

INTERNATIONAL DECISIONS

EDITED BY DAVID J. BEDERMAN

Excess of mandate—standard of review—failure to state reasons—partial nullity—traditional rights—land boundary delimitation

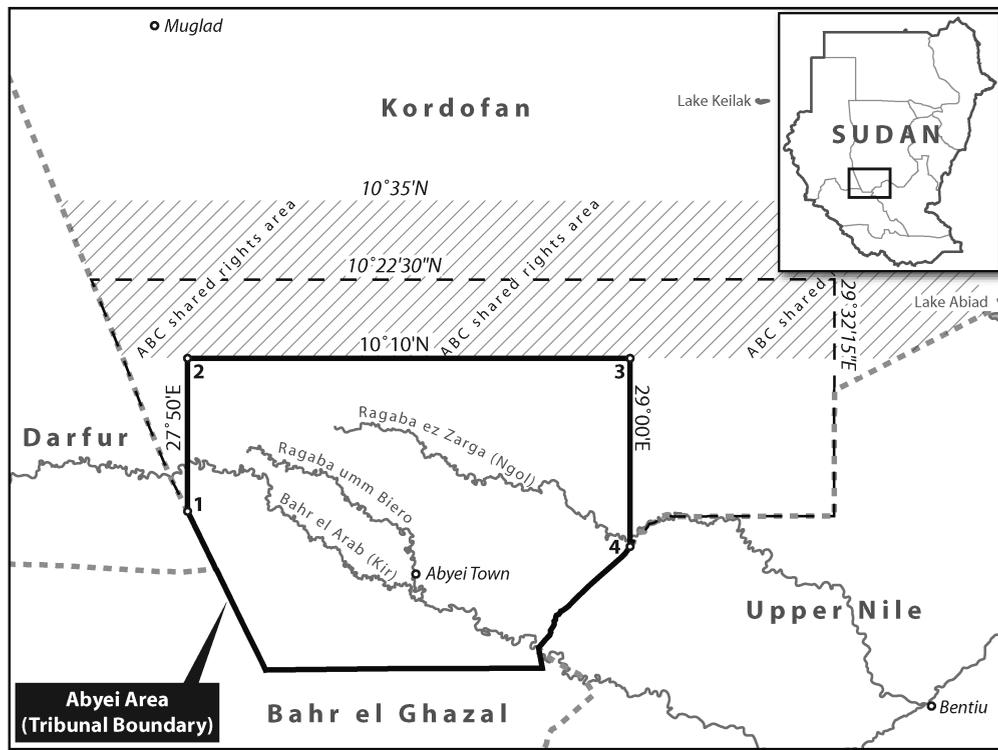
GOVERNMENT OF SUDAN V. SUDAN PEOPLE'S LIBERATION MOVEMENT/ARMY ("ABYEI ARBITRATION"). *At* <http://www.pca-cpa.org>.
Arbitral Tribunal, July 22, 2009.

On July 22, 2009, a five-member arbitral tribunal, operating under the Permanent Court of Arbitration's Optional Rules for Arbitrating Disputes Between Two Parties of Which Only One Is a State, rendered its 4-1 decision in the excess-of-mandate and boundary-delimitation case between the government of Sudan (Government) and the Sudan People's Liberation Movement/Army (SPLM/A).¹ The tribunal was asked (1) to determine whether the Abyei Boundaries Commission (ABC) Experts (Experts) had, in their final report² (Report), exceeded their mandate, which was "to define and demarcate the area of the nine Ngok Dinka Chiefdoms transferred to Kordofan in 1905,"³ and, if so, (2) to delimit that region, known as the Abyei area (see map). The tribunal found that the Experts had not exceeded their mandate with respect to the southern boundary of the Abyei area, the northern limit of permanent Ngok Dinka habitation, or the survival of established secondary (seasonal) rights on either side of the northern boundary. The tribunal did find, however, that the Experts had exceeded their mandate with respect to the delimitation of the area of shared secondary rights in the north, and with respect to the delimitation of the northern, western, and eastern boundaries of the Abyei area for failing to state sufficient reasons for how they implemented their mandate. The tribunal accepted the possibility of a partial nullity of the Experts' Report and set aside only those decisions in the Report that were rendered in excess of the Experts' mandate. In particular, the tribunal delimited new boundaries in the east and west, and ruled that, while the defined area

