Uti Possidetis Juris: From Rome to Kosovo

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This paper examines the principle of *uti possidetis juris*—a concept of international law that defines borders of newly sovereign states on the basis of their previous administrative frontiers. It proceeds by tracing the historical roots of the concept and by analyzing its modern-day application, albeit not recognized in law or international politics, in the case of Kosovo.

Originating from Roman law, *uti possidetis juris* involved ownership over things and was temporary in nature. It was later, during the medieval period, that it became a norm of international relations—first in Latin America and then in Africa and Asia.

Outside the colonial context, the *uti possidetis juris* principle has been applied to the disintegration of the former Communist federations of Yugoslavia, Czechoslovakia, and the Soviet Union. The Yugoslav case, one that has brought tragedy to the entire Balkan region, stands at the center of present analysis. This does not mean that the disintegration of the Soviet Union and its aftermath produced no tragedies—current developments in Chechnya prove otherwise. However, Kosovo has seen an unprecedented involvement by the international community, which has insisted on the continued—and, arguably, disastrous—application of the *uti possidetis juris* principle.

HISTORICAL DEVELOPMENT

The principle of *uti possidetis* has historically developed in two forms—*uti possidetis juris* and *uti possidetis de facto*.[1] The former norm is the one that has been used in modern times, while the latter belongs to the past, its origin traceable as far back as the medieval times. Back then, the partition of territories proceeded in ways analogous to the division of private property. For instance, Pope Alexander VI was well known for his issuance of bulls that named the titleholder of a given territory.[2]

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Roman law, which introduced the principle of *uti possidetis* into the body of international law, thought of it in different terms. The Praetorian Edicts of Republican Rome, which regulated private property, made a distinction between possession and ownership. When possession of a thing was achieved in good faith—that is, not by the use of force or any fraudulent means—Roman magistrates applied the famous rule *uti possidetis, ita possideatis* ("as you possess, so you may possess"). This rule, however, did not apply to questions of ownership—such matters were decided before the courts of law.[3]

The gradual evolution of *uti possidetis* from private law to the international realm, as well as its transformation into a rule of wider application, has proceeded in two directions. The first one reflects the practical implications of the application of *uti possidetis*, i.e., its transformation from a rule pertaining to claims over private property into a norm concerning state or territorial sovereignty. The other deals with the transformation of "possession" as a factual and provisional situation in private law into a permanent legal status of sovereign rights over certain state territory. Such a transformation should not be surprising considering that *uti possidetis* emerged at a time when the use of unlimited force by states in conflict over territories was not considered illegal or illegitimate[4]—a view that persisted until the Second World War.

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Uti possidetis juris, as it stands at the present, is based on two ideas: self-determination and the non-interference in the internal affairs of other countries. Both can be traced back to Latin America at the beginning of the nineteenth century. The first formal application of *uti possidetis* in Latin America reflects the nature of European affairs, on the one hand, and the relations between Europe and Latin America following the Napoleonic Wars of 1796-1815, on the other. Europe continuously interfered in Latin America in search of *terra nullius* (no man's land), which later became its colonial possession.[5] Following Latin American independence, achieved in the period from 1810 to 1824, Europeans sought to transfer the balance of power politics from Europe to Latin America.[6] As a result, and in order to divert frequent European interferences, Latin American states (except Brazil, until recently) accepted the *uti possidetis juris* principle to govern their relations.

To reiterate, the territorial delimitation of new sovereignties was based on *uti possidetis juris*, not *uti possidetis de facto*. This meant that national borders of newly independent countries coincided with the former colonial borders, leaving no *terra nullius* in that part of the world. A decade later, the principle of *uti possidetis* was reinforced by the 1823 Monroe Doctrine, which demanded noninterference in the

internal affairs of the American continent.[7] At the same time, while the acceptance of *uti possidetis juris* by Latin American states was designed to prevent further border conflicts, it stopped neither European interference nor territorial disputes.[8] *Uti possidetis*, as well as the concept of noninterference in the internal affairs of sovereign states, became well-established principles of general application only after the end of the Second World War during the process of decolonization.

