

# The Orange River Boundary and the Ongoing Border Dispute Between Namibia and South Africa

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## Introduction

This chapter provides an overview of the ongoing dispute between Namibia and South Africa over the position of their shared border along the Lower Orange River, which has been an important resource for animals and humans living in its proximity for millennia.<sup>1</sup> With a total length of 2,200 km, the Orange River is the longest river in South Africa, and its basin – which spreads out over Lesotho, South Africa, Botswana and Namibia – covers an astonishing area of 1,000,000 km<sup>2</sup>.<sup>2</sup> Therefore, the river is an indispensable source of water – especially in its lower section, which flows through desert landscapes with very little annual rainfall.<sup>3</sup>

Today, the Orange River forms part of several (inter-)national borders: between Lesotho and South Africa, between the Eastern Cape and the Free State, between the Free State and the Northern Cape, and between South Africa and Namibia. Prior to the formation of today's nation states, it had been (part of) the colonial borders between the Cape Colony and the Orange Free State, between German South West Africa and the Cape Colony, between German South West Africa and the Union of South Africa, between

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- 1 The Orange River – or *Oranjerivier* in Afrikaans – owes its name to Colonel Robert Gordon, who named it after the Dutch House of Oranje in 1779. Alternative names for the river are *Senqu River* in Lesotho, and *Grootrivier* (Afrikaans for 'great river') or *Gariep* (Afrikaans form of !*Garib*, the Khoekhoegowab word for 'river') in South Africa. Conley and van Niekerk 2000: p. 135; Raper et al. 2014: p. 147; Penn 1994: p. 93. Archaeological finds suggest that humans have been living and moving alongside the river, habituating in seasonal or (semi-)permanent settlements close to the riverbank for thousands of years. There are various petroglyphs along the lower Orange River dating back up to 10,000 years, presumably created by ancient San peoples. See Rudner and Rudner 1968; and Morris 2011.
  - 2 For a detailed description of the river see e.g., Kruchem 2012; for an early account of the lower Orange River see Cornell 1921.
  - 3 The average annual rainfall in southern Namibia ranges from <50 mm on the coast, 50–100 mm further inland and 100–150 mm in the south-eastern corner of Namibia. Suhling, Martens and Marais 2009: p. 290.

South West Africa and the Union of South Africa, and between South West Africa and the Republic of South Africa. And since before the arrival of European colonisers in the region, it has separated Little Namaqualand south of the river from Great Namaqualand north of the river.<sup>4</sup>

The exact position of the current border between South Africa and Namibia has been subject to ongoing discussions between the two states for decades. The last officially agreed upon position of the border, which is located at the northern bank of the river, was determined in the Anglo-German Treaty of 1890, an agreement between Great Britain and Germany resolving territorial claims between the two colonial powers in Africa (as well as Heligoland in the North Sea).<sup>5</sup> Despite several negotiations and alleged agreements between Namibia and South Africa, to officially move the border to the middle or *thalweg* of the river, the issue has not been resolved to date.<sup>6</sup>

### The Ambiguity of the Status Quo: Current Situation and Resultant Issues

The international disagreement on the actual position of the border between Namibia and South Africa has existed for more than 30 years. Whereas South Africa insists that the border is on the northern bank of the river, Namibia claims that it lies in the middle of the river. Although there have been several attempts to negotiate and settle the issue, no official agreement has been reached in the three decades since Namibia's independence in 1990. For Namibia, the issue remains as relevant today as it was when it was first brought up. For without a formal agreement on either a median line or *thalweg* boundary, Namibia is virtually deprived of independent access to and influence over the river and its water.

Although there are agreements that regulate and ensure Namibia's access to the river's water, giving Namibians permission to tap the river for irrigational purposes, they do not enjoy equal access to it.<sup>7</sup> The rights to harness the lower Orange River in its entirety lie solely with South Africa – for example, in regard to fishery or the navigation of vessels. Although it might seem that the Namibians are the only party to potentially profit from a renegotiated border agreement, it has been argued that dissolving the dispute would also be beneficial for South Africa. Anton Earle, Daniel Malzbender, Anthony Turton and Emmanuel Manzungu assert that the delineation of the border and resolution of the dispute would ultimately benefit both countries: 'Although South Africa has repeatedly stressed that it will not object to the use of Orange River water by Namibia

4 Penn 1995: p. 24

5 Also called 'the Heligoland-Zanzibar Treaty'. See e.g., Birken 1974; Akweenda 1997.

6 Maletsky 04.1999; Maletsky 07.1999; Meissner 2001: 35. The German term *thalweg* describes a line connecting the deepest points in the river course. Demhardt 1990: p. 357; Akweenda 1997: p. 55.

