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The Conflict over Hejlij

On or around 26 March 2012, fighting between the Sudan People’s Liberation Army (SPLA) and Sudan Armed Forces (SAF) erupted around Heglig, the disputed oil-producing area generally considered a part of South Kordofan state (Sudan) but also claimed by the South as part of Unity state. The SPLA says it responded to Sudanese air and ground attacks on Unity state, and then chased SAF back to Hejlij. SAF says the SPLA attack was unprovoked—a claim that seems difficult to justify given the Sudanese air bombardment in the vicinity during previous weeks. The SPLA seized the area with support from the Darfurian Justice and Equality Movement (JEM) and other members of the Sudan Revolutionary Front alliance: groups that, just one month ago, the SPLA denied supporting.

The occupation of Hejlij prompted widespread international criticism, and a discussion of possible sanctions at the United Nations Security Council (UNSC). On 20 April, South Sudan said it was withdrawing from the area. While the full story behind the withdrawal is not yet known, there is mounting evidence that the withdrawal was due to a mixture of fierce diplomatic pressure and military losses following a heavy bombing campaign by SAF on SPLA positions in and around the town.

As the Hejlij battle continued, the conflict spread along the border between the two countries. On 15 April, the two sides clashed just south of Meiram, at Kiir Adem in Northern Bahr al Ghazal—just to the west of Abyei. While Kiir Adem is south of the River Kiir/Bahr al Ghazal, its status is contested. As with the attack on Hejlij, this clash followed a familiar pattern: one party attempts to seize a disputed territory, achieving *de facto* what could not be decided upon *de jure* at the negotiating table.

Most of the fighting has focused on Hejlij, Sudan’s largest oil field, which produced 55,000 barrels a day; the income derived from this oil had become crucial to Sudan following South Sudan’s decision in January to suspend its oil production, depriving Sudan of fees from the oil’s transit through its territory. By many reckonings, Hejlij is north of the 1956 historical border that is supposed to dictate the frontier between the two states. But many Southerners have long considered it part of the South. Hejlij, which is known as Thou (or Panthou) in Dinka, was one of the territories depopulated by militias during the second civil war, when Sudan used paramilitary Popular Defence Forces (PDF) to clear southern residents from areas around oil-producing sites. For many Dinka at the border, accepting Sudan’s possession of these territories is tantamount to accepting the ethnic clearings of the 80s and 90s.

Hejlij’s status is intimately connected with that of Abyei. The initial report of the Abyei Boundaries Commission (ABC), mandated by the Comprehensive Peace Agreement (CPA) to determine the area of Abyei (‘defined as the area of the nine Ngok Dinka chiefdoms transferred to Kordofan in 1905’—Abyei Protocol, 2005, cl. 1.1.2), placed Hejlij within Abyei’s borders. After the rejection of that report by Sudan’s ruling National Congress Party (NCP) and the Missiriya, and during worsening violence in Abyei in 2008, the Permanent Court of Arbitration (PCA) in The Hague was asked to determine whether the ABC had exceeded its mandate. In

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what was widely seen as an effort to placate the NCP, the PCA ruled in 2009 that the oil-producing areas in the north-east of the territory (including Hejlij) were outside Abyei. The court did not make a determination about whether Hejlij was part of South Kordofan or Unity state—a point that the Government of South Sudan continues to emphasize. In a letter sent to the UNSC on 14 April, South Sudan noted that the PCA “defined the boundaries of the Abyei Area, and placed Hejlij outside of the Abyei Area. This has been misunderstood to mean that Hejlij is definitively inside the Republic of Sudan. However, the PCA did not rule on the border between north and south—it ruled only on the boundaries of the Abyei Area.”

South Sudan said Hejlij, like Kafia Kingi, Abyei, and the other contested areas along the border, does not have a settled legal status, and therefore the occupation of Heglig cannot be a violation of Sudanese national sovereignty. Given the breakdown in negotiations since January, the SPLA seems to be attempting to achieve militarily what it could not achieve at the talks: the establishment of what it considers to be the 1956 border. Sudan used a similar tactic during the May 2011 invasion of Abyei—physical occupation with the possibility of a legal recognition of the facts on the ground at a later date, and a vastly strengthened hand at the negotiating table.

Following the withdrawal from Hejlij, Riek Machar, South Sudan’s vice-president, said his country had made a diplomatic miscalculation by invading. But the incursion raised international awareness of Hejlij’s disputed status, and put the spotlight back on Sudan’s repeated attacks on Unity state—achievements for the SPLA.

On 21 April, the Government of South Sudan said it would “still claim ownership of Hejlij at the International Court of Arbitration in The Hague if diplomatic and bilateral efforts fail,” raising the possibility that the entire border demarcation would follow the path of the Abyei dispute. Without further political agreement between the two sides, however, it is hard to see how arbitration could resolve the opposing claims (Abyei remains occupied, and its territory disputed, two years after the arbitration of the PCA).

The prospects for negotiation are poor. SAF has said the Hejlij attack nullifies Sudanese commitments made in Addis Ababa, and that there will be no further talks. Bashir has been even more bellicose, declaring that the current conflict will end either ‘in Juba or Khartoum’, i.e. with the destruction of one of the parties. Such statements are designed for internal consumption in Sudan, and do not reflect Sudan’s actual bargaining position. The fighting may in fact ease with the coming of the rainy season. The recent battles may be simply attempts by both sides to carve out positions on the ground before rains begin.

26 April 2012