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

-and-

THE PERMANENT COURT OF ARBITRATION OPTIONAL RULES FOR ARBITRATING DISPUTES BETWEEN TWO PARTIES OF WHICH ONLY ONE IS A STATE Peace Palace, The Hague

Wednesday, 22nd April 2009

Before:

PROFESSOR PIERRE-MARIE DUPUY

JUDGE AWN AL-KHASAWNEH

PROFESSOR DR GERHARD HAFNER

JUDGE STEPHEN M SCHWEBEL

PROFESSOR W MICHAEL REISMAN

BETWEEN:

THE GOVERNMENT OF SUDAN and

THE SUDAN PEOPLE'S LIBERATION MOVEMENT/ARMY

AMBASSADOR MOHAMED AHMED DIRDEIRY of Dirdeiry & Co,
PROFESSOR JAMES CRAWFORD SC of Matrix Chambers,
PROFESSOR ALAIN PELLET of University of Paris Ouest,
MR RODMAN BUNDY and MS LORETTA MALINTOPPI of Eversheds LLP
appeared on behalf of the Government of Sudan.

DR RIEK MACHAR TENY, GARY BORN, WENDY MILES, of Wilmer Cutler Pickering Hale & Dorr LLP, PAUL R WILLIAMS and VANESSA JIMÉNEZ of Public International Law & Policy Group appeared on behalf of the SPLM/A.

REGISTRY: JUDITH LEVINE, Registrar and legal counsel, ALOYSIUS LLAMZON, acting Registrar and legal counsel, PAUL-JEAN LE CANNU, legal counsel, appeared for the Permanent Court of Arbitration.

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09:03 1	Wednesday, 22nd April 2009	09:01	1	of the Kiir.
2	(8.59 am)		2	Again, this does take a degree of what I have
3	THE CHAIRMAN: Mr Born will finish his presentation.		3	referred to openly as detective work, one has to look at
4	Submissions by MR BORN (continued)		4	the documents, but one can't just pretend that that
5	MR BORN: Yes, Mr President, thank you and good morning.		5	work, that analysis, doesn't need to be done. One does
6	You will recall that I finished yesterday discussing		6	need to do it.
7	one of Wilkinson's treks.		7	The Government, when it engages in the effort,
8	In 1903, going back to the pre-1905 Condominium		8	suggests that Mahon really was an enthusiastic trekker
9	record, Mahon, the Governor of Kordofan, again toured		9	and therefore that he made a big loop to the west of
10	Kordofan, and again in the dry season, of course. His		10	Um Semima, and that therefore when he said he went west
11	record, or the account of his trek, is in Sudan		11	it really meant east. I would suggest to you that that
12	Intelligence Report No. 104 which you can see on the		12	makes no sense.
13 14	screen. This report debunks another one of the Government's earlier claims, namely that Sultan Rob		13	When you look at Mahon's report, he describes quite
15	lived to the south of the Kiir/Bahr el Arab in 1905.		14 15	carefully the directions that he takes. He refers to going southeast, to northeast, to southwest at various
16	You can see on the current slide and I'm sorry		15 16	points in his point. I therefore suggest that when he
17	for the previous misreference the Government's		10 17	described going west to Sultan Rob's village, it is very
18	statement that Sultan Rob was there, the Ngok Dinka's		18	clear that he was going to the new village at Burakol.
19	paramount chief, his village was to the south of the		19	Mahon's report then goes on to describe how he
20	river in Bahr el Ghazal. In the wet season he went		20	arrested an Arab sheikh on his return to Bahr el Homr,
21	south to the River Lol, not north; we have seen that's		21	and this was returning north from Sultan Rob's place.
22	wrong. But the other part of the sentence is also		22	The MENAS report confirms and I think
23	wrong, as we will see.		23	Professor Crawford's reference yesterday to the dominant
24	In his 1903 trek Mahon travelled from Muglad, in the		24	usage of the words "Bahr el Homr" as referring to the
25	north of course, through Turda to Fauwel, which were		25	Ngol makes it fairly clear that in this dry-season
	norm of course, amough 1 man to 1 mm or, which were			1.got mands it tailly stom that in this dry souson
	Page 1			Page 3
09:00 1	both, as we know, north of the Ngol. He then turned	09:03	1	visit Mahon arrested the Arab sheikh on the Ngol.
2	west and headed towards what he called Sultan Rob's, and		2	That's the only reference that one could have been
3	he describes his trip as well. Now Sudan Intelligence		3	making if one was going north, the only river that one
4	Report No. 104 is on the screen. He says:		4	could have been referring to if one was going north from
5	"I next went west to Sultan Rob's and was well		5	Burakol on the northern side of the Kiir. The river
6	received"		6	that one come to would be what is today the Ngol, and
7	He presented a second-class robe of honour. He		7	that would be where he found an Arab sheikh and arrested
8	described the Dinka, and at the end he noted, consistent		8	the sheikh; in the dry season, which is exactly
9	with the other things that we have seen, they have large		9	consistent with the evidence we've previously discussed
10	herds of cattle.		10	of the Messiriya coming south during the dry season to
11	When Mahon reports that he travelled west from		11	graze on the Ngol. That makes perfect sense of the
12	Fauwel and Um Semima to Sultan Rob's Sultan Rob's		12	documents.
13	village it's clear that Sultan Rob had to have been		13	The third pre-1905 Condominium report that I'd like
14	located in what's called the village of Burakol. You		14	to look at was by Captain Percival of the Arab Mounted
15	can see that on the current map.		15	Infantry, also called the Camel Corps. The full account
16	When you leave Um Semima, Sultan Rob's old village		16	of this report, it's a dry season December 1904 trek,
17	at Mathiang, south of the Kiir, is at least due south		17	and you can find the full account of his trek in
18	and frankly southeast from where you began. In		18	Gleichen's 1905 compendium.
19	contrast, Sultan Rob's new village at Burakol is to the		19 20	This report provides very clear evidence of
20 21	southwest, clearly to the southwest of Fauwel and Um Semima.		20 21	substantial numbers of Ngok Dinka settlements well to the north of the Kiir, as well as indirect but I would
21 22	Mahon's description of Sultan Rob's village being to		21 22	suggest powerful evidence of Ngok Dinka to the north of
23	the west is thus much more consistent with Sultan Rob		23	the Ngol.
23	being where he had been reported to be before namely at		23 24	You can see on the current slide an excerpt of
25	Burakol, north of the Kiir, and not at Mathiang, south		2 4 25	Percival's trek notes, which are arranged on a daily
23	2 manos, norm of the thin, and not at manning, south			2 2.2.7 m 5 dok notes, which do dranged on a dairy
	Page 2			Page 4

09:04 1	basis. He would describe what it was he encountered,	09:07 1	going to see explicit reference to how that occurred.
2	typically, as you can see, in very short, terse accounts	2	Indeed, when we read Percival's notes with care
3	but what he encountered each day of his trip.	3	and the Government prefers not to; it prefers to pluck
4	When you look on the trek notes what you see is that	4	out snippets, soundbites if you will, and say,
5	a few days' journey from Lake Keilak up in the north he	5	"Uninhabited, therefore no Ngok" but Percival goes on
6	struck "what I take to be the Bahr el Arab". In fact	6	and only a few miles from where he had described the
7	and it is, I think, now agreed by everyone the only	7	area as uninhabited he says he encountered some
8	river that Percival could have struck here was the Ngol,	8	Ngok Dinka. He wrote:
9	not the Kiir. When he referred to the Bahr el Arab	9	"I surprised them and they thought we were Arabs
10	here, it's common ground that this was not the	10	raiding"
11	Kiir/Bahr el Arab in today's parlance, but rather the	11	That's not surprising; it was the Arab Mounted
12	Ngol.	12	Infantry, and there was a history of slave raiding and
13	That's confirmed in the MENAS report and I think it	13	cattle raiding in that area. It's not surprising that
14	was confirmed yesterday by Mr MacDonald. I would	14	the way that he found the Ngok Dinka was by surprising
15	underscore that that's different from the Government's	15	them. If they knew he was coming, they would hide.
16	initial submissions, as well as its submissions before	16	He then wrote:
17	the ABC.	17	" but I found them friendly and obtained
18	It's not surprising, of course, that Percival would	18	a guide."
19	have had this view; it's exactly the view that Wilkinson	19	After he had been able to assuage their concerns.
20	had the previous year. We need to read Percival's	20	One I would suggest powerful explanation for why the
21	report with some care, and I'll try to do that and I'll	21	early Condominium reports such as they are and there
22	work through it with you, but when you do read it and	22	are virtually none don't mention many Ngok in
23	you read it with care, I think it provides powerful	23	particular areas is that the Ngok hid, for very good
24	evidence of where the Ngok were to the north of the Kiir	24	reasons.
25	and inferential and indirect but nonetheless powerful	25	Second, it could well be it's not clear because
	Page 5		Page 7
	I age 3		I age /
09:06 1	evidence of where the Ngok were north of the Ngol.	09:08 1	this is a terse and fragmentary report that when
2	When he reached the Ngol, Percival noted:	2	Percival described the river as being uninhabited, he
3	"I have been some miles up and down the river but	3	meant the banks of the river rather than the areas set
4	can find no trace of inhabitants. The country between	4	slightly back from the river.
5	here and the jebels would appear to be uninhabited"	5	Indeed that's consistent with the environmental
6	And Professor Crawford and the Government of course	6	evidence, which indicates that the Ngok would not build
7	seized on that.	7	permanent settlements right on the river. Why wouldn't
8	The fact that Percival found the banks of the Ngol	8	they do that? Because, as we saw previously, there's
9	uninhabited during the dry season is in some tension, of	9	seasonal flooding. If you build your houses on the
	course, with the reports from Mahon and Wilkinson, who		
10		10	river people learned that even in this century in New
11	had said they had encountered villagers coming south	11	river people learned that even in this century in New Orleans and other places your houses get washed away
11 12	had said they had encountered villagers coming south from the Ngol, between the Ngol and the Kiir.	11 12	river people learned that even in this century in New Orleans and other places your houses get washed away when the seasonal rains come.
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09:09 1	an element of detective work, but it's common ground	09:12 1	encountering, more accurately Dinkas who were driving
2	I think on both sides that the fire, during this time of	2	cattle south, as hard as they could. This is at a place
3	the year, when there were no clouds, no thunderstorms,	3	called Amakok, not far from the Ngol river.
4	would have had human origins.	4	That's very important. It explains who made the
5	The question therefore is: what caused the fire?	5	cattle tracks: the Ngok Dinka cattle made the cattle
6	It's not a question one should dismiss as speculation;	6	tracks. The Government's speculation that maybe it was
7	it's a question that has to be answered. That's one of	7	the Messiriya cattle is completely unsupported. There's
8	the reasons ABC experts were selected, scientific	8	no reference to any Messiriya, much less any Messiriya
9	experts.	9	cattle in Percival's description here.
10	The answer to the question of what caused the	10	He described Messiriya much further up in the north
11	fire and this is a question that one does indeed have	11	when he began his trek, but not here. The reason is
12	to answer. If one is going to rely on these documents,	12	obvious: they hadn't gotten here because this wasn't the
13	one has to understand why it is that Percival saw	13	time that their seasonal migration would have gotten
14	a fire. The reason that Percival saw a fire is because	14	them to this particular area. Precisely consistent with
15	the Ngok Dinka back-burn their crops at the end of the	15	that, Percival describes seeing Dinka driving their
16	growing season.	16	cattle south as hard as they could.
17	There is the description of that sort of	17	That tells us something else, though, when we think
18	agricultural practice. It's one of the reasons that	18	about it in the context of the environmental evidence.
19	I spent a lot of time on environmental evidence, which	19	If the Dinka were driving their cattle south as hard as
20	might have seemed a little bit esoteric, but one of the	20	they could, where were they coming from? They were
21	reasons I spent the time with that evidence is because	21	headed south. That means they were coming from the
22	it is necessary in order to explain an otherwise	22	north. What does that mean? That means there were
23	lifeless and abstract written record.	23	Dinka up there in the north.
24	So when Percival describes the fire, he must be	24	I can't tell you exactly where the Dinka were, but
25	referring to Ngok Dinka engaging in their traditional	25	I can tell you that driving their cattle south as hard
	Page 9		Page 11
			•
09:10 1	agricultural practice of burning the harvested crops off	09:13 1	as they could puts their permanent villages, from which
2	their fields.	2	they were coming on their seasonal migrations, up above
2 3	their fields. The Government suggests that: well, maybe this fire	2 3	they were coming on their seasonal migrations, up above the Ngol; which is why Percival saw cattle tracks on the
2 3 4	their fields. The Government suggests that: well, maybe this fire was caused by the Messiriya. It doesn't work. It	2 3 4	they were coming on their seasonal migrations, up above the Ngol; which is why Percival saw cattle tracks on the Ngol. Those were Dinka cattle tracks coming south as
2 3 4 5	their fields. The Government suggests that: well, maybe this fire was caused by the Messiriya. It doesn't work. It doesn't work at all. Why doesn't it work? Because the	2 3 4 5	they were coming on their seasonal migrations, up above the Ngol; which is why Percival saw cattle tracks on the Ngol. Those were Dinka cattle tracks coming south as hard as they could to get down to where there was more
2 3 4 5 6	their fields. The Government suggests that: well, maybe this fire was caused by the Messiriya. It doesn't work. It doesn't work at all. Why doesn't it work? Because the Messiriya farm up in the north above the goz. That's	2 3 4 5 6	they were coming on their seasonal migrations, up above the Ngol; which is why Percival saw cattle tracks on the Ngol. Those were Dinka cattle tracks coming south as hard as they could to get down to where there was more water. That is a consistent explanation that fits
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00.14.1			
09:14 1	this is well to the north of the Kiir, it's 11 miles	09:17 1	already seen that. So what Sultan Rob is doing is
2	north of the Kiir at this point. And he describes	2	saying to Percival, "The place where you saw the Ngok
3	Achak, a Ngok village, as a "biggish" village.	3	driving their cattle south, and where you saw the fires,
4	He then proceeded south from Achak another 11 miles	4	that's really uninhabited." And the Government seizes
5	until he reached the Kiir. Then he headed northwest to	5	on that and says, "Ah ha, look, there are only Arabs
6	its junction with the Yamoi, also called the Nyamora,	6	living around the Ngol".
7	and proceeded up the Yamoi through what he called	7	Let's look carefully at why Sultan Rob would have
8	"another village" and I've lost track of quite how	8	said that. The Government criticised him to
9	many Ngok villages he's gone through, but it's a number	9	an extent or criticised us, frankly for us putting
10		10	forward a Ngok witness who was dissembling. Let's look
11	1 2	11	at why he did that.
12	, 1	12	In March 1906 Huntley Walsh gave a lengthy
13	1 2	13	description of an encounter with Sultan Rob. He said:
14	•	14	"For some reason Sultan Rob did all he could do to
15		15	prevent my going up the Kiir."
16	•	16 17	Sultan Rob's efforts to prevent Huntley-Walsh from
17	e		exploring his territory continued, and I think it's
18	•	18	worth your reading it on the slide, and then me
19 20		19 20	emphasising some points: "Among other things he told me that none of his men
20	· • • • • • • • • • • • • • • • • • • •	20	knew the river, which afterwards they proved to know
22		22	very well."
23	•	23	He then sent a man to guide Huntley Walsh. The man
24		24	pretended not to know anything and then guided him up
25	· · · · · · · · · · · · · · · · · · ·	25	a false canyon into a dead end. Then at the end
23	•	23	a raise earry on into a dead end. Then at the end
	Page 13		Page 15
09:16 1	through this.	09:19 1	Huntley-Walsh drew a conclusion:
2	But it frankly doesn't matter whether Burakol was	2	"I fancy that the latter [Sultan Rob] must have
3	Dut it mainly doesn't matter whether Duranter was		
	one mile or two miles from present-day Abyei Town. If		•
	one mile or two miles from present-day Abyei Town. If you tried to locate the heart of Rome or Paris, it no	3	given him [the guide] orders to do so. Both Bimbashi,
4	you tried to locate the heart of Rome or Paris, it no	3 4	given him [the guide] orders to do so. Both Bimbashi, Bayldon and I have proved that Sultan Rob is a liar, and
4 5	you tried to locate the heart of Rome or Paris, it no doubt has moved a mile or two miles. The fundamental	3	given him [the guide] orders to do so. Both Bimbashi,
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09:20 1 were only wandered parties of Arabs somewhere, it in no 2 way reflects where the Ngok really were. On the 3 contrary, it suggests that they were exactly there, and 4 just like he told the guide to lead the Condominium 5 officials away from where the Ngok were, that statement 6 in all likelihood was meant to conceal where the Ngok were located. 8 It's also important to look at the maps that 9 Percival produced. The Government just to disclose just 10 one part of Percival's full sketch map. Percival took 11 a long trek, as we've seen, coming from Lake Keilak down 12 to Sultan Rob and then going back up to where he 13 started. 14 The Government has only disclosed part of that full 15 sketch map, and that is the part that begins at Burakol, 16 in the southern part of where Percival trekked, and goes 17 further south. What the Government discloses, 18 therefore, omits the sketch map for the area north of 19 the Kiir, north of Burakol, up to Keilak; the part of 20 the Abyei Area that the Government says didn't have any 19:20 and 19:20 to Mar MacDonald through those and to. Ms Miles took Mr MacDonald through those and to. Ms Miles took Mr MacDonald through those and to. Ms Miles took Mr MacDonald through those and to to. Ms Miles took Mr MacDonald through those and to and all able to deny that those are very likely depictions of Ngok villages clustered in that region. 1 would also say that the fact and not that there are very few very, very few Ngok villages south of the Kiir on this map; even though it is a map that is focused on the Kiir going south, very few Ngok 10 willages. The reason I would suggest is on the next 11 slide. It is a slide from the Government that shows the 12 this region: the Twic live south of the Kiir. 13 Another fundamental problem with the Government 14 Case is: if it's the Ngok who really live only south of the Kiir, where do the Twic live? Actually the 15 Government tells you where the Twic live: the Twic live south of the Kiir on the Government's case gets mighty crowded
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19 the Kiir, north of Burakol, up to Keilak; the part of 19 of Twic and Ngok, while the area north of the Kiir is
20 the Abyei Area that the Government says didn't have any 20 dead empty.
y and the second and
21 Ngok in it. 21 I would suggest to you that both of those
The Government has not disclosed those parts of the 22 propositions are completely improbable. The Twic and
23 sketch map, notwithstanding our requests and 23 the Ngok Dinka don't live cheek-to-jowl in Condomini
24 notwithstanding your order; notably those parts of the 24 high-rises south of the Kiir, nor is the area north of
25 sketch map which show what it was that Percival reported 25 the Kiir dead empty.
Page 17 Page 19
Tage 17
09:22 1 in those areas. Look at what the Government did: it 09:24 1 It's rather just as the environmental evidence
2 disclosed the part of the sketch map beneath the Kiir 2 suggests: the Ngok lived predominantly north of the
and said, "Ah ha, there are Ngok beneath the Kiir". It 3 Kiir. There are few villages, as the maps showed, just
4 did not disclose the part of the sketch map above the 4 south of the Kiir, and then the Twic occupied the major
5 Kiir and it now argues that there is no evidence that 5 area between the Kiir and the Lol, while the Ngok occ
6 the Ngok were above the Kiir. 6 the area of the Bahr extending up to the goz.
7 I would suggest that that use of the document, 7 Let's go on to the next trek by Percival in
8 submission of part of the document and not the whole 8 March 1905. He went from Wau to Taufikia in Upper
9 document, does not provide a basis for concluding that 9 and that trek included a lot of areas not in the Abyei
there weren't Ngok up there. I would suggest, on the 10 Area but some that are, and it's reported in Sudan
11 contrary, that it provides a very powerful negative 11 Intelligence Report No. 130. He described, and this is
12 inference that just as Percival reported that he 12 just briefly, that:
encountered Ngok driving cattle just south of the Ngol 13 "Sultan Rob appears to exercise a certain amount of
14 and cattle tracks from Ngok cattle on the Ngol, that 14 authority over a large area of country, extending from
those sketch maps which the Government and you can the Shilluk's boundary in the east to the Chak Chak
16 see it listed on the Government's own index that 16 boundary in the west, with the Bahr el Arab as his Ara
17 those sketch maps which were taken and which existed 17 frontier on the north and the Lol River both banks and
18 showed the Ngok in exactly those places. 18 the Bahr el Ghazal in the south."
19 I'd like to move on. Even the partial sketch map 19 It's clear that when Percival referred to the
that the Government does disclose clearly identifies 20 Ngol/Ragaba ez Zarga, he did so by reference to the te
21 a number of villages. Note this is just the bottom part 21 Bahr el Arab, and that is both confirmed by the MENA
22 of Percival's sketch map, just the southern part, but 22 report and acknowledged by the Government. Thus w
23 even that part shows a whole cluster of villages to 24 event had part shows a whole cluster of villages to 25 Percival surmised that the Bahr el Arab is Sultan Rob's
24 north of the Kiir. 24 Arab frontier he is referring to the Ngol, not the
25 It's a little difficult to note on the slides, but 25 Kiir/Bahr el Arab.
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09:26		09:28 1	the tableland where good grazing and pastureland
	that one has to view these documents with care that	2	terminate."
	this was a dry-season observation. This was not	3	Based on that quotation, which is in a chapter
	a wet-season observation. The Condominium officials	4	describing the Bahr el Ghazal region, the Government
	never went there in the wet season.	5	claimed: no Dinkas are mentioned living in the province
	So what he's saying is that there are Ngok Dinka	6	of Kordofan, ie to the north of the Bahr el Arab. You
	going up to the Bahr el Arab, the Ngol, which is	7	can see the citations on your slide. I would suggest
	8 precisely consistent with his reporting not that this	8	that is completely misleading. When you look carefully
	territory is uninhabited but that he encountered lots of	9	at Gleichen, which was a compendium of what had been
1	e e	10	produced in the preceding seven years since 1898, it
1	E	11	powerfully supports everything that I have just been
1:	,	12	saying.
1		13	The passage that the Government cites is firstly
1.	•	14 15	a general reference to the Dinka. But more importantly,
1 1		16	it is a geographical and environmental reference there. The reference to the southern limit, the reference to
1	_	17	where good grazing and pastureland terminate, is
1	•	18	a reference to geographical and environmental features,
1		19	and it is precisely consistent with what Cunnison
2		20	described and what was described in all the
2		20	environmental evidence.
2		22	It describes the Dinka extending up to where good
2	•	23	pastureland and grazing stop, and that is the Bahr
2	3	24	region. It's an area that is well watered, where the
2		25	soil is fertile. That is the area that the Gleichen
_		23	
	Page 21		Page 23
09:27 1	extending far to the east and far to the west. Frankly,	09:30 1	compendium, in the very quotation that the Government
2		2	relies on, refers to.
3		3	More importantly, what the Government doesn't refer
4	west.	4	you to in Gleichen is even more important. Gleichen's
5	Finally, note that I have spent time going through	5	compendium also describes specifically the Ngok Dinka.
6	the entire pre-1905 Condominium record. It is basically	6	It says, and this is in 1905:
7	three people: Mahon, Percival and Wilkinson. Those	7	"Sultan Rob and Dar Jange belonging to Kordofan,
8	sources require careful attention. When you give them	8	with the southern boundary of Kordofan extending
Ģ	careful attention I would suggest that they lead to	9	southwards to the Bahr el Arab, leaving the Maalia and
10	a relatively strong conclusion which is precisely	10	the Rizeigat to Darfur, and the Homr and Dar Jange to
13	consistent with what the ABC experts found and what the	11	Kordofan."
12		12	What that does is it puts the southern boundary of
13		13	Dar Jange on the Bahr el Arab. That is precisely
14		14	consistent with all the evidence we've been discussing.
13	•	15	It has the Dar Jange, the Ngok Dinka, living in the Bahr
10		16	region, to the north of the Bahr el Arab. Their
17		17	southern boundary here in Gleichen, in the passage that
18	-	18	specifically refers to them, is put on the Bahr el Arab.
19	•	19	The Government has it exactly backwards, and that's
20	-	20	why I talked to you about the Twic. The Government has
2:		21	it backwards: the Ngok lived down to the Kiir and
22		22	a little bit south; the Twic lived south of the Kiir.
23		23	That is what Gleichen said in 1905 in the one
24 25	• •	24 25	pre-1905 document that the Government doesn't want to talk to you about. Again, that's precisely consistent
2.	Dani ei Ghazai, men southern mint being the edge of	23	tark to you about. Again, mat's precisery consistent
	Page 22		Page 24

