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EXAMINATION OF ABYEI ARBITRATION AWARD

A Thesis submitted to the School of Graduate Studies Addis Ababa University, Faculty of Law in Partial Fulfillment of the Requirements for the Degree of Master of Laws (LL.M) in Public International Law

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June, 2017
Addis Ababa, Ethiopia**

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DECLARATION

I, the undersigned declare that, this thesis titled “**EXAMINATION OF ABYEI ARBITRATION AWARD** ” is my own work, and that it has not been submitted before a program in any other university, and that, to the best of my knowledge, all the sources I have used have been indicated and acknowledged.

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ACKNOWLEDGEMENT

I wish to express my sincere appreciation to those who have contributed to this thesis and supported me in one way or the other during this amazing journey.

First and foremost, I wish to express my sincere appreciation and gratitude to my supervisor, ASS. Prof. Mohammad Habib, his contribution to the substance and presentation of this work is remarkable. His patience and kindness have never ever been failing, and to whom I will remain very much indebted to the rest of my life.

My sincere gratitude is reserved for my thesis examiners Dr Dereje Zeleke and Ato Benyam Tafesse, for their absolutely invaluable comments and suggestions.

My special thanks go to my loving wife, Roza Mekonnen, for her determination, inspiration and constant motivation through what has been an arduous and unavoidable prolonged journey of the post graduate study.

Finally, to great length I am indebted to my family, for their support, encouragement and patience during the pursuit of my post graduate degree in Public International Law.

All errors are mine.

ACRONYMS

ABC	Abyei Boundaries Commission
AU	African Union
AUBP	African Union Boarder Program
AUHIP	African Union High Level Implementation Panel
CPA	Comprehensive Peace Agreement signed between the GoS and SPLM/A on January 9/2005
GoS	Government of Sudan
IDPs	Internally Displaced Persons
IGAD	Intergovernmental Authority for Development
ICJ	International Court of Justice
OAU	Organization of African Unity
PCA	Permanent Court of Arbitration
SAF	Sudan Armed Force
SPLM	Sudan People's Liberation Movement
SPLA	Sudan People's Liberation Army
SPLM/A	Sudan People's Liberation Movement/Army.
UNMIS	United Nations Mission in the Sudan
UNSC	United Nations Security Council
VCLT	Vienna Convention on the Law of Treaties

ABSTRACT

South Sudan attained independence on 9 July 2011, from the Sudan, through the Referendum. Unfortunately, the Referendum left some issues unresolved. The status of the Abyei Area was one of such unresolved issues and, consequently, it has still remained to be a bone of contention between the new born the Republic of South Sudan and the Republic of Sudan.

Historically, northern and southern Sudan was administered by one colonial authority with distinct geographical, cultural entities, despite the fact that the Sudan existed as one single state. Thus, the Abyei Area had been one of the areas of contentious during the two bloody intra-state conflicts that took place after independence of the Sudan in 1956.

After the formal separation and attainment of independent statehood by the South Sudan in July 2011, the long-standing dispute over the Abyei Area became an inter-state dispute. It may be worth mentioning that the Comprehensive Peace Agreement (CPA) signed between the GoS and SPLM/A in 2005, consisting of six protocols, including the one intended to serve as a basis for subsequent settlement of the outstanding dispute of over the Abyei Area.

Thus, the CPA had provided the mechanisms how to ensure conclusive delimitation and demarcation of the Abyei Area between South Sudan and the Sudan. Accordingly, the Abyei Protocol established Abyei Boundary Commission (ABC) to define and demarcate the contested Abyei Area. The ABC has delivered its final and binding report in 2005. However, the GoS had rejected the Report of ABC on the ground that the ABC had exceeded its mandate, whereas the Southern Sudan, as represented by the SPLM/A, had accepted the Report as final and binding. The dispute over this Report was lasted more than three years and resulted in eruption of war in the Abyei Area that caused massive displacement and loss of innocent lives. In an effort to avoid further conflict, the Parties agreed to take their dispute to the Permanent Court of Arbitration (PCA) at The Hague for final and binding decision. On July 22, 2009, the PCA has issued its final and binding decision over the intra-state boundary dispute. However, the decision of Abyei Arbitration Award not yet been enforced and the final status of Abyei Area is not yet determined. Therefore, this thesis examines why Abyei Arbitration Award fail to be enforced and proposes an alternative solution to enforce the Award and determine the final status of Abyei Area.

CHAPTER ONE

GENERAL FRAMEWORK OF THE RESEARCH

1.1 Background of the Study

As has been succinctly stated “*Europe's arbitrary post-colonial borders left Africans bunched into countries that don't represent their heritage, a contradiction that still troubles them today.*”¹

Indeed, even the Abyei Boundary dispute, despite its origin as an intra-state conflict has got its root in the way the British administrated the two parts of the Sudan.

By and large, since the attainment of political independence by existing African States, borders, which were drawn by European colonial powers, have been recurrent causes of conflict among and within many African countries.² Moreover, disputes and conflicts over border related territory claims are sources of most African border wars, conflicts, and tensions.³

Despite this over-all picture of African boundary disputes, Abyei presented relatively different patterns of legal and political problem. As exiting now, the dispute over Abyei has become inter-state after the formal separation and subsequent recognition of the Republic of South Sudan as an independent State. However, historically speaking, the origin and genesis of boundary dispute over Abyei Area is also one of such problematic colonial legacies. Before 1905, the Abyei Area was used to be part of *Baher al Ghazal* province in southern part of Sudan. In the 1905, the colonial administration transferred it into Northern Sudan without the consent of the people of the area. Thus, the historical origin of Abyei boundary disputes has got its roots in the way the Anglo-Egyptian condominium administration managed the country. As is known, the Abyei area roots

¹The Atlantic, The Dividing of a Continent: Africa's Separatist Problem, September 10,2012, available at <http://www.theatlantic.com/international/archive/2012/09/the-dividing-of-a-continent-africas-separatist-problem/262171/>; (accesses on March 30,2014)

²Gbenga Oduntan, *International Law and Boundary Disputes in Africa*, 2015, Routledge, New York, United States of America, P, 2; See also, Thomas M Willson, A Campaign to Border Studies, Balackwell Publisher, United Kindgom, (2012), P76, See also African Union Boarder Progarame (AUBP), *Delimitation and Demarcation of Boundaries in Africa: The User's Guide*, 2nd ed., Addis Ababa, Ethiopia, p, 10. See also African Union Border Programme (AUBP) - *Uniting and integrating Africa through peaceful, open and prosperous borders* - available at <http://www.peaceau.org/en/page/27-au-border-programme-aubp>, (accessed June 25,2015)

³ African Union Border Programme (AUBP), *Delimitation and Demarcation of Boundaries in Africa : General Issues and Case Studies*, 2nd ed, August 2014, Commission of the African Union, Department of Peace and Security, Addis Ababa, Ethiopia, p.18; “African borders have never ceased to be recurrent factors in conflicts and even crises. Among the major border crises which Africa has witnessed, mention must be made of the Ogaden war in the Horn of Africa involving Ethiopia, Kenya, and Somalia; the Chad-Libya war over the then disputed Aouzou strip; the Burkina Faso-Mali wars; the Eritrean- Ethiopian war; and the shootouts between Cameroon and Nigeria and between Guinea and Senegal” Ibid.

historically the home region of the nine Ngok Dinak chiefdoms of Southern Sudan and its transfer to *Kordofan*, Northern Sudan province caused still lingering disputes and conflict in this part of Africa.⁴

The Abyei Area has always been a source of disagreement and contention between the northern and southern Sudan since the Sudan obtained independence in January, 1956.⁵ This means that the North/South conflict over the Abyei had been going on for many decades. Particularly, Abyei Area was the center of the battle field in the second civil war which is said to be the longest civil in Africa.⁶ More importantly, the dispute over the boundaries of the Abyei Area had formed one of the several multi-dimensional causes for the first and the second civil war⁷ between the Government of Sudan and armed opposition forces of Southern Sudan.⁸ As is known, the second civil war that took place for over two decades had caused two million deaths large scale suffering and grave human and material destruction, with more destructive consequences to effects upon Southern Sudan.⁹

Sudan witnessed a prolonged violence and failed efforts towards peaceful until the designing of CPA by the GoS and SPLM/A in 2005 in leading to the final settlement process through the referendum Southern Sudan in which the people to separate from the Sudan and establish their own state.¹⁰

However, one of the remaining critical issues whether or not the Abyei Area should form part of North or South Sudan, if the outcome of the referendum was to lead to full independence of South Sudan.¹¹ This was because, without defining Abyei Area, it could hardly be possible to

⁴ Salman M.A Salman, *The Abyei territorial dispute between North and South Sudan: Why has its resolution proven difficult?*, 2013, In *Land and post-conflict peace building*, ed. J. Unruh and R. C. Williams. London: Earthscan, P.57-58.

⁵ Abdal basit Saeed, *Failed governance and political turbulence in Abyei Area of Sudan*, 2015, p.22 available at <http://www.cmi.no/publications/file/5404-failed-governance-and-political-turbulence-in.pdf>; accessed September 24, 2015.

⁶ 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, and the Permanent Court of Arbitration Optional Rules for Arbitrating Disputes between Two Parties of Which Only One Is A State, between the Government Of Sudan and the Sudan People's Liberation Movement/Army, Final Award; Permanent Court of Arbitration, Registry; The Peace Palace, The Hague ,22 July 2009(hereinafter referred to as Abyei Abyei Arbitration Award),¶.109

⁷ The first Civil War between the North-South Sudan war began 1956 and ended by the 1972 Addis Ababa Peace Agreement. the second civil war erupted in 1983 and ended by the 2005 Comprehensive Peace Agreement.

⁸ BROOKS DALY (2010). *The Abyei Arbitration: Procedural Aspects of an Intra-state Border Arbitration*. *Leiden Journal of International Law*, 23, pp 801-823 doi:10.1017/S0922156510000373,p.802

⁹ Abyei Arbitration Award,(n-6)¶.109.

¹⁰ See foot note 4 at BROOKS DALY (n-2), *The Machakos Protocol*, signed 20 July 2002. The referendum is scheduled to take place between 9 and 11 January 2011. A simultaneous referendum will take place in which the people of Abyei Area will vote on whether to remain a part of the Northern Sudan or to become a part of Southern Sudan.

¹¹ W.J. Miles; D. Mallett: *The Abyei Arbitration and the Use of Arbitration to Resolve Inter-State and Intra-State Conflicts*, 1 *Journal of International Dispute Settlement* 2 (2010), P.316

determine the status of Abyei Area by a referendum. Thus, the Abyei Protocol established the Abyei Boundary Commission (ABC) in order “to define and demarcate” the area geographically which is binding on both parties.¹²

Accordingly, the ABC delivered its report in July, 2005 thereby defining boundaries of the Abyei Area.¹³ Subsequently, the SPLM/A accepted the report of ABC as final, whereas the GoS rejected the report, claiming that the ABC experts had exceeded their mandate.¹⁴ As a result of that, the dispute over the boundaries of Abyei area continued for more than three years causing massive displacement of people, loss of innocent lives and including the burning of Abyei Town.¹⁵

Subsequently, GoS and SPLM/A signed an Arbitration Agreement on July 7, 2008 whereby they agreed to refer the question of the Abyei Area to the Permanent Court of Arbitration (PCA).¹⁶ On 22 July 2009, the Abyei Arbitral Tribunal, at the Permanent Court of Arbitration issued its final and binding decision over the boundaries of Abyei Area. Immediately after that, the SPLM/A and GoS had unanimously accepted the decision of the Tribunal¹⁷ expressing their respective intention to implement the Tribunal’s Award.¹⁸ Unfortunately, the decision of the Abyei Arbitral Tribunal has not been enforced until today.

1.2 Statement of the Problem

As a rule, decisions of arbitration processes are supposed to be binding. Indeed, the Parties to the dispute over Abyei had expressed faithfully comply with and implement the decision of the Tribunal. However, the Parties still failed to implement the decision.

¹²The Comprehensive Protocol between the Government of the Republic of Sudan and the Sudan People’s Liberation Movement/Sudan’s People Liberation Army, Chapter IV; Abyei Protocol, Art. 5; Abyei Appendix, Art. 1; see also W.J. Miles; D. Mallett: The Abyei Arbitration and the Use of Arbitration to Resolve Inter-State and Intra-State Conflicts, 1 Journal of International Dispute Settlement 2 (2010), 313-340, 316.

¹³Douglas H. Johnson, When Boundaries Become Borders: The Impact of Boundary-Making in Southern Sudan, Published by the Refit Valley Institute, 2010, London, United Kingdom, p.40

¹⁴Salman M.A Salman, 2013,(n-4),P.14-15

¹⁵John R. Crook, The Abyei Arbitration: A Model for Other Situations? In Kurdish Human Rights Project, Legal Review, (2010) 18 KHRP LR, published by Kurdish Human Rights Project London, England, P.33

¹⁶ Arbitration Agreement between the Government of Sudan and the Sudan People’s Liberation Movement/Army on Delimiting the Abyei Area, signed on July 7, 2008 (“hereinafter referred to as Abyei Arbitration Agreement”).

¹⁷The CPA Monitor-Monthly report on the Implementation of the CPA, UNMIS, February 2009, ¶ 135. Vol.5, Issue 45, available at <https://unmis.unmissions.org/Portals/UNMIS/CPA%20Monitor/cpa/%20Monitor%20August%202009.pdf>.

¹⁸Joint Statement by the National Congress Party and the Sudan People’s Liberation Movement Announcing Their Firm Commitment to Implement the Abyei Arbitration Decision, 22 July 2009, available at www.southsudanembassydc.org/PressRelease_Archivedetails.asp?artId=5D58#sthash.TD0EIWNi.dpbs (last visited 20, December 2015); See also Freya Baetens & Rumiana Yotova, The Abyei Arbitration: A Model Procedure for Intra-State Dispute Settlement in Resource-Rich Conflict Areas?, Goettingen Journal of International Law 3 (2011) 1, 417-446, p.443

As clearly envisaged under the CPA, a referendum in Abyei was supposed to take place in parallel to the referendum in the South. However, the referendum on the final status of Abyei Area was cancelled because the SPLM/A and GoS did not agree on the criteria set for voter eligibility, despite intense international mediation and pressure, thus leaving the dispute over Abyei unresolved.

Therefore, it is evident that the secession of the South Sudan is a fundamental change of circumstances which transformed the Abyei Area boundary dispute from intra-state to inter-state boundary dispute. The unresolved status of Abyei area became the critical source of continued conflict between the Sudan and South Sudan unity today.

Under such circumstances, international law assumes that the Party failing to comply with decisions of arbitral body could be compelled to honor its commitment. To this effect, there are a number of institutional mechanisms which could be resorted to for the purpose of enforcing such decision. In other words, legally speaking there are institutional mechanism which could have been utilized so as to enforce the decision of the Tribunal Award for the settling the dispute over Abyei, particularly after the independence of the Republic of South Sudan. Ironically, the decision of the Tribunals which was a precondition to determine the final status of Abyei Area has not been enforced or implemented until to date.

Therefore, this thesis examines the challenges encountered in enforcing the decision of the Abyei Arbitration Tribunal. Furthermore, the objective of the research has been to explore ways and means for resolving the problem of enforcing the Tribunals Award and resolving the final status of Abyei Area once and for all.

1.3 Objectives of the Study

The thesis has general and specific objectives. The general objective of the thesis is to examine challenge and opportunities of ensuring due enforcement of an arbitration award, as has been envisaged in the arbitration process intended to determine the final status of Abyei Area. The thesis will specifically dwell on the following issues:

1. To examine why did they Abyei Arbitration Award fail to be enforced, as had been agreed by the Parties in resolving the dispute of determination of the final the final status of Abyei Area.

2. To explore alternative options applicable in the context of the Abyei boundary dispute which may help to ensure enforcement of the Award and to determine the final status of Abyei Area.

1.4 Research Questions

In an effort to attain the above stated objectives, the research will endeavor to address the following research questions from an independent legal perspective:

1. What were the measures taken by the UNSC, AUPSC, IGAD and AUHIP to secure the compliance of the Parties towards enforcement of Abyei Arbitration Award thereby determine the final status of Abyei Area?
2. Why did the measures taken, so far by UNSC, AUPSC, IGAD fail to ensure the intended enforcement of the Award and to determine the final status of Abyei Area?
3. What alternative institutional mechanisms are envisaged under international law to bring an end a half century old dispute over the status of Abyei Area once and for all?

1.5 Significance of the Study

This research will have academic and practical relevance. In academic terms, it will be a contribution in the legal issues which involve African boundary disputes. Secondly, as far as its practical significance is concerned, the research attempts to explore and propose workable alternative institutional mechanisms under international law parlance to resolve the dispute between the Republic of Sudan and the Republic of South Sudan over the final status of the Abyei Area. Hopefully, it may contribute towards shading more light on challenges and opportunity under international law for the purpose of effective enforcement of Arbitration Award.

1.6 Scope and Limitation of the Study

The title of this thesis is apparently broad, but its real scope is focused and limited to examining the challenges that made Abyei Arbitration Award unenforced to date and to explore possible alternative approaches for overcoming the challenge. The research embarks upon a current issue particularly after the independence of the Republic of South Sudan. Almost there is no relevant

published materials specific to the Abyei Boundaries Dispute. Reliance is made on electronic sources and even in this case the majority of apparently relevant materials are encrypted and are not freely accessible. Moreover, due to limitation of resources I was unable to visit the disputed area and collect the diverse views of the parties. These limitations are impeding an in depth investigation of issues due to information constraints and view on pertinent laws.

1.7 Research Methodology

In general, the methodology of this study employed the doctrinal approach which enquires the applicable laws in the issues under consideration.¹⁹ The researcher explores the primary and subsidiary sources of international law, as enumerated under Article 38 of the ICJ Statute. Thus, information will be gathered from sources such as Statute of International Court of Justice, United Nations Charter, Permanent Court Arbitration Rules, relevant decision of ICJ, Comprehensive Peace Agreement, Abyei Arbitration Agreement and Award, working papers, books, and periodicals, newspapers, and internet sources are consulted. Moreover, several UNSC and AUPSC Resolutions are also consulted in the course of conducting this research.

1.8 Chapter Outline

The thesis is divided into five chapters. The first introductory chapter deals with background, statement of the problem, research questions, and objective of the study, scope of the study, methodology and organization of the paper. The second chapter provides a synoptic review of historical background on Abyei Area and the origin and evolution of Abyei Arbitration. Chapter three is intended to provide a brief examination of Abyei Arbitration Award. Chapter four assesses the challenges to enforce Abyei Arbitration Award and to determining the final status of Abyei Area. Moreover, this chapter explores efforts made by regional, international and continental organizations and assesses alternative options to resolve the boundary dispute over the Abyei Area. Finally, Chapter five will provide conclusions and recommendations of the research.

¹⁹ Mike McConville and Wing Hong Chui, *Research Methods for Law*, 1sted, Universal Law Publishing Co, New Delhi, India, 2013, p.18-19.

CHAPTER TWO

HISTORICAL BACKGROUND OF THE DISPUTE OVER THE ABYEI AREA AND ABYEI ARBITRATION

2.1 Introduction

There could be a number of factors that led the GoS and SPLM/A to such protracted boundary disputes over Abyei Area. One apparent cause could be complex effect of the colonial legacy.²⁰ The dispute over Abyei Area was also interrelated with uneven distribution of geographical and natural resources, and fierce competition of the multi-ethnic inhabitants of the Abyei Area. Therefore, the chapter will shed light on the historical background of the dispute over the Abyei Area that of the arbitration process constituted for the purpose of settling the dispute with final and binding effects.

