

WHY ABYEI MATTERS

THE BREAKING POINT OF SUDAN'S COMPREHENSIVE PEACE AGREEMENT?

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ABSTRACT

The Abyei Area, straddling the North–South border of Sudan, was the subject of a separate protocol in the Comprehensive Peace Agreement signed between the Sudan government and the Sudan People's Liberation Movement in January 2005. One provision of that protocol was the establishment of a boundaries commission to define the territory to be included in the special administration of the area. The commission's decision was to be implemented 'with immediate effect' on the submission of its report in July 2005, but implementation has been blocked by the National Congress Party, which still controls the central government in Sudan. The conduct of war in Abyei established many precedents for the conduct of war in Darfur in the use of tribal militias and the forcible displacement of non-Arab peoples. The failure to implement the Abyei Protocol has implications not only for determining the North–South border (as stipulated by the CPA), but for the implementation of any Darfur peace agreement.

IF, AS THE LEGENDARY NGOK DINKA CHIEF, DENG MAJOK, once claimed, the thread that stitches the north and south of the Sudan together runs through Abyei,¹ then this narrow patch of land now threatens to unravel the Comprehensive Peace Agreement (CPA) and, with it, the rest of the country. So contentious an issue has it been that it was not fully resolved by the CPA, and it became one of the first items of business for the newly inaugurated Presidency of the Government of National Unity (GONU) in July 2005. The Abyei Boundaries Commission (ABC) was created by the Abyei Protocol of the CPA to make a 'final and binding' decision concerning the definition of the area. The two main partners in the GONU, the National Congress Party (NCP) and the Sudan People's Liberation

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1. Francis Deng, *The Man Called Deng Majok: A biography of power, polygyny, and change* (Yale University Press, New Haven, NJ, 1986), p. 229.

Movement (SPLM), bound themselves in advance to accept the decision of the ABC. The implementation of that decision has been a test not only of their commitment to the CPA as a whole, but of their intentions during the six-year interim period. There is a growing feeling, not only within the SPLM leadership but within the newly created Government of Southern Sudan (GOSS), that the Abyei Area could be the flashpoint that brings the country back to war.²

The historical background

The main part of the disputed area consists of a network of waterways flowing into the Bahr el-Arab on its way through Kordofan into the Bahr el-Ghazal. The heart of the area is where the Ngok Dinka have had their permanent settlements for more than two centuries. Its pastures are used in a seasonal rotation by both the Ngok Dinka and the Humr section of the Misseriya Baggara Arabs, who move south from their main settlement areas at Muglad and Babanusa.³

The Ngok and the Misseriya both entered Kordofan from different directions in the eighteenth century, occupying two distinct ecological zones. The Ngok were part of a broad migration of Padang Dinka who moved westward along the Bahr el-Ghazal, while the Baggara trace a migratory movement along the savanna belt from Wadai through Darfur and Kordofan.⁴ According to K. D. D. Henderson's standard history of the Humr, published over a quarter of a century before the area became disputed, the Ngok were well established in their area along the Ngol (Ragaba ez-Zarga), Kiir (Bahr el-Arab), Nyamora (Ragaba Umm Bieiro) and Lau by the time the Humr reached Muglad, and sections of Ngok even assisted them in seizing control of the area from the indigenous Shatt.⁵

2. The CPA covers an interim period of six years until a referendum in 2011, when the people of the ten states of the Southern Sudan will vote whether to remain part of a united Sudan or become independent. During that time the country as a whole is to be governed by a Government of National Unity in Khartoum, and the South by a Government of Southern Sudan in Juba. The NCP is the majority party in the GONU, while the SPLM is the majority party in the GOSS, at least until elections currently scheduled for 2009. The GOSS includes Southern members of the NCP as well as representatives of other Southern opposition parties.

3. The Misseriya are divided into two main sections: the Humr ('red') and Zurg ('black') Misseriya. They were united under the paramount nazirship of Babu Nimr in 1942, but it is the Humr, rather than the Zurg, who share the pastures and waterways of the Abyei Area with the Ngok Dinka. Ian Cunnison, 'The Humr and their land', *Sudan Notes and Records* 35, 2 (1954), pp. 50–1.

4. K. D. D. Henderson, 'The migration of the Messiria into south west Kordofan', *Sudan Notes and Records* 22, 1 (1939), pp. 55–62; P. P. Howell, 'Notes on the Ngork Dinka of western Kordofan', *Sudan Notes and Records* 32, 2 (1951), p. 241; H. A. MacMichael, *The Tribes of Northern and Central Kordofan* (Frank Cass, London, 1967 [1912]), pp. 140–6; Ian Cunnison, *Baggara Arabs: Power and the lineage in a Sudanese nomad tribe* (Clarendon Press, Oxford, 1966), p. 1; Cunnison, 'The Humr and their land', p. 50.

5. Henderson, 'Migration of the Messiria', pp. 55–63. There has been no detailed historical research in the area, drawing equally on oral testimony from the Ngok and Humr, since

Conditions along the Bahr el-Arab were disturbed during the late Turco-Egyptian period (1821–83) and throughout the administration of the Mahdist state (1883–98). The establishment of large ivory- and slave-trading companies operating in Bahr al-Ghazal, Kordofan and Darfur in mid-century brought about a commercial alliance between northern merchants from the Nile Valley (*jallaba*), such as al-Zubayr Pasha, and various Baggara groups, including the Humr, in raiding the Dinka and other peoples of Bahr al-Ghazal for slaves and cattle. For a while the Humr were administered as part of al-Zubayr's trading empire from Bahr el-Ghazal, and he appointed his own *sanjak* (military administrator) over them. The Ngok resisted these attacks, but they also sought strategic alliances with the Humr. The leading Ngok chief, Arop Biong, established personal relations with Humr shaikh, and through them, the Mahdi. In this way he secured protection from raids.⁶

The Humr split during the Mahdiyya. Most joined the Khalifa Abdullahi in Omdurman after 1885, but some refused and were targeted by the Mahdist state. The non-Mahdist Humr sought and received refuge with Arop Biong and the Ngok. After the overthrow of the Khalifa Abdullahi in 1898–9, the Mahdist Humr returned to Muglad. Shaikh Ali Julia, a former *marasala* (messenger) of the Khalifa, was recognized as *nazir* (head shaikh) of the Humr by the Condominium government in 1905.⁷

