

The Principle of Uti Possidetis Juris in Modern International Law (Some Aspects and the Context of Georgian Statehood)

Abstract

The article discusses the essence of the principle of Uti Possidetis Juris, the historical evolution of the doctrine of Uti Possidetis and the application of this principle in modern international law.

For a sovereign state territory and borders are of the most importance in the international political system. In this context, the importance of the principle of Uti Possidetis regarding achieving stability in relations between states and avoiding territorial conflicts is emphasized. It is also mentioned that in many cases the application of this principle has caused border disputes.

The article analyzes the application of this principle in the case of the dissolution of the former Soviet Union, presents an analysis of the possibility of using this principle in the context of the territorial integrity and border determination of Georgia in the context of the territorial conflicts of Abkhazia and South Ossetia. It is highlighted that after gaining independence, on the basis of Uti Possidetis Juris, the former administrative borders of the Georgian SSR were transformed into the international borders of independent Georgia, which is supported by the practice of democratic states, and Abkhazia and the so-called South Ossetia cannot use the principle of Uti Possidetis for separatist purposes.

The article presents problematic aspects, conclusions and opinions on the discussed issue.

Keywords: territorial integrity, borders, secession

Introduction

This article examines the *uti possidetis juris* principle—a concept in international law that determines the state borders of newly sovereign states based on their administrative boundaries prior to separation. The aim of this article is to explore the evolution of this principle and illustrate its application in contemporary international law. It also seeks to analyze the application of this principle in the aftermath of the dissolution of the former Soviet Union, particularly in the context of establishing territorial integrity and borders for Georgia, and to discuss the potential of applying this principle in the context of establishing state borders and gaining international recognition. The application of the *uti possidetis juris* principle plays a significant role in this process for any state.

Uti Possidetis Juris is recognized as a doctrine of customary international law, which, during the era of decolonization, played a central role in determining the territorial sovereignty and borders of newly formed states.¹ Nowadays, it is universally accepted that the borders of newly established states are determined using the *uti possidetis juris* principle as a norm of customary international law. This principle is applied even when it appears to contradict the principle of self-determination of peoples.² The *uti possidetis* doctrine asserts that new states arising from decolonization inherit the administrative boundaries that existed during the colonial period at the time they gained independence.³ Recent decades have confirmed that *uti possidetis juris* is employed not only in the context of decolonization but also in all instances where the borders of new states need to be established.⁴ *Uti possidetis juris* was applied in the cases of Czechoslovakia, Yugoslavia, as well as the states created from the dissolution of the Soviet Union.⁵

In international law, *uti possidetis* is the principle that converted the administrative boundaries established during the colonial era into international borders and plays a crucial role in the modern era.⁶ The application of the *uti possidetis juris* principle in the aftermath of the Soviet Union's collapse was supported by the practice of democratic states and played a

¹ Shaw, M. N., *The Heritage of States: The Principle of Uti Possidetis Today*. 67 BRIT. Y.B. INT'L L. 1996. N 1, 115.

² *Ibid.*, p. 5.

³ Ratner, S. R., *Drawing a Better Line: Uti Possidetis and the Borders of New States*, 90 AM. J. INT'L L. 1996. N4, 590.

⁴ Walter, Ch. et al. eds., *The Principle of Uti Possidetis Juris: How Relevant Is It for Issues of Secession?* by Anne Peters in "Self-determination and Secession in International Law". 2014. 95.

⁵ Evison, J. A., *MIGs and Monks in Crimea: Russia Flexes Cultural and Military Muscles, Revealing Dire Need for Balance Of Uti Possidetis and Internationally Recognized Self-Determination*, 220 MIL. L. REV. 2014. 95.

⁶ ICJ Judgement, *Case Concerning the Frontier Dispute (Burkina Faso/Republic of Mali)*, General List No. 69. 22.12.1986. Para 23.

significant role in the context of the international recognition of Georgia's former Soviet administrative borders.

The article explores problematic aspects, conclusions, and viewpoints on the issue presented.

1. Historical Evolution of the Uti Possidetis Doctrine

The term Uti Possidetis originates from Roman law, where it referred to property rights rather than territorial sovereignty. It can be argued that the Roman precursor shares little in common with the principle of uti possidetis juris in modern international law.

The doctrine of uti possidetis juris in modern international law emerged in Latin America in the nineteenth century.⁷

In many respects, the uti possidetis juris doctrine of international law represents a departure from its Roman law antecedent. While uti possidetis in Roman law addressed property rights, in international law it pertains to territorial sovereignty. In Roman law, it created only a presumption of rights, whereas in international law it confers absolute rights. Roman law recognized legal rights based on actual possession, while international law disregards actual possession and acknowledges rights based on colonial administrative boundaries.⁸

Historically, the uti possidetis principle has evolved in two forms: Uti Possidetis Juris and Uti Possidetis de facto.⁹ Uti Possidetis Juris is the form used today, whereas Uti Possidetis de facto belongs to the past.

To better understand the modern doctrine of Uti Possidetis Juris, it is essential to examine the events that have unfolded since its inception two centuries ago. In the 19th century, Latin America witnessed the decline of colonialism, initiated by Spain and Portugal, which had previously laid claim to all territories south of the United States and Canada. This period marked the emergence of new states embroiled in border disputes, a direct outcome of the colonial withdrawal. Spain and Portugal had not clearly delineated the borders for these new states. Consequently, the territories of newly independent states were rapidly changing, leading to the creation of new states. To circumvent perpetual conflicts over their borders,

⁷ Shaw, M. N., *Peoples, Territorialism and Boundaries*, 8 EUR. J. INT'L L. 1997. 493.

