

<p>Institution: King's College London</p>
<p>Unit of Assessment: UoA 17</p>
<p>Title of case study:</p> <p>The Permanent Court of Arbitration's (PCA's) 2009 Abyei award (Government of Sudan [GoS] vs. Sudan People's Liberation Movement/Army [SPLM/A]) in the context of the emergence of Southern Sudan as an independent state</p>
<p>1. Summary of the impact</p> <p>Research undertaken by the Geography Department impacted instrumentally on the Permanent Court of Arbitration's (PCA's) settlement of a unique and challenging territorial dispute in North-East Africa. Schofield's research and testimony assisted the Hague-based court in arriving at a judicial ruling on the territorial definition of a province (Abyei) long associated with conflict, establishing northern borders for the new state of Southern Sudan. Specifically, the PCA's Final Award of 22 July 2009 explicitly relied on Schofield's research-based evidence and testimony in court to interpret the boundary evolution process in its proper regional and historical context.</p>
<p>2. Underpinning research</p> <p>The unit's research comprises: A) Schofield's broader research on imperial boundary-drawing; B) a research study commissioned specifically to aid the arbitration process, undertaken by Schofield and Allan.</p> <p><i>Imperial boundary-drawing</i></p> <p>The main strength of Schofield's research is in critiquing Britain's imperial boundary-drawing and in constructing original borderland histories in a variety of Middle Eastern contexts, including relatively recent ones of decolonisation (references g and h). This was acknowledged during 2008 by leading boundary scholar, Victor Prescott: "Special mention should be made of Richard Schofield who has illuminated the boundary history of the Middle East" (reference f). Recent research into the boundary evolution process has yielded significant findings.</p> <ul style="list-style-type: none"> • Delimitation is a much more difficult stage to define in a boundary's evolution than allocation (that precedes it) or demarcation (that follows) (references a, b, c and d). • Delimitation has frequently been a distinct two stage affair with a broad territorial deal agreed centrally and then a more detailed definition agreed on the ground – with this second stage sometimes blurring with demarcation itself. Indeed, states and institutions continue to conflate the two terms, sometimes deliberately (reference a). • Even in well-resourced colonial boundary settlements, regional complexity and fluidity were rarely appreciated or addressed. The colonial record is always liable to be limited and misrepresentative. Continuing research into late nineteenth-century borderlands suggests that the imperial powers were rarely capable of identifying an appropriate organisational basis for estimating territorial control, yet these approximations were invariably frozen in time to constitute delimitations (reference b). <p><i>Abyei and the central Sudan:</i></p> <p>Building upon his research on imperial boundary delimitation (see above), Schofield then undertook a specific, regionally-focused research study, commissioned in the form of an expert report that was penned jointly by Schofield and Allan (reference c) and submitted to the PCA with the Sudan People's Liberation Movement/Army's Counter Memorial on 14 February 2009 (source i).</p>

Impact case study (REF3b)

The research effort lay in locating and assessing the historical documentary record (as located at the National Archives and elsewhere) relevant to ascertaining whether a provincial boundary delimitation could be said to have existed in central Sudan just seven years into the Anglo-Egyptian Condominium Government. It required detailed analysis of various primary materials - from letters, telegrams, intelligence, finance and annual administration reports to sketched and printed maps. Contemporaneous published material, mainly geographies, histories and travelogues in both book and article form were also scrutinised in an attempt to estimate Britain's prevailing geographical knowledge of the Abyei region at the turn of the twentieth century. The written observations of commentators on central Sudan were matched to prevailing mapping of the localities they described and characterised. In the second part of the research study, the unit utilised a varied assembly of cartographic and textual sources to characterise the prevailing hydrology of the Abyei region in the early 1900s.

The main conclusions of our research were as follows:

- The provincial boundary in question was uncertain, approximate, provisional and indeterminate;
- No delimitation could be held to exist and no executive act of delimitation had ever been contemplated, yet alone agreed;
- The geography of the border region (with its pronounced seasonality) was not understood

3. References to the research

Where a doi / url is not supplied, a hard copy is available if requested.

