

**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
 (“ARBITRATION AGREEMENT”)**

-and-

**THE PERMANENT COURT OF ARBITRATION OPTIONAL RULES
FOR ARBITRATING DISPUTES BETWEEN TWO PARTIES
OF WHICH ONLY ONE IS A STATE (“PCA RULES”)**

-between-

THE GOVERNMENT OF SUDAN

(“GoS”)

-and-

THE SUDAN PEOPLE’S LIBERATION MOVEMENT/ARMY

(“SPLM/A”, and together with GoS, the “Parties”)

TERMS OF APPOINTMENT

1 The Parties to the Arbitration

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2 The Dispute

- 2.1 On July 7, 2008, the Government of Sudan (“**GoS**”) and the Sudan People’s Liberation Movement/Army (“**SPLM/A**”, and together with GoS, the “**Parties**”) signed the “Arbitration Agreement between The Government of Sudan and The Sudan People’s Liberation Movement/Army on Delimiting Abyei Area” (“**Arbitration Agreement**”).
- 2.2 On July 11, 2008, in accordance with Article 12.1 of the Arbitration Agreement, the Parties deposited the Arbitration Agreement with the Secretary-General of the Permanent Court of Arbitration (“**PCA**”).
- 2.3 According to the Parties, a dispute has arisen between them regarding whether or not the experts of the Abyei Boundaries Commission (“**ABC**”), established pursuant to the Comprehensive Peace Agreement signed on January 9, 2005 (“**CPA**”), exceeded their mandate as per the provisions of the CPA, the Protocol on the Resolution of Abyei Conflict (“**Abyei Protocol**”), the Appendix to the Abyei Protocol (“**Abyei Appendix**”), and the ABC’s Terms of Reference and Rules of Procedure.
- 2.4 Under Article 1.1 of the Arbitration Agreement, the Parties agreed to refer their dispute to final and binding arbitration under the Arbitration Agreement and the PCA Optional Rules for Arbitrating Disputes between Two Parties of Which Only One is a State (“**PCA Rules**”), subject to such modifications as the Parties agreed in the Arbitration Agreement or may agree in writing.
- 2.5 Under Article 1.2 of the Arbitration Agreement, the Parties agreed to form an arbitration tribunal (“**Tribunal**”) to arbitrate their dispute.
- 2.6 Under Article 2 of the Arbitration Agreement, the issues to be determined by the Tribunal are the following:
 - “(a) Whether or not the ABC experts had, on the basis of the agreement of the Parties as per the CPA, 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 experts 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 experts 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.”

3 Appointment of the Tribunal

- 3.1 Under Article 1.4 of the Arbitration Agreement, the Parties designated the Secretary-General of the PCA as the appointing authority to act in accordance with the Arbitration Agreement and the PCA Rules;
- 3.2 Under Article 5 of the Arbitration Agreement, the Parties agreed that the Tribunal shall be composed of five arbitrators and that each Party shall appoint two arbitrators, and the four Party-appointed arbitrators shall appoint the fifth;
- 3.3 On August 14, 2008, in accordance with Articles 5.2 and 5.4 of the Arbitration Agreement, the GoS appointed the following two arbitrators:

H.E. Judge Awn Al-Khasawneh

Vice-President, International Court of Justice
Peace Palace, Carnegieplein 2
2517 KJ The Hague
The Netherlands

Tel: +31 70 302 23 23

Fax: +31 70 302 24 09

Email: a.s.al-khasawneh@icj-cij.org / s.vanbeek@icj-cij.org

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Email: gerhard.hafner@univie.ac.at

- 3.4 On August 15, 2008, in accordance with Articles 5.2 and 5.4 of the Arbitration Agreement, the SPLM/A appointed the following two arbitrators:

Professor W. Michael Reisman

127 Wall Street
New Haven, Connecticut 06511
P.O. Box 208 215
New Haven, Connecticut 06520
USA
Tel: +1 203 432 4962
Fax: +1 203 432 7247
Email: michael.reisman@yale.edu

Judge Stephen M. Schwebel

1501 K Street, NW
Suite 410
Washington, DC 20005
USA
Tel: +1 202 736 8328
Fax: +1 202 736 8709
Email: judgeschwebel@aol.com