⁸ *Ibid*, 492.

⁹ *Ibid*, 594-595. See Ratner, S.R., "Named Paper," *supra* footnote 3, 594-595.

these nascent states soon adopted the *uti possidetis* rule as a mechanism to define their borders.¹⁰

As noted, two versions of *Uti Possidetis* emerged. The *Uti Possidetis de facto* recognized sovereignty based on actual possession of the territory. In contrast, the *Uti Possidetis Juris* doctrine overlooked actual land ownership, focusing instead on administrative boundaries set by colonial powers before the emergence of new states.¹¹

The administrative boundaries applied under *Uti Possidetis Juris* to delineate borders were not international borders, and the administrative units enclosed within these boundaries did not serve as sovereign predecessors to the newly established countries. *Uti Possidetis Juris* employed various types of administrative boundaries—some purely administrative, others international—to define the borders of new sovereign states. The application of *Uti Possidetis Juris* did not necessitate the legal inheritance of colonial formations.¹²

Over time, *Uti Possidetis Juris* evolved into the prevailing doctrine for determining postcolonial boundaries.¹³ The national borders of newly independent countries aligned with their former colonial borders, leaving no *terra nullius* on the continent.¹⁴ The aim behind the Latin American countries' application of the *Uti Possidetis Juris* principle was to prevent conflicts related to state borders, yet it was not sufficient to halt European states' interference in domestic affairs and territorial disputes.¹⁵ *Uti Possidetis Juris* was only widely adopted as a principle during the decolonization process following the end of World War II.¹⁶

From Latin America, the *uti possidetis juris* principle expanded to Africa. It was recognized and adopted by the Organization of African Unity in 1964 with a resolution addressing border

¹⁰ Lalonde, S., *Determining Boundaries in a Conflicting World: The Role of Uti Possidetis*. McGill-Queen's University Press. 2002. 31.

¹¹ *Ibid*, 31.

¹² *Ibid*, 33.

¹³ *Ibid*, 23.

¹⁴ Hasani, E., *Uti Possidetis Juris: From Rome to Kosovo*. 27 *The Fletcher Forum of World Affairs*. 2003. N2, 86

¹⁵ *Ibid*, p. 87. Cf. See also recent disputes: ICJ Judgment, *Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening)*, General List No. 75, 11.09.1992, available at <https://www.icj-cij.org/sites/default/files/case-related/75/075-19920911-JUD-01-00-EN.pdf> [accessed 12.12.2023]; and ICJ Judgment, *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicar. v. Hond.)*, General List No. 120, 08.10.2007, available at <https://www.icj-cij.org/sites/default/files/case-related/120/120-20071008-JUD-01-00-EN.pdf> [accessed 12.12.2023].

¹⁶ *Ibid*, 87.

disputes between African states.¹⁷ The International Court of Justice (ICJ) applied the *uti possidetis juris* doctrine in the Burkina Faso/Mali case, highlighting the principle's significance. The court pointed out that *uti possidetis juris* is applicable in establishing borders, emphasizing that this principle is a general principle related to the event of gaining independence. Its clear aim is to ensure that the independence and stability of new states are not compromised by fratricidal conflicts sparked by border disputes.¹⁸ The court emphasized that the essence of this principle lies in its primary objective: to safeguard territorial borders upon achieving independence. These borders could be between different administrative units or colonies. In such cases, by applying the *uti possidetis juris* principle, the former administrative boundaries of the disputing parties are transformed into international borders in their full sense.¹⁹

The court elucidated that *Uti Possidetis Juris* is a doctrine of international law recognized globally,²⁰ clarifying the scope of the *uti possidetis juris* principle. It stated that where colonial administrative lines and the exercise of colonial authority within those borders are clear, these lines should be adopted as the borders of the new state, even if the new state does not actively control the territory. A state that acquires territorial sovereignty over an area through *uti possidetis juris* retains sovereignty over that territory, even if part of the territory is under the possession and administration of another state.²¹ Nevertheless, the *uti possidetis juris* doctrine gives precedence to establishing boundaries, considering the paramount significance of border stability for peacekeeping.²² This is despite the importance of the principle of self-determination in shaping governance mechanisms in the post-colonial context.

In addition to its application on the African continent, the protection of the territorial status quo and the application of the *uti possidetis juris* principle have also been noted in Asia.²³ Thus, following the emergence of new independent states from the process of decolonization, there

¹⁷ Organization of African Unity, Border Disputes Among African States, AHG/Res. 16(I) <<https://www.peaceau.org/uploads/ahg-res-16-i-en.pdf>> [accessed: 12.12.2013].

¹⁸ ICJ Judgement, Case Concerning the Frontier Dispute (Burkina Faso/Republic of Mali), General List No. 69, 22.12.1986, para 20 <<https://www.icj-cij.org/sites/default/files/case-related/69/069-19861222-JUD-01-00-EN.pdf>> {accessed: 12.12.2023}.

¹⁹ Ibid, paragraph 23.

²⁰ Ibid, paragraph 20.

²¹ Ibid, paragraph 23.

²² Ibid, paragraph 25.

