

Application of the Adjusted Winner procedure to the negotiations on wealth sharing in Sudan

What preconditions have to be met for an application of the Adjusted Winner procedure to civil war negotiations?

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Summary

Brams and Taylor (1996) have developed a dispute resolution mechanism, the procedure of Adjusted Winner (AW), which they claim will produce solutions that are envy-free, efficient and equitable.¹ Given these properties of fairness, the AW procedure may, if applied to civil war conflicts, provide parties with solutions that are acceptable at the negotiating table and are robust settlements in regard to implementation.

In this thesis the preconditions of applying the AW procedure to civil war negotiations are identified through various investigations. First, a theoretical investigation is carried out by using theory on conflict resolution and bargaining to discuss assumptions of applying the AW procedure to civil war negotiations. Second, an empirical investigation is conducted into the negotiations on wealth sharing between the Government of Sudan and the Sudan People's Liberation Army / Movement (SPLA/M) in the recent IGAD talks of making peace in Sudan. Third, the AW procedure is applied hypothetically to the issues of wealth sharing of the IGAD talks.

The preconditions for applying the AW procedure to civil war negotiations are related to the issues at stake, the parties at the negotiation table, the mediators and the aspect of implementing the deal. For instance must the mediators be able to demonstrate for the parties that the AW procedure guarantees them a favorable settlement and be trusted by the parties so they are willing to reveal their preferences. The precondition of defining what winning and sharing shall entail on each issue is especially problematized in the thesis. The process of defining what winning and sharing will imply on each issue decides to a great extent what outcomes can be produced by the AW procedure and to what extent the parties are likely to consider the outcomes as fair.

¹ Brams and Taylor (1996: 2, 68-75, 241) define "envy-freeness" as a property of a solution where "every part thinks he or she received the largest or most valuable portion of something – based on his or her own valuation – and hence does not envy anyone else". Equitability they define as a property of settlement where each part "thinks that the portion he or she receives is worth the same, in terms of his or her valuation, as the portion that the other player receives in terms of that player's valuation". A settlement is "efficient" (Pareto-optimal) if there is "no other allocation that is strictly better for at least one player and as good for all the others".

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Before I started on this project, I felt that research on ending civil wars and fairness in negotiations are both interesting and important topics. The beginning of promising peace talks in Sudan in 2002 brought my attention to this vast African country. At that time I had no idea of how fascinating the choice of Sudan as an empirical focus would be.

The project got a kick-off start when I for the first time entered the office of Endre Stiansen. He was not only willing to supervise me, but was actively involved in the Sudan peace negotiations taking place in Kenya. Now I can say for sure that Endre with his insight, contacts and piquant humor has been of unique support for the project.

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Abbreviations

AW Adjusted Winner

BOSS Bank of Southern Sudan

CBOS Central Bank of Sudan

GOS Government of Sudan

GOSS Government of Southern Sudan

ICG International Crisis Group

IGAD Intergovernmental Authority on Development

IMF International Monetary Fund

Nakuru document Nakuru protocol, Draft framework for resolution of outstanding issues arising out of the elaborations of the Machakos protocol

NIF National Islamic Front

NPC National Petroleum Commission

NRDF National Reconstruction and Development Fund

SPLA/M Sudan People's Liberation Army/Movement

SSRDF Southern Sudan Reconstruction and Development Fund

WB World Bank

1 Introduction

What does it take to end civil wars? The most common way civil wars end is by military dominance. A peace “deal” is then based on the justice of the victors. A decisive victory of one party may lead to political stability and growth in a country, but it might also have disastrous negative consequences such as human and material costs of war, unfair agreements not addressing grievances and permanent marginalization of various groups. If a civil war can be ended primarily by negotiations and third-party support, this is in principle a normatively preferable way of creating peace. Through negotiations the government can be responsive to the grievances of its people and the opposition can put forward its demands in a setting like “normal politics”. Negotiations are the natural meeting point of battle groups for returning politics back to peaceful coexistence (Zartman 1995: 3). Particularly if an agreement can be reached which provides at least a minimum of functional institutions leading to further stability and progress within the country, negotiations are preferable to military ways of ending civil wars.

Brams and Taylor (1996) have developed a dispute resolution mechanism, the procedure of Adjusted Winner (AW), which they claim will produce solutions that are envy-free, efficient and equitable. Brams and Taylor (1996: 2, 68-75, 241) define “envy-freeness” as a solution where neither of the players will trade its portion for that of the other. It is a division in which “every part thinks he or she received the largest or most valuable portion of something – based on his or her own valuation – and hence does not envy anyone else”. “Equitability” Brams and Taylor define as a property of a solution where both players receive the same number of points or utility. Each part “thinks that the portion he or she receives is worth the same, in terms of his or her valuation, as the portion that the other player receives in terms of that player’s valuation”. A settlement is “efficient” (Pareto-optimal) if there is “no other allocation that is strictly better for at least one player and as good for all the others”. Given these properties of fairness, the AW procedure may, if applied to civil war conflicts, provide parties with solutions that are

acceptable at the negotiating table and are robust settlements in regard to implementation. The AW procedure has been applied hypothetically to several international disputes, including the Panama Canal treaty (Brams and Taylor 1996), Spratly Islands (Denoon and Brams 1997), Camp David accords (Brams and Taylor 1999) and the Israeli-Palestinian conflict (Massoud 2000). However, the procedure's practicality to civil wars is still unclear as no one has ever before applied it to a case of civil war.

If the AW procedure can be fruitfully applied to prescribing a fair solution to a civil war conflict, it both has an analytical potential in suggesting solutions to different cases of civil wars and a practical potential as a tool for negotiators and mediators in resolving civil wars. As civil wars have become the major form of war in today's world and proven sustainable and hard to resolve, an analytical and practical measure in resolving civil wars could be one step towards fewer civil wars and less human sufferings.

The AW procedure starts by making assumptions about what issues are at stake and whether the issues are divisible or not. Then the parties' utility values towards each issue are point allocated.² The party that attaches most utility points to an issue wins on that issue. When all issues are shared according to this initial step, some issues are re-shared to make the total amount of utility points gained equal for both parties. In theory, the solutions created are equitable, envy-free and efficient and by creating an outcome with these criteria the procedure can be perceived as fair for the parties (Brams and Taylor 1996: chap. 4).

The AW procedure is interesting as it theoretically is an improvement of the more common fair division procedures, such as strict alternation and divide-and-choose (Brams

² Brams and Taylor (1996: 246) define "utility of some portion of a good or goods to a player" as "a numerical value indicating that player's degree of preference for that portion; if the player prefers one portion to another, then the former portion receives a higher value".

and Taylor 1999: 6).³ The procedure is also interesting as it is based on a standard of fairness which guarantees that the parties win on the issues they value most or satisfy the greatest subjective utility. Satisfaction of subjective utility is likely to be respondent to parties' various concerns, in contrast to other standards of fairness which may be either normatively unacceptable or involve great risks for the parties.

The aim of this thesis is to investigate the applicability of the AW procedure, as a standard of fair division, to civil war negotiations. The recent IGAD talks of making peace in Sudan are chosen as an empirical case of civil war negotiations to investigate the general applicability of the procedure.⁴ The IGAD talks are interesting as this peace attempt is currently on-going and has been carried out with two parties at the negotiation table.⁵ Two parties is an advantage when applying the procedure as three or more parties will make the mathematics of the procedure complicated and satisfaction of all the three properties of fairness (envy-freeness, equitability and efficiency) impossible at the same time (Brams and Taylor 1999: 83-86).

Great progress has been made in the IGAD talks in spite of a long lasting and complex civil war.⁶ With the signing of the Machakos protocol in July 2002, the two main

³ "Strict alternation" is a "procedure in which first one party chooses an item, then another party does, and so on, until all the items are exhausted" (Brams and Taylor 1999: 151). "Divide-and-choose" is a "discrete two-person fair-division procedure, applicable to a divisible heterogeneous good, in which one player (the divider) cuts a cake into two pieces, and the other player (the chooser) selects one of the pieces. It is proportional and envy-free but not efficient" (Brams and Taylor 1996: 240).

⁴ "IGAD" stands for "Inter-Governmental Authority on Development". IGAD is a regional organization in the Horn of Africa / East Africa, consisting of Djibouti, Eritrea, Ethiopia, Kenya, Sudan, Tanzania and Uganda. It was formed in 1986 (then as "IGADD"), and has the latest years been involved in peacemaking in Somalia as well as in Sudan (see www.igad.org).

⁵ The SPLA/M has been negotiating on behalf of the National Democratic Alliance (NDA) in the IGAD talks. The NDA is an umbrella organization of opposition parties and armed groups in Sudan, including amongst others the SPLA/M, the Democratic Unionist Party, the Sudan Alliance Forces and the Beja Congress (HRW 2003: 26).

⁶ Civil war has plagued Sudan since before independence in 1956, with relatively peace from 1972 to 1982. An estimated 2 million lives have been lost since the war in the South re-started in 1983. Historically the wars have been fought over the control, access, and use of state power in the Sudan (Kok 1992: 104). Some historians have explained this state conflict as mainly a contest between the Arab and Muslim nationalism of the North and the more Christian and African identities of the South (Deng 1995 and Lesch 1998). However, during the past few decades the civil war has become increasingly complex as Southerners are fighting Southerners, Muslims are fighting Muslims and oil areas have become a major war zone. According to Johnson (2003: xiii), "the Sudan entered the twenty-first century mired in not one, but many civil wars." The motives for fighting in the wars are

protagonists, the Government of Sudan (GOS) and the Sudan People's Liberation Movement/Army (SPLA/M), took a major step towards peace in Sudan.⁷ Since then, negotiations have taken place at different locations in Kenya. Issues have been addressed in areas of power sharing, wealth sharing, security and ultimately, "The Three Areas".⁸ There have been serious halt to the talks, but the signings of a protocol on security in September 2003, wealth sharing in January 2004 and power sharing and The Three Areas in May 2004, brought the parties closer to a final and comprehensive peace agreement. However, the war in Darfur (West Sudan), which erupted in early 2003 has derailed a final peace agreement and complicated the aim of the IGAD talks of establishing peace in Sudan. Today (October 2004), Sudan is in a paradoxical situation of having almost reached a momentous peace agreement regarding the 21 year lasting war in the South while a new and disastrous war in the West seems hard to resolve.

Ideally, the AW procedure would be tested by a real-life application at the negotiation table in Kenya. However, such an application would have to be well prepared by the mediators and be based on risk assessments showing that the procedure most likely would facilitate the talks in a positive direction. In this thesis I opt for a *hypothetical application* of the AW procedure. Hopefully such an application can reveal what preconditions which have to be met in order to apply the AW procedure successfully to a real-life situation of civil war negotiations.

various, but some common "root causes" of the wars can be traced to exclusionist policies of various forms of government in Sudan, both historically and up to the present day (Johnson 2003: xiii-xx).

⁷ In the Machakos protocol the issue of state and religion was principally resolved by agreement on continuance of Islamic Sharia law in the North, but opening up for a secularly based law system in the South. The issue of self-determination in the South was handled by agreement on the establishment of a regional government of Southern Sudan and a referendum on secession or unity after a six-year interim period (Machakos protocol 2002).

⁸ The Nuba Mountains, Southern Blue Nile and Abyei are the areas in Sudan labeled as the "The Three Areas". Their degree of autonomy, right to be a part of Southern Sudan and representation in Khartoum were highly contested issues in the talks (see ICG 2003a, ICG 2003b and ICG 2003c for more on The Three Areas as an issue in the talks).

Specifically, the issues of wealth sharing in the IGAD talks between the GOS and the SPLA/M represent the empirical case for a hypothetical application of the AW procedure in this thesis. The negotiations on wealth sharing addressed issues as sharing of oil revenues, government transfers, central bank and currency, ownership of land, management of the petroleum sector and the control of development and reconstruction funds. Why apply the AW procedure to the issues of wealth sharing of the recent IGAD talks of peace in Sudan?

The issues of wealth sharing seem suitable as a set of issues as they exhibit clear quantifiable aspects. The AW procedure requires point allocation of utility value and the importance of economic issues are likely to be possible to point allocate and systematically compare. Another aspect is that although the IGAD talks have addressed issues of power sharing, security and The Three Areas in addition to wealth sharing, the issues of wealth sharing were to a large extent negotiated as a self-contained area (Stiansen 2004 [interview]; GOS informant 2004 [interview]).⁹ That means that it is possible to treat the issues of wealth sharing as an isolated set of issues since the parties seemed to agree to them without serious considerations of how other issues were resolved. Finally, an advantage in applying the AW procedure to the issues of wealth sharing is that several documents indicating the positions and preferences of the parties during the peace talks are available, as well as the agreement from January 2004 which shows how the issues finally were addressed and what became acceptable terms for the parties.

Still, how realistic is it that fairness arguments of envy-freeness and equitability can be acceptable in civil war negotiations as the IGAD talks, where one party (the GOS)

⁹ As a part of the research process, I tried to apply the AW procedure to all the major issues of the IGAD talks. However, such a general application seemed to require a high number of issues included and was therefore hard to carry out in a fruitful way. An alternative to my application of the AW procedure to the issues of wealth sharing could be an application of the AW procedure to a few outstanding issues at a certain point of the negotiation process. For instance could the AW procedure have been applied to issues which presumably had to be traded in the preparation of the “Nakuru document” (a mediator suggested framework for a settlement of the outstanding issues of July 2003, see chap 4.1), or the final issues (like Abyei and the national capital) during the talks in February to May 2004.

controls most of the resources and issues at stake and where wealth sharing means that the GOS has to “give away” resources and powers which it now controls? As the GOS has greater power than the SPLA/M in terms of military capacity, income and administrative apparatus, it would probably seem more favorable for the GOS to bargain hard for a great portion of the issues than to apply a procedure which establishes a deal of envy-freeness and equitability. These objections to applying the AW procedure to the IGAD talks and civil war negotiations in general are important and are discussed in more detail in chapter 3 and 6. However, two points regarding the objections to applying the AW procedure to the IGAD talks should be made here in the introduction. One point is that the parties in the IGAD talks agreed to create an *equitable* sharing of wealth (Agreement on wealth sharing 2004: chapter 1). Although the specific meaning of the term was contested, it was concretized with other principles and the AW procedure may have been relevant as a way of deciding on what is an equitable sharing of wealth in Sudan. Another point is that although an application of the AW procedure to the IGAD talks may have been practically difficult and unacceptable for the parties, it does not mean that a solution suggested by the AW procedure is not possible to agree to or not favorable for a stable peace. Given these points, an application of the AW procedure to the issues of wealth sharing of the IGAD talks is fruitful although serious objections can be raised to the choice of case for an application of the procedure.

1.1 Research question

Brams and Taylor claim that the AW procedure can be a useful tool of conflict resolution as it guarantees fair shares to parties of a conflict. However, the objections to applying the procedure presented above and several assumptions of the procedure call into question how suitable the AW procedure is for settling civil war conflicts. One assumption of the procedure is additivity, which means that when sharing the issues to the parties, the utility satisfied should correspond to the initial rating of the issues before the sharing. In practice this means that the issues must be *separable*. Another assumption of the procedure is *linearity*, which means that the marginal utility of gaining or losing on an issue should be

constant no matter how the issue is shared among the parties.¹⁰ In practice this means that getting 2 percent of oil revenues should be double as good as getting 1 percent of oil revenues. In addition to these assumptions regarding the issues at stake, an application of the AW procedure to civil war conflicts relies on some wider and general assumptions: That parties in a civil war attend negotiations, that utility based characteristics of fairness (envy-freeness, equitability and efficiency) can play a role in such negotiations, and thirdly that a settlement based on the AW procedure increase the chances for a successful implementation of the agreement. In addition, if the parties are to carry out the AW procedure themselves, an application assumes that the parties can bind themselves to a procedure in reaching a settlement and be honest in their point allocation of utility. All these assumptions call into question whether the AW procedure realistically can be applied to a civil war conflict and eventually under what conditions the AW procedure can facilitate negotiations on ending a civil war.

In order to identify the preconditions which have to be met for a successful application of the procedure, the AW procedure has to be investigated in the context of civil war conflicts. Three investigations are carried out in this thesis to explore the context of civil war conflicts. First, a theoretical investigation is conducted into literature on ending civil wars and negotiations of internal conflicts. Second, a case study into the negotiations on wealth sharing which took place between August 2002 and January 2004 in Kenya is carried out. Third, a hypothetical application of the AW procedure to the issues of wealth sharing of the IGAD talks is conducted. Based on the three investigations, some of the most important preconditions for an application of the AW procedure to civil war conflicts are sought identified. The research question of this thesis is as follows:

What preconditions have to be met for an application of the AW procedure to civil war negotiations?

¹⁰ Brams and Taylor define “linearity” as constant marginal utilities of the players. By “additivity” they mean that the value of

Some central terms of the research question needs a definition. The “preconditions” which will be sought identified in this thesis are empirical situations which have to take place if the AW procedure is going to be applied successfully in a civil war negotiation. When Brams and Taylor (1996; 1999) discuss the applicability of the AW procedure, they use the term “assumption” to describe certain features which an application of the AW procedure “take for granted”. The concept of assumption is also used in this thesis, but for simplicity only the concept of “precondition” is applied in the discussion (chapter 6) to describe various empirical situations as well as procedural prerequisites of the AW procedure which have to be met to apply it to civil war negotiations.

An application of the AW procedure to civil war negotiations can be carried out in roughly two different ways. One alternative is to apply the AW procedure *directly*, meaning that the parties themselves to a large extent participate in carrying out the procedure. The parties would then define the set of issues, define what winning and sharing implies on each issue, point allocate the utility value of each issue and bind themselves to the outcome of the procedure after it is provided by a mediator. Another alternative is to apply the AW procedure *indirectly*. Then mediators or researchers carry out the different steps of the procedure based on interviews and information on the parties’ preferences and suggest a specific fair division being justified by the AW procedure. Dependent on the specific negotiation setting and what seems practicable suitable, a combination of a direct and an indirect application of the AW procedure can be carried out. In this thesis, I will identify what seem to be preconditions of both a direct and an indirect application of the AW procedure to civil war negotiations.

Finally the terms “civil war negotiations” and “civil war” have to be defined. “Civil war negotiations” can be defined as “a decision making process involving parties of a civil war where the official aim is to establish a peace deal incorporating central issues of the

two or more goods to a player is equal to the sum of their points (Brams and Taylor 1996: 72).

conflict”.¹¹ A “civil war” can be defined as “a military conflict within a state where the national government is one of the active parties and where both parties in the conflict can and intend to struggle despite any costs” (Small and Singer 1982: 210).

1.2 Outline

In identifying the preconditions that have to be met for applying the AW procedure to civil war negotiations I carry out three different investigations (mentioned above). The different investigations involve different methodological challenges and these are discussed in chapter two. Also, the research design as a basis for identifying preconditions of the AW procedure is discussed in that chapter.

In chapter 3, the theoretical investigation is carried out. I present the AW procedure developed by Brams and Taylor (1996) and show why the AW procedure in theory produces settlements that are envy-free, equitable and efficient. Specific assumptions of the AW procedure are discussed, as well as more general assumptions concerning the aspect of applying the AW procedure to civil war conflicts.

In chapter 4, the negotiations on wealth sharing in Sudan following the Machakos protocol are presented. How did the negotiations proceed? What were the issues of wealth sharing? How were the issues addressed? What were the positions of the parties? Investigations into these analytical questions form the basis for a hypothetical application of the AW procedure to the issues of wealth sharing and for a discussion on the practical preconditions of applying the AW procedure to civil war negotiations.

In chapter 5, I investigate how the AW procedure can be carried out on the issues of wealth sharing. I present a settlement based on a hypothetical distribution of utility points and discuss whether the AW solution is a *fair* settlement. I also work out two alternative

¹¹ Adopted from Underdal’s (2001: 293) definition of negotiations: “Negotiations is a process of decision making where two or more parties work out and discuss different proposals with the official aim of reaching a solution to a common problem”.

applications of the AW procedure: One by entitling the parties to unequal shares and one based on maximization of different goals of the parties.

In chapter 6, the hypothetical application of the procedure is critically evaluated and preconditions of applying the procedure to civil war negotiations are suggested on the basis of the different investigations.

In chapter 7, the main preconditions of applying the AW procedure to civil war negotiations which have been identified in the thesis are summed up and I briefly discuss whether these preconditions realistically can be met in civil war negotiations.

2 How to identify preconditions for applying the AW procedure

In this thesis I focus on identifying the preconditions which have to be met for applying the AW procedure to civil war negotiations. As a research design, three different explorations are conducted to identify the preconditions of the AW procedure. One investigation is carried out into theoretical findings of literature on negotiations and how civil wars end. Another inquiry is conducted into the real-life negotiations on wealth sharing of the IGAD talks. Finally, a hypothetical application of the AW procedure to the issues of wealth sharing of the IGAD talks is carried out.

It could be argued that the case study of the negotiations on wealth sharing and the hypothetical application of the AW procedure to a great extent are connected and should be treated as one case study. However, it seems orderly to separate these investigations as they are based on different scientific criteria: While the investigations into the negotiations of wealth sharing is to be a strictly empirically based inquiry, the application of the AW procedure is a hypothetical application of a normative theoretical procedure, which attempt to be empirically based but which have not been carried out in real-life.

Carrying out the three different investigations to identify preconditions of the AW procedure involve different methodological challenges. In this chapter I discuss the methodological challenges of conducting the different investigations and the prospects of deriving valid preconditions of the AW procedure on the basis of the three investigations.

2.1 Identifying preconditions through a theoretical investigation

The theoretical investigation of how civil wars end and how the AW procedure can facilitate such processes is carried out by establishing a framework for ending civil wars by negotiations and on the background of this framework propose some explicit assumptions of what an application of the AW procedure has to lead to in order to facilitate an ending of a civil war. By making explicit what assumptions which seem to

underlie an application of the AW procedure, the theoretical argumentation can be tracked by the reader and eventually criticized. The assumptions are discussed in a critical perspective to identify possible preconditions of the AW procedure. These suggested preconditions are re-evaluated in chapter 6 where preconditions of the AW procedure are discussed in the light of the theoretical investigation, the case study of the negotiations on wealth sharing and the hypothetical application of the AW procedure.

2.2 Identifying preconditions through a case study of the negotiations on wealth sharing

The investigation into the negotiations on wealth sharing has two aims: Firstly to explore the context and course of a specific civil war negotiation for suggesting general preconditions for a real-life application of the AW procedure, and secondly to establish the information needed for a hypothetical application of the AW procedure to the issues of wealth sharing. To meet these aims, specific questions have been worked out to establish an analytical focus for the investigation.¹² As a research method, a case study is conducted to answer these questions.¹³

Scientific control in the case study of the negotiations on wealth sharing has been sought by acquiring different types of sources as well as a triangular and critical utilization of the sources. The data sources which the case study primarily rely on are the agreement on wealth sharing of January 2004, a limited selection of proposals or position papers issued

¹² The four questions are: What were the issues of wealth sharing? How were the issues addressed? What were the positions of the parties to the issues? What was the role of the mediators and the resource persons during the negotiations?

¹³ Yin (2003) defines a case study as "an empirical inquiry that investigates a contemporary phenomenon within its real-life context, especially when the boundaries between phenomenon and context are not clearly evident". Further Yin notes that "the case study inquiry copes with the technically distinctive situation in which there will be many more variables of interest than data points, and as one result [it] relies on multiple sources of evidence, with data needing to converge in a triangulating fashion, and as another result [it] benefits from the prior development of theoretical propositions to guide data collection and analysis". Case studies are conducted in various forms. Generally it can be differed between multi- and single-case studies, exploratory case studies, descriptive case studies and explanatory case studies (see Yin 2003b: 5). Also, case studies vary in whether they attempt to arrive at theoretical generalizations based on the evidence from the case, or simply investigate the individual case (Yin 2003a: 15).

by the parties during the negotiations in September-October 2003, a draft framework for a resolution of the outstanding issues proposed by the mediators in July 2003 (the "Nakuru document") and statements given in personal interviews carried out in January-March 2004. Utilizing the data sources as evidence or indications of the preferences and positions of the parties is not a straightforward task. Below the different types of sources are presented in detail and the challenges of utilizing them are discussed.