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09:31 1	with what Professor Cunnison and Professor Allan told	09:34 1	The phrase "Dar Jange" does not mean "the territory of
2	you about the environmental evidence.	2	the Ngok"; it means "the territory of the Dinka".
3	The Gleichen compendium also included a map, and we	3	It's a general phrase.
4	can see that here, and we're going to blow it up.		MR BORN: Mr Chairman, I never once interrupted the
5	You'll remember we looked at this with Mr MacDonald.	5	Government's presentations
6	The map has descriptions of the Dar Jange; you can see		PROFESSOR CRAWFORD: Well, I will on this occasion because
7	it down there. The Bahr el Arab is of course the	7	that's an outrageous remark.
8	Kiir I'm sorry, is of course the Ngol; I've committed		MR BORN: and I would appreciate not being interrupted.
9	Wilkinson's mistake. The map again shows Sultan Rob		THE CHAIRMAN: Please, Mr Born, go on.
10	extending up to the Ngol; it shows the Messiriya far to		MR BORN: Thank you very much.
11	the north above the goz.	11	These two areas point towards the territory, as
12 13	That is it, members of the Tribunal, for the	12 13	I said, of the Ngok Dinka, and they're both well up in the north, well above the Abyei Area, and they point
13 14	pre-1905 record. As I've said, it's fairly limited, but it nonetheless allows us to draw a number of important	13	towards Ngok Dinka territory.
15	conclusions.	15	Lloyd also cites a report that says the southern
16	It places the Ngok with permanent villages,	16	boundary of Dar Homr is between the Bahr el Arab and the
17	prosperous agricultural fields, scattered throughout the	17	River Kiir, the latter being occupied by the Dinkas
18	Bahr region. It doesn't tell us exactly where they are;	18	under Sultan Rob. It's clear here, when he referred to
19	it's impossible given the nature of the record. But it	19	the Bahr el Arab, that he meant the Ngol, as we have
20	does tell you that they're definitely between the Ngol	20	seen, and not the Kiir, which he called the
21	and the Kiir, and it provides strong inferential	21	"River Kiir". That's the same terminology that
22	evidence that they're well to the north of the Ngol.	22	Wilkinson, Percival and Gleichen had all used in the
23	That's exactly the area that the Ngok had migrated	23	preceding years.
24	into; and the Government claims, without any support,	24	Thus what we have from Lloyd is the Messiriya going
25	they'd moved out of. The Condominium evidence shows you	25	no further south he talks about the Dar Homr's
	D 25		D 27
	Page 25		Page 27
09:33 1	that in fact they hadn't moved out of it; they were	09:35 1	grazing territory coming south no further south into
09:33 1 2	that in fact they hadn't moved out of it; they were still there. Gleichen's compendium, which sums up what	09:35 1 2	grazing territory coming south no further south into Dar Jange, the Ngok Dinka territory, during the dry
	still there. Gleichen's compendium, which sums up what we know about the pre-1905 record, puts their southern		Dar Jange, the Ngok Dinka territory, during the dry season, than approximately the Ngol. That description,
2 3 4	still there. Gleichen's compendium, which sums up what we know about the pre-1905 record, puts their southern boundary on the Kiir/Bahr el Arab, which makes perfect	2	Dar Jange, the Ngok Dinka territory, during the dry season, than approximately the Ngol. That description, the Messiriya coming down and grazing around the Ngol,
2 3 4 5	still there. Gleichen's compendium, which sums up what we know about the pre-1905 record, puts their southern boundary on the Kiir/Bahr el Arab, which makes perfect sense. It also puts Sultan Rob to the north of the	2 3 4 5	Dar Jange, the Ngok Dinka territory, during the dry season, than approximately the Ngol. That description, the Messiriya coming down and grazing around the Ngol, is exactly right. It has the Messiriya coming to the
2 3 4 5 6	still there. Gleichen's compendium, which sums up what we know about the pre-1905 record, puts their southern boundary on the Kiir/Bahr el Arab, which makes perfect sense. It also puts Sultan Rob to the north of the Kiir/Bahr el Arab, in Burakol, from 1902 to 1905.	2 3 4 5 6	Dar Jange, the Ngok Dinka territory, during the dry season, than approximately the Ngol. That description, the Messiriya coming down and grazing around the Ngol, is exactly right. It has the Messiriya coming to the Ngol. That is in no way inconsistent with the Ngok
2 3 4 5 6 7	still there. Gleichen's compendium, which sums up what we know about the pre-1905 record, puts their southern boundary on the Kiir/Bahr el Arab, which makes perfect sense. It also puts Sultan Rob to the north of the Kiir/Bahr el Arab, in Burakol, from 1902 to 1905. The pre-1905 Condominium records don't let us	2 3 4 5 6 7	Dar Jange, the Ngok Dinka territory, during the dry season, than approximately the Ngol. That description, the Messiriya coming down and grazing around the Ngol, is exactly right. It has the Messiriya coming to the Ngol. That is in no way inconsistent with the Ngok being there. On the contrary, as we're going to see, it
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09:36 1	As we've seen, that's exactly what Percival and Mahon	09:39 1	First, if you look on the left, you will see something
2	had previously reported.	2	marked "cult", cultivation. That is a cultivated area.
3	The Government suggests that there are Arab	3	It is to the north of Koak, in the region of Nyama, to
4	settlements shown to the north of the Kiir here. That	4	the north of the Ngol. A cultivated area, and that's
5	is completely wrong. When you read the route report by	5	another reason that I spent so much time on the
6	Hallam he talks about not settlements, but Arab "camps"	6	environmental evidence.
7	in the dry season, Arab "camping ground" in dry season.	7	Who cultivates in the Bahr? We know who cultivates
8	These are not villages.	8	in the Bahr, and you can see on that map cultivated area
9	That's another one of the reasons that I spent so	9	up there in the north. That is Ngok Dinka agricultural
10	much time with the environmental evidence. These are	10	lands. It's not Messiriya agricultural lands because
11	seasonal nomadic camping grounds. When the Messiriya	11	(a) as we saw, the Messiriya don't like farming, and (b)
12	came south from their area above the Muglad, they would	12	when the Messiriya do farm, they do it with millet up in
13	spend six days or so at particular camps; not villages.	13	the north in the goz, where their crops grow. They
14	Again, that's precisely consistent with the	14	don't do it in the Bahr down here.
15	environmental evidence.	15	That is Ngok Dinka, and that is one of the reasons
16	The Government goes on and makes much of a sketch	16	that the Government I would suggest did not disclose
17	map and a letter by Whittingham, a British officer who	17	that map, because that map provides clear evidence of
18	toured the area in 1909. These materials support not	18	Ngok Dinka cultivation well to the north.
19	the Government's case but our case. The Government once	19	The map also shows something else: it shows a Dinka
20	more only provides selective portions of Whittingham's	20	dugdug on the south bank of the Ngol in the region of
21	map.	21	Bara, to the east of the Abyei Area. As we've seen,
22	Whittingham trekked through several areas: (1) the	22	dugdugs are characteristic of the Ngok Dinka and not of
23	country north of Turda and south to Dawas and Abyei; (2)	23	the Messiriya.
24	Turda to Koak, and Bara to Mellum; and (3) Abut off Bari	24	Finally, there are repeated uses of Ngok Dinka
25	to Wul.	25	terminology here. One can scoff at toponymy, as
	Page 29		Dage 21
	rage 29		Page 31
09:38 1	The Government only disclosed a partial sketch map	09:41 1	Professor Crawford did, but the repeated use of
09:38 1 2	of the first section of Whittingham's trek; it did not	09:41 1 2	Ngok Dinka names in this area I would suggest is,
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00 40				
09:42	1	shows the Ngok living throughout the Bahr region, the	09:45 1	occupy an area and you can see this on the slide
	2	plains, and moving south to around the rivers during the	2	on the Bahr el Arab, extending northwards along the main
	3	dry season.	3	watercourses, of which the largest is the Ragaba
	4	There's then a reference in the next slide to the	4	Umm Biero; that's the Nyamora. Again, focusing on the
	5	Ngok Dinka, specifically under Sultan Rob, and then	5	Ngok living to the north of the Kiir, not to the south
	6	another reference to the fact that it was very difficult	6	of the Kiir.
	7	for the administrators to go to this region. We have	7	It's important to recall also going back to
	8	seen that quote previously and I won't read it out.	8	Professor Crawford's statements about the documentary
	9	As with pre-1905 reports, this account by the Sudan	9	record the 1965 and 1966 Abyei Agreements which were
	10	Intelligence Department places the Ngok entirely north	10	between the Messiriya and the Ngok. In those agreements
	11	of the Kiir, not to the south of it. It describes	11	the Messiriya provided, the Messiriya themselves agreed
	12	a considerable Ngok population living throughout the	12	to the fact that the Ngok could return to their
	13	plains of the Bahr, north of the Kiir and the Ngol and	13	homesteads at Ragaba ez Zarga and other places where
	14	northeast towards Lake Abyad.	14	they used to live.
	15	That population moves south to the Kiir in the dry	15	This is an agreement by the Messiriya referring
	16	season, which would be expected, and it lived in	16	specifically to the Ragaba ez Zarga, to the Ngol.
	17	characteristic Ngok villages. That's consistent with	17	Again, recall Professor Crawford's statement that there
	18	what Professor Cunnison described, it's consistent with	18	was no documentary evidence of the Ngok living around or
	19	the environmental evidence and it's another powerful	19	to the north of the Ngol. That is simply not true.
	20	documentary indication, contrary to what	20	There is documentary evidence both here, and the things
	21	Professor Crawford said, of the Ngok living throughout	21	we looked at previously.
	22	the Bahr region.	22	It is difficult documentary evidence to be sure, but
	23	There is a map that accompanied the Kordofan land	23	that's because it's a difficult documentary record and
	24	book; it's dated 1913 and it's a Survey Office map. It	24	a sparse one. But when you look carefully at all the
	25	places the Dinka and you can see on this slide	25	pieces, it provides a consistent set of observations of
		Page 33		Page 35
09:43	1	referred to parenthetically as Dar Jange, and we can go	09:46 1	the Ngok: virtually always to the north of the Kiir,
09.43	2	back to Professor Crawford's interruption of me it	2	sometimes to the north of the Ngol; always
	3	places the Ngok Dinka squarely in the area between and	3	consistently consistently between the Kiir and the
	4	above the Kiir and the Ngol.	4	
	5			Nool and a significant number of references to the Nook
		It extends up to around 10°20' latitude, and it is		Ngol and a significant number of references to the Ngok
		It extends up to around 10°20' latitude, and it is	5	north of the Ngol.
	6	precisely consistent with the environmental evidence and	5 6	north of the Ngol. That is based on a limited set of observations which
	6 7	precisely consistent with the environmental evidence and what we've otherwise described. It extends barely at	5 6 7	north of the Ngol. That is based on a limited set of observations which necessarily could not include the Ngok during the wet
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09:48 1	identified to be brought here.	09:50 1	Kiir. It is the black clay soil where the Ngok built
2	He has written extensively on the area, and I would	2	their culture.
3	refer you to his books. His books don't put you to	3	When we move on from that, we can see that
4	sleep, his books are actually riveting. I find them	4	Cunnison's description of the goz continues in other of
5	exciting. If you read and the names are on the	5	his works. He also defines more specifically a part of
6	screen, but he is a learned man. He wrote The Homr and	6	the goz as the Bahr el Arab, and he distinguishes that
7	their Land, The Social Role of Cattle, Baggara Arabs,	7	from the Bahr itself. The Bahr el Arab itself, as part
8	Some Social Aspects of Nomadism in a Baggara Tribe, and	8	of the Bahr generally, is the area between the Kiir and
9	one of my favourite is on giraffe hunting by the	9	the Ragaba ez Zarga; it's that strip between the Ngol
10	Messiriya in the region, which is a particular specialty	10	and the Kiir/Bahr el Arab.
11	of his apparently. But he knows this area quite well.	11	When we look at a 1953 article he wrote on the Homr
12	He describes the region, geographically first of	12	and their land, he quotes:
13	all, in a way that is quite consistent with what	13	"The river system is known to the Arabs as the Bahr,
14	Professor Allan did. He divides the region, this entire	14	although they subdivide the area into the Ragaba,
15	area, into four zones.	15	consisting of the Ragaba ez Zarga and the
16	First there's the Babanusa, which he describes as	16	Ragaba Umm Biero, and the Bahr, or the Bahr el Arab,
17	a sandy area in the north and northwest of the country	17	which consists of all riverbeds between the
18	which is used by the Messiriya for grazing during the	18	Ragaba ez Zarga and the main river. The nomenclature of
19	rains.	19	the rivers is confusing", he says.
20	Second, he describes the Muglad, which stretches	20	He is clear that the Bahr el Arab is not just the
21	from Babanusa in the north to the goz, the sandy, arid	21	Kiir/Bahr el Arab down at the southern boundary of the
22	strip. He describes that as the headquarters of the	22	Ngok Dinka territory, but instead it's the waterways
23	Messiriya.	23	between the Kiir and the Ngol.
24	Third, he refers to the goz. He describes it as	24	He repeats this description of the term Bahr el Arab
25	being between Muglad and Wadi el Ghalla in the north and	25	in his giraffe hunting article. He says:
	Page 37		Page 39
09:49 1	the river system, the Bahr, in the south. He describes	09:52 1	"Giraffe move from Upper Nile province in the early
09.49 1	the goz as a transit stage between Muglad and the Bahr.	09.32 1	rains and distribute themselves over the wide area known
3	Finally, of most importance to the Ngok, he	3	as the Bahr el Arab, penetrate north over the
4	describes, south of the goz, the Bahr itself. He	4	Ragaba ez Zarga and Ragaba Umm Biero and enter the goz
5	describes, south of the goz, the Bahr hasen. The describes it as the area which I previously referred	5	district between there and Muglad"
6	to of dark, deeply cracking clays and numerous	6	We can make light of the fact the Government no
7	winding watercourses, all connected eventually with the	7	doubt will that this is an article about giraffe
8	Bahr el Arab. It contains also two permanent lakes:	8	hunting. What's important about it is that it tells you
9	Keilak, which lies slightly southeast from the Muglad,	9	about the region, and what it says is that the region of
10	and Abyad in the southeast corner of the country.	10	the Bahr is the region that extends south from the goz
11	Cunnison notes that north of the Bahr is the goz.	11	down to the Kiir.
12	Recall this is exactly what Professor Allan	12	That makes perfect sense because that is a region
13	described and showed you on the satellite imagery. It	13	that is defined environmentally as the black clay
14	shows starting at the southern boundary of the goz the	14	fertile soils that are damp and subject to seasonal
15	Bahr begins. The Bahr is the dark, rich, deeply	15	flooding. You can see it from the satellite imagery.
16	cracking clay soil that extends down to the Kiir. That	16	Professor Allan, whose evidence has not been challenged,
17	is how Professor Cunnison described the region. It is	17	explained it to you: the goz starts to the north, the
18	the description that Professor Crawford you will	18	Bahr starts to south. Cunnison and Allan agree. Nobody
19	remember stumbled on; that's because they didn't have	19	disagrees.
20	an expert on this topic and because they didn't want to	20	Cunnison goes on and then repeatedly describes the
21	focus on Professor Cunnison.	21	existence of numerous permanent Ngok Dinka settlements
22	When you look at the evidence which you see on the	22	throughout the Bahr region. This squarely supports the
23	slide in front of you now and when you look at what	23	SPLM/A's case and squarely contradicts the Government's
24	their own fact witness said, the Bahr is the region that	24	case, which I would suggest is why Professor Cunnison
25	starts from the goz; it stops when it goes down to the	25	isn't here. His 1962 article is titled "Some Social
	Page 38		Page 40

9.953 Aspects of Nomadism in a Baggara Tribe." It said: 2	,			
4 This is a recognition of the permanent nature of the S Ngok settlements. 5 Ngok settlements. 6 In his 1906 book, Baggara Araba, Cunnison goes on and away: 8 "Much of the Bahr has permanent Dinka settlements, although during most of the time that the Hornr occupy it" 11 Recall he spent his time with the Hornr occupy it" 12 " the Dinka are with their cardle south of the Bahr and the Sandra of the Bahr and the Sandra of th	09:53 1	*	09:55 1	The state of the s
4 This is a recognition of the permanent nature of the 5 Ngok settlements. 6 In his 1966 book, Baggara Arabs, Cunnison goes on and says: 8 "Much of the Bahr has permanent Dinka sertlements, although during most of the time that the Honri coccupy in it" 11 Recall he spent his time with the Messiriya: 12 "" the Dinka are with their cattle south of the 13 Bahr el Arab." 14 Cunnison explicitly concludes that permanent 15 Ngok Dinka villages were located throughout what he repeatedly calls "much of the Bahr". Again, this was the reace actending south of the gor. 15 In his article on "The Social Role of Cartle" 16 Cunnison specifically addressed the question of whether 20 it wraulf make sense to try to encourage the Messiriya to cultivate in the Bahr. The Messiriya has a proud 22 cultivate in the Bahr. The Messiriya has a proud 22 cultivate in the Bahr. The Messiriya has a proud 23 rightfully so. But he answered a Government suggestion that they be settled in the Bahr, and he said to this: Pags 41 "It might be possible but fand I emphasise this 8 language] this is the traditional land of the Dinka, who as in the Bahr, and he said to this: Pags 41 "It might be possible but fand I emphasise this 8 language] this is the traditional hand of the Dinka, who are in there and cultivate during the nairs." 4 That talles you who was in the Bahr. This is the 8 because it is traditional lands. That is a precisely consistent with the Whittingham map, which showed the cultivation, that the Government's goog-sol top ut the Messirya in the Ngok Dinka's land. 5 Cunnison, their witness, said: no, you card do that 9 perfect the search of the middle stay, and it goes down to the Kir. It's defined by the soil. Page 43 10 Professor Cunnison, their witness and throughout much of the land this whose members of the middle stay, and the same throughout much of the land this whose members of the middle stay. 11 This was called 'Settlement of Nomash in the Sudan: 12 Look at it again: "settled farms throughout much of the land this	2		2	
5 Ngok settlements. 6 In this 1966 book, Baggarra Arabs, Cunnison goes on and says: 7 and says: 8 "Much of the Bahr has permanent Dinka settlements, although during most of the time that the Horn occupy 10 it" 11 Recall be spent his time with the Messiriya: 12 " the Dinka are with their cattle south of the 12 13. Bahr el Arab." 13 Bahr el Arab." 14 Cunnison explicitly concludes that permanent 15 Ngob Dinka villages were located throughout what he 16 repeatedly calls "much of the Bahr". Again, this was 17 the area extending south of the goz. 18 In his article on "The Social Role of Cattle" 19 Cunnison explicitly outledes the question of whether it would make sense to try to encourage the Messiriya to 20 cultivate in the Bahr. The Messiriya has a proud 22 cultivate in the Bahr. The Messiriya has a proud 22 cultivate, as we saw, that did not include agriculture. 23 They were cattle herders and they were proud of it; rightfully so. But he answered a Gorenment stagestion with the word of the goz. 24 rightfully so. But he make a state of the same the said to this: Page 41 709:54 1 "It might be possible but [and I emphassise this language] this is the traditional land of the Dinka, who remment and cultivate during the rains." 25 In his the face are actual threat south of the goz. Stopes that they be settled in the Bahr. This is the are are actual that savouth of the goz. Stopes that they be settled in the Bahr, and he said to this: Page 41 709:54 1 "It might be possible but [and I emphassise this language] this is the traditional land of the Dinka, who remment here and cultivate during the rains." 26 Doponal to part the Messiriya in the Ngob Dinka's hand. The stope of the powermment's proposal to part the Messiriya in the Ngob Dinka's thand. The stope of the powermment's proposal to part the Messiriya in the Ngob Dinka's thand. The stope of the powermment's proposal to part the Messiriya in the Ngob Dinka's thand. The stope of the powermment's proposal to part the Messiriya in the Ngob Dinka's thand. The sto	3		3	-
6 In his 1966 book, Baggara Arabs, Cunnison goes on and says: 8 "Moch of the Bahr has permanent Dinka sertlements, allowed during most of the time that the Horn occupy in it" 10 in i" 11 Recall he spent his time with the Messiriya: 12 " the Dinka are with their cattle south of the says: 13 Bahr el Arab." 14 Cunnison explicitly concludes that permanent construction of the repeatedly calls' much of the Bahr*. Again, this was the fer repeatedly calls' much of the Bahr*. Again, this was the repeatedly calls' much of the Bahr*. Again, this was the react extending south of the goz. 18 In his article on 'The Social Role of Cartie" 19 Cunnison specifically adhressed the question of whether oil would make sense to try to encourage the Messiriya to culture, as we saw, that did not include agriculture. 20 culture, as we saw, that did not include agriculture. 21 They were cattle barders and they were proud of it; the possible but land I emphasise this a return there and cultivate during the rains." 22 Language list is the traditional land of the Dinks, who return there and cultivate during the rains." 23 They were cattle barders and they were proud of it; the possible but land I emphasise this a gauged list is the traditional land of the Dinks, who return there and cultivate during the rains." 24 That tells you who was in the Bahr. This is the sear and said the same thing in another pages. 25 Governments worn winness in response to the Government's general to the same time of the page and it goes down to the Kiri. It's defined by the soil. 26 Page 41 27 Then at the end: 28 The wert on and said the same thing in another pages. 29 The wert on and said the same thing in another pages. 21 This was called 'Settlement of Nomads in the Sudan: 22 A columison, their witness, it and a response to the Government's general page of the same thing in another pages. 29 The went on and said the same thing in another pages. 21 The went on and said the same thing in another pages. 22 The went on and said the			4	_
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8 gag. 9 although during most of the time that the Homr occupy 10 it" 11 Recall be spent his time with the Messiriya: 12 " the Dinks are with their cattle south of the 13 Bahr el Arab." 14 Cunnison explicitly concludes that permanent 15 Ngok Dinks villages were located throughout what he repeatedly calls "much of the Bahr". Again, this was 16 repeatedly calls "much of the Bahr". Again, this was 17 the area extending south of the goz. 18 In his article on "The Souta Role of Cattle" 19 Cunnison specifically addressed the question of whether 20 it would make sense to try to encourage the Messiriya to 21 cultivae in the Bahr. The Messiriya has a proud 22 culture, as we saw, that did not include agriculture. 23 They were cattle herders and they were proud of it: 24 rightfully so. But he answered a Government suggestion 25 that they be settled in the Bahr, and he said to this: Page 41 10 yes 4 11 The might be possible but [and I emphasise this 22 language] this is the traditional land of the Dinka, who return there and cultivate during the rains." 25 Government's own mixes in response to the Government's 26 proposal to put the Messiriya in the Ngok Dinka's land. 27 Cunnison, their witness, said, no, you can't do that 28 be cause it is traditional Myok agricultural lands. That 29 is precisely consistent with the Whitinigham map, which 30 is proceedy consistent with the Whitinigham map, which 31 to us. 32 This was called "Settlement of Nomads in the Sidan: 33 This was called "Settlement of Nomads in the Sidan: 44 A Critique of Present Plane". He said and I quote— 34 ye use as even the sidie: 35 This was called "Settlement of Nomads in the Sidan: 36 The weet of the sidie: 37 This was called "Settlement of Nomads in the Sidan: 38 This was called "Settlement of Nomads in the Sidan: 39 This was called "Settlement of Nomads in the Sidan: 40 A Critique of Present Plane". He said and I quote— 41 You can see it on the sidie: 42 To part of the year they shared the area with the 43 To part of the Horn's sections, most	6	In his 1966 book, Baggara Arabs, Cunnison goes on	6	
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Page 42 Page 44	25	Professor Cunnison, their expert who lived there in	25	true, Cunnison is wrong; there are no Ngok houses there,
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09:58 1	there are no Ngok people there, they are all south of	10:00 1	environmental evidence, and it's exactly consistent with
2	the Kiir.	2	the SPLM/A case.
3	This is why the witnesses talk about a brotherhood.	3	There's one point on which Cunnison disagrees with
4	This is why the Ngok have to be in this area: because	4	both the ABC experts and the SPLM/A, and it's
5	when the Messiriya come south into the Bahr, they camp	5	a disagreement that was created by the Government and
6	next to the Ngok Dinka permanent houses; they leave	6	which is wrong. Cunnison says that he was:
7	their belongings in those houses; they get food from the	7	" informed that the effect of the ABC's decision
8	Ngok. That's why they're brothers: because they live	8	would be to exclude the Homr from the summer grazing and
9	together during part of the year.	9 10	living areas in the Bahr." And that he believed that that would be
10 11	If, on the Government's case, as Professor Crawford would have you believe, that can't be because there	10	
12	aren't Ngok there, that's just not true. And Cunnison,	11	"fundamentally unjust". It would be. It would be fundamentally unjust.
13	their own witness, who they didn't bring here, tells you	13	That should not happen. And that's what the experts
13	it's not true.	13	held: it would not happen. And that's what the experts
15	Let's look at the Abyei Protocol; it tells you the	15	We looked at what they said. They said that the
16	same thing. If you look in the Abyei Protocol, Abyei	16	Messiriya, precisely consistent with Article 1.1.3 of
17	and I showed you this before is the bridge between	17	the Abyei Protocol, would retain their traditional
18	the people. It's not a bridge that stops in mid-air	18	grazing rights in the Bahr, in the Abyei Area.
19	with nobody on it; it's a bridge that has both people on	19	The parties foresaw this. Professor Cunnison was
20	it together. That's why it's a brotherhood.	20	misinformed by the Government. He was told what the
21	It's the same thing in the other provisions of the	21	effect of the ABC decision would be. In fact, what the
22	Abyei Protocol that the parties agreed to, contrary to	22	experts said and you can read this; this comes from
23	what Professor Crawford told you. You look at it and	23	their report:
24	you see in Article 1.1.3 that:	24	"The experts want to stress that the boundary that
25	"The Messiriya are nomads and they will be entitled	25	is defined and demarcated will not be a barrier to the
	D. 45		D 45
	Page 45		Page 47
09:59 1	to exercise their traditional grazing rights in the	10:01 1	interaction between the Messiriya and the Ngok
2	area."	2	communities. The decision should have no practical
3	That's what the experts said and that's what the	3	effect on the traditional grazing patterns and the two
4	Abyei Protocol says.	4	communities."
5	Third, Cunnison also describes and I'll go	5	That goes back to the notion of brotherhood, to the
6	through this quickly the nomadic character of the	6	notion of a bridge, and to Article 1.1.3 of the
7	Messiriya's life. You can see the slides that describe	7	Abyei Protocol, which preserves those traditional
8	this. It describes how nomadism is the only way of	8	grazing rights.
9	life, a proud way of life to which they are attuned, how	9	Professor Cunnison's only disagreement was on this
10	the tribesmen are continually on the move.	10	point. It was a legal point, as to which he was given
11	He goes on and in the next slide describes where the	11	a legal conclusion which was wrong, by the Government.
12	Messiriya have their home. He says:	12	Taken together, Cunnison's writings, his witness
13	"The Muglad is regarded by the Homr as their home.	13	statement and his other statements, are frankly
14	Their arrival there from the Bahr ['from the Bahr'] is	14	devastating for the Government's case. He describes the
15	the occasion for great rejoicing and anticipation. This	15	existence of permanent Ngok Dinka homes throughout the
16	is almost the only place where the people have anything	16	Bahr region. That is precisely consistent with the
17	like permanent homes. It is where they cultivate [where	17	environmental evidence. It is consistent with the
18 19	they cultivate: not down in the Bahr] and store their	18 19	documentary record, so far as one can elicit useful conclusions from that record.
	grain, as their forefathers did. If people are away, they want to return to it."	20	He describes the Messiriya as coming south into that
20 21	"It", Muglad, up in the north, above the goz.	20	region to live as brothers with the Ngok Dinka. They
21 22	Similarly he wrote elsewhere that nearly all	22	couldn't live as brothers if the Ngok Dinka. They
23	Messiriya cultivation is in the Muglad; their	23	there, like the Government tells you.
23	cultivation is otherwise in Babanusa, further north.	23	Cunnison isn't here for a reason. His evidence,
25	Once more, this is exactly consistent with the	25	though, is extraordinary powerful, and I would suggest
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	Page 46		Page 48

100.5 1 His yosipey obea attention to it. His evidence is also appeared by Mr. Michael Tibbs, so methody who the Government has not referred to in the sightest. Looking at the next side. Mr Tibbs refers to the fact that in the west the Ngol want all the way. The Ngols cattle camps congregate in the immediate vicinity of Abyes. By the height of the dry season to the boundary with Darfur: The Ngols cattle camps congregate in the immediate vicinity of Abyes. By the height of the dry season in the point of Abyes and the surprise of the Ngols and the way to the boundary with Darfur: The Ngols cattle camps congregate in the immediate vicinity of Abyes. By the height of the dry season in the point of the Ngols in the way to the boundary with Darfur: The Ngols cattle camps congregate in the immediate vicinity of Abyes. By the height of the dry season in the point of the Ngols in the way to the Ngols and the head of the Ngols and the head of the Ngols in the head of the season that the way that the head of the Ngols in the head of the Ngols was the head grows weter, the herds can move up into the same and prove season that the head area not heyels whether pare are they the same the head grows weter, the herds can move up into the same area on heyels whether pare are they is used as the land grows weter, the herds can move up into the same area of head of the head and the same through the same and the same through the castern part of the Ngols hands, as more area to head of the point of the Ngols and the head of the Ngols and the Ngols bear the Ngols more than the head of the Ngols and the Ngols bear the Ngols where the pare they are they is used to the part of the Ngols and the Ngols where the pare they are they is used to the head of the Ngols and th				
18. Ex evidence is also supported by Mr Michael Tibbs, as superfixed to in the salightest. Looking at the next side, Mr Tibbs refers to in the fact that to the west the Ngok went all the way to the fact that to the west the Ngok went all the way to the fact that to the west the Ngok went all the way to the fact that to the west the Ngok went all the way to the fact that to the west the Ngok went all the way to the fact that to the west the Ngok went all the way to the fact that to the west the Ngok went all the way to the fact that to the west the Ngok went all the way to according to the Ngok and the Messirya and the Messirya in the north. Alrey was the centre of the Page 49 10.00 I a Ngok a Muglad was the headquarters of the Messirya. I always considered the area south from Antila popular in the west as an extended almin, I would see Ngok and the Messirya in the north. Alrey was the centre of the Page 49 10.00 I a Ngok, a Muglad was the headquarters of the Messirya. I always considered the area south from Antila popular in the north. Alrey was the centre of the Page 49 10.00 I a Ngok, a Muglad was the headquarters of the Messirya. I always considered the area south from Antila popular in the north. Alrey was the centre of the Page 49 10.00 I a Ngok, a Muglad was the headquarters of the Messirya. I always considered the area south from Antila popular in the north. Alrey was the centre of the Messirya. I always considered the area south from Antila popular in the north and the Messirya in the north. Alrey was the centre of the Messirya. I always considered the area south from Antila popular in the north of the Ngol I always to say, this is what he saw the north of the Ngol I always to say, this is what he saw the north of the Ngol I always to say, this is what he saw the north of the Ngol I was the centre of the Ngol Always the north of the Ngol I was the centre of	10:02 1	that you pay close attention to it.	10:05 1	report and these are people who spent time out in the
somehody who the Government has not referred to in the 4 sightest. Looking at the next side, Mr Tibbs refers 5 to the fact that to the west the Ngok went all the way 6 to the bondary with Darfur. 7 "As I note in Stadau Sunset, Grinti, I believe, 8 though I'm not sure, is on the north bank of the Kiir 9 River [is within the Ngok territoris]. Truvelling from 10 Abyet Town to Grinti I would see Ngok villages, just 11 clusters of two or there tuisely pour I members that] 12 and tuaks [you'll remember that] 13 the watercourse we travelled along. I find myself 14 unable to give an eastern boundary to the Ngok's lands, 15 as my travels throughout the district did not take me 16 through the eastern part of the Ngok's lands. 17 I should apologise: I recall now as I read the 18 reference to Stadan Sunser (Grinti, I believe, 20 there must have been as a reference to 19 that book being self-published by Tibbs, so I think 19 the menust have been some reference in the Government's 21 presentation. 22 But let's neutra to the Tibbs description. He 23 explained that: 3 Talways considered the area south from Antilia 4 [which is north of the Ngol], on our direct road from 5 Magdad to Abyet, to be within Ngok territory. From that 6 road, as soon as we rescribered to a dragdugs, and 1000 I Ngok, as Muglad was the headquarters of the Messiriya. 4 [which is north of the Ngol], on our direct road from 5 Magdad to Abyet, to be within Ngok territory. From that 6 road, as soon as we rescribered and adage Ngok, and 6 road, as soon as we rescribed and as dragdugs, and 7 always considered the area south from Antilia 8 the the beach chero-ter-circred to as dragdugs, and 8 to the road the waster eleverated about. 9 The Ngok as Magdad and the sear of the Messiriya. 1000 I Ngok, as Muglad was the headquarters of the Messiriya. 1000 I Ngok, as Muglad was the headquarters of the Messiriya. 1000 I Ngok, as Muglad was the headquarters of the Messiriya. 1000 I Ngok, as Muglad was the headquarters of the Messiriya. 1000 I Ngok, as Muglad was the head				
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Page 50 Page 52	2.5	110,000 which studied the region in 1770. The project	23	and the sound in the death of the sound in the sound in the
		Page 50		Page 52

10:08	1	Ragaba ez Zarga.	10:10	1	conclusions that they drew from the witness testimony
	2	And we have the Harvard Development Report		2	are powerful.
	3	describing the Ngok living up to where the sandy regions		3	They were educated, smart people. Their work, their
	4	stop.		4	efforts, demand respect; and not, as I said before,
	5	Professor Crawford is just wrong. When you actually		5	contempt. We should show humility towards what they
	6	look at the record and try to think about it, when you		6	did. Think about it if you could spend six days with
	7	don't just pull soundbites out of it that suit you, what		7	witnesses from all these areas. Wouldn't that tell you
	8	the record shows you is, undeniably, the Ngok living		8	a lot more than those snippets of testimony that you got
	9	throughout the entire Bahr region.		9	yesterday? I think we all saw the quality of the
	10	It's also not surprising that the more time people		10	interpretation. We saw that, right?
	11	spent out in the field, the more detailed and the		11	The experts didn't complain about that. They had
	12	further north their descriptions of the Ngok go. Think		12	immediate access to all those witnesses. I think the
	13	about it: who tells you most about the Ngok?		13	judgments that they drew are entitled to the greatest of
	14	Professor Cunnison, the Harvard Development Report,		14	respect. We should approach those with humility and not
	15	Mr Tibbs; people who actually lived there.		15	with contempt.
	16	Who doesn't tell you much? People like Henderson,		16	I'm not going to spend a lot of time because I've
	17	who Professor Crawford relies on, who rode in a truck		17	used too much time already on going through the
	18	from Muglad down to Abyei. The people that actually		18	witness testimony. It's on the slides, and if we can
	19	lived there are the ones that can tell you most.		19	just quickly show those.
	20	With that I suggest we turn to the people who lived	2	20	There are a number of specific descriptions from
	21	there most, the Ngok Dinka themselves. Contrary to what		21	different of the Ngok Dinka elders in the chiefdoms
	22	Professor Crawford would tell you, this is not evidence		22	about particular events in their lives. You can
	23	that we ought to look at from the perspective of		23	conclude, as I think Professor Crawford tries to
	24	Rudyard Kipling. I'm sure there was no intended irony,	2	24	insinuate, that it's all made up. I wouldn't do that.
	25	but Rudyard Kipling isn't necessarily the best source to	2	25	These witnesses are honest, they told the truth there,
		Page 53			Page 55
		-			-
10:09	1	choose in either evaluating oral evidence or looking at	10:12	1	they told the truth in the proceedings before the ABC
	2	a colonial people, a tribal people.		2	experts, and the ABC experts believed them.
	3	I would suggest that the views of the Canadian		3	With that I think I would like to move on to the one
	4	Supreme Court, which we've referred to in our written		4	witness that we will present, Deng Chier.
	5	submissions, which underscore the importance of paying		5	(10.13 am)
	6	respect to the testimony of indigenous people, is a lot		6	MR DENG CHIER AGOTH (affirmed)
	7	more useful than Rudyard Kipling's poem in the late		7	(Evidence interpreted)
	8	19th century. The Canadian Supreme Court has moved on		8	Examination-in-chief by MR LINDSAY
	9	a fair bit since Rudyard Kipling's views in the late		9	Q. Can you please confirm for the Tribunal that you have in
	10	19th century.		10	front of you the witness statement that you have made in
	11	Again, you can see on the current slide the faces of		11	this arbitral proceedings?
	12	the various Ngok Dinka who have given testimony here.		12	A. Honourable court, we have come here, it is a very far
	13	I'm going to move on relatively quickly through that.		13	distance, and nobody can move such a long distance if he
	14	I would note that we have seen some difficulty in		14 15	is not moving with the facts. So I'm coming with real facts.
	15 16	the formalities of this particular proceeding of having oral testimony. I would suggest that that doesn't in			Q. I want to ask you some questions about the places of
	16 17	the slightest devalue oral testimony. I would suggest		16 17	Q. I want to ask you some questions about the places of your people during the time of paramount chief
	18	that it instead underscores the wisdom of the parties		17	Arop Biong. Before we get to that can you please tell
	19	agreeing to the ABC experts' means of procedure.		10 19	the members of the Tribunal which of the nine Ngok Dinka
	20	You will recall that the ABC experts spent six days.		20	chiefdoms you belong to.
	21	You got six minutes; they spent six days in the Abyei		20	A. I belong to Abyior sub-tribe.
	22	Area. They met with 100 people; you'll have seen one or		22	Q. Can you please tell the Tribunal where you were born?
	23	two. They met with 100 people in open meetings, with		23	A. I can tell them where I was born; even where my
	24	lots of interpreters. They were able to ask whatever		23 24	grandfathers were born.
	25	questions they want. I would suggest that the		25	Q. Can you please tell the Tribunal where you were born?
		Page 54			Page 56

