

Border Treaties and Interstate Disputes in Africa: An Extension of the Normative Theory in Explaining the Malawi-Tanzania Conundrum

James Zotto

Department of History, University of Dar es Salaam, Tanzania

Abstract

The colonial project for the partition of Africa in the second half of the 19th century, which culminated in the 20th century, led to the disgruntlements among African countries in the post-colonial period. One discontentment manifests itself in the interstate border disputes. This paper is a critique to colonial scholarship which maintains that African borders were defined by colonial treaties with great precision. While I acknowledge the colonial border treaties as the foundations of the modern African states, this paper argues that most of the treaties were imprecise, incomplete, ill-defined, used vague documentation, routinely ignored ethnic composition of the territories and did not reflect realities on the ground, and, consequently staked interstate conflicts and wars in post-colonial period. To advance this argument, this paper is situated in the normative theory to explain the Malawi-Tanzania border dispute in the Lake Nyasa area, which reflects an ill-fated legacy of colonial boundary making process. Data for this paper are mainly drawn from the archival sources accessed from the British National Archives in the United Kingdom, Bundes Archives in Germany, SOAS; and another documentary information accessed from various libraries – public and private. Findings divulge that the Anglo-German Agreement of 1890 which situated the boundary between Malawi and Tanzania contained some anomalies entrenched in the contradictions within the treaty, limits and exercise of sovereignty of the two powers and geographical realities. The paper sums up that the two countries cannot use the treaty as one and the only justification for situating the boundary either on the eastern shore or in the middle of the lake. The treaty may, however, provide the basis for the two nation-states to renegotiate and compromise their shared boundary and rectify the errors noted.

Key Words: border treaties, Lake Nyasa, normative theory.

1.0 Theories Explaining Border Disputes: In Search of the Relevance of the Normative Theory

Understanding border disputes requires a thorough analysis of issues that influence conflicts, management and relations, such as strategic, political, economic, environmental, legal, domestic and international issues. This paper, therefore, uses political realist, institutional-statist and normative theories to explain border disputes and extends the latter to examine its relevance in the Nyasaland-Tanganyika row. While the earlier two theories are primarily concerned with political and domestic issues governing disputes, the latter theory is concerned with border treaties. This theory has been accorded little attention in the current literature since many scholars approach border disputes from the angle of power struggles between the actors. This study enlightens the relevance of the normative theory in examining border treaties and how they have glimmered disputes in post-colonial period in Africa. The main foundation of political realism is the principle of dominance. The theory holds that international politics is governed by objective, universal laws based on national interests defined in terms of power. In this regard, boundaries are fundamental to the bases of national power. Therefore nation states project various prescriptions for boundary protection as the demarcation lines of territorial integrity and exclusive control.¹ Power means an actor's ability to get another actor to do what she/he would otherwise not do.² Realists interpret international politics as a never-ending struggle for power and security among states and regard border disputes as a constant, endemic and unavoidable facet of the struggle.³ So, borders must be defended and fought for because they are perceived as territorial divisions—imagined historical identities or objects of zero-sum state competition for power, prestige, lebensraum and security. In modern border disputes, a zero-sum situation is a situation in which if one wins an amount of something then

¹S. P. Sharma. "The India-China Border Dispute: An Indian Perspective." *The American Journal of International Law*, Vol. 59, No. 1 (1965): 16-17.

²J. S. Goldstein and J. C. Pavehouse. *International Relations* (New York: Longman, 2009).

³S. A. Kocs. "Territorial Disputes and Interstate War, 1945-1987." *The Journal of Politics*, Vol. 57, No. 1 (1995): 159-160; R. A. Simmons. "Rules over Real Estate: Trade, Territorial Conflict and International Borders as Institution." *The Journal of Conflict Resolution*, Vol. 49, No. 6 (2005): 825-827.

another loses the same amount.⁴ As such, in international relations, states always prioritise their interests, which may be the sovereignty of a country, increased relative economic or military capabilities or power.⁵

Therefore, borders and geographical expansion are reflections of and increase state power.⁶ Since states are the most important actors on the international scene, so boundaries are necessary between them and therefore are defended. Boundaries are contested because they are interpreted as strict dividing lines protecting state sovereignty and national security.⁷ The theory is significant as it exposes the role of political, economic and strategic motives in triggering border disputes. However, the theory has downplayed factors which have reduced the number of border disputes and others that have caused border disputes, such as historical legacies and legal claims. For example, modernisation forces have reduced the number of border disputes in the Middle East, which is usually perceived as a hotbed of border disputes, from 33% before the Second World War to 16% after the war. Yet, mutual treaties account for 80% in reducing border disputes. A similar trend has been observed in Africa, where most of the economic interstate border contests have been successfully settled.⁸

Institutional-statist theory is based on domestic problems and is built on what F. J. Blanchard calls a “volatile mix” of functional values of the boundary being contested and the characteristics of the states involved in the dispute.⁹ This theory holds that the intrinsic salience of a given border depends *a priori* upon the following: military-strategic,

⁴C. H. Kim. “The Resurgence of Territorial and Maritime Issues in the Post-modern Era.” *The Journal of Territorial and Maritime Studies*, Vol. 1, No. 1 (2014): 7.

⁵K. E. Wiegand. “Resolution of Border Disputes in the Arabian Gulf.” *The Journal of Territorial and Maritime Studies*, Vol. 1, No. 1 (2014): 41; N. P. Gleditsch. “Armed Conflict and the Environment: A Critique of the Literature.” *Journal of Peace Research*, Vol 53, No. 3 (1998): 387.

⁶H. J. Morgenthau and K. W. Thompson. *Politics among Nations: The Struggle for Power and Peace* (New Delhi-Ludhiana: Kalyani Publishers, 1985), pp. 30-55; J. A. Vasquez. “Why Do Neighbors Fight? Proximity, Interaction, or Territoriality.” *Journal of Peace Research*, Vol. 32, No. 3 (1995): 278.

⁷V. Kolosov. “Border Studies: Changing Perspectives and Theoretical Approaches.” *Geopolitics* Vol. 10, No. 4 (2005): 612.

⁸A. Ajala. “The Nature of African Boundaries.” *African Spectrum*, Vol. 18, No. 2 (1983); Simmons, 2005, *op. cit.*

⁹J. F. Blanchard. “Linking Border Disputes and War: An Institutional-Statist Theory.” *Geopolitics*, Vol. 10, No. 4 (2005): 690.

economic and constitutive functions; national identity; ethno-national unity; as well as state building and preservation. Thus, the larger the number of functions a border performs, the greater the incentives it generates for policymakers to initiate border quarrels, to escalate existing controversies or to reject boundary-related compromises. Also, he notes that a country with low stateness can generate special needs which can make it highly desirable for policymakers to exploit the functions that boundaries serve, since they have a few strategies that they can employ to achieve higher levels of stateness. As a result, domestic deficiencies, internal resource mobilisation obstacles and the inability to concentrate resources and attention on the resolution of specific problems mean that such countries must rely extensively on external assets to surmount their internal and external problems. One such important external asset is a border which helps to satiate a country's needs.¹⁰ Krista E. Wiegand adds that, since a disputed border is important for states and their people, leaders of challenger states can divert attention away from domestic problems by attempting to (re)acquire a disputed territory while mobilising support for the government. He, thus, regards border disputes as a product of what he calls "domestic diversion."¹¹ Blanchard employed this theory in analysing the Indo-Pakistan border disputes of between 1947/8 and 1965 and argues that border disputes are the result of a volatile mix of rich functional values of a border, a deficient stateness of a disputant(s) and troubled borderlands.¹² While we appreciate the diverting of attention away from domestic tribulations and the role of borders in igniting dissension, we are aware that other potent factors (e.g. historical and legal issues) have been overlooked in the analyses. For instance, the British Boundary Commission did not adequately resolve boundary issues, especially ethno-national and legal issues. This might have increased the number of border claims between India and Pakistan.