- 3.5 Before August 22, 2008, in accordance with Article 5.6 of the Arbitration Agreement, each of the four Party-appointed arbitrators signed declarations of independence, impartiality, and commitment, and such declarations were immediately communicated by the PCA to the Parties.
- 3.6 On October 27, 2008, in accordance with Article 5.12 of the Arbitration Agreement, the Secretary-General of the PCA appointed as the fifth and presiding arbitrator:

Professor Pierre-Marie Dupuy

The Graduate Institute of International and Development Studies
Case Postale 136
CH-1211 Geneva 21
Switzerland
Tel: +41 79 602 16 97
Fax: +41 22 733 29 04
Email: pierre-marie.dupuy@graduateinstitute.ch

- 3.7 On October 30, 2008, in accordance with Article 5.13 of the Arbitration Agreement, the presiding arbitrator signed a declaration of independence, impartiality, and commitment, and such declaration was immediately communicated by the PCA to the Parties.
- 3.8 The Parties confirm that the members of the Tribunal have been validly appointed in accordance with the Arbitration Agreement and the PCA Rules.
- 3.9 In accordance with Article 9 of the PCA Rules, the Arbitration Agreement, and the declarations signed pursuant to Article 5.6 and 5.13 of the Arbitration Agreement, the members of the Tribunal are, and shall remain, impartial and independent of the Parties.
- 3.10 The Parties confirm that they have no objection to the appointment of each member of the Tribunal on the grounds of conflict of interest or lack of independence or impartiality.

4 Commencement of the Arbitration and Period of the Arbitration Proceedings

- 4.1 Under Article 4.1 of the Arbitration Agreement, the arbitration process was deemed to have commenced on June 8, 2008.
- 4.2 Under Article 4.2 of the Arbitration Agreement, the arbitration proceedings shall commence on the date of the formation of the Tribunal which shall start its work as soon as it is constituted. For purposes of Article 4.2, the date of the formation of the Tribunal was October 30, 2008, the date on which the declaration of the fifth and presiding arbitrator was signed and communicated to the Parties.
- 4.3 According to Article 4.3 of the Arbitration Agreement, the Tribunal shall endeavour to complete the arbitration proceedings including the issuance of the final award within a period of six months from the date of the commencement of arbitration proceedings subject to three months extension.
- 4.4 Article 8.7 of the Arbitration Agreement provides that notwithstanding Article 4.3, the Tribunal shall be empowered to extend for good cause the periods established for the arbitration proceedings on its own motion or at the request of either Party. The total cumulative extension of the periods granted by the Tribunal at the request of either Party may not exceed thirty days for each Party.
- 4.5 In accordance with Article 8.3(i) of the Arbitration Agreement, the Parties agree to simultaneously submit Memorials covering all issues of dispute in form and content by December 18, 2008. The schedule to be followed thereafter shall be determined by the Tribunal in consultation with the Parties, taking into account the provisions in Article 8 of the Arbitration Agreement.

5 Tribunal's Fees and Expenses

- 5.1 Each member of the Tribunal shall be remunerated at the rate of €600 per hour for all work carried out in connection with the arbitration.
- 5.2 Members of the Tribunal shall be reimbursed in respect of all disbursements and charges reasonably incurred in connection with the arbitration (including but not limited to travel expenses, telephone, fax, delivery, and copying).
- 5.3 Members of the Tribunal may bill for reimbursement of disbursements and charges as and when they are incurred, and may submit to the PCA periodic bills in respect of fees, at not less than quarterly intervals.
- 5.4 All payments to the Tribunal shall be made from the deposits referred to in paragraph 7.