2.2 South-North Sudan Dichotomy

The Sudan²¹ had been confronted by endless conflict between the northern Sudan and southern Sudan.²² The northern part of the Sudan is largely desert, inhabited by Arabic speaking Muslims²³ while the southern Sudan is diverse ethnic groups which are dominated by Christian or animist and culturally forming part of Sub-Saharan.²⁴ In tracing the sources of south-North dichotomy, it would not be proper to ignore the period during which the Sudan was under the Anglo-Egyptian Condominium administration. In addition to the cultural and religious differences, geographical and economic divergence Anglo-Egyptian colonial administration governed northern and southern regions separately.²⁵

²⁰ See the *Bakassi Peninsula* case, Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria: Equatorial Guinea intervention) Judgment, I.C.J. Reports 2002, p.303.

²¹ The name “Sudan” refers to the Northern and Southern Sudan altogether before the independence of Republic of South Sudan, in 2011

²² John R. Crook, 2010, (n-18), P.33, See also Abdalbasit Saeed, Challenges Facing Sudan after Referendum Day 2011 Persistent and Emerging Conflict in the North-South Borderline States, 2010, p.1

²³ Abyei Final Award, (n-6), ¶ 100

²⁴ Abyei Final Award, (n-6), ¶ 108

²⁵ John R. Crook, 2010, (n-18), P.33

The Anglo-Egyptian forces conquered the Sudan after crushing the Mahdist army in 1898.²⁶ The Anglo-Egyptian rule followed separatist policy in administrating the northern and southern Sudan. The policy was more favorable for northern Sudan. The colonial administration invested considerably to develop economic, social and cultural institution of northern Sudan.²⁷ Whereas, the southern Sudan remained isolated and marginalized.²⁸ In the north Sudan, for instance the colonial administration financed social service, educational and health sectors throughout the 1930s.²⁹

Northern and Southern dichotomy escalated especially after the colonial rule introduced the Closed District Ordinance during 1920s. By the years the regime introduced the called “Southern Policy” regime which the restricted movement of northern Sudanese persons in the southern Sudan.³⁰ That resulted in social and commercial barrier between the southern and northern Sudan population and resulted in deeply divided patterns of political, economic and social development.³¹

Alongside with it, the colonial regime defined ‘tribal borders’ to deepen the dichotomy between the north and south.³² To that general pattern, the administration effected the transfer of the nine Nong Dinka to the northern Sudan province of Kordofan, retaining the rest of the Dinka to continue being as part of southern Sudan.³³ Only of twenty five years later, restriction of non-native persons’ movement in the southern Sudan was removed in 1947.³⁴

2.3 The Abyei Area in Historical Context

This section provides for a brief account of the historical context of the disputed Abyei Area covering ethnic composition of the inhabitants, natural resources, administrative development, and related issues. Moreover, this section also provides a brief note on the first and the second civil wars of the Sudan from the context of the Abyei Area.

²⁶ Sara Basha, *Sudan: Civil War and Peace-Making*, Faculty of Humanities, University of Cape Town, 2006, p.10

²⁷ Ibid.

²⁸ Sara Basha, (n-26), “Sudan: Civil War and Peace-Making,”(2006),p.2 et seq

²⁹ Sara Basha, (n-26), “Sudan: Civil War and Peace-Making,”(2006),p.9 et seq

³⁰ Basha, (n-25), “Sudan: Civil War and Peace-Making,”(2006),PP. 10-14

³¹ Ibid.

³² Vaughny Christopher,(n-26), *The Boundaries of South Sudan: Authority and Identity in Contemporary and Historical Perspective*,2013,p.24

³³ Vaughny Christopher,(n-26), *The Boundaries of South Sudan: Authority and Identity in Contemporary and Historical Perspective*,2013,p.24

³⁴ Riek MacharTeny-Dhurgon, *South Sudan: A History of Political Domination—A Case of Self- Determination*, U. PA. AFR. STUD. CTR. (Nov. 19, 1995), http://www.africa.upenn.edu/Hornet/sd_machar.html.

2.3.1 Location of Abyei Area

Although, the final status of Abyei area is not yet been determined, at least, for the purpose of this chapter, it may be important to mention the geographical location of Abyei Area as it exists so far. Geographically, Abyei Area is situated between Unity, Warrap, and Northern Bahr el Ghazal states in southern Sudan, and the northern Sudanese states of South Kordofan and East Darfur.³⁵ However, under Abyei Protocol, the GoS and the SPLM/A had agreed to refer to the “Abyei Area” as “[t]he territory [of the Abyei Area] is defined as the area of the nine Ngok-Dinka chiefdoms transferred to Kordofan in 1905.”³⁶

Despite all these peculiarities, by and large, Abyei Area also believed to be “a bridge between the northern and the southern Sudan, linking the people of North and South Sudan.”³⁷ In the same token, some Authors claimed that Abyei Area is geographically and ethnically intersected between the northern and Southern.³⁸

2.3.2 Inhabitants of the Abyei Area

This section try to touch upon the two major tribes of Abyei Area who are culturally , religiously and politically different and their competing claims over the Abyei Area. For the purpose of this section the major tribes of Abyei Area are Ngok-Dinak and Misseriya. In other words, Abyei Area has been inhabited by Ngok Dinka and Misseriya.³⁹ But, due to their patterns of life, Abyei Area is claimed to be permanently inhabited by the Dinka-Ngok, and seasonally visited by the Misseriya ethnic groups⁴⁰

The Ngok-Dinka seems to be demographically larger, economically wealthier and politically strong as compared to other group of southern Sudan.⁴¹ The bulk of the population practice traditional indigenous religions, although many of the political leaders have embraced

³⁵ Joshua Craze, *Dividing lines: Grazing and Conflict along the Sudan– South Sudan border*, Small Arms Survey, Graduate Institute of International and Development Studies 47 Avenue Blanc, 1202 Geneva, Switzerland, 2013, P.73

³⁶ The Resolution of the Abyei Conflict, signed between GoS and SPLM/A at Naivasha, Kenya, on 26th May 2004, (Abyei Protocol) Section 1.1.2

³⁷ Ibid., Section 1.1.1

³⁸ D. Johnson: *Why Abyei Matters: The Breaking Point of Sudan’s Comprehensive Peace Agreement?*, 107 *African Affairs* 426 (2008), 1-19, 1 et seq.; see also: International Crisis Group (ICG): *Sudan: Regional Perspectives on the Prospect of Southern Independence*, Africa Report Number 159, 6 May 2010; ICG: *Sudan: Defining the North-South Border*, Africa Briefing Number 75, 2 September 2010; ICG: *Negotiating Sudan’s North-South Future*, Africa Briefing Number 76, 23 November 2010. As cited See foot note 10 as cited by Cindy Daase, “International Arbitration: A New Mechanism to Settle Intra-State Territorial Disputes between States and Secessionist Movements?”

³⁹ Abdalbasit Saeed, 2015,(n-5),p. 22

⁴⁰ Abyei Arbitration Award, ¶.107

⁴¹ Muna A.Abdalla, 2010,(n-48),p.23

Christianity, and some members of the group have converted to Islam.⁴² It is a section of other larger Nylotic ethnic group of Dinka, which constitute about 35 percent of the population of the Southern Sudan.⁴³ They live cultivating land and pursue political and cultural life, among others, in Abyei Area.⁴⁴ Many of the prominent southern Sudan politician and academicians are believed to be from the Dinka Tribe, including the current leader of Republic of South Sudan, President SalvaKiir.⁴⁵

The Misseriya group is largely composed of pastoralist population speaking a localized Arabic and based in the region of Muglad.⁴⁶ They are reported to be largely cattle-herders whose pastoral way of life urges them to move across a wide territory, covering the area around Muglad in the north, where they spend much of each year, to the Bahr basin system of the Abyei region during the dry season.⁴⁷ They belong to a larger social group, composed of Arab Muslim population, locally named Al Baggara.⁴⁸ Economically, Misseriya are wealthy with large numbers of livestock and move in certain seasons across southern Kordofan and the Abyei area to secure grazing land and water for their livestock.⁴⁹

2.3.3 Natural Resources and Utilization

In general, natural resources are attracting people to have greater attachments, and thus territorial disputes are believed to be strongly competed completion over natural resources.⁵⁰ Abyei Area has a major river and their tributaries a number of major rivers and their tributaries and because of that the Abyei Area and surrounding areas generally referred to as the “*Bahr*” or the “Bahr River Basin.”⁵¹ In general, no standardized naming system was adopted for rivers in Abyei Area.⁵² For instance, Misseriya call ‘*Bahr* River, as *Bahr Al Arab* or the Arabian River, while the Ngok-Dinka calls it River *Kiir*.⁵³

⁴²Ibid.

⁴³Ibid.

⁴⁴Abyei Arbitration Award, (n-6)¶,106

⁴⁵ Salman.M. A. Salman, 2013 (n-36),p.27, see also J.Peter Pham, Abyei : The Abscess Threatening the Sudan, Published 09 Dec 10, available at <http://worlddefenseview.com/pham120910.shtml>.(last visited on April 30,2016)

⁴⁶Abyei Arbitration Award, (n-6), ¶,107

⁴⁷Abyei Arbitration Award,(n-6), ¶,107

⁴⁸ Muna A Abdalla , Situation Report: Abyei Natural Resources Conflict, Published by Institute of Security Studies, available in pdf at https://issafrica.s3.amazonaws.com/site/uploads/SitRep2010_JulAbyei.pdf, July 26, 2010, Addis Ababa, Ethiopia, p.1

⁴⁹Muna A. Abdalla,2010(n-48) P .23

⁵⁰Ibid.p,3

⁵¹‘Bahr’ means river basin system in Arabic. The Dinka name word for river is ‘Kir’ See SPLM/A Memorial(n 62) , ¶86

⁵²SPLM/A Memorial , PCA No. GOS-SPLM 53,391, 18 December 2008, ¶ 91.

⁵³Abyei Arbitration Award,(n- 6) ¶,103.

According to notable sources, the conflict over Abyei Area is due to its vast oil reserves.⁵⁴ As is known, oil was discovered in Abyei Area in the late 1970s, since then, Abyei Area is known to be one of the most oil rich areas in the Sudan.⁵⁵ However, because of the conflicting political claims, oil sector in the Sudan had been obstructed frequently; unfortunately, the oil resource did not contribute to the human and economic development of the Abyei Area.⁵⁶ Since its discovery in the 1970s, GoS had taken control of Sudan's oil, but after the signing of the CPA between the GoS and SPLM/A in 2005 the revenue was used to be shared with the southern Sudan, Nkog-Dinka and Missariya.⁵⁷

2.3.4 The Interaction between the Ngok-Dinka and Missariya

The inhabitants of Abyei Area, partly are either pastoralists or partly agro-pastoralists.⁵⁸ They are dependent on seasonal climatic conditions and for the livelihood of themselves and their huge livestock they used to make long journey following the seasonal patterns of climate.⁵⁹ Moreover, as pastoralist and agro-pastoral people, they have traditional dispute settlement system for settling dispute arising out of such instructions.⁶⁰ At the end of each grazing season elderly traditional leaders of each ethnic group hold their session to address problems of the communities such as animal injuries or attacks on humans.⁶¹ Then they propose solutions such as compensation measures for loss and destruction.⁶² As such traditional leaders manage and resolve community based disputes peacefully thereby maintain sustainable peace and preservation of their traditional way of life.⁶³

2.3.5 Transfer of Abyei Area to Kordofan Province in 1905

This section is intended to shed some light on the historical background as to how the Abyei Area was transferred to the Kordofan province by Anglo-Egyptian Administration. That was in 1905, soon after the conquest of the Sudan. The history of the conflict in Abyei Area has its origin

⁵⁴ Žiga Golobič & Kaya van der Meulen, United Nations Security Council Study Guide, February 2017, P.19.

⁵⁵ Muna A. Abdalla, 2010, (n-48), p.3

⁵⁶ Ibid.

⁵⁷ Ibid.

⁵⁸ Ibid, p.7

⁵⁹ Ibid., p.10

⁶⁰ Ibid., p.10

⁶¹ Ibid., p.4

⁶² Ibid.

⁶³ Concordis International Report, Crossing The Line: Transhumance in Transition Along The Sudan--South Sudan Border October 2012, available at <http://concordis-international.org/wp-content/uploads/2012/11/Crossing-the-Line-FINAL-26Oct12.pdf> (accessed on May 13 2015), P.36

in that period. It began after the nine Ngok-Dinka chiefdoms were transferred from *Bahr-al-Ghazal* to the jurisdiction of *Kordofan* by the Anglo-Egyptian colonial administration.⁶⁴

At that time, the colonial administration had no precise survey maps of the area, and the area also could not demarcate on the ground.⁶⁵ This means one of the reasons for transferring the nine Ngok-Dinka to the Kordofan province was that the Misseriya were used to collecting tribute from the Ngok-Dinka, claiming that they were acting on behalf of the government.⁶⁶ As has been argued by some schools, such act of Misseriya was a wrong claim and they were merely trying to enrich themselves. Because of such misconduct and as a result of such complaints, the colonists decided to place the Ngok-Dinka under the same governor as the Misseriya Arabs.⁶⁷ The British colonial administration had made the following statement in 10905:

*it made sense to put the two contending groups under the same administration. For one thing it was much more difficult to reach the area from the British headquarters in Bahr el Ghazal than it was from Kordofan. In addition, it would be more effective to adjudicate the dispute if the two parties were under the same provincial administration. . . . As a result, the anomaly of a southern Sudanese group administered as part of northern Sudan was created.*⁶⁸

Therefore, the decision by Anglo-Egyptian colonial authorities to transfer the administration of the Ngok-Dinka people from the *Bahr el Ghazal* province southern Sudan to the Kordofan province of northern Sudan made the Abyei area to become part of Northern Sudan, although part of the inhabitants of the region, the Ngok-Dinka, regarded themselves politically more connected with southern Sudanese people.⁶⁹

⁶⁴ Abdalbasit Saeed, 2015,(n-5),p.8

⁶⁵ Ibid.

⁶⁶ Ibid.

⁶⁷ Abdalbasit Saeed, 2015,(n-5),p.9

⁶⁸ Donald Petterson, Abyei unresolved: A threat to the North-South agreement. In Implementing Sudan's comprehensive peace agreement: Prospects and challenges. 2008, Washington, D.C.: Woodrow Wilson International Center for Scholars Africa Program, p.22-23, As cited by Salman M.A Salman,(n -36), The Abyei Territorial Dispute between the North and South Sudan,2013, p.26

⁶⁹ Gabriella Abetnego. SUDAN: – Ngok Dinka Peoples' Request for Consideration under Early Warning Measure and Urgent Action Procedures, (CH-1211 Geneva,Switzerland)January 9, 2012., <http://publicinternationalallawandpolicygroup.org/wp-content/uploads/2012/01/Request-of-Ngok-Dinka-People-to-CERD-under-EW-UA-Mech-re-Sudan-Jan-9-2012-pdf-f.pdf> Accessed May 11, 2015), ¶.13

2.3.6 First and Second Civil War

The first of two civil wars between the northern and southern Sudan began soon after the Sudan's independence in 1956.⁷⁰ During that time, the two major groups, Missiriya and the Ngok-Dinka, of Abyei Area were involved against each other in the context of the war between the northern and southern Sudan.⁷¹ Fortunately, the first civil war which claimed lives of half a million people ended in 1972 by virtue of the Addis Ababa Agreement⁷² that had conferred considerable autonomy upon southern Sudan.⁷³ It is worth noting that one of the issues tabled; during the negotiation of the Addis Ababa Agreement of 1972 was the demand of the SSLM (South Sudan Liberation Movement) to return the Abyei Area back to southern Sudan.⁷⁴

As a result of that the Addis Ababa Agreement had stated that *“areas that were currently and geographically part of the Southern complex could be decided by a referendum whether or not they wanted to join the [the Southern Autonomous] Region [emphasis added].”*⁷⁵ However, the referendum was not took place and the second civil war erupted in 1983.⁷⁶

But the agreement did not seem to be honored to the satisfaction of the Southern Sudanese political forces. Thus the breach of the 1972 Addis Ababa Peace Agreement caused grievances that led to the outbreak of the second civil war in 1983.⁷⁷ In 1983, the SPLM and the SPLA emerged to lead the people of Southern Sudan in the course of the second civil war.⁷⁸ Moreover, the discovery of oil in 1979 in Abyei Area contributed to escalate the conflict between the northern and southern Sudan.⁷⁹

⁷⁰ Abyei Arbitration Award, (n-6), ¶.108

⁷¹ Abdalbasit Saeed, 2015, (n-5), p.1

⁷² Addis Ababa Agreement on the Problem of South Sudan (Addis Ababa Agreement) on March 12, 1972, between the Government of the Democratic Republic of the Sudan and the Southern Sudan Liberation Movement. For the complete text of the Addis Ababa Agreement, see www.goss-online.org/magnoliaPublic/en/about/politicalsituation/mainColumnParagraphs/00/content_files/file3/Addis%20Ababa%20Agreement.pdf. See also John R, Crook, 2010, (n-17). p.33

⁷³ See Article of 3 of the 1972 Addis Ababa Agreement (n-72), which states that the provinces of Bahr el Ghazal, Equatoria and Upper Nile, based on the boundaries as they stood on 1 January 1956, constituted a self-governing region within Sudan known as the Southern Region; see also John R, Crook, (2010) , (n-17), P.33

⁷⁴ Luka Biong Deng, South Sudan parliament and Abyei referendum, Monday 25 November, 2013, accessed June 6, 2015, available at http://www.sudantribune.com/spip.php?iframe&page=imprimable&id_article=48925.

⁷⁵ The first legal agreement which provided for the Regional Self-Government of the Southern Sudan and on the status of Abyei Area, See chapter II, Art.3.iii of the 1972 Addis Ababa Agreement.

⁷⁶ Ibid.

⁷⁷ David H. Shinn. “The Addis Ababa Agreement: was it destined to fail and are there lessons for the Current Sudan Peace Process.” *Annales D’Ethiopies*. (2004) ,P.225.

⁷⁸ Salman M.A Salman, 2013, (n-4) p.28

⁷⁹ US Energy Information Administration, Country Analysis Brief : Sudan and South Sudan, September 3, 2014, p.6

It was only after the passing over two decades that the second civil war ended following the signing of the CPA between the GoS and SPLM/A in 2005.⁸⁰ Abyei Area one of the centers of conflict between 1983-2005 which caused more than two million deaths, major economic destruction and prolong human suffering mainly for southern Sudan.⁸¹

2.3.7 The Comprehensive Peace Agreement and Abyei Protocol

The Comprehensive Peace Agreement (CPA) consisted of a number of separate agreements and protocols that were concluded after protracted negotiation between 2001 and 2005.⁸² Thus, the CPA and related agreements were created a better environment by deescalating the civil war between the parties. One of the central issues, addressed by the CPA was the status of Abyei Area situated along the border between southern and northern Sudan.⁸³ The GoS and SPLM/A, could not reach agreement in defining the territorial boundaries of the Abyei Area. Therefore, they had to agree to continue negotiation on the territorial boundaries of Abyei Area to be more specific, the two parties agreed to resolve the pursuing the process set out in the separate Abyei Protocol which was to be annexed as an instrument defining the process to be followed in resolving the dispute over the Abyei Area subsequently.⁸⁴

Moreover, the Abyei Protocol made it clear that the Parties designed two stages solutions to resolve the boundaries over the disputed Abyei Area. The first stage was defining and demarcating the disputed boundaries of the Abyei Area.⁸⁵ The second stage was determining the final status of Abyei Area by a referendum of the residents of the Abyei Area that supposed to have been taken in 2011 along the South Sudan referendum irrespective of the result of the

⁸⁰The Comprehensive Peace Agreement between the Government of the Republic of Sudan and the Sudan People's Liberation Movement/ Sudan People's Liberation Army, January 2005 <<http://www.aec-sudan.org/docs/cpa/cpa-en.pdf>> (accessed April 11,2015)

⁸¹ Abyei Arbitration Award,2009.,¶.109

⁸²The Comprehensive Peace Agreement between the Government of the Republic of Sudan and the Sudan People's Liberation Movement/Sudan's People Liberation Army, 9 January 2005; the parties signed a series of six agreements: The Protocol of Machakos (Machakos Protocol), 20 July 2002; The Protocol on Security Arrangements, 25 September 2003; The Protocol on Wealth-Sharing, 7 January 2004; The Protocol on Power-Sharing, 26 May 2004; The Protocol on the Resolution of Conflict in Southern Kordofan/Nuba Mountains and the Blue Nile States, 26 May 2004; and concerning Abyei The Agreement between the Government of Sudan (GoS) and the Sudan People's Liberation Movement/Army (SPLM/A) on the Resolution of the Abyei Conflict, 26 May 2004 (in forth referred to as Abyei Protocol); Understanding of Abyei Boundaries Commission, 17 December 2004 (in forth referred to as Abyei Appendix), for an overview see <http://unmis.unmissions.org/Default.aspx?tabid=515> or <http://peacemaker.unlb.org/> (last visited April 11,2015)

⁸³ Memorial of SPLM/A , 18 DECEMBER 2008

⁸⁴ Ibid.

