



## International tribunal redraws boundaries of Sudanese Abyei region: a chance for peace?

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On July 22, 2009, a Hague-based *ad hoc* international tribunal (“the Tribunal”) operating under the rules of the Permanent Court of Arbitration (“PCA”)<sup>1</sup> rendered its final Award in the highly complex *The Government of Sudan / The Sudan People’s Liberation Movement/Army* (“the Award”)<sup>2</sup> case. The Award considerably reduced the extent of the Sudanese Abyei area compared to a previous decision in 2005<sup>3</sup> and *de facto* placed several major oilfields under the authority of Northern Sudan. The delimitation of the Abyei area is indeed a highly delicate and possibly explosive issue for mainly two reasons. The first reason relates to the abovementioned oilfields in the region that yielded US\$ 1.8 billion in revenues from 2005 to 2007<sup>4</sup>, representing 26.6% of the oil production of Sudan in 2005.<sup>5</sup> The second reason is that under the 2005 Comprehensive Peace Agreement (“CPA”) the boundaries of the area are likely to become international borders in 2011 when Abyei area residents decide whether they wish to belong to Southern Sudan<sup>6</sup> concurrently with a referendum in Southern Sudan on its secession from the North.<sup>7</sup> A first attempt to define the boundaries of the Abyei area following the signature of the CPA by a panel of experts in 2005 did not resolve the dispute. On July 7, 2008, the parties signed an Arbitration Agreement according to which the Tribunal had to determine whether the group of experts had exceeded their mandate when

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<sup>1</sup> The Tribunal operated under the Permanent Court of Arbitration Optional Rules for Arbitrating Disputes between two Parties of which only one is a State, available at <<http://www.pca-cpa.org/upload/files/1STATENG.pdf>>.

<sup>2</sup> PCA, *In the Matter of an Arbitration Before a Tribunal Constituted in Accordance with Article 5 of the Arbitration Agreement Between the Government of Sudan and the Sudan People’s Liberation Movement/Army on Delimiting Abyei Area (Abyei Arbitration)*; the Memorials of the parties and the transcripts of the oral pleadings are also accessible, available at <[http://www.pca-cpa.org/showpage.asp?pag\\_id=1306](http://www.pca-cpa.org/showpage.asp?pag_id=1306)>.

<sup>3</sup> PCA, *Abyei Arbitration*, arbitral award of 22 July 2008, Appendix 2, available at <<http://www.pca-cpa.org/upload/files/Abyei Award Appendix2.pdf>>.

<sup>4</sup> PCA, *Abyei Arbitration*, para. 104.

<sup>5</sup> International Crisis Group, *Sudan: Breaking the Abyei Deadlock*, Africa Briefing number 47, 12 October 2007, p. 14, available at <<http://www.cmi.no/sudan/doc/?id=950>>.

<sup>6</sup> Comprehensive Peace Agreement (CPA), Chapter IV, *The Resolution of the Abyei Conflict*, Article 1(3), p. 65, available at <<http://unmis.unmissions.org/Portals/UNMIS/Documents/General/cpa-en.pdf>>.

<sup>7</sup> Comprehensive Peace Agreement (CPA), *The Right to Self-Determination of the People of South Sudan*, Article 2(5), p. 8.

fixing the boundaries of the Abyei area, and in case of a finding in the affirmative, “define (i.e. delimit) on map the boundaries of the area of the nine Ngok Dinka chiefdoms transferred to Kordofan in 1905”.<sup>8</sup> The Award is not only interesting because of the legal issues it raises but also because it is a unique instance where an international tribunal is called upon to resolve a dispute between a state and one of its constituent entities, in other words a dispute that would hence have been considered an internal affair. The proceedings before the PCA also stood out for both their transparency (all the documents were made accessible to the public) and their swiftness (the arbitrators only disposed of 90 days from the closure of submissions to deliver their decision).<sup>9</sup>

