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Ideal Deal? — Rethinking The 1954 Anglo-Portuguese Agreement

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Abstract

*This paper examines the potential for renegotiation of the 1954 Anglo-Portuguese Agreement ("the Agreement"), which delineated the Mozambique-Malawi (then Nyasaland) boundary. The delineation resulted in a significant territorial alteration, granting a net gain of about 6464 square kilometers of land and water surface to the then Portuguese overseas province. Specifically, Article 1(1) of the Agreement shifted the boundary from the eastern shore of Lake Malawi to the median line, annexing almost 6399 square kilometers of water surface to Mozambique. In exchange, Malawi acquired approximately 20 square kilometers of Portuguese territory in the Angonia area of the Tete District of Mozambique while retaining sovereignty over the Chizumulu and Likoma islands, with all attendant rights. This paper critically examines the geopolitical implications of the arbitrary boundary demarcation outlined in the Agreement, particularly considering the African Union's *uti possidetis* principle. Such implications extend to sovereignty, security, trade, and regional stability issues. The paper also assesses the underlying rationale behind what appears to be an inequitable agreement on Malawi's part by reviewing the Agreement's preparatory activities. Furthermore, it investigates potential solutions to this geostrategic quandary and suggests alternatives to address the current challenges. The central thesis is that, when considering the hierarchy of national interests, Lake Malawi may be less important to Mozambique than it is to Malawi. As a result, Malawi could use adept statecraft and diplomatic strategies to persuade Mozambique to renegotiate this colonial-era accord, offering a glimmer of hope for a more equitable resolution. In examining the potential for renegotiation of the Agreement, the research employed a multifaceted methodology, including a comprehensive literature review, legal analysis, and case studies focusing on Malawi and Mozambique. This approach*

involved document analysis of historical treaties and reports, alongside semi-structured interviews with stakeholders, to gain insights into the geopolitical implications, legal framework, and public sentiment surrounding the Agreement, ultimately aiming to contextualise Malawi's challenges within broader regional dynamics.

Keywords: Boundary demarcation, Colonial continuities, Regional Stability, Renegotiation, *Uti Possidetis*

1.0 Introduction

The 1954 Anglo-Portuguese Agreement ("the Agreement" or the "Heath-Bullock") aimed to delineate territorial boundaries between the British colony of Nyasaland (present-day Malawi) and Portuguese Mozambique (now Mozambique)¹. This Agreement, negotiated by colonial masters, has had far-reaching implications for the territorial sovereignty and geopolitical dynamics of the Southern African region in general and the two countries in particular. The tessellated boundary between Malawi and Mozambique demonstrates how colonialism entrenched unequal power dynamics, leaving a legacy of unresolved tensions and rivalries among successor states. Malawi dovetails in the northern part of Mozambique, which borders the Indian Ocean to its east. Kayuni and others wryly note that the shape of Malawi is akin to a knife that penetrates Mozambique, symbolising the uneasy relationship between the two countries (Kayuni, Banik, & Chunga, 2021). In their scramble for African territories, McCracken has demonstrated how colonial powers drew arbitrary borders without considering local ethnic, cultural, or geographic factors (McCracken, 2008).

Post-colonial governance structures inherited from colonial administrations contribute to the persistence of

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¹ Treaty between Great Britain and Portugal Defining the Spheres of Interest of the Two African Countries. Exchange of Notes Constituting an Agreement Between Her Majesty's Government in the United Kingdom of Great Britain and Northern Ireland and the Portuguese Government Providing for Portuguese Participation in the Shire Valley Project. (21 January 1953). 175 UNTS 14.

territorial disputes in the region. Granted, there have not been any significant instances of border conflicts and tensions that arose before and after the signing of the 1954 Agreement. Malawi and Mozambique have never had disputes regarding interpretations of this colonial-era accord or competing claims to territory and resources. However, scholars and citizens of both countries have questioned the fairness and equity of the 1954 Agreement, particularly regarding the territorial alterations and boundary demarcations (Zezeza, 2003; Robert & Rosberg, 1982; Meyer, 2012). Native historians such as Zezeza suggest that colonial-era boundaries, often drawn with little regard for local demographics or geographic features, continue to influence modern territorial disputes on the continent (Zezeza, 2003).

The purpose of this discussion is to critically examine the 1954 Anglo-Portuguese Agreement and investigate whether it can be renegotiated in light of current geopolitical realities and international legal principles. Of particular interest is the African Union's (AU) principle of *uti possidetis ita possideatis*, which states that newly independent states inherit the borders of their colonial predecessors. First, the historical background of the Agreement and the circumstances surrounding its negotiation are presented. After that, it analyzes the Agreement's boundary demarcations and territorial changes while taking into account the geopolitical difficulties and ramifications. Through a comprehensive review of existing literature and legal frameworks, this paper aims to offer insights into potential avenues for renegotiation and propose alternatives to address the prevailing inequities (Oduntan, 2015).

2.0 Methodology

To examine the potential for renegotiating the 1954 Anglo-Portuguese Agreement, the author employed a multifaceted methodology that addresses the geopolitical implications and historical context of this territorial arrangement (Merriam, 1998) (Willis, 2007, p. 22). A comprehensive literature review analysed scholarly works, historical documents, treaties, and prior negotiations related to the Agreement, particularly in light of the African Union's *uti possidetis* principle. This established a foundation for understanding the implications of boundary demarcations on current Malawi-Mozambique relations.²

The author conducted a rigorous legal analysis of the Agreement, focusing on its provisions, implications for

national sovereignty, and alignment with international law (Kelsen, 1941). This included assessing legal doctrines that might support or challenge the Agreement's terms and a comparative analysis of similar territorial agreements in Africa to identify precedents for renegotiation, contextualising Malawi's situation within broader regional dynamics. Using a case study method, the investigation provided an in-depth look at the historical interactions and evolving geopolitical dynamics between Malawi and Mozambique (Yin, 2014). The author also explored how sovereignty, security, and trade issues have developed, alongside policy analysis of existing strategies that could facilitate renegotiation.

