

Abyei Unresolved: A Threat to the North-South Agreement*

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For years the Misseriya* and Ngok Dinka peoples have disputed which of them has primary occupancy of the Abyei Area, which lies in the southern part of Western Kordofan. Two major topographical features of the area are the Bahr el-Arab/Kir and Ragaba ez-Zarga/Ngol rivers. In referring to them, I'll use the Arabic, Bahr el-Arab, and the Dinka, Ngol. Another feature is a zone called the Goz, which lies north of Abyei Town and south of the Misseriya headquarters town of Muglad and runs roughly west to east. It is unsuitable for cattle grazing and is described by some as a natural boundary between the Ngok Dinka and the Misseriya.

There is historical evidence, disputed by some, that both tribes migrated to Kordofan in the 18th century. The Misseriya's migration took them from North Africa to Chad; subsequently they left the Sultanate of Wadai and arrived at the Muglad area. The Ngok moved west to Kordofan from Upper Nile. Indications are that the two peoples lived in relative harmony until the 19th century advent of the Turko-Egyptian occupation of Sudan. Arab traders made alliance with Baggara groups, including Misseriya, to conduct slaving operations. The Dinka had believed that the coming of the Mahdi would end this dark time in their history. It did not, for most Dinka. However, during the Mahdiyya, largely through the diplomacy of Ngok leader Arop Biong, the Ngok were able to establish and maintain a mainly peaceful coexistence with the Misseriya. This changed after the British defeated the Mahdi's successor, the Khalifa Abdullahi, in 1898-1899. Most of the Misseriya had supported the Mahdists and many fought with the Khalifa. After the defeat they returned to Kordofan. Their leader, Ali Julla, who became Nazir in 1900, instigated raids against the Ngok.

Arop Biong complained to the new government, the Anglo-Egyptian Condominium. The British concluded that 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 al-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. Thus it was that in 1905 that authority over the Ngok was transferred from Bahr el-Ghazal Province to Kordofan Province.* As a result there was created the

* The people who today are known as Misseriya are Baggara Arabs who in the eighteenth century were composed of two tribal divisions, the Humr and the Zurg. The latter were referred to as Misseriya. The Humr settled in the Muglad/Babanusa area, the Zurg farther east. In 1942, the British amalgamated the two groups, who henceforth were both called the Misseriya.

* The shift was one of authority over the Ngok, not a physical movement of them from Bahr el/Ghazal to Kordofan.

anomaly of a southern Sudanese group being administered as part of northern Sudan.

Thanks to the leadership of Arop Biong's son, Kuol Arop, and his grandson, Deng Majok, Misseriya chiefs Nimur and Babo Nimur, and the British, the Ngok and Misseriya got along together quite well for the next half century. The two peoples shared cattle grazing rights in the territory. But then the first civil war came to the area and hostilities between the Misseriya and Ngok began, resulting in considerable killing beginning in 1965 and continuing even during the ten-year hiatus in the war. In the years after the war resumed in 1983, successive governments in Khartoum armed and equipped the Misseriya to play a key role as militia in the North's fight against the SPLA. The Abyei area was virtually denuded of Ngok Dinka. By the time that the war finally ended, the Misseriya had come to regard the area as rightfully theirs.

Because the Ngok and Misseriya were so intransigent on the question of to whom the area belonged, the negotiations that achieved the Comprehensive Peace Agreement failed to resolve the Abyei issue. But a basis for ending the dispute was laid by an American proposal.

The Americans, who played a vital role in the CPA negotiations, put forth a proposal on the Abyei issue in March 2004. This, which became the Abyei Protocol to the CPA, was written by the staff of US Special Envoy Senator John Danforth; it was adopted in May of that year.