In the period between 1815 and 1945, the rules on territorial sovereignty in Europe were based on a different set of criteria. The 1815 Congress of Vienna had fashioned a philosophy and practice of the so-called spheres of interest. In the Balkans, for example, this meant that no consideration, apart from geopolitics, was given to the ethnic composition of the territories to be partitioned. No consideration, apart from the use of brute force, was given to the previous administrative borders of the Ottoman and Austro-Hungarian empires. European territorial politics in the Balkan region in the aftermath of the 1912-1913 Balkan wars sought to preserve stability and security—even if at the expense of the nations affected by new territorial rearrangements.[9]

After the end of the Second World War and following the process of decolonization in Africa, African leaders also insisted on preserving the preexisting colonial administrative borders.[10] The case of Africa, however, is deeply rooted in the history related to the Berlin-Congo Conference (1884-1885), which is incorrectly portrayed as a meeting that divided Africa.[11] Africa, in fact, was divided much earlier. The Final Act of the Berlin-Congo Conference, signed on February 26, 1885, simply banned the slave trade and provided for the free movement of goods and persons within the territories under the sovereignty of colonial powers (Britain, France, Germany, Portugal, and Belgium).[12] The sovereign rights of these powers over their respective territories were not based on effective administrative control, as it used to be the case in Europe, but according to longitudes and latitudes starting at the coasts of Africa. In fact, Article 35 of the General Act spoke of the creation of a basic line of control along the coasts of the continent only.[13]

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The Final Act also provided that any state that would take a piece of African land into possession had to notify the other colonial powers in order to prevent conflicts over territory. Even then, the colonial powers were not allowed to set up any effective administration in these lands. All they could do was establish minimal effective control, regulate the movement of goods and persons, and control the trade of slaves. Any extension of European rule to the African mainland was deemed an expensive and difficult task.

Dividing Africa according to "spheres of influence" among the Europeans had yet another impact vis-à-vis the local population. To regulate relations with the locals, the colonialists set up various protectorates, neutral and "buffer" zones, and suzerainties. At no time did they attempt to establish any form of modern political rule in the lands they controlled.

With the collapse of colonial rule, most abstract lines running along given longitudes and latitudes that divided colonial "spheres of influence" were converted into international boundaries based on the principle of *uti possidetis juris.*[14] And despite the fact that 40 percent of African borders are straight lines that divide scores of different ethnic groups,[15] they have proved to be stable and viable in most cases.[16] African leaders have often claimed that their borders are artificial and imposed arbitrarily by foreign powers. However, since independence these leaders have subscribed to the fact that today's borders are the only viable solution for the continent. The Organization of African Unity (OAU) stressed in 1964, a year after its formation, that the borders of Africa reflect a "tangible reality," while its leaders made a commitment to respect the borders existing at the time of independence *(uti possidetis juris).*

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Those African countries that expressed territorial claims on bases different from the *uti possidetis juris* principle, such as ethnic or historical entitlements, have gradually lost their standing. The cases of Morocco and Somalia are the most conspicuous examples.[17] By the same token, ethnic groups that attempted to secede from the parent state met severe resistance from the international community, such as in the cases of Katanga (Zaire/Congo) and Biafra (Nigeria). On the other side, colonial powers that tried to forcefully hinder their former colonies from becoming independent—such as in the cases of Algeria or Guinea Bissau—ran the risk of being censured via the so-called "premature recognition of the new states and movements fighting for national liberation," a concept designed primarily to help the process of independence of former colonies.[18]

For a former African colony seeking international recognition, it sufficed to possess a government in control of only its capital. The premature recognition by other states, in essence, stemmed from the practice and philosophy of the Berlin-Congo Conference. In other words, the OAU and its African leaders adopted the same philosophy and practice as their colonizers: the rules of the OAU were designed to preserve the external borders and relations among the new sovereign states of Africa. Internally, it was sufficient that a given country

maintained minimal and symbolic administrative control centered mostly around the capital city.[19] An African colony was considered independent after it had emerged from foreign rule and was able to conduct its foreign relations with full authority, internal difficulties notwithstanding.[20]

In a way, international law of the 1880s, which sought to mitigate and regulate territorial quarrels, served as a model for the laws of the 1960s and 1970s, when anti-colonial movements gained international legitimacy. Their self-determination case was based on territorial rather than ethnic claims, which made transition from colonialism to independence that much easier. It certainly would have been too difficult, if not impossible, to define those ethnic "selves" entitled to self-determination, i.e., independence.[21] The African concept of self-determination, like that in Latin America, has been grounded in territory, not ethnicity. As a result, neither scholars[22] nor states[23] have recognized claims of self-determination put forth by various indigenous groups in these regions. Thus, the principle of *uti possidetis* has "bestowed an aura of historical legality to the expropriation of the lands of indigenous peoples."[24]