At the beginning of the twentieth century the in-coming Condominium administration found that Arop Biong's group of Ngok were generally on good terms with their Arab neighbours, but at the same time the Ngok's closest relationship was with the anti-Mahdist Humr, who were being supplanted by the returning Mahdist Humr. Ali Julia was largely responsible for carrying out raids against the Ngok and Twic Dinka, and of extortion in claiming to collect cattle tax on behalf of the government. The Bahr al-Ghazal Province administration found that the Dinka living around the Bahr al-Arab were largely inaccessible to them because of the *sudd* (barriers of floating vegetation) in the river. There was also a confusion about just who had jurisdiction over whom. The annual reports claimed that the Bahr el-Arab was the provincial boundary between Kordofan and Bahr al-Ghazal, but no official was quite sure where the Bahr el-Arab was, since neither the Dinka nor the Baggara used that name and called the river the Kiir or the

Henderson's time. Henderson's article was frequently cited as evidence to the ABC by both sides in the dispute (not always accurately), and was accepted as a baseline for pre-twentieth-century history. Given the highly public and vigorously contested versions of the past the Ngok and Humr gave, it is unlikely that a more thorough collection of oral testimony will produce a more neutral record any time soon.

6. Henderson, 'Migration of the Messiria', pp. 66–8; Deng, *Deng Majok*, pp. 46–7.

7. Henderson, 'Migration of the Messiria', pp. 69–70; MacMichael, *Tribes*, pp. 143, 148.

Jurf respectively.⁸ The location and nomenclature of these waterways were not sorted out until some years after the transfer of the Dinka to Kordofan.⁹

As a result of Dinka complaints it was decided to transfer the Ngok and part of the Twic Dinka from the administration of Bahr al-Ghazal Province to Kordofan, so that they would be placed 'under the same Governor as the Arabs of whose conduct they complain'.¹⁰ Various readjustments to the province boundary were made in 1912–31, leaving only the Ngok in Kordofan.

Immediately prior to independence in 1956 rural administration throughout the Sudan was reformed with the creation of Rural Councils. The Misseriya were detached from Nahud District and made part of a Rural Council with its headquarters at Rigl el-Fula (now Fula). At first the Ngok were not included in this council, but were eventually admitted following negotiations between the two tribal leaders, the *nazir umum* of the Misseriya, Babu Nimr, and the paramount chief of the Ngok, Deng Majok, in 1953.¹¹ Also prior to independence the Condominium government offered Deng Majok the option of being reincorporated into Bahr al-Ghazal Province. His refusal to take that option was opposed by many chiefs and sub-chiefs and split the tribe.¹²

The management of Ngok and Humr use of the same territory must be understood in the context of the general management of inter-tribal boundaries during the Condominium period. The principle of tribal lands in the northern Sudan was embodied in the tribal *dar* ('homeland' or territory). A tribal *dar* represented a common resource and entitled the group, through

8. B. Mahon, 'Extract from a report by Mahon Pasha, on country from El Obeid, *via* Kadugh [*sic*] and Shibun, to Sultan Rob's country on the Bahr El Homr, about 2 days from Lake Ambady', in 'Sudan Intelligence Report' ['SIR'] 92 (March 1902), App. F, pp. 19–20; B. Mahon, 'Report on tour of inspection through western and southern Kordofan, 11 March, 1903', 'SIR' 104 (March 1903), App E, p. 19; 'SIR' 127 (February 1905), p. 2; MacMichael, *Tribes*, p. 148; 'SIR' 126 (January 1905), pp. 1–2; R. C. Bayldon, 'Summary of Bimbashi Bayldon's Report on the Bahr El Arab sudd', 'SIR' 128 (March 1905), App. C, p. 10. Even in the 1950s the Humr referred to the Bahr el-Arab as the Bahr ed-Deynka (Cunnison 'The Humr', p. 51).

9. The trace map folder for map 65-K (Abyei) in the Sudan National Survey Authority in Khartoum shows that the 1912 edition of the map bore the warning note, 'The course of the Bahr el Arab is entirely unsurveyed.' Corrections made in December 1918 shifted the known position of the 'Gurf/Kir' (as it was still identified) further north and east of the position on earlier maps, and changed the name of the Ngol from the 'Bahr el Homr' to the 'Ragaba ez-Zarga'.

10. 'SIR' 128 (March 1905), p. 3; W. F. Sweny, 'Annual report. Bahr-El-Ghazal Province 1905', in 'Reports on the Finance, Administration and Condition of the Sudan 1905, Part IV. Provinces' (El-Sudan Printing Press, Khartoum, 1906), p. 3; J. R. O'Connell, 'Annual report. Kordofan Province 1905', in 'Reports on the Finance, Administration and Condition of the Sudan 1905, Part IV. Provinces' (El-Sudan Printing Press, Khartoum, 1906), p. 111.

11. Michael and Anne Tibbs, *A Sudan Sunset* (Hobbs the Printers, Totton, 1999), p. 167. In the hierarchy of Native Administration the *nazir umum* among nomad Arabs was the equivalent of paramount chief among the African tribes of the South.

12. Deng, *Deng Majok*, pp. 223–8.

its leaders, to manage the resources of that territory for their own benefit, to exclude others from either its seasonal use or permanent settlement, or to grant others temporary access.¹³ Where use of the same territory overlapped between an Arab group applying *dar* rights and a non-Arab group where *dar* rights did not hold – as, for instance, between the Rizeigat Baggara Arabs of Darfur and the Malwal Dinka of Bahr el-Ghazal – the Condominium government did sometimes modify the application of *dar* rights by the Arab group. It was a compromise that implicitly recognized that *dar* rights were not absolute where different customary legal regimes intersected.¹⁴

The Condominium government evolved a policy of including hostile or competing neighbours within the same district or province, the better to regulate and resolve their disputes. Attempted segregation often led to an increase, rather than a decline, in conflict. The attempt to make a tribal boundary coincident with the provincial boundary between Upper Nile and Mongalla Provinces before World War One, for instance, only exacerbated inter-province hostility and was abandoned in the 1920s.¹⁵ But the annual use of the same grazing territory did not establish a permanent claim to that territory by an itinerant group. The Lou Nuer of present-day Jonglei State regularly cross through the permanent settlements of the Gaawar Nuer on their way to their dry season riverine pastures. This annual movement has given the Lou a right of way, but not a right to claim the territory through which they passed as belonging to them.

