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Tenets of Uti Possidetis as a Panacea in Resolving Boundary Disputes in Africa: A Lesson from the Bakassi Peninsula Dispute

Bande Gulbert Mbah Tarh
Ph.D. in Law, Senior Lecturer, University of Maroua, Maroua, Cameroon

Abstract: The existence of boundaries in most parts of Africa are as a result of African colonialism. These boundaries created by the colonial powers were inherited by African states, when they attained independence through a resolution of the African heads of state and government.The ICJ, also, interpreted the resolution, to mean the doctrine of *utipossidetisjuris*. Indeed, the resolution is now enshrined in the Constitutive Act of the AU, as part of the principles governing African boundaries.Besides, despite the celebrated nature of the doctrine in Africa, there are continuing frontier disputes and hostilities in the continent. In this regard, this paper aims to provide a general overview and applicability of the doctrine.As it seeks to find out the reasons for the continuing boundary disputes, the role of the doctrine, and the extent to which it is applied in Africa as a whole, with particular focus on the lesson drawn from the resolution of the Bakassi Peninsula disputes. For this fact, the method is based on non-doctrinal legal analysis, qualitative data analysis, and case study research design.The findings show that there is dissatisfaction among African leaders, over the borders inherited from the colonial powers and the impropriety of the application of the doctrine of *utipossidetis* in all circumstances of disputed frontiers in Africa.Though the European colonial powers are usually blamedfor the boundary disputes in Africa; the Africans leaders as well as the AU and its predecessor OAU are equally blamed for the continuing boundary disputes. From these, the paper recommends that the AU should review its border principles governing African frontiers, by fixing the common errors inherited with the colonial boundaries without actually restructuring the edges. And also,to a lesser extent, limits the strict application of the doctrine of*utipossidetis*; to brighten the future of the endless boundary disputes, and ensure the proper use of the doctrine in Africa.

Keywords: *Tenet, UtiPossidetis, Resolution, Boundary Disputes, Africa, Bakassi Peninsula*

I. INTRODUCTION

Explicitly, since antiquity, states, empires and other political entities have been struggling to acquire more land to extend their territorial space. In fact, during those ages, land was mainly acquired through discovery by one sovereign entity of land, which according to international customary practice was not owned by anyone, that is,*terra nullius*- hence subject to acquisition by effective occupation. Besides, states also obtained title to land, by the use of force through conquering nearby or oversees states and other political entities,to extendtheir territories into that of other entity.[1] Conversely,with the advent of the 19thCentury, these forms of territorial acquisition have declined with the growth of international law.[2]From this perspective, it is noteworthy that the dominant role of international law in maintaining international peace and security was, thus, focused on the avoidance of international boundary disputes among states, by circumscribing the use of force as a mechanism to extend boundary limits, and safeguarding the existing territorial limits of each sovereign state. In this regard, international law has developed principles and rules, such as the doctrine of *utipossidetis*, the principle of territorial integrity and the right to self-determination to protect international boundaries and equality between states.[3] Besides, to a greater extent,it should be noted that these principles of international boundaries have enabled states to retain their existing boundaries and equally respect the international boundaries fixed between them and other sovereignty states. In this sense, this paper aims to focus on the doctrine of *utipossidetis*, as one of the tenets of International lawrelating to frontiers. This is because issues of frontiers have been the major causes ofmany conflicts within the African continent. As a consequence,to prevent such conflicts arising spontaneously over the issues of territorial boundaries after independence, Africa decided to adopt the doctrine of *utipossidetis*to maintain the boundaries which they had during European colonial administration.[4]

Generally, from this perception, the paper aims to assess the tenet of the doctrine of *utipossidetis*and its applicability in resolving international boundary disputes among African states. In this vein, itconsiders the following specific issues: To examine how the doctrine has been applied by boundary disputes resolution machinery; to find out whether circumstances of African boundary disputes justify the application of *utipossidetisjuris*; to find out factual and legal factors leading to the continuing frontier disputes of Africa despite the acceptance of *utipossidetisjuris* since 1964; and to examine the extent to which the doctrine of *utipossidetisjuris* has been successfully applied by diplomatic and judicial methods in resolving frontier disputes with particular focus on its panacean potency in resolving the Bakassi Peninsula dispute. Indeed, the paper usesboth the doctrinal legal and empirical researches in the analysis. With the doctrinal legal research being applied to examine the doctrine of *utipossidetis*

[1] Shaw, M. (2006). International Law. 6th Edition, Cambridge, UK: Cambridge University Press, pp. 495, 500-504.

[2] Thus, according to the Charter of the United Nations (UN Charter) as well as the various international and regional conventions, the rise of principles like territorial sovereignty, territorial integrity, and prohibition of threats and use of forces, have led to the demise of old modes of territorial acquisition by powerful states.

[3] See Article 2 of the UN Charter as well as Articles 3 and 4 of the Constitutive Act of the African Union.

[4] Shaw, (International Law, 6thEdition).,*op cit*. pp. 526-527.

through the analysis of the 1964 Cairo Resolution 16(1) with the aid of some African frontier disputes decided by the ICJ. While the need for the empirical research necessitates the paper to use the aforementioned research methods in obtaining the required findings. In a nutshell, it is worth reiterating that the paper is limited to the applicability of the doctrine of *utipossidetis* in resolving African frontier disputes, with particular focus on the land and maritime boundary dispute between Nigeria and Cameroon and itsimplication on the BakassiPeninsula.

II. SUBSTRATUM OF THE DOCTRINE OF UTI POSSIDETIS

Generally speaking, *utipossidetis* is an international legal doctrine applicable to the international boundaries of independent states during the period of decolonisation, to enable the independent states to inherit territorial boundaries of the former administrative powers.[5] By thesame token,according to the Black's Law Dictionary,*utipossidetis* is a doctrine that provides that old administrative boundaries will become international boundaries when a political subdivision achieves independence.[6]In this sense, it is noteworthy that *"utipossidetis or itapossidetis",* is a Latin phrase derived from Roman law which means, "Asyou possess, so may you possess".[7]From this, it is worth stressing that the doctrine of *utipossidetis* has its origin during the Roman era in the Roman law maxim "*UtiPossidetis* or *ItaPossidetis".* As such, its origin and development has been in two forms, *utipossidetisjuris* and *utiposidetis de facto*.[8]With *Utipossidetis de facto* referring to the old *utipossidetis* rule applicable to private property under Roman law[9], while at the international territorial boundaries, it is an alternative doctrine to *utipossidetisjuris* that determines ownership of territory based on physical occupation rather than colonial title.[10]While under international law, *Utipossidetisjuris* determines the colonial title to territories whose boundaries are subsequently inherited by the independent states, which become the international frontiers of those independent states.[11]

Unequivocally, it is worth reiterating that the Romans applied this doctrine to property disputes to empower a possessor to enjoy the possession of the property until another claimant strongly proved that the right belonged to him. But if the claimant tenders evidence not strong enough to prove his possession then the existing possessor becomes the permanent owner of the property.[12] As such, the doctrine of *utipossidetis* in Roman law was primarily aimed at maintaining the *status quo* of the possessor until the final determination on the ownership of the property was reached; for which either the possessor would permanently retain the property to maintain *utipossidetis* or the doctrine would be revoked when the property is conveyed to the owner.[13]Indeed, the Roman law principle of *utipossidetis* was later adopted by international law to apply in situations of territorial boundary demarcations where the former colonies attain independence from colonial rule.[14]The application of *utipossidetis* in international law was first done in the former Spanish colonies of Latin America.[15] When the Latin American states attained independence from Spanish rule in the beginning of 19thCentury, they defined their sovereign territories based on the doctrine of *utipossidetis*.[16] The territorial boundaries fixed by the Spanish administrative rule in Latin America remained unchanged during the decolonisation process of the continent and they agreed to apply the principle of *utipossidetis* both in the frontier disputes with each other and those with Brazil.[17]Moreover, except of Brazil, which applied the doctrine of *utipossidetis de facto,* all other former Spanish colonies in Latin America applied *utipossidetisjuris*.[18]

Similarly, owing to the colonisation of the African continent by seven European powers, with each having more than one colony with boundaries fixed by the colonial powers; the doctrine of *utipossidetis* was later applied in the decolonisation process of the continent from European colonial rule in the 20thCentury.[19]Since several boundaries in Africa were fixed based on binding treaties among colonial powers and their changes were also based on agreements among the parties concerned.[20]Thus, the colonial administration of the

[5]*Ibid.,* p. 527.

[6] Garner, B. (Ed.). (2004). Black's law dictionary. 8thEdition, USA, West publishing Co.

[7]*UtiPossidetis* and the Ethiopia-Eritrea Boundary Dispute. pp. 11 - 12. Retrieved from the World Wide Web: https://www.duo.uio.no/bitstream/handle/10852/20947/49319.pdf?sequence=1.

[8]Hasani, E. (2003). *UtiPossidetis Juris*: From Rome to Kosovo, p. 85.

[9]*Ibid,* pp. 85-86.

