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Reviewed work(s):

Source: *The Journal of Modern African Studies*, Vol. 11, No. 4 (Dec., 1973), pp. 611-628

Published by: [Cambridge University Press](#)

Stable URL: <http://www.jstor.org/stable/161618>

Accessed: 02/08/2012 10:42

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## ***The Malawi-Tanzania Boundary Dispute***

by JAMES MAYALL\*

SINCE Malawi became independent on 6 July 1964 diplomatic relations with her eastern neighbour, Tanzania, have been almost permanently strained. Differences between the two states have focused on three sets of issues: contrasting attitudes and policies towards the white minority régimes to the South, President Banda's suspicion that Tanzania was aiding and abetting the attempts by certain prominent Malawi exiles to subvert his régime,<sup>1</sup> and a dispute over the de-limitation of the boundary between the two states along Lake Malawi (Nyasa).

These issues are not easily separable: for if it had not been for Banda's outspoken policy towards the white South (which led him alone amongst African statesmen to establish diplomatic relations with South Africa), there would have been no compelling grounds for Tanzania, which opposed this policy, to offer asylum and support to his political opponents; and if it had not been for Tanzania's confrontation, not only with South Africa but also with the Portuguese authorities in Mozambique (with whom Malawi also maintained close relations), it is doubtful whether President Nyerere would have been provoked during May 1967 into bringing the Lake dispute into the open. There is no doubt also that Malawi exiles in Dar es Salaam were actively campaigning against Banda's régime, at this time, over the whole range of his policies, including the question of the Lake.<sup>2</sup>

But while some attention to the wider political context is necessary for any analysis of this dispute, the physical location of the boundary between the two states will remain at issue whatever the political climate. This article, therefore, is concerned with the boundary itself. My aim is first to establish the immediate circumstances of the Tanzanian claim, and the way it was handled by the two Governments, and then to focus on some of the major issues raised by the dispute.

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<sup>1</sup> In September 1964 Dr Banda dismissed three of his cabinet colleagues, and three others resigned in sympathy. Following this crisis the dismissed ministers, and a number of their supporters, crossed as political refugees into Tanzania and Zambia.

<sup>2</sup> See James Mayall, 'Malawi's Foreign Policy', in *The World Today* (London), October 1970, pp. 435-45.

## THE CLAIM BY TANZANIA

The Lake boundary was publicly disputed between Tanzania and Malawi from May 1967 to September 1968; since then, while remaining unresolved, it has not been the subject of major policy statements by either side. It is important to note at the outset that the claimant was, and is, the Tanzanian Government. From 1922, when Britain was awarded the mandate for German East Africa, until 1961, when Tanganyika became independent, the boundary with Nyasaland has been a matter of administrative convenience rather than political importance. But it is evident, from the inconsistency of the maps used in both territories during the mandate, that there was, from the start, some confusion as to exactly where it lay. The point is that the Government in Dar es Salaam accepted, both before and immediately after independence, that no part of the Lake fell within its jurisdiction. In May 1959, in the Tanganyika Legislative Council, the Minister for Lands and Mineral Resources replied to a question about the boundary in the following terms:

In the Treaty of Peace made with Germany after the 1914-1918 War, the boundaries of Tanganyika followed those described in Article II of the Anglo-German agreement of 1890. The description of the southern boundaries of Tanganyika, which include the boundaries of Nyasaland, are as follows: 'from the point of confluence of the Rovuma River with the Msinje River, the boundary runs westward along the parallel of that point until it reaches Lake Nyasa, thence striking northward it follows the Eastern, Northern and Western shores of Lake Nyasa 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'.<sup>1</sup>

This did not satisfy members of the Council who evidently felt that Tanganyika had as much of an interest in the Lake as Nyasaland, and the Attorney-General undertook to examine the problem. After consultation with the British Colonial Office, the Council was again told in December 1959:

that it was the opinion of the legal advisers to the Secretary of State for the Colonies that the southern boundary of Tanganyika lies along the Eastern, Northern and Western shores of Lake Tanganyika [*sic*] and that therefore not a part of the Lake lies within the boundaries of Tanganyika.<sup>2</sup>

The doubts which persisted were not so much about the delimitation of the boundary as its equity. Thus in October 1960 Chief Mhaiki, a

<sup>1</sup> *Tanganyika Legislative Council. Official Report* (Dar es Salaam), 26 May 1959.

<sup>2</sup> *Ibid.* 15 December 1959.