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Asia is different in this regard, due to a different history of colonization and the preservation of state traditions. In Asia, the system of frontiers set up by colonial powers (Britain and France) emulated the Western system in most cases, leaving pre-colonial state structures untouched. This meant that, in the aftermath of independence, these countries inherited state borders of already existing sovereignties with long state traditions. The implementation of self-determination, therefore, proceeded through a full restoration of pre-colonial forms of state organization. This was especially obvious in the southeastern part of Asia.[25]

THE RATIONALE BEHIND *UTI POSSIDETIS*

Scholars have made strenuous attempts to determine the real causes behind the emergence and acceptance of the *uti possidetis juris* principle. These causes can be grouped into two categories: external and internal. For instance, while discussing why Latin American countries have rejected the idea of confederation based on former administrative colonial borders *(uti possidetis juris)*, Alejandro Alvarez cites the total lack of communication among these countries; spirit of independence; conflicts over borders; civil wars due to the personal ambitions of revolutionary leaders; the lack of political experience; and, finally, the lack of common traditions.[26] Stressing some of the external reasons that would explain an acceptance of *uti possidetis juris*, Alvarez discusses the idea of a confederation in the

context of resistance to European intrusions. The *uti possidetis* principle served not only to prevent conflicts over borders, but also to eliminate the very pretext for interference by the Europeans in search of *terra nullius*. In fact, Spanish authorities enforced their delimitation policies in the region in total disregard of the local topography.[27] Another author, however, attributes the failure of Latin American countries to form a confederation to the personalities of local leaders who gained power following independence. These leaders, says Steven Ratner, turned to the *uti possidetis* rule for the sake of their own interests and personal gains.[28]

African borders were also established in disregard of any previous knowledge about topography of the terrain or the desires of local population. As mentioned above, African borders were determined on the basis of particular longitudes and latitudes. This heritage helps to explain why African decolonization produced weak states and political systems, but also ensured against the secessionist claims of various ethnic groups. These are the principal external causes for the acceptance of *uti possidetis juris* in Africa.[29]

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Analysts also point to personalities of African leaders and internal developments in the former colonies to explain the origin of *uti possidetis juris*.[30] However, this explanation is weak. While personal characteristics of African elites certainly played a role, the social make-up of African societies, weak state structures, and ethnic diversity, as well as international rules on juridical statehood and equal sovereignty of colonial peoples and their territories better explain the acceptance of uti possideti juris. Any other solution would have been detrimental to regional and international stability and could have led to fratricidal wars.

These reasons explain the ruling of the International Court of Justice (ICJ) concerning a border dispute in *Burkina Faso v. Republic of Mali* (1986).[31] In this case, the ICJ stressed that *uti possidetis juris* serves to freeze the title over territory at the time of independence, in effect producing a "photograph of the territory."[32] The ICJ defined *uti possidetis juris* as a principle that transforms former administrative borders created during the colonial period into international frontiers. As such, it is logically connected to the decolonization process wherever it occurs,[33] in that it protects the independence and preserves the stability of the new African states.[34] This does not mean, of course, that there were no departures from the strict application of the *uti possidetis juris* principle during African decolonization.[35] However, in most cases, previous administrative colonial borders have been accepted as international frontiers.

FORMER COMMUNIST FEDERATIONS AND KOSOVO

The application of *uti possidetis juris* beyond the colonial context has occurred only once: when the former Communist federations of the Soviet Union, Czechoslovakia, and Yugoslavia dissolved following the end of the Cold War. While Czechoslovakia split peacefully and the Soviet Union was able to avoid deep, violent clashes for the most part, the case of Yugoslavia brought the absurdity of the mechanical application of the principle of *uti possidetis juris* to the forefront.

International legal response to the dissolution of Yugoslavia is invariably linked to the French lawyer, Robert Badinter, who headed up the Arbitration Commission—a group of European jurists set up by the European Union in 1991 to arbitrate disputes and establish criteria for recognition.[36] The Commission based its ruling with regard to Yugoslavia on the elementary assumptions of international law and politics. It characterized sovereign states as those entities that, *inter alia*, fulfill the essential criteria for international statehood, i.e., possess territory, population, and a government in control of its territory and population. In its judgment, the Commission relied heavily on African experience in general and on the ICJ ruling in *Burkina Faso v. Republic of Mali* in particular, in effect extending the African precedent and standards it had set over to a quite different social and political milieu.