[10] Hansel, P., Allison M., Khanan, A. (2006). Territorial integrity treaties, UtiPossidetis and Armed Conflict over Territory. A paper presented at the 2006 Shambaugh Conference on Building Synergies: Institutions and Cooperations in World Politics, University of Iowa: http://www.paulhensel.org/Research/iowa06.pdf. In fact, it should be noted that Brazil is an example of a Latin American state, which applied *utipossidetis de facto* and was not bound to inherit colonial boundaries. Thus, based on this, Brazil could expand its boundaries beyond those which existed at the time of independence.

[11]Hasani.,*op cit.* See also, UtiPossidetis and the Ethiopia-Eritrea Boundary Dispute., *op cit.*

[12]UtiPossidetis and the Ethiopia-Eritrea Boundary Dispute, *op cit.*, p. 12.

[13]*Ibid.* See also, Shaw, M. (1997). Peoples, Territorialism and Boundaries, p. 492. 3 EJIL 478-507. From the World Wide Web: http://www.ejil.org/pdfs/8/3/1457.pdf

[14]UtiPossidetis and the Ethiopia-Eritrea Boundary Dispute, *op cit.*, p. 13. See also Shaw, (Peoples, Territorialism and Boundaries)., *op cit.*, pp. 492 and 493

[15]*Ibid.*

[16]*UtiPossidetis* and the Ethiopia-Eritrea Boundary Dispute., *op cit.*

[17]Hensel*et al*.,*op cit.*, p. 2.

[18]*Ibid.* (Brazil generally rejected the application of *utipossidetis de jure* in favour of *utipossidetis de facto* to argue for the expansion of its territory beyond the 1810 borders with former Spanish colonies, such as Bolivia and Peru).

[19] Shaw, (Peoples, Territorialism and Boundaries).,*op cit.*

[20] Various colonial boundary treaties by colonial powers during colonialism of Africa prove the creation of African boundaries through binding treaties. For instance, Article 1 of the Anglo-German Treaty 1890 between the British and Germans shows the boundaries of German's sphere of influence in Tanganyika. The ICJ in its judgment of 10 October 2002 between Cameroon and Nigeria; Equatorial Guinea Intervening showed how the 1919 Franco-British declaration (Milner-Simon Declaration), delimited Lake Chad area and how the 1913 Anglo-German Agreements delimited the area around the Bakassi Peninsula between the colonies of Cameroon and Nigeria. Also, Article 1 of the agreement between the British and Portugal on 18th November 1954, shows the changes on the boundaries between the colonies of Nyasaland and

colonies of each colonial power was exercised within these established territorial boundaries as fixed by the European powers during colonialism which later became the international boundaries for each African state after independence.[21] As a result, the right to self-determination of the independent states in Africa was exercised within the territorial boundaries inherited from the colonial administrative powers.[22]With the aim being to protect the independence and stability of the new states as well as to avoid any territorial conflicts among the African states after independence.[23] Therefore, on this basis, the African heads of state and government in a Summit held in Cairo - Egypt in 1964, adopted a Resolution on the border issues between the African states.[24]

Conversely,except of Morocco and Somalia, which reserved their right to claim territory based on religion, history or ethnicity, the Cairo Resolution was accepted by the rest of the African states.[25]Thus, in spite of the reservations by Morocco and Somalia, it should be noted that it is readily impractical to exercise their right to claim territory by extending beyond what was left during the decolonisation process. This is because the circumstances in which the African states inherited territorial boundaries from the colonial administrative rule and the wording of the Cairo Resolution 16(1) of 1964, reflect directly the doctrine of *utipossidetisjuris*. Currently, it is worth noting that the doctrine applied as a rule of general application to all African states.[26]In this regard, the International Court of Justice (ICJ) Chamber in case of Burkina Faso vs. Mali[27] emphasized that, the fact that the new African states had agreed to respect the administrative boundaries and frontiers established by the colonial powers,*"must be seen not as a mere practice contributing to the gradual emergence of a principle of customary international law, limited in its impact to the African continent as it had previously been to Spanish America, but as the application in Africa of a rule of general scope"*.[28]Equally, the chamber went further by stating that, *utipossidetis* had in fact developed into a general concept of contemporary customary international law and is unaffected by the emergence of the right of the peoples to self-determination.[29]Aptly, the general and uniform practice of the doctrine of *utipossidetis* particularly in the former Spanish colonies and Africa have led to the acceptance of the doctrine as a general rule of international law applicable to the determination of international boundaries of newly independent states.[30]

Explicitly, it is worth accentuating that once *utipossidetis* is recognised, the right of the peoples to self-determination cannot be extended beyond the existing territorial limits inherited from the colonial powers.[31]In the same token, the ICJ chamber also pronounced that the primary purpose of the doctrine of *utipossidetis*is to secure respect of territorial boundaries at the moment when independence is achieved, and on this basis the existing territorial limits during the colonial administration will be transformed into international territorial boundaries when a state attains independence.[32] In addition, the adoption of the doctrine of *utipossidetis* in Africa since 1964, marked the acceptance of colonial fixed territorial boundaries by African states. Appositely,it is realised thatthe decision on the application of *utipossidetis* was reached in 1964 - when most of the African states had attained independence from colonial rule. Consequently,the doctrine of *utipossidetis* was adopted in Africa to cause African states to inherit colonial boundaries at the time of independence. Conversely, although the colonial boundaries were fixed during the era of colonialism, it should be highlighted that before then, Africa had traditional boundaries which were highly influenced by the tribal groups. Thus, the coming of European colonial powers in Africa since the 18thCentury marked a new history for African boundaries. With each colonial power having occupied an area of influence and fixed boundaries which were based on their interests, particularly economic benefits and not on the interest of the Africans based on tribes, languages and chiefdoms.[33]

Moreover, it is worthwhile noting that during the period of fighting for independence, each colony demanded independence from a colonial power in whose hands the colony was in control, within the fixed colonial boundaries. On the same way, each colonial power thus granted independence to their respective colonies during independence. Besides, it is realised that after independence, most of the African states were not satisfied with the boundaries; hence, there were various attempts to extend their inherited boundaries beyond. This resulted in conflicts among some of the independent African states, with others not engaging into direct boundary

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Mozambique with respect of Lake Nyasa area as well as the islands of Chisamulo and Likoma.

[21] Shaw, (International Law, 6thEdition).,*op cit.* p. 526. See also Shaw, (Peoples, Territorialism and Boundaries).,*op cit.*, p. 494.

[22]*Ibid.*

[23]*Ibid.*, International Law. p. 527. See also Peoples, Territorialism and Boundaries, p. 497.

[24] OAU Resolution AHG/Res.16 (1) of 1964. This Resolution was adopted by the First Ordinary Session of the Assembly of Heads of State, and Government held in Cairo, U.A.R, from 17th to 21stJuly 1964. Indeed, Resolution 16(1) reads as follows: Considering that border problems constitute a grave and permanent factor of dissension; Conscious of the existence of extra-African manoeuvres aimed at dividing the African States; Considering further that, the borders of the African states, on the day of their independence, constitute a tangible reality; ...

1. Solemnly reaffirms the strict respect of all Member States of the Organization for the principles laid down in paragraph 3 of Article III, of the Charter of the Organization of African Unity

2. Solemnly declares that all Member States pledge themselves to respect the borders existing on their achievement of national independence. See also, Mayall, J. (1973). The Malawi-Tanzania Boundary Dispute. The Journal of Modern African Studies: Cambridge University Press.Vol. 11, No. 4, pp. 611-628. Retrieved from the World Wide Web: https://rebeccachimjeka.files.wordpress.com/2012/08/malawi-history-mw-tz-border-dispute.pdf. It is worth noting that it was a Tanzanian proposal that led to the adoption of this resolution that reflects the doctrine of *utipossidetis*. Indeed, this principle on respect of colonial boundaries is currently protected by Article 4(b) of the Constitutive Act of the African Union.

[25]Brownlie, I. (1979). African Boundaries. A legal and Diplomatic Encyclopedia., p. 11.

[26] Shaw, (International Law, 6thEdition).,*op cit.*, p. 526.

[27] ICJ Reports (1986), pp. 554-566.

[28] Shaw, (Peoples, Territorialism and Boundaries).,*op cit.*, p. 494.

[29] Shaw, (International Law, 6th Edition).,*op cit.*

[30] Shaw, (Peoples, Territorialism and Boundaries). *op. cit.*, pp. 493-494.

[31]Shaw, (International Law, 6thedition).,*op cit.* pp. 527-528.

[32] ICJ Report (1986), p. 566. See also Shaw, (International Law, 6thEdition).,*op cit.*, p. 527.