## **Background of the dispute**

The Abyei area is located between Northern and Southern Sudan. The region is inhabited by a number of tribes, the most prominent of which are the Ngok Dinka,<sup>10</sup> who number approximately 300,000 and follow local faiths, and the Misseriya, Arab nomads whose existence takes them across large portions of territory.<sup>11</sup> In 1905, while the country was under Anglo-Egyptian rule (1899-1956) and because of recurrent conflicts between the Ngok Dinka and Arab nomads, the Abyei area was transferred from the Bahr el Ghazal region (now in Southern Sudan) to Kordofan (now in Northern Sudan).<sup>12</sup> During the first Sudanese civil war (1956-1972), the Ngok Dinka fought alongside the South, while the Misseriya sided with the authorities in Khartoum.<sup>13</sup> The 1972 Addis Ababa Agreement provided for a referendum on Southern Sudan’s secession, but disagreements eventually led to a second civil war that started in 1983.<sup>14</sup> On May 26, 2004 the belligerent parties signed the Abyei Protocol, which placed the region under a joint administrative structure. But because the exact extent of the area was disputed, the Protocol also provided for the establishment of the Abyei Boundary Commission (“ABC”), which came into existence with the signature of the Abyei Appendix on December 17, 2004.<sup>15</sup> The parties agreed that a panel of experts (“ABC Experts”) would deliver a binding report that would establish the boundaries of the nine Ngok Dinka chiefdoms transferred to Kordofan in 1905 within six months following the signature of a peace agreement. Shortly after, on January 9, 2005, the parties signed the Comprehensive Peace Agreement which put an end to more than 20 years of civil war. The ABC Experts presented their report (“Experts Report” or “Report”) to the Sudanese Presidency on July 14, 2005.<sup>16</sup> The Abyei area defined in the Report comprised 18,559 square kilometres<sup>17</sup> (roughly

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<sup>8</sup> Arbitration Agreement between The Government of Sudan and the Sudan People’s Liberation Movement/Army on Delimiting Abyei Area, Article 2, p. 3, available at <[http://www.pca-cpa.org/upload/files/Abyei Arbitration Agreement.pdf](http://www.pca-cpa.org/upload/files/Abyei%20Arbitration%20Agreement.pdf)>.

<sup>9</sup> Arbitration Agreement, Article 9(1), p. 10.

<sup>10</sup> The Ngok Dinka are one of the 25 tribes that constitute the Dinka people, who make up 12% of the population of Sudan.

<sup>11</sup> PCA, *Abyei Arbitration*, para. 107.

<sup>12</sup> *Id.*, para. 564.

<sup>13</sup> *Id.*, para. 108.

<sup>14</sup> *Id.*, para. 109.

<sup>15</sup> *Id.*, para. 115.

<sup>16</sup> *Id.*, para. 122.

<sup>17</sup> PCA, *Abyei Arbitration*, Appendix 2.

the size of Slovenia) and included the important oilfields of Bamboo and Heglig.<sup>18</sup> While the Sudan People's Liberation Movement/Army ("SPLM/A") obviously welcomed the Report, the Government of Sudan ("GoS") strongly rejected it and continuously refused to implement its conclusions. New fighting erupted in the region. After many months and under international pressure, the two parties were brought back to the negotiating table and finally signed the Arbitration Agreement on July 7, 2008 in which they agree to "refer their dispute to final and binding arbitration"<sup>19</sup> under the auspices of the PCA.