6 Case Administration

- 6.1 Under Article 1.3 of the Arbitration Agreement, the Parties agreed that the International Bureau of the PCA shall act as registry and provide administrative support in accordance with the Arbitration Agreement and the PCA Rules.
- 6.2 Under Article 1.4 of the Arbitration Agreement, the Parties designated the Secretary-General of the PCA as the appointing authority to act in accordance with the Arbitration Agreement and the PCA Rules.
- 6.3 The International Bureau of the PCA shall act as registry in the arbitration on the following terms.
 - 6.3.1 The PCA shall maintain an archive of filings and correspondence and handle Party deposits and disbursements.
 - 6.3.2 The PCA shall make its hearing and meeting rooms in the Peace Palace available to the Parties and the Tribunal at no charge; costs of catering, court reporter, simultaneous interpretation, security, or other technical support associated with hearings or meetings at the Peace Palace shall be borne by the Presidency of the Republic of Sudan as per Article 11.1 of the Arbitration Agreement.
 - 6.3.3 The Tribunal may appoint a member of the PCA International Bureau to act as Registrar for the proceedings, and for this purpose appoints Judith Levine, PCA Legal Counsel, as Registrar.

- 6.3.4 The Registrar and other members of the International Bureau shall carry out administrative tasks on behalf of the Tribunal, and shall bill their time in accordance with the PCA Schedule of Fees.
- 6.3.5 PCA fees and expenses shall be paid in the same manner as the Tribunal's fees and expenses (paragraph 5).
- 6.4 The contact details of the PCA and Registrar are as follows:
- Peace Palace
Attn: Judith Levine
Carnegieplein 2
2517 KJ The Hague
The Netherlands
Tel: +31 70 302 4165
+31 70 302 4261 (Registrar)
Fax: +31 70 302 4167
E-mail: jlevine@pca-cpa.org and llamzon@pca-cpa.org

7 Deposits to Secure the Tribunal's Fees and Expenses and Case Administration Charges

- 7.1 The Presidency of the Republic of Sudan, as per Article 11.1 of the Arbitration Agreement, on behalf of both Parties, established a preliminary deposit of €40,000, for costs and expenses associated with the meeting in The Hague amongst the four arbitrators carried out in accordance with Article 5.7 of the Arbitration Agreement and the Parties' requests.
- 7.2 In addition to the preliminary deposit, the Presidency of the Republic of Sudan, on behalf of both Parties, shall establish an initial deposit of €1,000,000 (equivalent to €500,000 for each Party) as an advance on costs for the present arbitration. The deposit shall be placed with the PCA by wire transfer to the following account:
- ING Bank N.V., Schenkkade 65
2595 AS The Hague
The Netherlands
Account number: 68.55.45.369
Bank Identifier Code (BIC): INGBNL2A
IBAN: NL71 INGB 0685 5453 69
Account name of beneficiary: Permanent Court of Arbitration
Reference: GOS-SPLM
- 7.3 The Tribunal will review the adequacy of the deposit from time to time and may request the Presidency of the Republic of Sudan to make supplementary deposits in

accordance with Article 41(2) of the PCA Rules. Any supplementary deposit shall be placed by wire transfer to the bank account referred to above in paragraph 7.2.

- 7.4 The unused balance held on deposit at the end of the arbitration shall be returned to the Presidency of the Republic of Sudan as directed by the Tribunal.
- 7.5 Article 11.1 of the Arbitration Agreement provides that the Presidency of the Republic of Sudan shall direct for the payment of the cost of the arbitration from the Unity Fund regardless of the outcome of the arbitration.
- 7.6 Article 11.2 of the Arbitration Agreement provides that the Government of the Sudan shall apply to the PCA Financial Assistance Fund and the Parties may solicit additional assistance from the international community.

8 Communications

- 8.1 The Parties shall not engage in any oral or written communications with any member of the Tribunal *ex parte* in connection with the subject matter of the arbitration.
- 8.2 Correspondence between the Parties and the Tribunal shall normally be sent by fax or e-mail, with a copy to the PCA to the respective addresses set forth in paragraphs 1, 3 and 6 of these Terms of Appointment.
- 8.3 Written pleadings and other formal submissions, and written documentary and testimonial evidence delivered pursuant to the Arbitration Agreement or any Procedural Order shall normally be sent to each member of the Tribunal, the PCA and the opposing Party, simultaneously in hard copy by courier and in electronic format.
- 8.4 The Parties shall send copies of correspondence between them to the Tribunal only if it pertains to a matter in which the Tribunal is required to take some action, or be apprised of some relevant event.
- 8.5 Any change of name, description, address, telephone number, facsimile number, or e-mail address shall immediately be notified by the Party or member of the Tribunal to all other addressees referred to in paragraphs 1, 3 and 6 of these Terms of Appointment.

