A Condominium Approach to Abyei

Jack McNeily

Follow this and additional works at: https://chicagounbound.uchicago.edu/cjil

Recommended Citation
Available at: https://chicagounbound.uchicago.edu/cjil/vol13/iss1/10

This Article is brought to you for free and open access by Chicago Unbound. It has been accepted for inclusion in Chicago Journal of International Law by an authorized editor of Chicago Unbound. For more information, please contact unbound@law.uchicago.edu.
A Condominium Approach to Abyei
Jack McNeily*

Abstract

Despite the recent independence of the Republic of South Sudan (South Sudan) from the Republic of Sudan (North Sudan), ongoing hostilities between the two states threaten prospects for lasting peace. In particular, sovereignty disputes in Abyei, a resource-rich and culturally important region falling on the North Sudanese–South Sudanese border, pose significant risks to the security of Abyei residents and diminish the viability of long-term bilateral cooperation.

Although conflict in Abyei has existed alongside broader intra-Sudanese tensions for several decades, the independence of South Sudan presents the possibility for a novel solution: a “condominium” arrangement between the two states in Abyei. Whereas past solutions have failed to provide a tolerable compromise between North Sudan and South Sudan as it existed pre-independence, a condominium approach leverages this recent change in state structure and builds upon existing agreements over Abyei to provide a pragmatic, bilateral solution.

This Comment, then, addresses the viability and benefits of the condominium approach. Beginning with a history of relevant background to the Abyei conflict and proceeding to outline and apply the framework of condominium agreements over border disputes in international law, this Comment reconsiders the Abyei problem in context of a solution not previously considered.

This Comment builds upon the recent work of Joel Samuels, who argues for more robust consideration of condominium solutions in contemporary international disputes and seeks to incorporate lessons from historical condominium agreements and broader principles of common ownership rights. Although there is significant literature on early agreements and adjudications regarding the Abyei conflict as it existed prior to South Sudan’s independence, this Comment seeks to take the next step and explore a condominium approach that incorporates many of the provisions of such agreements and adjudications.

* AB 2010, Dartmouth College; JD Candidate 2013, The University of Chicago Law School.
Table of Contents

I. Introduction....................................................................................................................266
II. History of Dispute in Abyei ..........................................................................................268
   A. General Background ..................................................................................................268
   B. The Comprehensive Peace Agreement (CPA) .........................................................270
   C. Recent Violence, the Temporary Agreement, and the 2011 Referendum ...........274
III. The Condominium Solution .......................................................................................275
   A. Weaknesses of Other Proposed Solutions ..............................................................275
   B. Introduction to Condominium Arrangements .........................................................278
   C. Tenets for a Strong Condominium .........................................................................279
   D. The Benefits of a Condominium Approach to Abyei ..............................................281
IV. Applying the Condominium Approach to Abyei ..........................................................282
   A. Border Demarcation .................................................................................................283
   B. Citizenship Rights .....................................................................................................284
   C. Executive Authority ..................................................................................................285
   D. Legislative Authority ...............................................................................................286
   E. Capital Resources ......................................................................................................287
   F. Oversight and Security ..............................................................................................289
V. Conclusion ....................................................................................................................289

I. INTRODUCTION

On July 9, 2011, the Republic of South Sudan (South Sudan) became an
independent country, separating from the Republic of Sudan (North Sudan) by
virtue of a popular referendum held six months earlier. The independence
referendum was the key provision of the 2005 Comprehensive Peace Agreement
(CPA), an international arbitration undertaken to resolve a range of disputes
between northern and southern Sudan that plagued the state with civil war since
its own independence from Egypt and the UK in 1956.

Hostilities between northern and southern Sudan stemmed from regional
differences within the nation exacerbated by Sudan’s governance under a
condominium arrangement between the UK and Egypt. The Anglo-Egyptian
condominium governed Sudan as two separate administrations, one northern
and one southern, thus cementing regional identification and intra-national

---

1 South Sudan’s Flag Raised At Independence Ceremony (BBC Jul 9, 2011), online at
2 The Comprehensive Peace Agreement between the Government of the Republic of the Sudan
and the Sudan People’s Liberation Movement/Sudan People’s Liberation Army Ch I, Part B,
hostilities. Civil war followed Sudan’s independence as concerns over the just
distribution of resources compounded preexisting fears of regional domination.3

Intrastate violence centered on a few key regions, often where natural
resources were plentiful and the self-identification of local residents was divided;
the most prominent of these focal regions was Abyei. Unsurprisingly, disputes
over Abyei quickly came to represent the broader intrastate struggle. Two
principal groups of Sudanese claim historic ties to Abyei: the Ngok Dinka
people, who identify principally with the southern Sudanese, and the nomadic
Misseriya, who identify with the northern Sudanese.4 Abyei is strategically
significant to both sides because the region falls in the geographic center of the
state and contains numerous rich oil deposits.

Despite a provision in the CPA that provided for a popular referendum to
determine the governance of Abyei to be held along with the independence
referendum that created South Sudan, no referendum has been held and a lasting
solution to Abyei has eluded the Sudanese.5 The failure to have the referendum
as provided by the CPA and the subsequent failure of other proposed solutions
have provoked further violence in Abyei6 and subjected the entire peace
agreement to uncertainty and instability.7 The dispute and its proposed solutions
have generally revived the impasse that defined the pre-independence conflict;
however, South Sudan’s independence provides a novel solution heretofore not
considered by either party or international adjudicators.

The recent independence of South Sudan presents a new alternative
solution to the border dispute in Abyei: a condominium arrangement between
Sudan and South Sudan. Condominium arrangements exist “when two or more
states exercise joint sovereignty over a territory.”8 Condominia have been used
to resolve border disputes as early as the thirteenth century BC9 and have been
adapted to several unique geopolitical models.10 Although condominia fell into
disfavor following shifts in international legal and political thought after the

4 See generally Dorina Bekoe, Kelly Campbell, and Nicholas Howenstein, Resolving the Boundary
5 See, for example, Tim Flatman, Abyei: Predicting the Future (Sudan Tribune May 9, 2011), online at
6 Sudan: Further Violence in Abyei Border Region (BBC May 20, 2011), online at
7 Id.
8 Joel H. Samuels, Condominium Arrangements in International Practice: Reviving an Abandoned Concept of
9 See George Liska, Imperial America: The International Politics of Primacy 13–14 (Johns Hopkins 1967).
conclusion of the Second World War, recent proposed condominia\textsuperscript{11} as well as support from the academy\textsuperscript{12} suggest a resurgence in the consideration of condominia as a viable solution to modern border disputes. This solution was previously impracticable for the Abyei dispute, given the disparity in power between the two parties involved. However, the successful independence referendum of 2011 enables new consideration of the condominium solution. This Comment will proceed by explaining the history of the dispute in Abyei, exploring the weaknesses of proposed solutions presently under consideration by the parties, and finally outlining the benefits and application of a condominium solution between North Sudan and South Sudan.