### **The Award of 22 July 2009**

In the first 245 pages of the impressive 270-page Award, the five arbitrators<sup>20</sup> composing the Tribunal examine whether the ABC Experts exceeded their mandate in 2005. Even if until page 235<sup>21</sup> of the Award, the entirety of the Experts Report is still standing, at the end of page 245<sup>22</sup> only the Southern boundary of the Abyei area, the so-called 1956 *uti possidetis* line, which was never contested by the parties<sup>23</sup>, is maintained. Indeed, the Tribunal considers that the Experts failed to state sufficient reasons for the Northern, Eastern and Western boundaries of the area.<sup>24</sup> Consequently, while formally trying to uphold the Experts Report's reasonableness, effectively the Tribunal all but annuls the conclusions of the Report, as Judge Al-Khasawneh underlines in his dissenting opinion.<sup>25</sup>

Let's examine how the Tribunal got to that point. To do this it is useful to recall the claims of the two parties. For the SPLM/A the ABC Experts did not exceed their mandate and the relevant instruments "require defining the Abyei Area to include all of the territory of the nine Ngok Dinka Chiefdoms in 1905." (emphasis added)<sup>26</sup> It furthermore claims that the boundaries of the area were "indeterminate in 1905".<sup>27</sup> But what is more important is that the transfer of 1905 did not concern a territory but a people (the Tribunal calls this claim the 'Tribal Interpretation'), the Ngok Dinka. Indeed, according to the SPLM/A what "occurred was a transfer of people, not territory, from the Bahr el Ghazal administration to the Kordofan administration."<sup>28</sup> Contrarily, for the GoS the Experts exceeded their mandate for both procedural and substantial reasons. It furthermore claims that the boundary in 1905 was defined by a river called the Bahr el Arab<sup>29</sup> and that since the Ngok Dinka settlements extended north of the Bahr el Arab (which according to the GoS already belonged to

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<sup>18</sup> *Sudan's SPLM threatens to refer oilfield dispute to The Hague*, Sudan Tribune, available at <<http://www.sudantribune.com/spip.php?article31945>>.

<sup>19</sup> Arbitration Agreement, Article 1(1), p. 2.

<sup>20</sup> As provided by Article 5(1) of the Arbitration Agreement, each party was entitled to appoint two arbitrators (Awn Al-Khasawneh and Gerhard Hafner for the GoS; Micheal Reisman and Stephen Schwebel for the SPLM/A) who would then choose the fifth and presiding arbitrator (Pierre-Marie Dupuy).

<sup>21</sup> PCA, *Abyei Arbitration*, para. 674.

<sup>22</sup> *Id.*, para. 709.

<sup>23</sup> *Id.*, para. 699.

<sup>24</sup> *Id.*, para. 708.

<sup>25</sup> PCA, *Abyei Arbitration*, Dissenting opinion, para. 40.

<sup>26</sup> PCA, *Abyei Arbitration*, para. 708.

<sup>27</sup> *Id.*, para. 271.

<sup>28</sup> *Id.*, para. 296.

<sup>29</sup> *Id.*, para. 287.

Kordofan), the area transferred was smaller than the nine Chiefdoms.<sup>30</sup> Thus what was transferred in 1905 was not a tribe but an area which was smaller than the territory where the Ngok Dinka lived (the Tribunal calls this claim the ‘Territorial Interpretation’). After reviewing the arguments made by the parties and the Expert’s Report, the Tribunal considers that a

predominately territorial approach could thus lead to a definition of the Abyei Area that potentially risks defeating the main purpose of the referendum, to empower ‘the Members of the Ngok Dinka community and other Sudanese residing in the area’ to choose whether the Abyei Area should retain its special administrative status in the north or be part of Bahr el Ghazal in the south.<sup>31</sup> (emphasis added)

Furthermore, the Court asserts that “it is indeed reasonable to infer that the importance of internal boundaries in Sudan, including the Kordofan-Bahr el Ghazal boundary, was secondary, at least during the years of the Condominium period.”<sup>32</sup> Consequently, bearing in mind the special circumstances of the case, the Tribunal concludes that the “ABC Expert’s recourse to an interpretation [...] that focused on tribal elements, rather than on what the Condominium administrators considered to be the provincial boundaries, was reasonable in light of the wording, object and purpose and context [...]”.<sup>33</sup>

