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Understanding Malawi and Tanzania Border Dispute on Lake Malawi (also known as *Lake Nyasa*)

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Abstract

This article examines the enduring legal complexities of colonial boundary-making in international law: the Malawi-Tanzania border dispute over Lake Malawi (Nyasa). Malawi's claim to the entire lake is firmly grounded in the 1890 Heligoland Treaty, a formal legal instrument explicitly placing the entire lake within the British sphere. Malawi invokes the principle of *uti possidetis juris* which mandates inherited colonial geo-bodies. The African Union affirmed *uti possidetis juris* as a cornerstone of post-colonial African boundary law. Tanzania contests this, advocating for a median line boundary based on principles of customary international law for shared water bodies. Tanzania also cites inconsistent British mandate-era maps. However, International Court of Justice (ICJ) jurisprudence generally subordinates maps to primary textual instruments such as treaties. Although the dispute remained dormant for decades, Malawi's 2011 unilateral awarding of hydrocarbon exploration licenses in the contested lake aggravated the dispute. Although the lake dispute demonstrates that modern African sovereignty draws on *uti possidetis juris*, this article's conclusion recommends ways African states might move beyond inherited colonial legal frameworks and adopt pragmatic approaches to conflict resolution.

Keywords: Malawi, Tanzania, *uti possidetis juris*. Colonial boundary-making, Lake Nyasa, Heligoland Treaty, postcolonial Africa, territorial dispute, natural resources, SADC mediation, landlocked states, African Union, median line boundary.

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Introduction

Background: Colonial Historical Roots

Border disputes in Africa are inextricably linked to the era of European colonialism, as the arbitrary partitioning of the continent laid the foundation for many of the territorial disagreements that persist today (Loisimaye, 2024; Yoon, 2014; Abramson & Carter, 2016). Colonial powers delimited national boundaries in law and on maps, often surveying and marking borders according to the physical landscape or for political advantage. These processes were largely driven by imperial interests with limited or no regard for pre-existing social, ethnic, or geographical realities (Donaldson, 2008). The enduring consequences of these colonial tactics is exemplified by numerous border issues across the African continent, including the enduring dispute between Malawi and Tanzania over Lake Malawi (also known as Lake Nyasa).

The root of the contemporary Malawi-Tanzania border dispute can be directly traced to a legal agreement between colonial powers: the Heligoland Treaty of 1890, between Great Britain and Germany (Mahony et al., 2014; Maluwa, 2016; Mayall, 1973). Intended to define the respective spheres of influence of these European powers in East Africa, the treaty stipulated that the boundary between Nyasaland (British Malawi) and Tanganyika (German Tanzania) would follow the eastern, western, and northern shores of Lake Nyasa. The agreement effectively placed the entire lake within the British sphere (Mahony et al., 2014; Loisimaye, 2024; Maluwa, 2016; Mayall, 1973; Okumu, 2010; Yoon, 2014). One unilateral decision, made in European capitals without the involvement or consent of the African populations, determined the boundaries of countries' sovereignty (Donaldson, 2008; Maluwa, 2016). Furthermore, the allocation of a significant water resource to one territory deviated from more traditional African practices of shared access (Okumu 2010).

In the aftermath of World War I, Tanganyika came under British mandate rule in 1919. As a result, Britain administered both sides of the lake for several decades (Mahony et al., 2014). However, British documents and maps contained contradictions regarding where the boundary between Malawi and Tanzania lay.

On the one hand, the Heligoland treaty placed the entirety of Lake Malawi under Malawi's domain. On the other hand, the 'Annual Reports on Tanganyika' from 1924 to 1932 refer to a boundary down the center-line of the lake that distinguishes between the two territories (Mahony et al. 2014). Furthermore, a 1924 British State Department report with a map showing a median line. Such inconsistencies, produced by the same colonial administration, would later be used by Tanzania to argue for a median line boundary. However, by 1959 (that is, 3 years before Tanzania gained independence) the British Government told Tanganyika that the entire lake was within Nyasaland's borders (Mayall, 1973).

Contemporary Tanzanian perspectives argue that the British contradiction is evidence that the British administration effectively redrew the border (Mahony et al., 2014); Malawi maintains that the British colonial edict is correct, granting their territory the entire Lake Malawi upon independence in 1964, citing *uti possidetis juris*. African states have largely adopted the principle of *uti possidetis juris*, which meant respecting the colonial borders that existed at the time of independence (Mahony et al., 2014; Maluwa, 2016; Yoon, 2014). Malawi's claim to the entire lake is firmly based on the Heligoland Treaty of 1890 and the principle of *uti possidetis*. This means that the eastern shoreline was the recognized boundary when it became independent in 1964 (Loisimaye, 2024; Maluwa, 2016; Yoon, 2014). Tanzania challenged this boundary in 1967, advocating for a median line (see Figure 1), which directly contested the colonial-era decision and the subsequent principle of inherited borders (Loisimaye, 2024; Yoon, 2014).