- a) Richard Schofield (2008) "Laying it down in stone: delimiting and demarcating Iraq's boundaries by mixed international commission", *Journal of Historical Geography*, 34: 397-421. doi:10.1016/j.jhg.2007.11.002 (article)
- b) Richard Schofield (2008) "Narrowing the frontier: mid-nineteenth century efforts to delimit and map the Perso-Ottoman boundary" in Roxane Farmanfarmanian [ed.] *War and Peace in Qajar Persia*, Routledge, p: 149-173. (book)
- c) Richard Schofield and J.A. Allan (Menas Borders Limited) (2009) "The Boundaries and Hydrology of the Abyei Region, Sudan", Expert Report signed on 11th February 2009 by Schofield and Allan
http://www.menasborders.com/App_Data/elib/MB%20Report%20Abyei%20Arbitration.pdf
- d) Richard Schofield (1993 [2nd edition]) *Kuwait and Iraq: historical claims and territorial disputes*, Royal Institute of International Affairs, 207pp (book)
- e) Richard Schofield (1996) "The last missing fence in the desert: the Saudi-Yemeni boundary" in *Geopolitics*, 1(3): 247-299. doi: 10.1080/13629379608407568 (article)
- f) JRV Prescott and G Triggs (2008), *International Frontiers and Boundaries: Law, Politics and Geography*, Martinus Nijhoff, Leiden, 2008, p: vii. (book)
- g) Richard Schofield (with Elizabeth Evans) [ed.] (2009/10) *Arabian Boundaries: New Documents, 1966-1975*, Cambridge University Press, in 18 volumes [16 text and 2 map volumes: books].
- h) Richard Schofield (2011) "The crystallisation of a complex territorial dispute: Britain and the Saudi-Abu Dhabi borderland, 1966-71", *Journal of Arabian Studies*, 1(1): 27-51. doi: 10.1080/21534764.2011.576047 (article)

4. Details of the Impact

The unit's research and its presentation in court clearly informed the Permanent Court of Arbitration's pronouncement on the boundary evolution process, the latest in international law to define (and distinguish between) allocation, delimitation and demarcation. Schofield's evidence wholly informed the definition of delimitation provided by the PCA in its Final Award of 22nd July 2009:

"As explained by Professor Schofield, there are three stages in a boundary's evolution:

allocation, delimitation and demarcation. Allocation deals with allocating territory and not the actual boundary, while demarcation simply physically marks out the boundary on the ground. Delimitation, quite differently, is when the line is established and specified. It requires “an executive act” of determining where the actual boundary line should be, and calls for a detailed description of the location of a boundary line” (source ii).

Arriving at a defensible territorial definition for Abyei was crucial to Southern Sudan’s peaceful emergence as an independent state. In both the unit’s joint expert report of February 2009 (reference c) and in his testimony before the PCA during April 2009 (sources iii and iv), Schofield provided the principal expert defence against arguments made by the Government of Sudan that the Bahr al Arab river should today constitute a northern boundary for Abyei province on the basis that this constituted an inter-provincial colonial delimitation in 1905. Had these claims succeeded, Abyei might well have been left with a massively diminished territorial extent and prospects for the emergence of a sovereign south hugely complicated. Ultimately they were blunted by arguments, defended by Schofield in court (sources iii and iv), that highlighted the geographical uncertainty that prevailed in the early twentieth century and the confused colonial knowledge of the time (source v).

Detail and context:

Schofield’s has advised governments (including Barbados, Bahrain, Jordan and Yemen), emerging states (Palestine), law firms and international oil companies on territorial questions. His publications have been base references for the settlement of significant and complex territorial disputes – notably the UN Secretary-General’s 1991-1993 treatment of Iraq-Kuwait (reference d) and others such as Saudi Arabia-Yemen (summarised in reference e).