10:16 1	A. I was born in Abyei.	10:23 1	the Ngok lived during the time of your father's father;
10:16 1	Q. Do you know how old you are?	10:23 1	how do you know that?
3	A. I'm 75 years old.	3	A. Well, we came to know those places. We are in Abyei,
4	Q. Would you be able to tell the members of the Tribunal	4	and when we are children we move along with cattle and
5	where your father was born?	5	we as we go to those areas we will be told, "These
6	A. I can tell them.	6	are the places where we were staying here". We were
7	Q. Can you please tell the members of the Tribunal where	7	herding cattle and we had a continuous movement.
8	your father was born by specific reference to the	8	Q. So which of the places would you take your cattle?
9	village or place where he was born?	9	A. Those days, when things were normal, no conflicts, no
10	A. My father was born in Wun Bial, a place called Wun	10	disputes, we used to go as far as the north. We graze
11	Ameth, between the river and the village Wun Bial.	11	alongside we graze in the areas of the Arabs during
12	Q. Can you please, if you're able, describe for the	12	the rainy season, and in the dry season the Arabs also
13	Tribunal how far that place is from Abyei Town?	13	come down to our areas. But when things went wrong,
14	A. In actual fact Wun Bial and Wun Ameth are practically	14	there were conflicts, we shifted the pattern of herding
15	part of Abyei; it is the same. It is just the names of	15	southwards. We go up to Rek.
16	small further locations.	16	MR LINDSAY: Thank you. That's all we've got time for
17	Q. Could you please tell the Tribunal where your father's	17	today. So thank you very much, Deng-dit, you may
18	father was born?	18	return to your seat.
19	A. I will tell them. My grandfather, the father of my	19	THE CHAIRMAN: Thank you. The Government?
20	father, was born in a place called Kol Arouth.	20	MR BUNDY: We have no questions, Mr Chairman.
21	Q. And where is Kol Arouth?	21	THE CHAIRMAN: Questions from the Tribunal? There are no
22	A. This is a place the Arabs refer to as Mellum in the dry	22	questions, thank you.
23	land, but we call it Kol Arouth, beside the river.	23	MR BORN: Thank you for coming from so far.
24	Q. Does the name Kol Arouth have any meaning in the Dinka	24	(The witness withdrew)
25	language?	25	MR BORN: Mr Chairman, in terms of organisation, how am
	D 57		D 50
	Page 57		Page 59
10.19 1	A The Dinka referred to a number of hippopotamus. When	10:26 1	Lidoing on time? I think I've used 90 minutes now
10:19 1	A. The Dinka referred to a number of hippopotamus. When there are many we call them "routh" and when there is	10:26 1	I doing on time? I think I've used 90 minutes now. THE CHAIRMAN: You have used 90 minutes
2	there are many we call them "routh" and when there is	2	THE CHAIRMAN: You have used 90 minutes.
2 3	there are many we call them "routh" and when there is one we call it "rou".	2 3	THE CHAIRMAN: You have used 90 minutes. MR BORN: Should we take a break at this point?
2 3 4	there are many we call them "routh" and when there is one we call it "rou". Q. Just so the Tribunal is clear, is Kol Arouth a reference	2 3 4	THE CHAIRMAN: You have used 90 minutes. MR BORN: Should we take a break at this point? THE CHAIRMAN: Yes.
2 3 4 5	there are many we call them "routh" and when there is one we call it "rou". Q. Just so the Tribunal is clear, is Kol Arouth a reference to a village or a wider area?	2 3 4 5	THE CHAIRMAN: You have used 90 minutes. MR BORN: Should we take a break at this point? THE CHAIRMAN: Yes. MR BORN: Very well, thank you.
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10:55	1	just ride in a truck through it or lead a contingent of	10:58 1	we had reference to Noong yesterday from one of the
	2	40 Arab cavalry men through it where the Ngok Dinka	2	government's witnesses to Riet, Kol-Lang, Dagak,
	3	people were.	3	Awol, and other places. There are further references to
	4	I'd like to look first at what the chief of the	4	the Ngok along the river; that's the Ngol of course.
	5	Abyior, Kuol Alor Makuac Biong, says. You can see on	5	North of the Alei, the Achueng had more settlements,
	6	the current slide he describes the Abyior lands	6	and there are references there, and then there's
	7	extending as far as Wun Deng Awak in the northwest and	7	a description of what the biggest village is.
	8	Rumthil or Antila you will recall Antila is where	8	The current slide is what I promised you previously:
	9	Mr Tibbs had first seen, on the road coming down from	9	this is a base map of the Abyei Area and it shows in red
	10	Muglad, Ngok Dinka homes, and that insofar as the Abyior	10	various locations. The villages that are above the
	11	one just one of the nine subsections or chiefdoms	11	Ngol, you can see they're shown on the current slide,
	12	of the Ngok Dinka is concerned.	12	and I apologise for the quality of it.
	13	I'd like to move on and look just briefly at what	13	These are the locations that are identified in the
	14	an Abyei Area resident and elder of the Alei says. He	13	various witness statements that are before you. I'm
	15	described how the Alei moved to Thuur, which is Turda,	15	going to bring you back to another map, a community
	16	far in the north, and also to Nyama, also far in the	16	mapping map; this is just the witness statement
	17	north. The Alei made this move during the time of	17	references to the villages above the Ngol that we've
	18	Paramount Chief Arop Biong and when Chol Lual was the	18	already talked about.
	19	paramount chief of the Alei. He described how it was a	19	The Government has challenged the evidence before
	20	good life because there was lots of water, good crops		you in the Ngok witness testimony on the basis that it
	21	and fishing.	20 21	was taken for the purpose of this litigation. That's
		An Achak elder this is another one of the nine	22	hardly surprising; it was taken for the purpose of this
	22 23			
	23 24	chiefdoms it took me, I have to say, as I became familiar with it, some time to understand and come to	23	litigation.
	25	terms with the nine separate chiefdoms. I suppose it's	24 25	Litigations around the world are conducted on the
	23	terms with the fille separate chiefdoms. I suppose it's	23	basis of witness testimony, on the basis of witnesses
		Page 61		Page 63
10:57	1	a little bit like one of the people from the Abyei	11:00 1	coming and providing evidence about the current
10:57	1 2	region coming to Europe and coming to terms with the 19	11:00 1 2	proceedings. There's no reason to disbelieve that
10:57		region coming to Europe and coming to terms with the 19 or 27 or however many states there are here, but they		proceedings. There's no reason to disbelieve that evidence, and I would recall for you the fact that the
10:57	2	region coming to Europe and coming to terms with the 19 or 27 or however many states there are here, but they have their own separate areas, their own separate	2 3 4	proceedings. There's no reason to disbelieve that evidence, and I would recall for you the fact that the ABC experts had a chance to consider that testimony at
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11:01 1	then to Meiram. The Abyior of my father's age and my	11:04 1	remained in the north.
2	grandfather's age would also use this grazing route and	2	I won't read out the rest of the slide, but he gives
3	meet the same settlements of the Ngok."	3	a detailed description of what he has been told by his
4	An Achueng chief, Ajak Malual Beliu, who was born in	4	family, what he knows, what he learned from the tribal
5	the mid-1930s, recalls the birthplaces of his father and	5	elders, and that is the way that information was
6	grandfather. He says:	6	conveyed. They didn't have written records. One can
7	"The following are some of the Achueng permanent	7	criticise them perhaps in the sense that that doesn't
8	settlements that I know of and have been told by my	8	provide a sort of documentary record the way that
9	father and grandfather. Mading and Agany were permanent	9	Percival or Wilkinson might, had we had a full access to
10	settlements southeast of Abyei Town and north of the	10	it, but it is the way they record their history.
11	River Kiir. North of Abyei Town, Noong [which we heard	11	As we have seen from the Supreme Court of Canada in
12	reference to previously] was a village of the Achueng."	12	the Inter-American decisions that we've referred to in
13	An elder of the Mareng chiefdom, Malual Alei Deng,	13	our written submission, there is not any basis for
14	who was born in 1940, recounts:	14	devaluing those oral traditions and this sort of oral
15	"The lands of the Mareng chiefdom have traditionally	15	testimony.
16	been centred in the place called Nyama, in the north,	16	One has to look at it with care, of course. One has
17	and further south of Nyama towards Abyei Town. I lived	17	to recognise that these statements were prepared for
18	in Nyama and so did my Mareng from my father's and	18	a litigation, of course. On the other hand, one can't
19	grandfather's time."	19	simply dismiss it because that was what was done. This
20	As we've seen, Nyama is well to the north of the	20	is how those people, who we must respect and show
21	Ngol.	21	humility towards, record their past, record their
22	Adol Kwot Mual, a Manyuar elder, testified:	22	present. That is how they live. It is their land,
23	"I was born in the 1940s My grandfather was	23	those people, their land that you must decide about, and
24	born in Thuba and lived there until he was a man.	24	in doing that taking into account how they describe
25	I have been told that my grandfather was initiated in	25	their history is among the paramount tasks before you.
	There even total and my grandrania. Was inflanced in	23	aren instory is among the paramount tasks before you.
	Page 65		Page 67
11:02 1	Thuba."	11:05 1	We have put in significant numbers of witness
2	Again, all of these statements and the reason	2	statements which coincide exactly with what the ABC
3	I take you through them, and I realise to some extent	3	experts themselves five impartial men, three of them
4	it's tiresome, but I take you through them to point out	4	African, two of them African experts, the three picked
5	the specific details that these witnesses testified to.	5	by IGAD, chosen by the parties, congratulated by the
6	One can challenge their recollection, one can	6	parties, including the Government, at the end of the
7	challenge where places are and so forth I'm going to	7	proceedings for being impartial and doing the
8	show you a map that puts everything together, I just	8	proceedings right they looked at this witness
9	showed you a small selection of places that were	9	evidence and reached the same conclusions that we say
10	referred to in the first witness statements that	10	you should reach, and I would suggest that that judgment
11	I referred to; I will show you a map that puts all these	11	is entitled to the greatest of respect.
12	places on a single map but the notion that these are	12	I could go on through more witness statements, but
13	unspecific or that they are unreliable I think is simply	13	I suspect that that would not be enormously helpful for
14 15	speculation. I think when you look at what the	14 15	you. I would urge, though, that you read the witness
15	witnesses who describe their territory and you've	15	statements and give deference to the fact that that is
16 17	seen these are straightforward people, they're people	16 17	the way that these people speak. They didn't keep
17	who tell you what they know, and that's what their	17	documentary records, they didn't do trek reports; that's not how they did it. Instead they have oral traditions
18			not now mey did it. Histeau mey have oral traditions
10	witness statements do.		
19 20	If we can move on to the next slide, Belbel	19	that must be taken into account and deserve to be taken
20	If we can move on to the next slide, Belbel Chol Akuei Deng, who is the chief of the Alei, describes	19 20	that must be taken into account and deserve to be taken into account.
20 21	If we can move on to the next slide, Belbel Chol Akuei Deng, who is the chief of the Alei, describes how during the chieftaincy of Chol Lual in the	19 20 21	that must be taken into account and deserve to be taken into account. If we could look at a map, though, that tries to
20 21 22	If we can move on to the next slide, Belbel Chol Akuei Deng, who is the chief of the Alei, describes how during the chieftaincy of Chol Lual in the mid-1800s and again this is reporting what he hears	19 20 21 22	that must be taken into account and deserve to be taken into account. If we could look at a map, though, that tries to give modern description to what is on the witness
20 21 22 23	If we can move on to the next slide, Belbel Chol Akuei Deng, who is the chief of the Alei, describes how during the chieftaincy of Chol Lual in the mid-1800s and again this is reporting what he hears from his father, his grandfather, the people, the elders	19 20 21 22 23	that must be taken into account and deserve to be taken into account. If we could look at a map, though, that tries to give modern description to what is on the witness statements. Here is a map that shows the locations of
20 21 22 23 24	If we can move on to the next slide, Belbel Chol Akuei Deng, who is the chief of the Alei, describes how during the chieftaincy of Chol Lual in the mid-1800s and again this is reporting what he hears from his father, his grandfather, the people, the elders of his tribe the chief's family settled further south	19 20 21 22 23 24	that must be taken into account and deserve to be taken into account. If we could look at a map, though, that tries to give modern description to what is on the witness statements. Here is a map that shows the locations of the towns that are referred to in the witness
20 21 22 23	If we can move on to the next slide, Belbel Chol Akuei Deng, who is the chief of the Alei, describes how during the chieftaincy of Chol Lual in the mid-1800s and again this is reporting what he hears from his father, his grandfather, the people, the elders	19 20 21 22 23	that must be taken into account and deserve to be taken into account. If we could look at a map, though, that tries to give modern description to what is on the witness statements. Here is a map that shows the locations of
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11:06 1	the towns that are referred to in the various witness	11:10 1	That's consistent with what I said prior to the break
2	statements. That's also included in our materials.	2	about how the Messiriya and the Ngok would be in similar
3	This is not vague or generalised testimony. There	3	areas. It's inaccurate because it so sort of crudely
4	are a number of specific villages and settlements that	4	segregates the two peoples when in fact, as we know from
5	are referred to. Consistent with Cunnison and	5	all the evidence, they in truth overlapped.
6	consistent with the Harvard Development Report and	6	Importantly, what the map doesn't show is what
7	consistent with everything else that we've seen, these	7	happened in the wet season. And for all the reasons we
8	are villages dotted throughout the Bahr. They are north	8	talked about [before] the break, we know that if the
9	of the Ngol, south of the Ngol; there are very few of	9	dry-season grazing was in the south, then the wet-season
10	them beneath the Kiir.	10	home areas and permanent settlements that Cunnison
11	What I'd like to do next is to briefly address the	11	described so graphically were in the north, scattered
12	so-called "Civsec map" which was referred to by	12	throughout the Bahr. That, I would suggest, is the true
13	Professor Crawford at some length. You'll recall this	13	value of this map, whatever its provenance.
14	was a 1933 sort of cartoon sketch. It looked something	14	The idea, though, that you can from a dry-season
15	like this, and it's in the arbitrators' daily bundle,	15	grazing area in the south deduce what the territory of
16	and much was made of it by the Government.	16	the Ngok Dinka was is childish. That map does nothing
17	First, it's somewhat curious in that the Government	17	of the sort. It is a dry-season reflection of uncertain
18	submitted this twice. It was submitted first with their	18	provenance that has no bearing at all on where the Ngok
19	counter-memorial at Annex 39, and it was called "Civsec	19	themselves lived for most of the year.
20	66/4/35, minutes of the meeting 28th October 1933".	20	I'd also like to turn on, though, to a map that does
21	Then it was submitted again at Annex 40 of the	21	have more value. We were mindful of the Government's
22	counter-memorial, and it was described as "An agreement	22	criticisms of the witness evidence which, because it was
23	made at Wunrog, 7th March 1935".	23	only 26 witnesses and because it was prepared to some
24	Obviously the SPLM/A and the Ngok don't know what	24	extent under the time pressures of this case, couldn't
25	the provenance of the meeting was or the map was, but	25	fully capture we would have liked to fully capture
	Page 69		Page 71
11:08 1	it's somewhat peculiar that the Government would have	11:11 1	all the Ngok Dinka villages that one could; we couldn't
2	submitted it twice, describing it in a different way.	2	do that in the time allowed. So we also have submitted,
3	Be that as it may, the map shows nothing about the	3	for the Tribunal's assistance, a community map.
4	territory of the Ngok Dinka that has any value for these	4	The Government has scoffed at this, but community
5	proceedings.	5	mapping is a recognised and sophisticated means of
6	First, it concerned disputes between other tribes:	6	trying, in a scientific manner, to identify where it is
7	the Malwal, the Rizeigat and the Homr. It didn't	7	that people live.
8	involve discussions with the Ngok in the slightest.	8	One can criticise the methodology of this, one can
9	Therefore, whoever it was and, as the Government	9	question the way that it was conducted; that's fair
10	says, they have no idea who drew it whoever it was	10	enough, that's litigation. One should examine this
11	didn't have information from or, so far as the record	11	evidence like the other evidence in the record with care
12	indicates, about the Ngok that has the slightest	12	and discretion, and try to assess where it's stronger
13	veracity.	13	and where it's weaker; we don't dispute that in the
14	Second, it is completely obvious from the map and	14	slightest. What one can't do, though, is just dismiss
15	Professor Crawford at the end of the day couldn't and	15	it. One has to look at it and try to understand what it
16	•		•
	didn't really try to deny that that it shows	16	shows.
17	didn't really try to deny that that it shows dry-season grazing areas. The reason you know it shows	17	shows. What this shows, I would suggest, is a very powerful
17 18	dry-season grazing areas. The reason you know it shows dry-season grazing areas is, when you look at it, it has		
	dry-season grazing areas. The reason you know it shows	17	What this shows, I would suggest, is a very powerful
18	dry-season grazing areas. The reason you know it shows dry-season grazing areas is, when you look at it, it has	17 18	What this shows, I would suggest, is a very powerful picture of Ngok Dinka villages scattered throughout the
18 19	dry-season grazing areas. The reason you know it shows dry-season grazing areas is, when you look at it, it has the Homr substantially down in the south. That,	17 18 19	What this shows, I would suggest, is a very powerful picture of Ngok Dinka villages scattered throughout the area that the community mapping group was able to study.
18 19 20	dry-season grazing areas. The reason you know it shows dry-season grazing areas is, when you look at it, it has the Homr substantially down in the south. That, Cunnison tells us and all the environmental evidence	17 18 19 20	What this shows, I would suggest, is a very powerful picture of Ngok Dinka villages scattered throughout the area that the community mapping group was able to study. We are fortunate to have with us today
18 19 20 21	dry-season grazing areas. The reason you know it shows dry-season grazing areas is, when you look at it, it has the Homr substantially down in the south. That, Cunnison tells us and all the environmental evidence tells us, is where the Messiriya would come in the dry	17 18 19 20 21	What this shows, I would suggest, is a very powerful picture of Ngok Dinka villages scattered throughout the area that the community mapping group was able to study. We are fortunate to have with us today Dr Peter Poole. Dr Poole is one of the world's leading
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18 19 20 21 22 23	dry-season grazing areas. The reason you know it shows dry-season grazing areas is, when you look at it, it has the Homr substantially down in the south. That, Cunnison tells us and all the environmental evidence tells us, is where the Messiriya would come in the dry season. Therefore, to show, as that map did, the Ngok in	17 18 19 20 21 22 23	What this shows, I would suggest, is a very powerful picture of Ngok Dinka villages scattered throughout the area that the community mapping group was able to study. We are fortunate to have with us today Dr Peter Poole. Dr Poole is one of the world's leading community mapping experts. He in fact, I'm told, prepared the world's first community map. There is
18 19 20 21 22 23 24	dry-season grazing areas. The reason you know it shows dry-season grazing areas is, when you look at it, it has the Homr substantially down in the south. That, Cunnison tells us and all the environmental evidence tells us, is where the Messiriya would come in the dry season. Therefore, to show, as that map did, the Ngok in a particular area of the south, basically in the same latitude as the Messiriya, is not at all surprising.	17 18 19 20 21 22 23 24	What this shows, I would suggest, is a very powerful picture of Ngok Dinka villages scattered throughout the area that the community mapping group was able to study. We are fortunate to have with us today Dr Peter Poole. Dr Poole is one of the world's leading community mapping experts. He in fact, I'm told, prepared the world's first community map. There is a recognised methodology and technique for preparing community maps. It is a technique that has been
18 19 20 21 22 23 24	dry-season grazing areas. The reason you know it shows dry-season grazing areas is, when you look at it, it has the Homr substantially down in the south. That, Cunnison tells us and all the environmental evidence tells us, is where the Messiriya would come in the dry season. Therefore, to show, as that map did, the Ngok in a particular area of the south, basically in the same	17 18 19 20 21 22 23 24	What this shows, I would suggest, is a very powerful picture of Ngok Dinka villages scattered throughout the area that the community mapping group was able to study. We are fortunate to have with us today Dr Peter Poole. Dr Poole is one of the world's leading community mapping experts. He in fact, I'm told, prepared the world's first community map. There is a recognised methodology and technique for preparing

developed to address exactly the evidentiary problem 2				
4 oct how do you destrain where a people that do not have the storts of technological instruments for record-keeping that we do, were they live, where they lived in the past? How does not do that? 9 What Dr Poole and numerous other experts of this sort around the world have done is to harmess modern according perment of the complex with modern mapping, early size, the community mapping, and attempts to identify as pecisely and carefully as possible where it is that people live, and where they describe their ancestors as having lived. 10 Again, one can challenge how this is done; the provides as way to respond to the Government for the cross-cannine Probe. But it provides a way to respond to the Government scriticians of it has significant number of NgoR Diska people, aimed at recording permanent villages and other sites which would be a significant number of NgoR Diska people, aimed at recording permanent villages and other sites which would be a least-time to the size of fhe size of fhe sizes of fhe sizes. 10 Again, the Covernment is free to see the register of this article of the size of fhe sizes of fhe sizes of fhe sizes. 10 Again, the Covernment is criticians of the size of fhe sizes of fhe sizes of fhe sizes of fhe sizes. 11 Spent a significant provides and the proposition that is a substantial and more detailed picture than the witness sestimony is sizes. 11 Spent a significant provide of time in the region, with a significant number of NgoR Diska people, aimed at recording permanent villages and other sizes which would be a sizes. 11 Spent a significant number of NgoR Diska people, aimed at recording permanent villages and other sizes which would be a sizes. 12 Again, the Covernment has challenged both the entire of the sizes of fheliam. He nometheless was able to draw able to present. That is not supplied to the sizes of the sizes of the sizes of projects, again with indigenous peoples and a series. A for the size of chances, was asked to conduct an experiment in the conduction of the size of c	11:13 1	developed to address exactly the evidentiary problem	11:16 1	conscience that my statement will be in accordance
4 of how do you determine where a people that do not have within reacods, and who does have the sorts of technological instruments for record keeping that we do, 7 where they live, where they live to that? 9 What Dr Droole and numerous other experts of this of the head of the live, where they live and they do have the head of the live, where they live and they do have the head of the live, where they live and they do have the head of the live, where they live and they do have the have the his him to spend the same period that he might ordinarily have done. One might of the witness testimony a pend a have the him to spend the same period that he might ordinarily have done. One might of the witness testimony to the witness testimony to the witness testimony to the witness te	2	that the Canadian Supreme Court and the Inter-American	2	with my sincere belief.
swittern records, and who do not have the sorts of 6 to the chancelogical instruments for neerod-teceping that we do, 8 one do that, 9 where they live, where they lived in the past? How does one do that, 9 where they lived in the past? How does one do that, 9 where they lived in the past? How does one do that, 9 where they live, where they lived in the past? How does one do that, 9 where they lived in the past? How does one do that, 9 where they lived in the past? How does one do that, 9 where they lived in the past? How does one do that, 9 where they lived in the past? How does one do that, 9 where they lived in the past? How does one do that, 9 where they lived in the past? How does one do that, 9 where they lived in the past? How does one do that, 9 where they lived in the past? How does one do that, 9 where they lived in the past? How does one do that, 9 where they lived in the past? How does one do that, 9 where they lived in the past? How does one do that, 9 where they lived in the past? How does one do that, 9 where they lived in the past? How does one do that, 9 where they lived in the past? How does one do that, 9 where they lived in the past? How does one do that, 9 which have a date on it. I actually gor the PiD in 1988, and 15 per the precoded pix in driven ways in different places. So I'm going to take care to describe the mechadology that myself and my colleague describe their anesters as huring lived. 15 Again, one can challenge how this is done, the government is free to cross-examine Dr Pook. But it provides a way to respond to this is done, the government is free to cross-examine Dr Pook. But it provides a way to respond to this is done, the government is free to cross-examine Dr Pook. But it provides a way to respond to the foreward provides and the size of Belgium. He nonetheless was able to the size of Belgium. He nonetheless was able to the size of Belgium. He nonetheless was able to a significant period of time in the region, with a radius of the size of Belgium. He nonetheless was able	3	Court identified in their judgments. It is the problem	3	Presentation by DR POOLE
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10 sort around the world have done is to hanses modern 11 technology with pre-modern knowledge of an area. It 12 puts the members of a community, community mapping, 12 13 together with modern mapping techniques, the community 14 mapping project, and attempts to identify as precisely 15 15 and carefully as possible where it is that people live, 16 and where they describe their mostures as having lived. 17 Again, one can challenge how this is done; the 18 Government is free to cross-examine Dr Pools. But it 19 provides a way to respond to the Government's criticisms 20 of the witness testimony, 21 Unfortunately De Poole, given the exigencies of this 22 arbitration process, didn't have time to spend the same 23 period that he might ordinarily have done. One might 24 ordinarily spend a year to study an area three-quarters 25 of the size of Belgium. He nonetheless was able to 26 provided a way to read the same period that he might ordinarily have done. One might 27 of the size of Belgium. He nonetheless was able to 28 period that he might ordinarily have done. One might 29 of the size of Belgium. He nonetheless was able to 30 provide a way to read the same period that be might ordinarily have done. One might 31 recording permanent villages and other sites which would 32 he of assistance to the Tribunal. 33 recordinarily spend a year to study an area with a radius 34 recordinarily spend a year to study an area with a radius 35 of some 40 miles, with 150 permanent settlements, 36 burial sites, 74 grazing sites, 35 cultivation sites, 37 of burial sites, 74 grazing sites, 35 cultivation sites, 38 45 community meeting and court locations, and 11 sacred 39 sites. 30 Again, the Government can cross-examine him and 41 challenge those various points, but it is a substantial 42 and more detailed picture than the wincess testimony 43 itself was able to present. That's not surprising: we 44 could only but it 26 witness statements, the was able to 45 community meeting and court locations, and 11 sacred 46 sites. 47 The Without a	9	What Dr Poole and numerous other experts of this	9	there are people doing it in different ways in
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11:20 1			
11.20 I	attention to us and we will negotiate with them". It	11:23 1	that is communities mobilising to gather information
2	was quite a smart move because there was no law for	2	from elders, other authorities and from the environment
3	indigenous peoples in Venezuela at the time. So I said,	3	and to compile themselves, to compile maps which depict
4	"Well, what do you want me to do?" And they said,	4	their forms of resource use and enable them to deal on
5	"Well, we want you to make the white man's map, because	5	an equal footing with outside interests or competing
6	if we make our map the Government won't pay any	6	interests.
7	attention to it".	7	These are not all originally a lot of what we
8	So I had one of these new units with me and I said,	8	call tenure mapping was about land claims, but as these
9	"Look, I can teach you to make your own white man's	9	methodologies became more varied and commonplace they
10	map". They said, "Well, let's do the demarcation	10	started to address other issues.
11	first", so we did that and mapped that, and then they	11	Like, for example, last year in the Democratic
12	took the GPS and I spent about three weeks training	12	Republic of Congo, the Rainforest Foundation from London
13	a group of about 12 Ye'kuana who didn't have any	13	coordinated a very large project involving more than 100
14	concepts of north/south, our familiar concepts of	14	communities to do mapping of their resources, and the
15	orientation, and within that period they were fully	15	express purpose of this project was to persuade the
16	conversant with using a GPS unit.	16	Congo Government to change the laws and policies
17	I had made them a huge map of their territory which	17	regarding forestry in order to accommodate indigenous
18	I had stripped off all the names, everything except the	18	interests and community possibilities for doing their
19	rivers, and the rivers are people's way of it's their	19	own forestry.
20	latitude and longitude, the rivers. So all they had was	20	I just made a short list here of the four main
21	a big, blank, no-name map with latitude and longitude	21	characteristics that spring to mind.
22	and the rivers on it, and I left them with that for	22	We always did the training within the community, and
23	a year, and when I came back they had the whole map	23	what was interesting about the training process is that
24	covered with their names, their resources.	24	that process, which would take anything from two to
25	This was basically a method that myself and my	25	three or four weeks, started a process of reflection
	7		T. 50
	Page 77		Page 79
11:21 1	colleagues worked on over the next few years, and we	11:25 1	within the communities that we were passing through as
2	worked on about well, I was involved in about ten	2	we did the training. That in itself generated a lot
3	projects in Venezuela, Colombia, Guyana and Surinam.	3	more interest.
4	The last project in Surinam, which I think was	4	They were saying such things as, "Look, this is for
5	finished in 2001, was very successful insomuch that the	5	our land claim, but when we've done it we can start
6	NGO that I was working with, the Forest Peoples	6	doing forestry or we can start doing water or fisheries
7	Programme in England, successfully took it to the	7	management". A lot of them have done that in fact,
8	Inter-American Court human rights tribunal.	8	because they owned the map, they had the capacity; they
9	After about five years of back and forth, during	9	
	and the Libert to a content of the Tailboard and the state of the stat		didn't rely on somebody else outside to make the map for
10	which I had to go to the Tribunal myself with the two	10	didn't rely on somebody else outside to make the map for them.
10 11	maps I had made of Saramaka territory, or they had made,	10 11	
	•		them.
11	maps I had made of Saramaka territory, or they had made,	11	them. Even if they did some of them do rely on me and
11 12	maps I had made of Saramaka territory, or they had made, they were successful. They got a judgment in their	11 12	them. Even if they did some of them do rely on me and still ask me to help out with the computer side of
11 12 13	maps I had made of Saramaka territory, or they had made, they were successful. They got a judgment in their favour about two years ago.	11 12 13	them. Even if they did some of them do rely on me and still ask me to help out with the computer side of things, but they control the content. Every time
11 12 13 14	maps I had made of Saramaka territory, or they had made, they were successful. They got a judgment in their favour about two years ago. During the 1990s community mapping got globalised,	11 12 13 14	them. Even if they did some of them do rely on me and still ask me to help out with the computer side of things, but they control the content. Every time I change something, I send it back to them. I would say
11 12 13 14 15	maps I had made of Saramaka territory, or they had made, they were successful. They got a judgment in their favour about two years ago. During the 1990s community mapping got globalised, and I was glad to see that a lot of people in other	11 12 13 14 15	them. Even if they did some of them do rely on me and still ask me to help out with the computer side of things, but they control the content. Every time I change something, I send it back to them. I would say over the years that of all the groups I've trained or
11 12 13 14 15 16	maps I had made of Saramaka territory, or they had made, they were successful. They got a judgment in their favour about two years ago. During the 1990s community mapping got globalised, and I was glad to see that a lot of people in other countries were sort of getting the same sort of	11 12 13 14 15	them. Even if they did some of them do rely on me and still ask me to help out with the computer side of things, but they control the content. Every time I change something, I send it back to them. I would say over the years that of all the groups I've trained or worked with, 80% now have their own little they are
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11:26 1	just as accurate as digitising because you are still	11:30 1	12 young men well, medium-sized men, some young, some
2	following a line with a modem or a pencil.	2	older and we started off with the GPS units and
3	Finally, community ownership: they own the map, and	3	within about three or four days some of them already
4	that makes a tremendous amount of difference to the way	4	had used a GPS unit and after I sort of checked
5	they use it and the confidence with which they use it.	5	everybody's sort of way they approached it and the way
6	So coming to the Abyei mapping project, as Gary has	6	used it, it was very clear to me that they were going to
7	just mentioned, he has mentioned the general purposes of	7	move quite fast.
8	the project.	8	So on the third or fourth day we went out on one of
9	I should point out that my remit on this was to	9	our first exercises, which entailed driving just 20 or
10	collaborate with International Mapping, who were going	10	30 kilometres down the road from Agok to Abyei, and
11	to produce the maps, the community maps and all the	11	maybe now and then I would stop and say, "Take a point
12	other maps related to the project. My remit was not to	12	here", and there was an appropriate legend symbol, we'd already worked on the legend, and we simply recorded
13 14	frame the mapping process so it led towards a boundary of any kind; it was simply to direct the trainees	13 14	a dozen points.
15	towards collecting evidence of presence, and having that	15	When we went back I asked them to place those points
16	presence go back to 1905. That was my remit.	16	on the topographic base map, which had latitude and
17	There are two more points here which I should point	17	longitude lines on it, and they did that and they
18	out. In this methodology that we use, even though you	18	discovered that the road between Agok and Abyei was in
19	can localise GPS it's a perfectly obvious and simple	19	fact, as depicted on the map, inaccurate by up to
20	thing to do you can't necessarily localise the other	20	9 kilometres in one case. So the line of crosses that
21	bits, the computer and the printer, especially in places	21	the trainees plotted went this way and the road went
22	like humid tropics.	22	that way (indicates).
23	So the community mapping process evolved into a kind	23	So that told us something about the accuracy of that
24	of complementary form of organisation in many places	24	map, and it became another factor which we had to take
25	where the community teams would actually be the ones	25	into account in: how can we plan field trips when we are
	Page 81		Page 83
	Tage 61		1 age 65
11:28 1	going out and getting the information and recording it	11:31 1	not absolutely sure that we can get from this point to
2	on logbooks, and then a community association or	2	that point without having to go around?
3	a support NGO, or me, would take that information and	3	So that was another delaying factor that obliged us
4	just put it on the final map. All we did was to	4	to think: well, maybe we should concentrate on a smaller
5	regularise it and digitise it, really. But the actual	5	area that we know we can cover, or we feel confident we
6	collection, the design of the legend, was all within the	6	can cover, without assuming that we can go long
7	community.	7	distances and assume that the roads as shown on the map
8	Coming to this project specifically, the first step	8	would be there.
9	always is to look for the best source map, and from that source map we will derive whatever we need as	9	So along with that field training and classroom training we went into logbooks. Now, the logbook is the
10 11	a background upon which the trainees will place their	10 11	key. In the logbook the trainee will register the
12	information.	12	number, the date, the names and the people of that
13	It was not easy here because the satellite images of	13	group. We had 12 people divided into three teams, 1, 2,
14	the area tend to be rather low scale or extremely	14	3.
15	expensive. I think we calculated it would cost more	15	So each page of the logbook had: team 2, trip 1,
16	than 100,000 if we were to get high-resolution imagery	16	from here going to there, and then there was
17	of the whole area.	17	an observation number, with its latitude and longitude,
18	The other option was a medium-scale map, 1:250,000,	18	the legend symbol, the number of the photograph or
19	from that area made by the United Nations and a Swiss	19	photographs that were taken and some comments.
20	agency. So International Mapping produced a topographic	20	So every single observation that the mapping teams
21	map and we brought satellite images anyway in the event	21	made is traceable. It can be checked by anybody who
22	that they might prove useful.	22	takes a GPS unit and keys in those coordinates; it will
23	So I'm now going to go through the other four items	23	take him to that point. So in that sense the mapping
24	on the slide there, the methodology.	24	process was quite transparent.
25	The first step was to train the mappers. There were	25	The community meetings had been arranged for us, and
	Page 82		Page 84

