

Holding Sudan Accountable

A Draft U.N. Security Council Resolution

Jenn Christian September 25, 2012

Introduction

On May 2, 2012, the United Nations Security Council adopted Resolution 2046, which called for, among other things, the government of Sudan's acceptance of the so-called "Tripartite Proposal" to facilitate the delivery of international humanitarian assistance to war-torn regions in the Sudanese states of South Kordofan and Blue Nile.¹ Resolution 2046 expressed the U.N. Security Council's intention to take appropriate measures under Article 41 of the U.N. Charter against any party that failed to comply with the resolution's terms.

Today, nearly five months since Resolution 2046's adoption, the Sudanese government continues to deny international humanitarian aid organizations with access to civilians in South Kordofan and Blue Nile, particularly those civilians trapped in areas under the control of the Sudan People's Liberation Movement-North, or SPLM-N. The SPLM-N, along with other armed movements, has been engaged in a rebellion against the central government for over a year. On August 5, the Sudanese government signed a memorandum of understanding, or MOU, with the U.N., the African Union, and the League of Arab States – collectively known as the "Tripartite Partners" – providing for the development and implementation of an action plan related to the delivery of humanitarian aid throughout the two states.² However, Khartoum continues to thwart concerted international efforts to implement the MOU. Meanwhile, nearly 700,000 civilians are internally displaced or severely affected by the conflicts in South Kordofan and Blue Nile. Of this number, as many as 400,000 civilians may be located in areas controlled by the SPLM-N.³ These civilians are entirely cut off from international humanitarian assistance and are at risk of severe malnutrition.

The government of Sudan has demonstrated over the past year that it has little intention to take seriously international efforts to negotiate humanitarian access into South Kordofan and Blue Nile. The government has, as well, categorically failed to protect civilians within its territory, thereby shifting the burden to protect those vulnerable populations onto the international community pursuant to the responsibility to protect doctrine, or R2P.⁴

The U.N. Security Council's indication of its willingness, in Resolution 2046, to hold the government of Sudan accountable through the imposition of measures under the U.N. Charter provides a foundation upon which the international community can mount a response to Sudan's violations of international human rights and humanitarian law. Such measures could, as well, provide a legal basis for the U.N., its members, and/or regional organizations to deliver aid to civilians in South Kordofan and Blue Nile without the permission of Khartoum.

Resolution 2046 refers to the imposition of measures under Article 41 of Chapter VII of the U.N. Charter, which sets out non-military actions, such as the severance of diplomatic ties or the imposition of sanctions. However, the government of Sudan's continued refusal to permit humanitarian access to South Kordofan and Blue Nile, coupled with the Sudanese military's ongoing assault against civilians and the dire circumstances of populations in the two states, demands strong and immediate action on the part of the international community, which is designed to ensure the immediate delivery of aid. The U.N. Security Council should now adopt a resolution, under Chapter VII of the U.N. Charter and in accordance with R2P, that enacts measures against those Sudanese government officials responsible for the continued denial of humanitarian aid to the two sides while also calling on U.N. member States to take all measures necessary to deliver aid, should the government of Sudan continue to ignore its obligations under the Tripartite MOU. There is precedent for this latter action from the Council's response to the wars in the former Yugoslavia in the 1990s. To this end, the following draft resolution may serve as the basis for future U.N. Security Council action.

Draft U.N. Security Council Resolution

Resolution [x] (2012)

Adopted by the Security Council at its [x] meeting, on [x] September 2012

The Security Council,

Recalling its previous resolutions and statements on the situation in Sudan, in particular, resolution 2046 (2012) and its Presidential Statement of 31 August 2012,

Noting the Government of Sudan's continued failure to fully implement the memorandum of understanding it reached with the U.N., the African Union, and the League of Arab States to enable the urgent delivery of humanitarian assistance to affected civilian populations in the Sudanese states of South Kordofan and Blue Nile in accordance with the tripartite plan proposed by the U.N., the African Union, and the League of Arab States,

Expressing its utmost concern over reports of continued targeting of civilian populations by Sudanese armed forces and the Government of Sudan's obstruction of international humanitarian access to affected civilian populations,

Recognizing that the Government of Sudan's failure to fully implement the memorandum of understanding it reached with the U.N., the African Union, and the League of Arab States and its continued obstruction of international humanitarian access to affected civilian populations in South Kordofan and Blue Nile contradicts resolution 2046,

Recognizing that the situation in South Kordofan and Blue Nile states constitutes a threat to international peace and security and that the provision of humanitarian assistance in South Kordofan and Blue Nile states is an important element in the international effort to restore international peace and security in the area,

Determined to establish as soon as possible the necessary conditions for the delivery of humanitarian assistance to all areas within South Kordofan and Blue Nile states, in conformity with resolution 2046 (2012) and the tripartite plan proposed by the U.N., the African Union, and the League of Arab States,