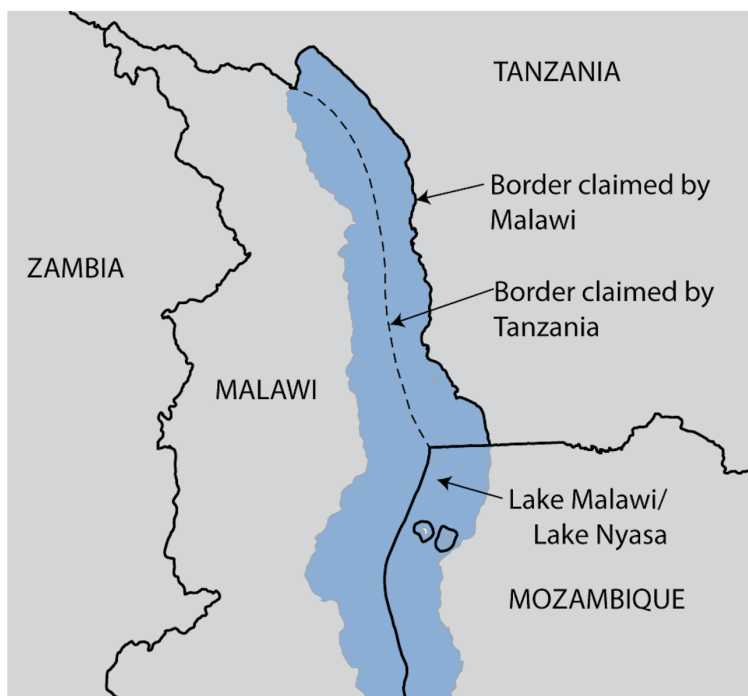


Figure 1: Map of Lake Malawi (*Nyasa*) identifying the competing border claims

Legacies of colonial boundary-making extend beyond the Malawi-Tanzania dispute, as the debate results from the artificial boundaries drawn by European powers during the scramble for Africa (Loisimaye, 2024). These boundaries frequently partitioned communities across newly formed state lines (Goemans and Schultz, 2017; Okumu, 2010). Similarly, Togo and Ghana, following a pre-World War I German-controlled Togo boundary (Scott and Carter, 2016), have experienced border conflict resulting from colonial precedents. However, it is not only the case that colonial borders are frequently contested, but it is also often the case that the incomplete or poorly executed demarcation of colonial borders (Donaldson, 2008; Okumu, 2010; Maluwa, 2016) adds another level of ambiguities which newly independent states have to grapple with. As I will later discuss regarding Tanzania's claims to Lake Malawi, such

territorial disputes are sometimes exacerbated when resources are explored or discovered in these border regions.

Africa and 'uti possidetis juris'

The principle of *uti possidetis juris*, often translated as 'as you possess, so you shall possess under law,' is important in shaping the territorial landscape of post-colonial Africa. The principle also helps to explain why newly independent states largely upheld the boundaries inherited from the colonial era (Mahony et al., 2014; Maluwa, 2016; Yoon, 2014), as the Organization of African Unity (OAU), now known as the African Union (AU), relied heavily on this principle. On the one hand, such reliance endorsed the legacy of European colonialism; on the other, it became a cornerstone of the pragmatic approach to identifying and legitimizing postcolonial borders. Thus, *uti possidetis juris* gave African leaders a script to help navigate the complex realities of independence (Maluwa, 2016; Yoon, 2014).

Like Latin America and South and Southeast Asia, Africa's modern state borders are rooted in treaties made by European colonial powers in the 19th and early 20th centuries (Loisimaye, 2024; Maluwa, 2016; Yoon, 2014). International Law views these borders as unequivocally legal and binding, contending that the fact that they were often drawn arbitrarily is a non-issue (Donaldson, 2008; Okumu, 2010; Yoon, 2014). The Malawi-Tanzania border dispute over Lake Malawi (Nyasa) serves as a clear example of this colonial legacy. One of the key sources of International Law are 'treaties' such as the Heligoland Treaty of 1890 between Great Britain and Germany to delineate their spheres of influence while placing the entire Lake Nyasa within the British sphere (Nyasaland) (Mahony et al., 2014; Maluwa, 2016; Mayall, 1973; Yoon, 2014). This bilateral agreement laid the foundation for Malawi's post-independence claim (Loisimaye, 2024; Mahony et al., 2014).

As many African states saw independence in the early 1960s their grappling with questions of inherited borders became a significant point of deliberation. While Maluwa (2016) notes that, initially, there were some movements advocating for the alteration of these boundaries to better reflect local demographics, a consensus emerged among the majority of African leaders to

uphold the existing colonial borders using *uti possidetis juris* (Mahony et al., 2014; Maluwa, 2016; Yoon, 2014).