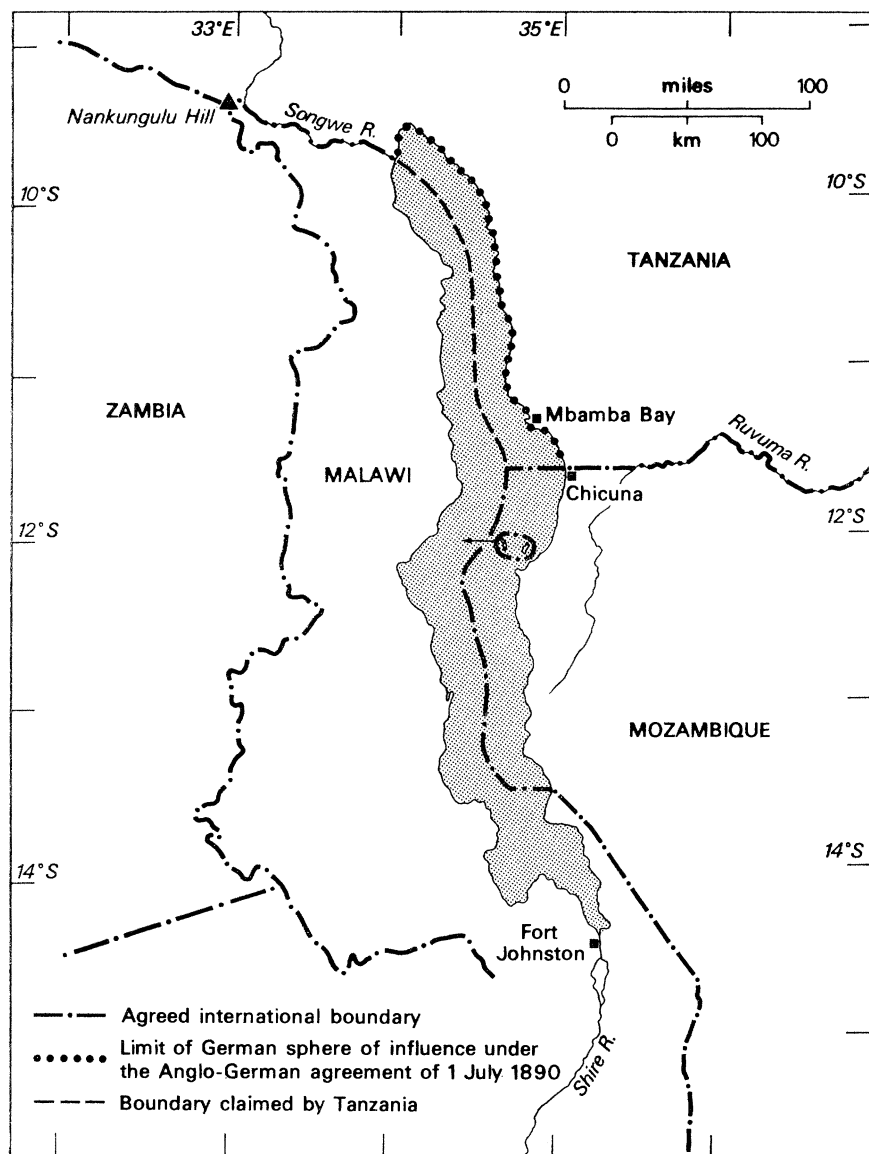


Figure 1  
Lake Malawi

member of the Legislative Council from the Songea district of Tanganyika which adjoins the Lake, requested the Government 'to approach the Nyasaland Government through her Majesty's Government in the United Kingdom with a view to securing a more equitable boundary between Tanganyika and Nyasaland'. The ensuing debate is of interest both because it reveals the widespread impression in Tanganyika that the British had illegally altered the boundary during the time of the Central African Federation (a view subsequently adopted in 1967 to justify a change of policy), and because it was the occasion of a categorical repudiation of any claim by the Chief Minister, Julius Nyerere.

Chief Mhaiki argued for the revision of the boundary on functional grounds: he claimed that with approximately 600,000 people living along the Tanganyikan shore, and dependent on the Lake for cooking and drinking water and for food, it was anomalous that the Government should have no rights over the Lake. He also alleged that as a result of flooding in 1956, following the construction of the Kariba Dam, Tanganyikan houses and plantations were inundated and the owners had been unable to claim compensation; and that any future modernisation of lake fishing – for example, through the use of motor boats or by the formation of co-operative societies – was dependent on the permission of the Nyasaland authorities. Although several other members of the Council spoke in support of the motion, the majority opposed it on the general grounds of pan-African solidarity. They recognised that any claim would be likely to provoke a counter claim and that, in any case, it would seem inconsistent to provoke a boundary dispute with Nyasaland while pursuing a policy of Federation in East Africa. One member, for example, suggested that:

the spirit now prevailing among our leaders is not dispute of boundaries but it is actually trying to do away with these boundaries in order that we can correct the mistakes of those people whom we now call sometimes, 'imperialists'.

For the colonial administration, the Minister of Information Services and the Attorney-General, both ex-officio members of the Council, repeated the official interpretation of the boundary and urged caution. The Minister for Lands, Surveys and Water, however, conceded that his Department was responsible for the publication of maps showing a 'median' line, the result, he said, of a mistaken impression that this was the correct and natural boundary in all inland waters. Finally Nyerere spoke against the motion. While conceding that there was justice in what had been claimed as the usual practice of dividing shared waters between neighbours, he continued:

I must emphasise again ... there is now no doubt at all about this boundary. We know that not a drop of the water of Lake Nyasa belongs to Tanganyika under the terms of the agreement, so that in actual fact we would be asking a neighbouring Government...to change the boundary in favour of Tanganyika. Some people think this is easier in the case of water and it might be much more difficult in the case of land. I don't know the logic about this.