[33]Hasani.,*op cit.*, pp. 87-88.

conflicts due to their strong belief in Pan-Africanism.[34]In this regard, the early African Elites sort out a better solution to the international boundaries of the independent African states. Thus, the earlier conferences of the African Elites in the 1950's reveal the Pan Africanists' views of uniting the African continent, to have a single political union and restructure the African frontiers fixed during colonialism to reflect the African image.[35] These views, according to Pan Africanism were aimed at creating a political and economic integration in Africa, eradicating all sorts of colonial legacies in Africa, and securing international boundaries of Africa and preventing boundary disputes. Contrariwise, despite these great efforts,it should be noted that the idea of keeping the international frontiers each state inherited during independence dominated over the two Pan Africanist ideas, as a result of the adoption of the doctrine of *utipossidetis* in 1964.[36]

Consequently, it is worth averring that most of the international boundary disputes in Africa that existed before 1964, continued after this period, with more others officially pronounced after the period. For instance, some of the boundary disputes in Africa are the boundary disputes between Cameroon and Nigeria over the Bakassi Peninsula and part of Lake Chad; Burkina Faso and Benin over Koualou village; Ethiopia and Somalia over Ogaden; Republic of the Congo and Democratic Republic of Congo over several islands in the Congo River; Cameroon and Equatorial Guinea over several islands in Ntemi river; Namibia and South Africa over the Orange River borderline; Eritrea and Djibouti over the RasDoumeira and Doumeira Island; Algeria and Libya over South East Algeria; South Sudan and Sudan over the Kaka and KafiaKingi; Kenya and South Sudan over the Ilemi Triangle; Rwanda and Uganda over part of the Gicumbi district – Northern Province; Botswana, Namibia, Zambia and Zimbabwe over the Capriv Strip boundary tripoints/quadripoints; Burkina-Faso and Mali as well as Malawi and Tanzania over the Lake Nyasa boundary line.[37]As reiterated above, most of these territorial claims existed before and after the adoption of the doctrine of *utipossidetis* in 1964.

Besides, it is worth emphasizing that various efforts at both the regional and international levels have been employed in settling these boundary disputes by applying the doctrine of *utipossidetis*, with some of the claims having been successfully settled while others are still pending settlement. In this regard, as the title suggests, the intention of the paper is to assess the tenet and application of the doctrine of *utipossidetis* in the resolution of territorial claims. Thus, it is appreciated that after its application in the decolonisation process of Africa, the doctrine also extended its application after the dissolution of the former Yugoslavia. Unlike its application in Latin America and Africa, it is realized that the application of the doctrine in the dissolution process of the former Yugoslavia was beyond the colonial context.[38]Equally, the doctrine is also applied in the situation of the dissolution of the existing state not in the process of decolonisation. For instance, following the fall of the USSR and eventually, the dissolution of the former Yugoslavia, the Yugoslav Arbitration Commission/Badinter Arbitration committee was established by the European Community in 1991 to settle the various issues about the former Yugoslavia.[39] In its opinion with regard to frontiers, the Commission upheld the application of the principle of *utipossidetis* to boundaries of new states formed from the dissolution of the former Yugoslavia as it was decided by the ICJ in the Burkina Faso vs. Mali frontier dispute. Besides, the Commission insisted that the right of the peoples to self-determination should not involve changing boundaries.[40] From this, it should be noted that with the doctrine of *utipossidetis*, the pre-existing boundaries become the international boundaries of the new states protected by international law. In this perspective, the acceptance of the doctrine of *utipossidetis* lays a presumption that, except where it is provided otherwise, the states emerging from decolonisation or the dissolution processes in the future will inherit the boundaries of the pre-existing states or entities.[41]

III. CONCEPTUAL FRAMEWORK OF THE DOCTRINE OF UTI POSSIDETIS

In this section, the conceptual framework of the doctrine of *utipossidetis* under international law will be assessed. With the aim to provide a periscopic view of the doctrine of *utipossidetis*, and equally, examine some salient precepts and other international law principles which are essential for the paper - used in the maintenance and protection of international boundaries. All these efforts will ensure a better appreciation of the applicability of the doctrine in Africa, on the one hand, and the understanding of the land and maritime boundary disputes between Nigeria and Cameroon, with particular focus of the Bakassi Peninsula boundary dispute, on the other hand.

A. The Scope of the Doctrine of Utipossidetis and the Critical Date Principle

Explicitly, *Utipossidetis*is a Latin legal maxim that originated during the Roman era and used in Roman law to mean "as you possess, so you may possess".[42] It, therefore, maintains the *status quo* of a thing. Besides, *utipossidetis* was later adopted and applied in international law to maintain the status of international boundaries as they exist during the decolonisation process.[43] In this vein, *utipossidetis* became a doctrine of international law. Moreover, the Black's Law Dictionary defines the doctrine of *utipossidetis*as, the doctrine that old administrative boundaries will become international boundaries when a political subdivision achieves independence.[44] Thus, the general idea of *utipossidetis* as defined above, is similar to that which was stipulated by the

[34]Mayall.,*op cit.,* p. 614. The majority of members of Tanganyika legislative council voted against the motion of claiming part of Lake Nyasa due to their spirit in Pan-Africanism.

[35] Michael, B. (2012). Panafricanism, African Boundaries and Regional Integration. In Canadian Social Science, Vol. 8, No. 4, pp. 232-237. These were also ideas of the early African Elites during the All African Peoples conference held in Accra, Ghana, December 1958.

[36]*Ibid.*

[37]World Wide Web:en.wikipedia.org/wiki/List_of_territorial_disputes.

[38]Hasani.,*op cit.*,p. 91.

[39] Shaw, (International Law, 6th edition).,*op cit.*, p. 527.

[40]*Ibid.*, p. 528.

[41]*Ibid.*

[42]Hasani.,*op cit.*

[43] The general practice of boundary inheritance witnessed during the decolonization process of Latin America and Africa, led to the acceptance of the doctrine of *utipossidetis* as a norm of customary international law. The ICJ stated application of *utipossidetis* as a rule of customary international law in the frontier dispute of Burkina Faso vs. Mali on page 565.

[44]Garner.,*op cit.*

international judicial organ and tribunals. With the ICJ viewing*utipossidetis* as a principle that primarily secures respect for the territorial boundaries of each colony at the moment when independence is achieved, by transforming the colonial administrative boundaries into the international frontiers of the independent states.[45] By the same token, the Yugoslav Arbitration Commission, equally, insisted on the respect of territorial *status quo* to the new states of the pre-existing former Yugoslavia, which is derived from the international law principle of *utipossidetis* in which the former boundaries become frontiers protected by international law.[46]From these, it is worth noting that the doctrine of *utipossidetis* applies after a state has attained independence. For instance, in the Burkina Faso v. Mali dispute, the doctrine was declared by the ICJ to be logically connected with the phenomenon of independence wherever it occurred.[47]From this perspective, it is worth noting that the application of the doctrine of *utipossidetis* on decolonisation process has been witnessed mainly in the continents of Southern America and Africa.

From the foregoing, under international law, a critical date is used to refer to the specific moment in time at which the rights of the parties (states) have crystallised and prevent alteration of the legal position of the parties by any act which may occur after that specific moment, unless it is the continuation of that act.[48] Similarly, a critical date is customarily used to determine the time through which the title to territory was acquired, as well as solving territorial disputes. It may be the date on which a treaty at issue was established or the date of occupation of a territory or the independence date which proves succession of boundaries established by earlier treaties.[49]From this, as concerned the doctrine of *utipossidetis*, a critical date is of special relevance for the determination of the date on which the new state acquires boundaries of the predecessor entity. Therefore, a critical date for the purpose of the doctrine of *utipossidetis*, unless proved otherwise, is the date of independence of a relevant state.[50] In fact, as Malcom Shaw avers, the application of *utipossidetis* freezes the territorial title existing at the moment of independence, to produce what the Chamber described as the "photograph of the territory" at the critical date.[51] As a consequence, a critical date as referred by the Chamber of the ICJ, is the date which the particular states achieved independence. As such, a critical date is also applied on territorial disputes to determine the rights of the parties. Besides, even though it is not necessary for a critical date to apply in every boundary dispute, however, where it applies, acts undertaken after that date cannot be taken into consideration unless such acts are a normal continuation of prior acts and are not intended at improving the legal position of the party relying on them.[52]

B. The Categories and Establishment of Boundaries, Frontiers, and Borders

In point of fact, before diving into the issues, it is appropriate to define a boundary. Which according to Garner, it is a natural or artificial separation that delineates the confines of a real property.[53]Equally, with regards to international law, a boundary is a line marking the limit of a territorial jurisdiction of the state or other entity having international status.[54] Besides, the Black's Law Dictionary defines a border as a boundary between one nation or a political subdivision, and another. With the term frontier being the line where one country joins another.[55]Similarly, Wondwosen amongstother scholars of boundary studies, provides the conceptual differences and similarities of the terms, boundary, frontier, and border.[56]With the term "frontier"being employed to denote an international boundary while the word "boundary" isused to designate divisions at the sub-state level. Besides, Wondwosen admits that these terms are considered synonym and can be used interchangeably.[57]Equally, healso assesses and provides the different categories of boundaries according to different authors.[58]From which, it is realised that though these authors use different names to express the categories of boundaries, they mainly base their arguments on two categories of boundaries, that is,the natural boundaries and the artificial boundaries. With one of the authors[59] referring to natural boundaries as those which involve hydric boundaries, water courses, dry boundaries, mountain ranges, etc., while the artificial boundaries are considered as those marked by monuments or boundary marks that are put over the boundary, which are man-made borders and depend neither on physical characteristics nor ethnic characteristics. Thus, according to the authors, artificial borders are the cause of many border disputes.[60]

