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Old issues and new challenges: the Migingo Island controversy and the Kenya–Uganda borderland

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This paper examines the controversy between Kenya and Uganda over the ownership of Migingo Island in the shared Lake Victoria waters, in the context of general debates regarding African boundary disputes. The Migingo controversy brings to the fore unresolved issues around the emergence, nature and transformation of African borders generally, and their significant role in addressing pertinent questions of territoriality, citizenship and nationhood. Like other border controversies elsewhere in Africa, the Migingo case challenges the perception that border areas are marginal spaces that can be ignored. Migingo’s troubles underscore the realities of Africa’s colonial borders, bringing into focus the border populations and the social, cultural and economic relations they generate across the dividing lines. While challenging eastern Africa’s states to view local communities as important agents in fostering change along common borders, the paper emphasizes the need for harmonious border relations as a barometer in testing good neighbourliness and regional integration.

Keywords: Migingo Island; borders; Lake Victoria; Kenya; Uganda

According to Lord Curzon, boundaries are the razor’s edge on which hang, suspended the modern issues of war or peace, of life or death to nations.¹ The recent controversy between Kenya and Uganda over the small island in the shared waters of Lake Victoria seems to vindicate this assertion and unmask not only historical but also legal, diplomatic, political, social and economic issues. On 27 May 2009, Kenyan parliamentarians voted in support of a private member’s motion calling for military intervention to resolve the island crisis. This simmering dispute over the rocky island, barely an acre in size, has brought the two neighbouring countries that are strong trading partners and members of the regional East African Community (EAC) to loggerheads. The island is occupied by about 500 (estimates vary) people, mostly Kenyans of the Luo ethnic community who are predominantly fishermen. Territorially, the island has been administered by Kenya since 1926 but was recently claimed by Uganda. On 11 May 2009, in an apparent effort to ease the then mounting crisis, Ugandan President Yoweri Museveni conceded that the island was Kenyan, but persisted in the claim that the waters surrounding it belonged to Uganda.

The tone of discussion in the press in both Kenya and Uganda² indicates that the controversy over Migingo has penetrated other spheres of politics, poisoning

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relations between the two countries. But why should two countries with very warm relations in recent years, who are both committed to further regional integration through an expanded EAC, who are both members of several regional multilateral organizations including the Common Market for Eastern and Southern Africa (COMESA), the Intergovernmental Authority on Development (IGAD), and the International Conference on the Great Lakes Region (ICGLR), find themselves drawn into an escalating border dispute of this kind? In an attempt to resolve the crisis diplomatically, a joint survey team was established in May 2009 to study and clearly demarcate the border with a view to establishing its precise location and clarifying the status of Migingo. The team was to make primary reference to various authoritative colonial texts and constitutions, such as the British Order in Council of 1926 that established the current Kenya–Uganda boundary complete with coordinates, pillars and natural features. It was also to rely on schedule 1 of the 1967 Uganda constitution, The Kenya Colony and Protectorate (Boundaries) Order in Council of 1926, and Kenya Legal Notice No. 718 of 1963, Schedule II Boundaries, Part I, the Districts, 37, Busia District. The survey team was to conclude its work by mid-July 2009, but soon dissolved amid acrimonious squabbling with the withdrawal of the Ugandan members. As things stand one year on, no resolution of the dispute seems imminent.

The controversy over the ownership of Migingo Island fits into a broader pattern of increasing conflicts around African boundaries in recent years, indicating the many debates and unresolved issues around the emergence, nature and transformation of borders generally, and their significant role in addressing pertinent questions of territoriality, citizenship and nationhood. Though traditionally conceived as barriers, borders are increasingly viewed as offering what Nugent and Asiwaju term as “conduits and opportunities” that constantly challenge the administration and management of the state. Like other border controversies in Africa, the Migingo case highlights the perils for the state of treating borders as marginal spaces that can be ignored. The argument to be developed in this analysis of the Migingo case is that border relations should be viewed as barometers in testing good neighbourliness and regional integration, and that this will be best accomplished if local communities are directly involved in resolving outstanding border issues rather than leaving this to political elites and central government alone.

Did it all begin in Berlin?