Data collection combined various methods to ensure a thorough understanding of the issues (Mazhar, Anjum, Anwar, & Khan, 2021). Document analysis gathered primary and secondary materials, including the 1954 Agreement, governmental archives, and reports from international organisations like the African Union. Semi-structured interviews with stakeholders, including legal scholars, historians, diplomats, and local community leaders, provided qualitative insights into the Agreement's nuances and public sentiment regarding the territorial arrangements. Secondary sources from academic journals, governmental bodies, and think tanks further enriched the analysis (Lindblom, 2005, p. 29). The explanations provided in this paper employ the reasoning termed 'critical thinking' in the way the argumentation is structured in the form of a premise, argument deduction, and induction to arrive at a conclusion (Moore & Parker, 2009).

3.0 Territorial Alteration and Boundary Demarcation by the 1954 Agreement

The 1891 Agreement defined the territorial boundaries between British Nyasaland (now Malawi) and Portuguese Mozambique (present-day Mozambique)³. The 1954 Agreement further re-demarcated the boundary between the two countries to consider changes on the ground. The resultant territorial alteration and boundary demarcation by this colonial-era treaty have shaped ethnic relations, particularly in the border districts of the two neighbouring countries. (Welsh, 1996). In addition, the 1954 Agreement has impacted access to resources in borderland communities and influenced socio-economic and political dynamics in borderland regions to date. Below is a cursory examination of the critical provisions of the Agreement.

² Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt (Advisory Opinion of 20 December 1980), ICJ Reports, 1980, p. 73, p. 87; see also United States Diplomatic and Consular Staff in Tehran (US v. Iran), Judgment of 24 May 1980, ICJ Reports, 1980, 3, 20; Orakhelashvili, *supra* note 123, p. 32

³ Gr. Brit.–Port., January 21, 1953, 175 UNTS 14, Agreement between the United Kingdom Acting on Its Own Behalf and on Behalf of the Federation of Rhodesia and Nyasaland and Portugal Regarding Nyasaland–Mozambique Frontier art. 2 1, Gr. Brit.–Port., Nov. 18, 1954, 325 U.N.T.S. 307, 310.

3.1 Analysis of Article 1(1): Shifting of the Boundary and Annexation of Water Surface

Article 1(1) of the Agreement marked a significant territorial alteration by shifting the boundary between Mozambique and Nyasaland (now Malawi) from the eastern shore of Lake Malawi (then Nyasa) to the median line. This annexation of the water surface raises questions of sovereignty and resource allocation, particularly as they obtrude two of Malawi's largest islands in Mozambican territory. The presence of Malawian islands in Mozambican waters in Lake Malawi presents legal and geopolitical implications. This boundary demarcation has the potential to complicate bilateral relations between the two countries and necessitate diplomatic efforts to resolve territorial disputes and manage shared resources effectively.

3.2 Malawi's Acquisition of Portuguese Territory and Retention of Islands

In exchange for the territorial concessions made to Mozambique, Malawi acquired a small portion of Portuguese territory in the Angonia area of the Tete District, while also retaining sovereignty over the islands of Chizumulu and Likoma. As elucidated below, the territorial concessions between Malawi and Mozambique have significant implications for bilateral relations, resource management, socio-economic development, border security, and legal frameworks in the two neighbouring States.

3.3 Rights Granted to Inhabitants Regarding Lake Malawi

Article 1(3) of the 1954 Agreement granted inhabitants of both countries the right to utilise all waters of Lake Malawi for fishing and other legitimate purposes. This provision reflects the complexities of resource management and transboundary water governance. Article 1(3) of the Agreement plays a crucial role in regulating access to Lake Malawi's resources and promoting cooperation between Malawi and Mozambique. However, effective implementation, enforcement, and management mechanisms are essential to address potential challenges and ensure the sustainable utilisation of the Lake's waters for the benefit of both countries and their populations.

4.0 Why the Exchange? – Examining the *Travaux Préparatoires* of the Agreement

The 1954 Agreement's territory exchange between Britain and Portugal was influenced by a combination of

colonial, geopolitical, economic, diplomatic, and administrative factors. This reflects the complex dynamics of colonial rule and international relations in Africa during the mid-20th century. Lake Malawi is a classic case of colonial powers imposing their political and economic interests on African territories, setting the stage for later conflicts over resources in the region (Kuwali, *Soil or Oil? – Resolving the Lake Malawi Boundary and Locational Quagmire*, 2021). Lake Malawi is the world's fourth-largest body of fresh water and hosts more fish than any other lake hence its alluring economic value (United Nations Environment Programme, 1995).

To appreciate the rationale of the treaty, an examination of the *travaux préparatoires* of the 1954 Agreement offers valuable insights into the motivations and decision-making process of the negotiating parties. The intention of the parties is invariably laid down in the preamble of a treaty. In summary, the preambular message of the 1954 Agreement is that new conditions arose in the area, which required adjustments to be agreed upon by the two governments. Further, representatives of the two governments suggested reconsiderations of certain sections of the frontiers between the two countries. As the preamble does not provide adequate information on the nature of the suggestion, recourse should be made to the *travaux préparatoires* of the Agreement, which offers valuable insights into the motivations and decisions. Discerning the *travaux préparatoires* requires analysing diplomatic correspondence, official documents, and archival sources, which shed light on the complexities of colonial diplomacy and the negotiations leading up to the 1954 Agreement.

Archival information reveals that the exchange of territory in the 1954 Agreement was primarily motivated by the British desire to accommodate the preferences of the Maseko Ngoni people of Ntcheu in Malawi⁴. These Ngoni communities strongly preferred British colonial rule over Portuguese sovereignty. This preference likely stemmed from historical, cultural, and political factors, including past interactions with colonial authorities, perceptions of governance and administration, and a sense of identity and allegiance to the British colonial administration. By acceding to the Maseko Ngoni's wishes and adjusting territorial boundaries accordingly, the British sought to maintain stability, loyalty, and support among local populations within their colonial territories⁵.