In addition, Wondwosen also provides thefour stages through which borders are establishedwhich are, the historical precedent or allocation, delimitation, demarcation and the characterisation or management.[61]Whereby, allocation or historical precedent is the first phase which involves the process of identifying the cultural characteristics of the people in the area and considering the previous attempts to establish the border. Indeed, it should be noted that it is this phase that isreadily the cause of many border conflicts in Africa since most of the borders of the former colonies in Africa lack these precedents. With delimitation beingthe second phase, which is essentially a political process, involving the signing and ratification of treaties concerning the border at issues through negotiations by both sides of the boundary. In fact, delimitation is a critical phase of boundary making, and most of the time;a joint commission is used. As for demarcation, it is the third and technical phase that involves interpreting the intentions of the delimiters on the ground. Indeed, during the demarcation of the boundary, demarcating monuments or markers are erected on the boundary to define the lines of the boundary of the countries. Concretely, this stage involves records such as maps, sketches, photographs, etc. While characterisation or maintenance is the fourth and last phase of the boundary establishment process involving the continuous process of

[45] Burkina Faso vs. Mali. 1986 ICJ Reports, p. 566. See also Shaw, M. International Law, 6thEdition.,*op cit.*, p. 527.
[46] Shaw, (International Law, 6th Edition).,*op cit.*, p. 528.
[47]*Ibid.*, p. 527. See also Burkina Faso vs. Mali. 1986, ICJ Reports, p. 565.
[48] Shaw, (International Law, 6thEdition).,*op cit.* pp. 509-510.
[49]*Ibid.*
[50] Shaw, (International Law, 6thEdition).*, op cit.*, pp. 509-510.
[51]*Ibid.*, p. 527.
[52]*Ibid.*, p. 509.
[53]Garner., *op cit.*
[54]*Ibid.*
[55] Oxford University Press. (2012). Oxford Student's Dictionary, 3rdEdition, UK.
[56]Wondwosen, T. Colonial Boundaries of Africa: The Case of Ethiopia's Boundary with Sudan. p. 339. Retrieved from: http://www.abbaymedia.com/pdf/sudan-boundary.pdf.
[57]*Ibid.*
[58]*Ibid.*, pp. 339-340.
[59]*Ibid.*
[60]*Ibid.*
[61]*Ibid.*, pp. 340-341.

management and administration of the boundaries after the new marks have erected.[62]

C. The Interface of Boundary Treaties and International Boundaries

Succinctly, it is worth highlighting that boundary treaties existing before independence are of special relevance to the doctrine of *utipossidetis*. In this vein, it is crucial to have an understanding of boundary treaties. Which according to Shaw, the boundary agreements between states constitute a root of title in themselves and is a special kind of treaty which establishes an objective territorial regime valid *ergaomnes*.[63] Besides, the established regime by that particular boundary treaty creates rights binding upon the parties and third parties, that will continue to exist between the parties and those outside the particular treaty even if it ceases to apply;in order to maintain the stability of boundaries.[64]In this regard, it is worth accentuating that a boundary line can be established or confirmed by an earlier treaty laying down a boundary line. Similarly, Shaw notes thatmany boundary disputes revolve around the question of treaty interpretation.[65]As a consequence, to avoid this problem, Shaw argues for the interpretation of these treaties in line with Articles 31 and 32 of the Vienna Convention on the Law of Treaties of 1969, that is, "in good faith and in accordance with the ordinary meaning given to the terms in their context and in the light of its object and purpose".[66]

Concretely, for the sake of securing the territorial integrity of the states, an international boundary is the line dividing the land territory over which the states exercise their full territorial sovereignty.[67]In this perspective, Shaw differentiates the internal borders frominternational boundaries. With theinternational boundaries being established in order to mark the limits of sovereignty and territorial jurisdiction between the different international persons; as they fix permanent lines, both geographically and legally, with full effect within the international system, and can only be changed through the consent of the relevant states. Indeed, such boundaries have important consequences with regard to international responsibility and jurisdiction. While the internal borders do not possess any of these characteristics.[68] Moreover, concerningthe international boundaries established by a treaty, Shaw[69]makes a reference to the position established in the Libya vs. Chad case.[70] In this case, the frontier established by the Franco-Libyan Treaty of 1955 was at issue. The ICJ resolved the issue by making great use of the relevant 1955 Franco-Libyan Treaty, to determine the permanent frontier between the colonial Chad and Libya. From this, it follows that the establishment of the boundary is a fact which, from the outset had a legal life of its own, independent of the fate of the 1955 Treaty. Therefore, it should be noted that the boundary established by the treaty achieves permanence which the treaty itself does not necessarily enjoy. In this line of though, the ICJ states further that, this approach is supported by the application of the principle of *rebus sic stantibus*, which provides that the rule relating to the termination of a treaty on the grounds of a fundamental change of circumstances does not apply where the treaty establishes a boundary. Similarly, it is stated under Article 11(a) of the Vienna Convention on Succession of States in respect of Treaties of 1978 that, "a succession of states does not as such affect a boundary established by a treaty".

D. The Latitude of Territorial Sovereignty and Territorial Waters

Congruently, a territory is a geographical area included within a particular government's jurisdiction; the portion of the earth's surface that is in a state's exclusive possession and control.[71]Besides, it should be noted that a defined territory is one of the basic elements of a state[72]in which the fundamental legal principles of sovereignty and state jurisdiction can be comprehended. Thus, a boundary disputedirectly affects the territorial portion of the state. In this regard, the struggles for independence and the formation of new states are also directly related to a specific territorial area on the surface of the earth. As a consequence, on this basis, it is realized that the territory has a direct impact on the people's right to self-determination, the exercise of state sovereignty and other international rights and obligations of a state and its subjects. Correspondingly, it is worth noting that the doctrine of *utipossidetis* applies to the territorial boundaries of the colonial power, which are transformed into international frontiers of the independent states. Indeed, the boundaries protect nothing than the territory on which the state exercises its sovereignty and where the rights and duties of both the state and its subjects are confined. In this regard, the doctrine of *utipossidetis* freezes the colonial boundaries at the time of independence to protect the territory of the independent state.

Therefore, if the territory is protected, then the sovereignty, rights and people of the state will certainly be protected as well. As such, the boundary is the natural or artificial separation that delineates the confines of real property.[73] From this and with regard to the concept of territory, it should be noted that the territorial boundary is an imaginary line on the surface of the earth, separating the territory of one state from that of another. It marks the limits and sovereignty of a particular territory, and it is through the territorial boundaries that a territory is defined. Indeed, the international boundaries demarcate the land territories over which states exercise full jurisdiction. Thus, it is through the territorial boundaries of states that the international boundaries are defined. As such, the territorial boundaries considered in this paper are those separating two or more states, which may be natural or artificial.

From this perspective, thesovereignty over a territory stands forthe supreme dominion, authority, or rule over the territory;[74] which is a principle inherent under international law to all states. In this light, territorial sovereignty entails title to territory and absolute control over the territory. With title to the territory giving an absolute state mandate on its territory, that is, anabsolute sovereignty over the territory - with the state having rights and duties over its territory as well as obligations over nearby and other territories in the world.[75]As such, according to Shaw, territorial sovereignty has a positive and negative aspect. With the positive aspect of territorial

[62] *Ibid.*
[63] Shaw, (International Law, 6th Edition).,*op cit.*, pp. 495-496.
[64] *Ibid.*, p. 496.
[65] *Ibid.*
[66] Shaw, (International Law, 6thEdition)., *op cit.*, p. 496.
[67] Wodwosen., *op cit.*, p. 339.
[68] Shaw, (Peoples, Territorialism and Boundaries)., *op cit.*, p. 490.
[69] Shaw, (International Law, 6thEdition)., *op cit.*
[70] ICJ Report, (1994), pp. 6, 37.
[71] Garner., *op cit.*, p. 1512.
[72] Shaw, (International Law, 6th Edition)., *op cit.*, p. 198.
[73] Garner., *op cit.*, p. 198.
[74] *Ibid.*, p. 1430.
[75] Shaw, (International Law, 6thEdition)., *op cit.*, pp. 487-489.

sovereignty relating to the exclusivity of the competence of the state regarding its own territory, while its negative aspect refers to the obligation to protect the rights of other states.[76]By the same token, Shaw also looks at the exercise of state sovereignty within and outside the territorial boundaries of a state. As a consequence, the exercise of state sovereignty needs to be appreciated through Shaw's negative and positive aspect to understand the powers, rights and duties of a state within and outside its territory. Thus, the doctrine of *utipossidetis* on this aspect applies to determine the limits within which the colonial powers exercised their sovereign authority and within the same limits the independent states exercise their sovereignty, rights and duties. Therefore, the moment that the doctrine of *utipossidetis* applies, an independent state becomes sovereign within the limits of its former colonial power and exercises such powers within the inherited boundaries.[77]

Emphatically, concerning territorial water, it is regarded as the waters under a state's or nation's jurisdiction, including both inland waters and surrounding sea.[78]With the internal or inland waters in the territory covering the natural, or artificial body, or stream of water within the territorial limits of the country, such as a bay, gulf, rivers, mouth, lake, or canal.[79] In the contrary, foreign water covers waters belonging to another nation or subject to another jurisdiction. Various shared water bodies around the world prove that, in most cases water bodies bordering two states are geographical features which naturally fix an international boundary between two or more states. Water bodies also separate continents, region and various places within the state. In fact, the territorial waters cover all water bodies which when the territorial boundaries were fixed became part of that territory. Thus, because of this, the doctrine of *utipossidetis* applies to transform the colonial boundaries into international frontiers and passes every feature including water bodies in the territory to the authority of independent state. Therefore,it is realised that the territorial waters in this sense do not form part of international waters which are normally shared by states due to their location.