7 In 1993 it was determined that Namibia is allowed to use up to 0.5 km<sup>3</sup> of the river's water per year. National Planning Commission, 1993, Transitional National Development Plan 1991/92–1993/94. Windhoek. (As denoted in: Food and Agriculture Organization of the United Nations, 1997, Irrigation Potential in Africa: A Basin Approach. FAO Water and Development Division: p. 77).

and although bilateral cooperation between the two countries is good, a solution to the border disagreement would be beneficial for joint basin management in the future.<sup>8</sup>

Regarding reparations, South Africa's refusal to move the border from the north bank to the middle of the river could be viewed as problematic. Considering the two countries' entangled histories, it seems reasonable for Namibia to expect a certain level of concession from their former occupying power. Irrespective of South Africa's own traumatising past, there is an argument to be made that even though Namibia has been independent for three decades, South Africa still occupies the superior position.<sup>9</sup> Namibia is still highly dependent on South Africa in many regards.<sup>10</sup> Chris Saunders argues that – although often portrayed differently to the public – the relationship between the two countries remains very unequal, with South Africa still being the 'regional hegemon' – both economically and in terms of population figures:

In every aspect except area...Namibia is a small state, with a total population that has always been smaller than that of Cape Town. South Africa's population is well over 20 times that of Namibia. South Africa has a far more developed civil society and many of its key institutions predate apartheid and therefore have a long history. Whereas Namibia has a relatively small economy, based mainly on mining, South Africa's economy – the most industrialised and diverse on the continent – is more than three times the size of the rest of the Southern African regional economies combined.<sup>11</sup>

In fact, South Africa's decision-making often affects Namibia directly. Regarding the Orange River, the Namibian population local to the Lower Orange River is highly dependent on South Africa's water management and allocation upstream. Through the construction of dams and reservoirs in the 1960s and 1970s, large quantities of water are held back in South Africa.<sup>12</sup> In addition to the impacts of climate change and illegal water drainage in the upper part of the river, this has at times led to the severe drying up of the Lower Orange River at certain sections.<sup>13</sup>

Overall, Namibia is excluded from any decision-making regarding the river. Even though there are international institutions and commissions responsible for managing the river and its basin, most notably the Orange-Senqu River Commission (ORASECOM), South Africa owns the biggest share of the river and its basin, and thus also holds the decision-making power. There have been several instances where Namibia has directly suffered from South Africa's decisions regarding the river. According to people living in Noordoewer, there have been urgent requests from the Namibian authorities to release

8 Earle et al. 2005: p. 26

9 It seems that because of South Africa's history, many historians tend not to regard South Africa as a colonial state. For more on this see the JSAS special issue: 'The South African Empire' (2015), *Journal of Southern African Studies* 41(3).

10 Perhaps one of the most notable and obvious examples is the linkage of the Namibian dollar to the South African rand. While it is possible to use both currencies interchangeably in Namibia, it is not possible to pay with Namibian dollars in South Africa.

11 Saunders 2016: p. 347–348

12 The largest of these schemes was the Orange River Development Project. See: Orange River Project 1968.

13 Cloete 2019; Demhardt 1990: p. 359.

parts of the water from the South African dam reservoirs prior to rainy season, in order to avoid severe flooding in the river's lower sections. However, these requests have been thoroughly ignored, which at several instances resulted in grave floods that destroyed houses, crops, and livelihoods – most recently in December 2021/January 2022 and in November/December 2022.<sup>14</sup> In recent years, plans to construct a dam about 6 km upstream of the Noordoewer–Vioolsdrift border have been developed.<sup>15</sup> The proposed water scheme would help regulate water flow and prevent droughts and floods in the lower section of the river, and is therefore highly anticipated by Namibian stakeholders.<sup>16</sup> However, South Africa has recently put a hold on the project and is considering abandoning the plans, claiming that the project would not be profitable enough. As Namibia cannot go forward with the project on its own, the dam will most likely never materialise.

