The presence of party representatives from all of Sudan, many of whom have a direct stake in the outcome of these proceedings, has been particularly significant to us, and truly fulfils the very purpose for which this Peace Palace was built.¹

The Abyei arbitral tribunal (the Tribunal) was established by the 2008 Arbitration Agreement² between the Government of Sudan and the Sudan People’s Liberation Movement/Army (SPLM/A), where the parties submitted to the Permanent Court of Arbitration (PCA) their difference concerning the excess of mandate of a panel of experts. This panel was composed by the Experts of the Abyei Boundary Commission (‘ABC Experts’) created by the 2005 Comprehensive Peace Agreement on Sudan in order to define and demarcate an area in the Abyei region in Central Sudan known as “the area of the nine Ngok Dinka chiefdoms transferred to Kordofan in 1905” (“Abyei Area”).

The Tribunal was specifically asked to determine whether the ABC Experts had, in their final report, exceeded their mandate and, if so, to delimit the Abyei area. The findings had to be based on the PCA Optional Rules for Arbitrating Disputes between Two Parties of Which Only One is a State, subject to the modifications the parties had agreed in writing. The Tribunal was composed of five leading international lawyers, with Professor Pierre-Marie Dupuy as presiding arbitrator.³

The determination the Tribunal had to make was politically sensitive as the Abyei Area is rich in resources and also crucial to establish the eligibility of the

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³ The other arbitrators were H.E. judge Awn Al-Khasawneh, prof. Gerhard Hafner, prof. Micheal Reisman and judge Stephen Schwebel.
residents of the Area to vote in the referendum on whether the Area should retain its special status in the north or become part of the south. The decision would in turn have consequences on the boundary of what was likely to become, through the planned 2011 referendum, the new state of South Sudan. The perspective that the boundaries of the Abyei Area became the border between two states is in fact the basis of the dispute.

The creation of the Abyei Tribunal was positively received in the hope that the Award would help bringing the long lasting conflict between north and south Sudan to an end, since “the question of defining the Abyei Area boundaries was a major stumbling block in the peace process”. In addition, the arbitration was seen as a “judicial experiment” in that for the first time the Government of a state and an armed movement had agreed to refer their major source of conflict to an international arbitral tribunal.

Both the Government of Sudan and the SPLM/A not only participated in full in the PCA proceedings but also displayed “spirit of reconciliation and cooperation” throughout the whole process. The Award, that was remarkably rendered only 90 days after the close of the oral pleadings, is a complex and highly substantiated decision reached by a majority of four arbitrators. The Tribunal found that the ABC Experts had exceeded their mandate with respect to the delimitation of the northern, western, and eastern boundaries of the Abyei Area for failing to suf-

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4 According to the Protocol between the Government of Sudan and the Sudan People's Liberation Movement/Army on the Resolution of Abyei Conflict, 26 May 2004, which forms part of the 2005 Comprehensive Peace Agreement, the ABC Experts were mandated to present a final report to the Presidency of the Republic of Sudan where the boundaries of the so-called Abyei area were defined and demarcated and it was up to the Presidency to “take necessary action to put the special administrative status of Abyei Area into immediate effect” upon reception of the report.


7 This was not the case for the Brčko Arbitration, where the Republika Srpska was reluctant to participate in the proceedings, see C. Schreuer, “The Brčko Award of 14 February 1997”, Leiden Journal of International Law, 11(1), 1998, 72–73.

8 See the Abyei Award: PCA, Abyei Arbitration, Final Award, para. 769.

9 Judge Al-Kasawneh voiced its dissent with respect to the standard of review, the partial annulment of the ABC report and the way the boundaries of the Abyei Area were delimited (see footnote 6 above). Remarkably, all arbitrators signed the Award. This is not always the case in highly contentious political disputes; for example, the Brčko Award of 14 February 1997 (see footnote 48 below) was signed by the presiding arbitrator only as the party- appointed arbitrators refused to do so. On this issue see Schreuer, “The Brčko Award”, 73–74.