11:33 1	there were nine of them, each one with 25 elders who had	11:36 1	radius from Abyei.
2	been invited on the basis of previous involvement in the	2	As my colleague has already pointed out, the list of
3	case or the fact that they were local authorities who	3	settlements, which I would say, from all the mapping
4	had something to contribute.	4	projects I've done, this is pretty good.
5	During those meetings the trainees and Kwol Biong,	5	The first one or the second and third one I ever did
6	who was sort of the lead trainee, had a list that had	6	took people a year, a solid year, and they came up with
7	been drawn from various sources, a sort of working list	7	4,000 observations, but that's never been equalled since
8	of potential sites in that area, in that chiefdom, and	8	in my experience. Some of the people who do community
9	simply went through them.	9	mapping come back with like 20 observations. In Africa
10	This sort of generated a discussion which lasted	10	and Bolivia I've seen examples where the data is fairly
11	anything from five to six or seven hours, and it was	11	skimpy.
12	a long, thorough discussion. You could tell there was	12	Now, on that kind of continuum I would say this is
13	a tremendous amount of interest and response to the	13	in the upper half, quite good, and I have the strong
14	points that were made: no, it's not here, it's there,	14	impression that if we hadn't had the problems of access
15	and: it should be there, and so forth.	15	and mobility that a lot more sites would have been
16	So by the end of the community meeting we had	16	recorded; but that is speculation, of course.
17	a pretty good idea where the sites were that needed	17	Finally we come to the map. One of these we've
18	visiting, and at the end of the meeting three or four	18	already gone over. The second one was the quality of
19	elders came forward or were selected to accompany the	19	the data.
20	mappers.	20	Now, my point of comparison for this is other
21	So what happened next was the mappers went to that	21	projects that I've worked on, and a very strong
22	area, and in each case they made two visits. One was	22	indicator is how disciplined the mappers are in filling
23	a sort of reconnaissance visit to find out how	23	out their logbooks. The whole thing has to be focused
24	accessible the sites were; because the elders couldn't	24	on the record, which has to be transparent and has to be
25	put them on a map because we weren't sure whether the	25	something that they can come back to later, or somebody
	Page 85		Page 87
11:34 1	map was accurate, so they said, "Well, we will take you	11:38 1	else can inspect if they wish.
11:34 1	map was accurate, so they said, "Well, we will take you there by this road and that road".	11:38 1 2	else can inspect if they wish. So in that sense I looked really hard at the way the
2	there by this road and that road".	2	So in that sense I looked really hard at the way the
2 3	there by this road and that road". So they took us there, and I would say that in most		So in that sense I looked really hard at the way the people filled out their logbooks, the things they put
2 3 4	there by this road and that road". So they took us there, and I would say that in most cases the sites that were registered in the logbooks	2 3 4	So in that sense I looked really hard at the way the people filled out their logbooks, the things they put in, the diligence and the care, and in that respect
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2 3 4 5	there by this road and that road". So they took us there, and I would say that in most cases the sites that were registered in the logbooks were sites that had already been talked about or discussed. There were only a few cases where someone	2 3 4 5	So in that sense I looked really hard at the way the people filled out their logbooks, the things they put in, the diligence and the care, and in that respect
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11:40	1	talking about all the kinds of things they would like to	11:43	1	and the time for gathering the data, it's been up to
	2	do with their territory if they could. This happened in		2	a year, in the Ye'kuana case, but it could be as short
	3	the vehicles. If you spend all day in a vehicle,		3	as three months.
	4	there's a lot of information flying back and forth.		4	The time after that for the compilation of
	5	So that convinced me that the people with whom we		5	a provisional final map, going back to the community so
	6	were travelling had a deep knowledge and familiarity		6	they can review it and make sure it's exactly what they
	7	with their landscape, not just their personal from		7	want, and then the final printing, you could add about
	8	their lives, but from their ancestors' lives and what		8	a couple of months, simply because of the problems of
	9	their fathers had told them.		9	getting big packages back to remote places, back and
	10	As I said, I thought that the team did very well.	1	10	forth.
	11	It was a great advantage that some of them speak	1	11	So I think six months is a good period, but it
	12	English, or most of them spoke English, and we had the		12	wouldn't be six months of continual activity.
	13	languages split between the teams, so the trainees who		13	Q. You say in page 7 of your report:
	14	spoke Arabic only, or Arabic Dinka but not English, were		14	" I would ordinarily expect a project of this
	15	not disadvantaged in any way.		15	type to require at least a year of work."
	16	I think the results are consistent. I am very		16	What you've said in effect confirms that that's what
	17	satisfied with the results. I am, in fact, surprised		17	your expectation was.
	18	because, given the obstacles that were confronting us in		18	A. Yes, that was before I got on the plane.
	19	terms of access and bad base maps and so forth, I was		19	Q. Right. What was the total period of time from the
	20	not optimistic, and having seen the results that they		20	beginning of training to the completion of the report?
					A. The completion of the report? Well, it started in
	21	achieved, I think they were excellent.		21	* *
	22	Thank you.		22	November
	23	THE CHAIRMAN: I thank you.		23	Q. The report is dated February.
	24	Questions from the part of the Government?		24	A. Yes, so it would be four months.
	25	PROFESSOR CRAWFORD: Thank you, sir.	2	25	Q. Thank you.
		Page 89			Page 91
					C
11:42	1	(11.42 am)	11:45	1	· · · · · · · · · · · · · · · · · · ·
11:42	1 2	(11.42 am) Cross-examination by PROFESSOR CRAWFORD		1 2	Did you instruct the team to enquire about any sites
11:42		Cross-examination by PROFESSOR CRAWFORD	2		
11:42	2	Cross-examination by PROFESSOR CRAWFORD Q. Dr Poole, we met informally yesterday; I now introduce		2	Did you instruct the team to enquire about any sites or locations other than those of the Ngok Dinka? A. No.
11:42	2 3 4	Cross-examination by PROFESSOR CRAWFORD Q. Dr Poole, we met informally yesterday; I now introduce myself formally. My name is James Crawford and I am	:	2 3 4	Did you instruct the team to enquire about any sites or locations other than those of the Ngok Dinka? A. No. Q. You're aware, of course, that the context in which you
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- 11:46 1 something to gain from the process, what measures did
 - 2 you take to safeguard against, say, unconscious bias?
 - 3 A. I wouldn't know how to deal with unconscious bias, but
 - 4 I did impress upon them that they -- their work and
 - 5 their results were transparent, and open to challenge by
 - 6 anybody with a GPS unit and an interest in inspecting
 - 7 the results. That's the way it was set up. So they
 - 8 were aware of that.
 - 9 Q. Who prepared the questionnaires that were asked?
 - 10 A. The -- my legal colleagues on the case.
 - 11 Q. Did you approve them?
 - 12 A. I approved of them, yes.
 - 13 Q. No, that wasn't my question. I'm not asking whether you
 - 14 approved of them, because my understanding is that you
 - don't take responsibility for the content of the
 - 16 material as distinct from the orderly method in which
 - the material is gathered. Is that correct?
 - 18 A. Yes.
 - 19 Q. So I am not asking whether you approved of them; I'm
 - asking whether you approved them?
 - 21 A. Well, I didn't -- I wasn't asked to approve them.
 - 22 Q. No. So the answer is "no"?
 - 23 A. Yes.
 - 24 Q. What were the procedures for independent supervision of
 - 25 the mapping teams when they were in the field engaging

- 11:50 1 meetings, and I assume that this was one of the them.
 - 2 I wasn't on all trips; we had three cars on the road.
 - 3 So my assumption is that they came to this grave
 - 4 site, the elders said, "This is the grave site", and
 - 5 they took a photograph of it.
 - Q. How many burial sites purporting to be from around 1905
 - 7 did you find in Abyei Town?
 - A. They didn't do mapping in Abyei Town as far as I know,
 - 9 unless they did some after I left.
 - 10 Q. You referred to the study area. How far north did the
 - 11 study area extend?
 - 12 A. 40 kilometres, roughly 40 kilometres.
 - 13 Q. So in terms of the northwards coordinate, what was that?
 - 14 A. I'll just have to check.
 - 15 Q. Can I represent to you it was 10°7' north?
 - 16 A. Okay, I can't read it, it's too small, so --
 - 17 Q. I've been having the same problem.
 - 18 A. Okay. This is -- you're looking at the community
 - mapping map here? Is that the line along the top?
 - 20 10°7'.
 - 21 Q. They way we achieved 10°7' north was to take 40 miles
 - 22 north of Abyei in a direct northwards line --
 - 23 A. 40 kilometres, sorry.
 - 24 Q. 40 kilometres. I'm sorry, are we miles or kilometres?
 - 25 A. I'm going to go back to my slide on that one.

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11:48 1 in their activities?

- 2 A. There wasn't an independent supervisor.
- Q. Can I take you to the burial sites. I'd like to look at
- 4 a picture which is figure 21 of your report, which we
- 5 will put on the screen, just before page 25 of the
- 6 report. The caption is "Grave of Deng Akonon,
- 7 Taj Alei".
- 8 You say that -- sorry, it's figure 21, just before
- 9 page 25 of your report.
- 10 A. Taj Alei, okay, yes.
- 11 Q. The bottom figure on that page.
- 12 A. Mm-hm.
- 13 Q. How do you know that that grave dates from 1905?
- 14 A. That -- the -- when the mapping team were in the field,
- they were there with elders, and the elders would have
- said, "That is the grave site", and even if it doesn't
- look like a grave site, that for the mappers was the
- authority upon which they were resting.
- 19 Q. So the mapping team simply worked on the basis that they
- were told that that was a grave site?
- 21 A. Yes. I imagine that that grave site was the subject of
- the -- a community meeting, the relevant community
- 23 meeting for whichever chiefdom it is in, and that came
- up in discussion. There was a whole list of grave sites
- 25 to be discussed with the elders, during the elders'

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- 11:51 1 Q. By all means. We understood that it was miles.
 - 2 A. Okay, I'm so used to see kilometres.
 - 3 Q. So I think counsel accepts that we're talking about
 - 4 miles.
 - 5 A. Okay.
 - 6 Q. So the 10°7' was what we achieved by taking 40 miles
 - 7 from Abyei Town.
 - 8 A. Mm-hm.
 - 9 Q. What's the northernmost point that the mapping team
 - plotted on the map?
 - 11 MR BORN: Professor Crawford, if I could just interrupt
 - for a moment, we've taken the liberty of putting the
 - map up so that perhaps you can read it a little bit
 - 14 more closely.
 - 15 PROFESSOR CRAWFORD: That's fine, thank you.
 - What's the northernmost point that the mapping team
 - 17 reached within the study area?
 - 18 A. The name of it?
 - 19 Q. Well, the coordinates will do; the name would be
 - 20 helpful
 - 21 A. I can't read the coordinates.
 - 22 Q. I'm sorry. We regarded it as Raantilraan, which we put
 - 23 at 10°3' north.
 - 24 A. Okay.
 - 25 Q. You're happy with that?

11:52 1	A. Yes.	11:56 1	southwestern Kordofan and the northern Bahr el Ghazal.
2	Q. The SPLM/A at paragraph 51 of the rejoinder states:	2	The peoples of those regions, including the
3	" the community mapping project, shows permanent	3	Ngok Dinka, were in effect sovereign. The
4	Ngok Dinka villages were located throughout the Bahr	4	Anglo-Egyptian colonial administration, which had just
5	region extending north to latitude 10°35' north,	5	been proclaimed in Khartoum, was only very gradually
6	both in 1905 and for decades thereafter."	6	widening the area it claimed to control, and that
7	There are two different issues here. One is the	7	nominal control did not include actual "government" in
8	Bahr region. But I'm interested in the aspect of that	8	any sense that we would understand the word today.
9	statement that says "extending north to latitude	9	While the beginnings of administration can be seen
10	10°35' north". Do you accept the accuracy of the	10	in a few towns along the Nile north of Khartoum and in
11	statement that you showed that the Ngok Dinka villages	11	the central region, there was literally no government
12	extended to 10°35' north in 1905?	12	administration of any kind in southern Kordofan and the
13	A. I'm sorry, who made that statement?	13	northern Bahr el Ghazal before the transfer of 1905.
14	Q. That was made by the SPLM/A in a comment on your report.	14	British officials in Khartoum had very little or no
15	A. Ah. I wasn't involved in taking the mapping project	15	idea of who the Ngok Dinka were, where they were, their
16	that far north, so	16	population, the extent of their territory, the nature of
17	Q. Let me just read the sentence again, as it relates to	17	their society, or the relations with their neighbours.
18	the area furthest north. Community mapping project,	18	A few points about the vast Bahr el Ghazal basin
19	paragraph 51 of their rejoinder:	19	illustrate what I have just said. You will recall that
20	" the community mapping project, shows permanent	20	the Anglo-Egyptian Condominium was established only in
21	Ngok Dinka villages were located extending north to	21	1898, and until 1902 there was not even a province
22	latitude 10°35' north in 1905."	22	called Bahr el Ghazal. In fact, Bahr el Ghazal remained
23	Do you accept that the community mapping project	23	under marshal law until at least 1907.
24	shows that?	24	Only a few British administrators were posted in the
25	A. That information may have been gathered, but it wasn't	25	entire Southern Sudan, of which the Bahr el Ghazal was
	Page 97		Page 99
11:54 1	included in the study area. That 10°35' would have been	11:58 1	only a part, and until the 1920s, their role was largely
2	outside the study area.	2	what was called loosely "pacification". So,
2 3	outside the study area. Q. And the community mapping project, to which that	2 3	what was called loosely "pacification". So, appropriately, most of the officers in Southern Sudan in
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Page 102 Page 104	23	what was true of Kordolan and the Banr et Gnazal in	25	the British were just another foreign exploiter. They'd
		Page 102		Page 104
			<u> </u>	

12:06 1	seen them before, like the Turko-Egyptians from the	12:09 1	We have to bear in mind that these treks were not
2	north, or the French and Belgians encroaching from the	2	for the purpose of recording the location and identity
3	west and south.	3	of local inhabitants. The purpose of these few British
4	The Ngok Dinka are likely to have been concerned for	4	treks was nothing more than reconnaissance, showing the
5	their and their community's safety in the presence of	5	flag, announcing the existence literally the
6	European officers. And they had no reason, certainly,	6	existence of the new regime in Khartoum, a week's
7	to trust them.	7	journey away.
8	Because the British administration was so	8	Because the documentary record is so scanty, Ngok
9	rudimentary and focused on practical issues rather than	9	witness testimony becomes important. The detail and
10	with details, the 1905 transfer decision was clearly	10	breadth of that testimony is, as I think you've seen to
11	about people, not land. The stated purpose of the	11	some extent this morning already, impressive. In many
12	transfer was to place slave raiders and the people they	12	cases the Ngok witness statements are the only evidence
13	raided under one administration. No effort was made to	13	we have on the issue of who inhabited the Abyei region
14	define the territory that this decision would involve.	14	in 1905. In other words, for large parts of the Abyei
15	There was no reason to define that territory.	15	Area before and in 1905 we have no contemporary
16	The covering letter transmitting to Cairo the	16	documents, and no witness testimony from anyone else.
17	material for the 1905 Governor-General's report on the	17	Indeed, for all the reasons I have already
18	Sudan was a typical summary of information in many	18	discussed, this is simply not surprising. Given this
19	departmental and provincial reports. The Sudan	19	meagre record, the Ngok witness testimony is
20	Government, or the Anglo-Egyptian Condominium, was	20	particularly interesting and important to the historian
21	highly bureaucratic. This 178-page cover letter was no	21	of the region and the historian of the period, providing
22	doubt compiled in the usual way by Sir Reginald	22	evidence of Ngok land use well north of the river
23	Wingate's civilian and military staff officers, then	23	systems of the Bahr and up into the goz in the period
24	likely drafted by the private secretary of the Sudan	24	around 1905.
25	Government, Lee Stack; whose career, incidentally, was	25	Thank you.
	D 105		D 107
	Page 105		Page 107
12:07 1	the subject of my London PhD thesis.	12:11 1	THE CHAIRMAN: I thank you very much, Professor Daly.
2	The important point, however, is that this cover	2	Questions on the part of the Government?
3	letter changed nothing. It merely noted that the Ngok	3	(12.11 pm)
4	people would forthwith be under the authority of	4	Cross-examination by MR CRAWFORD
5	Kordofan, as a people.	5	Q. Professor Daly, my name is James Crawford, and I'll be
6	In that cover letter there was nothing about	6	asking you some questions.
7	a provincial boundary. Why would there be? There was	7	You said and I hope I don't misquote you that
8	still no reason for a provincial boundary. There is no	8	there was in effect no British administration of the
9	evidence that Wingate or anyone on his staff had any	9	Ngok Dinka under Sultan Rob at the period of the
10	idea of the extent of Sultan Rob's lands.	10	transfer?
11	Moreover, we know that by the time of the transfer	11	A. Yes.
12	there still was confusion about the location and names	12	Q. In 1903 the Kordofan administration gave him
13	of the local rivers. We therefore still do not even	13	a second-class robe of honour?
14	know what was meant then by the Bahr el Arab, and	14	A. Yes.
15	Wingate confesses as much in this very cover letter of	15	Q. Which he subsequently wore when he went to the capital
16	which so much has been made.	16	of Kordofan. Do you know that that is true or not?
17	The few British officers who trekked through the	17	A. I know that the second-class robe of honour was
18	Abyei Area before 1905 saw only a fraction of the region	18	bestowed. I did not know he wore it on a subsequent
19	that they passed on the route they had travelled. It is	19	trip.
20	absurd to imply that the Ngok must have been absent from	20	Q. It is in fact recorded that he did. He was apparently
21	the remaining areas. It is likewise unhistorical and	21	extremely versatile, I understand, and he wore the
22	unreasonable to think that because a few British trek	22	second-class robe of honour when that was appropriate,
23	notes do not mention the Ngok Dinka as present in	23	and nothing at all when that was in accordance with what
24	a certain area during a certain season, then they must	24	the Dinka would do.
24 25		24 25	the Dinka would do. A. You are equating the two garments, I believe. No,
	a certain area during a certain season, then they must not have used that land during another season.		A. You are equating the two garments, I believe. No,
	a certain area during a certain season, then they must		

	12:12	1	I didn't know that.
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- 2 O. Prior to the transfer in 1905 there had been at least
- 3 two complaints, one from the Twic and one from the Ngok,
- 4 about raiding from southern Kordofan Arabs; you're aware
- 5 of that?
- 6 A. Yes.
- 7 Q. And that was the motivation for the transfer?
- 8 A. That was the announced motivation, yes.
- 9 Q. Is there any reason to think that it wasn't the
- 10 motivation?
- 11 A. I haven't found one.
- 12 Q. So the answer is: no?
- 13 A. The answer to what?
- 14 Q. The answer to my question is: no. I said "Is there any
- reason to think that wasn't the motivation?" and you
- 16 said --
- 17 A. I don't have any reason.
- 18 Q. You said in your statement that Kordofan was established
- as a province in 1900?
- 20 A. Yes.
- 21 Q. That's a province of the Condominium?
- 22 A. Right.
- 23 Q. Following the military victory. Of course, it had been
- 24 a province under the Turkiyya since the 1820s; is that
- 25 right?

- 12:14 1 to a particular page, and obviously if you don't
 - 2 remember the page or deny that he says it, we'll do that
 - 3 later on.
 - 4 MR BORN: Which publication are you referring to?
 - 5 PROFESSOR CRAWFORD: Hill.
 - 6 MR BORN: What's the name of the book, so that we can try
 - 7 to look at it in the record while you're asking the
 - 8 question?
 - A. It's called -- shall I? -- Richard Hill, Egypt in the
 - 10 Sudan, 1821-1881, published Oxford, I think, 1959.
 - 11 MR BORN: Do you know the page number, Professor Daly?
 - 12 A. Too many people are here to check! No, I don't.
 - 13 PROFESSOR CRAWFORD: He says that the Condominium
 - 14 basically took the Turko-Egyptian provinces over when
 - 15 the administration was established.
 - Perhaps we'll leave this. I'll come to this in
 - 17 submission.
 - 18 A. If I might, the significance of this is that the
 - boundaries of Kordofan were never fixed, whether under
 - the Turkiyya, or indeed late into the Condominium
 - 21 period, and certainly not during the Mahdiyya, when
 - 22 Kordofan ceased to exist as a province.
 - 23 Q. In the 1903 annual reports there's a statement about the
 - 24 boundaries of Kordofan?
 - 25 A. Mm-hm.

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12:13 1 A. Yes.

- Q. My understanding, and you'll correct me if I'm wrong, is
- 3 that when the Condominium Administration was established
- 4 they basically took the existing provincial
- 5 boundaries -- or the existing provinces, let me put
- 6 it -- let me rephrase that: they took the existing
- 7 provinces as they were?
- 8 A. No, I think that is wrong. They did, as you began to
- 9 correct yourself, take the existing names, or took some
- 10 of the existing names from the previous pre-Mahdiyya
- 11 region. Kordofan is an example of that.
- The name "Kordofan" extends at least back to about
- the 1820s, if not earlier, but originally referred only
- to the area around Jebel Kordofan, just to the south of
- 15 El Obeid, the capital. As the 19th century progressed
- the term "Kordofan" expanded, as control of the
 Turko-Egyptian regime from El Obeid expanded
- Turko-Egyptian regime from El Obeid expanded.
 But as Hill, the recognised source on the period,
- has stated in his classic book "Egypt in the Sudan"
- 20 there is still to this day no map from the Turkiyya,
- from the 19th century, that shows provincial boundaries,
- 22 including provincial boundaries between Kordofan and the
- 23 Bahr el Ghazal.
- 24 Q. Hill also says -- and I'm sorry that in the context of
- 25 this cross-examination I'm not in a position to take you

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- 12:16 1 Q. I'm sorry, can you say yes or no?
 - 2 A. Oh, I'm sorry, I didn't know it was a question.
 - 3 Q. Yes, it is a question. Everything I ask you is
 - 4 a question.
 - 5 A. I was waiting for a change of tone of voice.
 - 6 Q. I'm sorry, I'm an Australian and my tone of voice is
 - 7 very flat. That's not a question!
 - 8 A. Then I won't answer it! I don't have it at hand;
 - 9 I can't tell you.
 - 10 Q. But my question was this: is it the case that the annual
 - 11 reports for Kordofan prior to 1905 made a statement
 - 12 about provincial boundaries?
 - 13 A. Every year --
 - 14 Q. The annual reports.
 - 15 A. I don't know off-hand.
 - 16 Q. Thank you. You said that the British administrators who
 - passed through couldn't communicate with the local
 - people because they didn't know the language.
 - 19 A. Right.
 - 20 Q. Is that accurate?
 - 21 A. Yes, I said they didn't speak Dinka.
 - 22 Q. That's true, you said they didn't speak Dinka. So how
 - would they have communicated if they'd met?
 - 24 A. If they had met they would have communicated, if at all,
 - 25 through interpreters.