Anyone keen on appreciating the gravity of the Migingo crisis needs to reflect on the historical nature of the border question in Africa. Borders and border zones mark the places at which questions of territoriality, citizenship and nationhood are contested, negotiated and settled. As Glassner argues, in Africa this contestation has not so much been seen around the physical settlement of boundary locations, but rather has focused on the meanings and values attached to borders – these issues often being related to the historical process by which the boundary emerged, developed and transformed. Scholars who study the history of African borders have appreciated the central role played by the 1884–85 Berlin conference in the transformation of African borders. It was at this historic moment that African borders were formally drawn by seven European powers keen on extending their economic, political and strategic interests in the continent. Before the Berlin conference, as Mbembe argues, the historical geography of the continent left much
interstitial space open for the pulsation of a series of specialized areas, sometimes described as “trade areas”, “government and military areas”, “linguistic areas” or “religious and cultural areas”.5 These areas were fluid, mobile, and overlapped. With the onset of colonialism, boundaries were in many cases then drawn across these well established lines of interaction. In this process, previous inter-societal, economic and political relations were disrupted.6 The decisions of the Berlin conference thus epitomize the arbitrary character of Africa’s colonial boundaries, and offer an explanation for many of the continent’s contemporary border problems.7 For all African border disputes, including Migingo, the colonial archive is therefore a necessary reference point.

But to what extent can we argue that specific Berlin agreements, or colonialism more generally, are responsible for current African border crises? It is surely crucial to ask why it has taken so long for African governments to tackle these border questions after their attainment of independence? Katzenellenbogen has even questioned the relevance of Berlin, arguing that the conference achieved only the international recognition of partitioned areas that had already been subjected to a process of negotiation and settlement on the ground.8 The simple truth is that Berlin and colonialism are not sufficient explanations for Africa’s border problems. Some of Africa’s most significant recent conflicts have arisen in contested border zones, but the reasons for this have been rooted as much in the current politics of influence and resources as in the failings of the colonial past.9

Africa’s border problems need to be understood as symptoms of current problems, not just historical legacies. Border disputes have slowed the pace of international cooperation and integration, but they have also betrayed the extent to which border communities have been alienated and marginalized by the centralizing tendencies of the state in Africa. The case of Migingo captures this reality. Ben Arrous10 has addressed the question of the recurrence and persistence of border problems in Africa, arguing that African governments have failed to directly confront the questions of conflicts, inter-community relations and cross-border cooperation. These are matters of political governance and policy. These points have been reinforced by Clapham, who argues that African claims that the artificial or arbitrary nature of borders should be seen as the cause of problems is not tenable: borders everywhere are artificial, he points out, and the case for African exceptionalism is thus weak.11 Other scholars have argued that current borders have in fact had few deleterious consequences,12 while some point out that border issues have been used as a means to consolidate the central authority of the state.13 Still others agree that Africa has suffered from its partitioned nature, but see the costs of reshuffling states as greater than the hypothetical benefits. These analysts advocate the regional integration of troublesome borderlands.14

**Sovereignty and state failure**

In terms of border issues and their legacy in the independence period, it is necessary to examine the structures that created and maintained those borders. Aseka15 has observed that the bureaucratic and prefectural state apparatus set in place by the colonial administrators was largely adopted in independent Africa, becoming a central focus of the contradictory social forces evident in most African states. The colonial state was absolutist, and their successor states in Africa tended to the same.16 Border questions confronted the newly independent African states with two
major problems. The first related to whether inherited borders should be accepted and respected, or challenged and revised. The second issue related to the nature of policies that needed to be adopted in regard to trans-border transactions, especially where borders effectively partitioned cultural groups. Though closely related, these two problems generated diverse responses and policy shifts among African governments.

The Kenya–Uganda border was one of those that divided peoples who had previous shared a common cultural history – Luyia, Iteso, Sabaot, Pokot, and Luo groups were all divided by the border. By the time Uganda and Kenya attained their political independence in 1962 and 1963 respectively, both the international and local dimensions of border management presented difficult challenges. While it was clear that the local dimension could hardly be ignored, given that it was bound to test the authority and stability of the two administrations in their quests for hegemony, control and nation-building, it was hardly surprising that the two governments first resorted to defining and controlling the border from the centre. In this regard, cross-border activities involving those occupying the borderland region were secondary to the objective of consolidating the national sovereignties of the two newly independent states. Political consolidation required territorial integrity as the most viable means of maintaining national unity and fostering nation- and state-building. African states saw the need to defend their territorial sovereignty above all else.