⁸⁵ Abyei Protocol, ¶.5.1

latter's referendum.⁸⁶ Thus, the Abyei Boundaries Commission (ABC) was established in accordance with the terms and condition of the Abyei Protocol⁸⁷ and Abyei Annex to delimit and demarcate the Abyei Area.⁸⁸ Moreover, the Abyei Annex made it clear that ABC to be composed of five experts (from United Kingdom, United States of America, IGAD), and representative of the Party, Messiriya, Ngok Dinka respectively, as well that of representative of Abyei Administration.⁸⁹

2.3.8 Abyei Boundary Commission

The Abyei Protocol required for a referendum to be held simultaneously along with the referendum on the future status of southern Sudan. Pursuant to paragraph 1.3 of the Abyei Protocol, the referendum on the Abyei Area *“will present the residents of Abyei with the following choice, irrespective of the results of the southern Sudan referendum; the Abyei retain its special administrative status in the northern Sudan.”*⁹⁰ Moreover, the Abyei Protocol, under Paragraph 5.1 required the establishment of the *“Abyei Boundaries Commission....to define and demarcate the area if the nine Ngok Dinka chiefdoms transferred to Kordofan”*.⁹¹

The Abyei Appendix provided an additional procedure on the methodology to be followed by the ABC in discharging its mandate. It further states that ABC required to hear the representative of the people of the Abyei Area, their neighbor and submission of the two Parties' and to “consult the British Achieves and other relevant sources wherever they may be available.”⁹² These tasks were intended to serves as a means or to arriving at a decision based on scientific and reliable data.⁹³

Furthermore, the Abyei Appendix provides that the ABC Experts could determine the rules of procedure of the ABC and “the report of the experts, arrived at as prescribed” under those

⁸⁶ Abyei Protocol, ¶1.1.3

⁸⁷ Abyei Protocol, ¶1.5.1

⁸⁸ Abyei Annex: Understanding on Abyei Boundaries Commission, adopted by the GoS and SPLM/A on 17th December ,2004,(herein after referred to as Abyei Appendix), ¶1.2

⁸⁹ Ibid.

⁹⁰ Abyei Appendix: Understanding on Abyei Boundaries Commission, adopted by the GoS and SPLM/A on 17th December ,2004, ¶1.2, *one representatives from each party; the parties shall ask the US,UK and the IGAD to nominate five impartial experts knowledge in history , geography and any other expertis. Each Party shall nominated two from the administration of Abyei Area; the GoS shall nominate two from the Messiriya and the SPLM/A shall nominate two from the neighboring Dinka tribes of te south of the Abyei Area.*

⁹¹ Abyei Protocol, ¶1.5

⁹² Abyei Appendix, ¶1.4

⁹³ Ibid.

procedures “shall be final and binding on the Parties.”⁹⁴ Accordingly, the ABC Experts drew up terms of reference and rules of procedure for the ABC which were subsequently presented to and accepted by the Parties.⁹⁵

The AbC Experts began their work in April 2005 and submitted their final Report to the Presidency of GoS in July 2005.⁹⁶ It should be noted, however, that the ABC Experts’ made it clear that they found no conclusive evidence or Map which shows the Abyei Area as it existed in 1905. The Report read as follows:

*“no map exists showing the area inhabited by the Ngok-Dinka in 1905. Nor is there sufficient documentation produced in the year by the Anglo-Egyptian Condominium government authorities that adequately spell out the administrative situation that existed in that area at that time.”*⁹⁷

However, having considered, assessed and weighed the available evidences before them, the ABC Experts, rendered their decision as to the delimitation of the Abyei Area. The Report of the ABC Experts’ included, among other, the following decision, which read, in part:

- 1) *The Ngok have a legitimate dominant claim to the territory from the Kordofan-Bahr el-Ghazal boundary north to latitude 10°10’...;*
- 2) *North of Latitude 10°10’N through the Goz up to and including Tebeldia(north of latitude 10°35’N) the Ngok and Misseriya share isolated occupation and use rights, dating from at least the Condominium period. This gave rise to shared secondary rights for the both the Ngok and Misseriya:*
- 3) *The two parties lay equal claim to the shared areas and accordingly it is reasonable and equitable to divided the GoZ between them and locate the northern boundary in a straight line at approximately latitude 10°22’30’’N.*
- 4) *The Ngok and Misseriya shall retain their established secondary rights to the use of land north and south of this boundary.*⁹⁸

In accordance with the quoted decision of ABC Experts, the total area of Abyei comprises 10,460km square⁹⁹ and it extended to include critical oil fields, such as, Bamboo and Heglig with in the Abyei Area.¹⁰⁰

⁹⁴ Abyei Appendix, ¶¶.4 and 5

⁹⁵ Rules of Procedure for the Abyei Boundaries Commission, April 11, 2005 , Nairobi ,Kenya; See also ABC Experts’ Report, p.18.

⁹⁶ ABC Experts’ Report, Part 1, p.5

⁹⁷ ABC Experts’ Report Part I, p 4

⁹⁸ ABC Experts’ Report, PP.20-21; See also Appendix-3 Abyei Boundaries Commission Map.

2.4 Disagreement on ABC Experts' Report

The ABC Experts completed their deliberations and submitted the Report to the Presidency, on July 14, 2005.¹⁰¹ The GoS declined to accept the Report on the ground that the Experts had exceeded the scope of their mandate.¹⁰² But it is assumed that one of the reasons for the dissatisfaction of GoS was, the fact that the Report included Bamboo and Heglig oilfields in the Abyei Area.¹⁰³ On the other hand, SPLM/A had expressed satisfaction by the decision of ABC Experts' and declared commitment to accept it as final and binding, and further argued that ABC Experts did not exceed their mandate.¹⁰⁴ The rejection of the ABC Experts' Report by the GoS caused another obstacle which the Parties subsequently agreed to adopt the Abyei Road Map¹⁰⁵ to resolve the disagreement over the ABC Report.

2.5 Abyei Road Map

The Parties to the dispute over the Abyei Area seemed to be shocked by the fighting and devastation of Abyei Town caused by their failure to reach a workable agreement to return to the negotiating table to resolve the Abyei dispute. Accordingly, the GoS and SPLM/A started negotiations beginning from May 2006, to overcome the deadlock over the ABC Report and tabled mainly four options to be considered:

*“a) reach a political agreement; b) call on the ABC experts to defend their recommendations; c) refer the matter to the Constitutional Court; and d) or seek arbitration by a third party”.*¹⁰⁶

Fortunately, the Sudanese President, Omar Al-Bashir, and the current President of the South Sudan, Salva Kiir had agreed in June 8, 2008 to accept The Road Map for Return of IDPs and

⁹⁹ See Appendix-2 Comparative Map of the Abyei Area.

¹⁰⁰ Douglas H Johnson, Why Abyei Matters: The Breaking Point of Sudan's Comprehensive Peace Agreement?, 107 African Affairs 426 (2008), p.17

¹⁰¹ ABC Experts' Report, Part 1, p.5

¹⁰² BROOKS DALY (2010). *The Abyei Arbitration: Procedural Aspects of an Intra-state Border Arbitration*. Leiden Journal of International Law, 23, pp 801-823 doi:10.1017/S0922156510000373, p.802

¹⁰³ Douglas H Johnson, Why Abyei Matters: The Breaking Point of Sudan's Comprehensive Peace Agreement?, 107 African Affairs 426 (2008), p.17

¹⁰⁴ Ibid. p.14

¹⁰⁵ On 8 June 2008, President Al-Bashir issued Republican Decree 146 adopting an agreement between the NCP and the SPLM entitled 'Roadmap for Return of IDPs and Implementation of Abyei Protocol'. The four main points outlined were: security arrangements, return of IDPs, an interim administration and final arbitration. (06/08), See ¶ 145 of The CPA Monitor-Monthly report on the Implementation of the CPA, UNMIS, March 2009, Vol.5, Issue 40, available at <https://unmis.unmissions.org/Portals/UNMIS/CPA%20Monitor/cpa/%20Monitor%20August%202009.pdf>. See also The Road Map for Return of IDPs and Implementation of Abyei Protocol Khartoum, 8th June 2008

¹⁰⁶ The CPA Monitor-Monthly report on the Implementation of the CPA, UNMIS, March 2009, Vol.5, Issue 40, ¶ 141, available at <https://unmis.unmissions.org/Portals/UNMIS/CPA%20Monitor/cpa/%20Monitor%20August%202009.pdf>.

Implementation of Abyei Protocol, which provided, among other things, for the referral of the Abyei boundary dispute to international arbitration.¹⁰⁷ Based on that high level agreement, Ali Osman Mohamed Taha, Vice-President of the GoS and Riek Machar, the former Vice President of the Government of Southern Sudan, signed the Abyei Arbitration Agreement in July 2008.¹⁰⁸

¹⁰⁷The Road Map for Return of IDPs and Implementation of Abyei Protocol, 8 June 2008, Art. 4.

¹⁰⁸ United Nations Missions in Sudan, The CPA Monitor-Monthly report on the Implementation of the CPA., Vol. 5, Issue 42, May 2009, ¶.10

CHAPTER THREE

Examination of Abyei Arbitration Award

3.1 Introduction

The previous chapters shade some lights on the historical background of the dispute over Abyei Area and the origin and genesis of Abyei Arbitration process covering its different aspects. Among other things, the Chapter will explore and critically examine the scope of mandate, the deliberations of the Tribunal and related issues that attracted contentious subsequent to that.

3.2 The Mandate of the Tribunal

Issues to be determined by and the mandate of the Tribunal are stipulated under Article 2 of the Abyei Arbitration Agreement. The core issue that the Tribunal was required to address whether or not the ABC exceeded its mandate to define and demarcate the areas of the Nine Ngok-Dinka chiefdoms when transferred to Kordofan in 1905.¹⁰⁹ If the Tribunal could find that there was no excess of mandate, the Parties' agreement requires the Tribunal to "full and immediate implementation of the ABC report."¹¹⁰ If an excess is found, it will proceed to define and delimit the boundaries of the Abyei area based on the submission of the two parties during the arbitration process.¹¹¹

The Tribunal determined the scope of its mandate as "two distinct and contingent stages, comprising two distinct juridical tasks": to "determine whether the ABC Experts had exceeded their mandate" (Art. 2(a)), and, if so, to delimit the Abyei area on *de novo* reviews of the evidence (Art. 2(c)).¹¹² However, the Parties had controversy on the interpretation of the mandate and scope of review enshrined under Article 2 of the Abyei Arbitration. Therefore, the following sections discuss the main argument of the Parties on the scope of mandate and review the ABC Experts' Report.

¹⁰⁹See Article 2 of Abyei Arbitration Agreement(2008)

¹¹⁰*Ibid*

¹¹¹*Ibid*

¹¹²Abyei Arbitration Award,,(n-6),¶¶ 397-398

3.3 Summary of Arguments of the Parties

Under this section, the arguments of each party will be briefly summarized with a view to understand the basis of the decision of the Tribunal on the issue in questions. We have selected two specific area summarized under the following subsections.

3.3.1 Scope of Review and the alleged Excess of Mandate

In the proceeding before the Tribunal the GoS argued for the broad interpretation of the phrase “excess of mandate” that would include both procedural and substantive excess,¹¹³ whereas the SPLM/A argued for a narrow interpretation of excess of mandate that would include decision taken *ultra petita*.¹¹⁴

The GoS claimed that the ABC Experts had exceeded their mandate both (i) procedurally (by way of serious violations of the Terms of Reference agreed upon by the Parties and of the ABC Rules of Procedure adopted by the Experts themselves and approved by the Parties) and (ii) substantively (by deciding both *ultra petita*, i.e. deciding issues that had not been raised by the Parties; and *infra petita*, i.e. not deciding issues that had been raised by the Parties.¹¹⁵ The SPLM/A on the other hand argued that the ABC Experts had not exceeded their mandate in any way, or at least not in a manner that was manifest flagrant and glaring so as to justify the ABC’s Experts’ decision being set aside.¹¹⁶ The SPLM/A further argued that an “excess of mandate is a specific and identifiable types of defect.”¹¹⁷

Moreover, the Tribunal elaborated the limited review of its mandate under Article 2(a) of the Arbitration Agreement by explaining that the reviewing body’s undertaking cannot take the form of an appeal with respect to the *correctness* of the findings of the original decision-maker (ABC Expert) when the reviewing body’s (the Tribunal) methodology differs from that of the original-decision maker; the methodology of science vis-à-vis the methodology of law

¹¹³ Abyei Arbitration Award, (n-6), ¶139; See also GoS Memorial 18, December 2008, ¶¶ 229 et seq. The GoS alleges that the “ABC Experts exceeded their substantive mandate on at least the following grounds: (i) Refusal to decide the question asked; (ii) Answering a different question than that asked; (iii) Ignoring the stipulated date of 1905; (iv) Allocating grazing rights within and beyond the “Abyei Area.”

¹¹⁴ Abyei Arbitration Award, (n-6), ¶140

¹¹⁵ COUNTER-MEMORIAL OF THE GOVERNMENT OF SUDAN, 13 FEBRUARY 2009 (GOS Counter-Memorial), ¶ 134 et seq.

¹¹⁶ SPLM/A Counter Memorial, ¶ 45 et seq.

¹¹⁷ SPLM/A Counter Memorial, ¶165.

respectively.¹¹⁸ The Tribunal decided that the scope of its review was limited and excluded questions of factual or legal correctness, along with any question of procedural violations on the part of the ABC Expert. The latter exclusion arose because the Tribunal found that the Terms of Reference and Rules of Procedure of the ABC were not “intrinsic component of the mandate”¹¹⁹ and as the Tribunal was only given power to review excess of mandate, review of procedural violations was therefore not permitted.¹²⁰

3.3.2 Possible Effects of the Alleged Excess of Mandate (Full or Partial Annulment)

A second important issue relating to the scope of Article 2(a) of Arbitration Agreement is whether it allows for partial nullity of the ABC Experts’ Report. Regarding the extent of the annulment of the ABC Experts’ Report the Parties had conflicting views. The GoS argued that any findings of excess of mandate should cause the Tribunal to set aside the entire Report of and to delimit an new boundaries under Article 2(c) of the Arbitration Agreement, whereas the SPLM/A argued that the ABC Experts’ decision was severable and that those parts decided within the mandate of the ABC should remain intact.¹²¹

The Tribunal considered the possibility of endorsing part of the ABC Experts decision and excluding decision which was made in excess of its mandate.¹²² Accordingly, the Tribunal decided in favor of partial nullifying of the ABC report while upholding parts of the report found to have been made within its mandate consistent with the general principles law and practice.¹²³ Furthermore, the Tribunal further concluded to follow partial annulment approach, based on the purpose and object of the Abyei Arbitration Agreement.¹²⁴

¹¹⁸ Abyei Arbitration Award, (n-6), ¶¶ 406-409

¹¹⁹ Abyei Arbitration Award, (n-6), ¶ 440

¹²⁰ Abyei Arbitration Award, (n-6), ¶ 439-40

¹²¹ Abyei Arbitration Award, (n-6), ¶ 413 states that “In its Memorial, the GoS states that “if the ABC Experts exceeded their mandate in any respect,” the Report must be “set aside entirely and the task of determining the boundaries ... becomes one for the Tribunal.” In contrast, the SPLM/A would have the Tribunal annul those parts of the award which are in excess of mandate but “to leave the remainder of the [ABC Experts’] Report intact.” It submits that the nullified parts could be “disregarded as void ab initio and the remainder of the [ABC Experts’ Report] treated as valid and within the ABC Experts’ mandate”

¹²² Abyei Arbitration Award, (n- 13), ¶ 424

¹²³ Ibid.

¹²⁴ Abyei Arbitration Award (n-6), ¶.415.

3.4 Summary of the Tribunal's Deliberations

Under this section, we will look into the substances of the deliberation of the Tribunal. To be more specific, we will see the deliberation on the scope of mandate of the of the Experts' interpretation of their own mandate and subsequent implementation by the Experts of what they considered to be their scope of responsibility.

3.4.1 Scope of Standards of Review on ABC Experts Mandate

The Tribunal began its approach to the question of whether the ABC Experts had exceeded their mandate by differentiating between interpretation of their mandate and subsequent implementation of their mandate. To this end, the Tribunal established 'reasonableness' as appropriate standard of review for both 'interpretation' and 'implementation' of ABC Experts mandate.¹²⁵

3.4.1.1 Review of Experts' Interpretation of their Mandate

Having adopted 'reasonableness' as the standard of review of the ABC Experts' interpretation of their mandate, the Tribunal focused on the interpretation of the 'Formula' used in the Abyei, protocol, the ABC's terms of Reference, and the Arbitration of Agreement to define the area that was to be delimited; 'the area of the nine Ngok-Dinka chiefdoms transferred to Kordofan in 1905'

The Parties took opposing views on the interpretation of the formula, the GoS argued in favor of a 'territorial interpretation' specific area, while the SPLM/A argued for the 'tribal interpretation' according to which the transfer referred rather to the Ngok-Dinka as whole.¹²⁶ The Tribunal stated that on a plain reading of the text of the 'formula' each of proposed interpretations of the term 'area'(supporting the territorial interpretation) and the term 'nine...Chiefdoms' (leaning towards a 'tribal' interpretation adopted by the ABC Experts).¹²⁷

In this regard, the Tribunal further went on to conclude that the ABC Experts would not be unreasonable if it had chosen to follow either tribal or territorial interpretation.¹²⁸ Furthermore, the Tribunal made it clear that the ABC Experts was not unreasonable interpreting the Formula

¹²⁵ Abyei Arbitration Award,(n-6) ¶¶, 486 et seq.

¹²⁶ Abyei Arbitration Award, (n -6), ¶¶ 232 et seq; see also ¶¶ 546-57

¹²⁷ Abyei Arbitration Award, (n -6), ¶¶ 575 et seq

¹²⁸ Ibid.

from the context of tribal interpretation.¹²⁹ particular because of the reasonableness of tribal interpretation was further supported by the consideration of, inter alia, the object and purpose of the 1905 transfer and of the Parties when concluding the Abyei Protocol, Abyei Appendix, and other instrument relevant to the delimitation Abyei Area when interpreted as per the provision of the VCLT.¹³⁰ Moreover, the Tribunal substantiated the tribal interpretation by interpreting the very objective of CPA to empower the Ngok-Dinka as whole to choose their status in the referendum either to join South Sudan or remain with North Sudan.¹³¹

3.4.1.2 Review of ABC Experts' Implementation of their Mandate

In reviewing the reasonableness of the implementation of the ABC Experts of their mandate, the Tribunal sought to determine whether each binding decision made by the ABC Experts in their Report was supported by sufficient reasons, thereby allowing the reader to appreciate how they had reached their binding conclusion.¹³² Accordingly, the Tribunal stated that the contradictory reasoning or a failure to state any reasons at all by the ABC Experts would constitute an excess of mandate.¹³³ The Tribunal went on to assert that in absence of a standing compulsory jurisdiction for appeal, it is an informal control mechanism requiring the decision making body to substantiate its decision based on reasons.¹³⁴ Moreover, the Tribunal elaborated that the ABC was created in an extraordinary political process¹³⁵ and hence whatever conclusions would have a major political impact on the country and especially on the life of Misseriya and Ngok-Dinka in and around the Abyei Area, such circumstances require reasonableness of a decision.¹³⁶

One of the limited criteria of permissible review for the Tribunal is whether each of the binding decisions by the ABC Experts was supported by sufficient reasoning in such a manner that the

¹²⁹ Abyei Arbitration Award, (n-6), ¶ 656.