2.2.1 Documents as data material

The agreement on wealth sharing of January 2004 and the Nakuru document of July 2003 are documents which are made available through the internet.¹⁴ In investigating how the issues of wealth sharing were addressed in the talks, the Nakuru document is useful as a source of evidence as it shows what the mediators and the resource persons thought the parties could accept as arrangements by July 2003. The agreement of January 2004 is a useful source of evidence as it shows what finally became acceptable for the parties in a written and binding agreement. There may exist side agreements on sensitive issues, as both parties may have felt it beneficial to keep arrangements on certain issues secret because of serious internal opposition and potential international reactions. However, in my investigations I found no clear indications on the existence of a side agreement. I therefore assume that the paragraphs of the agreement can be treated as a reliable source of what arrangements for wealth sharing during the interim period which became acceptable for the parties in January 2004. It should though be mentioned that before an eventual signing of a final peace agreement of the IGAD talks, the parties are to revisit the initial protocols and agree upon implementation modalities. Important specifications to the arrangements of the agreement on wealth sharing may thus be added.

¹⁴ While the agreement on wealth sharing was agreed to be public by the parties, the Nakuru document was supposed to be kept secret. However it "appeared" on the internet short time after it had been presented by the mediators in July 2003.

A third form of documents that I utilize in the case study of the negotiations on wealth sharing, are a limited selection of proposals or position papers, which were issued between the parties in Naivasha in September and October 2003.¹⁵ They are *historically conditioned documents* as they were issued at a particular time of the negotiations and cover certain issues. In utilizing these documents as sources it has to be considered that the issues of wealth sharing had been worked on continuously since May 2002 and that these documents were issued at a time of the negotiations where certain issues had a status as “initially agreed to”. My collection of proposals/position papers potentially suffers from selection bias as it represents a limited selection of the total number of proposals which circulated between the parties. Nonetheless, compared to the total number of proposals, my selection of position papers do cover all the major issues of wealth sharing of what became the agreement of January 2004 and are from both of the parties. I therefore regard my collected proposals/position papers as reliable sources on the communicated positions of the parties in September and October 2003.

In discussing what the priorities of the parties were in the negotiations, I study how the positions of the parties developed from the Nakuru document, via the proposals/position papers to the agreement of January 2004. By checking which positions were upheld and in which issues the parties seemed to make concessions, I suggest what issues and positions were of greater importance for the parties.

A potential problem of deducing the importance of an issue or the preferences of the parties based on the movement of the related position is that it has to be considered whether the original position to a large extent was a *maximalist position* and a movement did not really involve any serious concession for the party. The proposals/position papers do not show the parties' secret dispositions of the issues and what they considered as red-

¹⁵ Ideally all the proposals or position papers which circulated among the parties at the talks would be used as a source of evidence of the positions of the parties. However, I was not able to acquire a complete collection of proposals and positions papers as they in principle are confidential.

and blue-line positions. Thus the *genuine positions* or the preferences of the parties are not necessarily shown by the proposals/position papers, but the *communicated positions* of the parties at certain dates of the negotiations are stated. In using the proposals/position papers as sources of evidence of the preferences of the parties, it thus has to be critically considered whether the communicated positions are tactical dispositions in a bargaining process or genuine positions which reflect the preferences of the parties. As the Nakuru document contains suggested compromises on the issues, positions which are distant from the arrangements of the document can be considered as highly maximalist positions. Also the interviews provide a check of what were the priorities of the parties of the issues and to what extent the suggested solutions of the proposals/position papers were maximalist positions.

Another potential problem in deducing the importance of the issues based on the movements of the parties from the Nakuru document and the proposals/position papers to the agreement, is that it assumes that the parties were *rational actors* in giving in on the issues in which they least valued and hold on to the issues of greatest importance. In a bargaining process and during several rounds of negotiations, parties may accept solutions not only due to rational concerns. For instance may one party suddenly give in on an issue and demand an equal concession from the other party. Then a former red-line position of a party may be perceived as less important and given in to, as suddenly an opportunity of winning on another issue emerges. In relation to such a situation, or generally through negotiations, a limited capacity of information processing may also lead to acceptance of a certain arrangement although it contradicts what has been laid down as priorities or overall goals of a party. An informant of the SPLA/M (2004 [interview]) illustrates this by his statement that "our negotiators tend to forget our priorities".

At the same time as there are reasons why the parties may agree to solutions that do not correspond to their agreed priorities, it can be held that the preferences of the parties in the talks are roughly reflected by the moves in the negotiations as the parties tried to avoid being influenced by the above mentioned dynamics. One informant of the SPLA/M

(2004 [interview]) stated that they deliberately did not want to develop too strong personal relationships with the GOS delegation in order to avoid making concessions that were not corresponding to their agreed priorities. If the SPLA/M eventually were going to make a greater concession, the delegation had extended meetings where all members of the team could speak up. The intension of such meetings was to avoid a split of the group following a concession and to avoid making unsound priorities. The SPLA/M thus had collective mechanisms to establish some agreement on their priorities. It is probably reasonable to believe that parties negotiating an end to a civil war are highly concerned about what should be their priorities and try to be conscious about these throughout the negotiations. Of course the various forms of pressure negotiators in a civil war negotiation face as well as the changing situation on the battlefield may make it hard for a negotiator to focus on what are the priorities of its party and only agree to terms consistent with its priorities. However, in the utilization of the documents I assume that the movements of the parties from the Nakuru document, via the proposals/position papers and to the agreement, can be treated as relatively reliable indications of the priorities of the parties.

Still, as have been discussed above, there are several reasons why deducing preferences and positions of the parties may be problematic on the basis of the documents. A triangulation of data material between documents and interviews may increase the validity of the investigation into the positions and preferences of the parties.

2.2.2 Interviews as data material

Interviews with key informants were carried out in January, February and March 2004.¹⁶ Most informants were met in Nairobi, while others were met in Oslo (Norway), New Site

¹⁶ One informant, Endre Stiansen, was interviewed at various dates between August 2003 and September 2004. He is one of the IGAD resource persons and had great influence on this thesis by being my supervisor. The close cooperation with him was useful since he could suggest qualified informants and inform widely of how the issues were addressed. On the other hand, I had to balance the usefulness of my supervisor against not becoming biased by relying on him as an informant. By crosschecking some of his statements and interviewing a broad selection of other informants, I have tried to avoid a biased dependence on him as an informant.

(Southern Sudan), Naivasha (Kenya) or Khartoum (Sudan). In selecting the interview objects I tried to cover the major groups involved in the negotiations on wealth sharing (the GOS, the SPLA/M, the mediators and the international observers).

From the SPLA/M delegation five representatives were interviewed. Unfortunately the leader of the SPLA/M team on wealth sharing was not interviewed, though two of the SPLA/M interview objects are probably well informed on what took place at the top level of the negotiations.

From the GOS delegation three representatives were interviewed, including the leader of the team on wealth sharing. Two representatives of the international observers were interviewed, while one mediator of the IGAD secretariat was met. Also, interviews were carried out with three press workers covering the peace talks. As representatives from all the major groups involved in the negotiations as well as representatives from the media were interviewed, the most important perspectives on how the issues were addressed and what were the positions and preferences of the parties have hopefully been detected.

On average the interviews lasted an hour and most of them were recorded. During the interviews I used an interview guide, but the interviews developed into guided conversations. I had some questions for which I wanted to have answers and some topics I wanted to cover, but I let the interview objects talk freely and improvised the order of the topics as the conversation developed. To get analytical answers on the questions for which I was particularly interested, I tried initially to ask open and neutral questions instead of specific and judging questions. For instance in investigating the positions of the parties and the utility basis of the issues, I started with open questions and eventually followed up with more specific questions testing my hypothesis on the positions of the parties. Also, I started by asking about the positions of the antagonist if the interview object represented a specific party in the talks. By applying these simple techniques of

creating confidence, I tried to avoid defensiveness of the interview object and to get honest and analytical answers.¹⁷

While the documents are exploited as physical evidence (“levninger”) of the negotiations on wealth sharing, the interviews are utilized as accounts (“beretninger”) on the talks.¹⁸ To utilize the interviews as accounts, the replies must be critically evaluated in relation to several aspects. A potential flaw of the replies given in the interviews is that the informants may have presented themselves as having *consistent* opinions or preferences over time, although this was not the case. For instance when asking a party as to why they accepted a certain solution to an issue, the respondent may present the solution as being a favorable term and meeting the parties’ considerations to a large extent. However, bargaining dynamics or international engagement may have led to a changing view of the informant towards an issue during the negotiations which in turn resulted in the acceptance of a certain paragraph. By crosschecking the replies of the informants by statements of other interviewees and the documents, I try to reveal an eventual false consistency of an informant’s replies.

Also, by taking into account the interests of the informant and the version of the negotiations that he or she may want to present I try to critically evaluate the statements and interests of the interviewees. For instance, both negotiating parties may have an interest in presenting their positions to me as a Norwegian researcher as having been in favor of “making unity attractive” (Norway’s position in the talks was pro solutions that would make unity attractive and functional). Eventually if an informant gave a statement on a topic that he or she most probably does not have particular interest, then the reply

¹⁷ It should also be mentioned that I presented myself as a cooperator of my Endre Stiansen who was involved in the negotiations as a resource person of the IGAD secretariat. He is well informed on the positions and priorities of the parties and the interview objects thus knew that I probably knew a lot about their positions and priorities through Endre and that I could eventually cross check their answers. This fact probably strengthens the reliability of the answers given in the interviews.

¹⁸ See Dahl (1967: 37-39) on the difference between utilizing sources as physical evidence (“levninger”) or accounts (“beretninger”).

can be treated as relatively reliable (Dahl 1967: 72-73). However, of the interviews carried out with representatives of the parties, it was hard to find statements that could not be colored by interests. This is probably due to the “life and death” importance of the talks for the parties in a context of a civil war. The replies of mediators and internationals are most probably more reliable than the statements of the parties, as the mediator’s interests in presenting a certain view of the talks and the actors involved are not as deep as the interests of representatives of the parties. I therefore assume in general that the responses of the internationals and the mediators are more reliable than the replies of the negotiating parties.

2.3 Identifying preconditions through a hypothetical application of the AW procedure

The idea of the AW procedure is to establish a fair division based on point allocation of utility. But what method for point allocation will give appropriate assignments in which the parties can be comfortable? If the AW procedure is going to be applied to a real-life situation of a conflict and the parties are to accept the outcome of the procedure, they have to be convinced that their preferences are appropriately represented by points. In an application of the AW procedure it should therefore be shown how point allocation of utility realistically can be carried out in a specific conflict and with a specific set of issues. Below I discuss challenges of point allocation and present a step-wise procedure for how parties can arrive at point allocation of utility. In the development of this step-wise procedure I have sought methodological guidance of how the AW procedure has been applied to other conflicts (Brams and Taylor 1996, Denoon and Brams 1997 and Massoud 2000).

As the value of winning on the issues of wealth sharing can not be adequately described by a single attribute (e.g. money), the allocation of utility value to the issues is a *complex* value problem (Keeney and Raiffa 1993: 15). I therefore suggest that as a first step towards point allocation of utility, the factors which make an issue important or less

important have to be specified. An item may have a utility value due to several different value factors. The item may have an economic value, a power-political value, a security-military value or a cultural-religious value for a party. Such categories of utility can be useful in making *explicit* what the basis of utility of an issue is. In addition to these forms of utility of an item, issues may vary to which extent they involve *risks* (Raiffa 1982: 154-155).¹⁹ Although an issue seems to have a great economic value for a party, it may involve a large risk of becoming jeopardized. By investigating and stating potential risk factors attached to the issues, a broader basis of utility of the issues can be discovered. Also, winning on an issue may involve a future benefit which is not as a good as a benefit at hand. Whether an issue should be *discounted* have to be explored and taken into account when deciding the utility value of an issue.

In the hypothetical application of the AW procedure the assumed basis of utility for the issues of wealth sharing are presented (table 5.1). While the sources of utility value for the issues which are assumed to be most important for each party are listed, the risk factors and the eventual discount factors are not presented as that would involve a quite extensive investigation. The interviews serve as the primary data material for listing the assumed basis of utility value for the different issues.

As a second step towards point allocation, it should be specified what winning and sharing implies for each party on each issue (Brams and Taylor 1999: 104). Point allocation of utility value requires such a specification, as otherwise it will be impossible for the parties to compare the importance of winning on the different issues. If they know what they will lose if the other party wins and what they eventually will win if they win, point allocation of the utility value of each issue can be carried out with a clear reference.

¹⁹ A “risk” can be defined as “the possibility that something unpleasant or unwelcome will happen” (New Oxford Dictionary of English).

Stating what winning and sharing will imply before carrying out the procedure makes it also possible to “decode” the division of the issues suggested by the procedure into a real-life settlement. As Denoon and Brams (1997: 322) notice in the application of the AW procedure to the Spratly Islands controversy, how the equitability adjustments are going to be transformed into a practical solution may be complicated and carried out in alternative ways. The more detailed the implications of winning on each issue are specified in advance the less is probably the potential for conflicts over what specific terms of agreement are produced by the AW procedure. It is not a necessity to agree to in advance how the issues eventually are going to be shared, as the parties may agree to this after the procedure is carried out. Brams and Taylor (1999: 105) suggest that if the parties do not know who will receive what portion in the equalization adjustment (see chapter 3.1), they can agree to what constitutes a certain share of the different issues. However, if possible it is probably an advantage to agree to what sharing will imply beforehand, as the potential for conflicts after the AW procedure has been carried out is reduced.

In the hypothetical application of the AW procedure I suggest implications of winning and sharing of the issues (table 5.2). I assume that these winning and sharing implications could have been reasonable in a real-life application of the AW procedure to the issues of wealth sharing of the IGAD talks.

As a third step of point allocation, the issues have to be systematically compared to work out an additive scale of utility values from 0-100. This can be done by first setting up an ordinal ranking of the importance of winning on the different issues. On the basis of the explicit formulations on the utility basis of each issue and the implications of winning and sharing, issues which a player most strongly wants to win on are ranked at top, while issues of less importance are ranked lower. An important source of utility which initially had not been taken into account in the initial listing of sources of utility in step 1, may emerge as a result of this process and be supplemented to the list (Brams and Taylor 1999: 101).

After having worked out an ordinal ranking, the *intensity of preferences* for the different issues must be taken into account to distribute a total of 100 utility points across the issues. This can be done by first comparing the importance of winning on the issues ranked at top, with the issues ranked second. If winning one issue turns out to be just as important as winning on two other items, this issue will get as many points as the two others combined. Then the importance of winning on the issues ranked second can be compared with the issues ranked third, and so on (Raiffa 1982: 151-3). As an alternative, the issues can roughly be given point assignments and then packages of issues worth 50 utility points can be compared to each other and it can be evaluated whether they are of equal value. If the two packages of 50 points are not of equal value, the point assignments will have to be adjusted (Brams and Taylor 1999: 102). By systematic introspection into the importance of the issues, these methods show how a party can determine the relative utility value of the various issues.²⁰

Giving weight to the different forms of utility and estimating the risks and discount factors of the items may be complicated for a party. However, as parties of negotiations usually do work out priorities of the issues, it is reasonable to assume that parties can work out a ranking of the issues and weight the intensity of their preferences. However, agreeing internally on a certain point allocation may be hard as parties of a conflict seldom are internally monolithic and the values on the same side may differ sharply (Raiffa 1982: 12). Point allocation by the party itself may thus be a disputed process, which may either mean that point allocation in relation to the AW procedure is not acceptable for the parties, or that point allocation will be a top elite project.

If point allocation is going to be carried out by a mediator or a researcher, the actual priorities of the parties and the divergent views of the parties must also be handled. This can be done by setting up assumptions on what are the leading utility preferences of a

²⁰ See Thomas L. Saaty (1995) for an additional method for comparing the importance of the issues, called “Analytic hierarchy processing”.

party and base the AW procedure on these assumptions. The assumptions can be altered by different understandings of utility values, giving new models of fair division. For instance can it be made explicit what goals a player may seek to maximize and then try to outline what utility values the weight of the different goals will result in (see Denoon and Brams 1997). As sources for point allocation, mediators or researchers can base estimated utility values on interviews with the parties, documents and statements by the parties, or third-party reports. The validity of the point allocation method may be strengthened if several qualified persons take part in it. One example of third party point allocation was carried out by Massoud (2000). He asked researchers who have specialized on the Israeli-Palestinian conflict to rate the importance of each issue on a scale from 1-6. Based on a mean and median of ratings, the relative value of each issue was calculated.²¹

In the hypothetical application of the AW procedure, I suggest an ordinal ranking of the issues. This is based on a brief comparison of the issues, where I try to give reasons for and use the statements from the interviews of why winning on one or more issues seem to be of greater importance for a party, while winning on other issues seem to be of less importance for a party. Further, the ordinal rankings of the issues are transformed into cardinal utilities from 0-100. I do this by expressing the ordinal ranking of the issues by giving them points according to how they are ranked, where issues ranked at top are given four points, issues ranked second are given three points, and so on. Then these “ordinal ranking points” are used as a basis for a calculation of additive scores by dividing the ordinal ranking point of an issue with the sum of the ordinal ranking points and then multiply by a 100:

Utility value of issue = [ordinal ranking point of issue / sum of ordinal ranking points of issues] * 100

²¹ Such an “expert survey” was developed for this project as well, but the collected survey schemes turned out to be unreliable as a basis for value assignments of the issues of wealth sharing. The set of issues in the survey schemes was incomplete when given

This way of transforming an ordinal ranking of the issues to a 100 point scale is inspired by Massoud (2000). As an alternative to using this formula of transforming the ordinal ranking into cardinal utility values, I could have systematically compared the issues and suggested additive scores from 0-100. However, such a process would involve quite a lot of speculation and is not carried out. That does not mean that the formula I apply involves any less speculation on the preferences of the parties. The formula is applied as it is a way of simply creating additive scores out of an ordinal ranking, in a hypothetical application of the AW procedure for research purposes, where the ratings do not necessarily have to represent the exact preferences of the parties (assuming that the parties had exact preferences).

2.4 Research design limitations

The ultimate aim of this thesis is to identify the general preconditions that have to be met in order to apply the AW procedure to civil war negotiations. As mentioned in the introduction, the ideal research strategy for identifying preconditions of the AW procedure is to apply it to a real-world situation and then investigate what conditions were present in the talks when the AW procedure could be applied successfully and what conditions were present in the talks when its application failed. Then a systematic pattern of specific preconditions can be singled out on the basis of various peace negotiations. As a real-world application of the AW procedure has not been carried out and only one case of negotiation is explored in this thesis, the potential for establishing robust preconditions of such a nature is limited.

Instead, the research design of this thesis allows for *proposing* plausible preconditions for applying the AW procedure to civil war negotiations. The preconditions of the AW procedure identified in this thesis may be truly generalizable if they have been *correctly*

to the respondents, several respondents resisted to rank the issues properly, and those who carried out the scheme did it very roughly. There were thus few replies and these replies seemed unreliable.

identified in the case of the IGAD talks, and if the negotiations on wealth sharing with their issues, settings and actors have relevant characteristics that are found in other cases of civil war negotiations (Andersen 1997: 132-136). Regarding the extent to which the preconditions have been correctly identified in the thesis, the combination of the case study based on different data sources and the hypothetical application of the AW procedure, represents at least a certain basis for highlighting what would have been requirements for applying the AW procedure in the case of the IGAD talks.

Regarding the question of whether the IGAD talks as a case have characteristics that are relevant for other cases of civil war negotiations, it seems reasonable to assume that the parties in other civil war negotiations have many of the same concerns of applying a formal procedure as the parties in the IGAD talks. For instance are all parties in civil war negotiations likely to be highly concerned about the situation on the battlefield, internal demands, the strategy of the mediators and international pressure. Particularly in negotiations involving two parties at the table, the same constraints and opportunities may be found in regard to the prospects of applying the AW procedure.

3 Theoretical investigation

A variety of normative principles can be applied to attain a fair or a just outcome of a civil war conflict. Based on the justice-of-war tradition, specific criteria for *ius post bellum* (justice after war) are relevant for a civil war conflict. Henrik Syse (2003: 153-4) suggests six criteria for *ius post bellum*: (1) There must be a just reason for ending the war, meaning that the injustice in which the war was fought against is ended by peace, (2) the parties involved in the peacemaking must be considered legitimate authority, (3) the parties involved in the fighting must reach clear and binding settlements, (4) security guarantees must be established, especially for civilians in the post-conflict situation, (5) transitional justice addressing criminals of war from all parties must be carried out, and a redistribution of property and resources which is perceived as fair for all parties must be accomplished, and (6) a reconciliation process must be established to build confidence between former enemies.

In civil war negotiations, parties or mediators may argue for a certain settlement by referring to these criteria for *ius post bellum*, though the criteria are quite general. A related standard of justice which is more specific in what arrangements should be established by a peace deal is international law and human rights.²² However, human rights and particularly demands of self-determination and freedom of religion are in many cases highly contestable by the parties when concretized into a specific form of fair division. The normative principles of human rights are often intertwined with the conflict itself and the power interests of the involved parties may be seriously threatened by a realization of these criteria of a fair or just ending of a war.

Brams and Taylor's approach to the problem of fair division and the AW procedure particularly may be an acceptable way of concretizing Syse's criteria (3) (the parties

²² See C. Bell's *Peace Agreements and Human Rights* (2000) for how arguments of human rights and transitional justice have been introduced in peace talks, but in different ways were manifested into peace agreements.

involved in the fighting must reach clear and binding settlements) and (5) (a redistribution of property and resources which is perceived as fair for all parties must be carried out) for a just ending of wars. Brams and Taylor investigate how a fair division of conflicts in general can be created based on the satisfaction of utility. They set up explicit criteria (or properties) that characterize notions of fairness, such as proportionality, envy-freeness, equitability and efficiency.²³ Then they provide a step-by-step procedure that show how the criteria of fairness can be obtained given a set of issues and different utility rankings. They present different procedures of fair division, which satisfy different criteria of fairness, involve unlike number of players and are based on different representations of preferences (Brams and Taylor 1996).²⁴

As mentioned in the introduction, the Adjusted Winner (AW) procedure is particularly interesting as a procedure for transforming an unstructured bargaining situation into an arguably fair settlement as it is theoretically preferable to other techniques of fair division, such as strict alternation and divide-and-choose. This is because the solutions created by the AW procedure satisfy all three properties of envy-freeness, equitability and efficiency at the same time (Brams and Taylor 1996: chap 4). Especially the characteristic of envy-freeness seems attractive as minimizing envy in a settlement has been identified as an important factor for resolving different types of conflicts (Brams and Taylor 1996: 4).²⁵

²³ “Proportionality” can be defined as “an allocation where every one of n players thinks he or she received a portion that has a size or value of at least $1/n$ ” (Brams and Taylor 1996: 244). For definitions on envy-freeness, equitability and efficiency, see chapter 1.

²⁴ Regarding the definition of “fairness”, Brams and Taylor (1996: 241) claims that “a procedure is fair to the degree that it satisfies certain properties (e.g. proportionality, envy-freeness, efficiency, equitability, or invulnerability to manipulation), enabling each player to achieve a certain level of satisfaction with a guarantee strategy”.

²⁵ “Envy” can be defined as “a feeling of discontented or resentful longing aroused by someone else's possessions” (New Oxford Dictionary) or “a painful or resentful awareness of an advantage enjoyed by another joined with a desire to possess the same advantage” (Webster).

