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## **The Spectre of the Treaty: Normative Gaps, Cartographic Anarchy, and the Perpetuation of the Tanzania-Malawi Lake Nyasa Dispute**

**Augustus Caesar RWELENGERA**

Center for Foreign Relations, Dar es Salaam, Tanzania

*Email:* [rwelengera2007@yahoo.com](mailto:rwelengera2007@yahoo.com)

**Jacob Joachim LISAKAFU**

The Open University of Tanzania,  
Dar es Salaam, Tanzania

*Email:* [jaclisakafu@yahoo.com](mailto:jaclisakafu@yahoo.com)

**Miraji KITIGWA**

The Open University of Tanzania,  
Dar es Salaam, Tanzania

*Email:* [miraji.kitigwa@out.ac.tz](mailto:miraji.kitigwa@out.ac.tz)

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### **ABSTRACT**

This article provides a critical historical-legal examination of the protracted territorial dispute between Tanzania and Malawi over sovereignty of Lake Nyasa (Lake Malawi). Drawing extensively on archival sources including colonial treaties, official correspondence, cartographic records, and legislative debates, it argues that the conflict's intractability stems not merely from competing national claims but from fundamental ambiguities embedded within the Anglo-German Heligoland Treaty of 1890, the dispute's foundational legal instrument. The treaty's failure to define key elements, including the demarcation of a dynamic shoreline, sovereignty over islands, and the jurisdictional implications of a “free trade zone,” created a normative vacuum subsequently filled by inconsistent colonial cartographic practices. The manuscript demonstrates how British administrators in Tanganyika and Nyasaland produced contradictory maps and administrative interpretations throughout the colonial period, with the mandate era of the 1930s favouring a median line boundary and the post-1945 period reverting to a shoreline depiction for politically motivated reasons. This cartographic anarchy bequeathed to the post-colonial states a toolkit of conflicting evidence. The analysis reveals how Tanzania legitimately anchors its median line claim in League of Nations mandate maps while Malawi legitimately anchors its shoreline claim in later colonial cartography and the treaty's literal wording, creating a perfect stalemate that the principle of *uti possidetis juris* cannot resolve. The discovery of

hydrocarbon resources in the 2010s has intensified the dispute without altering its fundamental dynamics. The article concludes that lasting resolution requires moving beyond legalistic reinterpretation of flawed colonial documents toward political acknowledgement of the lake as a shared resource, with joint management regimes offering the most promising pathway forward.

**Keywords:** Tanzania-Malawi Border Dispute; Anglo-German Treaty of 1890; Normative Theory; Cartographic Ambiguity; *Uti Possidetis Juris*; Lake Nyasa.

## INTRODUCTION

The territorial dispute between Tanzania and Malawi over Lake Nyasa (Lake Malawi) represents one of Africa's most enduring international boundary conflicts (Mayall, 1973; Touval, 1972). While tensions have periodically escalated following hydrocarbon exploration licences awarded in 2011 and 2012 and infrastructure developments in the region (Ng'ambi & Mwaia, 2013), the core disagreement remains entrenched in a historical-legal framework dating to the late nineteenth century. The partition of Africa, formalised at the Berlin Conference of 1884-1885, established the practice of defining spheres of influence through bilateral treaties between European powers, often with minimal regard for geographical accuracy or pre-existing socio-political realities (Ajala, 1983; Anene, 1970). The Lake Nyasa region became a focal point of imperial rivalry between Britain, Germany, and Portugal, leading to agreements that would generate enduring boundary uncertainty (Griffiths, 1986).

The primary legal instrument underpinning the Tanzania-Malawi dispute is the Anglo-German Heligoland Treaty of 1 July 1890 (Brownlie, 1979). This agreement, which involved the exchange of the North Sea island of Heligoland for German concessions in East Africa, included the delineation of the boundary between German East Africa, now mainland Tanzania, and the British protectorate of Nyasaland, now Malawi (McEwen, 1971). Article I, section 2 of the treaty stated that the border would run “along the eastern, northern, and western shores of Lake Nyasa” on the German East African side (Anglo-German Agreement, 1890). This description has proven to be the epicentre of over a century of disagreement (Zotto, 2020).

This article posits that the intractability of the Tanzania-Malawi dispute is a direct function of ambiguities within the 1890 treaty, which were then exacerbated by decades of inconsistent colonial cartography and administration (Donaldson, 2011). The treaty suffered from critical silences: it failed to specify the meaning of “shores” in the context of a fluctuating lake, made no mention of sovereignty over numerous islands, and created confusion through Article VIII, which declared the lake and its ports a “free trade zone” without clarifying how this status interacted with territorial sovereignty (McEwen, 1971). These gaps were not incidental but reflective of the cursory manner in which European powers partitioned the continent (Anene, 1970).

The colonial administrations that followed found themselves unable consistently to interpret or implement the treaty's provisions (Tanzania National Archives, 1949). British officials in both Tanganyika, a League of Nations Mandate after 1918, and Nyasaland produced a range of maps and official documents, some depicting the boundary along the shoreline, others along the median line, and many omitting it altogether (Ian, 1979). This cartographic inconsistency did not resolve the ambiguity but instead provided both future nation-states with historical evidence to legitimise their claims (Donaldson, 2011).

Upon independence, both Tanzania and Malawi inherited this contested boundary and embraced the Organization of African Unity's 1964 Cairo Declaration, which sanctified the principle of *uti possidetis juris*, the inviolability of colonial borders (OAU,

1964; Ratner, 1996). However, this principle presupposes the existence of a clear, knowable colonial border to inherit (Lalonde, 2002). In the case of Lake Nyasa, this was absent (Che-Mponda, 1972). Malawi, citing the 1890 treaty's literal wording and later British maps, asserts a shoreline boundary, claiming the entire lake (Mayall, 1973). Tanzania, invoking principles of riparian law, pre-independence British median line maps, and the treaty's provision for potential adjustments, claims a boundary through the centre of the lake (Zotto, 2020). Both positions find support in selective reading of the historical record (Kornprobst, 2002).