As mentioned before, the main body of the Award is dedicated to the study of the scope of the review of the Experts Report under Article 2(a) of the Arbitration Agreement, but also according to general principles of international law. Based on relevant legal principles of institutional review in international and national law,<sup>34</sup> the arbitrators conclude that the “proper reading of Article 2(a) [...] is that [...] the Tribunal must confine itself to determining whether the ABC Experts’ interpretation of their mandate was reasonable”.<sup>35</sup> The Tribunal therefore interprets the Arbitration Agreement as implying

that the Parties contemplated the possibility that the Tribunal (or some of its Members) might incline to the view that one or more of the ABC Experts’ findings were erroneous as a matter of law or fact, without however concluding that the ABC Experts had for that reason exceeded their mandate.<sup>36</sup>

Following a detailed review of international case law and international treaties, the arbitrators establish interesting standards for reviewing arbitral awards in general, which will be useful for future cases. In the words of the arbitrators

To meet the minimum requirement, an award should contain sufficient ratiocination to allow the reader to understand how the tribunal reached its binding conclusions

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<sup>30</sup> *Id.*, para. 251.

<sup>31</sup> *Id.*, para. 595.

<sup>32</sup> *Id.*, para. 630.

<sup>33</sup> *Id.*, para. 665.

<sup>34</sup> *Id.*, para. 401-411. The Tribunal draws intensively on the French principle of “excès de pouvoir”.

<sup>35</sup> *Id.*, para. 496.

<sup>36</sup> *Id.*, para. 399.

(regardless of whether the ratiocination might persuade a disengaged third party that the award is substantively correct). As to the substantive issue, awards may be set aside for failure to state reasons where conclusions are not supported by any reasons at all, where the reasoning is incoherent or where the reasons provided are obviously contradictory or frivolous.<sup>37</sup>

However, the Tribunal adds that

Review proceedings such as the present arbitration are unusual, and the setting aside of all or part of a decision must remain an exceptional remedy which can be applied only in instances in which the decision simply cannot reasonably be squared with the Parties' consent.<sup>38</sup> (emphasis added)

A second important issue relating to the scope of Article 2(a) of the Arbitration Agreement is whether it allows for partial nullity of the Experts Report. In this respect, the Tribunal retains a teleological interpretation of the Article for it "allows for the proper fulfilment of its task in that it allows for partial severance of discrete findings found to be in excess of mandate".<sup>39</sup> Consequently,

One of the limited criteria of permissible review for the Tribunal is whether each of the binding decisions by the ABC Experts is supported by sufficient reasoning to allow the reader of the ABC Experts' Report to appreciate the key elements of the ABC Experts' justification.<sup>40</sup> (emphasis added)

Concretely, and in accordance with the general principles mentioned before, the Tribunal concludes that the

ABC Experts will have exceeded their mandate if some or all of their conclusions are unsupported by any reasons at all, if the reasoning is incoherent, or if the reasons provided are obviously contradictory or frivolous.<sup>41</sup>

According to this standard, the Tribunal concludes that the Northern, Eastern and Western boundaries retained by the Experts constitute an excess of mandate because the Experts failed to state sufficient reasons for these boundaries. More precisely, the Tribunal asserts that "if there was no conclusive evidence of such permanent settlements north of latitude 10°10'N, it is difficult to understand why the Abyei Area was nonetheless extended further north, beyond that line up to latitude 10°22'30"N."<sup>42</sup> Subsequently, the Tribunal retains the 10°10'N line as the Northern boundary of the area.<sup>43</sup> Regarding the Eastern and Western boundaries, the

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<sup>37</sup> *Id.*, para. 531.

<sup>38</sup> *Id.*, para. 536.

<sup>39</sup> *Id.*, para. 415.

<sup>40</sup> *Id.*, para. 673.

<sup>41</sup> *Id.*, para. 535.

<sup>42</sup> *Id.*, para. 693.

<sup>43</sup> *Id.*, para. 711.