12:17 1	Q. Can I take you to Percival's route report of	12:20 1	Q. Yes, since one writes a lot, it's true.
2	December 1904.	2	Then we know from the 1904 annual report that
3	A. Yes.	3	Lieutenant Bayldon was told by Wingate to go and work
4	Q. This is at tab 31 of the common bundle. He's talking	4	out the little-known rivers, the Bahr el Arab, the Kiir,
5	about Sultan Rob, who he met at Burakol, he says "where	5	the Lol; that comes from the annual report for the Sudan
6	Sultan Rob is at present living". He makes some remarks	6	of 1904, and he did in fact do that?
7	about the region. Then he says:	7	A. Mm-hm.
8	"There are no Dinkas west of Burakol as far as	8	Q. So there is some evidence, isn't there, of a concern by
9	I could see, and Sultan Rob told me that there were only	9	the British Government to discover the hydrology of the
10		10	rivers?
11	Bahr el Arab"	11	A. There was certainly an interest. I think it's worth
12	By which I think we agree that he meant the river or	12	pointing out that the basin of the Bahr el Arab was the
13	part of the river to the north, not what we now call the	13	last, or certainly one of the last, of the river systems
14	Bahr el Arab?	14	in the Southern Sudan to be so opened up by the British.
15	A. Yes.	15	I think we tend to telescope things because of the
16	Q. " is uninhabited, he told me, except for occasional	16	concern over Abyei in this particular litigation, but
17	wandered [is what he says] parties of Arabs."	17	the Blue Nile had been completely opened earlier, the
18	A. I know the passage.	18	White Nile entirely opened as far as the Ugandan border,
19	Q. "He knew Chak Chak, which he said was the next lot of	19	the Sobat, the Pibor, the Bahr el Ghazal, the Jur to
20	natives to those he ruled."	20	Wau, other tributaries of the Bahr el Ghazal.
21	For someone who couldn't communicate, that's a fair	21	So what really this was is a way of tidying up, if
22	bit of information?	22	you like, opening up through sudd clearance one of the
23	A. As I say, there must have been some means of	23	last river systems.
24	translation. It's possible of course and likely	24	Q. Let's turn to the question of Ngok population. Would
25	I think, in fact that Sultan Rob spoke something of	25	you agree with the estimate of 50,000 for the population
	Page 113		Page 115
			The state of the s
12:18 1	what we would call today Juba Arabic, the sort of	12:22 1	of the Ngok in 1905?
2	lingua franca of the borderlands, and certainly some of	2	A. No.
2 3	lingua franca of the borderlands, and certainly some of the British officials' entourage would have spoken	2 3	A. No.Q. How would you go about estimating that population?
2 3 4	lingua franca of the borderlands, and certainly some of the British officials' entourage would have spoken Arabic.	2 3 4	A. No.Q. How would you go about estimating that population?A. I am not a demographer, I don't have a way. I have only
2 3 4 5	lingua franca of the borderlands, and certainly some of the British officials' entourage would have spoken Arabic. Q. In your second report at page 3, fourth bullet point,	2 3 4 5	A. No.Q. How would you go about estimating that population?A. I am not a demographer, I don't have a way. I have only the historical sources. I have looked extensively
2 3 4 5 6	lingua franca of the borderlands, and certainly some of the British officials' entourage would have spoken Arabic. Q. In your second report at page 3, fourth bullet point, you say:	2 3 4 5 6	 A. No. Q. How would you go about estimating that population? A. I am not a demographer, I don't have a way. I have only the historical sources. I have looked extensively through the nine volumes of the 1955/56 Sudan census
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12:23 1			
i	say:	12:27 1	go back to some of these slides if necessary for the
2	"We are left then with the conclusion that the best	2	purposes of clarification.
3	documentary evidence so far located for the northern	3	I am very honoured to be here presenting some
4	boundary of the area of the nine Ngok Dinka chiefdoms in	4	evidence. The last time I was here I believe was about
5	1905 remains, in the opinion of this historian and as of	5	eight or nine years ago, when I was showing some of my
6	the date of the present report, Wilkinson's itinerary of	6	MA students around the wonderful ICJ museum downstairs,
7	1902, which establishes a permanent Ngok presence on the	7	recommended for everybody if it's open.
8	Ragaba al-Zarqa."	8	Some of my details are here, you can read those at
9	That's what you say in your report?	9	your leisure, but I should state at the outset that I am
10	A. Yes.	10	not a Sudanese expert, nor would I ever purport to be,
11	Q. Can you point me to the words in Wilkinson's route	11	but I have been recognised as an expert on the origins
12	report, his itinerary of 1902, which establish	12	of international boundaries and boundary questions more
13	a permanent Ngok presence on the Ragaba ez Zarga?	13	generally within the Middle East, particularly in the
14	A. Well, Wilkinson never uses a phrase like that.	14	Gulf and the Arabian peninsula. Obviously my knowledge
15	Q. So the answer is you can't?	15	tends to be best where Britain has had a hand of some
16	A. I cannot point you to anything in the itinerary that	16	sort.
17	establishes where Wilkinson says there had been	17	I am going to begin by looking at some of the
18	established a permanent Ngok presence on the	18	terminology that we might use in order to establish the
19	Ragaba ez Zarga. What I'm doing there is summarising my	19	boundaries' various degrees of health.
20	view of the meaning of Wilkinson's itinerary.	20	I was reminded of the way in which the government's
21	PROFESSOR CRAWFORD: Thank you, Professor Daly. I have no	21	expert, Mr MacDonald, stated at the time of the transfer
22	further questions.	22	that the Bahr el Arab was fit for the purposes of
23	THE CHAIRMAN: I thank you. There are no questions from	23	delimitation, ie hadn't yet been delimited, but the
24	the part of the Tribunal. I thank you very much,	24	feature was robust enough to be considered for
25	Professor Daly.	25	delimitation.
	Page 117		Page 119
12:25 1	THE WITNESS: Thank you.	12:28 1	I think I would have to say that I must take issue
2	MR BORN: Thank you, Professor Daly.	2	with that particular comment for the critical region of
3	(12.25 pm)	3	the river along the borderlands, the indeterminate
4	(The witness withdrew)	4	borderlands, simply on the first hand because there was
5	MR BORN: I apologise for failing on this occasion to		
		5	confusion as to its identification held at the highest
6	•	6	levels between the governors and the governor-general
7	will recall, yesterday in glowing terms. I think he	6 7	levels between the governors and the governor-general themselves, and that was during the dry season. You can
7 8	will recall, yesterday in glowing terms. I think he demonstrated his historical mastery of the field.	6 7 8	levels between the governors and the governor-general themselves, and that was during the dry season. You can imagine that the picture would have been a lot more
7 8 9	will recall, yesterday in glowing terms. I think he demonstrated his historical mastery of the field. I am trying to manage my time judiciously and will	6 7 8 9	levels between the governors and the governor-general themselves, and that was during the dry season. You can imagine that the picture would have been a lot more complex during the wet season, as Tony Allan's slides
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12:30	1 " a line separating areas of different political	12:32 1	references didn't constitute a central defining action
	2 administration, authority or jurisdiction."	2	by the Condominium government allocating or establishing
	3 Of course, if we are actually going to talk about	3	a boundary. Of course, as we'll find, there was actual
	4 delimitation then we ought to look at the other	4	confusion as to the course of the feature purporting to
	5 recognised stages very briefly in a boundary's	5	represent the provincial boundary, in our opinion and
	6 evolution.	6	my opinion rendering the territorial limit both
	7 Recognised by de Lapradelle in 1928 and refined by	7	indeterminate and indefinite.
	8 the American geographer Stephen Jones in 1945, there are	8	A legacy of uncertainty. Again, in many, many ways
	9 three stages to this. Generally the stage of allocation	9	we can say that the Bavarian traveller Ignatius Pallme,
	allocates the territory in a line will in future be	10	his description in 1844 of an Ottoman boundary which
	drawn. Note that it doesn't allocate a boundary as	11	contracted and retreated, and did so regularly over
	such.	12	a period of years, as recorded in many Ottoman
	The second stage would be delimitation, where the	13	salnameh not here, but elsewhere in the Ottoman
	line is established, and of course, as we know, the line	14	world that was a fairly standard depiction of
	has no width; it needs to be specified. A demarcation,	15	an Ottoman provincial boundary. Some were more firmly
	although there are many instances of confusion, simply	16	established than others, it must be said, depending
	physical marks out that line on the ground. Let's go	17	where you looked.
	18 on.	18	But certainly by 1898 we had the definition at the
	Delimitation requires, I would purport at, both	19	bottom. This mudiria was vaguely defined, but may have
	20 levels, inasmuch as the way I described it, an executive	20	been described as enclosing the entire district water by
	21 act determining a boundary line, geographic	21	the southern tributaries; very vague, and certainly
	identification of the boundary line, the line being the	22	a zonal implication.
	point here, detailed description of the location of	23	Uncertainty continued to rein into the 1900s. Abyei
	24 a boundary line, ideally to the degree that it can be	24	had not been defined, numerous Condominium officials, as
	mapped, and a fourth stage will often be taken: a survey	25	we've heard very eloquently over the last few days, had
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	Page 121		Page 123
10.01		10.24 1	
	of the immediately surrounding borderlands so that	12:34 1	referred to the Ngol/Ragaba ez Zarga as the
2	2 a delimited line can in fact be demarcated.	2	Bahr el Arab. The Government seems to have accepted
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12:35 1	actually in May 1905. But again recounting Percival's	12:39 1	the Arab, the Lol and the Kiir; again the Kiir
2	march in late 1904, he acknowledged that the Kiir was in	2	distinguished differently and clearly from the Arab.
3	fact 50 miles south of the Bahr el Arab.	3	If we go on a few years later and I'm not
4	James O'Connell. I know this was acknowledged as	4	providing any context for this statement; it's on the
5	a mistake by Government the other day, one which they	5	record it confirms a reality that was alluded to by
6	said was quickly corrected. Nonetheless, he was the	6	my colleague Martin Daly, where Wingate says even in
7	Governor of Kordofan, the top dog if you like, and he	7	1909 that much of the course is the Bahr el Arab is
8	located Hasoba on the Bahr el Arab, meaning the Ngol or	8	still unexplored.
9	the Ragaba ez Zarga.	9	So if we come to a conclusion, clearly there was no
10	Here are the words from the appropriate report:	10	delimited boundary between Kordofan and Bahr el Ghazal
11	"I at once proceeded to Hasoba on the Bahr el Arab."	11	provinces in 1905. I would say that both the Kordofan
12	Uncertainty: cartography. The point was: in 1905 no	12	and Bahr el Ghazal Governors were confused as to the
13	Sudan Government map had determined, delimited or	13	location of the Bahr el Arab at the time of transfer in
14	designated any provincial boundary. This has been	14	1905. If we were charitable we would say that the
15	established, but we'll have another look at the 1904	15	governor-general himself was confused in late
16	War Office map. And the insert of course there: the	16	January 1905; but perhaps later, as I've alluded to.
17	Bahr el Arab is running along the Ngol.	17	I still said still some uncertainty; perhaps less
18	On to the next one. Uncertainty: Wingate. This was	18	uncertainty, but uncertainty nonetheless.
19	noted in the Government's representations over the last	19	Logically, therefore, any putative Bahr el Arab
20	two days, that there was uncertainty in the 1904 annual	20	boundary must have been indeterminate and indefinite.
21	report. I refer to some of the highlighted sections	21	There had been no central allocation, never mind
22	there, particularly the individual specification in the	22	delimitation; while significant leading Condominium
23	first paragraph of the quote as Bahr el Arab, Kiir and	23	personnel didn't know where it was.
24	Lol are separate rivers.	24	There was uncertainty as to the extent of provincial
25	On to the next one, please. There's still some	25	administration in the emerging territory's undefined
	Page 125		Page 127
	1 ugo 123		1 age 127
12:37 1	uncertainty, it must be said, in the 1905 annual report,	12:40 1	margins therefore.
2	which was dated January 1906. We were taken through	2	So I would say that Mr MacDonald's assertion that
3	very, very eloquently again by the Government counsel	3	the Bahr el Arab's pre-transfer depiction of the river
4	elements of this report. I refer to pages 10 and 11 of	4	was fit for the purpose of boundary delimitation at the
5	the annual report for 1905. But if we look at page 10,	5	time does not hold, other than perhaps in its western
6	the Bahr el Ghazal exploration, the last sentence says:	6	reaches, west of the Kordofan/Bahr el Ghazal borderlands
7	"Much of the course of these rivers is still	7	themselves.
8	unknown and doubt still exists as to the correct	8	I'd leave it there, thank you.
9	names of the intricate waterways which intersect this	9	THE CHAIRMAN: I thank you very much.
10	part of the Sudan."	10	
11	On the next page, of course page 11, which we heard	11	(12.41 pm)
12	about yesterday, we had a very full treatment of the	12	•
13	sudd clearing in the Bahr el Arab. It was very evident	13	Q. Mr Schofield, I know we know each other very well, but
14	from this that Wingate, the governor-general, had begun	14	3
15	to think about clearing up the question of identifying	15	
16	rivers in the Southern Sudan. That's been addressed	16	* *
17	yesterday. The point I would make is that we'd only got	17	
18	so far in this process.	18 19	
19 20	If we look at the second paragraph of page 11 of the		* *
20 21	report, there is still an indication that Wingate is confused in January 1906, whereupon he repeats almost	20 21	existed no provincial boundary between Bahr el Ghazal and Kordofan provinces."
21 22	the same phrase as was made in the previous annual	21 22	_
23	report, saying that the various waterways he asked	23	* *
23	Lieutenant Walsh to go back to penetrate as far as	23	A. Well, there was certainly no provincial boundary
25	possible along the various waterways known locally as	25	· -
2.5	possible along the various waterways known locally as	23	definition. If there was a parative boundary
	Page 126		Page 128

10.41	1		
12:41	- 1	recognised or "inter-provincial limit" might be	

- 2 a better term -- recognised as separating somehow the
- 3 two adjoining provinces, I don't think it could be
- 4 considered a definite boundary at all, simply because of
- 5 the pertaining confusion over the feature that actually
- 6 constituted the boundary; as I say, one which went right
- 7 the way up to 1905.
- 8 So in effect you could not be sure, when referring
- 9 to the Bahr el Arab, which feature, for much of the
- early part of the decade, was actually being referred
- 11 to. And as I say, that was in the dry season --
- 12 Q. You accept, though --
- 13 MR BORN: Please, if you could let the witness finish his
- 14 answer.
- 15 MR BUNDY: I have specific questions. My specific
- 16 question was: is it your opinion that Condominium
- officials took the view at that time that there was no
- provincial boundary? He can answer, "No, I don't
- think they took that position", or, "Yes". It's
- a simple question.
- 21 MR BORN: I think he was answering your question,
- 22 Mr Bundy.
- 23 A. I think I was trying to provide a context, and I think
- if you read through the report, and if you listened to
- what I've just said, I don't think I could give such

- 12:44 1 Q. And it's your view that that's not a description of
 - 2 a provincial boundary?
 - 3 A. Not a defined one, no.
 - 4 Q. If there was no provincial boundary in 1905,
 - 5 Mr Schofield, why was there a need for a transfer from
 - 6 one province to another?
 - 7 A. It's been alluded to earlier today that a people were
 - 8 transferred from one province to another.
 - 9 Q. How could a people be transferred from one province to
 - another if there was no distinguishment between the two
 - provinces, if there was no provincial boundary?
 - 12 A. Because the margins of the borderlands, the borderland
 - margins of the two provinces weren't adequately defined.
 - 14 Q. If the Condominium's intention had been to fix
 - 15 a provincial boundary on a line of latitude, do you
 - accept that that would have been a straightforward
 - 17 exercise that could have been done?
 - 18 A. It's beyond my competence to talk about lines of
 - 19 longitude and latitude in a technical sense.
 - 20 Q. I'm just saying: if they had wished to fix the boundary
 - as a line of latitude, would it have been relatively
 - 22 easy just to say "The boundary follows such and such
 - a latitude", if that had been their wish?
 - 24 A. If they'd gone for a very -- it's a hypothetical
 - 25 question because they never decided to do that.

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- 12:43 1 an easy "yes" or "no" [answer], simply because in my
 - 2 mind no boundary had been allocated, no boundary had
 - 3 been delimited, no boundary had been noted other than
 - 4 running along a river in an administration report. But
 - 5 that, to my mind, did not constitute a boundary
 - 6 definition.
 - 7 MR BUNDY: But do you accept in these administration
 - 8 reports -- are you referring to the annual reports by
 - 9 that
 - 10 A. Yes, I'm referring to the 1902/1903, obviously,
 - Bahr el Ghazal, those independent --
 - 12 Q. The annual reports. Do you accept in those annual
 - 13 reports there is a section entitled "Province
 - 14 Boundaries"?
 - 15 A. I accept that. It's absolutely on the record, yes.
 - 16 Q. Do you accept that under those headings the southern
 - 17 boundary of Kordofan and the northern boundary of
 - 18 Bahr el Ghazal is stated as the Bahr el Arab?
 - 19 A. In individual reports, yes.
 - 20 Q. Thank you. If there was no --
 - $21\,$ $\,$ A. No, it's not stated as a boundary. I'm sorry to
 - interrupt again. It's under a heading, it's under
 - a box, "Provincial Boundaries".
 - 24 Q. And then it sets out a description?
 - 25 A. Yes.

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- 12:45 1 Q. It's entirely hypothetical, I agree.
 - 2 A. It's often commented, isn't it -- and I think
 - 3 Stephen Jones, the famous American geographer, made the
 - 4 point -- that nomination of lines of latitude and
 - 5 longitude and nominations of rivers are a sure guarantee
 - 6 of absenteeism in boundary drawing.
 - 7 Q. My question --
 - 8 MR BORN: If you could let him answer the question.
 - 9 MR BUNDY: I'm sorry, Mr Born. Mr President, I've asked
 - 10 a simple question.
 - If it had been the intention -- I'm not saying it
 - was -- to draw a provincial boundary, any provincial
 - boundary, along a line of latitude, could that simply
 - have been stated in reports or other official documents?
 A. In my opinion, no, because for a deliberate delimitation
 - along lines of latitude there would need to be central
 - action sanctioning such a development. It would need to
 - 18 be official.
 - 19 Q. Are you aware of any boundaries in Sudan that follow
 - 20 lines of latitude?
 - 21 A. I haven't looked much beyond this one, no.
 - 22 Q. The references in the annual reports before 1905 under
 - the heading "Province Boundary" refer to the
 - 24 Bahr el Arab. Would it be fair to consider that
 - 25 Condominium officials were considering a river as the

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12:47 1	province boundary, even if we accept your proposition	12:51 1	area of cultivation, what the SPLM/A did here, as it did
2	that the location of the river was uncertain?	2	before the ABC experts and which is hardly any
3	A. Obviously from the content, yes.	3	surprise is to try to use manageable and practical
4	Q. Professor Daly, in his second report, has called Wingate	4	straight-line boundaries. It used some that already
5	"the only official who mattered". Do you agree with	5	exist, it extended some that already exist, and it
6	that?	6	relied on the evidence which I've demonstrated
7	A. I subscribe I would subscribe to his expertise	7	I think in great detail as to why the Ngok Dinka
8	inasmuch as he has written, as far as I know, the only	8	territory extended up to latitude 10°35' north.
9	biography of the individual; I know of no other.	9	That's not and I won't pretend it is precise.
10	MR BUNDY: Thank you very much, Mr Schofield.	10	I'm not saying that there wasn't a Ngok Dinka village
11	I have no further questions, Mr President.	11	just to the north, or it didn't go quite up to the north
12	THE CHAIRMAN: I thank you.	12	of that line. But in terms of putting forward a claim
13	I thank you very much, Professor Mr Schofield.	13	in these proceedings, as was put forward before the ABC
14	(12.49 pm)	14	experts, that is a line that provides a fair
15	Submissions by MR BORN (continued)	15	representation of the extent of the Ngok Dinka
16	MR BORN: Thank you, Mr President, and thank you,	16	territories in all directions. And the suggestion that
17	Mr Schofield.	17	it was some sort of cartographically challenged mishmash
18	I've been working hard to manage my time	18	has no more substance than the accusation that the ABC
19	judiciously. I'm not sure I have succeeded terribly	19	experts' report was a scientific shambles.
20	well in that.	20	With that, Mr President, I'd like to thank you all
21	I only now in closing want to address one issue.	21	very much for your attention during this presentation.
22	Professor Crawford referred to us not quite as badly as	22	Thank you.
23	he referred to the ABC experts; he didn't say that our	23	THE CHAIRMAN: I thank you very much, Mr Born.
24	memorial was a scientific shambles; but he did say we	24	I understand that there is a question on the part of
25	were cartographically challenged in how we put our	25	Judge Schwebel.
	D 122		D 125
	Page 133		Page 135
12:49 1	statement as to the delimitation of the Abyei Area in	12:52 1	(12.52 pm)
12:49 1 2	statement as to the delimitation of the Abyei Area in the event that the Tribunal were to go on and address	12:52 1 2	(12.52 pm) Questions from THE TRIBUNAL
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2	the event that the Tribunal were to go on and address the question under Article 2(c). I'd just like very briefly in closing to address that question. It's	2	Questions from THE TRIBUNAL
2 3	the event that the Tribunal were to go on and address the question under Article 2(c). I'd just like very	2 3	Questions from THE TRIBUNAL JUDGE SCHWEBEL: Thank you, Mr President.
2 3 4	the event that the Tribunal were to go on and address the question under Article 2(c). I'd just like very briefly in closing to address that question. It's	2 3 4	Questions from THE TRIBUNAL JUDGE SCHWEBEL: Thank you, Mr President. A question for Mr Born, to which counsel for the
2 3 4 5	the event that the Tribunal were to go on and address the question under Article 2(c). I'd just like very briefly in closing to address that question. It's a relatively straightforward and simple point.	2 3 4 5	Questions from THE TRIBUNAL JUDGE SCHWEBEL: Thank you, Mr President. A question for Mr Born, to which counsel for the Government may also wish to respond, both after lunch.
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10.55 1			
12:55 1	adjourned until 3 o'clock.	15:02 1	describe exactly how many of the Bahr it is, but it's
2	MR BORN: Thank you, Mr Chairman.	2	clear it's a big chunk. It goes up beyond what we've
3	(12.55 pm)	3	called the Ngol, the Ragaba ez Zarga, in Atem's words,
4	(Adjourned until 3.00 pm)	4	the Government's witness's words.
5	(3.00 pm)	5	He then goes on in that paragraph and also in
6	THE CHAIRMAN: A question was asked by Judge Schwebel just	6	paragraphs 25 and 26 to describe why that is, and
7	before the break to Mr Born, with the possibility, of	7	I think it's helpful to look at why that is because it
8	course, for the Government to answer it if they want.	8	coincides very nicely with the Government's other
9	Reply to the Tribunal by MR BORN	9	witness, Professor Cunnison, who wasn't able to be here.
10	MR BORN: Thank you, Mr Chairman.	10	He says, and this is in the next sentence of
11	Turning to the relevant paragraph, 33 of	11	paragraph 23:
12	Zakaria Atem's witness statement which was read out, the	12	"The area to the north of Abyei is good for cattle
13	question is: what was the thesis of that paragraph and	13	grazing and has always been the grazing for my
14	what factual inferences might be drawn from it?	14	sub-section."
15	The thesis we would submit is almost identical to	15	"Always". He goes on in paragraph 25 to say:
16	the Government's legal case, and one can surmise how the	16	"Beginning in October, the Messiriya migrate south
17	Government's legal case found its way into Mr Atem's	17	of Abyei where they stay for the entire summer period
18	witness statement. That legal case is, of course, that	18	until the first rain when they return. The reason for
19	the Abyei Area is defined as a transferred area that lay	19	this is that the Messiriya cattle are sensitive to the
20	to the south of what the Government takes to be the	20	flies."
21	Kordofan/Bahr el Ghazal boundary in 1905, what they call	21	We've seen that referred to before in the record:
22	the Bahr el Arab or the Kiir/Bahr el Arab, and that the	22	"The Ngok Dinka build luaks for the rainy season and
23	transferred area can only be that area to the south of	23	our cattle can survive the flies."
24	the Kiir.	24	I'd like to take us back to the description of the
25	The thesis as well and this is going to take me	25	Bahr region, the environmental evidence which we put in
25	The diesis as well and this is going to take the	23	Buil region, the charlothichtal evidence which we put in
	Page 137		Page 139
15:01 1	e	15:04 1	and which is uncontroverted. Atem here affirms that in
2	•	2	terms. He explains how it is that the Ngok can survive
3		3	throughout the Bahr region, which we looked at, where
4		4	there is seasonal flooding and where there are the
5		5	flies: they build luaks, and they have the short-legged,
6	3	6	non-humped cattle which are able to survive in that
7		7	
8	He draws a conclusion from that in paragraph 33 that		area.
		8	Then he gives another reason that I was a little bit
9	it caused political difficulties for the SPLM because	9	Then he gives another reason that I was a little bit embarrassed frankly that I hadn't made this in my
9 10	it caused political difficulties for the SPLM because when they realised in effect, in his view and the	9 10	Then he gives another reason that I was a little bit embarrassed frankly that I hadn't made this in my presentation, but he goes on in paragraph 26 to say:
9 10 11	it caused political difficulties for the SPLM because when they realised in effect, in his view and the Government's legal view, that they had given up their	9 10 11	Then he gives another reason that I was a little bit embarrassed frankly that I hadn't made this in my presentation, but he goes on in paragraph 26 to say: "If a Ngok wishes to take his cattle into
9 10 11 12	it caused political difficulties for the SPLM because when they realised in effect, in his view and the Government's legal view, that they had given up their traditional ancestral homelands to the north of the	9 10 11 12	Then he gives another reason that I was a little bit embarrassed frankly that I hadn't made this in my presentation, but he goes on in paragraph 26 to say: "If a Ngok wishes to take his cattle into a Messiriya area he is not prohibited."
9 10 11 12 13	it caused political difficulties for the SPLM because when they realised in effect, in his view and the Government's legal view, that they had given up their traditional ancestral homelands to the north of the Kiir/Bahr el Arab, people were angry with them.	9 10 11 12 13	Then he gives another reason that I was a little bit embarrassed frankly that I hadn't made this in my presentation, but he goes on in paragraph 26 to say: "If a Ngok wishes to take his cattle into a Messiriya area he is not prohibited." That, of course, is above the goz. He says:
9 10 11 12 13	it caused political difficulties for the SPLM because when they realised in effect, in his view and the Government's legal view, that they had given up their traditional ancestral homelands to the north of the Kiir/Bahr el Arab, people were angry with them. That is what I would submit quite clearly is the	9 10 11 12 13 14	Then he gives another reason that I was a little bit embarrassed frankly that I hadn't made this in my presentation, but he goes on in paragraph 26 to say: "If a Ngok wishes to take his cattle into a Messiriya area he is not prohibited." That, of course, is above the goz. He says: "But he does not need that"
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15:05 1	north.	15:08 1	What he tells you there is, if you accept the
2	I'd finally like to take you to paragraph 28. If	2	Government's legal theory, which he had put in his
3	you look, he gives an explanation which, not	3	statement, it is in his view unfair because it takes
4	surprisingly, coincides with the government's legal	4	away from the Ngok Dinka their traditional lands.
5	thesis. Then in the second-to-last sentence he says,	5	The good news is it isn't unfair. The good news
6	and he is describing the Abyei Area in accordance with	6	is we've seen it before, we're going to hear it
7	the Government's case:	7	again the legal formula in Article 1.1.2 of the Abyei
8	"This clearly excludes areas of Ngok settlements	8	Protocol does not adopt the bizarre interpretation that
9	which were in Kordofan before the transfer."	9	the Government has put. Instead the experts got it
10	So here he's referring to the areas north of the	10	exactly right.
11	Bahr el Arab which were in Kordofan before the transfer	11	Thank you, Mr Chairman.
12	and which caused, from his perspective, the political	12	THE CHAIRMAN: I thank you very much.
13	problems. This was the area to the north of the Kiir	13	Does the Government want to answer the question
14	which supposedly got given away.	14	raised by Judge Schwebel?
15	The important thing, the important factual	15	Reply to the Tribunal by PROFESSOR CRAWFORD
16	inferences to draw from this, is that the Government's	16	PROFESSOR CRAWFORD: Most certainly, yes, sir. It's
17	witness, Zakaria Atem, who they brought here, in his	17	an important question, and we would as a matter of
18	witness statement does two important things: he	18	courtesy have answered it in any event.
19	describes how the traditional Ngok territories extended	19	However, I have to say that we've now had what
20	well north of the Kiir/Bahr el Arab, up to and beyond	20	amounted to a ten-minute speech going somewhat beyond
21	the Ngol/Ragaba ez Zarga.	21	the implications of the question and I reserve the right
22	We saw him. He's not a scientist, but he can tell	22	to come back tomorrow in my discussion of the
23	us about the area, and he told us why that would be the	23	travaux préparatoires of the Abyei Protocol to deal
24	case. He told us about the luaks, he told us about the	24	further with the implications of what counsel for the
25	flies, he told us about the rains and he told us	25	SPLM/A have just said.
			•
	Page 141		Page 143
15:06 1	something we didn't even know about the lisaig grass.	15:09 1	The first point I would make is that the whole of
2	The last thing that he said isn't in his statement	2	that statement was Mr Zakaria's testimony and not just
3	but I'd like to read from page [45, line 24, to page 46	3	the bits that suit counsel for the SPLM/A. It's obvious
4	line 5] of his witness [testimony], in response to	4	if you read our witness statements that they are not
5	questions from the Tribunal. He said in reference to	5	completely consistent with each other. The reason for
6	the Abyei Area:	6	that is that there are different views held amongst the
7	"Danforth said that this is the place where the	7	various people who gave witness statements and we didn't
8	Dinka have been transferred, but this is a small	8	try and homogenise them.
9	triangle"	9	It's clear that Mr Zakaria, as a respected elder
10	This is in reference to what took to be the	10	member of the Ngok community, takes a broader view of
11	transferred area beneath the Kiir:	11	the extent of historical Ngok lands than the Government
12	" this is a small triangle, so it is not enough	12	does; that's his prerogative. But he also takes the
13	to accommodate even the owners of the area."	13	view, which is his own view as I understand it, that the
14	That takes us back to what I told you about the	14	Danforth compromise involved a territorial transfer to
15	Government's theory that you really need high-rise	15	Kordofan. It's not a very surprising view because
16	condominiums in the 14 miles of swampland underneath the	16	that's what it says.
17	Kiir to accommodate all the Ngok Dinka that would need	17	He expresses the corollary of that: that when that
18	to live there. There's not enough room there, Mr Atem	18	compromise was reached, after intensive and lengthy
19	told us; "it is not enough to accommodate even the	19	negotiations, as I said in my first speech, there was
20	owners of the area".	20	considerable disquiet amongst the Ngok community as to
21	Then he went on and said, and this is very	21	the implications for them, as well there might have
22	important:	22	been. The agreement was reached by the SPLM/A and not
23	"So as a Dinka tribe member I think that this is	23	by the Ngok, and that gave rise to disquiet. That's
24	unfair, because Dinka used to extend from the south	24	what he's saying.
25	from the north and to the south as well."	25	What its implications are for this Tribunal of
	Page 142		Page 144
	1 ago 1+2		Tage 144