3.1 The Adjusted Winner (AW) procedure

The AW procedure can be applied primarily to conflicts over goods or issues between two parties, though Brams and Taylor (1996: 80-3) demonstrate how the procedure also can be applied to cases with three or more parties. The procedure can be used by parties with the goal of solving a conflict, or it can be used as a tool for analyzing conflicts and prescribing solutions (see chapter 1.1 on what can be meant by *application* of the procedure).

The procedure starts with designating the goods and issues of the dispute. There is some distinction between goods and issues, but they can be referred to as items. Goods are typically physical objects, while issues are matters on which there are opposing positions, such as Islamic law versus secularism in a state and religion conflict. Most important for dispute resolution is whether the goods or issues can realistically be split or shared without losing their value (Brams and Taylor 1999: 9). The second stage of the AW procedure is therefore to state whether the goods or issues can be divided or not and in what way they eventually can be split.

Next each party is given 100 points which are distributed across the goods or issues. The distribution of points is based on an allocation of the relative utility value which each party places on the different items. Utility is defined as “the numerical value indicating the player’s degree of preference for that item or portion” (Brams and Taylor 1996: 246). If for instance a party regards four items equally important, it will allocate 25 points to each item (Brams and Taylor 1999: 11). If a party regards one item of major importance, for instance it allocates 50 points to this item and distributes the rest of points (50) to the other items.

The items are then divided among the parties on the basis of the following procedure (Brams and Taylor 1996: chap. 4):

1. Initially, the parties win the items for which they have allocated more points.

2. If the total number of points won by each party is equal, then the procedure ends.
3. If one party gets more points than the other, then “equitability adjustments” have to be carried out so each party has an equal number of points acquired. The adjustment is carried out with sharing the divisible item controlled by the party with the most points, which also is characterized by the lowest ratio of ranking between the two parties.
4. If the parties still have an unequal satisfaction of points, the procedure moves on to the next issue with the next-lowest ratio, and so on.

This procedure can be illustrated with a simple example (adopted from Massoud 2000). Two parties disagree on three issues in which all are divisible. The parties point allocate utility values as listed in table 3.1 below.

Table 3.1: An example of point allocation of utility in a conflict involving two parties and three issues.

Issue	Party 1 utility	Party 2 utility
Issue 1	<u>20</u>	10
Issue 2	20	<u>50</u>
Issue 3	<u>60</u>	40
Total points allocated	100	100
Initial points satisfied	80	50
Points satisfied after equalization adjustments	62	62

As Party 1 has ranked issue 1 and 3 higher than Party 2, it wins on these issues. Party 2 wins on issue 2 and has only 50 points satisfied compare to Party 1’s 80 points. To achieve equitability, some points have to be transferred from Party 1 to Party 2. Which of the winning issues of Party 1 should be shared? Issue 3 has a lower winner-loser ratio ($60 / 40 = 1.5$) than issue 1 ($20 / 10 = 2$). Parts of issue 3 will therefore be transferred to Party 2. How much of issue 3 must be transferred to Party 2 to equalize satisfaction? If x is the

fraction of issue 3 that Party 1 will keep and $1-x$ is the rest transferred to Party 2, then an equation can be set for determining the share given to Party 1 vs. Party 2 (Party 1 is on the left side of the equation and Party 2 on the right side):

$$20 + 60(x) = 50 + 40(1 - x)$$

$$60x + 40x = 50 + 40 - 20$$

$$x = 0.7$$

Party 1 retains 70 percent of issue 3 and keeps issue 1, giving it 62 points ($20 + 0.7 * 60$).

Party 2 is given 30 percent of issue 3 in addition to issue 2 and gains a total of 62 points ($50 + 0.3 * 40$).

Are the outcomes equitable, efficient and envy-free? As each party is given equal amount of points satisfied, the outcomes are equitable. More important, each party has won on the issues it values most and has no reason to envy the other. Finally, it can be showed that there are no other outcomes which will give the parties more points satisfied and at the same time being envy-free and equitable. Three important criteria of fair division (equitability, envy-freeness and efficiency) seem to be met (Massoud 2000: 336).

It is important to notice that if the criteria of equitability, envy-freeness and efficiency are to be met, the ratings of the parties have to correspond to their preferences. If the procedure is carried out by the parties themselves, their announced values may involve strategic considerations and not necessarily reflect their preferences. It might be tempting for the parties to estimate the point allocation of the other party and then be “economical” in the distribution of their own points in order to win on most issues possible, instead of allocating points directly corresponding to its own preferences. Although a party with complete information can exploit another party without such information, Brams and Taylor show that a strategy of not announcing truthful points is likely to fail in practice as it easily leads to backlash. If one party chooses to not be truthful about its allocation of points and the other party also chooses such a strategy, both parties easily end up with a

division which is much worse than a settlement based on their true preferences (Brams and Taylor 1999: 79-83, 145).

Although the criterion of envy-freeness is attractive in settling disputes, there may be reasons for finding a division which is not envy-free, for instance if one party should be entitled to a greater share of the total utility. A settlement can be created by giving a certain share of the total utility points to each party. The procedure is carried out in the same manner as for an envy-free solution, but adjustments have to be carried out by transferring issues with lowest winner-loser ratio from one party to the other until a settlement with a set share of utility points is produced. By applying the AW procedure with unequal entitlements, the parties receive more utility points than their entitlements (as a percentage), but envy-freeness is not ensured as one party receives a greater share than the other (Brams and Taylor 1996: 70).

3.2 Specific assumptions of the AW procedure

Having presented how the AW procedure theoretically can provide parties with a settlement which is envy-free, equitable and efficient, some specific assumptions of the AW procedure should be looked into. An application of the AW procedure relies on at least four specific assumptions: (1) The players are willing to point allocate the utility value of the different items (Brams and Taylor 1999: 11-12), (2) the players are unitary actors, (3) utility points are additive, and (4) utility points are linear (Brams and Taylor 1996: 72). Below the above mentioned assumptions are briefly presented.

3.2.1 The players are willing to point allocate the utility value of the different items

In applying the AW procedure, the players are to assign points representing their preferences of winning on the different items. All items may be of equal importance for a player, or they may not. If a party is not willing to state how much it values certain items, the procedure can not be carried out by the parties (Brams and Taylor 1999: 10). A direct

application of the AW procedure thus assumes a willingness of the parties to point allocate their subjective utility value of the issues.

3.2.2 The players are unitary actors

As mentioned in chapter 2.3, application of the AW procedure assumes that the players or parties internally can agree to a certain point allocation and thereby accept an agreement as fair. However, parties of a civil war are almost never internally homogenous and that may represent a serious challenge in applying the AW procedure to civil war negotiations. Especially if all factions of a party must approve the deal, or if any faction may be a “spoiler”, heterogeneity may be an obstacle to applying the AW procedure (Wood 2004: 16). However, heterogeneity may be more of a general problem of peace negotiations than of applying the AW procedure specifically.

3.2.3 Additivity

It will be hard to allocate the utility value of items for a party, if the utility of one item is highly related to the utility of another item. Two items may not be “separable” if they are complementary in giving utility. For instance in a conflict over banking and currency in a divided country, if currency (one or two) and central bank (one or two) are regarded as two different issues, the utility of winning on the issue of currency is highly dependent of what arrangements of central bank is created and who wins on that issue. In such an example and if winning on one issue affects the value of the other issue, there is a lack of *additivity* of the player’s utilities. Additivity means that “the utility of two or more goods to a player, is equal to the sum of their points” (Brams and Taylor 1996: 72). Lack of additivity may be handled by joining two items and letting the parties rate them as one item. In many cases it is problematic to assume perfect additivity, but “weak additivity”

of the most important issues is probably satisfactory for a fruitful application in real-life situations.²⁶

3.2.4 Linearity

In the equitability adjustment of the AW procedure, one or more items will have to be divided. This is to make sure that each party receives an equal amount of their points or utilities. The division of items assumes that the player's marginal utilities of the item are constant ("linearity"). However, the perceived change in utility value may be far greater for a part getting 1/5 of an issue instead of nothing (for instance of oil fields), compare to a party who loses 1/5 of the same issue but still has 4/5 left. The total subjective utility value gained by the two parties may then not be equal, leading to a real-life settlement in which does not correspond to the party's point allocated preferences (Brams and Taylor 1996: 72). However, whether the total gain of utility value may be unequal after equitability adjustments is dependent upon what type of item is divided and how the eventual division of an issue is carried out.

3.3 General assumptions of applying the AW procedure to civil war conflicts

The applicability of the AW procedure to civil war conflicts is the focus of this thesis. The AW procedure must therefore be investigated in relation to the context of ending civil wars. As an analytical framework for such an investigation, I rely on an article by Barbara Walter (2002) in which she argues that ending civil wars by negotiations can be conceptualized as a three staged process. As a first stage the parties have to attend negotiations, secondly the parties have to sign a bargain, and thirdly this bargain has to be successfully implemented. At these stages, different factors are important for the proceedings of the resolution process (Walter 2002).

²⁶ "Weak additivity" can be defined as a case in which "a player's preferences, whenever he or she prefers A to B and C to D, and there is no overlap between A and C, prefers A together with C to B together with D" (Brams and Taylor 1996: 247).

An application of the AW procedure particularly regards the progress of Walter's stage two and three of the resolution process.²⁷ The question is then whether the AW procedure, which provides the parties with an arguably fair settlement, can contribute positively to the progress of these two stages of conflict resolution. In stage two, can the AW procedure with its properties of fairness facilitate the signing of a bargain? For stage three, will a settlement based on the AW procedure increase the chances for a successful implementation of the agreement? These questions and the stages of conflict resolution suggest that an application of the AW procedure to a civil war negotiation relies on at least three assumptions: (1) That the parties in a civil war attend negotiations, (2) that the AW procedure can play a constructive role in such negotiations, and (3) that a settlement based on the AW procedure can increase the chances for a successful implementation of the agreement.

Also, if the AW procedure is to be applied by the parties themselves in a civil war negotiation, an application of the AW procedure assumes that the parties can accept to bind themselves to a procedure in a negotiation process, and that such a procedural arbitration will not negatively affect a successful implementation of the agreement.²⁸

Below I investigate these general assumptions of the AW procedure and on the basis of the assumptions suggest some theoretical preconditions of applying the AW procedure.

²⁷ It can also be argued that a settlement suggested by the AW procedure by a third party can encourage the parties to attend negotiations as the framework for an agreement is clarified. For instance, Brams and Denoon (1997) do suggest how the Spratly Islands controversy can be resolved, and this may be one factor in facilitating negotiations.

²⁸ Brams and Taylor (1996: 7) claim that the AW procedure can be classified as "a fair division procedure", as "it leaves to the disputants themselves what procedure, if any, they will adopt". At the same time they notice that once a procedure is chosen, the solution suggested under it "is binding in the same manner as an arbitrator's choice is binding". The AW procedure can also be labeled as an "arbitration procedure", which Young (1991: 8) defines as a "formal process that the parties submit to as an alternative to negotiating in an unstructured way". However, it is important to distinguish the AW procedure from arbitration by an arbitrator, who makes a decision that the disputants must accept (Brams and Taylor 1996: 7).

3.3.1 Parties of a civil war attend negotiations

Under what conditions do parties of a civil war attend negotiations? As less than 20 percent of the civil wars after 1940 have ended in a negotiated settlement (Walter 2002: 5-6), there is both a pattern that parties of a civil war do not attend negotiations and that eventually such negotiations fail. Several attempts have been made to explain why parties in a civil war do not attend negotiations. It can be argued that in civil wars a moment in which the parties perceive the costs of fighting to outweigh the costs of negotiating rarely emerge.²⁹ Factors such as asymmetrical power relations between the parties, lack of security guarantees after a settlement, internally polarized parties, external involvements and conflict over in-compromisable values are possible reasons for why such a moment does not occur in a civil war.

One influential contribution to the study of when and how civil wars end by negotiations is I. William Zartman's concept of ripeness. Zartman argues that a civil war is ripe for mediation when there is a "mutually hurting stalemate", that means "a moment when things will significantly get worse if they have not gotten better in ways that negotiations seeks to define" (Zartman 1983: 353). This is a situation in which the parties sense a crisis and have to reevaluate their strategy towards military victory. Thus, the presence of a mutually beneficial settlement, for instance developed by the AW procedure, is not sufficient for parties to opt for negotiations. There has to exist some kind of crisis where each side perceives that it can not win on the battlefield, or at least that engaging in negotiations will be beneficial in the shorter run. Third parties or potential mediators can be influential in changing the perception of the parties towards the gains of negotiations, for instance through economic and military rewards and punishments (Zartman 1983). In addition mediators can be decisive by putting pressure on the parties and establish a setting in which negotiations can occur.

²⁹ See for instance Stedman 1991, Zartman 1985, 1995 and Licklider 1993.

While the presence of a costly military stalemate has been identified as a necessary and sometimes sufficient condition for negotiations to be initiated, researchers have claimed that other conditions are also central for negotiations to occur. Conciliatory leaders who are willing to negotiate is one factor and the presence of a strong center fraction inside a party is another factor which may be decisive for whether negotiations are initiated (Walter 1994). Thus, these two conditions add to the conditions of a mutually hurting stalemate and international pressure which this brief investigation has identified as important factors for negotiations to occur in a civil war.

3.3.2 The AW procedure's as a method of reaching a bargain

Having assumed that parties of a civil war may attend negotiations under certain conditions, there is a question as to what induces parties to sign an agreement in civil war negotiations and whether an application of the AW procedure can facilitate the signing of a bargain. While numerous factors are likely to influence the parties' decision to finally sign a bargain, in this chapter I do focus on a general factor commonly applied in negotiation analysis: Parties will only sign a bargain if they perceive the gains of the bargain to be greater than the reversion point of breaking the negotiations, like going back to war in a civil war negotiation (Young 1991: 3). Further, I will assume that the AW procedure is most likely to be legitimately introduced if there is a deadlock or a crisis in the negotiations. Before discussing whether the AW procedure and its properties of fairness can be attractive for parties and stimulate the progress of peace talks, some assumed characteristics of the dynamics of civil war negotiations have to be presented.

It can be assumed that civil war negotiations in general are likely to develop into *tug-of-war negotiations* as the parties are bitter enemies and do have few reasons to trust each other. In tug-of-war negotiations the interests of the parties seem to be irreconcilable and each party wants to get a best possible outcome regardless of the other party's needs (definition adopted from Underdal 2001: 307-8). This type of negotiation can be contrasted to negotiations of a highly *cooperative nature* where the parties have a clear

preference for joint problem-solving aimed at an efficient and fair outcome (Midgaard 1993: 199-200).

One aspect of tug-of-war negotiations is that the parties may have several good reasons to apply a hard strategy where they hold on to their positions and are less interested in compromising (Midgaard 1993: 201). One good reason for holding on to a specific position may be that a party's constituencies at home may have strong expectations as to a specific outcome. A negotiator is likely to exploit such expectations as well as arguments of fairness for committing to different positions. Further, a party may invest great prestige in getting a particular outcome, or on avoiding another outcome. As the perceived costs of leaving a prestigious position tend to increase during bargaining, the process of bargaining itself is by this mechanism likely to generate incitements which reward a hard strategy (Underdal 2001: 306-7).

In a situation where the parties have developed hard strategies, they may have great problems in taking the necessary steps towards available solutions. As steps towards a compromise or an alternative solution to those the parties hold on to can be attributed as weakness, the parties may choose to hold on to their positions although they risk a breakdown of the negotiations. In a game theoretic sense, such a situation is similar to a "chicken" game. If there are two parties at the negotiation table, either one of the parties has to give up its position to get a deal or the parties have to converge their positions into one alternative outcome that both perceive as less beneficial than the position they are holding on to with a hard strategy.

One possible course of negotiations where a situation similar to a chicken game has developed is that the party who perceives that it has little to win compare to what it will lose when holding on to the position, finally must yield or make a concession (Midgaard 1993: 318). Alternatively, the negotiations will break down as the parties hold on to their positions and is not willing to give in (for instance due to the process generated incitements mentioned above).

Another alternative course of negotiations where a situation of a deadlock has developed is that the parties through a successful coordination of expectations and choices arrive at an acceptable outcome (Schelling 1960). Mediation may be central to coordinating expectations and choices. By putting forward proposals and applying various forms of leverage mediators may manage to stimulate the parties to agree to an outcome instead of a breakdown of the negotiations.³⁰ While mediation strategies of building confidence, putting pressure on the parties and providing neutral information are central to dealing with a deadlocked situation, I will here focus on the potential of introducing the AW procedure as a key for resolving a deadlock as described above.

One reason why the AW procedure may be a tool for resolving a deadlock is that its criteria of fairness are attractive and salient. Young (1991: 25-6) argues that the problem of converging on one outcome in bargaining is strongly attached to the issue of fairness. By introducing and appealing to standards of fairness, negotiators sort out a specific range of solutions and delimit the number of disagreements. Of course there exist a number of possible standards of fairness, so the principles appealed to have to be unique or to some extent respected by both parties to be effective. Possibly the AW procedure may be relevant in some negotiations where other standards of fairness are hard to appeal to or highly contested. A deadlock facing the parties during negotiations may thus open up a room for the AW procedure as it provides a legitimate and an arguably method for converging on one outcome.

However, the AW procedure will simply be an unacceptable method for addressing a crisis at the negotiation table if parties believe that they can get a better solution by appealing to other standards of fairness. Negotiating by appealing to other standards of fairness than the AW procedure, like historical guilt or proportionality, may also be more

³⁰ “Leverage” can be defined as “an ability to favorably change the bargaining set” (Stedman 1991: 23). Lax and Sebenius (1986) suggest that such leverage can come from five sources: coercion (the “stick”), remuneration (the “carrot”), identification (“charisma”), normative conformity (appeal to values, principles, and norms), and knowledge (information).

normatively acceptable for a party and its constituencies, than applying a procedure where the other party is given equal entitlements to subjective utility. In a bargaining situation between civil war contestants where the parties are bitter enemies and even recognition of the antagonist as a negotiating party is seen as a concession, accepting the other party's right to a specified share of utility labeled as an equitable or envy-free portion of the issues may not be acceptable, at least not explicitly. However, it is likely that a moral objection to the AW procedure's division of equal subjective utility values will be most relevant if it co-occurs with an expectation that greater gains can be achieved without the AW procedure.

Given that the issues of a civil war negotiation can be handled by the AW procedure without violating the assumptions of additivity and linearity, it can be held that *rational negotiators* will accept the AW procedure as a method for resolving the conflict as long as their expected payoff of the AW produced deal is higher than both *negotiating without the AW procedure* and *the payoff of breaking the negotiations*. As the AW procedure provides parties with a guaranteed strategy in which they will be given a satisfaction of utility which is greater than half of their total utility and at the same time is efficient, the procedure has the potential to be attractive for rational actors and involve greater payoffs than negotiating without the procedure or breaking the negotiations. Particularly if both parties are insecure on how strong they really are in the negotiations, a neutral procedure with a certain guaranteed payoff may be tempting (assuming that applying the AW procedure is perceived as a safe strategy; will be discussed later).

This implies that the greater the costs of returning back to war are for both parties, the greater are the chances that the AW procedure is acceptable as a method of reaching an agreement. The question is then whether the AW procedure in a context of civil war negotiations can be perceived as giving greater benefits than negotiating "freely". Several aspects suggest that the condition where applying the AW procedure is perceived as giving greater payoffs than negotiating without the AW procedure and risk the return of war is hard to meet in civil war negotiations.

Firstly, although negotiators of a civil war are likely to compare expected payoffs of different ways of handling the conflict, the payoffs are hard to define and uncertain. It is probably too much to assume that the shape and direct implication of a party's utility frontier are fixed in the players' imagination (Young 1991: 3). Thus, the condition of a rational actor in which compares the expected payoff of the AW procedure versus negotiating without the procedure or going back to war is likely to be complicated by different factors in real life. Aspects as unfamiliarity with the AW procedure, practical requirements of point allocation and cultural and individual preferences for negotiating without a formal procedure are likely to alternate the parties' utility assessment of the AW procedure towards the conclusion that applying the AW procedure is less preferable than negotiating without it or breaking the negotiations.

Secondly, the condition of parties who perceive their expected payoffs of applying the AW procedure to be greater than negotiating without the procedure is hard to meet if parties differ in their control of attractive endowments.³¹ A party controlling most attractive endowments may simply expect to get a great portion of the issues by playing hard on the endowments it controls and negotiate without the AW procedure. If party A is controlling several goods that party B assigns great value, party B will be willing to pay a high price to get a share of these goods. If there is an asymmetrical control of attractive endowments, meaning that A is controlling several goods that B finds attractive and party B is not controlling as many goods that A assigns great value, then party B must pay a higher price than A to get a desirable outcome (Underdal 2001: 309). According to this theoretical argument, A is not likely to accept a procedure where the issues are to be distributed equitably. As the government in a civil war conflict often controls several attractive endowments by its command over the state apparatus, this is highly relevant in a civil war negotiation.

³¹ "Endowments" can be defined as "the resources that a party controls when the negotiations start". Such resources may be territorial (like control of an area), economic (like natural resources), and political (such as the government apparatus).

However, a party with the least attractive endowments may compensate for its lack of endowments through a costly effort during the negotiations (Underdal 2001: 309). Arguing for the application of the AW procedure may be one strategy for a party of channeling a great effort towards a desirable outcome. For instance may a party of civil war negotiations be able to play on international support for an “equitable” settlement. A party may also manage to convince a party controlling more endowments that a procedure which establishes an equitable deal has greater chances of not being violated and thus give greater payoffs in the longer run. On the other hand, the benefits of such a repeated game are uncertain and in the future. It therefore seems as although there are reasons why the AW procedure may become acceptable for both parties in a situation of asymmetrical control of attractive endowments, it is most realistic to assume that there is a quite limited room for a party who controls less attractive endowments to argue for a procedure that establishes an equitable outcome.³²

Finally, practical issues are to a great extent likely to decide whether the AW procedure is an acceptable method for resolving a deadlock during civil war negotiations. The fairness principles of the AW procedure are intractably linked to the practical aspects of a strict sharing of point allocated utility. Although the principles of envy-freeness, equitability and efficiency are acceptable standards of fairness, they may be surrendered as of little attractiveness if the AW procedure can not be applied in an acceptable way. If the AW procedure is to be applied directly, one major practical obstacle is the requirement that the parties have to commit to a procedure with an uncertain outcome. I argue here that although parties may perceive the theoretical guarantees of envy-freeness, equitability and efficiency of the AW procedure as having a potential for creating a good outcome of the negotiations, they may in practice have great problems to accept a direct application of the procedure where the parties have to commit themselves to a procedure where the

³² This discussion assumes that the AW procedure in real life can establish a settlement which is equitable. However this assumption is problematized in chapter 6 in relation to the fact that the winning and sharing implications of the procedure have large implications for what settlement is created by the AW procedure.

specific arrangements of the settlement is not known beforehand. Especially in civil war negotiations, where a peace situation will leave the parties with limited security guarantees, the parties may “fear the settlement” (Stedman 1991: 15, Walter 1994). It is therefore reasonable to assume that parties will maximize their control of what specific outcome the negotiations will lead to and that they will be highly skeptical to bind themselves to a procedure.

A less binding application of the AW procedure can overcome this likely unwillingness of the parties to commit to arbitration by the procedure. If the AW procedure is applied indirectly, for instance by mediators who on the background of interviews with parties suggest an arguably fair outcome based on a procedure, the procedure may establish a constructive framework for further negotiations on what is a fair outcome. Especially if there is a deadlock in the negotiations and the parties still have an interest in resolving the conflict, the AW procedure may create a new drive towards a final bargain.