Another aspect that appears to be of interest to both parties is mining. The Orange River Mouth is situated in a region rich in diamond deposits, both on- and offshore. On the Namibian side, this area lies in the Tsau ǁKhaeb (Sperrgebiet) National Park.<sup>17</sup> From 1930 until Namibia's independence in 1990, the mining rights in the Sperrgebiet were solely owned by CDM, a subsidiary of the De Beers Group.<sup>18</sup> In November 1994, the Namibian Government and the De Beers Centenary AG signed a co-ownership deal which transformed CDM into the 50/50 joint venture Namdeb Holdings (PTY) Ltd.<sup>19</sup> Namdeb operates in several mining areas along the Namibian coast and along the Orange River. As there are large diamond deposits in the sea around the Orange River Mouth, they are investing in offshore diamond mining through Debmarine Namibia, a subsidiary of Namdeb Holdings (PTY) Ltd. Since the location of the maritime border between Namibia and South Africa is dependent on the exact position of the border at the mouth, Namdeb – and the Namibian government – might benefit from an official relocation of the border line to the middle of the river. However, it is equally possible that they profit from the current ambiguity of the border position.<sup>20</sup>

The same seems to be the case for other companies operating alongside or on the river. For example, it is striking that there are several river-rafting and canoeing companies operating on the Namibian side of the river, which theoretically should not be possible if the border was on the Namibian bank. However, the companies work closely with the South African border posts. As long as they do not cross over to the South African

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14 As the interviewees preferred to stay anonymous, I have only included their initials. A.T., Noordoewer, 09 November 2021, interview done by Wanda Rutishauser; Albertz 2022.

15 Cloete 2018

16 P.E. and K.C., Noordoewer, 10 November 2021, interview done by Wanda Rutishauser.

17 Also known as the Sperrgebiet or Diamond Area 1. It is a restricted territory proclaimed in 1911 by the Germans. The area stretches along the Namibian coast from latitude 26 degrees in the North to the Orange River in the South and extends up to 137 km inland. Corbett 1998: p.14.

18 Initially, there had been several mining companies operating in the region, which have then been consolidated by Ernest Oppenheimer into the Consolidated Diamond Mines of South West Africa (CDM) in 1920. De Beers bought CDM in 1930. Corbett 1989: p. 14.

19 Ndivanga 1994

20 As long as the exact maritime border is not demarcated, Debmarine could potentially also engage in offshore mining in the disputed area, which would be highly problematic if the border were to be unequivocally set at the Namibian bank line.

riverbank, they are allowed to run canoeing trips on the river and have been doing so since the mid-1990s.<sup>21</sup>

## Refiguring the Border Line: Official Negotiations Since the 1990s

During the run-up to Namibia's independence in 1990, the emerging government tried to renegotiate the position of the border. As a strategic move, the newly independent state anchored these territorial claims in its very foundation. The Constitution of the Republic of Namibia states that the Namibian–South African border runs in the middle of the river:

The national territory of Namibia shall consist of the whole of the territory recognised by the international community through the organs of the United Nations as Namibia, including the enclave, harbour and port of Walvis Bay, as well as the off-shore islands of Namibia, and *its southern boundary shall extend to the middle of the Orange River.*<sup>22</sup>

Interestingly, when the Namibian Constitution was written and adopted in early 1990, South Africa had not agreed to any of the suggested territorial changes. At the time, the relocation of the Orange River boundary seemed relatively trivial, compared to the question of Walvis Bay and the Penguin Islands. Walvis Bay is the only natural deep-water harbour along Namibia's coastline and as such has been of great interest and importance, particularly in regard to trade. Britain annexed the territory, as well as the so-called Penguin Islands (a group of small islands scattered along the Namibian coast) in 1878. By the time Germany established their colonial rule in German South West Africa, both Walvis Bay and the Penguin Islands had been incorporated into the British Cape Colony.<sup>23</sup> Germany formally agreed to these South African exclaves by signing the Anglo-German Agreement of 1890 – a decision they would later come to regret. Therefore, the claim anchored in the Namibian Constitution has never had any actual legal foundation. Nevertheless, it was a well-considered political move to raise international awareness and support for the Namibian claim. Sakeus Akweenda (1997) points out the significance of the fact that 'the southern boundary is the only line expressly identified by the Constitution'.<sup>24</sup>

In the early 1990s, the newly formed Namibian government tried to persuade South Africa into officially moving the border to the middle of the Orange River and handing over the exclaves Walvis Bay and the Penguin Islands. One of its main arguments was that it would not be reasonable to base the position of the boundary and control over Walvis Bay and the Penguin Islands on a colonial agreement between the two former colonial powers, Germany and Great Britain. After all, Namibia had been a South African man-

21 A.T., Noordoewer, 09 November 2021, interview done by Wanda Rutishauser; S.G., Noordoewer, 11 November 2021, interview done by Wanda Rutishauser.