¹ Gov't of Sudan v. Sudan Peoples' Liberation Movement/Army ("Abyei Arbitration") (Arb. Trib. July 22, 2009). The award and dissenting opinion by Judge Al-Khasawneh are contained in separate files on the Web site of the Permanent Court of Arbitration, <http://www.pca-cpa.org>. The optional rules are also available on the PCA Web site.

² Abyei Boundaries Commission Report (July 14, 2005) [hereinafter ABC Report], *at* <http://www.sudanarchive.net>. Appendix 1 of the ABC Report includes the Abyei Protocol (Protocol Between the Government of Sudan (GoS) and the Sudan People's Liberation Movement (SPLM/A) on the Resolution of Abyei Conflict, May 26, 2004) (Appendix 1.1), Abyei Appendix (Understanding on Abyei Boundaries Commission, Dec. 17, 2004) (Appendix 1.2), Terms of Reference (Appendix 1.3), and Rules of Procedure (Appendix 1.4). The ABC consisted of fifteen individuals, five appointed by each of the parties and "five impartial experts knowledgeable in history, geography and any other relevant expertise." These last five were the "ABC Experts." Abyei Appendix, *supra*, para. 2.

³ Abyei Protocol, *supra* note 2, Art. 5.1. This phrase is referred to throughout the award (see para. 95) as the "Formula."



of shared secondary rights was a nullity, “the exercise of established traditional rights within or in the vicinity of the Abyei Area . . . remain[ed] unaffected” (para. 770).

In 1905, in the early years of the Anglo-Egyptian Condominium, a transfer was made between Bahr el Ghazal Province and Kordofan Province intended to bring the Ngok Dinka (one of a collection of Dinka tribes) under the same provincial administration as their nomadic neighbors to the north, the Humr Arabs (a subgroup of the Misseriya). For several years prior to the transfer, the Dinka had complained of raids by the Humr (para. 637). The Condominium officials, in the interest of pacification, thought it “advisable to place them under the same Governor as the Arabs of whose conduct they complained” (para. 616, quoting Sudan Intelligence Report, March 1905). The effect of this transfer was to shift southward the ill-defined provincial boundary between Bahr el Ghazal and Kordofan, with the result that the Ngok Dinka were encompassed within the reconfigured Kordofan Province.⁴

It is clear, in retrospect, that this provincial redistricting along the volatile cultural fault line dividing Arab (northern) and African (southern) areas of Sudan did not have the desired pacifying effect. The first of two civil wars between northern and southern Sudan began around the time that Sudan achieved independence in January 1956 (para. 108). The first civil war—in

⁴ The Experts found that “no map exists showing the area inhabited by the Ngok Dinka in 1905. Nor is there sufficient documentation produced in that year by the Anglo-Egyptian Condominium government authorities that adequately spell out the administrative situation that existed in that area at that time.” ABC Report, *supra* note 2, at 4. The tribunal further described the uncertainty of the Bahr el Ghazal–Kordofan boundary at paragraphs 618 to 623.

which the Misseriya and Ngok Dinka participated on opposite sides—ended in 1972 with the Addis Ababa Agreement. In 1983, however, after a tenuous eleven-year peace, that agreement fell apart, leading to another civil war, in which “the Abyei Area [was] said to be at the geographical center” (para. 109). This second civil war officially ended with the signing in January 2005 of the Comprehensive Peace Agreement,⁵ although sporadic unrest has continued since then.⁶ With that agreement the parties reconfirmed their commitment to previous agreements, which included the Machakos Protocol signed in July 2002 and the Abyei Protocol and its annex, the Abyei Appendix, signed in May and December 2004, respectively.⁷

