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MEDIATING THE LAKE NYASA BORDER DISPUTE BETWEEN TANZANIA AND MALAWI

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A Research Report Submitted to the School of Social Sciences, University of the Witwatersrand, in Partial Fulfilment of the Requirements for the Degree of Master of Arts in the International Relations.

2016

DECLARATION

I, Agnes Neema Kenneth, declare that this research report is my own unaided work. It is submitted in fulfilment of the requirements for the degree of Master of Arts in International Relations in the School of Social Sciences, at the University of the Witwatersrand. It has not been submitted before for any degree or examination at the University of the Witwatersrand or any other University.

……

Agnes Neema Kenneth

November, 2016

ABSTRACT

The study seeks to examine and provide an understanding of the processes of mediation of a border dispute on Lake Nyasa between Tanzania and Malawi. Border disputes in Africa are sometimes difficult to resolve peacefully and in a sustainable manner. The outcome of adjudication on border issues is normally not predictable, and in most cases, political leaders are not willing to accept the risks of losing their territory. Mediation, which is non-binding arbitration, provides a more flexible and balanced way to reach a satisfactory outcome, but the final results of mediated settlements sometimes makes politicians uncomfortable.

This research sketches a conceptual framework of mediation by examining the Lake Nyasa dispute between Tanzania and Malawi. Most of the literature on border conflicts does not adequately address the attempts by African institutions to resolve these conflicts. This research uses the contingency theory to examine the roles of mediators and their impacts in attempting to resolve the dispute.

The research finds that border disputes often flare-up when they are connected to important economic or social interests such as valuable mineral reserves, oil and gas, water source, and access to the sea. The findings reveal that the discovery of oil and gas deposits on Lake Nyasa led to the resurgence of claims and counter-claims between Malawi and Tanzania. In turn, these countries asked the African Forum to mediate the border dispute.

In addition to analysis of the mediation role of the African Forum in this conflict, the report also examines the obstacles that have contributed to the stalemate in these efforts. The research recommends that for the mediation to be successful, the mediators should strive to understand and get knowledge about the source and basis of the dispute; knowledge on internal and external context of the disputants; level of resources-human and material at their disposal and the use the correct strategy to influence the parties in dispute. Also the countries in dispute may consider involving other local and regional mediators, neutral groups, Civil Society Organizations (CSOs) and the International Court of Justice (ICJ).

***Key Words**: Africa Forum; Border Disputes; Lake Nyasa; Malawi; Mediation; Tanzania.*

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ABBREVIATIONS AND ACRONYMS

Africa Forum	The Forum for Former African Heads of State and Government
AFES	Executive Secretariat of Africa Forum
AFPSM	Africa Forum Peace Support Missions
AU	African Union
AUHIP	African Union High Level Implementation Panel in Sudan
CNMC	Cameroon- Nigeria Mixed Commission
COM	Council of Ministers
COMESSA	Common Market of Sahel and Saharan States
CSR	Corporate Social Responsibility
EIA	Environmental Impact Assessment
HLMT	High Level Mediation Team
ICJ	International Court of Justice
IOs	International Organizations
JBC	Joint Boundary Commission
JCO	Joint Committee Officials
JTE	Joint Team of Experts
LOE	Legal and Other Experts
MHS	Mutually Hurting Stalemate
OAU	Organization of African Unity
SADC	South African Development Countries
SAIIA	South African Institute of International Affairs
SF	Stakeholder's Forum
SU	Support Unit
UK	United Kingdom

UN	United Nations
UNESCO	United Nations Educational, Scientific and Cultural Organisation
UNOWA	United Nations Office for West Africa
USA	United States of America
WWI	World War One

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CHAPTER ONE: INTRODUCTION

Introduction

The international political environment has been tainted with unresolved inter-state border disputes. Some states have made claims and counter-claims over some territories due to social, political, and economic rivalries. Such disputes if not resolved by peaceful means, may lead to armed conflicts as it has happened in the past. Some of the on-going border disputes include: China- India over Aksai Chin; India- Pakistan over Kashmir; and South China Sea which involves various nations such as China, Malaysia, Philippines, Taiwan and Vietnam.

Border disputes in Africa have often led to extreme conflicts because governments are unwilling to make concessions on questions of territorial integrity. In addition, governments fear the consequences of caving in to pressures that compromise national interests that are linked to sovereignty.

Although border conflicts in Africa have declined over the years, there has been a recent re-emergence of these disputes. In most of the post-colonial period, border disputes were resolved through the principle of *uti- possidetis* which meant that inherited colonial territories remained unchanged (Mayall, 1973). Some of the border disputes of recent years have been: Ethiopia-Eritrea over Badme (1998-2000), Cameroon-Nigeria over Bakassi (1994-2006), Sudan-South Sudan over Abyei, and Tanzania-Malawi over Lake Nyasa (1967 to present) (Khadiagala, 2008).

The research focuses on the Tanzania-Malawi dispute over the Lake (named Lake Nyasa in Tanzania; Lake Malawi in Malawi; and Lake Niassa in Mozambique), from 2012 to the present for two reasons. First, despite the long periods of dormancy, the dispute surfaced because of the recent explorations that reveal that the lake has the possibility of abundant oil and gas deposits. In light of the growing intellectual and policy interest in natural resource conflicts in Africa, this study will illuminate the territorial dimension of African resource conflicts.

Second, since it broke out, both governments of Tanzania and Malawi have sought the mediation from the High Level Forum of Former African Heads of States and Government

(the African Forum). Given the importance of Africa's search for solution to local problems, African mediators have played critical roles in conflict resolution. This study is interesting because it sheds light on the efforts of African mediators, showing how they have deployed their resources to resolve this conflict.

Figure 1 below shows the area of which is being discussed. The orange dots show the border claimed by Malawi and the red dots show the border claimed by Tanzania which is at the middle of the lake.

Figure 1: Tanzania-Malawi Border Dispute



Source: Lalbahadur (2013)

Historical Background

The border between Malawi and Tanzania was first demarcated by Britain and Germany through the Heligoland Treaty of 1890 (Che-Mponda, 1972). The Treaty demarcated several boundaries, including that between Tanganyika and Nyasaland (the predecessors of Tanzania and Malawi). At that time Tanganyika was a German colony and Nyasaland, a protectorate of Britain. Article two of the first paragraph of the Treaty provided that the boundary between Malawi and Tanganyika ran along the Songwe River (Zotto, 2013). It then continued up that river to its intersection point with the 33 degrees of the eastern longitude. Hence the whole of the Lake was part of Nyasaland. Following the First World War (WWI), Great Britain was given a mandate over Tanganyika and did make any changes to the border.

The dispute in question

Tanganyika gained independence on 9th December 1961 while Malawi gained independence from Britain on 6th July 1964. Malawi has claimed ownership of the entire lake basing its claim on the Heligoland treaty. On the other hand, Tanzania has argued that the border runs down the middle of the waters basing her arguments on international law. This is a unique kind of border dispute in the continent as it faces very long periods of dormancy and has not led to violent eruptions (Zotto, 2013). The dispute is actually on the question whether Tanzania or Malawi has the sovereignty on the eastern part of northern area of the lake that separates them.

In early 1967, the Tanzanian government officially notified Malawi that it considered the boundary to run through the middle of the Lake. The Malawi government responded that it had received the notification and a further reply was to follow. However, later that year President Banda of Malawi publicly rejected this claim and later deployed patrol boats on the lake (Mayall, 1973). This issue was then not discussed for a very long time.

In 2011, the Malawi government gave exploratory rights to a British company, Sure Stream Petroleum Company, on the Eastern part of the lake. This has led to the rise again of the dispute between Tanzania and Malawi (Meyer, 2012). The countries got to the brink of a conflict in 2011.

Table 1*:* Historical Background of the Tanzania- Malawi Border Dispute

PERIOD	DEVELOPMENT
1859	David Livingstone discovers Lake Nyasa
1884- 1885	Berlin Conference
1890	Heligoland Agreement
1961	Tanganyika Independence
1964	Union of Tanganyika and Zanzibar to form the United Republic of Tanzania
1964	Malawi Independence
1964	The dispute began when Malawi renamed the lake from Nyasa to lake Malawi
1967	Tanzanian government officially notified Malawi on the border issue
1967	Malawi government rejects the claims over the lake's boundary
2011	Malawi gives Lake Nyasa exploratory rights to Sure stream Petroleum
2011	Tanzania raises the dispute case again
August2012	Jakaya Kikwete and Joyce Banda rule out going to war
3rdOctober 2012	Joyce Banda threatens to withdraw from the negotiations with the reason that Tanzania had produced new maps with a median border on Lake Nyasa
2012	African Forum agrees to mediate the dispute

Table 1 above shows the history of the dispute at hand from the period when the lake was discovered by David Livingstone in 1859, who gave it a name, Lake Nyasa, then the Berlin conference that divided the Africa continent among different colonial countries during 1884-1885 after which the Heligoland agreement was signed in 1890, then independence of Tanganyika in 1961 and Malawi in 1964, the year which the dispute started and up to 2012 when the Africa Forum was requested by both states to mediate the dispute.

Statement of the Problem

This study seeks to examine the roles of mediators in trying to resolve the border dispute which has lasted for over four decades.

The study focuses on various mediation events and processes during the history of the dispute including, the colonial era, the independence period, and the current situation. The study aims

to provide insights into the complexities of mediation in the border dispute. It also aims to contribute to the existing knowledge and research on this dispute. There are some important works that have been done on the roles played by the Heads of the two States- Tanzania and Malawi in trying to resolve the dispute amicably. But these efforts were fruitless and hence necessitating both parties to later request the mediation of the Africa Forum. The main focus of this study then revolves around the roles of the mediators in the dispute.

The discovery of resources such as oil and gas has made the dispute even more complex and difficult to resolve. In light of these difficulties, it is important to examine if the mediators are making any difference in pushing the parties towards a mutually accepted settlement. In addition, since this is an ongoing conflict and events continue to unfold, this research seeks to contribute to the postulation of future trends around it. Scholars following this conflict in future will be able to benefit from understanding how third parties through the African Forum have influenced the search for a peaceful solution.

Aim

The research seeks to explore and evaluate the role of African mediators in resolving border conflicts. Using the case of the Africa Forum, this research analyses how mediators attempt to engage countries involved in border disputes to find mutually acceptable solutions. Equally significant, it probes the obstacles mediators face in intervening in interstate border conflicts.

Research Question

By using the background of the drivers of the border dispute between Tanzania and Malawi, this research was guided by the following questions:

Primary Research Question

Do African mediators have the ability to solve African border disputes?

Secondary Research Questions

- Why and when do parties in such disputes invite mediation?
- Has the Africa Forum made a difference in ending the dispute?

Rationale

Although there are debates on border disputes in Africa, there has not been much scholarly work on the roles mediators play in solving these disputes. The study helps to understand the changing dynamics which mediators play in resolving border disputes in Africa.

The study aims to understand if these external actors can exert leverage to help in the search for peaceful agreements among states in the dispute. The research is important in highlighting how African countries are evolving methods for conflict resolution involving territorial disputes. Overall it tries to contribute to the existing literature on border disputes in Africa.

The findings of this study should be of interest and use to policy makers, analysts, mediators, scholars and governments' officials.

Theoretical Framework

Contingency Theoretical Framework

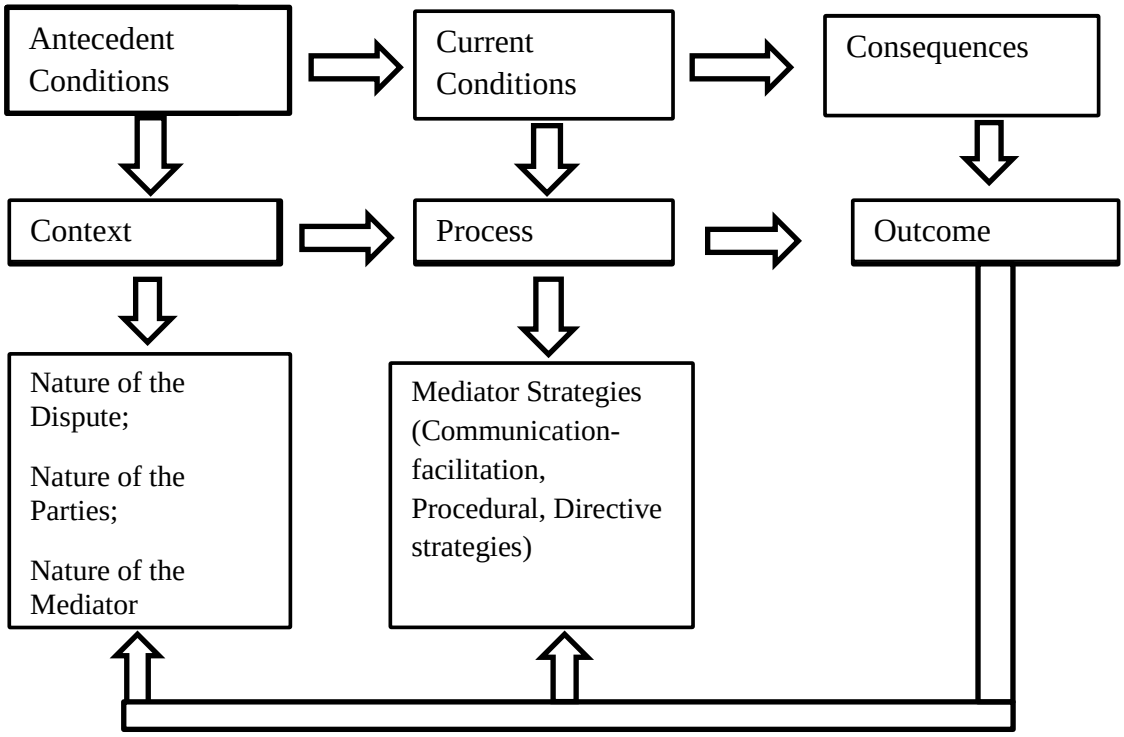
Border disputes are not static or uniform events as they vary in terms of the situation, parties, intensity, escalation, responses, meaning and possible transformation. Mediation is shaped by the context and characteristics of a situation. For a mediation to be successful, it needs to be adaptive and responsive, reflecting different problems, different parties and different situations. With this understanding, this study uses an approach to mediation that takes into account the context and other factors - the contingency approach.

This theory was first discussed by social psychologists Sawyer and Guetzkow (1965) and it was later further elaborated by Druckman (1973). According to these scholars, conflict management is a social process. This is a comprehensive model that offers some understanding of international behaviour that has not been possible before (Bercovitch and

Houston, 2000: 173). Being a realistic and dynamic model, it allows empirical testing of actual conflict events. Bercovitch and Jackson developed a similar framework that makes a difference between antecedent factors, current factors and consequences, which help interpret international mediation processes in a useful way (Bercovitch and Jackson, 1997: 26). This process helps to evaluate certain aspects of mediators.