22 Namibian Constitution 1990, art. 1 par. 4. Emphasis added.

23 See e.g., Griffiths 1994, and Evans 1990.

24 Akweenda 1997: p. 115

date and de facto colony for much longer than they had ever been under German occupation.<sup>25</sup>

There were several rounds of negotiations regarding Walvis Bay, the Penguin Islands, and the Orange River boundary.<sup>26</sup> It seems that South Africa was much more reluctant to give up their exclaves than to give into moving the border. Allegedly, South Africa agreed to move the border to the middle of the river in 1991, and a joint technical committee was established to work out the details of the new border.<sup>27</sup> At the time, South Africa still had high hopes of keeping their exclaves. Therefore, South Africa's move of seemingly agreeing to give in to Namibia's third territorial claim – the river boundary – might have been just that: a political move. And it seems that, at the time, people really believed that the issue had been resolved.

It was not until the early 2000s that the issue re-emerged in the public sphere. By the late 1990s, the joint technical committee appears to have been dissolved. When questioned by Christof Maletsky of the *Namibian*, Namibian Government officials explained that 'the delay [in resolving the border issue] could be attributed to the Kasikili border dispute with Botswana which was in the International Court of Justice at the Hague in February [1999]' and on which 'most of their energy had been spent [...] in recent years'.<sup>28</sup> What happened with the endeavours of the joint technical committee remains unclear. Presumably, South Africa no longer felt the obligation to go through with the project, after they handed over Walvis Bay and the Penguin Islands in 1994. This also marks the moment in time when South African apartheid officially ended, and the first independent elections were held. Given this, perhaps the issue of redefining the border was simply overlooked in the excitement of the moment. It seems highly improbable that the new South African government was less likely to agree on a fair borderline than the old one.

However, no formal agreement has been signed to date. In 2001, the South African administration reportedly declared that they had no intention of moving the border, by referring to the principle of *uti possidetis* with regard to African borders at the time of independence – as determined by a resolution of the Organization of African Unity (OAU) in 1964.<sup>29</sup> The OAU resolution in question states that all member states 'pledge themselves to respect the borders existing on their achievement of national independence'.<sup>30</sup> When the OAU was replaced by the African Union (AU) in 2002, these principles were again adopted in its constitutive act.<sup>31</sup>

This sudden reluctance to move the border, after a decade of negotiations and joint work, took Namibia by surprise. There was a second round of negotiations in 2004 with a Namibian delegation led by Hidipo Hamutenya, then Minister of Foreign Affairs, and Hifikepunye Pohamba, then Minister of Land, Resettlement and Rehabilitation,

25 Barnard 1994: p. 127

26 See e.g., Evans 1993.

27 Namibia/South Africa: Joint Statement 17. May 1991. Retrieved from: PA-X, Peace Agreement Access Tool [www.peaceagreements.org](http://www.peaceagreements.org).

28 Maletsky 04.1999

29 Turton et al. 2004: p. 385

30 Organization of African Unity (OAU), AHG/Res. 16(I), 21 July 1964. Emphasis added.

31 Organization of African Unity (OAU), Constitutive Act of the African Union, 11. July 2000. Art. IV.

traveling to Cape Town in February 2004.<sup>32</sup> The South African delegation was led by Nkosazana Dlamini-Zuma, then Minister of Foreign Affairs and Minister Phumzile Mlambo-Ngcuka.<sup>33</sup> However, these negotiations also came to nothing. Legal practitioner Titus Ipumbu, who was part of the Namibian delegation, blames the ‘political atmosphere prior to and after the SWAPO elective Congress of 2004’, and the ‘failure of [the] leaders to take [their] legal advice seriously’, which according to him, ‘started at the level of national preparatory committee and continued in South Africa’.<sup>34</sup>

In recent months it has been revealed that the two governments are in fact still talking about the issue. According to *The Namibian* and the *Windhoek Observer*, a bi-lateral meeting between representatives of the two governments, including the presidents in office, Hage Geingob and Cyril Ramaphosa, was scheduled for 9 to 12 April 2022, but had then been postponed until further notice just days before it was supposed to take place.<sup>35</sup> It is unclear at this stage why the meeting has been delayed, but it has been speculated that it was due to the fact that Namibia wanted to include the Orange River border disagreement in the agenda, which South Africa was allegedly not on board with.<sup>36</sup> According to the Ministry of International Relations and Cooperation, new dates will be communicated to the public at a later stage. If anything, this at least shows that Namibia has not given up on trying to renegotiate the borderline and resolving the dispute. Whether South Africa is ever going to agree to move the border remains to be seen.