- The protocol begins by stating that "the territory is defined as the area of the nine Ngok Dinka chiefdoms transferred to Kordofan in 1905."
- In the interim period [i.e., from 2005 to 2011], Abyei will have a special status. Its residents will be citizens of both Western Kordofan and Bahr al-Ghazal states. The territory will be governed by an elected Executive Council. Revenues of oil produced in Abyei will be divided: 50 percent for the central government, 42 for the Government of Southern Sudan, 2 for Bahr el-Ghazal, 2 for Western Kordofan, 2 for the Misseriya, and 2 for the Ngokl.
- After the interim period, residents will vote to either retain special administrative status in the north or be part of Bahr al-Ghazal, regardless of how the southern people vote in their 2011 referendum on whether to become independent.
- The Protocol states that the presidency will establish the Abyei Boundaries Commission to define and demarcate the area of the nine Ngok Dinka chiefdoms transferred from BAG to Kordofan in 1905.

In December of 2004 the Government of Sudan (GOS), and the Sudan People's Liberation Movement (SPLM) adopted an annex to the protocol. It provided that the ABC would consist of fifteen members, five each named by the GOS and the

SPLM, and five “impartial experts” nominated by the US, UK, and IGAD.* The Annex states that the experts would consult the British archives and other relevant sources. They would determine the rules of procedure of the ABC. The report of the experts...would be “final and binding on the parties.”

Why did the two sides (a) decide to delegate to five outsiders the power to make the decision on the boundaries and (b) provide that that decision would be final and binding?

For one, they knew they couldn't do it themselves. And it's possible one or both sides figured it would be better that blame for an adverse decision would fall on the outsiders, not on themselves. Beyond that is the fact that each side believed its case was iron clad.

The ABC gathered in Nairobi in early April and held our first meeting on the 10th. The GOS side was led by Ambassador El-Dirdeiry Mohammed Ahmed, the SPLM side by Commander Deng Alor. The five impartial experts were Godfrey Muriuki, professor of African history at the University of Nairobi; Kassahun Berhanu, professor of political science at the University of Addis Ababa; Douglas Johnson, scholar, publisher, and expert on southern Sudan; and me. The fifth expert, Shadrack Gutto, a South African lawyer, law professor and specialist on land usage would be selected by IGAD later. IGAD had asked a Ghanaian professor to be one of the five experts, but after accepting he equivocated and then at the last minute bowed out. In accordance with the wishes of the GOS and SPLM, I, as the American representative, became the ABC's chairman.

None of us, the five experts, was instructed by any government or by IGAD as to what we should do or how we should do it. We acted entirely on our own, guided by the terms of the Protocol, the Annex, and the Rules of Procedure.

In its initial presentation to the experts there in Nairobi, the GOS maintained that the nine Ngok chiefdoms in 1905 lay well south of the Bahr el-Arab. The SPLM insisted that the chiefdoms were, and remain, both north and south of the river. Neither side's arguments were convincing. When I suggested privately to Ambassador Dirdeiry that an equitable decision based on compromise would be a good outcome, he told me flat out that there could be no compromise on a land issue. Later that same day, Deng Alor agreed with him.

Dirdeiry made much the fact that the Protocol states that “the territory is defined as the area of the nine Ngok Dinka chiefdoms transferred to Kordofan in 1905.” He lauded what he said was “the genius” of the Americans for coming up with that definition. This, he claimed, meant that nothing that occurred before or after 1905 had any relevance to the Abyei issue and could not be considered by the ABC. He seemed to believe that hinging the ABC's decision narrowly on that

* The US and the UK each nominated one expert, and IGAD nominated three.

year would give the government's case a decided advantage over the SPLM's case.

Douglas Johnson heatedly took issue with Dirdeiry. He said we would need to refer to post-1905 documents to clarify earlier information. And he said a restriction on our ability to gather evidence would be intolerable. Dirdeiry backed down. It is possible, however, that the later claim by the government that the experts had exceeded their mandate stemmed at least in part from Dirdeiry's stated position on this.

Why this terminology -- the reference to the nine Ngok Dinka chiefdoms in 1905? I e-mailed Jeff Millington, who had been a State Department officer on Senator Danforth's staff and was the principal drafter of the Protocol. He said, "It was clearly our view...that the area transferred in 1905 was roughly equivalent to the area of Abyei that was demarcated in later years." In other words, the Americans had not meant to limit the gathering of information about Abyei strictly to information available in 1905, which my colleagues and I found to be extremely limited and manifestly insufficient on which to base a decision on Abyei's boundaries.

