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Not Just Mediation

The United Nations Security Council's Role in Supporting Peace in the Two Sudans

Jennifer Christian, Omer Ismail, and John Prendergast

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This is the second in a series of Policy Briefs focusing on the international community's extraordinary opportunity to help support peace within Sudan and between the two Sudans.

Throughout the last fifty years of war between North and South Sudan, peacemaking efforts have never simply been about the quality of mediation. Experience has demonstrated that without international unanimity and pressure, diplomatic efforts to resolve the cycle of conflict between North and South were, by themselves, insufficient to support peace. That is true again today, as a long mediation effort, conducted under the auspices of the African Union High-Level Implementation Panel, or AUHIP, headed by former South African President Thabo Mbeki, begins to wind down. Without a strong stand now by the U.N. Security Council, the ambiguity of the next difficult steps in negotiations could undermine the prospects for peace.

In the coming days, the U.N. Security Council will have the opportunity to vote on a set of recommendations from the African Union Peace and Security Council, or A.U. PSC, on ways to address the outstanding issues that remain after the conclusion, in September 2012, of a set of agreements between Sudan and South Sudan. The A.U. PSC's recommendations are based on President Mbeki's October 24, 2012 report.

The A.U. PSC's recommendations are a productive contribution to international efforts to resolve the remaining outstanding issues, and the U.N. Security Council should endorse them while adding to two key areas in which the A.U.'s recommendations are deficient. One, the A.U.'s recommendations do not identify any consequences, should any party choose not to comply with them. Two, the A.U.'s recommendations do not offer a constructive way forward on the issue of unfettered international humanitarian access to the Sudanese states of South Kordofan and Blue Nile.

The U.N. Security Council must rectify these issues through the adoption of a resolution, under Chapter VII of the U.N. Charter, which provides clear guidelines, particularly on the issue of humanitarian access, and consequences for those parties found not

in compliance. If the U.N. Security Council neglects to do this, it will create new space in the region for spoilers who do not want peace. The government of Sudan's recent public insistence that it will not accept the A.U. PSC's recommendations on the final status of the Abyei area underscores what is at stake.

Without clearly defined disincentives related to noncompliance, the A.U. PSC's recommendations, and any accompanying U.N. Security Council resolution, will do little in terms of consolidating peace and resolving the outstanding issues. The U.N. Security Council has the next move, and it may be the most important one. A clear way forward with targeted consequences for those who resist will lay the ground for peace and save lives through the provision of desperately needed aid.

What the African Union has done

On October 24, 2012, President Mbeki delivered a report to A.U. PSC that contained the AUHIP's proposal on issues left outstanding after the conclusion of negotiations concerning the two Sudans, namely:

- The final status of the Abyei area,
- The definition of the disputed and claimed areas along the North-South border,
- Direct political negotiations between the government of Sudan and the Sudan People's Liberation Movement-North, or SPLM-N, on the basis of the unimplemented June 28, 2011 agreement between the Sudanese government and the SPLM-N, and
- International humanitarian access to the Sudanese states of South Kordofan and Blue Nile.

The A.U. PSC responded to President Mbeki's report by accepting the AUHIP's September 21 proposal on Abyei, calling it "a fair, equitable and workable solution to the dispute." The A.U. PSC requested that the governments of Sudan and South Sudan continue their negotiations on the basis of the AUHIP's proposal; however, should the parties remain at an impasse over the modality to determine Abyei's final status six weeks after the A.U. PSC's adoption of its communiqué, or December 5, 2012, the A.U. PSC will endorse the AUHIP's proposal as "final and binding" on the two parties.

On the definition of the disputed and claimed areas of the North-South border, the A.U. PSC provided the governments of Sudan and South Sudan with two weeks to agree on the modality by which they will define the disputed and claimed areas along the North-South border. If their current impasse remains at the conclusion of the two-week period,

on November 7, 2012, the A.U. PSC has requested that the AUHIP present it with a proposal on how to address the issue. Thereafter, the A.U. PSC will make a final and binding determination concerning the disputed and claimed areas.

As to direct political negotiations between the government of Sudan and the SPLM-N, the A.U. PSC called on the two parties to begin negotiations no later than November 10, 2012 on the basis of the June 28, 2011 framework agreement. Notably, the A.U. PSC did not identify any consequences, should one or both parties fail to comply.