Tribunal concludes that they were “insufficiently motivated” by the Experts Report<sup>44</sup> and thus invalidates them. In conclusion, the Tribunal thus upholds the reasonableness of the Experts’ interpretation of their mandate but considers that the boundaries retained were not justified by sufficient reasons. Consequently, the Tribunal redraws the boundaries of the Northern, Eastern and Western part of the Abyei area. The boundaries that the Tribunal eventually adapts follow latitude lines and reduce the Abyei area to a territory of 10,459 square kilometres compared to the 18,559 square kilometres in the ABC Experts Report.<sup>45</sup> Surprisingly enough, the Tribunal’s justification of these new boundaries only represents an infinitely small part of the Award<sup>46</sup> and is predominantly based on the account of a single British District Commissioner and anthropologist called Paul P. Howell who only “approximately” located the Ngok Dinka in 1951.<sup>47</sup> The Tribunal tries to justify this predominant role of Howell’s notes by the fact that “they provide the best and most specific available data”.<sup>48</sup> It is however questionable, considering the stakes involved, whether this reason suffices to draw what might become an international boundary in the years to come and if it satisfied the criteria laid out by the Tribunal itself to define an excess of mandate.

Finally, again basing itself on a vast amount of case law and international treaties,<sup>49</sup> the Tribunal also affirms that its decision does not affect “traditional rights to graze cattle and move across the Abyei Area”,<sup>50</sup> including those of the Misseriya tribe. Surprisingly, in what may become a premonitory sign, the arbitrators close the Award by affirming that they are “confident that no objective claim can be made from any quarter that the Tribunal acted in excess of its mandate.”<sup>51</sup> This is however precisely what one of the arbitrators does in his dissenting opinion.

### **Judge’s Al-Khasawneh’s dissenting opinion**

Judge Al-Khasawneh, one of the two arbitrators appointed by the GoS, indeed lodged an unusually forceful and blunt 67-page dissenting opinion in which he qualifies the Award as

singularly unpersuasive (let alone convincing), self-contradicting, result-oriented, in many respects cavalier, insufficiently critical and unsupported by evidence, and indeed flying in the face of overwhelming contrary evidence.<sup>52</sup>

He further affirms that

demolishing the construct the Tribunal seeks to erect is relatively easy, for that construct is a weak one, as weak as a spider’s web, and this is so, not because of my learned colleagues’ lack of legal imagination but rather despite it.<sup>53</sup>

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<sup>44</sup> *Id.*, para. 702.

<sup>45</sup> PCA, *Abyei Arbitration*, Appendix 2.

<sup>46</sup> PCA, *Abyei Arbitration*, para. 720-744.

<sup>47</sup> *Id.*, para. 721.

<sup>48</sup> *Id.*, para. 723.

<sup>49</sup> *Id.*, para. 754-765.

<sup>50</sup> *Id.*, para. 766.

<sup>51</sup> *Id.*, para. 767.

<sup>52</sup> PCA, *Abyei Arbitration*, Dissenting opinion, Introduction, p. 1.

According to Judge Al-Khasawneh the Tribunal itself exceeded its mandate, notably “by drawing boundary lines without the reasoning it required of the Experts”.<sup>54</sup> Furthermore, he claims that the straight boundary lines retained by the Tribunal are “an affront to the science of delimitation”<sup>55</sup> and that “drawing boundaries requires more precision and meticulousness than this.”<sup>56</sup> He therefore passes judgment on the boundaries established by the Tribunal by underlining

the futility of drawing longitudinal and latitudinal lines – in the best traditions of the 1878 Berlin Conference, ‘prises de possession sur le papier’, as Bismarck famously called them – which bear no resemblance to reality or to local conditions or tribal locations.<sup>57</sup>