The motion was then put to the vote and failed to carry.<sup>1</sup>

There the matter rested until 30 November 1961 when Nyerere, then Prime Minister, set out the policies which Tanganyika would adopt, once independent, towards international treaties concluded by Britain in her capacity first as mandatory power, and then as trustee, during the colonial period. The central point of this statement was the announcement of a two-year time-limit during which Tanganyika would continue to honour bilateral treaties, 'unless abrogated or modified by mutual consent'. The new policy was communicated to the Secretary-General of the United Nations in a letter, the relevant paragraph of which reads as follows:

As regards bilateral treaties validly concluded by the United Kingdom on behalf of the territory of Tanganyika, or validly applied or extended by the former to the territory of the latter, the Government of Tanganyika is willing to continue to apply within its territory, on a basis of reciprocity, the terms of all such treaties for a period of 2 years from the date of independence [i.e. until 8 December 1963] unless abrogated or modified by mutual consent. At the expiry of that period, the Government of Tanganyika will regard such of these treaties which could not by the application of the rules of customary international law be regarded as otherwise surviving, as having terminated.<sup>2</sup>

Not surprisingly, Chief Mhaiki was prompted to take up the issue of the Lake boundary again in the National Assembly. In June 1962 he acknowledged that under the existing treaty the entire Lake area fell within Nyasaland, but asked what steps the Government was intending 'to remove the disadvantages the people of Tanganyika living along the shores of Lake Nyasa incur'. In his reply the Prime Minister, currently Rashidi Kawawa, made three points: (i) that no part of Lake Nyasa fell within German East Africa; (ii) that since the boundary had not been altered by Britain after the assumption of the mandate, the Prime Minister's statement of 30 November 1961 did not apply; and (iii) that whatever the disadvantages to Tanganyika,

<sup>1</sup> For the full debate, see *ibid.* 12 October 1960.

<sup>2</sup> Cf. also E. E. Seaton and S. T. M. Maliti, 'Treaties and Succession of States and Governments in Tanzania', *African Conference on International Law and African Problems*, Lagos, March 1967, pp. 76–98.

the Government could not contemplate negotiations with either the Central African Federal Authorities in Salisbury or with Britain. 'If there are to be negotiations on this question', he concluded, 'they must be with the Government of Nyasaland itself and must wait the attainment by Nyasaland of full independence'.<sup>1</sup> Thus while holding to the pre-independence interpretation of the boundary, the Government held out the prospect of future negotiations.

There is no record that Tanzania approached the Government of Malawi in the immediate aftermath of that country's independence. In any case, in view of his cabinet crisis in September 1964 it seems unlikely that Banda would have responded. Once the ex-ministers had gone into exile in Tanzania and Zambia, moreover, Banda's fears that his neighbours were actively supporting attempts by the exiles to mount an 'invasion' against him, led to a rapid deterioration of Malawi's relations with both states. His fears also undermined any hope there might have been of quiet diplomacy aimed at a fraternal adjustment of the boundary, such as the Tanzanians had evidently contemplated.<sup>2</sup> So long as the Lake might conceivably be used as an infiltration route into Malawi, Banda was unlikely to modify his attitude that the Lake constituted an integral part of Malawi's national territory. Indeed, it was at this time that the steamer service which had previously plied from Monkey Bay in Malawi to ports in Tanganyika was suspended.<sup>3</sup>

It is not clear from the public evidence whether the immediate cause of the Tanzanian claim in 1967 was renewed pressure for compensation from the representatives of the population along the Lake shore, whose lands had been flooded or, as seems more likely, the Government's fears that Malawi, as a result of her growing *entente* with South Africa and Mozambique, would allow the Portuguese to use the northern part of the Lake to pursue Frelimo 'freedom fighters' to their sanctuaries across the Ruvuma River which forms the international boundary between Tanzania and Mozambique.

Two pieces of evidence support this view. First, a series of bilateral talks at ministerial level, aimed at reducing the area of misunderstanding

<sup>1</sup> *Tanganyika National Assembly. Official Report* (Dar es Salaam), 11 June 1962. Kawawa had earlier succeeded Nyerere as Prime Minister on the latter's resignation to devote himself to the reorganisation of the ruling party, T.A.N.U.

<sup>2</sup> Cf. Mayall, loc. cit. pp. 438-9.

<sup>3</sup> It is uncertain, however, whether this decision was solely dictated by the requirements of Malawi's security policy. Earlier the Geographer in the U.S. State Department had noted that 'the recent rise in the water level of Lake Nyasa has tended to disrupt services between the two states'. *International Boundary Study*, No. 37. *Malawi-Tanganyika and Zanzibar Boundary* (Washington, 1964), p. 4.

between the two Governments, were called off in August 1966 after Banda had publicly claimed that Tanzania was 'fed up with Malawi refugees and wanted to get rid of them. That is why there is discussion between Malawi and Tanzania'. In *riposte* the Tanzanians insisted that the talks were intended to cover the whole spectrum of their relations, including the problem of Malawi's dealings with Portugal, to which Tanzania took exception.<sup>1</sup>

Secondly, on 3 July 1967, in a debate on foreign affairs in the National Assembly in which he was later to explain the Tanzanian position, the Minister for Information and Tourism spoke about the Government's attitude towards those countries which inherited geographical or economic links with South Africa and Portugal: 'What we cannot understand or forgive', Hasnu Makame explained, 'are actions which have the effect of strengthening and furthering such links when gradual weakening of them would be both possible and in keeping with purposes expressed during the independence movement.' He added that while it might not be possible for every country in Africa to take an active part in the struggle for total African liberation, it was certainly possible for them to refrain from giving assistance to the enemy.<sup>2</sup>