The Machakos Protocol established the process by which, after a six-month pre-interim period followed by a six-year interim period, an “internationally monitored referendum” would be held in southern Sudan to decide whether “to confirm the unity of Sudan . . . or to vote for secession.”⁸ The pre-interim period began in January 2005, and the referendum is anticipated in 2011. The Abyei Protocol called for a parallel referendum to be held simultaneously with the referendum for southern Sudan. Pursuant to paragraph 1.3 of protocol, the referendum “will present the residents of Abyei with the following choices, irrespective of the results of the southern referendum: a. That Abyei retain its special administrative status in the north; b. That Abyei be part of Bahr el Ghazal.” If southern Sudan were to secede, some segments of the Abyei area boundary under consideration in this arbitration would be transformed into an international boundary (see para. 428).

The Abyei Protocol, in paragraph 5.1, also called for the establishment of the “Abyei Boundaries Commission . . . to define and demarcate the area of the nine Ngok Dinka chiefdoms transferred to Kordofan in 1905.” The Abyei Appendix elaborated on the composition of the Abyei Boundaries Commission and provided additional guidance on the methodology that the ABC was to use in carrying out its mandate. For example, the ABC was required “to listen to representatives of the people of the Abyei Area and their neighbours” and to “listen to presentations of the two Parties’ and to ‘consult the British Archives and other relevant sources on Sudan wherever they may be available, with a view to arriving at a decision that shall be based on scientific analysis and research’” (para. 116, quoting Abyei Appendix). The Experts’ Report, the final product envisioned in this process, “shall be final and binding.”⁹ The ABC drew up terms of reference and rules of procedure over the months following the January 2005 signing of the Comprehensive Peace Agreement. The ABC Experts started their work in mid-April 2005 and presented their final Report to the Presidency in July 2005. Included in the Report was the Experts’ five-point decision, which read, in part:

Having duly considered, assessed, and weighed the evidence before them, the experts have come to the following decision:

⁵ Comprehensive Peace Agreement Between the Government of the Republic of Sudan and the Sudan People’s Liberation Movement/Sudan People’s Liberation Army, Jan. 9, 2005, at <http://www.sudanarchive.net>. Chapter 1 of this agreement is the Machakos Protocol, see *infra* text accompanying notes 7–8.

⁶ In particular, violent clashes in May 2008 destroyed Abyei Town. This incident is most likely the one that Judge Al-Khasawneh refers to in his critique (dissent, para. 193) of the Experts’ decision: “By proceeding as they did, they in fact derailed that peace process and caused a conflict in which Abyei itself was destroyed.”

⁷ See *supra* note 2.

⁸ Comprehensive Peace Agreement, *supra* note 5, ch.1, para 2.5.

⁹ Abyei Appendix, *supra* note 2, para. 5.

- (1) The Ngok have a legitimate dominant claim to the territory from the Kordofan-Bahr el Ghazal boundary north to latitude 10°10' N . . . ;
- (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 both the Ngok and Misseriya;
- (3) 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 western boundary shall be the Kordofan-Darfur boundary as it was defined on 1 January 1956. The southern boundary shall be the Kordofan-Bahr el Ghazal-Upper Nile boundary as it was defined on 1 January 1956. The eastern boundary shall extend the line of the Kordofan-Upper Nile boundary at approximately longitude 29°32'25" E northwards until it meets latitude 10°22'30" N;
- (4) The northern and eastern boundaries will be identified and demarcated by a survey team . . . ;
- (5) The Ngok and Misseriya shall retain their established secondary rights to the use of land north and south of this boundary. (Report, p. 21)

The Government rejected the Experts' decision, and disagreement soon arose as to whether the Experts had exceeded their mandate. During the subsequent three years, the parties negotiated the Abyei Road Map, signed in June 2008, which included the commitment to refer the Abyei dispute to arbitration.¹⁰ In July 2008, the parties signed the Arbitration Agreement that led to the formation of the tribunal and to this decision.¹¹

The tribunal's mandate is set out in Article 2 of the agreement. It reads:

The issues that shall be determined by the Tribunal are the following:

- a. Whether or not the ABC [E]xperts had, on the basis of the agreement of the Parties as per the [Comprehensive Peace Agreement], exceeded their mandate which is "to define (i.e. delimit) and demarcate the area of the nine Ngok Dinka chiefdoms transferred to Kordofan in 1905" as stated in the Abyei Protocol, and reiterated in the Abyei Appendix and the ABC Terms of Reference and Rules of Procedure.
- b. If the Tribunal determines, pursuant to Sub-article (a) herein, that the ABC [E]xperts did not exceed their mandate, it shall make a declaration to that effect and issue an award for the full and immediate implementation of the ABC Report.
- c. If the Tribunal determines, pursuant to Sub-article (a) herein, that the ABC [E]xperts exceeded their mandate, it shall make a declaration to that effect, and shall proceed to define (i.e. delimit) on map the boundaries of the area of the nine Ngok Dinka chiefdoms transferred to Kordofan in 1905, based on the submissions of the Parties. (Award, para. 395, quoting Arbitration Agreement, Art. 2)

¹⁰ The Road Map for Return of IDPs and Implementation of Abyei Protocol, Khartoum, June 8, 2008, para. 4.1, at <http://unmis.unmissions.org/Portals/UNMIS/2008Docs/Abyei%20Roadmap.pdf>.

¹¹ Arbitration Agreement Between the Government of Sudan and the Sudan People's Liberation Movement/Army on Delimiting Abyei Area, July 7, 2008 [hereinafter Arbitration Agreement], at <http://www.pca-cpa.org>.

The tribunal interpreted its mandate to consist of “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 review of the evidence (Art. 2(c)) (paras. 397–98). While the tribunal’s task under Article 2(c) was contingent on its determination under Article 2(a), the proceedings were not separated into two phases.

In the proceedings before the tribunal, the Government argued for a broad interpretation of the phrase “excess of mandate” that would include both procedural and substantive excesses (para. 139), whereas the SPLM/A argued for a narrow interpretation of excess of mandate that would include only decisions taken *ultra petita* (para. 140). The Government argued that the Experts had exceeded their mandate, inter alia, by going beyond (*ultra petita*) or failing to answer (*infra petita*) the question agreed to by the parties (para. 165) and by failing to provide reasons capable of forming the basis of a valid decision (para. 192), whereas the SPLM/A argued that the Experts had not exceeded their mandate in any respect. The Government argued that the Experts would have exceeded their mandate if their interpretation of that mandate was not correct (para. 491), whereas the SPLM/A argued for a more deferential, “reasonableness” standard of review (para. 492). Finally, the Government argued that any finding of excess of mandate should cause the tribunal to set aside the entire Report and to delimit the boundaries anew under Art. 2(c) (para. 413), whereas the SPLM/A argued that the Experts’ decision was severable and that those parts decided within the Experts’ mandate should remain intact (para. 413).

The tribunal divided its Article 2(a) analysis into two parts: the Experts’ interpretation of their mandate and the Experts’ implementation of it (para. 486). The tribunal first concluded that “reasonableness” was the appropriate standard of review for both the interpretation and implementation of the mandate. On the question of severability or partial nullity, the tribunal concluded “that certain discrete . . . findings or conclusions of the ABC Experts . . . which are not fundamentally related to other findings or conclusions” could be set aside while the rest of the Report remained intact (para. 424). The parties presented the tribunal with two possible interpretations of the Experts’ mandate: a “tribal interpretation” focused on the people transferred in 1905 (“the nine Ngok Dinka Chiefdoms transferred”) and a “territorial interpretation” focused on the territory involved in the transfer (“the area . . . transferred”), specifically the area bounded by the pre-1905 Bahr el Ghazal–Kordofan boundary.¹² The Experts had worked on the basis of a “tribal interpretation” of their mandate, sleuthing out the configurations of Ngok Dinka habitation and land use circa 1905.¹³ Members of the tribunal disagreed among themselves whether that interpretation was correct (para. 666), but a four-member majority agreed that it was not an unreasonable interpretation and found no excess of mandate with respect to the Experts’ interpretation (para. 582).