Moreover, he rejects the Tribunals standard of “reasonableness” for reviewing the ABC Experts Report, arguing that the “reasonableness standard could not have been the expectation of the two Parties when they conferred on the Tribunal its mandate”.<sup>58</sup> Judge Al-Khasawneh also disagrees with the Tribunals interpretation of the Arbitration Agreement as allowing a partial annulment of the Experts Report.<sup>59</sup> Finally, he argues that the Tribunal has delayed the possibility of a durable peace because the Award “failed utterly to take the rights of the Misseriya into consideration.”<sup>60</sup> He ends his opinion on a somewhat sarcastic tone by affirming that “the authors of the Award may congratulate themselves on their Herculean efforts, but the result is, not for lack of cleverness on their part, a feeble and modest construct with much to be modest about.”<sup>61</sup> In his opinion the “Tribunal could have been a peace-maker had it realised the obvious fact that peace-making is more difficult than law-making and judgment drafting.”<sup>62</sup>

### **Reception of the Award by the stakeholders**

Despite Judge Al-Khasawneh’s forceful criticisms, the reception of the Award was positive by both parties, even though this first assessment has to be put into perspective by subsequent declarations made by the GoS, the SPLM/A and the Misseriya tribe. But it is important to highlight that the Award was unequivocally accepted by the conflicting parties in a joint statement they issued on the same day the Award was rendered.<sup>63</sup> Independently of this joint statement, Mr. Salva Kiir Mayardit, SPLM/A’s chairman, declared that he accepted the

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<sup>53</sup> *Id.*, para. 30.

<sup>54</sup> *Id.*, para. 5.

<sup>55</sup> *Id.*, para. 8.

<sup>56</sup> *Id.*, para. 26.

<sup>57</sup> *Id.*, para. 35.

<sup>58</sup> *Id.*, para. 192.

<sup>59</sup> *Id.*, para. 50.

<sup>60</sup> *Id.*, para. 203.

<sup>61</sup> *Id.*, para. 200.

<sup>62</sup> *Id.*, para. 203.

<sup>63</sup> Joint Statement by the National Congress Party and the Sudan People’s Liberation Movement Announcing their Firm Commitment to Implement the Abyei Arbitration Decision, available at <[http://www.gossmmission.org/goss/index.php?option=com\\_content&task=view&id=928&Itemid=193](http://www.gossmmission.org/goss/index.php?option=com_content&task=view&id=928&Itemid=193)>.

Award.<sup>64</sup> Likewise, Sudan's foreign minister, who is also a senior member of the SPLM/A, Mr. Deng Alor Kuol, called the award a "win-win situation".<sup>65</sup> The European Union and the United States also issued a joint declaration backing the Award.<sup>66</sup> However, these positive reactions have to be contrasted with the rebuttal of the Award by the Misseriya tribe reported by several Sudanese and international media.<sup>67</sup> Furthermore, the reaction of both parties to the Award following its rendering was at least ambiguous, if not outright worrisome. On the one hand, several media reported that Khartoum was to stop its oil payments to the South<sup>68</sup> as the Award had attributed the oilfields to Southern Kordofan state (in Northern Sudan),<sup>69</sup> even though these reports cannot be confirmed at this point. In 2005, the total net transfers to the South from oil revenues amounted to US\$ 619.6 million.<sup>70</sup> On the other hand, the SPLM/A has affirmed that the Award does not demarcate what might become a future North-South border<sup>71</sup> and that the oilfields in the region are "still up for grabs".<sup>72</sup> To sum up, the overall immediate reception of the Award was very positive but the ensuing reaction of all the stakeholders involved was ambiguous.

### **The events on the ground subsequent to the Award**

The following summary is based on Media Monitoring Reports of the United Nations Mission in Sudan ("UNMIS"). According to these Reports, the Presidency of Sudan officially endorsed the Award on August 9 and agreed to set up a committee to demarcate the area.<sup>73</sup> The Abyei boundary demarcation committee started to meet on 23 August<sup>74</sup> but quickly

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<sup>64</sup> J. Gatdet Dak, *SPLM Chairmen declares acceptance of Abyei ruling*, Sudan Tribune, 23 July 2009, available at <<http://www.sudantribune.com/spip.php?article31900>>.