Acting under Chapter VII of the Charter of the United Nations,

1. *Demands* that the Government of Sudan immediately implement the memorandum of understanding it reached with the U.N., the African Union, and the League of Arab States by:
 - a. Unconditionally permitting the deployment of assessment teams comprised of representatives of the U.N., the African Union, and the League of Arab States to all conflict-affected areas in South Kordofan and Blue Nile states within no more than one week of the adoption of this resolution;
 - b. Unconditionally implementing the plan of action for the delivery of humanitarian assistance that the U.N., the African Union, and the League of Arab States shall develop and propose in accordance with the memorandum of understanding within no more than four weeks of the adoption of this resolution; and
 - c. Continuously ensuring the safety and security of all personnel engaged in the delivery of humanitarian assistance pursuant to the memorandum of understanding and any future agreements concluded with the Sudan People's Liberation Movement-North or any other party;
2. *Calls upon* Member States, individually or through regional organizations or agencies, to immediately take all measures necessary to facilitate, in coordina-

tion with the U.N., the African Union, and the League of Arab States, the delivery by relevant humanitarian organizations of humanitarian assistance to South Kordofan and Blue Nile states without the consent of the Government of Sudan, should the Government of Sudan fail to fully comply with paragraph 1 above;

3. *Decides*, in light of the Government of Sudan's failure to comply with resolution 2046,

a. To establish, in accordance with rule 28 of its provisional rules of procedure, a Committee of the Security Council consisting of all the members of the Council (herein "the Committee"), to undertake the following tasks:

i. To monitor implementation of the measures referred to in subparagraphs (c) and (d) of this paragraph;

ii. To designate those individuals subject to the measures imposed by subparagraphs (c) and (d) of this paragraph and to consider requests for exemptions in accordance with subparagraphs (e) and (f);

iii. To establish such guidelines as may be necessary to facilitate the implementation of the measures imposed by subparagraphs (c) and (d);

iv. To report at least every 90 days to the Security Council on its work;

b. That those individuals, as designated by the Committee established by subparagraph (a) above, based on the information provided by Member States, the Secretary-General, the African Union, the League of Arab States, and other relevant sources, who have or continue to impede the delivery of humanitarian assistance to South Kordofan and Blue Nile states, commit violations of international humanitarian or human rights law or other atrocities within the context of the conflicts in South Kordofan and Blue Nile states, or violate or otherwise impede the measures implemented by Member States in accordance with this resolution shall be subject to the measures identified in subparagraphs (c) and (d) below;

c. That all States shall take the necessary measures to prevent entry into or transit through their territories of all persons as designated by the Committee pursuant to subparagraph (b) above, provided that nothing in

this paragraph shall obligate a State to refuse entry into its territory to its own nationals;

d. That all States shall freeze all funds, financial assets and economic resources that are on their territories on the date of adoption of this resolution or at any time thereafter, that are owned or controlled, directly or indirectly, by the persons designated by the Committee pursuant to subparagraph (b) above, or that are held by entities owned or controlled, directly or indirectly, by such persons or by persons acting on their behalf or at their direction, and decides further that all States shall ensure that no funds, financial assets or economic resources are made available by their nationals or by any persons within their territories to or for the benefit of such persons or entities;

e. That the measures imposed by subparagraph (c) above shall not apply where the Committee established by subparagraph (a) above determines on a case by case basis that such travel is justified on the ground of humanitarian need or where the Committee concludes that an exemption would otherwise further the objectives of the Council's resolutions for the creation of peace and stability in Sudan and the region;

f. That the measures imposed by subparagraph (d) of this resolution do not apply to funds, other financial assets and economic resources that:

i. Have been determined by relevant States to be necessary for basic expenses, including payment for foodstuffs, rent or mortgage, medicines and medical treatment, taxes, insurance premiums, and public utility charges or for payment of reasonable professional fees and reimbursement of incurred expenses associated with the provision of legal services, or fees or service charges, in accordance with national laws, for routine holding or maintenance of frozen funds, other financial assets and economic resources, after notification by the relevant States to the Committee of the intention to authorize, where appropriate, access to such funds, other financial assets and economic resources and in the absence of a negative decision by the Committee within two working days of such notification;

ii. Have been determined by relevant States to be necessary for extraordinary expenses, provided that such determination has been notified by the relevant States to the Committee and has been approved by the Committee, or

iii. Have been determined by relevant States to be the subject of a judicial, administrative or arbitral lien or judgment, in which case the funds, or other financial assets and economic resources may be used to satisfy that lien or judgment provided that the lien or judgment was entered prior to the date of the present resolution, is not for the benefit of a person or entity designated by the Committee, and has been notified by the relevant States to the Committee;

4. *Decides* that the measures referred to in subparagraphs 3 (c) and (d) shall enter into force within 30 days from the date of adoption of this resolution;

5. *Expresses* its readiness to consider the modification or termination of the measures under paragraph 3, on the recommendation of the Committee or at the end of a period of 12 months from the date of adoption of this resolution, or earlier, if the Security Council determines that before then the Government of Sudan has ensured the unhindered, consistent, and secure delivery of humanitarian assistance throughout all areas of South Kordofan and Blue Nile states;

6. *Decides* to remain actively seized of this matter.

Endnotes

- 1 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>
- 2 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>
- 3 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
- 4 Jenn Christian, “Shifting the Burden: The Responsibility to Protect Doctrine and the Humanitarian Crisis in Sudan” <http://enoughproject.org/publications/shifting-burden-responsibility-protect-doctrine-and-humanitarian-crisis-sudan>