It thus seems reasonable to conclude that if a mediator can present the outcome of the AW procedure as highly attractive in a rational sense (in giving all parties greater payoff than going back to war and hold on to their positions in a deadlock) and at the same time present the standards of fairness as normatively appealing, some form of an indirect application of the procedure can be acceptable and facilitate civil war negotiations towards the signing of a bargain. However, the discussion in this chapter has raised several objections to whether the AW procedure will be an acceptable method for reaching an agreement. Independently or in combination, factors such as perceived strength versus the opposing party, other appealing moral standards and practical reservations, may make even an indirect application of the AW procedure unacceptable.

3.3.3 Fair division and successful implementation of the agreement

Below I present some conditions which I assume are necessary for the implementation of civil war peace agreements in the uncertain post-conflict environment. Then I briefly

discuss whether an AW produced deal with its properties of fairness is likely to meet these conditions.

Elisabeth Wood (2004) argues that if some parties of a civil war have chosen to negotiate, it can be assumed that they are not capable of imposing a solution on the other party or parties. This relates to what Zartman (1983, 1985) refers to as a "mutually hurting stalemate" as a moment in which a civil war conflict can be mediated. Further, it is likely to assume that a third party can not implement a peace settlement that is not in the interests of both parties in the long run. This means, according to Wood (2004), that a necessary condition for the successful implementation of civil war peace agreements, is that adhering to the terms of the agreement is a Nash equilibrium; an outcome from which neither player have an incentive to depart unilaterally because his or her departure will lead to a worse, or at least not a better, outcome (Nash 1951). With such a settlement it will be in the interest of the parties to implement the agreement as long as the other party or parties also does. The question is then whether the AW procedure creates a settlement in which is a Nash equilibrium.

Assuming that the AW procedure can be carried out in real-life and create a settlement that the parties immediately get a sense that the deal is procedurally fair, this may increase the chances of a successful implementation to the extent that such fairness creates a commitment of the parties toward the deal. A sense of procedurally fairness may in real-life involve a sense that no other agreement would be better for one party without being worse for the other (efficiency) and that both parties received an equal portion of their subjective utility (equitability). Such feelings are likely to increase the party's commitment to a deal when confronted with the heavy tasks of implementation. Thus as long as a party recognizes the other party's right to an equal portion of subjective utility and get a sense of procedurally fairness by applying the AW procedure, an AW produced deal will contribute positively to a Nash equilibrium of implementing the deal.

However, both the specific *terms* of the settlement and the extent of *credible commitments* to uphold the terms of the agreement are likely to be important factors determining the payoffs of the parties of sticking to the agreement and to what extent a peace agreement is a Nash equilibrium. Further, how the terms of the agreement come into play in the post-conflict situation is dependent on a number of factors as global economic and political development, various efforts of peace building, natural incidences and choices of core actors in the post-conflict environment. The agreement and its terms must therefore be robust so it can uphold a Nash equilibrium in spite of the various uncertainties given by these factors.

One critical point related to whether an AW produced settlement is a Nash equilibrium, is that it is not guaranteed that a settlement created by the AW procedure establish credible commitments for the parties to adhere to the terms of the agreement. For instance has the presence of *security guarantees* been identified as one important condition for the parties to commit to the terms of civil war peace agreements (Walter 2002). Will the AW procedure produce a solution with such guarantees? Logically, the AW procedure will let the parties win on the issues in which they value most and thus security issues may be settled in a way such that none of the parties will depart. However, whether this will involve sufficient self-enforcing mechanisms and/or third party security support is not guaranteed by the application of the AW procedure.³³ That shows that if the application of the AW procedure is to lead to a successful implementation of the deal, some form of credible commitments must be guaranteed by the winning and losing implications of the procedure. Thus the role of the mediators is critical as they have to encourage such winning and losing implications as well as ensure that sufficient third party support is

³³ Hovi (1998: 85) describes an agreement as 'self-enforcing' if it satisfies two conditions: "The first is that each contracting party complies as long as everyone else does so. The second is that no external mechanism is needed to ensure compliance." Hovi (1998: 77-8) also notes that establishing a self-enforcing agreement can be highly complicated, but that three mechanisms are likely to 'enforce' an agreement: "A first possibility is that, even in the short run, there is no incentive for anyone to violate the agreement, given that the other parties comply as well. Second, it may be the case that at least one of the parties wants to defect, but is simply incapable of doing so. Third, even if some of the parties are tempted to defect, they may refrain from doing so for fear that a violation could motivate other signatories to suspend or even terminate the agreement".

provided in economic, political and security matters (see also Brams and Taylor 1999: 104).

Wood (2004) shows that if parties perceive issues to be of less divisibility (assuming that issues differ in degrees of divisibility), a peace settlement is likely to be less robust. That means that if the issue treated by the equalization adjustments of the AW procedure is perceived as of little divisibility by one or more parties, the settlement created by the AW procedure will be less robust. However, that does not mean that a settlement created by the AW procedure will not lead to a robust settlement, but means that if there are alternative issues which should be treated by the equalization adjustments, the issue which is perceived of highest divisibility should be divided. Possibly, an issue which is perceived as of higher divisibility, but which involves a higher winner-loser ratio may be a better choice by a mediator in carrying out the equalization adjustments, although it will lead to fewer points satisfied for the parties. As the ultimate goal of applying the AW procedure is not to get a deal, but to establish a deal with the greatest chances of a successful implementation, this consideration may be important.

3.3.4 Summing up the theoretical investigation

This brief investigation into general assumptions of an application of the AW procedure to civil war negotiations has first looked into when parties of a civil war are most likely to attend negotiations. The investigation suggested that some kind of a “mutually hurting stalemate” is a central condition for parties of a civil war to enter into negotiations. Secondly, the theoretical investigation has clarified that if the AW procedure with its criteria of fairness shall be acceptable in civil war negotiations, both parties must be convinced that their payoff of applying the procedure will be higher than both the expected payoff of going back to war and the expected payoff of negotiating without the AW procedure. This seems to be a definite precondition of applying the AW procedure. If there is an asymmetrical control of attractive endowments or if one party views the

sharing of equal subjective utility as normatively unacceptable, it may be hard to meet this precondition.

Another aspect in which has been raised was the practical issue of whether parties in a civil war conflict are likely to bind themselves to a procedure as a method of resolving the conflict. Although the AW procedure may be seen as a neutral and safe strategy in a situation of a deadlock, it seems most realistic to assume that a direct application of the AW procedure is unacceptable for the parties. This is because they by a direct application of the procedure are not in full control of what specific arrangements the negotiations will lead to. An indirect application of the AW procedure is probably more acceptable and can eventually be applied by mediators as a framework for suggesting a fair agreement. However, as the investigation into whether the AW produced deal can increase the chances for a successful implementation of the agreements showed, a third party or a mediator must ensure that credible commitments like self-enforcing mechanisms are built into the winning implications of the procedure and additional third-party support is provided if necessary to implement the agreement.

4 The negotiations on wealth sharing of the IGAD talks

*We have suffered so much, we cannot compromise*³⁴

In this chapter I analyze the negotiations on wealth sharing between the Government of Sudan (GOS) and the Sudan People's Liberation Army/Movement (SPLA/M) which took place between August 2002 and January 2004. I concentrate on answering the following questions:

- What were the issues of wealth sharing?
- How were the issues addressed?
- What were the positions of the parties to the issues?³⁵
- What was the role of the mediators and the resource persons during the negotiations?

One aim of this analysis is to get the information needed for a hypothetical application of the AW procedure to the issues of wealth sharing. Investigations into the first three questions serve this aim. Another aim of this case study is to investigate the course of the negotiations and the role of the mediators to identify practical preconditions of applying the AW procedure to civil war negotiations.

The bargaining process is likely to have influenced on how the issues were addressed and how the positions of the parties developed. However, as it is hard to get reliable

³⁴ A common saying in the SPLA/M delegation during the negotiations (Stiansen 2004 [interview]).

³⁵ When investigating the *positions* of the parties I first present the *communicated positions* of the parties at the negotiation table. Then I try to on the background of what became the paragraphs of the agreement state what that indicates on the *importance* of the communicated positions and the issues for the parties (see chapter 2.2.1).

information on how this process developed, this analysis does only to a minor degree cover the bargaining dynamics between the parties during the negotiations.

4.1 The course of the negotiations on wealth sharing

The rejuvenated IGAD initiative led to talks between the GOS and the SPLA/M in May 2002 in Machakos (Kenya).³⁶ The issues of wealth sharing were discussed as well as other issues. However, the mediators decided upon a strategy where the core issues of self-determination and state and religion were addressed first. It was clear that these issues had to be resolved before real progress could be made in other issues. The parties accepted this order of the issues and with the signing of the Machakos protocol in July 2002, where principles for the resolution of the issues of self-determination and state and religion were agreed to, a framework for further negotiations in the issues of power sharing, wealth sharing, security and ultimately The Three Areas were established.³⁷ Under the auspices of IGAD and the leadership of General Lazarus Sumbeiywo, committees were formed to work out acceptable solutions to the different issues. In addition to mediators from the IGAD countries, the United States, Great Britain and Norway (the “troika”), and Italy were actively involved as international observers. Later in the process the United Nations and the African Union obtained observer status.

³⁶ The IGAD initiative dates back to the Declaration of Principles (“DOP”) in 1994, when IGAD’s members, particularly Ethiopia and Eritrea, proposed either self-determination for Southern Sudan through a referendum, or a united secular country as a basis for resolving Sudan’s civil war. The government of Sudan was military stronger than the SPLA/M at the time and did not accept the initiative in 1994, but in 1997 it accepted the DOP as a basis for negotiating with the SPLA/M. However, the IGAD initiative was partly parked by the Egypt-Libyan initiative in 1999 which had a united Sudan as a basis for resolving the civil war (Johnson 2003: 174-7). The IGAD initiative was revitalised during the spring 2002 when the parties agreed to meet in Machakos, and finally agreed to the Machakos protocol. There are a number of factors which can explain the signing of the Machakos protocol, among others, re-unification of Southern groups, stalemate on the ground, US war on terrorism, a clarification of the concept of self-determination for the South following the Danforth peace effort, and the efforts of General Sumbeiywo and the IGAD secretariat for peace in the Sudan (see ICG 2002b: 5-8, Johnson 2003: 174-9 and Dagne 2003: 2-9).

³⁷ From the beginning of the IGAD talks, the SPLA/M strongly argued that The Three Areas as an issue should be a part of the talks. The GOS did not accept to include The Three Areas as an issue of the IGAD talks, but agreed to negotiate this issue under the auspices of the Kenyan government. However, during the talks in Naivasha in September 2003 The Three Areas as an issue became integrated with the IGAD talks (Stiansen 2004 [interview]).

A technical committee on wealth sharing under the IGAD peace initiative had met on occasions since 2000 and discussed issues of wealth sharing. The signing of the Machakos protocol enabled the parties to focus on how to specifically address the economic issues of Sudan during a half year pre-interim period and a six year interim period (GOS informant 2004 [interview]). The stated aim of the Machakos protocol is unity of the country (Machakos protocol: Part A), but the political structure of Sudan that would follow the negotiations was contested. While some representatives of the SPLA/M claimed that the Machakos protocol outlines a confederal political structure and argued for economic arrangements following such a political framework (SPLA/M informant 2004 [interview]), the representatives from the GOS argued that the protocol outlines a strong federal solution within a national framework. This meant that in some issues of wealth sharing the positions of the parties differed greatly. However, the chief mediator General Sumbeiywo emphasized that the central aims of the talks were to give national unity a chance and make unity attractive. According to him, the range of bargaining in the talks did not, strictly speaking, include confederal solutions which would establish *de facto* two states and pre-empt the outcome of the referendum (Stiansen 2004 [interview]).

In October and November 2002 talks were held between the parties focusing on a wide range of issues relating to power and wealth sharing arrangements. Deliberations of wealth sharing included issues as ownership of land and revenue sharing. The issues were addressed in broad terms and significant disagreements stood clear at this time. However, a “Memorandum of understanding between The Government of the Sudan (GOS) and The Sudan People's Liberation Movement/Army (SPLA/M) on aspects of structures of government” was signed in November 2002 as a general framework for further talks on power and wealth sharing.

In January-February 2003 a major session was held in Karen (Kenya) to negotiate further on wealth and power sharing, building on the Memorandum of Understanding. During this round representatives from the World Bank (WB) and the International Monetary Fund (IMF) assisted the parties in finding some arrangements on the sharing of wealth

(these representatives as well as other experts who were brought in to assist the parties and the mediators are later referred to as the “resource persons”). According to the International Crisis Group (ICG) (2003b: 14), these representatives introduced technical expertise, pragmatism and case studies from other countries dealing with similar issues, which led to high progress in the negotiations on wealth sharing. The consultancy of the IMF and WB representatives seemed to structure the negotiations on wealth sharing in a way in which the parties could focus on a limited number of disagreements and build on some common understanding on how to address the issues (Deng 2004 [interview]).

By May 2003 the GOS and the SPLA/M had held several rounds of talks confined to specific committees. Although there had been incremental progress on some issues, there had been no agreement on the major themes of power sharing, wealth sharing, security, or the contested areas of Abyei, the South Blue Nile and the Nuba Mountains. The IGAD mediators therefore changed its focus on the specific issues to a “holistic” approach where all of the outstanding issues were presented together. The aim of the new approach was to suggest trade-offs between the outstanding issues and enable the parties to reach a final agreement (ICG 2003c: 3). In early July 2003, the “holistic” approach manifested when the mediators presented “the Nakuru Protocol, Draft Framework for the resolution of outstanding issues arising out of the elaborations of the Machakos protocol” (hereafter the “Nakuru document”). In this document the mediators proposed what they regarded as fair compromises on outstanding issues (as ownership of subterranean natural resources), as well as some implicit trade offs inside different issues (as currency) (Stiansen 2004 [interview]).

When the Nakuru document was presented, the SPLA/M delegation was willing to negotiate, while the GOS delegation rejected the document. In a public speech, President Bashir declared that “IGAD could go to hell” as a reaction to the document (ICG 2003c: 3). According to Justice Africa (2003: 1), the rejection by the GOS was mainly due to disagreement on the issues of the national capital, power sharing and security. The GOS

had only minor comments on the issues of wealth sharing, in which indicates that the arrangements of the Nakuru document would have been acceptable for the GOS.

The peace process seemed near a collapse and there was high activity by internationals to get the parties back to the negotiation table. In mid-August 2003 the parties met in Nanyuki (Kenya), but little was achieved in substance matters. There was thus a break of the IGAD talks (Stiansen 2004 [interview]).

However, the mediators suggested a change of procedure. Instead of negotiating through the mediators, the parties agreed to direct consultations by two teams of people each and by the mediation of General Sumbeiywo (ICG 2003c: 4). The international observers and resource persons were to be present only to a limited degree during these consultations.

In the beginning of September 2003, the new negotiation procedure was adapted and the leaders of the two parties, John Garang and Ali Osman Taha, met face to face in Naivasha (Kenya). This seemed to bring new dynamics into the negotiations. According to the ICG (2003c: 1), “the parties, and not the mediators, were leading the process by setting the agenda and driving the compromises”. On the 25th September 2003 a framework agreement on security arrangements were reached, which marked a major progress of the talks as a difficult issue had been broadly agreed on.

In October 2003 a new round of talks began in Naivasha. Inspired by the arrangements of the Security agreement (two separate armies, but a certain number of common integrative units), the SPLA/M argued for a similar model to the issues of wealth sharing, like the establishment of two central banks and two currencies and a Joint Monetary Authority (Deng 2004 [interview]). The ICG (2003c: 7) claims that the SPLA/M demands of separate central banks and currencies “upset both the GOS and the World Bank and IMF experts involved in facilitating the process”. It seemed as a stalemate on the issue of The Three Areas had a spill over effect in hardening SPLA/M’s positions in the wealth sharing issues.

After a Ramadan break in November, the parties met in December 2003. During this phase the international pressure was high, particularly from the United States.³⁸ The parties talked of all outstanding issues, but it stood clear that there was a possibility to reach an agreement on wealth sharing as there were only a few outstanding issues in this field and compromises could be acceptable. It was also thought that an agreement on wealth sharing would make it easier to agree on other issues (Page 2004 [interview]).

Throughout December 2003, Garang and Taha re-examined the issues of wealth sharing and reached an initial agreement on important issues as monetary policy, central bank, currency and land rights, and “grey zones” as representation in different commissions. Finally, disagreement stood on how to manage the oil sector during the interim period and how to share revenues (Mahgoub 2004 [interview]; Deng 2004 [interview]).

On the 7th of January 2004 the parties signed the agreement on wealth sharing. The intricate issue of oil revenues was resolved and there seemed to be a momentum in the peace process.³⁹ However, skeptics remarked that “the devil is hiding in the details” of the agreement. Several paragraphs are unclear and the implementation of the deal will face numerous challenges. Still, the agreement on wealth sharing covers many issues in detail and marked a major progress towards a final comprehensive agreement.

Summing up this brief presentation of the course of the negotiations on wealth sharing can be done by reviewing the course of the negotiations through its various phases. The Machakos round with the signing of the Machakos protocol marked a first phase, which by solving the fundamental issues of self-determination and state and religion, gave a framework for detailed negotiations on the issues of wealth sharing. A second phase of

³⁸ US Minister of foreign affairs, Colin Powell, visited Naivasha during the October round and set a deadline for a final agreement on the 31 December 2003 (Sudan Tribune 24 October 2003).

³⁹ During the signing ceremony, John Garang told the reporters that “this is a major achievement that will take us closer to a just and lasting peace which we shall reach sooner than later, at least by the end of this month” (News article by IPS 10 Jan 2004).

progress was marked by the consultancy of resource persons as they enabled the parties to reach a common understanding on how to address the issues and limit the area of disagreements. A third phase was marked by a proposal of a comprehensive agreement by the resource persons, which gave the parties a realistic text to bargain on. At this stage, but also during the process as a whole, international pressure made sure that the peace talks did not collapse at critical stages and set time limits for pushing for progress. Lastly, a phase of face to face negotiations at the top level enabled the parties to take decisions on how to finally settle the issues. In retrospect it seems as the proceedings of these phases were necessary for progress of the IGAD peace talks and the signing of the agreement on wealth sharing.

4.2 The issues of wealth sharing and the specific positions of the parties

In the following presentation of the issues of wealth sharing and the positions of the parties, I concentrate on the major issues. According to my investigations, ownership of land, management of the petroleum sector, existing oil contracts, sharing of revenues, monetary policy, central bank and currency were the major issues. In addition to these issues I also briefly look at how the control of flow of foreign funds was contested.

Before looking at the issues, some comments on the principles of the agreement should be provided. The overall principle laid out for the negotiations on wealth sharing was an “equitable” sharing of common wealth. This is interesting as this principle is also the property in which the AW procedure is supposed to guarantee. According to the New Oxford Dictionary of English, “equitable” is an adjective for something which is fair and impartial. In Sudan, the principle of “equitable sharing of wealth” does at least date back to the Abuja talks of 1991 and 1992 between the GOS and the SPLA/M (Wondu and Lesch 2000). What was meant by the principle of “equitable sharing” in the negotiations on wealth sharing of the IGAD talks?

In the agreement on wealth sharing the principle of an “equitable sharing of common wealth” is specified by a number of guiding principles. Several of these guiding principles recognizes the special needs of Southern Sudan, such as paragraph 1.7 stating that “Southern Sudan, and those areas in need of construction/reconstruction, should be brought up to the same average social/economic standard and public services as the Northern states.” Other paragraphs have clear similarities with the international covenants on human rights, as guiding principle 1.4 which states that “the sharing and allocation of wealth emanating from the resources of the Sudan shall ensure that the quality of life, dignity, and living conditions of all the citizens are promoted without discrimination on grounds of gender, race, religion, political affiliation, ethnicity, language, or region” (Agreement on wealth sharing 2004: chapter 1).

Most of the informants were asked whether the particular principle of “equitable sharing” had a specific impact in the talks. Generally, the informants claimed that this principle had no specific meaning and it therefore had no impact on what solutions were relevant for an agreement (Hødnebo 2004 [interview]; GOS informants 2004 [interview]; SPLA/M informants 2004 [interview]). One GOS informant meant that the principle of “equitable sharing” was used simply as a general principle of fairness which was more appropriate than the alternative principle of “equal” sharing, which would imply a strict sharing of resources according to population size or other criteria.

Although the principle of “equitable sharing” seems to not have had any operational impact in the talks, this and the other principles outlined above were applied rhetorically by both parties to argue for a particular position (Stiansen 2004 [interview]). In that respect these principles probably had some resonance in the talks as they were introduced by the parties. However, the operational meaning of the principles was highly contested as both parties could use the principles for their interest based positions (as GOS delegation 2003b). Thus the actual impact of the principles on what solutions became salient may have been quite limited. Still, to what extent the principles had any significant

impact on the course and outcome of the negotiations seems hard to answer in this investigation.

4.2.1 Ownership and control of land

Sudan is rich in resources, particularly in land, minerals and forests.⁴⁰ Due to the commercial value of the resources (especially oil) and the grievances of how the resources have been handled by the state up to present day, ownership and control of land was a core issue in the negotiations of wealth sharing. The issue is complex and interlinked with several other issues of wealth sharing. The presentation below must therefore be regarded as an overview.

When addressing ownership and control of land, the issue of oil had a great influence on how the parties developed their positions. The GOS argued that surface land and subsurface land (involving subterranean natural resources) are two different categories of “land”. The SPLA/M on its side, did not want to differ between two types of land in Sudan. The SPLA/M claimed that all land in Southern Sudan is owned by the communities (SPLA/M 2003a). The GOS rejected completely the claim of communal ownership in Southern Sudan. They agreed in principle to the SPLA/M’s demand of communal use rights of land in regard to surface land, but stood firmly on a position of national ownership of subterranean natural resources (Stiansen 2004 [interview]).

From the mediator’s point of view, the positions of the parties regarding subsurface land seemed irreconcilable. From an early point of the negotiations (during the rounds in Machakos of November 2002) the mediators and the resource persons therefore proposed

⁴⁰ There is a great potential of agricultural production in Sudan due to vast areas of fertile soil along the rivers and in the South. Although some areas are ecologically sensitive and the access to water and the quality of the soil varies, both rainfed and irrigated agriculture has a great potential in Sudan, particularly in the war-affected areas where agriculture is to only a minor degree modernized (WB 2003: 1-2). Land resources do not only have a great commercial potential in Sudan, land represents the essential economic asset for many communities and tribes in Sudan. At the same time, many people are displaced due to the war, and in the event of peace many will return back to their land. This may potentially create conflicts over who has the right to different land areas. How the issue of land is resolved in a settlement and finally implemented thus have large implications for the durability of a peace agreement.

that the ownership of subterranean natural resources could remain undecided in a peace agreement and that the parties eventually could agree to a process to resolve the ownership issue later. The resource persons argued that revenues could be shared although the issue of ownership remained undecided and that management of the oil sector could be resolved independently of how to share revenues from oil (Stiansen 2004 [interview]).

To let the ownership of subterranean natural resources remain undecided in the interim period became acceptable for the parties just a week before the agreement on wealth sharing was signed.⁴¹ However, more than a year before the signing of the agreement the mediators felt that this approach to the issue of ownership of subterranean natural resources was salient and would be the only acceptable outcome. The parties' acceptance of letting the issue of ownership of oil remain unsettled did therefore not come as a surprise. Still, the way the issue was handled can be regarded as the major compromise of the agreement on wealth sharing as both parties had fundamental interests in the issue (Stiansen 2004 [interview]).