¹³⁰ Based on Article 31(3)(b) and 31(3)(c) of 1969 Vienna Convention on the Law of Treaty, Done at Vienna on 23 May 1969. Entered into force on 27 January 1980. United Nations, Treaty Series, vol. 1155, p. 331

¹³¹ See Abyei Arbitration Award, (n-6) ¶ 656 which state that "...Indeed, the 2008 Agreements lend further support to the Tribunal's conclusion that it was not unreasonable for the ABC Experts to adopt a predominantly tribal interpretation of the Formula. As stated above, an approach that primarily focuses on the transfer of all the nine NgokDinka chiefdoms as opposed to a specific territory can reasonably be interpreted as furthering a key objective of the CPA, which is to submit, through a referendum, to the whole NgokDinka community the choice of either retaining the Abyei Area's special administrative status in the north or joining the South in the event that the South were to secede. The purpose of the 2008 Agreements thus further supports the reasonableness of incorporating in the Abyei Area the entirety of the community that is expressly mentioned in the definition of the Abyei Area as found in Section 1.1.2 of the Abyei Protocol and specifically referred to in Section 8 of the Abyei Protocol (which describes the process of the Abyei Referendum)."

¹³² Abyei Arbitration Award, (n-6), ¶ 673

¹³³ Abyei Arbitration Award, (n-6), ¶ 525

¹³⁴ Abyei Arbitration Award, (n-6), ¶ 524

¹³⁵ Abyei Arbitration Award, (n-6), ¶ 520

¹³⁶ Abyei Arbitration Award, (n-6), ¶ 521

reader of the ABC Experts' Report to understand the key elements of the ABC Experts' justification.¹³⁷ Then the Tribunal turned to examining whether the ABC Experts, when implementing their mandate on the basis of a tribal interpretation, stated reasons in support of their definition of the northern, southern, western and eastern boundaries of the Abyei Area and remained within their mandate.¹³⁸ In general, in reviewing the implementation of the ABC Experts' mandate, the Tribunal set the following standard:

*“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 reason provided are obviously contradictory or frivolous.”*¹³⁹

(a) The Southern Boundary of the Abyei Area

The only decision of the ABC Expert that survived the Tribunal's review was the one referring to the (undisputed) southern boundary, which corresponded to the January 1, 1956 *uti possidities* line dividing the Northern from South Sudan during the colonial period. The southern boundary of Abyei Area was not disputed boundaries between the parties.¹⁴⁰ Moreover, the parties not submitted the Southern delimitation of Abyei Area by ABC Experts as an excess of mandate. Therefore, the Tribunal upholds the southern limits of Abyei Area were delimited within the mandate of the ABC Experts.¹⁴¹

(b) The Northern Boundary of Abyei Area

In respect to delimitation of the northern border, in the Tribunals' view the ABC Experts' reasoning was “comprehensible and complete” only with respect to the extent of Ngok-Dinka settlement in 1905.¹⁴² The justifications of the ABC Experts, in this regard, were that the patterns of permanent settlement of the Ngok Dinka had permanent settlement and dominant use of the land while Misseriya enjoyed established secondary right up to the Northern part of the Ragaba ez Zarga, or 10°10'N.¹⁴³

¹³⁷ Abyei Arbitration Award, (n-6), ¶. 673

¹³⁸ Abyei Arbitration Award, (n-6), ¶. 673

¹³⁹ Abyei Arbitration Award, (n-6), ¶. 535

¹⁴⁰ Abyei Arbitration Award, (n-6), ¶. 698

¹⁴¹ Abyei Arbitration Award, (n-6), ¶¶ 698 *et seq*

¹⁴² Abyei Arbitration Award, (n-6), ¶. 680

¹⁴³ Abyei Arbitration Award, (n-6), ¶¶. 678 *et seq.*

However, the Tribunal rejected the shared area determined by the ABC Experts between 10°10'N and 10°22'30"N or Goz area wherein the Ngok Dinka and Misseriya had shared right.¹⁴⁴ The Tribunal concluded that the ABC Experts declined to provide conclusively evidence as to why the Northern area extended up to the latitude 10°22'30"N nor the ABC proved the permanent settlement of Ngok Dinka extends beyond the north limit up to latitude 10°10'N.¹⁴⁵ Subsequently, the Tribunal uphold the North limit of Abyei Area upto latitude 10°10'N and rejected the extension of the north limit up to 10°22'30"N on the ground that it was not sufficiently reasoned by the ABC Expert.¹⁴⁶

(c) The Eastern and Western Boundaries of Abyei Area

Regarding the Eastern and Western boundaries of the Abyei Area, the Tribunal concluded that the ABC Experts exceeded its mandate because the Experts declined to state sufficient reasons for the delimitation of these boundaries. The reason given by the ABC Experts to detriment the Eastern boundary of Abyei Area at the longitude 29°32'E is found to be grounded on insufficient pre-season due to the Experts' reason was simple based on a summary of the SMLM/A's position and inconclusive evidence.¹⁴⁷

Regarding determination of the western boundary, the Tribunal found that the ABC Experts' report is insufficiently reasoned without sufficient analysis and evidence by stating that the Expert determined the Western boundary merely based on the provincial boundaries as they were

¹⁴⁴ Abyei Area Arbitration, (n-6), ¶¶.683 et seq, see also Appendix 3 "Abyei Area Map-Delimited by Abyei Boundaries Commission.

¹⁴⁵ Abyei Arbitration Award (n-6), ¶¶.693.

¹⁴⁶ Abyei Arbitration Award, (n-6), ¶¶.696 and 697

¹⁴⁷ Abyei Arbitration Award, (n-6) ¶ 704 which states that "The ABC Experts attempted to explain the eastern boundary line by indicating that it was reasonable to adopt longitude 29°32'E since neither "the Ngok nor the SPLM/A had presented claims to the territory east of longitude 29°32'15."1179 This terse statement does not constitute a sufficiently reasoned justification of the eastern boundary; rather, it is a mere summary of one of the Parties' positions (the SPLM/A's). The Report remains silent on the GoS's arguments concerning this point, and the ABC Experts do not indicate any independent conclusions that they would have drawn as a result of their analysis"; see also ¶ 705 which states that "The only other possible justification of the eastern boundary that the Tribunal can discern from the Report stems from the ABC Experts' analysis of a sketch map produced by the SPLM/A. The ABC Experts briefly refer to the sketch map produced by the SPLM/A during their final presentation to the ABC before proceeding to state that this evidence is "inconclusive" (given the absence of a copy of a 1974 presidential decree). However, although the ABC Experts themselves do not ascribe much probative value to the sketch map, they nevertheless seem to rely on this very map to determine that the villages presented by the SPLM/A as Ngok villages were mostly "contained within the area of latitude 10°35'N and longitude 29°32'15"E..."

at the independence of Sudan on 1 January 1956.¹⁴⁸ Taking into the given responsibility of the ABC Experts to delimit Abyei Area, the Tribunal concluded that the requirement to provide sufficient reasoning with respect to the delimitation of its eastern and western components was an integral part of that responsibility.¹⁴⁹ In reviewing the western and eastern boundary, the Tribunal went on to recall that the “target audience” of the ABC Experts’ Report were the multiple stakeholders of the Sudanese peace process, ranging from the Presidency to the local residents of Abyei Area, failure to state sufficient reasons does not allow the reader to understand the basis on which the ABC Experts made such decision.¹⁵⁰

3.4.2 Delimitation of the Abyei Boundaries

The Tribunal noted that while its mandate to review the ABC Experts’ decision was limited, its mandate to delimit the Abyei Area involved a *de novo* review of all relevant evidence submitted by the Parties.¹⁵¹ Accordingly, the Tribunal considered that its power to delimit the Abyei Area *de novo under Article 2(c)* of the Arbitration Agreement extended only to those parts of the ABC Experts that were tainted by an excess of mandate namely, the partially the Northern, and entirely the Western and the Eastern segments of Abyei Area. The Tribunal accepted the ‘reasonableness’ of the ABC Experts’ predominantly tribal interpretation of the Formula, proceeded to the delimitation phase of the mandate without departing from the same predominately tribal approach.¹⁵²

3.4.2.1 Delimitation of the Northern Boundary

With respect to the Northern boundary line, the Tribunal argued that it had fulfilled its mandate by invalidating the line drawn by the ABC Experts to divide the Goz area where the Ngok-Dinka and the Misseriya enjoyed shared rights while upholding the ABC Experts further south which marked the Northern edge of the area where the Ngok-Dinka enjoyed the dominate rights up to latitude 10°10’N.¹⁵³

¹⁴⁸ Abyei Arbitration Award, (n-6), ¶, 706

¹⁴⁹ Abyei Arbitration Award, (n-6), ¶.708

¹⁵⁰ Abyei Arbitration Award, (n -6), ¶, 708

¹⁵¹ Abyei Arbitration Award, (n -6), ¶,398.

¹⁵² Abyei Arbitration Award, (n-6), ¶ 710.

¹⁵³ Abyei Arbitration Award, (n-6), ¶ 711 which states that “ While the Tribunal finds itself bound to sustain the ABC Experts’ interpretation of the Formula, it did find an excess of mandate on a different ground, the Experts having failed to adequately state reasons in support of some of their findings in the implementation of their mandate. By invalidating the 10°35’N and 10°22’30”N lines while upholding the 10°10’N line, the Tribunal has fulfilled its mandate with respect to the northern limit of the Abyei Area and will not address the issue any further”.

3.4.2.2 Delimitation of Western and Eastern Boundaries

a) Admissibility and Analysis of Evidence

As to the Eastern and Western lines, the Tribunal rendered its decision on the basis of what it considered to be ‘the best available evidence’ within the predominantly tribal interpretation of the mandate.¹⁵⁴ Keeping in mind the critical date of 1905, but also the relative dearth of contemporaneous evidence the Tribunal relied on the concept of the ‘continuity’ of Ngok-Dinka settlements, which allowed the Tribunal to resort to non-contemporaneous evidence.¹⁵⁵ This evidence was taken not only as reflecting the position in the middle of the twentieth century, but by and large to reflect a position that had remained unchanged since the critical date of 1905; and it served as the basis for the Tribunal’s determination of the eastern and western boundaries of Abyei Area.

Each party to the dispute alleged that the other had sought in some way to hinder their ability to produce evidence before the Arbitral Tribunal. In response to SPLM/A’s allegations of the denial of access to documents relied upon the part of the GoS, the Tribunal communicated a request to the Parties for the production of the relevant documents, and invited the SPLM/A to submit any requests for further documents.¹⁵⁶ The SPLM/A indeed submitted such a request for a number of documents, which the Tribunal requested GoS to provide.¹⁵⁷ However, the SPLM/A claimed to have been denied an access to Survey Department and the Sudan National Records office with a view to conducting independent research while such allegation was rejected by the GoS, who charged the SPLM/A with an attempt to embark on a “fishing expedition”.¹⁵⁸ The SPLM/A in turn, announced that the Tribunal to draw adverse inferences from GoS’s refusal to cooperate in discovery.¹⁵⁹

On the other the GoS complained of the intimidation of witnesses by the SPLM/A, who had allegedly threatened the ‘elimination’ of one Ngok-Dinka witness and harassed a number of others.¹⁶⁰ Further, both parties made submissions on the admissibility and relative weight of

¹⁵⁴ Abyei Arbitration Award, (n-6), ¶.714

¹⁵⁵ Abyei Arbitration Award, (n -6), ¶. 723 et seq

¹⁵⁶ Abyei Arbitration Award, (n-6), ¶.746

¹⁵⁷ Abyei Arbitration Award, (n-6), ¶.46

¹⁵⁸ Abyei Arbitration Award, (n-6), ¶. 52

¹⁵⁹ Abyei Arbitration Award, (n-6), ¶.57

¹⁶⁰ Abyei Arbitration Award, (n-6) ¶¶ 714 et seq.

evidence, particularly maps and other official documentary evidences and evidences based on oral tradition.¹⁶¹ Moreover, the SPLM/A contested on the admissibility of evidences emanating from the condominium officials on the ground that the purpose of those documents were not to collect information on the people but rather on the topography or the river system.¹⁶²

b) The Delimitation of Eastern and Western boundaries of Abyei Area.¹⁶³

Having considered the documentary, oral witnesses and anthropological evidences and adopting the ABC Experts' use of line of longitude in its delimitation of tribal boundaries, the Tribunal decided that the western boundary runs along the longitude 27°50'E from the latitude 10°10'N south until it intersects with the 1956 Kordofan-Darfur boundary and the eastern boundary of the Abyei Area runs along longitude 29° 00'E from latitude 10° 10'N south until it intersects with the Abyei Area's southern boundary.¹⁶⁴

3.4.2.3 The Tribunal's Decision with Respect to Traditional Right¹⁶⁵

The other aspects of the Tribunal's Award which would potentially has a positive implication for resolutions of other disputes over shared access to land across boundaries whether between the North and South Sudan or other African states. The Tribunal ruled that according to the general

¹⁶¹ See Abyei Arbitration Award(n-6), ¶¶, 372 et seq, 375, 381,383 ; see also Abyei Arbitration Award,¶ 717 wherein the Tribunal concluded that witness testimony would be a potential source of evidence although the GoS criticized the reliability of witness evidence.

¹⁶² Abyei Arbitration Award, (n -6),¶715.

¹⁶³ See Appendix-1 Abyei Area as delimited by the PCA Tribunal on Abyei Arbitration.

¹⁶⁴ Abyei Arbitration Award,;(n-6),¶. 745 *In view of the above, the Tribunal defines the western and eastern boundaries of the Abyei Area as indicated on the Tribunal's Award Map (Appendix 1).1247 The western boundary runs along longitude 27°50'E from latitude 10°10'N south until it intersects with the 1956 Kordofan-Darfur boundary. In order to take into account the fact that the Abyei Area's southern boundary, as confirmed by this Tribunal, is the prolongation of the 1956 Kordofan-Darfur boundary, the Abyei Area's western boundary then follows the latter until it meets the former. The eastern boundary of the Abyei Area runs along longitude 29°00'E, from latitude 10°10'N south until it intersects with the Abyei Area's southern boundary"*.

See also Abyei Arbitration Award,;(n-6), ¶746. "By delimiting the eastern and western boundaries of the Abyei Area in the foregoing manner, the Tribunal adopts the ABC Experts' use of lines of longitude in its delimitation of tribal boundaries, as the Tribunal finds that it was reasonable for the Experts to do so for both logical and practical reasons. In cases where a tribunal is required to delimit boundaries based on a meager evidentiary record, the "fewer the points (or points of reference) involved in its definition, the greater the court's 'degrees of freedom' (in the statistical sense)." And indeed, lines of longitude and latitude when delimiting boundaries have been used in appropriate circumstances by international courts and tribunals and are recognized in public international law.

See Also Abyei Arbitration Award,;(n-6),¶ 747 which states that "The same reasoning applies in this case, as it has proven impossible for the Tribunal to determine every relevant historical and geographical feature in the area, and then proceed to draw authoritative boundaries, from the sparse amount of decisive evidence and the temporal constraint of 1905. As there are few non-topographic circa-1905 features that survive intact today to aid in delimitation, the Tribunal deems it proper to delimit the eastern and western boundaries based on lines of longitude, as the ABC did.

¹⁶⁵ See Abyei Arbitration Award,(n-6)¶ 753, *the Tribunal stated in this connection that "the jurisprudence of international courts and tribunals as well as international treaty practice lend additional support to the principle that, in the absence of an explicit prohibition to the contrary, the transfer of sovereignty in the context of boundary delimitation should not be construed to extinguish traditional rights to the use of land"*

principles of international law , traditional rights are not extinguished by boundaries demarcations explicitly stating that’ the transfer of sovereignty, in the context of boundary demarcation should not be construed to extinguish traditional right.’¹⁶⁶ In its determination the Tribunal concluded that:

*“...it is an established principles of boundary adjudication that the transfer of territorial sovereignty resulting from the delimitation of a new international boundary does not, in the absence of an explicit intention to the contrary, extinguish traditional rights to the use of transferred territory.”*¹⁶⁷

Accordingly, the Tribunal ruled that with respect to the tradition right, grazing and other traditional rights, the ABC Experts did not exceed their mandate in ruling that “the Ngok and Misseriya shall retain their established secondary rights to the use of land north and south of this boundary.”¹⁶⁸ Furthermore, the Tribunal ruled that “the exercise of established traditional rights within or in the vicinity of the Abyei Area, particularly the right (guaranteed by Section 1.1.3 of the Abyei Protocol) of the Misseriya and other nomadic peoples to graze cattle and move across the Abyei Area (as defined in this Award) remains unaffected.”¹⁶⁹

Up on issuing the Award, the tribunal emphasized the conciliatory nature of the arbitration agreement and asked the Parties to accept its finding.¹⁷⁰ The Tribunal also urged the Parties to take the next step according to the arbitration agreement, which required the President al-Bashir to immediately execute the award.¹⁷¹

3.4.3 The Reaction of the Parties to the Tribunal Award

Under this section we will see the respective reactions of the Parties to the dispute. Notwithstanding Judge Al-Khasawneh’s objection to the Award, the both the government in Khartoum and the SPLM/A quickly announced that they would accept the ruling, and the European Union and United States urged its immediate and peaceful implementation.¹⁷² The

¹⁶⁶ Abyei Arbitration Award,,(n-6), ¶.750

¹⁶⁷ Abyei Arbitration Award,(n-6)¶.754

¹⁶⁸ Abyei Arbitration Award,(n-6), ¶ 131.

¹⁶⁹ Abyei Arbitration Award,(n-6),¶. 770

¹⁷⁰ Abyei Arbitration Award,(n-6), ¶ 767

¹⁷¹ Abyei Arbitration Award ,(n-6), ¶ 769

¹⁷² Sharon Otterman, Ruling Redraws Disputed Zone in Sudan in Effort to Keep North and South at Peace, N.Y. TIMES, July 23, 2009, at A6; Stephanie McCrummen, Ruling Signals Compromise in Border Dispute in Sudan, WASH. POST, July 23, 2009, at A12, available at <http://www.washingtonpost.com/wp-dyn/content/article/2009/07/22/AR2009072202063.html>; Press Release,

decision of the Tribunal reduced the Abyei Area from 18,559 square Kilometers, as defined by ABC Experts, to 10, 460 Kilometers.¹⁷³ The decision of the Tribunal was not only reduced the Abyei Area, it also excluded the major oil fields, including Heglig and Bamboo from Abyei Area and placed under the northern Sudan.¹⁷⁴ Although, the Tribunal Award considerably reduced the Abyei Area and placed the two oil fields from the disputed area, the SPLM/A was not opted for rejection of the Award, rather accepted and pledged to implement the decision of the Tribunal's Award.

Following the Tribunal Award, the SPLM/A representative, Dr Riak Michar, stated 'I think this is going to consolidate peace in Sudan'¹⁷⁵ [and it] is a victory for the Sudanese people and a victory for peace'.¹⁷⁶ Similarly, the GoS representative, Ambassador Diridiery asserted '[w]e welcome the fact that the oil fields are now excluded from the Abyei area, particularly the Heglig oil field.'¹⁷⁷

UNMIS reported that the SPLM and NCP publicly reaffirmed their commitment to accept the Tribunal Award as final and binding.¹⁷⁸ To this end, the NCP and SPLM announced plans to complete demarcation of the boundary on the ground by September 2009.¹⁷⁹

Furthermore, in authoritative way, five months after the Tribunal was rendered the Award, the National Assembly of the Sudan passed Abyei Referendum Act in December 31, 2009 which confirmed the Abyei Area as *"the geographical area provided for in the republican decree 18 of 2009 in accordance with the Hague Permanent Court of Arbitration ruling"*

In view of the above discussions, one can conclude that the Parties to Abyei Arbitration are accepted the decision of the Tribunal or at least t both Parties and either one of them not rejected the Award of the Tribunal. Therefore, why did the Abyei Arbitration Award failed to be implemtned?