## The Making of a Boundary: Colonial Treaties and Proclamations

To understand how the north bank borderline came to be, it is essential to look at the origins of the border function of the river. There have, of course, been people living along the Orange River long before the arrival of the Europeans. In precolonial times, the Lower Orange River and its hinterland was primarily inhabited by Khoekhoen and San societies.<sup>37</sup> Even then, the river did not represent an insurmountable barrier, as people were able to cross it by swimming over or walking through the water at the river’s shallow sections.<sup>38</sup> Prior to the construction of bridges, there had been several pontoons and drifts through which people were able to cross over. The importance of these drifts is reflected in various place names in southern Africa, especially along the Orange River. Interestingly, three of the current crossings are situated at such places: the ferry at Sendelingsdrift, the bridge at Noordoewer-Vioolsdrift, and the bridge at Velloorsdrift-Onseepkans.<sup>39</sup> Even though the river has always been a geographic disjuncture, it has not always been a dividing line

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32 Ipumbu 2014

33 Ibid.

34 Ipumbu 2014; Titus Ipumbu, *Windhoek*, 07. November 2020.

35 Vatileni 2022; *Windhoek Observer* 2022.

36 Ibid.

37 For a detailed overview and history of the different groups and societies that inhabited the Lower Orange River in the 18<sup>th</sup> century see Penn 1995.

38 See Cornell 1921; Penn 1994 and Willcox 1986.

39 A popular story amongst local people explains that the name Vioolsdrift is derived from a certain ferryman who used to play the violin for the people crossing the river.

between two territories inhabited by two different groups, but rather functioned as the fertile centre of an otherwise arid landscape.<sup>40</sup>

The Lower Orange River had first been proclaimed a territorial boundary on 17 December 1847 by the Cape Colony, which was part of the British Empire.<sup>41</sup> Sir Harry Smith, the British Governor of the Cape of Good Hope, proclaimed the northern borders of the Cape Colony as commencing at:

the source of the Kraai River; thence down the left bank of the last mentioned River, where it falls into the Orange River, and thence, following the source of the last mentioned River [Orange], along its *left* bank to where it empties itself into the Atlantic Ocean.<sup>42</sup>

The wording ‘on the left bank’ puts the border on the southern bank of the river, thus leaving the river itself and the river islands unclaimed by European powers. At that time, the territory north of the river was not yet occupied by Europeans. But even after the 1847 proclamation of the border, the river did not constitute a closed frontier. As Penn notes, ‘the Orange, though in itself a physical boundary, did not so much constitute a frontier as fall within a frontier zone’.<sup>43</sup> The river boundary did not become an actual official border until four decades later, when the Germans established their colonial rule in present-day Namibia – at least not in the western understanding of what constitutes a border. When Imperial Germany proclaimed German South West Africa as a protectorate in 1884 – which was approved by the Berlin Conference in 1885 – they claimed the area north of the Orange River.

With the proclamation of the Cape Colony’s new neighbour, the two colonial powers felt it was necessary to negotiate the exact borderline between the two territories.<sup>44</sup> They appointed Mr Percy Anderson and Mr Friedrich Krauel to negotiate an agreement to settle various issues relating to the two colonial powers’ interests.<sup>45</sup> The resulting agreement – the Anglo-German Treaty – was signed by both parties on 1 July 1890 in Berlin. This treaty had a fundamental impact on German South West Africa, although its main objective was the exchange of influence over Heligoland and Zanzibar.<sup>46</sup> In regard to German South West Africa, the agreement resulted in the annexation of the so-called Caprivi Strip along the Zambezi River in the north-eastern part of the German territory, and in the demarcation of the southern border on the northern bank of the Orange River.<sup>47</sup>

In regard to Germany’s territories in South West Africa, the results of this treaty turned out to be unfavourable. On the one hand, they failed to get hold of Walvis Bay, the only natural harbour on the entire coastline of the territory, apart from Lüderitz Bay.