The conflict

Fighting during the first civil war spread into Abyei in 1965. There were clashes between the Ngok and Misseriya in the grazing areas, mass murders of Ngok civilians in the towns of Muglad and Babanusa, and even the assassination of Abdalla Deng, Deng Majok's son and successor as paramount chief.¹⁶ Because Abyei had been affected by the war, a provision was made for it in the 1972 Addis Ababa Agreement, entitling the Ngok to vote in

13. Kevin O'C. Hayes, 'Dar rights among the nomads: an arbitral award', *Sudan Law Journal and Reports* 5 (1960), pp. 336–7; Gaim Kibreab, *State Intervention and the Environment in Sudan, 1889–1989: The demise of communal resource management* (Edwin Mellen Press, New York, 2002), Chapter 4.

14. Kibreab, *State Intervention*, Chapter 5. Documents on the Rizeigat–Malwal dispute can be found in the National Records Office, Khartoum, Civsec I 66/4/35 vol. I.

15. Douglas H. Johnson, 'Tribal boundaries and border wars: Nuer–Dinka relations in the Sobat and Zaraf valleys, c. 1860–1976', *Journal of African History* 23, 2 (1982), pp. 183–203.

16. Francis Deng, *The Dinka of the Sudan* (Holt, Rinehart and Winston, New York, 1972), p. 151; Francis Deng, *Dynamics of Identification: A basis for national integration in the Sudan* (Khartoum University Press, Khartoum, 1973), p. 60; Deng, *Deng Majok*, pp. 238–40; Abdalbasit Saeed, *The State and Socioeconomic Transformation in the Sudan: The case of social conflict in southwest Kurdufan* (University of Connecticut, unpublished PhD dissertation, 1982), pp. 221–5; David Keen, *The Benefits of Famine: A political economy of famine and relief in southwestern Sudan, 1983–1989* (Princeton University Press, Princeton, 1994), pp. 40–2.

a referendum on whether or not to be incorporated into the newly formed Southern Region. In the meantime Abyei was given a special administrative status under the office of the President.

These arrangements aroused considerable anxiety among the Misseriya. Long-term change in rainfall patterns occurred at this time, just when the Misseriya's traditional grazing areas and grazing routes were being subjected to other pressures. Misseriya cattle herds had more than doubled since independence; at the same time the expansion of agriculture under the Sudan's 'bread-basket' strategy meant that lands essential to the Misseriya's seasonal grazing cycle were being taken out of livestock management and turned over to agriculture. This affected the Misseriya's rainy season pastures in the far north of their territory, around Babanusa, as well as along some of their dry season southern grazing routes. The decline of rainfall and the expansion of mechanized agriculture coincided with a marginalization of the Baggara both in province administration and at the national level.¹⁷

The creation of the Southern Regional government following the end of the first civil war in 1972 brought further administrative challenges for the Misseriya. The Southern Regional government, as weak as it may have been in many other respects, had far more powers than the northern provincial governments along its borders, or even the northern regional governments created in 1981. With the end of the war northern civil administrators in Bahr al-Ghazal were replaced by southern administrators, and the police and local army garrisons were composed mainly of ex-Anyanya soldiers. The end of the civil war brought a new security to the grazing areas south of the Bahr al-Arab which the Misseriya began to use again. It also brought the revival of Dinka herds, and an increased use of the grazing areas by local Dinka pastoralists. Southern administrators, army and police tended to give local Dinka the sort of support in such disputes that they felt northern administrators had given the Baggara before 1972. Mobile police units patrolled the grazing grounds and often clashed with the Baggara. This increased the Misseriya sense of being squeezed out of much needed grazing areas, both north and south.¹⁸

Abyei was not part of the Southern Region, but it had a special administrative status in the early 1970s. Most of the civil administrators and police were drawn from local Ngok, and new development projects for the people of Abyei itself were planned. This had the effect, in some ways, of moving the southern border of Kordofan further north. Misseriya viewed with alarm the growing momentum among the Ngok in favour of a referendum to decide whether they should be transferred to Bahr al-Ghazal; thus potentially

17. Keen, *Benefits of Famine*, pp. 54–61.

18. Keen, *Benefits of Famine*, pp. 60–2; David C. Cole and Richard Huntington, *Between a Swamp and a Hard Place: Developmental challenges in remote rural Africa* (Harvard Institute for International Development, Cambridge, MA, 1997), pp. 64–5.

moving the border of Bahr al-Ghazal permanently north. It was not long before the Misseriya responded to these perceived threats, resorting to self-help in the form of armed militias. The *murahalin* had been auxiliary cattle guards formed in the 1960s during the first civil war to protect Baggara herds in their southward movements. They were now revived, with automatic weapons brought in from Libya, Chad, and Uganda, and often with the support of Misseriya in the police and army, and even, it was said, from national politicians based in Khartoum. Misseriya attacks on Ngok Dinka settlements and civilians were particularly severe in 1977 and 1980. They were a departure from the customary patterns of dry season conflict, as they were aimed at permanent settlements, standing crops and grain stores rather than cattle camps and herds. This was the opening of a long-term campaign to secure the Bahr el-Arab area for exclusive Misseriya use.¹⁹

In the mid-1960s, when a pro-Southern sentiment began to emerge among the Ngok, the Misseriya made their first attempt to claim that all of the territory north of the Bahr el-Arab belonged to Dar Misseriya. Babu Nimr presented this claim at an inter-tribal meeting presided over by Munim Mansour, the *nazir umum* of the neighbouring Hamar, in 1966, only to have it rejected out of hand.²⁰ No such previous claim is recorded in the available Condominium documents, but it was to be revived during the sitting of the Abyei Boundaries Commission in 2005.

The failure to implement the referendum clause in the Addis Ababa Agreement was a significant factor in the growing political alienation of the Ngok in the 1970s and early 1980s. Some Ngok Dinka formed their own 'Anyanya 2' guerrilla group in the final years of the Addis Ababa Agreement and were instrumental in the formation of the SPLA in 1983. Many Ngok became prominent within the SPLM/A, which is one reason why the SPLM could not abandon the issue. In the war that followed the Abyei Area became the testing ground for a new government strategy combining regular army forces with Arab militias to clear the Ngok Dinka population out of the oil fields and their traditional homes. This strategy was later applied to the Nuba Mountains, refined in the Western Upper Nile oil fields, and transferred to Darfur.