²³ ICJ Judgement, Case Concerning The Temple of Preah Vihear (Cambodia v. Thailand), General list No. 45. 15.06.1962, ICJ Reports 6, 16 <<https://www.icj-cij.org/sites/default/files/case-related/45/045-19620615-JUD-01-00-EN.pdf>> {accessed: 12.12.2023}.

was an evolution of the *uti possidetis* doctrine. The main aim of this evolution is to underscore the principle of stability of state borders and to ensure the territorial legitimacy of the new states.²⁴

Recent decades have demonstrated that *uti possidetis juris* is utilized not only in the context of decolonization. This principle has been applied in determining the borders of states that emerged from the dissolution of Yugoslavia, Czechoslovakia, and the Soviet Union.²⁵

2. Separate Aspects of the Application of the Uti Possidetis Juris Doctrine

The *uti possidetis juris* principle, a tenet of international law, is employed in determining the borders of a state during its independence. It is considered in the context of territorial issues in the process of obtaining independence and approaches the process of forming statehood.²⁶ *Uti possidetis* is recognized as a general principle of international law.²⁷ The International Court of Justice, in the *Burkina Faso/Mali* case, explained that by gaining independence, a new state acquires sovereignty over the territory and borders bequeathed to it by the colonial power, and international law, and therefore the *uti possidetis* principle, is applied to the new state immediately from this moment.²⁸

As elucidated by the International Court of Justice in the *El Salvador/Honduras* border dispute, *uti possidetis juris* is a retrospective principle in the sense that it transforms administrative borders, originally intended for entirely different purposes, into international borders.²⁹ Thus, *uti possidetis juris* is an exception to what is known in international law as the intertemporal rule, which gives importance to the law in force at the time of the action. In contrast, *uti possidetis juris* reinterprets the legal meaning of past acts, transforming lines of administrative demarcation into internationally recognized borders.³⁰

²⁴ Jennings and Watts (eds.), *Oppenheim's International Law*, ninth edition. 1992. 670.

²⁵ Justin A. Evison, *MIGs and Monks in Crimea: Russia Flexes Cultural and Military Muscles, Revealing Dire Need for Balance Of Uti Possidetis and Internationally Recognized Self-Determination*, 220 *MIL. L. REV.* 2014. 95; Shaw, M. N., "Named Paper", *supra* note 1, 106.

²⁶ Crawford, J., *The Creation of States in International Law*, Oxford University Press. 2006. 107.

²⁷ *Burkina Faso v Mali Case*, *supra* note 18, paragraph 23.

²⁸ *Ibid*, paragraph 30.

²⁹ *Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening)*, *supra* note 15, paragraph 43.

³⁰ Bell, A. and Kontorovich, E. *Palestine, Uti Possidetis Juris and the Borders of Israel*. 58 *Arizona Law Rev.* 2016.

In the context of the *uti possidetis juris* principle, outcomes are influenced by the "critical date"—the moment at which the rights of the parties are crystallized, beyond which subsequent actions do not alter the established legal situation.³¹ For *uti possidetis juris*, this "critical date" is the moment of gaining independence.³²

The application of the *uti possidetis juris* principle ensures that the sovereignty of the new state extends over the entire territory, aiming primarily to eliminate any *terra nullius* condition, where a territory remains ownerless and unclaimed.³³ When multiple states emerge and become independent from a single territory simultaneously, or when a state achieves independence in a portion of a territory while the rest does not become *terra nullius*, the *uti possidetis juris* principle necessitates consideration of the territorial extent of the new state. It is essential to account for the actual administrative control exercised over the territory in question prior to independence, determining the scope of action of the administrative unit for the purposes of *uti possidetis juris*.³⁴

During the evolution of the *uti possidetis juris* doctrine, its application has not always been uniform. There have been instances where states, upon liberation from colonial rule, found their borders altered from those existing prior to independence, as seen in the case of Cameroon, and cases of division at independence, such as the Rwanda-Urundi situation.³⁵ The compromise reached in the Honduran border dispute of 1933, which involved an exchange of territories, established a border that deviated from the *uti possidetis* line by considering the consequences of each side's incursions into the other's territory.³⁶ Furthermore, it is important to note that in these specific instances, decisions regarding the status of the territories were made by the populations themselves, and deviations from the *uti possidetis* principle were agreed upon by mutual consent. In the Burkina Faso/Mali case, the International Court of Justice clarified that the parties, despite requesting the application of the *uti possidetis juris*

³¹ Shaw, M. N. "Named Paper", *supra* note 1, 130.

³² *Ibid*, 130.

³³ Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening), *supra* note 15, paragraph 42.

³⁴ ICJ Judgement, Frontier Dispute (Benin/Niger), General list No. 125.12.07.2005, para 30 <<https://www.icj-cij.org/sites/default/files/case-related/125/125-20050712-JUD-01-00-EN.pdf>> [accessed: 12.12.2023].

³⁵ Ratner, S. R. Drawing A Better Line: *Uti Possidetis* and the Borders of New States. 90 AM. J. INT'L L. 1996. 599.