40 See Penn 1994; Willcox 1986.

41 Barnard 1994: p. 126

42 Taken from Akweenda 1997: pp. 104–105. Original: Colonial Office 48/279, p. 116; Cape Government Gazette No. 2195 of 23 December 1847. Emphasis added.

43 Penn 1994: p. 21

44 Barnard 1994: p. 126

45 Akweenda 1997: p. 74

46 Which is why the agreement is also known as the Heligoland-Zanzibar Treaty.

47 Nowadays known as the Okavango Strip.

And on the other hand, they agreed to move the Orange River border to the northern bank of the river, as determined in article 3 of the treaty:

In South West Africa the sphere in which the exercise of influence is reserved to Germany is bounded:

To the South at the mouth of the Orange River, and ascending the *North bank* of that river to the point of its intersection by the 20<sup>th</sup> degree of East longitude.<sup>48</sup>

According to Imre Demhardt, this was due to the German imperial negotiators' incompetence.<sup>49</sup> However, it seems highly unlikely that the Germans simply overlooked the fact that the border would be moved to the northern bank. Why they failed to negotiate the position of the border to the thalweg or median line of the river, as is custom for international river boundaries, remains a site of speculation.<sup>50</sup>

When looking at other river boundaries, there seem to be three ways to demarcate them: the border can either be one of the river banks, it can be the river itself, or fall somewhere in the middle of the river.<sup>51</sup> If the borderline is located within the river, there are typically three ways of determining said line: it can either be the median line, the thalweg, or any arbitrary line.<sup>52</sup> The median or middle line is defined as 'a line of equal distance from both banks at the same time of a water level that is determined by mutual consent'.<sup>53</sup> The water level is then usually defined as either the 'mean high water' or 'mean low water'.<sup>54</sup> The alternative option – the thalweg – has been the prominent choice since the early 19<sup>th</sup> century.<sup>55</sup> It is defined as 'a connecting line between the deepest points in the main current of the river course. Normally applied to navigable rivers only and usually identical with the downstream navigation channel'.<sup>56</sup> Both options have their advantages and disadvantages. As explained by Kristian Gleditsch:

The thalweg will often pass very close to one of the banks, and a division by the middle line would in many places give one State the whole navigable channel, the other State a broad band of useless shallow waters or even sand banks.<sup>57</sup>

An additional problem that affects both models, is the question of how to deal with islands in the river. According to legal practitioner Sakeus Akweenda, the title to 'islands existing or arising within a river which forms an international boundary belongs to the sovereignty of the State on whose side of the thalweg or middle line they are located'.<sup>58</sup>

48 Anglo-German Treaty 1890: Art 3. Emphasis added.

49 Demhardt 1990: p. 358

50 On the different possibilities to demarcate an international river boundary see Boggs 1937; Biger 1988; and Donaldson 2011.

51 See also the similar border dispute between Malawi and Tanzania at Lake Malawi. E.g. Okumu 2010: p. 293–294.

52 Boggs 1937: p. 446

53 Demhardt 1990: p. 357

54 Boggs 1937: p. 451

55 Boggs 1937: p. 451; Gleditsch 1952: p. 18.

56 Demhardt 1990: p. 357

57 Gleditsch 1952: p. 18

58 Akweenda 1997: p. 60

Although both options have their pros and cons, one essential aspect is that in terms of general access to the river's water – e.g., for irrigational purposes – both options provide each riparian state with water rights.

Herein lies the main problem of the shore or bank line. It gives one state full water and mineral rights over the river, while leaving the other state with no access at all. Furthermore, as comprehensible as the term *bank line* sounds in theory, it is rather impractical in practice, as it does not specify which water mark is to be taken as the official line.<sup>59</sup> And therein begin the problems with the Orange River boundary, which from 1890 onwards was a bank line situated at the northern river bank, as agreed upon by Germany and Great Britain in the Anglo-German Treaty. This resulted in a somewhat absurd situation:

[The] arrangement was bound to confuse. While the British and German spheres of influence met each other on the north bank of the Orange River, the Cape boundary was still on the south bank because Proclamation 29 of 1847 had not been superseded. The stream itself, the stream channel and the islands were therefore within British territory but outside the Cape Colony.<sup>60</sup>

But this technicality did not prevent the Cape officials from claiming the territory, as they were the 'local custodians of British authority'.<sup>61</sup> According to Demhardt, the German colonial administration realised their mistake in signing off this border agreement a few years later. In 1906, the Germans tried to salvage at least minimal access to the river, by contesting the interpretation of the exact position of the borderline.<sup>62</sup> However, the British government disputed their attempts.