19. John Ryle, 'Displaced Southern Sudanese in Northern Sudan with special reference to southern Darfur and Kordofan' (report, SCF-UK, London, February 1989), pp. 9–10; Alex de Waal, 'Some comments on militias in the contemporary Sudan', in M. W. Daly and Ahmad Alawad Sikainga (eds), *Civil War in the Sudan* (British Academic Press, London, 1993), pp. 144–51; Keen, *Benefits of Famine*, pp. 72–3; Cole and Huntington, *Between a Swamp and a Hard Place*, pp. 57–76.

20. Saeed, *The State and Socioeconomic Transformation*, pp. 163–4, 235, 420–3; Francis Deng, *War of Visions: Conflict of identities in the Sudan* (The Brookings Institution, Washington, DC, 1995), pp. 296.

Abyei in the peace negotiations

The Machakos Protocol signed in July 2002 established the framework to be followed in the CPA for the establishment of a Government of the Southern Sudan and a referendum on the future of the South. It left unresolved the question of the areas immediately bordering the South where the SPLA was also active: the Blue Nile, Nuba Mountains and Abyei. When negotiations resumed later in 2002 the SPLM raised the issue of the Three Areas (as they became collectively known), and it was eventually agreed that a resolution of the issues surrounding the Three Areas would be included in a final comprehensive peace. The first meeting on the Three Areas was supposed to take place in Kenya in January 2003. The SPLM sent a full negotiating delegation, but the government did not, announcing instead that they would send a team only to take notes and report back. A second round of talks in February that year was no more conclusive, as the entire time was taken up with wrangling over procedural issues. In the end the seemingly more difficult issues of security, power sharing and wealth sharing were all resolved before the protocols on the Blue Nile, Nuba Mountains and Abyei were signed in May 2004.

Of the Three Areas, only Abyei has the prospect of voting to be incorporated into the Southern Sudan at the end of the interim period. Until that time it is supposed to have a special administration under the Presidency (which includes the President of the Sudan and the President of the GOSS as First Vice-President). The Abyei Protocol outlines the provision for administration, the sharing of local oil revenues, and the guarantee of continued access to traditional grazing areas by both the Ngok and Misseriya. But unlike the protocols for Blue Nile and the Nuba Mountains, it leaves the area to be administered undefined. Also unlike the protocols on the other two areas, the final text of the Abyei Protocol was not drafted by the two parties, but had been presented to them by the US envoy, Senator the Reverend Jack Danforth, to break the impasse in negotiations.

There were several reasons for the impasse. On the government side there was a desire to retain the loyalty of the Misseriya, a constituency the NCP was wooing away from the Umma Party. There was also a determination not to lose control over Western Kordofan's large oil deposits, most of which are found within or around the area claimed by the Ngok Dinka. Linked to this was a further determination not to concede any further territory to the South other than that which was included in the Southern provinces as of Independence Day (1 January) 1956. On the SPLM's side, there was the importance of the Ngok Dinka as one of their own constituencies, and the conviction that the failure to resolve the Abyei dispute through the mechanism of the Addis Ababa Agreement was one of the grievances that led to the outbreak of war in 1983. In other words, it was old business.

In addition to this was also the feeling that, as in Western Upper Nile, Khartoum was exploiting oil that really belonged to the South.

During the abortive January 2003 session on the Three Areas it had been revealed that the territory of the Ngok Dinka had been part of Bahr el-Ghazal Province until transferred to Kordofan in 1905, and this date was incorporated into the later American draft protocol, specifically defining Abyei as 'the area of the nine Ngok Dinka Chiefdoms transferred to Kordofan in 1905'. The exact definition of that area was left to a Boundaries Commission which was to 'define and demarcate' the area following the signing of the CPA.²¹ 1905 therefore became a date of significance to both parties: to the SPLM because it validated their claim that Abyei was part of the South, and to the government because they were convinced that the area so transferred was less than the area the SPLM was claiming.

According to the Abyei Protocol, which was signed by both parties, and to the Implementation Modalities, which were drafted by the two parties, the Abyei Boundaries Commission (ABC) was to be composed in equal parts of five members from the government, five from the SPLM, and five 'international experts'. The international experts were to take testimony from the peoples of the area and their neighbours, as well as from the two sides, and 'consult the British Archives and other relevant sources on Sudan wherever they may be available, with a view to arriving at a decision that shall be based on scientific analysis and research'.²² The experts were to present their report to the Presidency at the end of the pre-interim period (which terminated on 9 July 2005). The Protocol also stated that 'the report of the experts, arrived at as prescribed in the ABC rules of procedure, shall be final and binding on the Parties'.²³ On receiving the report the Presidency was then to 'take necessary action to put the special administrative status of Abyei Area into immediate effect'.²⁴ In other words, the final decision about Abyei was to be left to the foreign experts, and both sides undertook to accept that decision, whatever it would be.²⁵

21. 'Abyei Protocol' Resolution of the Abyei Conflict, Chapter IV of 'The Comprehensive Peace Agreement between the Government of the Republic of the Sudan and the Sudan People's Liberation Movement/Sudan People's Liberation Army' (Nairobi, 9 January, 2005) [hereinafter the CPA], p. 68.

22. 'Abyei Annex. Understanding on Abyei Boundaries Commission' in the CPA, p. 217.

23. Ibid.

24. Abyei Protocol, p. 68.

25. The experts were nominated by the US and UK governments, and the Inter-Governmental Authority for Development (IGAD) secretariat overseeing the peace negotiations. They were: former Ambassador Donald Petterson (chairman, nominated by the US), Dr. Douglas H. Johnson (historian, American, nominated by the UK), Prof. Godfrey Muriuki (historian, Kenyan, nominated by IGAD), Prof. Kassahun Berhanu (political scientist, Ethiopian, nominated by IGAD), and Prof. Shadrack Gutto (lawyer and land rights expert, South African, nominated by IGAD).