In dealing with the issue of control of land and natural resources, an important juridical point of reference was the principle of "concurrent competencies of land". This principle means that rights of land owned by the Government of Sudan are to be exercised at the appropriate or designated levels of government (Agreement on wealth sharing 2004: paragraph 2.3 and 2.4). The GOS argued that the central government should handle the use rights of subsurface land. Principally, the GOS claimed that the central government is best equipped to handle the natural resources of a country equitably and should therefore not only own but also decide over the use of Sudan's natural resources (as oil, minerals and water). The rationale for this was that natural resources are unequally distributed

⁴¹ How the ownership and revenues of subterranean natural resources is going to be settled in the event of secession after the interim period is not addressed in the agreement on wealth sharing. This is likely to be one of the most politicized issues during the interim period. Can the North accept that most oil fields will be owned by the GOSS if the result of the referendum is secession?

around the country and the central government will be able to distribute revenues throughout the country according to different needs. In addition, the GOS claimed that the central government will have the oversight and capacity to decide how to develop the country's natural resources in order to stimulate long-term economic growth and serve the country with resources (GOS delegation 2003b). When sharing oil revenues with a future regional Government of Southern Sudan (GOSS), the oil should, according to the GOS, belong to the national government, but a percentage of the revenues could be distributed to the regional government (see chapter 4.2.5 on revenue sharing).

Regarding surface land, the GOS was positive to some form of southern self-determination in settling claims of communal use rights of land. However, the GOS argued that existing land laws in Sudan already protect customary rights to land and that laws do not have to be amended to meet the SPLA/M's demand of communal use rights of land. The GOS also argued that if surface land is not registered as privately or communally owned, it belongs to the central state (GOS informants 2004 [interview]).⁴²

The SPLA/M claimed that land, both surface and subsurface, is communally owned in Sudan. They argued that the state is supposed to be a guardian of communal ownership and basically the communities have the right to decide over land use. If commercial interests want to exploit the land, the state can in cooperation with the local community give a lease for operations on the land (SPLA/M informant 2004 [interview]). The SPLA/M claimed that customary land rights are not sufficiently protected in existing laws in Sudan. The SPLA/M wanted to introduce new land laws in Southern Sudan, based on

⁴² This argument builds on the land policies of Nimeiri through the 1970s where mechanized agricultural schemes were developed to produce more cash crops for the international markets. The Unregistered Land Act of 1970 laid the fundament for Nimeiri's policies by abolishing customary land use and entitled the central state to give commercial leases for land use. In 1974 the rights of lease holders were strengthened by the 1974 Law of Criminal Trespass as nomads and smallholding farmers' access to land were restricted (Johnson 2003: 130). The NIF-government continued this policy of leasing land for commercial use through the 1990s, by acting as the arbiter in regard to oil development and by selling large leases for agricultural schemes in South Blue Nile (Johnson 2003: 135-6). The GOS position on surface land must probably also be understood as a strategic and Egypt-backed position. The water resources of the River Nile are of Egypt's primary interests and Egypt has always supported a united solution in Sudan and central control of the land where the river flows.

the legal tradition of the people of Southern Sudan (Stiansen 2004 [interview]). In Naivasha, the SPLA/M stated in their position paper that they wanted a process to develop and amend the land laws of Sudan to be in accordance with principles of communal land ownership (SPLA/M 2003a).⁴³

While a concretization on what the principle of “concurrent competencies” would mean in terms of subterranean natural resources was highly contested (see chapter 4.2.3), an approach of settling surface land claims through a National Land Commission and a Southern Sudan Land Commission gradually became acceptable for both parties. The Australian lawyer Patricia Lane played an active role in working out the paragraphs which set up land commissions. She demonstrated how communal land ownership can be established on the basis of common law and how land disputes can be settled through commissions of various stakeholders (SPLA/M informant 2004 [interview]; Stiansen 2004 [interview]).⁴⁴ Even though the ideas of the Australian lawyer were contested to begin with, her suggestions became acceptable to a wide extent (Stiansen 2004 [interview]). The parties agreed to a process to develop and amend laws to incorporate customary laws and practices, local heritage and international trends and practices through a National Land Commission and a Southern Sudan Land Commission. Both commissions are going to give recommendations to the governments on land reform policies, recognition of customary land rights and appropriate land compensation. The commissions are to arbitrate between claims of land and to sort out such claims (Agreement on wealth sharing 2004: paragraph 2).

⁴³ In a position paper the SPLA/M claims that “subterranean natural resources should be owned by land owners, but regulated by governments at their respective level” (SPLA/M 2003a). However, if there is a conflict over land use between the formal GOSS authority and the local communities in Southern Sudan, does the GOSS have sovereignty over the land and can overrule local communities, or do local communities have veto right in such a dispute? Does “ownership of the people” mean ownership of the GOSS, or does it mean that local communities are regarded as sole owners of the land? The SPLA/M position on land is unclear on this important point as the authority of the GOSS versus the local communities is not explicitly formulated. Still, how the issue of land is handled will probably be decisive for how many Sudanese will judge a forthcoming peace and how popular the SPLA/M will continue to be.

In the Nakuru document it was suggested that there should be a National Land Commission with a branch in Southern Sudan (IGAD secretariat 2003a: chapter 12). However, in the agreement there was established an independent land commission in the South. The autonomy of the South in settling issues of surface land was thus extended throughout the negotiations. This is also demonstrated by a paper of initial agreement between the parties of October 2003 where the GOS accepted a separate Southern Sudan Land Commission to settle use rights of surface land (IGAD secretariat 2003b). In this paper the parties had agreed that the leadership of the Southern Sudan Land Commission was going to be appointed by the Presidency, involving some Northern control over the commission. However, the right to appoint the leader of the commission was changed in the agreement of January 2004 to being the powers of the President of the GOSS.

The gradual agreement on a separate Southern Sudan land commission and finally agreement on a commission without any Northern control, indicates that control of surface land in the South was of fundamental importance for the SPLA/M, while the issue were of relatively less importance for the GOS. One reason why the GOS could accept an independent Southern Sudan land commission was probably that Southern autonomy in deciding over surface land followed to some extent logically from the Machakos protocol's notions of self determination. Probably also the GOS realized the fundamental importance of the issue of land for the SPLA/M and that southern control of the surface land would be the only option for an agreement. In addition, the GOS had not sold licenses for use of surface land in the South and may not have the same commercial obligations to this land as to the agricultural areas of the South Blue Nile.

At the same time, to what extent the Southern Sudan Land Commission will be sovereign in settling land claims of the South remains to be seen in practice. In dealing with claims of land a conflict may erupt between the Southern Sudan Land Commission and the

⁴⁴ The use of the Australian experience of dealing with claims of communal rights of land as an example for Sudan was justified by the fact that both countries have inherited the British legal tradition of common law (Lane 2003: 1).

National Land Commission. If the commissions fail to reconcile their positions, the case is going to be decided by the constitutional court (Agreement on wealth sharing 2004: paragraph 2.9). Thus the Southern Sudan Land Commission's independence may be limited by conflicts with the National Land Commission and decisions in the Constitutional Court.

4.2.2 Compensation for displacement

A part of the issue of land ownership was the question of rights to compensation for displacement. By March 2002 an estimated 174 200 civilians remained displaced as a result of fighting in the oilfields of Western Upper Nile / Unity State.⁴⁵ This forced displacement was to a little extent discussed during the negotiations and the issue was addressed in principles (Stiansen 2004 [interview]). While the government accepted in principle displaced persons' right to compensation, they wanted to control the process of giving people a right to compensation by channeling the question of compensation through the law system.

The SPLA/M argued strongly for compensation for displacement in the oil regions. In the agreement on wealth sharing it is stated that persons whose rights have been violated by oil contracts are entitled to compensation. If a legal process shows that land rights have been violated, the parties of the oil contracts are given the responsibility for compensating the affected persons and the land commissions are authorized to assess appropriate compensation (Agreement on wealth sharing 2004: paragraph 4.5 and 2.7.7). The inclusion of these paragraphs was resisted by the government due to the many demands of compensation they may face. However, as the implementation of compensation will be dependent on how land claims are settled in the land commissions, the GOS can to some

⁴⁵ This is an uncertain estimate, and do not include the many people who have fled to areas where the U.N. and other relief organizations do not have access, and those who have gone to Khartoum and other northern towns (HRW 2003: 39).

extent control the eventual responsibility they will get in paying compensation for displacement.

4.2.3 Management of the oil sector during the interim period

Large areas of Southern Sudan have not been explored for oil due to the war. Concessions for exploration have been given in certain blocks, but in the event of exploitation there must be negotiated licenses for exploitation (Fawzi 2001: 249). Given the economic and political power of dealing with petroleum contracts, both parties had high interests in how leases and licenses were going to be settled in the interim period. In addition, several existing contracts are set to be renewed at certain dates and how these contracts are settled may have important implications.

The GOS' position on management of oil was to maintain central control of the petroleum sector during the interim period. The GOS wanted to establish a single and "national" commission and thereby secure its control of the important oil resources in the South. The rationale given for this position was parallel to the justification for federal ownership of natural resources. The GOS argued that management of natural resources would best be performed by a national body as it could make sure that resources are equalized in the interest of the people at large. By referring to what became guiding principle 1.4 of the agreement, "all parts of Sudan are entitled to development", the GOS delegation claimed that the central government will be best equipped to apply the same formula for wealth sharing uniformly throughout Sudan and safeguard against regional imbalances and national instability. At the same time the central government must be equipped with revenues from natural resources to be able to foresee macroeconomic stability. The GOS also argued that central control of the oil revenues will be the best way to absorb the volatility of the oil price. If the states/regions were to control the oil revenues, they would be jeopardized due to instable revenues from oil (GOS delegation 2003b).

In Naivasha the SPLA/M demanded three petroleum commissions; one "joint" or "national" petroleum commission, one Northern and one Southern oil commission

(SPLA/M informant 2004 [interview]; GOS informant 2004 [interview]). They proposed that the national petroleum commission should be constituted of equal representation from the national government, the GOSS and representatives of oil producing states/regions. The national oil commission should be in-charge of oil contracts in the areas outside Southern Sudan, while the Southern commission should decide over contracts in Southern Sudan (SPLA/M 2003a; SPLA/M Sub-committee on wealth sharing 2003d). A separate oil commission in the South would give the GOSS autonomy in dealing with new oil contracts.

In the agreement the parties ended up with a single petroleum commission: the National Petroleum Commission (NPC). The functions of the NPC are to formulate public policies and guidelines of the petroleum sector and to approve and supervise all oil contracts in Sudan. The NPC is going to consist of 5 members of the GOS and 5 members of the GOSS, in addition to a maximum of three non-permanent members from oil producing states/regions. One informant of the SPLA/M (2004 [interview]) claimed that they could accept one petroleum commission as the GOSS was given full control of the oil sector by having a *de facto* veto in the NPC. This is probably going to be the case as decisions are to be taken by consensus in the commission. This indicates that for the SPLA/M the importance of having control with the oil sector in the South was high, but that having a separate Southern oil commission was not a red-line position. For the GOS, the arrangement of the NPC which they agreed to indicates that establishing a national oil commission was of the greatest importance for the GOS and that they were willing to let the SPLA/M have a great influence in the NPC in order to establish one national commission.⁴⁶

⁴⁶ How could the GOS accept a NPC where the GOSS have *de facto* veto given the possibility that the GOSS may block all further leases in the South in order to get 100 percent of the revenues after secession? One reason can be that the GOS took it for granted that the GOSS will not block new concessions during the interim period due to internal political pressure for oil development and increasing revenues to the South. Another reason may be that the GOS is not dependent on the active work of the NPC during the interim period, as the GOS has signed the most important contracts for the interim period before a comprehensive peace agreement.

4.2.4 The status of existing contracts

Sudan has signed petroleum contracts with several oil companies since exploration started in 1974.⁴⁷ These contracts have been negotiated by the GOS and the details of the contracts are confidential. The GOS stressed that existing contracts should not be re-negotiated as these are sound contracts and a break of them will seriously damage the climate for future foreign direct investments in Sudan. Particularly due to the already high risk which companies face in Sudan given possible secession of the South, they argued that both parties should have a common interest in protecting the business climate in Sudan during the interim period (GOS informant 2004 [interview]).

In September 2003 the position of the SPLA/M was to renegotiate contracts if they are “deemed to have fundamental social and environmental problems which can not be rectified by remedial measures” (SPLA/M 2003a). The SPLA/M argued that the oil contracts had been negotiated without southern consultation and participation and were illegal business contracts as the land is owned by the communities.

In the agreement of January 2004, the SPLA/M accepted that existing contracts shall not be subject to renegotiation. SPLA/M’s concerns are addressed in a clause saying that if contracts are “deemed to have fundamental social and environmental problems the Government of the Sudan will implement the necessary remedial measures” (Agreement on wealth sharing 2004: Paragraph 4.3), though the SPLA/M gave up the wording of possible “re-negotiation”. This indicates that the importance of having the right to re-negotiate oil contracts was not primary for the SPLA/M, while for the GOS this position

⁴⁷ The most important concession holders in Sudan during the negotiations were China National Petroleum Company (CNPC), Petronas Nasional Berhad of Malaysia, ONGC Videsh Ltd. (Indian), TotalFinaElf, Lundin Oil AB (Swedish), OMV of Austria and Sudapet (Sudanese). In addition to these companies, Chevron Oil Co (US based) and the Canadian Arakis Energy Co (bought by Talisman Energy in 1998) have had a considerable impact on oil development in Sudan. Chevron was the major oil company in Sudan when oil exploration started in 1974, but pulled out of the South in 1984 when rebels killed three of its employees, and sold its assets in Sudan in 1992. Arakis Energy Co was an important partner in the development of the Greater Nile Petroleum Company (GNPC) in December 1996, and eventually the export of oil which started in August 1999 (HRW 2003: 2-4). However, Talisman received great international critics for its involvement in Sudan and was sewed for its actions in a New York lawsuit. In March 2003 it sold the final parts of its interests in the GNPC (Dow Jones International News March 2003; Talisman annual report 2003).

was of great importance. The importance of this issue was possibly greater for the GOS than the SPLA/M as the GOS had negotiated the contracts and established a relationship with the oil companies (Stiansen 2004 [interview]).

According to two SPLA/M informants (2004 [interview]), the SPLA/M accepted that oil contracts are not going to be renegotiated as there is an option to implement necessary remedial measures if contracts are found to have fundamental social and environmental problems (Agreement on wealth sharing 2004: Paragraph 4.3). The SPLA/M's concerns are to some extent met with this option, and according to one central SPLA/M informant (2004 [interview]) the SPLA/M recognised the importance of the argument of not worsening the business climate in Sudan.

4.2.5 Sharing of revenues

Petroleum revenues are the major revenues in Sudan by constituting approximately 35 percent of the federal government revenue in 2002 (\$1 billion per year in 2002). A durable peace will create an opportunity for increased oil revenues, probably up to levels of \$2 billion a year for at least a decade (CSIS 2002: 1). In addition to petroleum, major sources of federal government revenues in Sudan today are taxes on income and profits, taxes on domestic goods and services and taxes on international trade. Peace will provide an opportunity to increase these non-oil revenues, especially through international trade, investments and donation. There is also a potential for increased government revenues in Sudan by better state performance due to a currently low total revenue raising performance by the state (11.3 percent of GDP in 2001) (WB 2003: 49-50).

In discussing non-oil revenues, the parties worked on a framework of specific distribution of revenue sources and taxes between levels of government. In Karen, the parties outlined how a wide range of non-oil revenues could be entitled to either the national level, the GOSS or the states/regions and reached an initial agreement on this (SPLA/M informant 2004 [interview]). However, during the negotiations there was considerable disagreement

on what type of revenue sharing model should be applied and the formulas for distribution of both oil and non-oil revenues.

In Naivasha, the GOS argued for collecting revenues from oil as a national resource and distribute a share of the total government revenues to the GOSS as equalization (GOS informants 2004 [interview]). Regarding an eventual formula for sharing the oil revenues specifically, the government argued that it had already invested in the development of the oil fields and attracted international partners and that this should be taken into account when revenues were going to be shared (ICG 2003b: 14).

The SPLA/M claimed that since most of the oil is in the South (as of the borders of 1st January 1956) and it had been exploited by the cost of many southern lives, the South deserves the lion's share of the oil revenues (ICG 2003b: 14). Referring to amongst others the "Khartoum Peace Agreement" of 1997 where Riek Machars' group was promised a high share of the oil revenues, the SPLA/M claimed 90 percent of the revenues from the oil in the South to begin with (SPLA/M informant 2004 [interview]).⁴⁸ In Naivasha in October 2003, the SPLA/M adjusted its demands and proposed that 5 percent of the oil revenues should be allocated to the oil producing state/region, 60 percent of the revenue of oil produced in Southern Sudan should be transferred to the GOSS and the remaining balance should accrue to the National Government. Regarding other federal revenues, pooled in a "National Revenue Fund", the SPLA/M proposed that 10 percent of the nationally collected revenue should be allocated annually to the GOSS and its states/regions for "general budgetary expenditure and establishment of institutions of governance", and 33.4 percent of the remaining balance should be allocated annually to the GOSS for costs of "repatriation, resettlement, rehabilitation, reintegration, reconstruction and development" (SPLA/M 2003a). However, this proposition must be

⁴⁸ Rick Machar, the leader of the SPLA fraction "SSIM/A", signed a peace agreement with the government in April 1997. A part of the deal was a referendum on self-determination for Southern Sudan and a great share of the oil revenues to Southern Sudan (Johnson 2003: 122-123, 209).

regarded as a quite maximalistic position as several of these percentages were significantly reduced in the agreement.

During the talks on revenue sharing, an important aspect became the limited ability of the GOS to share revenues the first years of the interim period. The central government is highly indebted and has great financial problems (World Bank 2003). If the central government should be able to carry out basic government tasks after a peace deal, it can not afford to share a high percentage of oil or other revenues, at least not in the beginning of the interim period (GOS informant 2004 [interview]; Stiansen 2004 [interview]). Thus, when the resource persons suggested a revenue sharing model, they did not base the model on specifications of the enormous needs for reconstruction and development in the South, but based the suggested model on the central government's assumed ability to share revenues within a strict budget. However, the resource persons stressed that the GOS through increased taxes, enhanced tax collection, donations from abroad, decreased military expenses and oil investments throughout the interim period would be able to share a significant part of today's federal revenues with the GOSS. The resource persons therefore proposed a revenue sharing model where federal revenues allocated to the GOSS were to be increased throughout the interim period (Stiansen 2004 [interview]).

The specific arrangements of such a revenue sharing model were suggested in the Nakuru document. In the Nakuru document it was proposed that transfers and revenues to the GOSS should come in mainly four ways. The first and main revenues of the GOSS were to be transfers from the federal government in the form of equalization and allocation of revenues collected nationally (pooled in a "National Revenue Fund") (IGAD secretariat 2003a: chapter 18). These transfers would involve revenues from existing oil contracts as well as other national revenues (taxes and duties). To let the GOSS be entitled to revenues based on a certain percentage of GDP instead of simply a percentage of oil revenues from all oil contracts, was intended to establish a predictable and stable flow of revenues to the GOSS as well as creating an arrangement for equalization in a federal system (Stiansen 2004 [interview]). The percentage of GDP defining the federal transfers to the GOSS was

to be increased throughout the interim period as well as GDP was expected to rise. A second important source of revenues for the GOSS would be donations from abroad. Along with the proposals of the parties, a “Southern Sudan Reconstruction Fund” was suggested in the Nakuru document to handle these revenues (IGAD secretariat 2003a: chapter 27). Thirdly, the GOSS was to be entitled to raise and collect different taxes and charges as state personal income tax and agricultural tax (IGAD secretariat 2003a: chapter 17). Finally, a source of revenues for the GOSS was to be oil revenues from “new” oil contracts. The resource persons thereby proposed that revenues from “new” (contracts signed after the start of the interim period) and “old” (existing) oil contracts should be treated differently. It was suggested that the GOSS should be entitled to 48 percent of the revenues from “new” oil contracts (IGAD secretariat 2003a: chapter 16).⁴⁹ The federal government was to collect the revenues from “old” contracts, but parts of the revenues from these contracts would be indirectly shared with the GOSS through transfers defined as a certain share of GDP.

Interestingly, the parties did neither agree to share oil revenues nor to establish transfers from the federal government like as was suggested in the Nakuru document by the resource persons. Regarding oil, the parties agreed to not differentiate between “new” and “old” contracts, but instead to share revenues from oil produced in Southern Sudan by allocating two percent of the net revenue from oil to the oil producing states/regions and then share the rest of the oil revenues 50-50 between the national government and the GOSS. Instead of establishing transfers from the national government to the GOSS as a certain percentage of GDP, the parties agreed to a 50-50 percent sharing of national revenues (different taxes and non-oil-revenues) collected in the South (Agreement on wealth sharing 2004: paragraph 5, 6 and 7). These arrangements of revenue sharing mean

⁴⁹ More specifically the GOSS was to receive 48 percent of a defined “net revenue from oil” after an amount of revenues had been transferred to an oil revenue stabilization account and the oil producing states/regions had got a share of the oil revenues. The oil producing states/regions were by the Nakuru document entitled to two percent of the net revenues of oil (including both “new” and “old” contracts), in proportion to output produced in each state (IGAD secretariat 2003a: chapter 16).

that the revenues of the GOSS primarily will come from oil and that resources with an origin in the North will not be transferred to the South. What does this indicate on the position of the parties towards arrangements of revenue sharing?

For the SPLA/M it seems to have been of greater importance to get a high percentage of oil revenues than to entitle the GOSS to a high level of transfers from the federal government. This apparent SPLA/M position is indicated by the paragraphs of the agreement where the revenues of the GOSS primarily come from oil in the South. Also informants (GOS informants 2004 [interview], international observers 2004 [interview]) felt that getting a high percentage of oil became of overall importance for the SPLA/M during the negotiations. These informants suggest that the SPLA/M adopted this position due to the symbolic aspect of the oil for Southern constituencies. Another motive for this position was a lack of trust in federal transfers due to the experience of the Regional Government after the Addis Abeba agreement in 1972. A representative from the SPLA/M claimed that “empirical evidence” shows that the South can not count on getting revenues from the North. In addition, separatist motives could have been important for the SPLA/M stressing oil revenues instead of transfers. In a political discourse on secession or unity during the interim period, secessionists can claim that the Northern government showed little will to share national resources and there is therefore no economic reason to cooperate with the Northern government.

One starting point for discussing the GOS position on revenue sharing is to look at the final proceedings of the negotiations before the agreement on wealth sharing was signed. Two weeks before the signing of the deal, the GOS suggested that the arrangements of the Nakuru document of transfers could be applied as a basis for revenue sharing (GOS informants 2004 [interview]; Abango 2004 [interview]). The SPLA/M then rejected the arrangements of the Nakuru document. The SPLA/M instead insisted on the better part of the oil revenues. One of the final positions of the SPLA/M was that all the oil revenues of Sudan should be shared 50 – 50 and a certain percentage of nationally collected non-oil revenues should be entitled to the GOSS. However, to entitle the GOSS to a significant

level of revenues from the North was not acceptable for the GOS, when the SPLA/M claimed 50 percent of the oil revenues. If the government were going to allocate a significant level of non-oil revenues in addition to 50 percent of oil revenues to the GOSS, the government would probably face a serious fiscal crisis with risky political consequences. On the other hand, if not a significant level of revenues collected by the federal government are allocated to the South, this is likely to lead to dissatisfaction in the South and involve political costs for the GOS. A low level of transfers from the federal government to the GOSS is likely to lead to less integration between the federal level and the GOSS during the interim period compare to what extensive transfers might lead to. Also, small federal transfers give secessionists an argument in saying that the GOS was not willing to share revenues with the South. Did the GOS consider the political costs of not sharing revenues that is collected in the North with the GOSS?

The GOS sees the oil in the South as a national resource. From that point of view, the GOS can claim that a significant part of the national revenues have been shared with the South (Stiansen 2004 [interview]). However, in the agreement there are few revenues that clearly come from the North (Agreement on wealth sharing 2004). It therefore seems as the GOS did not consider the political costs of not committing to explicit transfers from the federal government to the GOSS based on revenues collected in the North as important. Instead it seems as the primary position of the GOS was to safeguard the revenues of the central government even if it meant political costs of not explicitly sharing revenues from the North with the GOSS.