This article proceeds in four parts. First, it deconstructs the Anglo-German Treaty of 1890, analysing its inherent ambiguities. Second, it traces the colonial cartographic and administrative practices that followed, demonstrating how they amplified rather than resolved the treaty's deficiencies. Third, it examines post-colonial interpretation of this inheritance, highlighting how the framework of *uti possidetis* is ill-equipped to handle fundamental ambiguities. The article concludes by considering implications for dispute resolution beyond legalistic reinterpretation of flawed colonial instruments.

### **THE ANGLO-GERMAN TREATY OF 1890: A FOUNDATION BUILT ON AMBIGUITY**

The scramble for territorial acquisition in East-Central Africa culminated in the Anglo-German Agreement of 1890, a pivotal document that defined spheres of influence between the British and German empires (Brownlie, 1979, p. 67). For the British, the treaty secured strategic territories, most notably Uganda and the future Rhodesia, while ceding the small but strategically vital North Sea island of Heligoland to Germany (Perras, 2004, p. 72). For the Germans, it provided a definitive outline of their East African colony (Brownlie, 1979, p. 68). The treaty's significance for the Tanzania-Malawi dispute lies in Article I, section 2, which delineated the southern border of German East Africa. The clause stated:

“To the south by a line commencing on the coast at the northern bank of the River Rovuma, and running up that river to the point where it is joined by the Msinje River; thence turning westwards along that river to where it meets the latitude of the confluence of the Msinje and Rovuma; thence striking north and running along the eastern, northern, and western shores of Lake Nyasa to the northern bank of the Songwe River; it ascends that river to the point where it intersects the 33rd degree of east longitude...” (Anglo-German Agreement, 1890).

This description contains several critical ambiguities that have fueled the dispute for over a century (Mayall, 1973, p. 613; McEwen, 1971, p. 112).

#### **The Illusion of the “Shore”**

The treaty's reliance on the “eastern, northern, and western shores” as a boundary marker represented a fundamental geographical and legal oversimplification (Griffiths, 1986, p. 208). A shoreline is not a static cartographic line but a dynamic, fluctuating zone subject to seasonal and long-term hydrological changes (Anderson, 2014). Lake Nyasa, a Rift Valley lake and the third largest in Africa, experiences significant water level variations that render any boundary defined solely by reference to its shores inherently unstable (Anderson, 2014).

The treaty failed to specify whether the boundary was to be the water's edge at a particular point in time, the mean high-water mark, or another measurable datum (McEwen, 1971, p. 114). This vagueness made precise demarcation impossible and left the boundary susceptible to reinterpretation with every change in the lake's level. As one Tanzanian official later argued, “the shoreline enlarges; therefore, water cannot be a

boundary in reality. The land in the deep water must be the boundary” (“ with Hon. Patrick Tsere, 2024).

This ambiguity was recognized by the treaty's authors themselves. Article VI of the same agreement included a crucial but often overlooked provision: “Any modifications of the demarcation lines laid down in Articles I to IV that may be found necessary by reason of local circumstances will be effected by agreement between the two Powers” (Anglo-German Agreement, 1890, Article VI). This clause explicitly acknowledged that the treaty's geographical descriptions were provisional and might require adjustment based on actual ground conditions, a clear admission of the inherent uncertainty in their own demarcation (Brownlie, 1979, p. 71).

### **The Silence on Islands**

A second major flaw was the treaty's complete silence regarding the status of the numerous islands within Lake Nyasa (McEwen, 1971, p. 115). Significant islands such as Likoma and Chizumulu, which were already home to Anglican mission stations established by the Universities' Mission to Central Africa in the 1880s, were not mentioned (Good, 1991, p. 45). This omission is striking when compared to other contemporary treaties governing the same lake.

The Anglo-Portuguese Agreement of 1891, which defined the border between Nyasaland and Portuguese East Africa, specifically addressed island sovereignty. Article VI of that treaty stated that “the islands in that lake south of Parallel 11° 30' south latitude... Chisamulu, Lukoma, Dikomo, and every other island in Lake Nyasa farther to the south will all be acknowledged as being under British influence” (Anglo-Portuguese Agreement, 1891, Article VI; see also Hertslet, 1967, vol. 3, p. 1011). The deliberate inclusion of island sovereignty in one treaty governing Lake Nyasa and its exclusion in another created a legal contradiction from the outset (Brownlie, 1979, p. 116).

The German colonial administration assumed control over islands close to the eastern shore, such as Lundu and Papayi, using them for administrative purposes including a leper colony (Tanzania National Archives, 1959, File AB 553). This exercise of de facto control suggested an interpretation that sovereignty extended into the lake, at least to proximate islands, contradicting a strict reading of a shoreline boundary (Ian, 1979, p. 247). McEwen (1971, p. 116) dismissed these islands as “too small and insignificant” to factor into sovereignty claims, but this ignores their administrative and social importance, as well as the precedent set by state action.

### **The “Free Trade Zone” Conundrum**

Further complicating the issue was Article VIII of the treaty, which stated: “The two Powers agree that on lakes, rivers, and canals within the free trade zone, the vessels of both Powers shall have liberty to navigate and trade without any differential treatment” (Anglo-German Agreement, 1890, Article VIII). This clause was intended to ensure commercial access, but it created a normative conflict regarding sovereignty over the lake itself (McEwen, 1971, p. 118). If the entire lake was unequivocally British territory, as Malawi's modern interpretation suggests, then German vessels would be granted trading rights within another power's sovereign waters. Conversely, if the lake constituted a free trade zone in which both powers exercised rights, this implied a shared space, undermining the concept of absolute British sovereignty based on the shoreline description (Ian, 1979, p. 249).

The free trade provisions of the 1890 treaty derived from the General Act of the Berlin Conference of 1885, which established freedom of navigation and commerce in the conventional basin of the Congo and extended these principles to other African waterways (Crowe, 1942, p. 87). Article VIII of the 1890 treaty applied these principles

specifically to the Lake Nyasa region, including the transit routes between Lake Nyasa and Lake Tanganyika (Anglo-German Agreement, 1890, Article VIII).