The theory was used in a series of other earlier studies (Bercovitch, 1986; Bercovitch et al., 1991; Bercovitch and Houston, 1993; Bercovitch and Langley, 1993; Bercovitch and Wells, 1993). The approach explains variables with specific operational criteria and each may have an impact on mediation effectiveness. The contingency approach has clusters of context, process and outcome variables, while each cluster refers to specific characteristics of the party, the dispute, the mediator and the outcome. Mediation outcomes may be successful or not but they are seen as a result of interaction of context and process variables. The conception of the contingency approach is depicted in a diagram in Figure 2 below.

Figure 2: Contingency Theoretical Approach



Source: Bercovitch and Houston, 2000: 173

Antecedent Conditions

The antecedent dimension refers to inputs that exist before engaging in mediation. According to Bercovitch and Houston (2000) these conditions include: nature of dispute; nature of the mediator and nature of the parties and their relationship. These conditions apply before there has been any kind of intervention and may influence any third party efforts to resolve the dispute. They affect the kind of mediation style to be used (Bercovitch and Houston, 2000: 172).

A border dispute is not an isolated event as it has a past that shaped the relationship between the parties. As such, the previous relationship between parties needs to be taken into consideration. According to Deutsch (1973) the previous relationship between parties in dispute is one of the main variable affecting the course and outcome of a dispute.

The nature and identity of the mediator have been mentioned by various scholars (Brett, Drieghe and Shapiro, 1986; Carnevale, 1986; Young, 1968) as predictors of success in mediation process. Other scholars like Harbottle (1979), Kockan and Jick (1978) and Ott (1972) do not view the mediator as a critical determinant to mediation process but as secondary to the process. Mediation is a voluntary process, meaning that, the mediators are not able to mediate until they are perceived as reasonable, acceptable, and knowledgeable and can secure trust and cooperation from the disputants.

Current Conditions

The current conditions highlight various issues that characterise the conditions and process of a particular mediation process. They involve the strategies that are used to mediate.

Mediation Strategies

According to Touval and Zartman (1985) mediation strategies can be categorized into three strategies: communication- facilitation strategies, formulation strategies and manipulation strategies.

Communication-Facilitation strategy

This is when a mediator takes a passive role as a channel of communication, or goes between the parties and exhibits little control over the process of mediation. This may include making contact with parties, not taking sides and giving positive evaluations (Bercovitch and Rubin, 1992: 17).

Procedural-Formulation Strategies

According to Bercovitch and Rubin (1992), these strategies enable a mediator to exercise more formal control over the mediation process with respect to aspects of the conflict management environment. They may include choosing meeting sites, establishing protocols, and setting the agenda.

Manipulation or Directive Strategies

These strategies include taking responsibility for concessions, expectations and filter information (Bercovitch and Rubin, 1992: 17). The mediator sets to affect the content, substance and process of mediation. The mediator achieves the goals by providing incentives, rewards and punishments, issue ultimatums and introducing new proposals.

Which of these strategies is most effective to mediate an international dispute?

Kochan and Jick (1978) found that mediators who used directive strategies were more successful than those who used communication-facilitation strategies. Carnevale and Pegnetter (1985) found that communication-facilitation strategies are more effective than other strategies. Bercovitch (1986) found that communication-facilitation strategies were more commonly used; however, directive strategies were the most successful.

Also Donohue (1989) and Hiltrop (1989) argue that mediation relationship is particularly strong when disputes are intense. Mediators with ability, opportunity and resources to initiate

and engage in active mediation are likely to have successful outcome than powerless mediators who have their faith in communication strategies only.

Jackson (1952) observed that it would be very difficult if not impossible for a mediator who is not trusted by one of the parties to carry out a successful mediation. Effective mediation depends on mediators' knowledge, management of dispute and in addition prestige and authority, originality of ideas, access to resources and ability to act unobtrusively. Wehr (1979) has listed the attributes necessary for successful mediation as: knowledge on dispute situations, ability to understand the positions of the antagonists, active listener, and sense of timing.

Other scholars doubt the importance of the attribute of impartiality which has been traditionally emphasised. This stems from the inability to recognize that mediation is a reciprocal process of social interaction in which a mediator is a major participant. Mediators are accepted by the adversaries not because of their impartiality but because of their ability to influence, protect, and extend the interests of each party in a dispute (Faure, 1989; Kressel and Pruitt, 1985; Smith, 1985; Touval and Zartman, 1985).

Among the effective requirement to have by international mediator is possession of legitimacy. It includes high level state leaders and officials like foreign ministers and prime ministers (Ott, 1972; Touval and Zartman, 1985). Under proper auspices and use of high ranking mediators, an environment of credibility, trust and joint interests may be established. This is because such presence of powerful and legitimate mediator allows the parties in dispute to back down from fixed positions and make concessions (Pruitt and Johnson, 1970).

Mediators have different ranks and possess different resources which they can use in different ways in mediating different disputes (Bercovitch, 1992). Reflecting the diversity of possible mediators in international dispute environment, mediators need to be ranked in a dimension ranging from government leaders and representatives of regional and international organisations to private individuals. The regional organisations, such as African Union, Organisation of African States, Economic Community of West African States and Africa Forum (from SADC countries) have common ideals, perspectives and interests and appear to offer good chances of successful outcomes in international mediation.

Consequences

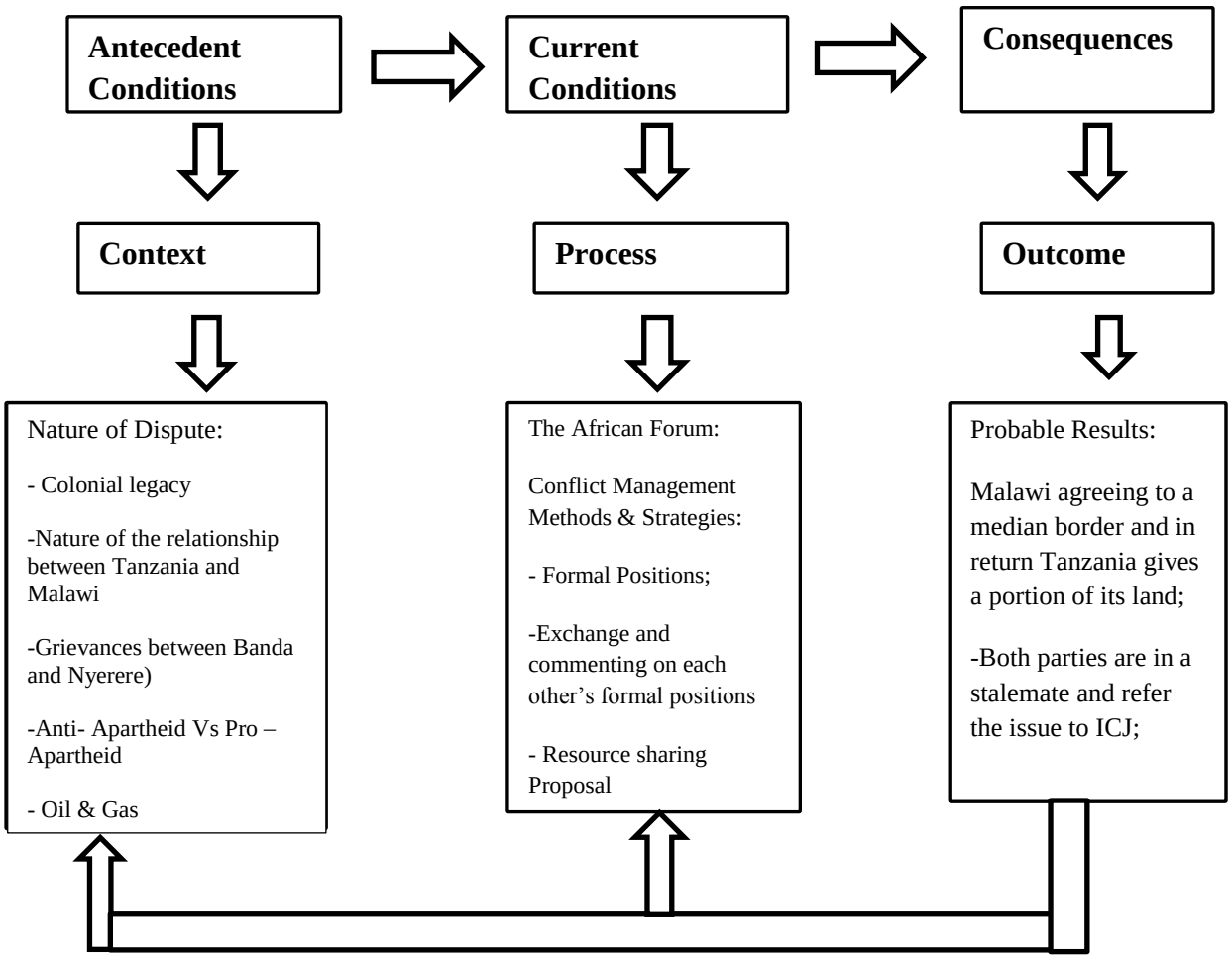
This dimension looks at the results or outcomes of the mediation. There is the use of either subjective or objective criteria in analysing the consequences of the mediation process. The subjective criteria refers to the parties' or mediator's perspective that the intended goals have been attained. Mediation can be considered successful when the disputants are satisfied with the outcome. That is, when either or both the process and outcome are considered as efficient and effective (Bercovitch and Rubin, 1992: 22).

The objective criterion involves notions of judgements about the extent of change as evidence of the success or failure of mediation (Bercovitch and Rubin, 1992: 24). It involves observable changes in evaluating a mediation process. A failed mediation evaluated from this criterion would be if the parties continue to dispute. It would be considered successful when the disputants agree with the outcome that settles most of the issues and produces more productive (positive) interactions between the disputants (Bercovitch and Rubin, 1992: 24).

Contingency Theory and the Tanzania- Malawi Dispute over Lake Nyasa

This research used the contingency theory in analysing the dispute between Tanzania and Malawi over Lake Nyasa. Since the theory is divided into three parts of antecedent, current and consequences, it was easier to have an analysis of the situation from the beginning of the dispute to the current process (Bercovitch, 2007:170).

Figure 3: Research Model



By using the 'antecedent conditions', the research was able to show why the parties agreed to ask the Africa Forum to mediate. The research analyses why the parties have decided to invite the African Forum when they did. Under this category, the research also aims to analyse the current issues at stake that were not present in the 1960s.

The 'current conditions' analysis is important to gain sufficient understanding of the strategies to be used by the mediator and when to use them. This analysis will be relevant for policy makers when making decisions on dispute management using negotiations and mediation. The 'Consequences' category helps to evaluate if the parties have obtained their goals and if the mediation process will assist in preventing the resort to war by the two countries in dispute.

Literature Review

This study builds on and contributes to the work on border disputes in developing countries. I have organized this chapter into three parts. The research highlights the issue of border disputes as outcomes of the colonial legacy. Later there was a focus on the discovery of oil and gas which has led to the resurgence of the border dispute. Lastly it highlights the Management of African Border Disputes.

Border Disputes as Outcomes of Colonial Legacy

There are scholars that argue that border disputes are as a result of colonial legacy. Anyu (2007), Shah (2010), Mayall (1973) and Zotto (2013) share this perspective blaming colonialism for the emergence of border conflicts. Anyu (2007) argues that most of interstate conflicts in Africa were the result of artificial boundaries drawn by colonial powers during the scramble for Africa in the 1880s. Anyu (2007) and Shah (2010) have argued that the impacts of colonialism, specifically the creation of Africa's state borders, have created prolonged border disputes. Prescott and Triggs (2008) have also argued that interstate boundaries in Africa are the prominent raison d'être for conflicts in the region because their delimitation did not take into account important information about the inhabitants and geographical location.

Zotto (2013) has claimed that documents regarding the Tanzania- Malawi dispute have shown disparities between the Heligoland Treaty by the Germans in 1890 which established the boundary between the current Tanzania and Malawi, and what was actually drawn on contemporaneous maps. These discrepancies were never looked at during the rest of the colonial period and hence led to the post- independence border dispute. This dispute has not been solved since the 1960s because of the failure of the colonial governments to solve the discrepancies (Zotto, 2013: 38). However what these scholars may overlook is that blaming the border disputes primarily on colonization may be overstating the case because there are many borders that were created by colonialists that have not resulted in conflicts.

Discovery of Oil and Gas Resources resulting into Border Disputes

Baye (2014), Collier and Hoeffler (1998), and Herbst (2002) have argued that the presence of natural resources (especially gas and oil) have led to the increase of border disputes as nations expect to benefit from these resources. There have been many disputes that turned into full-fledged conflicts as a result of discovery of natural resources. Some of these are Ethiopia-Eritrea over Badme (1998-2000) and Cameroon-Nigeria over Bakassi (1994-2006). There have also been skirmishes between Kenya and Uganda over the Migingo Island on Lake Victoria which is rich in fishing resources.

Collier and Hoeffler (1998) find empirical evidence showing that a relatively high dependence on primary commodity exports can be strongly related with the occurrence of violent armed conflict. They assert that natural resources constitute a form of 'booty' which, in most cases, is far more valuable than possession of the state.

Bannon and Collier (2003) have argued that discovery of natural resources increases the risk of conflict especially in oil resource rich low income countries. They have argued that violent secessionist movements are more likely to take place if there are valuable natural resources such as oil (Bannon and Collier, 2003: 4). Rebel groups can target foreign companies and threaten expensive infrastructure. There have been instances like Biafra in Nigeria and Cabinda in Angola. These rebel groups may raise funds through selling of the rights to the extraction of natural resources that they do not fully control yet but intend to control or by kidnapping leaders and workers of the companies (Bannon and Collier, 2003: 5). It has been argued by some scholars that Tanzania-Malawi dispute has risen due to the anticipated gas and oil reserves in the lake (Banda, 2013).

Management of African Border Disputes

Border disputes have become a common issue in Sub- Saharan Africa. These disputes have been managed and handled differently from case to case. Maundi and others (2006) analysed various cases including the Ethiopia- Eritrea dispute over Badme. Since 1998 the dispute had various mediators managing it. There was first the United States and Rwanda's intervention which tried to de-escalate the conflict. However this was not an easy task because the

mediators' proposition was accepted by Ethiopia but rejected by Eritrea. Also the Common Market of Sahel and Saharan States (COMESSA) led by Muhammad Gaddaffi launched a parallel initiative arguing that the conflict had to be resolved within a friendly African environment. His three point initiative was supported by Eritrea but rejected by Ethiopia. Then the Organization of African Unity (OAU) entered in the mediation as an institutional compromise from the other mediators. It was not until the United Nations (UN) intervened in 2000 when there was progress in the mediation. Hence, this case shows that crowdedness of mediators in African conflicts contributes to confusion since different mediators have different motives (Maundi et al., 206: 160).