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In its opinion, the Badinter Commission declared that "whatever the circumstances, except where the states concerned agree otherwise, the right to self-determination must not involve changes to existing frontiers existing at the time of independence *(uti possidetis juris)*." In line with this, the Commission stressed that "except where otherwise agreed, former republican borders [the internal borders between Serbia and Croatia and between Serbia and Bosnia-Herzegovina] become international frontiers protected by international law."[37] This stance reflected the notion of respecting territorial status quo (the "photograph of territory" in *Burkina Faso v. Republic of Mali*) and the *uti possidetis* principle itself, which—according to the Commission—was supposed to prevent territorial conflicts arising among newly independent states that emerged from the former Yugoslavia.[38]

In making its determination, the Commission assumed that conflicts over territories could be prevented only through recognition of former administrative

borders as international ones, which would then be protected by Article 2(4) of the UN Charter.[39] This assumption reflected political aims of European leaders who insisted that, following the June 1991 declarations of independence by Croatia and Slovenia, only the federal republics of Yugoslavia would be invested with the right to self-determination.

The same attitude, by analogy, extended to the Soviet Union and Czechoslovakia and was endorsed by the December 16, 1991, statement of the European Community (now, the European Union) that established a series of guidelines establishing the conditions that had to be met before new states could be recognized as independent. Former Soviet republics accepted this formally in 1993, stating that *uti possidetis juris* would be a valid solution to territorial disputes between them.[40]

By insisting on applying *uti possidetis juris* in the former Yugoslavia, European decision makers conditioned the standards set with regard to Africa by adding some corrective criteria. The list of preconditions for international recognition was now lengthened to include the requirements of the rule of law, democracy, and respect for human and minority rights. At the same time, no real mechanisms for the implementation of these guidelines existed in practice—economic sanctions proved ineffective, while military intervention was still unlikely at that time. Only when it became apparent that the Serbs of Croatia and Bosnia-Herzegovina espoused to the "wrong" interpretation of self-determination, the international community intervened militarily to protect the territorial sovereignty of Bosnia-Herzegovina. At the same time, Croatia was allowed to destroy the Republic of Serbian Krajina (Republika Srpska Krajina), a Serb entity that found itself within sovereign Croatian borders when Croatia seceded from the federation. In Bosnia-Herzegovina, intervention by Western powers came too late as well, after a fait accompli and genocide against the Bosniac Muslims.

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The international community's acceptance of the *uti possidetis juris* principle with respect to the former Yugoslavia reflected "balance of power" politics and the desire to balance forces within multinational republics that existed at the time of independence. In other words, entities that did not posses features of a federal republic had to fight hard to present themselves as valid candidates for full independence. With this in mind, international decision makers had rejected the sovereignty claims put forth by Serb entities within Croatia (Republica Srpska Krajina) and Bosnia-Herzegovina (Republica Srpska). When the time came again to forcefully apply, and impose the respect for, the corrective criteria of *uti possidetis juris* (democracy, the rule of law, and respect for human and minority rights), Kosovo was added to

the list of "illegal" entities. The international community used the *uti possidetis juris* standard to reject Kosovo's claim for independence.

With this in mind, this author, in his capacity as a legal adviser to the Kosovar Albanian delegation, had warned the Kosovar Albanian leaders during the February 1999 Rambouillet peace talks on Kosovo against those provisions of the Rambouillet Accords that put Kosovo within Serbia's jurisdiction. Unfortunately, the negotiators paid far more attention to the Accords' provisions with regard to the selection of judges, formation of the parliament, election of the future president, and so on.[41]

A new paradox emerged in the aftermath of NATO's intervention: Kosovo, in its final status, was equated with those entities that provoked the conflict.

The Rambouillet Peace Accords were reinforced by the Agreement on Principles of Relations between Serbia and Montenegro within the State Union (the Union Agreement), signed in Belgrade on March 14, 2002, under the supervision of Javier Solana, the EU High Representative for Foreign and Security Policy. The Union Agreement states, *inter alia*, in paragraph three, *Provision on Reconsideration*, that "upon the expiration of a three-year period, the member states shall be entitled to instituting proceedings for a change of the state status, that is, withdrawal from the state union. If Montenegro withdraws from the state union, international documents related to the Federal Republic of Yugoslavia, the UN Security Council Resolution 1244 in particular, shall relate to and fully apply on Serbia as its successor."[42] The insertion of this provision into the Union Agreement, which was absent in the final draft of the Rambouliet Accords due to the fervent opposition of the Kosovar Albanians, means that if and when Montenegro secedes from the Union, Serbia will once again have full sovereign rights over Kosovo.