Earlier, the first public announcement of the reversal in the Tanzanian position had been made by President Nyerere in an address to high school pupils at Iringa on 31 May 1967. Having stated that Tanzania did not accept the shore boundary and had informed Malawi that it recognised instead the median line, he added: 'I am told that the boundary was changed by the British during the declaration of the Rhodesian Federation, but they had no right whatsoever to do this because Tanzania was a Trust Territory.'<sup>3</sup>

Subsequently it emerged that the Tanzanian Government had pointed out to Malawi, in a note dated 3 January 1967, 'that maps produced in recent years give the impression that the international boundary between the two countries follows the Eastern and Northern shores of Lake Nyasa'. Certain actions of Malawi, it suggested, appeared to give support to this impression. While Tanzania did not want an international issue to arise between countries sharing the waters of Lake Nyasa, she wished 'to inform the Government of Malawi that Tanzania has no claim over the waters of Lake Nyasa beyond the line running through the median of the Lake', and that this line alone was recognised by Tanzania as the legal and just delineation between the

<sup>1</sup> *The Standard* (Dar es Salaam), 3 August 1966.

<sup>2</sup> *B.B.C. Summary of World Broadcasts* (London), ME/2508, 5 July 1967, B/1.

<sup>3</sup> *The Nationalist* (Dar es Salaam), 1 June 1967.



two countries. On 24 January 1967 Tanzania was informed that the matter would receive the consideration of the Malawi Government, and that a further reply would follow.<sup>1</sup>

#### THE RESPONSE BY MALAWI

The Tanzanian case was now complete, and the dispute might have remained quiescent if it had been ignored by President Banda. But on his return from the United States he made a full statement when the Malawi Parliament reassembled on 27 June 1967. After noting that if the reported claim were true (as he must have known it to be from the exchange of notes), the Government and country were bound to take it seriously, Banda continued:

I consider such a claim and such a statement as rubbing salt in the wounds inflicted on the body of Malawi by imperialism and colonialism. I say this. . . because the present boundaries between Malawi and her neighbours, whether to the North or to the South, to the East or to the West, are not natural boundaries. These wounds were inflicted on Malawi by imperialism and colonialism first at the Congress of Berlin in 1885; then by an Agreement between the British and the Germans in 1890, again by an Agreement between the British and South Africa Company, controlled by Cecil Rhodes, and the African Lakes Corporation; and finally by an Agreement between the British and Portuguese in 1891. As a result of these wounds. . . we have now such districts as Mbeya, Njombe, and Songea to the north of us, such provinces as Tete, north of the Zambesi, and Zambesia or Quelimane to the south, such provinces as Vila Cabral or Nyasa to the east of us, and such districts as Isoka in part, Lundazi, Fort Jameson and Mpetanke to the west of us. . . which geographically, linguistically, and culturally belonged to Malawi and which in our forefathers' time, in our ancestors' time, were definitely Malawi but which are now outside. . . our present borders. . .

As to the claim that the Lake should be divided between Malawi and another neighbouring country, I should like to say here and now that we will never recognize or accept this claim; we will never agree to the suggestion or proposal. The Lake has always belonged to Malawi.

. . . it is of course true that in the area of Vila Cabral, part of the Lake now belongs to the Portuguese, to Mozambique. But the Portuguese did not claim that part of the Lake as of right. They gave up a piece of their land in Mozambique in exchange for a piece of our Lake in 1949 or 1950. In saying this I am not laying any claim to any part of land in any of the neighbouring countries. I am simply stating the facts of geography, history, ethnology, language or linguistics in that part of Africa. If between Malawi and her neighbours to the north or to the south, to the east or to the west, any country has any just cause for territorial claim on any other country, that country is Malawi.<sup>2</sup>

<sup>1</sup> *B.B.C. Summary of World Broadcasts*, ME/2509, 6 July 1967, B/1.

<sup>2</sup> *Malawi News* (Blantyre), 30 June 1967.

In the light of subsequent events (and in the absence of published evidence to the contrary), it may be inferred that Malawi held to this line and refused further negotiations. By July the Tanzanian Government, in support of its claim, had announced its intention of putting a ship on the Lake, 'to help trade'.<sup>1</sup> Banda's 'opening to the South' had aroused deep hostility and suspicion in Dar es Salaam, and his speech was interpreted in both Tanzania and Zambia as evidence of Malawi's own irredentist claims. If Tanzania drew a sharp distinction between those countries which were unable, for historical and economic reasons, to break their dependence on the white South, and those which showed no desire to reduce this dependence at all, Malawi clearly belonged in the second category. Since, in the Tanzanian view, Banda had deliberately betrayed the liberation movements by negotiating trade and labour agreements with South Africa and Portugal, there was no obvious ground on which a *rapprochement* could be based.

Still, more than a year elapsed before the war of words between the two Governments flared up again. This time it was Banda who took the initiative in September 1968. At a Malawi Congress Party rally at Chitipa near the northern boundary with Tanzania, the President drew the attention of his audience to Malawi's 'natural frontiers' in an impromptu and dramatic aside. Pointing towards Tanzania, from which many people had apparently crossed to be present at the meeting, he was reported as saying, 'that is my land over there, Tukya, Njombe and Songea, all of them must be given back'.<sup>2</sup>

This speech produced a predictably vigorous response. The T.A.N.U. newspaper, *The Nationalist*, published an interview with Nyerere in which he dismissed Banda's claim, adding the ominous warning that he 'must not be ignored simply because he is insane. The powers behind him are not insane.' About the Lake, Nyerere said that the insanity of the claim was proved by the fact that the eastern shore was constantly mobile.<sup>3</sup> Here, then, were two new elements to the dispute: the insinuation that the South African and Portuguese authorities were behind Banda's alleged irredentism, and the view that a shoreline boundary is not feasible in a situation where the water level itself fluctuates.