The British's retention of Chizumulu Island and Likoma Island stemmed from a combination of strategic,

⁴ In an interview between the author and a senior government official who was once in the Surveyor General's Department in Malawi and accesses the archival information., which he could not trace by the time of writing.

⁵ Information obtained during an interview between the author and an expert in the Ministry of Lands and Housing in Malawi who has been privy to the archives in the United Kingdom.

economic, administrative, and socio-political factors, all aimed at advancing British interests and maintaining stability within their colonial territories in Southern and Eastern Africa. Chizumulu Island and Likoma Island are strategically located in Lake Malawi, which made them valuable assets for the British colonial administration. Controlling these islands allowed the British to maintain influence and control over key waterways and transportation routes within the Lake, enhancing their ability to effectively administer and govern their colonial territories. Retaining control over these islands allowed the British to exploit and manage economic resources for agricultural production, fishing resources, and as sites for colonial infrastructure and development projects to benefit their colonial administration and the British Empire. The British also wanted administrative continuity and governance as the Islands were already integrated into the administrative structures of British Nyasaland (Malawi) and transferring them to Portuguese control could have disrupted existing governance arrangements and administrative systems⁶.

In the 1954 Agreement, as a Portuguese colony, Mozambique acquired territorial concessions from the British, which included certain areas in the Angonia region of Tete District. The specific territories transferred to Mozambique were part of the colonial negotiations between Britain and Portugal, aimed at delineating their respective spheres of influence and resolving territorial disputes in East Africa. Mozambique sought these territorial concessions for economic resources as the Angonia region was known for its natural resources, including minerals and agricultural land. Acquiring control over these territories provided the Portuguese with access to these resources, which were exploited for economic development and colonial revenue generation. The Angonia region also had a strategic importance for Mozambique in terms of its geographic location, transportation routes, and military significance. Control over these territories enhanced Mozambique's strategic position within its colonial borders and contributed to its overall security and defense interests. The acquisition of additional territories through diplomatic negotiations also bolstered Portuguese Mozambique's territorial integrity and sovereignty. By expanding its territorial boundaries, Portugal asserted its authority and control over a larger domestic and international area.

5.0 Historiography of Factors Leading to the Negotiation of the 1954 Agreement

It is crucial to contextualise the geopolitical environment of Mozambique and Malawi (then Nyasaland) during the colonial era to appreciate the significance of the 1954 Agreement. A complex interaction of colonial, political, economic, strategic, international, and local factors

shaped the 1954 Agreement negotiations. Therefore, historical context is crucial to comprehending colonialism's lasting effects on the region's current geopolitical issues. The following list of variables impacted the 1954 Agreement's negotiations between Portugal and the United Kingdom (UK) over Lake Malawi's border.

5.1 Colonial Interests

Both the Portuguese and the British had stakes in the region. The interests of the colonial powers differed; under Portuguese rule, Mozambique had a settler economy, whereas Malawi, under British rule, had a planter-based economy. The locals were forced to speak the languages of the foreign powers. Mozambique turned Lusophone, while Malawi became Anglophone. As a result of the colonial legacy's artificial language barriers, precolonial relatives became strangers in the post-colonial era (Sheriff, Oluwafunke, & Bankole, 2015).

5.2 Economic Considerations

Lake Malawi has significant economic value because of its fishery resources and potential for hydroelectric power generation. Economic exploitation and access to these resources were likely considered during the boundary negotiations. The fact that the Agreement granted residents of both countries the right to use all waters of Lake Malawi for fishing and other legitimate purposes demonstrates the lake's economic importance.

5.3 Strategic Interests and Local Factors

The geopolitical landscape of Africa during the mid-20th century, characterised by decolonisation movements and Cold War rivalries, influenced negotiations over territorial boundaries. The UK and Portugal were motivated by strategic interests in maintaining influence and control in the region. Their livelihoods, access to resources, and traditional land rights were undoubtedly considered during the negotiation. Archival information indicates that the main reason for the exchange of territory was the desire of the British to appease the Maseko Ngoni of Ntcheu in Malawi, who preferred to be under British rule over the Portuguese. In exchange for the territory, Portugal proposed to have part of the Lake. However, the British retained the Islands of Chizumulu and Likoma because they wanted to have control over their missionaries who resided on the islands. The interests and concerns of local communities living around Lake Malawi may also have influenced the negotiations.

5.4 Administrative Efficiency

Another motivation for the territorial exchange was rationalising colonial administrative structures and borders. The preamble of 1954 points to administrative

⁶ As above

efficiency as the main reason for the demarcation in the 1954 Agreement. By adjusting boundaries and consolidating territories, the British and Portuguese colonial authorities sought to streamline governance and improve administrative efficiency in their respective colonies.

6.0 Geopolitical Implications and Challenges Emanating from the 1954 Agreement

Malawi and Mozambique have witnessed significant socio-economic and political dynamics of borderland communities in the aftermath of the 1954 Agreement, including challenges to governance, resource management, and identity formation. The Agreement has also presented multifaceted geopolitical dynamics in the region, including how colonial legacies, ethnic rivalries, and strategic interests intersect to shape territorial disputes and border conflicts.

On the one hand, the presence of Malawi's two islands in Mozambican waters in Lake Malawi has myriad implications, both politically and economically. Here are some potential effects: On the other hand, the territorial concessions under which Malawi acquired a small portion of Portuguese territory in the Angonia area of the Tete District have several implications. Below is a brief discussion of the ripple effects of the 1954 Agreement.

6.1 State-Building and Nationalism

Post-colonial states, including Malawi and Mozambique, have navigated the legacy of colonial borders in their nation-building projects. The 1954 Agreement influenced the formation of national identities and narratives of territorial sovereignty in Malawi and Mozambique, contributing to processes of state consolidation and nationalism (Bush, 2006). As noted during the Cold War where Malawi leaned towards the West while Mozambique sided with the East, the Agreement has political implications, including issues of territorial integrity, sovereignty, and cross-border cooperation. It has shaped national and regional politics and the strategies employed by both countries to assert control over borderland regions.