The principle was also widely applied in Latin America to demarcate boundaries of newly independent states from former Spanish and Portuguese colonies (Maluwa, 2016; Yoon, 2014). However, African leaders reluctantly or willingly accepted administrative boundaries existing at the time of independence as their countries' internationally recognized borders (Maluwa, 2016) for three reasons. First, the inherited colonial borders, no matter how artificial they might be, constituted a 'tangible reality' at the moment of independence (Maluwa, 2016). Redrawing these borders was viewed as an immensely daunting, complex, and potentially inviting destabilization, particularly in the early days of independent statehood (Yoon, 2014). Given the vast number of diverse ethnic and cultural groups dispersed across the continent, attempting to create new borders based on these lines could have led to the fragmentation of existing states into numerous smaller and weaker entities (Yoon, 2014). Second, newly independent African states faced numerous pressing challenges resulting from colonialism, including building national unity, developing weak economies, and developing government institutions' administrative capacity (Yoon, 2014). In this context, the potential for conflict arising from widespread border revisions was deemed a significant threat to the fragile stability of the nascent nation-states. Some leaders, like the President of the Malagasy Republic (in Madagascar), were explicit in their reckoning with the moral and historical arguments for readjusting boundaries vis-à-vis the practical attempts to reshape them (Maluwa 2016).

Third, the principle of territorial integrity was considered essential for the survival of newly sovereign but often weak states (Yoon, 2014). Article III of the OAU Charter, adopted in 1963, already affirmed respect for the sovereignty and territorial integrity of each state (Maluwa, 2016). However, the OAU's adoption of the Resolution on Border Disputes Among African States in Cairo in 1964, which solemnly declared that all member states would respect the borders existing at their independence, was a further commitment to *uti possidetis juris* (Maluwa, 2016; Yoon, 2014). This resolution, proposed by President Nyerere of

Tanzania (Maluwa, 2016), effectively enshrined *uti possidetis juris* as a guiding principle for interstate relations in Africa (Yoon, 2014). This commitment was further reiterated in the Constitutive Act of the African Union in 2001 (Maluwa, 2016).

This legal reality, however, does not preclude border conflict, as the Malawi-Tanzania dispute demonstrates. Malawi relies on the Heligoland Treaty of 1890 and the principle of *uti possidetis*, asserting that the eastern shoreline was the established boundary at independence (Mahony et al., 2014; Maluwa, 2016; Yoon, 2014). Tanzania, while initially accepting this boundary, later contested it, arguing for a median line based on international law principles for shared water bodies (Mahony et al., 2014; Maluwa, 2016; Yoon, 2014). Despite Tanzania's arguments, the legal weight, supported by the principle of *uti possidetis*, generally favors the colonial-era boundary inherited by Malawi (Mahony et al., 2014; Maluwa, 2016). While some scholars like Mutua (1995) have critiqued the legitimacy of these imposed borders and the OAU's decision (Maluwa, 2016), the practical challenges of redrawing the map of Africa and the desire for stability led African leaders to prioritize the upholding of colonial-era boundaries through the principle of *uti possidetis juris*. This decision, born out of the specific historical context of decolonization, continues to shape the political geography of the continent and influences the dynamics of ongoing border disputes (Loisimaye, 2024; Yoon, 2014).

Lake Nyasa (Malawi): Territorial Dispute

There are several factors which drive territorial disputes in post-independence Africa. Ethnic political consideration appears to be a significant factor. All border segments that divided ethnic groups became particularly susceptible to claims when those groups held political power in ethnically homogeneous societies (Goemans and Schultz, 2017). Physical and geographical features near the border also play a role, albeit a secondary one. For instance, border segments which followed clear focal geographical features such as rivers and watersheds were less likely to be disputed, even when colonial-era border changes created opportunities for later disputes (Goemans and Schultz, 2017). Furthermore, historical precedents matter for territorial

claims. These often follow earlier boundary configurations, potentially offering leaders greater political opportunity (Scott and Carter, 2016). Indeed, resource competition is often an underlying factor, yet power considerations in tandem with resources played only a minor role in explaining the location of territorial claims in Goemans and Schultz' analysis of the Malawi-Tanzania dispute (2017). However, in Eastern Africa, it has been proven that the likelihood of inter-state disputes increases when natural resources (e.g. oil and valuable minerals) are discovered in borderlands (Okumu 2010). This was also the case with the Tanzania-Malawi: after remaining dormant for the decades 1970s till 1990s, the lake dispute resurfaced with the discovery of potential oil and gas deposits (Loisimaye, 2024; Maluwa, 2016; Yoon, 2014).

