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Harry van der Linden

Butler University, hvanderl@butler.edu

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Just Military Preparedness, U.S. Military Hegemony, and Contingency Planning for Intervention in Sudan: A Reply to Lango and Patterson

Harry van der Linden
Butler University

ABSTRACT: This paper rejects most aspects of John W. Lango and Eric Patterson's proposal that the United States should plan for a possible intervention in Sudan on secessionist and humanitarian grounds and announce this planning as a deterrent to the central government of Sudan attacking the people of South Sudan if they would opt in a January 2011 referendum for independence. I argue that secession is not a just cause for armed intervention and that, rightfully, neither the American people nor many of its men and women in uniform would be prepared to engage in an intervention that might easily escalate. I also caution that American intervention against an Islamic regime might have high global security costs. For the sake of avoiding these negative consequences and harm to the people of Sudan, available nonviolent policy alternatives should be pursued. Still, I grant that the global community should intervene in Sudan if mass slaughter of civilians were to occur as a result of renewed hostilities between North and South Sudan. My objections to Lango and Patterson's intervention proposal appeal to *jus ad bellum* principles as well as just military preparedness (*jus ante bellum*) principles.

Introduction

In "South Sudan Independence: Contingency Planning about Just Armed Intervention," John W. Lango and Eric Patterson argue that the United States should plan for the possibility that it might have to execute a "*separative-cum-humanitarian*" military intervention in Sudan in order to prevent that its central government in Khartoum would succeed in brutally repressing the legitimate independence aspirations of the people of South Sudan.¹ On their account, a declaration by the American government of this contingency plan would have a deterrent impact on the Khartoum regime undertaking a military campaign against the South's anticipated choice for secession in a referendum scheduled for January 2011. I will assess Lango and Patterson's intervention proposal from two evaluative perspectives. The first one is "just military

preparedness” (JMP), or “*jus ante bellum*,” which may be conceived of as a new category of just war thinking in addition to the traditional categories of *jus ad bellum* and *jus in bello* and the more recent category of *jus post bellum*. The second evaluative perspective is constituted by a few *jus ad bellum* (JAB) principles applied to the United States conceived of as a state seeking to maintain its position of global military dominance or hegemony. The two evaluative perspectives are interrelated, but I will first emphasize the JMP perspective and subsequently the JAB perspective. I will reject most aspects of Lango and Patterson’s intervention proposal, and, in conclusion, I will make some alternative suggestions of how to approach the dreadful prospect of renewed wide-scale hostilities between the Khartoum regime and South Sudan.

The Need for Just Military Preparedness Principles

What is theoretically most innovative about Lango and Patterson’s article is their exploration of the notion of contingency planning within the contours of just war theory. One merit of their application of the JAB principle of just cause and, at least indirectly, also of the JAB principle of last resort, to make the case for planning for a possible military intervention in Sudan by the United States is that this application points to important JMP issues and shows, in effect, the need for this new category of just war thinking. Looking prospectively at what kind of conflicts a country may need to fight raises the JMP questions of what kind of defense structure and military training and recruitment a country should have in place so that it can successfully meet its legitimate anticipated defensive tasks. Lango and Patterson’s recommendation that the United States should make the deterrent threat of intervention in Sudan “with the goal of *preventing* a renewed North-South civil war” (130) also raises an important JMP issue. For such a threat not to appear as belligerent, but rather as a preventive measure in accordance with the JAB principle of last resort, the country making the threat must have a record of making nonviolent measures a priority. Accordingly, the JMP concern is raised as to how military preparedness can be so shaped that, at the outset, resort to force, or the threat thereof, does not appear as a first choice but rather as a last choice.

JMP addresses two types of justice issues. First, it raises questions about whether the military preparation of a country is just toward its military personnel, places a fair burden on the civilian population, reflects adequate civilian control, and the like. Second, it raises questions about whether the military preparation of a country is such that it is conducive to the country resorting to force only when justice is on its side as well as to executing and concluding war in a just manner. The ultimate concern of JMP as a new category of just war theory is military preparedness that is just in the second sense – that is, how should we prepare for the possibility of military conflicts so that wars will be only justly initiated, executed, and concluded? However, since military preparedness that lacks justice in the first sense will be an obstacle to realizing justice in the second sense (for example, inadequate civilian oversight over weapon

purchases may increase the chance of unjust resort to force), JMP should also aim at addressing justice in the first sense.

Just Military Preparedness and Secession

There are six JMP principles.² The first principle says that the basic defense structure of a country should accord with its general purpose of using military force only for the sake of protecting people against extensive human rights infringements caused by large-scale armed violence. This principle accepts the common view that aggression – defined as a violation of political sovereignty and territorial integrity – is a just cause for resort to military force, but adds the qualification that the aggression must also involve the threat of widespread human rights violations. So, a *mere* violation of territorial integrity, for example, is not an adequate cause for resort to force.³ Each country should in the first instance focus its defense structure on protecting its *own* people against aggression. Preparation for humanitarian intervention and assisting other states subjected to aggression (i.e., “maintaining international security”) are additional responsibilities, but these tasks should be approached as shared or collective responsibilities. Since humanitarian intervention threatens international stability, the threshold for human rights violations for just intervention in this form must be higher than in the case of national self-defense.

Lango and Patterson adhere to a much broader understanding of just cause for resort to force than the one embedded in the first JMP principle. For my purpose here, what is most important to note is that they embrace Michael Walzer’s view that a state might be justified to offer (and so prepare for) armed support to a secessionist group “when a particular set of boundaries clearly contains two or more political communities, one of which is already engaged in a large-scale military struggle for independence” (124).⁴ Claiming that Sudan has two political communities, North Sudan and South Sudan, and that the Sudan People’s Liberation Army (SPLA) of South Sudan had a long history of being engaged in a large-scale struggle for secession, Lango and Patterson conclude that because from the perspective of June 2002 “there are threatened harms to the political community of South Sudan that are sufficiently serious, the just cause principle is satisfied” (124). On the same moral ground, they argue that the United States, or other “responsible actors,” presently (the August 2010 temporal standpoint) may offer secessionist (“separative”) military support to South Sudan if it would be seriously threatened again by North Sudan.

