

Some Observations on the Memorial of the SPLM Submitted to the Permanent Court of Arbitration

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On 18 December, 2008 the Government of Sudan and the Sudan People Liberation Movement /A submitted to the permanent court of Arbitration Memorials covering all issues of the dispute of delimiting Abyei Area in accordance with Article 8 of the Arbitration Agreement between them signed on 7/7/2008. Some preliminary observations about the SPLM Memorial are listed below :

- 1- The SPLM Memorial claims that Ngok people existed in places north of Bahr el Arab since their early emigration to the area. According to some authorities in Ngok Dinka history, namely Henderson, Howell and F. Deng, Jok was the chief of Ngok who led his people in their exodus from their homeland in Wadi el-Zaraf to Bahr el-Ghazal region. Though Jok had other sons (Pyar, Bulabek), he was succeeded in ruling Ngok in their new habitat by his son Awil and grandson Kowl Dit. As Dr. F. Deng has mentioned “ Kwol Dit’s leadership coincided with one of the most difficult periods in Dinka history, the 19th century upheavels in which the world was spoiled by slave raiders and hostile tribes.” (Deng, War of Visions.p.254). When Kwol Dit died , he was succeeded by Alor, Biong, sultan Arop Biong, and Kwol Arob. Based on these facts, the following chronological table of the Ngok rulers can reasonably be deduced : Jok :1810-1815, Awil:1815-1823, Kwol Dit: 1823-1843, Alor :1843-1863, Biong: 1863-1881, sultan Arob Biong:1881-1905, Kwol Arob:1905-1944. (See my book in Arabic ; Abyei Crisis: Between the International Law and the question of Arbitration(2009)p.14. Instead of this chronological table,(which is more approximate to the truth as explained in the book) the SPLM Memorial provided an outlandish and farfetched chronological table in which chief Jok’s rule began in the late 16th century(SPLM Memorial,p.28). It added as rulers Bulabek, Donbek, Mondyang to fill the 17th century with unknown chiefs, extend and prolong the years in which they ruled so as to bring it to mid-18th century. The Memorial’s widely exaggerated chronological table is based entirely on the partial and unexamined oral traditions of contemporary Ngok persons as well as the oral traditions contained in Santandrea’s book “The Lou of Bahr el-Ghazal”. Indeed , the Memorial’s chronological table can be described as what Professor E. Hobsbawm called “invented tradition” with no real roots in actual history and no reference to authoritative sources of the travellers and explorers of 18th-19th centuries who mentioned the floods and the invasions of Nuer as instrumental in the exodus of some branches of the Dinka westward to Bahr el-Ghazal.
- 2- The protocol defines the Abyei area as the “area of the nine Ngok Dinka chiefdoms transferred to Kordofan in 1905”. This definition is deliberately formulated in a broad , imprecise and vague manner which renders it liable to various interpretations. It is most likely that the advisor of the SPLM Dr. D. Johnson (and Assistant-Director for the Archives of Southern Regional



Government) has influenced the drafters of Abyei protocol to define the area of Abyei in such an ambiguous manner. The Memorial of the SPLM exploited the vagueness of the definition to raise objections against the GoS claim that the Experts exceeded their mandate by saying “any excess of authority must be manifest, glaring, flagrant and unambiguous. An excess of authority does not rise from *debatable or complex circumstances, where reasonable minds might differ*, but only in extreme and clear-cut cases.” . As the ABC Report correctly noted “the two sides had presented their own positions...*and their contrasting definitions of the area under consideration.*” (ABC Report, 10). The broadness of the protocol’s definition of Ayei area has tempted Deng Alor to widen the extent of Ngok’s borders in his witness statement in which he says “ We understand the definition of Abyei in Article 1(b) in the Principles of Agreement to define Abyei as encompassing all of the land and people over which the Paramount Chief Arop Biong and the Kol Arop exercised their tribal authority and jurisdiction , *no matter where his people and his lands were located.* We believed that what was defined here as Abyei was the entirety of land and resources and people that were tribally administered.” Thus the SPLM interpreted the 1905 formula to mean that areas north of Bahr Arab in which few members of Ngok resided before 1905 are included within the territories affected by the 1905 decision to transfer the Ngok chiefdoms to Kordofan province.