IN LIEU OF A CONCLUSION: WILL THE PRESENT CALCULATIONS OF THE PARTIES CHANGE?

Kosovo is not any different from other parts of the world, and it is certainly not any different from those African states that had sought independence from their colonial rulers. In fact, the international community has insisted and relied on this legal similarity when it intervened militarily in Yugoslavia, but then limited Kosovo's claim to self-determination. European decision makers explained their position in terms of *uti possidetis juris*, according to which the terrain of new sovereign states is defined on the basis of old colonial borders. Since Kosovo was not a federal republic within Yugoslavia, but rather an entity within Serbia, it had no right to claim sovereignty.

What the European politicians failed to recognize with respect to Kosovo is that *uti possidetis juris* has evolved throughout history and now includes such additional criteria as the rule of law, democracy, respect for human and minority rights. In practice, of course, there are no implementation mechanisms to ensure the viability of these principles, and as a result, nations of the world stood on the sidelines during the initial stages of genocide committed by the Serbian forces in Kosovo. A new paradox emerged in the aftermath of NATO's intervention: Kosovo, in its final status, was equated with those entities that provoked the conflict.

The principle of *uti possidetis juris* has served as the basis for UN Security Council Resolution 1244 (1999), which designates the Rambouillet Peace Accords as a platform for the final solution of the issue of Kosovo.[43] Arguably, what informed the calculations of the European powers in drafting these documents was more a result of their own power politics than the real interests of the Kosovar people. How long they will be able to preserve the stability in Kosovo will depend on whether their present calculations remain justifiable.

In concluding this paper, I shall make use of an opinion expressed by Jeffrey Herbst with regard to Africa that clearly reflects the crux of the issue with *uti possidetis* in the Yugoslav case:

> The boundaries in Africa are often characterized as artificial and arbitrary on the basis of the fact that they do not respond to what people believe to be rational demographic, ethnographic, and topographic boundaries. However, borders are always artificial because states are not natural creations. Therefore, it is important to judge boundaries—political creations—on the basis of their usefulness to those who created them. Based on this criterion, the current African boundaries are not arbitrary. The boundary system developed in 1885 represented a rational response by the colonialists because it served their political needs. The vast majority of borders have remained virtually untouched since that time because the system for the most part continues to serve the political needs of the colonialists and present-day African leaders. There is a chance that at a future date African elites may find preservation of existing borders to be more costly than other alternatives, but a large number of political calculations will have to change first. Until then, Africa's "rational" borders will be preserved.[44]

Will the political calculations with regard to the former Yugoslav territories change in the near future? It is very hard to predict. For the time being it seems unlikely—judging, once again, by the African experience. The only difference might be that, in the Balkans, the problem of borders arose too late and has been going on for too long. ■

NOTES

1 Steven Ratner, "Drawing a Better Line: *Uti Possidetis* and the Borders of New States," *American Journal of International Law* 90 (4) (October 1996): 594-595.

2 Jesse S. Reves, "International Boundaries," *American Journal of International Law* 38 (4) (October 1944): 539-541; and Frederich von der Heydte, "Discovery, Symbolic Annexation and Virtual Effectiveness in International Law," *American Journal of International Law* 29 (3) (July 1935): 452.

3 For the Roman law, see W. Michael Reisman, "Protecting Indigenous Rights in International Adjudication," *American Journal of International Law* 89 (2) (April 1995): 352, footnotes 8 and 9. In this study, the author gives an overview of the theory founded by Moore confirming that *uti possidetis* had been taken into the realm of interstate relations from the Roman (private) law by medieval lawyers.

4 Frantz Despagnet, *Cours de Droit International* (Paris: Librarie de la Societe du Recuiel Sirey, 1910), 117-132, 575, 579-584; Thomas Joseph Lawrence, *Les Principes de Droit International* (Oxford: Imprimerie de la Universite, 1920), 766; Thomas Baty, "Can an Anarchy be a State?" *American Journal of International Law* 28 (3) (July 1934): 444, 446, 454; Karl Strupp, "Les Regles General du Droit de la Paix," *Recueil de Cours de l'Academie de Droit International* 47 (I) (1934): 473-474; and Hersch Lauterpacht, ed., *Oppenheim's International Law,* Vol. II, 7th ed. (London: Longman, 1952), 598-599.