As prescribed by the Annex to the Protocol, the experts drafted rules of procedure. These laid out how the ABC would do its work and included a passage to the effect that the Commission would try to reach a decision by consensus, but failing that the experts would have the final say. That passage underscored the statement in the Annex that the report of the experts would be final and binding on the parties. This and the rigid adherence of the two sides to their respective positions made it clear from the outset that the experts would make the decision on the Abyei boundaries.

On the 14th the commission flew to Khartoum and from there to Abyei Town via Kaidugli, where we boarded Russian-made helicopters flown by Ukrainian crews. Over the next week we listened to testimony by Ngok Dinka in Abyei Town; by mostly Misseriya in cattle camps northeast and northwest of Abyei Town; by Twic, Rek, and Rueng neighbors of the Ngok in the village of Agok; and by Misseriya in Muglad.

The essence of what we heard from the Ngok and their neighbors was that the Ngok chiefdoms included land south and north of the Bahr el-Arab and that the Ngok had permanent settlements well north of the river. At each Misseriya cattle camp we were told that it was a permanent settlement, even though it was clear to an objective observer that there was no physical evidence indicating permanency. From the Misseriya at the camps and also those we interviewed in Muglad, we heard that the Misseriya were permanently settled in the Abyei area long before the Ngok, that in 1905 the destitute Ngok sought refuge from their enemies, that Misseriya leaders, Ali Julla in particular, welcomed them to the

Abyei area, and that therefore the Ngok were guests and had no valid claim to the land.

Because the testimony was so similar to the GOS and SPLM positions and because of the sameness of the wording used by many of those who testified, it was obvious that both the Dinka and Misseriya had been coached. Most, though not all, of the testimony was of no use to the experts. This meant we would have to base whatever decision we made mainly on evidence gleaned from historical records. Back in Nairobi we reviewed the testimony, made arrangements to have it translated into English and transcribed, and plotted out our research needs. Then we went to Khartoum at the end of April. For the next two weeks we pored over documents at the National Records Office and the University of Khartoum, and maps at the Sudan National Survey Authority. There was no map showing the extent of the territory of the nine Ngok Dinka chiefdoms in 1905 or before then or afterward. Nor was there any written description of who had primary rights to the land.

But there was a wealth of material in the documents we studied in Khartoum and subsequently in England. These documents consisted mainly of records written by British colonial administrators during the first half of the 20th century: trip reports, province intelligence reports, correspondence between province headquarters and the central government, and some district records and private papers. We also consulted scholarly studies and memoirs written by former administrators. In the absence of demarcated and surveyed boundaries in 1905, we had to reconstruct what the boundaries -- in particular the northern boundary -- were by using legal, sociological, and historical scientific methods.

After doing some more work in Nairobi, three of us (Muriuki, Johnson and I) went to England to do more research at the universities of Oxford and Durham. We also went to Sussex, where we interviewed Michael Tibbs, the last British District Officer for Dar Misseriya, and to Hull, where we spoke with Ian Cunnison, an anthropologist who had lived with the Misseriya in the early 1950s.

The Commission reconvened in Nairobi in mid-June for the final presentations of the two sides. There was no change in their basic positions. We five reviewed our preliminary findings, re-examined evidence, and fine-tuned our summary report. And we made our decision. Our work done, we dispersed in late June to await word from Khartoum as to when we would meet with the new presidency.

Before we left Nairobi, we took an oath not to reveal to anyone the decision we had just made. We were aware that a leak of the decision before it was made known to the presidency could spark violence in the Abyei area.

In doing our work we had had to consider all the assertions made by the two sides, both in the presentations by the government and the SPLM and in the testimony we had heard. Let me recapitulate the two positions:

The GOS and Misseriya insisted that the only area transferred from the authority of Bahr el-Ghazal to Kordofan in 1905 was a strip of land south of the Bahr el-Arab. They maintained that the Ngok Dinka lived south of the Bahr el-Arab before 1905 and migrated to the territory north of the river only after coming under the direct administration of Kordofan. Therefore the Abyei Area should be defined as lying south of the Bahr el-Arab, and should exclude all territory to the north of the river, including Abyei Town itself.