15:10 1	course is unfathomable, but the Government affirms the	15:14 1	interject a brief comment. Yesterday afternoon Mr Born
2	truth of what he is saying in the paragraph to which you	2	purported to quote something that I said yesterday
3	refer, and then the context of the testimony that he	3	morning in my first-round presentation. At page 183 of
4	gave allowed him to say what he thought on all fronts.	4	the transcript counsel said that I said:
5	Thank you, sir.	5	"It is self-evident that as of 1905 Government
6	THE CHAIRMAN: I thank you very much. We are now to begin	6	officials would have had no knowledge of tribal
7	the second round of replies, this time on the	7	locations."
8	delimitation issue. I recall that each side will have	8	That's what counsel said that I said: that as of
9	80 minutes and the Government begins.	9	1905 Government officials would have had no knowledge of
10	Please, Mr Bundy, you have the floor.	10	tribal locations.
11	(3.11 pm)	11	As an advocate I can certainly have no objection if
12	Submissions by MR BUNDY	12	opposing counsel tries to cite my words against me. But
13	MR BUNDY: Thank you, Mr President, distinguished members	13	when he does so, I'd prefer it if he could quote me
14	of the Tribunal. I shall begin the Government's reply	14	correctly. I did not say that it's "self-evident that
15	to the SPLM/A's first-round pleading on the question:	15	as of 1905 Government officials would have no knowledge
16	what was the area of the nine Ngok Dinka chiefdoms	16	of tribal locations".
17	transferred to Kordofan in 1905? I'll be followed by	17	If one checks the actual transcript at page 20
18	Professor Crawford, who will discuss the SPLM/A's	18	Mr Born's reference to the transcript was incorrect, but
19	tribal case.	19	if one checks the actual transcript, it will be seen
20	We've heard two very different accounts of what	20	that what I actually said was:
21	happened at the time. The SPLM/A has painted a picture	20	"It is self-evident that as of 1905 Government
22	of confusion, ignorance, uncertainty in the minds of	22	officials would have no knowledge of tribal locations or
23	Condominium officials as to the area that was	23	other factors that only emerged after that date."
23	transferred from Bahr el Ghazal to Kordofan in 1905, and		
25		24	By dropping the final words that I said, counsel
23	the people of that area.	25	seriously distorted my point.
	Page 145		Page 147
15:12 1	According to our opponents there was no provincial	15:15 1	As both Professor Crawford and I have shown, by 1905
15:12 1 2	According to our opponents there was no provincial boundary between the two provinces at the time. That,	15:15 1 2	As both Professor Crawford and I have shown, by 1905 Condominium officials did have a good idea of where the
2	boundary between the two provinces at the time. That,	2	Condominium officials did have a good idea of where the
2 3	boundary between the two provinces at the time. That, as you'll recall from this morning, was the principal	2 3	Condominium officials did have a good idea of where the Ngok Dinka were located, and of the area that was
2 3 4	boundary between the two provinces at the time. That, as you'll recall from this morning, was the principal conclusion of MENAS: no provincial boundary. The	2 3 4	Condominium officials did have a good idea of where the Ngok Dinka were located, and of the area that was transferred in that year.
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15:17 1	the Bahr el Ghazal province at the time, were	15:20 1	not diminish its importance, although it may say
2	transferred to Kordofan so that all the protagonists	2	something about the ABC's work. The centre does indeed
3	would be under the same administrative authority of the	3	hold; nothing falls apart. Perhaps, if I may be
4	Governor of Kordofan.	4	permitted to say so, this Tribunal is in a very real
5	There was no dispute in 1905 over these issues.	5	sense the second coming when compared to the ABC
6	Condominium officials were not trying to settle	6	experts' report.
7	a territorial dispute where different positions have	7	Now, we have been told by the SPLM/A not to
8	been advanced. No one was posturing for litigation	8	second-guess or rewrite what Government administrators
9	purposes. All that was involved was a straightforward	9	wrote at the time, and that the most reliable approach
10	administrative transfer of an area from one province to	10	is to look at what Government administrators said they
11	another. It did not involve large-scale change to	11	transferred to Kordofan in 1905.
12	Sudan's provincial boundaries. Relatively limited	12	The SPLM/A memorial in fact, at paragraph 1579
13	though nonetheless important areas were at stake.	13	called the 1905 Condominium official documentary records
14	This was not a complex matter for Condominium	14	"decisive". Precisely. And we encourage the Tribunal
15	administrators in 1905, and we would submit that it does	15	to take that approach.
16	not need to be a complicated task for this Tribunal	16	Yet yesterday afternoon counsel for the SPLM/A took
17	either. The pieces of the documentary record fit	17	exactly the opposite approach. He now emphasises that
18	together like a jigsaw puzzle; they add up. The	18	the documentary evidence should be looked at with
19	essential task for this Tribunal, we would respectfully	19	scepticism because of its so-called limitations.
20	submit, is to examine that record as a whole in	20	From what we heard for a good part of yesterday
20	assessing the parties' positions.	21	afternoon, what is more important is to look at what
22	Does it really support the proposition that	22	Condominium officials did not say, rather than what they
23	Condominium officials in 1905 intended to transfer from	23	said, and the Tribunal is invited to play detective and
24	Bahr el Ghazal to Kordofan areas that extended up to the	24	speculate as to the alleged missing gaps.
25	10°35' north latitude, or even the 10°22'30" north	25	In short it turns out that we should second-guess
23	10 33 north latitude, of even the 10 22 30 north	23	in short it turns out that we should second-guess
	Page 149		Page 151
15:19 1	latitude? Is that what the record really shows? Or	15:22 1	the Condominium officials after all, and today we've
2	does the record support the proposition that the	15:22 1 2	actually heard virtually no discussion whatsoever of the
2 3	does the record support the proposition that the transferred area was viewed by Condominium officials		actually heard virtually no discussion whatsoever of the documents that the SPLM/A previously said were decisive.
2 3 4	does the record support the proposition that the transferred area was viewed by Condominium officials themselves as much more limited, and as lying along the	2 3 4	actually heard virtually no discussion whatsoever of the documents that the SPLM/A previously said were decisive. There's been no mention today, for example, of the
2 3 4 5	does the record support the proposition that the transferred area was viewed by Condominium officials themselves as much more limited, and as lying along the Bahr el Arab and to its south?	2 3 4 5	actually heard virtually no discussion whatsoever of the documents that the SPLM/A previously said were decisive. There's been no mention today, for example, of the March 1905 Sudan Intelligence Report, no mention of the
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15:24 1	in connection with the transfer in climatic conditions,	15:27 1	Bayldon was in the relevant area. It was Bayldon who
2	soil, vegetation and other environmental elements. They	2	was the one that Sheihk Rihan of the Twic had complained
3	weren't interested in those, and those did not figure	3	to as reported in the February 1905 intelligence report
4	into their decision and their description of the	4	about raiding. Bayldon was the one in fact the only
5	transfer.	5	one who explored the Ragaba ez Zarga in any details.
	Condominium officials make no mention of these kinds		
6		6	He went up 40 miles. He also had been engaged obviously
7	of factors in relation to the transfer decision, and	7	on the Bahr el Arab, the real Bahr el Arab.
8	indeed Professor Allan confirmed in response to	8	What is clear is that there is not a single document
9	a question put to him that there's no document	9	on the record there's not one suggesting that the
10	evidencing that Condominium officials considered these	10	transfer decision was motivated by and contingent on
11	kinds of environmental factors relevant at all to the	11	identifying the extent of the territory occupied or used
12	transfer decision or to their description of the	12	by the Ngok Dinka in 1905. Condominium officials were
13	transferred area.	13	simply not concerned with that issue. They were solely
14	Those officials were focused on a much more limited	14	concerned with the transfer of an area from one province
15	exercise: transferring the districts, the areas, the	15	to another to control raiding in areas that formerly had
16	territories, the country those are the terms that are	16	formed part of the province of Bahr el Ghazal, and to
17	used of two tribal chiefs previously located in	17	accomplish that task they were only concerned with the
18	Bahr el Ghazal to Kordofan. The location of the	18	Ngok Dinka and Twic areas situated in Bahr el Ghazal,
19	transferred area must be viewed in the light of the	19	since it was only this area that would be transferred.
20	object and purpose behind the transfer.	20	As I said, areas or even people already in Kordofan
21	That purpose was only to transfer an area that was	21	did not need to be transferred to Kordofan in order to
22	previously in Bahr el Ghazal province to Kordofan so	22	achieve the object and purpose of the transfer. Hence
23	that the area would be placed under the same	23	Wingate's description in his 1905 memorandum that it's
24	administration, and the only areas transferred were	24	the districts of the two sultans to the south of
25		25	Bahr el Arab, and formerly in the Bahr el Ghazal
23	those necessary to fulfil that purpose, ie areas that	23	Baill et Arab, and formerly in the Baill et Ghazai
	Page 153		Page 155
15:26 1	previously had been in Bahr el Ghazal. People already	15:29 1	province, that have been transferred to Kordofan.
2	living in Kordofan did not need to be transferred to	2	Nor were colonial administrators trying to divide up
3	Kordofan.	3	the goz, or to allocate permanent or secondary grazing
4	On Sunday counsel for the SPLM/A said that the	4	rights in an equitable manner, or to apply African
5	decisive issue for the ABC experts was to locate:	5	principles of law. The Tribunal will search the record
6	" the extent of the territory of the nine	6	in vain for any trace of evidence that these kinds of
7	Ngok Dinka chiefdoms as they stood in 1905, not the	7	considerations were in the minds of Condominium
8	location of the putative provincial boundary"	8	administrators when they carried out and when they
9	I don't intend to return to the question put to the	9	reported on the transfer. Such concepts were utterly
10	ABC experts it's possible that Professor Crawford may	10	alien to the whole raison d'être underlying the transfer
11	in closing tomorrow but what I would say is that that	11	decision.
12	formula, simply "the territory of the nine Ngok Dinka	12	Let me turn to the actual transfer documents,
13	chiefdoms as it stood in 1905", is most certainly not	13	despite the fact that they've been virtually ignored by
13	a correct description of this Tribunal's delimitation	13	our opponents in their first round presentation. What
	mandate. The words "transferred to Kordofan" cannot	15	• •
	mandate. The words transferred to Kordolan cannot	13	do they tell us was the Condominium's contemporary
15 16		12	understanding of what they were doing and which areas
16	simply be suppressed, as counsel does, and that is	16 17	understanding of what they were doing, and which areas
16 17	simply be suppressed, as counsel does, and that is certainly not the way that Condominium officials in 1905	17	they considered they were transferring? Surprisingly
16 17 18	simply be suppressed, as counsel does, and that is certainly not the way that Condominium officials in 1905 viewed the situation.	17 18	they considered they were transferring? Surprisingly the March 1905 Sudan Intelligence Report first reporting
16 17 18 19	simply be suppressed, as counsel does, and that is certainly not the way that Condominium officials in 1905 viewed the situation. Officers such as Wilkinson, Percival and Bayldon	17 18 19	they considered they were transferring? Surprisingly the March 1905 Sudan Intelligence Report first reporting on the transfer has not, at least as far as I'm aware,
16 17 18 19 20	simply be suppressed, as counsel does, and that is certainly not the way that Condominium officials in 1905 viewed the situation. Officers such as Wilkinson, Percival and Bayldon were not dispatched to investigate the location of areas	17 18 19 20	they considered they were transferring? Surprisingly the March 1905 Sudan Intelligence Report first reporting on the transfer has not, at least as far as I'm aware, been even referred to by our colleagues in the
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15:31 1	to Sultan Rob's people, those people had a country. The	15:34 1	subsequently carried out in the same year by Sciplini
2	Sudan Intelligence Report of March 1905 clearly states	2	and Walsh. We know that because he referred to these in
3	that the country of Sultan Rob is on the Kiir. There's	3	his 1905 memorandum. And yet, as is clear from the
4	never been any confusion about where the Kiir was. It	4	submissions of the other side, either by omission or by
5	didn't say his country was on the Ragaba ez Zarga or the	5	denigration, the description of the only official who
6	Bahr el Homr further north; it said it was on the Kiir.	6	mattered, his description of the transferred area should
7	Then of course we have, as I've explained,	7	be given no weight. Once again, I'd respectfully ask:
8	Governor-General Wingate's description of the	8	which party is now trying to rewrite or second-guess
9	transferred area. On Monday counsel for the SPLM/A	9	what Condominium officials said?
10	asserted and this is in the transcript at page 90	10	I turn to a related issue which concerns the
11	that Condominium officials had:	11	relevance of the provincial boundary. It's obviously
12	" no idea of what the territorial boundaries of	12	another issue on which the parties remain divided. The
13	the thing that they would have been transferring was."	13	SPLM argues that the location of the provincial boundary
14	Well, that's certainly not the case for	14	is irrelevant to the question posed. We say it's not.
15	Governor-General Wingate; he had a very good idea of the	15	Indeed we believe an assessment of the northern limits
16	thing. It wasn't a thing; it was two districts that was	16	of the transferred area is inextricably linked to the
17	being transferred to the south of the Bahr el Arab.	17	question of the provincial boundary, and it's linked
18	It can't be disputed that Wingate was the most	18	both before and after the transfer, and that that is how
19	senior official in the Sudan. Let me just recall how	19	Condominium officials at the time viewed the situation.
20	Professor Daly has described him: his power was	20	As I've already noted in my first round
21	absolute; he was a virtual dictator; the supreme	21	presentation, three of the four transfer documents,
22	military and civil command in Sudan was vested in him;	22	three of the four documents from 1905 specifically
23	and lastly, the governor-general in Khartoum was "the	23	referring to the transfer do so under headings/rubric
24	only official who mattered". The only official who	24	dealing with provincial boundaries and changes to
25	mattered. That's in Professor Daly's second report at	25	provincial boundaries.
	D 157		P. 150
	Page 157		Page 159
15:32 1	page 19.	15:36 1	In contrast we have the SPLM/A's complaint, repeated
2	Wingate was not thus merely some administrative		
. ~		2	by their expert, that there was no administration to
	•	2 3	by their expert, that there was no administration to speak of in the area in question, and that therefore the
3 4	official, as was intimated by the SPLM/A's presentation		speak of in the area in question, and that therefore the
3	•	3	· · · · · · · · · · · · · · · · · · ·
3 4	official, as was intimated by the SPLM/A's presentation the other day; he was the only official that mattered.	3 4	speak of in the area in question, and that therefore the very existence of a provincial boundary was
3 4 5	official, as was intimated by the SPLM/A's presentation the other day; he was the only official that mattered. Moreover, he was interested in where the relevant rivers	3 4 5	speak of in the area in question, and that therefore the very existence of a provincial boundary was inconsequential. We would respectfully suggest that
3 4 5 6	official, as was intimated by the SPLM/A's presentation the other day; he was the only official that mattered. Moreover, he was interested in where the relevant rivers lay, as his 1904 memorandum and the annual report for	3 4 5 6	speak of in the area in question, and that therefore the very existence of a provincial boundary was inconsequential. We would respectfully suggest that that line of argument is ill-founded on a number of
3 4 5 6 7	official, as was intimated by the SPLM/A's presentation the other day; he was the only official that mattered. Moreover, he was interested in where the relevant rivers lay, as his 1904 memorandum and the annual report for that year clearly shows. And even Professor Daly	3 4 5 6 7	speak of in the area in question, and that therefore the very existence of a provincial boundary was inconsequential. We would respectfully suggest that that line of argument is ill-founded on a number of grounds, both legal and factual. Let me start with the
3 4 5 6 7 8	official, as was intimated by the SPLM/A's presentation the other day; he was the only official that mattered. Moreover, he was interested in where the relevant rivers lay, as his 1904 memorandum and the annual report for that year clearly shows. And even Professor Daly acknowledged this this morning.	3 4 5 6 7 8	speak of in the area in question, and that therefore the very existence of a provincial boundary was inconsequential. We would respectfully suggest that that line of argument is ill-founded on a number of grounds, both legal and factual. Let me start with the legal.
3 4 5 6 7 8 9	official, as was intimated by the SPLM/A's presentation the other day; he was the only official that mattered. Moreover, he was interested in where the relevant rivers lay, as his 1904 memorandum and the annual report for that year clearly shows. And even Professor Daly acknowledged this this morning. Previously in Professor Daly's written statements he had said, quite categorically, that the hydrology of the region we're concerned with was of little or no concern	3 4 5 6 7 8 9	speak of in the area in question, and that therefore the very existence of a provincial boundary was inconsequential. We would respectfully suggest that that line of argument is ill-founded on a number of grounds, both legal and factual. Let me start with the legal. As was pointed out as far back as the Island of
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15:37 1	territory being administered. When territory is	15:41 1	one province to another? If you haven't got
2	relatively remote, a display of modest amounts of	2	a provincial boundary, why do you need a transfer from
3	administration does not imply that a province is not	3	one province to another province?
4	administered as a unit, or that provincial boundaries do	4	In a situation where there are no provincial
5	not exist or were not deemed to be important.	5	boundaries, it would have been meaningless to carry out
6	Factually we know that Sultan Rob was given a robe	6	an administrative act the sole purpose of which was to
7	of honour; it's actually reported in gazetted documents	7	transfer the districts of two sultans from the
8	that the SPLM/A is so fond of, an administrative act.	8	administration of Bahr el Ghazal to that of Kordofan in
9	We know that both he and Sheihk Rihan approached the	9	order to place them under the same governor.
10	Government to control raiding; we know that the	10	Condominium officials would not have needed a transfer
11	Government responded; and we know that one of the	11	if there was no provincial boundary.
12	responses was the transfer. That transfer decision was	12	It's precisely because the districts of the two
13	quintessentially an administrative act.	13	sultans, as so clearly shown in Wingate's memorandum,
14	MENAS's primary conclusion, which I can only assume	14	had formerly been situated in the province of
15	that the SPLM/A shares, is that in 1905 there existed no	15	Bahr el Ghazal that they were incorporated in the
16	provincial boundary between the two provinces. And this	16	transfer into Kordofan, and it's why he discusses it
17	morning Professor Daly asserted that in Wingate's cover	17	under the heading "Changes to Provincial Boundaries",
18	letter he called Wingate's memorandum Wingate's	18	and it's one of his principal changes.
19	"cover letter". In speaking of Wingate's cover letter	19	As I noted in my first-round presentation, it's true
20	he said:	20	that prior to 1905 there were large portions of the Bahr
21	"There was nothing in there about a provincial	21	el Arab that remained unexplored, but Condominium
22	boundary."	22	officials knew that. That was the whole reason why
23	We disagree with that, and based on Condominium	23	Lieutenant Bayldon was sent to explore the river at the
24	accounts and contemporary accounts of the situation it's	24	end of 1904.
25	quite clear that Government officials of the day did not	25	Nonetheless, the Condominium officials were aware
	quite eleas unit 30 (elimient officials of the day and not	23	Troncateless, the Condonminant officials were aware
	Page 161		Page 163
15.20 1			
1 17:19 1	share that view either ('ertainly as Protessor Allan	15.42 1	that areas remained unexplored, but that did not prevent
15:39 1	share that view either. Certainly, as Professor Allan	15:42 1	that areas remained unexplored, but that did not prevent
2	confirmed yesterday, there's no document that can be	2	them from still considering the Bahr el Arab to
2 3	confirmed yesterday, there's no document that can be pointed to, referenced during the relevant period, in	2 3	them from still considering the Bahr el Arab to constitute the provincial boundary between the two
2 3 4	confirmed yesterday, there's no document that can be pointed to, referenced during the relevant period, in which Condominium officials said there was no provincial	2 3 4	them from still considering the Bahr el Arab to constitute the provincial boundary between the two provinces, just as it was the provincial boundary
2 3 4 5	confirmed yesterday, there's no document that can be pointed to, referenced during the relevant period, in which Condominium officials said there was no provincial boundary. In fact, quite the opposite is the case.	2 3 4 5	them from still considering the Bahr el Arab to constitute the provincial boundary between the two provinces, just as it was the provincial boundary further west between Bahr el Ghazal and Darfur,
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15:44 1	had referred to in his long paragraph at page 11 as	15:47 1	Tribunal, the Government of Sudan submits that when the
2	where Bayldon, Walsh and Sciplini were carrying out	2	documents are looked at as a whole, the documents that
3	their operations, that implies that the Bahr el Arab had	3	shed light on and evidence what Condominium officials
4	been the pre-transfer boundary.	4	intended with respect to the 1905 transfer and the
5	We have, in short, four key factors relating to the	5	location of the transferred area, the following
6	provincial boundary.	6	conclusions emerge.
7	Prior to 1905 it was expressly recorded in the	7	First, there was a clear purpose behind the
8	annual reports for both provinces that the provincial	8	transfer.
9	boundary was the Bahr el Arab; not the putative	9	Second, that purpose was to transfer areas belonging
10	Bahr el Arab, the Bahr el Arab; not a parallel of	10	to the two sultans, and necessarily the people living in
11	latitude, the Bahr el Arab. That was the case for the	11	those areas or districts, that formerly had been
12	Kordofan/Bahr el Ghazal boundary and it was equally the	12	situated in the province of Bahr el Ghazal to the
13	case for the Darfur/Bahr el Ghazal boundary. It was the	13	province of Kordofan, so that such areas would be under
14	only river in this area that fit that description going	14	the administration of the same provincial governor, the
15	east to west from Darfur to its origins in the east	15	Governor of Kordofan.
16	surveyed by Saunders and Peake.	16	Third, there was no need and no intention to
17	Secondly, we have the 1905 annual reports. They	17	transfer anything that was already in Kordofan before
18	show the description of the provincial boundary changes,	18	1905. That would have been meaningless.
19	and instead of referring to the Bahr el Arab now as the	19	Fourth, the transferred area as described by Wingate
20	provincial boundary, they record the transfer. Those	20	is consistent with the fact that the March 1905
21	are foundation texts that we should pay close attention	21	intelligence report situates Sultan Rob's country on the
22	to; "essential" is the word that the SPLM uses.	22	Kiir, as to which there's no dispute, and Sheihk Rihan's
23	We then have Wingate's memorandum talking about the	23	between the Kiir and the Lol. The Percival and
24	transfer in connection with the provincial boundaries, and we have after the transfer the new provincial	24	Wilkinson sketches show Sultan Rob's territory, a great
25	and we have after the transfer the new provincial	25	swathe of it, lying, particularly in the Percival
	Page 165		Page 167
15:45 1	boundary, not fully delimited because the southern area	15:48 1	sketch, to the south of the Kiir.
2	of the transferred districts had not been precisely	2	Next, the transfer decision was obviously related to
3	identified it did not necessarily follow a river like	3	the location of the provincial boundary. Had there been
4	the northern limits which were transferred but you	4	no such boundary, there would not have been any areas
5	had the new southern boundary, the new	5	which could have been said to have been in the province
6	Kordofan/Bahr el Ghazal provincial boundary, starting to	6	of Bahr el Ghazal that needed to be transferred to
7	be shown on maps like the Lloyd map I projected and the	7	Kordofan.
8	whole series of sheet 65 maps that are in the record.	8	Sixth, the transfer documents, the so-called
9	That's the boundary that ultimately becomes the 1956	9 10	foundation texts the decisive documents, according to the other side refer to the transfer in connection
10	boundary on independence. That is why, for example, the 1911 Anglo-Egyptian	10	with the provincial boundary and the change in that
11 12	Sudan Handbook, when it describes the northern	12	boundary that the transfer gave rise to.
13	boundaries of Bahr el Ghazal province, states as	13	Seven, Wingate's memorandum: Wingate, the only
13	follows:	13	official who mattered, bears this out. His memorandum
15	"The actual boundary line is not yet delimited, but	15	also provides the clearest and the best description of
16	it follows the course of the Bahr el Arab or Rizeigat	16	the location of the transferred area: the area of the
17	from the Nile/Congo watershed [that's in Darfur] until	17	two sultans situated to the south of the Bahr el Arab
18	the frontier of Kordofan is reached, when the boundary	18	that had formerly been in Bahr el Ghazal province.
19	divides certain tribal districts to Lake No."	19	Eighth, that is why the post-1905 provincial
20	Previously, in 1903, the boundary had been the	20	boundary changes and is situated on maps to the south of
21	Bahr el Arab to Lake No. Now it's saying the boundary	21	Bahr el Arab.
22	divides certain tribal districts. That's because of the	22	Finally, our conclusion on this is that it follows
23	transfer. The southern limits had not been precisely	23	that the transferred area in 1905 that was intended and
24	identified, but the northern limits were.	24	carried out by Condominium officials was the area
25	So in conclusion, Mr President, members of the	25	between the Bahr el Arab and the new provincial boundary
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15:50 1	further south.	15:53 1	an anthropological fact, and he has discussed the entire
2	Thank you very much, Mr President, members of the	2	case in what is known as the anthropological present;
3	Tribunal. I'd be grateful if you could now call on	3	that is to say on the assumption that all dates are
4	Professor Crawford.	4	compressed and that everything that is happening now is
5	THE CHAIRMAN: I thank you, Mr Bundy, and I give the floor	5	deemed always to have happened. Yet dates, and
6	to Professor Crawford.	6	especially 1905, are crucial to this case.
7	(3.50 pm)	7	The fourth element of the tribal delimitation case
8	Submissions by MR CRAWFORD	8	is what I might describe as environmental determinism.
9	PROFESSOR CRAWFORD: Mr President, members of the	9	It's not too much to say that he discussed the
10	Tribunal, Mr Born's presentation on delimitation	10	environment rather than the evidence. The environment
11	insofar as it concerns the so-called tribal	11	was used to generate a presumption that everything that
12	interpretation demonstrated six general	12	happened in a grossly extended area of the so-called
13	characteristics.	13	Bahr was attributable to the Ngok in case of doubt.
14	The first is that as it concerns the crucial date of	14	His fifth characteristic is the continued
15	1905, it's based entirely on inference. However much	15	cartographical challenge, amounting in some cases to
16	Detective Sherlock Born or it may be in the present	16	incompetence, as in his treatment of the Wilkinson map
17	context, Mr President, Hercule Born tried to stretch	17	and route report to which I will come; and sixth,
18	it. There is no smoke without fire, and there is no	18	a pronounced tendency to miss the point.
19	fire without the Ngok; there is no dung without cattle,	19	My anthropological fact he said a very
20	and there's no cattle without Ngok, and so on. It's	20	complicated question of fact related only to the
21	a new form of prima facie title: if you are in someone's	21	tribal definition, and I made that perfectly clear. In
22	presumptive area, any activity is presumed to be that	22	our view, if we are right on the territorial definition
23	someone, no matter how large the area.	23	of the mandate, the question is not very difficult.
24	The second characteristic was a highly selective	24	Of course there is still a question of delimitation,
25	attitude to sources, with which is associated	25	and on the view of delimitation put forward by
	Page 169		Page 171
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15:52 1	an unwillingness to actually address our real argument.	15:55 1	Mr Schofield, unless the delimitation is virtually
2	On the latter point they almost seem to have abandoned	2	already achieved, it's beyond the reach of a tribunal.
3	any claim to area 1, which seems to have been given over	3	But you would understand the questions of delimitation
4	wholly to the Twic.	4	that would involve a certain degree of difficulty. The
5	One need only look at the article he discussed at	5	degree of difficulty is by no means excessive in the
6	length yesterday one by scientists, he stressed by	6	context of the run of delimitation cases.
7	Stubbs and Morrison regarding the Ngok agro-pastoral way	7	My point was different: to determine the boundaries
8	of life. The opening sentence of the article reads as	8	of the area transferred in 1905, if that means the
9	follows:	9	boundaries of the area of the Ngok in 1905, is
10	"The western Dinkas, who now number some 140,000	10	an extraordinarily difficult thing to do. It's not
11	persons living along the Lol, the Chel, the Pongo and	11	a case, according to their position, simply of
12	the Bahr el Arab."	12	determining the outer edges of the Ngok in 1905 and then
13	"Along", I stress. These four rivers paint a rough	13	straightening the lines; it's a case of assuming that
14	geographic box, with the Bahr el Arab forming the	14 15	they extend to vast swathes of area.
15 16	northern side. And yet it is suggested that a country	15 16	Area 4, the area north of the Ragaba ez Zarga, I remind you, constitutes a majority of the ABC experts'
17	the size of Belgium sits on top of them. A third remarkable fact for someone who believes as	17	area, 11,000 square kilometres. There is no extant
17	rigidly as Mr Born does in the rules of English grammar	17	definition of the goz which would produce that result.
19	is the complete tone-deafness to the critical date in	19	I will come back to each of these points.
20	this case.	20	My first point of substance then is environmental
20	He purported to accept my characterisation of the	20	determinism and the idea that you are allowed, as it
22	anthropological fact, although characteristically there	22	were, to give the Ngok the benefit of the doubt whenever
23	is no sentence of Mr Born that doesn't involve some	23	any doubt arises on environmental grounds.
24	twisting of the argument and he didn't accept the point	24	One of the features of this case is the way in which
25	I was making. But he said: yes, there is	25	the SPLM/A rely on their experts to say things and to do
	Page 170		Page 172
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15:56 1	things that their experts do not agree. We saw that	16:00 1	black soil predominates."
2	this morning with community mapping as well.	2	We entirely accept that that may be true as a matter
3	It's remarkable that Professor Allan who answered	3	of geographic fact; it doesn't determine where the Ngok
4	questions entirely fairly and openly yesterday, accepted	4	were in 1905. It doesn't even begin to do that. What
5	that he was not an environmental determinist. He said	5	Mr Born omitted to say yesterday was that he was citing
6	and I quote:	6	from a 1907 Lloyd article, "Some Notes on the Dar Homr",
7	"As a geographer as part of my professional	7	in which Lloyd says:
8	experience, geographers learn that environmental	8	"Dar Homr, or the country of the Homr Arabs, is
9	determinism doesn't work. You can't say, 'Well, that	9	situated in the southwest corner of the province of
10	particular tract of land will lead to that particular	10	Kordofan."
11	livelihood' So I'm not at all suggesting that the	11	If the ABC experts are right, it's not situated
12	Bahr region determines anything, or the goz region	12	there anymore.
13	determines anything."	13	With regard to the heralded black soil, Lloyd later
14	That's a perfectly fair statement, and yet that of	14	writes:
15	course is precisely what the SPLM/A counsel did: to	15	"The southern half of Kordofan, which included
16	determine that, on the basis of an inflated definition	16	Dar Nuba, consists of black soil in the centre of which
17	of the Bahr and of the goz, all the Bahr and half the	17	rise the Nuba Mountains. The plains are inhabited by
18	goz belongs to the Ngok on environmental grounds.	18	cattle-owning Baggara Arabs and the mountains by
19	The SPLM/A's environmental claim is essentially	19	numerous tribes of Nuba."
20	based on two points. The first is that because the Ngok	20	He doesn't mention the Ngok. I accept that the Ngok
21	crop, dura, is ideally suited to the Bahr region, they	21	live also on black soil, but they didn't have a priority
22	must necessarily have lived throughout the Bahr region.	22	right to it. There are no patent rights of the Ngok in
23	The same argument is made with respect to the cattle	23	the black soil. This is a sort of agricultural
24	being adapted to the Bahr region's damp climate and	24	determinism. MacMichael, the prolific Sudan scholar and
25	terrain.	25	former Condominium governor, refers to the Homr living
23	terrain.	23	Tornier Condominatin governor, refers to the Holli fiving
	Page 173		Page 175
15.58 1	Now there is of course an important point here. We	16:01 1	on black soil: it was not exclusive to the Nook Nor
15:58 1	Now, there is of course an important point here. We accept entirely that the environment of the region does	16:01 1	on black soil; it was not exclusive to the Ngok. Nor
2	accept entirely that the environment of the region does	2	was cultivation, as Lloyd equally points out.
2 3	accept entirely that the environment of the region does influence the movement patterns of the groups that live	2 3	was cultivation, as Lloyd equally points out. Nor does the environmental cattle argument sit
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16:02 1	Ragaba ez Zarga, and the mere fact that some slight	16:05 1	materials in the record, given the shortness of time,
2	areas to the north of the Ragaba ez Zarga might have	2	but since it is said that Professor Cunnison supports
3	black soil doesn't begin to establish Ngok ownership of	3	the SPLM/A, I have no choice but to read the whole
4	those areas. You have to look at the actual documents	4	paragraph. He says:
5	which demonstrate where the Ngok were in 1905 to	5	"The goz overlaps the so-called 'shared rights area'
6	establish that.	6	of the ABC report. In describing that area in this way,
7	I have two other points in Cunnison which I make	7	it seems to me the ABC was fundamentally mistaken.
8	incidentally in the context of this reply. The first	8	I did not observe this."
9	relates to his non-appearance here.	9	He refers to his two and a half years living in the
10	Mr Born suggested that we deliberately withheld him	10	region with the Homr, travelling down as far as the
11	as a witness on the ground that his evidence was	11	Bahr el Arab:
12	unfavourable to us. I've already had occasion to remark	12	" I did not observe this as an area of shared
13	about the normal etiquette amongst legal professionals	13	rights at all. Nor was the dividing line drawn by the
14	of not inferring bad faith in the context of their	14	ABC within that area in any way regarded as a boundary
15	handling of a case.	15	between the Homr and Dinka. The Dinka were to the
16	In fact we specifically said why Professor Cunnison	16	south, as I have said. Some Dinka sought employment in
17	is not here in a letter to the Tribunal of	17	Muglad. It was not unknown for individual families to
18	20th March 2009. We said:	18	travel north and be, so to speak, adopted into one or
19	"The Government of Sudan is willing to make all of	19	another of the omodiyas of the Homr. They might also
20	its witnesses available to attend the hearing [they	20	take surplus cattle north to market, but they did not
21	didn't ask to see them all] except for Mr Ian Cunnison,	21	exercise regular grazing or similar rights in the
22	who will be unable to attend due to his poor health."	22	so-called 'shared rights area'."
23	He was born in 1923. He is 86. Some octogenarians	23	The real area of sharing was further south in the
24	manage to travel to The Hague with considerable	24	Bahr, as he defines it. There the two groups coexisted
25	frequency; some do not. The judgment that was made, in	25	for a fairly short season, but this was not a host-guest
23	requercy, some do not. The judgment that was made, in	23	for a fairty short scason, but this was not a nost-guest
	Page 177		Page 179
16:04 1	consultation with his wife, was that he was not well		
	consultation with his wife, was that he was not well	16:06 1	relationship. For him it was the Bahr, the area to the
2	enough to travel. If the SPLM/A had asked to talk to	2	south, which in the early 1950s was the shared rights
2 3	enough to travel. If the SPLM/A had asked to talk to him, arrangements could have been made to do it, as we	2 3	south, which in the early 1950s was the shared rights area. That bore no relationship to the reasoning which
2 3 4	enough to travel. If the SPLM/A had asked to talk to him, arrangements could have been made to do it, as we offered to do with the vice president. They did not do	2 3 4	south, which in the early 1950s was the shared rights area. That bore no relationship to the reasoning which enabled the ABC experts to transfer 11,000 square
2 3 4 5	enough to travel. If the SPLM/A had asked to talk to him, arrangements could have been made to do it, as we offered to do with the vice president. They did not do so.	2 3 4 5	south, which in the early 1950s was the shared rights area. That bore no relationship to the reasoning which enabled the ABC experts to transfer 11,000 square kilometres of Kordofan to the Abyei Area.
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16:08 1	Counsel quoted Cole and Huntingdon, a modern account	16:11 1	broadly northwest. Then he walks back on a somewhat
2	based on fieldwork in Abyei in the 1970s of agricultural	2	different route, again to the river that he calls the
3	patterns in the region. Cole and Huntingdon shed light	3	Bahr el Arab.
4	on the difficulties of the region and its extremely	4	The two small villages which Mr Born said were Ngok
5	variegated character, which anyone who knows anything	5	villages on the Ragaba ez Zarga are El Jaart and
6	about the geography of riverine areas will find is not	6	Um Geren. He said they were Ngok villages because they
7	surprising. This is what they say at page 88 of their	7	have the characteristic mode of there only being three
8	study:	8	or four houses in a rather separate area. This is
9	"First, it was generally assumed [they mean it was	9	a wonderful example. This would be an architectural
10	generally assumed before they began their study] that	10	monopoly. No one else is allowed to have three houses
11	there was a huge amount of cultivable land just waiting	11	in a small village; it has to be six or eight or some
12	to be utilised with the available technology in the	12	other number.
13	general area around Abyei. In part this myth was	13	If you look at how it's described, he talks about
14	fostered by the northern Ministry of Agriculture	14	a series of settlements. It's true that he mentions
15	officials, who compared the apparently fertile open	15	some being Arab settlements, but he's giving general
16	lands of Abyei to the drier and sandier lands to the	16	descriptions. He refers to a few Homr Arabs living in
17	north. The supposed vast sources of land on the flood	17	various places. While he's north of Fauwel so far as
18	plains of Western and Southern Sudan were a myth under	18	one can tell the whole area up to now has been Arab
19	existing technologies, at least in the Abyei Area and	19	he says:
20	probably to a greater or lesser extent in the rest of	20	"Fula Hamadai with a little water [is] sufficient to
21	the region as well."	21	water animals dry on 9.2.02."
22	In fact Willis and Wilkinson knew where the Ngok	22	It's amazing how these administrators who didn't
23	went in the wet season. They were more congregated	23	administer were concerned about the availability of
24	together; and, at the time Willis and Wilkinson were	24	water for the locals.
25	writing, more or less immediately after the transfer,	25	He then says:
23	writing, more or less immediately after the transfer,	23	The then says.
	Page 181		Page 183
16:09 1	that was very much in the south.	16:13 1	"Small villages: mere collection of three or four
2	I turn to the second issue of cartographic	2	huts passed to the El Jaart and Um Geren."
3	incompetence. Here I want to deal in the first place	3	And that is said to be an acknowledgement of the
4	with Wilkinson's report. There are three points. The	4	Ngok.
5	first relates to the alleged Ngok villages of El Jaart	5	Then he refers to:
6	and Um Geren.	6	"Fula Hamadai a village named 'Fut'."
7	It's fair to say and one does try to be fair,	7	Well, these are villages. There's absolutely no
8	even under provocation that counsel for the SPLM/A	8	evidence that they're Ngok villages at this time. And
9	accepted that this was an inference or a hypothesis.	9	one would infer from the text of the report that they're
10	I have to say, when counsel for the SPLM/A accepts that	10	not, because he goes on to say, after reaching Fauwel
11	something is an inference, he would, on the other side,	11	with its large Arab settlements, and crossing the
12	take that as a definite admission. His normal forensic	12	Bahr el Arab", he finds the road to a Dinka chief named
13	mode is that of carpet-bombing, so to suggest something	13	Ruweng; bearing in mind of course, there were other
14	is an inference is already to admit a high level of	14	Dinka in this area, though this was the Ruweng.
15	doubt. But curiously enough there's not much doubt at	15	Then he says:
16	all if you look at the document.	16	"The first Dinka village of Bombo is reached."
16 17	all if you look at the document. This is of course taken from the volume 2 routes of	16 17	"The first Dinka village of Bombo is reached." According to counsel that should have been the
16 17 18	all if you look at the document. This is of course taken from the volume 2 routes of the Anglo-Egyptian Sudan, and it's the route report	16 17 18	"The first Dinka village of Bombo is reached." According to counsel that should have been the fourth or possibly the third Dinka village. When he
16 17 18 19	all if you look at the document. This is of course taken from the volume 2 routes of the Anglo-Egyptian Sudan, and it's the route report which begins at page 151 of volume 2, Major Wilkinson,	16 17 18 19	"The first Dinka village of Bombo is reached." According to counsel that should have been the fourth or possibly the third Dinka village. When he said "first" he meant first; that's what he said. There
16 17 18 19 20	all if you look at the document. This is of course taken from the volume 2 routes of the Anglo-Egyptian Sudan, and it's the route report which begins at page 151 of volume 2, Major Wilkinson, the route report of January and February of 1902.	16 17 18 19 20	"The first Dinka village of Bombo is reached." According to counsel that should have been the fourth or possibly the third Dinka village. When he said "first" he meant first; that's what he said. There was no reason to refer to every clutch of a few houses
16 17 18 19 20 21	all if you look at the document. This is of course taken from the volume 2 routes of the Anglo-Egyptian Sudan, and it's the route report which begins at page 151 of volume 2, Major Wilkinson, the route report of January and February of 1902. There are basically three stages to the route that	16 17 18 19 20 21	"The first Dinka village of Bombo is reached." According to counsel that should have been the fourth or possibly the third Dinka village. When he said "first" he meant first; that's what he said. There was no reason to refer to every clutch of a few houses at an earlier stage as being Arab for them to be Arab
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16 17 18 19 20 21 22 23 24	all if you look at the document. This is of course taken from the volume 2 routes of the Anglo-Egyptian Sudan, and it's the route report which begins at page 151 of volume 2, Major Wilkinson, the route report of January and February of 1902. There are basically three stages to the route that Wilkinson took. There's the stage south, where he meets a river which he is told is the Bahr el Arab, and then goes further south to see Sultan Rob. There's a short	16 17 18 19 20 21 22 23 24	"The first Dinka village of Bombo is reached." According to counsel that should have been the fourth or possibly the third Dinka village. When he said "first" he meant first; that's what he said. There was no reason to refer to every clutch of a few houses at an earlier stage as being Arab for them to be Arab from the context; and there's no indication that they were not, in particular because they're described as the first Dinkas. And the first Dinkas he sees are even