Finally it should be mentioned that the expenditures of the national government may have been an important factor for the parties in arriving on a revenue sharing model where non-oil revenues collected in the North is not shared with the South (Hødnebo 2004 [interview]). The national government will be responsible for various costs (like the diplomatic service, the central civil service and the integrated military units) and the parties may possibly have reached an understanding that the national government will be responsible for certain expenditures of the South, for instance pensions of SPLA/M

soldiers. However, whether this will be the case or not will eventually be sorted out in a comprehensive peace agreement.

4.2.6 Monetary policy, central bank and currency

In the government controlled areas of Sudan, Islamic banking laws have been applied since 1983 (Stiansen 2004 [interview]). In principle interest rates are prohibited, but borrowing and lending take place through other instruments. In the SPLA/M controlled areas of Sudan there have been no formal financial institutions during the war. Numerous currencies are circulating in the South and barter is common (World Bank 2003: 56-7).

The GOS legitimized its coup d'état in 1989 as an Islamist revolution and maintaining the Islamic banking system in the North seemed to be of the greatest importance for the GOS during the negotiations. To meet the SPLA/M demands of conventional banking laws, the GOS suggested a southern branch of the central bank to facilitate both conventional and Islamic banking in the South. However, the GOS proposed a continued strong role by the Central Bank of Sudan (CBOS) in regulating a single monetary policy of Sudan (GOS delegation 2003c).

Given the secularist ideology of the SPLA/M, it was a major concern to have conventional banking system in the South and not Islamic banking laws. In addition, the SPLA/M was not willing to accept the Dinar as a currency in the South, as it is associated with Islamization and Arabization (Stiansen 2004 [interview]).

In the first round of talks in Naivasha the SPLA/M proposed a Joint Monetary Authority to formulate and oversee the implementation of monetary policy during the interim period. As the government, the SPLA/M also proposed the establishment of a Bank of Southern Sudan (BOSS) as a branch of the CBOS, but differed from the GOS proposal in setting up the head of the BOSS as the Deputy Governor of the CBOS. The SPLA/M accepted a new common currency, but wanted an explicit formulation that the New Sudan Pound would be regarded as a legal tender in the whole of Sudan until a new currency is

issued. Already in December 2002, the SPLA/M announced the intention to issue New Sudanese Pounds in areas under its control (ICG 2002c: 19).⁵⁰

Following the breakthrough of the security agreement in September 2003, the SPLA/M wanted to apply a more confederal model in the area of banking (SPLA/M informant 2004 [interview]). The SPLA/M thereby developed their position from accepting the BOSS as a branch of the CBOS to claiming *de facto* two central banks, two currencies and a small coordinating unit at the central level. The SPLA/M thus adopted a confederal position on banking and currency which was further from the GOS position than the initial SPLA/M position. To what extent this was a tactical move in order to trade this issue for a greater concession from the GOS on another issue, or whether this reflected a genuine change of priorities of the SPLA/M, is unclear. However, in the agreement the SPLA/M accepted the BOSS as a branch of the CBOS and gave up its demand of *de facto* two central banks. This indicates that the position of *de facto* two central banks was not of the greatest importance for the SPLA/M. Also, the SPLA/M had a hard task in arguing for two central banks, as it would contradict what is an international trend of fewer central banks and currencies. In addition, a joint monetary policy would be difficult to carry out with two central banks. The position of two central banks and currencies was also problematic in relation to the goals of unity of the Machakos protocol, as one common currency is an important integrative factor of societies.

In the agreement the parties arrived at maintaining the Islamic banking system in the Northern Sudan, while establishing a conventional banking system in Southern Sudan. A restructured CBOS is to be responsible for a single monetary policy in the whole of Sudan and is supposed to be independent in the pursuit of this function. The head of BOSS is to

⁵⁰ The SPLA/M claims to have newly printed New Sudan Pounds stored in Uganda. Given that this money exist, those who have paid for the printing of the money are probably highly concerned about the future value of them. Two informants claimed that private motifs of guaranteeing the value of these money pushed the SPLA/M position of including a paragraph which could guarantee the possibility to exchange the New Sudanese Pound with the new common currency (international observer 2004 [interview]; GOS informant 2004 [interview]).

be a deputy governor of CBOS, along with another deputy governor responsible for the Islamic banking of the North (Agreement on wealth sharing 2004: chapter 14).

4.2.7 Reconstruction and development funds

Large areas of Sudan, particularly in the South, are undeveloped in terms of modern infrastructure, education and health services. In the event of peace, Sudan can expect aid from foreign countries and these donations may constitute an important part of the country's revenues. The parties agreed to establish a Southern Sudan Reconstruction and Development Fund (SSRDF) and a National Reconstruction and Development Fund (NRDF) to handle donations from abroad. There was little disagreement regarding the management of the funds, but there was controversy on how foreign funds are going to flow into the SSRDF. While the GOS wanted to control the flow of foreign funds through special accounts in the CBOS (GOS delegation 2003c), the SPLA/M demanded that foreign funds should be channeled directly to the BOSS and thus be fully controlled by the GOSS (SPLA/M 2003a).

In the agreement on wealth sharing it is stated that "funds may be channeled directly to finance activities beneficial to the National Government or the GOSS as the case may be" (Agreement on wealth sharing 2004: paragraph 15.10). It is also stated that in the interim period the foreign funds for the Southern Fund "will be disbursed through a special account at the Bank of Southern Sudan designated for the Government of Southern Sudan" (Agreement on wealth sharing 2004: paragraph 15.11). These paragraphs seem to propose arrangements for a direct transfer of money to the SSRDF and thus meet the SPLA/M's demands of full control of the flow of foreign funds to the South. However, when real life arrangements for handling flow of foreign funds are going to be established there might be different interpretations of these paragraphs that may give a significant control to the CBOS in dealing with the flow of foreign funds.

4.2.8 Other issues

In addition to the above discussed issues, there are some other issues or topics covered by the agreement on wealth sharing. The discussion on equalization led to the establishment of a Fiscal and Financial Allocation Commission. This commission is to monitor and ensure that “equalization grants from the National Revenue Fund are promptly transferred to respective levels of government” (Agreement on wealth sharing 2004: paragraph 8.2.1). Although one GOS informant (2004 [interview]) mentioned that there was some disagreement on the representatives of the commission, it seems as there was no disagreement on establishing the commission.

The agreement on wealth sharing also deals with how to finance the transition, accounting standards, division of government assets, interstate commerce and government liabilities. According to my investigations, these paragraphs were discussed only to a small degree. That does not necessarily indicate that these paragraphs do not represent issues of great importance. Rather it may be the case that little discussion was devoted to these paragraphs as their areas of disagreement were postponed for later occasions to address the issues. In this investigation into the issues of wealth sharing I do not go further into these paragraphs.

4.2.9 What were the general positions of the parties to the issues of wealth sharing?

In this chapter I have presented what were the major issues of the negotiations on wealth sharing in the IGAD talks. Ownership of land, sharing of revenues, the status of existing oil contracts, management of the petroleum sector, monetary policy, central bank, currency and flow of foreign funds were important issues. In table 4.1 below these issues and the assumed positions of the parties are presented.

In general the GOS were in favor of nationally based solutions, like one central bank, currency and petroleum commission. It can be argued that such arrangements will foster integration of the country and contribute to fulfilling the goal of unity of the Machakos

protocol. However, it seems as the general position of nationally based solutions not necessarily represented a will of the GOS to make unity attractive. While the final composition of the NPC shows a will of GOS to share power with the GOSS, the fact that no revenues collected in the North are allocated to the GOSS, will probably not contribute to make unity attractive.

A general trait of the SPLA/M positions seems to have been to maximize autonomy by establishing separate Northern and Southern institutions. Although the arrangements of the agreement in which the SPLA/M accepted is not particularly confederal, the SPLA/M argued for two petroleum commissions, two *de facto* central banks and two currencies. Also, the fact that the SPLA/M seemed to be in favor of a Southern revenue base instead of creating a more integrative system of revenue allocation, supports the impression that the SPLA/M did not want to establish federally based institutions. The SPLA/M argued for confederal solutions and one explanation may be that these solutions reflected a general position of maximizing autonomy and eventually making separation more likely. However, there are two other possible important concerns which may explain why the SPLA/M argued for separate and confederal arrangements.

Firstly, it can be argued that the SPLA/M argued for separatist solutions out of *tactical* reasons. In order to bargain hard and launch maximalistic positions, the SPLA/M had to move an essentially integrative position in a separatist direction. This explanation may have some bearing on why the SPLA/M delegation could end up on certain “integrative” positions (as for central bank and currency), but do not seem to be sufficient for a general explanation for the SPLA/M positions. The reasons for this, is that the SPLA/M could have moved their maximalistic positions towards gaining greater control and revenues out of integrative solutions, instead of arguing for confederal or separatist solutions. It thus seems as the tactical weight of a separatist position may explain some of the internal dynamics leading up to the SPLA/M positions, but that it is not a sufficient explanation as being the driving force of the SPLA/M positions.

Secondly, the SPLA/M general position of confederal or separatist solutions may not necessarily reflect a separatist position, but rather a fear of biased implementation of the agreement in the creation of integrative institutions. As one SPLA/M informant (2004 (interview]) said, “there is empirical evidence that the North will not keep what they promise”. The SPLA/M may have adopted a bargaining position of confederal or separatist solutions in order to guarantee their gains in the agreement and eventually be open for establishing more integrative solutions after having gained more confidence in cooperation with the central level. Given the history of poor implementation of peace agreements in Sudan, this concern is well grounded. In conclusion, I suggest that the position of having unity as a final aim, but realizing the risks associated with integrative institutions, was held by some SPLA/M representatives, while others were more inclined to prepare for secession and argue for confederal solutions. However, in spite of different aims, these two groups could unite in their fear for Northern domination through the interim period and unite for confederal positions during the negotiations.

Table 4.1: The main issues of the talks in Naivasha (September 2003 to January 2004) and the assumed positions of each party

Issue	GOS position	SPLA/M position
Ownership of land	Differ between surface and subsurface land Use rights of surface land can be held by communities Subsurface natural resources belong to the national government South Sudan land commission acceptable, but chairman appointed by the Presidency of the GOS	Land is communally owned Subterranean natural resources are owned by land owners and regulated by governments at their respective level Fully autonomous Southern Sudan land commission
Management of the oil sector during the interim period	National oil commission Decisions by majority Limited GOSS representation in the NPC	Three and later two oil commissions Decisions by consensus GOSS half of the representatives in the NPC

Table 4.1 continued.

Issue	GOS position	SPLA/M position
Existing contracts	<p>No changes</p> <p>Every contract before comprehensive peace agreement is valid</p>	<p>Re-negotiate if deemed to have fundamental social and environmental problems which can not be rectified by remedial measures. Contracts signed after agreement on wealth sharing invalid</p>
Revenue sharing in the interim period	<p>Oil revenues collected as a national resource</p> <p>Limit the transfers to the GOSS and the states/regions</p>	<p>Differ between oil revenues and non-oil revenues</p> <p>A high percentage of oil revenues to the South and the oil producing states/regions</p> <p>A high level of federal transfers to the South and the states/regions</p> <p>Direct oil revenues matter, federal transfers less reliable</p>
Monetary policy, central bank and currency	<p>One currency and one central bank</p> <p>Sharia based banking laws</p> <p>Southern “window” of conventional banking</p> <p>Central control of Southern borrowing</p>	<p>Bank of Southern Sudan as branch of Central Bank of Sudan.</p> <p>Conventional banking in the South</p> <p>Establish a Joint Monetary Authority</p> <p>Dinar and New Sudanese Pound as legal tenders until new common currency</p> <p>October 2003: Two currencies and <i>de facto</i> two central banks</p>
Flow of foreign funds	<p>All foreign funds channeled through the CBOS</p>	<p>Foreign funds to the South channeled directly to the BOSS</p>

5 A hypothetical application of the AW procedure

In chapter 4 I discussed the main issues of wealth sharing that were addressed in the talks leading up to the agreement of January 7th 2004. Below I investigate how these issues can be dealt with by the AW procedure. I start by discussing which issues can be included in the procedure and which may not be included. Then I go on with a chosen set of issues to make assumptions on the quantified utility which each party could attach to the different issues. To arrive at ratings of the issues, I apply the three staged procedure presented in chapter 2. First, the basis of utility for the issues is suggested. Secondly, assumptions on what winning and sharing can imply on each issue are presented. Thirdly, additive scales of the issues summing up to 100 points are worked out. Based on the discussion on the importance of the issues for the parties in chapter 4 and interviews with informants, I suggest an ordinal ranking of the issues for the parties. These ordinal rankings are simply transformed to cardinal utilities by the formula presented in chapter 2.3 to get ratings of the issues adding up to 100 points. Having worked out a hypothetical point allocation of the utility value of winning on each issue, the AW procedure is finally carried out and an arguably fair settlement suggested.

5.1 Which issues can be included in the AW procedure?

Which issues can be included in the AW procedure are both dependent on what issues the parties can accept as issues and on whether these issues fruitfully can be handled by the AW procedure without violating the assumptions of additivity and linearity. Regarding the acceptance of the issues, I assume in this hypothetical application of the AW procedure that the parties can accept the set of issues in which were regarded as the major

issues in chapter 4.⁵¹ Regarding the assumptions of additivity and linearity, I investigate below whether these assumptions pose any significant problems for that set of issues.

The issue of ownership of subterranean natural resources was highly contested. Finally the issue was left unresolved. Including this issue in the AW procedure is technically possible, but the inclusion of such a sensitive issue would probably not be acceptable for the parties. They seemed completely unwilling to accept any trading or compromise on the issue, except leaving it undecided (Stiansen 2004 [interview]).

If the issue of ownership of subterranean natural resources is going to be included, it has to be clear that ownership of the resources does not mean a specific entitlement to the revenues to successfully separate these issues. However, the management of the petroleum sector is potentially problematic to separate from the ownership of the subterranean natural resources. If the ownership of subterranean natural resources is entitled to a specific government level, it would logically (but not necessarily) follow that this level should be the one to decide over the management of the resource.

Given these two problematic aspects of including the issue of ownership of subterranean natural resources, I suggest that an application of the AW procedure to the issues of wealth sharing should exclude the issue of ownership of subterranean natural resources. Since it can be argued that in real-life the issue of ownership of oil can be left unsettled (Lane 2003), I suggest that the AW procedure can be fruitfully carried out although the issue of ownership of subterranean natural resources is excluded.

It seems as ownership of surface land can be included in the set of issues by regarding the independence and status of the Southern Sudan Land Commission as an issue. The status of the Southern Sudan Land Commission is highly related to the issue of compensation

⁵¹ There are some strategic aspects that parties are likely to consider when they are going to sort out a set of issues to be handled by the AW procedure. These strategic considerations are elaborated on in chapter 6.5.

for displacement. The aim of establishing a Southern land commission is in principle to sort out who may have rights of land and thereby be entitled to compensation if their rights have been violated. Compensation for displacement is therefore excluded as a single issue in the hypothetical application of the AW procedure as it is interlinked with the issue of the Southern Sudan Land Commission.

Sharing of revenues also pose some problems in preparing the issue for the AW procedure. There are different sources of revenues and should the revenues from the different sources be treated as different issues, or lumped together as one package of a revenue model? Treating revenue sharing as one issue may not allow for trade-offs between the different revenue sources. In this hypothetical application of the AW procedure I therefore suggest that revenue sharing is split into three issues: Oil revenues to the states/regions, oil revenues to the GOSS and non-oil transfers from the national government to the GOSS.

National government expenditures are not covered in the agreement on wealth sharing, but may have been an issue which may have influenced on the arrangements of the agreement. In this hypothetical application of the AW procedure I assume that the ratings of the issues can be done independently of other issues not included in the set of issues, both other issues of wealth sharing and other issues of the negotiations.

It seems, as with the exclusion of the issues of ownership of land and compensation for displacement, the other main issues that were investigated in chapter 4 can be treated by the AW procedure without violating the assumption of additivity. As a set of issues for this hypothetical application of the AW procedure, I use the issues of the Southern Sudan Land Commission, oil revenues to the states/regions, oil revenues to the GOSS, management of the oil sector, existing oil contracts, monetary policy, central bank and currency, equalization and allocation of funds collected nationally and flow of foreign funds. The question is then whether these issues can meet the precondition of linearity when treated by the AW procedure.

Whether the precondition of linearity is met is dependent on an eventual sharing of the different issues. The implications of sharing of the different issues are presented in table 5.2. For issues which regard revenues I have suggested two alternative ways of sharing the issues. I suppose these options of sharing both have the potential to correspond to a linear satisfaction of utility value for the parties. For the other issues I suggest flexible sharing implications which I assume also have the potential to satisfy utility according to the percentage of the issues that a party is entitled to. For instance, I suggest that a sharing of the issue of central bank can be carried out by adjusting the representation in the Board of Directors.

5.2 The basis of utility for each issue

Investigating the basis of utility of each issue is a starting point for arriving at point allocated utility of the issues. In table 5.1 below, I suggest what can serve as sources of utility for the different issues of wealth sharing. The relative importance of these different sources of utility as well as their risk and discount factors are not discussed here as that would involve a high number of assumptions. Ideally all the factors making an issue of less or greater importance should be enlisted so it can be taken into consideration when prioritizing the issues.

Table 5.1: Assumed basis of utility for the issues of wealth sharing

Issue	GOS utility	SPLA/M utility
Land commissions	Control of the legal development of the fertile land in the South The economic value of potential agricultural development in the South Leases and taxes in relation to commercial activity of land use (as forestry and irrigated and rain-fed agriculture) Control the process of compensation for displacement	Self-determination in land policy Political power in settling conflicts over land and developing land laws The economic value of potential agricultural development in the South Leases and taxes in relation to commercial activity of land use (as forestry and irrigated and rain-fed agriculture) Control the process of compensation for displacement

Table 5.1 continued.

Issue	GOS utility	SPLA/M utility
Oil revenues	An economic basis for securing the position of the regime Meeting the fiscal needs of the Sudan state	An economic basis for a strong regional Southern Sudan Self-determination in land and natural resources
Management of the oil sector during the interim period	Control of the oil sector Upholding oil exploitation during the interim period	Self-determination in land and natural resources Power to eventually delay oil exploitation during the interim period
The status of existing contracts	Upholding relations with the oil companies Securing the business climate in Sudan	Moral victory in claiming contracts to be invalid; implies the regime has acted illegally Securing the business climate in Sudan
Equalization and allocation of revenues collected nationally	An economic basis for securing the position of the regime Meeting the fiscal needs of the Sudan state Creating integration between the national and the regional level, or making the regional level economically dependent on the national level	An economic basis for an autonomous Southern Sudan Creating integration between national and regional level
Monetary policy, central bank and currency	Controlling the Sudanese economy Maintaining the Islamic banking system as proclaimed by the Islamic revolution Guaranteeing Islamic banking Limiting the possibility for Southern secession and ensuring geographical stability	Greater Southern autonomy by having an independent currency Political delivery (anti-Islamic) by the creation of a conventional banking system in the South
Flow of foreign funds	Controlling the economic relations of the GOSS National sovereignty	Autonomy in receiving foreign funds Guaranteeing funds reach the South

5.3 Assumptions on what winning and sharing could imply for each party

In table 5.2 I suggest what winning on an issue could imply for each party and what sharing could imply.⁵² The issues differ in terms of whether it is easy to suggest what winning can imply for a party and whether it is problematic to suggest how sharing of an issue can be carried out.

For the issues of land commission, existing contracts and flow of foreign funds, determining what winning implies for each party seem relatively easy. It seems to exist roughly two alternative solutions for the issues and these two possible solutions can be used as what winning for each party would imply.

For the issues of revenues and transfers involving different frameworks for revenue sharing it is more problematic to state what winning for each party should imply. Given that I have chosen to apply a set of issues where oil and non-oil revenues are separated, the framework for revenue sharing must be the same. This may be unacceptable for the parties and an alternative application of the procedure would be to lump together all the issues of revenue sharing. However, by applying the framework for revenue sharing as was agreed to in the settlement, I assume that the parties can accept this framework and that the percentages can be adjusted to be a reasonable “winning implication” for the parties.

The framework for allocating oil revenues to the states/regions was not contested as the allocation of the other revenues. The two alternative percentages suggested as “winning implications” are thus based on position papers and seem unproblematic to prepare for the AW procedure.

⁵² Although these assumptions on winning are similar to the arrangements of the agreement, they should not be interpreted as meaning that either party necessary won or lost in what turned out to be the arrangements of the agreement. My suggestions of what winning and sharing could imply for each party are developed in retrospect of the signing of the agreement on wealth sharing. Whether the mediators during the negotiations would have suggested similar winning implications or not, can only be speculated on. My suggestions of winning implications are meant to illustrate how the issues can be treated by the procedure and investigate whether acceptable solutions can be worked out on the basis of the AW procedure.

In dividing the issues of revenue sharing, I suggest that the ratio for a division can be applied to the range of revenues which exists between the parties' positions. If for instance 70 percent of an issue of revenue sharing is going to be given to one party, then this party will get 70 percent of what are the revenues between the position of the GOS and the SPLA/M. One drawback of this sharing procedure is that it may create a sharing of for instance oil revenues in which is politically not sound. Why should one party receive 49.5 percent of oil revenues while another party 50.5 percent? Regarding how to share the issue of oil revenues to the GOSS, I have therefore suggested an alternative way of sharing the issue in which may be more politically feasible.

Table 5.2: Suggestions of what winning and sharing could imply for each party

Issue	Winning for the GOS	Winning for the SPLA/M	Options for sharing of the issue
Land commission in the South	A national land commission with a branch in the South	Fully independent Southern Sudan land commission	Chairman of the commission appointed by the Presidency of the Sudan (instead of the President of the GOSS)
Oil revenues to the states/regions	1 percent for the states/regions of the "net revenue from oil"	3 percent for the states/regions of net revenue from oil	Adjusting the percentage in a range from 1-3 percent of the "net revenue from oil" to the states/regions
Oil revenues to the GOSS	48 percent of the "net revenue from oil" to the GOSS	52 percent of the "net revenue from oil" to the GOSS	Adjusting the percentage of the "net revenue from oil" to the GOSS in a range from 48-52 percent. Alternatively change the pool of revenues to be shared from all oil revenues to only revenues of Southern Sudan oil and share these 50-50.
Management of the oil sector during the interim period	National oil commission	Southern oil commission	Decision rules and representation in the national oil commission. Decision rules and representation in the Southern oil commission

Table 5.2 continued.

Issue	Winning for the GOS	Winning for the SPLA/M	Options for sharing of the issue
Existing contracts	No changes. All existing contract is valid	Re-negotiate if deemed to have fundamental social and environmental problems which can not be rectified by remedial measures Any contract after Karen should be invalid	Adjusting the date of valid existing contracts, for instance to the signing of the agreement on wealth sharing
Monetary policy, central bank and currency	One currency and one central bank Sharia based banking laws in the North, but a Southern “window” of conventional banking	Establish a Joint Monetary Authority with equal GOS and GOSS representation Dinar and New Sudanese Pound as legal tenders until new common currency Bank of Southern Sudan as branch of Central Bank of Sudan. Conventional banking in the South.	No explicit paragraph on the legality of the New Sudanese pound The representation in the Board of Directors Adjust the autonomy of the BOSS
Equalization and allocation of funds collected nationally	40 percent of federal revenues collected in Southern Sudan to the GOSS	60 percent of federal revenues collected in Southern Sudan to the GOSS	Adjusting the percentage in a range from 40-60 percent
Flow of foreign funds	All flow of foreign funds controlled by the CBOS	Foreign funds to the South flow directly to the BOSS	Adjusting representation in a committee ruling the Southern reconstruction fund

5.4 Point allocation

Based on the investigations into the utility of the different issues and the development of the negotiations which ended in the final agreement, I suggest how the parties *could* have ranked the issues. The assumption of using the course of the negotiations and the agreement as a basis for suggesting a ranking of the issues, is that the priorities in which the parties seem to have made in holding on some positions, while giving away other

positions, to a large degree reflects the preferences of the parties towards the issues (see chapter 2 for further elaboration on this). The rankings I suggest are not necessarily how the parties would have ranked the issues during the negotiations, but a ranking which can be used to investigate how an application of the AW procedure possibly would turn out if applied to the issues of wealth sharing in Sudan's peace negotiations.

