

South Kordofan: The Next Case for R2P?

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Summary

Given the nature of violence perpetrated against innocent civilians and prolonged hostility between Sudan and South Sudan, it is imperative that the UN Security Council takes stock of the situation and acts immediately. While the two parties to the conflict have failed to reach an amicable solution, it is but logical for the international community to step in, assume the responsibility to intervene and protect the rights of civilians. The lack of a unified voice against the atrocities committed could prove to be an aberration of the Responsibility to Protect (R2P). One of the key aspects of R2P is the 'responsibility to react' and the Council has to not only react by condemning the escalation of conflicts, but also take up the 'responsibility to prevent' further escalation into war. However, this R2P should not be misconceived as synonymous with military intervention or humanitarian intervention. Instead, the Council has to explore all plausible scenarios in bringing both governments to the negotiating table and engage them in dialogue.

South Kordofan, a province of Sudan located in the border region between Sudan and South Sudan, is home to the people of the Nuba mountains. A religiously and ethnically mixed population (adhering to Christian, Muslim and Animist beliefs), the people of Nuba were historically discriminated against and marginalized by the Arabic regime of Khartoum. With the aim of seeking to put an end to all atrocities committed against them, the Nuban people joined John Garang's Sudan People's Liberation Army (SPLA) in the civil war against the Khartoum government. In the Comprehensive Peace Agreement signed in 2005 between the National Congress Party (NCP) of the North and Garang's SPLA of the South, the issues of South Kordofan including the Abyei region and Blue Nile were given special status and were to be resolved through the agreement. However, in the frenzy amidst the South's secession earlier this year, all three areas of concern were neglected and put on the back burner. With the escalation of attacks against civilians and human rights violations in the region, this neglect has proven to be costly for people on either side of the border.

Violence Since May 2011

In May 2011, a few weeks before South Sudan became independent, the disputed region of Abyei was seized by al-Bashir's Sudan Armed Forces (SAF). This resulted in the displacement of 60,000 people in Abyei and a further 100,000 in South Kordofan.¹ Though hostilities in Abyei ceased after Sudan and South Sudan reached an agreement, the Abyei conflict spread to other border states like South Kordofan and Blue Nile posing massive threats to human life and security both in Sudan and South Sudan.

By June 2011, violence reached South Kordofan and the surrounding towns and villages following clashes between the SAF and the SPLA. Growing tensions between the SAF and the SPLA over security arrangements and disputed elections led to the SAF attacking the SPLA and forcing the latter to move out of South Kordofan and Blue Nile. These attacks left another 20,000 civilians displaced and as the violence spread to Blue Nile state, there was a massive civilian displacement to neighbouring states and across the border into Ethiopia.

The Satellite Sentinel Project (SSP), based on the accounts of refugees who fled the fighting, reported that the Sudanese government forces have been killing and raping civilians in the state of Blue Nile.² The SSP also confirmed, through satellite images, the burial of

¹ "The Crisis in Sudan", *International Coalition for the Responsibility to Protect*, at <http://www.responsibilitytoprotect.org/index.php/crises/crisis-in-sudan>.

² "Sudan Dispatch: Government Forces Target Civilians in Blue Nile, Refugees Say," *Satellite Sentinel Project*, October 31, 2011, at <http://www.satsentinel.org/blog/sudan-dispatch-government-forces-target-civilians-blue-nile-refugees-say>

human remains; in addition, two mass grave sites were discovered in South Kordofan.³ The SPLA-North has also been accused of 'indiscriminate shelling and other alleged abuses'.⁴ Since violence broke out, international NGOs such as Amnesty International and Human Rights Watch have reported aid being prevented from reaching desperate and displaced people due to the indiscriminate bombing of civilian areas in the Nuba mountains. Reports also reveal that Antonov planes or fighter jets flying at high altitudes dropped bombs on civilian areas where there were allegedly no military targets. This indiscriminate use of force in civilian areas amounts to the violation of international humanitarian law. Delivery of relief and aid to civilians has also been hampered as the Sudanese authorities have refused to allow relief flights into the region.

The preliminary report on international human rights violations in Southern Kordofan submitted by the UN in August 2011 details atrocities committed against civilians in South Kordofan and also stressed that 'these violations should be understood to be indicative and not exhaustive of the range of violations that appear to have taken place in Southern Kordofan.' The report further stated that these atrocities, if substantiated, 'could amount to crimes against humanity, or war crimes.'⁵

To date, hostilities persist between the SAF and the SPLM-North in the provinces of South Kordofan and Blue Nile. Neither side has withdrawn its troops from the Abyei region which is a violation of the 30 July agreement.⁶ The Government of Sudan has accused South Sudan of supporting the SPLA-North and fuelling the fighting, while Salva Kiir's government has in turn arraigned Sudan of supporting insurgent groups in South Sudan. The SAF has also conducted cross-border attacks on the South Sudanese provinces of Upper Nile and Unity and is guilty of bombing refugee camps in these provinces. These incursions have led to heightened tensions between the two countries.