- 3- The same definition was interpreted by the GoS to mean and refer to the territories in which Ngok Dinka settled on the triangle south of Bahr el-Arab where sultan Rob village was located. According to GoS Memorial “..the definition does not refer to the “District of Abyei”, as later established. , still less to any area inhabited by Ngok Dinka in 1956, 1965, or any later date.
- 4- There is an alternative interpretation of the 1905 decision in my book which is composed of the following elements :
 - a- The linkage between the nine Ngok Dinka chiefdoms and the current Abyei town (called Abyei area in the definition) seem to suggest and give the appearance that the present town of Abyei and the nine Ngok chiefdoms, that were centered in sultan Rob village south of Bahr el-Arab, are identical or one and the same. In reality and actually, the Ngok chiefdoms and Abyei town are not identical for the simple reason that the current town and area of Abyei was non-existent in 1905. Indeed, Abyei town was founded in the 2nd decade of the 20th century as attested by the maps in the GoS Memorial.
 - b- The 1905 decision mentioned the word *belong* to refer to the triangle of Ngok territories south of Bahr el Arab of which sultan Rob village is the center.
 - c- The decision did not mention the word *transfer* for a good reason: since the decision permit Ngok the freedom of movement and settlement in any place within Kordofan province , by virtue of their subjection to its jurisdiction, they may interpret the word transfer (if used in the decision)



to claim in the future that the said decision includes areas in which they settled in the areas north of Bahr a-Arab few years after 1905. The word *belong* refers specifically to the triangle and sultan Rob village south of Bahr Arab and indicates the incorporation of this area into Kordofan as well as the transfer of its inhabitants to the administrative jurisdiction of the said province.

- d- Though there may be evidence that a tiny group of Ngok were living in places north of Bahr Arab before 1905, the word *belong* used in the decision does not refer to them. Their original homeland is Upper Nile and South Sudan whose Nilotic people are different ethnically, religiously and culturally from the people of Kordofan and northern Sudan. ***All territories north of Bahr Arab belong to Kordofan province and Ngok homeland is the Nilotic South Sudan and Bahr el-Gazal province.*** Ngok who lived north of Bahr Arab are transferred as individuals to the jurisdiction of Kordofan, ***but*** the areas of Kordofan in which they settled- like Raqba Zarga- are not affected by the 1905 decision and need not be transferred to Kordofan because they are already part and parcel of it.
- e- Because the natural barrier Bahr Arab is the boundaries between Kordofan and Bahr Ghazal provinces since time immemorial(1), the present site of Abyei town and Raqba Zarga are within the geographical framework of Kordofan province and have never been affected by the 1905 decision which mentioned the word *belong* referring solely to the triangle south of Bahr Arab and sultan Rob village. As mentioned earlier, Abyei town and the District of Abyei were nonexistent in 1905.
- f- Unlike the silence of GoS Memorial concerning the possible existence of few Ngok in some places north of Bahr el Arab before 1905, chapter 1 of my abovementioned book includes a historical account about the history of South Kordofan since the 18th century. The said chapter admits the existence of few Ngok within Kordofan province in the 19th century ***but they must be viewed as a minority Nilotic group who were forced by circumstances to emigrate from their element and the typical environment of their homeland in Bahr Gazal(wet season and rains for long period ,thick vegetation, low plains and network of rivers and tributaries, swamps and sudd) to live in the different environment of the lands of the majority Northern Muslim ethnic groups of Kordofan province(semi-desert in the north approaching to grassy plains as far south as Bahr el-Arab, and mountains where the Nuba of Kordofan live).***
- 5- The SPLM Memorial claimed that the conclusions of the ABC Report are based on scientific analysis and “intensively researched and expert analysis”(p.118). The GoS Memorial provided several instances to prove that the ABC Experts were not following the proper scientific analysis and research which they were duty bound to pursue according to the Abyei protocol, the



terms of reference and rules of procedure of the mandate. Though the nature of the problem and task assigned to the experts is historical, -to determine the location, scope and borders of Ngok chiefdoms in 1905-, I argued in my book that they had failed to adopt the method of the historian who infers his conclusions from the facts before him. The experts confessed that there was no “ sufficient documentation produced in that year(1905) ...that adequately spelt out the administrative situation that existed in that area at that time.”(ABC Report,p.4). Consequently, they adopted the method of the mathematician who “ make assumptions which will enable him to solve his problem , and this involve appeal to his power of invention ...the business of the historian is not to invent any thing , it is to discover something.”(R. Collingwood, The idea of History,p.251). Such deviation from the appropriate method of scientific analysis and research demonstrate that the ABC Experts have exceeded their mandate.