³⁶ Honduras Borders Case (Guat./Hond.), 2 R.I.A.A.1933.1356-1357 <https://legal.un.org/riaa/cases/vol_II/1307-1366.pdf> [available 12.12.2023]

principle to resolve their border dispute, should also adhere to this principle even in the absence of an agreement.³⁷

There are instances where the application of the *uti possidetis juris* principle encounters challenges, leading to the consideration of other historical and legal factors through mutual compromise when defining the border. For instance, in the Salvador/Honduras land, island, and maritime border dispute, the International Court of Justice observed that borders that have remained undefined since independence, such as in this case, are those where the arguments for *uti possidetis juris* itself become contentious. In such situations, *uti possidetis juris* provides guidance in an uncertain voice.³⁸

In the same case, the court highlighted that the *uti possidetis juris* principle encompasses issues of territorial ownership and border demarcation. A key element of this principle is to negate the concept of *terra nullius*.³⁹ Accordingly, the court, to avoid the notion of *terra nullius*, applied this principle to matters of territorial affiliation. It elaborated that *uti possidetis juris* aims to establish borders, define territorial limits, and ensure border protection.⁴⁰ The legitimacy of a border is seen as separate from the legality of territorial ownership, and the authenticity of the border stands legally independent from the legal instrument that establishes it. In the Libya/Chad case, the International Court of Justice observed that an established border maintains its legal existence based on the fundamental principle of border stability, irrespective of the treaty's nature and status, and that the termination of an agreement does not affect the legal existence of an established border.⁴¹

The *uti possidetis juris* principle is universally applicable and is not confined to any specific region. In the Burkina Faso/Mali case, the International Court of Justice explicitly affirmed that *uti possidetis juris* does not represent a special rule applicable solely to one particular system of international law. Instead, it is a general principle intrinsically linked to the

³⁷ ICJ Judgement, Case Concerning the Frontier Dispute (Burkina Faso/Republic of Mali), *supra* note 18, paragraph 20.

³⁸ Land, Island and Maritime Frontier Dispute (El Salvador/ Honduras: Nicaragua intervening), *supra* note 18, paragraph 41.

³⁹ *Ibid*, paragraph 42.

⁴⁰ *Ibid*, paragraph 45.

⁴¹ ICJ Judgement, Case Concerning The Territorial Dispute (Libian Arab Jamahiriya/Chad). General List No.83. 03.02.1994, para 72, 73 <<https://www.icj-cij.org/sites/default/files/case-related/83/083-19940203-JUD-01-00-EN.pdf>> [accessed: 12.12.2023].

phenomenon of gaining independence, irrespective of the location.⁴² The application of this principle in Africa is not merely a practice contributing to the gradual establishment of a principle of customary international law exclusive to the African continent, as was previously the case in Latin America. Rather, it signifies the implementation of a universal rule of action in Africa.⁴³ The application of the *uti possidetis juris* principle reinforces⁴⁴ the principle of territorial integrity of states and plays a pivotal role in fortifying the principle of stability of state borders.⁴⁵

3. Uti Possidetis Juris Principle Under International and Administrative Boundaries

During the emergence of a new state, the *uti possidetis juris* principle is applied to transform former borders into international borders, thereby defining and establishing the new state's boundaries based on former borders. The boundaries under consideration for the new state may be either former international borders or former administrative borders, with each situation being distinct.⁴⁶

International borders separate sovereign states and are primarily established through the agreement of states, reflected in bilateral or multilateral treaties. Such borders remain in effect and operational regardless of any change in sovereignty and are binding on the new state. Any unilateral change could infringe upon the interests of the second state. These boundaries remain in force and are valid until amended with the consent of the parties involved.⁴⁷

In the Guinea-Bissau/Senegal arbitration dispute, a question arose regarding whether the *uti possidetis* principle could solely be applied to treaties concluded long before independence. It was argued that treaties concerning the fundamental aspects of the right to self-determination, signed by the colonial power, were invalidated after independence commenced.⁴⁸

⁴² ICJ Judgement, Case Concerning the Frontier Dispute (Burkina Faso/Republic of Mali), *supra* note 18, paragraph 20.

⁴³ *Ibid*, paragraph 21.

⁴⁴ Shaw, M. N., *International Law*. Cambridge University Press. 2008. 527–528.

⁴⁵ Jennings, R. and Watts, A. (eds.), *Oppenheim's International Law* (9th edition), Longman, London 1996, 669–670.

⁴⁶ Shaw, M. N. "Named Paper", *supra* note 1, 111.

⁴⁷ *Ibid*, 112.

⁴⁸ Arbitration Tribunal For The Determination of The Maritime Boundary (Guinea-Bissau v, Senegal), *Arbitral Award*, 1989, paragraph 40.

However, the arbitral tribunal disagreed with this perspective. It maintained that a border treaty concluded by the colonial power before the internationalization of the liberation process did not need to fulfill any special conditions to be enforceable against the successor state. There exists no norm in international law mandating such a requirement.⁴⁹

The acknowledgment of internationally recognized borders by the newly formed state is an established norm. The International Court of Justice, in the Burkina Faso/Mali case, highlighted that the obligation to acknowledge previously established international borders during the legal succession of states is derived from a general principle of international law. This obligation exists irrespective of whether it is explicitly expressed through the *uti possidetis* formula.⁵⁰

The principle of continuity of international borders extends beyond the scope of *uti possidetis*. *Uti possidetis juris* pertains solely to the territorial aspects of statehood attainment, primarily in cases involving territorial reconfiguration or regrouping. In situations where a new state emerges without territorial changes, the principle of continuity of international borders applies.⁵¹

It is essential to distinguish between the legal status of administrative borders and international borders. Administrative boundaries, established through national legislation for domestic purposes, divide the state's territory into various units. Unlike international borders, administrative boundaries are not fixed and may undergo alterations in many instances.