¹⁰*Ibid.*, pp. 697-708.

¹¹K. E. Wiegand. "Territorial Dispute Settlement Attempts as Domestic Diversion." A paper Presented at the Annual Meeting of the American Political Science Association, Seattle, September, 2011, p. 0, 2.

¹²Blanchard, 2005, *op. cit.*

The normative theory is based on history and international treaties. Its main argument is that border disputes are caused by a feeling that a piece of a territory was wrongfully seized, rather than by strategic or economic values of the boundary.¹³ The theory views border disputes or accords as dependant on the sturdiness of treaties. As such, international treaties not only prevent disputes from arising, but may also fuel them. The number of border claims can be reduced if treaties are more precise and if there is a consensus on following the treaties and resolving or adjudicating claims.¹⁴ By contrast, ambiguities contained in treaties are highly likely to lead to border disputes, since states may have different conceptions of justice or because relevant norms may be differently understood in such a situation. Therefore, interstate border disputes have occurred in situations where international treaties have left room for the claims in question to be staked.¹⁵ For instance, Japan staked claims to a few, small, sparsely inhabited islands in the northeast of Hokkaido (the northern territories), not to the more economically and militarily valuable islands farther north;¹⁶ and Venezuela persistently staked claims to agriculturally unproductive areas covered by rain forest in Guyana, not to the oil-rich areas of northern Columbia. The same applies to the border disputes between India and Pakistan.¹⁷ In many areas where disputes have occurred, treaties and maps are not congruent. On this, John W. Donaldson argues that, in order to be respected, a boundary requires both recognised legal validity and a clearly identified geographical position.¹⁸ This is because a demarcated territory is equivalent to a property of a government. As such, international boundaries are lines where one government's property begins and

¹³A. B. Murphy. "Historical Justifications for Territorial Claims." *Annals of the Association of American Geographers*, Vol. 8, No. 4 (1990): 332-334; K. Fierbeck. "Political Imperatives and Normative Justifications: A Reply to Joyce Green." *Journal of Political Science/ Revue canadienne de science politique*, Vol. 34, No. 1 (2001): 157-161.

¹⁴J. A. Vasquez. "Why Do Neighbors Fight? Proximity, Interaction, or Territoriality." *Journal of Peace Research*, Vol. 32, No. 3 (1995): 283.

¹⁵T. Forsber. "Explaining Territorial Disputes: From Power Politics to Normative Reasons." *Journal of Peace Research*, Vol. 33, No.4 (1996): 434-439.

¹⁶P. O'shea. "Playing the Sovereignty Game: Understanding Japan's Territorial Disputes" (University of Sheffield: PhD Thesis, 1996), pp. 16-17.

¹⁷Murphy, *op.cit.*, pp. 337-338; Forsberg, 1996, *op. cit.*, pp. 444-445.

¹⁸J. W. Donaldson. "Perceptions of Legal and Geographical Clarity: Defining International Land Boundaries in Africa", in R. Home (ed.). *Essays in African Land Law* (Pretoria: Pretoria University Law Press, 2011), p. 5.

another's ends.¹⁹ Much evidence from Africa in general and from Malawi and Tanzania in particular shows that the disputes are largely prompted by border treaties and related documents, such as maps. Most of the treaties on borders neither show geographical realities on the ground, nor do they represent acceptable demographical division. Moreover, in areas where the colonial powers did not have any economic interests, boundaries were extremely ambiguous.²⁰ Since treaties are also contested and negotiated terrains, it is important for African states to re-examine their troubled boundaries.

2.0 The Establishment of Colonial Borders in the Lake Nyasa Region

East-Central Africa, just like other African regions, experienced the imperialist scramble for colonies. Specifically, the Lake Nyasa region witnessed an intense scramble involving three major imperialist powers, namely Britain, Germany and Portugal. The drawing of the boundaries separating the spheres of influence of these powers involved the signing of bilateral treaties by the powers concerned. One such bilateral agreement was the Anglo-Portuguese Treaty of 10 August 1890. This treaty placed the border between British Nyasaland (Malawi) and Portuguese East Africa (Mozambique) on the shore of Lake Nyasa, on the latter's side. Article 1 of this treaty reads:

To the north by a line which follows the course of the River Rovuma from its mouth up to the confluence of the River M'sinje, and thence westerly along the parallel of latitude of the confluence of these rivers to the shore of Lake Nyassa. To the west by a line which, starting from the above-mentioned frontier on Lake Nyassa, follows the eastern shore of the lake southwards as far as the parallel of latitude 13° 30' south...²¹

Likewise, Article I (sub-section 2) of the Anglo-German Treaty of 1 July 1890 situated the border between German East Africa (now Mainland Tanzania) and the British

¹⁹R. H. Jackson and C. G. Roseberg. "Why Africa's Weak States Persist: The Empirical and the Juridical in Statehood." *World Politics*, Vol. 35, No. 1 (1982): 2-4.

²⁰ Donaldson, *op. cit.*, p. 14.

²¹B. Ian. *African Boundaries: A Legal and Diplomatic Encyclopedia*. (Berkeley: University of California Press, 1979), p. 1119.

protectorate of Nyasaland (Malawi) on the shore of Lake Nyasa in German East Africa. According to this treaty, the German colonial possession was bounded:

To the south by a line which starting on the coast at the northern limit of the Province of Mozambique, follows the course of the River Rovuma to the Point of confluence of the Msinje; thence it runs westward along the parallel of that point till it reaches Lake Nyasa; thence striking northward, it follows the eastern, northern and western shores of the lake to the northern bank of the mouth of the River Songwe; it ascends that river to the point of its intersection by the 33rd degree of east longitude; thence it follows the river to the point where it approaches most nearly the boundary of the Geographical Congo Basin defined in Article I of the Act of Berlin.²²

The third agreement involved Germany and Portugal. According to Article II of the German-Portuguese Agreement, signed in Lisbon, Portugal, on 11 June 1891:

The boundary line which separates the Portuguese from the German possessions in South-East Africa follows the course of the River Rovuma from its mouth to the point where the River M'sinje joins the Rovuma and runs to the westward on the parallel of latitude to the shores of Lake Nyasa.²³

²²See the original Anglo-German Agreement of 1 July 1890. All provisions included. British National Archives, London, *Acta/ Helgoland-Sansibar-Vertrag, No.17*, pp. 15-17; The Anglo-German Agreement, 1 July 1890; Heligoland-Sansibar-Vertrag, 1 May 1919. See also B. Ian, *ibid.*, p. 1119; German History in Documents and Images, *Wilhelmine Germany and the First World War, 1890-1918, Anglo-German Treaty [Heligoland-Zanzibar Treaty] (July, 1, 1890)*, Volume 5., n.d., p. 2. A full treaty text can be found in Das Staatsarchiv, Sammlung der offiziellen Aktenstücke zur Geschichte der Gegenwart [The State Archive, Collection of Official Documents Relating to Contemporary History]. Leipzig, Verlag von Duncker & Humblot, 1891, Vol. 51, p. 151. Translation by Adam Blauhut; E. Hertslet, *The Map of Africa by Treaty*, Vol. III, Nos. 260-382. (London: Harrison and Sons, 1909), p. 900.

²³B. Ian, *op. cit.*, p. 970.

