

Shining light on investment- The Sudan Peace Act

Recommended Citation

Leif Brottem and Sandy Buffett, "Shining light on investment- The Sudan Peace Act", Special Policy Forum 9/11, November 06, 2001, <https://nautilus.org/napsnet/special-policy-forum-911/shining-light-on-investment-the-sudan-peace-act/>

By Leif Brottem and Sandy Buffett

November 6, 2001

I. Introduction

Sandy Buffett and Leif Brottem are Senior Program Officer and Program Officer for the Globalization and Governance Project at The Nautilus Institute for Security and Sustainable Development. The authors assert that the lack of transparency and disclosure in the global financial system degrades long-term peace, security, and sustainable development. According to Buffett and Brottem, the U.S. Congress and the Bush Administration now have the chance to make a first step towards meaningful disclosure and transparency in the U.S. financial markets in a groundbreaking provision of the proposed Sudan Peace Act.

II. Essay By Leif Brottem and Sandy Buffett

"Shining light on investment-- The Sudan Peace Act"

It has often been said, "sunlight is the best disinfectant." In the financial markets, that sunlight is disclosure. The governance of the global financial system fails to provide adequate transparency and disclosure mechanisms needed to inform investors of environmental, human rights, and security risks. The current system enables criminal networks to launder money and corporations that drill for oil amidst slavery and repression to raise capital on the New York Stock Exchange.

In the wake of September 11th, the Bush Administration's sudden after-the-fact awakening to the need for financial transparency has been to try to freeze the assets of terrorists. This is the financial equivalent of launching a long-range missile to hit Osama Bin Laden-- both are crude, blunt instruments whose purpose seems more to demonstrate tough action than to accomplish meaningful change. The U.S. Congress and the Bush Administration are now faced with the chance to make a first step towards meaningful disclosure and transparency in the U.S. financial markets in a

groundbreaking provision of the proposed Sudan Peace Act.

A version of the Sudan Peace Act that contains capital market disclosure provisions passed the House of Representatives by a vote of 422-2 and is now at the Senator Committee on Foreign Relations. The provisions within the bill prohibit any foreign oil companies that do business in Sudan from listing or trading their securities on any U.S. financial exchange. All companies that do business in the country will be compelled to provide significant disclosure to investors and the public via the Securities Exchange Commission or face a similar prohibition. The disclosure requirements would include the relationship of their commercial activity to human rights and religious freedom in Sudan, and the use of proceeds from capital raised in US markets to the contribution of these activities. U.S. oil companies are already prohibited by sanctions from investing in the country.

Human rights groups and Christian organizations are the primary backers of the capital markets provisions that they see as key to ending the country's 18-year long civil war between the Muslim dominated central government and the Christian dominated South. The Sudanese coffers are filled with oil revenue from sources developed with foreign investment and there is speculation that recent government campaigns are intended to assert control over new oil developments in the South. The most prominent investors in Sudan are Talisman Energy, a Canadian firm, the state-owned China National Petroleum Corp. and the Swedish firm Lundin Oil AB.

If the threat of exclusion from the NYSE spurs companies such as Talisman to leave the Sudan, it could make oil companies worldwide think twice about investing in countries where the government commits human rights abuses. The disclosure provision could also prove to be a powerful tool to this end, especially if it is eventually expanded beyond the borders of the Sudan. In May of this year, Laura Unger, then acting chairman of the SEC expressed support for this kind of measure when she stated in a memo that overseas companies seeking to raise money in US capital markets should disclose if they do business in countries recognized by the US as "states of concern" such as Burma and Sudan. Unger wrote, "Our aim is to make available to investors additional information about situations in which the material proceeds of an offering could-- however indirectly-- benefit countries, governments, or entities that, as a matter of US foreign policy, are off-limits to US companies."

Opponents to the capital markets provisions of the Sudan Peace Act see them as a slippery slope in a policy area where the SEC should not tread. The State Department spokesman recently told journalists: "Prohibiting access to capital markets would run counter to global US support for open markets, would undermine financial market competitiveness, and could end up impeding the free flow of capital worldwide".

Such disclosure and reporting requirements, it is believed, would effectively bar foreign companies from listing on US markets. Indeed, the threat of increased transparency and reporting led Russia's Lukoil to list on the London Stock Exchange rather than the NYSE.

Wall Street interests, particularly the Securities Industry Association and Goldman Sachs Inc., underwriter for the hotly protested PetroChina IPO, are lobbying to have the capital markets provisions removed from the final bill. A final debate in Congress on the capital markets sanctions provisions has been delayed.

The September 11th tragedy showed, however, that the current opacity of capital flows has a profound effect on foreign policy and that the governance of finance requires greater transparency and disclosure. As much as the US wants to preserve the status quo of the international financial system that it currently dominates, it cannot be denied that changes are due. Let the sun shine in.

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