16:14 1	It's pure supposition to suggest that because	16:17 1	of any human presence found by Wilkinson north of the
2	Condominium officials didn't describe a clutch of huts	2	real Bahr el Arab on this trip, on the return leg of his
3	north of Fauwel, they're somehow presumed to belong to	3	journey, was a Homr settlement.
4	the Ngok.	4	I make the point, incidentally, that that particular
5	We now come to the second phase of Wilkinson's	5	village, Abu Kareit, if you look very carefully at the
6	journey after he leaves Sultan Rob. Mr Born quoted the	6	map I'll leave it to your cartographical consultants
7	following extract, and he did it in order to demonstrate	7	to do so is actually not on the real Ragaba ez Zarga;
8	that there was Ngok settlement well to the north of the	8	it's on a tributary. It lies on a stream which runs
9	Bahr el Arab in 1902.	9	into the Ragaba at Mellum.
10	I interpolate to say: we don't deny that there was	10	In any event, our basic proposition is this: we have
11	Ngok settlement to the north of the Bahr el Arab in	11	never said that there was a mistake of the whole course
12	1902; we could not do so in light of the evidence. What	12	of the Ragaba ez Zarga in or around 1905 for the
13	we deny is that it reached anywhere near the	13	Bahr el Arab; there was not, for the perfectly good
14	Ragaba ez Zarga, and that is a crucial fact in this	14	reason that the course of the Ragaba ez Zarga in general
15	case. It's one which, since each party at this phase	15	was not known at the time. That was why it was possible
16	has to prove its own case, the onus is on the SPLM/A to	16	for people like Wilkinson to mistake the Bahr el Arab:
17	do it.	17	they weren't looking for another river.
18		18	But I would draw the attention of your consultants
	Mr Born tried valiantly, I have to say but		
19	everything he does is valiant to prove the point, and	19	to the fact that the river which is identified as the
20	he quoted the following passage:	20	river on which Abu Kareit lies, the Ragaba ez Zarga, is
21	"Leaving Sultan Rob's settlement the road runs	21	actually not the Ragaba ez Zarga but a tributary of it.
22	northwest, and the river is left on the left, but is	22	Mr Born called for detective work and scientific
23	struck again 2.5 miles on, and the path keeps along the	23	appreciation. Looking at a map would have been a good
24	left bank. The country here is all open and much dura	24	start.
25	cultivated."	25	I would also refer to the concession no, I'm
	Page 185		Page 187
	<u> </u>		
16:16 1	It is not in dispute that this country was Ngok	16:19 1	sorry, I won't use that word. I will also refer to the
16:16 1 2	It is not in dispute that this country was Ngok country:	16:19 1 2	sorry, I won't use that word. I will also refer to the response made by Professor Daly this morning to my
2	country:	2	response made by Professor Daly this morning to my
2 3	country: "Dinka dwellings are dotted about, and the country	2 3	response made by Professor Daly this morning to my question in relation to Percival's report. The Tribunal
2 3 4	country: "Dinka dwellings are dotted about, and the country presents a most prosperous aspect."	2 3 4	response made by Professor Daly this morning to my question in relation to Percival's report. The Tribunal will remember I asked him: where in Percival's report do
2 3 4 5	country: "Dinka dwellings are dotted about, and the country presents a most prosperous aspect." Even the quickest look at Wilkinson's map	2 3 4 5	response made by Professor Daly this morning to my question in relation to Percival's report. The Tribunal will remember I asked him: where in Percival's report do you find an express reference to Ngok settlements on the
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16:20 1	the Bahr el Arab [that is in the riverine area] and	16:23 1	yourself.
2	rebuilt their stocks of cattle by trading ivory they	2	Mr Born did not refer to the majority of the route
3	hunted for cattle from traders who established buying	3	reports and associated information which I took you
4	centres there."	4	through yesterday. He has a rather snotty and selective
5	So they were well to the south at that time, hiding	5	view about colonial administration, it seems.
6	from the impact of the Mahdi and the extremely disturbed	6	Instead the primary basis on which the SPLM/A
7	conditions to which that had given rise.	7	constructed its case is the combination of its
8	A second point in the immediately post-Condominium	8	environmental argument, its form of environmental
9	period related to the Government's concern about the	9	determinism, with oral history.
10	river system. I would simply make the point, in	10	I have already commented on oral history. I don't
11	supplement to the questions that I asked Professor Daly,	11	deny its value in determining a general position, but it
12	that the Sudan Intelligence Report for November 1904	12	has to be checked against the other evidence. It's said
13	makes it clear that Bayldon was beginning to investigate	13	that Sultan Rob, who was himself of course a direct
14	areas to the north.	14	actor in the event, was lying when he said there were no
15	In February 1905, the month before the transfer,	15	Ngok to the west of his settlement in Burakol.
16	there was a report in Bayldon's progress reproduced in	16	What we suggest is you look at the other evidence on
17	the Sudan Intelligence Reports which refers to the raids	17	that particular point. To take one example, what is the
18	on Sultan Gorkwei of the district of Toj, and says that:	18	other evidence? The other evidence is the route report
19	"The Camel Corps Company, now in Bahr el Arab, will	19	which someone walks from Gerinti, which is not a Ngok
20	investigate their case on the way to Kordofan."	20	settlement and certainly was not a Ngok settlement in
21	Professor Daly presented this picture as one of	21	1905, to the new village, to Burakol, and finds no
22	complete absence of Government administration. All	22	treks, and then says that on the Ragaba there are only
23	I would say is: read the documents for yourself. They	23	Arabs travelling south to go to the village to buy
24	may be colonial documents; they are colonial documents.	24	grain.
25	One doesn't like colonialism in principle. What is	25	There is a concordance of evidence conforming with
	Page 189		Page 191
16:22 1	clear is that the coming of the Condominium was	16:25 1	Sultan Rob, who may have lied on occasions but doesn't
2	an unqualified blessing for the people of the Sudan,	2	seem to have been lying on this occasion, and there is
3	including both the peoples primarily involved in this	3	much other evidence of the non-involvement of the Ngok
4	case.	4	on the Darfur boundary, north of the Bahr el Arab.
5	Professor Daly fully accepted my view that the	5	But the principal new element about the oral history
6	population estimate given by the SPLM/A of 50,000 was	6	is the community mapping report. Now, one cannot deny
7	wrong. He wasn't prepared to put his own estimate on	7	the value of community mapping in certain contexts, but
8	it. We've given an estimate based upon his methodology	8	frankly it's the case that the information gathered may
9	of 5,000-10,000. Counsel distorted my statement, which	9	be gathered in a more systematic way, but it can only be
10	was a slight modification of our earlier position, by	10	checked in a very careful manner. We simply don't have
11	giving the number of 15,000, but didn't explain where that came from.	11 12	the data, the data produced by the community mapping
12 13	The consequence was that it's obvious from the	13	project that was conducted in a hurry. You heard the circumstances in which it was
13	evidence that there was significant interest by the	13	conducted, but in particular you heard the concession by
15	Government in clarifying the river situation at	15	Dr Poole when I asked him whether he accepted the
16	precisely the time when the transfer occurred, and that	16	SPLM/A's representation of what he had established.
17	incidentally in the course of those programmes there was	17	I will quote it again from paragraph 51 of the
18	something which is indistinguishable from	18	rejoinder:
19	administration.	19	"The community mapping project shows permanent
20	Can you imagine, if you were counsel in my	20	Ngok Dinka villages were located throughout the Bahr
21	hypothetical case between the British Government and the	21	region, extending north to latitude 10°35' north, both
22	French Government for the delimitation of the boundary	22	in 1905 and for decades thereafter."
23	between a French Bahr el Ghazal and an English Kordofan,	23	He obviously accepted under some pressure that that
24	how much you would leap on these documents with joy as	24	was not the case. It is a clear misrepresentation. The
25	evidence of administration? But you know that for	25	community mapping project can establish nothing except
	D 100		D 102
	Page 190		Page 192

,				
16:26 1	for the area in which it was covered. You can look at	16:29	1	shows.
2	the outcome as to what you would think in relation to		2	If they are not on the Darfur boundary, then their
3	areas to the north of the Ragaba ez Zarga.		3	own theory of the case means that the Abyei Area does
4	I come back to my point about hybrid boundaries		4	not include an area so far to the west, and Sultan Rob
5	which I made yesterday and which counsel for the SPLM/A		5	was right in saying that more or less at the time of the
6	responded to very briefly this afternoon. I will revert		6	transfer.
7	to some of the issues about the determination of the		7	You can determine the anthropological fact because
8	tribal area of the Ngok at 1905 in my final presentation		8	that is your mandate in the context of the delimitation
9	tomorrow, but I do want to address this issue because it		9	exercise. We say, of course, that it is
10	is of fundamental importance.	1	10	an extraordinarily difficult fact to demonstrate, and
11	When I was making a point about being geographically	1	11	I think the process of the last two days will have
12	challenged, I was not making that point in relation to	1	12	satisfied you of that proposition, on which counsel do
13	the hybrid issue; I was making the point in relation to	1	13	in fact agree.
14	rather more, let us say, trivial questions of whether	1	14	We say the fact of that is the reason why there was
15	their submission actually contained the complete area or	1	15	an excess of mandate in this case, because the fact that
16	not, and whether particular references to coordinates	1	16	was determined was actually a fact relating to
17	were geographically accurate.		17	provincial boundaries, without the most crucial
18	The broader point is this: if the SPLM/A wants to	1	18	provincial boundary being taken into account at all.
19	live by the tribal boundary hypothesis, then they die by	1	19	Mr President, I think I've reached the period at
20	it as well. They can't pick and choose. They can't		20	which we are supposed to stop at this phase; we will do
21	say, as they now seem to be saying, there were virtually		21	it, but with, I hope, the assurance that if there's
22	no Ngok in area 1, the area below the Bahr el Arab, and		22	anything that I've left out in these rather scattered
23	then say that as a matter of tribal interpretation it		23	remarks, I can come back to it before Mr Born has the
24	belonged to the Ngok.		24	last word tomorrow morning.
25	On the basis of the assumption that that area was	2	25	Thank you, sir. Thank you, members of the Tribunal.
	Page 193			Page 195
16:28 1	virtually empty, it did not belong to the Ngok;			THE CHAIRMAN: I thank you very much, Professor Crawford.
2	apparently it belonged to the Twic, who accepted their		2	Are there any questions on the part of the Tribunal?
3	being moved to the south in a boundary which		3	No. Then we'll break until 5 o'clock.
4	Titherington showed was some considerable distance south			(4.31 pm)
5	of the river and which was coexistent with the boundary		5	(A short break)
6	between the Ngok and the Twic.			(4.59 pm)
7	The positions they're taking don't add up, they			THE CHAIRMAN: Mr Born.
8	don't make sense. There is no actual evidence that they		8 9	Submissions by MR BORN MR BORN: Thank you, Mr President.
9 10	were on the Darfur boundary. Mr Born says, and it's		.0	I would like to turn now in our rebuttal submissions
	true, that the agreement to which one version of the Civsec document was attached the reason we gave you		1	to the interpretation of the definition of the Abyei
11 12	two versions is that it was an annex to a meeting held		2	Area. I addressed this in some detail, as you remember,
13	in the 1930s, which is one of those annex numbers he		3	on Monday, but it seems that I need to do so again.
13	mentioned. But it obviously was brought into being for		4	You will remember that on Monday and Tuesday the
15	another purpose and was used in the context of		5	Government, both Mr Bundy and Professor Crawford, argued
16	a discussion about grazing rights for the Ngol Dinka		.6	at some length that the Abyei Area can consist only of
17	south of the Bahr el Arab and south of the Darfur		7	the territory that was located to the south of the
18	boundary.		.8	putative Kordofan/Bahr el Ghazal provincial boundary in
19	It's obvious that the Ngok had no interest in what		9	1905. As we've seen, they argue basically that
20	was being discussed at that meeting, although the map		20	Article 1.1.2 of the Abyei Protocol refers to the
21	itself was being used as an apparently valuable addition		21	transfer of an area or a territory in 1905, and not to
22	to the body of information about grazing rights in the		22	the transfer of the nine Ngok Dinka chiefdoms.
23	general area. But the fact that they had no interest in		23	I promised you yesterday that I would come back and
24	it demonstrates the point, which is that they were not		24	address this in some detail.
25	on the Darfur boundary at all, as the other evidence	2	25	I'd like to start by just referring briefly to the
1	Dogo 104			Page 106
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1			
17:00 1	consequences of the Government's definition. It would	17:04 1	sort of enquiry by this Tribunal, the Government's
2	mean that, irrespective of what the historical and the	2	interpretation of Article 1.1.2 is wrong; it's
3	factual evidence showed, even though the Ngok's	3	demonstrably wrong in substance.
4	historical and ancestral homelands were located 88%, as	4	It's important as we turn to interpreting that
5	Professor Crawford put it, or 98% to the north of the	5	definition of the Abyei Area to look to the language of
6	Kiir/Bahr el Arab, that would be irrelevant; that 88% or	6	the Abyei Protocol. That's something that Mr Bundy, who
7	98% of the Ngok's territory would be excluded from the	7	revisited this issue for the Government today and
8	Abyei Area would result, in Mr Crawford's submission,	8	yesterday, did not do. He and the Government would
9	entirely by virtue of the parties' agreement in 2005 in	9	instead define the Abyei Area more or less by reference
10	the Abyei Protocol.	10	to Wingate's memorandum and by reference to what they
11	As we saw at the question just at the end of the	11	call the transfer documents, and not by reference to the
12	morning's session that I came back and answered, that is	12	language or the purposes of the Abyei Protocol; or in
13	essentially the thesis also of Zakaria Atem's witness	13	fact, as we come to see soon, to the drafting history of
14	statement on behalf of the Government.	14	the Abyei Protocol.
15	I would like to turn now to the Government's	15	Let's start then, as we set about trying to give
16	interpretation of Article 1.1.2, but I'd like to do that	16	a substantive interpretation to Article 1.1.2, with the
17	in a way that's a bit different from how the Government	17	language of what the parties agreed to, the Government
18	has done it, which, as you will recall, is to address	18	and the SPLM/A in 2005.
19	Abyei Protocol's language in its first presentations and	19	What they agreed to you can see it on the screen,
20	then to spend time dwelling, in these presentations in	20	and it's language we've had read to us repeatedly but
21	the last couple of days, on the historical documents,	21	it's worth looking at again the territory is defined
22	I'd like to put those two pieces together and look at	22	as the area of the nine Ngok Dinka chiefdoms transferred
23	them together. Naturally what I'd like to do is to	23	to Kordofan in 1905. That's the place we start.
24	begin with the language of Article 1.1.2.	24	I discussed at some length on Sunday that in the
25	Preliminarily, though, as we've seen and this	25	English language the plain meaning of Article 1.1.2
23	•	20	Zinginon imagunge the plant meaning of three 11112
	Page 197		Page 199
17:02 1	goes back to excess of mandate provisions the	17:05 1	refers to the area of the nine Ngok Dinka chiefdoms
2	Government's claim that the experts misinterpreted	2	which were which were collectively transferred to
3	Article 1.1.2 is not a basis for an excess of mandate	3	Kordofan in 1905. It does not refer to the transfer of
4	claim. The experts' misinterpretation of the definition	4	some sub-part of an area of the nine Ngok Dinka
5	of the Abyei Area in Article 1.1.2 would be an error of	5	chiefdoms, as the Government would have you believe.
5 6	of the Abyei Area in Article 1.1.2 would be an error of law or an error of interpretation, not an excess of	5 6	chiefdoms, as the Government would have you believe. We also saw how that interpretation was confirmed by
5 6 7	of the Abyei Area in Article 1.1.2 would be an error of law or an error of interpretation, not an excess of substantive mandate.	5 6 7	chiefdoms, as the Government would have you believe. We also saw how that interpretation was confirmed by the expert report of Professor Crystal OBE.
5 6 7 8	of the Abyei Area in Article 1.1.2 would be an error of law or an error of interpretation, not an excess of substantive mandate. I would suggest I will probably be accused of	5 6 7 8	chiefdoms, as the Government would have you believe. We also saw how that interpretation was confirmed by the expert report of Professor Crystal OBE. Professor Crystal explained and applied the simple but
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17:13 1	on April 16th in Dembloya, he said again that what they	17:15 1	chiefdoms at the time they the chiefdoms were
2	were setting out to do was:	2	transferred to Kordofan in 1905. That is the definition
3	" determine the boundaries of the nine Ngok Dinka	3	of the Abyei Area.
4	chiefdoms as they existed 100 years ago."	4	With that we arrive at where Mr Bundy began
5	A different formulation, but every single time it	5	yesterday, when he addressed the issue of the definition
6	had the same essential meaning. It referred to the nine	6	of the Abyei Area.
7	Ngok Dinka chiefdoms which were transferred; not to some	7	You will recall that Mr Bundy began his presentation
8	specific territory that was transferred. Each time the	8	by addressing the reference to what he described as the
9	Government sat there, the Government didn't object,	9	Condominium orders of the 1905 transfer, which he said
10	didn't protest, didn't say, "That's wrong". The reason,	10	were before the Government and the SPLM/A when they
11	I would suggest and we are going to come on to it	11	negotiated the Abyei Protocol, and you can see
12	is because the Government knew perfectly well, and	12	I don't want to be accused of misstating what someone
13	didn't disagree that that's what the language meant.	13	said you can see here that he said:
14	That is one of the reasons that they picked the ABC	14	"Yes, the negotiators of the Abyei Protocol were
15	experts. They didn't pick people that might adopt	15	aware of the 1905 transfer documents."
16	a sort of abstract, cold, arbitrary provincial boundary	16	Preliminarily. Mr Bundy's reliance on the supposed
17	definition that the Government urges; they picked	17	negotiating history of the Abyei Protocol, on what was
18	experts that would evaluate historical evidence and they	18	before the negotiators of the Abyei Protocol, is a bit
19	put in with the greatest of respect to our mountains	19	of an about-face about the Government.
20	of evidence their own mountains of evidence.	20	The Government's initial position was that the
21	They put in 100 witnesses to talk not about	21	Tribunal did not need to pay attention to these
22	provincial boundaries, not to read on what Governor	22	so-called supplementary means of interpretation. You
23	Wingate said or didn't say, but to talk about the land,	23	will recall that our memorial put in a substantial
24	to talk about the people, to talk about the history, to	24	discussion of the drafting history, while the Government
25	talk about the traditional areas of both people, because	25	devoted essentially no attention to it because, pursuant
	Page 205		Page 207
17:14 1	that's what they had in mind.	17:17 1	to this paragraph from their memorial, they didn't think
2	They didn't object when Ambassador Petterson	2	it was appropriate, didn't think it was necessary.
3	provided these comments, and he didn't adopt any	3	In any case, about-face or not, Mr Bundy's
4	peculiar interpretation here; this is just what	4	discussion of the drafting history of the Abyei Protocol
5	Article 1.1.2 says in the English language.	5	is wrong. In fact, when you go and look at that
6	Even the Government's counter-memorial, when you	6	drafting history, it confirms it confirms
7	look at it, does not disagree that what	7	powerfully what the language said, what English
8	Ambassador Petterson said at these meetings was	8	grammar rules say, and what the purposes mean. It may
9	an acceptable interpretation of the mandate.	9	be a secondary means of interpretation, but it's still
10	Flipping back, even if Professor Pellet had answered	10	one that supports the primary means.
11	Professor Reisman's question differently and had said:	11	What we will see when we look at this drafting
12	yes, if they made a serious error in misinterpreting	12	history is the opposite of what Mr Bundy told you.
13	Article 1.1.2 that would be an excess of mandate, the Government conceives here that these were acceptable	13 14	Mr Bundy would have you think that the negotiators of the Abyei Protocol focused on Wingate's memorandum.
14	crovernment concerves here that these were acceptable	14	the Abyel Protocol locused on wingate's memorandum.
15	*	15	
15 16	interpretations. That is a concession we don't need to	15 16	There's no evidence at all none that they even
16	interpretations. That is a concession we don't need to rely on. It's because Article 1.1.2 is as plain as day	16	There's no evidence at all none that they even knew about it. There's no evidence that they even
16 17	interpretations. That is a concession we don't need to rely on. It's because Article 1.1.2 is as plain as day when you read it.	16 17	There's no evidence at all none that they even knew about it. There's no evidence that they even referred to it.
16 17 18	interpretations. That is a concession we don't need to rely on. It's because Article 1.1.2 is as plain as day when you read it. So, if we can stop here for just a moment, what we	16 17 18	There's no evidence at all none that they even knew about it. There's no evidence that they even referred to it. Instead, as one would think, and as we will see the
16 17 18 19	interpretations. That is a concession we don't need to rely on. It's because Article 1.1.2 is as plain as day when you read it. So, if we can stop here for just a moment, what we see from the language of Article 1.1.2, what we see from	16 17 18 19	There's no evidence at all none that they even knew about it. There's no evidence that they even referred to it. Instead, as one would think, and as we will see the record clearly shows and as the Government has
16 17 18 19 20	interpretations. That is a concession we don't need to rely on. It's because Article 1.1.2 is as plain as day when you read it. So, if we can stop here for just a moment, what we see from the language of Article 1.1.2, what we see from the grammatical rules of the English language applied to	16 17 18 19 20	There's no evidence at all none that they even knew about it. There's no evidence that they even referred to it. Instead, as one would think, and as we will see the record clearly shows and as the Government has conceded repeatedly, even under Professor Crawford's
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16 17 18 19 20 21 22 23	interpretations. That is a concession we don't need to rely on. It's because Article 1.1.2 is as plain as day when you read it. So, if we can stop here for just a moment, what we see from the language of Article 1.1.2, what we see from the grammatical rules of the English language applied to Article 1.1.2 and what we see from the purposes of Article 1.1.2, and indeed of the whole Comprehensive Peace Agreement, is a single, clear,	16 17 18 19 20 21 22 23	There's no evidence at all none that they even knew about it. There's no evidence that they even referred to it. Instead, as one would think, and as we will see the record clearly shows and as the Government has conceded repeatedly, even under Professor Crawford's standards for concessions what the parties focused on was Sudan Intelligence Report No. 128, and we will look at that too. What we will see is the Sudan Intelligence
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17:24 1	transfer, the 1905 transfer, the thing, the object or	17:27 1	Twic Dinka people. That's what the language of the
2	the subject that was transferred in 1905, was the	2	report says, that's what the purpose of the decision was
3	Ngok Dinka and Twic Dinka people, and not a defined	3	meant to be.
4	territorial area, not an area.	4	It is, as I said and I'll no doubt be accused of
5	That's plain when you read the language. It refers	5	being unduly adversarial in my advocacy style but it
6	to, "These people have on certain occasions"; it refers	6	is absurd, quite literally absurd, to say that it was
7	to placing "them", not "it", under the same governor.	7	just Sheihk Rihan and Sultan Rob that were transferred.
8	Beyond any conceivable doubt it was Sultan Rob,	8	No. It's right that people were transferred; it's wrong
9	Sheihk Rihan and their people who were to belong to	9	that it was those two people. It was the Ngok Dinka
10	Kordofan and be under the administration of the Kordofan	10	people and the Twic Dinka people.
11		10	I shouldn't in a sense even have to do all this.
	governor.	12	I shouldn't have to be harsh. I should be able to be
12	Mr Bundy argued on Monday, and with a fair bit less	13	
13	conviction today, that the reference to "people" is		understanding, because the Government agreed with me.
14	really just a reference to Sultan Rob and Sheihk Rihan.	14	Let's look at what their memorial said. The invention
15	I would suggest to you that although that at least	15	that we heard just recently of a transfer of Sultan Rob
16	acknowledges that it was people, not territory, that was	16	and Sheihk Rihan or of an area isn't what the Government
17	transferred, that the suggestion that it was just those	17	said before. You can look in their written submissions.
18	two individuals, Sultan Rob and Sheihk Rihan, is	18	The Government said:
19	hopeless, it's desperate.	19	"It was decided in early 1905 to transfer the latter
20	Sudan Intelligence Report No. 128 did not transfer	20	groups [ie the Ngok Dinka and the Twic Dinka] to
21	just Sultan Rob and Sheihk Rihan. It was not some sort	21	Kordofan."
22	of late 19th century/early 20th century witness	22	The Government didn't say to transfer Sultan Rob and
23	protection programme. This was a transfer of the	23	Sheihk Rihan; didn't say an area. They said it was
24	people. When we look at what happened before the	24	decided in early 1905 to transfer "the groups". Then,
25	transfer, when we look at what the transfer said, when	25	just to make sure we didn't miss the point, they said it
	Page 213		Page 215
			- 10
17:26 1	we look at why the transfer was done, we will see that	17:29 1	again:
17:26 1 2	we look at why the transfer was done, we will see that that is inescapably true.	17:29 1 2	again: "Apparently investigations were carried out and
			"Apparently investigations were carried out and
2	that is inescapably true.	2	
2 3	that is inescapably true. First, it doesn't make much sense in the English	2 3	"Apparently investigations were carried out and a decision was promptly made to transfer both the Ngok
2 3 4	that is inescapably true. First, it doesn't make much sense in the English language and perhaps that's why Mr Bundy said he wasn't a grammarian to refer to just two individuals	2 3 4	"Apparently investigations were carried out and a decision was promptly made to transfer both the Ngok and the Twic to Kordofan." They couldn't have put it much more clearly.
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17:30	1	beneath the Kiir to Kordofan", as Mr Bundy would have	17:33 1	On Monday Mr Bundy said:
	2	you say. That's what they said there: the decision to	2	"I shall discuss each of these documents in turn,
	3	transfer the Ngok Dinka and Twic to Kordofan. Those are	3	but before doing so I might just note in passing that it
	4	tribes, those are people; that's not an area.	4	is absolutely extraordinary in the Government's view
	5	Let's look at the next slide. The Government then	5	that the ABC experts referred to none of these four
	6	said:	6	documents in connection with the transfer in their
	7	"The reason of transferring the Ngok and the Twic to	7	report, despite the fact that all of them had been
	8	Kordofan"	8	submitted to the experts by the Government"
	9	Again, not an area, but the Ngok and the Twic. And	9	It's a bit like Professor Crawford's accusation of
1	10	guess what you see underneath: you see Sudan	10	a scientific shambles. And, like Professor Crawford's
1	11	Intelligence Report No. 127, which has the language that	11	accusation, when you go and look at the report with even
1	12	I referred to you previously, explaining the reason for	12	the slightest care, it's wrong.
1	13	protecting the people of the tribes.	13	Let's look. Far from ignoring the transfer
1	14	Let's look at the next slide, and here it's a little	14	documents, the ABC experts' final report refers directly
1	15	bit obscured:	15	and specifically to Sudan Intelligence Report No. 128.
1	16	"The decision to transfer."	16	You can see that on the screen, you can read the
1	17	The decision to transfer the Ngok and the Twic to	17	footnote, you can read it on the text. Mr Bundy didn't
1	18	Kordofan. And guess what you see underneath that: you	18	do it for you, but let me take you to it.
1	19	see Sudan Intelligence Report No. 128, which says what	19	The experts said specifically that the Sudan
	20	we've already seen, and which, just as I said, just as	20	Intelligence Report provides:
	21	the Government's memorial said, just as the previous two	21	" the official principal reason for the transfer
	22	slides said, just as the ABC experts said, that it was	22	of the nine Ngok Dinka chiefdoms"
	23	a decision to transfer the Ngok and the Twic to	23	This is the part of the report that supposedly
	24	Kordofan.	24	didn't exist. This is the thing which, extraordinarily
2	25	It did not, as Mr Bundy sought to do, describe this	25	in the Government's view, the experts never paid
		Page 217		Page 219
17:31	1	as a transfer of territory and an area. They took the	17:34 1	attention to. When you look at what the experts did,
	2	same position as the Government's memorial. It	2	they did just what everybody else who's ever looked at
	3	described precisely the passage that was used, as the	3	this document concluded: they said that it was the
	4	Government put it, to formulate Article 1.1.2.	4	principal reasons for the transfer of the nine
	5	Not surprisingly, in the experts' report that's what	5	Ngok Dinka chiefdoms to Kordofan, again a tribal
	6	they said about exactly this document. First we've seen	6	transfer.
	7	how the experts described this in the various meetings	7	If you don't read the experts' report with any care,
	8	with the people. We heard also I'm going to come on	8	maybe then you say it's a scientific shambles, maybe
	9	in a moment to describe the ABC report itself, but	9	then you say they didn't even bother to refer to the
	10	before we do let's look at what Professor Daly, the	10	transfer documents. But if you do read it what you see
	11	world's leading expert on the Condominium and Sudan has	11	is the same thing that the SPLM/A has said, the same
	12	to say about this, what he said about it in	12	thing that I have said, the same thing the Government's
	13	cross-examination. He said:	13	memorial has said, the same thing the Government's
	14 15	"Because the British administration was so	14 15	presentation to the experts said.
	15 16	rudimentary and focused on practical issues rather than with details, the 1905 transfer decision was clearly	15 16	In addition, if you go and look at proposition 7 in
	16 17	about people, not land. The stated purpose of the	16 17	the experts' report, they described the full context of the Sudan Intelligence Report. They ended with another
	18	transfer was to place slave raiders and the people they	17	conclusion that this was a tribal transfer, not
	19	raided under one administration. No effort was made to	19	a territorial one. They said that the Ngok people were
	20	define the territory"	20	regarded as part of the Bahr el Ghazal province until
	21	That's Professor Daly under cross-examination.	20	their transfer "their transfer" in 1905.
	22	Mr Schofield said exactly the same thing. Again, he	22	So I don't think there really can be any doubt about
	23	defended that position on cross-examination from	23	it. It's completely clear that the transfer decision in
	24	Mr Bundy. He answered clearly that it was a people that	24	1905, which is recorded in Sudan Intelligence Report
	25	were transferred.	25	No. 128, which is precisely the passage that the parties
		Page 218		Page 220