Issaka and Ngandu (2008) have analysed the case of Nigeria and Cameroon over the Bakassi Peninsula using the Contingency model. The whole process involved the parties' interactions with each other even after signing the Greentree Agreement in 2003 that marked the official end of the dispute between the two countries. They argued that the success was also due to the presence of the UN as a neutral third party, the presence of Kofi Annan as a West African chief mediator, the presence of competent external experts, and a joint agreement on the structure of the whole mediation process (2008: 3). These two cases assist in gaining more understanding on management of border disputes in Africa.

Another case that it is important to look at is the Botswana- Namibia dispute over Kasikili / Sedudu Island (Alexander, 1999). This dispute was mainly due to the incompleteness of the Heligoland treaty. In 1996 Namibia and Botswana agreed to take the issue to the ICJ. They also agreed that the ruling should be based on the Heligoland treaty and the international law guidelines. After looking at cartographic materials, and analysing both countries' arguments, the ICJ came to a conclusion that the Sedudu Island belongs to Botswana (Alexander, 1999). The failure by SADC to resolve this conflict among its two members was partly an indictment on its ability to mediate border disputes.

Research Methodology

The research adopted a qualitative research methodology in both data collection and analysis. A qualitative research mainly aims at answering questions, exploring and understanding issues (Greenstein, R. Sitas, A. and Robert, B., 2003; 49). Also, the contingency theory was

used to analyse the mediation of Tanzania- Malawi dispute. These sources were used because they provide the best approach for a qualitative study by looking at antecedent conditions, current conditions and consequences of the dispute at hand.

This research makes use of 'document analysis' to examine the mediation of the border dispute. Document analysis is a systematic procedure for evaluating data in qualitative research (Bowen, 2009). The process for this kind of analysis includes finding, selecting and synthesizing data. This includes making use of sources like journal articles, books, book chapters, letters and memoranda, newspapers, maps, press releases, institutional reports, and public documents (Bowen, 2009). These sources are used because they provide the best approach for a qualitative study.

The research makes use of the Tanzania- Malawi dispute as the 'case study' to help explain how African mediators intervene to resolve border conflicts. Yin (1994) considers a case study as an empirical enquiry that investigates phenomenon within its real life context especially between phenomenon and context that are not clear. Evera (1997) argues that case studies have five main purposes which are testing theories, creating theories, identifying antecedent conditions, testing the importance of these antecedent conditions, and explaining cases of intrinsic importance. This supports the main aim of understanding the Tanzania-Malawi mediation process mainly because the research aims to examine the antecedent conditions (conditions before the mediation began) and also the whole process that has been on going.

One of the benefits of a single case study according to Stephen van Evera, is that the case can be intensively examined (Evera, 1997: 54). It enables the researcher to concentrate on a single case thus identifying the causes, outcomes and various other explanations on the phenomenon to be analysed (Bennett and George, 2005; 106).

A case study leads to the construction of a chronological narrative that helps both the researcher and other readers understand the nature of the case and variables included (Baxter and Jack, 2008; 550). Such a case study would also enable us to understand different perspectives within a complex context and test the phenomenon under study.

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A case study leads to the construction of a chronological narrative that helps both the researcher and other readers understand the nature of the case and variables included (Baxter and Jack, 2008; 550). Such a case study would also enable us to understand different perspectives within a complex context and test the phenomenon under study. The report has made a chronological narrative of the dispute and the mediation process helping the researcher and other readers get a better understanding of the dispute.

Research Limitations

There has not been much written on this conflict. Since the focus in on the dispute since the 1960s, the main challenge has been to obtain government documents from Tanzania and Malawi on how they handled the case during that period. There are difficulties in accessing information from that period because most documents have not been made available online. Given these difficulties, the researcher was forced to access what is available publicly through the archives of both countries and also had to go extra mile in locating few individuals who had access to relevant information. In analysing the current phase of the conflict since December 2012 when the African Forum started to mediate, the research also encountered difficulties of evaluating the progress and final outcome of the mediation since it remains an ongoing process. However, the information gathered in this research is still sufficient to add to the knowledge on the conflict.

Outline of the Study

Chapter two discusses the dispute, focusing on the causes for its occurrence in the 1960s and why it resurfaced in 2012. The chapter also outlines the nature of the current dispute.

Chapter three focuses on the mediation by the Africa Forum. It gives a brief introduction of the Africa Forum. It also provides some reasons why the Africa Forum is mediating the border dispute. This chapter also examines the formal positions of both countries.

Chapter four gives a preliminary assessment of the mediation process. It examines what has happened since mediation began and whether the parties have been able to meet their objectives. The chapter also includes challenges of the mediation process. Chapter five focuses on conclusions and recommendations of the study.

CHAPTER TWO: THE DISPUTE IN PERSPECTIVE

Introduction

Negotiation and conflict resolution became prominent at the height of the cold war in the 1960s. This was when there was the bi-polar nuclear competition amongst the super powers, bringing the rise of the literature on arms control negotiations. Zartman (1977:7) argues that the literature on negotiations focused on international diplomacy; however there was no literature on negotiations as a social process. As a contemporary field of expertise, analyses of mediation as a negotiation tool came from conflict resolution studies.

Over the years, there has been more systematic analysis in this field. The field has been enhanced through the work of scholars like Bercovitch, Zartman, Touval, and Khadiagala. They have contributed to making the field of conflict and dispute resolution an area of knowledge of its own.

Concepts

Border Disputes

For the purpose of this research a 'border dispute' refers to a disagreement between two or more states due to their claim of a part of or a whole territory that is based in at least one of these states (Kornprobst, 2002: 370). Such disputes have been caused by the presence of natural resources (such as minerals, water sources, gas and oil). If they are not resolved, they may easily turn to full-fledged wars. The Lake Nyasa dispute nearly brought Tanzania and Malawi to a full-fledged war between 2012 and 2013. However, it did not happen and they chose to invite the mediators.

Negotiations

Negotiation is one of the conflict resolution tools. Other tools are domination, withdrawal, inaction, and third party intervention. The literature on negotiation as an instrument of international diplomacy has been influenced by fields like Economics and Psychology

(Zartman, 1977). These studies focus on various approaches related to the significance of behaviour, interaction between parties, positive-sum game and zero-sum game, as significant elements in the negotiation process.

The research defines negotiation as:

> A process in which divergent values are combined into an agreed decision and it is based on the idea that there are appropriate stages, sequences, behaviours and tactics that can be identified and used to improve the conduct of negotiations and better the chances of success (Zartman and Berman, 1982: 2)

This is a process that parties involved in a dispute try to reach a consensus by communicating directly with each other. These parties exchange proposals and concessions until they get a solution. However, if parties cannot reach any form of agreement, they ask for assistance from a third party (Bercovitch and Jackson, 1997: 26). With respect to the case of Tanzania and Malawi they did try to have negotiations in 2012, however, they reached a deadlock.

Mediation

Mediation is generally a non-coercive and non-binding form of social behaviour that aims to help disputants rather than force them into submission (Bercovitch, 1991). Mediation can be considered as an extension of negotiations. In this process, both parties agree to the mediation and find common ground around elements that would lead to a solution.

According to Bercovitch (1992: 8):

> A process of conflict management, related to but distinct from the parties' own efforts, whereby the disputing parties or their representatives seek the assistance, or accept an offer of help from an individual, group, state or organization to change, affect or influence their perceptions or behaviour, without resorting to physical force, or invoking the authority of law.

Ripeness

Zartman (1982) argues that the dispute cannot be ended by negotiation unless they are ripe for resolution, meaning that the parties in dispute perceive themselves in a painful deadlock from which only solution is negotiation. Ripeness is necessary only for equitable settlements of a dispute in place. Mediators are able sometimes to ripen a dispute without inducing a hurting stalemate and if not done with due care, mediator's attempt at ripening may backfire. Mediators may convince the parties that the objective factors on the dispute demonstrate that the fight is costly and fruitless and that pain can sharply increase if nothing is done about it now. Other scholars argue that, the remaining question is whether under what conditions the artificial ripening by mediators is desirable.

Kuperman (2001) argues that, Zartman ripeness theory is not as broad as he suggests given the number of potential disputes that have not reached the heights of mutual hurting stalemate, but successful resolution occurred via negotiation. He argued that even equitable outcomes do not strictly require a mutual hurting stalemate as it may be sufficient for only one party being in a situation of hurting and the opponent face the prospect of hurting from international sanctions if the parties reject an equitable compromise. Kuperman gives the example of Bosnia between 1992 and 1995 between Serbians, Croatians and Muslims, where an accurate characteristic of dispute neither a stalemate nor mutually hurting. All sides believed and relied heavily on external support, so peace negotiations failed, but later the parties realised that mutual agreement is better than battle and it ended the dispute.

Arbitration

Arbitration refers to the binding process of conflict management whereby disputants seek or accept help from a group, organization, individual or a state to resolve their differences (Bercovitch, 1991). The arbitrator makes the final decision and may take even military action to enforce the decision. This process sometimes forces disputants into submission. In the case of Tanzania and Malawi, if the Africa Forum does not make a decision in the favour of any of the part, it is likely they may go to the ICJ for arbitration. This would only take place if the parties are not happy with the mediation process.

Mediating Border Disputes

Border disputes have always been very difficult to mediate. It is a characteristic of most border disputes that they can be transferred from one generation to the next, making them resistant to lasting solutions. These disputes often face deadlocks since parties believe in winning. It is therefore important for mediators to take into consideration the issue of 'ripeness' of the situation. According to Zartman (2006), ripe moments present opportunities that can be seized by either the mediator/s or the parties themselves to engage in constructive resolution of conflicts. This is when both parties have reached a stalemate which affects and hurts both parties (Zartman, 2006).

Maundi and others (2006) argue that mediators are not exogenous actors without any interests. When a mediator gets into the negotiations table, they also have their own interests. Individual mediators in particular intend to defend and protect their own reputation in the process. According to Zartman (2009) in situations where states are the mediators, their interests lie in the conflict being a threat to their relationship with the parties in dispute. For example, Chissano's mediation in the Lake Nyasa dispute has partly been driven by enhancing cooperation but also securing Mozambique's borders from the thousands of refugees into Mozambique, in case it went into a full blown war.

Furthermore, timing is a huge factor in mediation. The mediator has to know a ripe moment as it comes up and seize it. A ripe moment should be seized either by parties themselves or through a mediator's persuasion (Zartman, 2009). However it should be noted that ripeness is a condition and it is not self- implementing. It has been argued that not all 'ripe moments' lead to the initiation of a mediation.

The literature on mediation also raises the issue of the impartiality/ partiality of mediators. The parties would most likely accept or request a mediator that is impartial and fair to them. However, perceptions of impartiality can create problems in the relationship between the mediator and the parties involved, especially if there appears that the mediator is taking positions or if they do not meet either party's expectations (Zartman, 2009).

The Phases of the Border Dispute

The research divides the Lake Nyasa dispute in five phases. These phases have to some extent been influenced by the presidencies in both countries.

Phase One (1859-1963)

The scramble for Africa was a process which Western powers competed against each other to obtain parts of Africa. In East and Central Africa, Britain, Portugal and Germany actively competed against each other for territories.

The colonial era is the first phase since it has contributed to the current border dispute. David Livingstone discovered Lake Nyasa in 1859 and this is where the modern history of the lake began. Access to the Lake Nyasa basin was not easy for Livingstone. When he made the journey that resulted in the discovery of the lake, Livingstone travelled up the Zambezi from its delta in Portuguese-controlled Mozambique (Livingstone, 1923: 60). He found that it was difficult to pass through the Zambezi at the Kebrabasa cataract. He then returned to River Shire (the only outlet of Lake Nyasa) that led him to the lake.

It then became an active area for missionary activities (Livingstone, 1923: 55). The Universities Mission to Central Africa was the first to arrive in 1860, and was followed by the Livingstonia Free Church Mission which brought the first steamer that was placed on the lake in 1875. In 1876, the Church of Scotland established a settlement, however it could not develop local trading and transport facilities. Therefore in 1878 the African Lakes Company (a commercial company) was established in Scotland and took over the mission's duties (Livingstone, 1923: 60).

At that time, and for many years later, the only known navigable entrance to the mouth of the Zambezi for ocean-going ships lay at the Mozambique port of Quelimane (on river Kwakwa). This lack of navigability for ocean-going vessels and the Portuguese control of its entrance prevented Lord Salisbury (the British Prime Minister) from obtaining a declaration that the Zambezi was an international water way (McEwen, 1971: 173).

Initially, Portuguese authorities allowed free transit at Quelimane to the missionaries and traders. But the growth of the lake missions and the African Lakes Company and their efforts to suppress the slave trade to which Portugal was at best indifferent, convinced many Portuguese that there was a British plan to take complete possession of the African interior and oust them from an area which traditionally they regarded as their own. This led to deterioration of relations between the British and Portuguese by 1888 (Livingstone, 1923). Portugal seized a steamer under African Lakes Company on the Zambezi and also restricted the movement of British supplies at Quelimane (Livingstone, 1923).

Early in 1889 there was the discovery of an alternative navigable route from the Indian Ocean to the Zambezi. This meant that access to the Shire no longer depended on the Portuguese controlling the Quelimane. British Consul to Mozambique then persuaded the Portuguese not to go any further than the Shire-Ruo confluence. This became the boundary between the British and Portuguese sphere of influence and were defined by a treaty in 1891. Through this treaty, Portugal got the eastern shore of Lake Nyasa which lies to the southern boundary of Tanganyika (about halfway along the eastern side of the lake). The treaty did not take any part of the lake to the Portuguese authorities (McEwen, 1971: 175).

Germany had no interest of connecting her colonies in South East and South West Africa, however was willing to agree with the Portuguese so as prevent a British 'all-red route' from Cape to Cairo. Around the same time Germany did not have sufficient funds to establish herself along the East African coast (McEwen, 1971: 176). She also recognized that British advance north of the Zambezi into Nyasa area was a threat. For instance Cecil Rhodes' company was trying to push northward in an area which Germany considered important for her economic development in East Africa. This resulted in a diplomatic clash between Britain and Germany, whereas both powers invoked the principle of effective occupation (a claim that Africa could only be maintained by real occupation) and the hinterland doctrine (the interior of a country belonged to those who held the coast).

When Germany pressed this principle on Salisbury, she brought up the issue that it would be difficult to define a hinterland, and his only concession was that communication between Tanganyika and the Congo state should not be cut off. This would allow German access to the Eastern shore of Lake Tanganyika, without giving Germany control of any land either to

the north or the south of that lake. On the other hand, Germany interpreted hinterland as the whole territory between her coastal sphere and the Congo state.