II. HISTORY OF DISPUTE IN ABYEI

A. General Background

Abyei is an area of land of over four thousand square miles lying on the present-day border of the Republic of Sudan and the Republic of South Sudan. The exact borders of Abyei are currently disputed by parties claiming rights to the region, though the 2004 Protocol between the Government of Sudan and the Sudan People's Liberation Army on the Resolution of Abyei Conflict defined the territory as "the area of the nine Ngok Dinka chiefdoms transferred to Kordofan in 1905."\textsuperscript{13}

Despite the imprecise geography of Abyei, it nonetheless remains a prominent symbol of cultural divide among the Sudanese. Indeed, as the CPA notes, "Abyei is a bridge between the north and the south, linking the people of Sudan."\textsuperscript{14} Unsurprisingly, the geographic and cultural importance of Abyei is accompanied by multiple claims of legal right to the region. The conflict over competing claims to Abyei by the Ngok Dinka and Misseriya people poses the greatest threat to peace and stability. Early disputes in the region emerged as each group sought greater protections of their land rights in Abyei. The Ngok Dinka, an agro-pastoralist people closely related to the Dinka tribe which populated southern Sudan, claimed rights as residents of Abyei, while the Misseriya, a nomadic tribe residing just north of Abyei but who passed through Abyei each year in order to graze animals, claimed equal rights as residents.\textsuperscript{15} Initially, under the Anglo-Egyptian condominium in Sudan, the Ngok Dinka

\textsuperscript{11} See, for example, Peter C. Farrand, Comment, Lessons from Briko: Necessary Components for Future Internationally Supervised Territories, 15 Emory Intl L Rev 529, 533 (2001); David Scrivener, The Border Dispute in the Barents Sea, 4 Jane's Intelligence Rev 252, 253 (1992).

\textsuperscript{12} See, for example, Samuels, 29 Mich J Intl L at 728–32 (cited in note 8).

\textsuperscript{13} CPA at Ch IV, § 1.1.2 (cited in note 2).

\textsuperscript{14} CPA at Ch IV, § 1.1.1 (cited in note 2).

\textsuperscript{15} See generally Bekoe, Campbell, and Howenstein, Resolving the Boundary Dispute in Sudan's Abyei Region (cited in note 4).
were principally located in Bahr el Ghazal, a district immediately south of Abyei, while the Misseriya were principally located in Kordofan, a district immediately north of Abyei. In 1905, however, administrative concerns prompted Britain to redistrict the nine Ngok Dinka chiefdoms into Kordofan in order to establish common administration over the two groups.

Following the 1946 consolidation of the Sudanese condominium into a single administrative state and the 1953 independence of Sudan from the condominium, violence erupted between northern and southern Sudan, crippling intrastate cooperation and exacerbating conflict in Abyei. The violence resulting from both the First (1955-72) and Second (1983-2005) Sudanese Civil Wars caused numerous deaths in and closely proximate to Abyei and further divided the Ngok Dinka and Misseriya as each allied with opposing sides. Shortly after the outbreak of the First Civil War, the Ngok Dinka allied with southern Anyana rebels, while the Misseriya favored the north and were supported by the Khartoum-based government of the Republic of Sudan. While conflict between the two groups in Abyei had heretofore existed as an extension of broader northern-southern conflict within Sudan, the War cemented the direct opposition of the two groups and set Abyei as a central battleground. The War succeeded in polarizing regional division to the point of extreme violence. For example, in 1965, seventy-two unarmed Ngok Dinka were burned alive by a Misseriya mob in South Kordofan just north of Abyei.

The struggle in Abyei continued during the Second Sudanese Civil War, deepening the division between the Ngok Dinka and Misseriya in the region. Regional alliances were maintained from the previous war, so there was little lag time between the outbreak of the War and regional battles between warring factions. In fact, the Ngok Dinka were among several early groups to join the rebellion and many consequently rose to prominent leadership positions within the South’s governing body: the Sudan People’s Liberation Army (SPLA). Meanwhile, the Misseriya joined the government-backed northern armies, often

---

16 The Government of Sudan v The Sudan People’s Liberation Movement/Army, Final Award of July 22, 2009, 35-37 (Perm Ct Arb 2009) (Sudan v SPLM/A).
17 South Sudan President to Assert Abyei Belongs to Dinka Ngok (Sudan Tribune Jul 24, 2011), online at http://www.sudantribune.com/South-Sudan-President-asserts,39616 (visited Apr 17, 2012).
19 Sudan v SPLM/A at 37.
20 Sudan: Breaking the Abyei Deadlock at *2 (cited in note 18).
21 Id.
22 Id.
serving as *murabeen*—mounted raiders scouting and raiding southern villages.\(^23\)

By the conclusion of the Second Civil War in 2005, the landscape of Abyei had changed dramatically. In addition to the great number of deaths suffered on both sides, countless villages were displaced from the region. Despite this, the Abyei issue remained unsettled at the War’s conclusion and prospects for peaceful settlement remained distant.

**B. The Comprehensive Peace Agreement (CPA)**

In January of 2005 the government of the Republic of Sudan and the Sudan People’s Liberation Movement/Army (SPLM/A) signed a collection of agreements that comprised the CPA, thus ending the civil war and enabling negotiation on the remaining issues between northern and southern Sudan.\(^24\)

The CPA is a collection of protocols signed by northern and southern Sudan including agreements on: broad principles of government and governance,\(^25\) modalities of government administration,\(^26\) the division of state assets and liabilities,\(^27\) the power of state military force and the reintegration of northern and southern military units,\(^28\) and the interim administrative control of Abyei.\(^29\)

The collection of agreements represents several years of negotiations aiming to establish a coherent countrywide democratic governance and agreement over national distribution of natural resources. Moreover, the Machakos Protocol establishes a timeline for a South Sudanese independence referendum.\(^30\)

The initial agreement in the Machakos Protocol used the 1956 independence boundaries to demarcate North and South Sudan, leaving Abyei, the Nuba Mountains, and Blue Nile (collectively the “Three Areas”) within North Sudan’s boundaries,\(^31\) thereby preserving the dispute over legal rights to Abyei.

In the two years between the signing of the Machakos Protocol and the signing of the Protocol on the Resolution of the Conflict in the Abyei Area, the Government of Sudan and the SPLM/A negotiated the issue of whether to include Abyei in the independence referendum. The eventual agreement within the Protocol on the Resolution of the Conflict in the Abyei Area, arrived at with


\(^{24}\) See generally CPA (cited in note 2).

\(^{25}\) Id at Ch I (Machakos Protocol).

\(^{26}\) Id at Ch II.

\(^{27}\) Id at Ch III.

\(^{28}\) CPA at Ch VI (cited in note 2).

\(^{29}\) Id at Ch IV (Protocol on the Resolution of the Conflict in the Abyei Area).

\(^{30}\) Machakos Protocol, § 2.5 (cited in note 25).

the encouragement of third-party state actors, was a compromise providing for an additional referendum for residents of Abyei to choose whether or not to secede with the South should the South elect to do so in the Machakos referendum. The Abyei referendum states:

Simultaneously with the referendum for southern Sudan, the residents of Abyei will cast a separate ballot. The proposition voted on in the separate ballot will present the residents of Abyei with the following choices, irrespective of the results of the southern referendum:

(a) That Abyei retain its special administrative status in the north;
(b) That Abyei be part of Bahr el Ghazal.  