A problem with Lango and Patterson’s argument for secessionist intervention is that they fail to explain the purpose of Walzer’s criterion of being “engaged in a large-scale military struggle for independence” as required for just intervention. For Walzer, the satisfaction of criterion signifies that there is a secessionist group with the kind of strong and representative independence aspirations and capabilities that he deems necessary to warrant external military support. In

other words, the existence of a large-scale struggle is viewed as a reliable indicator of there being an evolving political community capable of self-governance. The criterion is unsatisfactory. It might be the case that the large-scale military struggle emerged because it has been fueled by a third party with an ulterior interest in the secession. Or, what if overwhelming force by the central state apparatus simply prevents the occurrence of an armed independence struggle – should this mere fact then be viewed as indicating a lack of widespread deeply-rooted independence aspirations and capabilities, so that intervention would be wrong?⁵ Moreover, outside military involvement becomes morally questionable once the secessionist movement brutally represses the rights of some minority within its sphere of political control. And, as Walzer himself notes, armed support of secession may be questioned if the secession would leave one political community without essential resources necessary for its economic flourishing.⁶

Taking such considerations into account and adopting a more nuanced view of secession as just cause for intervention raises some serious doubts about Lango and Patterson's claim that there was a just cause for secessionist intervention in Sudan in June 2002. To begin, we may wonder whether the SPLA and its political wing [the Sudan People's Liberation Movement (SPLM); in combination referred to as the SPLA/M] were at the time in the position to safeguard the security of all ethnic groups in South Sudan. The SPLA split into two warring factions in 1991, significantly along ethnic lines (the Dinka and the Nuer), and the outcome was a humanitarian catastrophe. Two anthropologists with ample field research experience in South Sudan wrote in 1999: "At this point, the number of Dinka and Nuer who have died in these fratricidal conflicts and in other South-on-South confrontations since the re-eruption of full-scale civil war in Sudan in 1983 exceeds those lost to atrocities committed by the Sudanese army."⁷ Similarly, Human Rights Watch reported massive human rights violations by the SPLA throughout the 1990s.⁸ Reconciliation began in 1999 and the two SPLA factions united in January 2002. Secessionist intervention in 2002 might have emboldened the South to declare secession too soon and have led to a renewed inter-ethnic struggle for political power. Another reason for questioning secessionist intervention in 2002 is that it was not until the mid 1990s that the original SPLA (of John Garang) changed its political agenda from a commitment to creating a new (non-Islamic) Sudan to establishing a separate South Sudan.⁹ Subsequently, the United States added to the strength and credibility of the more "nationalist," and by then severely weakened, SPLA (of Garang) when it began to provide this SPLA faction with secret military aid as well as open moral and political support, all in an attempt to get rid of the Khartoum regime (as part of an emerging war on terror).¹⁰ In sum, it is doubtful that in June 2002 South Sudan had reached the stage of having become a true political community capable of self-rule and protecting the rights of all its members. And, to avoid misunderstanding, my claim is not that the people of South Sudan had no cultural identity separate from the North or did not long for some kind of independence; rather, my point is that the different identity and the self-determination aspirations

had not yet found an effective political expression. Accordingly, secessionist intervention would have been strongly questionable.

What would have made secessionist intervention at this time most obviously wrong and imprudent is that the reunited SPLA/M and the Khartoum regime were engaged in elaborate peace negotiations, brought to the table under great pressure from multiple nations, including the United States. Intervention would have brought the negotiations to a tragic halt. Incidentally, an intervention for humanitarian reasons would accordingly also have been misguided and wrong.¹¹ Still, I share the belief of Lango and Patterson that humanitarian intervention might have been a just cause at various points in the long horrific civil war in Sudan. What I would like to stress, though, is that the just cause would not only have been to restrain indiscriminate violence by the Sudanese government forces against the people of South Sudan but also to restrain the SPLA (and other military groups from South Sudan) from committing similar crimes.

The political and security situation in South Sudan has improved since June 2002, especially after the adoption of the Comprehensive Peace Agreement (CPA) in 2005, even though the human rights record of the SPLA/M remains a problem today and inter-ethnic violence is a continuous concern.¹² Notably, the government of the South (established by the CPA and dominated by the SPLM) has gained valuable experience in self-rule since 2005 and, so, applying the more nuanced just cause standard of secessionist intervention to South Sudan in August 2010 and later, Lango and Patterson have a much stronger case for intervention during this time period than in June 2002.

In my view, however, outside military support of secessionist movements should generally be rejected because it encourages endless conflicts about redrawing state boundaries. Additionally, secession often will not eliminate the repression of cultural minorities but rather lead to a shifting of which groups will be repressed. Independence aspirations must be satisfied in a greater recognition of minority rights as well as in the granting of cultural autonomy and some degree of political autonomy; or, secession must take place in agreement with all parties involved. The broader political point is that we should move in the direction of a more cosmopolitan world of shared sovereignty within and between states rather than adhere to absolute state sovereignty.

I see legitimate room for military intervention in support of a secessionist movement only in two cases. First, the secession is necessary to prevent (the re-occurrence of) a humanitarian disaster caused by wide-scale violence. Here the just cause is the prevention of massive human rights violations and so the intervention would be a humanitarian intervention with secession as its political outcome. Second, the intervention is executed in support of a collectively (e.g., U.N.-) mediated peace treaty that includes conditional secession. Here the just cause is to protect a party of a peace treaty against large-scale violence by the other party, not unlike the collective responsibility of states to assist one another when one of them is subjected to aggression. In

other words, the collective task of maintaining global security does not allow for collectively negotiated peace treaties to be set aside at will.