There has been a significant displacement of civilians into neighbouring countries which have to bear the burden of refugees. Ethiopia alone has received over 35,000 civilians in

³ "Satellites Confirm Sudanese Red Crescent Burial of Body Bags in Mass Graves," *Satellite Sentinel Project*, August 23, 2011, at <http://www.satsentinel.org/press-release/satellites-confirm-sudanese-red-crescent-burial-body-bags-mass-graves>

⁴ "Sudan's widening arc of instability," *The Guardian*, September 23, 2011, at <http://www.guardian.co.uk/commentisfree/2011/sep/23/south-sudan-oil>

⁵ "Thirteenth periodic report of the United Nations High Commissioner for Human Rights on the situation of human rights in the Sudan," Preliminary Report on violations of international human rights and humanitarian law in Southern Kordofan from 5 to 30 June 2011, Office of the High Commissioner for Human Rights, August 2011.

⁶ "Agreement on the Border Monitoring Support Mission between the Government of the Sudan and the Government of South Sudan," July 30, 2011 at <http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/SUDAN%20S%202011%20510.pdf>.

the last few months and close to 30,000 civilians have been displaced into South Sudan.⁷ For a country that won its independence five months ago and is marred by domestic problems, the issue of refugees adds to the woes of South Sudan's nation-building process.

Humanitarian access in South Kordofan remains constrained due to insecurity and restrictions imposed on movement by the Sudanese government. An UNHCR report⁸ estimated around 1,200 refugees arriving in South Sudan every day, while between 5000 and 7000 refugees are believed to be in the border areas. The food security situation in the conflict-affected areas of Blue Nile, South Kordofan and Abyei is dim and if the limits on humanitarian and food access continue, it is probable that parts of Blue Nile and South Kordofan could reach emergency levels of food insecurity by early 2012.⁹

In addition, the migration of Misseriyah tribes to Abyei poses the risk of outbreaks of violence in the region. Controversial oil-rich areas in Sudan, Abyei and Heglig have been battle grounds for not only the two Sudans but also for the Dinka Ngok and the Messeriyah tribes of the region. Both governments have made very little progress on the June 20 Agreement¹⁰ on the Abyei area and the continued presence of the two parties in the region poses a threat to the safe migration of the Misseriyah nomads and the return of the Dinka Ngok refugees. Furthermore, both parties are yet to establish a Border Monitoring Support Mechanism based on the agreement of July 30, which is critical to prevent further escalation of tensions along the border.

UN Action Till Date

Responding to the crisis in Abyei, the UN Security Council issued its first presidential statement on the issue on June 03, 2011. In the statement, Sudan's military operations in Abyei were condemned and seen as a 'serious violation' of the 2005 peace accords. UN peacekeeping forces have been deployed in Abyei under the mandate of UN Interim

⁷ "Sudan: Weekly Humanitarian Bulletin - 04-10 November 2011," United Nations Office for the Coordination of Humanitarian Affairs, at http://reliefweb.int/sites/reliefweb.int/files/resources/Full%20Report_356.pdf.

⁸ "UNHCR concerned about thousands of refugees in South Sudan border areas," UN High Commissioner for Refugees, November 18, 2011 at <http://www.unhcr.org/refworld/country,,,SSD,,4eca35f92,0.html>.

⁹ "Sudan: Weekly Humanitarian Bulletin - 18-24 November 2011," United Nations Office for the Coordination of Humanitarian Affairs, at <http://reliefweb.int/sites/reliefweb.int/files/resources/OCHA%20Sudan%20Weekly%20Humanitarian%20Bulletin%2018%20-%2024%20November%202011.pdf>.

¹⁰ According to the Agreement, Sudan and South Sudan committed to establish the Abyei Area Administration to be led by a Chief Administrator and the appointment of the Chair of the Legislative Council for Abyei based on approval from both sides.

Security Forces for Abyei (UNISFA), which have been monitoring the flashpoint region since June 2011. UNISFA has been conducting regular air and ground patrols and has also been establishing temporary operating bases in critical areas to enhance its mobile and static monitoring capabilities. As of November 14, 2011, 2,873 troops have been deployed, which is 68 per cent of the total authorized troop strength of 4,200. The African Union has also been playing a mediatory role in the region and has been brokering the implementation of the CPA between Sudan and South Sudan and on the issue of Abyei. While the UNISFA is already making strides in the implementation of its mandate, it is vital that it continues and consolidates its presence in order to build on its achievements and help stabilise Abyei.

Expressing concern over the situation in South Kordofan and the surrounding regions, UN Secretary-General Ban-Ki moon stated in his report¹¹ that the continued lack of progress on outstanding issues of the CPA and post-independence negotiations has contributed to a lack of progress in North-South relations and significant uncertainty in South Sudan since July 09, 2011. The report also noted that the delay in implementing the June 20 agreement on Abyei has also added to tensions between the two countries. The Secretary-General called upon the Governments of Sudan and South Sudan to demonstrate 'commitment and flexibility to agree on key post-independence issues and move towards a strong, mutually beneficial partnership going forward.'