5 A theory enunciated by Emerich de Vattel set out three major epochs of *terra nullius* corresponding to our analysis of *uti possidetis*. These epochs can be briefly summarised as the sixteenth century Roman law concept, when *terra nullius* referred to all non-Roman territory; the seventeenth and eighteenth century tenet that considered any non-Christian territory as *terra nullius*; and finally, the nineteenth century claim that territory not belonging to a "civilized state" would be considered *terra nullius*. As cited by Joshua Castellino, "Territoriality and Identity in International Law: The Struggle for Self-Determination in the Western Sahara," *Millennium: Journal of International Studies* 28 (2) (1999): 547. The case of Latin America belongs to the first category of *terra nullius*, while the rest of colonies fall under the heading of "territory not belonging to a civilized state."

6 Norman Rich, *Great Power Diplomacy: 1814-1914* (New York: McGraw-Hill, Inc., 1992), 28-44; 167-184; 347-364.

7 Paul de Lapradelle, *La Frontiere. Etude de Droit International* (Paris: Imprimerie du Centre Issoudun, 1928), 76-87; and Georg Schwarzenberger, "Title to Territory: Response to a Challenge," *American Journal of International Law* 51 (2) (April 1957): 320.

8 The last territorial dispute, settled in 1992, was between El Salvador and Honduras, with Nicaragua intervening. For an overview of history of conflicts over borders in Latin America since the nineteenth century, see Alejandro Alvarez, "Latin America and International Law," *American Journal of International Law* 3 (2) (April 1909): 269-353; James Brown Scott, "The Swiss Decision in the Boundary Dispute Between Colombia and Venezuela," *American Journal of International Law* 16 (3) (July 1922): 428-431; Chandler P. Anderson, "The Costa Rica-Panama Boundary Dispute," *American Journal of International Law* 15 (2) (April 1921): 236-240; L.H. Woosley, "Boundary Disputes in Latin America," *American Journal of International Law* 25 (2) (April 1931): 324-333; F.C. Fisher, "The Arbitration of the Guatemalan–Honduras Boundary Dispute," *American Journal of International Law* 27 (3) (July 1933): 403-427; L.H. Woolsey, "The Ecuador-Peru Boundary Controversy," *American Journal of International Law* 31 (1) (January 1937): 97-100; Josef L. Kunz, "Guatemala vs. Great Britain: In Re Belice," *American Journal of International Law* 40 (2) (April 1946): 383-390; C.G. Fenwick, "The Honduras–Nicaragua Boundary Dispute," *American Journal of International Law* 51 (4) (October 1957): 761-765; Georg Maier, "The Boundary Dispute between Ecuador and Peru," *American Journal of International Law* 63 (1) (January 1969): 28-46; and Gideon Rottem, "Land, Island and Maritime Frontier Dispute," *American Journal of International Law* 87 (4) (October 1993): 618-626.

9 Arthur W. Spencer, "The Balkan Question—Key to a Permanent Peace," *The American Political Science Review* 8 (4) (November 1914): 563, 569-570, 575, 577, 580-581; Reves, 545; and Michael Roux, *Les Albanais en Yugoslavie. Minorite Nationales, Territoire et Development* (Fondation de la Maison des Science de l' Home: Paris, 1992), 175-185, 187-191.

10 See also Rupert Emmerson, *From Empire to Nation* (Cambridge: Harvard University Press, 1960), chs. VI and XVI.

11 For more on this, see Daniel de Leon, "The Conference at Berlin on the West-African Question," *Political Science Quarterly* 1 (1) (March 1886): 103-139.

12 Rich, 237-242.

13 The General Act of the Berlin-Congo Conference. See Arthur Berriedale Keith, *The Belgian Congo and the Berlin Act* (Oxford: Clarendon Press, 1919), 314-315.

14 Friedrich Kratochwil, "Of Systems, Boundaries, and Territoriality: An Inquiry into the Formation of the State System" *World Politics* 39 (1) (October 1986), 36-41.