Both these just causes offer reasons in support of contingency planning for military intervention in Sudan now and executing this planning when the appropriate conditions would emerge. In other words, it might quite well be possible that renewed hostilities between the North and South will be of such a kind that armed intervention becomes a reasonable consideration. Accordingly, to reject armed intervention in Sudan without further argument would be a failure to take the CPA and the human rights of the Sudanese people seriously.

JMP Objections to (Contingency Planning for) Intervention

The first JMP principle, then, precludes preparation for secessionist (separative) intervention strictly defined, but is compatible with (the contingency planning for) intervention in Sudan executed in 2010 and beyond for humanitarian reasons and reasons of maintaining international security. However, we will see that the first JMP principle shows that the United States is not adequately prepared for such an intervention. The other JMP principles offer additional strong grounds against Lango and Patterson's intervention proposal and the same is true of several JAB principles other than the just cause principle. Thus I will conclude that there are overriding reasons not to engage in contingency planning for intervention as a deterrent to North Sudan and that there is a strong presumption against executing intervention in Sudan in support of the SPLA/M. Our conclusions, however, are not completely opposed. Even though Lango and Patterson are not very clear on this score, they seem prepared to acknowledge that events in Sudan might evolve such that intervention, notwithstanding it having a just cause, would be wrong overall on basis of various other JAB principles. And I am prepared to acknowledge that under some conceivable circumstances, such as the threat of a complete annihilation of the independence of people of the South or massive killing of civilians, the presumption against intervention could be overridden.

Lango and Patterson recommend that the U.N. Security Council adopts a resolution in favor of the contingency planning in Sudan, and that the planning (and execution of military action if necessary) is done by "appropriate CPA guarantors" (130), "responsible actors" (119 and 131), and "especially the United States" (130). The preference for the United States is defended on no other ground than that "its military support is essential for robust military action" (130), as if such CPA guarantors as Italy, the Netherlands, and the United Kingdom cannot (together) engage in "robust military action." Perhaps Lango and Patterson appeal primarily to the United States as intervening military agent because, as responsible American citizens, they want to appeal in the first instance to their own government, but I suspect that the issue is also that they accept the self-ascribed "global cop" role of the United States. In my view, one problem with the United States as global cop is that this cop is not properly prepared and trained for

interventions in civil conflicts and violent humanitarian crises; another problem is that the United States lacks legitimate (right) authority to play this role and intervene in Sudan (and note that Lango and Patterson only recommend U.N. Security Council support rather than make it into a sine qua non for U.S. intervention). I will address now the first problem, while the second problem of the United States violating the JAB principle of legitimate authority will be examined later in this paper.

The basic defense orientation of the United States since the end of the Second World War has been one of global power projection, high-tech weapons, and establishing a world-wide military presence in the form of military bases in dozens of countries, aircraft carriers roaming across the oceans, and long-range bombers.¹³ With the end of the Cold War, the United States became the sole military superpower and it has sought to maintain this position of military hegemony by keeping a large professional army, increasing (in absolute terms) its huge military budgets – currently, around 700 billion and close to 50% of global military expenditures¹⁴ – and seeking dominance in the use of space for military purposes.

Recently, Defense Secretary Robert M. Gates, in “A Balanced Strategy: Reprogramming the Pentagon for a New Age,” has noted that one problem with America’s basic defense orientation is that its weapon systems “have grown ever more baroque, have become ever more costly, are taking longer to build, and are being fielded in ever-dwindling quantities.”¹⁵ For Gates, one cost of the high-tech focus of the Pentagon is wasteful spending and even reduction of conventional fighting capabilities, but the more serious cost is that not enough resources are put into developing “the capabilities needed to win today’s [asymmetric] wars and some of their likely successors.”¹⁶ He summarizes his main point in blunt fashion: “The United States needs a military whose ability to kick down the door is matched by its ability to clean up the mess and even rebuild the house afterward.”¹⁷ Gates, then, maintains that – notwithstanding recent improvements – the American military falls short in its preparation for fighting irregular warfare, policing ethnic violence, providing security to restoration efforts, training new local military personnel, and the like. And this leads him to propose a more “balanced” military budget toward greater nonconventional fighting and peacemaking capabilities. The U.S. National Security Strategy of May 2010 echoes the same point: “To succeed, we must balance and integrate all elements of American power and update our national security capacity for the 21st century. We must maintain our military’s conventional superiority, while enhancing its capacity to defeat asymmetric threats.”¹⁸

The lack of proper Pentagon preparation for fighting nonconventional wars goes hand in hand with the use of excessive force, typically with civilians as the unintended victims. The mindset of soldiers tends to reflect the enormous destructive power available to them and their education has not fully caught up with their new responsibilities. Thus the second JMP is violated. It says that military personnel should be trained as experts in preventing human rights violations caused by

large-scale armed violence and should participate in the decision-making concerning the initiation and execution of military force. Again, the American military has made recent improvements in the training of its soldiers in regard to the use of force in nonconventional settings, but the continued high toll of civilian deaths (also the result of the misplaced use of high-tech weapons) in Afghanistan should guard us from embracing a too optimistic picture. And, of course, proper training involves more than correct use of force, including the acquisition of mediation skills, cultural understanding, and the like.

