

SCIENCE PEOPLE & POLITICS

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WHAT PRICE THE AVOIDANCE OF WAR?

RESOLUTIONS AFFECTING SUDAN AND SOUTH SUDAN FROM THE UN SECURITY COUNCIL FROM APRIL TO JUNE 2020

BY HELEN GAVAGHAN

IF IT IS TRUE THAT it is only the disputants in a conflict who can really know what they disagree about then Sudan and South Sudan have a lot of argumentation options to explore both within and between their nations. Is what troubles these two countries internal and external rivalries about Land, land use (secondary rights), migration paths, pastoral and nomadic agriculture, newly discovered resources, for example oil, minerals? Is it religion, language, identity – tribal and national, response to changing

BOX 1 IN 2020 THE UNITED NATIONS TURNED 75. IT HAS 193 MEMBER STATES, DRAWING ORGANISATIONAL STRENGTH FROM THE SOVEREIGNTY OF EACH OF THOSE MEMBERS. AS AN INTERGOVERNMENTAL ORGANISATION (IGO) THE UN'S MAIN AIM IS TO FOSTER PEACE BALANCED BY ENSURING THE SECURITY OF ITS MEMBERS. TO ACHIEVE THOSE GOALS THE UN AND ITS AGENCIES PROMOTE AND PAY FOR DEVELOPMENT, THE ADVANCEMENT OF HUMAN RIGHTS, AND HUMANITARIAN ASSISTANCE.

weather patterns, power and governance structures and processes, climate change or legal structures? Or is it the sheer helplessness of not having the money or knowledge needed to do what needs to be done to take advantage of the natural resources each of the two countries has?

Sudan and South Sudan are one of the most serious problems on the current agenda of the United Nations. In May the UN Security Council voted to extend its mandate in support of the Abyie region on the border of South Sudan and Sudan until November. The mandate was issued first in 2011 and has been extended numerous times. In addition, the Security Council voted to maintain troops and police above an authorised ceiling until the Secretary General lifts suspension of troop repatriation which was imposed because of Covid-19.

The security council additionally welcomed formation of a "revitalised transitional government of national unity (GNU)" in South Sudan and urged that its establishment be completed. The GNU is needed because of ongoing fighting in the country. That fighting, human rights' violations and misappropriation of funds are of significant concern to the UN Security Council. As a result the UNSC has extended its 2018 Arms Embargo of South Sudan until May 2021.

During the same months the Security Council continued its welcome of Sudan's constitution signed in August 2019 for establishment of a civilian transitional government and for the country's

cessation of hostilities. The UNSC paid tribute to the African Union for its support of Sudan's transition to a democracy and good governance. Unlike its landlocked southern neighbour of South Sudan, which has fertile land, Sudan has a coastal region on the Red Sea.

BACKGROUND TO THE UNSC RESOLUTIONS ON SUDAN AND SOUTH SUDAN DURING MAY TO JUNE 2020

The Sudanese have fought one another since before Sudan became independent in 1956. First by civil wars (1955-1972 and 1983-2005). Then indirectly in Courts (2009) just before secession of the southern part of Sudan in 2011, when that region became South Sudan, and the 193rd member state of the United Nations. The second civil war ended with a Comprehensive Peace Agreement (CPA)¹ in 2005 between the Government of Sudan and the Sudanese Peoples Liberation Movement/Army (which subsequently split in the north). The CPA was signed on 9 January 2005. It made provision for a referendum to ask the people of the southern regions of the country if they wanted independence. In July 2011 South Sudan seceded from Sudan following a vote yielding an overwhelming majority for independence.

Separation of the two states did not solve all their problems. How could it? The US Central Intelligence Agency reports that during the civil wars 2.5 million Sudanese people died², that most were civilians, and that drought and starvation were causes. Hundreds of thousands were displaced into neighbouring countries, adding strain to already struggling nations which do not have the resources for a mass influx of refugees. At the same time refugees from neighbouring countries entered the two Sudanese nations. In the north, now Sudan, there was military dictatorship for many years which was overthrown in 2019, paving the way for the civilian government which the UN is now encouraging. In South Sudan there is human trafficking and sexual slavery of women and conflict and human rights violations. Yet within both countries there are some who intend to live by law not the gun, as became clear when in 2009 the Government of Sudan and Sudanese Peoples' Liberation Movement took their concerns to the Permanent Court of Arbitration (PCA) in The Hague.

For the international community there is the problem that uncertainties in demarcation on the Sudan and South Sudan border threaten international security. South Sudan additionally has in parts an uncertain border with Kenya. The job of the UNSC, and of the UN, is to avert war between Sudan and South Sudan, help to prevent further civil war in either, to protect neighbouring nations, and to facilitate humanitarian aid even as the UN's own staff are threatened as they go about their tasks.

As members of the UN both countries are signed up to the concepts of collective security and the belief that alternates to War should be found for the settlement of international disputes. Yet it is civil wars and discontent which have and are ripping the two nations apart and threatening international peace.