U.S. Dep't of State, U.S. - European Union Joint Declaration on the Boundaries of the Abyei Area, Press Release No. 2009/761 (July 22, 2009), at <http://www.state.gov/r/pa/prs/ps/2009/july/126300.htm>.

¹⁷³ Salman.M. A. Salman, The Abyei Territorial Dispute between the North and South Sudan: Why has its resolution prove difficult?, In Land and post-conflict peace building, eds., J.Unruh and R.C. William. Londaon : Earthscan., 2013,p.42

¹⁷⁴ Ibid.

¹⁷⁵ Mike Corder, 'Arbitration Panel Gives Oil Field to Sudan Govt', 22 July 2009. Available at http://www.eagletribune.com/arbitration-panel-gives-oil-field-to-sudan-govt/article_1d82fb1a-c6f8-57a9-88b5-ddc4e641227a.html

¹⁷⁶ Ibid.

¹⁷⁷ BBC, 'Sudan Welcomes Oil Border Ruling', BBC News (22 July 2009). Available <http://news.bbc.co.uk/2/hi/africa/8162690.stm>, accessed June 25, 2015.

¹⁷⁸ UNMIS, The PCA Monitoring: Monthly Report on the Implementation of CPA, Vol. 5, Issue 49, December 2009 <https://unmis.unmissions.org/Portals/UNMIS/CPA%20Monitor/CPA%20Monitor%20December%202009.pdf>, accessed September 3, 2015.

¹⁷⁹ Ibid.

3.4.4 Implementation of Abyei Arbitration Award

This section will attempt to consider at which stage the demarcation process being interrupted. Demarcation of the Abyei Area was supposed to be the next step following the decision of the PCA Tribunal. To this end, the Abyei Arbitration Agreement provides for the “final Arbitration Award” shall be ensured “immediate execution’ by the presidency of the Republic of Sudan.¹⁸⁰ Accordingly, the Parties endorsed the Award and established the Abyei Border Demarcation Committee (ABDC) with a view to enforce the Tribunal decision on the ground.¹⁸¹ In order to facilitate demarcation process, United Nations in its part, assigned the UNMIS to support the parties with logistical support.¹⁸²

The ABDC started physical demarcation of the border from southern parts of Abyei Area, between the Abyei and Unity State.¹⁸³ The ABDC erected only four out of the planned 26 beacons as demarcation on the southern parts of Abyei Area.¹⁸⁴ However, the demarcation process which was supposed to be finalized in 2009 was blocked by the SAF 31st brigade and local Missariya.¹⁸⁵ In April 2010, the Misseriya publically declared to take any action against anyone attempting to demarcate the border as per the Abyei Arbitration Award.¹⁸⁶ They also communicated AUHIP their objection to Tribunal’s Award, by claiming that they were not consulted in the Arbitration

¹⁸⁰ Abyei Arbitration Agreement(2008), Article 9(5); see also , Human Right Watch, Ending Human Rights Abuses and Repression across Sudan, October 6, 2009, available at https://www.hrw.org/report/2009/10/06/way-forward/ending-human-rights-abuses-and-repression-across-sudan#_ftn74; accessed March 20, 2016.

¹⁸¹ UNSC, Report of the Secretary-General on the United Nations Mission in the Sudan, UN.doc S /2009/545, 21 October 2009, available at <http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/Sudan%20S%202009%20545.pdf>, ¶.15

¹⁸² Ibid.

¹⁸³ UNMIS, Media Monitoring Report, 8 November, 2009 , United Nation Mission in Sudan , public information office, Khartoum, Sudan <http://unmis.unmissions.org/Portals/UNMIS/MMR/MMR%208%20Nov%2009.pdf>

¹⁸⁴ Roger winter, Abyei Sudan’s other Referendum part(1), September 13, 2010 , available at <http://www.enoughproject.org/blogs/abyei-sudan%E2%80%99s-other-referendum-part-i> (accessed May 15, 2015), see also UNMI, Briefing Paper on Abyei Area 5th August 2010, available at <http://unmis.unmissions.org/Portals/UNMIS/Referendum/Abyei%20briefing%20pack.pdf>

¹⁸⁵ Douglas H. Johnson, When Boundaries Become Borders: The impact of boundary-Making in Southern Sudan’s frontier Zones, Refet Valley Institute, 2010, Nairobi , Kenya, p.39 available at <http://www.riftvalley.net/publication/when-boundaries-become-borders> (accessed on July 16, 2015)

¹⁸⁶ UNMI, Briefing Paper on Abyei Area 5th August 2010, available at <http://unmis.unmissions.org/Portals/UNMIS/Referendum/Abyei%20briefing%20pack.pdf>, ¶.22; see also

“Some segments of the Misseriya are opposed to the PCA award and have vehemently opposed any border demarcation on the ground. Only 4 of the planned 26 beacons (pillars) have so far been erected (the distance between each pillar is 10km). A Misseriya meeting held in El Setab in April 2010 resolved that anyone attempting to demarcate the border as per PCA award should be at tacked. During the AU High Level mission to Muglad in July (led by Presid ent Mbeki), Misseriya representatives stated their rejection of the PCA ruling and border demarcation, claiming that they were not consulted in the process. They argued that they never agreed to the PCA ruling, and claimed that the 1-1-56 is the legitimate boundary” Ibid.

process and they claim the January 1, 1956 is a legitimate boundary.¹⁸⁷ Accordingly, they continue to oppose the implementation of the Award and persistently blocked the progress of the border demarcation process.¹⁸⁸ Since, Missariya and Ngok Dinal are not the parties to the Abyei Arbitration; their position would not affect the implementation of the decision of the Arbitration Award, had both Parties been committed to enforce the Award.

The SPLM/A and Ngok-Dinka requested the GoS to take all the necessary measure to enforce the decision of the Tribunal by reminding that Arbitration Agreement wherein they have agreed not to contest the Award but to implement it.¹⁸⁹ However, beyond obstructing the demarcation process, there was ambivalence as to who should be eligible to vote on the Abyei Area referendum. The GoS came up with neither new issue which was neither part of the demarcation process nor issues envisaged in the Arbitral Award. In this regard, the GoS argued for Missiriya and other pro-unity tribes who graze the cattle in the Abei Area during the dry season should vote in the Abyei referendum.¹⁹⁰ On the hand, the SPLM/A has rejected the GoS claim on the ground that only permanently settled tribes would be allowed in the referendum.¹⁹¹ This is the point where the demarcation issue turned into voter's eligibility for the referendum on Abyei Area to determine the final status of Abyei Area.

Despite the ambivalence hinted above, one thing is clear as the views of the Parties on the decision of the Tribunal. That is, both GoS and SPLM/A were not rejected or opposed to accept the delimitation of the Abyei Area as decided by the Abyei Arbitration Tribunal.

3.5 The 2010 AUHIP Proposals to Resolve Abyei Area

This part considers the African Union proposal for resolving the pending demarcation and determination of the final status of Abyei Area. The African Union Peace and Security Council in the 207th Meeting at the level of the Head of State and Government, requested the Chairperson of the Commission to establish the African Union High Level Implementation Panel to assist the Parties to Abyei Arbitration, among others, in the implementation of the Comprehensive Peace

¹⁸⁷ UNMI, Briefing Paper on Abyei Area 5th August 2010, available at <http://unmis.unmissions.org/Portals/UNMIS/Referendum/Abyei%20briefing%20pack.pdf>

¹⁸⁸ UNSC, Report of the Secretary-General on the United Nations Mission in the Sudan, UN.doc S /2010/388, 19 July 2010, available at http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2010/388.

¹⁸⁹ UNMI, Briefing Paper on Abyei Area 5th August 2010, available at <http://unmis.unmissions.org/Portals/UNMIS/Referendum/Abyei%20briefing%20pack.pdf>

¹⁹⁰ McDoom, O. August 2010. Deadlock in dispute over Sudan's Abyei oil region. Reuters. Available at <http://www.reuters.com/article/2010/08/01/idUSMCD150582.CH.2400>, accessed September, 21 2015.

¹⁹¹ Ibid.

Agreement.¹⁹² In 2010, the AUHIP came up with a proposal to resolve the issue of Abyei requesting the Parties to think outside the Abyei Protocol and Abyei Arbitration Tribunal's Ruling to resolve the Abyei issue.¹⁹³ The AUHIP proposed the Partition of Abyei Area by Presidential Decree and to create a Soft Border between northern and southern Sudan.¹⁹⁴ To this end, the AUHIP proposed the Abyei Area as defined by the PCA to be partitioned by the Presidential Decree in such a manner that the northern parts of the Abyei Area were to be transferred and administered by the northern Sudan and the southern part of the Abyei Area to be administered by the southern Sudan irrespective of the outcome of the South Sudan referendum.¹⁹⁵ Subsequently, the GoS persistently proposed to give up 60% of the southern part of the Abyei Area, leaving 40% of the northern part of the Abyei Area to northern Sudan.¹⁹⁶ However, SPLM/A opposed to compromise on the Abyei Area which is delimited by the Tribunal.¹⁹⁷

In 2011, when the South Sudan became an independent state, the Republic of Sudan announced that "it recognizes the Republic of South Sudan as an independent state, according to the borders existing on 1 January 1956."¹⁹⁸ Moreover, the dispute becomes more contentious when the Republic of South Sudan under Article 1(2) of Part I of its Provisional Constitution enshrined a controversial provision regarding the status of the Abyei Area. It reads as follows:

*"The territory of the Republic of South Sudan comprises all lands and air space that constituted the three former Southern Provinces of Bahr el Ghazal, Equatoria and Upper Nile in their boundaries as they stood on January 1, 1956, and the Abyei Area, the territory of the nine Ngok Dinka chiefdoms transferred from Bahr el Ghazal Province to Kordofan Province in 1905 as defined by the Abyei Arbitration Tribunal Award of July 2009"*¹⁹⁹

Conversely, the Government of the Republic of Sudan asserted that the contested Abyei Area belongs to the Republic of Sudan and will remain a Sudanese territory.²⁰⁰ In 2011, while South Sudan was preparing for independence, tensions and violence escalated between SAF and SPLA and

¹⁹² AUPSC(AFRICAN UNION PEACE AND SECURITY COUNCIL), 27th Meeting at the Level of the Heads of State and Government, PSC/AHG/COMM.1(CCVII), 29 October 2009, Abuja Nigeria.

¹⁹³ AUHIP PROPOSALS TOWARDS A RESOLUTION OF THE ISSUE OF ABYEI: initially presented to the Parties on November 27, 2010, (Accessed June 20, 2015), Available at <http://www.mofa.gov.sd/new/pdf/AUHI.pdf>

¹⁹⁴ Ibid

¹⁹⁵ Ibid

¹⁹⁶ Steven Spittaels & Yannick Weyns, Mapping Conflict Motives: the Sudan - South Sudan border International Peace Information Service (IPIS), Antwerp, January 2014, p.52

¹⁹⁷ Ibid.

¹⁹⁸ *South Sudan Counts Down to Independence*, BBC NEWS (July 8, 2011), <http://www.bbc.co.uk/news/world-africa-14077511> (accessed March 11, 2017).

¹⁹⁹ Republic of South Sudan, *The Transitional Constitution of The Republic Of South Sudan*, July 9, 2011, Art. 1(2).

²⁰⁰ Sudan Tribune, Abyei is Sudanese territory and will remain so: president Bashir, Friday 13 March 2015, available at <http://www.sudantribune.com/spip.php?article54270>, (accessed April 14, 2017).

caused killing and displacement of significant number of civilians around the disputed Abyei Area.²⁰¹ In response to the renewed violence, in accordance with chapter VII of the United Nations Charter, UN Security Council authorized the deployment of the peace keeping force named United Nations Interim Security Force for Abyei (UNISFA) with a view to maintain peace, stability and security throughout the Abyei Area.²⁰² UNISFA was given different mandate including to ensure redeployment of SAF and SPLA “from the Abyei Area as defined by the Permanent Court of Arbitration”, and protect civilians from any threat and Abyei Area from an authorized incursion.²⁰³

Before and after the independence of the South Sudan, the UNSC, AUPSC and IGAD, AUHIP and international communities have been urging both Parties to determine the status of Abyei Area.²⁰⁴ However, the Parties failed to resolve the dispute over the Abyei Area as defined by the Permanent Court of Arbitration and reaffirmed by UNSC resolution 1990, currently the disputed area is under UNISFA.

²⁰¹ See UNISFA Background, available at <http://www.un.org/en/peacekeeping/missions/unisfa/background.shtml>, Accessed April 14, 2017; See also the 9th preamble in the UNSC Resolution 1990(2011) Adopted by the Security Council at its meeting on 27 June 2011

²⁰² UNSC, Resolution 1990(2011) Adopted by the Security Council at its meeting on 27 June 2011, available in pdf at [http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1990\(2011\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1990(2011)), (accessed February 24, 2017).

²⁰³ UNSC, S/RES/1990(2011), ¶¶ 2 and 3.

²⁰⁴ See UNSC, Resolution 2046(2012), Adopted by the Security Council at its meeting on , available in pdf [http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2046\(2012\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2046(2012)) (Accessed February 24, 2017)

CHAPTER FOUR

Institutional Efforts and Options to Resolve the Boundary dispute over the Abyei Area

4.1 Introduction

This Chapter is intended to address two important and interrelated issues. Firstly, it sheds lights on an efforts of regional, continental and international organizations so far made the dispute over the Abyei Area to be resolved in accordance the decision of the PCA and CPA. Secondly it explores alternative solution to enforce the decision of the PCA and determine the final status of the Abyei Area.

4.2 Intergovernmental Authority on Development (IGAD)

Since 1993 IGAD has played a significant role in the peace making process of the Sudan. It is worth to noting that the CPA which ended the second civil war was concluded under the auspices of IGAD.²⁰⁵ Subsequently, in accordance with the Abyei Protocol, IGAD also appointed three representatives of experts in the ABC to delimit and demarcate Abyei Area.²⁰⁶

Regarding the enforcement of the Abyei Arbitration Award, based on the outcome of the meeting 34th Extra-Ordinary Meeting of the IGAD Council of Ministers was held in Addis Ababa on January 30, 2010, IGAD called upon the Parties to complete the demarcation of the Abyei Area in compliance with the decision of PCA.²⁰⁷ After that, IGAD kept on urging upon the Parties to resume negotiations in order to determining the final status of the Abyei Area.²⁰⁸ Despite all that the Parties did not find workable and conclusive solution to determine the final status of Abyei Area. Meanwhile, IGAD did not impose any sanction against the Parties with a view to bringing them to full compliance of the decision to find a final solution for the disputed Abyei Area.

²⁰⁵ The CPA between the GOS and SPLM/A,(2005),(n-82), see the Preamble.

²⁰⁶ ABC Experts' Report Part I,2005,p.3

²⁰⁷ IGAD, Communiqué of the 34th Extra- Ordinary Session of the IGAD Council Of Ministers, Addis Ababa, Ethiopia, 30th January 2010, available at <https://igad.int/communique/168-communique-of-the-34th-extra-ordinary-session-of-the-igad-council-of-ministers>.

²⁰⁸ AUPSC, Africa Union Peace and Security Council 319th Ministerial Meeting, PSC/MIN/COMM/3.(CCCXIX) Addis Ababa, Ethiopia, 24 April 2012, available in pdf at <http://www.peaceau.org/uploads/psc-319-com-soudan-south-sudan-24-04-2012.pdf>, accessed on March 5,2017.

4.3 Africa Union Peace and Security Council (AUPSC)

Like IGAD, the AU has attempted to exercise its mandate as a continental body. Based on the decision of the Permanent Court of Arbitration on Abyei Area, the Africa Union at its 207th meeting, held at the level of Heads of State and Government, in Abuja, Nigeria, on 29 October 2009, passed a resolution establishing the AU High-Level Implementation Panel (AUHIP) on Sudan so as to representing the African States assist the Parties to reach a final and lasting solution as envisaged by the CPA.²⁰⁹

Thus, the Africa Union acting under the chairmanship of the Thabo Mbeki, former South African President to attempted to mediate between the Parties and countless negotiations and proposals. However, the Parties did not show commitment for the implementation of the Abyei Arbitration Award and determine the status of the Abyei Area in accordance with the provision of the CPA. Thus, the issue of the Abyei Area has proved to be one of the most difficult and contentious in the implementation of the post-referendum outstanding issues, particularly the issue of the eligibility criteria for voters in the Abyei Referendum being proven the stumbling block to resolve the dispute over the Abyei Area.²¹⁰

The AUPSC in its 319th meeting held, in ministerial level, on 24 April 2012, adopted road map which obliges the Parties unconditionally to resume negotiations, under auspices of the AUHIP and with support of the chairman of IGAD, to reach an agreement to finalize the status of the Abyei within the timeframe set forth under the resolution.²¹¹ Moreover, this Roadmap was adopted by the United Nations Security Council Resolution 2046 of 2 May 2012.²¹²

The Roadmap made it clear that if the Parties failed to resolve the final status of the Abyei Area, then the AUHIP mandated to come up with the status report along with the proposal that would be

²⁰⁹ Africa Union, Peace and Security Council 250th Meeting Tripoli, Great Socialist People's Libyan Arab Jamahiriya 30 November 2010, PSC/AHG/3(CCL).

²¹⁰ Ibid., ¶.36.

²¹¹ Africa Union, Peace and Security Council 319th Ministerial Meeting, Addis Ababa, Ethiopia, 24 April 2012, PSC/MIN/COMM/3.(CCCXIX), ¶. 13, available in pdf at <http://www.peaceau.org/uploads/psc-319-com-soudan-south-sudan-24-04-2012.pdf>.

²¹² See United Nations Security Council Resolution 2046 'Adopted by the Security Council at its 6764th meeting, on 2 May 2012' S/RES/2046(2012), available in pdf at [http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2046\(2012\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2046(2012))

endorsed by the AUPSC.²¹³ Moreover, the AUPSC decided that failure by either Party to implement the provisions of the Roadmap or to cooperate in good faith with the AUHIP towards the conclusion of the negotiations on the outstanding issues, in including the final status of Abyei Area, gives rise to the AUPSC to take appropriate measures.²¹⁴

In accordance with AUPSC Resolution, on September 27, 2012 the Republic of Sudan and Republic of South Sudan signed nine agreements on the post-secession issues under the auspices of AUHIP.²¹⁵ One of those agreements is the Cooperation Agreement which recognized the AUHIP to continuously to discuss with Parties and AUPSC in issues involving the final status of the Abyei Area.²¹⁶ Moreover, the other important agreement is the boarder issues agreement made between the Parties under the auspices of AUHIP which involves the delimitation and demarcation of boarder between the two Sates.²¹⁷

On September 21, 2012, the AUHIP tabled the “Proposal on the Final Status of the Abyei Area” which required the Abyei Area Referendum Commission to be established by the two Parties to conduct referendum on the Abyei Area to be held in October 2013.²¹⁸ The very purposes of the September 21, 2012 AUHIP proposal on the final status of the Abyei Area was that determining the final status of Abyei Area by a referendum in accordance with the procedure determined thereof.²¹⁹ The AUHIP Proposal on the final status of Abyei Area, set the Permanent Court of Arbitration on the delimitation of the Abyei Area of 22, 2009 and the territory-the Area of the

²¹³ See Article 14 of AUPSC, Africa Union Peace and Security Council 319th Ministerial Meeting, SC/MIN/COMM/3.(CCCXIX) Addis Ababa, Ethiopia, 24 April 2012, available in pdf at <http://www.peaceau.org/uploads/psc-319-com-soudan-south-sudan-24-04-2012.pdf>, accessed on March 5, 2017

²¹⁴ Ibid., Art.15.