The Abyei Boundaries Commission

The ABC convened in Nairobi on 10 April 2005 and heard the presentations of the SPLM and government delegations on 13 April. It then spent six days in the field hearing testimony from the Ngok, Misseriya and neighbouring Dinka, before consulting documents in government offices in Khartoum and later in archives in the Universities of Oxford and Durham in the United Kingdom. The final report was presented to the Presidency in Khartoum on 14 July, just five days after John Garang was sworn in as First Vice-President of the Sudan.

In their initial presentations the two sides offered starkly contrasting positions. The SPLM's interpretation of the ABC mandate was that the commission was to determine the full extent of the nine Ngok Dinka chiefdoms in 1905. The government delegation, for its part, made a forceful claim that the territory transferred from Bahr el-Ghazal to Kordofan in 1905 was restricted to a narrow strip of land south of the Bahr el-Arab, then the official boundary between the two provinces. Both sides laid great stress on the conditions that existed in 1905, rather than on subsequent developments of any part of the territory by either people. Throughout the gathering of testimony in the field members of the government delegation repeatedly reminded the experts that only evidence referring to conditions in 1905 was relevant.

The tension surrounding the work of the ABC is illustrated by a further assertion made by the government side in their initial presentation. The leader of the government delegation emphatically announced that the government could make no concession on the issue of ownership of land; that no compromise was possible. He went on to state that if the government's claim were not accepted, the country could go back to war. When challenged by the leader of the SPLM delegation he quickly backed away from that threat, but like any piece of trial evidence struck from the record, it could not be erased from the minds of those who heard it.

The atmosphere in the field was such that it was impossible to collect impartial testimony from either the Misseriya or Ngok. Arguments over ownership of the area had been publicly stated for over forty years, and both the Misseriya and Ngok knew the positions of their rivals as well as those of the government and SPLM. While the SPLM agreed to allow the commission to hear dissenting testimony from among the Ngok, the government suppressed dissenting voices among the Misseriya. Thus Mukhtar Babu Nimr, the son of Babu Nimr and current Amir of the Misseriya, had been threatened with dismissal if he did not support the government's claim. Though present at a number of meetings in the field, he chose to remain silent rather than publicly support a position with which he disagreed.²⁶

26. I was told of government pressure on Mukhtar by three participants in the Karen and Naivasha negotiations: one international observer and two from the SPLM team. In the

Three main claims emerged from the field testimony and presentations of the government and SPLM. One was the Misseriya claim that Dar Misseriya had always extended south of the Bahr el-Arab River all the way to the provincial border with Bahr el-Ghazal, and the Ngok Dinka had lived there only by the permission of the Misseriya. This was partly undermined by the government's position, which was that the Bahr el-Arab was the province boundary between Kordofan and Bahr el-Ghazal in 1905, and that the 'Abyei Area' under discussion was confined to the territory south of the river and did not even include Abyei town. The position of the SPLM more closely supported that of the Ngok, which was that the area of the Ngok chiefdoms had extended as far as the belt of stabilized sand dunes (Qoz) that separated the two peoples, and that this was the case before, during, and after 1905. Some Ngok asserted that Ngok territory had extended even further north than Muglad, but this was not supported by the majority.

In considering these claims the experts examined the oral testimony against the evidence presented by both the government and the SPLM, as well as evidence collected from government and other records held in Khartoum and the UK. They found that the Misseriya claims were contradicted by earlier historical testimony recorded and published by such authorities as H. A. MacMichael, K. D. D. Henderson, P. P. Howell and Ian Cunnison (see footnote 4). They were also refuted by contemporary administrative records produced between 1902 and 1908. Their claim to ownership of the land south of the Bahr el-Arab had not been supported by the government in its presentations. In addition to that, the Misseriya's lesser claims to ownership of the area between the Bahr el-Arab and the Ragaba ez-Zarga had already been rejected by the 1966 meeting presided over by Munim Mansour. The Misseriya claims, therefore, were not sustained.

The government had a better case for claiming that the territory north of the Bahr el-Arab belonged to Kordofan before 1905 and therefore was not part of the transfer from Bahr el-Ghazal, in that provincial reports prior to 1905 stated that the boundary between the two provinces was the Bahr el-Arab itself. Unfortunately, they overlooked the evidence that Condominium officials in both provinces had assumed that the Ragaba ez-Zarga/Ngok was

subsequent debate over the ABC report Mukhtar has been more outspoken. In a meeting between Misseriya and Ngok leaders in Khartoum on 27 November 2006 he 'noted that he had said something during the peace talks in Karin [*sic*], Kenya, for which he had been criticised by some people among the Misseriya, but which he was prepared to say again. He reiterated that while people coexisted and interacted, there was Dar El Denka (the land of the Dinka) and Dar El Missiriya (the land of the Missiriya), and found it unconscionable for some Arabs to lay claims to the land of the Dinka.' 'List of the Missiriya Arabs and the Ngok Dinka who met with Dr Francis Deng on November 27, 2006 at the Nile Hilton in Khartoum' (typescript minutes in the author's possession).

the Bahr el-Arab. Both referred to the present-day Bahr el-Arab by its Dinka name, Kiir, and this confusion was not rectified until 1908, after the transfer was made.²⁷ In respect to administrative practice on the ground in 1905, the government therefore had not substantiated its claim that the territory north of the Bahr el-Arab was already part of Kordofan.²⁸

It remained for the experts to determine the area covered by the nine Ngok Dinka chiefdoms in 1905, and this proved more difficult. The contemporary documentary record was incomplete. It was in the nature of both the climate and the itinerant administration that no British official visited the Ngok during the rainy season; therefore there was no independent observation of the most northerly Ngok movements in the late rains and early dry season, or their seasonal use of pools and pastures near or in the Qoz belt. Without such corroboration Ngok oral testimony, by itself, could not prove the extent of Ngok settlement, seasonal use, or claims in 1905. The experts resolved this problem by looking at the administrative practice of the Condominium, and the legal issues surrounding shared resource use.

Condominium officials generally avoided dividing single tribes between two or more provinces, and treated a tribal territory as a whole, even if they were unclear about the exact extent of that territory. The Ngok Dinka were therefore transferred as a whole in 1905, and throughout the period 1905–54 British administrators assumed a territorial continuity of the Ngok. No Condominium record was found documenting any significant or permanent alteration of a specific part of Ngok territory.