All in all, it seems that the American military would fall short in terms of adequate preparation and training for intervention in Sudan because it is still too focused on fighting conventional wars and bound to use excessive force. What worsens the problem is that the transformation towards an American military more suitable for fighting nonconventional conflicts takes place in a time of its increased involvement in Afghanistan. The strength of this argument, however, hinges on the scope and nature of Lango and Patterson's intervention proposal. The main tenet of their paper is that a *limited* armed intervention will suffice. They mention such measures as interdicting supply convoys from North Sudan, giving air support to ground forces from South Sudan, providing military advisers, trainers, and equipment, and imposing no fly-zones to protect civilians in South Sudan (129, 130, and 131). In the same vein, they cite Defense Secretary Gates as claiming in a very recent article that "[t]he United States is unlikely to repeat a mission on the scale of those in Afghanistan or Iraq anytime soon," and that instead the United States should adhere to a policy of "helping other countries defend themselves" (131).¹⁹ Lango and Patterson add: "Similarly, what we are advocating is that the United States (and other responsible actors) should engage in contingency planning about helping South Sudan defend itself." Perhaps my objection here that American military capabilities are not adequately attuned to intervention in Sudan is not overriding if the intervention would remain limited in the manner envisioned by Lango and Patterson.

We must continue to ask, though, whether it is reasonable to assume that the intervention in Sudan would remain limited. The historical record (say Vietnam, or, more recently, Afghanistan) suggests that interventions that are initially limited in scope have a way of leading to wide-scale interventions. It is easy to envision that the same might happen in Sudan. Consider, for example, that the North in response to American attacks on supply convoys initiates a violent expulsion of the one- to-two million refugees from the South living in the North. Would this not force a more widespread American intervention for humanitarian reasons? And what if, in response, the people from the North living in the South would be attacked out of revenge? Or, what if the SPLA/M, which was engaged in abuses against its opponents during the elections in April 2010, would begin killing its political opponents in the South or civilians in the border regions with the North?²⁰ Or, what if the tribal violence and conflict over basic resources that have led in the past two years to high casualties and large displacements in the South would even get much worse after the renewal of the civil war in Sudan with U.S. military support of the SPLA/M?²¹ Would

American intervention then remain limited? Or what if China and Iran, as the main weapons suppliers to North Sudan,²² would sharply increase their arms delivery in response to an American intervention? And the issue is not only the scale of the intervention, but also its duration. The North and South have fought one another for decades. How long will American intervention last? Finally, it is widely acknowledged (including by Lango and Patterson) that South Sudan currently still has weak economic, legal, and political resources to succeed as a state.²³ A sharply escalated civil war would push its limits in these regards, and so much assistance, both military and nonmilitary, would be needed to prevent South Sudan's collapse.

Extensive and long-lasting American military involvement in South Sudan, including "nation building," would presumably be rejected by many in the military. The second JMP principle allows for the input of the military in resort to force decisions, and so offers a normative ground for opposing intervention in Sudan. A corollary of the principle is an extensive right of conscientious refusal, and many soldiers may exercise it in the case of a Sudan intervention. The intervention would also be objectionable in terms of three other JMP principles, requiring (in summary) that the demographic composition and values of the military are reflective of the population at large and its values; that the value of security and the resources committed to this value are properly weighed against other human values (such as health and education) and the resources set aside for them; and that military preparation decisions are made by a competent and transparent authority with the purpose of just military preparedness in view. The three principles require a much more limited U.S. military and defense structure than the present one and raise fundamental questions about whether U.S. military hegemony is an injustice to the American people. But even if we make the present military and defense structure of the United States our baseline, the principles suggest that intervention in Sudan is to be rejected. Another extensive and drawn-out U.S. military intervention would require greater material and human sacrifices than the American people are willing to make, an even greater use of Private Military Contractors (increasing the risks of a growing civilian-military divide and more indiscriminate killing), and a Congress unwilling to question the executive branch and the Pentagon. Significant raises in the military budget would be especially hard to sell in light of growing deficits and a bloated Pentagon budget in the first place, leaving too few badly needed resources for infrastructure improvements, health care, education, stimulus spending, and the like.

The very fact that Lango and Patterson cite Gates as claiming that it is unlikely that the United States in the near future will fight a war similar to the interventions in Iraq and Afghanistan show that they are not unaware that a full-scale American war in Sudan would be an unpopular option. However, they fail to meet the issue head-on, writing that "even if a renewed North-South civil war proved to be very deadly, it might be unwarranted, both from the point of view of just war theory and from the point of view of military and political prudence, to launch a large-scale military invasion of Sudan, with the goal of military occupation and democratization" (129). They add: "Nevertheless, it might be warranted, from both points of view, to engage in more

limited forms of armed intervention.” Now that military and political prudence counsel against large-scale invasion in Sudan is clear, but Lango and Patterson leave unanswered how an American intervention in Sudan can remain limited *without* committing a moral wrong, especially when the intervention would contribute to an escalation of the conflict. Surely, it is possible to stick to a scenario of a somewhat limited intervention irrespective of changing conditions, as arguably (former U.S. President) Bill Clinton did after his bombing campaign in Kosovo created a widespread refugee problem, but his decision not to commit ground troops to protect the refugees was also widely criticized by just war theorists.²⁴ In other words, just war theory might demand a considerable expansion of an intervention once it has been initiated. Adequate contingency planning must take this possibility into account, and, with good reason, neither the thinly stretched military nor the overburdened American people want to embrace such planning. We have, therefore, here a moral ground against American contingency planning for limited intervention in Sudan in the first place.

The sixth and final JMP principle is that priority should be given to nonmilitary means of preventing massive human rights violations caused by armed force. The United States violates this principle on basis of a variety of measures, such as the ratio of military spending to budgetary support for the U.N. (at least 100 to 1), the ratio of the military budget to official development aid (at least 20 to 1), or the ratio of the Department of Defense spending to all spending on “Department of State, Foreign Operations and Related Programs” (14 to 1).²⁵ Again, Defense Secretary Gates acknowledges the problem in “A Balanced Strategy,” noting that there is a definite imbalance in U.S. spending on the “war on terror” (and Sudan is since 1993 on the U.S. list of states sponsoring terrorism) because “over the long term, the United States cannot kill or capture its way to victory.” He continues: “Where possible, what the military calls kinetic operations should be subordinated to measures aimed at promoting better governance, economic programs that spur development, and efforts to address the grievances among the discontented, from whom the terrorists recruit.”²⁶ Accordingly, Gates proposes that the budget of the State Department and the USAID increase relative to the Pentagon budget. This has happened in recent years, but, as the figures above show, the basic focus of American foreign policy is the United States as global cop rather than as global diplomat or global provider of economic assistance.