The crucial piece of evidence supporting the government's position was a trip report by a British official, Major E.B. Wilkinson, traveling from El-Obeid south to Dar el Jange, the land of the Dinka, in 1902. In his account of his journey, Wilkinson wrote that he did not encounter any Dinka until after he crossed the Bahr el-Arab.

The SPLM case was that the Ngok Dinka had well established historical claims to an area extending from the existing Kordofan/Bahr el-Ghazal boundary to north of the Ngol River, and that the northern boundary should run in a straight line along latitude 10°35' N. Before, during and after 1905, Ngok permanent settlements were situated both north and south of the Bahr el-Arab; and there had been no major changes to those areas of permanent settlement from 1905 to 1965.

On July 9 the new presidency was sworn in. On the 14th, the ABC met with President Omar al-Bashir and Vice Presidents John Garang and Ali Osman Taha in a large formal room in the Presidential Palace. We, the five experts, made our presentation. Much of our summary report, which we read aloud, dealt with nine propositions, which were the claims that emerged from the presentations of the government and the SPLM and the testimony we had heard in the field. For each claim we offered an analysis and conclusion as to its validity.

For example, the Ngok had stated that their territory originally extended north as far as Muglad. We cited evidence that Muglad was and remains the heart of Dar Misseriya, and that contemporary documents showed that Ngok Dinka settlements did not extend that far north. Therefore, we rejected the claim.

Another proposition was the assertion by the Misseriya that their territory extended well south of the Bahr-el Arab. This too did not hold up to scrutiny, for in the early years of the 20th century the Misseriya had taken their cattle no farther south than the Ngol River, and they never lodged an official claim to ownership of land south of the Bahr el-Arab.

Another proposition, one which arose from Misseriya testimony and from the government's case, was that the Ngok are newcomers to the territory, not having left the Upper Nile area until the nineteenth century, and having been brought into Kordofan as destitute refugees at their own request to Humr leaders. This,

too, was belied by historical evidence showing that the Ngok as well as the Humr arrived in Kordofan in the 18th century. There was no evidence that the Ngok asked Ali Julla, the Misseriya chief who was conducting raids against them, for refuge. And far from being destitute at the turn of the century, the Ngok were, as British officials noted, well off and owned lots of cattle.

Rather than go into each proposition, let me read excerpts from our conclusions, which cover other claims of both sides:

- In 1905 there was no clearly demarcated boundary of the area transferred from Bahr el-Ghazal to Kordofan.
- The GOS belief that the area of the nine Ngok Dinka chiefdoms placed under the authority of Kordofan in 1905 lay entirely south of the Bahr el-Arab is mistaken. It is based largely on a report by a British official who incorrectly concluded that he had reached the Bahr el-Arab when in fact he had come to the Ngol, some 28 miles north of the Bahr el-Arab.
- The Ngok claim that their boundary with the Misseriya should run from Lake Keilak to Muglad has no foundation.
- The historical record and environmental factors refute the Misseriya contention that their territory extended well to the south of the Bahr el-Arab, an area to which they never made a formal claim during the Condominium period.
- Although the Misseriya have clear “secondary” (seasonal) grazing rights to specific locations north and south of Abyei Town, their allegation that they have “dominant” (permanent) rights to these places is not supported by documentary or material evidence.
- There is no substance to the Misseriya claim that because the Abyei Area was included in “Dar Messeria” District, it belongs to the Misseriya people. The Ngok and the Humr were put under the authority of the same governor solely for reasons of administrative expediency in 1905. After that action, the Ngok retained their identity and control over their local affairs and maintained a separate court system and hierarchy of chiefs.
- There is compelling evidence to support the Ngok claims to having dominant rights to areas along the Bahr el-Arab and Ngol.
- The administrative record of the Condominium period and testimony of persons familiar with the area attest to the continuity of Ngok Dinka settlements in...places north of the Bahr el-Arab between 1905 and 1965.

- The border zone between the Ngok and Misseriya falls in the middle of the Goz, roughly between latitudes 10°10' N and 10°35' N.