This ambiguity was exploited by Germany in the early years of colonial administration. In 1898, Germany launched the steamboat *Hermann von Wissmann* on the lake, conducting patrols and shipping operations (Lan, 1979, p. 156). This action represented a de facto extension of German jurisdiction into the lake's waters, a move that was not explicitly sanctioned by the treaty nor formally challenged by Britain at the time (Lan, 1979, p. 158). The exercise of such rights by Germany, and Britain's tacit acceptance, created a precedent that complicated a purely shoreline-based interpretation of sovereignty.

### **Conflicting Interpretations from the Outset**

The weaknesses of the treaty became apparent almost immediately to the colonial administrators tasked with its implementation. In the late 1940s, the British colonial government in Tanganyika expressed confusion over its jurisdiction. In a letter to the Nyasaland government, the Chief Secretary of Tanganyika wrote: "I have the honour to refer to Lake Nyasa and inquire into the extent of the jurisdiction of Tanganyika Territory over these waters... he [the fishery officer] understood that Tanganyika had no rights in Lake Nyasa not even the right from the offshore" (Tanzania National Archives, 1949, File Acc.192 No. 1428).

This internal confusion demonstrates that the treaty did not provide a clear, operable definition of sovereignty (Mayall, 1973, p. 617). The meeting that followed in Zomba in December 1949 resulted not in a clarification of the boundary, but in a temporary and limited administrative fix: Nyasaland granted Tanganyika fishing rights for Africans within a three-mile limit from the Tanganyika coast, explicitly avoiding the larger boundary question (Tanzania National Archives, 1950, File Acc.192 No. 1428). This stopgap measure treated the symptom, access to resources, while ignoring the underlying disease, the undefined boundary (Ian, 1979, p. 252).

The treaty also referred explicitly to a map, the "map of the Nyasa Tanganyika Plateau that was officially drawn up for the British government in 1889" (Anglo-German Agreement, 1890, Article I[2]). This map, if it could be located and interpreted, might have resolved some ambiguities. However, the map was not attached to the treaty and its precise content has been a matter of historical dispute (McEwen, 1971, p. 120). The failure to preserve or adequately reference the cartographic basis for the boundary compounded the textual ambiguities, leaving later interpreters to reconstruct the negotiators' intentions from fragmentary evidence (Ian, 1979, p. 254).

Parliamentary discussions in London during the treaty's negotiation revealed that even its framers lacked certainty about the territories they were dividing. In response to a question in the House of Commons on 19 May 1890, the Under-Secretary of State for Foreign Affairs, Sir James Fergusson, admitted that the spheres of influence "have not yet been geographically defined, and the understanding in question was general in its terms" (Hansard, 1890, vol. 344, col. 1272). This contemporary admission that the agreement was "general in its terms" supports the argument that the treaty's ambiguities were not inadvertent but inherent to the negotiating process (Brownlie, 1979, p. 73).

The Anglo-German Treaty of 1890 was a flawed instrument from its inception. Its reliance on an unstable geographical feature, the shore, its silence on critical issues such as island sovereignty, and its creation of a confusing free trade regime through Article VIII ensured that it would generate more conflict than it resolved (Mayall, 1973, p. 628). The treaty did not establish a definitive border; it established a problem whose ambiguities would be magnified by the colonial administrations that followed.

As the next section will demonstrate, these inherent ambiguities were not resolved through subsequent colonial practice. Instead, British administrators in Tanganyika and Nyasaland produced contradictory cartographic representations and administrative interpretations that amplified the treaty's deficiencies. The resulting inconsistencies bequeathed to Tanzania and Malawi a contested inheritance that defies easy resolution through the principle of *uti possidetis juris* (Donaldson, 2011, p. 278).

### **COLONIAL CARTOGRAPHIC ANARCHY: AMPLIFYING AMBIGUITY (1890-1961)**

The inherent ambiguities of the 1890 treaty were not resolved in the subsequent decades of colonial rule. Instead, they were amplified and institutionalised through a chaotic and inconsistent series of cartographic representations and administrative actions (Donaldson, 2011, p. 278). The British colonial governments in both Tanganyika, after the First World War, and Nyasaland failed to establish a unified, definitive position on the boundary, producing a body of evidence that both Tanzania and Malawi could later mine to support their diametrically opposed claims (Ian, 1979, p. 243). This period was characterised by what can be termed cartographic anarchy, where the map of the border became a fluid and contested document (Donaldson, 2011, p. 279).

#### **The Mandate Period and the “Median Line” Interlude**

Following Germany's defeat in the First World War, Tanganyika was placed under British administration as a League of Nations Mandate (Louis, 1967, p. 156). This period saw a significant, albeit informal, shift in the understanding of the boundary. The British administration in Tanganyika, now responsible for both sides of the lake as the ruler of both Tanganyika and Nyasaland, began to depict the boundary in the centre of Lake Nyasa on official maps and in reports to the League of Nations (Ian, 1979, p. 244).

This shift is vividly illustrated in the Map of East Africa No. 148, produced circa 1918 by the German Kolonialamt, which clearly depicts a median line boundary (German Kolonialamt, 1918). Similarly, the maps accompanying the Tanganyika Territory's Annual Reports to the Permanent Mandates Commission from 1932 to 1938 consistently reinforced this median-line interpretation, presenting it as the *de facto* administrative boundary for over a decade (League of Nations, 1932-1938). These maps were reviewed and never challenged by the international body overseeing the mandate, lending them a degree of official sanction (Ian, 1979, p. 245).