With regard to Lake Nyasa, Britain used the concept of effective occupation to state that British companies have occupied the area with settlements. This occupation could not be justly set aside by the vague claim which arose from the fact that these regions lay within the same parallels of latitude as those of German territory. However, later Salisbury conceded the area extending from Lake Tanganyika to the Uganda border, which meant the 'all-red route' was abandoned. Because of this Germany's resistance to the British claims in Nyasa was lowered.

The signing of the Anglo-German treaty in July 1890 can be considered as the legal origin of the Lake Nyasa boundary between Tanzania and Malawi. Britain and German determined their spheres of influence in this treaty. Article I and II were about East Africa, Article III was about South West Africa and Article IV was about West Africa (Anglo-German Treaty, 1890). Article I of the Heligoland Agreement was about Germany's spheres of influence and the second section of the first article was mainly about the border around Lake Nyasa. It states:

> …To the south by the line that starts on the coast of the northern border of Mozambique Province and follows the course of the Rovuma River to the point where the Messinge flows into the Rovuma. From here the line runs westward on the parallel of latitude to the shore of Lake Nyasa. Turning north, it continues along the eastern, northern, and western shores of the lake until it reaches the northern bank of the mouth of the Songwe River….

Article six then states:

> "Any correction of the demarcation lines described in Articles I to IV that becomes necessary due to local requirements may be undertaken by agreement between the two powers".

An important question that arises from the 1890 treaty is: why was the boundary of the British sphere with those of Germany and Portugal considered as the shore of Lake Nyasa

rather than its middle? Firstly, Britain was determined to control the lake as a means of protecting her missionary and commercial interests. It also aimed at abolishing the slave trade (McEwen, 1971; 179). Hence, the Parliament made recommendations that the lake should be entirely under British control. Secondly, Germany was more interested in the Indian Ocean coast than Britain's ambitions on Lake Nyasa (McEwen, 1971; 179). Germany was more concerned about gaining Heligoland and preventing the British all-red route. This meant that Heligoland was more important than British expansion in Africa. Thirdly under Article VIII of the treaty, Germany was given access to the Lake and right to transit (McEwen, 1971; 179). The Article states:

> …According to these provisions, trade is free; shipping is free on lakes, rivers, canals and their ports for both flags; unequal treatment as regards transport or coastal trade is prohibited; goods of either origin shall not be subject to taxes other than those raised to cover trade-related outlays, unequal treatment excluded. Transit duty may not be levied, and monopolies and privileged commercial treatment may not be granted…

These factors made it easier for Germany to agree with Britain on the shoreline border. This is because even though it agreed to a shoreline border, it still had access to the lake. Therefore sovereignty of the waters was not contested.

Phase Two (1964-1968): Active Phase

In April 1964 Tanganyika united with Zanzibar to form the United Republic of Tanzania. It also agreed on the principle of reciprocity and decided to extend a period of one year and a half to continue the terms of all treaties signed by Britain on its behalf. Malawi gained independence from Britain on July 1964 under its first President Kamuzu Banda. The immediate issue since its independence was that president Banda did not get along with some of his ministers and the leaders of neighbouring states. In September 1964 (two months after Malawi gained independence), Banda dismissed six of his ministers arguing they were plotting against him. These ministers fled to Tanzania and were well received and employed by the Tanzanian government. This infuriated Banda especially since these refugees were against his government and even attempted to invade Malawi through armed bands. Banda

then accused president Nyerere of keeping and aiding rebels from Malawi. The Tanzanian counterpart initially ignored these claims (Pike, 1968).

According to Whiteman, (1970), President Banda did change the name from Lake Nyasa to Lake Malawi in December 1964 (five months after independence) without consulting any of the leaders of the neighboring countries that share the lake. He did not inform President Nyerere of his intentions to change the lake's name. President Nyerere ordered the banning of all maps in Tanzania with name 'Lake Malawi'.

Further, during the Accra Summit conference of the OAU in 1965, the two presidents clashed over the Liberation Committee. President Nyerere accused president Banda of supporting white supremacists in their efforts to block the liberation of Southern Africa (Baker, 2008). Banda was supportive of Portuguese in Mozambique and the apartheid government of South Africa. Although some member states requested for the dismissal of Malawi from the OAU, this did not happen.

Tanzania made an official communication with Malawi regarding the lake in January 1967. President Nyerere officially rejected the shoreline boundary and the name 'Lake Malawi' (Mayall, 1973). Malawi acknowledged in writing that it had received Tanzania's communication and took matters under consideration (Whiteman, 1970: 443). In June 1967 president Banda made a public statement arguing that no part of the lake belongs to Tanzania. He argued that the lake had always belonged to Malawi and this would always be the case. He said that Malawi did not accept Tanzania's stand. As a result of such response, the Tanzanian government put patrol ships on the lake (Mayall, 1973).

The year1968 was of extreme tensions in relations between Malawi and Tanzania. Direct communication between the two leaders deteriorated and they attacked each other through the media. It all began after Banda at a rally claimed parts of Tanzania as Malawi territory. He claimed that areas of Njombe, Tukuyu, Mbamba Bay, Manda Bay and Songea belonged to Malawi. He added that the people on that side of the lake should surrender the land near the lake to him. Nyerere responded through the TANU newspaper 'The Nationalist' by calling Banda an insane man but the powers behind him are not insane (he was referring to apartheid South Africa). He also argued that the eastern shore was constantly mobile. Banda responded

by calling Nyerere a coward and a jelly fish. He then threatened to put patrol boats on the lake. The Tanzanian government launched a military and education program in villages surrounding the lake and also started to invest in improving social services in the area (Che-Mponda, 1972). By the end of the year, the Tanzanian government said that it was no longer going to discuss the lake border issue until Malawi had a sensible and sane leader.

Phase Three (1969- 2010): Dormant Phase

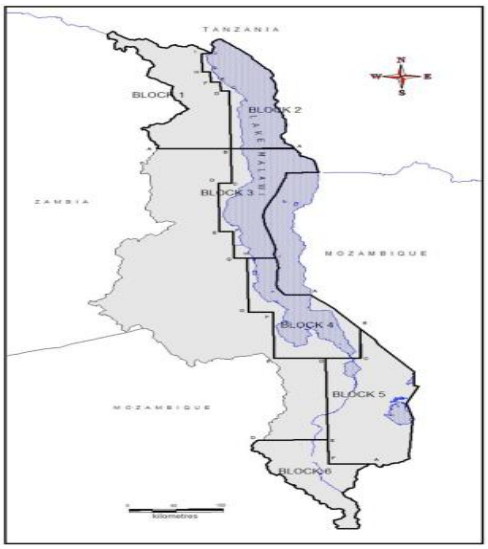
This phase is known as the dormant phase because there was no communication regarding the border dispute. Banda placed gunboats on the lake from 1969 to 1970s. The boats had Boer commanders which meant that he had obtained the support of apartheid South African government. About the same time the Tanzanian government sent troops to Manda Bay to protect the Tanzanians living in the area. The issue was never raised by the two leaders or their successors.

Phase Four (2011- 2012)

This period is one of bilateral negotiations between the two states. In 2011 Malawi awarded exploratory rights to a British firm, Surestream Petroleum Company, on the Eastern part of the lake. This is in Block 2 from the figure below. In 2012, Tanzania demanded that exploration cease until the dispute has been settled. From the above figure it can be seen that portions of Block 2 and Block 3 are on the Tanzanian side of the border (if the median border is taken into consideration).

The Blocks have been divided as follows: Block 1 was given to SacOil in 2012, Block 2 and 3 were initially given to Surestream Petroleum Company but later in 2014 Hamra Oil bought 51 per cent share, Block 4 and 5 were given to RAK Gas in 2013, and Block 6 was given to Pacific Oil and Gas in 2013 (Etter, 2015).

Figure 4: Blocks Awarded by Malawi to Companies for Exploration Purposes



Source: Rachel Etter (2015)

The Tanzanian government (under President Jakaya Mrisho Kikwete) invited the Malawian counterpart (under Joyce Banda) to discuss the matter of awarding exploratory rights to parts believed to belong to Tanzania. They met in Dar es Salaam from 25th to 27th July 2012 and drew a road map to resolve the dispute. This roadmap called for the formation of a Joint Team of Experts (JTE) as a first step. After its formation, the JTE met in Mzuzu (Malawi) from 20th to 23rd August 2012 (Tenthani, 2012). Both parties agreed to the creation of a Joint Boundary Commission (JBC); however they differed over the purposes for its creation. Tanzania supported the creation of the JBC with the intention to carrying out physical inspection of the lake and analyse the boundary alignment as provided in Article 1 (2) together with Article 6 of the Heligoland Agreement. Malawi, on the other hand insisted that the JBC should only approach the issue according to Article 1 (2) meaning the border lies by Tanzania's shores. These statements were repeated again in the Joint Committee of Officials (JCO) meeting on 25th August 2012.

The only achievement from these meetings was the agreement of the Council of Ministers (COM) that Malawi would stop oil explorations in Lake Nyasa. They also agreed to have follow- up meetings from 10th to 15th September and 26th to 29th October 2012 (Tenthani, 2012). However, Malawi's delegation did not go to Dar es Salaam and brought up new accusations against Tanzania. President Joyce Banda accused Tanzania for torturing

Malawian fishermen on the lake. Tanzania's Foreign Affairs Minister Bernard Membe responded by noting that the government had been promoting safe fishing methods on all fishermen (both Tanzanian and Malawian) on the lake and hence confiscated any harmful equipment (like fireworks) caught in the process. The Malawians remained unconvinced and refused to return to the negotiations (Tenthani, 2012).

Another issue that President Banda raised was that Tanzania produced new maps which have the Lake Nyasa border in middle of the lake before both sides had time to settle the issue. Membe stated that the Tanzanian government had always reproduced new maps for administrative purposes. He argued this was done after the creation of new regions. This map was a fifth edition and Malawi had never raised any objections with prior editions (Msonsa, 2012). He then urged the Malawian delegates to return to the negotiation table.

In December 2012 both parties agreed that they could not resolve the dispute by themselves. They thus agreed to present the issue to the Africa Forum for mediation (Saiboko, 2012). On 21st December 2012, Tanzania and Malawi sent a joint application to Chissano as the chairperson of Africa Forum requesting the Forum to mediate the dispute. Chissano agreed and the process began in 2013.

Phase Five (2013- 2016): Africa Forum Mediation Phase

This was the first time both parties had a third party mediate the Lake Nyasa border dispute. In 2013 both parties accused each other of killing civilians. Some Tanzanians living in Mzuzu area (northern Malawi) claimed they had been attacked by Malawians. Malawians living around the lake made similar cases against Tanzania. The other important thing was that Malawi was preparing to have elections in 2014. This slowed down the mediation process because Malawi government was busy with the elections. Some candidates in the elections used the border dispute as a means of obtaining votes. Candidates such as Bingu wa Mutharika argued that a woman (Joyce Banda) could not protect Malawi's borders. He disparaged her gender and together with other allegations against her, partially contributed to his winning. This phase is further discussed in chapter three.

Natural Resources and the Lake Nyasa Border Dispute

The border dispute came up after four decades of dormancy once Malawi gave exploration rights to Sure Stream Company. Some have contended that it is not so much the water that Tanzania and Malawi have been quarrelling about, but rather what lies beneath the lake (Banda, 2013). Sediments beneath the lake are suspected to hold oil and gas reserves that both countries hope to explore (Yeager-Kozacek, 2012). The possibility of oil and gas deposits in the lake has brought tensions within Malawi and with Tanzania.

Within Malawi, tensions over the natural resources have risen because of environmental concerns. Early in 2014, United Nations Educational, Scientific and Cultural Organization (UNESCO) conducted a monitoring visit and recommended that Malawi prohibit oil exploration in the Lake Malawi National Park an area that is considered a World Heritage (Etter-Phoya, 2014). UNESCO also recommended that Surestream and RAK Gas (companies given exploration rights in parts of the lake) should not do any exploration activities of oil and gas in World Heritage sites (Etter-Phoya, 2014). The government was supposed to respond by 1st December 2015 but it asked for more time to prepare its response.

In addition, there have been civil society organizations that have been against the exploration activities around the lake's national park. For instance Godfrey Mfiti (the director of the Institute of Sustainable Development) has argued that Malawi did not follow the correct procedures in the issuance of the licences to the companies (Etter-Phoya, 2015). He has suggested that the government needs to take an Environmental Impact Assessment (EIA) and promote Corporate Social Responsibility (CSR). Such criticisms from within Malawi may later lead into a full blown civil conflict if the resources are discovered as it has happened in countries like Nigeria and Sudan. This would then complicate the relationship between Malawi and Tanzania if the border issue is not resolved.

In deciding to resort to the Africa Forum, Tanzania and Malawi have turned to reinvigorate African institution for mediation. This is also in line with the increasing significance use of former heads of states as mediators. This research examines whether African mediators complement the negotiation process.

CHAPTER THREE: MEDIATION BY THE AFRICA FORUM

Introduction

There are a lot of expectations about what African mediators can do. This is based on the concept of 'African solutions to African problems'. Western countries and institutions have always been at the forefront of efforts to solve African problems. The OAU and later AU have pledged to solve African problems. The African Forum was established in 2006 constituting an informal network of former heads of states and other African leaders. It is designed to support the implementation of the broad objectives of the AU and the New Partnership for Africa's Development (NEPAD) at national, sub regional and at regional levels (Africa Forum, 2006). The members share experiences and continue to participate in the search for solutions to the problems facing the Africa.

African leaders and institutions have tried to be at the forefront to solve security, economic, political and social affairs of the continent. The Forum has been involved in mediating conflicts through its Africa Forum Peace Support Missions (AFPSM). It should be noted that there are times when members of the Africa Forum have been directly requested by organizations like the UN, AU and SADC to take missions on their behalf. In such instances, the mediator would act as an Africa Forum representative of the other organization. Prior to this case, the Forum has been involved in various mediations such as Madagascar, Sudan, Kenya and Liberia (Africa Forum, 2011).

The Reasons why the African Forum Agreed Mediate the Tanzania-Malawi Border Dispute

The organization has a lot of experience in mediating issues in Africa (Banda, 2013). As it has been discussed above, the African Forum has been involved in mediation to countries such as Madagascar, Sudan, Kenya and Liberia. Even though these examples do not involve border disputes, they gave the leaders significant experience in mediation of conflicts in Africa. The Forum's members are former heads of states with years of experience of the politics and negotiations.