17:36 1			
i e	had before them when they negotiated the Abyei Protocol,	17:39 1	the provincial boundary in the next years. Contrary to
2	and as to which that's no evidence that they had any	2	the Government's claims, Kordofan's boundaries were not
3	other passage, any other document in front of them, that	3	extended to encompass any particular area, any specific
4	this passage, precisely the passage which formulated	4	area in 1905; again, because it was only the
5	their views, shaped their views, was a transfer of the	5	administration of the Ngok people, and not a defined
6	tribes.	6	territory, that had been transferred.
7	That's what Sudan Intelligence Report No. 128 said.	7	In 1905, as we've seen, the Condominium officials
8	That's, when you go and look at the ABC report, what the	8	had no idea about what territory the Ngok Dinka
9	ABC experts said. That's what Professor Daly said.	9	inhabited. Mr Bundy said this, and I will, with all
10	That's what Mr Schofield said. That's what the	10	respect, stick to my interpretation of what he said.
11	Government's presentations to the ABC experts said.	11	In 1905, as we've seen, the Condominium officials
12	That's what the Government's memorial said. The only	12	had no idea about what territory the Ngok Dinka
13	person who has said something different is Mr Bundy, and	13	inhabited. Mr Bundy said this and I will, with all
14	he is just plain wrong on this issue.	14	respect, stick to my interpretation of what he said
15	Mr Bundy then went on and addressed the question of	15	very clearly when he made the statement in his opening
16	the provincial boundaries. He treated the references to	16	comments that:
17	the provincial boundaries in the annual reports as some	17	"It is self-evident that as of 1905 Government
18	sort of extraordinary revelation. He emphasised how	18	officials would have had no knowledge of tribal
19	there was a reference to changes in the provincial	19	locations"
20	boundaries.	20	The qualification that he added [earlier] didn't
21	That's hardly surprising; it's not surprising in the	21	change the substance of it, but if it did, it doesn't
22	at least. It's obvious that if you transfer a people,	22	matter. You saw from the evidence, you heard from the
23	especially if you transfer a large and widely dispersed	23	evidence, you heard from Professor Daly that the
24	people like the Ngok Dinka, there will be territorial	24	Condominium couldn't have begun to define the territory
25	consequences. A transfer of people will at some point	25	of the Ngok Dinka in 1905; they had no clue, quite
	D		5
	Page 221		Page 223
17:37 1	entail or at least potentially entail, depending on	17:40 1	literally, about where the Ngok Dinka's territory might
2	where they are territorial consequences. That's what	2	start and where it might stop. Professor Daly confirmed
3	happened here: after the transfer decision there were	3	that. What they did was wherever the Ngok were, they
4	territorial consequences.	4	put administration of the Ngok in the hands of the
5	But critically, the critical passage before the	5	
		3	Governor of Kordofan, and they did it for a very simple
6	parties when they negotiated the Abyei Protocol was	6	Governor of Kordofan, and they did it for a very simple and logical practical reason.
	parties when they negotiated the Abyei Protocol was a tribal transfer that only subsequently had territorial		
6	a tribal transfer that only subsequently had territorial	6	and logical practical reason.
6 7	a tribal transfer that only subsequently had territorial consequences. It was the tribal transfer of the	6 7	and logical practical reason. When you look at what actually happened in the next
6 7 8	a tribal transfer that only subsequently had territorial	6 7 8	and logical practical reason. When you look at what actually happened in the next years, the Condominium took no steps to delimit the
6 7 8 9	a tribal transfer that only subsequently had territorial consequences. It was the tribal transfer of the Ngok Dinka people that defined subsequently the area.	6 7 8 9	and logical practical reason. When you look at what actually happened in the next years, the Condominium took no steps to delimit the territory because they didn't know what the territory
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17:41	1	It makes perfect sense for the reasons that we've	17:44 1	Ngok don't really live anywhere: they're not north,
	2	discussed that they couldn't have. They didn't have any	2	they're not south of the Kiir. But people do live
	3	idea about the territory of the Ngok Dinka, who not	3	somewhere, and if you transfer a people there will be
	4	what, who they had transferred.	4	territorial consequences.
	5	Even after 1912, the southern boundary of Kordofan	5	But the essential question that the Government tries
	6	remained indeterminate and ill-defined because the	6	to confuse is that what Article 1.1.2 refers to is
	7	Government didn't even at that stage know where the Ngok	7	a transfer of people. That's what Sudan Intelligence
	8	really were, and you can see what Mr MacDonald called	8	Report No. 128, which was precisely the passage that was
	9	the spaghetti bowl of different boundaries that were	9	used to formulate Article 1.1.2, said. There were
	10	there.	10	subsequent territorial consequences, but the essential
	11	It's also instructive to consider how the	11	guiding point is that there was a transfer of a people,
	12	Twic Dinka, who we haven't heard that much about and who	12	which is just the way the English language of the
	13	were transferred along with the Ngok, were treated by	13	Abyei Protocol reads.
	14	the Government.	14	Again, as the Government describes it here, it's
	15	In 1929 the Twic Dinka, who had been tribally	15	a transfer of people, the Twic, not of a territory. If
	16	transferred as a people in 1905, were retransferred back	16	that's not clear enough, we can also look at how the
	17	to Bahr el Ghazal. That's undisputed between the	17	Government has described this retransfer.
	18	parties. Again, everybody treated the Twic's retransfer	18	Let's look at their memorial. They talk there about
	19	just the way they had treated their transfer: namely, as	19	the retransfer of the Twic Dinka to Bahr el Ghazal.
	20	a tribal transfer of people, not of areas.	20	They don't talk about a territory. They use that phrase
	21	We can see and this is the best version of the	21	multiple times in their memorial and you can see it in
	22	document that's in the record; it comes from the	22	the slide.
	23	Government's presentation to the ABC experts. It's the	23	Professor Crawford said the same thing when he
	24	published gazette notice of the alteration of the	24	talked about this part of the case in his submissions.
	25	boundaries of Kordofan and Upper Nile provinces. Just	25	He said: a retransfer of the Twic. Again, just
		D 225		D 227
		Page 225		Page 227
17:43	1	parenthetically I note that this is how boundary changes	17:45 1	inevitably lapsing in his case into the plain English
	2	and boundary creations were noticed in the Sudan. If	2	language of what the transfer was: it was a transfer of
	3	there was a boundary, it was noticed in the gazette, the	3	people and tribes. The retransfer of the Twic was
	4	way this is done.	4	exactly on the model of the original transfer of the
	5	It is important to look at this report, and look at	5	Twic, and the original transfer of the Ngok Dinka, not
	6	it closely. It refers as you can see to the transfer of	6	of abstract pieces of territory.
	7	the Ruweng Ajubba, the Ruweng Await and the Ruweng Alorr	7	The simple point is that the description was
	8	sections of Dinka from Kordofan to Upper Nile province.	8	precisely parallel to the earlier transfer decision that
	9	Those are transfers of people. What follows from that	9	we saw in the Sudan Intelligence Report.
	10	transfer of people? As a result then there are certain	10	Finally Mr Bundy took us to what he would have
	11	territorial consequences which if you look at the	11	defined the ABC defined the Abyei Area. He took
	12	gazette notice are described.	12	us to Governor-General Wingate's memorandum, and in
	13	Note down at the bottom of the page the Government's	13	particular to the statement that:
	14	comment on this:	14	"The districts of Sultan Rob and Okwai, to the south
	15	"By then the Twic were already returned to	15	of Bahr el Arab, and formerly a portion of the
	16	Bahr el Ghazal, probably in 1929."	16	Bahr el Ghazal province, have been incorporated into
	17	It's a sequence. You can look at it up there.	17	Kordofan."
	18	There's a transfer of people, a tribe, the Ruweng, which	18	This is treated as some extraordinary revelation
	19	has a consequence of result as a consequence of	19	also. That frankly has no more weight than the province
	20	transferring people which is to alter the boundaries.	20	boundary references previously discussed.
	21	It's no revelation that after you transfer a people	21	Of course there would be consequences from the
	22	there will then subsequently be a boundary adjustment or	22	transfer of the people. Those consequences would be the
	23	a territorial consequence; of course. People have to	23	incorporation of an as yet unspecified area of the Ngok
	24	live somewhere.	24	and Twic territories into Kordofan. That in no way
	2-			
	25	The Government I think seems to believe that the	25	changed of course the fact that the 1905 transfer was
			25	
		The Government I think seems to believe that the Page 226	25	changed of course the fact that the 1905 transfer was Page 228

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17:47 1	a transfer of the Ngok people, not a transfer of	17:50 1	grammar; Professor Crystal has told us what that means.
2	a particular area.	2	We look at the purposes, the purposes in 2005; not,
3	Wingate did not try to define the boundaries of	3	as the Government would try to have you do, the purposes
4	an area that was supposedly transferred; no, far from	4	in 1905. Those weren't the purposes of the Government
5	it. He didn't try to define the way that the provincial	5	and the SPLM/A in 2005. You look at the purposes of the
6	boundaries would be changed, because they didn't know,	6	Abyei referendum in interpreting the Abyei Protocol.
7	it would have been impossible.	7	Then, if you're going to have recourse to the
8	As Mr Bundy told us yesterday, the Condominium	8	travaux, as we think you can, you pay attention to what
9	officials didn't know what the area of the Ngok Dinka	9	it was they paid attention to, what the Government told
10	was. That's clear equally even if he hadn't conceded	10	you they paid attention to. That was not Wingate's
11	it from the actions of the Condominium officials	11	memorandum, that was not what Mr Bundy told you about.
12	between 1905 and 1911, when they didn't try to change	12	Instead, as has been repeatedly said by the Government
13	the boundary.	13	itself, indeed on Saturday, precisely the passage they
14	Nor did Wingate's reference to the Bahr el Arab in	14	paid attention to was Sudan Intelligence Report No. 128.
15	any way purport to fix a northern boundary. As	15	Therefore, even if you were to redo what the experts
16	Mr Schofield demonstrated this morning, it's unclear	16	looked at it's not an excess of mandate question, but
17	what Wingate meant by the reference to the Bahr el Arab,	17	even if you were to redo it you would reach exactly
18	whether it was the Ngol or the Kiir. He made that very	18	the same question that everybody else had.
19	clear this morning when he took us through Wingate's	19	I'd like to move on from that briefly to the
20	full memorandum, not just the bits that we were taken	20	question of boundaries. We had a lot of discussion
21	to.	21	about it this morning. You'll excuse me if I'm
22	More fundamentally, though, in referring to the	22	cartographically challenged in this. I'll do my best to
23	Bahr el Arab Wingate was merely describing the general	23	try to explain my understanding of the boundaries, and
24	location of the Ngok and the Twic. He was not	24	if I make mistakes I'm sure you'll ask questions so
25	purporting to define the extent of some territory that	25	I can correct myself.
	Page 229		Page 231
	1 age 22)		1 age 231
17:48 1	had been transferred. No. He was simply referring back	17:51 1	The Government's case is that there's
2	to what the territorial consequence would be of the	2	a well-established provincial boundary in 1905 between
3	tribal transfer. Of course there was a territorial	3	Kordofan and Bahr el Ghazal, which was located on the
4	consequence, but nobody would know what that would be	4	Kiir/Bahr el Arab. The Government argues that the 1905
5	until 1911.	5	transfer, as we've seen, was a transfer of a specific
6	Of course Wingate's memorandum played no role at all	6	area, from south of the boundary to north of the
7	in the 2005 negotiations of the Abyei Protocol. We've	7	boundary.
8	seen what did play a role in those negotiations. What	8	As we've seen, the Government concludes that the
9	did play a role was Sudan Intelligence Report No. 128.	9	purported provincial boundary is decisive to the
10	That is what reference was specifically made to, that	10	definition of the Abyei Area, because only territory
11	was the passage that was precisely relied on by the	11	south of the boundary could have been transferred north
12	parties. There was no hint of Wingate's memorandum in	12	of the boundary to Kordofan.
13	those discussions.	13	For all the reasons that I've already explained,
14	There was frankly virtually no hint of Wingate's	14	that argument is irrelevant. That is not what the
15	memorandum in the Government's memorial. When you go	15	Abyei Protocol in Article 1.1.2 refers to. You don't
16	back and look at that memorial, and you can see on the	16	need to look you can't look, frankly, if you properly
17	screen the references to it, there was no argument of	17	interpret Article 1.1.2 to that boundary. Instead
18	the sort that Mr Bundy has made. It was the same as in	18	you look at the territory of the nine Ngok Dinka
19	the previous presentations to the ABC experts: the focus	19	chiefdoms.
20	was on the transfer decision, the transfer of the	20	But even if we did try to look at the Government's
21	people, not on some supposed territorial transfer.	21	boundary, the Government's boundary that plays such
22	In sum, where all that takes us is back to where we	22	a decisive role in its analysis, we'd see that its
23	started. If we're going to interpret Article 1.1.2 of	23	argument is wrong. Even if it were a relevant issue,
24 25	the Abyei Protocol, we start with the language. We've seen what that language means. We pay attention to the	24 25	the Government's claim that there was some sort of "established provincial boundary" simply isn't correct.
23	seen what that language means. We pay attention to the	23	established provincial boundary simply isn't correct.
	Page 230		Page 232

17:52 1	There wasn't in 1905 any determinate or defined	17:56 1	two."
2	Kordofan/Bahr el Ghazal boundary. That's because no	2	You can see the rest of his answer there on the
3	such boundary had been established; and because, even if	3	slide.
4	there had been some reference to the Bahr el Ghazal as	4	We also heard how Bahr el Ghazal had only been
5	a real boundary, that wouldn't have meant anything.	5	established as a province in 1902, less than three years
6	I'll briefly look at both points. Again, we've	6	before the tribal transfer. No boundary between
7	heard testimony on this from Professor Daly and from	7	Kordofan and Bahr el Ghazal was included on any
8	Mr Schofield, who have addressed it specifically. I'll	8	Government map before 1914, nine years after the
9	try to summarise as best I can what's in the evidence.	9	transfer. Even when that happened and there's the
10	Their expert testimony on it I would suggest is much	10	cartographic evidence in the record, referred to in our
11	more to the point, much more decisive.	11	memorials it was only referred to as an approximate
12	Preliminarily, it's clear that in 1905 any	12	provincial boundary.
13	provincial boundary in Sudan was approximate and	13	The Government claimed that there's not a single
14	uncertain. Professor Daly explained it. You'd just had	14	mention in the record of any boundary, other than the
15	17 years of civil war, and Sudan was just coming to	15	Bahr el Arab, between the two provinces before the 1905
16	grips with peace. Nobody was paying attention to trying	16	transfer; you can see the cite to that in the previous
17	to establish boundaries. There were no constitutional,	17	slide.
18	there were no legislative, there were no executive	18	In fact there were multiple references, that
19	pronouncements. There was no gazette that announced the	19	Mr Schofield referred to, to other boundaries that had
20	existence of a boundary.	20	been albeit in a very indeterminate and uncertain
20	There are a couple of references in annual reports	20	way referred to in the preceding years. I won't
22	to how governors approached their particular	22	bother to take you to each of them, but Kordofan was
23	territories. But I would suggest that's not enough to	23	described during the Turkiyya as:
23	create a real provincial boundary of the sort that the	23	" towards the south. No definite confines can be
25	Government has relied on.	25	described, as the extent of these dominions increases or
23	Government has rened on.	23	described, as the extent of these dominions increases of
	Page 233		Page 235
17:54 1	You can tell that in part from the cartographic	17:57 1	decreases."
17:54 1 2	evidence. I'm challenged on it, no doubt, but I'm	17:57 1 2	The same kinds of references were made in the 1877
2 3	evidence. I'm challenged on it, no doubt, but I'm comforted because Mr MacDonald agreed with me. The only	2 3	The same kinds of references were made in the 1877 general report; and, if we go on to the next slide, in
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2 3 4 5	evidence. I'm challenged on it, no doubt, but I'm comforted because Mr MacDonald agreed with me. The only Sudan Government cartographic evidence in the record of any provincial boundaries is after 1905. If you look in	2 3 4 5	The same kinds of references were made in the 1877 general report; and, if we go on to the next slide, in similar discussions in 1884; and in Gleichen's handbook, where it's said that the mudiria was vaguely described,
2 3 4 5 6	evidence. I'm challenged on it, no doubt, but I'm comforted because Mr MacDonald agreed with me. The only Sudan Government cartographic evidence in the record of any provincial boundaries is after 1905. If you look in the transcript Day 3, page 166, Mr MacDonald	2 3 4 5 6	The same kinds of references were made in the 1877 general report; and, if we go on to the next slide, in similar discussions in 1884; and in Gleichen's handbook, where it's said that the mudiria was vaguely described, but may be described as enclosing the entire district
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17:58 1	We've seen numerous references from Professor Daly	18:01 1	that was identified by 1905, and that's contradicted by
2	and Mr Schofield to the different meanings. I went	2	essentially all the evidence in the record. The experts
3	through some of the different meanings from Wilkinson	3	correctly concluded that the confusion lasted until at
4	and Percival and Lloyd and others.	4	least 1907. If I can quote:
5	The Government has suggested that this was	5	"1905 and [1906] surveys correctly identified the
6	an isolated error by Wilkinson; that was its first	6	Kiir as the Bahr el Arab and the Ragaba ez Zarga/Ngol
7	characterisation. It's since become somewhat less	7	for what it actually was (and labelled it the
8	isolated: it's in Wilkinson and Percival, and now Mahon	8	Bahr el Homr). It was not until 1908, however, that the
9	and Lloyd and O'Connell and others. But it wasn't	9	local administrators in Kordofan consistent described
10	an error that had been rectified, as the Government puts	10	the Ragaba ez Zarga as Bahr el Homr in their official
11	it, by 1905. On the contrary, nobody knew what the	11	reports."
12	situation was, nobody knew what the Bahr el Arab was in	12	The historical record, if we go through it
13	1905 in the Condominium Administration.	13	briefly Mr Schofield did this and I hesitate to
14	Preliminarily and moving on to the next slide	14	repeat it too much, but Mr Schofield did it. If we go
15	it was the ABC experts who identified this confusion.	15	through the historical record, we will see that was
16	We've heard a lot of criticism of their work, but the	16	precisely confirmed. It wasn't just Wilkinson and it
17	experts said:	17	wasn't just Percival who made the mistake; everybody was
18	"Wilkinson was not alone in erroneously demarcating	18	confused.
19	geographic features in the Sudan other reports make	19	You can see how Percival referred to the Ngol in
20	it clear that administrative officials mistook the	20	May 1905, two months after the transfer of the
21	Ragaba ez Zarga/Ngol for the Bahr el Arab and thought	21	Ngok Dinka people. He said that the wildlife was thick:
22	the Kiir was a different river."	22	" between the Lol, Kiir and Bahr el Arab."
23	This is the report that has been castigated in such	23	He thought still in May 1905 that they were two
24	harsh terms, but this was something that the experts	24	separate rivers.
25	themselves identified in their archival research. They	25	That's the same reference that Percival had used
	·		
	Page 237		Page 239
18:00 1	identified not just a single error by Wilkinson, as the	10.02 1	
10.00		18:03	earlier in his reports in 1905, when he referred to the
2		18:03 1	earlier in his reports in 1905, when he referred to the
2	Government would have had us believe, but a widespread	2	Ngol as what he took to be the Bahr el Arab. The
3	Government would have had us believe, but a widespread error and a widespread confusion.	2 3	Ngol as what he took to be the Bahr el Arab. The Government essentially concedes that not just Wilkinson
3 4	Government would have had us believe, but a widespread error and a widespread confusion. The experts were right in reaching this conclusion.	2 3 4	Ngol as what he took to be the Bahr el Arab. The Government essentially concedes that not just Wilkinson but Percival made that same mistake.
3	Government would have had us believe, but a widespread error and a widespread confusion. The experts were right in reaching this conclusion. As you've seen from our reply memorial, it was	2 3 4 5	Ngol as what he took to be the Bahr el Arab. The Government essentially concedes that not just Wilkinson but Percival made that same mistake. Then the Governor of Kordofan, O'Connell, in the
3 4 5 6	Government would have had us believe, but a widespread error and a widespread confusion. The experts were right in reaching this conclusion. As you've seen from our reply memorial, it was a confusion that was shared by Percival, Mahon,	2 3 4 5 6	Ngol as what he took to be the Bahr el Arab. The Government essentially concedes that not just Wilkinson but Percival made that same mistake. Then the Governor of Kordofan, O'Connell, in the 1906 annual report for Kordofan located Hasoba, which
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18:04 1	waterways, known locally as the Arab [the Bahr el Arab],	18:08 1	I'd like to finally turn to two points about the
2	the Lol, the Kiir"; treating the Kiir and the	2	witness testimony.
3	Bahr el Arab as separate rivers.	3	I made reference this morning to Whittingham's
4	Again, if you look at the map that accompanied the	4	sketch map which we put in. I was searching desperately
5	Gleichen text we can see this is the map that Wingate	5	for the Ngok Dinka dugdug and couldn't find it on my
6	would have had in front of him, this was the map that	6	slide. I've now found it. Here you can see on the map,
7	was created in 1904, this was the map that Mr MacDonald	7	just to the south of the Ngol, a reference to
8	was questioned about when you look at the map and how	8	a Ngok Dinka dugdug. You can just see it in the second
9	it labels the rivers, you will see how the Ngol is	9	white box there.
10	referred to as the Bahr el Arab, the Ngol, the	10	There's no question but that this was the Ngol
11	Ragaba ez Zarga.	11	river. Obviously this is one dugdug; one dugdug does
12	It's hard to read on this I guess we don't have	12	not a kingdom make. On the other hand, given the
13	a blowup but the Ngol Ragaba ez Zarga continues on	13	extraordinarily sparse and fragmentary nature of the
14	the 1904 map, which wasn't replaced until well past	14	record, this provides yet another piece of the puzzle,
15	1907, as the Bahr el Arab.	15	another piece of the evidence that contradicts
16	Actually here we have the blowup and it's a little easier for all of us to see. You can see there how the	16 17	Professor Crawford's repeated assertion that there's not any documentary evidence that shows Ngok Dinka on the
17			•
18	Bahr el Arab is clearly referred to as the Ngol. So the only official map that the Government had at	18 19	Ngol or north of the Ngol. Here you have a Ngok Dinka dugdug exactly on the Ngol.
19 20	its disposal at the time when the 1905 transfer occurred	20	I would remind you that this is the map that the
20	left undecided and indeterminate, because of the	20	Government didn't produce. They produced other parts of
22	confusion that Wingate referred to, what the	22	this map; this is the piece they didn't produce. This
23	Bahr el Arab really meant. We've also seen the	23	is the piece that we had to go to the Survey Department
24	statements by Boulnois and O'Connell and Wingate.	24	and copy on the world's worst copying machine and try
25	I'd like to move quickly on to what all this	25	and put in front of you. I apologise for the quality,
23	To like to move quickly on to what an ans	23	
	Page 241		Page 243
18:06 1	geographical confusion meant, and then to end.	18:09 1	but it's the best that they would give us.
2	This geographic confusion on this relatively small	2	Finally turning, as I promised, just briefly to the
3	part of the case, I would suggest, meant that the	3	witness evidence. We heard a question to Dr Poole this
4	references by the Government to the provincial boundary	4	morning, Professor Crawford put to Dr Poole the
5	didn't have any force, they didn't have any impact.	5	following question:
6	Even if there had been a provincial boundary that had	6	"Question: ' the community mapping project,
7	been established, which there wasn't, the references to	7	shows permanent Ngok Dinka villages were located
8	the Bahr el Arab were confused; they didn't have any	8	throughout the Bahr region extending north to
9	determinate or definite meaning in 1905.	9	latitude 10°35' north, both in 1905 and for decades
10	The Government's effort, therefore, to found its	10	thereafter.'
11	case on the notion that something was taken from beneath	11	"There are two different issues here. One is the
12	the boundary and put above the boundary, and that that	12	Bahr region. But I'm am interested in the aspect of
13		13	that statement that says 'extending north to
14		14	latitude 10°35". Do you accept the accuracy of the
15	Article 1.1.2 looks to the error of the nine Ngok Dinka	15	statement that you showed that the Ngok Dinka villages
16		16 17	extended to 10°35' north in 1905?"
17	to approach this from the perspective of the	17	Then we heard in his submissions just a few moments
18	Government which we do not and if we pay attention to	18	ago how Professor Crawford said: and look,
19 20	the language of Article 1.1.2 would not do then the Government's case nonetheless falls apart because there	19	Professor Poole admitted on cross-examination that the
20 21	wasn't a boundary in 1905 that had the significance that	20 21	community mapping report didn't get you up to 10°35'. The truth of the matter was: Dr Poole was dead
21 22	the Government attaches to it; there was simply	21 22	straight honest. He got asked that question,
22 23	confusion. No boundary had been established, nothing	22 23	Professor Crawford read it out to him from our
24		23	rejoinder, he answered honestly and transparently.
25	Bahr el Arab, and that didn't, as we saw, mean anything.	25	You heard, he said: no, my report didn't go up to
23	Zam er rhae, and that them t, as we saw, mean anything.	23	Tou neard, he said. no, my report didn't go up to
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18:11 1	10°35'; I examined a study area that didn't go that far;	18:14 1	accomplished in legal terms. Different possibilities
2	I couldn't go that far. That's an honest answer,	2	are imaginable, starting from the displacement of
3	an honest answer to a question that was a little	3	persons to the extension of personal jurisdiction or
4	different, to be honest.	4	territorial jurisdiction, or both, to these people.
5	Let's put up what our rejoinder said at paragraph 5,	5	So in your view which meaning is conveyed by this
6	and let's blow it up. Here's what Professor Crawford	6	term applied in our case, by this term of "transfer"?
7	didn't read to you. He read to you just the last bit.	7	Thank you very much.
8	In fact, here's what we said, and it sort of sums up our	8	MR BORN: Thank you very much, Professor Hafner. I'm
9	•	9	trying to look at the transcript as we speak to make
	Case:		sure that I had the question properly understood.
10	"In sum, as a fair reading ['a fair reading'] of (a)	10	
11	the pre-1905 and post-1905 documentary records, (b) the	11	I think, though, that the answer is best understood in the context of the Condominium administration. What
12	cartographic evidence, (c) the environmental and	12	
13	cultural evidence (including the MENAS expert report),	13	was transferred was the administration of the people.
14	(d) the testimony of Professor Cunnison"	14	That's what you see when you look at the purposes of the
15	Who the Government could have put on a video link,	15	transfer: it was how the Condominium authorities would
16	and who was well enough to give two witness statements,	16	supervise, would oversee the respective people, the Homr
17	and who at 86 I think could have come here, or at least	17	and the Ngok Dinka. What was transferred was the Ngok
18	been on a video link:	18	from the administration of one place, one governor, to
19	" and Mr Tibbs, (e) the Ngok Dinka witness	19	the administration of another governor. Therefore the
20	testimony [all 26 statements, and all 48 statements to	20	transfer referred to the oversight and administration of
21	the experts], and finally (f)"	21	the Ngok Dinka tribe. Thank you.
22	And this is where Professor Crawford started reading	22	THE CHAIRMAN: Thank you very much. No other questions.
23	to Mr Poole:	23	So this closes the reply phase on the delimitation
24	" the Community Mapping Project, shows permanent	24	issue. Tomorrow, Thursday, will be our very last day.
25	Ngok Dinka villages were located throughout the Bahr	25	We start again at 9 o'clock, and we finish the hearings
	D 045		D 047
	Page 245		Page 247
I 18·12 1	region extending north to the goz and latitude	18.15 1	at 12 o'clock, which means that each side, including the
18:12 1	region extending north to the goz and latitude	18:15 1	at 12 o'clock, which means that each side, including the
2	10°35' north, both in 1905 and for decades thereafter.'"	2	10 minutes left to the Tribunal for asking questions,
2 3	10°35' north, both in 1905 and for decades thereafter.'" I would suggest that you have to read that	2 3	10 minutes left to the Tribunal for asking questions, will have 75 minutes. I thank you very much.
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