In light of the fact that U.S. foreign policy is overall a *militarized* policy, any claim to the effect that the United States opted for foreign military intervention as a last resort measure has at the outset diminished credibility. This does not mean that the JAB principle of last resort can never be satisfied, but the bar of what counts as satisfying the principle should be raised considerably in the case of the United States. Likewise, it is harder for the United States to make a credible threat of resort to force as a *preventive* last resort measure than it is for a country with a foreign policy much less militarized. A long history of unjust U.S. interventions and military strikes adds to the problem that a threat of contingent resort to force may not appear as an attempt to

prevent the use of force (and so to satisfy the last resort principle), but rather as a belligerent gesture. In the case of Sudan, the U.S. history of aggression against the North Sudan regime in the form of the 1998 cruise missile strike on the al-Shifa pharmaceutical factory in Khartoum,²⁷ and its strong support of the South would further reduce the likelihood that its contingent threat would not be viewed as strongly belligerent.²⁸ Now it might be hard to avoid that the intended target of a (contingent) military threat will perceive the threat as belligerent, but this is still a matter of degree. The more the threat is viewed as deeply belligerent by the target, the greater the chance is that cooperation will not be forthcoming or will be only temporary and involve deceptive compliance. Accordingly, even if we were to grant that Lango and Patterson are correct that the threat of intervention would be necessary (and so justified) to keep the Khartoum regime from attacking the South after it opts for, or moves toward, secession, it would be better that the threat of such an intervention would be made by a country perceived as less hostile and biased and more of a neutral mediator than the United States. More importantly, it adds to global instability and tension when a contingent threat is viewed as belligerent by *other* countries. What is especially worrisome is that the contingent threat would be against a predominantly Muslim regime in Khartoum made by the United States as an agent with a long record of interventions and missile strikes in the Muslim world. North Sudan might be able to exploit this point to its benefit and induce widespread animosity among Muslims against the United States.²⁹ The actual execution of the threat seems a scenario with even higher global security costs.

***Jus ad Bellum* Objections to (Contingency Planning for) Intervention**

Lango and Patterson do not apply the JAB principle of proportionality to their intervention proposal and so they do not pay much attention to the costs of the threat of intervention or the anticipated costs of actual intervention. These costs partly hinge on whether the United States has the authority to function as global cop and intervene in this capacity in Sudan. Accordingly, I will first apply the JAB principle of legitimate authority to Lango and Patterson's intervention proposal before turning to the proportionality principle. As noted previously, they recommend U.N. Security Council authorization of (the threat of) military action against North Sudan, while the planning and execution is left in the hands of "responsible actors" and especially the United States. It is not to be expected that U.N. Security Council authorization will be forthcoming in light of China's support of the Khartoum regime. Considering the undemocratic and power-centered veto system of the U.N. Security Council, however, I share Lango and Patterson's view that a collection of responsible actors might constitute a legitimate authority with regard to actions that concern collective security or averting violent humanitarian crises. Our disagreement is that I don't view the United States as military hegemon or global cop as a responsible actor. Responsible actors will view the military tasks related to international security and humanitarian intervention as shared tasks for the common good and will not have the ulterior motive of performing these tasks with the aim of strengthening their global power projection and military dominance. Nor do responsible actors divide the world into spheres under their military

command (USSOUTHCOM, USCENTCOM, etc.) and seek to maintain an “empire of bases,” often in opposition to local populations.³⁰ Admittedly, the wars in Afghanistan and Iraq have tempered American unilateralism, and the Obama administration might be more reluctant to use force, especially on a broad scale, than the G.W. Bush administration. However, the policy of “helping others to defend themselves” is not likely to be a policy without strings attached. Economically, it likely means that markets are opened for American corporations and that resources are exploited in similar fashion; militarily, it likely means an extension of the American “empire of bases.” Sudan has enormous oil reserves. China has tapped into these resources through its support of the Khartoum regime; the best chance of the United States to do the same at this juncture seems to be through the secession of South Sudan. This secession, especially if it would result from U.S. intervention, would also likely benefit U.S. Africa Command (AFRICOM) as the newest regional command structure of the United States.

In an endnote, Lango and Patterson propose that AFRICOM engages “in contingency planning about building the capacity of South Sudan’s defense forces” (132 n.4). AFRICOM was formed in 2008 and its main military purposes are to train African defense forces, share intelligence, engage in joined exercises, and respond (with cooperative African forces) to crisis situations in Africa. For these purposes, AFRICOM needs Cooperative Security Locations (CSLs) and Forward Operating Sites (FOSs). AFRICOM has identified ten CSLs, but only two FOSs.³¹ This makes it necessary for AFRICOM operations to use military bases in Europe. Accordingly, it is to be expected that if U.S. intervention were to occur in Sudan, it would be done with the understanding that a long-term FOG would be created in South Sudan. This would not only strengthen U.S. military hegemony with regard to Africa, but globally since an additional “node” in the network of U.S. bases strengthens the American capability to strike anywhere.