The Deputy Governor of Tanganyika, in a 1958 letter to the Secretary of State for Colonies in London, articulated this position, stating that the border ran “up to the mouth of the Songwe River, the boundary traces the eastern, northern, and western coastlines of Lake Nyasa. The Tanganyika Territories include the islands in Lake Nyasa that are close to the lakeshores previously mentioned” (British National Archives, 1958, CO 822/1234). This description, while referencing the shoreline, also claimed islands, implying a jurisdiction that extended into the lake. Crucially, he admitted that the Tanganyika government did not possess a copy of the 1890 convention and requested one, along with an Admiralty chart, indicating that local administration was not based on a strict reading of the original treaty but on inherited practice and maps (British National Archives, 1958, CO 822/1234).

**Map of Malawi showing Chisumulu and Likoma Islands**



Source: retrieved from amproehl [www.http//.com](http://www.http//.com) 05/08/2025

**Map of Malawi showing Chisumulu and Likoma Islands with the border between Malawi and Mozambique**



Source: retrieved from amproehl [www.http//.com](http://www.http//.com) 05/08/2025

This median-line interpretation was reflected in official publications. The Tanganyika Territory's annual reports to the League of Nations' Permanent Mandates Commission from 1932 to 1938 consistently showed the boundary running through the centre of the lake (Ian, 1979, p. 245). This was not a minor cartographic error but a deliberate representation that was reviewed and never challenged by the international body overseeing the mandate. The rationale was likely administrative convenience; since Britain controlled both territories, defining a median line allowed for a clear division of the lake's resources and responsibilities between the two colonial administrations under one imperial roof (Mayall, 1973, p. 618).

### **The Reversion to the Shoreline and Mounting Confusion**

As the prospect of Tanganyikan independence loomed in the post-Second World War era, the British colonial stance underwent a dramatic reversal. Official maps produced from the late 1940s onwards abruptly abandoned the median line and reverted to depicting the boundary along the Tanzanian shoreline (Ian, 1979, p. 246). The 1951 annual report on Tanganyika to the United Nations Trusteeship Council explicitly stated: "As the inter-territorial boundary follows the lake coast, none of the waters of Lake Nyasa are encompassed within the Territory's bounds" (United Nations, 1951, p. 23).

This shift was a calculated political move (Mayall, 1973, p. 619). With Tanganyika moving towards self-governance, the British imperial interest lay in securing the entire lake for the territory that would remain under more direct British influence, the Federation of Rhodesia and Nyasaland, of which Nyasaland was a part (Ian, 1979, p. 246). This ensured that a future independent Tanganyika would not have a claim to the lake, thus preserving it as a British resource. The cartographic correction was an exercise in retroactive boundary-making (Donaldson, 2011, p. 280).

This reversal created immense confusion within the colonial bureaucracy itself. The Tanganyika Attorney General's office, tasked with formulating a position for potential negotiations with Nyasaland in the late 1950s, found itself grappling with contradictory sources. Their research concluded that:

1. The boundaries were unclear in the Tanganyika Order-in-Council (1920) and the Mandate's preamble.
2. The Nyasaland Orders-in-Council did not explicitly extend its boundary to the eastern shore.
3. The General Act of the Berlin Conference placed Lake Nyasa in a Maritime Free Trade Zone, suggesting it should not have been partitioned.
4. Riparian law typically recommended a median boundary for water bodies.
5. The 1954 Anglo-Portuguese boundary revision, which set a median line in the lake between Nyasaland and Mozambique, should serve as a precedent (Tanzania National Archives, 1959, Ministry of Lands and Mineral Resources File 4/28).

When this legal opinion was forwarded to London and shared with the Nyasaland government, it was summarily rejected. The Nyasaland government dismissed it as a "locally prepared opinion," arguing that the riparian principle was irrelevant because the colonial powers had already agreed the lake was outside German territory, a fact supposedly confirmed by the Orders-in-Council (British National Archives, 1959, CO 822/1345). The Nyasaland legal officers insisted the eastern shore boundary was definitive and refused further discussion, effectively shutting down colonial-era management of the dispute.

## LEGISLATIVE CHALLENGES AND THE FAILURE OF COLONIAL RESOLUTION

The confusion spilled over into the political arena. In the Tanganyika Legislative Council in the late 1950s and early 1960s, African members repeatedly raised the issue, expressing outrage at the territory's apparent loss of rights to the lake. Member Mr. Ulaya challenged the government in 1960, stating:

the early explorers, like Dr. Bernhardt, who visited the region in 1896... his charts indicated that the line was splitting the lake in half. It was until last year that I realized things had changed. I must now pause and await appropriate explanations from the Minister of Lands and Surveys regarding the origins and timing of the altered maps (Tanganyika Legislative Council, 1960, p. 342).

The government's response was telling. The Minister for Lands, Surveys, and Water admitted to the cartographic inconsistencies, apologising for the "error" of past maps that showed a median line. He claimed that new maps were being prepared to "correct that error" and show the boundary "tracing the eastern beaches of Lake Nyasa," which was the limit "we must now respect" as it was the focus of an international agreement (Tanganyika Legislative Council, 1960, p. 345). This admission revealed that the colonial government itself was engaged in active revisionism, choosing one historical interpretation, the shoreline, over another, the median line, for political reasons, rather than based on any new legal or survey evidence (Mayall, 1973, p. 620).

The failure to resolve the issue during the colonial period was thus a product of wilful neglect and political expediency (Ian, 1979, p. 253). As the Tanganyika Legislative Council debates revealed, British officials saw the boundary issue as a low priority compared to the larger project of managing the transition to independence. For the African members of the council, the issue was a matter of justice and equitable resource sharing, but their efforts were stymied by a colonial administration that was unwilling to reopen a settled, in their view, imperial matter (Tanganyika Legislative Council, 1960, p. 348). The stage was thus set for the dispute to be passed on, fully formed and utterly unresolved, to the independent nations of Tanzania and Malawi.

### **Cartographic Evidence as Legal Arsenal**

The cartographic anarchy of the colonial period produced a paradoxical outcome: instead of creating clarity, it generated a reservoir of conflicting evidence upon which both post-colonial states could draw (Donaldson, 2011, p. 282). For Tanzania, the League of Nations mandate maps depicting a median line became foundational evidence for its claim. For Malawi, the post-1940s colonial maps reverting to the shoreline became equally foundational for its opposing position.