With regard to the three treaties cited above, it can be said that the boundary separating the German, British and Portuguese spheres of influence in the Lake Nyasa region was confined to the lake shore in German East Africa and Portuguese territory. More specifically, with reference to our case, the Anglo-German Agreement of 1890 indicates that the boundary of German East Africa, which separated her with Nyasaland, runs through the eastern, northern and western shores of Lake Nyasa in German East Africa. This boundary is commonly called the eastern shore boundary. Thus, for the purposes of this paper, I use the eastern shore or the eastern side to mean the shore or side of the lake in the part of German East Africa that is today known as Mainland Tanzania. Also, I use the western shore or western side of the lake to mean a shore or side of the lake in Nyasaland, which is today known as Malawi.

We have already seen above that the eastern shore boundaries separated the powers on the scene of partition of the Lake Nyasa area. In this regard, the eastern shore boundaries were chosen in preference to the median line for a number of reasons. One reason was that such treaties were intended to push Germany and Portugal as far back as possible from the British sphere of influence.²⁴ I may therefore say that this was a deliberate move to avoid further clashes among these powers over the Lake Nyasa region if their boundaries ran through the middle of the lake. The definition of such boundaries would be vague, and thus contested. The second reason, and perhaps more important than the first, was that the early establishment of British activities in the Lake Nyasa region, had given the British the advantage of taking the largest share of the Lake Nyasa region. This follows from two considerations. First, Lake Nyasa was a corridor of the British Universities Mission to Central Africa (U.M.C.A) activities. The U.M.C.A. activities began in this region before any other European forerunners of colonialism arrived on the scene to start projects such as schools, dispensaries and churches. Consequently, such British missionaries as William Percival Johnson appealed to the British government to occupy

²⁴British National Archives, London, *The Boundaries of Tanganyika in the Northern Part of Lake Nyasa*, Acc. No. EAF 130/7/01. See Correspondence from Mr. Browning to Mr. Fry (British officials) about the exact boundary between Tanganyika and Nyasaland, 12 May 1959.

the Lake Nyasa region.²⁵ With this advantage, the British made use of the missionary factor when advocating the protection of Lake Nyasa from infringement by their rivals.²⁶

Related to this reason is the ‘disruption’ the Lake Nyasa region had experienced following the unwillingness of Germany and Portugal to invest in the fight against slave trade. Thus, only Britain had vivid interests in the Lake Nyasa region and fought against the slave trade, locally called *ukapolo*.²⁷ German occupation of this region would have meant taking the fight against the trade across the lake, an activity that would be costly to Germany, whose imperial charter, *Schutzbrief*, entered international politics late, with an insufficient capital investment. It was only in about 1884 that Germany’s interest in East Africa began; this was followed by the establishment of German protectorate over some areas in the region in 1885.²⁸ This fact is akin to Heinz Schneppen’s argument that in 1880 nowhere on African soil were the German colours flying. It is in this regard that Schneppen says that Germany was a late comer to the colonisation enterprise.²⁹ Similarly, Portugal had no interest in the Lake Nyasa region. As such, she didn’t want to be involved in the campaign to abolish the slave trade in the Lake Nyasa region.³⁰ Given these facts, I can argue that Britain had greater interests in and stronger reason to occupy the Lake Nyasa region. For example, she sought to defend her missionaries and trade interests in the region.

The third reason for British occupation of the Lake Nyasa region was that the Anglo-German Agreement of 1890 excluded the German colonial claims over much of East

²⁵See L. Chisui. *Kalilole wa Wana Msapulo wa Kalilole* (Likoma, n.d.), p. 53.

²⁶A. C. McEwen. *International Boundaries of East Africa*. (Oxford: Oxford University Press, 1971), pp. 177, 179.

²⁷*Ibid.* See also, L. Chisui, *op. cit.* He describes how disruptive slave trade was and the efforts of the U.M.C.A to abolish it. Also, see Eginald Mihanjo “Capital, Social Formation and Labour Migration: A Case Study of the Wampoto in Mbinga District 1900-1960” (University of Dar es Salaam: M.A. Dissertation, 1989); Eginald Mihanjo, “Transition to Capitalism and Reproduction: The Demographic History of Lake Nyasa Region 1850-1980s” (University of Dar es Salaam: PhD Thesis, 1999).

²⁸B. Ian, *op. cit.*, p. 957; R. Oliver and A. Atmore. *Africa since 1800*, Vol. IV (Cambridge: Cambridge University Press: 1994), pp. 106-109.

²⁹H. Schneppen. “Why Kilimanjaro is in Tanzania: Some Reflections on the Making of this Country and its Boundaries.” *National Museum of Tanzania*, Dar es Salaam, Occasional Paper No. 9, 1996, p.4.

³⁰McEwen, *op. cit.*, p. 173.

Africa, though it unleashed a wave of nationalist protests in Germany.³¹ Three explanations bear this out. One is that Germany's attention was focused on the Indian Ocean coast; she had managed to put down the British ambition to traverse Africa from Cape Town to Cairo. After the former succeeded in doing this, she withdrew her intention to have territories in East and Central Africa. Secondly, Germany was satisfied with the Heligoland prize. When Germany was given Heligoland Island, she withdrew her territorial claims from certain parts of East Africa, including the Lake Nyasa region. Heligoland is a tiny island, a few miles off the German coast on the North Sea. The Germans had interest on this island. Since it connected the Baltic Sea and the North Sea, Heligoland was regarded by German naval strategists as an invaluable bastion to the gateway of the German fleet. This became a serious negotiation substance between the two powers. When the Heligoland question was resolved, Germany accepted British protectorate over Zanzibar. When these were agreed upon, it seems that Germans were flattered with colonial ambitions and disregarded most of the areas once contested with other powers. Along this line of thinking, Heinz Schneppen argues that Germany had not been able to realise its maximum objectives for the Lake Nyasa and on Zanzibar. This clearly illustrates "a colonial marriage" between the Germans and Britons shaped by the political interests of give and take.³² Third, Germany secured access to and the right of transit on Lake Nyasa. Thus, Germany was less concerned with countering British ambitions in the Lake Nyasa region.³³

The last reason given by A. C. McEwen was that, theoretically, during the process of partitioning the continent, other powers were unable or unwilling to press their claims as far as the theoretical limits of their spheres of influence, while others did it strongly. For instance, British nationals, particularly members of parliament, church ministries and elders persuaded their government to protect the nation's interests in the Lake Nyasa

³¹German History in Documents and Images, *op. cit.*, p. 1.

³² Schneppen, *op. cit.*, pp. 25-30.

³³McEwen, *op. cit.*, p. 179.

region.³⁴ It is in this light that I can agree with Heinz Schneppen's argument that Lord Salisbury proposed to divide the territories North-West of Lake Nyasa, where Britain could get the lion's share. In turn Germans would be compensated by a portion of the territory South-West of Lake Victoria, with a dividing line drawn from the Northern tip of Lake Tanganyika to Lake Victoria.³⁵ Subsequently this became an agreement between Germany and Britain. In sum, the definition of early boundaries in the region indicates that both Germany and Portugal were confined to the eastern shore of the lake, which served as boundaries separating them from the British Protectorate of Nyasaland. The latter country had a strong bargaining power to occupy a large part of the Lake Nyasa region because of the advantages she had before and at the time of partitioning the continent. Such advantages included Britain's involvement in the abolition of the slave trade and investments in social infrastructure. From the above discussion, I can conclude that the process and outcome of border formation on the Lake Nyasa region was determined by rivalries, cooperation, investment and history of arrival of the concerned powers in the region. These factors played a greater role in bilateral negotiations which consequently influenced a share each respective power would get.