As the second part of its Article 2(a) analysis, the tribunal turned to the Experts’ implementation of their mandate. Here, too, reasonableness was the standard of review. Moreover, the

¹² “The Tribunal acknowledges that a ‘territorial interpretation’ of the Formula, pursuant to which more significance would have been conferred to the provincial boundary (albeit approximate and uncertain), could also have been reasonably justified” (para. 671).

¹³ “The area to be defined is described in the protocol as the area of the 9 Ngok Dinka chiefdoms—no one else. And we are supposed to discover what territory was being used and claimed by those 9 chiefdoms when the administrative decision was made to place them in Kordofan” (para. 565, quoting the ABC Report, *supra* note 2, pt. 2 at 155–56).

tribunal concluded that it was beyond its competence to review the Experts' decision for substantive error¹⁴ (paras. 512–17). The tribunal did find, however, that the duty to state the reasons for their decisions was integral to the Experts' mandate (paras. 519–25) and that a failure to state reasons "could constitute an excess of mandate" (para. 525). While the tribunal's scope of review under Article 2(a) was limited, it did include the task of "verify[ing] whether the ABC Experts' Report contain[ed] sufficient explication to allow the reader to understand how the ABC Experts reached each conclusion of their "final and binding decision" (regardless of whether these explanations are persuasive or the decision was right)" (para. 535). The tribunal discerned, primarily from annulment committee decisions under the Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (ICSID Convention), the required minimum standard and concluded that "awards may be set aside for failure to state reasons where conclusions are not supported by any reasons at all, where reasoning is incoherent or where the reasons provided are obviously contradictory or frivolous" (para. 531).

The tribunal applied these minimum requirements to the reasoning in the Experts' Report and found the reasoning insufficient with respect to the northern limit of the shared rights area at 10°35' N, the northern boundary of the Abyei area at 10°22'30" N (which was derived from the northern and southern limits of the shared rights area),¹⁵ and the eastern and western boundaries of the Abyei area.¹⁶ These findings triggered the tribunal's Article 2(c) review of those parts of the Experts' decision.¹⁷

Having concluded that the Experts' reasoning was sufficient with respect to the southern boundary of the Abyei area and having retained the sufficiently reasoned northern limit of the area of permanent Ngok Dinka habitation at 10°10' N as the new northern boundary of the Abyei area,¹⁸ the tribunal was left to (re)delimit only the eastern and western boundaries. In doing so the tribunal maintained the Experts' "tribal interpretation" of the mandate (para. 710) and relied on the best available evidence for the eastern and western limits of the Ngok Dinka chiefdoms transferred in 1905. Among this evidence was a document by Paul Howell, a British district commissioner and anthropologist, that identified the western and eastern limits of the Ngok Dinka at "approximately Long. 27°50' and Long. 29°" (para. 721, quoting Howell). Other evidence corroborated Howell's western and eastern limits, and the

¹⁴ Additionally: "It appears that the Parties did not expect or authorize the Tribunal to make any definitive substantive determination . . . as to the ABC Experts' correctness of fact or law with respect to its delimitation of the Abyei Area in 1905" (para. 398).

¹⁵ These conclusions were "not supported by sufficient reasons" (para. 697).

¹⁶ Here, too, the Experts' reasoning was insufficient, and in the case of the western boundary, the Experts failed "to state any reasons at all" (para. 708).

¹⁷ The parties had argued their delimitation positions in the course of the proceedings. The Government argued that the Abyei area was "the area bounded on the north by the Bahr el-Arab and otherwise by the boundaries of Kordofan as at independence" (para. 37, quoting Government memorial), The SPLM/A argued that, if the tribunal found an excess of mandate, the Abyei area was defined by "the current boundary of Kordofan and Bahr el Ghazal to the south extending to 10°35' N latitude to the north and the current boundary of Kordofan and Darfur to the west extending to [29°]32'15" E longitude to the east" (para. 39, quoting SPLM/A memorial, as modified).