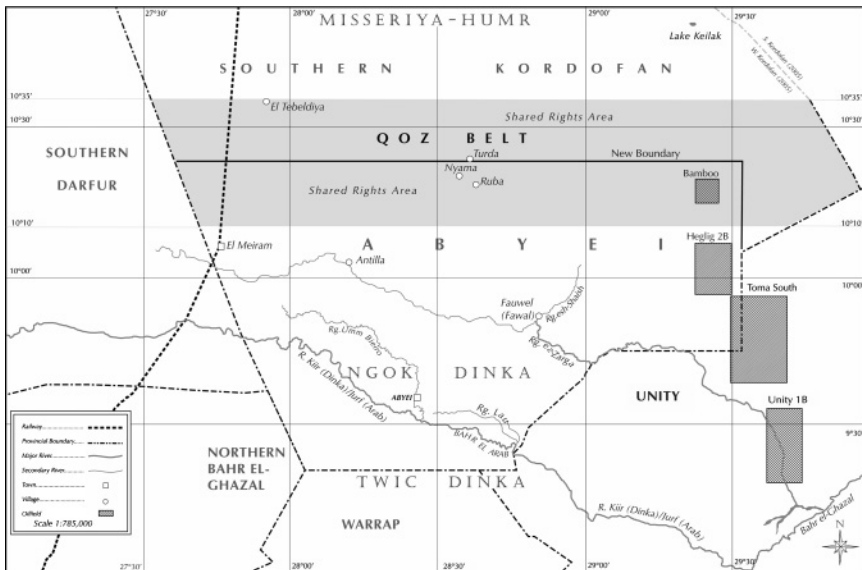
The question of a boundary was complicated by the overlapping seasonal use of the area by the Humr Misseriya. Here the experts were guided by the legal principles regulating land rights, as opposed to land ownership. A distinction was made between ‘dominant rights’ in permanent settlements,

27. Two documents were particularly important in revealing this confusion. One was a 1902 itinerary presented by the government in support of their case, where a Condominium official reported crossing the ‘Bahr el-Arab’ at ‘Fauwel’ and then continuing south past Dinka villages to the ‘Kir, or Bahr el Jange [Dinka]’ (‘Route 101, El Obeid to Dar el Jange by Major E. B. Wilkinson, January and February 1902’ in Count Gleichen (ed.), *The Anglo-Egyptian Sudan*, vol. II (HMSO, London, 1905), pp. 155–6). ‘Fauwel’, or Pawol, was one of the sites visited by the ABC and lies to the north of the Ragaba ez-Zarga/Ngol. The other was a 1904 letter found by the experts in the Sudan Archive at the University of Durham, which claimed that the Ngok Dinka chief Arop Biong lived on the ‘Kyr’ river, fifty miles south of the ‘Bahr el-Arab’ (W. A. Boulnois [Governor of Bahr el-Ghazal Province] to Wingate [Governor General], 23 December 1904, SAD 275/9/39–40). This was clear evidence that the provincial authorities of both Kordofan and Bahr el-Ghazal at the time believed that the ‘Bahr el-Arab’ was to the north of its actual location, and that the Ngok Dinka and this section of the Kiir lay inside Bahr el-Ghazal Province.

28. Abyei Boundaries Commission, ‘Abyei Boundaries Commission Report’ (14 July 2005) available at <<http://www.sudanarchive.net/cgi-bin/sudan?a=d&d=D11d18>>. Part 1 outlines the claims presented by the government, SPLM, Misseriya and Ngok, along with a summary of the evidence relating to them. Oral testimony is transcribed in Part 2, Appendix 4; documentary evidence is presented in Part 2, Appendix 5; and map evidence is discussed in Part 2, Appendix 6.

and ‘secondary’ or seasonal rights to the use of land. There are numerous examples in the Sudan, and elsewhere in British-administered territories in Africa, where a transhumant group, such as the Humr, had shared rights in land use on a seasonal basis: examples of the Malwal Dinka and Rizeigat Baggara, and the Lou and Gaawar Nuer are mentioned above.²⁹

The area of the nine Ngok Dinka chiefdoms, therefore, included territory where they had dominant rights (permanent settlements) and territory where they had secondary rights (seasonal use). Ngok secondary rights overlapped with Misseriya secondary rights. The experts determined that the boundary, stipulated by the Abyei Protocol, should bisect the area of shared secondary rights equally. This placed it in the Qoz belt that intervened between the Ngok and Misseriya permanent settlements, south of the line claimed by the SPLM and Ngok.³⁰



The Abyei Area

Source: Abyei Boundaries Commission Report (14 July 2005); Sharon Hutchinson, 'Western Upper Nile and Abey Region Oil Development Activities 1990-2003'.

The stand off

The report was presented to the three members of the Presidency on 14 July 2005. In the press statement following the presentation the leader of

29. The distinction between ‘dominant’ and ‘secondary’ rights is discussed in the ‘Abyei Boundaries Commission Report’, Part 2, Appendix 2.

30. ‘Abyei Boundaries Commission Report’, Part 1, Map 1.

the government delegation to the ABC announced that the report contained 'recommendations' which would be 'studied', while the leader of the SPLM delegation pointed out that the decision in the report was 'final and binding'. First Vice-President Garang later recounted in a private meeting with the experts that President Bashir had said to him, 'The experts have given us a report which will start a war with the Misseriya', to which Garang replied, 'It is up to us to see that does not happen.' Garang then made it clear that the SPLM regarded the report as final and binding, even though it had not recognized all of the Ngok and SPLM's claims.

The day after the report was presented to the Presidency the government delegation to the ABC briefed representatives of the Misseriya in Khartoum. At that time the report, though now a public document, had not been publicized. The government delegation misrepresented the report to the Misseriya, claiming that the experts had exceeded their mandate; that the experts had ignored the evidence the government had presented; and that the experts had included Keilak, far to the north of the boundary, in Abyei. The Misseriya representatives then rejected the report.³¹

Because the Presidency declined to publish the report, the experts made it available to the Rift Valley Institute to put on their website, and there are now links on the Sudan Tribune, Gurtong and other Sudan websites.³² The United Nations peacekeeping force, the UN Military Mission in Sudan (UNMIS), has also circulated copies of the report. But the death of Garang on 30 July 2005 meant that the NCP members of the government have been able to block the implementation of the decision and the establishment of the Abyei administration, despite the explicit provisions of the CPA.