As Namibia was under South African occupation for the most part of the 20<sup>th</sup> century, the Orange River boundary's border function was largely suspended, as South Africa tried to integrate South West Africa into their territory.<sup>63</sup> Thus, during the 75 years of South African occupation of present-day Namibia, there were no negotiations regarding the position of the border. Whereas during the 19<sup>th</sup> century many efforts were made to create and demarcate this border, for the most part of the 20<sup>th</sup> century, South Africa rather tried to connect the two sides – for e.g., through the construction of bridges. All three bridges over the lower Orange River have been constructed during South African rule. The Ernest Oppenheimer Bridge, which connects Oranjemund and Alexander Bay at the river mouth, was built in 1951.<sup>64</sup> The bridge connecting Noordoewer and Vioolsdrift had been in planning since the 1920s and, after long discussions on whether the bridge should be built at its current location or rather at Goodhouse, it was eventually constructed in 1956.<sup>65</sup> The bridge connecting Onseepkans and Velloorsdrift was built in 1959, and the fourth and final river crossing between Namibia and South Africa, the ferry

59 Demhardt 1990: p. 357

60 Barnard 2000: p. 210

61 Ibid.

62 Demhardt 1990: p. 358

63 See Cockram 1976; and Silvester 2015.

64 Corbett 1989: p. 50

65 National Archives of Namibia (NAN), SWAA A376/26 vol. 2. Director of Public Works, Pretoria to the Secretary of South West Africa, Windhoek, 24 October 1956.

at Sendelingsdrift in the !Ai-!Ais/Richtersveld Transfrontier Park, officially started operations in 2007 at the site of an old pontoon that had last been in use in 1988.<sup>66</sup> Until Namibia's independence, the river crossings were completely open. The border posts were only erected in 1990 – first on the Namibian border and later also on the South African side. Before that, locals regularly crossed the river for work or grocery shopping, or to visit friends and family on the other side.<sup>67</sup> With the closing of the border and the establishment of border posts, daily border crossings decreased significantly.

## Conclusion

The Orange River – or any river for that matter – can both be understood as a dividing and uniting entity. On the one hand, it constitutes a distinct physical barrier, separating one shore from the other, and on the other hand it also represents a life-giving resource to all living organisms in its proximity. In a drought-stricken desert landscape such as the Lower Orange River region, it provides otherwise scarce grazing lands and water to the people who inhabit these spaces.

Although the Orange River might already have had a border-like function in certain parts of the river in precolonial times, it only became an actual demarcated frontier zone in 1847. Like most African borders, which have been drawn at random by European imperialists in the 19<sup>th</sup> century, the current internationally recognised borderline traces back to an agreement negotiated by two foreign powers over a hundred and thirty years ago. The fact that there have been several occasions in which delegates from both sides met to renegotiate the position of the border, suggests that South Africa at least partly supports the validity of Namibia's claim. While it initially looked like the two parties came to an agreement in the late 1990s, the jointly established technical committee did not lead to any changes. To this day, it remains unclear why the issue has not yet been resolved. Perhaps, at this point, the issue is simply not pressing enough to either one or both parties. There could also be other undisclosed elements that factor into the negotiation. Another possibility is that perhaps the advantages of the ambiguity of the current situation outweigh the desire to resolve the issue. Whatever the underlying reasons, part of the river and its northern bank have been proclaimed official state territory by both Namibia and South Africa for the past thirty years.

It is, however, likely that the issue will become more pressing in the near future. With climate change and the severe impact of river floods and droughts along the Lower Orange River, at least partially caused by upstream water management, South Africa's absolute power of decision over the river has serious implications for the local Namibian population. This might be reflected in Namibia's current attempts to bring South Africa

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66 Cloete 2007

67 According to several locals in Noordoewer, the main grocery store used to be situated in Vioolsdrift on the South African side of the river – so they would do most of their everyday shopping there. With the closing of the border, that was suddenly no longer possible. M.C., Noordoewer, 10 November 2021, interview done by Wanda Rutishauser; I.A., Noordoewer, 10 November 2021, interview done by Wanda Rutishauser.

back to the negotiating table. Perhaps this time, over three decades into Namibia's independence, the two parties can finally come to an agreement and settle the dispute once and for all.

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