¹⁸ In the ABC Report the northern limit of the area of permanent habitation of the Ngok Dinka at 10°10' N formed the southern limit of the shared rights area. It appears that the 10°10' N line became, in the award, the new northern limit through the process of invalidating the more northerly alternatives under the Article 2(a) review rather than through a *de novo* review of the evidence under Article 2(c). "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 . . ." (para. 711). The dissent (para. 34; see paras. 38–39) questioned "whether that line is in fact a mere confirmation of the Experts' line or in essence a new line."

tribunal adopted these lines of longitude as the western and eastern boundaries of the Abyei area. One effect of the annulment of the shared rights area and northern boundary, coupled with the (re)delimitation of the eastern and western boundaries, was to diminish the total extent of the Abyei area by approximately 8,000 square kilometers, or 45 percent.¹⁹ Finally, although the tribunal had annulled the area of shared rights delimited by the Experts, it did not find an excess of mandate with respect to Point 5 of the Experts' decision,²⁰ noting that "the transfer of sovereignty in the context of boundary delimitation should not be construed to extinguish traditional rights to the use of land" (para. 753).

* * * *

The result in this arbitration depended, in large part, on how the tribunal defined its review role with respect to the sui generis ABC and the decisions set forth in the ABC Experts' Report. Just how to understand and define its mandate was, for the tribunal, an uncertain task requiring careful reflection. It was an ad hoc body outside any codified system of institutional review, reviewing a decision made by an original decision maker that had used a fundamentally different methodology (that is, science versus law), and situated in a quasi-international setting where, in any event, review is the rare exception.

In order to determine the outlines of its review powers, the tribunal looked first to Article 2 of the Arbitration Agreement, which provided the primary textual basis for the tribunal's mandate (para. 395). With little express guidance from that agreement,²¹ the tribunal moved beyond the text to a searching inquiry into the object and purpose of the arbitration, the expectations of the parties, and general principles of law and practices,²² all considered against the backdrop of the larger peace process of which the arbitration was only one part. In the course of this inquiry, the tribunal implicitly analogized its function to that of other reviewing bodies and found itself, for the purposes of Article 2(a),²³ most closely resembling an annulment committee, with limited powers of review that did not extend to reviewing the factual or legal correctness of the Experts' decision, but only whether that decision was based on a reasonable interpretation and implementation of the Experts' mandate.²⁴ This function was thus in contrast to that of an appeal body, which might consider errors of law and also, possibly, fact.²⁵

¹⁹ Although much of the post-award reporting focuses on the location of oil fields relative to the ABC Report's boundaries and the award boundaries—the new eastern boundary excludes the major fields from the Abyei area—there is no discussion of oil resources in the tribunal's analysis; its decision was based on other grounds.

²⁰ Point 5 of the ABC Report read: "The Ngok and Misseriya shall retain their established secondary rights to the use of land north and south of this boundary."

²¹ For example, with respect to the key phrase in Article 2, the tribunal noted "the paucity of authority on what 'excess of mandate' concretely represents in law" (para. 401).

²² Article 3 of the Arbitration Agreement, *supra* note 11, called on the tribunal "to resolve the disputes before it in accordance with the provisions of the [Comprehensive Peace Agreement], particularly the Abyei Protocol and the Abyei Appendix, the Interim National Constitution of the Republic of Sudan, 2005, and *general principles of law and practices* as the Tribunal may determine to be relevant" (para. 425, emphasis added (quoting Arbitration Agreement)).

²³ The tribunal's role under Article 2(c) as a boundary delimitation tribunal was less difficult to discern.

²⁴ In support of this limited review role, the tribunal cited the small body of relevant ICJ jurisprudence (para. 403 & n.810, quoting Arbitral Award Made by the King of Spain on 23 December 1906 (*Hond. v. Nicar.*), 1960 ICJ REP. 192 (Nov. 18)).

