

The Boundaries of Benefit Sharing

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Much has been said about the need for states sharing transboundary waters to shift their focus away from the difficult question of how to divide up the water itself, toward exploring the possible benefits to be derived and shared out from the water in all of its uses and contexts. Put differently, it is generally thought that by widening the array of possible benefits, one simultaneously narrows the window of opportunity for violent conflict. To enhance possibilities for cooperation, a great deal of effort has been placed in establishing multilateral settings for collective decision-making, with River Basin Organisations (RBOs) being a highly touted way forward. Southern Africa is regularly cited as a success story in this regard, where cooperative arrangements are in place on all of the major shared watercourses. The latest RBO to be established is the Zambezi Watercourse Commission (ZAMCOM), which includes 8 riparian states: Angola, Botswana, Malawi, Mozambique, Namibia, Tanzania, Zambia and Zimbabwe. Only Malawi has not ratified the agreement. According to policy makers there, they have not ratified the agreement because to do so would be to acknowledge Tanzania's ownership claim to the Lake, a claim that Malawi argues is denied via treaty law. The Anglo-German Agreement of 1890 sets the border at the eastern, northern and western shores of the Lake between Malawi and Tanzania before reverting to the median line between Mozambique and Malawi as stipulated in separate agreement between Great Britain and Portugal in 1954. The Lake is called Lake Malawi by Malawians and Lake Nyasa by Tanzanians while the Mozambicans refer to it as Lake Niassa.

Malawi and Tanzania have recently been in the news not for their extensive cooperation on the Songwe River which forms part of the northern and southern borders respectively between the two states, but for the resurfacing of the long-running dispute regarding the location of the border on the Lake. The Lake Malawi/Nyasa/Niassa basin, extending from the Songwe catchment to the confluence of the Shire River with the Zambezi, is one of the thirteen sub-basins of the greater Zambezi River Basin. The recent flare-up of tensions surrounding the border stems from Malawi's desire to award private contracts for the exploration of oil and gas beneath the waters of the Lake. The government of Tanzania has challenged Malawi's right to explore for oil and gas in an area that would constitute part of Tanzania were the border to follow the Thalweg or Median line as is the generally accepted practice in international law. Malawi dismisses such a challenge, arguing that Treaty Law renders the Thalweg argument moot. Regional newspapers trumpeted 'Water wars!' while diplomats in each of the riparian states blustered about whose rights were being violated and why.

These events formed the backdrop to our study. Initially what we sought to investigate was the credibility of the claims by each side, the likely outcomes and to suggest several policy options, with a view toward making an argument regarding 'benefit sharing'. A secondary question for investigation was

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to determine the relevance of ZAMCOM in this. If the ultimate aim of ZAMCOM was sustainable and equitable development and management of the waters for all riparian states, should the RBO not have a voice in this dispute? As we began to explore the issue through key-stakeholder interviews and literature searches, we came to understand that this particular dispute at this particular time needed to be understood within the broader context of inter-state relations over the entire sub-basin. What we discovered was that the sub-basin had given rise to four discrete geographical decision contexts, each with their own dynamics, and each specifically bilateral in nature. These four contexts are:

- Malawi-Tanzania on the Songwe River
- Malawi-Tanzania on Lake Malawi/Nyasa
- Malawi-Mozambique on Lake Malawi/Niassa
- Malawi-Mozambique on the Shire-Zambezi Rivers

We employed the transboundary water interactions nexus (TWINS) framework to assist with both the analysis and depiction of events. TWINS was first developed by Naho Mirumachi and her colleagues in the UK. As shown in the diagram below, it provides a means for mapping inter-state interactions on transboundary waters over time.