E. The Relevancy of UtiPossidetisto Territorial Boundary Disputes in Africa

Unequivocally, it is worth reiteratingthat although the existing boundaries of Africa were fixed by the colonial powers, particularly in the 19th Century. Although it should be noted that the history of Africa proves that before colonialism, Africa was divided into small and large chiefdoms, kingdoms and states, which were politically led by the African local rulers.[80]With each kingdom or state having occupied a specific territory within the continent. As such, it is worth stressing thatthe African boundaries existing at the advent of colonialism were based on communities characterised by culture, language, and ethnicity. For instance,the traces of Africa with its own boundaries before colonialism can be seenin the Western Sahara Case.[81]In which the issue as to whether the territory in question was a *terra nullius* was responded by the ICJ in the following words, "the state practice in the relevant period of colonisation indicated that territories inhabited by people having a social and political organisations were not regarded as *terra nullius"*.[82] Thisshows the existence of social and political organisations among Africa societies and their territorial boundaries before colonialism. The fixing of these boundaries based on colonial power's benefits and areas of influence rather than the interests and benefits of Africans themselves.[83] Besides, it was also a method adopted by the European colonial powers to avoid conflicts among themselves, and to have a peaceful governance and control of the African continent by allocating each colonial power its own area of influence.[84]Moreover, it should be noted that earlier, the colonial power's areas of influence were acquired by forceful entries and occupation of the local African territories or by entering into agreements with the African local leaders. Although most of these agreements were of little or no interests to Africans but they enabled the Colonial powers to occupy various territories effectively.[85]

Apparently, after most of the European colonial powers had occupied large parts of Africa, they, however, concluded boundary treaties among themselves in order to have clear boundaries of their areas of influence.[86] As such, these boundary treaties created by the colonial powers duringcolonialism have great impact on the doctrine of *utipossidetis*. Thus, since the essence of the doctrine of *utipossidetis* is to preserve the territorial colonial boundaries at the time of independence, it is appreciated that these colonial boundary treaties are the effective available evidence to prove the existence of colonial boundaries. Similarly, the ICJ Reports affirm that the territorial claims invoking the applicability of the doctrine of *utipossidetis* are normally proved by the boundary treaty created prior to independence. In this regard, Shaw groups international territorial disputes into different categories.[87]With the first categorybeing territorial dispute over the status of the country itself and a dispute over a certain area on the borders of two or more states; while the second relates to international boundary disputes since they arise from a contention of states over uncertainties of a border line or a certain area on the borders of two or more states.

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[76] *Ibid.*, p. 490.
[77] *Ibid.*
[78] Garner., *op cit.*, p. 1622.
[79] *Ibid.*, p. 834.
[80] Dobler, G. (2008). Boundary drawing and the notion of territoriality in pre-colonial and early colonial Ovamboland. From: http://www.ethno.uni-freiburg.de/dok/publikationen_dobler/dobler_territoriality_jns.pdf.
See also, Michalopoulos, S. &Papaioannou, E. The long-run effects of the scramble for Africa. Retrieved from http://www.yale.edu/leitner/resources/papers/scramble_africa_stelios_elias.pdf.

[81] Shaw, (International Law, 6th Edition)., *op cit.*, p. 503.
[82] *Ibid.*
[83] Michalopoulos&Papaioannou., *op cit.*, pp. 1-2.
[84] *Ibid.*, p. 3.
[85] *Ibid.*
[86] There were a number of colonial boundary treaties that demarcated African boundaries. The few ones include Franco-British declaration (Milner-Simon Declaration) of 1919 on parts of lake Chad, Anglo-German Agreements of 11th March and 12thApril 1913 that demarcated parts of the Bakassi peninsula and the Anglo-German treaty of 1890 that fixed the boundaries of the German's and Britain's areas of influence in the Eastern part of Africa. African states that were not colonized like Ethiopia had their territorial boundaries fixed by treaties with the colonial governments. As stated by Wodwosen., *op cit.*, p. 338. In the second half of the 19th Century and in the first half of the 20thCentury, the British, representing their colonies (i.e., Sudan, Kenya and the British Somaliland) signed various treaties with independent Ethiopia to demarcate the Ethiopia-Sudan, Ethiopia-Kenya and Ethiopia-British Somaliland boundaries".
[87] Shaw, (International Law, 6thEdition)., *op cit.*, p. 491.

Cogently, it is noteworthy that since the doctrine of *utipossidetis* creates the international boundaries of states, it, thus, has a direct and general link with international boundary disputes. Therefore, with specific reference to Africa, it should be noted that the doctrine of *utipossidetis* has a direct relevancy to territorial boundary disputes in Africa, because of its impact in the determination of its international boundaries. As reiterated earlier, the doctrine of *utipossidetis* has to be proved by the existence of a valid boundary agreement prior to the formation of new states. From this, it is observed that this is what applies in Africa where the proof of the existence of colonial boundary treaties prior to independence is vital. Thus, unless proved otherwise, any boundary dispute in Africa has its roots in the colonial boundary treaties.[88]The Cairo Resolution on the respect of colonial boundaries, also, provides that any territorial boundary dispute among African states has to be settled in accordance to the doctrine of *utipossidetis.* This is different to other territorial boundaries which are settled by a proof of the title to territory ofhistory and effective control over the territory. Indeed, the ICJ has applied the doctrine of *utipossidetis* to solve not only African boundary disputes but also those of the Latin America boundary disputes.

F. The Applicable Principles of Solving Boundary Disputes in Africa

According to Wodwosen, there are three categories of boundary dispute, that is, territorial boundary disputes, positional boundary disputes, and functional boundary disputes. While territorial disputes occurs when countries contest for large tracts of land; positional disputes are those that usually follow boundary allocation; with functional disputes usually arising in relation to the everyday management and operationof boundaries.[89] From these, territorial claims can be based on categories such as treaties, geography, economy, culture, effective control, history, *utipossidetis,* elitism, and ideology. Thus, among these, the common territorial claims are cast in terms of effective control of the disputed territory, historical right to title, *utipossidetis,* geography, treaty law, and cultural homogeneity.[90]In this sense, it is interesting to note that uncertainties of international boundaries usually lead to misunderstandings and disputes among states. This is typically the case in Africa,where claims to boundaries normally originate from uncertainties, said to have been created by the colonial powers. In this regard, since majority of the African states are members of the UN and AU, whose primary objective is to promote and maintain internationalpeace and security through various ways such asthe peaceful resolution of conflicts among member states.[91] It is interesting to note that both the UN Charterand the AU Constitutive Act insist on the peaceful means of settling disputes among the conflicting states. These peaceful methods clearly enshrined in Article 33 of the UN Charter,include negotiation, enquiry, mediation, conciliation, judicial settlement and other peaceful means of their choice;have been applied by conflicting states on boundary disputes in Africa. With the last method often resorted to after the failure of the initial methods in resolving the dispute, by invoking judicial bodies like the ICJ whose decision is final. In a nutshell, it should be noted that the concept of the doctrine of *utipossidetis*needs to be understood in terms of its existence and application under international law.

IV. LEGAL FRAMEWORK OF UTI POSSIDETIS AND ITS IMPACT INTHE CAMEROON AND NIGERIA BOUNDARY DISPUTES

This sectionassesses the legal framework of the doctrine of *utipossidetis;* by examining its status under international law, its application on international boundary disputes and the legal challenges facing it when resolving international boundary disputes. As a background to appreciate the application of the doctrine *utipossidetis*, with regards to theland and maritime disputes between Cameroon and Nigeria,with particular focus onthe Bakassi Peninsula boundary dispute.

A. The Status of the Doctrine of UtiPossidetis under International Law

Before diving into the applicability of the doctrine of *utipossidetis*, it is worthwhile assessing the doctrine under international law, since it does not operate in one nation only but operates within nations. As it exists to determine the international boundaries of the independent states. Thus, the definition ofthe doctrineand the case laws on the doctrinehaveproved its applicabilityunder international law. Therefore, it is a doctrine of international law. For instance, in the frontier dispute case of Burkina Faso vs. Mali, the ICJ states that*utipossidetis* is a principle which upgraded former administrative delimitations, established during the colonial period to international frontiers. Besides,it is a principle of a general kind which is logically connected with decolonisation wherever it occurs.[92] However, despite its recognition under international law, it is noteworthy thatthere is no specific global instrument providing for the doctrine of *utipossidetis*.[93]

Appositely, at the regional level, Article 4(b) of the Constitutive Act of the African Union (AU) provides elaborately words reflecting the doctrine of *utipossidetis*.[94]Even though most of the international instruments only recognize and provide for the principles of Sovereignty and Territorial Integrity when it comes to the protection and respect of international boundaries. However, the doctrine of *utipossidetis* once applied, is protected by the principles of sovereignty and territorial integrity, as provided in the various instruments such as the UN Charters and the AU Constitutive Act. Equally, the doctrine of *utipossidetis*, although determines the principle of territorial integrity, is an independent principle which enables independent states to maintain international boundaries left by their predecessor administrative entities. As a result, the recognition of the doctrine as a separate international legal principle is very paramount.