3.0 Boundary Adjustments in the Lake Nyasa Region after the Initial Agreements

Some inter-territorial boundaries were adjusted during the colonial period after initial treaties had been signed. This happened in areas where disputes arose, for instance due to inconsistencies in the definition of a particular boundary or in geopolitical conditions between contiguous territories. In such cases, boundary commissions were constituted and charged with the task of proposing boundary revisions, hence the drawing of new inter-territorial boundaries. In the tripartite region of Lake Nyasa, two notable boundary adjustments were made. One of these involved the German and Portuguese territories in the River Ruvuma area, which is a contact zone. There were three phases of boundary adjustment with regard to these two colonial territories.

³⁴*Ibid.*, pp. 18-19, 174.

³⁵ Schneppen, *op. cit.*, p. 25.

The first phase began and ended in 1907. During this time, a joint German-Portuguese boundary demarcation commission made slight adjustments to the boundary between the territories under these powers. The adjustments were meant to get rid of certain inequalities evident in the use of a 'parallel' for an international boundary between the confluence of the River Ruvuma and the River M'sinje and the shores of Lake Nyasa. The word parallel was conceived by the two powers concerned as obscuring as to the exact location of the boundary on the ground. As a result, natural topographical features were used to define the boundary.³⁶ The boundary was changed on the Mozambique side at the mouth of the Txuinde (Kiwindi) stream, by being extended about 0.5 kilometres southward of the initial tripoint. The tripoint was located approximately at latitude 11° 34' 30" S and it was presumed to be the centre or middle of the stream.³⁷ The revised boundary became effective from 24 November 1909.³⁸

The second phase began and ended in 1913. The boundary was adjusted for two reasons. The first was that both the German-Portuguese Agreement of 1886 and the Anglo-Portuguese Agreement of 1890 referred to the boundaries at the contact zone between the territories under these three powers which were not clear on the course of the River Ruvuma. In other words, the powers did not say exactly which part of the river served as the boundary between German East Africa and Portuguese East Africa. Secondly, there were issues to do with the location of the islands in the River Ruvuma. These two reasons made the European powers reach an agreement in 1913, through which Germany acquired the islands in Upper Ruvuma, above the river's confluence with the *Domoni* area, while Portugal got the islands below the confluence. Further to this agreement, the *thalweg* of the River Ruvuma was declared a boundary line and the inhabitants of both territorial banks were granted, among other things, fishing rights.³⁹ The third phase of the boundary

³⁶McEwen, *op. cit.*, p. 211.

³⁷The Geographer, Bureau of Intelligence and Research, Department of State, United States of America, *International Boundary Study: Malawi-Tanzania (Tanganyika and Zanzibar) Boundary*, No. 37, 26 October 1964, pp. 3-4; Ian, *op. cit.*

³⁸ Ian, *ibid.*, p. 971.

³⁹McEwen, *op. cit.*, p. 212.

modification started and ended in 1937. The course of the River Ruvuma experienced constant changes. This gave rise to disputes as to who had sovereign rights over the banks at certain points and over the islands in the river. Due to these difficulties, an Anglo-Portuguese boundary commission was formed to make certain modifications to the boundary.⁴⁰ An agreement was reached on 11 May 1936 and was subsequently approved by the Council of the League of Nations in its Ninety-Eight Session of 14 September 1937. In this agreement, it was resolved that a line passing through the middle of the River Ruvuma would serve as a boundary and that the islands in certain sections of the river would belong to Tanganyika while those in the other sections would belong to Mozambique. It was further agreed that in the sections where there were no islands, the boundary would follow the *thalweg* even when its position was changed by natural forces in the river bed. In addition, it was agreed that, if the bed of the river underwent any changes, the river would be diverted into its old bed or, if that was impossible, some territorial compensation would be provided.⁴¹ Other subsequent agreements included the freedom to navigate the river without distinction of nationality of the people from both territories. The inhabitants of both banks had the right to draw water, to fish and to collect salt from the river. ⁴² The use of physical features at the time was regarded as a convenient means of locating a boundary, since physical features such as lakes, oceans, mountains, rivers and big trees were regarded as permanent objects. One weakness of using physical features such as water bodies as interterritorial limits was that such features were dynamic based on climatic variations that kept them fluctuating and changing their courses. As a result, boundary adjustment negotiations were imperative to address changing boundary alignments due to shifts in water course.

Another notable boundary adjustment involved the British and Portuguese territories on the Lake Nyasa region. The two colonial governments undertook to regulate their frontier

⁴⁰Tanzania National Archives, Dar es Salaam, *League of Nations and Permanent Mandates Commission, Minutes of Session*; Vol. 7. Minutes of the Thirty-five Session, held at Geneva from May 31 to June 1 1937, including report of the Commission to the Council; Geneva, 1937; Ian, *op. cit.*, p. 971.

⁴¹*Ibid.*

⁴²*Ibid.*

which they delineated through the Anglo-Portuguese Agreement signed in Lisbon, Portugal, on 11th June 1891. There were reasons for this boundary adjustment. One reason had something to do with the desire of the governments to alter certain provisions of the treaty which they felt were contradictory. Another reason was lack of precision in interpreting or executing the treaty with regard to points of mutual interest. Also, new conditions had arisen in the area in question which necessitated the making of certain adjustments to the boundary. Lastly, representatives of the two governments had suggested that certain sections of the frontier between Mozambique and Nyasaland should be made.⁴³ So, the two governments agreed on the rectification of their shared frontier; this was indicated in Article 1 (sub sections 1-3) of the Anglo-Portuguese Agreement, signed in Lisbon, Portugal, on 1st January 1953. The agreement reads:

The frontier on Lake Nyasa shall run due west from the point where the frontier of Mozambique and Nyasaland meets the shore of the Lake to the median line of the waters of the same Lake and shall then follow the median line to its points of intersection..... which shall constitute the southern frontier (1). The Government of the United Kingdom shall retain sovereignty over the islands of Chisamulo and Likoma together with the exercise of all rights flowing from such sovereignty, including full, unrestricted and unconditional rights of access. The Government of the United Kingdom shall also retain sovereignty over a belt of water two sea miles in width surrounding each of these islands, except that where the distance between Likoma and the mainland is less than 4 miles the waters shall be equally divided between the two Governments (2). The inhabitants of Nyasaland and the

⁴³Ian, *op. cit.*, p. 1194; See also British National Archives, London, *The Boundaries of Tanganyika in the Northern Part of Lake Nyasa*, Acc. No. CO 822/1555. Such information about boundary adjustment is specifically found in the “Opinion on the Tanganyika/Nyasaland Boundary border on Lake Nyasa by the Attorney General of Tanganyika to the British Government of Tanganyika, dated 29.6.1959, pp. 12-14.

inhabitants of Mozambique shall have the right to use all the waters of Lake Nyasa for fishing and other legitimate purposes, provided that the methods of fishing which may be employed shall be only those which are agreed upon by the Government of Nyasaland and the Government of Mozambique (3).⁴⁴

This treaty came into force on 18th November 1954.⁴⁵ Thus, the initial Anglo-Portuguese Treaty of 1891 was abrogated, and therefore the new boundary between the territories under these two powers was moved from the eastern shore of Lake Nyasa in Portuguese East Africa to the middle of the lake.