15 "We (the colonial powers) have engaged...in drawing lines upon maps where no white man's feet ever trod; we have been giving away mountains and rivers and lakes to each other, but we have only been hindered by the small impediment that we never knew where exactly these mountains and rivers and lakes were." Lord Salisbury, British prime minister of the late nineteenth century, as quoted in Joshua Castellino, "Territoriality and Identity in International Law: The Struggle for Self-Determination in the Western Sahara," *Millennium: Journal of International Studies* 28 (3) (1999): 529.

16 Jeffrey Herbst, "The Creation and Maintenance of National Boundaries in Africa," *International Organization* 43 (4) (Autumn 1989): 674.

17 Ravi L. Kapil, "On the Conflict Potential of Inherited Boundaries in Africa," *World Politics* 18 (4) (January 1966): 633-634; and Patricia Berko Wild, "The Organisation of African Unity and the Algeria–Morocco Border Conflict: A Study of New Machinery for Peacekeeping and for the Peaceful Settlement of Disputes Among African States" *International Organization* 20 (1) (Winter 1996): 19-20, 27, 29-36.

18 Heather Wilson, *International Law and the Use of Force by National Liberation Movements* (Oxford: Clarendon Press, 1988), 119-120, at footnote 101.

19 Herbst, 687-689.

20 Ali A. Mazrui, "The United Nations and Some African Political Attitudes," *International Organization* 18 (3) (Summer 1964): 499. This author has euphemistically named the very process of attaining independence in the African context as a transition "from foreign rule to foreign relations."

21 Rupert Emerson, "Pan-Africanism." *International Organization* 16 (2) (Spring 1962): 276-283.

22 "Not only do no territories 'nullius' exist on the American continent, but further, and in consequence thereof, no international value is given to the possession of certain regions held since time immemorial by native tribes not recognising the sovereignty of the country within whose limits they find themselves. Two important consequences follow from therefrom: that the occupation of those regions by the natives is a matter of internal public law of each country and not only of International Law; and second, that the governments have, in certain cases, an international responsibility for the acts of natives within their boundaries, even though those natives do not recognise the sovereignty of the State." Alvarez, 342-343, at footnote 95.

23 In the ICJ rulings, international borders follow the line of *uti possidetis juris*, that is, the colonial administrative divisions or loyalties belonging to pre-colonial era. This stance has been confirmed in the cases of Western Sahara (1975); El Salvador v. Honduras, with Nicaragua intervening (1992), and, recently, in the territorial dispute between Libya and Chad (1994). For more, see Reisman, 354-357.

24 Malcolm Shaw, "The Heritage of States: The Principle of *Uti Possidetis* Today," *British Yearbook of International Law* 67 (1996): 98.

25 See Robert L. Solomon, "Boundary Concepts and Practices in Southeast Asia," *World Politics* 23 (1) (October 1970): 1-23.

26 Alvarez, 288.

27 Ibid., 290-291, 320-321, 342-343.

28 Ratner, 592.

29 Kapil, 656-673; and Herbst, 690-691.

30 Herbst, 676-678.

31 *Burkina Faso vs. Republic of Mali*, 1986 ICJ Reports 565. "On 14 October 1983 Burkina Faso (then known as Upper Volta) and Mali notified to the Court a special agreement referring to a Chamber of the Court the question of the delimitation of part of the land frontier between the two States....Following grave incidents between the armed forces of the two countries at the very end of 1985, both Parties submitted parallel requests to the Chamber for the indication of interim measures of protection....In its Judgment delivered on 22 December 1986, the Chamber began by ascertaining the source of the rights claimed by the Parties. It noted that, in that case, the principles that ought to be applied were the principle of the intangibility of frontiers inherited from colonization and the principle of *uti possidetis juris*, which accords pre-eminence to legal title over effective possession as a basis of sovereignty, and whose primary aim is to secure respect for the territorial boundaries which existed at the time when independence was achieved. The Chamber specified that, when those boundaries were no more than delimitations between different administrative divisions or colonies all subject to the same sovereign, the application of the principle of *uti possidetis juris* resulted in their being transformed into international frontiers, as in the instant case. It also indicated that it would have regard to equity *infra legem*, that is, that form of equity which constitutes a method of interpretation of the law and which is based on law. The Parties also relied upon various types of evidence to give support to their

arguments, including French legislative and regulative texts or administrative documents, maps and 'colonial *effectivités*' or, in other words, the conduct of the administrative authorities as proof of the effective exercise of territorial jurisdiction in the region during the colonial period. Having considered those various kinds of evidence, the Chamber defined the course of the boundary between the Parties in the disputed area...." See <http://www.lawschool.cornell.edu/library/cijwww/icjwww/igeneralinformation/ibbook/Bbook8-1.51.htm> (accessed March 29, 2003).