The other reason why the Forum is ideal for mediation is because African countries have the respect and faith in former African heads of states. It could be argued former heads of states are increasingly becoming indispensable in mediating disputes before other actors and parties enter the conflict resolution process. The two countries, Malawi and Tanzania have publicly said that they have faith in Africa Forum and they are committed to the mediation process (Banda, 2013). In addition, the decisions made by the Forum are not binding to the countries. In case either of the parties would not be satisfied with the results, there is the option of referring the case to the ICJ. However going to the ICJ may take longer time and be more expensive. Table 2 below shows the flow of events from the point where the disputants presented a joint application to the Forum until the events of January 2016.

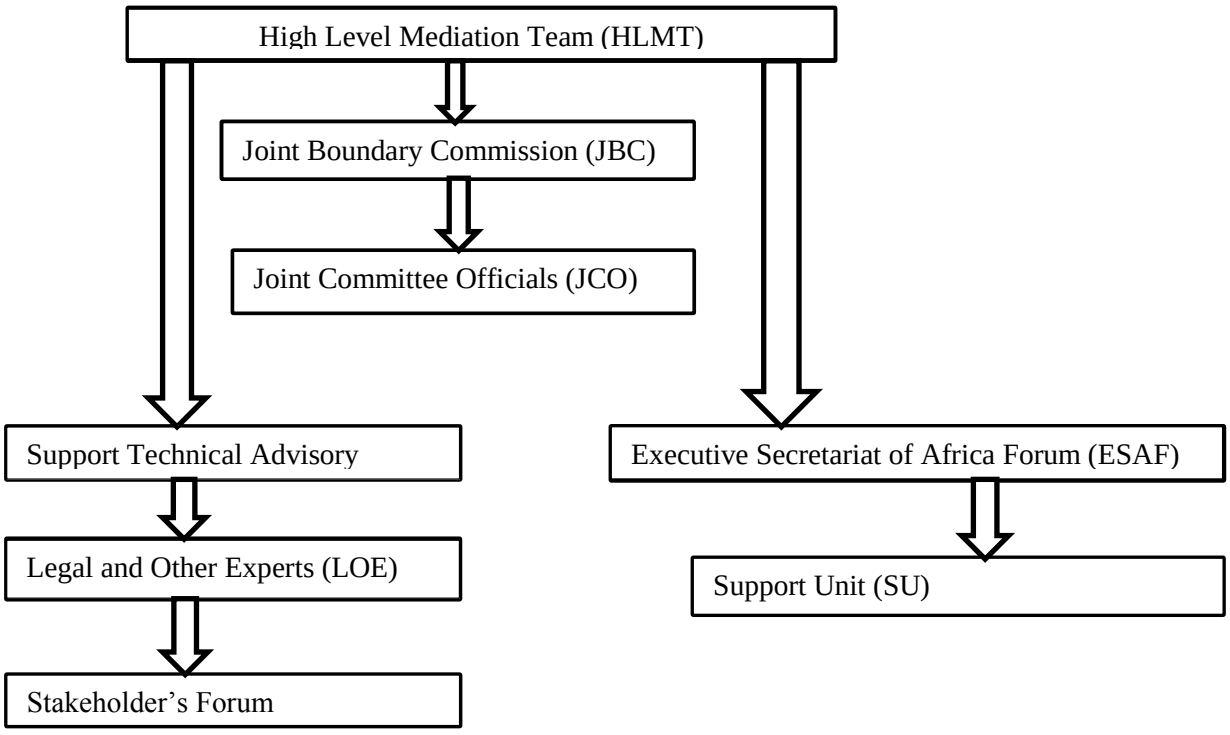
Table 2: Mediation Events

Dates	**Event/ Issue**
21st December 2012	Joint application to Joaquim Chissano, chairperson of Africa Forum and he agrees to lead the mediation process
January 2013	Creation of the High Level Mediation Team (HLMT)
31st January 2013	Malawi submits its formal position document in Maputo, Mozambique
11th February 2013	Tanzania submits its formal position document in Maputo, Mozambique
March 2013	Africa Forum review the formal positions documents
3rd April 2013	Joyce Banda threatens to withdraw from the mediation process due to the presence of Tanzanian John Tesha in the mediation team
May 2013	Malawi recommits to the mediation table
14th- 16th July 2013	Mediators' fact finding mission in Lilongwe, Malawi
11th September 2013	Chissano held a meeting in Windhoek, Namibia with Bernard Membe and Ephraim Chiume regarding the formal positions. He also posed four questions to respond to in two weeks.
25th- 28thNovember 2013	Mediators' fact finding mission in Dar es Salaam, Tanzania
20th March 2014	Resource Sharing Proposal

7th May 2014	Supposed 2nd Round of talks to begin (but did not happen due to elections in Malawi).
August 2014	Peter Mutharika and Jakaya Kikwete rule out going to war
10th January 2016	Malawi protested formally to Tanzania for publishing new maps

The Figure 5 below shows that, after agreeing to mediate, the Africa Forum laid down the steps for the mediation. The first item was the creation of the High Level Mediation Team (HLMT) (Oduntan, 2015:207). As the Chair, Chissano has been assisted by Thabo Mbeki (former president of South Africa) and Festus Mogae (former president of Botswana) in leading the HLMT. The Executive Secretariat of the Africa Forum (ESAF) led by John Tesha, a Tanzanian national, assisted Chissano with the formation of the HLMT.

Figure 5: Structure of the HLMT



The Forum also got a strong team of Legal and Other Experts (LOE) to assist with the mediation (Oduntan, 2015:208). This is mainly because the parties' joint application requested the involvement of eminent jurists who are experts in international border issues.

This team includes: Judge Raymond Ranjeva (former judge of the ICJ); Judge Abdul Koroma (former judge of the ICJ); Judge Barney Afako (legal advisor to the AU High Level Implementation Panel in Sudan (AUHIP)); George Kanyeihamba (former judge of the supreme court of Uganda); Martin Pratt (Director of Research, International Boundaries Research Unit in the Geography Department, Durham University); Gbenga Oduntan (member of the Nigerian team at the ICJ on Bakassi Peninsula border dispute case); Dire David Tladi (counsellor and legal advisor of the Permanent Mission of South Africa to the UN); and Miguel Alberto Chissano (President of the National Institute for Maritime and Border Affairs of Mozambique) (Oduntan, 2015:208).

Mediation Budget

The mediation team also created a budget with the help of ESAF, estimated to be $716,016. Both parties were to contribute half of the amount. Tanzania contributed $387,336 while Malawi contributed a mere $50,000 (Zablon, 2014). President Kikwete raised the question of Malawi's contribution as a sign of its lukewarm commitment to the mediation. Due to the big deficit, ESAF had to find the rest of the funding from the United Nations (UN).

Formal Positions Documents

The disputants were required to submit their formal positions to the mediator. Malawi submitted the document on 31st January 2013 and Tanzania submitted its document on 11th February 2013.

Malawi's Formal Position

On 31st January 2013 Ephraim Chiume, Malawi's Foreign Affairs Minister, submitted Malawi's formal position to Chissano in Maputo, Mozambique. The document made arguments to support its case for full ownership of the north eastern part of the lake. Malawi

and Tanzania have both agreed that the Anglo-German Agreement of 1890 is binding to them. Malawi argued that Article 1 (2) is complete in its argument that the border lies at the Tanzania's shoreline. Malawi stands firm on this agreement and does not consider Article VI as relevant to the situation. This is the same argument it had previously brought up during the bilateral discussions.

Nyerere Doctrine of Succession of States

On 30th November 1961, Nyerere gave a speech in the National assembly that came to be known as the 'Nyerere Doctrine of Succession of States'. In it he argued that the government would not accept and is not bound to agreements that were made by the colonizers especially if they were not to the benefit of the people of Tanganyika (Makonnen, 1986). It rejected inconsistent colonizer's treaties and emphasized the right to scrutinize all treaties before deciding to accept them or not (Mayall, 1973).

When Tanganyika gained independence on 9th December 1961, it did not agree to inherit treaties that Britain had made during colonial times. Tanganyika decided to submit a formal declaration to the UN. The declaration was that on the basis of reciprocity Tanganyika decided to extend a period of two years after independence the validity of the bilateral agreements that were made on her behalf by Britain and to amend the ones it did not accept (Makonnen, 1986). In these two years Tanganyika had the time to change all agreements that were made during colonialism that she did not support. Malawi argued that Tanganyika had the two years after independence to raise the Lake Nyasa border dispute (Mayall, 1973). However Nyerere's government did not raise the issue which would mean that Tanganyika decided to accept the Heligoland treaty with regards to Lake Nyasa.

The OAU Declaration of 1964

The other issue that Malawi brought up was the OAU Cairo Declaration of July 1964. The new independent states faced border and territorial disputes in the aftermath of independence. There were border disputes between countries like Ethiopia and Somalia; and Algeria and Morocco. The OAU stated that if the issue of border disputes was not managed carefully, it

would lead to more conflicts (Mwakikagile, 2006: 175). Therefore, the African heads of states decided to respect the borders that were inherited from colonialism (Mwakikagile, 2006: 175). Malawi supports this resolution and further claims that it was Nyerere that advocated for it. As a result Malawi believes that Tanzania's claims over the lake potentially threaten the stability of many African boundaries.

Political Statements from Tanzania's Leaders

Malawi has also claimed that Tanzanian officials in the independence period made statements that seemed to indicate acceptance of the 1890 Treaty as the basis of the boundary on Lake Nyasa. Malawi cites a statement made on 12th October 1960 by Nyerere, in the Tanganyika Legislative Council in which he said:

> …but one point which I think I must emphasize again, which was raised by my Hon. Colleague the Minister for Information Services and repeated by the Attorney General is there is now no doubt at all about the 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 as the Attorney General said, 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.

After Nyerere resigned as Prime Minister of Tanganyika, Rashidi Kawawa became the new Prime Minister. Kawawa also stated in parliament in June 1962 that Tanzania does not own any part of the lake and the border lay at the shores of Tanganyika (Mayall, 1973).

Local Population

Another issue between the parties has been the right of access of the affected local population to the lake. About 800, 000 Tanzanians and 1.5 million Malawians living around the lake depend on it for their livelihoods (Banda, 2013). Malawi has acknowledged the importance of the lake to the local Tanzanian population along the shoreline. Under Article VIII of the 1890 treaty, it allows the use of the water body by the local population of all parties concerned.

Malawi claims it is committed to ensure access to the lake by the Tanzanian local population to sustain their livelihoods.

Malawi has stated that the only way to revise of the boundary is through a new treaty with Tanzania. This position is similar to the case of Malawi-Mozambique border where Malawi got a portion of Mozambique land through negotiations. Thus, Malawi has maintained that any revisions to the boundary that is based on a treaty would need to be resolved by a subsequent treaty. If there is no such treaty, it is unlikely that Tanzania could secure a variation of the 1890 boundary. Malawi believes that the colonial powers through the 1890 treaty did not make a mistake in locating the shoreline boundary on the north eastern side of the lake, placing the lake under its sovereignty.

Tanzania's Formal Position

On 11th February 2013 foreign minister Membe submitted Tanzania's formal position document to Chissano in Maputo. The document made arguments to support its case for a median border on the lake.

The Anglo-German Agreement of 1890

Tanzania has accepted the Anglo-German Agreement of 1890 as an important element to solving the boundary problem. It however, insisted that the lines of demarcation are subject to rectification by agreement between the two countries in accordance with local requirements. It argues that Article I (2) is not conclusive and that Article 6 permits for rectification of delimitation set out in Articles I to IV (Oduntan, 2015: 212).

Formation of Joint Boundary Commission (JBC)

Tanzania has argued that agreements between Western powers were followed by formation of JBC to delimit and demarcate in order to clarify their spheres of influence. For example the Anglo- German Joint Boundary Commission in 1898 and the Anglo- Belgian Joint Boundary

Commission in 1923 demarcated the borders between Rwanda, Burundi and Tanganyika. In addition, the Anglo-Portuguese Joint Boundary Commission in 1954 shifted the boundary from the shore line to the middle of Lake Nyasa between Malawi and Mozambique (Oduntan, 2015: 212).

Tanzania has argued the Anglo- German JBC of 1898 introduced what Tanzania understands as radical move from the former, in the form of Article 2 which introduced the Thalweg principle for river and stream boundaries. It states:

> In all cases where a river or a stream forms a boundary, the Thalweg of the same shall be the boundary; If however, no actual 'Thalweg' is to be distinguished, it shall be the middle of the bed…

Tanzania also argued that due to the onset of the First World War, the Anglo-German JBC stopped the process of demarcation. After the war Germany lost its colonies including Tanganyika. Tanganyika became a mandate territory and Nyasaland remained a colony under Britain but the British did not delimit or demarcate the border (Oduntan, 2015: 212).

The African Union Border Programme (AUBP)

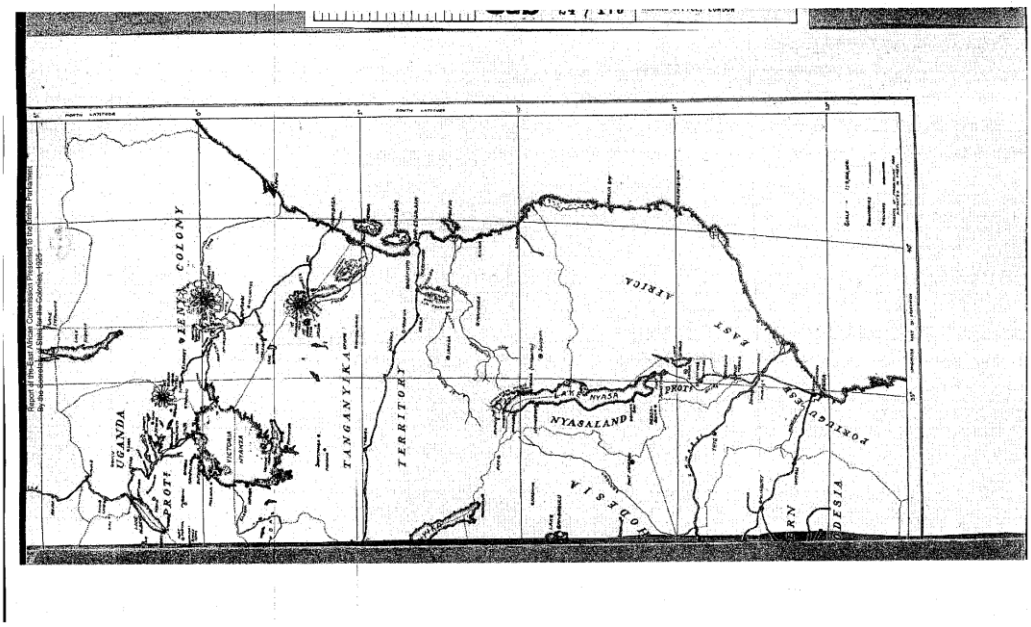
Most OAU/AU member states have not fulfilled the OAU Cairo Declaration of 1964. In 2002 African leaders discussed the issue of insecure borders which led to the establishment of the African Union Border Programme (AUBP) (Oduntan, 2015: 110). One of the aims of the AUBP is to make sure all borders of Africa are delimited and demarcated by 2017.