This expert track record, reinforced during 2009 with Cambridge University Press’s publication of Schofield’s major documentary anthology on Middle Eastern boundaries during decolonisation (reference g), led leading law firm, Wilmer Cutler Pickering Hale and Dorr LLP to approach the unit to undertake specific historical and geographical research on behalf of the SPLM/A in autumn 2008. Its resultant study on boundaries and hydrology was undertaken via the specialised research consultancy, Menas Borders Limited (reference c). Schofield’s characterisation of the vagaries of British policy towards boundary questions at the turn of the twentieth century came under scrutiny during the PCA hearings, convened at the Peace Palace in The Hague during April 2009. Here he presented and defended his arguments under cross-examination as the expert witness on imperial boundary-drawing for the SPLM/A (sources iii and iv).

More than just a territorial case, the Abyei arbitration had been unusual in a number of ways. The PCA’s decision of July 2009 on the territorial extent of Abyei has foreshadowed the future international boundary between Sudan and Southern Sudan. The case effectively revolved around defining the territorial extent of a people (the Ngok Dinka) as they existed back in 1905, only 7 years after the Anglo-Egyptian Condominium Government was formed. The GoS tried to argue that a provincial boundary existed along the Bahr al-Arab river at this time that should define the Abyei region today. Relying upon Schofield as its expert witness on delimitation questions (sources iii and iv), the SPLM/A countered that there was far too much uncertainty to make such an assertion. The available historical record showed that Britain had been confused as to the identity of the various water courses, that it was unfamiliar with the pertaining physical environment (highlighted in court by fellow SPLM/A expert witness, Allan [source iv]) and that the evidence for Sudanese arguments remained flimsy and contradictory. Certainly, no executive act of delimitation had been enacted by 1905. Ultimately, in an effective vindication of Schofield’s arguments concerning uncertainty (source v), virtually all the riverain systems of central southern Sudan (including those to the north of the Bahr al-Arab) were recognized as belonging within the Abyei region defined by the PCA’s Abyei judgement of 22nd July 2009. The live broadcast of the hearings stage via streaming on the PCA website (for the first time in its history) was watched by a sizeable audience in Sudan, both in the north and south.

The Permanent Court of Arbitration’s arrival at a more sustainable and equitable territorial formula

for Abyei province, one that would be welcomed instantly by both sides in the summer of 2009, clearly derived from its regionally-sensitised treatment of delimitation and its critical assessment of the historical and colonial record. Not only did the Abyei award materially advance the prospects for regional peace and security by establishing the territorial framework for Southern Sudan's emergence as an independent state, but its considered treatment of historical delimitation questions may point the way forward for the settlement of future, analogous postcolonial disputes.

5. Sources to corroborate the impact

Sources i-iv available at: www.pca-cpa.org

- 5i In the Matter of an Ad Hoc Arbitration pursuant to the Arbitration Agreement in The Hague, The Netherlands between the Government of Sudan versus the Sudan People's Liberation Movement/Army, PCA No. GOS-SPLM 53991: *The Sudan People's Liberation Movement/Army Rejoinder*, 28th February 2009.
- 5ii In the Matter of..., PCA No. GOS-SPLM 53991: Final Award, 22nd July 2009, note 885, paras 477-478, p: 169.
- 5iii In the Matter of...SPLM/A Oral Pleadings, April 22 2009. Transcr. 121/03-122/02. www.kcl.ac.uk/innovation/REF/UoA17/Schofield-Evidence.pdf
- 5iv Richard Schofield's appearance as a witness on the morning of Wednesday 22nd April 2009: for webcast of oral pleadings: http://www.pca-cpa.org/showpage.asp?pag_id=1318; for Schofield's appearance in Part II of the morning session, see the last quarter of the stream on the following page: http://www.wx4all.net/pca/22-04-2009_6.2.html
- 5v Letter from a Partner at Dechert LLP, 8 November 2013, which confirms Schofield's written evidence and oral testimony via expert report to the tribunal.