It is interesting to note that the eastern shore boundary between Germany and Britain was not adjusted. The only adjustment to the boundary between the territories under the two powers was made at the River Songwe, an end point of the eastern shore boundary, and also at a section that connects Lake Nyasa to Lake Tanganyika. A mixed commission was entrusted with the work of delimiting the boundary at the River Songwe. The commission began its boundary demarcation work in 1898 from the River Songwe and proceeded westward to Lake Tanganyika.⁴⁶ The commission was led by Captain Charles Close, who later became the president of the Royal Geographical Society and Director of the Ordinance Survey (1911-1922). Captain Close was assisted by a German Commissioner, Herrmann Hauptmann.⁴⁷ In the process of boundary delimitation, the commission, in pursuance of Article VI of the Anglo-German Agreement of 1 July 1890 (as cited above), was appointed to delimit the frontier between British and German territory from Lake Nyasa (at the River Songwe) to Lake Tanganyika. Noting that the boundary depended on the positions of two meridians, the Commission decided to carry out a triangulation

⁴⁴Ian. *op.cit.*, pp. 1194-1195.

⁴⁵*Ibid.*

⁴⁶McEwen, *op. cit.* pp. 178-179, cited in *Report by Captain Close, R.E., on the Delimitation of the Nyasa-Tanganyika Boundary in 1898*. Foreign Office, Confidential No. 7115, March 1899.

⁴⁷British National Archives, London, *Report by Captain Close, R.E., on the Delimitation of the Nyasa-Tanganyika Boundary in 1898*. London, Foreign Office, p. 1, Acc. No. FO 881/7115; J. W, Donaldson, "Pillars and Perspective: Demarcation of the Belgian Congo-Northern Rhodesia Boundary." *Journal of Historical Geography*, Vol. 34 (2008): 182-183.

along the boundary. Also, modification was called on because the River Songwe affected the boundary due to shifting of its bed or was likely to in the future. The modification altered the boundary from the northern bank of the mouth of the River Songwe (adjoining Lake Nyasa) to the middle of the same river.⁴⁸ Clearly marked and elaborated boundary pillars were erected on the ground to mark the limits of the territories under Britain and Germany.⁴⁹ After the work had been completed, the commission called upon the two powers to confirm the 1890 Treaty, with abrogation effected from the River Songwe to the Lake Tanganyika. Consequently, the Anglo-German Agreement relative to the boundary of the territories under Britain and Germany was signed in Berlin, Germany, on 23rd February 1901. A few sections of this agreement important to our analysis here read:

Section 1- It begins at the mouth of the Songwe River at Lake Nyasa and follows this river upwards to its junction with the Katendo Stream in the Shitete district... Section 2- In all cases where a river or stream forms the boundary, the “thalweg” of the same shall form the boundary; if, however, no actual “thalweg” is to be distinguished, it shall be the middle of the bed.⁵⁰

At this juncture, it is clear that the eastern shore boundary which was defined by the Anglo-German Treaty of 1890 and which was confirmed in 1891 was not demarcated on the ground, nor was it modified. The propositions for this are twofold. First, a boundary defined in terms of a lake shore was self-demarcating, and thus required no physical demarcation or alteration. The second proposition is that water limits were at the time popular with both the diplomatists and the surveyors. Regarding the former, the presence of water features provided valuable geographical material during the negotiation, especially in unexplored and unmapped areas. With respect to the latter, the adoption of water boundaries meant reduction of the amount of work which should have been done

⁴⁸E. Hertslet. *The Map of Africa by Treaty*, Vol. III (London: Harrison & Sons, 1989), p. 925.

⁴⁹*Ibid.*, pp. 925-926. See descriptions of the marked areas and the pillars installed on the ground.

⁵⁰*Ibid.*

and the water line was considered more permanent and more easily recognisable than a series of artificial boundary marks.⁵¹

Before the names Malawi and Tanzania became the official names of these two modern states, both countries evolved through different names. From the time of occupation, the modern-day Malawi was called Nyasaland Protectorate in 1891. However, in 1893 it was incorporated in to British Central Africa Protectorate. In 1907, the present-day Malawi was again called Nyasaland Protectorate. From 1953, it was part of the Federation of Rhodesia and Nyasaland. Upon the attainment of independence in 1964, the name Nyasaland was abandoned and instead the independent country was, and still is called Malawi. With regard to Tanzania, it is a country that was formed following the union of two countries, namely Tanganyika and Zanzibar in 26th April 1964. So the present study is within Tanganyika, which is commonly called Mainland Tanzania. This part of the country was formerly a German colony and was therefore part of German East Africa up to WWI. Other parts of German East Africa are the modern-day countries of Ruanda and Burundi. After the WWI ended, German East Africa was split up and placed under the mandate of two colonial powers. Ruanda and Burundi were placed under the Belgian mandate while the remaining part, which is modern day Mainland Tanzania, was under the British mandate. This part was called Tanganyika from 1920 up to the time of independence in 9th December 1961. The same name was maintained after independence up to 1964 when the United Republic of Tanzania was formed.

4.0 Anomalies of the Anglo-German Treaty of 1890 and the Resulting Malawi-Tanzania Border Dispute

The Anglo-German Agreement of 1890 situated the boundary between Britain and Germany on the shore of Lake Nyasa in German East Africa (modern-day Mainland Tanzania). However, the practices of Germany and Britain in respect to this boundary were contrary to the provisions of the treaty. Similarly, the treaty itself was not implemented on the ground. In other words, the demarcation of the boundary was not

⁵¹McEwen, *op. cit.*, pp. 78-79, 195.

shown on the ground, a fact which suggests that the process of demarcating the boundary between the two territories was not completed. Consequently, later during the colonial and post-colonial periods the treaty caused a border dispute. This brings us to the question we need to answer in order to understand how the treaty in question has been a contributing factor for the Malawi-Tanzania border dispute. Was the treaty inconclusive and ill-defined? Did the powers ever respect it? Therefore, the central thesis relates to the exactness of the boundary which the two powers had determined and which was later inherited by the post-colonial governments of Malawi and Tanzania. To establish the inconsistencies in the agreement and the ultimate divergent interpretations emanating from the treaty we need, first of all, to look at certain Articles contained in the treaty, since the agreement cannot be understood without considering such Articles. Second, we need to examine what we call in this paper 'silences' in the treaty in question. The Articles to be examined are: Article VI, Article VII and Article VIII. Article VI states that any correction of the demarcation lines described in Articles I to IV that is necessary due to local requirements may be undertaken through an agreement between the powers. Also, Article VII states that the two powers agree that they shall not interfere in the sphere of influence assigned to the other power through Articles I-IV. They shall not, in the other power's sphere of influence, make acquisitions, sign treaties, accept sovereign rights or protectorates or prevent the other from expanding its influence; it is understood that companies or individuals subject to one power shall not be permitted to exercise sovereign rights in the sphere of influence assigned the other, except with the consent of the latter. In addition, Article VIII states, among other things, that trade is free; and shipping is free on lakes, rivers, canals and their ports for both powers. The subjects of both powers have the right to settle freely in either power's territories, provided that these are located in the free trade zone.⁵²

The Articles cited above indicate certain anomalies which, in turn, lead to contradictions between within the treaty, actual practices of the colonial powers and the realities on the

⁵² See the original copy of the Anglo-German Agreement. British National Archives, London, Anglo-German Agreement (Helgoland-Sansibar-Vertrag), No. 1, 1 July 1890.

ground. In this regard, there is evidence that from 1890 to 1918 Germany extended her territory on to the waters of Lake Nyasa. Perhaps this means that German sovereignty was extended into the middle of Lake Nyasa. However, there is no evidence indicating that the territorial limits of Nyasaland were extended to the eastern shore of the lake. Two pieces of evidence support this. First, Germany operated a steamboat on the lake from 1898 on.⁵³ However, it is not clear whether Germany did what she did because of the General Act of the Berlin Conference of 1884/85 which required the European powers to suppress slave trade by operating steamboats on the inland waters and navigable rivers. In similar vein, it is not clear whether Germany's 'occupation' of the waters was granted by Article VIII of the treaty cited above, that is, free trade and navigation. But some evidence shows that Germany controlled a certain part of Lake Nyasa. This is built on the fact that, while the German steamboat, *Hermann von Wissmann*, and other small vessels were patrolling the lake so that slavery could be abolished, the boat continued patrolling the lake and conducted shipping activities even after slavery had been formally abolished. The steamboat was bombarded and destroyed during the First World War by British troops.