Malawi's Case for the Lake

As previously discussed, the legal claims of Malawi and Tanzania over the border on Lake Nyasa (Lake Malawi) are deeply rooted in the history of European colonialism in East Africa, specifically the interactions between Great Britain and Germany (Loisimaye, 2024; Mahony et al., 2014; Maluwa, 2016; Mayall, 1973; Yoon, 2014). Malawi's legal claim rests primarily on the Heligoland Treaty of 1890 between Great Britain and Germany. From the Malawian legal point of view, the famous treaty demarcated the British and German respective spheres of influence (Mahony et al., 2014; Maluwa, 2016; Yoon, 2014). The treaty explicitly stated that the boundary between Nyasaland (the predecessor of Malawi) and Tanganyika (the predecessor of Tanzania) ran along the eastern, western, and northern shores of Lake Nyasa. In particular, the explicit language of the treaty identifying a physical geographical feature (i.e., 'shores') unequivocally placed the entire lake within the British sphere of influence (Mahony et al., 2014; Maluwa, 2016; Mayall, 1973; Yoon, 2014). When Malawi gained independence in 1964, Nyasaland possessed the entirety of the lake.

In sum, Malawi cites a British colonial-era treaty that promises them sovereignty over the whole of lake Nyasa (Mahony et al., 2014; Maluwa, 2016; Yoon, 2014). Malawi maintains that such agreements should be upheld, citing the

principle of *uti possidetis juris*. The Organisation of African Unity's (OAU) 1964 resolution supports this claim, as it pledged member states to respect the frontiers existing upon their achievement of national independence. It is of great importance to note that both Malawi and Tanzania assented to the Organisation of African Unity's (OAU) 1964 resolution. While the OAU's 1964 resolution bolsters Malawi's claim (Mahony et al., 2014; Maluwa, 2016), some legal scholars argue that the Heligoland Treaty carries more weight as the primary instrument for determining the boundary (Maluwa, 2016; Yoon, 2014).

Tanzania's Case for the Lake

Tanzania asserts that the boundary should run through the median line of the lake. This would effectively grant Tanzania sovereignty over the eastern half of the northern part of the lake (Mahony et al., 2014; Maluwa, 2016; Mayall, 1973; Yoon, 2014). Tanzania's claim for the disputed lake rests on several grounds. First, Tanzania points to various maps and reports produced under British mandate rule such as 'Annual Reports on Tanganyika' (1924-2932), which referred to a center line as the lake boundary (Mahony et al., 2014; Maluwa, 2016). Such inconsistencies serve as evidence, they claim, that the precedent that the British set was inconsistent. Central to this claim is the British acknowledge their later modification of the 1890 treaty (Mahony et al. 2014). In short, Tanzania has found maps that indicate that the treaty initially reflected the median border line; later, they claim, the British amended this document and afforded Malawi control of the entire lake. However, the legal significance of these maps and reports is contested. As the International Court of Justice (ICJ) established in the Frontier Dispute Case (Burkina Faso vs. Mali), treaties are the primary source for determining boundaries; maps, such as the one Tanzania uses to dispute the validity of the Heligoland Treaty, should generally serve only as corroborative evidence unless formally annexed to a legal text (Maluwa 2016). The absence of explicit (legal) textual evidence demonstrating a deliberate agreement between the colonial powers to alter the boundary weakens Tanzania's reliance on these cartographic representations (Mahony et al., 2014; Maluwa, 2016).

Second, Tanzania invokes customary international law regarding the delimitation of boundaries in contiguous lakes, in particular when suggesting a presumption for a median line (Mahony et al., 2014; Maluwa, 2016; Yoon, 2014). Article 15 of the United Nations Convention on the Law of the Sea (UNCLOS) provides for a median line in the absence of agreement or special circumstances (Mahony et al., 2014). There are two major hurdles for Tanzania for invoking customary international law: (a) UNCLOS is meant to help settle maritime disputes, but the dispute about the *lake* is a 'territorial' border dispute; and (b) the existence of the 1890 treaty, predating UNCLOS, could be considered a specific agreement that overrides this presumption. Furthermore, both Malawi and Tanzania ratified UNCLOS *after* their independence, suggesting the principle of *uti possidetis juris*, based on the *earlier* colonial agreement, takes precedence in determining the inherited boundary (Maluwa, 2016).

Third, Tanzania's President Kikwete argued that the 1890 agreement could not deny communities living along the lake their natural rights (Mahony et al., 2014). However, this argument, while addressing the human dimension, does not necessarily displace the legally established colonial boundary (Maluwa, 2016). Tanzania may also attempt to argue historical consolidation of title based on its presence and activities on the lake. However, as the ICJ held in the Cameroon vs. Nigeria case, mere presence and administrative activities in a territory do not automatically negate established conventional title or imply acquiescence from the other party (Mahony et al., 2014; Maluwa, 2016).