Conversely, although there is no specific international instrument providing for the doctrine of *utipossidetis*, it is

[88]Aghemelo and Ibhasebhor., *op cit.*

[89]Wodwosen., *op cit.*, p. 342.

[90] Summer, B. (n.d.). Territorial Disputes at the International Court of Justice. pp. 1779 and 1780.

[91] Articles 1 and 33 of the UN Charter and Article 4(e) of the Constitutive Act of the AU.

[92] See also Burkina Faso vs. Mali. 1986, ICJ Reports, p. 565.

[93]*Utipossidetis* and the Ethiopia-Eritrea Boundary Dispute., *op cit.*,p. 24.

[94] See Article 4(b) of the Constitutive Act of the African Union (AU), which states as follows: "The AU shall function in accordance with the following principles ... (b) respect of borders existing on achievement of independence". Among the principles to be observed by the members of the African Union provided under Article 4(b) of the Constitutive Act, is respect of borders existing on achievement of independence. This principle of the AU reflects the doctrine of *utipossidetis,* which was initially declared by the 1964 Cairo Resolution 16(1).

realised that the doctrine is firmly recognised as an international custom. As such, under Article 38(1) of the Statute of the ICJ, a treaty is not the only source of international law; since other sources as international custom, evidence from general practice are recognised as law in line with Article 38(1)(b) of the Statute of the ICJ. Apparently, just like other norms which must be proved as norms of customary international law, *utipossidetis* needs also be proved as a norm of customary international law. In this regard, Shaw[95]and Professor FernandaJankov[96] provide the two important elements which prove the existence of *utipossidetis* as an international custom, which are:*opiniojuris* and necessities (acceptance of the practice as law) and the generality of the practice. With the common authorities proving *opiniojuris* and generality of the practice of states of the doctrine of *utipossidetis* being the practice of Latin American and African countries (the 1964 Cairo Resolution 16(1) and the rampant arbitration *compromise).*[97]

In fact, as aforesaid, the application of the doctrine of *utipossidetis* to international boundaries started with the decolonisation process of Latin America in the 19thCentury - and later in the 20thCentury,with the decolonisation process of the African continent. Thus, except of Brazil which opted for *utipossidetis de facto*, the rest of independent states under the Spanish rule in Latin America applied *utipossidetisjuris*. In a similar manner, in Africa, all the independent African states exceptof Morocco and Somalia applied *utipossidetisjuris*.[98]From this perspective, it is worth noting that the way the doctrine of *utipossidetis* was applied in Latin America, is the same way that it is applied in the decolonisation process of Africa. Although in Latin America the doctrine of *utipossidetisjuris* was initially accepted by the independent states that were under the rule of the same colonial power, that is, Spanish rule.In Africa, the doctrine of *utipossidetisjuris* was accepted by the majority of independent states under different colonial powers. As a consequence, the application of the doctrine of *utipossidetis* in Africa was not something new and unique. This ledShaw to aver that, the acceptance of the colonial borders by African political leaders and by the Organisation of African Unity (OAU) itself neither created a new rule nor extended to Africa a rule previously applied only in another continent. Rather it constituted the recognition and confirmation of an existing principle.[99] This shows how the doctrine has been uniformly and consistently practiced long enough to bind the states concerned.[100]

Explicitly, in the North Sea Continental Shelf cases,[101] it was observed that there is no precise length of time during which a practice must exist, but it has to be shown that a practice has been followed long enough to satisfy other requirements of a custom. Thus, the applicability of the doctrine of *utipossidetisJuris* in the above two continents and in some parts of Eastern Europe proves its recognition by the majority of states on the globe. Indeed, a large number of states to which the doctrine of *utipossidetis* has applied and maintained its status up to date; shows how the states have accepted its binding nature and agreed to be bound by it permanently. In Africa, the 1964 Cairo Resolution 16(1) is a proof of the willingness of African Head of states and governments to be bound permanently by the international principle of *utipossidetisjuris*. From these, it is realized that despite the occurrence of territorial disputes in these two continents, the international boundaries determined by the doctrine of *utipossidetis* have remained in force up to date. For instance, in the Burkina Faso vs. Mali dispute, the ICJ recognised the doctrine of *utipossidetis* as a rule of general application and, thus, a rule of customary international law. Indeed, by referring to the above frontier dispute, Shaw states that, the principle of*utipossidetis* has in fact developed into a general concept of contemporary customary international law and is unaffected by the emergence of the right of peoples to self-determination.[102]

Correspondingly, the ICJ while declaring the doctrine of *utipossidetis* as a norm of customary international law, went further to state that, the doctrine of *utipossidetis* cannot be affected by the right of the people to self-determination. Similarly, the Yugoslav Arbitration Commission also had the same view by stating that, the right of the people to self-determination should not involve the changes to international boundaries at the time of independence unless the states concerned agree.[103] Thus, on this basis, it is realised that the doctrine of *utipossidetis* has acquired international recognition as a norm of customary international law. Indeed, the existence of the doctrine of *utipossidetis*in international law makes the right of the peoples to self-determination to be exercised within the boundaries inherited from colonial rule. On this basis, no group of people can claim the right to self-determination beyond the territorial boundaries conferred by the doctrine of *utipossidetis*. Altogether, it is observed that a critical review of Resolution AHG/Res 16(1) and Article 4(b) of the AU Constitutive Act on boundary inheritance, illuminates the conclusion that, the doctrine of *utipossidetisjuris* was adopted as a whole to apply in African boundaries. In this regard, BonchukOmang views that, the principle of the boundary *status quo* was adopted with its inconsistencies and ambiguities that froze African boundaries and provided them with a legal framework for boundary functioning and maintenance.[104]

In sum, it should be noted that*utipossidetis* in Africa applied and continues to apply only to states that attained independence from the decolonization process and acquired their colonial power's boundaries. With the post application of the doctrine of *utipossidetis* invoking the applicability of another important international principle of territorial integrity to protect the territorial boundaries determined by the *utipossidetis* principle.[105]Among other things, it is observed that the principle of territorial integrity maintains the

[95] Shaw, (International Law, 6th Edition)., *op cit.*, pp. 73-89.
[96]Jankov., *op cit.*, p. 7.
[97]*Utipossidetis*and the Ethiopia-Eritrea Boundary Dispute., *op cit.*, p. 24.
[98] Morocco and Somalia did not adopt the 1964 Cairo Resolution 16(1) as they reserved their right to claim territory on the basis of religion, history or ethnicity. See Brownlie, I. (1979). African Boundaries. A legal and Diplomatic Encyclopedia.
[99] Shaw, (Peoples, Territorialism and Boundaries)., *op cit.*
[100]*Utipossidetis* and the Ethiopia-Eritrea Boundary Dispute., *op cit.*, p. 25.
[101] Federal Republic of Germany vs. Denmark; Federal Republic of Germany vs.The Netherlands (1969).
[102] Shaw, (International Law. 6th Edition)., *op cit.*, p. 526.
[103]*Ibid.*, pp. 527-528.
[104] Michael, B. (2012). Pan-africanism, African Boundaries and Regional Integration. In Canadian Social Science, Vol. 8, No. 4, pp. 233 - 234. Retrieved from the World Wide Web: http://www.cscanada.net/index.php/css/article/viewFile/j.css.1923669720120804.039/2891.
[105]Lalos, D. (2011). Between Statehood and Somalia: Reflections of Somaliland Statehood. Washington University Global Studies Law Review. Volume 10, Issue 4, p. 801.

inviolability nature of colonial inherited boundaries acquired through the doctrine of *utipossidetis*. Hence protecting the stability and existence of independent states. Conversely, DimitriosLalos argues that, as post-colonial boundaries are formalized, *utipossidetis* is replaced by the concept of territorial integrity.[106] In this regard, looking closely at Lalos' view expressed above, one may argue that, among other things, the concept of territorial integrity has been discouraging the recognition of self-declared states, hence preventing secession attempts particularly in Africa. All in all,it is worth noting that the principle of territorial integrity as enshrined in the UN Charter and the AU Constitutive Act prohibit attempts to states' border changes through threats or the use of force.[107]