Tanzania has argued that it supports the AUBP's mission and it aims to get its border with Malawi delimited and demarcated. It has also stated that it is because of Malawi's unresponsiveness that this is not happening. Tanzania already stands for the median border and wants this dispute to end with its demarcation. It has called upon all African leaders (including Malawi's) to implement the AUBP by 2017.

Maps

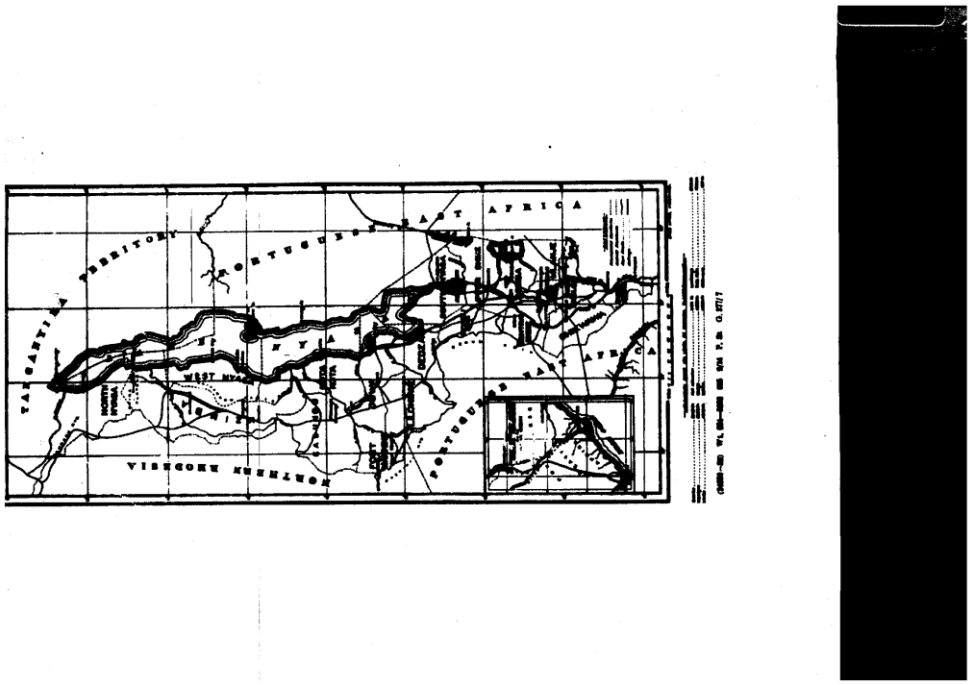
There have been inconsistencies in the maps produced of the border between Tanzania and Malawi (McEwen, 1971: 184). The mandate agreements came into force on July 1922 and the maps used during the Britain's mandate over both countries were ambiguous and inconsistent. Maps that were drawn between 1922 and 1964 have not been consistent on the border between Tanganyika and Malawi. Britain produced maps some with a median border; at times shore line borders, while others do not have a border at all (McEwen, 1971: 184).

Figure 6: Map of East Africa



Source: Report of the East African Commission Presented to the British Parliament by the Secretary of State for the Colonies, 1925.

Figure 7: Map of Nyasaland



Source: Annual Report on the Social and Economic Progress of the People of Nyasaland, 1933.

The above maps in figures 4 and 5 were submitted to the League of Nations as part of the annual reports on the territories' development. They both show a median border line.
Due to these ambiguities in 1961, Chief Mhaiki (a member of the Legislative Council from Songea District of Tanganyika which borders the lake) requested the government to review the Anglo-German Agreement especially since at least 600,000 people of Tanganyika lived on the shores of the lake. He was concerned about the border issue (Mayall, 1973: 614).

However he did not get much support from Nyerere and Kawawa who both publicly said that the lake does not belong to Tanganyika. This was because they were adherents of Pan Africanism and did not want to stir any problems with Tanganyika's neighbours. It was also a time when Nyerere was at forefront in promoting the independence of other African states. He therefore did not want to challenge inherited boundaries. To put the issue to rest, in 1962 the Tanganyika government decided it would wait for Malawi's independence before discussing the issue with an independent Malawian government (Mayall, 1973: 614).

President Bingu's Attempt to Resolve the Case

Tanzania brought up the question of Malawi's late President Bingu wa Mutharika who had written to the Tanzanian President Mkapa in 2005 with the aim to end the border dispute issue (Nyasa Times, 2012). Mutharika requested for the creation of a JBC to end their long dispute. Tanzania has stated that Mutharika's letter was an admission that the boundary between the two countries was not properly defined (Nyasa Times, 2012). However, this was an election year for Tanzania and Mkapa left the issue in the hands of his successor. Unfortunately Mutharika passed away before the talks were fully established.

Customary International Law

Tanzania has also brought up the issue of customary international law in the area of international water laws. It argues that the Helsinki Rules of 1966 established the principle of equitable utilization and obligation whereby there should be no significant harm to the dwellers of either side of trans-boundary waters. Therefore the waters of boundary Lake Nyasa should be shared between all the countries bordering it.

Effective Control

The other claim by Tanzania has been that throughout colonial and post- colonial periods Tanzania has exercised effective control of the North Eastern part of the lake (Mayall, 1973). The government has had regulatory and legal presence in the region. Before the outbreak of the First World War in 1914, both Germany and Britain deployed gunboats in the lake. Even though Tanganyika leaders had said no part of the lake belongs to Tanganyika, they still had administrative presence in the lake which demonstrates its effective control over the area. Malawi, on the other hand has not exercised sovereignty over the North Eastern part of the lake.

After both documents were submitted, the mediation team reviewed them. They also asked both parties not to make any public announcements regarding the dispute without first communicating with the Forum.

Africa Forum Fact Finding Mission in Malawi

Chissano and Mbeki went to Lilongwe, Malawi on a fact finding mission from 14th to 16th July 2013 (Chikoko, 2013). On 15th July, the mediators had a meeting with President Joyce Banda. She was accompanied by John Tembo (opposition leader in Parliament), Joseph Kubwalo (former Malawian envoy to Tanzania) and George Chaponda (leader of the Democratic Progressive Party) to raise Malawi's concerns (Chikoko, 2013). She said that Tanzania had made threats of going to war over its sovereignty and Malawi would not enter into any interim agreement until the border issue was resolved. She added that if the Forum could not solve the border issue she would take the case to the ICJ (Chikoko, 2013). In his response, Chissano promised to discuss Malawi's concerns with Tanzania and would try to speed up the process. He also requested Malawi not engage in activities that may disrupt the mediation process.

Exchange of Position Documents in Windhoek, Namibia

During the SADC Troika meeting in Windhoek, Namibia in September 2013, Chissano held a meeting on 11th September 2013 with foreign ministers Membe and Chiume (Etter-Phoya, 2013). This meeting was important for two reasons. First it was held to allow the two parties to exchange views on their position papers that had been submitted to the Africa Forum in early 2013. Chissano gave the Tanzanian government the position paper that Malawi had submitted and gave the Malawian government the position paper by Tanzania. Both parties were given three weeks from the meeting date to give comments on each other's position documents.

Second, the Forum gave both parties four questions to respond in three weeks (Etter-Phoya, 2013). According to Etter-Phoya (2013) the questions were:

i. Does Malawi agree that there is a boundary along the lake between itself and Tanzania?
ii. What is the legal implication of the absence of ratification on the delimitation in Article 1(2) of the 1890 Treaty in relation to the lake?

iii. What is the legal implication of the acceptance by either party of the importance of the lake to the local population along the shoreline and their use of the lake?
iv. Are there examples of cooperation between the parties in relation to the use of the lake?

Africa Forum Fact Finding Mission in Tanzania

Chissano and Mogae were in Tanzania on 25th and 26th November 2013 on a fact finding mission (Mkinga, 2013). They had a meeting with president Jakaya Kikwete, Bernard Membe, Anna Tibaijuka Minister of Lands, Housing and Human Settlements and Mark Mwandosya the Minister of State- President's Office (Mkinga, 2013). Kikwete and his ministers repeated Tanzania's stand for a median border on the lake.

Submission of Responses to the Position Papers

The responses took more than the agreed three weeks deadline. It was not until 27th November 2013 when Membe and Chiume met with Chissano in Maputo (Elter- Phoya, 2013). Membe was accompanied by Fredrick Werema the Attorney General of Tanzania, Shamim Nyanduga the High Commissioner of Tanzania to Mozambique and Elisha Suku- Tanzanian Foreign Service officer (Elter- Phoya, 2013). The purpose of this meeting was to give written comments on each other's position documents and submit the responses to the questions that were asked in the September 2013 meeting. Both parties were also able to discuss each other's positions in detail.

Africa Forum's Reaction to the Formal Positions: The Resource Sharing Proposal

After reviewing the positions, the fact finding missions and the responses to the questions, the Forum held a meeting in Maputo in March 2014 with a resource sharing proposal (Matonga, 2014). The Forum suggested that the best approach was that Tanzania and Malawi should

look at the resources found in the lake and find equitable means to optimally use and share these resources. In addition, Chissano suggested that the parties should abandon any legal claims to the border and focus on coming up with mechanism on sharing the resources (Matonga, 2015). Once the resource issues were resolved, the border questions would be managed more easily. The Forum has been advocating for this proposal for over a year without any success. The mediators recently repeated this proposal during the March 2015 AU summit in Addis Ababa (Matonga, 2015).

However, this proposal has not been accepted by both parties. At a press briefing in Lilongwe, Chiume stated that both countries intended to resolve the border dispute first before going to resource sharing issues (Matonga, 2014). He claimed that the main concern was to first determine where the border lies and the ownership of the lake before negotiating the resource issues. Further, he had informed the Forum that if resources such as oil and gas are discovered in the lake, Malawi would have to involve both its neighbours Tanzania and Mozambique. This is because, as a landlocked country, Malawi would need the access of her neighbours to the Indian Ocean (Matonga, 2014).

Tanzania agreed with Malawi by repeating the point that in 2005 Mutharika asked Mkapa to establish a JBC to solve the dispute. This explains Tanzania's willingness to resolve the border dispute before embarking on negotiations on resource sharing. Given the stalemate at the March 2014 meeting, both parties agreed to further study the proposal before the resumption of the mediation. Another round of talks was supposed to begin on 7th May 2014; however, due to the elections that took place in Malawi, they were postponed until after the elections.

On 19th November 2014, Peter Mutharika (the new President of Malawi) had a meeting in Malawi with Chissano and Mogae. The mediators went to congratulate him on becoming the new Malawi president and also used the opportunity to brief him on the progress of the mediation. Mutharika restated Malawi's stand regarding the Lake Nyasa dispute (Matonga, 2014).

On the question of the dispute, Chissano stated that the aim of the mediators was to bring both parties closer together and if they fail to reach a solution, then they should take the case to the ICJ. Mogae warned that Botswana had taken its border dispute with Namibia to the ICJ, resulting in a very expensive and time consuming process. He said that the ICJ gave full

ownership of the area to Botswana but also allowed local Namibians to use the area for fishing and tourism. Namibian access to the islands was already happening before the two sides went to the ICJ) (Namangale, 2014).

Another meeting was supposed to be held in August 2015 but it was postponed because one of the chief mediators had fallen sick and was taken to India for treatment (Chitsulo, 2016). The aim of this meeting was for the mediators to give a final report on the process. At the same time Tanzania was preparing for the October 2015 elections, thus leading to the postponement of the mediation.

CHAPTER FOUR: ANALYSIS OF THE MEDIATION

Introduction

There are a lot of expectations about what the Africa Forum can do to resolve the dispute especially since both parties are SADC members. Despite these expectations, the mediators have faced several challenges. These problems have made it difficult for the mediators to induce to reach any kind of agreement.

The contingency model challenges the mediators that they have to consider and be careful on the approach they plan to use in implementing the mediation and do a detailed analysis of the dispute before deciding on the most appropriate method. This study gathered the details on the parties in dispute that provided understanding on the context, mediation process by Africa Forum, and consequences. Factors associated with successful mediation were determined and analysed and given scores from 1 to 4 meaning poor to very good (1= Poor; 2 = Satisfactory; 3 = Good; 4 = Very Good), indicating the conduciveness of factors to successful mediation.

Dispute Context

The dispute context in contingency model is a stage that is important to mediation success in relation to circumstances it occurs. The antecedent dispute context includes a number of contextual variables that explain pre-existing conditions of the dispute environment where the mediation takes place. The independent variables include a number of several dispute factors that impact the parties' interactions and the mediator behaviours. These are listed below as nature of the dispute, nature of the issues, nature of parties in dispute and nature of relationship with mediator as shown in Table 3 below.

Table 3: Dispute Context

Dispute Context		
Factors	**Dispute details**	**Scores**
Nature of the dispute – geographic region, period of dispute, hostility level, type of dispute, superpower involvement	**Geographical** - The two states are SADC members. During pre-colonial period, communities on both sides shared the lake resources without dispute. During colonial period they had different rulers – Germany for Tanganyika and British for Malawi the time when the border treaty was signed. Later the two states were ruled by British, since the two states were under one ruler the border over the lake was not an issue. **Period of dispute** – During the independence period from 1967 to-date (49 years). This is a very long time for conflict to remain unresolved. **Hostility level** – Intensity and hostility level of dispute was observed periodically after a certain action by one party such as change of the name of the lake, signing of exploration agreements for gas and oil. This time the parties decided to resolve the dispute. The states were unable to negotiate among themselves and thus requested for third party mediation by the Africa Forum. **Type of dispute** – Border dispute of two states Tanzania and Malawi over Lake Nyasa/Malawi. Malawi claims the whole Lake as per colonial treaties while Tanzania claims the Lake middle line border as per international laws. **Regional Power Involvement** - South Africa supported Malawi during apartheid.	4 1 1 1 1
Nature of the issues – Type of issues at the centre of the dispute, tangible like sovereignty,	**Tangible** – Sovereignty in nature on border line over the Lake Nyasa/Malawi. The nature of the issues is tangible since at the centre there is also economic/resources (gas and oil)	1 1

economic/ resources, or intangible like ideology and political	**Intangible** – Ideology and political	
Nature of parties in dispute – previous relations if had previous hostilities or friendly relationship; attributes like power disparity, political system or regime type; similarity in the parties	**Previous relations -** . The two states had good relations during pre-colonial time and communities around the Lake shared the benefits of the Lake like fishing, crossing without any dispute. During the colonial period, a treaty that demarcated the borders and allowed the communities to continue with good relations and use of the Lake together. After the independence of Malawi the dispute started when Malawi changed the name of the Lake without consultation with the neighbouring states especially Tanzania. **Previous power, political and regime** – Previous relationship before and during colonial timed was good under one colonial ruler-the British before independence by both states.	4 4
Nature of relationship with mediator – previous relationship of mediator to the parties in dispute, numbers of specific attempts by this mediator in disputes. Repeated successful attempts build trust. Previous experience between parties can assist or restrict level of cooperation in subsequent dispute	**Previous relationship** of mediator to the parties in dispute – The relationship was good because the Africa Forum is a network from SADC countries and the states in dispute are SADC members. There is, therefore commonality in their identity and understanding of issues such as historical background, ethnicity, culture and politics around the region. **Previous experience of mediators** – The mediators have previous experiences in mediation. For instance they were initially involved in Kenya during the post elections conflict. These are high level former Heads of States who have mediation expertise and experience built in the course of their positions.	4 4

The dispute context involves various contextual variables that describe pre-existing conditions on the two states in dispute that help in understanding the dispute environment where the dispute mediation is taking place. Understanding the nature of the dispute provides the dispute environments, the incidence of dispute in different system periods, characteristics of the dispute. The fatality level of dispute is also analysed to understand hostility level and its duration. The nature of the issues in dispute or rather underlying causes of dispute can be varying in different ways such as in substance and complexity. The disputes sometimes evolve with a mix of tangible issues like border, territorial, resources and sometimes with intangible issues like ideological differences and ethnicity that may increase the complexity of the dispute. Scholars argued that, the type of dispute issues involved has the ability to substantially reduce the likelihood of mediation success (Bercovitch, 1991). The analysis above shows that the two factors, nature of the dispute and nature of the issues out of seven variables allocated to the factors, only one variable has a likelihood support to mediation success, the geographical location sharing the same region.