6.2 Impact on Sovereignty and Border Security

The territorial alterations and boundary demarcations outlined in the 1954 Agreement have had significant implications for the sovereignty and security of the two neighbouring countries. The Lake's resources, including fisheries and potential for hydroelectric power generation, make it strategically important for economic development and national security. The Agreement has security implications, particularly in relation to border management, territorial disputes, and regional stability. Undoubtedly, the 1954 Agreement influences contemporary debates and negotiations surrounding Lake

Malawi, including efforts to renegotiate territorial boundaries and manage shared resources. The fact that the median line marks the boundary between Malawi and Mozambique may be the intricate factor influencing Tanzania's claim over the median line as the boundary on the Lake (Maluwa, 2016). The adjustments to the territorial boundaries required both countries to reassess their border security measures in the affected areas. Ensuring effective border control and preventing illegal activities such as smuggling or trafficking became priorities for both countries.

6.3 Colonial Continuities and Legacies

Colonial-era boundaries were often arbitrary and imposed without regard for local ethnic or geographic considerations, continuing to influence modern territorial disputes. The 1954 Agreement is a definition of colonial-era accords that have created enduring geopolitical realities that persist into the post-colonial period. The Agreement continues to distort and shape the state boundary between Malawi and Mozambique, especially the absurd obtrusion of Malawian islands in Mozambican waters. The boundary separated families and divided villages on the Angonian side of the boundary, disrupting ethnic relations where one side is Anglophone and the other Lusophone. Obviously, the delineation of borders through colonial agreements disrupted traditional trade routes, kinship networks, and economic activities in areas surrounding Lake Malawi. Ethnic and tribal rivalries influenced by language barriers, exacerbated by colonial divide and rule policies, may have contributed to the subtle territorial tensions between the two countries.

6.4 Resource Allocation and Management

The 1954 Agreement has influenced approaches to resource management, particularly regarding Lake Malawi and its fisheries. The Agreement, which seems to have unclear or contested boundaries has shaped policies regulating resource exploitation and facilitating cooperation between Malawi and Mozambique in managing shared resources. For example, the location of Chizumulu and Likoma Islands within Mozambican waters complicates resource management efforts and access to natural resources in Lake Malawi (Henderson, 1977). Issues such as fishing rights, oil exploration, and access to freshwater resources could become contentious, requiring negotiated agreements between Malawi and Mozambique (Maluwa, 2016). Both Malawi and Mozambique may need to negotiate agreements regarding the exploitation of resources such as minerals, water, and land within the transferred territory. Lack of cohesion over resource management has hindered regional economic development and cooperation for countries sharing the Lake Malawi boundary.

6.5 Implications for Trade, Market Fragmentation, and Regional Stability

Generally, arbitrary boundary demarcation and territorial exchanges have also affected trade relations and regional stability in Southern Africa. Aside from the 1954 Agreement, several Anglo-Portuguese and Anglo-German sphere of influence treaties have impacted economic integration and regional development, highlighting the challenges of overcoming historical divisions and promoting cross-border cooperation. Colonial-era borders fragmented markets and disrupted pre-existing economic networks, trading communities, and trade routes hindering cross-border trade and economic cooperation.

6.6 Infrastructure Development, Regional Disparities, and Dynamics

Given the disparities in economic development between the colonial masters and later post-colonial States, the 1954 Agreement affected the planning and development of infrastructure, including transportation networks and energy systems in relation to Lake Malawi. A comparative analysis of the Ntcheu and Dedza districts of Malawi in juxtaposition with Angonia province in Mozambique shows that divided territories and competing colonial interests have resulted in uneven infrastructure development, with implications for regional connectivity and economic growth.

6.7 Potential Legal Challenges and Implications on Diplomatic Relations

Malawi may face legal challenges in asserting its sovereignty over the islands located in Mozambican waters. International law governing territorial disputes and maritime boundaries would need to be navigated, potentially requiring arbitration or adjudication by international bodies. Further, the territorial concessions have implications for the diplomatic relations between Malawi and Mozambique. While the concessions may foster goodwill and cooperation between the two countries, they could also lead to tensions or disagreements if there are disputes over the implementation or interpretation of the Agreement.

6.8 Economic Impact and Socio-Economic Development

The islands' placement may impact Malawi's economic interests in the Lake. Malawi relies on Lake Malawi for fishing, transportation, and tourism, and any disruption to these activities due to territorial disputes could have adverse effects on the country's economy.

In addition, the territorial concessions have socio-economic implications for the affected regions. Malawi's

acquisition of territory in the Tete District provides opportunities for economic development and infrastructure projects in the area while retaining sovereignty over Chizumulu and Likoma islands allowing Malawi to continue to benefit from tourism and other economic activities on the Lake.

6.9 Potential for Dispute and Legal and Administrative Frameworks

The presence of Malawian islands within Mozambican waters could exacerbate existing territorial disputes between the two countries. This situation may lead to diplomatic tensions and potential conflicts over sovereignty and control over resources in the lake.

Further, the territorial concessions necessitate the establishment of legal and administrative frameworks to govern the transferred territories. Malawi and Mozambique need to enact laws and regulations to address issues such as land ownership, taxation, and citizenship rights in the affected areas.