The quarrel now deteriorated into an exchange of more-or-less personal accusations and counter-accusations which were only indirectly linked to the subject at issue. If he was 'insane', Banda told

<sup>1</sup> *The Times* (London), 1 July 1967.

<sup>2</sup> *The Standard*, 10 September 1968.

<sup>3</sup> *The Nationalist*, 13 September 1968.

the annual convention of the Malawi Congress Party, everyone knew Nyerere 'as a coward and a communist inspired jellyfish':

We know that while pretending to be a staunch supporter of the Organization of African Unity, Nyerere is the worst agitator and betrayer of the cause for which the Organization was formulated. . . .

History, geography or even ethnical knowledge will convince Nyerere that four districts to the South of Tanganyika belong to us by nature. It is only because we respect the feasible unification of our Mother Africa that we do not claim these districts. All we are doing is setting [*sic*] historical and geographical truth.<sup>1</sup>

Banda went on to announce that he was putting a gunboat on Lake Malawi to answer Nyerere's claim, and that two more were on order from Britain. For a time it appeared that the two countries were preparing for a military show-down. In Tanzania, Vice-President Kawawa, who had returned early from the O.A.U. summit in Algiers after the report of Banda's claims,<sup>2</sup> told a rally in the capital organised by the National Union of Tanzanian Workers that since they had no claim to any part of Malawi it was a clear colonialist tactic, designed to bring hatred between the two states, that had led to the alteration of the boundary from the centre to the shore line.<sup>3</sup> The Tanzanian Government then embarked upon a programme of military and political education amongst the villagers along the Lake shore, allegedly diverting some of the African Liberation Committee's small arms (the distribution of which they controlled) for this purpose; they also began to spend an estimated £1.5 million on improving road and other communications in the area.

There the matter rested, and by December 1968 relations between the two states had somewhat improved, although it was clear that Tanzania saw little hope of reaching an understanding with Banda. In a speech delivered at Manda on the Lake shore, F. V. Mponji, Parliamentary Secretary in Kawawa's Office, reasserted that while Tanzanians had no wish to fight Malawians they were prepared to defend their country against any threat. Meanwhile, he said, they would wait for the emergence in Malawi of a sensible leader.<sup>4</sup>

#### AN EVALUATION

The status of the Tanzanian claim calls for further analysis. As a preliminary, it is relevant to refer briefly to the attitude of African states towards the doctrine of *uti possidetis*. At the meeting of the

<sup>1</sup> *Malawi News*, 24 September 1968.

<sup>2</sup> *The Nationalist*, 20 September 1968.

<sup>3</sup> *The Standard*, 27 September 1968.

<sup>4</sup> *Ibid.* 20 December 1968.

Organisation of African Unity in Cairo, July 1964, it was a Tanzanian proposal which led to the adoption of a resolution under which the Assembly of Heads of State and Government:

1. *Solemnly reaffirms* the strict respect of all Member States of the Organization for the principles laid down in Article III, paragraph 3 of the Charter of the Organization of African Unity [Respect for the sovereignty and territorial integrity of each state and for its inalienable right to independent existence];

2. *Solemnly declares* that all Member States pledge themselves to respect the frontiers existing on their achievement of national independence.<sup>1</sup>

For the Tanzanian claim to be consistent with this resolution it is clearly necessary to show that, notwithstanding the Government's pronouncements in both the Legislative Council before independence and in the National Assembly afterwards, the boundary was in fact uncertain. Given the manner in which colonial settlements were reached between the European powers in Africa, and particularly Britain's administration of the two territories concerned, this possibility cannot be ruled out. Uncertainty, moreover, might have arisen either as a result of confusion in the original delimitation of the boundary, or because of a British decision to move it. Such a unilateral action would presumably have been illegal, unless endorsed by the League of Nations – or, later, by the United Nations – at any time from 1922 onwards. The Tanzanian view that the change was instigated by the Federal Authorities in Salisbury with the connivance of the British in the mid-1950s is therefore of no legal significance.

Ian Brownlie has concluded that the boundary could have been changed prior to 1914 by British acquiescence in a *de facto* German interest in, and presence on, the Lake, since – until the outbreak of World War I – the British raised no objection to, and even co-operated with, 'a continuing pattern of public and official German authority on the waters of the Lake'.<sup>2</sup> Moreover, some contemporary British and German maps show a shore boundary, others a median line, and some no boundary at all.

While there is ample scope for disagreement about the history of the Lake boundary during the colonial period, the original agreement between Britain and Germany does not appear to be in doubt. The basic document is the Heligoland Agreement of 1 July 1890 which

<sup>1</sup> See Ian Brownlie (ed.), *Basic Documents on African Affairs* (Oxford, 1971), p. 361.