One reason for this resistance is that the definition of the boundary places active oil fields inside the Abyei Area. Officially the NCP presents resistance to the boundary as grassroots opposition from the Misseriya. In practice resistance has been mobilized from within the government. In late January 2006 the deputy governor of Southern Kordofan State brought a force of over sixty police to Abyei town and announced in the central mosque that 'Abyei shall remain part of Southern Kordofan until the end of time'.³³ This was seen by the SPLM as a deliberate attempt to provoke a security incident, which would then have been an excuse to suspend the Abyei Protocol. The SPLM made a public issue of the failure to implement the report of the ABC and the police were withdrawn. In January 2007 a Dinka Abyei Development Committee assumed responsibility for administration

31. 'Misseiriya [*sic*] chiefs in stormy meeting after handing over to the Presidency of the Abyei Boundary Commission Report', *Akhbar Al-Yaum*, 16 July 2005.

32. I was later told that for one month after the report was posted on the Sudan Open Archive, persons in Khartoum attempting to read the document found their access blocked.

33. Njahira Gathara, 'Trouble in Abyei', *Sudan Mirror*, 2 March 2006 available at <<http://www.sudanmirror.com/headline/trouble.asp>>.

after protesters seized the local civil administrative buildings, but no formal administrative authority has yet been appointed. President Bashir, in an address to Sudanese in Saudi Arabia during the Hajj January 2007, restated the government position, claimed again that the experts had exceeded their mandate because they had failed to find a 1905 boundary map, and reaffirmed that his government would 'never accept' the experts' decision.³⁴

Since then direct negotiations over Abyei have been conducted between the Second Vice-President of the GONU, Ali Uthman Muhammad Taha (Khartoum's chief negotiator at Naivasha) and the Vice-President of the GOSS, Riek Machar. One of the sticking points is the NCP's insistence on continuing to get a share of all oil revenues after 2011, should the South vote for independence and should the people of Abyei vote to join the South. Some 60 percent of the oil currently produced outside the South comes from the Abyei area,³⁵ and Taha has been adamant that Khartoum did not intend to be deprived of these revenues permanently. In these discussions the GOSS team has produced a map of the Abyei Area when it was under direct presidential authority in the early 1970s, showing a larger territory than that defined by the ABC report. The implications of this are clear: the NCP can either accept the ABC report, or the SPLM will introduce new claims. Taha broke off discussions. One group of Misseriya subsequently distanced themselves from the NCP's line, declaring that they were not part of the dispute over the Abyei Protocol and stressing their support for its implementation.³⁶

While the NCP in the GONU have justified their refusal to implement the Abyei Protocol by criticizing the ABC report, they have refused to take part in any public forum where the experts might be called upon to explain their decision and answer criticism. The NCP in Khartoum refused an invitation to attend a public hearing with all five international experts at the South Sudan Legislative Assembly in Juba in September 2007. Southern members of the NCP in the Assembly did attend, and all those who spoke

34. 'Speech of the President of the Republic Field Marshal Umar Hassan al-Bashir to the Sudanese diaspora', 2 January 2007 (in Arabic) available at <http://www.sudaneseonline.com/ar/article_7813.shtml>.

35. Luka Biong, 'Overview of the emerging security situation in southern Sudan' (paper presented at the Consultative Workshop on Defence White Paper for Southern Sudan, Juba, 5 September 2007). The output of the Abyei oil fields is expected to decline after 2006, but it is still considered a significant source of income for the NCP, with anticipated revenues of over \$500 million a year. International Crisis Group, 'Sudan: breaking the Abyei deadlock' (Africa Briefing No. 47, 12 October 2007), pp. 1, 7–9.

36. 'Sudanese tribe backs implementation of Abyei protocol'. Source: *Al-Ayyam*, Khartoum, in Arabic, 29 September 2007, BBC Monitoring ME1 MEEau 290907/as-mj. There is a split in the ruling family of the Misseriya. Babu Nimr's sons by his Misseriya wives, led by Mukhtar Babu Nimr, have been active in dialogue with the SPLM and the Ngok Dinka. His sons by the niece of Sayyid Abd al-Rahman al-Mahdi (the grandfather of the leader of the Umma Party, Saddiq al-Mahdi), led by former chief-of-staff General Mahdi Babu Nimr, have taken a more militant line, hostile to the Abyei Protocol and any accommodation with the Ngok.

in the public discussion that followed supported the ABC report, revealing a North–South split even within the NCP.

Tensions have been rising in the Abyei area. The CPA required the numerous militias allied to either the Sudan Armed Forces (SAF) or the Sudan People's Liberation Army (SPLA) to choose which force to join. Following the merger of the SPLA with the former government-backed South Sudan Defence Force (SSDF) in January 2006, units of the SSDF passing through Abyei were ambushed. The local UNMIS unit was forbidden by Khartoum to investigate this breach of the ceasefire,³⁷ and the movements of UNMIS have been restricted to Abyei town and points south. The SAF has shifted more troops into the area.³⁸ Khartoum continues a policy of surreptitious annexation by encouraging the settlement of Misseriya in former Dinka territory, while impeding the return of displaced Ngok. The absence of a civil administration and the lack of security has prevented the UN from carrying out its other duties in the area.³⁹

There is considerable confusion over the allegiance of the remaining militias in the area, with one group of Misseriya *murahalin* repudiating Khartoum and joining the SPLA.⁴⁰ This led to a very serious incident on 8–10 September 2007, when a platoon of SPLA officers and men sent to Southern Kordofan to screen the Misseriya recruits were surrounded by 1,000 SAF soldiers and four tanks on their way back through Muglad. The SPLA force was besieged for three days while First Vice-President Salva Kiir Mayardit negotiated their release with President Omar al-Bashir. During this time some local Misseriya sided with the SPLA fighters, providing them with food and water.⁴¹

This incident was uppermost in Salva Kiir's mind when he addressed the opening of the Southern Sudan Legislative Assembly on 10 September 2007, warning 'that it is likely that Sudan will reverse again to war', and citing the non-implementation of the Abyei Protocol as top of the list of his

37. 'Sudan: joint military team discusses recent ambush on militia convoy'. Source: Suna news agency website, Khartoum, in Arabic, 22 March 2006, BBC Monitoring ME1 MEEau 220306/hs.