As the referendum implies, the Protocol on the Resolution of the Conflict in the Abyei Area provides for a special administrative status for Abyei in the interim period before the referendum. This special administrative status provides the structure of local government and divides oil revenues within Abyei, creating an interim system of local government partly dependent on support from the national government and international monitors. It provides that residents of Abyei will be citizens of both Western Kordofan and Bahr el Ghazal with representation in both legislatures, Abyei will be administered by a local council elected by Abyei residents, oil revenues will be divided six ways between the northern and southern governments, the two local districts, and the Ngok Dinka and Misseriya in particular, and the region will be given support by national development projects and international monitors. Like the referendum provision discussed above, the details of the special administrative status governing Abyei in the interim depend on an understanding of who qualifies as a resident of Abyei, an issue which itself depends on defining regional borders.

In the years following the signing of the CPA, disagreement over the boundaries of Abyei renewed hostilities and crippled both the special administrative status governing Abyei and the looming referendum. The Abyei Protocol provides for an Abyei Boundaries Commission to “define and demarcate the area of the nine Ngok Dinka Chiefdoms.” Anticipation of the upcoming referendum spurred early concerns regarding Abyei residency status. The issue was complicated by the nomadic nature of the Misseriya, and northern loyalists argued that exclusion of Misseriya voters in the referendum could
unjustifiably guarantee that Abyei would vote to join Bhar el Ghazal.\textsuperscript{39} The CPA provides little guidance on the issue; nowhere in the text of the protocols are the Misseriya defined as residents of Abyei. Instead, Chapter IV notes only: “The Misseriya and other nomadic peoples retain their traditional rights to graze cattle and move across the territory of Abyei.”\textsuperscript{40} Ambiguity over residency status renewed historic ambiguity over the boundary lines of Abyei itself. In response, the Abyei Boundaries Commission prepared a report defining Abyei’s boundaries in hopes that filling this remaining gap in the agreement would facilitate the eventual referendum.\textsuperscript{41}

The Boundaries Commission, composed of five members representing North Sudan, five members representing the SPLM/A, and five international experts,\textsuperscript{42} was charged with investigating historical materials and listening to presentations from each party and local residents in preparation for presenting a report to the Presidency before the end of the pre-interim period.\textsuperscript{43} In the Rules of Procedure of the Boundaries Commission the parties agreed that “[t]he Commission will endeavor to reach a decision by consensus. If, however, an agreed position by the two sides is not achieved, the experts will have the final say.”\textsuperscript{44} Moreover, the Abyei Appendix to the CPA notes that the report presented to the Presidency—if arrived at by the Rules of Procedure—“shall be final and binding on the parties.”\textsuperscript{45} The Boundaries Commission considered a range of historical maps and heard separate arguments regarding boundaries from the Government of Sudan, the Misseriya, and a joint argument from the SPLM/A and the Ngok Dinka.\textsuperscript{46} However, despite the information available and both parties’ ostensible agreement to be bound by the Commission’s report, the Presidency rejected it, citing a failure of the Commission to establish the boundaries as they existed in 1905.\textsuperscript{47} This rejection by the Commission radically increased hostilities in Abyei, causing both the Misseriya tribesmen and the


\textsuperscript{40} Protocol on the Resolution of the Conflict in the Abyei Area, § 1.1.3 (cited in note 29).

\textsuperscript{41} See, for example, Line Drawn: A Border Dispute in Southern Sudan is Resolved (The Economist July 23, 2009), online at http://www.economist.com/node/14070450 (visited Apr 1, 2012).


\textsuperscript{43} Id at Appendix 1.2, ¶¶ 3–5.

\textsuperscript{44} Id at Appendix 1.4, ¶ 14.

\textsuperscript{45} Id at Appendix 1.2, ¶ 5.


\textsuperscript{47} Id.
SPLM/A to deploy troops to the region, resulting in dozens of deaths and displacing tens of thousands of local residents.\(^{48}\)

Given the renewed violence in the region and the bleak record of past cooperation, both parties to the conflict agreed to refer the boundary dispute to the Permanent Court of Arbitration (PCA) at The Hague. Referring the dispute to international arbitration had the benefit of removing the hostility and ingrained bias, however, as with the Abyei Boundaries Commission, the possibility of rejection by the parties remained significant. Similar to the Commission, the PCA’s award was technically binding: “The Award, duly pronounced and notified to the agents of the parties, settles the dispute definitively and without appeal.”\(^{49}\) The 1907 Convention establishing the PCA also notes, “[submitting a dispute to PCA arbitration] implies an engagement to submit in good faith to the Award.”\(^{50}\) However, the Court has no actual enforcement power but merely relies on the moral authority of the signatory powers and collective acceptance of the international community.

On July 22, 2009, the PCA rendered its decision regarding the Abyei border dispute, ordering the redrawing of Abyei’s northern, eastern, and western borders.\(^{51}\) The PCA award shrunk the area of Abyei considerably relative to that defined by the Boundaries Commission, though the PCA defined area remained larger than the boundaries argued for by the Government of Sudan.\(^{52}\) Although both the Government of Sudan and the SPLM/A announced that they would accept the PCA’s ruling, developments following the award have demonstrated the opposite. Indeed, days after the decision the deputy head of the SPLM/A bloc in the Sudanese Parliament qualified the award, stating that the PCA’s ruling did not decide if Abyei regional oilfields are part of North or South Sudan.\(^{53}\) Moreover, recent proposed solutions to the Abyei conflict suggest the boundaries as awarded are, at the very least, negotiable.\(^{54}\)

---


\(^{50}\) Id at Ch I, Art 37.

\(^{51}\) See generally *Sudan v SPLM/A*.

\(^{52}\) Salman M.A. Salman, *The Abyei Dispute between Northern and Southern Sudan and the Decision of the Permanent Court of Arbitration* (World Bank July 2010), online at http://go.worldbank.org/M0SRDKU7H0 (visited Apr 1, 2012).

\(^{53}\) Sudan’s SPLM Threatens to Refer Oilfield Dispute to The Hague (Sudan Tribune July 26, 2009), online at http://www.sudantribune.com/Sudan-s-SPLM-threatens-to-refer,31945 (visited Apr 1, 2012).

C. Recent Violence, the Temporary Agreement, and the 2011 Referendum

In January 2011, South Sudan held the independence referendum authorized by the CPA. According to the South Sudan Referendum Commission, the body charged with overseeing the independence referendum, "98.8% voted for secession." Shortly after the referendum, Sudanese President Omer Hassan Al-Bashir accepted the referendum result. The result was likewise accepted by the UN, the EU, the US and others. Although the vote passed in January, independence was not set to occur until the following July.

Despite the successful execution of the independence referendum, the Abyei referendum also provided for in the CPA never occurred. Disputes between the Government of Sudan and the SPLM/A over Abyei's borders and residency status for local Misseriya sunk any possibility of conducting the vote along with the independence referendum. Although the failure of the Abyei referendum was acknowledged far before the vote was to take place, hostilities and uncertainty within and regarding Abyei pervaded intrastate politics following the independence referendum. Despite the success of South Sudan's independence, Abyei remained a significant obstacle to lasting peace between the newly drawn states.