<sup>2</sup> Ian Brownlie, 'A Provisional View of the Dispute Concerning Sovereignty on Lake Malawi/Nyasa', in *The Eastern Africa Law Review* (Dar es Salaam), 1, 3, December 1968, pp. 258–73. For the legal background to the dispute, see also A. C. McEwan, *International Boundaries in East Africa* (Oxford, 1971), pp. 178–206.

defined spheres of interest in East Africa: Article I (2) described the German sphere to the south as bounded by the northern limit of Mozambique to the point where that limit touched 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'.<sup>1</sup> Although the frontier between Lakes Tanganyika and Nyasa was subject to later delimitation by a further agreement of 23 February 1891,<sup>2</sup> no further action was taken on the shore-line section of the boundary.

The significance of this lack of clarification seems to be in dispute amongst lawyers. Brownlie, for example, considers that the failure to delimit 'may have very little significance since a shore line may not have been considered susceptible to further delimitation'.<sup>3</sup> On the other hand, E. E. Seaton, writing in 1967 as an official of the Ministry of Foreign Affairs in Dar es Salaam, adopts a more equivocal attitude. Having observed that Tanzania had continued to respect the 1890 Agreement on the Tanganyika-Kenya border, on the grounds that 'since German and British spheres marched together in the North and each power occupied up to the limit, the delimiting of their respective spheres produced a territorial boundary on the line of delimitation', he continued:

With regard to the southern boundaries of mainland Tanzania the position is less clear. Some consider that under the 1890 Agreement, the territory's southern boundary ran along the eastern, northern and western shores of Lake Nyasa, in any event the boundaries between Tanganyika and Malawi were settled by two Orders-in-Council made by the British Government, namely the 1902 British Central African Order-in-Council and the 1920 Tanganyika Order-in-Council. Others contend that no sphere of influence corresponding to the spheres in the north was reserved to Britain in the south of Tanganyika by the 1890 Agreement hence it is to the extent of occupation, not of the limits in that Agreement, that one must look for the southern border.

In such circumstances, there has been no recognition by the Tanzanian Government of the 1890 Agreement as constituting authority for the line of the Tanzania/Malawi border. (If the provisions of that Treaty were incorporated in pre-existing legislation, i.e. the two Orders-in-Council, the validity of the boundary might depend upon the extent to which such legislation continued to be applied in Tanganyika after independence.) In the absence of legislative or treaty provisions the principles of customary international law would provide for the boundary between Tanzania and Malawi to run along the shore line of Lake Nyasa.<sup>4</sup>

<sup>1</sup> E. Hertzlet, *Map of Africa by Treaty* (London, 1909 edn.), p. 899.

<sup>2</sup> *Ibid.* p. 295.

<sup>3</sup> Brownlie, *loc. cit.* p. 259.

<sup>4</sup> Seaton and Maliti, *op. cit.* pp. 81-2.

This account ignores the fact that in 1962 the Tanganyika Government accepted the Orders-in-Council of 1902 and 1920 as an accurate description of the boundary limits. It can be argued that the Orders are themselves unclear on the Lake Nyasa sector,<sup>1</sup> and that closer inspection of the text after 1962 may have revealed this obscurity and justified the Tanzanian reversal. But this was not how the Government chose to present its case.

What, then, was the basis of the assertion that there had been a unilateral and unlawful alteration of the boundary by the British? The evidence for this view, which has never been fully set out, appears to come from two sources. First, as early as 1959 it was claimed, for example by Chief Mhaiki, that maps of the Lake, produced by the Tanganyikan Department of Surveys, had changed from showing a median to a shore boundary without explanation. In his review of the legal evidence, Brownlie notices earlier discrepancies in the cartography of the Lake, both before the 1914–18 war, and perhaps more significantly in the description and depiction of the boundary under the Mandate. Thus between 1924 and 1932 the British *Annual Report on Tanganyika* refers, although not always explicitly, to a centre line as the Lake boundary. In 1933 and 1934 a discrepancy appears between the text, which refers to a centre line, and the map which shows the eastern shore boundary. Then from 1935 until 1938, as in the post-World War II reports to the Trusteeship Council, both text and map refer to the eastern shore line. Official reports and maps produced in the Nyasaland Protectorate during the 1920s and 1930s also show a middle line.<sup>2</sup>

Was this change the result of a deliberate political decision or, as suggested in 1960 by the Minister for Lands, Surveys and Water, merely the result of a mistaken impression about the law relating to inland waterways? Although this question cannot be answered with certainty at present, the evidence is sufficiently contradictory to make the Tanzanian charge of ‘creeping cartographical aggression’ plausible, at least within the context of a much wider political conflict.

The attempt to relate the change to the Central African Federation, as Nyerere did in 1967, is more dubious, although there were political advantages in making the connection. The Federation was viewed by African nationalists throughout East and Central Africa as a ruthless attempt to consolidate settler control. Prior to Nyasaland’s secession from the Federation, moreover, non-recognition of Federal legitimacy had been cited as one of the reasons for not raising the boundary issue; in the new context, Banda would thus be discredited if he was

<sup>1</sup> Cf. Brownlie, loc. cit. pp. 260 and 263.

<sup>2</sup> Ibid. pp. 263–6.

shown to be resting his case on a legacy of the Federation which he had helped to destroy.