B. The Trends of the Cameroon-NigeriaLand and Maritime Boundary Disputes

As a matter of fact, it is worth examining the**Cameroon-Nigeria boundary disputes** - toprovide an understanding of the manner in which parties to an international boundary dispute are dealt with, in relation to the acceptance of the doctrine of *utipossidetis*and the applicability of the doctrine through diplomatic and international adjudicatory mechanisms.This is due to the fact that in most cases, African states arecomplying with the provisions of the pacific settlement of disputes as enshrined in the UN Charter and AU Constitutive Act. As such, since boundary disputes are often faced with uncertainties, the first process to engage the parties isusually negotiation, for the purpose of fixing the boundary by the parties. In this sense, a resolution on peace and security in Africa by the council of ministers, while reaffirming the attachment of the African peoples and countries to the 1964 Cairo Resolution AHG 16(1), encourages member states to undertake or pursue bilateral negotiations with a view to demarcating their common borders with beacons.[108]Nonetheless, if negotiation fails, then it might result toa mediation or conciliation process. Despite this, it should be noted that there are some challenges to these peaceful methods, since they can only be successfully carried out if the states are at least in good relations. For instance, in the case between Cameroon and Nigeria, it is important to note that the aforementioned procedures were not followed due to the hostile nature of the states, as the matter was referred directly to the ICJ – with the ICJ determining the issues based on the doctrine of *utipossidetis* in resolving the landmark case.[109]

Explicitly,it is worthwhile accentuating that on the 29th March 1994, Cameroon filed an application with the ICJ requesting that it should determine the question of sovereignty over the Bakassi Peninsula, and also the parcel of land in the area of Lake Chad - both of which formed the bone of contention between Cameroon and Nigeria. Equally, Cameroon also requested the Court to specify the land and maritime boundary between the two states, and to order the immediate and unconditional withdrawal of the Nigerian troops from the alleged Cameroonian territory in the disputed areas. From these perspectives, as the basis of the jurisdiction of the Court, Cameroon firmly relied on the declarations made by the parties under Article 36(2) of the ICJ Statute. Whileon the basis of these claims, Nigeria raised eight preliminary objections on the jurisdiction of the court and the admissibility of the claim.Among other things, the objections, thus, discuss the methods of disputes settlement, the competence of the court in dealing with the maritime boundary between the parties and on the issue of interests to third parties.

Correspondingly, the preliminary objections were responded by the court in its Judgement held on the 11th June 1998. In this regard, in the objection relating to the methods of settling the disputes, Nigeria stated that, 24 years prior to the application made by Cameroon, the parties had agreed to settle all their boundary claims through the existing bilateral machinery. And, thus, argued further that, Cameroon's acceptance to settle boundary claims through the existing bilateral machinery estopped it from turning to the ICJ. Nonetheless, the ICJ among other things in dismissing the objection, stated that negotiation and judicial settlement form part of the peaceful methods of dispute settlement as enshrined in Article 33 of the UN Charter. Similarly, the court observed further that there is no established principle under international law, requiring the exhaustion of diplomatic negotiations as a precondition for a matter to be referred to the ICJ. In addition, it is worth noting that nothing relating to such principle had been stated in the Statute of the Permanent Court of International Justice, or is stated in the UN Charter and the ICJ statute. In this perspective, the court, thus, found no reservation containing a precondition of this type included in the Declarations of Nigeria or Cameroon on the date of the filing of the Application. Therefore, on this basis, the court was, nevertheless, estopped from entertaining the matter.

C. The Resolution of the Disputed Boundary from Lake Chad tothe Bakassi Peninsula

Historically, Cameroon was initially under the colonial administration of German and later after the First World War, a great part of its territorial space was under the French rule and the remaining smaller part under the British rule. These two colonial powers administered the country until when its French part achieved its independence on the 1stJanuary 1960, while the English part inconclusively federated with it after 1stOctober 1961. As for Nigeria, it was under the colonial administration of Great Britain until it attained independence on the 1st October 1960. In fact, it is noteworthy that during the colonial rule, the boundaries of both colonies were fixed by agreements concluded between the colonial powers. These greatly aid the ICJ in determining the land and maritime boundary disputes between Cameroon and Nigeria, to peruse all the boundary treaties concluded by Germany, France and Great Britain, as the former colonial powers of the parties. From these, it should be noted that the disputed boundary in the area of Lake Chad was resolved by the 1919 Franco-British Declaration[110], which was invoked by Cameroon, which was clarified by the Thomson-Marchand Declaration that was signed, approved and incorporated in an exchange of notes between France and Britain from 1929 to 1931. This Franco-British declaration acquired international status and due to this, it was used to determine the frontier separating the British and French Cameroons and specified the tri-point in Lake Chad. With the ICJin assessing the 1919 declaration, concluded that despite having some technical

[106]*Ibid.*

[107]Lalos., *op cit.*

[108] Resolution on Peace and Security in Africa through reservation by Somalia Negotiated Settlement of Border Conflicts. [CM/Res.1069 (XLIV)]. Adopted by the Council of Ministers of the OAU in its 44th Ordinary Session held at Addis Ababa, Ethiopia from 21 to 26 July 1986.

[109] Cameroon vs. Nigeria; Equatorial Guinea Intervening International. ICJ, 10th October 2002. Retrieved from the World Wide Web: <http://www.icj-cij.org>. International Court of Justice, 10th October 2002.

[110] The Picot Line and the Milner-Simon Declaration. See Milner-Simon (1919: 16)

imperfections, still provided the delimitation that was generally sufficient for the demarcation of the Lake Chad border area.

Also, with respect to the land and maritime boundary dispute in the Bakassi Peninsula area, it is worthwhile noting that with the exception of the disputed area, the court found that both parties did accept the validity of the colonial instruments that delimited the rest of the boundaries in the disputed area. These colonial instruments are: the two Anglo-German Agreements of the 11th March and 12th April 1913, as well as the Thomson-Marchand Declaration incorporated in the 1931 and 1946 British Order in Council. In this regard, the court based its interpretation of the 1931Thomson-Marchand Declaration and the 1946 British Order in Council, in resolving the disputed boundary in the Bakassi Peninsula. Conversely, on the issue of sovereignty over the Bakassi Peninsula, the court rejected the argument by Nigeria that, the Treaty of Protection concluded between the kings and chiefs of Old Calabar and the British in September 1884, excluded Great Britain from sovereignty over the Bakassi Peninsula;for which Great Britain did not have any legal power to cede it to German in the March 1913 Anglo-German Agreement. Concretely, the court firmly based its determination of the Sovereignty over the Bakassi Peninsula on the Anglo-German Agreement of March 1913.

Similarly, on the issue of the maritime boundary between Cameroon and Nigeria, whose coastlines are adjacent and are washed by the waters of the Gulf of Guinea, the court resolved the matter by determining the issue based on two points of the boundary, that is, Point G (at a distance of some seventeen nautical miles from the coast) and the maritime boundary beyond Point G. Indeed, it is noteworthy that the maritime boundary to Point G was resolved based on the Anglo-German Agreement of March 1913. While with regard to the maritime boundary beyond point G, although there wasno maritime boundary delimitation,however, both parties agreed that the ICJ should equitable measures to resolve it. The ICJ responded to the request of the parties, by applying Articles 74 and 83 of the 1982 UN Convention on the Law of the Sea, which deal with delimitation of the exclusive economic zone and continental shelf; with the aim of ensuring that such a delimitation is done in a way that will achieve an equitable solution.

D. The Challenges of the Doctrine of UtiPossidetis in Boundary Disputes in Africa

As aforementioned, the doctrine of *utipossidetis* has been the pivotal instrument used in determining the uncertainties in resolving the disputed boundaries between Cameroon and Nigeria. In this vein, it is noteworthy that Cameroon in its arguments basedsolely on the colonial boundaries which were fixed by the former colonial powers of both territories during the period of colonialism. Besides, Cameroon alsostrongly argued before the ICJ that, the colonial agreements that delimited the territories of both parties, did create valid boundaries binding both parties, as were later inherited by both parties during independence. Concretely, it is worth noting that most of the above arguments adduced by Cameroon as supported, were upheld by the ICJ. Moreover, it is worth stressing that where the delimitation of the maritime boundary beyond point G was not evidenced by any colonial delimitation,the doctrine of *utipossidetis*was not be applied, but rather the court delimited the boundary on equitable basis, in accordance with the applicable international law requested by the parties. As a consequence, the ICJ on its judgement in October 2002, ruled that sovereignty over the Bakassi Peninsula and the Lake Chad area lay with Cameroon. In this regard, in upholding the validity of certain colonial boundary agreements invoked by Cameroon, the ICJ fixed the land boundary from Lake Chad in the north, to the Bakassi Peninsula in the south. Similarly, in fixing the maritime boundary beyond point G, the ICJ agreed with Nigeria's submission that the equidistant line between them should produce an equitable result.

Conversely, it should be noted that despite its acceptance as a general principle of customary international law and its applicability to frontier disputes; the doctrine of *utipossidetisjuris*has faced some major challenges such as its inability to solve all boundary disputes. In this vein, Shaw provides an example of a situation whereby the relevant boundary wasestablished by a legally binding treaty. For which, it was noted that if theboundary dispute is not decided otherwise by the parties, then that treaty shall prevail over the doctrine of *utipossidetis*.[111] Moreover, from the above frontier dispute, it is observed that, the ICJ found itself within the limits of applying the doctrine of *utipossidetis* in situations where there is no proof of delimitation of the boundary in question during colonialism. Indeed, this type of situation happened in the boundary dispute between Burkina Faso and Mali, where the ICJ invoked the principle of equity *infra legem* to the delimitation of the pool of Soum. Similarly, the same occurred in the dispute between Cameroon and Nigeria, where the maritime boundary beyond point G was resolved on equitable basis, based on Articles 74 and 83 of the 1982 UN Convention on the Law of the Sea.