In the past five months, the UN Security Council has kept itself abreast with the situation in the border regions of Sudan and South Sudan through consultations with and briefings from the UN representatives to the region including the Head of the UNMISS (UN Mission in South Sudan), the Under Secretary-Generals for Peacekeeping Operations and Humanitarian Affairs, the Special envoy to Sudan and South Sudan and the High Commissioner for Human Rights. However, the UN's missions in Sudan and South Sudan seem to be over-stretched (the UN has three peacekeeping missions in the region: UNISFA, UNMISS and African Union/United Nations Hybrid Operation in Darfur (UNAMID) and is doing the little it can.

Need for further UN Action

Given the apparent unwillingness of either party to honour prior agreements, the UN Security Council is faced with a complex problem of addressing the interconnected political and humanitarian challenges along the border of Sudan and South Sudan.¹²

¹¹ "Report of the Secretary-General on the Situation in Abyei," United Nations Security Council, S/2011/741, November 27, 2011 at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N11/603/84/PDF/N1160384.pdf?OpenElement>.

¹² Security Council Report Monthly Forecast for December 2011, December 01, 20

Compounding the predicament is the lack of progress on the resolution of key issues of the CPA, which includes the status of Abyei, oil- and wealth-sharing and border demarcation.

It is worrisome that the Security Council till date has not issued a presidential statement condemning the growing violence in South Kordofan and Blue Nile. Though negotiations for a presidential statement have been going on for a while, the Council has not presented a united front. While the US is preparing a draft statement condemning the bombings in Upper Nile and Unity states, the Russian draft statement condemns South Sudan for violating the status of forces agreement. Other members call for a more balanced statement. The lack of consensus on a balanced approach is delaying any action that the Security Council could take.

It is also perturbing that the UN missions in the region are doing all that they can within the limits of their mandates, yet have not been able to successfully avert the escalation of violence. Within the Council, the US has been a leading actor on the CPA, north-south issues and South Sudan. The Council has thus far been united on the issue of Abyei, with consensus on maintaining close attention on the current situation in the region. However, there are issues that divide the Council and prevent a concerted effort. Some members want to limit the role played by the UN and are also concerned about the budgetary limitations of the three UN missions in the region. Differences also persist on the pursuit of ICC criminal proceedings against al-Bashir. There is also division among the members regarding Council action on South Kordofan, Blue Nile and attacks on states of South Sudan. While some want the Council to speak formally on the issue, others seem hesitant to take any concrete action without a formal report from the ground. The Western members have been pushing for a statement of condemnation of human rights violations and aerial bombings undertaken by the SAF. But other members are hesitant about adopting such a statement given the lack of sufficient evidence and stress on the need to adopt a comprehensive approach to the conflict.

More often than not, over issues such as this, the Council is divided into two different camps; one that seeks immediate, fix-it-all solutions to end violence which often endangers civilian life and the other that seeks a deliberated and planned approach which has thus far not been successful in abating the conflict. To end the status quo, the need of the hour is a mid-way approach between the logic of military interventions to resolve conflicts around the globe and the adoption of a 'wait and watch' approach. Before the clashes assume the nature of an international armed conflict, where the two Sudans declare war against each other, the international community has to take necessary and timely action.

Given the nature of violence perpetrated against innocent civilians and prolonged hostility between the two countries, it is imperative that the UN Security Council takes stock of the situation and acts immediately. While the two parties to the conflict, Sudan and South Sudan, have failed to reach an amicable solution, it is but logical for the

international community to step in, assume the responsibility to intervene and protect the rights of civilians. The lack of a unified voice against the atrocities committed could prove to be an aberration of the Responsibility to Protect (R2P). One of the key aspects of R2P is the *'responsibility to react'* and the Council has to not only react by condemning the escalation of conflicts, but also take up the *'responsibility to prevent'* further escalation into war. However, this R2P should not be misconceived as synonymous with military intervention or humanitarian intervention. Instead, the Council has to explore all plausible scenarios in bringing both governments to the negotiating table and engage them in dialogue. The first step would be for the Council to request the Secretary-General to launch a fact-finding mission to gather information from the ground and also investigate the bombings in South Sudan. Secondly, the Council has to ensure that the Government of Sudan allows relief organizations unrestricted access to the conflict-ridden areas to provide necessary humanitarian assistance.

Simultaneously, the Council, for its part, should also step up efforts to help resolve outstanding issues of the CPA such as border demarcation, oil- and wealth-sharing and generate the necessary trust and goodwill between Sudan and South Sudan. The Council has to persuade both countries to resolve outstanding issues amicably. It also becomes mandatory that all Council members and other actors have in place clear contingency plans anticipating risks and also a comprehensive strategy to address these risks. Since the UN has three peacekeeping missions operating in the region, a holistic approach taking into consideration all three peacekeeping efforts becomes a prerequisite. Failure to present a united front now and act immediately could cause irreversible damage not only for the Sudanese but for the entire international community.