²¹⁵ On September 27, 2012 the Republic of the Sudan and the Republic of South Sudan made nine agreement under auspices of AUHIP in Addis Ababa, Ethiopia, these are “The Agreement on Security Arrangements, The Framework Agreement on the status of Nationals of the other state, The Agreement on Border Issues (including demarcation), The Agreement on Trade and Trade-Related Issues, The Agreement on a Framework for Cooperation on Central Banking Issues, The Framework Agreement to Facilitate Payment of Post-Service Benefits, The Agreement on Certain Economic Matters: Division of Assets and Liabilities, Arrears and Claims and Joint Approach to the International Community, The Agreement Concerning Oil and related Economic Matters, The Cooperation Agreement.”

²¹⁶ See Article 4 of The Cooperation Agreement between the Republic of the Sudan and the Republic of South Sudan, Addis Ababa, Ethiopia, 27 September 2012.

²¹⁷ Agreement between the Republic of the Sudan and the Republic of South Sudan on Boarder Issues, Addis Ababa, Ethiopia, 27 September 2012.

²¹⁸ African Union, African Union High Level Implementation Panel for Sudan, ‘the Proposal on the Final Status of the Abyei Area’, September 21, 2012, ¶2.2

²¹⁹ African Union, African Union High Level Implementation Panel for Sudan, ‘the Proposal on the Final Status of the Abyei Area’, September 21, 2012

nine Ngok Dinka chiefdoms transferred to Kordofan in 1905 as defined by the PCA on July 22, 2009 as a cornerstone of the proposal.²²⁰

On September 24, 2012 the meeting held between the Republic of Sudan President Omar al-Beshir and the Republic of South Sudan President Salva Kiir Mayardit under the auspices of the AUHIP to discuss on the AUHIP Proposal on the final Status of Abyei Area.²²¹ In the meeting the President Salva Kiir Mayardit accepted the proposal without any amendment and call for immediate implementation while the President Omar al-Beshir rejected the proposal on the ground of voter eligibility criteria set forth under AUHIP Proposal.²²² Since then, however, the Parties unable to meet and discuss on the final status of Abyei Area in accordance with AUHIP proposal and hence the AUHIP reported same to AUPSC.²²³

In accordance with the Article 14 of AUPSC Roadmap, the AUHIP presented its proposal on the final status of the Abyei Area and reported that the Parties failed to comply with the Proposal.²²⁴ The AUPSC has accepted AUHIP's proposal on the final status of Abyei Area by affirming the proposal as "fair, equitable and workable solution to the dispute between the two countries" and requested the Parties to resume September 21, 2012 the negotiation on the AUHIP's Proposal on the Final Status of Abyei Area to reach an agreement on the final status of Abyei Area within six weeks from the adoption of the communiqué under the auspices of AUHIP.²²⁵ The AUPSC further decided that:

*"In the event of that the Parties fail to reach agreement on the Final Status of the Abyei Area within the six-week period mentioned [], council will endorse the 21 September 2012 Proposal as final and binding, and would seek the endorsement by the UN Security Council of the same."*²²⁶

²²⁰ Ibid., ¶.1

²²¹ AUPSC, NTERIM REPORT OF THE AFRICAN UNION HIGH -LEVEL IMPLEMENTATION PANEL ON THE MATTERS DETAILED IN THE 24 APRIL 2012 COMMUNIQUÉ OF THE PEACE AND SECURITY COUNCIL, PSC/PR/CCCXXXIX, Addis Ababa, Ethiopia, October 24, 2012, ¶.15 available at <http://www.peaceau.org/uploads/psc-339-auhip-report-24102012.pdf>

²²² Ibid.

²²³ African Union, African Union High Level Implementation Panel for Sudan, 'the Proposal on the Final Status of the Abyei Area', September 21, 2012, ¶.5

²²⁴ African Union, Peace and Security Council 349th Meeting 14 December 2012 'Report of the African Union High Level Implementation Panel for Sudan and South Sudan', 14 December 2012, Addis Ababa Ethiopia.

²²⁵ African Union, Peace and Security Council 339 Meeting, Addis Ababa, Ethiopia 24 October 2012, PSC/MIN/COMM/1/(CCCXXXIX), ¶.9.

²²⁶ Ibid., ¶.10.

Accordingly, on November 6, 2012, the AUHIP wrote to the President of the Sudan and South Sudan urging them to meet and discuss on the Final status of the Abyei Area on the basis of the AUHIP's September 21, 2012 proposal.²²⁷ However, when the Parties kept silent the AUHIP for the second time on December 9, 2012 communicated both Presidents to reflect their intention on determination of the final status of Abyei Area.²²⁸ The AUHIP further made it clear that the Parties were not able to meet during the six week period as determined by the AUPSC in its 339th Ministerial Meeting held on October 24, 2012.²²⁹

The AUPSC noted the deadline for the negotiation of the Parties on the Proposal expired as of December 5, 2012²³⁰ which triggers the endorsement of the AUHIP's Proposal in accordance with the decision of AUPSC 339th Ministerial Meeting held on October 24, 2012. However, AUPSC instead of endorsing the AUHIP's proposal, time and again continue to call upon the Sudan and South Sudan to keep on negotiation under the auspices of the AUHIP and requested the chair of IGAD to continue its supportive role.

4.4 The United Nation Security Council (UNSC)

The Council has primary responsibility in the sphere of international peace and security as envisaged under Article 24 of UN Charter. Thus States have duty to cooperate with and enforce the decision of the Security Council on matters affecting international peace and security.

United Nation Security Council unequivocally recognized the dispute over the Abyei Area is constitutes "a serious threat to international peace and security."²³¹ Therefore, UNSC council has been urging the Sudan and South Sudan negotiation to be made between the two Parties with a view to find enduring political solution on the final status of Abyei Area.²³² Moreover, the UNSC has issued different resolutions which call the GoS and GoSS to extend their full commitment and

²²⁷ African Union, 'Report of The African Union High-Level Implementation Panel for Sudan and South Sudan', Peace and Security Council 349th Meeting 14 December 2012 Addis Ababa, Ethiopia, PSC/PR/2(CCCXLIX), ¶4; African Union High Level Implementation Panel for Sudan, 'the Proposal on the Final Status of the Abyei Area', September 21, 2012.

²²⁸ Ibid., ¶8.

²²⁹ Ibid., ¶9.

²³⁰ African Union, Peace and Security Council 349th Meeting 14 December 2012, Addis Ababa, Ethiopia, PSC/COMM(CCCXLIX).

²³¹ See preamble UNSC Resolution Adopted by the Security Council at its 7580th meeting, 15 December 2015, S/RES/2251 (2015); See also preamble UNSC Resolution Adopted by the Security Council at its 6773rd meeting, 17 May 2012, S/RES/2047 (2015);

²³² S/PRST/2013/14 Statement by the President of the Security Council, available in pdf at http://www.un.org/en/ga/search/view_doc.asp?symbol=S/PRST/2013/14, accessed on March 8, 2017.

cooperation to AU, AUHIP, AUPSC and IGAD to find a workable solution to determine the final status of the disputed Abyei Area.²³³ It should be noted that the UNSC did not order the Parties evidently to be abide by the decision of the Abyei Arbitration Tribunal and to enforce accordingly. However, the resolutions of UNSC have been persistently urging the Parties to reach an agreement on the final status of Abyei Area.²³⁴

It should also be noted that the UNSC directly or indirectly recognized for different purpose the Abyei Area as determined by the PCA. In this regard, the striking example is that in its resolution S/RES/1990(2011), the UNSC made stipulation as to the UNISFA to “[monitor] and verify the redeployment of any Sudan Armed Force, Sudan People’s Libration Army or its successor, from the Abyei Area as defined by the Permanent Court of Arbitration”.²³⁵ Moreover, in its subsequent resolutions, the UNSC use the term ‘Abyei Area’ without giving any further description than as defined by the PCA. The UNSC in the Resolution 2046 (2012) adopted in its 6764th meeting, on 2 May 2012 decided that:

*“Sudan and South Sudan shall unconditionally resume negotiations, under the auspices of the AUHIP and with the support of the Chairman of IGAD, at a time to be set by the AUHIP in consultation with relevant international partners, but within no more than two weeks from the time of adoption of this resolution, to reach agreement on... the final status of the Abyei Area.”*²³⁶

Moreover, the UNSC Resolution 2046 (2012) made it clear that the AU PSC to work closely with the AUHIP and submit progress report to the UNSC periodical whether both Parties or one of the Parties not complied with the decision of UNSC set forth under the Resolution 2040(2012) with a view to take appropriate additional economic sanction under Article 41 of the Charter as necessary.²³⁷ As has been mentioned hereinabove, the Parties failed to held negotiation on the final Status of Abyei Area to bring the lasting solution in accordance the AUHIP proposal and

²³³ UNSC, Resolution 1990(2011) Adopted by the Security Council at its 6567th meeting, on 27 June 2011, available in pdf at [http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1990\(2011\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1990(2011)), accessed on March 10, 2017.

²³⁴ Ibid., ¶. preamble.

²³⁵ Ibid., ¶.2(a).

²³⁶ United Nations Security Council Resolution 2046 (2012), Adopted by the Security Council at its 6764th meeting, on 2 May 2012, S/RES/2046 (2012), ¶.2.

²³⁷ Ibid., ¶.6; see also Article 41 of United Nation Charter “The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.”

AUPSC Roadmap. In the same token, the UNSC has issued a number of resolutions which obliges the Parties to reach consensus on the final status of Abyei Area.²³⁸ However, the Parties not yet agreed to bring a solution on the final status of Abyei Area despite UNSC urged them unconditional to resume negotiation on the final status of Abyei Area in accordance the Roadmap adopted in the Resolution 2040(2012) and failure to do so calls for the economic sanction in accordance with Article 41 of United Nation Charter.

Article 41 falls under Chapter VII of UN Charter which deals about threats to the peace, breaches of the peace and acts of aggression. It states that the Council may decide what measures, not involving the use of armed force, are to be taken to give effect to its decisions, and it may call on the Members of the United Nations to apply such measures. Moreover, measures to be taken under Article 41 of the Charter are articulated under the same Article. These are, inter alia, “include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.”²³⁹

The UNSC passed Resolution 2040 in 2012, however, the Parties declined to comply with the decisions, inter alia, to reach unconditionally an agreement on the final status of Abyei Area. So far , the dispute over the Abyei Area has not been resolved , despite the those decisions and resolutions by UNSC, it has not opted to resort to impose sanctions articulated under Article 41 of the UN Charter in accordance with its Resolution 2040(2012).

4.5 Remaining Opportunities to Resolve the Status of Abyei Area

Under Such circumstances, there are few solution remaining opportunities to unlock the deadlock on the dispute over the Abyei Area and move forward. The enforcement of Abyei Arbitration Award is not a final solution to determine the future status of Abyei Area. It is a means to determine the future status of Abyei Area by a referendum in accordance with Abyei Protocol. Therefore, the following sections explore the opportunities to find a final solution for the disputed Abyei Area by making use of the international legal instruments of UN and International Court of Justice.

²³⁸ See <http://www.un.org>.

²³⁹ See Article 41 of the UN Charter.

4.5.1 From Intra-state to inter-state boundary dispute

This section is intended to reconsider the origin and genesis of the current dispute over the Abyei Area. As has been discussed elsewhere in this thesis, in 2008 the GoS and SPLM/A brought the dispute to Permanent Court of Arbitration under the PCA Optional Rules for Arbitrating Disputes Between Two Parties of Which Only One Is a State. At the time since the dispute over the Abyei Area was not an inter-state boundaries dispute, there was no an option to the Parties to bring the boundary dispute to the compulsory jurisdiction of the International Court of Justice.

As a matter of fact, the PCA has no institutionalized enforcement mechanism to ensure the enforcement of the arbitration award when one party fails to perform the obligation incumbent upon it under the arbitral award rendered by the PCA, the other party recourse to the enforcement of the Award. However, as will be discussed in the next sections, in the UN there is a firm institutional mechanism when one of the parties fails to discharge its obligation arising out of the decision of ICJ; the other party may invoke Article 94(2) of the UN Charter whereby UNSC to take the necessary measure against the party who defiant to the decision of the ICJ.²⁴⁰

Under Article 9(5) of Abyei Arbitration Agreement “*the Presidency of the Republic of Sudan shall ensure the immediate execution of the final award.*”²⁴¹ Arguably, this provision imposed the obligation to enforce the Abyei Arbitration Award on the GoS with the assumption that the demarcation of the Abyei Area would be completed before the referendum took place on the South Sudan independence. However, arguably the applicability of this provision ended when the South Sudan become an independent state which is a fundamental change of circumstance occurred before the demarcation and the status of Abyei Area determined in accordance with the CPA and Abyei Arbitration Agreement.

Although, PCA has no institutional mechanism to ensure the enforcement of its award, the UNSC and AUPSC have been requiring the parties to resolve the future status of Abyei Area by negotiation under auspices of AUHIP.²⁴² The efforts so far made by the AUPSC and UNSC found to

²⁴⁰ UN Charter, Art.94(2).

²⁴¹ See Article 9(5) of Abyei Arbitration Agreement.

²⁴² UN Security Council, Resolution 2230(2015) Adopted by the Security Council at its 7483rd meeting, on 14 July 2015, available in pdf at [http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2230\(2015\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2230(2015)), accessed March 01,2017.; See also Security Council, Resolution 2045(2012) Adopted by the Security Council at its 6764th meeting, on 2 July 2012, available in pdf at S/RES/2046(2012) [http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2046\(2012\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2046(2012)), accessed on March 01,2017.

be unsuccessful attempt to resolve the dispute over the status of Abyie Area. Therefore, the South Sudan has compelling reasons to find a viable institutional mechanism to resolve the disputes over the Abyei Area. The independence of South Sudan seems plausible to argue that it constitutes for fundamental change of circumstances which transformed an intra-state boundary dispute to an inter-state boundary dispute.

4.5.2 Fundamental Change of Circumstances

This part attempts to show the significance of the new circumstances after the birth of South Sudan. In this juncture, it is imperative to shade some light on the concept of fundamental change of circumstances under international law. The doctrine of fundamental change of circumstances clearly contextualize under Article 62 of the Vienna Conventions on the Law of Treaties (VCLT).²⁴³ Article 62(2) of the VCLT states that: *“A fundamental change of circumstances which has occurred with regard to those existing at the time of the conclusion of a treaty, and which was not foreseen by the parties, may not be invoked as a ground for terminating”*²⁴⁴

International Court of Justice examined the doctrine of fundamental change of circumstance in different cases. The striking example is the *Gabčikovo–Nagymaros Project* case, where the International Court concluded that:

The changed circumstances advanced by Hungary are, in the Court’s view, not of such a nature, either individually or collectively, that their effect would radically transform the extent of the obligations still to be performed in order to accomplish the Project. A fundamental change of circumstances must have been unforeseen; the existence of the circumstances at the time of the Treaty’s conclusion must have constituted an essential basis of the consent of the parties to be bound by the Treaty. The negative and conditional wording of article 62 of the Vienna Convention on the Law of Treaties is a clear indication moreover that the stability of

²⁴³ 1969 The Vienna Conventions on the Law of Treaties, done at Vienna on 23 May 1969, entered into force on 27 January 1980. United Nations, *Treaty Series*, vol. 1155, p. 331.

²⁴⁴ *Ibid.*, Art. 62 states that :

“1. A fundamental change of circumstances which has occurred with regard to those existing at the time of the conclusion of a treaty, and which was not foreseen by the parties, may not be invoked as a ground for terminating or withdrawing from the treaty unless: (a) the existence of those circumstances constituted an essential basis of the consent of the parties to be bound by the treaty; and b) the effect of the change is radically to transform the extent of obligations still to be performed under the treaty. 2. A fundamental change of circumstances may not be invoked as a ground for terminating or withdrawing from a treaty: (a) if the treaty establishes a boundary; or (b) if the fundamental change is the result of a breach by the party invoking it either of an obligation under the treaty or of any other international obligation owed to any other party to the treaty. 3. If, under the foregoing paragraphs, a party may invoke a fundamental change of circumstances as a ground for terminating or withdrawing from a treaty it may also invoke the change as a ground for suspending the operation of the treaty.”

*treaty relations requires that the plea of fundamental change of circumstances should be applied only in exceptional cases.*²⁴⁵

The independence of the South Sudan did not exist at the time when the Abyei Arbitration Agreement and CPA were concluded. In relation to Abyei Boundary Dispute, under the CPA and Abyei Arbitration Agreement, the GoS obliged two perform two obligations to end the dispute over Abyei Area. However, since South Sudan was not the party to Arbitration Agreement, the GoS may invoke fundamental change of circumstances as envisaged under Article 62 of the VCLT to suspend or terminate the CPA and the Abyei Arbitration Agreement.²⁴⁶ However, in post-independence, the GoS has made different treaties with the Republic of South Sudan in relation to outstanding matters of the 2005 CPA in general and particularly boarder issues.

4.5.3 Post-independent Agreements on the Abyei Area

Again, this section attempts to shade light on subsequent agreements to resolve the dispute over Abyei Area as one of the outstanding issues of the CPA. The CPA and Abyei Arbitration Agreement obliges the GoS to undertake two critical obligations which were intended to resolve the prolonged dispute over the Abyei Area. Article 9(5) of the Abyei Arbitration Agreement states that “*the Presidency of the Republic of Sudan shall ensure the immediate execution of the final Arbitration Award.*”²⁴⁷ As has been mentioned before, both GoS and SPLM/A were accepted the delimitation of Abyei Area as defined by the Abyei Arbitration Tribunal. Moreover, in accordance with the Article 9(5) of the Abyei Arbitration Agreement, the GoS has attempted to establish Abyei Boundaries Demarcation Committee in order to execute the decision of the Abyei Arbitration Award.

However, after the independence of the South Sudan, demarcation of the boundary became an inter-state boundary issue between the Republic of the Sudan and the Republic of South Sudan. Therefore, the Republic of the Sudan and Republic of South Sudan agreed jointly to demarcate the boundary from the tri-junction point of Republic of Sudan, Republic of South Sudan and

²⁴⁵ Gabčıkovo–Nagymaros Project case (Hungary/Slovakia) (Judgment) , ICJ Report, 1997, P.65.

²⁴⁶ The Vienna Convention on the law of treaties (with annex), Concluded at Vienna on 23 May 1969, available at <https://www.google.com/#q=the+vienna+convention+on+the+law+of+treaties>.

²⁴⁷ See Article 9(5) of the Abyei Arbitration Agreement.

Central Africa to the tri-junction point of Republic of Sudan, Republic of South Sudan and Democratic Republic of Ethiopia.²⁴⁸

It should be noted that since the disputed Abyei Area is at a crossroad of the boundaries of the states, the intended demarcation of boundary between the two tri-junction points would not be viable without determining the final status to Abyei Area. The final status of Abyei Area was intended to be determined by the referendum in accordance with the provisions of Abyei Protocol which is part of the CPA of 2005. In accordance with Article 8 of the Abyei Protocol, the GoS was obliged to conduct a referendum on the Abyei Area in 2011 simultaneously with a referendum of Southern Sudan. However, due to disagreement on the eligibility of voters in the intended referendum over the Abyei Area, status of the Abyei Area is not yet been determined.

However, September 27, 2012, the Republic of Sudan and the Republic of South Sudan made a nine agreements²⁴⁹ whereby to resolve all outstanding CPA issues involving disputed and claimed borders.²⁵⁰ Subsequently, the parliaments of Sudan and South Sudan ratified these Agreements.²⁵¹

Particularly, under Article 4 of the treaty, the Parties urged the AUHIP to play a facilitation role between the Parties and AUPSC to determine final status of Abyei Area.²⁵² It is almost seven years since the two states made a treaty to resolve all outstanding border issues, however, those boundary issues not yet been resolved despite AUHIP efforts and resolutions of UNSC and AUPSC which urged the two states immodestly and unconditional to determine the final status of the Abyei Area.