Tensions over Abyei sparked violence shortly after South Sudan's independence, necessitating further temporary agreements between Sudan and South Sudan regarding the governance of the unstable region. From May 20 to May 21, 2011, forces from North Sudan invaded Abyei, displacing an estimated one hundred thousand people. Following the May violence, the Government of Sudan and the SPLM/A reached a temporary agreement on Abyei in June of 2011. The parties agreed as follows:

[Footnotes]

55 See, for example, South Sudan Independence Referendum 'Credible,' Say EU Monitors (The Guardian Jan 17, 2011), online at http://www.guardian.co.uk/world/2011/jan/17/southern-sudan-independence-referendum (visited Apr 1, 2012).
57 See President Bashir Officially Endorses South Sudan Independence (Sudan Tribune Feb 7, 2011), online at http://www.sudantribune.com/South-Sudan-officially-voted,37905 (visited Apr 1, 2012).
58 Id.
59 Id.
60 See, for example, Muhaydin Ahmed Roble, Sudan: Abyei Referendum Deadline Impossible (Africa News Oct 15, 2010), online at http://www.africanews.com/site/Sudan_Abyei_referendum_deadline_impossible/list_messages/35375 (visited Apr 1, 2012).
61 Dagne, The Republic of South Sudan at 3-4 (cited in note 56).
The Abyei Area Administration shall consist of a Chief Administrator, a Deputy Chief Administrator and five heads of department. The Chief Administrator shall be a nominee of SPLM, agreed by the Government of the Sudan. The Deputy Chief Administrator shall be a nominee of the Government of the Sudan, agreed by SPLM. . . .

There shall be established an Abyei Joint Oversight Committee which shall be composed of four members. Each Party shall appoint two members to the Oversight Committee. . . .

19. The Abyei Area Executive Council shall draw up budget for review and approval by the Abyei Area Council. The Government of the Sudan and the Government of Southern Sudan shall jointly finance that budget.

20. With the exception of ISFA [Interim Ethiopian peacekeeping forces], the Abyei Area shall be demilitarized. Any [Sudanese or South Sudanese] forces shall redeploy out of the Area. Henceforth, all other forces, apart from the ISFA, shall remain outside the boundaries of Abyei Area, as defined by the Permanent Court of Arbitration. . . .

22. A Joint Military Observer Committee, consisting of an equal number of observers from the two Parties shall be stationed in Abyei. . . .

36. All displaced former residents of Abyei have the right to return to their former places of residence. The Parties shall facilitate the rapid return of internally displaced persons. . . .

39. Consistent with the Abyei Protocol, pastoral nomads shall enjoy rights of migration and access to pasture and water in accordance with traditional migration routes in the Abyei Area. . . .

This Agreement and the Abyei Protocol (except as modified by the terms herein) shall continue to apply until such time as the final status of Abyei has been resolved.62

With the Temporary Agreement in effect governing Abyei, The Republic of South Sudan officially became independent on July 9, 2011.63

III. THE CONDOMINIUM SOLUTION

A. Weaknesses of Other Proposed Solutions

Since the failed Abyei referendum, several proposals regarding the future of Abyei have been raised. None, however, satisfy the criteria for a desirable solution. The history of failed solutions in Abyei suggests two correlated factors by which to assess potential solutions: the viability of the proposed solution and proper representation of each party's interests. Historically, solutions to the Abyei conflict have typically failed to meet either or both of these criteria, resulting in proposals that are impractical, unjust, or both. However, previous

---


63 Dagne, The Republic of South Sudan at 1 (cited in note 56).
proposed solutions applied to a border dispute between a state and a non-state actor. Since the independence of South Sudan has manifested southern interests in a state actor, the framework has changed. Therefore, it is worthwhile to address a few of the most prominent proposals currently on the table in Abyei.

The most obvious solution remains the Abyei referendum as outlined by the CPA. Although this solution benefits from legitimacy accorded by its historical basis in the CPA, it no longer exists as a viable solution given recent developments in Abyei. Many of the forces working against the Abyei referendum before persist. The principal obstacle for this referendum was, and remains, the parties’ failure to cooperate in demarcating borders on the land according to the PCA award and the corresponding uncertainty regarding voter status for Misseriya in the region. The prospects of curing these two obstacles are dim, as both issues remain critical for both states.

The determination of voter status for regional Misseriya could prove decisive in the referendum, creating a situation in which a compromise by one party could prove fatal to its interests. In the months before the envisioned referendum, sources reported increased Misseriya settlement in Abyei, prompting concerns over alleged manipulation of the vote: “[Chief Administrator of Abyei] Arop believes that the [Misseriya] settlements are aimed at changing the demographic make-up of Abyei, signaling early preparations for manipulation of the vote.” Moreover, public commentary has essentially foreclosed the possibility of a referendum. Sudanese president Omer Al-Bashir has cemented North Sudan’s hardline position, stating that the referendum will only take place “if all the people of Abyei participate, not just the Ngok Dinka.”

A second proposed solution that has surfaced in reports of negotiations between the two Sudanese states is a bilateral agreement in which one party cedes rights to a part or all of Abyei in exchange for capital resources. The logic is, on its face, appealing: if the people of Abyei are blocked from voting on the future alignment of the region, the two parent states can negotiate an agreement. Months after the independence of South Sudan, its leaders offered a deal to North Sudan in which it would essentially purchase territorial sovereignty in Abyei in exchange for “[the sale of] oil at a discounted price, an unspecified

---

64 See, for example, Muhammad Osman, North-South Talks over Abyei Referendum Fail, New Round Scheduled (Sudan Tribune Oct 12, 2010), online at http://www.sudantribune.com/North-South-talks-over-Abyei,36576 (visited Apr 1, 2012).


amount of cash, and forgiveness of all arrears from oil sharing claimed by the South from the time before it gained independence last July.\textsuperscript{67}

However, like the Abyei referendum, such a solution has little chance of gaining traction among the entrenched parties. Importantly, the proposed deals generally take the form of the transfer of Abyei along with the cessation of "any claims on areas on the border of Southern Sudan that [North Sudan] is claiming."\textsuperscript{68} Framing the deal as a cessation of claims implies that neither South Sudan nor North Sudan currently has full rights to the region, a statement neither state is willing to make publicly, nor one that garners popular support. In fact, the mere purchase proposal by South Sudan generated backlash from southern Ngok Dinka who criticized the proposition that the area to which they claim a right must be acquired at all.\textsuperscript{69} Resistance from North Sudan has been formalized at the state level; a spokesman from the ruling party in North Sudan responded to the proposal: "Abyei belongs to the north and that it is not up for sale or compromise."\textsuperscript{70}

Even if a negotiation were somehow achieved, governing the resulting region would be problematic. Unequal representation will necessarily result for either the Ngok Dinka or the Misseriya. Because both parties lay claim to rights in Abyei and have aligned directly with one state, eventual unilateral control of the region will necessarily work to the detriment of one of the two groups. Although the concern over exploitation and abuse of the non-represented group is currently only hypothetical, the history of violence in the region both in wartime and peace suggests a significant concern for the legal rights of the non-represented group. Moreover, recent clashes in Abyei have spurred international monitors to raise human rights concerns about Abyei;\textsuperscript{71} extending unilateral control seems unlikely to cure such abuses, and may exacerbate them.