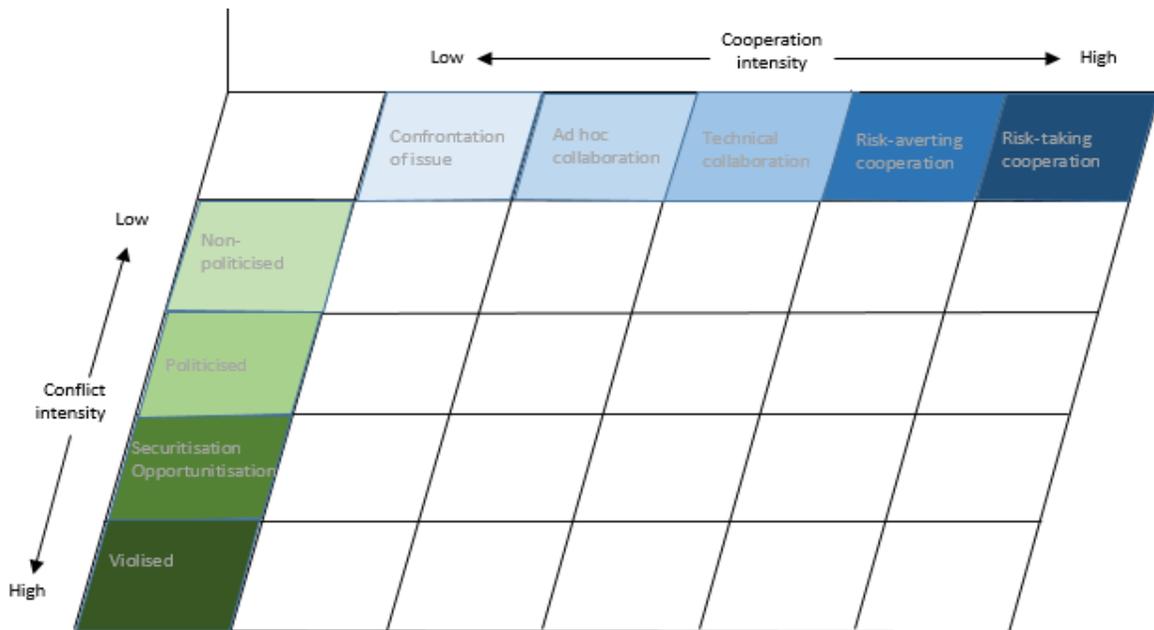


Fig 1 Transboundary Water Interactions Nexus Frame (source: Zeitoun and Mirumachi, 2008)²

Our findings suggested several things:

² While the categories are relatively self-explained, readers are encourage to consult Zeitoun and Mirumachi (2008) for details.

- Conflict and cooperation exist co-terminously within each decision-context and across the entire sub-basin
- Decision-contexts are not necessarily self-evident: they are partially determined by geography, by sovereign boundaries, and by specific opportunities as they present themselves and are perceived and acted upon by state actors
- The particular issues are embedded in formal organisational structures at the state level which leads to the routinization of procedures, practices and perspectives
- The actions taken are specifically bilateral and sovereign-state directed, usually through the Ministry of Foreign Affairs who will then draw in other government departments, non-state actors and so on as needed
- The ZAMCOM seems to serve two functions: (i) to delimit the extent of discussion regarding who should be informed regarding actions in the sub-basin; and (ii) as a potential source of technical information and services
- Where transboundary governance is concerned, it is not the RBO that wields power but the revised SADC Protocol on Shared Watercourses; decisions taken are set within the framework of the Protocol in every instance. It should be noted, however, that the Protocol itself highlights the right of sovereign states to act in their own interests.

It seems to us that the findings are important in two ways. First, the study shows how conflictful actions and perspectives are embedded within a dense web of inter-state actions built up over time, which helps to routinize the conflict. Where on balance relations are cooperative, the 'exceptionality' of the conflict is noted and in some ways domesticated, i.e. given a home, making it more readily understood, treated and possibly resolved (though in the case of the boundary, it remains a particularly nettlesome issue). Second, the study suggests that RBOs such as ZAMCOM are important but fall very short of their articulated ideal. Sovereignty and articulated, often opportunistic 'national' interest define the boundaries of benefit sharing. In our view, this is not necessarily problematic when viewed in light of the very short life span of these organisations in comparison to formal state practices on matters of utmost importance. The challenge emerging, therefore, is to devise a means for ensuring that these various and partial policy regimes 'add up' to a collective, basin-wide shared good.