The OAU charter emphasized the principle of territorial integrity and non-interference in the internal affairs of member states. There was a need therefore to use inherited borders in creating nation sovereignties and imagined national political communities. Anxious in encouraging a national sovereignty – or “dichotomy” to use Barth’s term – the new leaders were compelled, however, to look inward and to rank as their first priority the political, economic and social development of their own central polities. The more the issue of national consolidation received high priority, the less the attention paid to relations between communities that had strong inter-state cultural bonds. The OAU, which was established on 25 May 1963 with the intended purpose of promoting the unity and solidarity of the African states as well as acting as a collective voice for the continent, was central to the sanctioning of colonial boundaries and emphasizing strong feelings of nationalism between and among the various member states. In Kenya and Uganda, as the case was elsewhere in Africa, commitment to the Pan-African ideals only mattered in contexts where they did not conflict with national interests. Like the UN, its mother organization, the OAU stressed in Article III (3) and (4) of its Charter respect for the sovereignty and integrity of each state and the peaceful settlement of disputes through negotiation, mediation, conciliation and arbitration. Although this resolution was critiqued for being unrealistic by four African states – Somalia, Togo, Ghana and Morocco, each with specific border claims of their own in mind – the unanimity of support exhibited by the other African leaders made their cases for ethnic reunifications irrelevant.

By sanctioning the continuity of the colonial boundaries, the OAU became an important institution in the transformation of these borders and in the independent states’ role in institutionalizing policy frameworks that favoured strict adherence to the sanctity of the nation-state borders. As a policy choice, therefore, the independent regimes used the sovereignty argument to refrain from any policy choices that could deal with cross-border issues and populations by retaining the validity of these
borders both as territorial markers and separators. Yet, the reality of the porous nature of borders as evident in the everyday economic, cultural and political activities of the borderland communities made the statist policy choice impractical. The cultural fluidity around the border generated multiple forms of informal (and sometimes covert) initiatives that constantly challenged the state and indeed denied it viable revenue sources.

**It is our fish: Migingo’s dwindling economic fortunes**

The Migingo island dispute represents not only a tussle over sovereignty by Kenya and Uganda, but also illustrates the importance of dwindling economic fortunes in shaping political responses in the region. The formative Kenya–Uganda border demarcations were made by the British way back in 1926, and had not raised any particular issues with regard to Migingo until 2008 – a fact that suggests current issues may be more important than are historical questions. The available sources on the history of the island indicate that Migingo was first inhabited only in 1991. Contestation over the ownership of the island only came to the fore in June 2004, when the Ugandan marine police landed on Migingo, pitching a tent and hoisting the Ugandan flag. By then, Migingo had become a central base for the burgeoning fishing industry in this north-east sector of Lake Victoria. Shared between the three members of the original East African community – Kenya, Uganda and Tanzania – the fisheries resources of Lake Victoria have been economically important to the local populations for decades. Yet, the growing mismanagement of the lake in more recent years has had far reaching consequences in terms of depletion of fish stocks, threats to livelihoods through job losses, interference in power supplies, and food insecurity.22 The Migingo confrontation is all about fisheries, and specifically about the cause of the lake’s declining fish stocks.

The fisheries industry in Kenya and Uganda is currently suffering because of fish scarcity. This scarcity comes at the time when demand for Lake Victoria’s Nile Perch has never been higher, both in local and export markets. According to Okumu,23 the greatest threat to the resources of the lake has come partly from unscrupulous fishing with technically superior nets and trawling gear that depletes a wide variety of marine species, and partly from the dumping in the lake of industrial and urban effluent from the cities of Kisumu, Kampala and Mwanza. The three governments with direct access to the lake have each adopted different responses to the perceived threats to the ecology and management of the lake, failing to find a coherent and unified strategy.

Migingo’s location has fuelled the contestation over its ownership. While the island is located only 10 kilometres off the Sori-Bay in Karungu division, part of Kenya’s Migori district, it is over 100 kilometres from the nearest land point in Uganda. However, the Ugandan authorities claim that Migingo falls within the boundaries of its eastern district of Bugiri. The proximity to the Kenyan shore has enhanced the utility of the island to Kenya’s fishermen who wish to exploit the resources of Nile perch found in the lake. For them, Migingo represents an important base for fishing further out into the lake – into waters that have previously been dominated by fishermen from the Ugandan shores. While it is easier for Kenyans to cross over to Migingo, it is fairly difficult for the Ugandans to do the same. This has compounded a major debate over the fishing rights on the lake between the nationalities of Kenya, Uganda and Tanzania. Kenya owns only 6% of the Lake
Victoria waters, compared to Uganda’s 45% and Tanzania’s 49%. In recent years, Kenyan fishermen have been arrested with increasing regularity by both Tanzania and Ugandan authorities for illegally fishing in foreign waters. Once arrested, the fishermen are required to pay a fine and their fishing gear is confiscated. In an effort to check illegal fishing, the three countries did initiate a fishing revenue tax, but the poor administration of this initiative appears to have only worsened tensions. Indeed, the flare up over Migingo in April 2009 arose when the Ugandan authorities sought to remove several Kenyan fishermen from the island for failure to pay fishing fees.