<sup>65</sup> M. Mayom, *Sudan to demarcate Abyei boundary in September – Official*, Sudan Tribune, 29 July 2009 available at <<http://www.sudantribune.com/spip.php?article31961>>.

<sup>66</sup> U.S. – European Union Joint Declaration on the Boundaries of the Abyei Area, 22 July 2009, available at <<http://www.state.gov/r/pa/prs/ps/2009/july/126300.htm>>.

<sup>67</sup> A. Heavens, *Sudan Nomads say protests against oil ruling*, Reuters, July 28, 2009, available at <<http://www.reuters.com/article/latestCrisis/idUSHEA848954>>; *Sudan Misseriya community refuse to implement Abyei ruling*, Sudan Tribune, 6 October 2009, available at <<http://www.sudantribune.com/spip.php?article32687>>; UNMIS, Media Monitoring Report of October 6, 2009, available at <<http://unmis.unmissions.org/Portals/UNMIS/MMR/MMR%206%20Oct%2009.pdf>>; M. Mazen, *Sudan Arab Tribe Rejects Ruling on Oil-Producing Abyei Region*, Bloomberg.com, available at <<http://www.bloomberg.com/apps/news?pid=20601116&sid=ajJkHou7QLqA>>.

<sup>68</sup> These payments have been agreed to in the CPA in 2005 under the Chapter III, Wealth Sharing, Article 5(6), p. 54.

<sup>69</sup> A. Heavens, *North, south Sudan leaders trade blame after oil ruling*, Reuters, 27 July, 2009, available at <<http://af.reuters.com/article/topNews/idAFJQE56Q05I20090727?sp=true>>; *Rifts emerge between Sudan's ruling parties after Abyei ruling*, Sudan Tribune, 25 July 2009, available at <<http://www.sudantribune.com/spip.php?article31922>>; J. Gatdek Dak, *South Sudan cabinet approves Abyei ruling*, Sudan Tribune, 1 August 2009, available at <<http://www.sudantribune.com/spip.php?article31992>>.

<sup>70</sup> International Crisis Group, *Sudan: Breaking the Abyei Deadlock*, Africa Briefing number 47, 12 October, 2007, p. 14, available at <<http://www.cmi.no/sudan/doc/?id=950>>.

<sup>71</sup> N. Arol Garang, *Abyei ruling doesn't demarcate North-South Sudan border – lawmaker*, Sudan Tribune, 26 July 2009, available at <<http://www.sudantribune.com/spip.php?article31928>>.

<sup>72</sup> *Sudan's SPLM says Abyei oil fields still up for grabs*, Sudan Tribune, 23 July 2009, available at <<http://www.sudantribune.com/spip.php?article31902>>.

<sup>73</sup> UNMIS, Media Monitoring Report of August 10, 2009 available at <<http://unmis.unmissions.org/Portals/UNMIS/MMR/MMR%2010%20August%2009.pdf>>.

<sup>74</sup> UNMIS, Media Monitoring Report of August 23, 2009 available at <<http://unmis.unmissions.org/Portals/UNMIS/MMR/MMR%2023%20August%2009.pdf>>.

encountered problems regarding its funding and security.<sup>75</sup> Because of these problems, the committee's initial duration of one month was extended by an additional 30 days.<sup>76</sup> Further problems arose in the beginning of September when the Misseriya refused to cooperate with the demarcation commission.<sup>77</sup> In spite of the abovementioned complications, the committee reportedly visited the region in mid-September.<sup>78</sup> However, in late September, it saw itself obliged to interrupt its work and leave the area as its protection was apparently withdrawn.<sup>79</sup> The committee returned to the area in the beginning of October.<sup>80</sup> On 8 November, the committee marked two points at the Abyei-Unity border.<sup>81</sup> As of 11 November, the security concerns have been solved and the committee is apparently able to carry out its work without hindrances.<sup>82</sup> All signs therefore point to the fact that the Award is currently being implemented on the ground.