Historical reckoning: The Berlin Conference through the 1890 Heligoland Treaty

The root cause of the Lake Malawi conflict lies in the arbitrary partitioning of Africa for colonial exploitation at the 1884 Berlin Conference, when European powers formalized the scramble for Africa (Mayall 1973). Of particular importance, this partitioning was primarily intended to define European spheres of influence on the continent and borders were drawn without proper and adequate consideration of the pre-existing socio-cultural structures and geographic realities of African societies. Instead,

these treaties often reflected geopolitical considerations in European capitals and prioritized the marking of boundaries on *maps*, often neglecting to identify clear physical demarcations on the *ground* (Donaldson, 2008). Furthermore, many colonial-era border decrees and inter-state treaties were contradictory. Despite these foundational territorial arrangements which shape the new states in sub-Saharan Africa, both Tanzania and Malawi acknowledge the legitimacy and binding nature of colonial agreements such as the 1890 Heligoland Treaty, which established clear spheres of influence between Germany and Britain and consequently influenced the contemporary border delineations (Mayall 1973).

The Heligoland Treaty was a product of the ‘diplomatic scramble for African territory’ among European powers (Donaldson, 2008). Heligoland defined spheres of interest between Britain and Germany in East Africa and beyond, also referencing new borders on Heligoland Island in the northern sea (on the European continent). Though the African countries’ geographic landscapes were considered when drawing boundaries established by the treaty (i.e. the lake and the Nyasa-Tanganyika plateau), this border was predominantly drawn with Colonizers’ interests in mind. The treaty negotiations were, for example, heavily influenced by Britain’s desire to control the entire Lake Nyasa to protect missionary and commercial interests and abolish the slave trade (Loisimaye, 2024; Tillotson 2020; Mayall, 1973). Ultimately, the treaty was meant to address and resolve tensions between Britain and Germany, it was a practice of diplomacy.

The treaty explicitly stated that the boundary ran along the eastern, western, and northern shores of Lake Nyasa. The treaty’s reference to an immutable geographical feature such as the lake shore effectively situated the entire lake within the British sphere of influence; and this is the status quo which Malawi inherited upon independence (Mahony et al., 2014; Maluwa, 2016; Mayall, 1973; Yoon, 2014). However, following Germany’s loss of World War I, Germany lost its colonial territories and Britain controlled both sides of the lake and Tanganyika came under British mandate (Mahony et al., 2014; Maluwa, 2016). Though Malawi and Tanzania are now each independent nation-states, the

1890 Heligoland Treaty continues to paramount significance in the Malawi-Tanzania lake dispute. It sets such an important legal foundation which can hardly be overlooked when engaged in defining the colonial boundary.

Even though it is widely known that some subsequent inconsistencies emerged during the colonial period, the principle of *uti possidetis juris*, the 1964 resolution of the OAU, and the jurisprudence of the ICJ, all underscore the enduring legal weight of this treaty to determine delimiting the inherited post-colonial boundary (Mahony et al., 2014; Maluwa, 2016; Yoon, 2014). Therefore, legal commentators largely agree that this treaty represents the foundational legal basis for determining the boundary (Maluwa 2016; Yoon 2014). Ultimately, the Malawi-Tanzania lake dispute reflects a broader pattern in post-independence Africa and beyond. Colonial treaties, despite their origins and occasional ambiguities, remain the primary legal basis for determining international boundaries.

Unpacking the Dispute in Post-Independence

The Malawi-Tanzania border dispute over Lake Nyasa significantly unfolded after Malawi gained independence on July 6, 1964. There is no official and formal record of Tanzania approaching the Government of Malawi in the immediate aftermath of its independence. However, tensions began to surface around the delimitation of the boundary along Lake Malawi (Nyasa). Although symbolic and may not hold any legal sway, Malawi unilaterally changed the lake's name to 'Lake Malawi' without consulting neighboring states (Loisimaye, 2024). Of particular importance, Tanzania was not consulted which marked the starting point of political and territorial contestation post-independence.

The Exchange of First Letters

Tanzania-Malawi relations were strained immediately following independence (Mayall 1973). In 1967, the Lake Nyasa border dispute between Malawi and Tanzania saw a crucial exchange of letters and notifications that solidified their differing positions. This period marked overt 'border anxiety,' starting with a formal

escalation from Tanzania's challenge to the inherited and established colonial boundary (Simmons & Shaffer 2024). The exchange began with a Note Verbale dated January 3, 1967. This note, sent by the Ministry of Foreign Affairs of the United Republic of Tanzania to the Ministry of External Affairs of the Republic of Malawi, explicitly laid out Tanzania's stance: the lake should be divided at the median line (Maluwa 2016). Malawi responded to this initial notification on January 21, 1967 (Maluwa, 2016). However, Malawi's reply was limited to an acknowledgment of Tanzania's Note Verbale and indicating willingness to send a response following the brief note. Of particular importance, Malawi did not issue a further reply (Maluwa 2016).