As for the decision, it includes the following:

The Ngok have a legitimate dominant claim to the territory from the Kordofan–Bahr el-Ghazal boundary north to latitude 10°10' N, stretching from the boundary with Darfur to the boundary with Upper Nile.

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 secondary rights.

The two parties lay equal claim to the shared areas, and accordingly it is reasonable and equitable to divide the Goz between them and locate the northern boundary in a straight line at approximately latitude 10°22'30" N.

The Ngok and Misseriya shall retain their established secondary rights to the use of land north and south of this boundary.

What is the significance of our decision? During the years leading up to the 2011 referendum, the decision should have no effect. As we stated in our report, the boundary that we defined would not be a barrier to interaction between the Misseriya and Ngok Dinka communities. It should have no practical effect on the traditional grazing patterns that have been followed for many years. Nor does the boundary affect the distribution of oil revenues, the shares of which are laid out in the Protocol.

The placement of the Abyei boundary would become a serious issue only if in 2011 the South votes to become independent and at the same time the residents of Abyei vote to become part of Bahr el-Ghazal. In this way, Abyei would be part of the new country and Abyei's northern boundary would be an international boundary.

In addition there is the matter of oil. The oil-rich territory of Abyei would no longer belong to Sudan. And therein lies the rub. Some believe that no matter what happens, the North will never relinquish so much oil.

It was clear that as he heard it being read, President Bashir was unhappy with the decision. Indeed several days later, after the Misseriya had rejected it, Bashir followed suit. The Misseriya had been confident that the decision would be favorable to them. Before the Commission had convened in April, Ngok Dinka members of it had suggested to the Misseriya members that the two sides should themselves identify their boundaries as they knew them and present them to the ABC for endorsement. The Misseriya rejected the proposal. Apparently they were confident that the government's support for their position would determine the outcome. In fact, they had been assured this would occur.

A year and a month have passed since my colleagues and I presented our decision to the presidency, and it remains unimplemented. It is quite possible that this would not have been the case if John Garang had lived. This is not to take anything away from Salva Kiir, who insists that the ABC's decision must be implemented. It's just that Garang was in some ways bigger than life, a charismatic and persuasive man who had developed a close working relationship with Ali Osman Taha.

We, the five experts, met with Garang that night of July 14. He was in good form -- good-humored, expansive, confident about the future of democracy in Sudan. I said the government had not permitted any exposure of my post-presentation remarks to the media, which had been limited to government radio and TV. In contrast Dirdeiry's comment that the decision would merely be studied was publicized. Garang said Dirdeiry was speaking for himself only and that clearly the decision was final and binding.

The northern political leadership and the Misseriya maintained, and continue to insist, that the ABC experts had exceeded their mandate and that, therefore, their decision was invalid. But Salva Kiir and the SPLM are adamant that the decision was just and that, as stipulated in agreements signed by both parties, it is final and binding,

My colleagues and I were fully aware that the Misseriya would strongly object to our decision. I for one, though, thought that in time the northerners would accept it, however reluctantly. After all, the presidency included a southerner as first vice president, and southerners would have no reason not to support our decision. Would President Bashir hold to a rejection that could have a devastating impact on the CPA as a whole? Well, thus far he has done just that.

Neither the National Congress Party (NCP) nor the SPLM appears to want to bring the issue to a head at this time. The same holds for the US government. Although the Bush administration has stated its support for the ABC decision, the State Department is too focused on Darfur to expend diplomatic resources on Abyei. It is also possible that Washington's desire not to hinder its intelligence relationship with the Sudanese government has inhibited the Americans from exerting strong pressure on the NCP's leaders to implement the ABC decision.

The issue is potentially explosive. The Misseriya have said they will fight if the decision is implemented. Salva Kiir told Americans during his October 2005 trip to the United States that the decision had to be implemented. He indicated that any effort to deny that would lead to fighting. Abyei has been a subject of several discussions between the president and first vice president, but there has been no progress at all in resolving the issue. If not overcome, failure to implement the ABC's decision -- the first major test of the viability of the Comprehensive Peace Agreement -- could well signify failure of the CPA itself.