This view of events was propagated in Dar es Salaam by those former Malawi ministers who sought refuge there after the cabinet crisis in 1964. It seems very probable, therefore, that they exercised some influence in the Tanzanian Government's re-formulation of its views on the Lake boundary. In a newspaper article based on an interview with one of Malawi's exiles, it was alleged that changes had been made in 1956 after the report of a Federal Boundary Commission on which Africans were not represented, and which they subsequently denounced. The Commission was said to have recommended two apparently contradictory changes: first, to move the Tanganyika-Malawi boundary from the centre to the eastern shore line; secondly, to 'cut the Lake in half to give Mozambique a share', thus incurring the anomolous situation under which the Malawi islands of Chisamulo and Lokoma are technically within Portuguese territory.<sup>1</sup>

The relevance of this view of events to the Tanzanian claim clearly rests on the assumption that prior to 1956 the acknowledged boundary lay through the centre of the Lake. But although such a Commission did sit between 1950 and 1956, and despite the conflicting evidence of the maps during the earlier period, the *Annual Colonial Reports* on Nyasaland for the period 1948-53 - i.e. before the establishment in 1953 of the Central African Federation - all show a shore-line boundary. There is, then, no evidence to suggest that a political decision was taken during the period of the Federation to reduce the extent of Tanganyika's territory.

#### SOME FURTHER CONSIDERATIONS

It is possible, however, that there is some connection between Tanganyikan dissatisfaction with their lack of status on the Lake, and local knowledge around the shores of the work of the Federal Boundary Commission during the 1950s. The Commission was established by the Nyasaland Government in connection with a plan to control the water level of the Lake and the outflow of the Shiré River.<sup>2</sup> While

<sup>1</sup> This article, probably written by Henry Chipenbere or Kenyame Chiume, entitled 'Background to the Lake Squabble', appeared in *The Standard*, 9 November 1968. The same interpretation of the dispute was given to the author by Chiume in an interview in Dar es Salaam in August 1969.

<sup>2</sup> In 1950 the Nyasaland Department of Surveys commissioned Messrs. Sir William Halcrow & Partners to undertake the preliminary survey work at an estimated cost of £300,000.

such developments might affect the shore population in Tanganyika, there is no record of any official approach to the authorities in Dar es Salaam. But a British initiative in July 1951<sup>1</sup> led to an Agreement being signed with Portugal in November 1954:

the frontier on Lake Nyasa shall run due West from the point where the frontier of Mozambique and Tanganyika 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 point of intersection with the geographical parallel of Beacon 17 as described in the exchange of notes of 6 May 1920 which shall constitute the southern frontier.<sup>2</sup>

The *quid pro quo* for this adjustment was Portuguese acceptance of liability for one third of the cost of the Shiré valley scheme.

One further provision of this Agreement may help to throw light on the origins of the claim by Tanzania. When he raised the issue of the boundary in the Legislative Council in October 1960, Chief Mhaiki claimed that the local people had been told that they could use the Lake for fishing 'only as far as primitive methods are concerned ... when we think of beginning to use new kinds of nets, boats with engines or we start fishing in co-operative societies, we cannot do so until permission has been sought from the Nyasaland Government'.<sup>3</sup> Article II (3) of the British-Portuguese Agreement which established the arrangement under which the United Kingdom retained sovereignty over the islands of Chisamulo and Likoma, despite their falling within Mozambique waters, used a similar wording to describe the fishing rights of the inhabitants of Nyasaland and Mozambique.<sup>4</sup> A reasonable hypothesis, therefore, might be that this provision was taken over as an administrative rule-of-thumb by the local authorities in Tanganyika as applying there also.

The Shiré valley scheme, which had formed the background to the Anglo-Portuguese boundary Agreement, failed to win the support of the Federal Authorities in Salisbury who gave priority instead to the

<sup>1</sup> *Exchange of Notes between Her Majesty's Government in the United Kingdom of Great Britain and Northern Ireland and the Portuguese Government providing for participation in the Shiré Valley Project* (London, 1953), Cmd. 8855.

<sup>2</sup> *Agreement between the Government of the United Kingdom and Northern Ireland (acting on their own behalf and on behalf of the Government of the Federation of Rhodesia and Nyasaland) and the Government of Portugal regarding the Nyasaland Mozambique Frontier* (London, 1962), Cmd. 1866. For the exchange of notes of 6 May 1920, see *Treaty Series*, No. 16 (London, 1920), Cmd. 1000.

<sup>3</sup> *Tanganyika Legislative Council. Official Report*, 12 October 1960.

<sup>4</sup> 'The inhabitants of Nyasaland and the 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'. Cmd. 1866.



Kariba Dam project in Southern Rhodesia.<sup>1</sup> Despite Chief Mhaiki's reference to this as the cause of the inundation of the Lake shore in 1956, it is difficult to see the connection. It is more probable that the flooding was due to natural causes: the wide meteorological variations of Lake Nyasa (which has fluctuated through 24 feet since 1896), have long been notorious with adverse consequences for agriculture and navigation alike.<sup>2</sup> Moreover, it seems possible that the floods in 1956 was at least partly due to cyclone 'Edith' which appeared off the East African coast at the beginning of April, causing extensive flooding in Mozambique and Nyasaland.<sup>3</sup> While these observations suggest the economic absurdity of attempting a planned development of the resources of the Lake for agriculture, fishing, or transport without the co-operation of all the littoral states, they none the less hardly strengthen Tanzania's formal case in her conflict with Malawi over sovereignty on the Lake.