The exchange continued later in the year. On May 31, 1967, President Julius Nyerere of Tanzania wrote directly to his Malawian counterpart, President Kamuzu Banda (Loisimaye 2024; Maluwa 2016). In this letter, President Nyerere advised President Banda that Tanzania rejected the eastern shoreline boundary. President Nyerere's message communicated that Tanzania rejected the shoreline boundary (Loisimaye 2024). On the same day, President Nyerere publicly announced Tanzania's new position for the first time in a speech given at a school in Iringa, southwestern Tanzania (Maluwa 2016). In this public address, he declared that Tanzania could no longer accept the shoreline as the boundary and instead recognized the median line as more equitable.

In a note dated January 3, 1967, the Tanzanian Government informed Malawi that it considered the median line to be the legal border and rejected the shoreline boundary (Mayall 1973). There was no written response from President Banda to President Nyerere's letter of May 31st (Maluwa 2016). But Malawi's President Banda addressed the issue publicly on June 27, 1967, in an address to the Malawi Parliament (Maluwa 2016; Mayall, 1973). In this speech, he rejected Tanzania's claim, arguing that it had no justification and reaffirmed that the lake had always belonged to Malawi. Later that year, President Banda publicly rejected Tanzania's claim (Loisimaye 2024).

Overt Tension and Political Contention

The initial exchanges between Tanzanian and Malawian officials marked the beginning of a protracted dispute (Maluwa 2016). For the next year and a half, Presidents Nyerere and Banda engaged in escalated political conflict, both in rhetoric and action. Presidents Banda and Nyerere attacked one another in the media in 1968. Malawi's President Banda ordered the deployment of patrol boats and threatened to deploy armed boats on the lake, and Tanzania fortified communications technology and small arms reserves (Loisimaye 2024; Maluwa 2016). In response, the Tanzanian government launched a military and education program in villages surrounding the lake. Towards the end of 1968, Tanzania indicated it would no longer discuss the border issue until Malawi had a 'sensible and sane leader' (Loisimaye 2024). Tensions died down and relations improved slightly towards the end of the year, as the states entered a 'passive phase' of paused negotiations (Loisimaye 2024; Maluwa 2016; Yoon 2014). Relations regarding the Lake remained generally cool until 1985 (Yoon 2014).

Though tensions regarding the lake subdued, diplomatic relations between the two countries did not fully recover. These tensions arose from several factors, including contrasting viewpoints on white minority regimes in Southern Africa and the liberation struggles in those regions. Additionally, President Banda harbored suspicions that Tanzania's President Julius Nyerere was supporting exiled Malawian politicians who opposed his rule. Through all of this was the undercurrent of the dispute over the delimitation of the lake boundary, contributing to the strained relationship. Though there were sizable efforts to re-establish formal diplomacy in 1985, an effort that signified some improvement of the relationship, tensions persisted until 1994, when Malawi's President Kamuzu Banda left power (Maluwa 2016). The improvement in relations continued and was strengthened further in the immediate post-1994 period with the appointment of resident ambassadors to each other's capital. This further step of establishing resident diplomatic missions stabilized a commitment to a more normalized and cooperative relationship.

Dispute Resurgence

The exploration of oil and gas deposits in Lake Nyasa in 2011 escalated the dispute and spurred renewed attempts at resolution (Loisimaye, 2024; Mahony et al., 2014). Malawi unilaterally awarded legal exploration licenses to private companies to begin drilling for oil in the lake (Mahony et al., 2014). Tanzania condemned the move, and the two states together submitted the dispute to third-party mediation under the auspices of the Southern African Development Community (SADC) (Mahony et al., 2014; Loisimaye, 2024). SADC appointed former Mozambican President Joaquim Chissano, who was chair of the Forum of Former African Heads of State and Government, to lead the mediation process (Loisimaye, 2024; Mahony et al., 2014).

SADC mediation process, though hopeful in its initiation, was mired in delays and controversy. Specifically, Malawi often expressed skepticism and a preference for referring the dispute to the International Court of Justice (ICJ), especially following a former president's suggestion to do so during her term (Maluwa, 2016; Mahony et al., 2014). In April 2013, Malawi temporarily withdrew from the SADC mediation process citing bias, only to return to the mediation table a month later (Lautier, 2013; Mahony et al., 2014).

While the SADC mediation efforts were a major development toward settling the dispute, the core positions of both countries have remained largely unchanged. Malawi continues to insist on ownership of the entire lake based on the Heligoland Treaty (1890) (i.e., Anglo-German Treaty, 1890) and the principle of *uti possidetis juris*, which was affirmed by the Organisation of African Unity (OAU) in 1964. Both Malawi and Tanzania were signatories of the relevant Organisation of African Unity (OAU) resolution. Tanzania also maintains its claim for a median line boundary, making an argument based on contradictory colonial maps and customary international law regarding maritime boundaries. The protracted nature of this dispute, initially characterized by an exchange of letters, and later hampered by an extended-period without formal high-level negotiation, exemplifies one of many African border disputes rooted in colonial boundary-making.