On May 15, 2017 before the UNSC, the Government Sudan showed its commitment to resolve the dispute over the Abyei Area in accordance with the decision of the Permanent Court of Arbitration and the CPA. The representative of the GoS called upon;

²⁴⁸ Agreement between the Republic of the Sudan and the Republic of South Sudan on Boarder Issue, September 27, 2012, Addis Ababa, Ethiopia, Article 5(2).

²⁴⁹ On September 27, 2012 the Republic of the Sudan and the Republic of South Sudan made nine agreement under auspices of AUHIP in Addis Ababa, Ethiopia, these are “The Agreement on Security Arrangements, The Framework Agreement on the status of Nationals of the other state, The Agreement on Border Issues (including demarcation), The Agreement on Trade and Trade-Related Issues, The Agreement on a Framework for Cooperation on Central Banking Issues, The Framework Agreement to Facilitate Payment of Post-Service Benefits, The Agreement on Certain Economic Matters: Division of Assets and Liabilities, Arrears and Claims and Joint Approach to the International Community, The Agreement Concerning Oil and related Economic Matters, The Cooperation Agreement.”

²⁵⁰ The Cooperation Agreement between the Republic of the Sudan and the Republic of South Sudan, September 27, 2012, Addis Ababa, Ethiopia, Article 4.

²⁵¹ AUPSC, PEACE AND SECURITY COUNCIL 339th Meeting, Interim Report of The African Union High-Level Implementation Panel On The Matters Detailed In The 24 April 2012 Communiqué Of The Peace And Security Council, Addis Ababa, Ethiopia 24 October 2012, ¶.5

²⁵² Ibid., Article 4(2).

*“South Sudan to engage with his country and the African Union in creating the bodies to determine the final status of Abyei, he emphasized that until then, Abyei remained a Sudanese area. Sudan had full sovereignty, according to both the International Court of Arbitration in The Hague, and the Peace Agreement, which could not be altered without a referendum or another mutually agreed measure”*²⁵³

The representatives of the South Sudan also showed requested the two countries to create national cooperation in order to resolve the Abyei boundary dispute.²⁵⁴

4.6 Bring the dispute over the final status of Abyei Area to ICJ

This section attempts to explore what the writer believes to be the remaining options legally to resolve the dispute over the Abyei Area. Most of the disputing parties are ready to comply with the decision of International Court of Justice due to partly the decision of ICJ draws public attention and pressure.²⁵⁵ Only a few judgments of ICJ have not been implemented.

Abyei Area is currently neither to the Republic of South Sudan nor to the Republic of Sudan.²⁵⁶ So far, both the GoS and South Sudan/SPLM/A are not in defiance of the decision of the Abyei Arbitration Tribunal regarding the delimitation of the Award. The very purpose of delimitation and demarcation of the Abyei Area was to determine the status of the Abyei Area by the referendum scheduled for 2011. Unfortunately, due to the failure of the GoS and SPLM/A to agree up on the eligibility of voter between the Ngok Dinka and Misseriya tribes, the referendum on the Abyei Area not yet been taken. Subsequently, UNSC and AUPSC issued different resolutions to resolve the disputes over the final status of Abyei Area; however, they failed to bring a viable solution to resolve the dispute over the final status of Abyei Area.

Therefore, it is imperative to find a viable solution which could potentially close the chapter on the dispute over the final Status of Abyei Area. Since the Republic of Sudan and the Republic of South Sudan not in defiant with the decision of the Permanent Court of Arbitration on the

²⁵³ UNSC, Meeting Coverage and Press Release; SECURITY COUNCIL 7939TH MEETING NIGHT),SC/12822 15 MAY 2017 available at [HTTPS://WWW.UN.ORG/PRESS/EN/2017/SC12822.DOC.HTM](https://www.un.org/press/en/2017/SC12822.DOC.HTM)(Accessed MAY 18,2017)

²⁵⁴ Ibid.

²⁵⁵ András Jakab, Dimitry Kochenov, ed., The Enforcement of EU Law and Values: Ensuring Member States' Compliance, Oxford University Press, United Kingdom, 2017.P.373.

²⁵⁶ See Appendices 4 and 5(Republic of the Sudan and the Republic of South Sudan Maps), In both Map the Area of Abyei was uniquely identified to remark that the issue of the Abyei Area is not yet been determined.

delimitation of Abyei Area, Abyei Arbitration Award would not be a contentious issue to determine the final status of Abyei Area. As has been discussed before, the acuteness of the dispute involves determining the status of Abyei Area by referendum and who should vote on the referendum. Therefore, it is a better solution to one of the Parties unilateral application or by special agreement to bring the dispute over the status of Abyei Area to be determined by the continuous jurisdiction of ICJ. Bring the dispute to the contentious jurisdiction of ICJ has a high potential for enforceability and to end prolonged dispute over Abyei Area due to the following reasons.

As a matter of fact, unlike ICJ, PCA has no an institutional enforcement mechanism to take a coercive measure against the reluctant party to ensure the enforcement of its Award. However, under the UN framework, non-compliance is dealt with principally through Article 94(2) of the UN Charter, which offers the creditor state recourse to the Security Council in seeking enforcement of the ICJ judgment. UNSC, noted that non-enforceability to ICJ judgment might threaten international peace and security, and hence it can use the power under its disposal to enforce the ICJ judgment.²⁵⁷ Therefore, the following section attempts to find avenues to bring the dispute over the Abyei Area to International Court of Justice.

4.6.1 Sources of Jurisdiction to bring the dispute over Abyei Area to ICJ

As a matter of fact states cannot be sued before the ICJ without their consent. Of course, Article 93(1) states that “[a]ll Members of the United Nations are *ipso facto* parties to the Statute of the International Court of Justice”. However, joining the United Nations and thereby *ipso facto* becoming a party to the ICJ's Statute does *not* automatically expose a State to the Court's jurisdiction. For the ICJ to be able to settle a dispute, the States involved must have accepted its jurisdiction. There are different means to do that: by concluding a special agreement, by becoming Party to a treaty that provides for the settlement of disputes by the Court or by filing a unilateral declaration recognizing the jurisdiction of the ICJ in accordance with Article 36 of the Statute of ICJ. Therefore, the following sub-sections dedicated to explore the possible legal basis among those three means to confer jurisdiction on the ICJ over Abyei Area dispute.

²⁵⁷ Security Council Report, The Rule of Law: Can the Security Council make better use the International Court of Justice? No.5, December 20, 2016, available in pdf at www.securitycouncilreport.org.

4.6.1.1 Jurisdiction Based on Jurisdictional Clause in a Treaty

States agree in advance to submit to the ICJ any dispute concerning the implementation and interpretation of the treaty. In accordance with Article 36(1) of the Statute of the ICJ, state becoming a Party to a treaty conferring jurisdiction on the Court over disputes relating to the interpretation or application of that treaty either by bilateral treaty or multilateral treaty. The Republic of Sudan and the Republic of South Sudan made several treaties after the independence of South Sudan to resolve outstanding issues related with CPA (2005) obligations²⁵⁸ including, but not limited to, the final status of Abyei Area²⁵⁹ and boarder issues between the two states.²⁶⁰

Under auspices of AUHIP, on September 27, 2012, the Republic of the Sudan and the Republic of South Sudan made nine agreements of which one related with border demarcation between the States,²⁶¹ however, no stipulation made in all of those agreements, in cluing agreement related with demarcation of border, to confer jurisdiction on the ICJ over any disputes arising out of such treaties.

4.6.1.2 Jurisdiction Based on Special Agreement

According to Article 36(1) of the Statute of the Court, the jurisdiction of the ICJ comprises all cases which the Parties refer to it. In such cases, the Parties express their consent on an ad hoc basis by means of a special agreement requesting the ICJ to adjudicate a specific and defined dispute. Of course, based on this doctrine the Republic of the Sudan and the Republic of South Sudan may confer jurisdiction on ICJ over the dispute arising out of the determination of the final status of Abyei Area by special agreement as GoS and SPLM/A brought the dispute over delimitation of Abyei Area to the jurisdiction of PCA, however, currently there seems to be no compelling reason to argue the Parties may easily made special agreement to confer compulsory jurisdiction on ICJ over the Abyei Area dispute. This approach would be best alternative;

²⁵⁸ See the third Preamble of the Cooperation Agreement between The Republic of the Sudan and The Republic of South Sudan, 27 September 27, 2012 , Addis Ababa , Ethiopia.

²⁵⁹ See Article 4(2) of the Cooperation Agreement between The Republic of the Sudan and The Republic of South Sudan, 27 September 27, 2012 , Addis Ababa , Ethiopia.

²⁶⁰ The Agreement between The Republic of the Sudan and The Republic of South Sudan on Boarder Issues , 27 September 27,2012 , Addis Ababa , Ethiopia.

²⁶¹ On September 27, 2012, the Republic of Sudan and the Republic of South Sudan made the following agreement : 1)The Agreement on Boarder Issues(including demarcation),2)The Agreement Concerning Oil and related Economic Matters,3) the Framework Agreement on the Status of Nationals of the Other State,4) the Agreement on a Framework for Cooperation on the Central Banking Issues, 5)the Agreement on Trade and Trade Related Issues ,6)the Agreement on Certain Economic Matters: Division of Assets and Liabilities , Arrears and claims and joint Approach to the International Communities,7) The Agreement on Security Arrangements , 8) the Agreement on Security Arrangements , and 9) Cooperation Agreement between.

however it requires the consent and commitment of the both Parties to bring the dispute over the Abyei Area to the compulsory jurisdiction of ICJ base on special agreement.

4.6.1.3 Unilateral Declaration to ICJ Jurisdiction

The third way in which ICJ Jurisdiction may arise in unilateral declaration states to the compulsory jurisdiction of the ICJ in accordance Article 36(2) of the Statute of ICJ. In accordance with Article 36(2) of the ICJ Statute, the state parties to the ICJ Statute may make a unilateral declaration that "they recognize as compulsory ipso *facto* and without special agreement, in relation to any other state accepting the same obligation, the jurisdiction of the Court in all legal disputes involving issues of law or fact governed by rules of international law."²⁶² According to Article 36(4) of the Statute of the Court, declarations shall be deposited with the Secretary-General of the United Nations, and the copy of such declaration thereof to the parties to the Statute of the Court and to the Registrar of the Court.²⁶³

Most States have *not* accepted this "compulsory jurisdiction" of the Court. Of the 193 Member States of the United Nations, only 72 have accepted the Court's compulsory jurisdiction as of 2017.²⁶⁴ As a matter of fact, the Republic of South Sudan is not yet unilaterally declared to accept the compulsory jurisdiction of the ICJ. However, the Republic of the Sudan as accepted the compulsory jurisdiction of ICJ since January 1958.²⁶⁵ The Government of the Republic of the Sudan declared that:

“ in pursuance of paragraph 2 of Article 36 of the Statute of the International Court of Justice, the Government of the Republic of the Sudan recognize as compulsory ipso facto and without special agreement, on condition of reciprocity, until such time as notice may be given to terminate this Declaration, the jurisdiction of the International Court of Justice in all legal disputes arising after the first day of January 1956 with regard to situations or facts subsequent to that date concerning: (a) the interpretation of a treaty concluded or ratified by the Republic of the Sudan on or after the first day of January 1956; (b) any question of International Law; (c)

²⁶²See Article 36(2) of the Statute of International Court of Justice , available at http://legal.un.org/avl/pdf/ha/sicj/icj_statute_e.pdf

²⁶³ Article 36(4) of the Statute of ICJ.

²⁶⁴ ICJ, Declarations Recognizing the Jurisdiction of the Court as Compulsory, available at <http://www.icj-cij.org/jurisdiction/index.php?p1=5&p2=1&p3=3&code=SD>, accessed on March 10,2017.

²⁶⁵ See ICJ, Declarations Recognizing the Jurisdiction of the Court as Compulsory, available at <http://www.icj-cij.org/jurisdiction/index.php?p1=5&p2=1&p3=3&code=SD>, accessed on March 10,2017

the existence of any fact, which, if established, would constitute a breach of an international obligation; or the nature or extent of the reparation to be made for the breach of an international obligation.”²⁶⁶

It should be noted that unilateral declarations under Article 36(2) of the Statute of ICJ can be made with such reservations as the declaring state may deem fit to specify. In this regard, Article 36(3) of the Statutes of ICJ provides for states are free to include reservations in their declarations. Accordingly, the Government of the Republic of the Sudan also made reservation to exclude some specific class of disputes from the jurisdiction of the ICJ. Reservations made the Government of Sudan states that:

*“(I) disputes in regard to which the parties to the dispute have agreed or shall agree to have recourse to some other method of peaceful settlement; (ii) disputes in regard to matters which are essentially within the domestic jurisdiction of the Republic of the Sudan as determined by the Government of the Republic of the Sudan; (iii) disputes arising out of events occurring during any period in which the Republic of the Sudan is engaged in hostilities as a belligerent.”*²⁶⁷

By its 1958 unilateral declaration, the Government of the Republic of Sudan conferred compulsory on ICJ over disputes arising out of the interpretation of treaties, questions on international law and existence of fact which constitutes a breach of international obligation. Issues reserved under the Government of the Republic of the Sudan are self-explanatory and hence not need further explanation. However, it should be noted that any state which made application against the Government of Sudan invoking unilateral declaration should make sure that it is obliged to make similar declaration because the Government of the Sudan made such declaration with the condition of reciprocity.

From the previous chapters discussion one can argue that it is the Republic of the South Sudan Government which critical in need of demarcation of Abyei Area and determination of the final status of Abyei Area by a referendum. Therefore, the unilateral declaration made by the Republic of the Sudan is arguably the best and feasible opportunity to the Republic of South Sudan to set in motion the disputes related with demarcation of Abyei Area and determination of the final status of Abyei Area.

²⁶⁶ Ibid.

²⁶⁷ Ibid.

4.6.2 UN-Framework to enforce ICJ decision

Unlike the decision of other international tribunals or courts, the decision of ICJ has an advantage to make use of enforcement mechanism envisaged under the UN Charter framework. The principal enforcement machinery of judicial decisions of the ICJ is conferred on the Security Council under Article 94 (2) of the UN Charter, which provides, *"If any party to a case fails to perform the obligations incumbent upon it under a judgment rendered by the Court, the other party may have recourse to the Security Council, which may, if it deems necessary, make recommendations or decide upon measures to be taken to give to the judgment."*²⁶⁸ Of course, in practice the Security Council has never used its power conferred on it under Article 94(2) of UN Charter to enforce the decision of ICJ because the parties to the dispute more often than not comply with ICJ Judgment.²⁶⁹ However, there are a few examples mostly cited in this regard, and it suffices to mention one. In the Nicaragua Case²⁷⁰, in its letter dated October 17, 1986 the Nicaragua Government requested the president of the council to an emergency meeting to consider the failure of US to comply with the ICJ's judgment.²⁷¹ Accordingly, the Security Council was held meeting and prepared draft resolution, however, the resolution was not adopted due to negative vote of US, one of permanent members of the Security Council.²⁷² Since United State was one of the parties in the case, it is unlikely possible to expect US would cast positively on the resolution.

Following the failure of the UNSC to adopt resolution against US, the government of Nicaragua brought the non-compliance of US with ICJ judgment to UNGA.²⁷³ Under UN Charter Article 10, UN General Assembly *"may discuss any questions or any matters within the scope of the [UN] Charter..., and may make recommendation to the Members of the United Nation or to the Security Council or to both on any such question or matters."*²⁷⁴ Accordingly, the application made by the Minister for External Relations of the Republic of Nicaragua, the UNGA urged the US for full and immediate compliance with the Judgment of the International Court of Justice in

²⁶⁸ See Article 94(2) of UN Charter

²⁶⁹ UN Security Council Report, The Rule of Law: Can the Security Council Make better use of the International Court of Justice?, no.5, December 20,2016,p.6.

²⁷⁰ Military and paramilitary Activities in and Against Nicaragua (Nicaragua V.US), Provisional Measures [1984] ICJ Rep 169: Jurisdiction and Admissibility [1984] Rep 392; Merits [1986] Rep14.

²⁷¹ UN Security Council, S/18415, October 20, 1986.

²⁷² UN Security Council, Provisional Verbatim Record of the Two Thousand Seven Hundred and Fourth Meeting, held at Headquarters, New York on 31 July 1986,at, S/PV.2704.

²⁷³ UNGA A/RES/41/31,3 November 1986, 53rd plenary meeting.

²⁷⁴ See Article 10 of UN Charter.

that case.²⁷⁵ However, US was declined to comply with the recommendation of the United Nations General Assembly.²⁷⁶

The very purpose of citing Nicaragua Case is only to show that there are enforcement mechanisms under UN framework which could possibly be used in case of non-compliance with ICJ judgment on the Status of Abyei Area, if one of the parties or both parties bring the dispute of the determination of Abyei Status to the compulsory jurisdiction of ICJ.

4.7 Current Challenges to Resolve the Abyei Boundary Dispute

There could be many challenges to resolve the dispute over the final status of the Abyei Area by making use of the institutional mechanisms envisaged under the UN framework. However, this section is not intended to exhaustively explore each and every potential challenges involving the Abyei Area. It is imperative to mention the critical and the current internal dispute of South Sudan which virtually draw the total attention of the South Sudan government in domestic matter and to give little or no attention to find a solution as to how to resolve the old aged problem of determining the final status of Abyei Area between the two States. Since the independence of the South Sudan until December 2013, the government of the Republic of South Sudan, the Republic of South Sudan, UNSC, AUPSC, IGAD and other international communities were engaged to find a solution as to how to resolve the inter-state boundary dispute over the final status of Abyei Area and the outstanding issues of CPA. However, in December 2013 internal political dispute arose in the Sudan People's Liberation Movement (SPLM) which resulted in grave political, security, economic and humanitarian crises in South Sudan.²⁷⁷ The main reason for the current conflict is the disagreement between acting President Salva Kiir and former Vice President and opposition leader Riek Machar.²⁷⁸ The dispute is more complicated and extremely inhuman when it gradually turned from political to ethnic dimension-between the Nuer and Dinka.²⁷⁹

As part of its response to the crisis in South Sudan, the Peace and Security Council of the African Union (AU), at its 411th meeting held at the level of Heads of State and Government, in Banjul, The Gambia, on 30 December 2013, mandated the establishment of the Commission of Inquiry on

²⁷⁵ Ibid.

²⁷⁶ András Jakab, Dimitry Kochenov, eds., *The Enforcement of EU Law and Values: Ensuring Member States' Compliance*, Oxford University Press, United Kingdom, 2017.P.376

²⁷⁷ UNSC, Adopted by the Security Council at its 7754th meeting, on 12 August 2016, S/RES/2304 (2016), 12 August 2016.

²⁷⁸ Žiga Golobič & Kaya van der Meulen, *United Nations Security Council Study Guide*, February 2017, p.18.

²⁷⁹ See "Final Report of the African Union Commission Of Inquiry On South Sudan", OCTOBER 15, 2014, Addis Ababa, Ethiopia.¶60 available in pdf at <http://www.peaceau.org/uploads/auiciss.final.report.pdf>, accessed April 15, 2017.