Assessment of U.S. intervention in Sudan, or the threat thereof, on basis of the proportionality principle should take into account the costs to the American and Sudanese people as well as the security costs to the international community at large. I have already noted that the threat of U.S. intervention will be perceived as deeply belligerent by the Khartoum regime. This type of pressure might work better if it were exercised by some other guarantors of the CPA, but even so it is difficult to see how military threats may help in the current negotiations between North and South Sudan about how the border between them should be drawn, how it should be managed, and the like. The International Crisis Group (ICG) notes in a September 2010 Policy Briefing: “Both the Sudanese Armed Forces (SAF) and the Sudan People’s Liberation (SPLA) have exhibited an aggressive military posture in some border areas.”³² A contingent threat now of intervention might increase aggression on both sides. Again, a contingent threat will damage U.S. standing in the Muslim world and so be harmful to the American people. These negative consequences will increase the more the United States makes definite preparations for intervention. The execution of the planned intervention would greatly worsen the scope and degree of bad consequences, especially when U.S. intervention would lead to an escalation of the

renewed hostilities between the North and South. Wide-scale conflict would be an injustice to the American people and many military men and women (and especially the fresh recruits acquired in lean economic times). The greatest victims in Sudan would be the ordinary people who to some extent have been victims of the endless bloody wars of their leaders and their foreign supporters. The greatest long-term costs, however, might be the global political ramifications of U.S. intervention. It would increase tensions between the United States and China, and strengthen the resolve of the latter to catch up with the United States in military terms. It also would increase tensions between Iran and the United States, and benefit Iran in the Muslim world because Iran as arms supplier to North Sudan would be viewed as supporting a Muslim regime under attack and standing up against the “evil” hegemon. More broadly, many people in the Muslim world would see their distrust of the United States confirmed, and the already-diminishing good will established by the Obama administration in the Muslim world would evaporate. The Islamist struggle against the United States would be boosted and an increase of terrorist attacks might occur. Lastly, the intervention may lead more (Muslim) countries to follow the example of Iran and conclude that the acquisition of nuclear weapons is the best protection against the interventionist proclivities of the U.S. military hegemon.

The anticipated negative consequences of using U.S. contingency planning for intervention as a leverage against the Khartoum regime shows that it would violate the proportionality principle; for even if it were to work as a deterrent against North Sudan aggression, which is to be doubted, this good result would be overshadowed by its global security costs. And, of course, once a threat is made, the United States is on the road to its execution and the many disproportionate harms that this would bring about.

Policy Alternatives and Conclusion

What further underlines that the threat of intervention is not advisable is that there are many other policy measures that can be taken to keep the peace that seem much less risky and more effective, including conditional debt relief to North Sudan and conditional normalization of the relations between the United States and North Sudan. Additionally, the CPA guarantors should increase diplomatic support for ongoing negotiations and offer more assistance to South Sudan to help it to prepare for a referendum on secession that is free of fraud and intimidation. Cooperation of China must be sought: It has leverage on the Khartoum regime and a great stake in preventing conflict that might interrupt its oil imports from Sudan.³³ The large U.N. mission in Sudan (UNMIS) should be expanded and certainly extended beyond April 2011. More controversially, the referendum and, definitely, subsequent full secession should not be rushed, not only for the sake of keeping the peace but also so as to ensure that the referendum will be fair and that South Sudan will have the legal, political, economic, and security structures in place to function effectively as a sovereign state. Lastly, for the sake of avoiding the likely horrors of a renewed civil (secessionist) war, an open mind must be kept with regard to temporary or perhaps

even permanent intermediate solutions short of full sovereignty for South Sudan, such as a union of North and South Sudan sharing, for example, monetary policy, foreign policy and U.N. membership, but each having their own political institutions, laws, etc.³⁴

Consider, however, that these measures don't work or that the CPA guarantors fail to make a real concerted effort to keep the peace, and hostilities between North and South resume. Would now U.S. intervention, or at least intervention by other states in support of South Sudan not be appropriate? The proportionality principle would counsel against intervention, especially by the United States, provided that my description of the anticipated negative consequences of intervention is roughly correct. The last resort principle also seems to offer a moral ground against intervention in that other less coercive measure may still work and bring the parties back to the negotiation table. The European Union adopted in 1994 an arms and ammunition embargo on Sudan, and the world community lost an opportunity for ending the Sudanese civil war, or at least reducing its intensity, by not following the example. The CPA only prevents the Sudanese Armed Forces replenishing weapons and ammunitions within some areas.³⁵ A complete U.N. embargo would reduce the scope of the hostilities. Or, if this could not be implemented, say because of opposition by China, and the Sudanese government forces would seem to get the upper hand, then arms sales to South Sudan should be made to counterbalance the North. But what if such measures would not work? In the final instance, I hold that the guarantors of the CPA should intervene if the point would be reached of a complete destruction of the South as a still evolving political community. For obvious reasons, I hold that the role of the United States in such an intervention should be limited or nonexistent. Most likely, before this rationale for intervention would be applicable, Sudan would already be on its way to turning into a land of civilian mass killings. I share the moral conviction of Lango and Patterson that the world should not stand by if this were to happen. The West has all too often fought humanitarian wars under false pretense and stood by silently when mass slaughter of civilians unfolded. Planning for humanitarian intervention is a global responsibility, but local agents seem generally most effective as intervening agents. But if the West nonetheless had to intervene in Sudan, even with the assistance of the United States if necessary, then this intervention should not be viewed as an act of assistance to South Sudan as such. Nor should the planning for its possibility be viewed as a threat to North Sudan. Rather, the planning and execution must be viewed as acts of solidarity with a brutalized humanity and done with the understanding that in civil war atrocity is seldom to be found on one side alone.

Afterword

The political and security situation in Sudan is very complex and rapidly changing. What adds to the difficulty of understanding the conflict between North and South and how intervention would shape it is that this conflict is only one of the armed struggles that have devastated Sudan since its independence in 1956. I think that Lango and Patterson misinterpret some aspects of Sudan's

tragic history and how intervention would impact the country. No doubt, they think the same of my understanding and we all three will likely have to revise some aspects of our view upon further examination or in light of new developments. All too often it is only (long) after American military boots have hit the ground in some foreign country that policy makers, soldiers, and citizens begin to pay serious attention to the history, culture, and society of this country. A great merit of Lango and Patterson's paper is that it demands of all of us moral reflection and debate as well as getting "the facts" straight before the United States would possibly add another armed intervention to its long list of interventions since 1945.