This phenomenon is not unique to the Tanzania-Malawi dispute. As McEwen (1971, p. 124) observed, "the cartographic history of African boundaries is replete with inconsistencies that reflect the changing administrative priorities of colonial powers rather than any stable geographical or legal reality." The Lake Nyasa case exemplifies this pattern with particular clarity because the contradictory maps were produced by the same colonial power, Britain, within the same generation (Ian, 1979, p. 255).

The 1954 Anglo-Portuguese agreement establishing a median line boundary between Nyasaland and Mozambique on Lake Nyasa added further complexity (Brownlie, 1979, p. 123). If Portugal and Britain could agree on a median line for the southern portion of the lake, why was the same principle not applied to the eastern shoreline between Nyasaland and Tanganyika? This question, raised by Tanganyikan officials at the time, has never been satisfactorily answered by Malawi or by British colonial records (Tanzania National Archives, 1959, Ministry of Lands and Mineral Resources File 4/28).

### **The Map as Political Instrument**

The colonial cartography of Lake Nyasa illustrates a broader truth about maps in the African colonial context: they were not neutral representations of geographical reality but political instruments deployed to advance imperial interests (Harley, 1988, p. 278). The shift from median line to shoreline depiction in the late 1940s was not driven by new survey data or legal analysis but by the changing political calculus of the approaching independence era (Mayall, 1973, p. 621). As Harley (1988, p. 280) argued, “maps are preeminently a language of power, not of protest.” In the Lake Nyasa case, the power to define the boundary cartographically rested entirely with British colonial authorities, who exercised that power inconsistently and, in the final analysis, strategically. The maps produced in the 1930s served the administrative convenience of a unified British control over both territories. The maps produced in the 1950s served the political objective of preserving British influence over the lake's resources by ensuring they passed to the more reliably pro-British Federation rather than to a potentially nationalist Tanganyika (Ian, 1979, p. 256).

This strategic use of cartography left an enduring legacy. As Donaldson (2011, p. 283) noted, “when African states inherited colonial boundaries, they also inherited the cartographic contradictions that colonial powers had never resolved.” In the case of Lake Nyasa, they inherited not a single boundary but a portfolio of competing boundaries, each with some claim to official sanction.

### **The International Community's Role**

The international community, through the League of Nations and later the United Nations, bore some responsibility for the perpetuation of the ambiguity (Louis, 1967, p. 245). The League's Permanent Mandates Commission received and reviewed Tanganyika's annual reports, including the maps depicting a median line boundary, for over a decade without comment or correction. This silence could be interpreted as tacit approval of the median line interpretation (Ian, 1979, p. 257).

Yet when the United Nations Trusteeship Council later received reports depicting the shoreline boundary, it also raised no objection. The international bodies tasked with overseeing the mandate and trusteeship systems failed to identify or address the fundamental inconsistency, treating each report as an isolated document rather than part of a contradictory series (Mayall, 1973, p. 622). This failure allowed the ambiguity to persist and deepen, as neither interpretation was ever formally repudiated by an authoritative international body.

The International Court of Justice, in its jurisprudence on boundary disputes, has held that cartographic evidence must be evaluated with caution, particularly when maps are produced by interested parties (Ratner, 1996, p. 605). In the *Burkina Faso/Mali* case, the Court noted that “maps merely constitute information which varies in credibility” and that they cannot “constitute a territorial title, that is, a document endowed by international law with intrinsic legal force for the purpose of establishing territorial rights” (ICJ Reports, 1986, p. 582). This caution is particularly apt in the Lake Nyasa case, where maps were produced not by disinterested cartographers but by a colonial power with shifting political objectives.

The colonial period transformed the ambiguities of the 1890 treaty from textual uncertainties into cartographic contradictions. British administrators in Tanganyika and Nyasaland, acting under the same imperial authority, produced maps that supported diametrically opposite interpretations of the boundary. The median line maps of the 1930s and the shoreline maps of the 1950s were both official British productions, yet they pointed to fundamentally different conclusions about sovereignty over Lake Nyasa.

This cartographic anarchy did not resolve the treaty's ambiguities; it institutionalised them. By bequeathing to Tanzania and Malawi a contradictory portfolio of maps and administrative records, the colonial period ensured that the dispute would survive independence and resist easy resolution through the principle of *uti possidetis juris* (Donaldson, 2011, p. 284). As the next section will demonstrate, the post-colonial states inherited not a clear boundary but a contested cartographic legacy, each selecting the evidence that supported its claim and dismissing the evidence that supported the other's.

## **POST-COLONIAL INHERITANCE AND THE CLASH OF INTERPRETATIONS**

The independence of Tanganyika in 1961 and Malawi in 1964 transferred the unresolved colonial boundary dispute to new African governments now bound by the Organization of African Unity's principle of *uti possidetis juris* (OAU, 1964; Touval, 1972, p. 85). This principle, enshrined in the 1964 Cairo Declaration, demanded that member states respect the borders existing at the time of their independence (OAU, 1964, AHG/Res.16[I]). However, as the historical analysis has shown, there was no single, clear border to inherit. Instead, Tanzania and Malawi inherited a contradictory portfolio of evidence, leading to an intractable clash of interpretations that continues to this day (Mayall, 1973, p. 623; Zotto, 2020, p. 12).

### **Tanzania's Median Line Doctrine**

Tanzania's position is built upon the colonial cartographic practice of the mandate period and a specific reading of international riparian law (Zotto, 2020, p. 15). Its claim rests on several pillars. First, it points to the consistent depiction of the median line in Tanganyika's annual reports to the League of Nations from 1932 to 1938, which were approved by the international community without objection (Ian, 1979, p. 258). Second, it argues that the principle of equitable distribution for shared water bodies, a cornerstone of modern international water law, supports a median line boundary, ensuring fair access to resources for both riparian states (Caflisch, 1998, p. 72).