The contest over fishing rights around Migingo has raised diverse debates. On the one hand there is feeling among Kenyan fishermen – who are in a clear majority – that they should not pay fishing fees to the Ugandans since Migingo is Kenyan. These Kenyan fishermen view the acts by Ugandan authorities as harassment and a clear assault on Kenya’s sovereignty. The nationality issue came to the fore when Uganda’s fisheries minister, Fred Mukisa, ordered the inhabitants of the island to elect a local council leadership and a Migingo Beach Management Unit to be in charge of the affairs of the island. Although the Ugandan authorities required fishermen to pay the fishing fees of 50,000 Uganda shillings (about $ 26), and an annual boat licensing fees of 150,000 Uganda shillings (about $ 78), the Kenyan fishermen refused to pay these charges. This prompted the Ugandan authorities to seek to remove them from the island. For their part, Kenya’s fishermen argue that the Nile perch that bring prosperity to everyone around the lake shore actually breed on the Kenyan side of the lake, swimming over to the Ugandan and Tanzanian waters after hatching. This is a view that seems to be supported by marine studies, thus raising the stakes of the Kenyan fishermen in the economic productivity of the fisheries in Tanzanian and Ugandan waters.

Migingo and the challenge to regional integration

Is the Migingo dispute between Kenya and Uganda about sovereignty, economic resources, or the failure by the independent states to address border challenges? It is evident that the problem cannot be understood without reference to all three issues. The centrality of these issues raises the question of the role of regional organizations, especially the EAC, not only in promoting regional peace and integration, but also in instituting mechanisms that would address the challenge of managing shared resources. Indeed, the greatest political paradox revealed by the Migingo crisis is the exposure of the underlying fragility of the EAC as an arena in which common resources can be effectively utilized and conflicts successfully resolved.

Regional integration has been heralded as a solution to many of the governmental challenges of the East African region. Yet from the outset, the history of regional integration in East Africa generally and in regard to the specific Kenya–Uganda case has been a challenging one. In both countries, national consolidation has always received higher priority than any pretensions towards regional integration. Regional or cross-border matters are more often than not conflated within strident economic competition and strong feelings of nationalism. Regional issues only provide a common platform in contexts where they do not conflict with the national interests of security, prestige and economic advantage. But as Nugent and Asiwaju have observed, there has always been an inherent tension between the ideology of “nationalism” espoused by the political establishment and which assumed that people belonged to one nation or another, and the reality of
borderlands where communities merged into one another in spite of the official lines of demarcation. Thus, whereas the common border provided an opportunity for national consolidation, it also presented a challenge to the new states. Can sovereignty be protected while mutual regional and cross-border interests are secured? This is the challenge that Migingo represents.

As Okumu has insightfully observed, Lake Victoria can best be described as both the heart of the EAC and the basic binding physical feature that defines the East African region. The need therefore to have a regional approach in the management of such shared resources and potentials will surely be central to the future social, economic and political development of the region. The signing of the first treaty establishing East African Co-operation on 6 June 1967 was the first clear response by the independent states of Kenya, Uganda and Tanzania to the fact that the three countries could not socially, economically and politically meet their national objectives without incorporating inter-state integration arrangements within their developmental agenda. The EAC thus came to characterize those broader initiatives that aimed to increase the bargaining power of the respective countries within the international political economy. The uniting strand within such initiatives therefore was a sense that as individual states, they could not readily achieve their goals in isolation from their neighbours. The EAC treaty of 1967 therefore signalled a major development in inter-state relations in the region. The spirit of the first EAC has been revived in later regional social, economic and political arrangements in East Africa, including the East African Community (EAC), COMESA, IGAD, and ICGLR.