The second piece of evidence is that Germans controlled such Lake Nyasa islands as Lundo and Papayi. During German colonial rule, such islands were lepers' settlements. Lepers continued to live on the islands even during the British period, until 1927, to be exact, when the lepers were moved to an area in the hinterland called Ngehe.⁵⁴ This reveals that both the German and British colonial administrations controlled the islands and, in so doing, they considered certain parts of the lake to fall within their geographical area. This view is supported by Brownlie Ian, who argues that the administration of these islands means that Germany's presence on the lake was not confined to the mere exercise

⁵³Many sources indicate the existence of such ships. See, for instance, McEwen, *op. cit.*

⁵⁴Committee of State Succession. *The Effect of Independence on Treaties*. (London: Stvenson, 1965).

of rights of navigation.⁵⁵ However, there is no evidence suggesting whether the British had acquiesced to such ‘occupation’ of the lake by Germany.

Regarding the evidence of Germany’s exercise of jurisdiction of the islands, McEwen maintains that the two islands were at the time of partitioning of the region small and unknown to the two powers. Therefore, he notes that settlement on such small Islands does not offer any justification for anyone to lay claim to the islands.⁵⁶ While it is true that the islands were small, McEwen’s legal analysis lacks historical significance, and therefore a number of questions are left unanswered. For instance, the view that the islands were small and unknown implies that the two powers had little knowledge of the entire Lake Nyasa area at the time of partitioning of the region, and therefore the treaty they signed is questionable. Second, the islands had both administrative and social significance. For instance, although he dismisses their values, McEwen shows that about 500 people lived on one island, Papayi, by 1893, and that the lepers were moved to Ngehe, owing to overcrowding on the island.⁵⁷ In any case, this shows that the Germans and later the British in Tanganyika had complete authority over the islands. Third, unlike the other islands in the Lake Nyasa waters, the islands under contention were not defined by the agreement. For instance, we saw earlier that the islands in the River Ruvuma were clearly defined and the midstream boundary was agreed upon. Again, we saw that in the Anglo-Portuguese Agreement of 1891, which put the boundary on the eastern shore of the lake in Portuguese East Africa, the islands which were in the waters (i.e. Chisumulu and Likoma) which were the bases of the U.M.C.A. were clearly defined and given to Nyasaland. Evidence for this is found in Article VI of the Anglo-Portuguese Agreement. Among other things, this agreement states:

Portugal agrees to recognize, as within the sphere of influence of Great Britain on the north of Zambesi, the territories extending from the line to be settled by the joint Commission mentioned in

⁵⁵Ian, *op. cit.*, p. 966.

⁵⁶*Ibid.*, p. 197.

⁵⁷*Ibid.*

the preceding Article to Lake Nyassa, including the islands in that lake south of Parallel 11° 30' south latitude, and to the territories reserved to Portugal by the line described in Article I. The islands of Chisamulu and Lukoma, or Dikomo and all other islands of Lake Nyasa further to the south, shall be recognised as being within the British sphere of influence.⁵⁸

The Anglo-Portuguese Agreement of 1954, which moved the boundary between these powers from the eastern shore to the middle of the lake, stated that such islands belonged to Nyasaland. Thus, despite the islands being close to Mozambique, there has been no significantly recorded dispute between Malawi and Mozambique, because they were defined and inhabited according to the treaty. Therefore, McEwen argues that these islands are part of Malawi.⁵⁹ Detailed description of the Anglo-Portuguese Agreement of 1954 provides clear validation of the normative theory, in which a boundary defined clearly and provided with grounds for the adjoining states to follow, has no or less frailty to ignite a dispute.

This paper departs from the absolute legal status of the Malawi-Tanzania border dispute. Scholars who base their analysis of this dispute on absolute legal grounds do not acknowledge Germany's jurisdiction beyond the shores of the lake. They thus consider the treaty in question to be conclusive and indisputable. For instance, Chris Mahoney and others⁶⁰ claim that the Anglo-German agreement is an authoritative document and is a good starting point in determining sovereignty over the Lake Nyasa. They further argue that, since the treaty is explicit as to the shore boundary, it gives the entire lake to Malawi. Thus, Tanzania bears the burden to dismiss this.⁶¹ Similarly, A. C. McEwen emphatically asserts that, in order for anyone to know the legal origins of the Lake Nyasa boundary between Malawi and Tanzania, reference must be made to the Anglo-German

⁵⁸*Ibid.*, E. Hertslet, *op. cit.*, pp.1120-1121.

⁵⁹McEwen, *op. cit.*, p.197.

⁶⁰C. Mahoney *et. al.* "Where Politics Borders Law: The Malawi-Tanzania Boundary Dispute" (n.d.).

⁶¹ *Ibid.*, p. 10.

Heligoland Agreement of 1890. He submits that the treaty was plain and cannot be affected by any other admission.⁶² He realises, however, that considerable confusion had arisen since that time.⁶³ As a historical paper, I look at how different events and pieces of evidence relating to the treaty have resulted in divergent interpretations regarding the border on the Lake Nyasa area thereby causing misunderstandings over the boundary between Malawi and Tanzania during and after colonialism. My argument is that the Anglo-German Treaty of 1st July 1890 should be the starting point for a historical analysis of the divergent interpretations of the border by the two countries. Below I present a few cases of misunderstandings emanating from the controversies presented above.

During the late 1940s, the British colonial government in Tanganyika raised some concerns over its territorial limits in the Lake Nyasa region. The concerns originated from the fact that the government wanted to exploit the fish resources in the lake. However, the government's understanding of its boundary with Nyasaland was not clear, especially with regard to the Anglo-German Agreement. On the contrary, the Nyasaland government claimed that the entire lake belonged to it, a claim based on the same agreement. Because of the decline in the amount of fish in the lake, the Tanganyika government sought to understand its jurisdiction, as the excerpt below shows:

I have the honour to refer to Lake Nyasa and inquire into the extent of the jurisdiction of Tanganyika Territory over these waters. During recent years, the fishing on Lake Nyasa has deteriorated greatly and the Administration would like to take some steps to "stop the rot". When the fishery officer was asked for his advice, he stated he was only too willing to do all in his

⁶²McEwen, *op. cit.*, p.186.

⁶³*Ibid.*, pp. 177-178.

power to help but he understood that Tanganyika had no rights in Lake Nyasa not even the right from the offshore.⁶⁴

The above excerpt indicates that the officials of the Southern Province in Tanganyika, which had Lake Nyasa within its jurisdiction, did not know their territorial limits. Hence, the Chief Secretary of Tanganyika sought clarification of the matter from the Chief Secretary of Nyasaland. The two officials convened at Government House in Zomba, Nyasaland, on 24th December 1949. At this meeting, they allowed Tanganyika to use three miles of Lake Nyasa. A letter from Zomba reads:

I am directed to refer to your letter No. 23601/11/53 dated 9th January 1950, on the subject of fishing rights in Lake Nyasa and to confirm that subject to the under-mentioned considerations, the Government of Nyasaland Protectorate grants to the Government of Tanganyika Territory fishing rights for Africans in Lake Nyasa within a three-mile limit from the Tanganyika Coast on the lake.⁶⁵

From the letter above, it is obvious that the two governments resolved only issues pertaining to fishing, but did not address the border-related problems. Yet, it is not clear whether the three-mile distance included the islands as well. As such, it was a partial resolution, which left issues pertinent to the boundary untouched. Indeed, interterritorial issues between Nyasaland and Tanganyika were regarded insignificant by the Imperial British Government and as such were accorded little regard. At this time, Tanganyika was nearly at an exit door, which meant too little value to the British Government to give its material and administrative directives. Thus, the British Government did not provide its paternal role in resolving the dispute between the two sovereigns.