38. Battalion 250 of the 31st Brigade redeployed to Abyei from Diffra on 6 February, 2007. UNMIS, *The CPA Monitor* (February 2007), p. 44 available at <http://www.unmis.org/common/documents/cpa-monitor/cpaMonitor_feb07.pdf>.

39. Skye Wheeler, 'Sudan deadlock over Abyei stops thousands going home', Reuters, 15 August 2007, available at <<http://www.reuters.com/article/latestCrisis/idUSMCD450527>>. 'Gurtong interviews Kuol Deng, Abyei paramount chief of the Ngok Dinka', 15 August 2007, available at <http://www.gurtong.org/ResourceCenter/weeklyupdates/wu_contents.asp?wkupdt_id=991>.

40. UNMIS, *The CPA Monitor* (March 2007), section 3.1 available at <http://www.unmis.org/common/documents/cpa-monitor/cpaMonitor_mar07.pdf>.

41. Swangin Isaac, 'Besieged SPLA platoon arrives Juba', *The Juba Post*, 13–20 September 2007, p. 1 available at <<http://www.k2-media.org/jubapost/go/record.php?cat=6&recordID=214>>.

concerns.⁴² In this he is openly repeating what many other SPLM officials also have been saying, identifying Abyei as the possible trigger for renewed war.⁴³

There has been a lack of public reaction from the international community, particularly the US and the UK governments, which is surprising given the role they played in establishing and funding the ABC. Any representations they may have made through ‘quiet diplomacy’ have been so muted as to be silent. The signal they have sent to the NCP is that non-compliance can be achieved with impunity.

Implications for the future

The role of the ABC was to gather evidence and make a decision about the boundary on the basis of that evidence. Its role was not to adjudicate between two parties, though that is how its work is now widely interpreted. The mandate of the ABC was cast in historical terms, to reconstruct a situation as it existed in 1905, rather than take into consideration any developments of the last forty years, when the area has been actively disputed. The government’s attempt to claim a far greater share of territory than could be justified by historical evidence, and its rejection of any notion of compromise, had a direct bearing on how evidence was presented. Part of the NCP’s dissatisfaction with the boundary is based on the fact that the boundary places certain development projects – the agricultural schemes in Nyama, the railway town of Meiram, and the oil fields of Bamboo and Heglig – within the Abyei Area. But all of these developments post-date 1905. And while the Misseriya have been involved in some of them, they are all government-initiated and sponsored projects, and therefore lie outside what might be considered the secondary rights of the Misseriya.

If there can be no agreement on this limited boundary, what is the prospect of agreement on the delimitation of the whole North–South boundary? Deliberations on the North–South boundary have also been set an historical baseline, in this case the provincial boundaries as they were on 1 January 1956, the date of Sudan’s independence. The documentation for fifty years ago is rather better than for a hundred years ago, but it is still incomplete, and there is room for disagreement, especially when it

42. ‘Salva Kiir says “Sudan will likely reverse again to war”’, *Sudan Tribune*, 11 September 2007, available at <http://www.sudantribune.com/spip.php?page=imprimable&id_article=23697>. In an unscripted (and unreported) aside in his opening address, Salva Kiir explained that the sending of an SPLA team to screen the Misseriya recruits had been agreed with the Ceasefire Joint Military Committee, but SAF claimed that the SPLA had violated the ceasefire agreement by sending an armed platoon in uniform to Southern Kordofan.

43. Nick Wadhams, ‘Tension rises between North, South Sudan over Abyei region’, 15 August 2007, available at <<http://www.voanews.com/english/2007-08-15-voa35.cfm>>.

comes to locating a map line on the ground. The North–South Boundary Technical Committee includes no foreign representatives or experts. To the extent that any agreement thus reached will be between Sudanese and therefore might be more acceptable and enforceable, this could be an improvement over the ABC. The committee has already agreed that all decisions will be by consensus rather than majority vote, and that, too, might avoid impasses that could deadlock the committee. But the committee has also decided that irreconcilable disagreements will be submitted to the Presidency for a final decision, and we have seen with the ABC report that the Presidency itself can be easily deadlocked over a boundary issue.

The failure to implement the Abyei Protocol has other implications for the future peace of the Sudan. If the NCP continues to obstruct the implementation of the Protocol, what can be said about its commitment to the rest of the CPA? If the military build-up in the Abyei area, which is contrary to the security protocol, goes unchecked, will this encourage other violations of the ceasefire? If displaced Ngok Dinka are denied the right of return to their homes as Khartoum attempts to change the demographic pattern of Abyei, what hope is there for the larger numbers of displaced Darfuris to return home in the much greater demographic shift currently taking place in Darfur? If the international actors who were directly involved in drafting the Abyei Protocol and supporting the work of the ABC remain inactive, how reliable will they be in backing up their guarantees for the CPA as a whole, or any Darfur peace agreement? And finally, given the parallels between the conflicts in Abyei and Darfur, can the Darfur groups be confident that Khartoum will faithfully adhere to any future agreement it signs?

Postscript

At the time of completing this article the SPLM announced that it was suspending its participation in the government of national unity in Khartoum, citing the NCP's failure to implement the CPA as its reason for doing so. Chief among its complaints was the NCP's refusal to implement the Abyei Protocol.

On 10 October 2007 the SPLM suspended their participation in the GONU citing the failure of the President to implement key aspects of the CPA. Agreement was reached on most issues by 3 November, but talks broke down over the Abyei issue. President Bashir then ordered the reopening of Popular Defence Forces training camps and the mobilization of the *mujahidin*, repeated his rejection of the ABC report, declared his refusal to relinquish even an 'an ant's body' of the Abyei area, and denounced foreign powers as part of a conspiracy to dismember the Sudan. One of the for-

mer members of the government delegation to the ABC, Ahmad al-Salih, declared 'that the Mujahidin battalions were ready and would not accept the expert's [*sic*] report even if the cost was going back to war.' The SPLM lodged a formal complaint with IGAD, requesting international mediation, but internally are reported to have agreed to resolve the issue within the three man presidency.