7.0 Why should the Agreement be Renegotiated? – An Analysis of Inequities

The European colonial powers drew the boundaries based on their limited understanding of Africa's precolonial history, ethnicity, and geography (Welsh, 1996, pp. 477-479). Worse, they left some borders partially defined or undefined, particularly in areas difficult to access or insignificant to their interests. This has resulted in several disputes that require action. The 1954 Agreement, like most colonial agreements, was imposed by colonial benefactors with little regard for the country's societal needs or geographical realities. This resulted in an unequal distribution of land and resources, with Malawians significantly disadvantaged. Many boundaries established during this colonial period were arbitrarily drawn, as famously described by British Foreign Minister Lord Salisbury that they "have been engaged in drawing lines upon maps where no white man's feet have ever trod; we have been giving mountains, rivers, and lakes to each other, but we have only been hindered by the small impediment that we never knew exactly where those mountains, rivers, and lakes were."⁷

International disputes over territory are more likely to involve the use of military force, to escalate to war, and to reach higher levels of severity than nonterritorial disputes (Chiozza & Choi). Similarly, territorial issues are likely to strain international relations as far as most ethnic or nationalist conflicts are associated with competing claims over the sovereignty of the territory in question (Chiozza & Choi). Hence, agreement renegotiations are

⁷ Quoted in *The Times*, 7 August 1890

viewed as a threat to the stability of international regimes because they question past commitments (Castle, 2019). However, Article 39 of the Vienna Convention on the Law of Treaties provides a method of resolving disputes emanating from bilateral agreements through amendment through renegotiation.

The delineation of the boundary between Malawi and Mozambique stands out amidst the relative clarity of Malawi's borders with Zambia and Tanzania (McCracken, 2008). Formulated during the 1891 Anglo-Portuguese Convention, the boundary between present-day Mozambique and Malawi emerged under contentious circumstances. This historical agreement led to the establishment of two political entities characterised by asymmetrical shapes and arbitrary borders, leaving Malawi landlocked while affording Mozambique access to the Indian Ocean. Lake Malawi is Malawi's primary water source, contrasting with Mozambique's advantageous oceanic access, which positions it as a strategic interest for Lilongwe rather than Maputo.

The 1954 Agreement forced people to be partitioned into another country that they had little or no affiliation with (Oduntan, 2015). The Agreement also entrenched Malawi's disadvantaged geographical position. Despite the perceived sanctity of colonial borders, opportunities for renegotiation may arise, particularly where post-colonial independent states mutually agree to rectify historical boundaries. If the 1891 Anglo-Portuguese Treaty that delineated the boundary between present-day Malawi and Mozambique was renegotiated as exemplified by the 1954 Agreement to respond to new conditions that arose then, why should the 1954 Agreement itself not be renegotiated to cure colonial absurdity?

7.1 Unfair and Inequitable Boundary Demarcation and Territorial Exchange

From the terms of the accord, the 1954 Agreement was inherently unfair and inequitable, particularly regarding the unequal distribution of territory and resources between Mozambique and Malawi. The Agreement resulted in a significant territorial change, with Mozambique gaining approximately 6464 square kilometers of land and water surface. Specifically, Article 1(1) of the Agreement moved the border from the eastern shore of Lake Malawi to the median line, adding nearly 6399 square kilometers of water surface to Mozambique. In return, Malawi received around 20 square kilometers of Portuguese territory in the Angonia area of Mozambique's Tete District. Malawi also retained sovereignty over the Chizumulu and Likoma islands, along with all associated rights. Comparatively, Mozambique benefited more than Malawi.

7.2 Potential Biases and Power Dynamics by Colonial Negotiators

The negotiation and implementation of colonial-era agreements were often characterised by unequal power relations and asymmetrical bargaining power. The colonial negotiators of the 1954 Agreement seem to have operated within a framework of entrenched biases and power imbalances that prioritised colonial interests and perpetuated colonial domination over African territories. These dynamics continue to shape the legacies of colonialism and the challenges of post-colonial governance in Africa today.

7.3 Legal and Ethical Implications

The 1954 Agreement extends beyond territorial disputes to encompass broader issues of justice, human rights, and international law. As discussed above, the territorial concessions brought about complications in legislation and regulations to address issues such as land ownership, resource management, taxation, and citizenship rights in the affected areas. For example, complex legal frameworks are required to address questions of territorial sovereignty in areas surrounding the Likoma and Chizumula islands and the challenges of reconciling competing claims to land and resources in shared territories.

8.0 Why should Mozambique Accept to Renegotiate?

The disproportionate territories and varying strategic importance underscore the unfair, inequitable, and unconscionable nature of the Agreement, thus necessitating its renegotiation. Article 4(i) of the AU Constitutive Act requires States to uphold the principle of peaceful co-existence and their right to live in peace. However, by their very nature, countries compete to safeguard their national interests. In descending order, national interests range from survival, vital, major, and periphery (Moore & Parker, 2009). When a state considers a given interest as major or vital, it can extend time, energy, and resources to attain its desired outcome regarding the interest by way of competition. Survival interests are those that directly impact the future viability of the State.

While the State is unwilling to make concessions, vital interests represent areas where State survival is not in danger. Major interests are those for which a state is prepared to compete and may even be willing to engage in conflict but is still amenable to compromise, in contrast to vital interests, which represent an unwillingness to compromise. Peripheral interests are those significant to a state's actors, sectors, or interest groups but may not necessarily be significant to the State as a whole. Peripheral interests seldom cause conflict between governments and cannot do so absent a critical political

interest. However, the issue of national interest also poses a challenge regarding Mozambique as Maputo may not appreciate the need to renegotiate an agreement that does not align with its paramount strategic priorities.

Further, it has been highlighted above that the Agreement was poorly negotiated and had perceived biases. The colonial negotiators, representing imperial powers, seemingly operated from a position of perceived superiority over Indigenous African peoples. This mindset could have led to a dismissive attitude towards the interests and concerns of local populations, resulting in decisions that favoured colonial powers at the expense of African territories.

Furthermore, Indigenous African peoples were often excluded from colonial negotiations and decision-making processes, leaving them vulnerable to exploitation and marginalisation. The absence of meaningful representation for African interests could result in unequal power dynamics and biased outcomes that perpetuated colonial oppression and injustice. Hence, renegotiation can remedy the absurdity brought about by the Agreement. If handled properly, Mozambique may agree to renegotiation as Lake Malawi may only be a peripheral interest to Mozambique and, therefore, amenable to compromise, whereas it is a vital interest to Malawi as it is a critical source of the country's revenue and the people's livelihood.