Given the concerns raised by each of the above proposed solutions, it is clear that the options currently under consideration present a bleak picture of the future for Abyei. Given the numerous issues resulting from the current interim agreement, maintenance of the status quo is neither productive nor desirable, while proposed solutions recycled from the early independence of Sudan from the Anglo-Egyptian condominium in the twentieth century merely

\textsuperscript{67} Sudan Rules Out Abyei Swap Deal with South (cited in note 54).
\textsuperscript{68} Id (quoting Pagan Amum, secretary general of the SPLM/A).
\textsuperscript{69} See, for example, Mijak, Is SPLM Buying Abyei and Selling Heglig to North Sudan Regime? (cited in note 54); Mark Otwari Odufa, Why "Dollars For Abyei" May Backfire (Gurtong Dec 2, 2011), online at http://www.gurtong.net/ECM/Editorial/tabid/124/cd/ArticleView/mid/519/articleId/6119/Why-Dollars-For-Abyei-May-Backfire.aspx (visited Apr 1, 2012).
\textsuperscript{70} Sudan Rules Out Abyei Swap Deal with South (cited in note 54).
\textsuperscript{71} See, for example, UN Official Urges Human Rights Probe in Abyei, South Kordofan (Sudan Tribune June 27, 2011), online at http://www.sudantribune.com/UN-official-urges-human-rights,39360 (visited Apr 1, 2012).
replace one evil with another. However, the recent independence of South Sudan enables fresh consideration of alternatives, the most promising of which is a condominium arrangement between North and South Sudan.

B. Introduction to Condominium Arrangements

The joint exercise of sovereignty in a region by two states under a condominium arrangement has been used to resolve border disputes around the world as early as the thirteenth century BC. In fact, this compromise solution has been used in a wide variety of border disputes, including water condominia, colonial condominia (governing land non-contiguous to either sovereign), frontier condominia (governing land contiguous to both sovereigns), and hybrid condominia (those blending the above types). Traditionally, condominia have been discredited as permanent solutions and have been used instead as "measures of last resort when efforts to resolve territorial disputes through negotiation have failed."

The rare use of condominia is a product of skepticism regarding the workability of such agreements and the associated pessimism of international scholars favoring indivisible notions of sovereignty. Such attacks on condominia in the abstract are based on concerns of administrative practicality or abstract characterization, not criticisms based on any substantive legal doctrine. Therefore, while a proposed condominium may be challenged on grounds that it is logistically difficult or improperly labeled, there is no present concern that such an agreement is invalid or unrecognizable under international law. Moreover, at least one legal scholar has challenged the definitional criticism of condominia by arguing for a reframing of such agreements from the state

---

72 See Liska, Imperial America: The International Politics of Primacy 13-14 (cited in note 9).
73 See, for example, Land, Island and Maritime Frontier Dispute (El Sal v Hond: Nicaragua intervening), 1992 ICJ 351, 600 (Sept 11, 1992).
74 See, for example, D.P. O'Connell, The Condominium of the New Hebrides, 43 Brit YB Intl L 71, 75-76 (1968-69).
75 See, for example, Peter Schneider, Condominium, in Rudolf Bernhardt, ed, 1 Encyclopedia of Public International Law 732, 732 (Elsevier Science 1992).
76 See, for example, P.M. Holt and M.W. Daly, The History of the Sudan: From the Coming of Islam to the Present Day 118 (Weidenfeld & Nicholson 3d ed 1979).
77 Id, citing Hersch Lauterpacht, ed, 1 International Law: Being the Collected Papers of Hersch Lauterpacht 370, 371-72 (Cambridge 1970) (suggesting a condominium "may be practicable only between States between which there exists an atmosphere of understanding or co-operation—in which case solutions more simple than a condominium will be found in the first instance").
78 See, for example, Giovanni Distefano, Theories on Territorial Sovereignty: A Reappraisal, 41 J Sharia & Law 25, 32 (2010) (implicitly challenging the notion of joint sovereignty by defining sovereignty as an "exclusive power of government").
level to the international community level. With this understanding, a condominium agreement should be understood as establishing a territory respecting the exercise of competences of a partial international community, rather than a territory under the governance of two jointly sovereign states. This work to clarify the nature of a condominium is only helpful, for purposes of this Comment, insofar as it acknowledges that challenges to condominium agreements in the abstract are extralegal challenges. This opinion has been supported by other scholars, including Joel Samuels, a legal scholar and advocate for greater consideration of condominia, who notes: “[T]here is nothing in legal theory . . . to render impossible a permanent and agreed division of sovereignty as suggested by the very nature of a condominium.”

Despite the contemporary rarity of international condominium arrangements, several condominia have been proposed in the past half century. As Samuels notes, condominia have been considered for some of the most prominent territorial disputes in recent international history, including Gibraltar, Brčko, the West Bank and Gaza, the Caspian Sea, and the Barents Sea. The wide application of condominium proposals highlights the absence of any such proposal in Abyei and urges its consideration. Nonetheless, critics remain skeptical that a bilateral governance mechanism can succeed between two parties who have otherwise been unable to agree on an alternative solution.

C. Tenets for a Strong Condominium

The construction of a successful condominium arrangement should take careful consideration of the potential pitfalls presented by the exercise of joint sovereignty, demonstrated by both historical failures of interstate condominia and more abstract principles of the legal structure of common property ownership. While historical accounts of condominia are instructive insofar as

83 For a discussion of the historical development and recent application of condominium agreements, see generally Samuels, 29 Mich J Intl L 727 (cited in note 8).
84 See, for example, Britain and Spain Pledge to Continue Talks on Gibraltar, Glasgow Herald 4 (Dec 7, 1985).
85 See, for example, Farrand, 15 Emory Intl L Rev at 533 (cited in note 11).
86 See, for example, Dore Gold, From Polarity to Unity: World Leaders’ Eyes on Us, Jerusalem Post 8 (Nov 10, 1995).
87 See, for example, Michael Bronner, Oil Economist Says Sanctions Hurt U.S. Firms, Wash Times A8 (Nov 22, 1997).
88 See, for example, Scrivener, 4 Jane’s Intelligence Rev at 252, 253 (cited in note 11).
they reveal consequences of specific condominium design, an understanding of common property design informs the broader development of condominia, given the overlap of issues between private and public joint exercise of power. Although scholars disagree over the degree to which condominia and private common ownership may be analogized, such disagreements center on the proper characterization of condominia, rather than on the proper role of using insights from private common property regimes in applying condominium theory to a specific border dispute.  