In the Dubai/Sharjah case, the arbitration court emphasized that borders established through agreements, arbitration, or court decisions cannot be equated in value. In such cases, involved parties have the opportunity to present their arguments. Conversely, administrative borders set by the government, where the interests of parties might be disregarded, serve a different purpose, depending on the specific political or economic context, based on non-legal criteria.⁵²

Utilizing the *uti possidetis* principle, former administrative boundaries underwent a transformation into international borders. Administrative borders, initially designated for

⁴⁹ Ibid, paragraph 43.

⁵⁰ ICJ Judgement, Case Concerning the Frontier Dispute (Burkina Faso/Republic of Mali), *supra* note 18, paragraph 24.

⁵¹ Shaw, M. N "Named Paper", *supra* note 1, 114.

⁵² Court of Arbitration, Dubai-Sharjah Border Dispute, 91 I.L.R. 1993. 579.

entirely different objectives, assumed the status of international borders through this principle.⁵³

Despite the clear and indisputable distinctions between international and administrative borders, the impact of *Uti Possidetis* lies in the conversion of administrative borders into international ones. However, it's essential to note that not all administrative borders are eligible for such transformation into international borders. Hence, the challenge in international law is precisely related to determining which administrative borders have this potential.⁵⁴

In applying the *uti Possidetis* principle in the colonial context, emphasis is placed on the administrative units established by the colonial power, rather than any pre-existing ones.⁵⁵ For instance, in the *Salvador/Honduras* case, the court observed that it was the administrative boundaries of Spanish colonial units, not the administrative boundaries of Indian settlements, that were transformed into international borders through the application of *Uti Possidetis Juris*.⁵⁶ Similarly, in the case of a federated state, the administrative boundaries between the constituent entities of the former federated state are of significance.⁵⁷ The timing aspect also holds importance in this context. It is feasible to convert administrative boundaries existing at a specific moment in time into international boundaries.⁵⁸ The concept of the "critical date" becomes relevant, where specific rights and boundaries are established, and it continues to apply when the *uti Possidetis Juris* principle comes into effect. This principle, as noted by the International Court of Justice in the *Burkina Faso/Mali* case, is not applied retroactively but takes immediate effect from the moment of the new state's emergence. Therefore, the moment of the new state's independence serves as a "critical date" in this regard.⁵⁹

Following the emergence of a new state, the principle of territorial integrity extends to the territory of this state within the boundaries established using the *uti Possidetis Juris* principle.

⁵³ ICJ Judgement, *Case Concerning the Frontier Dispute (Burkina Faso/Republic of Mali)*, supra note 18, paragraph 23; *Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening)*, 1990 ICJ Rep. 1423, paragraph 43.

⁵⁴ Shaw, M. N., *The Heritage of States: The Principle of Uti Possidetis Today*, supra note 1, 118.

⁵⁵ *Ibid*, 118.

⁵⁶ ICJ Judgement, *Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening)*, supra note 15, paragraph 50.

⁵⁷ Shaw, M. N., "Named Paper", supra note 1, 118.

⁵⁸ *Ibid*, 118.

⁵⁹ *Burkina Faso v Mali Case*, supra note 18, paragraph 30.

The *uti Possidetis Juris* principle aims to promote international stability by safeguarding the inviolability of the former borders adopted by new states.

4. The Question of Applying the *Uti Possidetis Juris* Principle Outside the Context of Decolonization and the Case of the Collapse of the Former Soviet Union

Uti Possidetis Juris is not solely confined to the context of decolonization. The attainment of independence through traditional decolonization and secession outside of decolonization contexts differs across various aspects. Decolonization is governed and acknowledged by international law, and its legality is intrinsic to this process. The quest for independence during decolonization is intertwined with the realization of the right to self-determination and is founded on legitimacy. Conversely, in non-colonial secession scenarios, independence is pursued based on effectiveness, posing a challenge to legitimacy. However, it is worth noting that the application of *Uti Possidetis Juris* originated and evolved primarily in response to secessionist movements in Latin America during the 19th century, where it began as a mechanism to formalize the borders of emerging states.⁶⁰ Furthermore, it cannot be asserted that international law is fully applied to the process of state formation through secession. State formation does not occur in legal vacuums; the issue of the use of force in this process is considered.⁶¹ Statehood requires a factual basis, but these facts must be legally evaluated and given significance. To undergo legal evaluation, facts must be conceptualized.⁶² Both in decolonization contexts and in secession scenarios outside of decolonization, a new state emerges, yielding the same outcome. In both scenarios, *Uti Possidetis* can function to ensure stability by delineating boundaries.⁶³ During the collapse of Yugoslavia, the application of *Uti Possidetis* was endorsed by the Arbitration Commission (Badinter Committee). It noted that while originally utilized to resolve decolonization issues in Latin America and Africa, *Uti Possidetis* is now acknowledged as a universal principle. Unless otherwise agreed upon, former

⁶⁰ Walter, Ch. et al. eds., *The Principle of *Uti Possidetis Juris*: How Relevant Is It for Issues of Secession?* by Peters, A., supra note 4, 108.

⁶¹ *Ibid*, 108.

⁶² Crawford., J. and Nouwen, S. eds, “Statehood after 1989: “Effectivites” between Legality and Virtuality” by Peters, A. in *Select Proceedings of the European Society of the International Law*, Vol. 3. Hart publishing 2012, 171.