End Notes

¹ I am grateful to John Lango and Eric Patterson for inviting me to write this response. John made some valuable suggestions of how to use my notion of "just military preparedness" as a platform for discussing his (and Eric's) Sudan paper.

² I have previously articulated five JMP principles in "Barack Obama, Resort to Force, and U.S. Military Hegemony," *International Journal of Applied Philosophy* 23/1(2009): 95-104, and "From Hiroshima to Baghdad: Military Hegemony versus Just Military Preparedness" forthcoming in *Philosophy after Hiroshima*, ed. Edward Demenchonok (Newcastle, UK: Cambridge Scholars Press). I have added a sixth principle about how the demographic composition and values of the military and the population at large should mirror one another.

³ Cf. Larry May, *Aggression and Crimes against Peace* (Cambridge: Cambridge University Press, 2008), 103-07.

⁴ Cited from Michael Walzer, *Just and Unjust Wars* (New York: Basic Books, 1977), 90.

⁵ Cf. Tom J. Farer, "The ethics of intervention in self-determination struggles," in *Ethics and Foreign Intervention*, ed. Deen K. Chatterjee and Don. E. Scheid (Cambridge: Cambridge University Press, 2003), 158.

⁶ Walzer, *Just and Unjust Wars*, 93n.

⁷ Jok Madut Jok and Sharon Elaine Hutchinson, "Sudan's Prolonged Second Civil War and the Militarization of Nuer and Dinka Identities," *African Studies Review* 42/2 (September 1999): 125-45, 127.

⁸ A wide variety of documents reporting these abuses can be found on the website of Human Rights Watch (HRW), <http://www.hrw.org>. For example, in a 1999 letter to Secretary of State Madeleine Albright (posted on December 13, 1999), HRW requests that the United States does not provide food aid to the SPLA because the "SPLA has a history of gross abuses of human rights" (and some of the abuses are listed in the letter). In the summary of the 1994 report *Civilian Devastation*, HRW writes: "The two factions of the rebel Sudan People's Liberation Army have engaged in indiscriminate attacks, destruction of property, looting, and long-term sieges that starve civilians. The cumulative effect has been to turn Sudan's southern region into a permanent emergency situation where war, flood, drought, and disease have torn apart ordinary survival strategies and made millions dependent in whole or in part on international assistance."

⁹ For a discussion of this transformation within the SPLA, see Claire Metelits, "Reformed Rebels? Democratization, Global Norms, and the Sudan People's Liberation Army," *Africa Today* 51 (Fall 2004): 64-82.

¹⁰ See "Sudan's rebels change their spots," *Economist*, 03/28/98, and Global Security, "Sudan People's Liberation Army (SPLA), Sudan People's Liberation Movement (SPLM)," <http://www.globalsecurity.org/military/world/para/spla.htm>. American support of the SPLA was widely noticed in the global press when Secretary of State Madeleine

Albright visited Garang in 1997. U.S. special operation forces might have assisted the SPLA at the time. The Christian Right also offered support, seeing the civil war through the Muslim against Christian lens. See Jeff Sharlet, "Focus on the Sudan," <http://www.alternet.org/story/23859/>. The United States first supported North Sudan but ceased this support when the Khartoum regime sided with Saddam Hussein in the Gulf War. What added to the animosity is that Sudan housed Osama bin Laden during 1992-96. Sudan was placed on the U.S. list of state sponsors of terrorism in 1993.

¹¹ In support of their humanitarian intervention proposal in Sudan in 2002, Lango and Patterson cite (124) the following passage from the International Crisis Group (ICG) Report *God, Oil and Country*: "Sudan's civil war has been prosecuted with stark brutality, principally by government forces. The [Khartoum] government has unleashed indiscriminate aerial attacks, used famine as a weapon of war, forcibly displaced civilians and supported paramilitary forces engaging in the slave trade." Remarkably, they leave out the sentence that follows immediately in the report and changes the overall picture: "The SPLA and its allied militias have indiscriminately attacked civilian populations, diverted relief supplies and forcibly recruited soldiers, including children." There is a certain tension between the ICG assessment here and the one provided by Jok and Hutchinson (see note 7, above), but this tension dissolves somewhat once it is noted that the Sudanese government played a divide and conquer strategy in the South and assisted one of the SPLA factions. At any rate, it must be said that Lango and Patterson offer a one-sided account of the human rights violations in Sudan's civil war.

¹² *Amnesty International Report 2010* states concerning South Sudan: "Armed clashes between different ethnic communities continued. More than 2,500 people were reportedly killed and more than 350,000 were displaced" (306). For a brief discussion of these numbers, see note 21, below. In the summary of *Democracy on Hold: Rights Violations in the April 2010 Sudan Elections*, HRW reports that before and during the elections in April 2010 the SPLM committed "numerous human rights abuses," including "arbitrary arrests and intimidating opponents, voters, and election observers...." Posted on June 29, 2010, at <http://www.hrw.org>. In *There is No Protection* (issued on February 12, 2009), HRW similarly writes that the government of South Sudan (dominated by the SPLM) that came into existence after the adoption of the CPA in 2005 "has not managed to protect civilians from its security forces" (2).

¹³ The Base Structure Report FY 2009 of the Department of Defense (DoD) lists 121 DoD sites in the U.S. territories and 716 DoD sites in 38 foreign countries. See <http://www.defense.gov/pubs/pdfs/2009baseline.pdf>.