⁶⁴Tanzania National Archives, Dar es Salaam, *Fishing, Lake Nyasa, Draft Note on Discussions Regarding Tanganyika Territory Fishing Requirements Held at Government House, Zomba, 20 December 1949*. The quotation above is a letter from the Provincial Commissioner of the Southern Province in Lindi to the Chief Secretary of Tanganyika Territory in Dar es Salaam dated 27 May 1949.

⁶⁵*Ibid.*, A letter from the Chief Secretary of Nyasaland in Zomba to the Chief Secretary of Tanganyika Territory in Dar es Salaam dated 21 October 1950.

Contentions between the two colonial governments continued to surface in the 1950s. The imperial government in London was equally involved in matters pertaining to the border dispute on the Lake Nyasa area. The most serious area of contention was the interpretation of the evidence which established the sovereignty of German East Africa and later Tanganyika under the British government, with respect to the islands, waters and the limits of their jurisdictions. Correspondence between colonial officials will help us analyse and draw some conclusions on this issue. The Deputy Governor of Tanganyika wrote to the Secretary of State for Colonies in London, concerning the boundaries of Tanganyika. In the letter he said the following regarding the boundary between Tanganyika and Nyasaland:

“To the West with Nyasaland (Lake Nyasa): Commencing at the point where the parallel of latitude of the confluence of the Rovuma River and Msinje River meets the eastern shore of Lake Nyasa (such point being the terminal point of the boundary between the Tanganyika Territory and Portuguese East Africa). The boundary follows the eastern, northern and western shores of Lake Nyasa to the mouth of the Songwe River. The islands in Lake Nyasa adjacent to the above-mentioned lake shores form part of the Tanganyika Territories”. It is understood that this description was taken from the Anglo-German Convention of 1890. Unfortunately, no copy of that Convention can be traced in this Territory. I shall, therefore, be grateful if you will supply me with either a copy of the Convention or an extract concerning the boundary on Lake Nyasa. It will be helpful if you could send me at

the same time a copy of Admiralty Chart No. 3134 which I believe is the most up to date of the Northern part of Lake Nyasa.⁶⁶

The above quotation raises doubts with regard to the sources that the Tanganyika government had used to make this boundary. First, the Anglo-German Treaty did neither refer to the islands, nor did any documents to the date of this telegram show such a jurisdiction of the islands. Second, while the first sentence cited the treaty, the Deputy Governor did not mention the title of the document he was referring to. This provides grounds for one to believe that such a view on the islands comes from the fact that the German and Tanganyika administrations thought the islands had been located within their territories.

In his letter, the Secretary of State for Colonies in London regretted that he was unable to supply a copy of the 1890 Anglo-German Agreement concerning the spheres of influence of the two colonies. The letter also quoted the Anglo-German Treaty of 1890. However, the letter did not mention the islands. In addition, the letter confirmed that Admiralty Chart No. 3134 was the most up to date document that covered the northern part of Lake Nyasa. He asked the Crown Agents for Overseas Governments and Administrations, Mr. K. G. Fry, to purchase a copy of the Admiralty Chart and forward it directly to the Deputy Governor.⁶⁷ A reply from the Crown Agents of the Colonies and Administrations directed the Deputy Governor to obtain a copy of the publication he had requested. The copy had to be obtained from the Hydrology Department of the Navy, Admiralty Hydrographic Supplies Establishment, and the cost of the chart had to be charged to the Tanganyika government's account.⁶⁸

⁶⁶British National Archives, London, *The Boundaries of Tanganyika in the Northern Part of Lake Nyasa*, Saving telegram from the Governor's Deputy, Dar es Salaam, Tanganyika Territory, to the Secretary of State for the Colonies, London, 18 November 1958.

⁶⁷*Ibid.* Saving Telegram from the Secretary of State for the Colonies, London, to the Officer Administering the Government of Tanganyika, 9 December 1958.

⁶⁸ *Ibid.*, Saving telegram from the Crown Agents, Mr. K.G. Fry, East African Department, London to The Governor's Deputy, Dar es Salaam, Tanganyika Territory, 9 December 1958.

As shown, the two correspondences cited above give directives to the government of Tanganyika to find documents, rather than clarifying the boundary. Thus, a number of questions are unanswered. First, a reply from the Secretary of State for Colonies, who was charged with colonial matters on behalf of the British government, did not clarify the issues pertinent to the boundaries of Tanganyika. Second, there is a confusion regarding the sources for the valid reference of the boundary on the Lake Nyasa area. Apart from mentioning the treaty, the Secretary also referred to the chart. Yet, he did not indicate whether the so-called up-to-date edition of the chart was a conclusive piece of evidence for reference, and not the treaty. This clearly indicates contradictions in the sources. Third, no piece of evidence indicates that the Tanganyika government received and used the suggested chart as a reference to the boundary in question. As a consequence, this boundary confusion continued.

While these uncertainties were evident in the various quarters of the British colonial administration, the Commissioner for Rhodesia and Nyasaland who was based in Nairobi, Kenya, wrote to the Tanganyika government, claiming, among other things, that the islands in the northern portion of Lake Nyasa belonged to Nyasaland. Similarly, the Government of the Federation of Rhodesia and Nyasaland recognised its boundary with Tanganyika to be the one described in the Anglo-German Agreement of 1890.⁶⁹ Upon receipt of the letter, the Deputy Governor of the Tanganyika Territory directed the Ministry of Lands and Mineral Resources to reply to the letter. Among other things, the Minister wrote:

The Tanganyika Government has no documents which indicate the 'sphere of influence' of Great Britain, nor has it any copy of the map mentioned in Article 2. The question then arises whether the Lake Nyasa came under the 'sphere of influence' of Great Britain. We have been unable to trace no documents or books which

⁶⁹*Ibid*, A letter from the Commissioner of Rhodesia and Nyasaland, Nairobi, Kenya, to Governor's Deputy, Tanganyika Territory, 28 November 1958.

would clarify this point. Reference has been traced to an agreement of 1884 which seems to indicate that the Zambezi River and Lake Nyasa were recognised as international water ways. This would mean that Lake Nyasa was outside the 'sphere of influence' of either German or Great Britain. The 'Congo Basin' Treaties signed in Berlin in 1885 seem to bear out this contention. From such German records as are held by the Tanganyika Government, it would appear that these islands were always regarded by the Germans as coming under their jurisdiction. The largest of these islands, Lundu off Mbamba Bay, was used as a leper settlement during the German regime and as well as under the British up to 1927 (c.) when it was removed to the mainland at Ngeke (nr. Liuli). In general, the islands have been administered by the de jure Government of Tanganyika. It may well be that the occupation of these islands for some 70 years by both the German and British Administration of Tanganyika has created a prescriptive right to these islands.⁷⁰

In addition, this letter was submitted to the colonial authorities in the United Kingdom. The Tanganyika government thought that the Secretary for Colonies in London would be approached by the Federal Government of Rhodesia and Nyasaland for clarification of the matter.⁷¹ However, there is no evidence indicating that the Federal Government of Rhodesia and Nyasaland approached the colonial government in that regard. In similar vein, no evidence shows that the British government clarified the issue of the boundary.