Negotiations require a measure of goodwill, flexibility, and mutual understanding between the parties to succeed (Boas, 2012). Even if negotiation fails to resolve a dispute, it will often assist the parties in clarifying the nature of the disagreement and the issues in dispute and in obtaining a clearer idea of their own and each other's positions, what they are willing to compromise on and what it might take to resolve the dispute (Boas, 2012). Therefore, letting the sleeping dogs lie is a postponement of the problem and exacerbates the geopolitical implications, which may present a time bomb for the two neighbours (Kuwali, 2024). As the hierarchy of national interests indicates that Lake Malawi is not as vital to Mozambique as it is to Malawi; by employing adept statecraft, Malawi may persuade Mozambique to renegotiate the 1954 Agreement. A concerted and timely renegotiation of the Agreement may boost the implementation of the maritime policies and strategies of the two countries (Walker, 2015).

9.0 Can the Agreement be Renegotiated Considering the *Uti Possidetis* Principle?

The principle of *uti possidetis, ita possideatis*, is relevant to interpreting and applying colonial-era agreements such

as the 1954 Anglo-Portuguese Agreement. It traditionally upholds the immutability and sanctity of borders⁸. Despite colonial powers drawing boundaries without consideration for ethnic groupings, the AU has upheld a doctrine of maintaining border stability to foster peace and stability among African nations. Nevertheless, the porous and arbitrary nature of African borders has, in certain instances such as the 1954 Agreement, led to unjust and inequitable demarcations, contributing to regional instability and conflict, and even fostering conditions of anarchy (Institute for Security Studies, 2012).

Given the historical injustices embedded in the 1954 Agreement, there have been calls for its renegotiation to address the prevailing inequities and promote regional cooperation. Diplomatic scholars have advocated for the potential role of mediation, arbitration, and multilateral diplomacy in facilitating dialogue and reconciliation between Mozambique and Malawi. Renegotiating the 1954 Agreement in light of the *uti possidetis* principle requires careful diplomatic and legal considerations. Various measures are available to address the inequities and geopolitical challenges stemming from the 1954 Agreement. These measures include confidence-building measures, economic incentives, and territorial adjustments to promote the region's peace, stability, and development. Below is a discussion of how renegotiation could be approached:

9.1 *Uti Possidetis* Does Not Preclude Renegotiation

The principle of *uti possidetis*, while traditionally understood to uphold the sanctity and immutability of colonial-era borders, does not categorically preclude the possibility of renegotiation. Although *uti possidetis* serves as a foundational legal doctrine to maintain stability and prevent border disputes, it is not an absolute barrier to revisiting or renegotiating boundaries under certain circumstances. One such circumstance arises when the initial delineation of borders is unjust or arbitrary, leading to persistent tensions or conflicts between neighbouring states. In such cases, the principle of *uti possidetis* may be invoked as a starting point for negotiations aimed at rectifying historical injustices or addressing contemporary geopolitical realities.

Given the perceived unfair and inequitable demarcation in the 1954 Agreement, the principle of *uti possidetis* may yield to the principles of fairness and justice, opening the door to renegotiation or boundary adjustments through diplomatic channels or third-party mediation. This view is supported by Oduntan who argues that "*uti possidetis* principle ought to be exposed as an ambitious plasterwork to cover deep injustices that have been done to African

⁸ See article 4(b) of the Constitutive Act of the African Union, African Union, *Constitutive Act of the African Union* (Lomé, Togo: African Union, 11 July 2000)

societies (Oduntan, 2015). Additionally, changing geopolitical dynamics, economic interests, or shifts in regional alliances may warrant revisiting colonial-era borders to accommodate evolving political realities and foster greater regional cooperation and integration. In such instances, the principle of *uti possidetis* may be interpreted flexibly to facilitate negotiated settlements that promote peace, stability, and mutual prosperity among neighbouring states.

9.2 Consideration of Historical Context and Diplomatic Engagement

Consider the historical context and socio-economic factors that have shaped the dispute over Lake Malawi. It is important to acknowledge the grievances and concerns of affected communities on both sides of the border and strive for a solution that respects their rights and interests. The principles of non-intervention and the prohibition of the threat or use of force in international law require states to seek pacific settlement of disputes. Diplomatic relations serve as a forum for bilateral engagement, providing an avenue for states to address anomalies resulting from colonial agreements. In this regard, Malawi, and Mozambique, as the successor states to British Nyasaland and Portuguese Mozambique, respectively, should initiate diplomatic discussions to rectify the issues stemming from the 1954 Agreement. When initiating renegotiation, Malawi should underscore the principle of peaceful dispute resolution and express its willingness to engage in constructive negotiations aimed at finding a mutually acceptable solution to a colonial anomaly (Six, Zimmeren, Popa, & Frison, 2015). Moreover, the Constitutions of both countries provide a solid foundation for renegotiation, as they emphasise promoting friendly relations, peaceful coexistence, and the pacific settlement of disputes⁹.

9.3 Mediation or Arbitration

Article 4(e) of the AU Constitutive Act charges Member States to peacefully resolve conflicts. In line with Article 2(3) of the Charter of the United Nations (UN), all member states are required to settle their international dispute by peaceful means so that international peace and justice are not endangered. According to Article 33 of the UN Charter, the peaceful means for dispute resolution include negotiation, inquiry, mediation, conciliation,

arbitration, judicial settlement, resort to regional agencies or arrangements, or any other peaceful means of their choice. Granted, there is no dispute between Malawi and Mozambique, mainly because of the respect for the principle of *uti possidetis*, which preserves the sanctity of boundaries as adopted at independence. However, due to its perceived unfairness and inequity, the 1954 Agreement is a potential source for a dispute. Hence, both States may consider the possibility of renegotiating the 1954 Agreement to resolve the inequalities that present socioeconomic and political challenges between them (Baye, 2014; William, 2000; Organisation of African Unity, 1964).