Before specifically comparing the importance of the issues of wealth sharing, it should be mentioned that the parties seemed to base their priorities on two fundamental premises. For the GOS, one fundamental premise was that the existing state in Sudan is sovereign and another premise that the laws and arrangements in Sudan should remain status quo. For the SPLA/M, two other premises seemed to underlie their approach to the issues: The existing state in Sudan is not sovereign, and a quasi-state should be established in Southern Sudan. During the negotiations these premises represented a paradigm of thinking for the parties and they were highly reluctant of engaging in arrangements in which were not consistent with their paradigm (Stiansen 2004 [interview]). In suggesting below how the parties could have compared and ranked the importance of the issues of wealth sharing, I therefore build on these basic premises as well as the investigations into the positions and priorities of the parties carried out in chapter 4.2.

For the GOS I suggest that management of the oil sector is ranked at top as the GOS strongly argued for one national petroleum commission and this became the arrangement of the agreement. One central GOS informant (2004 [interview]) stated that there was a trade off between oil revenues and management of the oil sector in the final round of the talks. Winning on oil revenues to the GOSS can therefore be ranked below winning on management of the oil sector for the GOS. However, although there was a trade-off between the positions towards these issues at the time, the importance of getting a good deal on the issues may have been of equal importance. Given the GOS dependence on the oil revenues, I suggest that oil revenues are ranked at top as well as management of the petroleum sector. I also suggest that winning on oil revenues to the GOSS is top ranked for the SPLA/M as they argued strongly for a certain arrangement on this issue during the

negotiations and various types of informants had the impression that this issue was of core importance for the SPLA/M delegation.

Concerning central bank and currency, I suggest this issue is ranked at top for the GOS as maintaining the Islamic banking system in the North seems to be perceived of greatest importance for the GOS for maintaining legitimacy among Muslim constituencies, ensuring stability of the banking sector and upholding sovereignty in Sudan (Stiansen 2004 [interview]). Although existing contracts seem to be a greatly important issue for the GOS, this issue is ranked second, as the implications of losing on this issue is relatively less compare to the wide implications of losing on central bank and currency and management of the oil sector. Further, winning on equalization and allocation of revenues collected nationally is regarded as less important for the GOS than winning on oil revenues, as oil revenues concerns significantly more money and transfers from the national level will create some GOSS dependence on the national level. Of second least importance for the GOS I propose control of the Southern Sudan Land Commission, as the GOS at an early phase of the talks agreed to let the GOSS have the control of this commission (the economic potential of the Southern land is high and the GOS could probably have ranked this issue higher, but I have chosen to primarily use the course of the talks as a basis for the GOS ranking on this issue). Finally, winning on flow of foreign funds is ranked second lowest for the GOS. The utility value of control of foreign funds is relatively low as the funds to the GOSS will have to flow directly to the GOSS given the demands of the GOSS and the international donors, though the importance of ensuring a national framework for money flow and maintaining sovereignty of the federal government, makes this issue of somewhat importance for the GOS. This brief elaboration on ranking of the issues, leads to a four-leveled ordinal ranking for the GOS and is presented in table 5.3 below.

Table 5.3: A hypothetical ordinal ranking by the GOS

Rank	Issue
1	Management of the oil sector during the interim period Oil revenues to the GOSS Monetary policy, central bank and currency
2	The status of existing contracts
3	Oil revenues to the states/regions Equalization and allocation of revenues collected nationally Flow of foreign funds
4	Land commission in the South

The issues of oil revenues, land commission in the South, management of the oil sector during the interim period and central bank and currency are probably of the highest importance for the SPLA/M and could possibly all have been ranked first. However, as oil revenues seemed to be the issue of the highest priority in the negotiations, I suggest a ranking where the issue of oil revenues to the GOSS is ranked at top and the issues of oil revenues to the states/regions, land commission in the South, management of the oil sector, and central bank and currency are ranked as second highest. Regarding equalization and allocation of revenues collected nationally, I suggest that winning on this issue is ranked lower than winning on oil revenues, as oil revenues were prioritized before non-oil revenues in the negotiations. I also suggest that winning on the issues of land commission, management of the oil sector and central bank and currency, is more important for the SPLA/M than non-oil transfers given the broader basis of utility of these issues. The issue of control of flow of foreign funds is important for the SPLA/M, but the basis of utility of winning on this issue is probably not as wide as the issues ranked first and second, as the GOSS will have the possibility to receive foreign funding although it eventually would lose some of the control on this money flow. The issue of existing contracts may seem to have been of high importance for the SPLA/M as they hold on to their position in this issue for a long time in the negotiations. However, due to the

problematic aspects of renegotiation of business contracts for the SPLA/M during the interim period, this issue is ranked fourth. This leads to a four-leveled ordinal ranking of the SPLA/M which is presented in table 5.4 below.

Table 5.4: A hypothetical ordinal ranking by the SPLA/M

Rank	Issue
1	Oil revenues to the GOSS
2	Land commission in the South Management of the oil sector during the interim period Monetary policy, central bank and currency Flow of foreign funds
3	Equalization and allocation of revenues collected nationally Oil revenues to the states/regions
4	The status of existing contracts

The ordinal rankings of the issues can simply be transformed to cardinal utilities where each party has a total of 100 points.⁵³ In table 5.5, the additive scales in which such a transformation leads to is presented as well as the utility points satisfied for the parties when the AW procedure is carried out.

⁵³ See chapter 2.3 for the formula of how additive scales is calculated on the basis of the ordinal rankings.

Table 5.5: Hypothetical point allocation of the issues

Issue	GOS utility	SPLA/M utility	Winner-loser ratio
Land commission in the South	5	<u>14</u>	3,14
Oil revenues to the states/regions	9	<u>10</u>	1,05
Oil revenues to the GOSS	18	<u>19</u>	1,05
Management of the oil sector	<u>18</u>	14	1,27
The status of existing contracts	<u>14</u>	5	2,86
Equalization and allocation of revenues collected nationally	9	<u>10</u>	1,05
Monetary policy, central bank and currency	<u>18</u>	14	1,27
Flow of foreign funds	9	<u>14</u>	1,57
Total points allocated	100	100	
Initial points satisfied	50	67	
Points satisfied after equalization adjustments	58	58	

5.5 Settlement suggested by the AW procedure

Based on the rankings of table 5.5, the AW procedure proposes a solution where the GOS wins on the issues of management of the oil sector during the interim period, the status of existing contracts and central bank and currency. The SPLA/M wins on the issues of land commission in the South, oil revenues to the states/regions and the GOSS, equalization and allocation of revenues collected nationally and flow of foreign funds. This is shown in table 5.5 by the underlining of the utilities in which the parties initially win. Initially the GOS gets 50 points satisfied, while the SPLA/M gets 67 points. Three issues have the lowest winner-loser ratio: Oil revenues to the states/regions, oil revenues to the GOSS and equalization and allocation of revenues collected nationally. Which of these issues should be divided to carry out the equalization adjustment? Although this situation is special, it shows a potential problem of the equitability adjustment: Several issues may be equally relevant for sharing. Here, I suggest that the problem can be solved by choosing the issue of oil revenues to the GOSS as the issue to be divided. Both parties have ranked the

highest number of utility points to that issue and it is therefore reasonable that the issue is chosen for the equalization adjustment.

According to the equalization adjustment ($18 + 14 + 18 + 18(x) = 14 + 10 + 19(1-x) + 10 + 14$, $x = 0.46$), 46 percent of the utility of winning on this issue should be given to the GOS, while the SPLA/M should remain 54 percent of its utility on winning on the issue. After the equalization adjustments, the parties have 58 points satisfied each. By judging the solution out of utility points satisfied for each party, the solution suggested seems to be equitable, envy-free and efficient according to the criteria of Brams and Taylor (1996).

How can a settlement be created according to the division of the issues suggested by the hypothetical AW procedure above? If the assumptions of what winning and sharing could imply for each party (see table 5.2) are applied, the following settlement is suggested by the AW procedure:

- As the SPLA/M wins on the issue of a land commission in Southern Sudan, a fully independent Southern Sudan Land Commission is created.
- As the SPLA/M wins on the issue of oil revenues to the states/regions, there will be transferred 3 percent of the “net revenue from oil” to the states/regions.
- The issue of oil revenues to the GOSS is going to be shared. One option is to share it so that the GOS receives 46 percent of the issue by allocating $48 + (4 \cdot 0.46) = 49.84$ percent of the net revenue from oil to the GOSS. Another option is to change the basis of revenues which is going to be shared from the “net revenue from oil” to the “revenue from oil from Southern Sudan” and divide these revenues 50-50.
- As the GOS wins on the issue of management of the oil sector, there is established one national petroleum commission.
- As the GOS wins on the issue of the status of existing contracts, the existing contracts are not going to be re-negotiated.

- As the SPLA/M wins on the issue of equalization and allocation of revenues collected nationally, 60 percent of the federal revenues collected in Southern Sudan will be transferred to the GOSS.
- As the GOS wins on the issue of monetary policy, central bank and currency, there is going to be one central bank with a conventional window in the South through a Bank of Southern Sudan. There is going to be one currency for the whole country and the New Sudan Pound will not necessarily be regarded as a legal tender.
- As the SPLA/M wins on the issue of flow of foreign funds, foreign funds to the South will flow directly to the BOSS.

The settlement suggested by the AW procedure is not very different from the agreement on wealth sharing in which the parties of the IGAD talks agreed to (the only exception is the arrangement of transfers from the national government to the GOSS and the percentage of oil revenues to the states/regions). The AW produced settlement may thus have been acceptable as relatively fair given that the parties agreed to the real agreement because of some sense of having received a fair portion of claims.

However, note that the settlement produced by the AW procedure is highly dependent on what is defined as winning on the issues for each party. In this hypothetical application of the AW procedure, I have used the proposals/position papers and the agreement of January 2004 to suggest what winning and sharing for each party can imply. In suggesting the ranking of the issues by the parties I have also used the same documents. The outcome of the procedure is thus logically not far from the agreement of January 2004.

Given the set of issues, the rankings of the parties and the criteria of envy-freeness, equitability and efficiency for a fair division, it can be argued that the AW produced settlement is fair in terms of satisfying subjective utility value. However, it is hard to see how it can make sense that the hypothetical settlement is envy-free if that is operationalized as a settlement where “each of the parties thinks he or she got the largest

or most valuable portion of something” (Brams and Taylor 1996: 241). Would the SPLA/M think that it received the largest or most valuable portion of the set of issues at stake in Naivasha if the AW procedure had been applied? It is hard to talk of a “portion” in these negotiations as the implications of winning on the different issues are different for the two parties. In settling oil revenues, each party receives a relatively clearly defined portion of a greater whole, but for the other issues, the portion of political power or self-determination in which the parties receive is hard to compare. While the SPLA/M wanted as much autonomy and economic viability of Southern Sudan as possible, the GOS wanted to maximize central control. Is it possible to compare these two opposing demands or the portions of these claims that the parties receive? At a general level it may make sense for the SPLA/M to say that it received a good portion of the issue of autonomy and economic viability of Southern Sudan and would possibly not change this portion to an alternative and realistic portion of autonomy and economic arrangements. However, it is meaningless to discuss whether the SPLA/M would have changed its portion to the GOS’ portion: then the SPLA/M would be the government and that might have been highly tempting! Fairness in this hypothetical application of the AW procedure does therefore not seem to include envy-freeness as operationalized as a settlement where “each of the parties thinks he or she got the largest or most valuable portion of something” (Brams and Taylor 1996: 241). However, the outcome of the AW procedure can still be regarded as fair defined by the steps of the procedure and how it divides satisfaction of subjective utility between the parties. Instead of comparing their real portion the parties received against the real portion the other party received, the parties have to closely look at what they gained out of their claims and compare this to what the other party gained out of their claims. Equitability does then seem to make sense as both parties through an equal satisfaction of utility points have received an equal portion of their claims satisfied, but a sense of envy-freeness seem hard to point to in this application of the AW procedure.

I therefore suggest that whether the AW produced outcome presented above can be regarded as a procedurally fair settlement can not be deduced from the outcome above, but relies on at least two preconditions:

- that the parties accept the initial suggestions of what winning on the different issues will imply for each party.
- that the parties perceive a straight link between their point allocation of utility value and the real-life settlement created by the AW procedure.

In addition, a crucial precondition for accepting the settlement as fair is that the parties can accept the specific entitlement to subjective utility points. One party may claim to have been historically neglected development and may therefore demand a greater share of utility value satisfied in a settlement to regard it as fair. Although this can be compensated for in the definitions of what winning will imply for each party, it can be explicitly worked out by letting one of the parties be entitled to a greater number of utility points. Below I investigate how this can be done on the same set of issues and the same distribution of points.

5.6 Alternative applications of the AW procedure

5.6.1 A settlement with unequal share of points

Let us say that the SPLA/M is entitled to $5/8$ of the total points of utility, while the GOS should have $3/8$ of the total points of utility which can be shared. This means that the total number of points satisfied for the SPLA/M should be 1.67 times the number of points satisfied for the GOS.⁵⁴

⁵⁴ Solving for $X * 3/8 = 5/8$ gives $x = 1.67$.

If the SPLA/M wins on the issues of land commission in the South, oil revenues to the states/regions, oil revenues to the GOSS, management of the oil sector, equalization and allocation of revenues collected nationally and flow of foreign funds, the SPLA/M initially has 81 points (14 + 10 + 19 + 14 + 10 + 14), while the GOS has 32 (14 + 18) by winning on the status of existing contracts and monetary policy, central bank and currency. To satisfy the set share of 5/8 to the SPLA/M, 44 percent of the issue of oil revenues to the GOSS has to be allocated to the SPLA/M while 56 percent to the GOS.⁵⁵ The total points received by the GOS will then be 42 (32 + 18 * 0.56) and 70 (62 + 19 * 0.44) for the SPLA/M.

The solution suggested by the AW procedure giving unequal shares to the parties will in practice mean the following settlement (based on the assumptions of what winning and sharing will imply for each party presented in table 5.2):

- As the SPLA/M wins on the issue of a land commission in Southern Sudan, a fully independent Southern Sudan Land Commission will be created.
- As the SPLA/M wins on the issue of oil revenues to the states/regions, there will be transferred 3 percent of the “net revenue from oil” to the states/regions.
- The issue of oil revenues to the GOSS is shared giving 56 percent of it to the GOS and 44 percent to the SPLA/M. Either the GOS receives 50.24 percent (48 + 4 * 0.56) of the “net revenue from oil”, or the pool of the revenues is changed from the national “net revenue from oil” to revenue from oil of Southern Sudan which is divided 50-50.
- As the SPLA/M wins on the issue of management of the oil sector there is established a Southern petroleum commission.

⁵⁵ Solving for $1.67(32 + 18x) = 62 + 19(1 - x)$ gives $x = 0.56$.

- As the GOS wins on the issue of the status of existing contracts, the existing contracts are not going to be re-negotiated.
- As the SPLA/M wins on the issue of equalization and allocation of revenues collected nationally, 60 percent of the federal revenues collected in Southern Sudan will be transferred to the GOSS.
- As the GOS wins on the issue of monetary policy, central bank and currency, there is going to be one central bank with a conventional window in the South through a Bank of Southern Sudan. There is going to be one currency for the whole country and the New Sudan Pound will not necessarily be regarded as a legal tender.
- As the SPLA/M wins on the issue of flow of foreign funds, foreign funds to the South will flow directly to the BOSS.

A settlement based on unequal shares is possible to carry out theoretically on the issues of wealth sharing in Sudan. However, as for the AW application with the equal entitlements the outcome of this application with unequal shares seems to be most dependent on what is defined as winning and sharing for each party. It therefore seems unfruitful to discuss any further to what extent this outcome is fair. In the discussion in chapter 6 I will turn back to the centrality of what is defined as winning and sharing when applying the AW procedure.

5.6.2 Alternative goals of the parties giving alternative utility rankings

Point allocation of the parties' utilities towards the issues can be carried out by stating alternative goals in which the parties may maximize and then distribute the points according to these goals (see Denoon and Brams 1994). Below I suggest how the parties in the IGAD talks could maximize alternative goals during the negotiations. The alternative goals are presented in table 5.6.

For the GOS, I suggest that it had the choice between two broad strategies. It could maximize a goal of making unity attractive by sharing powers to a great extent in the centre of Sudan and allocate a significant part of the national revenues to the GOSS. Solutions that in this way prioritise making unity attractive and which eventually are carried out with some success during the interim period do increase the chance for a pro-unification result of the referendum after the interim period.

Alternatively, the GOS could try to limit the sharing of wealth and power with the SPLA/M and other groups in order to keep as much as possible at central control, at least during the interim period. As democratization and sharing power with the SPLA/M is risky for the survival of the Congress Party (now constituting the GOS) and contradict ideological commitments to “the Islamic revolution” of 1989, the GOS may choose to maximize a goal of status quo and limiting the powers of both the SPLA/M and the GOSS, although the risks of Southern secession would increase by such a strategy.

A baseline for the SPLA/M was to establish an autonomous Government of Southern Sudan and entitle it to sufficient resources for securing the South’s viability. Out of this baseline, I suggest that the SPLA/M either could maximize a creation of favorable federal institutions or they could maximize establishing confederal institutions. Most probably the second strategy would to a greatest extent foster secession (through independent institutions which will make secession easier and give secessionists a political argument in a debate for or against secession).

Table 5.6: Alternative goals of the GOS and the SPLA/M

Party	Alternative goal 1	Alternative goal 2
GOS	Maximize central control	Sharing of powers in a federal framework
SPLA/M	Maximize influence over federal institutions	Maximize extent of confederalism

Alternative goals will lead to different point allocations of the utility of winning on the different issues. However, alternative goals of the parties will also mean that they would go for different implications of winning and sharing on the different issues. For instance would the GOS be more concerned with getting winning implications of revenue sharing prioritizing equalization if they would maximize making unity attractive, while they would prioritize limiting the resources of the South in general if they would maximize a goal of limiting the powers of the SPLA/M and the GOSS. In order to carry out a modeling of alternative goals of the parties, new sets of winning and sharing implications have to be worked out and new allocations of points suggested. As also the perceived fairness of such a model of the AW procedure to a large extent would be dependent on what is defined as winning and sharing on each issue, I do not carry out a model of the AW procedure with alternative goals of the parties. It seems as the central task of defining what winning should imply on each issue is illustrated by this alternative application of the AW procedure as well as in the previous applications.

6 What preconditions have to be met for an application of the AW procedure to civil war negotiations?

The hypothetical applications of the AW procedure in chapter 5 showed how the issues of wealth sharing can be treated by the procedure and an arguably fair settlement meeting the criteria of equitability, envy-freeness and efficiency can be worked out. However, the hypothetical application of the AW procedure to the issues of wealth sharing involved serious challenges. Below, a critical assessment of the application of the AW procedure to the issues of wealth sharing serve as a starting point for a discussion on what general preconditions have to be met in order to apply the AW procedure to civil war negotiations. Aspects from the theoretical investigation in chapter 3 and the case study of the negotiations on wealth sharing in chapter 4 are also taken up in this discussion.

6.1 Defining what winning and sharing implies for different types of issues

Both the challenge of point allocation and the “decoding” of the point allocated outcome into a real-life settlement demonstrated that it must be clear in advance what winning and sharing will imply for each party in an application of the AW procedure. The utility value of an issue can not be determined for a party if it does not know what will be gained by winning or lost by losing. Further, the real-life implications of the outcome of the procedure can only be formulated if it is clear what winning will imply for each party. Otherwise, this will potentially be contested by the parties after the procedure has been carried out and the settlement may not be accepted. It is therefore clear that a basic precondition for applying the AW procedure is that *the parties can agree to what winning and sharing on each issue shall imply for each party.*

The hypothetical application of the AW procedure suggests that issues differ in regard to the prospects of meeting this precondition. For issues with few alternatives and clear solutions the implications of winning for each party were relatively clear, while for multifaceted issues, as central bank and currency, a quite detailed account on what

winning and sharing will imply for each party was required. However, winning and losing implications for multifaceted issues may still be easier for parties to agree to than for clear-cut issues. For multifaceted issues the parties' concerns may be easier to meet as there are a high number of alternative solutions to such issues. Also, sharing and equitability adjustments may be more acceptable when the issues are multifaceted. This is because the many facets of the issue allow small alternations of the solution in favour of one or the other party.

A potential problem in agreeing to what winning and sharing shall imply on different issues is that each party will argue for the best arrangement they can get in defining what winning will imply. Mediators can suggest such implications, but it may be hard for the parties to accept the proposed winning gains for each party. The reason for this is that the parties then must acknowledge what will be an "acceptable" loss on the different issues and that may reveal the preferences and dispositions of the party. A central part of bargaining is to stick to maximalistic positions in order to gain as many concessions from the opposite part as possible. If parties shall agree on what winning will imply for each party on the different issues, it will be tempting for a party to hold on a maximalistic position as what winning will imply. The fact that the actual arrangements created by the procedure to a large extent will be dependent on what is defined as winning for each party, means that agreeing to what winning shall imply will be a considered a most important step of applying the AW procedure. If the negotiations are conducted in "good faith" as Brams and Taylor (1999: 104) point out, working out what winning and sharing shall imply on each issue should be possible. However, in "tug-of-war" negotiations (as is most likely in civil war negotiations) the tactical aspects of agreeing to what winning and sharing shall imply will probably play an important role. Thus, agreeing to what winning and sharing will entail is likely to be a though precondition to meet in an application of the AW procedure to civil war negotiations.

6.2 Balanced winning and sharing implications

Eventually, in the process of agreeing to certain winning and sharing implications there is a question of how active the mediators should be. In an indirect application of the procedure (which is most likely), mediators will be active suggesting what they view as reasonable winning and sharing implications. In a more direct application of the AW procedure, the parties are active in bargaining over winning and losing implications. Such a party driven process of negotiation may enhance the ownership of the deal and sort out acceptable winning and losing implications, but it may not necessary lead to “balanced” winning and losing implications.

If there is a significant asymmetry of power between the parties, a powerful negotiating party may have a strong influence on what is defined as winning and sharing on the different issues and the deal produced by the AW procedure will to a large extent favor the strong party.⁵⁶ Can the AW produced settlement then be labelled as fair? As the steps of the AW procedure have been carried out and the parties have technically received an equal amount of point allocated utility value, the outcome can be claimed to be *procedurally fair*. However, the exchange rates of the utility points are different for the parties. One party wins more in real life than the other although their technical satisfaction of utility points are equal. In such a situation, and given that the parties had an equal entitlement to the issues, the outcome of the AW procedure can not be considered as *de facto* fair. It therefore seems as if there is a great asymmetry of power (for instance if one party is controlling more attractive endowments than the other), a powerful third-party or mediator is required to establish winning and sharing implications in which not only favors the stronger party but which also take into account important considerations

⁵⁶ This argument is similar to the general argument made by Hilde Henriksen Waage (2004) in a report on the role of Norway as a mediator between the Israelis and the Palestinians in 1993 (the “Oslo channel”). Henriksen Waage claims that the Oslo peace process reflected the fundamentally asymmetrical power relation between the Israelis and the Palestinians. Although the Norwegian mediators strove to ensure process symmetry in the negotiations, the room of manoeuvre was strictly limited by the Israeli power supremacy and Yasser Arafat and the PLO’s weak position. Eventually the Norwegian mediation served to facilitate a deal which left out a core issue (the Israeli settlements on the occupied territories) and established a peace agreement largely on the premises of the stronger party Israel.

of the weaker party. This argument assumes that the parties should have equal entitlements to the endowments at stake and that “balanced” or reasonable winning and sharing implications can be established.