Based on the correspondences cited above, we can argue that the border contention between Nyasaland and Tanganyika is embedded in the silences of the treaty and

⁷⁰*Ibid.* Letter from R. Craufurd-Benson, Ministerial Secretary, Ministry of Lands and Mineral Resources, Tanganyika Territory to the Commissioner for Rhodesia and Nyasaland, Nairobi, Kenya, 24 January 1959.

⁷¹*Ibid.* Saving telegram from the Governor's Deputy, Dar es Salaam, Tanganyika Territory to the Secretary of State for the Colonies, London, 27 January 1959.

sluggishness on the part of the British administrators both in the Metropole and the two colonies. First, it seems that Article VIII of the Anglo-German Treaty was interpreted as granting a free zone for trade and navigation without clearly specifying issues of sovereignty. In effect, both colonial states believed that they had sovereign rights over the waters of the lake. Yet, the British Metropolitan government paid very little attention to this contention. As such, the states did not know how to handle this matter. Thus, neither the documents nor the colonial states defined clearly the boundary between the two states. A. C. McEwen calls such a confusion a genuine ignorance of the true position of the boundary, a genuine ignorance that has been fortified by certain erroneous assumptions expressed on maps and in public documents.⁷²

Probably, McEwen's view assumes that the colonial and post-colonial states were really 'ignorant' of the treaty and other supporting documents, and thus their confusion did not have any effect on disputing the boundary on the Lake Nyasa area. But he does not say why they were ignorant of the treaty, given the fact that the colonial states were well-established institutions with political and legal apparatus. Thus, we cannot take this proposition for granted. For each colonial state, territorial expansion and possession were key requisites, thus the weaknesses of the documents in relation to the boundary constituted a loophole for either nation-state to claim that the territory that had not been clearly defined belonged to it or to its counterpart. It is in relation to this argument that I find the normative theory is applicable to explain the cause of the Malawi-Tanzania border dispute, in that if boundary treaties are not clear, they leave room for states to stake claim to territories. This idea is also supported by Wafula Okumu, who argues that, although the 292-mile Tanzania-Malawi border was defined by a joint British and German boundary commission in 1898 and the Anglo-German Agreement of 1901, it was not determined in detail.⁷³

⁷²McEwen, *op. cit.*, p. 178.

⁷³W. Okumu. "Resources and Border Disputes in Eastern Africa." *Journal of Eastern African Studies*, 4:2 (2010): 294.

In connection with the confusions presented above, there is the question of the practicability of the Anglo-German Treaty of 1890 because of the incompleteness of the boundary making process. It is correct to conclude that the boundary was not demarcated. Thus, the treaty can be said to be wholly static, although the grounds on which the treaty was to be executed were essentially dynamic. This has made it difficult to determine where exactly the boundary was situated. The other boundaries in the Lake Nyasa region, such as the boundaries between Portugal and Germany, Portugal and Britain, and Britain and Germany, were clearly defined and demarcated. With the exception of the boundary between Tanzania and Malawi, the others were demarcated using such permanent physical objects as beacons. Also, descriptions of the boundaries were provided. In places where the objects were not visible or their numbers had become illegible, they were replaced with more accurate objects.⁷⁴

At this juncture, it is clear that the eastern shore boundary which was defined by the Anglo-German Treaty of 1890 and which was confirmed in 1891 was not demarcated on the ground. In this state of affair, McEwen argues that diplomatists and surveyors viewed that a boundary defined in terms of a lake shore was self-demarcating, and thus required no physical demarcation as water limits were at that time popular. The adoption of water limits had two advantages at the time. First, the presence of water features in partitioned areas provided valuable geographical material during the bilateral negotiations, especially in unexplored and unmapped areas. Second, the adoption of water boundaries meant reduction of the fieldwork labour.⁷⁵

On the basis of the above explanations, I concur with Wafula Okumu's view that border disputes in Eastern Africa are caused, among other things, by the lack of clearly defined and marked boundaries. I specifically agree with him with respect to his argument that the Tanzania-Malawi border dispute highlights one of the most blatant colonial boundary

⁷⁴ For a comprehensive work of demarcation of boundaries in Lake Nyasa region, see B. Ian, *op. cit.*, pp. 971, 1123-1135. Also, most of all boundaries that were defined were demarcated on the ground.

⁷⁵ McEwen, *op. cit.*, pp.78-79, 195.

making errors.⁷⁶ In a similar fashion, A. T. Aghemelo and S. Ibhasebhor argue that the international agreements of the era of the scramble for Africa are a source of conflicts among African states; they call such agreements an ‘unhappy legacy of colonialism’.⁷⁷ This unhappy legacy of colonialism has haunted most post-colonial states. This is so because some problematic boundaries made during the colonial period were left unresolved because the governments accorded priority to other issues.

5.0 Conclusion: Reflecting the Normative theory

In brief, throughout the German colonial period, the boundary in the Lake Nyasa area remained ambiguous because the respective powers did not address the issue of ownership of the offshore islands, fluctuation of the eastern shore and execution of actual surveys and boundary demarcation. What was done by both powers was in contravention of the treaty. Consequently, German sovereignty and later colonial Tanganyika sovereignty extended beyond the territorial limits as provided for in the treaty, while Britain Nyasaland never occupied the lake waters beyond the middle of the lake. Due to these anomalies, after WWI the British colonial states of Tanganyika and Nyasaland disputed this border on the basis of the different interpretations of the treaty. Similarly, drawing on the precedence of the colonial past, President Banda’s administration in Malawi and later succeeding presidents in Malawi regarded the treaty as a complete legal and political document that situated the boundary on the eastern shore of the lake. However, this was a static view because Malawi overlooked other provisions of the treaty and hardly asked whether the treaty was complete or not. In this regard it is hard for Malawi to state categorically where the eastern shore of the lake was, given the expansion of the lake over the years. On the contrary, Tanzania administration said that the boundary she shared with Malawi was situated in the middle of the lake. Tanzania’s position was based on the ‘incompleteness’ of the Anglo-German Agreement, experiences

⁷⁶ Okumu, *op. cit.* pp. 279; 293.

⁷⁷A. T. Aghemelo and S. Ibhasebhor. “Colonialism as a Source of Boundary Dispute and Conflict among African States: The World Court Judgement on the Bakassi Peninsula and its Implications for Nigeria.” *Journal of Social Sciences*, Vol. 13, No. 3 (2006): 177.

from other shared international water bodies as well as a past precedence based on the presence of the Germans up to the middle of the lake. However, Tanzania's claim regarding the median boundary is equally questionable. It is impossible to locate such a boundary for a boundary that was not demarcated and was shifted over the years. Generally, the claims of both states indicate that the treaty in question was contradictory, and therefore it was the source of the Malawi-Tanzania border dispute. This argument affirms the relevance of the normative theory, which states that, whereas international treaties were not clear and consistent, they provided the basis for adjoining countries to contest their boundary. In contrast, the sturdiness of the international treaty, which divided the two countries, provided room for them to reach an agreement to adopt the treaty. From the claims and counterclaims presented above, it is evident that the two countries cannot use the treaty as a justification for situating the boundary either on the eastern shore or in the middle of the lake. The treaty may, however, provide a basis for the two nation-states to renegotiate or go on in mediation of their shared boundary and rectify the errors noted.