¹⁴ See Anup Shah, "World Military Spending," <http://www.globalissues.org/article/75/world-military-spending#USMilitarySpending>.

¹⁵ Robert M. Gates, "A Balanced Strategy: Reprogramming the Pentagon for a New Age." *Foreign Affairs* 88 (January/February, 2009): 28-40, 34.

¹⁶ *Ibid.*, 29.

¹⁷ *Ibid.*, 31.

¹⁸ National Security Strategy of May 2010, p. 5, http://www.whitehouse.gov/sites/default/files/rss_viewer/national_security_strategy.pdf.

¹⁹ The cited article is "Helping Others Defend Themselves," *Foreign Affairs* 89 (May/June 2010): 2-6. The main difference between this article and "A Balanced Strategy" (2009) is that Gates in the 2010 article puts more emphasis on the idea – also mentioned in the 2009 article – that the United States should assist other governments in their nonconventional wars. Correspondingly, the shortcoming of the American military that is more emphasized in the 2010 article is that the military must get better at the task of "helping others defend themselves." A weakness of Gates's analysis is that he brings up the issue of "helping others defend themselves" in the context of arguing that fractured or failing states constitute "the main security challenge of our time" (since terrorists are bound to flourish in such states). He pays insufficient attention to the problem that often within such states there are no parties that

with mere assistance will become successful in governing and providing security. Accordingly, limited intervention in such states might soon turn into massive involvement, militarily and otherwise.

²⁰ See citation from *Democracy on Hold* in note 12, above.

²¹ See citation from *Amnesty International Report 2010* in note 12, above. The Lord's Resistance Army (LRA) is partly responsible for the casualties and displacement. It might also be the case that the North instigates inter-ethnic conflict in the South. The main issue, however, is not to assign specific responsibility, but to note the fragile security situation in South Sudan. See also note 23, below.

²² See Sudan Human Security Baseline Assessment (HSBA), *Sudan Issue Brief*, No. 15 (December 2009), *Supply and demand: Arm flows and holdings in Sudan*, <http://www.smallarmssurveysudan.org/pdfs/HSBA-SIB-15-arms-flows-and-holdings-in-Sudan.pdf>.

²³ In *There no Protection*, the HRW describes the security environment in South Sudan as "extremely fragile" due to conflict over scarce resources, communal fighting, a weak police force, soldiers committing crimes for personal gain, etc. (2-4). The United Nations Development Programme (UNDP) reports that in 2008 about 90% of the population of South Sudan lived in poverty, while 48% of children under five suffered from malnutrition. Only 20% attended primary school. See http://www.sd.undp.org/mdg_fact.htm

²⁴ For example, Michael Walzer argued that the failure to commit ground troops was immoral, posing in "Kosovo" (1999) the rhetorical question (also applicable to the Sudan intervention proposal of Lango and Patterson), "Are countries with armies whose soldiers cannot be put at risk morally or politically qualified to intervene?" See *Arguing about War* (New Haven: Yale University Press, 2004), 100.

²⁵ See "International Affairs—FY 2010," <http://www.state.gov/r/pa/prs/ps/2009/05/123160.htm>.

²⁶ Gates, "A Balanced Strategy," p. 29. The National Security Strategy of May 2010, p. 5, echoes this point.

²⁷ The U.S. had no convincing evidence for its claim that the 1998 strike was necessary to prevent Osama bin Laden from acquiring nerve gas precursors produced at the pharmaceutical factory, and it blocked any independent investigation of the evidence after the fact. See Michael Barletta, "Chemical Weapons in the Sudan: Allegations and Evidence," *Nonproliferation Review* 6 (Fall 1998): 115-36, available online at <http://cns.miis.edu/pubs/npr/vol06/61/barlet61.pdf>. But even if the U.S. was right about its accusation, it would not have warranted, either according to international law or just war theory, the unilateral missile strike.

²⁸ For a perceptive discussion of why the central government of Sudan does not see the United States as a balanced mediator and how this can be changed, see Nureldin Satti, "Engaging Sudan: The Word is Mightier Than the Sword," Working Group Series Paper No. 1 of the Africa Program of the Woodrow Wilson International Center for Scholars. Posted in August 2010 at <http://www.wilsoncenter.org>.

²⁹ Lango and Patterson usually argue that the threat of intervention should be publicly declared, but on p. 130 they write that the threat might have to be made "indirectly or even secretly." They don't explicate why it might be necessary to proceed in this way, but my discussion of how the threat might be negatively perceived by many other countries provides a rationale. I find it difficult what to make of Lango and Patterson's qualification here since they also recommend that the Security Council would adopt a resolution in favor of contingency planning and that a variety of "responsible actors" engage in the planning. How can a threat be made secretly or indirectly under those conditions?

³⁰ See *The Bases of Empire: The Global Struggle against U.S. Military Posts*, ed. Catherine Lutz (New York: New York University Press, 2009).

³¹ AFRICOM, *2010 Posture Statement: United States Africa Command* (March 2010), 36, http://www.usaraf.army.mil/NEWS/NEWS_AFRICOM_POSTURE_STATEMENT_2010.html.

³² ICG, Africa Briefing No. 75, *Sudan: Defining the North-South Border*, September 2, 2010. Posted at <http://www.crisisgroup.org>.

³³ Some of these proposals (as well as other valuable proposals) can be found in John Prendergast and Laura Jones, “Avoiding the Train Wreck in Sudan: U.S. Leverage for Peace,” Working Group Series Paper No. 1 of the Africa Program of the Woodrow Wilson International Center for Scholars. Posted in August 2010 at <http://www.wilsoncenter.org>. They correctly link some of their proposals to ending the conflict in Darfur, but to address this issue is outside the scope of my paper.

³⁴ See Satti, “Engaging Sudan,” 20.

³⁵ See HSBA, *Sudan Issue Brief*, 2.