If the AW procedure is applied where winning and sharing implications to a large extent is dictated by one party, it can serve to legitimate a deal as equitable although it strongly favors one party. Still, the AW procedure can be applied as a means of getting a deal in a civil war negotiation, although the settlement created is only fair *de jure* as the winning implications to a large extent favor one party.

The discussion above demonstrates the centrality of the winning and sharing implications for the prospects of a *de facto* fair outcome of the AW procedure. If cake-pieces or clear-cut goods are going to be shared by applying the AW procedure the winning and sharing implications can easily be singled out to be the same for the parties. In such a situation none of the parties can claim a right to win more than the other on an item. However, in a conflict over issues in an institutional context that have to involve different winning and sharing implications for the parties, a great challenge is to sort out what are *reasonable* winning and sharing implications for the parties. If the parties of a civil war negotiation should be equally entitled to the issues, what winning and sharing implications do these mean in real life? What is a reasonable balance of winning and sharing implications in a civil war negotiation? What kind of aspects should be considered by a mediator when proposing certain winning and sharing implications?

The questions above point to fundamental matters of fairness as well as practical challenges of what solutions will work where. For issues involving a simple sharing of goods or bads, norms as equal treatment, proportionality and exemption may serve as guidelines of what positions are fair (Underdal 1998: 312). For complex issues, “international best practice” (like what institutions have provided stability in other conflict ridden countries) may be a more relevant reference as to what positions are reasonable. I will not try to answer the question of what are reasonable winning and

sharing implications any further here. However, note that both the parties and the mediators have to face the question of what are balanced or reasonable winning and sharing implications when applying the AW procedure. That means that when applying the AW procedure to issues where the winning and sharing implications are not clear, fundamental questions of fairness have to be addressed. The AW procedure can not be applied and automatically give an outcome which can be labelled as *de facto* fair. The AW procedure is a tool of converging on one outcome in a negotiation, but to what extent its outcome can be labelled as *de facto* fair and correspond to equal entitlements is decided by the winning and sharing implications rather than the application of the procedure itself. Thus, that winning and sharing implications can be worked out which correspond to equal entitlements of the parties is a precondition for creating a *de facto* fair outcome of the AW procedure.

In practice, the parties may themselves be able to establish balanced winning and sharing implications by haggling over the issues. However, if there is a great asymmetry of power between the parties, and it is a goal by applying the AW procedure to establish a settlement based on equal entitlements, a mediator or a strong third party is necessary to guarantee balanced winning and sharing implications. By applying various forms of leverage, mediators can work to make the parties accept certain winning and sharing implications or eventually an AW produced outcome based on these premises. It has to be specified that a mediator in itself is not sufficient for guaranteeing balanced winning implications as mediators surely have their own agenda. However, I assume that some winning implications are more reasonable than others and that mediators have the potential to propose balanced winning implications. At the same time, what winning implications that are reasonable is likely to be contested even among relatively neutral mediators. For both the parties and the mediators it will thus be a highly challenging and contested part of applying the AW procedure to sort out what are balanced winning and sharing implications.

6.3 Winning and sharing implications increasing the chances for a successful implementation of the peace deal

In sorting out winning and sharing implications it is not only a question of what implications balance the parties' entitlements, but also a question of what terms of agreement which are likely to ensure post-conflict stability. Balanced winning and sharing implications and thus a *de facto* fair outcome of the AW procedure are likely to increase the chances for a successful implementation of the agreement as the parties perceive the deal as fair (given that the parties recognizes the other party's right to equal entitlements). However, there is a great question as to what *specific* post-conflict arrangements are going to be established by the AW produced deal and whether these are likely to ensure post-conflict stability. As was discussed in chapter 3.3.3, one important aspect for increasing the chances for a successful implementation of the deal, is that the winning and sharing implications incorporate robust self-enforcing mechanisms and allow credible security guarantees and third-party support if that is an issue.

A number of other aspects, such as the extension of political inclusiveness, are also likely to be important for post-conflict stability. In the case of the negotiations on wealth sharing in Sudan, there are several examples of claims by the parties which most probably had been problematic for post-conflict development. The SPLA/M claimed at a certain time during the negotiations the establishment of a *de facto* independent central bank in Southern Sudan, but at the same time proposed a joint monetary policy. If this outcome had been used as a basis for what winning should imply for the SPLA/M on the issue of central bank and the SPLA/M had won on this issue by allocating most points on it, the AW procedure could have created a settlement of banking institutions in Sudan which would be hard to combine with a joint monetary policy. At a certain time during the negotiations, the SPLA/M also argued for an arrangement of two permanent currencies in Sudan. This would probably represent a great disadvantage as it would be a serious hindrance for trade and economic integration in Sudan and a stable exchange policy would be hard to uphold. These examples from the hypothetical application of the AW

procedure suggest that although an AW produced settlement is arguably fair, the issues may be settled in a way that hardly can be sustainable in a post-conflict environment. This means that an application of the AW procedure will not be any guarantee that the terms of the agreement ensure post-conflict stability. The types of arrangements that are defined by the winning and sharing implications and their suitability in the actual context are probably as important for the prospects of post-conflict stability as whether the settlement is procedurally fair.

6.4 Parties willing to make explicit trade-offs between the issues

While the presentation of the negotiations on wealth sharing of the IGAD talks showed that many issues were resolved by making compromises on the different issues, the AW procedure produces a settlement by primarily making trade-offs between issues and only to a minor extent by producing compromises or trade-offs inside larger issues. This suggests that in an application of the AW procedure making trade-offs between the issues must be an acceptable and constructive way of reaching a settlement for the parties. Trade-offs occur in most negotiations, but the extent of trade-offs differ significantly. According to one SPLA/M informant (2004 [interview]), the SPLA/M adopted a strategy in the talks to not trade across the larger issues, but only within these issues. He claimed that for the SPLA/M it seemed advantageous to not trade across, as that would not guarantee them a certain share on each issue. One international observer claimed that the SPLA/M seemed to have less time pressure than the GOS and had the possibility to hold on to positions for a long time in order to obtain maximum concessions from the GOS instead of involving in trade-offs (Goulty 2004 [interview]). This shows that if a party perceives it to be favorable to not trade between issues and if it is willing to take the risks of this strategy over time, an application of the AW procedure will not be acceptable as a conflict resolution mechanism for this party.

However, in many negotiations it is likely that some positions have to be traded between issues to reach an agreement. This suggests that an application of the AW procedure can

be fruitful in what seems to be a final stage of negotiations if there are several outstanding issues in this phase. Possibly the procedure can be introduced to produce acceptable trade-offs between issues and enable the parties to reach a settlement. Also if the parties have tried to find acceptable compromises on the different issues and there is a situation of deadlock, the AW procedure can possibly stimulate further talks by having a creative role in what winning and sharing implications can be carried out and which trade-offs are possible between the issues. The AW procedure can also have a reality orienting role in such a phase by ascertain a specific bargaining set and range of solutions and make clear that trade-offs have to be made to get an agreement (Brams and Taylor 1999: 109).

6.5 Agreement to a set of separable issues

The fact that the resource persons during the IGAD talks played an important role in finding ways to address the issues, also suggest that the AW procedure only can be applied in a later phase of negotiations. In earlier phases of negotiations the issues may seem chaotic and the knowledge of the parties may be limited in how to address the issues. Under such conditions the AW procedure can not be applied, as the parties can not agree to a list of issues and will feel a need to elaborate more on the issues before settling on them. If the issues involved are simple and the parties can accept a “quick and dirty” process to settle the issues, the AW procedure may be acceptable at an early stage of negotiations. However, clear-cut issues and attitudes of parties toward a “quick and dirty” process are unlikely in civil war negotiations involving life-and-death questions for the parties.

In the hypothetical application of the AW procedure I simply assume that the chosen set of issues would be acceptable as a set of issues for the parties. As the mediators of the IGAD talks regularly updated lists on what were the outstanding issues, that assumption is probably unproblematic in this application of the AW procedure. However, there are strategic aspects regarding the set of issues that parties of civil war negotiations may consider. For a party it may be tactical to include a minor issue which the party does not

regard as important, but which may be important for the other party. The tactical aspect of this is to let the other party use some of its points on this issue and thereby have fewer points to allocate on the other issues. This means that to avoid haggling over the set of issues when applying the AW procedure (either directly or indirectly), a particular set of issues should be sorted out before introducing the procedure.

As was presented in chapter 3.2.3 on the specific assumptions of the AW procedure, the parties also have to agree to a set of *separable* issues (meeting the precondition of additivity). This means that a precondition of applying the AW procedure is that the parties do not only have to overcome the tactical aspects of agreeing to a specific set of issues, but also to accept a set of *separable* issues.

To what extent all outstanding issues should be included in the set of issues which is going to be divided by the AW procedure, must be evaluated by the mediators and the parties. Some issues at stake may have to be solved outside the AW procedure as they can not be rendered separable in a meaningful way. Other issues may be so vital for the parties that they can neither be solved by making trade-offs nor by haggling over winning and losing implications. In the case of the negotiations on wealth sharing of the IGAD talks, the divergent positions to the issue of ownership of subterranean natural resources seemed so fundamentally important for the parties that the issue had to be left undecided to at all get an agreement on wealth sharing. Technically it would be possible to include this issue when carrying out the AW procedure, but for the parties it would be highly problematic to settle the issue (as was discussed in chapter 5.1).

6.6 Accepting to establish an equitable, envy-free and efficient settlement

An obvious and general precondition of applying the AW procedure to negotiations is that *the parties can accept to establish an equitable, envy-free and efficient settlement based on a specific satisfaction of utility value*. Although trivial, this precondition is interesting as it highlights fundamental challenges of applying the AW procedure to civil war

negotiations. In chapter three on theory, it was discussed that although a settlement characterized by envy-freeness, equitability and efficiency may increase the likelihood of a successful implementation of the agreement there are problematic aspects of assuming that all of these criteria of fairness will be normatively and rationally acceptable for a party. One party may feel historically neglected development and may claim in principle a greater share of the issues than another party. Then an equal sharing of subjective utility may not seem as a fair deal for this party. Another possibility is that the parties may have different endowments when negotiation starts. Then it will be acting against self-interests for a party with greater endowments to accept the principles of equitability and envy-freeness, if it perceives that it will get a more favorable deal by relying on its power of controlling more endowments.

In the case study of the negotiations on wealth sharing in Sudan this problematic assumption manifested. The starting point of the negotiations was a situation where the GOS controls most of the state powers and resources of Sudan, while SPLA/M had relatively few means of power except for the territories it occupies, the support it has among several Sudanese groups and the potential backing from Western powers (especially American). In the negotiations the GOS thus had to give away more of what it controls than the SPLA/M had to, simply as the GOS controlled most of the issues which were at stake. Still, the fundamental position of the GOS in the negotiations seemed to be status quo solutions and minimizing the sharing of wealth with the SPLA/M. Introducing concepts of fairness where a settlement is to be established by strictly giving each party the same satisfaction of utility, would probably to a great extent seem to be not strategic for the GOS (at least in the short run).

Theoretically, this situation can be described as one where the parties are controlling different sizes of endowments. The AW procedure may then be unacceptable as it produces a settlement out of a situation where all the issues, independently of whom controls them, are going to be shared and can be assigned utility values. By the AW procedure the parties are given equal satisfaction of utility out of a non-agreement

situation where the parties have no utility satisfied. However, when one party controls more goods or issues than the other, the AW procedure will create a settlement where the party controlling most will have a smaller gain compare to its initial endowment than the other parties. The AW solution may still be better than the fallback position for the party controlling most goods, but the party controlling more goods or issues will not regard the AW settlement as equitable as it has received a lesser gain of utility value than the other party. This means that applying the AW procedure may be unacceptable for a party controlling more goods or issues than the other.

One possible way to overcome such a situation where the AW procedure is likely to be unacceptable would be to start to gain support from the parties for certain implications of winning and sharing. Possibly, these implications can be outlined so that the party with greater endowments are favored. However, then a problem would arise that the deal would not be *de facto* fair (assuming that the parties should have equal entitlements to the issues), but only fair *de jure*. The AW procedure can still be carried out if it is likely that the AW produced settlement is sufficient for building peace.

6.7 Acceptance and understanding of the whole methodology of the AW procedure

Applying the AW procedure to civil war negotiations do not only involve acceptance of a fair settlement based on a specific satisfaction of utility value, but also a more general *acceptance and understanding of the whole methodology of the AW procedure*. For an application of the AW procedure the parties have to understand and accept the stages and concepts of the AW procedure, involving point allocation of utility value, sharing according to the ranking of the issues, finely-tuned equitability adjustments and an outcome with the characteristics of fairness based on the allocation of utility points. Only if parties have understood these steps and are familiar with them, they can agree to point allocate the utility value of the issues.

The informants were asked on the likelihood of an application of the AW procedure to the IGAD talks. Some gave positive replies, but generally the informants were highly critical to applying the AW procedure. One mediator of the IGAD secretariat and one representative of the SPLA/M claimed that the procedure could have been introduced during the peace process. The IGAD mediator (Page 2004 [interview]) suggested that a couple of days had to be spent on presenting and discussing the procedure and then it could possibly be a framework for the parties to reach an agreement. On the other hand, two GOS informants (2004 [interview]) and two SPLA/M informants (2004 [interview]) were highly sceptical to the procedure as it so explicitly focuses on trade-offs between issues. Their experience was that progress on the issues came when compromises were made inside each issue. One observer (Hødnebo 2004 [interview]) was highly critical to the AW procedure as it seems to be a rigid structure which do not allow for the complexity of the issues of civil war negotiations. One observer (Goulty 2004 [interview]) and a resource person (Stiansen 2004 [interview]) were also highly sceptical to the methodology of the procedure in a context of civil war negotiations. According to Stiansen, the parties have numerous tasks they are concerned with during the negotiations. It is therefore highly unlikely that they can accept to spend up to several days on getting familiar with technical aspects of a mathematical procedure.

In presenting the AW procedure, a mediator does not only have to show that it guarantees envy-freeness, equitability and efficiency, but also that dishonest point allocation and strategy in a game-theoretic sense easily fails if the other party also tries to be tactical and not honest in point allocation.⁵⁷ Brams and Taylor (1999: 101) suggest that a way to convince parties that manipulation of points is hazardous when information is incomplete is to let the parties “go through the exercise of allocating insincere points for itself and

⁵⁷ Brams and Taylor (1996: 246) differ between “strategy in game theory” and “strategy in fair division”. “Strategy in game theory” they define as “a complete plan that specifies the course of action a player will follow, depending on the strategies of the other players”. “Strategy in fair division” they define as “advice to a player about the choices he or she should make, based on that player’s preferences, that are consistent with a procedure’s rules and give a solution having certain properties”.

then test (via AW) the outcome of such an assignment against various point assignments that its opponent might make". This may convince the parties that honest allocations are a smart strategy in general, but it may also make the parties in doubt of the fairness guarantees of the AW procedure as there is some potential for allocating points with a game-theoretic strategy and win on it. As the stakes in civil war negotiations are immense, taking such a risk and committing to a binding procedure will probably be unacceptable for the parties. Thus applying the AW procedure both involves a challenge of justifying the time spent on presenting the procedure as well as a challenge that the guaranteed properties of the procedure may be questioned. Both these challenges of applying the AW procedure to civil war negotiations suggest that an application can only occur indirectly by the mediators.

7 Conclusion

Three investigations have been carried out in this thesis to identify the preconditions of applying the AW procedure to civil war negotiations. First a theoretical investigation was carried out by using theory on conflict resolution and bargaining to discuss assumptions of applying the AW procedure to civil war negotiations. Second, an empirical investigation was conducted into the negotiations on wealth sharing between the GOS and the SPLA/M in the IGAD talks of making peace in Sudan. This investigation served to highlight some of the practical considerations regarding an application of the AW procedure. Third, the AW procedure was applied hypothetically to the issues of wealth sharing of the IGAD talks and what seemed to be important preconditions for such an application were identified.

The preconditions for applying the AW procedure to civil war negotiations that are identified in this thesis are presented in table 7.1. The preconditions are of various types and can be categorized. Some of the preconditions regard the *issues* at stake, like the preconditions of additivity and linearity. Other preconditions do primarily regard the *parties* and their acceptance of the different requirements of the procedure. Acceptance of point allocation of utility value and engagement in trade-offs are some of the important preconditions regarding the parties. Another set of preconditions regard the *mediators* and their capability to apply the procedure. For instance must the mediators be able to demonstrate for the parties that the AW procedure guarantees them a favorable settlement and eventually be trusted by the parties so they are willing to reveal their preferences (particularly if direct application). Finally, a precondition has been identified which are assumed to increase the chances for a successful *implementation* of a peace deal. This precondition regards the implications of winning and sharing of the issues and states that the implications must establish self-enforcing mechanisms and allow necessary third party support if implementation of the deal shall have a good chance of succeeding.

Table 7.1: Preconditions which have to be met for applying the AW procedure to civil war negotiations

<p>Preconditions regarding the issues at stake</p>	<p>Additive utility of the issues (separable issues) Linear utility values of the issues (constant marginal utilities when sharing the issues)</p>
<p>Preconditions regarding the parties</p>	<p>In general, the parties must perceive the payoffs of applying the AW procedure to be greater than both negotiating without it and the reversion point of breaking the negotiations.</p> <p>The parties have to understand and accept the whole methodology of the AW procedure. This means that the parties have to accept:</p> <ul style="list-style-type: none"> - a specific set of issues - specific implications of what winning and sharing shall imply on each issue (some form of balanced implications are a necessity for a <i>de facto</i> fair outcome of the AW procedure) - to engage in (if direct application) or conform to (if indirect application) a certain point allocation of utility value of the issues - explicit trade-offs between most issues - the normative principles of an equitable, envy-free and efficient settlement - to bind themselves to an unknown outcome of the procedure based on the guaranteed “fair” properties of the settlement (can be relaxed if <i>indirect</i> application)
<p>Preconditions regarding the mediators</p>	<p>The mediators must:</p> <ul style="list-style-type: none"> - be able to convince the parties that the AW procedure guarantees a settlement with favorable properties - be trusted by the parties so they are willing to reveal their preferences (particularly if direct application) - be able to demonstrate the hazardous risk of dishonest point allocations - be able to work out reasonable winning and sharing implications (particularly if indirect application) - be able to assign realistic point allocations (only if indirect application)
<p>Preconditions increasing the chance for a successful implementation</p>	<p>Winning and sharing implications that incorporate self-enforcing mechanisms and allow necessary third party support</p>

Several of the preconditions listed in table 7.1 do not particularly regard civil war negotiations, but are rather requirements for applying the AW procedure to conflicts in general. The preconditions thus seem generalizable in terms of being requirements that have to be met in most applications of the AW procedure, independent of whether it is a civil war negotiation or another type of conflict. Another point is that several of the preconditions are trivial or tautological; the preconditions are part of the AW procedure itself. Some of the preconditions may thus rather be labeled prerequisites of the AW procedure than preconditions. A third comment to the preconditions identified is that many of them have been pointed out by other contributions on the AW procedure and are adopted from these works. For instance Brams and Taylor (1996 and 1999) discuss additivity, linearity and willingness to point allocation as basic requirements of applying the AW procedure. Brams and Taylor (1999) also discuss a number of practical considerations when applying the AW procedure, such as the precondition of agreeing to what winning and losing implies and the necessity of a mediator who can demonstrate the great risks of being dishonest in allocating points.

However, a contribution of this thesis has been to make the various preconditions of the AW procedure explicit and discuss them in relation to civil war negotiations. Also, the investigations of this thesis have highlighted some aspects of the AW procedure that have only been addressed to a limited extent in other works. One aspect is the fundamentality of defining what winning and sharing implies. Defining what winning and sharing implies is not only a necessary initial step of carrying out the AW procedure, but has large consequences for what settlement the AW procedure produces. To produce a settlement that corresponds to equal entitlements, the winning and sharing implications do have to be balanced between the parties. Agreeing to what winning and losing entails is thus likely to be a step that will decide whether the procedure is acceptable or not for parties and eventually whether the parties can have a sense of an equitable deal or not.

Another related aspect of applying the AW procedure which has been addressed in this thesis is the case of parties controlling different sizes of endowments. In such a situation,

if the implications of winning and losing are balanced equally among the parties, an application of the AW procedure will not be viewed as equitable by the party controlling most endowments as the relative gains of the party with greater endowments will be less than for the party with fewest initial endowments. The party controlling most endowments may use this control to bargain for a favorable outcome and is likely to not accept the AW procedure. However, the AW procedure may still be applied as a powerful mediator may support its application, or the party with less initial endowments may be able to put efforts into convincing the other party of the prospects of a stable deal if the AW procedure is applied.

Can the preconditions of the AW procedure realistically be met in a case of civil war negotiations? The discussion on the preconditions in chapter 6 demonstrated that the AW procedure can only be applied in what seems to be a later phase of negotiations. When the parties have sorted out what are the remaining issues and there exist some form of deadlock, the AW procedure may be introduced legitimately as a mean of resolving a crisis at the negotiation table. However, a direct application of the AW procedure involves a high risk for the parties as the specific outcome of the deal is unknown and the parties have to reveal their preferences. In addition, the practical aspect of fine-tuning utility points corresponding to the importance of the issues is likely to be problematic for a party. An indirect application of the procedure may thus be more relevant in a civil war negotiation. The AW procedure can first be a tool for mediators and then possibly a framework for either putting pressure on the parties to reach a specific deal or facilitate a process towards a deal.

This means that although the AW procedure provides a technical structure to work out what is a fair division of issues in a conflict, it is not a new great formula to solve the world's conflicts. The AW procedure can not simply be applied and automatically produce a fair settlement. Specifically as a precondition of applying the AW procedure is to specify winning and sharing implications of the different issues, the AW procedure does not solve what may be at the core of fairness in civil war negotiations, namely the

question of what are reasonable or fair demands of each party to the different issues. Whether an application of the AW procedure eventually can stimulate the last phase of a civil war negotiation towards a fair settlement (in terms of satisfying an equal level of subjective utility) will thus depend on how bargaining and mediation occurs in order to settle out what are the issues and their winning and sharing implications. That means that the AW procedure is not a recipe in itself, but relies on series of “traditional” mediation and bargaining to ever have a chance of facilitating a conflict.

This does not imply that the AW procedure is not useful for settling other types of conflicts. In divorce conflicts for instance, where there are a limited number of goods and clear-cut issues, the AW procedure has greater chances of being applicable. Equal entitlements to the items can easily be established as the winning and sharing implications can be the same for both parties. Also, the fact that the parties in a divorce conflict are faced with an expensive arbitration in the courts if they do not settle the conflict by themselves will enhance the chances of an application of the AW procedure. This is in contrast to a civil war negotiation where going back to war may be a feasible option for the parties.

Only a real-life application of the AW procedure can demonstrate with certainty whether the procedure can be a useful tool of civil war negotiations or not. According to one of the experienced mediators of the IGAD talks, successful mediation of civil war does not necessarily involve a specific approach or tactic. The AW procedure may thus in certain contexts be an acceptable and constructive framework for conflict resolution. In this respect, the discussion of the preconditions of the AW procedure in the thesis can hopefully serve as a useful background for mediators who stumble in civil war negotiations, like in Sri Lanka or Darfur, and have to decide whether or not to try an application of the AW procedure.

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