The Lake Dispute Today, and Broader Implications for Landlocked States

The Malawi-Tanzania dispute exemplified the enduring legal structure established by colonial agreements which contribute a critical challenge for modern state development. However, sources of international law such as treaties must not preclude cooperation towards development between states. While Malawi's foundational claim to the entirety of Lake Malawi/Nyasa rests firmly on the 1890 Heligoland Treaty, reinforced by the principle of *uti possidetis juris* (Mahony et al., 2014; Maluwa, 2016; Yoon, 2014), the enduring legal weight of such colonial treaties must be balanced against the pragmatic imperative for stability and mutual prosperity (Powell & Wiegand, 2023; Maluwa, 2016).

This tension is rooted in inherited colonial legal structures which had no regard or neglected to foresee both short and long-term effects on the burgeoning post-colonial international order. This is especially relevant for landlocked states such as Malawi, whose economic development depends heavily on access agreements with coastal neighboring countries. Malawi does not have any direct maritime access, and the country has historically relied on neighboring nations for transit. Beyond the lake dispute, Malawi heavily depends on Tanzania's major port of Dar es Salaam for both exports and essential imports. This interdependence incentivizes regional cooperation. Malawi evidently values mutual benefits from interdependence considering Malawi's decision to officially join the Central Corridor Transport Facilitation Agency (CCTFA) in 2023 (Kisamfu, 2023). The decision is also a strategic move towards maritime access to regional markets, promoting trade and economic growth via the Tanzanian Indian Ocean port of Dar es Salaam (Kisamfu, 2023).

However, Malawi challenged recent Tanzanian port development on Lake Malawi (Nyasa) signaling that the spillover of the territorial sovereignty concerns renders commitment to cooperation vulnerable. In 2024, Tanzania decided to upgrade the Mbamba Bay Port located on Malawi's shoreline. Tanzania's port development goals aimed to increase cargo efficiency at Mtwara's port (Lansing Institute, 2024). Malawi immediately

protested the move. The Government of Malawi asserted that proceeding with the project on what it considers Malawian territory without consent was ‘irregular and illegal’ (Lansing Institute, 2024) and the country demanded the project be halted until proper consultations were conducted. This challenge emphasizes that even development-focused cooperation can be derailed when it intersects with unresolved colonial boundaries and the assertion of inherited colonial legal claims.

The complexity of this dynamic mirrors relevant implications in the quest for maritime access by other major landlocked nations, such as Ethiopia. The Eritrean independence in 1993 resulted in a loss of Ethiopian maritime sovereignty, and Ethiopia has been actively working to diversify its trade corridors and secure access to the sea (Mulugeta, 2024). Ethiopia engaged in high-level diplomatic discussions, culminating in the January 2024 Memorandum of Understanding (MoU), with the Republic of Somaliland. The Prime Minister Abiy Ahmed Ali and President Muse Bihi Abdi (MoFA Somaliland, 2024) signed the bilateral MoU: (a) Somaliland would lease a 20km strip of sea access for 50 years for commercial and naval use; (b) and Ethiopia would undertake ‘in-depth assessment’ toward formal recognition (Ministry of Foreign Affairs, 2024). The case is a powerful example of African statecraft in a context in which the *uti possidetis juris* doctrine did not reward the Republic with *de jure* sovereignty, and the underlying colonial determinants of international law did not dissuade Ethiopia’s peaceful pursuit for maritime access.

Though colonial-era treaties complicate the case of Malawi-Tanzania, Ethiopia and Somaliland represent countries engaging pragmatic negotiation maritime access rights outside traditional frameworks. Such cooperation is especially significant in a global system marked by persistent inequalities, where reliance on colonial-era legal precedents, while convenient and well-established, carry legacies that are at times contradictory and/or ill-suited to address contemporary political and economic realities.

Conclusion

The protracted dispute over the boundary on Lake Malawi/Nyasa has witnessed various attempts at peaceful resolution, reflecting the complexities inherent in post-colonial border disagreements. Ultimately, diplomatic relations between Malawi and Tanzania were almost permanently strained soon after Malawi's independence in 1964 (Mayal 1973). The heightened tensions were initially marked by personal accusations between leaders in 1967, and 1968 gave way to a period where direct, high-level formal negotiations were largely absent for several decades. It was not until 1985 that significant steps towards improving relations occurred with the establishment of diplomatic ties between Malawi and Tanzania (Maluwa, 2016). This normalization was further solidified in the post-1994 era through the appointment of resident ambassadors, indicating a commitment to a more cooperative relationship (Maluwa, 2016).

The dispute is no longer dormant, however, and there are renewed attempts towards peaceful resolution. The border dispute is currently active as a result of oil and gas deposits exploration in Lake Nyasa in 2011. Malawi's unilateral awarding of oil exploration licenses in the contested area further aggravated the situation (Maluwa, 2016). Unlike the period when the diplomatic relations were frozen, the contemporary governments of the two states are recognizing the potential for conflict considering the rich natural resources of the lake. Thus, both states agreed to submit the dispute to third-party mediation under the auspices of the Southern African Development Community (SADC) (Maluwa, 2016), and the former Mozambican President Joaquim Chissano, to lead the mediation efforts in 2012.