⁶³ Walter, Ch. et al. eds., *The Principle of *Uti Possidetis Juris*: How Relevant Is It for Issues of Secession?* by Peters, A., supra note 4, 114.

borders transition into international borders safeguarded by international law.⁶⁴ Regarding the right to self-determination, the commission also emphasized that unless otherwise agreed upon by the involved states, the right to self-determination does not imply boundary changes at the time of independence (Uti Possidetis Juris).⁶⁵

It should be emphasized that the general stance is that *uti possidetis juris* neither prohibits nor permits secession.⁶⁶ This principle is primarily concerned with delineating borders post-independence and remains agnostic on the question of whether secession should occur.⁶⁷ It is a response to the reality of a new state with its territory and borders already in existence. *Uti Possidetis* is not invoked during the process of gaining independence but rather after independence has been achieved.⁶⁸ This principle, aimed at safeguarding territorial integrity at the moment of independence, does not come into effect during the process of attaining independence itself.⁶⁹ Moreover, it is important to acknowledge that self-determination and secession inherently involve territorial aspects, emphasizing the assignment of specific territory to distinct entities. In this process, the territorial component holds significance, aiming to ensure the integrity of territories by recognizing and delineating specific borders. *Uti Possidetis*, in this regard, aligns with the principles of self-determination and non-interference in domestic affairs,⁷⁰ as it establishes territorial boundaries while also supporting self-determination.⁷¹ Additionally, by setting territorial borders, this principle seeks to mitigate external threats. The International Court of Justice, in the *Burkina Faso/Mali* case, underscored that the implementation of *Uti Possidetis* fosters respect for the inviolability of

⁶⁴ The Arbitration Commission of the Conference on Yugoslavia (Badinter Arbitration Committee) Opinion No 3, 92 ILR 168. 1992. 171.

⁶⁵ *Ibid*, 168.

⁶⁶ Rathner. S. R., *Drawing a better Line: Uti Possidetis and the borders of New States*. 90 AJIL. Cambridge University Press 1996. 601.

⁶⁷ Corten. O. et al. eds. "Le problème des frontières en cas de dissolution et de séparation d'Etats: quelles alternatives?" by Kohen. M. G., in *Demembrements d'Etats et delimitations territoriales*, Bruxelles, 1999. 400.

⁶⁸ *Ibid*, 375.

⁶⁹ Kohen. M. G. ed., *Secession: International law perspectives*. Cambridge University Press. 2006. 14-15.

⁷⁰ Hasani, E., *Named Paper*, *supra* note 14, 286.

⁷¹ ICJ Judgement, *Case Concerning the Frontier Dispute (Burkina Faso/Republic of Mali)*, *supra* note 6, paragraph 20.

borders.⁷² Uti Possidetis aims to prevent border disputes arising from external pressures and internal conflicts, thereby safeguarding the independence and stability of new states.⁷³

In December 1991, the dissolution of the Soviet Union led to the establishment of the Commonwealth of Independent States (CIS), as announced. The Minsk Treaty of December 8, 1991, Article 5, explicitly states that the parties recognize and uphold the sanctity of the existing borders of the Commonwealth.⁷⁴ Additionally, on December 21, 1991, the Alma-Ata Declaration was adopted, wherein signatory states (excluding the three Baltic states - Latvia, Lithuania, Estonia - and Georgia, which later joined the CIS in 1993) affirmed each other's territorial integrity, respected existing borders, and pledged allegiance to the UN Charter.⁷⁵ Although these documents do not explicitly mention the uti Possidetis principle, their intent is evidently aligned with it. By affirming territorial integrity and respecting existing borders, these agreements implicitly endorse the uti Possidetis doctrine, which ensures the international and regional legitimacy of new borders. Furthermore, these accords underscore that classical rules of international law safeguard established borders unless mutually agreed upon changes occur.⁷⁶

Uti Possidetis pertains to boundary delineation, while the inviolability of borders concerns their defense.⁷⁷ While these principles often align temporally, the application of territorial integrity and border inviolability is not solely contingent on uti Possidetis. Boundaries can be determined through various principles and procedures, and the inviolability of borders is not merely a tacit substitution for uti Possidetis. References to border inviolability in international documents do not necessarily rely on uti Possidetis.⁷⁸ However, in the case of the Soviet Union's dissolution, uti Possidetis was the determining factor, with no alternative practices

⁷² Walter, Ch. et al. eds., *The Principle of Uti Possidetis Juris: How Relevant Is It for Issues of Secession?* by Peters, A., supra note 4, 117, 118.

⁷³ ICJ Judgement, *Case Concerning the Frontier Dispute (Burkina Faso/Republic of Mali)*, supra note 6, paragraph 20.

⁷⁴ Article 5. Minsk Treaty of 1991 of December 8 <https://www.refworld.org.ru/pdfid/52f8f06a4.pdf> > [accessed: 12.12.2023].

⁷⁵ Alma-Ata Declaration of 1991 December 21 <https://www.bits.de/NRANEU/START/documents/alma-ata91.htm> [accessed: 12.12.2023].

⁷⁶ Shaw, M. N., *Named Paper*, supra note 1, 110.

⁷⁷ Corten. O. et al. eds. *Droit des peuples à disposer d'eux-mêmes et uti possidetis: deux faces d'une même médaille?* by Corten. O., in *Demembrements d'Etats et delimitations territoriales, l'uti possidetis en question(s)*, Bruxelles 1999. 432.