9.4 Joint Resource Management

Another way of addressing the inequity is to leave the boundary as it was pre-1954 and establish Joint Management Zones (JMZs) to provide for shared resources between the two countries, as fish and other resources know no boundaries (Kadagi, Ifesinachi, Glaser, & Lien, 2020). Citizens living around Lake Malawi in both countries may have competing claims to land and resources, adding complexity to resource management. Hence, the two countries may need to explore options for joint resource management and cooperation over Lake Malawi's resources, such as fisheries and potential hydrocarbon deposits. The neighbouring countries may then need to develop mechanisms for revenue sharing and environmental stewardship to promote sustainable development and mitigate potential sources of conflict.

9.5 International Support

Either of the countries may seek support from the international community, including neighbouring countries, regional organisations, and relevant stakeholders, to endorse and facilitate the renegotiation process. The Southern Africa Development Community (SADC) is particularly suitable as it established the Organ on Politics, Defense, and Security Cooperation (OPDSC), which is the primary mechanism within SADC for addressing political, defense, and security issues. The OPDSC is mandated, among others, to prevent conflicts and resolve disputes. To do so, SADC has established various initiatives and mechanisms for conflict prevention, management, and resolution, such as the

⁹ From Malawi's perspective, with regards to international relations, section 13 (k) of its Constitution requires the government to respect the rule of law and govern in accordance with international and regional law. Section 13(i) of Malawi's Constitution also requires the country to settle disputes peacefully. From Mozambique's standpoint, Article 11 (j) and Article 17 of the Mozambican Constitution enjoins the country to establish friendly relations and cooperation with other states based on international and regional law principles and reciprocity of benefits. Article 22 of Mozambican Constitution states that Maputo shall pursue a peace policy and support the primacy of negotiated solutions to

conflicts, only resorting to force in the case of legitimate self-defense. Such as negotiation, good offices, mediation, conciliation, and arbitration. See Government of the Republic of Malawi, *Constitution of the Republic of Malawi*, (Lilongwe, 2017), https://constituteproject.org/Constitution/Malawi_2017.pdf?lang=en (accessed 24 April 2024). See also Government of the Republic of Mozambique, *Constitution of the Republic of Mozambique*, Mozlegal, Lda, <https://ecn1.org/sites/default/files/files/2021/MozambiqueConstitutio.pdf> (accessed 24 April 2024).

SADC Mediation Support Unit, and the SADC Tribunal, to support conflict prevention, management, and resolution efforts within the region. By highlighting the importance of regional stability and cooperation for broader peace and development goals, the two countries may earn the assistance of the international community to strike an ideal deal. The engagement of neutral parties or international organisations with expertise in territorial disputes may help the two countries to help bridge differences and facilitate a fair and equitable resolution.

9.6 Compliance with International Law

Article 4(b) of the AU Constitutive Act enjoins Members to respect borders existing on achievement of independence. What this means is that Malawi and Mozambique should respect the 1954 Agreement as it is. However, it has been argued that the agreement is unfair and unjust and produces absurd geopolitical implications. To say that States should respect colonial borders is not to say that States should not peacefully negotiate on disputed or unconscionable boundaries. What is important is to ensure that the negotiations or any renegotiated agreement comply with international law, including principles of territorial integrity and peaceful coexistence. As such, experts from both countries should peacefully negotiate and draft the terms of the agreement according to established norms and procedures to avoid repeating the mistakes leading to and emanating from the 1954 Agreement.

10.0 Potential Impacts of Renegotiation on Regional Dynamics

Colonial powers were neither interested in helping a democratic system in Africa flourish nor enabling African states to administer themselves effectively in the post-independence period (Endalcachew, 2015). This indifference has had a lasting effect on peace and economic discussions between the two countries. The asymmetrical power relations between former colonial powers and newly independent states contribute to the complexity of resolving territorial disputes (Ndlovu-Gatsheni, 2010). The renegotiation of the 1954 Agreement could have far-reaching implications for regional dynamics and interstate relations in Southern Africa. Addressing the potential economic, social, and political impacts of border changes and territorial adjustments, requires inclusive governance and participatory decision-making processes.

First, the two countries face a challenge of common means of communication due to the language barrier. Under the defunct Maravi Kingdom, Malawians and Mozambicans shared similarities in languages, cultures,

and communal life of cooperation until the arrival of the colonialists who established barriers and divisions along the lines of the European lingua franca. Hence, language is a barrier to effective communication between diplomats of the two countries to renegotiate¹⁰. However, the two countries have a common regional heritage in which the Chewa (Nyanja) language is prevalent and transcends their colonial boundaries (Sheriff, Oluwafunke, & Bankole, 2015). The interconnectedness of their economies and the disposition of their militaries rule out an armed conflict between the two countries. To overcome the communication barrier, both countries may also need to develop effective communication and credible commitment mechanisms to alleviate each other's concerns and build mutual trust (Chadefaux, 2011).

Second, the prospect of renegotiation is heightened by the fact that the two countries depend on each other economically. On the one hand, Malawi relies on Mozambique to trade and transport goods. Malawi uses four Indian Ocean ports: Dar es Salaam in Tanzania, Beira and Nacala in Mozambique, and Durban in South Africa. Routes to the first three ports pass through corridors across Mozambique. On the other hand, Mozambique receives revenue from Malawi to use its ports. As such, it is in the best interest of the two countries to reach an amicable solution for peace and security. The two neighbours have close historical relations, geographical position, security interconnectedness, and political and economic proximity that may bring them closer to understanding each other and embracing strategic empathy (Shore, 2014). Therefore, preventing potential disputes is a strategic imperative to improve the relationship between the two countries and ensure geostrategic stability (Cilliers, 2021).

For purposes of statecraft, Malawi and Mozambique employ the following instruments of national power: diplomatic, informational, military, economic, and legal (DIMEL) (Worley, 2015; The Lighting Press, n.d.). These instruments are employed in an integrated manner (Jones). While one instrument may be dominant in a particular situation, the other instruments may still be engaged in diverse ways to support a state's objectives in an analogous situation. The ultimate strategic objective is sustainable peace, security, and development for the two countries.