South Sudan (AUCISS) to investigate, among others, the human right violation and other abuses of committed during the armed conflict in South Sudan and make recommendation.²⁸⁰ The African Union Commission of Inquiry on South Sudan chaired by the former President Olsegun Obasanjo, produced its final report as of October 14, 2014 and AUCSC endorsed the report on July 14, 2015 at the 526th Ministerial Level Meeting.²⁸¹

As envisaged under the Final Report of the African Union Commission of Inquiry on South Sudan, the African Union Commission of Inquiry found that:

“ ...sexual and gender based violence committed by both parties against women. It also documented extreme cruelty exercised through mutilation of bodies, burning of bodies, draining human blood from people who had just been killed and forcing others from one ethnic community to drink the blood or eat burnt human flesh. ”

It should be noted that the Nuer and Dinka have never had such magnitude of problems as currently witnessed, save for the minor tribal differences which were usually addressed through the traditional systems.²⁸² On August 17, 2015 Salva Kiir Mayardit and Dr. Riek Machar Teny has signed a peace agreement under auspices of IGAD.²⁸³ However, violence in South Sudan continued and in responses the escalation of violence UNSC, in December 2016, urged all parties immediately end the fighting throughout South Sudan, and that the country's leaders implement a permanent ceasefire declared in the Agreement on the Resolution of the Conflict in the Republic of South Sudan signed in August 2015.²⁸⁴

Therefore, from the above discussions one can argue that the internal armed conflict in South Sudan is currently a big challenge to the Government of South Sudan to turn its attention to and concentrate on how to find out and use the possible institutional mechanisms envisaged under international law to enforce the Abyei Arbitration Award and determine the final Status of Abyei Area.

²⁸⁰ AUPSC, Communiqué PSC/AHG/COMM.1 (CDXI) dated December 30, 2013, Banjul, The Gambia, ¶.7

²⁸¹ AUPSC, Communiqué PSC/MIN/COMM.(DXXVI) dated July 24 2015, Addis Ababa, Ethiopia.

²⁸² Ibid. ¶, 398

²⁸³ Agreement on the Resolution of the Conflict in the Republic of South Sudan, Addis Ababa, Ethiopia 17 AUGUST 2015, available in pdf at https://unmiss.unmissions.org/sites/default/files/final_proposed_compromise_agreement_for_south_sudan_conflict.pdf, accessed on April 25, 2017.

²⁸⁴ Adopting Resolution 2327 (2016), Security Council Grants Mandate Extension of United Nations Mission in South Sudan, Considers Possible Sanctions.

It should also be noted very recently that the Security Council Extends Mandate of United Nations Interim Force for Abyei by 6 Months, Unanimously Adopting Resolution 2352 (2017).²⁸⁵ In the meeting United States emphasized that the issue of Abyei is a political problem and hence it needs political solution.²⁸⁶ Moreover, US further noted that:

*“...the extension of UNISFA’s tasks relating to the Joint Border Verification Monitoring Mechanism would be the last unless both parties demonstrated their will to make the Mechanism fully operational. “The status quo must be questioned when the status quo is not working,” ... both sides to pursue a reinvigorated political process that would lead to a permanent solution on Abyei’s status”*²⁸⁷

²⁸⁵ UNSC, S/RES/2352(2017).

²⁸⁶ UNSC, Meeting Coverage and Press Release; SECURITY COUNCIL 7939TH MEETING NIGHT), SC/12822 15 MAY 2017 available at [HTTPS://WWW.UN.ORG/PRESS/EN/2017/SC12822.DOC.HTM](https://www.un.org/press/en/2017/SC12822.DOC.HTM)(ACCESSED MAY 18,2017)

²⁸⁷ Ibid.

CHAPTER FIVE

CONCLUSION AND RECOMMENDATION

5.1 CONCLUSION

This study has attempted to critically examine the settlement process of the dispute over the Abyei Area as the dispute extended before and after the independence of the Republic of South Sudan. However, the researcher does not claim to have exhaustively discussed the origin and genesis of the Abyei boundary dispute, including the different stages of its settlement process which still unfinished. Despite its limited scope, the research seems to have provided sufficient background and basis to draw the following conclusion based on which a certain recommendations also been formulated.

Historically, the Abyei Area boundary dispute originated as intra-state boundary dispute as far back as 1905. However, after the independence of South Sudan, the issue became an inter-state boundary dispute. By and large, the dispute constituted parts of the multi-dimensional conflict that continued for half century involving as protracted long civil war between Northern and Southern Sudan.

The Comprehensive Peace Agreement, 2005, included the Abyei Protocol that designed solution to take place into two phases. The first phase required establishing Abyei Boundary Commission to determine and demarcate or make conclusive indication as to the geographical area that constitutes the nine Ngok Dinka chiefdoms of the Abyei Area in 1905. The second phase was to determine the final status of Abyei Area by a referendum as it expected to be held simultaneously along with the referendum on the South Sudan in 2011.

The ABC Expert delimited the Abyei Area in accordance with the CPA and submitted the Report to the GoS in 2005. Unfortunately, the GoS rejected the ABC Experts' Report on the ground that the Experts had exceeded their mandate. Then the Parties agreed to refer the matter to international arbitration under the auspices of the Permanent Court of Arbitration. In 2009, the PCA produced its decision and, subsequently the Parties pledged their commitment to enforce the Abyei Area Arbitration Award. Subsequently, the GoS and SPLM/A had established the Abyei Border demarcation Committee (ABDC) with a view to enforce the Tribunal's Award.

The ABDC indeed started the demarcation process involving the erection of four out of the planned 26 beacons. After that, the ABDC was unable to complete demarcation of the Abyei Area partly due to intimidation of by Sudanese Armed Forces against the SPLM/A members. The Second factor for non-implementation of the Abyei Arbitration Award was the disagreement and deadlock between the SPLM/A and GoS as to who should be eligible to vote in the Abyei Referendum. Even after post-independence, there has been disagreement between the Republic of the Sudan and the Republic of South Sudan as to voters' eligibility to undertake Abyei referendum.

The UNSC and AUPSC have passed number resolutions to urge the parties to negotiation without any precondition and resolve the dispute over the final Status of the Abyei Area. Particular, UNSC Resolution 2040(2012) against any Party who failed to resolve the final status of Abyei Area in accordance Article 41 of the UN Charter. In the same way, AUPAC in its 319 Ministerial Meeting Communiqué PSC/MIN/COMM/3(CCCXIX) warns that necessary measures to be taken against the party who might fail to comply with its resolution. However, both the UNSC and AUPSC appeared to be unable to enforce their respective measures against the Party that obstructed the final settlement of the dispute.

In any case, lack of commitment and good faith from the Parties together with the failure of AUPSC and UNSC to enforce their respective decision against the Parties have caused the existing deadlock over the Abyei Area boundaries disputes settlement process. Lack of coercive measure requiring the Parties to determine the final status of Abyei Area has proved to be an obstacle to the settlement the dispute over seven years now. Therefore, it may be necessary to explore an alternative and viable legal solution applicable under international law so as to bring the dispute over Abyei Area resolved once and for all.

In the light of the above stated concluding remarks, the author explores other alternative mechanism which may be applicable under international law. For instance bring the dispute over the Abyei Area to the compulsory jurisdiction of ICJ might be a viable solution. This is because there could be high probability of the enforceability of the ICJ judgment under UN institutional framework. First, under Article 94(2) of the United Nations Charter, the Security Council mandated to adopt measures to be taken against a Party resisting reluctant to enforce ICJ

Judgment if one of the Parties who has the right to execution of judgment invoke such course of action under the UN Charter. Secondly, in such a case UNSC will not urge time and again the Parties to negotiate to resolve the dispute over Abyei Area as it has been doing now, rather it directly require the reluctant party to enforce the decision of ICJ. Thirdly, there is also the option to bring the matter to the attention of the United Nation General Assembly for a political action recommendation to name and shame the party not complying with the ICJ Judgment.

Thus, with regard to the current deadlock, there could be two possible alternatives to bring the matter to the compulsory jurisdiction of ICJ. Although, there is no treaty between the Parties conferring jurisdiction on the ICJ over the dispute related with Abyei Area. Both Parties may make Special Agreement to bring the dispute to the compulsory jurisdiction of the ICJ.

This alternative may be workable solution if the only if both parties give consent in good faith, to bring an end to the dispute. The second option is unilateral submission of the dispute by the Republic of South Sudan to the compulsory jurisdiction of ICJ.

Since 1958, the Republic of the Sudan Government is reported to have unilateral declaration to confer compulsory jurisdiction on ICJ concerning disputes arising out of the interpretation of treaties, questions on international law and existence of fact which constitutes a breach of international obligation. In the light of this existing commitment of the Sudan, it may be possible to resort ICJ for settling the dispute over the Abyei Area.

Therefore, based on the above observation the following alternative approaches are recommended to resolve the dispute over the Abyei Area.

5.2 RECOMMENDATION

Hopefully, the dispute over Abyei Area which proved to be resistant to most of the available remedies may be resolved by the resorting to what this writer finds to be the remaining option under the modern international law. Thus, the commitment of the Parties to peaceful resolution of the dispute may be tested by their level of positive response to the following alternative options.

1. Taking note that effort made so far by the UNSC, AUSPC, AUHIP and IGAD to resolve the dispute over the final status of Abyei Area proved fruitless, the Parties including the Republic of Sudan and the Republic of South Sudan may bring the contentious issues including, but not limited to, the demarcation of the Abyei Area and acting in accordance with the definition and delimitation of Abyei Area by the Permanent Court of Arbitration/Abyei Arbitration Tribunal to the compulsory jurisdiction of International Court of Justice. To this effect the Parties may enter into a Special Agreement in accordance with Article 36(1) of the Statute of International Court of Justice.
2. In the event where the two parties fail to enter into a Special Agreement as recommended above, the Republic of South Sudan may unilaterally bring the dispute over the demarcation of Abyei Area based on the 1958 decision of the Republic of Sudan to accept unilaterally the compulsory jurisdiction of ICJ *ipso facto* and without special agreement but on conditions or reciprocity. Thus, this option may be resorted to by the Republic of South Sudan which may have to express its own consent to reciprocate the pre-existing unilateral commitment and consent of the Republic of the Sudan.
3. The Above alternatives would be viable and effective, if and only if the internal armed conflict in the Republic of Sudan, which erupted since 2013 gets resolved by the conflicting political leaders. Therefore, in order to resolve the dispute over Abyei Area by making use of UN institutional mechanism, the Government of South Sudan and the prominent political leader should resolve their internal problem and create national conscience and peace in the country.
4. If based on either one of the above options the Parties bring the dispute to the compulsory jurisdiction of the ICJ and ICJ render its Judgment, the UNSC should effectively enforce its decision with a view to enforce the decision of ICJ if either one of the Parties invoke Article 94(2) of UN Charter for the enforcement of the ICJ judgment on the Abyei Boundaries dispute.

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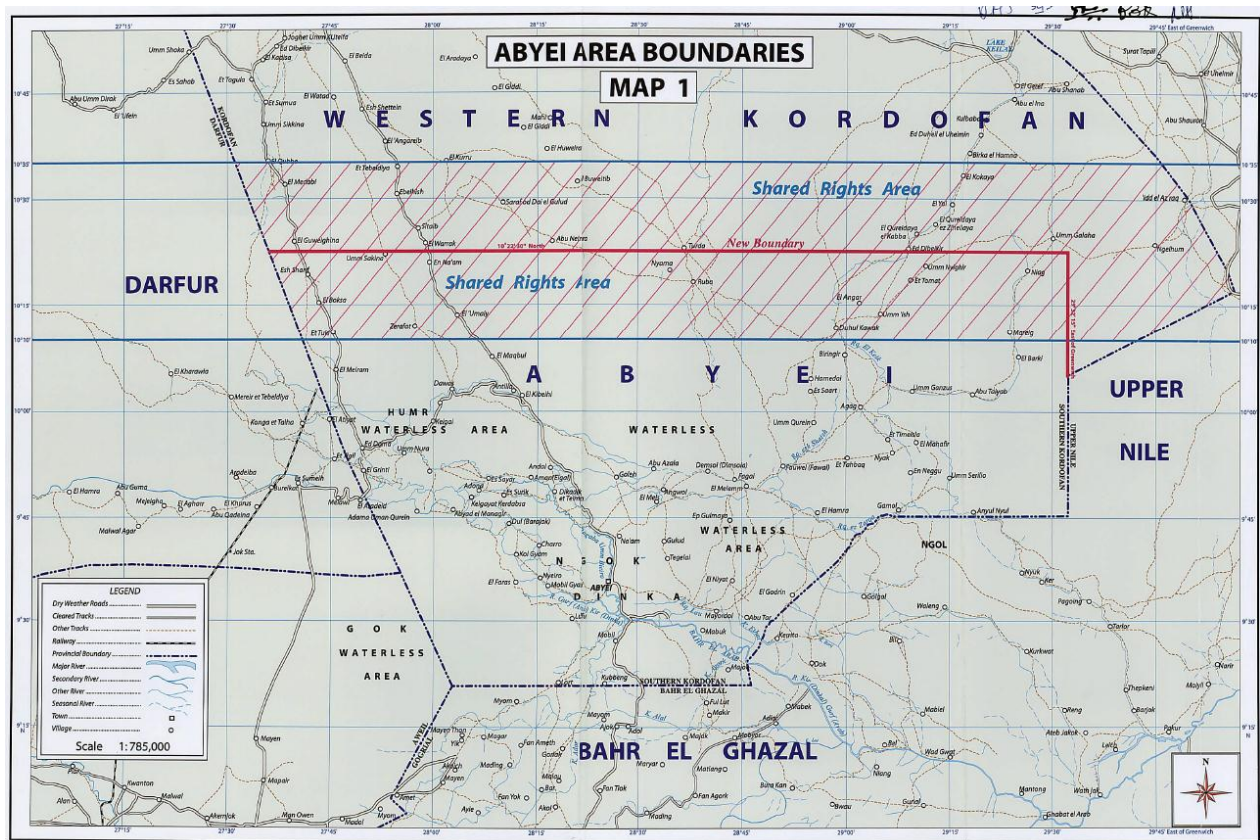
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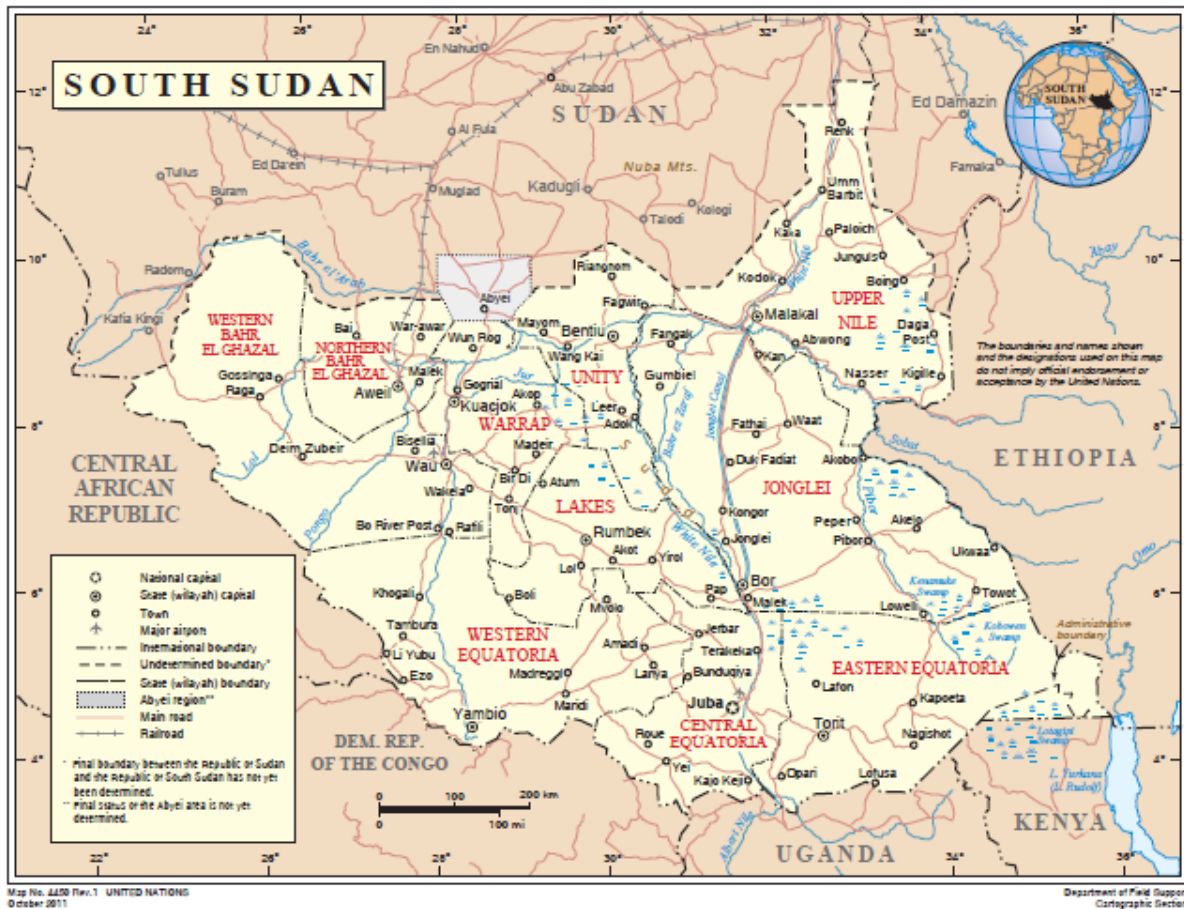
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APPEBDIXES





GLOSSARY OF TERMS

ABC Experts or Experts	The five experts nominated by the United Kingdom, the United States of America and the IGAD to the ABC (Ambassador Donald Patterson, Dr. Kassahun Berhanu, Prof. Shadrack B.O. Gutto, Dr. Douglas H. Johnson, Prof. Godfrey Muriuki)
ABC Experts' Report or Report	Report presented by the ABC Experts to the Sudanese Presidency on July 14, 2005
Abyei Appendix or Abyei Annex	Appendix to the Abyei Protocol relating to the Parties' "Understanding on Abyei Boundaries Commission"
Abyei Area or Formula	The area of the nine Ngok Dinka chiefdoms transferred to Kordofan in 1905
Abyei Protocol	Protocol on "The Resolution of Abyei Conflict" signed by the Parties on May 26, 2004
Abyei Referendum	A referendum to be held among the residents of Abyei (simultaneously with the referendum of Southern Sudan) allowing them to vote on whether Abyei shall retain its special administrative status in the north or become part of Bahr el Ghazal
Abyei Road Map	Road Map for the Return of IDPs and Implementation of Abyei Protocol" signed by the Parties on June 8, 2008
Abyei Town	Town of Abyei located north of the Bahr el Arab river.
Anglo-Egyptian Condominium	Joint British and Egyptian government of Sudan (1899-1956)
Boundary Delimitation	Denotes description of the alignment in a treaty or other written source, or by means of a line marked on map or charter .
Boundary Demarcation	Denotes the means by which the described alignment

is marked, or evidenced, on the ground, by means of cairns of Stones, concrete pillars, beacons of various kinds, cleared roads in scrub, and so on.

Goz

Sandy area of transit south of Muglad

Humr

Also known as Homr; cattle-owning nomadic Arab tribe of southern Kordofan, subgroup of the Messiriya

Interim National Constitution

Interim National Constitution of the Republic of Sudan adopted on July 6, 2005

Kordofan

Also referred to as Kurdufan; Western Province of Sudan bordering Darfur in the west, Bahr el Ghazal in the southwest and Upper Nile in the southeast

Misseriya

also known as Messeria or Messiria; nomadic tribe of Baggara Arabs

Muglad

Home and cultivation area of the Humr, south of the Babanusa and north of the Goz.

Nine Ngok Dinka Chiefdoms

Abyior, Achaak, Achueng, Alei, Anyiel, Bongo, Diil, Manyuar, Mareng

Parties

GoS and the SPLMA, collectively

PCA Financial Assistance Fund

A fund established by PCA Member States that helps developing countries meet part of the costs involved in international arbitration or other means of dispute settlement offered by the PCA.

Ragaba ez Zarga

also known as Ragaba ez-Zarga, Ngol, Ragaba Zarga; also referred to, in the early 20th century, as Bahr el Arab due to geographic confusion; watercourse located north of the Bahr el Arab and the Ragaba Umm Biero