

# FIIA 1/2014 COMMENT

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## Hard Work Needed in South Sudan: Formal Statehood Cannot Work Miracles

Turmoil in the newest state in the world shows that much work still needs to be done in South Sudan after formal independence. The international community must continue its efforts to help the South Sudanese people to restore and maintain peace in order to build a viable state.

When the United Nations welcomed South Sudan into the community of states and as its 193rd member state in July 2011, it represented the end of a long journey towards independence. Decades of warfare between the North and the South of Sudan had been brought to an end and an independence referendum showed the overwhelming support of the South Sudanese for forming a state of their own.

Today, this international success story has turned into a humanitarian catastrophe. The fighting that erupted in South Sudan in December 2013 has raised questions about the viability of the South Sudanese state and how the international community should react to the widespread instability. It also justifies discussion on the creation of states and the role played by other states in that process.

As a result of the fighting, some American foreign policy experts have called for turning South Sudan into a protectorate or placing it under international administration. The recent development has been taken to indicate that independence might have been premature and that the country needs to practise under international guidance how to act as a state. Despite these contested ideas, it seems reasonable to ask what happens to a new state when statehood

is fragile and fighting erupts. Under international law, statehood as such is, however, usually not in danger.

There is normally a strong presumption of continued statehood even though actual authority would be lost. For example, shortly after independence in 1960 the now Democratic Republic of Congo failed to control its territory due to internal divisions and unpreparedness to assume power. Neither the lack of effective control nor subsequent foreign interventions served to undo its legal title to statehood. Another illuminating case is Bosnia-Herzegovina, which has been under international administration for years, yet no one questions its position as a state under international law. For South Sudan this means that despite internal violence, its legal statehood will hardly be disputed.

Although the civil war in South Sudan may not have effects upon its formal statehood, it has highlighted the gap between formal and actual independence. The independence process of South Sudan enjoyed widespread backing from the international community. With the support of the United Nations, the United States, neighbouring African states and other interested parties, its independence claims were accepted because of its long struggle

against foreign oppression, its cultural, religious and linguistic separateness, as well as the rejection by Sudan of internal self-determination arrangements.

Today, realism about outstanding challenges has replaced the exhilaration of independence. Thousands of people have been killed in the civil war which broke out between President Salva Kiir and opposition leader Riek Machar, and the number of displaced persons has risen to 500,000. The UN is struggling to ensure the safety of tens of thousands civilians that have sought refuge in its compounds. There have also been alarming reports about ethnic violence, which will keep South Sudan in the headlines for some time to come. The fear of another Rwanda is noticeable.

This warrants discussion on the way in which the international community contributes to the emergence of new states. The birth of new states is a mixture of law, politics and factual circumstances. One important aspect in the process is to secure the acceptance of other states: territories seeking to become states need to gain recognition from other states in order to be able to function fully on the international plane. As a result, the community of states plays an important role in state formation.

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States may consequently be even more cautious when considering recognition of territories such as Somaliland or Palestine. These territories and others seeking to gain independence will not benefit from the optimism that characterized South Sudan's independence; instead they will face increasing scrutiny before being considered worthy of statehood.

With respect to South Sudan, the international community must not only continue to support this young state but it must intensify its engagement in order to bring it back on track. To begin with, international efforts must seek to help South Sudan out of civil war through diplomacy, political dialogue, and monitoring the fragile ceasefire. Access in order to provide humanitarian relief is also of the utmost importance.

When these primary goals have been met, the international community must revert to state-building. It must help South Sudan to resolve outstanding conflicts with the North over border areas, oil revenues and pipelines. Support must be given to a democratic political process, and to improve, for example, the security sector, economics, public administration, infrastructure, and human rights. Corruption and the plundering of state funds should be

dealt with so that South Sudan can work its way out of being one of the poorest states in the world.

Much work remains to be done, and to be sure, the international community has once again been reminded of the fact that formal statehood is not a shortcut to actual independence and a peaceful and prosperous state.