The key to renegotiating the 1954 Agreement is strategic empathy, which helps to understand other state's perspectives and find common ground by establishing

¹⁰ See, for example, United Nations Education, Science and Cultural Council, UNESCO. 2013. 'Convention concerning the protection of the world cultural and natural heritage',

WHC13/37.COM/7B, May 3 Paris, viewed on 12 December. Available at: <<http://whc.unesco.org/archive/2013/whc13-37com7B-en.pdf>>. Accessed 20 March 2020.

shared strategic objectives and collaborative action¹¹ (Shore, 2014). In agreement, Thucydides noted that "[i] identity of interests is the surest of bonds whether between states or individuals (History of the Peloponnesian War, Richard Crawley, 2019). Therefore, both countries should recognise the potential benefit of cooperation. Overcoming this challenge requires solution-oriented statecraft, including strategies that do not undermine each other's policies.

For example, comparable countries, like Angola and Zambia, have strengthened their trade relations through public-private sector collaboration for mutual benefit (Food Business Africa, 2024). These countries have also agreed to work together to improve agriculture in both countries. Emulating the Angola–Zambia example, Malawi and Mozambique should review each other's national development plans and collaborate on developmental goals of mutual interest, especially in and around Lake Malawi and the boundary between Maseko Ngoni territory in Malawi and the Angonia district in Tete Province, Mozambique. Both countries require strategic empathy to understand each other's perspectives, motives, and constraints. Malawi should take the initiative to propose renegotiation, considering that it is the main culprit on the wrong side of history (Jere, 2021). Malawi has the burden to persuade Mozambique to the negotiation table¹².

Taking the example of Angola and Zambia, Malawi and Mozambique should reinforce their collaborative partnerships on development initiatives of mutual interest, such as the ongoing Mozambique–Malawi power transmission interconnection project to strengthen their bond (Klomegah, November 27, 2021). The joint railway rehabilitation project by the two countries to connect Malawi to the Mozambican Sena Line is an example of this approach (Klomegah, November 27, 2021). To manage the relevant part of the Lake, the two countries should consider establishing a joint planning commission to oversee the design and implementation of the initiatives, address unintended consequences of implementation actions, and recommend ways to maximise the benefits of their collaboration (Stroh, 2015).

11.0 Political Calculus and Strategic Analysis of Renegotiation

As elucidated below, Malawi and Mozambique's proposed strategy for renegotiation and strategic collaboration regarding the 1951 Agreement successfully

navigates the suitability, acceptability, feasibility, and risk (SAF-R) test. The strategy is deemed suitable as it contributes significantly to achieving geostrategic stability between the two countries. Moreover, it aligns with the constitutions of both countries, which advocate for good neighbourliness, peace, stability, and development—all outcomes associated with geostrategic stability (Kuwali, 2024). Furthermore, the strategy is inherently acceptable, resonating with the foundational principles espoused by both countries as the Agreement was made by their colonial masters but is negatively affecting them. Feasibility analysis affirms that the execution of this strategy relies on leveraging existing means of statecraft rather than necessitating additional resources. Therefore, it presents a pragmatic and viable approach to fostering collaboration and stability between the two countries.

12.0 Conclusion

This paper examined the 1954 Anglo-Portuguese Agreement, exploring its historical context, territorial implications, and geopolitical challenges. The discussion has provided a more nuanced understanding of colonial legacies, border disputes, and regional dynamics in Africa by critically examining the inequities embedded in the 1954 Agreement and proposing alternatives for renegotiation. The 1954 Agreement is not an ideal deal as it has presented multifaceted implications of colonial legacies and territorial agreements such as the 1954 Agreement for state-building, regional dynamics, security, and resource management in the context of borderland regions surrounding Lake Malawi. The unproportional territories and discrepancy in strategic value mean the Agreement is unfair, inequitable, and unconscionable, hence the need for renegotiation. Lake Malawi appears to be of marginal concern (peripheral interest) to Mozambique, whereas it holds undeniable strategic importance (vital interest) for Malawi. Therefore, there is potential for Maputo to consider compromises if Lilongwe employs skillful diplomacy.

This paper tackled the central research question of whether the 1954 Agreement can be renegotiated by means of a multidisciplinary analysis of historical, legal, and geopolitical perspectives. In doing so, it sheds light on the complexities of colonial-era accords on territorial sovereignty, resource management, and interstate relations in post-colonial Africa. One significant barrier to renegotiation is the *uti possidetis* principle, which upholds the sanctity of colonial borders and detests tampering with existing boundaries.

¹¹ Strategic empathy is the skill of stepping out of one's own head and into the minds of others to pinpoint what truly drives and constrains them.

¹² See the National Planning Commission, *Malawi Vision 2063: An Inclusively Wealthy and Self-reliant Nation* (Lilongwe, 2021), <https://malawi.un.org/sites/default/files/2021-01/MW2063->

[%20Malawi%20vision%202063%20doc.pdf](#) accessed 21 January 2022). See also Commonwealth Governance, *National Development Plan of Mozambique: Agenda 2025* (Mozambique, November 2003), <https://commonwealthgovernance.org/countries/africa/mozambique/ue/national-development-plan/>. (accessed 21 January 2024).

While *uti possidetis* provides a foundational framework for the maintenance of territorial integrity and stability, it does not foreclose the possibility of renegotiation under circumstances where historical injustices persist or changing geopolitical dynamics necessitate boundary adjustments. As such, the principle of *uti possidetis* should be interpreted and applied in a manner that promotes justice, fairness, and the peaceful resolution of boundary disputes between States. Thus, by approaching the renegotiation of the 1954 Agreement with careful consideration of the *uti possidetis* principle and employing diplomatic, legal, and cooperative strategies, Malawi and Mozambique can work towards a peaceful and mutually beneficial renegotiation of the 1954 Agreement.

The findings and insights presented in this paper have implications for future research and policy interventions in the fields of international law, international relations, conflict resolution, and regional integration, especially in resolving disputes emanating from colonial-era boundary treaties. By engaging with diverse stakeholders and promoting dialogue and cooperation, Malawi and Mozambique can work towards addressing the historical injustices and promoting peace, stability, and development in and around their borders.

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