The nature of the parties attributes the disputants' states with a character that recognises the state identity and elements of the past and present behaviour, political power, economic, social level homogeneities, civils and nature of political system. Previous party relationship determines the behaviour of disputants that arises from previous hostilities. The previous hostility between the parties in dispute compounds their level of dis-trust and can affect the on-going dispute mediation. The nature of the relationship is related to parties in dispute previous relations with the mediator. The analysis was done for the relationship between the parties in dispute and mediator by looking at their earlier relations and earlier experiences with mediator called previous mediation relationship. This factor was identified as an important determinant in mediation outcome (Deutsch, 1973). The analysis above shows that the earlier relationship of the parties in dispute was very good during pre-colonial and the colonial era, as their communities around the Lake in dispute shared the Lake Nyasa/Malawi resources without disputes. The scores on Table 3 above, shows that out of four variables allocated to these factors all of them scored number four meaning very good to the likelihood to success of the mediation in this case.

Current Mediation Conditions

The second contingency stage explains the process meaning the current conditions affecting the mediation. In this stage there are two main variables to consider in the mediation process. These are nature of the mediator and mediator behaviour and the mediation strategy as shown in Table 4 below. The nature of the mediator explains the mediator's identity, experience and skills. The contingency approach in mediation acknowledges the previous relationship between mediators and parties in dispute, also the number of subsequent mediation attempts by the mediator. The current mediation conditions are detailed in the previous chapters and this is the stage where the mediation process is at currently.

Table 4: Current Mediation Conditions

Current Mediation Conditions		
Factors	**Dispute details**	**Scores**
Nature of the mediator – Rank, identity, level of experience, experience with the parties in dispute	**Rank of mediator** – this is the position, status and power of the mediator. The success of the mediation may depend on the rank of the mediators, the ability they have to use leverage strategies and their credibility. For the case of Tanzania and Malawi border dispute the mediators are High Level former Heads of States in SADC countries and have the ability to use leverage strategies. **Identity of mediator** – Mediators' identity can influence the parties' perception of mediator's efficiency in selection of most appropriate strategy. The Africa Forum identity is positioned to be able to influence since they understand historical background, culture, political environment at a high level. **Level of mediator's experience** – Experience adds to the credibility of the mediator and adds on his/her	4 4 3

	efficiency in selecting correctly the related strategy. Experience can help the mediator to know the moment of ripeness and when it is more appropriate to engage a strategy after strategy. As former heads of states, they have had experience in mediation. Although the Africa Forum network is a relatively new institution, the leaders have had to build on the experience they gained in their previous mediation roles. **Experience with the parties** - Previous experience with mediator including a number of mediations attempted by the mediator has impact in the current mediation interactions.	3
Nature of mediation strategy and mediator behaviour – Strategy, behaviour, environment and timing	**Strategy** – Mediation strategy employed by the mediator is very important, and has several strategies from passive to active strategies. Passive strategies are where the mediator uses their good offices without pressing tactics to press the parties to resolution. The more active the strategy forces the mediator to exercise directives, tactics, suggestions, and persuasion to allow the disputants to reach agreement. Supplementary strategies identify the times when the mediator have used two or more strategies. Other mediation attempt may include duration and previous strategy used **Behaviour** – Behaviour is the way of which a person conducts him/her self and it defines the mediator's approach towards dispute environment and disputants. Also it instils confidence, trust, relationship, encouragement and influence of the parties in dispute. **Environment** – Mediation environment determines the place where the mediation takes place whether in a neutral country or in the parties country. There are several environmental conditions that can be evaluated	3 4 2

	to be impacting the mediation like hostilities reported during the mediation and the dispute phase in which mediation takes place and presence of other activities. **Timing -** Mediation timing indicates when mediation is initiated in the dispute meaning that how long the dispute last before mediation did took place (Becovitch and Langley, 1993:676). For a well-timed intervention by a mediator, timing is a precondition and said to be one of the root reasons for subsequent success or failure of mediation in question. For Tanzania and Malawi border dispute, time has been very long- about four decades- without mediation and trend shows that interaction only starts when something happens such as Malawi changing the name of the Lake or signing agreements with investors. This shows that the dispute was kept and not dealt with for many years.	1

Consequences and Outcome of Mediation

The third and final phase of contingency theory is consequences of mediation as shown on Table: 5 below. The consequences of mediation are comprised of dependent variables that depend on antecedent dispute characteristics and current mediation process analysed above. The determination of success relates to assessment of mediation outcome using three outcome indictors: actual mediation outcome, durability, and subsequent and consecutive mediation trials. Actual outcome is measured in relation to short term attainment of agreement; while durability is based on long term success in resolving the dispute and subsequent and consecutive mediation attempts considers personal success of a certain mediator that is based on the parties in dispute invitation to continue mediation.

Table 5: Consequences and Outcome of Mediation

Consequences of Mediation		
Factors	**Dispute details**	**Scores**
Nature of mediation outcome – Outcome, durability and future invitation of a mediator to continue with his/her mediation role	**Outcome –** Outcome ranks the success or failure of mediation attempts and also a successful outcome is described as a cease fire agreement, partial settlement or full settlement. Unsuccessful outcome is when no objective success is achieved or when mediation was only offered. **Durability** – Durability of the outcome is a period the dispute settlement lasts. Re-emergence of the dispute indicates non-durability of the outcome. **Future invitation of a mediator -** This shows indication of success if mediator is invited to continue in the dispute management role. The previous attempts by the mediator help measurement of mediation success. If the first strategy fails the parties' perceptions of mediator are formed. Then subsequent dispute management may be affected unless earlier mediators resolve residual parties' perceptions about process and their involvement. Mediators know that the second invitation is subject to effectiveness of their first performance and subsequent invitation is subject to continuing success (Shapiro et al, 1985:113).	2 2 2

The analysis of the success of the mediation helps to determine the reasons for failure or the conditions that produce unsuccessful results. For this research on Tanzania and Malawi border dispute, the mediation process started in 2012 and is on-going so the outcome is yet to be known. The mediation process basing on contingency theory is on the second stage of current mediation conditions. This is the reason of attaining low scores on the outcome stage.

The three indicators for outcome success in Table 5 above are rated with two scores as just satisfactory due mediation process in progress and outcomes to be determined at a later stage.

Challenges Facing the Africa Forum mediation

Neutrality of the mediator

Some studies on mediation have considered the concept of the 'impartiality' of the mediator as an important element in the mediation process (Wallensteen, 2007). For instance in April 2013, Malawi threatened to withdraw from the mediation arguing that the mediator was biased and partial (Lalbahadur, 2013). As stated previously, this stemmed from Malawi's accusations about the role of Tesha who allegedly leaked Malawi's position paper to Tanzania before being removed from the mediation process.

Other studies, however, have argued that because of cost-benefit considerations impartiality may not be a necessary condition for the parties' acceptance of mediators (Maundi and others, 2006). These authors argue that it becomes necessary to be impartial when a biased mediator can lead a party which is biased to an outcome that is acceptable to all parties involved. Zartman (2009) argued that an outcome that only benefits the favoured party should be avoided at all costs.

Mediator has not considered the consequences of no Agreement

The mediator has not focused clearly and intensively on the consequences that would arise if both Malawi and Tanzania do reach an agreement. Malawi sent a written rejection of the resource sharing proposal but it has not suggested any other proposal that can be used by both parties. Even though Mogae briefly highlighted the costs of going to the ICJ in a meeting with president Mutharika, there have not been any discussion of the costs if the dispute is not solved (Namangale, 2014).

Bercovitch (1991) argued that it is sometimes necessary for the mediator to use 'manipulation strategies' to influence the behaviour of the parties in a dispute towards a desired target. This

approach aims to make the parties aware and knowledgeable of the costs that may arise if no agreement is reached. It can be argued that the mediator needs to discuss with both parties about the costs and benefits of the resource sharing proposal and the parties should be able to improve on the proposal or assist with making a new proposal.

Parties' Unwillingness to Compromise

The need to compromise is considered an important component in the mediation process; however in the Tanzania- Malawi case, both parties do not seem to be willing to compromise. Without such willingness, the role of mediators has become less relevant since there is no movement in the negotiations. Malawi does not seem ready to share the lake with Tanzania particularly after the exploration of oil and gas started. On the other hand, Tanzania does not seem willing to give up on the potential resources either and is still pushing for a median border. Throughout the mediation, Malawi and Tanzania have repeated their positions in the presence and absence of the mediators. Even when the mediators brought up the proposal on resource sharing, Malawi has been very vocal and sent a written document to reject the proposal in 2015. Chissano publicly acknowledged that the process was deadlocked since both parties are unwavering in their positions (Matonga, 2015).

Ripeness

It can also be argued that both Malawi and Tanzania have not reached a Mutually Hurting Stalemate (MHS). They both need to reach a level where they accept that the disagreements had more costs than benefits to both their governments. Writing on ripeness, Zartman (2009) has argued that at the centre of a MHS point, there is the cost- benefit analysis. This is because perceptions of threat may lead parties to genuine mediation process. In addition the MHS is the point in a conflict when both parties cannot impose unilateral solutions; a mediator's role becomes favourable and may have a great impact to resolving a dispute at the MHS

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Timing

The timing of efforts to resolve a problem is one of the keys to a successful mediation process. It can be argued that the Africa Forum did not take timing as a factor in the process. For example the Africa Forum introduced the resource sharing proposal at a time when Malawi was preparing for elections. This was probably bad timing to seize a moment. The mediators could have waited for the elections to take place and brought the proposal to the newly elected president.

Also parties resolve their dispute only when they are ready to do so. This is when alternative way of achieving a satisfactory result is blocked and the parties find themselves in an uncomfortable and costly situation. At that point they are most likely to lurch onto proposals that have been in the air for a long time and that now seems attractive. The Forum has not used manipulative strategies to lead the parties to such a position.

Local Politics and the Mediation Process

An equally unhelpful issue to the mediation has been when local politics is brought into the negotiations. In both countries, politicians have tried to use the boundary dispute and the mediation process for their own political gains. On Malawi's side, before the last elections, Mutharika used the border issue to claim that Banda was not strong enough to rule the country and protect its borders (Nyasa Times, 2013). On Tanzania's side there was Edward Lowassa the head of security who, without the permission of the government announced that Tanzania was ready to go to war to protect its borders (Nick, 2015). At that time, Lowassa was positioning himself to run for the Chairmanship of the ruling party which would have made him the successor to president Kikwete (Nick, 2015). This statement irked the African Forum because it compromised its mediation role.

Commitment from Malawi

Certain aspects of the provisions in the bilateral agreement between Malawi and Tanzania that was signed in November 2012 make it possible for either party to refer the matter to the ICJ. This has placed the Africa Forum in a difficult position. It is important that the parties to a conflict respect the power and prestige of the mediator. The perceived threat that one of the parties may pull out of the mediation at any time or that no matter how the mediation goes, one of the parties is likely to proceed to the ICJ is not helpful to mediation. Such a situation does not agree with international policy in support of finality of judgements of international tribunals. For instance Malawi officials have several times publicly threatened to take the issue to ICJ. However, on 15th April 2015, Audrey Poskakukhin an ICJ spokesperson said that no party involved in the Lake Nyasa dispute has communicated the matter to the court (Ubwani, 2015). This may be because Malawi has used the presence of the ICJ as a strategy to threaten the Africa Forum and wring demands from it.

Inclusion of the Civil Society

There has been lack of inclusion of local civil society. The mediation has primarily involved government officials of both countries without considering the views and interests of local civil society organizations that have links to the people living around Lake Nyasa. The local people obtain their livelihoods from the lake through fishing and tourism and may be more knowledgeable about ways of resolving the conflict. For instance, local civil servants like Godfrey Mfiti who are well knowledgeable about the lake could be involved in the mediation process. The Africa Forum should have made some efforts to reach out to these actors on both sides of the border in order to broaden the voices around finding a mutually acceptable solution.

CHAPTER FIVE: CONCLUSION AND RECOMMENDATIONS

Understanding Africa Form Mediation

Mediation is an important tool in the resolution of border disputes. It remains one of the most used options by policy makers and practitioners aiming to resolve disputes. The aim of the research has been to explore and evaluate the role of African mediators in resolving border conflicts. Using the case of the Africa Forum mediating the Tanzania- Malawi dispute, this research has analysed how mediators attempted to engage countries involved in border disputes to find mutually acceptable solutions within the contingency theoretical framework. The lessons from the Lake Nyasa mediation will significantly add to the growing academic literature on the role of African former heads of states as mediators. Policymakers will also benefit from the insights that the research has highlighted, particularly on the challenges faced by African mediators.

The role of Africa Forum on the dispute in question

The previous chapters have explained how the mediators came into the mediation and how they have interacted with the parties to border dispute. The research briefly discussed the Lake Nyasa history. This started from the discovery of the lake in 1859 by David Livingstone. Later the Anglo- German treaty was signed in 1890 was considered as the legal origin of the lake's boundary between Tanzania and Malawi. There were grievances between Tanzania's Julius Nyerere and Malawi's Kamuzu Banda between 1964 and 1968 partly due to differences in ideology. After 1968 there was a period of dormancy until 2011 when Tanzania raised the boundary case with Malawi. This was because Malawi gave exploration rights to Surestream Petroleum Company. However, they could not reach a consensus on their own. In December 2012 they sent a joint request to the Africa Forum that is headed by Chissano.