9 Applicable Law

- 9.1 In accordance with Article 3.1 of the Arbitration Agreement, the Tribunal shall apply and resolve the disputes before it in accordance with the provisions of the CPA, 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.

- 9.2 In accordance with Article 3.2 of the Arbitration Agreement, the Arbitration Agreement, which consolidates the Abyei Road Map signed on June 8, 2008 and Memorandum of Understandings signed on June 21, 2008 by the Parties with the view of referring their dispute to arbitration, shall also be applied by the Tribunal as binding on the Parties.

10 Applicable Procedural Rules

- 10.1 Pursuant to Article 1.1 of the Arbitration Agreement, the proceedings shall be conducted in accordance with the Arbitration Agreement and the PCA Rules, subject to such modifications as the Parties agreed or may agree in writing.
- 10.2 Pursuant to Article 1.2 of the Arbitration Agreement, the PCA Rules shall not apply when excluded or modified by the Arbitration Agreement.
- 10.3 For issues not dealt with in the Arbitration Agreement or the PCA Rules, the Tribunal shall apply the rules that the Parties have agreed upon. In the absence of such agreement, it shall apply the rules it deems appropriate.
- 10.4 Consistent with Article 5.15 of the Arbitration Agreement and Article 31.1 of the PCA Rules, any award or other decision of the arbitral tribunal shall be made unanimously or by a majority of the arbitrators.
- 10.5 The Tribunal is empowered to issue Procedural Orders, after hearing the Parties' positions, on specific procedural issues if and when needed. These Procedural Orders may be signed solely by the Presiding Arbitrator after consultation with his co-arbitrators.

11 Seat of Arbitration

- 11.1 In accordance with Article 6 of the Arbitration Agreement, the seat of the arbitration shall be The Hague, The Netherlands.

12 Language

- 12.1 In accordance with Article 7 of the Arbitration Agreement, the language of the arbitration proceedings shall be English.

13 Privileges and Immunities

- 13.1 The Parties shall not seek to make the Tribunal or any of its members liable in respect of any act or omission in connection with any matter related to the arbitration.
- 13.2 The Parties shall not require any member of the Tribunal to be a party or witness in any judicial or other proceedings arising out of or in connection with this arbitration.
- 13.3 Pursuant to Article 9 of the “Agreement Concerning the Headquarters of the Permanent Court of Arbitration,” the members of the Tribunal shall, in the exercise of their duties within The Netherlands, enjoy such immunities as are accorded to diplomatic agents under the 1961 Vienna Convention on Diplomatic Relations, and other participants in the proceedings shall enjoy immunity from criminal, civil, and administrative jurisdiction in respect of acts performed in The Netherlands in the fulfilment of their duties in the arbitral proceedings.
- 13.4 Each Party shall, within its territory, accord to the members of the Tribunal, staff of the Registry, and any other persons engaged by the Tribunal, the same privileges and immunities as are accorded to diplomatic agents under the 1961 Vienna Convention on Diplomatic Relations.

14 Confidentiality of Deliberations

- 14.1 All deliberations of the Tribunal shall remain confidential in perpetuity unless the Parties release the Arbitrators from this obligation.

15 Publicity

- 15.1 In accordance with the Article 8.6 of the Arbitration Agreement: “The oral pleadings of the Tribunal shall be open to the media, a portion of a hearing may only be closed at the discretion of the Tribunal for security reasons. The Parties authorize the PCA to issue periodic press releases regarding the progress of the arbitration proceedings and to make publicly available on its website the final award, as well as Party submissions.”



16 Counterparts

- 16.1 These Terms of Appointment may be signed in counterparts.

Signed:



The Government of Sudan
Date: November 24, 2008



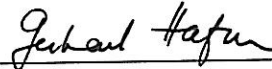
The Sudan People's Liberation
Movement/Army
Date: November 24, 2008



Professor Pierre-Marie Dupuy
Presiding Arbitrator
Date: November 24, 2008



Judge Awn Al-Khasawneh
Date: November 24, 2008



Professor Gerhard Hafner
Date: November 24, 2008



Professor W. Michael Reisman
Date: November 24, 2008



Judge Stephen M. Schwebel
Date: November 24, 2008