In such situations it can be worth wading through the dense legal language of accords, Treaties and agreements to locate words identifying where a practical problem between people/s might be rather than relying

on reader-friendly transpositions created by analysts and specialists. Sometimes looseness and contradictions in the original legal language reveal where the parties to a dispute are struggling - perhaps without the means or knowledge to articulate the dilemma pithily - to put their problem into words. An historiography periodising world events in transition from multilateralism via Treaties between small groups of nations balancing power to one in which nations exercise their Sovereignty through intergovernmental organisations such as the League of Nations or the United Nations shows that in contentious situations one must first identify the relevant facts.

One relevant fact for the Sudanese is that when the CPA of 2005 was signed there was unfinished business between the disputants. One significant matter was delimitation of the Abyei region which straddles the border between Sudan and southern Sudan, which in 2011 would become the new nation of South Sudan. Definition of that boundary may determine whether inhabitants may participate in a referendum to join South Sudan, but also there are issues of land ownership, agricultural rights (land use) and tribal claims and waterways and newly identified resources. The boundaries of Abyei were, according to the 2005 Peace Agreement, to be defined by an Abyei Boundary Commission (ABC).

AT THE PERMANENT COURT OF ARBITRATION

The idea was to define the Abyei region as being that which nine Ngok Dinka tribal chieftans transferred in 1905 to the Kordofan area of Sudan. When the experts from the CPA of 2005 delivered their opinion to the presidency of the Government of Sudan (GoS), the GoS was not happy, and it took its concerns to the Permanent Court of Arbitration in The Hague³. The GoS argued the experts had exceeded their mandate. South Sudan had not at that time seceded from Sudan. The GoS argued the ABC experts had defined the area under consideration according to what was used (called a tribal interpretation) and had done so because of their interpretation of what was meant by "land as it was in 1905" rather than the area itself (a territorial interpretation) independent of how the land in 1905 was occupied or used. The other disputant in proceedings was the SPLM. The PCA noted the two interpretations of the spatial area of Abyei were not necessarily mutually exclusive.

The Government of Sudan (GoS) said the experts in exceeding their mandate had substituted a question different from the one asked. The GoS had additional objections, and none of its arguments nor those of the Sudanese Peoples' Liberation Movement/Army were trivial. The PCA's assessment of the case, its reasoning and conclusions extend over 769 paragraphs, at the end of which the PCA delimits the north, south, east and west boundaries of the Abyei region and hopes the GoS will send surveyors to complete the task of demarcating the area of Abyei. The Court noted a spirit of co-operation between parties.

When the dispute was referred to the Permanent Court of Arbitration both parties agreed to abide by the PCA's conclusions. The Permanent Court of Arbitration is a product of the first Hague Peace Conference in 1899. During proceedings, which applied rules for disputes before the PCA between a State and a non-State actor, there were allegations of witness intimidation and denial of archive access. The disputants each denied the allegations of the other side. The PCA monitored allegations before eventually the Court gave its opinion.

ADDIS ABABA AGREEMENT⁴

There was an indication of the problem of the Abyei region in the wording of the Addis Ababa Agreement of 1972, an agreement which helped end Sudan's first civil war. The agreement ducks the issue of Abyei and gives an inkling of what the problem is, which become a factor contributing to Sudan's second civil.

Chapter One Addis Ababa Agreement 1972. Article 3.

C) "Southern Provinces of the Sudan means the Provinces of Bahr El Ghazal, Equatoria and Upper Nile in accordance with their boundaries as they stood January 1, 1956, *and other areas that were culturally and geographically a part of the Southern Complex as may be decided by a referendum.*" **Italics are mine.**

UNISFA is the UN Interim Security Force for Abyei. UNISFA was formed in 2011.



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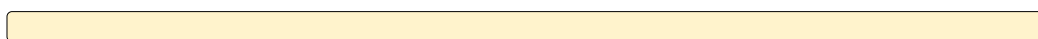
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FORTHCOMING IN SCIENCE, PEOPLE & POLITICS IN 2021.

The UN's roots stem from the aspirations of The Hague Peace Conferences of 1899 and 1907 (see issue 1, 2020 of *Science, People & Politics*), and from there through the League of Nations (LON). Issue two of *Science, People & Politics* will in 2021 argue the LON's inability to prevent World War II is unfairly characterised as failure and traces the LON's activities through to its termination.

Standfirst for issue 2, 2021 of *Science, People & Politics*.

Inability to play the piano is not failure if one has no hands. It is a situation identifying a need for a given aim. The League of Nations lacked much because the information and knowledge it needed did not yet exist. Yet the LON provided a pivot around which the nations of the World could gather and deploy their Sovereignty, and identify the global structures needed to avert a third global war. This issue traces the LON's activities from its inception to its termination, and transition of some of its activities to the United Nations.

The invited guest editor of the above article for issue two of 2021 is Professor Graham Dutfield.

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