## Conclusion

Despite significant positive signs – principally the GoS's and SPLM/A's endorsement of the Award and the implementation of the conclusions of the Tribunal by the Abyei boundary demarcation committee – the situation is not completely defused. Even though the international jurist will find very interesting developments on the review of arbitral awards in general, the first set of problem resides in a certain number of shortcomings of the Award itself: the scant justification of the boundaries retained by the Tribunal, the fact that those boundaries follow straight lines (at least on maps) thereby recalling some of the errors committed by the colonizing powers when drawing the borders of the continent, and the secondary role attributed to the Misseriya, who in the words of Judge Al-Khasawneh have become “second class citizens in their own land”.<sup>83</sup> However, it is necessary to point out that Judge Al-Khasawneh's proposals would have been even less likely to put an end to the conflict as the SPLM/A would have very probably rejected the even much smaller Abyei area envisioned by him.<sup>84</sup> The second set of problems relates to the ambiguous reception of the Award by the stakeholders: the Misseriya's rejection of the decision, the SPLM/A's insistence that the Award has not decided the issue of the oilfields of the region – one of the key elements to the area's conflict and hardly mentioned in the Award<sup>85</sup> – and the GoS's

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<sup>75</sup> UNMIS, Media Monitoring Report of August 25, 2009 available at <<http://unmis.unmissions.org/Portals/UNMIS/MMR/MMR%2025%20August%2009.pdf>>.

<sup>76</sup> UNMIS, Media Monitoring Report of August 30, 2009 available at <<http://unmis.unmissions.org/Portals/UNMIS/MMR/MMR%2030%20August%2009.pdf>>.

<sup>77</sup> UNMIS, Media Monitoring Report of September 7, 2009 available at <<http://unmis.unmissions.org/Portals/UNMIS/MMR/MMR%2007%20September%2009.pdf>>.

<sup>78</sup> UNMIS, Media Monitoring Report of September 14, 2009 available at <<http://unmis.unmissions.org/Portals/UNMIS/MMR/MMR%2014%20Sept%2009.pdf>>.

<sup>79</sup> UNMIS, Media Monitoring Report of September 30, 2009 available at <<http://unmis.unmissions.org/Portals/UNMIS/MMR/MMR%2030%20Sept%2009.pdf>>.

<sup>80</sup> UNMIS, Media Monitoring Report of October 4, 2009 available at <<http://unmis.unmissions.org/Portals/UNMIS/MMR/MMR%204%20Oct%2009.pdf>>.

<sup>81</sup> UNMIS, Media Monitoring Report of November 8, 2009 available at <<http://unmis.unmissions.org/Portals/UNMIS/MMR/MMR%208%20Nov%2009.pdf>>.

<sup>82</sup> UNMIS, Media Monitoring Report of November 11, 2009 available at <<http://unmis.unmissions.org/Portals/UNMIS/MMR/MMR%2011%20Nov%2009.pdf>>.

<sup>83</sup> PCA, *Abyei Arbitration*, Dissenting opinion, para. 203.

<sup>84</sup> PCA, *Abyei Arbitration*, Dissenting opinion, Appendix to Dissenting Opinion.

<sup>85</sup> Oil is only incidentally mentioned four times in the Award: para. 104, 212, 216 and 592.

apparent decision to withhold the payments of oil revenues to the South and the Ngok Dinka as agreed in the Comprehensive Peace Agreement.<sup>86</sup> Under present circumstances, it thus seems probable that the issue of the sovereignty over the oilfields in the region will erupt again in the run-up to the 2011 referendum on the South's independence. However, in the rather unlikely case the Award succeeds in putting an end to "a distinct stage in the peace process",<sup>87</sup> it could become a future model for peacefully resolving internal disputes through international arbitration, thereby helping to end a scourge that not only affects the African continent.

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<sup>86</sup> CPA, Chapter IV, The Resolution of the Abyei conflict, Article 3(3.1).

<sup>87</sup> PCA, *Abyei Arbitration*, para. 768.