²⁵ The tribunal noted that "neither Party has asked the Tribunal to assume a review function akin to a 'court of appeals,' a clear demonstration of their continued wish to circumscribe this Tribunal's jurisdiction" (para. 411).

Although the tribunal was formed for a specific purpose, the Arbitration Agreement and associated agreements did not form a self-contained regime. In the process of filling gaps in the express terms of both the Experts' mandate and its own, the tribunal necessarily fell back on general principles of international law, including those that guided its decisions on partial nullity under appropriate circumstances (paras. 416–24), traditional rights surviving territorial delimitation (paras. 753–65), the appropriate standard of review (paras. 401–03), and the minimum requirements for stating reasons (paras. 527–31). The tribunal turned to the jurisprudence of other courts and tribunals, including the International Court of Justice, WTO Appellate Body, and ICSID annulment committees. Such inter-institutional cross-referencing can only contribute to the unification of international law despite the potentially fragmenting effect of awards from ad hoc tribunals. In the interest of consistency and cohesion, it can be hoped that the articulation of general principles in this award will be cited favorably by future review bodies.²⁶

Finally, this arbitration was also part of a larger, ongoing peace process across Sudan's north/south divide. Despite a rather fiery dissent that concluded "today, we are more remote from achieving a durable peace than before the rendering of this Award" (dissent, para. 203), all indications are that both parties have accepted the award; demarcation of the Abyei area boundaries was under way by early September 2009;²⁷ and discussions continue about voting rules, in anticipation of the 2011 referenda.²⁸ It is to be hoped "that the spirit of reconciliation and cooperation visible throughout [the] proceedings . . . will continue to animate the Parties on this matter" (para. 769).

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Special Court for Sierra Leone—international criminal law—attacking personnel involved in a peacekeeping mission—recruitment and use of child soldiers—sexual slavery—forced marriage

PROSECUTOR V. ISSA HASSAN SESAY, MORRIS KALLON & AUGUSTINE GBAO. Case No. SCSL-04-15-T.
At <http://www.sc-sl.org/CASES/ProsecutorvsSesayKallonandGbaoRUFCase/TrialChamberJudgment/tabid/215/Default.aspx>.

Special Court for Sierra Leone, Trial Chamber I, March 2, 2009.

PROSECUTOR V. ISSA HASSAN SESAY, MORRIS KALLON & AUGUSTINE GBAO. Case No. SCSL-04-15-A.
At <http://www.sc-sl.org/CASES/ProsecutorvsSesayKallonandGbaoRUFCase/AppealJudgment/tabid/218/Default.aspx>.

Special Court for Sierra Leone, Appeals Chamber, October 26, 2009.

On March 2, 2009, Trial Chamber I of the Special Court for Sierra Leone issued its judgment in *Prosecutor v. Issa Hassan Sesay, Morris Kallon & Augustine Gbao* (Trial), widely known

²⁶ In the latest ICSID matter concerning annulment—*Azurix Corp. v. Argentina*, Decision on Annulment, ICSID Case No. ARB/01/12 (Sept. 1, 2009), in which one of the possible grounds for annulment was failure to state reasons—the committee members did not cite the current award, but this lack of reference may reflect the fact that the award was published only five weeks before the ICSID decision.

²⁷ *Abyei Chief Administrator Pledges to Support Border Technical Demarcation Team* (Sept. 11, 2009), at <http://www.sudantribune.com>. Unfortunately, as of December 2009, actual demarcation of the Abyei area has proceeded slowly, having been hindered by the presence of armed groups opposed to the demarcation. Of the anticipated twenty-eight boundary markers, only four had been placed as of early December. [*Sudan's First Vice President Accuses [National Congress Party] of Hindering Abyei Boundary Demarcation* (Dec. 3, 2009), at <http://unmis.unmissions.org/Portals/UNMIS/MMR/MMR%203%20Dec%2009.pdf>].

²⁸ [*SPLM/A and [National Congress Party] Resume Talks on South Sudan Referendum* (Sept. 14, 2009), at <http://www.sudantribune.com>].