In addition, there is also a challenge of non-acceptance of the doctrine of *utipossidetis* in Africa. This is observed in the frontier dispute between Burkina Faso and Niger, where Judge Yusuf made a dissenting opinion negating the existence of the doctrine of *utipossidetis* in Africa; by strongly arguing that Resolution 16(1) of the African head of states adopted in Cairo in 1964, does not make reference to the Latin American doctrine of *utipossidetisjuris*, and thus, the ICJ's conclusion on the existence of *utipossidetisjuris* in Africa has been wrong. Furthermore, the last major challenge to the doctrine of *utipossidetis*, specifically,in Africa is a tendency to depart from the doctrine and rely on other principles in order to justify one's boundary claims. In this perspective, it is observed that the departure from the doctrine to other principles usually occurs in most cases where the application of *utipossidetis* is clearly in favour of one side, with the departing parties normally basing their claims on historic rights. This is the case of the boundary dispute between Malawi and Tanzania,whereby the application of *utipossidetis* directly favoured Malawi, to the dismay of Tanzania whose interest in the lake is basedon claims on historic rights, and the general practice of the delimitation of the boundary lakes in Africa by the colonial powers.

In sum, it is worth noting that the application of the doctrine of *utipossidetisjuris* has developed from being applied to normal estates by settlers, to large land territories by powerful nations, and lastly to international boundaries of the newly formed states. Initially, the application of the doctrine of *utipossidetis* was confined within the decolonisation process only, but later, it has been extended beyond the context of decolonisation to other forms by which new states can be formed from the pre-existing entity. All in all, the discussion of the boundary disputes in Africa, shows that African international boundary disputes are dealt with, at the national level as wellat the international levelbetween the parties. These

[111] Shaw, (International Law, 6th Edition)., *op cit.*, pp. 528-529.

cases also reveal the various challenges that can limit the application of the doctrine of *utipossidetisjuris*. Thus, despite these challenges, there is a great need and necessity toapplythe doctrine in resolving international boundary disputes – as appreciated in the Bakassi Peninsula boundary dispute case.

CONCLUSION

The findings of this paperhave proven the existence of the doctrine of *utipossidetis* in Africa. Besides, the decision of the ICJ on the existence of the doctrine of *utipossidetis* and its applicability on African boundary disputes has been supported by various experts of international law in their writings. Indeed, it is noteworthy that the doctrine is applied in Africa as a rule of general scope applicable during independence. However, despite the dissenting opinions on the interpretation of the 1964 Cairo Resolution to mean the doctrine of *utipossidetis*, it is clear that the ICJ and majority of experts maintain the existence of *utipossidetisjuris* to the 1964 Cairo Resolution AGH/Res 16(1).From this, it is worth noting that the application of the doctrine of *utipossidetis* in African boundary disputes was first invoked by the ICJ in the Burkina Faso-Mali frontier dispute; with reference to the OAU principles of intangibility of frontiers and the respect of international borders. As a consequence, all the African boundary conflicts referred to the ICJ were decided on the basis of the doctrine of *utipossidetis* except where the doctrine was seen to have no application. Thus, the application of the doctrine has been very successful to most of the African boundary disputes, as appreciated in the Bakassi peninsula dispute. As it applies only to boundaries that were clearly fixed by colonial powers during colonialism.

Conversely, despite the acceptance of the doctrine of *utipossidetis* in Africa, there have been some challenges facing its existence. These challenges are mainly based on the claims of unequal delimitations of the African continent by colonial powers and the delimitation of certain areas without considering other factors like the general practice of states on those areas. On the one hand, these challenges have been created by colonial powers themselves due to their tendency of concentrating on potential areas to satisfy their needs and desires without considering the interests of the Natives and their future. On the other hand, these challenges have been created by the African leaders and elites, first when they adopted the doctrine of *utipossidetisjuris* as a whole without considering other factors like the above challenge created by colonial powers, second failure of the AU and its predecessor OAU to reconstruct the principle so as to limit its strict application as a whole. In a nutshell, it is noteworthy that the doctrine of *utipossidetisjuris* has readily laid a solid foundation in African boundaries. Besides, the claims on boundaries are normally settled by the parties or referred to the adjudicative bodies with one or both parties relying on the doctrine of *utipossidetisjuris*,as seen in the case of the Cameroon-Nigeria land and maritime boundary dispute. Indeed, the manner in which the doctrine of *utipossidetisjuris* secured international boundaries of Africa after independence and the extent to which it has maintained peace by resolving disputed boundaries peacefully, especially as seen in the case of the Bakassi Peninsula dispute between Cameroon and Nigeria, show how the doctrine has been a tool for maintenance of peace and security in Africa. Its usefulness since independence has brightened the future of Africa and its boundaries. However, the challenges to the applicability of the doctrine of *utipossidetis*, as shown above, may pose problems to certain boundaries and diplomatic relations of disputing states. This is due to the fact that the strict application of the doctrine as a whole, as it has been done to the cases referred before the ICJ, may leave the loosing state party with an unrecoverable wound for losing a portion of territory which it has a right of claim on the other side of the coin, as envisaged for Nigeria in the Bakassi Peninsula dispute.

RECOMMENDATIONS

Succinctly, the doctrine of *utipossidetis* in Africa exists under customary international law through the provision of Article 4(b) of the Constitutive Act of the AU, which was initially adopted by the heads of African states and governments in the 1964 Cairo resolution. Although the African leaders did not specifically refer to the doctrine, their expressed intention in Cairo confirmed clearly the applicability of the doctrine in African boundaries. Despite the existing boundary disputes in Africa,it is observed that the great role of the doctrine has greatly facilitated the maintenance of peace and security in Africa since independence. From this, the first great role of the doctrine is to prevent expected hostilities, conflicts and wars among independent states of Africa over their boundaries. While the second great role of the doctrine is its function in solving international boundaries of Africa without causing war. The third great role is the maintenance of African international boundaries and protection of African states which have always been stable within and outside their inherited boundaries.As aconsequence, the acceptance and applicability of the doctrine of *utipossidetis* in Africa since 1964, has greatly facilitated the achievement of African objectives and principles of maintenance of international peace and security, protection of independence and territories of African states, respecting the borders of each state as well as the peaceful resolution of African boundary conflicts. Since without the doctrine, Africa would not have been where it is now, if the doctrinewas abandoned at the early stage of independence.

Besides, the doctrine faces a number of challenges in Africa, as a result of the boundaries created by the colonial powers during colonialism, and the African leaders during the adoption of the doctrine in 1964. These are due to the interests of colonial powers on Africa's natural resources, the attractive geographical features and fertile land as well as the adoption of the doctrine of *utipossidetisjuris* as a whole. With these challenges enabling the doctrine of *utipossidetis*at some points to be seen as unfair and ineffective. Indeed, the major challenge to the doctrine is the unequal territorial delimitations and delimitation without considering the general practice of states on certain features. With these unequal territorial delimitation in most cases placing rich soil and natural resources on one side, with the other side left with nothing or little wealth. For example,the Bakassi Peninsula dispute between Cameroon and Nigeria was due to the discoveryof oil and other minerals in the peninsula. This example shows how the colonial powers createdconflicts in Africa, by placing natural wealth on one side of the territory, thus, creating circumstances for independent states to fight for these areas. The other conflict was created on the second challenge in which the colonial powers delimited some specific areas without considering the general practice of states when delimiting such areas.

In a nutshell, as a way forward, it is highly envisaged that the African states should do everything possible to ensure that, they utilise effectively the principle of "Negotiated Settlement" of border disputes adopted by the council of ministers of the OAU/AU in Resolution CM/Res.1069 (XLIV) of 1986.Besides, the African Judges need to have good faith in

the interpretation of the applicability of the doctrine of *utipossidetis* in the context of Africa with reference to the 1964 Cairo Resolution with respect to borders. In addition, the African judges and experts,and the commissioners of the AU Commission on International Law (AUCIL) shouldalso work on the dissenting opinions of judges and other experts of international law on the general and strict applicability of the principle of *utipossidetisjuris* in Africa. Altogether, the paper has presented the root of the existing boundary disputes in Africa, with the aim to appreciate the contour on how the Bakassi Peninsula dispute was resolved, by looking at the key principles determining international boundaries in Africa. All in all, the paper has provided the substratum forother scholars, government officials, experts of international law and institutions interested in dealing with or conducting studies on African boundary disputes and applicable legal principles.In this light,the paper is significant to the AU in its efforts to solve African boundary disputes and the AUCIL in its studies and researches on the principles of international law applicable to African frontiers particularly the governing principle of *utipossidetisjuris.* It is, also, of great relevance to the future of the continuing African boundary disputes, as it is of much importance to persons and institutions charged with the functions of dealing with these boundary disputes.And lastly,it isof paramount importance to students of international law and every other person interested in an in-depth study of the doctrine of *utipossidetis*in theAfrican context in general, and the Bakassi Peninsula dispute resolution in particular.