⁷⁸ Walter, Ch. et al. eds., *The Principle of Uti Possidetis Juris: How Relevant Is It for Issues of Secession?* by Peters, A., supra note 4, 128-129.

observed. It's noteworthy that *uti Possidetis's* application in secession beyond decolonization contexts is viable, recognized, and customarily extended. The European Commission's guidelines⁷⁹ on international recognition, notably addressing the former Soviet Union and Yugoslavia, underscore the widespread acceptance⁸⁰ of *uti Possidetis* in this domain. Additionally, developed state practices and Security Council resolutions supporting the territorial integrity of Georgia⁸¹ and Azerbaijan⁸² further affirm the international embrace of the *uti possidetis* principle in this specific context.⁸³

Following the dissolution of the Soviet Union, the principle of *Uti Possidetis* was applied exclusively to the constituent republics. The 2009 report from the European Union's fact-finding mission, known as the Tagliavini Commission, explicitly states that in the context of the Soviet Union, *Uti Possidetis* pertained solely to the borders of the constituent republics. This principle was not extended to autonomous entities or subdivisions of a lower order.⁸⁴ Similarly, in the case of the former Yugoslavia, the application of *Uti Possidetis* was advocated by the Badinter Committee to be limited to the republics alone.⁸⁵ Utilizing the principle of *Uti Possidetis Juris*, the former administrative borders that delineated the constituent republics of the Soviet Union were converted into international boundaries. Consequently, each Soviet republic, including Georgia, attained independence with its administrative boundaries from the Soviet era intact. Following the re-establishment of its independence, Georgia's national territory was officially demarcated on December 21, 1991.⁸⁶ Following the establishment of specific borders through the application of the *Uti Possidetis Juris* principle, any infringement upon these borders is not recognized by the international community. The Tagliavini Commission's report underscores that, in accordance with the widely accepted *Uti Possidetis* principle, only the constituent republics of the former Soviet Union, including Georgia, are entitled to independence following the disintegration of such a vast entity as the Soviet Union.

⁷⁹ EC Declaration on the "Guidelines on the Recognition of New States in Eastern Europe and in the Soviet Union", 4 EJIL. 1993. 72.

⁸⁰ Shaw, M. N., "Named paper", supra note 1, 110.

⁸¹ Security Council Resolutions 876 (1993), 896 (1994), 906 (1994), 937 (1994), 977 (1995), 993 (1995), 1036 (1996).

⁸² Security Council Resolutions 822 (1993), 853 (1993), 874 (1993), 884 (1993).

⁸³ Shaw, M. N., Named Paper, supra note 1, 110-111.

⁸⁴ EU Report of the Independent International Fact-Finding Mission on the Conflict in Georgia, 2009. 143 <https://www.echr.coe.int/documents/d/echr/HUDOC_38263_08_Annexes_ENG> [available 12.12.2023].

⁸⁵ *Badinter Arbitration Committee* Opinion No 3, supra note 64, 171.

⁸⁶ 1995 Constitution of Georgia, Article 1(2), available at <https://matsne.gov.ge/ka/document/view/30346?publication=36> [accessed 12.12.2023].

This principle does not extend to territorial subdivisions within these republics, such as South Ossetia and Abkhazia, which do not possess the right to secede from Georgia. Consequently, the recognition of South Ossetia and Abkhazia as separate entities by a third country is deemed a violation of international law. Such recognition constitutes unlawful interference in the sovereignty and territorial integrity of the concerned state, in this instance, Georgia. This action contradicts the Helsinki Final Act's principles, which mandate that participating states must uphold each other's sovereign equality and distinctiveness, including the rights inherent to sovereignty. Specifically, this encompasses the right to legal equality, territorial integrity, freedom, and political independence for all nations.⁸⁷

Within the Soviet Union, Abkhazia and South Ossetia were classified as third and fourth-level administrative units, respectively, and both were integral parts of Georgia.⁸⁸ The principle of Uti Possidetis was not applied to these regions. In the context of the Soviet Union (as well as the former Yugoslavia), the application of Uti Possidetis was confined solely to the first-level units, the constituent republics. There is no precedent for extending Uti Possidetis to lower-level administrative divisions within the Soviet Union.⁸⁹ Georgia today is a unitary state. The Constitution of Georgia's first article affirms that Georgia is an independent, united, and indivisible state. This status was validated by the referendum conducted on March 31, 1991, across the entire territory of the country, including the Abkhazian ASSR and the former South Ossetian Autonomous District.⁹⁰ Furthermore, Georgia's state independence was reinstated on April 9, 1991. In the context of unitary states like Georgia, the applicability of the Uti Possidetis principle is considered to be limited.⁹¹ After gaining independence, the application of the Uti Possidetis Juris principle resulted in the conversion of the borders of the former Soviet Union's allied republics into international borders. This action effectively "froze" the geopolitical situation, with the international community not supporting further fragmentation. The Uti Possidetis principle establishes a critical date, legitimizing the status quo at that moment. Thus, the pre-independence administrative boundaries, which were in place before this enactment, cannot be contested against the new international borders established by Uti Possidetis. In

⁸⁷ Independent International Fact-Finding Mission Report, supra footnote 84, p. 143, available at https://www.echr.coe.int/documents/d/echr/HUDOC_38263_08_Annexes_ENG [accessed 12.12.2023].