These regional organizations have, however, had their share of setbacks, and their fragility is indicated by cases such as the Migingo controversy. Although the first EAC made significant gains, its collapse in 1977 unmasked some of the major contradictions evident in its stumbling progress over a decade of existence. Ideological and economic competition among political elites, as well as their unwillingness to forfeit political and economic sovereignty, lay at the centre of the collapse of the first EAC. It is also significant that the state-centered economic arguments emphasized under the first EAC paid little attention to the views of the peoples who were meant to benefit from the integration initiatives. Although it is too early to see the full impact of the new EAC that is now taking shape in the region, the inability of Kenya and Uganda to speedily resolve the Migingo crisis does not bode well for the future.

Towards a conclusion?

Why, then, has the Migingo crisis not been resolved? And why does it continue to cast a cloud over relations between Kenya and Uganda? While the Kenyan authorities have assumed a diplomatic stance to the crisis, treating the affair as “a non issue”, the Ugandan authorities have been more proactive – perhaps because they believe their sovereignty to be directly under threat. Uganda has evicted the Kenyan administration police who were resident on the island, enforced the fishing revenue tax on Kenyan fishermen, arrested Kenyan citizens on the island who fail to comply with Ugandan regulations, and at one point imposed a curfew on the island. All these activities are viewed by Kenya as provocative and have served to perpetuate a state of hostility between the two countries. Media pronouncements in both countries have done little to diffuse the crisis. In Kenya, many accuse President Mwai
Kibaki’s administration as having made a “weak” response over Migingo, sections of the press calling for the Kenyan military to be deployed on the island to protect Kenya’s threatened sovereignty. In mid-April 2009 a group of Kenyan youths uprooted the main Kenya–Uganda railway to protest against Uganda’s occupation of Migingo. Since the railway has remained a key supply valve for the Ugandan economy since the colonial period, the actions by the youth sent a strong signal.

As if a replay of the political and ideological differences among the political elites that preceded the collapse of the first EAC, the public pronouncements by the politicians have been contradictory at best and inflammatory at worst. Yet all this has been happening without any politician being reprimanded by the EAC. While official rhetoric seems to emphasize the strong economic achievements made by the EAC and indeed the need to fast track these initiatives, the individual political and ideological rivalries generated around the Migingo issue portray a different picture. One wonders whether the EAC will at any point reassert itself amid the varied power interests at play in the region. What perhaps one can say in regard to Migingo is that border issues still remain conflated within the various national sovereign entities, each jealous of its own territorial integrity and national autonomy.

The popular discourses framed around the Migingo crisis are generating both exciting and revealing moments on the various talk shows on local FM radio stations in Kenya and on the internet. Two are particularly significant in trying to appreciate the gravity of the Migingo crisis and how the various interpretations point to its possible resolution. One such discourse revolves around the fact that the lacklustre manner in which President Kibaki has handled the crisis has been due to the fact that he had donated the island to his friend President Museveni of Uganda as a reward for supporting him during the post-election crisis that was witnessed in Kenya in early 2008. The second discourse revolves around the issue that the Migingo crisis is not about the sovereignty of Kenya and Uganda at all, but it is more about President Museveni’s dislike for the Luo people who live around the lake and on the island. Though there are clear justifications by the various framers of these discourses, it is important to emphasize the fact that in the two discourses the centrality of politics in the Migingo crisis is highlighted. It is true from the discussion above that politics could be at the centre of the crisis. However, treating politics in isolation from other critical issues – the divisive legacy of colonial boundaries, competition over trans-boundary resources, the failure to address such trans-boundary issues through regional mechanisms – is to miss the mark. The Migingo crisis has unmasked these issues in ways that seriously question the status of the post-independent state in Africa in its pretensions towards addressing them.

Notes
4. Glassner, Political Geography.
5. Mbembe, “At the Edge of the World,” makes a convincing argument as to the nature of space and territoriality in pre-colonial Africa.
7. See Davidson, *Black Man’s Burden* and Donnan and Wilson, *Borders*.
8. Katzenellenbogen, “It Didn’t Happen at Berlin,” further argues that by 1884 European powers had been grabbing pieces of Africa for many years and many boundaries had already been set.
14. The term borderlands refers to regions lying along and across the boundary separating one country from another. Hansen, *Border Economy*, describes borderlands as “sub-national areas whose economic and social life are directly and significantly affected by proximity to an international boundary.” See also Nugent and Asiwaju, *African Boundaries*.
16. Ibid.
17. Ojo, “International Actors.”
21. Touval, “Partitioned Groups and Inter-State Relations.”
23. Ibid.
25. Adetula, “Regional Integration in Africa.”

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