The analysis showed that Africa Forum's strong indicators that may be used to the success of the mediation in progress. These are: nature of dispute relating to geographical location, since

the two states in dispute are located in the same region, SADC and same continent, Africa. They had pre-colonial period together without dispute and colonial period together and at some point under one colonial ruler with no dispute. The dispute started after independence; as such the mediator may bank on this previous condition. The nature of the mediators has positive indicators as well as nature of previous relationship with mediators. Africa Forum has strong basis to stand upon leading to successful mediation.

The analysis showed that, there are some weak indicators that may lead to likelihood of unsuccessful mediation. These are, period of dispute that has been on for about four decades; the level that shows a hostility level; type of dispute that relates to sensitive issue of border; tangibility that relates to sovereignty, political and social economic resources; and timing meaning that the mediation has come into place only after a very long time, sometimes it is good if is the ripeness time for agreement but sometimes it may have lost track and impact mediation process. There are some of the challenges facing the Africa Forum mediation process. These are issues such as neutrality of the mediator; parties' unwillingness to compromise; mediator has not discussed the consequences of no agreement; ripeness; timing; local politics and the mediation process; commitment from Malawi; and the inclusion of the civil society.

Recommendations

Study nature of previous conditions

While looking for the mediation process to progress, the mediators need to look at the possible effects that arose from the multifaceted background on the current process. Considering the history and the dynamics of the dispute, it is necessary for the HLMT to have a deep understanding of the parties' motivations and concerns. The HLMT also needs a deep understanding of the interests and cultural practices of the local communities. There is a need to involve the local communities around the lake from both parties.

Equally important the mandate agreements came into force on 20th July 1922 which must therefore be regarded as a critical date for determining the boundaries of Tanganyika. Any alteration of boundaries after the creation of the mandate would be a modification of its terms

and could take effect only with the consent of the Council of the League of Nations. It is important to see if there is any evidence that shows a shift of the lake boundary from the shore to the middle between 1st July 1890 and 20th July 1922 (McEwen, 1971).

The effectiveness of mediation depends on the parties, character of their dispute, and on who the mediator is, and his/her behaviour. Mediation is a contingent form of political influence and also its performance and outcomes are contingent on context.

The study gathered information on antecedent conditions, current conditions and consequences using contingency model of mediation. The results of the analysis have interesting insights about the factors that impact the mediation outcome and also reveal that several factors determine the success of the mediation including: the identity of the disputants, their past relationship, their socio-political norms and power, the nature of the dispute and stakes, the intensity and duration, and how the mediator influences the process of dispute management.

The Effectiveness of the Mediator

The study analysed factors that may lead to success or failure of the dispute mediation. The mediation operates in a system of reciprocal social influence whereby parties in dispute and mediators influence each other. The mediator's behaviour is not based on one specific pre-determined plan and action but reflects changing contexts of a dispute, the interests and the needs of all parties concerned. For the mediator to succeed he/she has to be seen as a full participant in the dispute decision making process and has to be in possession of sufficient resources and an active strategy. As a mediator, the Africa Forum has set various strategies, faced challenges, and acknowledged the slow pace of the process. They have a good team of experts but they have to understand the correct strategy to be used for this kind of dispute and the strategies of combining mediation variables at the right time. In addition, depending on the situation, it is important to recognise if there is a need to involve other groups at the national or international levels and the timing of such involvement.

APPENDIX – The Treaty

The Anglo German Treaty

Volume 5. Wilhelmine Germany and the First World War, 1890-1918 Anglo-German Treaty [Heligoland-Zanzibar Treaty] (July 1, 1890)

This treaty temporarily settled colonial disputes between Germany and Great Britain. It recognized Tanganyika as a German colony; in return, the Germans abstained from further encroaching into British Kenya. The agreement ceded Heligoland, an island off the coast of Schleswig-Holstein in the North Sea, to Germany. Because the treaty appeared to abandon German colonial claims to much of east Africa, it unleashed a storm of nationalist protest at home.

The undersigned:

Chancellor and General of the Infantry von Caprivi,

Legation Councilor at the Foreign Office Dr. Krauel,

Her Britannic Majesty's Ambassador Extraordinaire and Plenipotentiary Sir Edward Baldwin Malet,

Chief of the African Department of Her Majesty's Foreign Office Sir Henry Percy, have, on behalf of their respective governments, reached the following agreement after deliberating on various issues pertaining to the colonial interests of Germany and Great Britain:

Article I

In East Africa, Germany's sphere of influence is demarcated thus:

1. To the north by the line that commences on the northern bank of the mouth of the Umba River, runs directly to Lake Jipe and, after passing along the eastern shore and around the northern shore of that lake, crosses the Lumi River and bisects the territories of Taveta and Chaga. Skirting the northern slope of the Kilimanjaro range, this line continues to the point on the eastern shore of Lake Victoria Nyanza that is intersected by the 1st degree of south latitude. It crosses the lake on this parallel and follows it to the border of the Congo Free State, where it terminates. It is understood, though, that the German sphere of interest on the western side of the aforementioned

lake does not include Mount Mfumbiro. Should it turn out that this mountain lies to the south of the aforementioned parallel of latitude, the line of demarcation shall be drawn so as to exclude the mountain from the German sphere of interest; but the line shall nonetheless terminate at the previously described point.

2. To the south by the line that starts on the coast of the northern border of Mozambique Province and follows the course of the Rovuma River to the point where the Messinge flows into the Rovuma. From here the line runs westward on the parallel of latitude to the shore of Lake Nyasa. Turning north, it continues along the eastern, northern, and western shores of the lake until it reaches the northern bank of the mouth of the Songwe River. It then continues up that river to its intersection point with the 33rd degree of east longitude. The line continues along the river until its closest point with the border of the geographical Congo Basin as described in Article I of the Berlin Conference and marked on the map appended to its ninth protocol. From here the line runs directly to the previously described border, follows this to the point of intersection with the 32nd degree of east longitude, turns and continues directly to the meeting point of the northern and southern branches of the Kilambo River. It follows that river until it enters Lake Tanganyika.

The course of the planned border has been specified in accordance with the map of the Nyasa Tanganyika Plateau that was officially drawn up for the British government in 1889.

3. To the west by the line that coincides with the border of the Congo Free State between the mouth of the Kilambo River and the 1st degree of south latitude.

In Southwest Africa, Great Britain's sphere of influence is demarcated thus:

1. To the south by the aforementioned line running from the mouth of the Umba River to the point on the border of the Congo Free State intersected by the 1st degree of south latitude. It includes Mount Mfumbiro.

2. To the north by the line that, beginning on the shore of the northern bank of the Juba River,

runs along this bank and traces the border of the area reserved for Italian influence in Gallaland and Abyssinia. It extends to the Egyptian borders.

3. To the west by the Congo Free State and by the western watershed of the Upper Nile Basin.

Article II

To implement the demarcation line as described in the previous article, Germany shall withdraw from its protectorate over Witu in favor of Great Britain. Great Britain agrees to recognize the sovereignty of the Sultan of Witu over the area extending from Kipini to the point opposite the Island of Kweihu defined as the border in 1887.

Furthermore, Germany shall give up its protectorate over the coastal area bordering on Witu and extending to Kismayo. It shall also renounce its claims both to the territories on the mainland north of the Tana River and to the islands of Patta and Manda.

Article III

In Southwest Africa, Germany's sphere of influence is demarcated thus:

1. To the south by the line that commences at the mouth of the Orange River and continues up its northern bank to its intersection point with the 20th degree of east longitude.

2. To the east by the line that commences at the aforementioned point and follows the 20th degree of east longitude to its intersection point with the 22nd degree of south latitude. The line then races this degree of latitude eastward to its intersection with the 21st degree of east longitude, follows this degree of longitude northward to its intersection with the 18th degree of south latitude, and runs along this degree of latitude eastward to its intersection with the Chobe River. Here it descends the thalweg of the main channel until it meets the Zambezi, where it ends.
It is understood that under this arrangement Germany shall be granted free access from its protectorate to the Zambezi by means of a strip of land not less than twenty English miles wide at any point.

Great Britain's sphere of influence is bounded to the west and northwest by the previously described line and includes Lake Ngami.
The course of the planned border has been specified in general accordance with the map officially prepared for the British government in 1889.
The fixing of the southern border of the British territory of Walvis Bay shall be subject to arbitration unless both powers reach a border agreement within two years after the

signing of this treaty. Both powers agree that, as long as the border issue is unresolved, not only passage but the transport of goods through the disputed territory shall be free for subjects of both powers. They also agree that their subjects shall be treated equally in every respect in this territory. No duty shall be levied on goods in transit and the territory shall be deemed neutral until such time as this issue is resolved.

Article IV

In West Africa:

1. The border between the German protectorate of Togo and Great Britain‟s Gold Coast Colony begins at the border mark determined by both powers‟ commissioners during negotiations on July 14 and 28, 1869. It extends northward to the parallel circle at 6° 10,, north latitude. From there it traces this degree of latitude westward to the left bank of the Aka River and ascends along the thalweg to the parallel of latitude at 6° 20‟ north latitude. It follows this degree of latitude westward to the right bank of the Dchawe or Shavoe River and runs along this bank to the parallel of latitude defined by the intersection of the Deine River and the Volta. It then traces this degree of latitude westward to the Volta. Here it ascends the left bank of the Volta to the neutral zone agreed upon in the Treaty of 1888 that starts at the junction of the Dakka River and the Volta. Both parties agree upon conclusion of this treaty to withdraw all their civil servants and employees from the territory that is assigned to the other by the borders defined above.

2. After it has been satisfactorily proven to both governments that no river exists on the Gulf of Guinea corresponding to the river that is marked on maps as the Rio del Rey and mentioned in the Treaty of 1885, a provisional borderline shall be adopted between the German territory of Cameroon and the adjoining British territory. This borderline shall start at the head of the Rio del Rey Creek and run directly to the point at roughly 9° 8‟ of east longitude marked as “Rapids” on the British Admiralty map.

Article V It is understood that treaties or agreements concluded by, or for the benefit of, one of the two powers in the areas north of the Benue River shall not interfere with the other power‟s right to engage in trade, freely and without duties, on routes to and from the shores of Lake Chad. Both powers are obliged to report to each other all agreements that they reach in the territories between the Benue and Lake Chado.

Article VI

Any correction of the demarcation lines described in Articles I to IV that becomes necessary due to local requirements may be undertaken by agreement between the two powers. It is understood, in particular, that commissioners will meet as soon as possible to undertake such a correction with regard to the borders described in Article IV.

Article VII

The two powers agree that they shall not interfere in the sphere of influence assigned the other by Articles I to IV. They shall not, in the other‟s sphere of influence, make acquisitions, sign treaties, accept sovereign rights or protectorates, or prevent the other from expanding its influence. It is understood that companies or individuals subject to one power shall not be permitted to exercise sovereign rights in the sphere of influence assigned the other, except with the consent of the latter.

Article VIII

Both powers agree to apply the provisions of the first five articles of the General Act of the 1885 Berlin Conference in all areas of their territories located within the free trade zone described in this Act and to which its first five articles are applicable on the day of the conclusion of the present treaty. According to these provisions, trade is free; shipping is free on lakes, rivers, canals and their ports for both flags; unequal treatment as regards transport or coastal trade is prohibited; goods of either origin shall not be subject to taxes other than those raised to cover trade-related outlays, unequal treatment excluded. Transit duty may not be levied, and monopolies and privileged commercial treatment may not be granted.

The subjects of both powers have the right to settle freely in either power’s territories, provided that these are located in the free trade zone. It is understood, in particular, that, in accordance with these provisions, the transport of goods by both sides shall not be subject to any obstacles or transit duties between Lake Nyasa and the Congo Free State, between Lake Nyasa and Lake Tanganyika, on Lake Tanganyika, and between this lake and the northern border of both spheres of influence.

Article IX

Trading concessions, mining concessions, and property rights that companies or private persons subject to one power have acquired within the sphere of interest assigned the other shall be recognized by this latter power insofar as their validity is satisfactorily proven. It is understood that concessions shall be pursued in accordance with valid local laws and regulations.

Article X

The missionaries of both powers shall enjoy full protection in all territories in Africa that belong to one of the two powers or are in its sphere of influence. Religious tolerance, freedom of all forms of worship, and freedom of religious instruction shall be ensured.

Article XI

Great Britain shall bring to bear her full influence on the Sultan of Zanzibar to facilitate an amicable agreement by which the Sultan unconditionally cedes to Germany the Island of Mafia and his territories on the mainland (including dependencies) that are referred to in the existing concessions of the German East Africa Company. It is understood that His Highness shall receive fair compensation for the loss of revenue resulting from this cessation.

Germany agrees to recognize the British protectorate over the remaining territories of the Sultan of Zanzibar, including the islands of Zanzibar and Pemba. Germany will also recognize the British protectorate over the territories of the Sultan of Witu and the adjacent territory extending to Kismayo, from which the German protectorate will be withdrawn. It is understood that, if the cessation of the German coast has not been made before Great Britain assumes its protectorate over Zanzibar, Her Majesty‟s government, upon establishment of said protectorate, shall use all its influence to induce the Sultan to make the cessation as soon as possible in return for fair compensation.

Article XII

1. Pending approval by the British parliament, Her British Majesty shall grant sovereignty over the Island of Heligoland and all its facilities to His Majesty the German Kaiser.

2. The German government shall grant natives of the ceded territory the right to choose British citizenship by a declaration to be made by themselves or, in the case of underage children, by their parents or guardians before January 1, 1892.

3. Natives of the ceded territory and their children born before the day on which this treaty is signed shall be exempt from compulsory military service in the German army and navy.

4. The currently valid local laws and practices will remain unchanged wherever possible.

5. The German government agrees not to raise, until January 1, 1910, the customs tariffs currently in force in the ceded territory.

6. All property rights acquired by individuals or existing corporations in Heligoland under the British government shall remain intact. Any obligations linked to these shall pass to His Majesty the Emperor of Germany. The term "property rights" includes Lloyd"s signaling rights.

7. The rights of British fishermen shall remain unaffected, including the right to anchor in all weather, take on provisions and water, make repairs, transship goods, sell fish, land and dry nets.

Berlin, July 1, 1890

von Caprivi

R. Krauel

Edward B. Malet

H. Percy Anderson

Source: Das Staatsarchiv, Sammlung der offiziellen Aktenstücke zur Geschichte der Gegenwart

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