⁸⁸ Constitution of the USSR 1977, Articles 83 and 87, available at <https://www.prlib.ru/en/node/420906> [accessed 12.12.2023]; Constitution of the USSR 1936, Article 25, available at <https://www.prlib.ru/en/node/420907> [accessed 12.12.2023].

⁸⁹ Peters, A. "Named Paper" supra note 4, 121.

⁹⁰ 1995 Constitution of Georgia, supra note 86, article 1.

⁹¹ Shaw, M. N., Peoples, Territorialism and Boundaries. supra note 7, 504.

Georgia's context, this meant that upon achieving independence, the administrative boundaries encompassing Abkhazia and South Ossetia were recognized as legal, and any contention over these territories was deemed invalid. The essence of *Uti Possidetis* is to resolve disputes by affirming the legality of territorial boundaries as they existed at the moment of independence, thereby precluding challenges to these borders based on previous territorial claims or arrangements.⁹²

Following the attainment of independence, the principle of *Uti Possidetis Juris* was applied, transforming only the borders of the former Soviet Union's allied republics into international borders, thus "freezing" the situation. The international community does not support further fragmentation.⁹³ The *Uti Possidetis* principle establishes a critical date, legalizing the borders as they existed at that moment. Thus, the pre-independence administrative boundaries, including those encompassing Abkhazia and South Ossetia within Georgia, were legitimized, and disputes regarding them were intended to be resolved. *Uti Possidetis* aims to eliminate disputes, including those stemming from prior territorial irregularities.

However, the extension of control over territories like Abkhazia and South Ossetia, which are largely under Russian influence post-independence, does not justify the initiation of a new *Uti Possidetis* in favor of the separatist regions. State practice does not endorse an expanded application of *Uti Possidetis*.⁹⁴ While in some instances formal data and actions have been assessed to determine the presence of territorial divisions at critical moments, such evaluations have never applied to control acquired over a territory by a state after its independence.⁹⁵

It is important to recognize that the principle of *Uti Possidetis* serves as a general principle which, following the establishment and recognition of a state, prevents arbitrary changes to the state's existing borders.

Conclusion

International law highly prioritizes the stability of borders. The establishment of state borders and their international recognition constitute fundamental aspects for any nation. In this context, the application of the *Uti Possidetis Juris* principle plays a significant role. This

⁹² Peters, A. "Named Paper", supra note 4, 123.

⁹³ Ibid, 123.

⁹⁴ Wolfrum, R. ed. "Uti Possidetis Doctrine", by Nesi, G. in *The Max Planck Encyclopedia of Public International Law*. Oxford University Press. 2013, para 10.

⁹⁵ Peters, A. "Named Paper", supra note 4, 123.

principle, universally applied, chiefly aims to underscore the stability of state borders and to secure the international legitimacy of the new state's borders.

Following the formation of a new state, the principle of territorial integrity is applied to the state's territory within the confines determined by the *Uti Possidetis Juris* principle. The essence of *Uti Possidetis Juris* is to foster international stability by safeguarding the sanctity of the old borders embraced by new states.

Broadly speaking, the *Uti Possidetis Juris* principle neither directly prohibits nor permits secession. Its application is initiated post-independence, focusing on delineating borders. By establishing the borders of a new state and ensuring these borders' international legitimacy, the principle acts as a barrier against the arbitrary alteration of a state's existing borders. Throughout its development, the application of the *Uti Possidetis Juris* doctrine has not been entirely consistent. There have been instances where states emerged from colonial rule with borders that differed from those in place before independence. Additionally, there were situations where divisions occurred at the point of gaining independence, but deviations from the *Uti Possidetis* principle were made through agreements. Violations of boundaries established and recognized under the *Uti Possidetis Juris* principle are not upheld by established practices and laws. Recent decades have demonstrated that the *Uti Possidetis Juris* principle is utilized beyond the decolonization context. It has been applied in delineating the borders of states emerging from the disintegration of Yugoslavia, Czechoslovakia, and the Soviet Union. The principle is also relevant where there is no explicit agreement on its application, underscoring its significance in the modern geopolitical landscape and its role in ensuring the stability and legitimacy of state borders. The *Uti Possidetis* principle is specifically invoked at the inception of a new state and does not apply to situations unrelated to the formation of a new state. Its primary function is to convert administrative borders into international borders. However, not all administrative boundaries are eligible for such transformation. A key challenge in international law is determining which administrative borders can be transformed into international borders. Established practice indicates that, in the case of a federated state, the administrative boundaries that exist between the higher-level units composing the former federated state are considered significant. Upon the dissolution of the Soviet Union, the *Uti Possidetis Juris* principle was applied exclusively to the former administrative borders of the constituent republics. This principle does not extend to autonomous or lower-level units. There is no precedent for a new application of *Uti Possidetis* that would apply to these lower-level units in the event of the Soviet Union's collapse.

Following the disintegration of the Soviet Union and the subsequent restoration of its independence, Georgia's former administrative borders as the Georgian SSR were converted into the international borders of an independent Georgia. This transformation is upheld by the practice of democratic states, and international law does not endorse further partitioning. Consequently, there is no legal foundation for Abkhazia and South Ossetia to invoke the Uti Possidetis principle to justify separatist aspirations. Moreover, international law generally does not support the exercise of self-determination by populations within a democratic state in the form of secession. This stance reinforces the principle of territorial integrity and sovereignty of states, limiting the application of self-determination to prevent the fragmentation of established states without a compelling legal basis.

