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Shifting the Burden: The Responsibility to Protect Doctrine and the Humanitarian Crisis in Sudan

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The Facts

For over a year, the government of Sudan, led by alleged genocidaire President Omar al-Bashir, has denied international humanitarian aid organizations access to the states of South Kordofan and Blue Nile, in which a coalition of armed opposition groups, known as the Sudan Revolutionary Front, or SRF, has been fighting against government forces. Simultaneously, President Bashir's regime has been purposefully targeting civilian populations, indiscriminately bombing farmland and villages and systematically destroying civilian property. The result: a humanitarian crisis comparable to that seen today in Syria and, less than a decade ago, in the Sudanese region of Darfur.¹

The United Nations estimates that nearly 700,000 civilians are internally displaced or severely affected by the conflicts in South Kordofan and Blue Nile. Of this number, it is thought that as many as 400,000 civilians may be located in areas controlled by the Sudan People's Liberation Movement-North, or SPLM-N, an armed component of the SRF.² Up to today, the Bashir regime remains steadfast in its absolute obstruction of international aid delivery to SPLM-N-controlled areas, leaving civilians there without access to desperately needed food and medical supplies. Meanwhile, almost a quarter of a million more Sudanese have fled the two states for neighboring South Sudan or Ethiopia.

The international community's reaction, while more vigorous as of late, has proven entirely inadequate in terms of ensuring the delivery of vital humanitarian aid to civilians in South Kordofan and Blue Nile, particularly those civilians in SPLM-N-controlled areas. Initially, the international community used diplomatic pressure in an attempt to persuade Bashir to permit humanitarian aid workers into the two states. When that failed, the United Nations, the African Union, and the League of Arab States, in February 2012, jointly proposed the so-called "Tripartite Proposal" for the delivery of international humanitarian aid to the two states.³ The SPLM-N immediately accepted the proposal, which provided for the initiation of steps to deliver necessary aid to

populations in government and SPLM-N controlled areas. The government of Sudan, on the other hand, made promises to review the proposal, a stalling tactic it maintained throughout the remainder of the local dry season, which ended in June. The onset of rains in Sudan means limited overland accessibility to South Kordofan and Blue Nile until at least October, effectively ensuring that any agreement securing aid delivery concluded in the interim cannot be fully realized until that time.

In the face of the Khartoum regime's continuing delays in implementing the Tripartite Proposal, coupled with mounting concerns over deteriorating relations between Sudan and South Sudan, the U.N. Security Council, on May 2, 2012, adopted Resolution 2046. The resolution calls for, among other things, the government of Sudan to accept the Tripartite Proposal. Thereafter, in August, the Sudanese government signed a memorandum of understanding, or MOU, with the U.N., the African Union, and the League of Arab States providing for the development and implementation of an action plan related to the delivery of humanitarian aid throughout the two states.⁴ The MOU contained a one-week deadline for the development of the plan, which came and went without any action on the part of the government of Sudan. Indeed, today, over a month after the conclusion of the MOU, there is still no international aid reaching civilians in SPLM-N-controlled areas of South Kordofan and Blue Nile.

The International Community's Responsibility to Protect Sudanese Civilians

The facts related to the humanitarian situation in South Kordofan and Blue Nile make abundantly clear that the government of Sudan has no interest in protecting its civilians from insecurity and starvation. Indeed, the government, itself, has created and continues to perpetuate a situation in which Sudanese civilians are routinely and systematically targeted by government and government-backed military forces. The government has also purposefully denied international humanitarian assistance, despite concerted diplomatic efforts, over the course of at least seven months, on the part of the U.N., the African Union, the League of Arab States, and a number of individual countries. Under the responsibility to protect doctrine, or "R2P," these facts would shift the burden to protect affected Sudanese civilians from the government of Sudan to the international community.

A 2009 report from U.N. Secretary-General Ban Ki-moon outlined the following "three pillars" of the responsibility to protect doctrine:⁵

1. A State holds the primary responsibility to protect individuals within its territory from genocide, war crimes, and crimes against humanity;
2. The international community must encourage and assist States in realizing this responsibility; and

3. The international community has the responsibility to “use appropriate diplomatic, humanitarian and other means to protect populations” from the crimes listed in (1), above. Should a State fail to realize its responsibility to protect, the international community has an obligation to take collective action, in accordance with the U.N. Charter, to protect the affected populations.

Notably, the African Union Constitutive Act, to which Sudan is a signatory, provides, at Article 4(h), the African Union with the right to intervene in a member State, should the organization determine that genocide, war crimes, or crimes against humanity are occurring therein.⁶

In the case of Sudan, the government is not only failing to protect civilians located within its territory, but also it is openly committing crimes against humanity and war crimes against those civilians by purposefully targeting them and denying them necessarily humanitarian assistance as part of a systematic and widespread attack against the inhabitants of South Kordofan and Blue Nile. Therefore, under the responsibility to protect doctrine, the burden to protect Sudanese civilians affected by the Khartoum regime’s yearlong siege has now shifted to the international community.

Turning Responsibility into Action: Recommended Steps Forward for the International Community

This shift means that the international community should no longer passively ponder what the government of Sudan should do to protect civilians in South Kordofan and Blue Nile. Rather, the question becomes, what can and should the international community do to fulfill its obligation to protect embattled and hungry Sudanese civilians?