On the issue of humanitarian access into South Kordofan and Blue Nile, the A.U. PSC failed to go beyond a simple reiteration of the government of Sudan and the SPLM-N's respective obligations, in coordination with the Tripartite partners, comprised of the U.N., A.U., and League of Arab States, to permit international humanitarian aid agencies into areas under the control of the SPLM-N. While the A.U. PSC further urged the government of Sudan and the SPLM-N to reach a cessation of hostilities agreement to facilitate the delivery of aid, the A.U. PSC's communiqué falls short in that it does not identify measures that the A.U. will take against any party found to be obstructing the delivery of aid to the two states.

What the U.N. Security Council must do

Now is time for the U.N. Security Council to weigh in. The support of the U.N. Security Council for the A.U. PSC's communiqué, and the adoption of measures to ensure enforcement of the same, would serve as a powerful demonstration of the international community's commitment to the consolidation of peace and security within and between the two Sudans and the region at large. To this end, at its next meeting to consider the situation in the two Sudans, the U.N. Security Council should adopt a resolution, under Chapter VII of the U.N. Charter, providing for the following:

1. The adoption of the AUHIP's September 21, 2012 proposal on Abyei as the final and binding resolution to the dispute over the area and demand Sudan and South Sudan's immediate ratification of and compliance with the same, should they fail to reach a separate agreement on or before December 5. The Security Council should further outline measures that it will take under Chapter VII of the U.N. Charter should one or both parties fail to comply, in good faith and in a timely fashion, with all provisions of the AUHIP's proposal. Given the government of Sudan's demonstrated tendency to disregard "final and binding" decisions related to Abyei, particularly vis-à-vis the area's borders, implementation mechanisms will be critical to ensuring that both parties adhere to the AUHIP's proposal. Indeed, recent comments from Sudan's Minister of Foreign Affairs indicate that the government will reject the AUHIP's proposal on Abyei as the final and binding resolution to the conflict. If the U.N. Security Council fails to identify consequences

for non-compliance, Abyei's final status may remain unresolved indefinitely, ensuring that the area remains a potential catalyst for North-South violence.

2. The imposition of measures against those Sudanese government officials or SPLM-N representatives responsible for the continued denial of unfettered international humanitarian aid to South Kordofan and Blue Nile. Moreover, unlike the A.U. PSC, the U.N. Security Council should define a strict timeline by which the government of Sudan and the SPLM-N must permit unfettered international humanitarian assistance into the two states. If aid is not flowing into the two states per the timeline, the U.N. Security Council should call on U.N. Member States to take all measures necessary to deliver aid, with or without the government of Sudan or the SPLM-N's consent. Precedent for this latter action may be found in the U.N. Security Council's response to the wars in the former Yugoslavia in the 1990s. Without the definition of a strict implementation timeline and the threat of additional measures should one or both parties fail to adhere to that timeline, it is unlikely that the Tripartite initiative will ever be fully realized.
3. The endorsement of the A.U. PSC's decision on the disputed and claimed areas of the North-South border. Per the A.U. PSC's communiqué, the U.N. Security Council should stand ready to enact measures to ensure the enforcement of a A.U.-imposed final and binding resolution to the disputed and claimed areas, should the governments of Sudan and South Sudan fail to reach agreement on a mechanism to resolve their dispute over the definition of the North-South border by December 5.
4. The support of the U.N., as necessary and appropriate, in securing the commencement of direct political negotiations between the government of Sudan and the SPLM-N by the November 10 deadline identified by the A.U. PSC. The U.N. Security Council should go further and identify measures that it will take, under Chapter VII of the U.N. Charter, against any party found to be purposefully and without due cause delaying the initiation of direct political negotiations.
5. The identification of measures designed to ensure Sudan and South Sudan's implementation of all signed agreements. While the A.U. PSC called on international actors to assist the two Sudans in their implementation efforts, it fell short of identifying consequences for non-implementation. Given the demonstrated tendency of the government of Sudan, in particular, to avoid implementation of agreements that it signs, either through outright refusal or, more commonly, endless delays, internationally-backed implementation mechanisms will be critical to ensuring the success of all North-South agreements. More specifically, consequences must await either party that significantly obstructs implementation of these proposals, including sanctions and other measures under Chapter VII of the U.N. Charter.