Once the condominium arrangement is in development, parties should consider, and seek to implement, principles of common property. Samuels refers to Elinor Ostrom’s analysis in *Governing the Commons*, in which she identified and analyzed successful common property regimes “in which (1) appropriators have devised, applied, and monitored their own rules to control the use of [common pool resources] and (2) the resource systems, as well as the institutions, have survived for long periods of time.” Ostrom's work proceeds to outline eight design principles for common property regimes that Samuels argues might prove instructive for the common governance of a region under a condominium. Those principles are: “(1) clearly defined boundaries; (2) congruence between the rules for appropriation and local conditions; (3) collective-choice arrangements; (4) monitoring systems; (5) graduated sanctions; (6) conflict-resolution mechanisms; (7) minimal recognition of rights to organize; and (8) multi-tiered, nested enterprises.”

While private common property arrangements provide a useful starting position for the theoretical construction of a successful international condominium arrangement, it is important to recognize differences between the two systems that may alter the understanding of proper construction, including the principal role of public actors, collection and distribution of public resources, and the need for regional protection. Analyses of past international condominium arrangements are instructive on these matters.

Combining Ostrom’s baseline design principles with lessons learned from historical condominia allows for the construction of a strong theoretical model for a successful condominia against which to compare this Comment’s model for an Abyei condominium. To that end, Samuels’s article is highly instructive, as he analyzes the numerous historical condominia he outlined in order to glean

---

89 See generally Samuels, 29 Mich J Intl L 727 (cited in note 8) (discussing the parallel concerns of private common-property design and condominium design). But see Bantz, 12 Fla J Intl L 77 (cited in note 81) (noting the imperfect analogy between public condominia and private common-property regimes).


useful principles. He specifically identifies (1) the importance of transparency in lawmaking from the Moresnet condominium; 92 (2) rights of supervision by respective parties from the Hittite condominium; 93 (3) the use of joint implementation of governing laws to encourage cooperative monitoring and enforcement from the New Hebrides condominium; 94 (4) the controlled devolution of local authority to ensure justice and administrative ease from the Trieste condominium; 95 (5) the importance of condominium partners as “co-equals in authority, with equal rights and obligations” from both the Trieste and Sudanese condominiums; 96 and (6) the overarching importance of an incentive structure that keeps each condominium partner invested in maintaining the condominium. 97 Because applying a condominium agreement to a specific border dispute is necessarily sui generis, legal doctrine can only go so far in aiding the development of a practical condominium solution. Therefore, using both resources—common property theory and assessment of historical condominiums—creates a workable set of principles to guide the application of a condominium approach to Abyei where legal doctrine cannot.

D. The Benefits of a Condominium Approach to Abyei

Before addressing the application of the condominium approach to Abyei, it is important to outline the merits of suggesting such a solution in the first place. Consider the two factors used above to criticize other proposed solutions: the viability of the proposed solution and the proper representation of each party’s interests. An analysis of each factor suggests that a condominium is well-tailored to the border dispute in Abyei. 98 A condominium approach is more viable than the alternatives on the table because it avoids the issue of unilateral loss that plagues the others. Given the violent history in Abyei and the deeply ingrained positions of both the states and the Ngok Dinka and Misseriya, a diplomatic solution resulting in unilateral control of Abyei is unlikely. Therefore, a solution that allows both parties to retain rights is inherently more viable in Abyei. Additionally, the condominium solution benefits from its novelty. Whereas some solutions have been put to the test and failed, 99 and others have

---

93 Id.
94 Id.
95 Id at 773.
97 Id.
98 See Section III.A.
99 No Referendum in Abyei, Sudanese Official Says (cited in note 66) (noting that The Abyei Referendum was planned and negotiated for years before it was de facto rejected by the parties).
been proposed and swiftly rejected before implementation, the condominium approach would provide a solution outside of the scope of historical failures and leverage the recent independence of South Sudan into a more viable option.

Moreover, the current administrative regime in place in Abyei closely resembles a condominium agreement, providing institutional momentum toward a long-term condominium arrangement. The Temporary Agreement reached by the parties in June 2011 and currently in place in Abyei is governed under an administration of joint sovereignty between North and South Sudan. The fundamental framework of the Temporary Agreement, then, is a condominium agreement. However, the Agreement includes provisions for third-party military presence, international facilitators, and provisions ensuring the parties’ cooperation in developing a long-term solution beyond the Temporary Agreement. But while the Temporary Agreement provides institutional momentum toward the development of a condominium agreement, it is itself insufficient to ensure lasting peace in Abyei. Failure of the parties to comply with the terms of the Agreement and its inherently temporary nature both necessitate the implementation of a more robust, well-devised joint sovereignty agreement.

IV. APPLYING THE CONDOMINIUM APPROACH TO ABYEI

A successful condominium must accommodate the specific characteristics unique to the border dispute it seeks to cure; thus, a condominium in Abyei must be designed for the mutual satisfaction of North Sudan and South Sudan with respect to border demarcation, citizenship rights, the distribution of resources, the distribution of administrative duties, and the protection of area residents. More generally, a condominium in Abyei must be structured so as to

---

100 See, for example, Sudan Rules out Abyei Swap Deal with South (cited in note 54).
101 See generally Temporary Arrangements for the Administration and Security of the Abyei Area (cited in note 62).
102 Id at ¶ 21.
103 Id at ¶ 11.
104 Id at ¶ 40.
minimize the difficulties associated with "frontier condominiums" and condominia governing regions of past inter-party violence. Fortunately, the history of dealings between North and South Sudan (including the pre-state southern Sudan region) provides a solid foundation from which a robust condominium may be built.

The initial hurdle for the development of a lasting condominium in Abyei is creating incentives for cooperation in the development of a long-term solution. As Samuels notes, an "action-forcing event" is often instrumental in initiating the negotiation process. Given the significant degree of foreign aid and support given to Sudan since its independence as well as recent international interest in economic investment in South Sudan, the role of international sanctions or incentives could prove highly influential in initiating and facilitating negotiation talks. Even without an external "action-forcing event," North and South Sudan maintain internal incentives to negotiate a long-term agreement. Both states suffer from interstate violence, both fail to maximize revenues from state-owned land resources, and both are subject to vocal local groups' calls for a solution. Therefore, the same forces that worked toward the development of the Temporary Agreement and the CPA before it can contribute to the development of a condominium agreement, even absent foreign intervention.

The Temporary Agreement currently governing Abyei (with the aid of international military support) and the CPA are enormously useful in the theoretical construction of an Abyei condominium arrangement. Though significant portions of the CPA have been tacitly rejected and the provisions of the Temporary Agreement are, by their nature, temporary only, both include agreements on issues fundamental to constructing an Abyei condominium and signify points of agreements that may be reproduced or built upon in a permanent condominium arrangement. Therefore, each of the principal categories examined below will first reference past agreements reached on the issue in order to ground realistic expectations between the parties.

A. Border Demarcation

An important benefit of a joint-sovereignty solution to the Abyei dispute is that it minimizes the importance of border demarcation between the parties.

---

106 Samuels, 29 Mich J Int'l L at 735 (cited in note 8) (noting that frontier condominia suffer from unique obstacles stemming from the contiguous land disputes such as border crossings, currency flows, and citizenship issues).