Third, and most crucially, Tanzanian officials and scholars invoke Article VI of the 1890 treaty itself, which provided for modifications due to "local circumstances" (Anglo-German Agreement, 1890, Article VI). Tanzania contends that the dynamic nature of the shoreline and the need for equitable resource sharing constitute precisely such circumstances, nullifying a strict shoreline interpretation (Personal interview with Hon. Patrick Tsere, 2024). As former Tanzanian Ambassador to Malawi Patrick Tsere argued, the treaty signatories had never visited the region, and the unstable nature of the shoreline and the Songwe River meant the boundary required correction as per the treaty's own provisions (Personal interview with Hon. Patrick Tsere, 2024).

This position was articulated early on. During a legislative debate in 1960, Tanzanian officials argued for a "more equitable boundary" with Nyasaland, noting that the changing lake levels and the problematic nature of a shoreline boundary restricted fishing, domestic water usage, and raised environmental concerns (Tanganyika Legislative Council, 1960, p. 346). Tanzania's stance is therefore not a rejection of the colonial inheritance but a selective adoption of one specific colonial tradition, the median-line practice of the mandate period, over another (Zotto, 2020, p. 18).

Tanzania has also invoked the principle of international watercourses law, particularly the Helsinki Rules on the Uses of the Waters of International Rivers (1966) and the subsequent UN Convention on the Law of the Non-Navigational Uses of International Watercourses (1997). Article V of the Helsinki Rules provides that "each basin State is entitled, within its territory, to a reasonable and equitable share in the beneficial uses of the waters of an international drainage basin" (International Law Association, 1967, p. 486). Tanzania argues that a shoreline boundary, which would exclude it entirely from

the lake's waters, cannot constitute a reasonable and equitable share of this international water resource (Zotto, 2020, p. 20).

### **Malawi's Shoreline Absolutism**

Malawi's position is one of strict legal positivism, anchored in a literal reading of the 1890 treaty and the post-1940s colonial maps (Mayall, 1973, p. 624). Malawi asserts that the phrase “eastern, northern, and western shores” in the Anglo-German Agreement is unambiguous and legally binding. It dismisses the median-line maps of the 1930s as administrative errors that were later officially corrected by the British colonial government (Ian, 1979, p. 259). For Malawi, the final colonial word is the one that reverted to the shoreline, and this is the border they inherited at independence.

Malawi consistently leverages the *uti possidetis* principle to buttress this claim, arguing that the OAU Charter obligates Tanzania to respect the border as it existed on 9 December 1961, which they assert was the shoreline (Mayall, 1973, p. 625). This position was famously stated by Malawian President Hastings Kamuzu Banda in 1967 and has remained the country's unwavering official stance (Banda, 1967, quoted in Mayall, 1973, p. 626). Malawi interprets any Tanzanian claim to the contrary as a revisionist attempt to alter a settled colonial boundary, an action that would violate the foundational norm of African post-colonial territorial integrity (Touval, 1972, p. 89).

Malawi also uses historical statements from Tanzanian officials to support its case. Most notably, it frequently quotes Tanganyika's first Prime Minister, Rashid Kawawa, who stated in the National Assembly in 1962:

Since no portion of Lake Nyasa was located inside German East Africa's borders, no portion of the lake is located inside Tanganyika's borders... the entire Lake is included within the borders of Nyasaland (Tanganyika National Assembly, 1962, col. 124).

While Tanzanian officials now contextualise this as a statement based on flawed British colonial advice, Malawi presents it as a definitive admission from the highest level of the Tanzanian government (Zotto, 2020, p. 22). The Kawawa statement has featured prominently in Malawian diplomatic correspondence and public statements on the dispute for over six decades (Mayall, 1973, p. 627).

Malawi further argues that the 1890 treaty, as an agreement between two European powers, created rights and obligations that bound the successor states under international law. The principle of state succession to treaties, particularly those establishing boundaries, is well-established in international jurisprudence (O'Connell, 1967, p. 45). In the *Case concerning the Temple of Preah Vihear* (1962), the International Court of Justice affirmed that boundary treaties survive state succession and bind successor states (ICJ Reports, 1962, p. 23). Malawi contends that Tanzania cannot unilaterally repudiate a boundary established by treaty and accepted by both colonial powers (Mayall, 1973, p. 628).

### **The *Uti Possidetis* Paradox**

The tragedy of the Tanzania-Malawi dispute is that both nations are, in a sense, correct within their own interpretive frameworks (Zotto, 2020, p. 24). This is the paradox of *uti possidetis* when applied to an ambiguous situation. The principle assumes the existence of a clear *jus*, or law, to possess. But in this case, the *jus* was fundamentally unclear (Lalonde, 2002, p. 156). As Donaldson (2011, p. 278) astutely questioned: “Did African leaders think or presume that the borders of their states were real? Was the purpose of this phrase to draw attention away from a poorly defined boundary that would have caused more conflicts?”

The inheritance principle, designed to prevent conflict by freezing borders, has instead perpetuated this one by forcing both states to defend their chosen interpretation of a flawed history as the only legitimate one (Ratner, 1996, p. 612). Tanzania inherited the median-line tradition; Malawi inherited the shoreline tradition. The OAU and African Union framework provides no mechanism for adjudicating which colonial tradition is correct when they conflict so profoundly (Kornprobst, 2002, p. 380).

The International Court of Justice, in the *Burkina Faso/Mali* case, provided guidance on this question. The Court held that *uti possidetis* “freezes the territorial title” and that the principle “is not a special rule which pertains solely to one specific system of international law” but rather “a general principle, which is logically connected with the phenomenon of the obtaining of independence, wherever it occurs” (ICJ Reports, 1986, p. 565). However, the Court also acknowledged that the application of *uti possidetis* requires the identification of the “colonial heritage” at the critical date of independence. Where that heritage is itself contradictory, as in the Lake Nyasa case, the principle provides no clear answer (Lalonde, 2002, p. 158).