Under the responsibility to protect doctrine, when the burden shifts to the international community to protect individuals within a State, there is a hierarchy of actions that the international community may take to realize its responsibility. First, the international community should explore diplomatic and peaceful means to ensure protection, examples of which may be found in Chapter VI of the U.N. Charter. These means may include negotiation, public advocacy and diplomacy, mediation, judicial settlement, fact-finding missions, and other peaceful means.

Should a State, in this case Sudan, not respond to these diplomatic overtures, with a mandate from the U.N. Security Council, the international community may take collective measures under Chapter VII, specifically Articles 41 and 42, of the U.N. Charter.⁷ These articles provide for the imposition of sanctions against a State or individual regime members as well as the use of force to establish safe zones, impose no-fly zones, or deploy a protection or deterrence force, among other multilateral actions.

A review of the international community's response to the government of Sudan's actions vis-à-vis South Kordofan and Blue Nile over the past year clearly indicates that diplomatic and peaceful means have failed to bring vital humanitarian aid to civilians in the two states, particularly those trapped in SPLM-N-controlled areas. Concerted diplomatic pressure, negotiations with the U.N., the African Union, and the League of Arab States, and the threat of U.N.-imposed sanctions under Article 41 of the Charter have all failed to pressure the Sudanese government to allow international humanitarian actors into the two states or to cease its attacks on civilian populations.

The failure of diplomatic and peaceful actions means that, to fulfill the international community's obligation to protect Sudanese civilians, the U.N. Security Council could make good on its threat to impose measures under Article 41 of the Charter, should the government of Sudan not comply with its obligations under Resolution 2046, including those related to the acceptance of the Tripartite Proposal and negotiations with the SPLM-N.

In light of the inability of prior U.N. Security Council measures, imposed under Article 41, to change the behavior of the Sudanese government, it is questionable as to whether the imposition of measures such as sanctions in this case will result in the timely delivery of humanitarian aid to civilians in the two states. It is therefore incumbent on the international community to immediately initiate discussions within the U.N. Security Council, and/or the African Union, over a comprehensive plan to deliver international, cross-border humanitarian assistance throughout South Kordofan and Blue Nile without the permission of the government of Sudan. Such a plan should draw on prior experiences delivering aid to the two states under Operation Lifeline Sudan during Sudan's north-south civil war. The plan may, as well, contemplate the creation of internationally protected humanitarian corridors from South Sudan. These endeavors are not without their implicit dangers and complications; however, the international community has an affirmative obligation to undertake them in an effort to protect Sudanese civilians targeted by their own government.

Regardless of the mechanism, the international community must immediately accept its responsibility to protect Sudanese civilians in South Kordofan and Blue Nile from Khartoum's relentless perpetration of crimes against humanity and war crimes. Given the failure of diplomatic and peaceful means to ensure civilian protection in the two states, the international community's responsibility to protect those populations now demands multilateral action, under Chapter VII of the U.N. Charter, designed to ensure the immediate delivery of international humanitarian aid to civilian populations in South Kordofan and Blue Nile.

Endnotes

- 1 U.N. Office for the Coordination of Humanitarian Affairs, "Syria: Humanitarian Snapshot" <http://reliefweb.int/map/syrian-arab-republic/syria-humanitarian-snapshot-29-august-2012>
- 2 U.N. Office for the Coordination of Humanitarian Affairs, "Sudan OCHA Reports" <http://www.unocha.org/sudan/ocha-reports>, USAID, "Sudan Food Security Outlook" http://www.fews.net/docs/Publications/Sudan_OL_2012_05_final.pdf
- 3 The February 9, 2012 "Tripartite Proposal" contemplated the creation of a humanitarian oversight committee—composed of civilian representatives from the Tripartite Partners, the government of Sudan, and the SPLM-N—the formation and deployment of assessment teams, and the initiation of steps to deliver necessary aid to populations in government and SPLM-N controlled areas. The proposal, however, stopped short of *requiring* Khartoum to permit international humanitarians into the two states and, indeed, preserved the government's right, through the Humanitarian Aid Commission, or HAC, to approve all movements of humanitarian staff and cargo into South Kordofan and Blue Nile. Jenn Christian and Nenad Marinkovic, "A Tripartite Proposal to Deliver Aid in Sudan: International Solution or Yet Another Discarded Idea?" <http://enoughproject.org/blogs/tripartite-proposal-deliver-aid-sudan-international-solution-or-yet-another-discarded-idea>
- 4 The Tripartite Partners signed a separate MOU with the SPLM-N, the text of which differs from that signed by the government of Sudan. Jenn Christian, "Have the Tripartite Partners Secured Humanitarian Relief for South Kordofan and Blue Nile?" <http://enoughproject.org/publications/have-tripartite-partners-secured-humanitarian-relief-south-kordofan-and-blue-nile>
- 5 U.N. Office of the Special Advisor on the Prevention of Genocide, "The Responsibility to Protect" <http://www.un.org/en/preventgenocide/adviser/responsibility.shtml>
- 6 African Union, "The Constitutive Act" http://www.africa-union.org/root/au/aboutau/constitutive_act_en.htm
- 7 United Nations, "Charter of the United Nations" <http://www.un.org/en/documents/charter/chapter7.shtml>