107 Id at 774.


Whereas border demarcation was previously the most significant obstacle to a compromise in Abyei because of the consequences it would have on referendum voting rights, oil resources, and geo-political control, joint control of Abyei removes the referendum concern and allows for the fair distribution of the commonly held land and resources. Therefore, although border demarcation has historically proved to be fatal to Abyei negotiations, it is unlikely that the issue would have the same impact under a condominium approach. The Temporary Agreement incorporates the PCA’s award regarding Abyei’s boundaries, and the proposed condominium solution should adopt the same understanding, since it is the only recent unbiased adjudication of historical borders. Although other frontier land condominia have divided the governed area into sub-regional areas under the control or ownership of one of the parties to the condominium, that solution is inadvisable for Abyei. The claims of the Misseriya underlying the Abyei dispute are for nomadic grazing rights along traditional paths throughout Abyei; restricting their ownership to a set boundary within Abyei would frustrate this original claim. Accordingly, the Temporary Agreement and the Abyei Protocol both recognize “rights of migration and access to pasture and water in accordance with traditional migration routes in the Abyei Area.” Therefore, an agreement covering border demarcation within Abyei would be extraneous and the PCA boundaries between Abyei, Sudan, and South Sudan would govern.

B. Citizenship Rights

The allocation of citizenship rights under a condominium is most difficult in frontier condominia, particularly where the area to be governed was formerly part of either party state, but in Abyei, explicit state allegiance will likely alleviate the difficulty. Citizenship issues are extremely important because while the governed region will likely have local representatives to administer local government (especially if Ostrom’s eighth design principle is to be satisfied), local residents will still be subject to state authority of one or both of the parties to the agreement. Citizenship determination, therefore, directly affects such broad issues as voting rights and the laws to which residents are subject. The

110 See, for example, Sudan Official: Misseriya Settling in Abyei, Fueling Referendum Tensions (cited in note 65).
112 Temporary Arrangements for the Administration and Security of the Abyei Area at ¶ 2 (cited in note 62).
113 See, for example, Samuels, 29 Mich J Ind L at 744 (cited in note 8), citing Convention of Gastein, Austria-Prussia, Art I, (Aug 14, 1865).
114 Temporary Arrangements for the Administration and Security of the Abyei Area at ¶ 39 (cited in note 62).
115 Samuels, 29 Mich J Ind L at 771 (cited in note 8), citing Ostrom, Governing the Commons at 101–02 (cited in note 90).
Temporary Agreement is silent on matters of citizenship, while the CPA states only that, under the special administrative status held before the ill-fated Abyei referendum, "[r]esidents of Abyei will be citizens of both [northern] Western Kordofan and [southern] Bahr el Ghazal, with representation in the legislatures of both states."\(^{116}\)

Historically, condominia over land have allocated citizenship rights in two different ways: dividing local residents into citizens of the two member states,\(^{117}\) or providing for some modified form of joint citizenship between the member states.\(^{118}\) Though, theoretically, both options might be considered in Abyei, given the clear division of state allegiance among the Misseriya and Ngok Dinka in Abyei, divided citizenship seems both more practicable and desirable. The demographic circumstances present in Abyei bear similarity to the Moresnet condominium between Prussia and the Netherlands (later Prussia and Belgium after Belgium’s independence from the Netherlands). In Moresnet, the vast majority of local residents were Prussian or Belgian, and the condominium agreement allowed the preservation of existing citizenship rights with little resistance from either side.\(^{119}\) The implications of citizenship rights in Abyei comport with the proposition of a divided citizenry. Inter-Sudanese voting rights no longer matter as they did under the CPA, and the political as well as cultural interests of the Misseriya and Ngok Dinka are represented by the Government of North Sudan and the Government of South Sudan respectively.

C. Executive Authority

The Temporary Agreement incorporates the executive administration provisions of the CPA in establishing a “Chief Administrator, a Deputy Chief Administrator and five heads of department.”\(^{120}\) Unlike the CPA, however, the Temporary Agreement specifies the division of the Administrative authority between North and South Sudan.\(^{121}\) Although South Sudan has a greater number

---

\(^{116}\) Protocol on the Resolution of the Conflict in the Abyei Area at § 1.2.1 (cited in note 29).

\(^{117}\) See, for example, Samuels, 29 Mich J Int'l L at 744 (cited in note 8), citing Convention of Gastein, Austria-Prussia, Art I (cited in note 113).

\(^{118}\) See, for example, Samuels, 29 Mich J Int'l L at 742 (cited in note 8), citing Camille Piccioni, Moresnet, in M.A.F. Frangulis, ed, 2 Dictionnaire Diplomatique 165 (Académie Diplomatique Internationale 1933).


\(^{120}\) Temporary Arrangements for the Administration and Security of the Abyei Area at ¶ 4 (cited in note 62); Protocol on the Resolution of the Conflict in the Abyei Area at ¶ 2.4 (cited in note 29).

\(^{121}\) Temporary Arrangements for the Administration and Security of the Abyei Area, ¶ 5 (cited in note 62) (specifying that the Chief Administrator and three heads of department would be nominees of the
of executive representatives under the Temporary Agreement, such majority does not give it the ability to overrule North Sudanese interests because Executive Council decisions require consensus.\textsuperscript{122} Despite the consensus requirement, dividing the executive authority inequitably between the parties decreases the viability of the proposed condominium as North Sudan stands in a relatively weaker position. Historical condominia concentrating power inequitably between the parties were restricted to colonial condominia and were typically unsuccessful in providing for long-term stability.\textsuperscript{123} As Samuels notes: "[t]he primary lesson to be drawn from the Sudanese condominium is that the legal nature of a condominium can be obscured when one State wields a disproportionate amount of power in the arrangement."\textsuperscript{124} Accordingly, the proposed condominium should create a dual executive held by representatives from both North and South Sudan, as was done in the New Hebrides\textsuperscript{125} and the Moresnet\textsuperscript{126} condominia. Although members of the Executive Council should ultimately be determined by popular vote, in keeping with the CPA,\textsuperscript{127} initial membership of the Council may require appointment by the state governments of North and South Sudan. Such an arrangement supports the principles of equal representation and collective-choice arrangements identified by Ostrom\textsuperscript{128} while providing for the initial stability required before a shift of control to locally elected administrators can occur.

D. Legislative Authority

Both the Temporary Agreement and the CPA provide for an "Abyei Area Council ... to be composed of twenty members."\textsuperscript{129} Although the Temporary Agreement does not delineate the responsibilities of the Area Council, the absence of language modifying the CPA in the Temporary Agreement indicates the continuation of the Council's responsibilities to:

---

\textsuperscript{122} Id at ¶ 7.

\textsuperscript{123} Samuels, 29 Mich J Intl L at 752–53 (cited in note 8), citing Mekki Abbas, The Sudan Question: The Dispute over the Anglo-Egyptian Condominium, 1884–1951 46 (Faber & Faber 1952).

\textsuperscript{124} Samuels, 29 Mich J Intl L at 753 (cited in note 8).


\textsuperscript{126} Samuels, 29 Mich J Intl L at 741 (cited in note 8), citing Treaty of Aix-la-Chapelle, Prussia-Netherlands, Art XXVII, (June 26, 1816).

\textsuperscript{127} Protocol on the Resolution of the Conflict in Abyei Area at § 4.1 (cited in note 29).

\textsuperscript{128} Id at ¶ 7.