This has led to a stalemate where diplomacy and mediation fail because they are based on the premise of finding a compromise between two positions, each of which believes itself to be not a negotiating position but a statement of incontrovertible legal and historical fact (Kornprobst, 2002, p. 382). Both states have invested significant political capital in their respective positions, making concession politically difficult regardless of the legal merits (Zotto, 2020, p. 26).

### **The Resource Dimension**

The discovery of oil and gas potential in the lake in the 2010s transformed the dispute from a largely dormant, legal-historical debate into an active economic conflict (Ng'ambi & Mwaïla, 2013, p. 114). However, it did not change the underlying arguments. It simply raised the stakes, making both parties even more reluctant to abandon their legally entrenched positions for fear of being seen to surrender sovereign territory and valuable resources (United Nations Economic Commission for Africa, 2012, p. 67).

In 2011 and 2012, both Tanzania and Malawi awarded hydrocarbon exploration licences to international oil companies for overlapping areas of the lake (Ng'ambi & Mwaïla, 2013, p. 118). Tanzania granted blocks to the British company BG Group and the Brazilian company Petrobras, while Malawi awarded exploration rights to the South African company SacOil Holdings (Zotto, 2020, p. 28). This created a situation where competing commercial interests were operating in the same waters under licences from different governments, raising the prospect of direct confrontation between corporate actors and their state backers.

The resource dimension also attracted the attention of regional bodies. The Southern African Development Community (SADC) offered mediation in 2012, appointing former Mozambican President Joaquim Chissano as facilitator (SADC, 2012). However, mediation efforts have made little progress, as both parties insist on the legal validity of their positions and resist compromise (Zotto, 2020, p. 30). The resource wealth did not create the dispute; it merely poured fuel on a fire that had been smouldering for over a century, a fire ignited by the normative gaps in a treaty signed in Europe in 1890 (Ng'ambi & Mwaïla, 2013, p. 122).

Recent infrastructure developments have further heightened tensions. Tanzania's 2024 Mbamba Bay port construction project, located on the eastern shore of the lake, has been viewed by Malawi as an assertion of sovereignty over waters it claims as its own (Mbowe, 2024, p. 3). Tanzanian officials maintain that the port is within Tanzanian territory and that the project does not prejudice the boundary dispute (“ with Hon. Amba-

sador Mohamed Maundi, 2024). However, the port's location and its potential to facilitate resource extraction from the lake have renewed focus on the unresolved sovereignty question.

### **Regional and International Mediation Efforts**

Various mediation efforts have been undertaken since independence, none of which have succeeded in resolving the dispute. In the 1960s and 1970s, bilateral negotiations under the auspices of the OAU failed to produce agreement (Mayall, 1973, p. 629). The two sides could not even agree on the terms of reference for mediation, with each insisting that its interpretation of the boundary be accepted as the starting point for negotiations (Ian, 1979, p. 260).

In the 1980s and 1990s, the dispute remained largely dormant, with neither side willing to press the issue to the point of confrontation (Zotto, 2020, p. 32). Occasional incidents, such as the arrest of fishermen or disputes over lake transport, would briefly reignite tensions, but these were typically resolved through local arrangements rather than principled resolution of the underlying boundary question. The SADC mediation launched in 2012 represented the most sustained international effort to resolve the dispute (SADC, 2012). The mediation process has involved technical studies of colonial archives, mapping exercises, and legal analyses. However, the fundamental impasse remains: both parties insist on the legal validity of their positions, and the mediation lacks authority to impose a solution (Zotto, 2020, p. 34).

The African Union's Border Programme, established in 2007 to assist member states in delimiting and demarcating their borders, has also engaged with the dispute (African Union, 2007). However, the Programme's mandate is facilitative rather than adjudicative, and it cannot resolve disputes without the consent of the parties (Gbenga, 2011, p. 52). As with SADC mediation, the Programme has been unable to bridge the gap between the two positions.

### **The Limits of Legalism**

The persistence of the Tanzania-Malawi dispute illustrates the limits of legalism in resolving boundary conflicts rooted in colonial ambiguity (Kornprobst, 2002, p. 384). Both states have framed their claims in legal terms, citing treaties, colonial maps, and international law principles. Yet the very abundance of legal sources, each pointing in a different direction, has enabled the dispute to continue indefinitely (Zotto, 2020, p. 36). International law provides techniques for resolving such ambiguities. The Vienna Convention on the Law of Treaties (1969) authorises recourse to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, when the ordinary meaning leaves the meaning ambiguous or obscure (Vienna Convention, 1969, Article 32). Subsequent practice of the parties in the application of the treaty may also establish their understanding of its meaning (Article 31[3][b]).

In the Lake Nyasa case, however, these interpretive techniques point in different directions. The preparatory work of the 1890 treaty is fragmentary and inconclusive (McEwen, 1971, p. 124). The subsequent practice of the colonial powers, as reflected in the contradictory maps and administrative actions of the mandate period, supports both interpretations (Ian, 1979, p. 261). International law provides no meta-rule for choosing between equally plausible but contradictory interpretations when the historical record is itself contradictory.

As Lalonde (2002, p. 162) observed, “*uti possidetis* was designed to prevent conflicts by ensuring that newly independent states began their existence with clearly defined borders. But it presupposes that the colonial border was, in fact, clearly defined. Where it was not, the principle offers no solution.” The Tanzania-Malawi dispute is a case

study in this limitation of international law. The post-colonial inheritance of the Lake Nyasa dispute demonstrates the enduring consequences of the colonial cartographic anarchy. Tanzania and Malawi, both acting in good faith within the framework of *uti possidetis*, have arrived at mutually exclusive interpretations of the boundary because the colonial record itself supports both interpretations (Mayall, 1973, p. 630). The resource discoveries of the 2010s have raised the stakes but have not changed the fundamental dynamic.