Despite this commitment to peaceful means, the SADC mediation process faced significant challenges in delays and instances of controversy (Maluwa, 2016, Mahony et al., 2014). While actively participating in the process, Malawi questioned the integrity of the process. The country has repeatedly voiced its preference for referring the dispute to the International Court of Justice (ICJ). Malawi's inclination towards adjudication reflects the country's confidence in its legal standing, based primarily on the Heligoland Treaty of 1890 (Maluwa, 2016, Yoon, 2014) and principle of *uti possidetis juris*, which generally upholds colonial-

era boundaries upon independence (Yoon, 2014). On the other hand, Tanzania has strategically favored continued mediation and bilateral negotiations with Malawi. Tanzania's claims primarily rely on post-1890 colonial maps indicating a median line and the historical usage of the lake by its citizens. Tanzania's inclination towards mediation and bilateral negotiations shows that the state is indeed aware of the legal complexities of challenging the established treaty.

Powell and Wiegand (2023) succinctly observe that “since political, economic, and strategic considerations, as well as particulars of legal claims associated with each territorial and maritime dispute, are unique, no single PR [peaceful resolution] method is always most appropriate on each occasion” (p. 7). The future for the disputed lake is uncertain, however, one potential avenue for peaceful resolution which has been considered involves shared management and utilization of the lake's resources (Maluwa, 2016). This approach could potentially satisfy both country's interests to ensure Malawi's territorial integrity while allowing Tanzania to benefit from the vast economic opportunities the lake offers including oil and gas natural resources (Maluwa, 2016, Yoon, 2014, Okumu, 2010). Such a solution would align with SADC's principles of cooperation emphasized as a regional body with a priority for prosperity (Maluwa, 2016). Whichever venue the two states choose, either continued mediation or eventual adjudication, the success of any peaceful resolution will ultimately depend on the political will of both nations to compromise and prioritize the long-term stability and mutual benefit of the region.

The implications from the Malawi-Tanzania border dispute go beyond post-colonial rivalry. Considering the diverse contexts for applying international law while drawing on *uti possidetis juris* doctrine, the case provides an in-depth analysis for international law scholarship on territoriality, inherited sovereignty, and particularly concerning the application of international law in resource-rich regions. This paper's findings underscore the enduring legal weight of existing international principles and their intricate relationship with challenging historical legacies which gave rise to contemporary modern states. This research reinforces the hierarchy of legal sources and

the pragmatic political utility of *uti possidetis juris*. The doctrine was first applied in Latin America, where theorists and practitioners developed legal strategies for contemporary maritime delimitation disputes. The Malawi-Tanzania case highlights the continued, often immutable colonial-era treaties in defining modern international boundaries. This is not an isolated phenomenon. Others, for example the dispute between Cameroon and Nigeria over the Bakassi Peninsula and ultimately settled by the ICJ, were also based on colonial treaties (Yoon, 2014; Maluwa, 2016). Such cases reflect the enduring legal significance of colonial-era treaties such as the Anglo-German (Heligoland) Treaty of 1890. Similarly, improperly delimited, contradictorily referenced, and poorly demarcated colonially inherited borders are among the sources of current border disputes in Eastern Africa. Kamazima (2017, 2018), for example note “the Tanzania-Uganda border stems from the Anglo-Germany delimitations of spheres of influence of November 1st, 1886, 1890 and 1893, with modifications by an Agreement of May 14, 1910” (p.41). In the dispute on Lake Nyasa, the resurfacing of claims due to the exploration and potential discovery of natural resources further adds to African border disputes.

For scholars and policymakers interested in the dynamics of post-colonial statecraft globally, this research illuminates that *uti possidetis juris* doctrine is not just as a legal rule, but a political cornerstone endorsed by the African Union to ensure stability and territorial integrity in a continent grappling with arbitrarily drawn boundaries. The African adoption of *uti possidetis juris* was arguably a pragmatic necessity, accepted to prevent the fragmentation of nascent post-colonial states. The AU could not imagine feasible policies to manage the daunting complexity of redrawing maps based on ethnic or cultural lines. The dispute thus serves as a powerful case study demonstrating the trade-off between the moral arguments for boundary readjustment and the practical imperative for stability. The resource dimension underlying territorial disputes adds another layer of conflict underpinning international law. The Lake Malawi/Nyasa conflict stands as an enduring testament that even decades after independence, the legacy of colonial geopolitical decisions continues to impose its legal structure upon modern sovereignty,

and the need for political commitment to devise approaches prioritizing cooperation and compromise between states to navigate the complexities of inherited boundaries.

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