- 6- There are many weak points in the SPLM Memorial. Following are examples, some of which are commented on, and many others contain legal questions which will certainly be addressed and criticized by the lawyers of the GoS team in the counter- memorial phase of the proceedings of the tribunal.
- 7- Paragraphs 36 in which it claims that the GoS ought to raise the issue of excess of mandate before the experts of ABC issued their decision. Also paragraphs 38,41, 44 ,47 ,51, 54, 56, 60,62.
- 8- Paragraph 85, which claim that Abyei area is the ancestral homeland of Ngok. Influenced by D .Johnson ,the SPLM provides the unsubstantiated hypothesis that the Ngok people who are still living in Abowng in upper Nile are distinct from the branch of Bahr Gazal province who had been there since early times. This is contradicted by SPLM recognition of the tradition that chief Jok led his people in their emigration westward and that his daughter Acai drowned while crossing Bahr el-Ghazal river. This fact indicate that some of Ngok remained in Upper Nile while others decided to emigrate with chief Jok in the 19th century. Therefore their hypothesis that the Bahr Gazal Ngok are different from those still living in Abowng is invalid. There is a map in Dr. D.Johnson article “Reconstructing a history of local floods in the upper Nile region of the Sudan” 25 IJAHS, 3 (1992) (The map is also cited in the appendices of my book) showing the ancestral home of Ngok which is by no means the present area of Abyei.
- 9- Paragraph 86 claims that Abyei town became the home of sultan Rob by the end of the 19th century; there is no historical evidence to corroborate this position. Moreover, it is contradicted by the documented fact that major Wilkinson had visited sultan Rob in his village, which is situated in Maithang Dil south of Bahr el-Arab, in 1902.
- 10- Paragraphs 112, 116, 120.
- 11- Paragraph 125 which claims that chief Kwol Dit was buried in Dimbloya in Kordofan despite the well known historical fact that the cemeteries and shrines



of Ngok chiefs are located in Maithang south of Bahr el-Arab. As P. Howell has maintained “the graves of the leaders still exists and carefully tended” (Howell, “Note on Ngok Dinka”, *SNR, 1951p242*).

12- Paragraphs 297-230, in which the Memorial considers the appearance in 1910 of a map identifying a boundary between Kordofan and Bahr el Ghazal provinces running south of Bahr el-Arab as a confirmation of the point it emphasizes in paragraphs 297-230 to the effect that there were no definite and certain boundaries between the said provinces in the period between 1899 to 1909. As a matter of fact, there was no need for the British administrators to delimit the borders between Kordofan and Bahr el-Gazal provinces because the natural barrier of Bahr el-Arab is the recognized boundaries between them since time immemorial (natural barriers are favored by states and surveyors due to their definiteness, permanence and convenience). The colonial authorities were compelled to delimit a *new and provisional* border between Kordofan and Bahr el-Ghazal as appeared in the 1910 and 1916 maps to run south of Bahr el-Arab in order to accommodate for the 1905 decision which incorporated the triangle of Ngok territories and sultan Rob village south of Bahr el-Arab to Kordofan province and subjected the members of Dinka Ngok to the jurisdiction of Kordofan instead of Bahr el-Ghazal. Whenever Ngok Dinka desired and decided to return to Bahr el Ghazal province to live with their cousins, the old natural boundaries of Bahr el Arab between Kordofan and Bhr el Ghazal provinces will be restored and drawn in the maps as was the case before 1905.

13- Chapter 7 of the Memorial entitled “The ABC did not exceed its mandate”. Since this is the main case and position of GoS, it is expected that the legal team of the GoS will proffer powerful arguments to refute the case of SPLM on solid legal grounds.

Footnote:-

(1) For a comprehensive and cogent account of Bahr el Arab and its relationship with other sources of the Nile and the knowledge of the travellers, explorers and administrators since the 19th century that it represents the boundaries between Bahr el Ghazal, Kordofan and Darfur provinces see An Expert Report by A. Macdonald, in Gos Memorial pp.161-188

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