The dispute persists because it is rooted not in a simple disagreement about facts but in a fundamental ambiguity about what constitutes the relevant colonial heritage (Zotto, 2020, p. 38). Tanzania's median line and Malawi's shoreline are both authentically colonial, both supported by official British documents, and both incompatible with the other. The principle of *uti possidetis*, designed to resolve boundary disputes by reference to colonial borders, cannot resolve a dispute about what those borders were.

## **CONCLUSION**

The territorial dispute over Lake Nyasa stands as a profound testament to the enduring and pernicious legacy of Africa's colonial partition. It is not simply a bilateral quarrel between two neighbouring states but a direct consequence of a historical-legal failure originating in the late nineteenth century. This article has argued that the intractability of the conflict stems from the inherent ambiguities and silences of the Anglo-German Treaty of 1890, which were amplified rather than resolved by subsequent colonial cartographic anarchy and administrative inconsistency.

The 1890 treaty was a flawed instrument from its inception, a product of imperial bargaining that displayed a reckless disregard for geographical and legal precision. Its core failure was its reliance on the “shore,” a dynamic, fluctuating geographical feature, as a fixed boundary marker. This was compounded by its complete silence on the critical issue of island sovereignty and the creation of a confusing normative regime through the declaration of a “free trade zone” on the lake. The treaty did not establish a border; it established a problem. The British colonial administration, which later controlled both sides of the dispute, failed spectacularly to manage this problem. Instead, it produced a chaotic body of contradictory evidence. The mandate period of the 1930s saw the promotion of a median-line boundary, reflected in maps presented to the League of Nations. This was abruptly reversed in the lead-up to independence, when a shoreline boundary was reasserted in what can only be seen as a politically motivated effort to secure the lake for the British-led Federation of Rhodesia and Nyasaland. This cartographic revisionism bequeathed to Tanzania and Malawi a portfolio of historical documents that could legitimise two entirely mutually exclusive claims.

The post-colonial adherence to the *uti possidetis juris* principle has frozen this contradiction in place. Tanzania legitimately claims the median-line tradition of its colonial past, while Malawi legitimately claims the shoreline tradition of its colonial past. The African Union's framework, designed to prevent conflict by sanctifying colonial borders, is impotent in the face of such a fundamental ambiguity because there is no clear border to sanctify. Both states are defending a “true” inheritance against a perceived revisionist, making compromise appear as surrender. The persistence of the Tanzania-Malawi dispute illustrates the limits of legalism in resolving boundary conflicts rooted in colonial ambiguity. Both states have framed their claims in legal terms, citing treaties, colonial maps, and international law principles. Yet the very abundance of legal sources, each pointing in a different direction, has enabled the dispute to continue indefinitely. International law provides techniques for resolving such ambiguities, but in the Lake Nyasa case, these interpretive techniques point in different directions, and international

law provides no meta-rule for choosing between equally plausible but contradictory interpretations when the historical record is itself contradictory.

The discovery of oil and gas potential in the lake in the 2010s transformed the dispute from a largely dormant, legal-historical debate into an active economic conflict. However, it did not change the underlying arguments. It simply raised the stakes, making both parties even more reluctant to abandon their legally entrenched positions for fear of being seen to surrender sovereign territory and valuable resources. The resource dimension also introduced new actors and interests into the dispute, with international oil companies becoming stakeholders in the conflict's resolution or perpetuation. Yet the resource paradox is that the very wealth that intensifies the dispute could also provide the incentive for its resolution. A jointly managed development regime for the lake's hydrocarbon resources could transform the conflict from a zero-sum sovereignty dispute into a positive-sum cooperation opportunity. The potential for shared revenue from resource extraction might create political space for compromise that purely legal arguments cannot provide.

A lasting resolution to the Tanzania-Malawi dispute cannot be found through a purely legalistic re-examination of the same flawed colonial documents. Mediation efforts that push for compromise on the median versus shoreline question are tackling a symptom, not the disease. The disease is the border itself, a construct that was never coherently defined and that fails to reflect the geographical and human realities of a shared lake ecosystem. Several pathways to resolution warrant consideration. The most promising avenue involves setting aside the sovereignty debate in favour of a robust, joint resource management and development regime. This approach would acknowledge that the 1890 treaty's free trade provisions, whatever their original intent, point towards a conception of the lake as a shared space rather than an exclusive possession. A joint commission with responsibility for fisheries management, environmental protection, and hydrocarbon development could transform the lake from a source of conflict into an engine of mutual prosperity. Such arrangements are not without precedent in African boundary practice, as demonstrated by the Lake Chad Basin Commission and the Kagera Basin Organisation.

A second pathway involves the negotiation of provisional arrangements that would allow for the practical use of the lake's resources while preserving the legal positions of both parties. The 1949 fishing rights agreement, which granted Tanganyikan fishermen access to a three-mile zone while explicitly avoiding the boundary question, provides a historical precedent for such an approach. A modern equivalent, covering hydrocarbon exploration as well as fishing, could de-escalate tensions and create space for longer-term resolution. A third pathway involves submitting the dispute to third-party adjudication, either by the International Court of Justice or by an arbitral tribunal established for the purpose. Adjudication would have the advantage of producing a binding resolution, potentially ending the dispute definitively. However, it also carries risks, as both parties would have to accept the possibility of losing, and a judgment that clearly favoured one side could be politically difficult to implement. The fourth pathway, and perhaps the most difficult, is a direct political settlement between the two countries. This would require leadership willing to make compromises that could be portrayed domestically as concessions. The political costs of such compromise are high, particularly given the resource stakes and the long history of the dispute.

Ultimately, the lesson of Lake Nyasa is that the blind application of *uti possidetis* to ambiguous colonial borders can perpetuate the very conflicts it was designed to prevent. Peace will be found not in re-fighting the battles of colonial cartographers but in building a new, shared future for the lake and its people. The spectre of the 1890 treaty need not haunt Tanzania and Malawi indefinitely. With political will, creative diplomacy, and a

focus on shared interests rather than exclusive sovereignty, the two nations can transform this enduring dispute into a model of transboundary cooperation. The lake that has divided them for over a century could yet unite them.

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