\textsuperscript{129} Temporary Arrangements for the Administration and Security of the Abyei Area ¶ 8; Protocol on the Resolution of the Conflict in Abyei Area at § 4.1 (cited in note 29).
Issue local enactments within the powers of local government and on customary matters; Approve the budget of the Area; Adopt reconstruction, development and urbanization plans for the Area; If necessary, recommend to the Presidency the relief of the Chief Administrator or his/her Deputy; Participate in the promotion of reconciliation efforts in the Area.130 For the purposes of this Comment, the principal points contained within this delegation of authority are the power to approve the budget, mentioned above, and the power to recommend removal of the Chief Administrator(s). The power to issue local enactments appropriate for local government is a potentially broad delegation of power, but it is unlikely to implicate the broader issues of justice and security threatening the viability of a long-term agreement in Abyei. The divided budgetary regime, with the Executive Council recommending a budget and the Area Council voting on it, comports with several of Ostrom’s design principles: congruence between the rules for appropriation and local conditions, monitoring systems, and multi-tiered, nested enterprises.131 Such principles are similarly reflected in the power given to the Area Council to recommend removal of the Chief Administrator(s). While such a recommendation requires bilateral agreement between North and South Sudan if the equality of governing power is to be preserved,132 the mere power of recommendation serves as an additional check on the concentration of power. Therefore, both the Executive Council and Area Council as established by the CPA and the Temporary Agreement are currently well-positioned to transition into the executive and legislative authority for Abyei under a condominium agreement. Although changes must be made to accommodate the permanence of a joint sovereignty regime in the area, the institutional momentum put in place under the two agreements minimizes the transaction costs in completing condominium negotiations.

E. Capital Resources

Another principal concern to address in creating a Sudanese condominium is the just distribution of capital resources in Abyei, including tax and oil revenues. Financial agreements contained within the CPA entitle the Abyei Area to tax revenue raised in the Area as well as an equitable portion of national spending programs allocable to sub-state units.133 The Temporary Agreement

130 Protocol on the Resolution of the Conflict in the Abyei Area at §§ 4.3.1–4.3.5 (cited in note 29).
131 Ostrom, Governing the Commons at 59, 102 (cited in note 90).
132 Academic studies of condominia stress the importance of equality of power and obligation among the member states, regardless of the abstract characterization of condominia. See Bantz, 12 Fla J Int'l L. at 99 (cited in note 81) (discussing condominia as “a partial international community characterized by the juridical and functional equality of the members states”); Samuels, 29 Mich J Int'l L. at 773 (cited in note 8) (noting that “[condominia] can only succeed where the condominium partners are co-equals in authority, with equal rights and obligations”).
133 Protocol on the Resolution of the Conflict in the Abyei Area at § 3.2 (cited in note 29).
lacks a provision regarding revenue generated within the Area, though it does provide that North and South Sudan shall jointly finance the approved budget. One principal concern is enforcing equal obligations of both North and South Sudan to finance the administration of the Abyei Area. The burden of supporting Abyei must be split equally among the parties to ensure the equitable balance of control between the states. Therefore, to the extent that administrative costs exceed local revenues, North and South Sudan must negotiate the level of capital investment each makes in Abyei to avoid the problems associated with inequitable control under a condominium.

Oil revenues present a more complex issue. Oil is one of the region's most important national resources and provides for a significant portion of both nations' wealth, while remaining a major source of conflict between them. The distribution of oil reserves and pipelines between the two states complicates the matter. While oil reserves are concentrated more heavily in the South (including some in Abyei), only the North has readily accessible pipelines to export the resource for revenue. Therefore, under a condominium agreement in Abyei, two possibilities appear viable for Abyei oil: split revenues while compensating North Sudan for the transportation of the oil within the Greater Nile Oil pipeline, or split oil resources, allowing South Sudan to determine alternate methods to export their share. The CPA provides for the former approach, awarding 50 percent of the revenues to North Sudan, 42 percent to South Sudan, and distributing the remaining 8 percent equally among the West Kordofan and Bahr el Ghazal states and the Ngok Dinka and Misseriya. This approach has the advantage of incentivizing cooperation between the parties to the condominium on matters apart from oil revenues. A split in the joint sovereignty of the two states could disrupt the exportation of Abyei oil resources and therefore provides an added cost to hostilities between the member states. While previously, the remaining 8 percent of revenues were divided by demographics and bordering states, the remainder should be returned to local Abyei administration in order to contribute to the financial security and unity of the Area.

134 Temporary Arrangements for the Administration and Security of the Abyei Area at ¶ 19 (cited in note 62).
137 Nomi, Oil's Impact on the Possibility of Renewed Conflict over South Sudan Independence (cited in note 136).
138 Protocol on the Resolution of the Conflict in the Abyei Area, § 3.1 (cited in note 29).
F. Oversight and Security

The function of this Comment is to suggest a condominium solution constructed to avoid further violence and discord within Abyei. But if conflict were nevertheless to reemerge, the condominium would have to be capable of containing harm, providing security to Abyei residents, and continuing governmental administration of Abyei. It is for this purpose that the Temporary Agreement created the Abyei Joint Oversight Committee, a body composed of representatives from both states as well as foreign monitors with power to oversee the functioning of the Executive Council, supervise the interim security forces and establish local police.\textsuperscript{139}

The Oversight Committee is vital to preserving administrative power in Abyei should local governance break down. Indeed, the Committee plays a vital role in monitoring local government\textsuperscript{140} and expanding on the multi-tiered nature of the administration, which is in line with Ostrom’s design principles. Although the presence of foreign influence within the Abyei condominium may provoke criticism, its presence diminishes the likelihood of condominium capture by either of the signatory parties. Without security in Abyei, the condominium will be unable to establish institutional momentum through which such outside intervention may eventually become redundant; but the nascent condominium has little chance of survival under constant threat of seizure by either of the sponsoring states. Therefore, foreign monitors will be a necessary part of an Abyei condominium until the internal administrative bodies overcome the latent inter-state power struggle within the region.

V. CONCLUSION

The status of Abyei remains a significant obstacle to lasting peace between the Republic of Sudan and the newly formed Republic of South Sudan. Heretofore, no viable solution has emerged that can quiet the continuing conflict in Abyei. However, the states can leverage the recent independence of South Sudan and establish a condominium agreement for Abyei that settles the primary concerns of current Abyei residents and provides for lasting peace in the region. Such a solution was previously untenable because South Sudan was a legal subordinate to the predecessor state. A condominium agreement, however, must overcome skepticism from the existing legal-political community and the obstacles that have blocked negotiations between North and South Sudan in the past. Despite this, the current interim agreement effectively functions as a condominium agreement, minimizing the transaction costs in transitioning from

\textsuperscript{139} Temporary Arrangements for the Administration and Security of the Abyei Area at ¶ 10–18 (cited in note 62).

\textsuperscript{140} See id at ¶ 17 (discussing the requirement for periodic reports to be made to the Oversight Committee).
the current administration to a permanent joint sovereignty regime. In sum, a condominium solution remains the best option, and perhaps the only practical solution to avoid violence or permanent third-party intervention in Abyei.