32 International Court of Justice (ICJ) Reports (1986), 568.

33 Ibid., 566.

34 Ibid.

35 Thus, British Togo was united with Ghana. The same has been the case when the British Cameroon joined with Nigeria. British and Italian Somalia became one state, while the Belgian Rwanda/Burundi separated into two.

36 For more, see Alain Pellet, "The Opinions of the Badinter Committee: A Second Breath for Self-Determination of Peoples" *European Journal of International Law* 3 (1) (1992): 178-181; Alain Pellet, "Note sur la Conference Europeenne pour la Paix en Yougoslavie," Annuaire Francais de Droit International XXXVIII (1992): 223-238; Vladimir Djuro Degan, "Samoopredeljenje Naroda i Territorijalna Celovitost Drzava u Uvjetima Raspada Jugoslavije," *Nasa Zakonitost* 46 (4) (Zagreb, April 1992): 543-569; Antonio Cassese, "Self-Determination of Peoples and the Recent Break-Up of USSR and Yugoslavia," in Roland St. John Macdonalded, ed., *Essays in Honor of Wang Tieya* (The Hague: Martinus Nijhoff Publishers, 1994), 131-144; Vladimir Djuro Degan, "L'Arbitrage Juridique Ignore: La Jurisprudence de la Commission Badinter" in Marie Francois Allain et al., eds., *L'Ex Yougoslavie en Europe. De la Fallite des Democraties au Processus de Paix* (Paris: Editions L' Harmattan, 1997), 31-43; and Thomas D. Grant, *The Recognition of States (Law and Practice in Debate and Evolution)* (London: Praeger, 1999), 149-213.

37 Conference on Yugoslavia Arbitration Commission, Opinion No. 2 (January 11, 1992).

38 Ratner, 614, footnote 192.

39 UN Charter, Article 2(4): "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations." See <http://www.un.org/aboutun/charter/> (accessed March 29, 2003).

40 Article 3 of the Charter of the Commonwealth of Independent States (June 22, 1993) affirms the "inviolability of States' boundaries, recognition of existing borders and rejection of unlawful territorial acquisitions." The Alma-Ata Agreement establishing the Commonwealth of Independent States (December 1991) includes similar provisions. For more on this, see Sergei A. Voitovich, "The Commonwealth of Independent States: An Emerging Institutional Model," *European Journal of International Law* 4 (3) (1993): 418-430. For the full text of the Charter, see Sergei A. Voitovich, "Annex: Decision of the Council of Heads of State of the Commonwealth of Independent States," *European Journal of International Law* 4 (3) (1993), 418-430.

41 Following Kosovo's liberation from Belgrade's repressive policies, the newly established international administration sought to establish local structures of self-government in Kosovo. During this process, local politicians gave much attention to secondary issues rather than focusing on the crucial issues of the country's future. Thus, the Democratic League of Kosovo led by Dr. Ibrahim Rugova insisted on inserting in the "Constitutional Framework for Provisional Self-Government in Kosovo," promulgated by the Special Representative of the Secretary-General of the United Nations, Hans Haekkerup, on May 21, 2001, provisions regarding the president of Kosovo. These provisions had been previously deleted from the Rambouliet Accords. Compare Chapter 9, Section 2 of the Constitutional Framework.

42 See <http://ue.eu.int/pressdata/EN/sg/69898.pdf> (accessed March 29, 2003).

43 In its preamble, the UN Security Council Resolution 1244, which provides the framework for the current international administration in Kosovo, acting side by side with the newly formed local self-government administration, stated that the Council reaffirms "the commitment of all Member States to the sovereignty and territorial integrity of the Federal Republic of Yugoslavia and other States of the region." The Resolution, in point 11, refers to the Rambouliet Accords as a basis for self-government in Kosovo and as a means to facilitate the political process designed to determine Kosovo's future status. Resolution 1244, S/RES/1244 (1999). See <http://www.kentlaw.edu/perritt/99sc1244.htm> (accessed March 30, 2003).

44 Herbst, 692.