Finally, therefore, it is necessary to consider the question of motive. Unlike some other African boundary conflicts, popular passions were hardly involved in this dispute.<sup>4</sup> True the inconsistency in the maps prompted members of the Legislative Council to raise the matter in the first place before independence. But, as their speeches indicate, they were probably motivated more by a desire to express frustration at what they considered cavalier treatment of the southern region by the centre, than by hostility to the inhabitants on the opposite side of the Lake. Some of the peoples of Northern Malawi and Southern Tanganyika – the Nyakusa, for example – are related, but their presence in both states has probably acted as a pressure for the improvement of relations, rather than for any escalation of the conflict.

Why then did Tanzania reverse her position? Although the evidence is mostly circumstantial, it supports the view that the decision was essentially a function of the wider conflict between the two states, arising out of their differing policies towards the 'white South'. In this context, Tanzania's decision to publicise the Lake dispute may be understandable, but it was hardly prudent. For it provoked Banda into an equally categorical repudiation of this claim, and provided evidence for his suspicions that the T.A.N.U. Government was supporting efforts to subvert his régime. The Tanzanian case, which rests on the assertion of an illegal change of the boundary during the period

<sup>1</sup> Cf. Patrick Keatley, *The Politics of Partnership* (Harmondsworth, 1963), pp. 136–8.

<sup>2</sup> Cf. John G. Pike, *Malawi: a political and economic history* (London, 1969), pp. 11–14.

<sup>3</sup> *Nyasaland Protectorate. Report for the Year, 1956* (London, 1957), p. 13.

<sup>4</sup> Cf. Saadia Touval, *The Boundary Politics of Independent Africa* (Cambridge, Mass., 1972), especially ch. 5, 'The Use of Force'.

of the mandate and trusteeship, may not be without legal foundation, but is, none the less, weak; in any case, the manner of its presentation made it virtually certain that Malawi would not accept international adjudication.

Again, the suggestion that there was a military threat from the Portuguese and South Africans through Malawi was imprudent. Like most African states, Tanzania has a small army, most of which is deployed in the general vicinity of the Ruvuma River to cover the escape routes for Frelimo freedom fighters from Mozambique. Under the pressure of confrontation with the Southern African régimes, the armed forces of Tanzania have been expanded in recent years, but it is still very doubtful whether she has the capacity to open a second front, even a defensive one, along the shores of the Lake, or that President Nyerere would wish to do so.

These considerations may lie behind the fact that there has been no public reference by either side to the dispute since 1968. Not that the Lake itself has always been quiet. In 1971 there were reports that Malawi had handed over the control of some control boats to Portuguese officers, who were apparently to keep watch on possible insurgence against the régime of President Banda, as well as on Frelimo infiltration into the Nyassa Province of Mozambique.<sup>1</sup> More recently there has been a clash between Tanzanian forces and a Portuguese gunboat operating off-shore, although perhaps significantly there was no mention of Malawi in this latest incident.<sup>2</sup> The fact that the 1955 Nyasaland-Mozambique Frontier Agreement gave the Portuguese the right to operate over 'all the waters' of Lake Nyasa was, from the Tanzanian point of view, its most objectionable feature.<sup>3</sup> But since it is clear that President Banda will not recognise their case – the strength of which in law is at best uncertain – there is little to be gained by pressing the formal boundary dispute any further. It is arguable, indeed, that if the Tanzanian claim was recognised this might precipitate a further direct and costly confrontation with the Portuguese on the Lake.

Meanwhile, although Malawi's relations with Tanzania have remained strained, those with her western neighbour, Zambia, have improved, notably by Banda's willingness to help re-route export traffic, following the closure of the Zambian border with Rhodesia.

<sup>1</sup> Colin Legum (ed.), *Africa Contemporary Record: annual survey and documents, 1971-72* (London, 1972), B452.

<sup>2</sup> *The East African Standard* (Nairobi), 24 January 1973.

<sup>3</sup> Cf. McEwan, *op. cit.* p. 194.

On the other hand, relations with the Portuguese in Mozambique have deteriorated following their incursions into Malawi in pursuit of insurgents, and a diplomatic incident which culminated in the withdrawal of the Portuguese ambassador from Zomba in November 1972.<sup>1</sup> When the Lake dispute was at its height five years earlier, Zambia strongly supported Tanzania's claim, which was wrongly interpreted in Lusaka as a response to Banda's irridentist claims, not only to the Lake but to parts of Tanzania and eastern Zambia. In the present circumstances Zambia would seem more likely to restrain her ally from any tendency to force the issue.

For her part, Malawi has no alternative, in practice, but to acquiesce in a Tanzanian presence on the Lake, rather as Britain reacted to the presence of the Germans there before 1914. In the absence of a major effort by Malawi to control the water level, and to exploit the resources of the Lake in a more thoroughgoing manner than at present, it seems likely that the *status quo* will persist. A substantive settlement – possibly through the creation of a common Lake Development Authority<sup>2</sup> – will have to wait on a more general political *détente* between the two states.

<sup>1</sup> *Africa* (London), 14, October 1972, and 16, December 1972.

<sup>2</sup> Alternatively, Tanzania might purchase a share of the Lake, as Portugal was to have purchased her share in 1954, by paying Malawi a proportion of the cost of the Shiré valley project. See McEwan, *op. cit.* p. 205.