Page 2153 - 2156 **DOI:** *https://doij.org/10.10000/IJLMH.114280*

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 6 | Issue 1

2023

The Idea of Territory in International Law

VIDIT[1]

ABSTRACT

The presence of a territory is of utmost importance for a state to be a legal person. Therefore the nature of territory becomes a vital part in the study of international law, because fundamental legal concepts such as jurisdiction and sovereignty can only be comprehended in relation to territory. This paper analysis the idea of what constitutes "territory" in the international legal sphere in order to understand the concept of state in International law.

Keywords: *international law, state.*

I. INTRODUCTION

The roots of international law are based on the concept of the state. At the same time the concept of state generally lies upon the establishment and foundation of sovereignty, which articulates internally the supremacy of the governmental institutions and externally the supremacy of the state in the form of a legal person. But sovereignty itself, with its spheres such as legal rights and duties, is founded upon the fact of territory.[2]

The presence of a territory is of utmost importance for a state to be a legal person.[3] Therefore the nature of territory becomes a vital part in the study of international law because fundamental legal concepts such as jurisdiction and sovereignty can only be comprehended in relation to territory. Indeed, the principle whereby a state is deemed to exercise exclusive power over its territory can be regarded as a fundamental axiom of classical international law. [4]

Jean Gottman in *Significance*[5] talks about how most nations indeed developed through a close relationship with the land the settled with. International law has developed and often evolved with a series of rules governing the control and transfer of territory. Such rules, by the very nature of international society, have often (although not always) had the effect of legitimizing the results of the exercise of power. The lack of a strong central authority in international law has emphasized, even more than municipal legal structures, the way that law must come to

[1] Author is an Advocate with the Bar Council of Maharashtra & Goa, India.
[2] Oppenheim's International Law (eds. R.Y. Jennings and A.D. Watts), 9th edn, London 1992, Chapter 5, p.563.
[3] Ibid.
[4] Hill, *Claims to Territory*, p.3
[5] Gottmann, J.: The Significance of Territory, Charlottesville, VA, University of Virginia Press, 169 pp., ISBN: 0-8139- 0413-7, 1973.

 [ISSN 2581-5369]

terms with power and force.[6]

In the international legal system, a modification in the possession of a particular territory also inherently involves a change in sovereignty, in the legal authority that governs the area. This means that the nationality of the inhabitants of a particular territory may be transformed, with the various legal systems they work, live and conduct their relations in comparison to municipal law where changes are only involved in the notion of legal ownership. Therefore, one needs to understand how international law also deals with the varied effects of the alterations in international sovereignty.

II. TERRITORIAL SOVEREIGNTY AND THE DOCTRINE OF *UTI POSSIDETIS*

The true spirit of territorial sovereignty evolved around the notion of title. This term serves as a combination of both the factual and the legal conditions under which territory is supposed to belong to one particular authority or another. This contains the presence of facts required under international law to entail the legal concerns of change regarding the juridical status of a particular territory[7] In the case of Burkina Faso and Mali[8], the court comprehended the word 'title' to be grasped both; any evidence which may establish the existence of a precise right and the actual source of that right.[9]

The difficulty in examining how a state actually acquires its own territory in international law is a problematic one and can only be explained through legal-political terms. While with former long-established states one may dismiss this question on the basis of acceptance and recognition, relatively newer states pose a different problem altogether since, under classical international law, until and unless a new state is created, no legal person can be entitled to hold title, therefore the international community has traditionally approached the problem of new states in terms of recognition, rather in the terms of acquisition of territory.[10]

The principle of uti possidetis has been explicitly stated in a resolution of the Organization of African Unity in 1964, which declared about a tangible reality which existed in the form of colonial frontiers at the date of independence and that all member states pledge to respect such borders.[11] A chamber of the International court also discussed this principle in the case of

[6] Malcolm N. Shaw, International Law -6th Edition, Cambridge University press 1997, p.489., ISBN: 978-1-107-00832-8.
[7] I. Brownlie, Principles of Pulic International Law, 6th edition, Oxford, 2003, p.119.
[8] ICJ reports, 1986, pp.554-564; 80 ILR, pp.440, 459.
[9] This was reaffirmed in the *Land, island, and Maritime Frontier (El Salvador/ Honduras) case*, ICJ reports, 1992, pp.351, 388;97 ILR, pp.266, 301.
[10] Malcolm N. Shaw, International Law -6th Edition, Cambridge University press 1997, p.489., ISBN: 978-1-107-00832-8.
[11] Security Council resolution 1234(1999) which refers to the peace and security of the African Union.

 [ISSN 2581-5369]

Burkina Faso vs. Republic of Mali[12] where there existed a special agreement on the basis of which the parties approached the court, and later the court specified that the settlement of the dispute should be based upon the respect for the principle of "intangibility of frontiers inherited from colonization. Also by this time this particular principle had developed into a general concept of customary international law and was sincerely unaffected by the right of peoples to self-determination. The International Court of Justice in one of its judgment defined *uti possidetis* as:-

"The essence of the principle lies in its primary aim of securing respect for territorial boundaries at the moment when independence is achieved. These territorial boundaries might be no more than delimitations between different administrative divisions or colonies all subject to the same sovereign. In that case, the application of uti possidetis resulted in administrative boundaries being transformed into international frontiers."[13]

III. AN ANALYSIS OF THE SITUATION AT GUANTANAMO

Guantánamo is aided by the Caimanera port near the site of a U.S. naval base. The area produces sugarcane and cotton wool. These are traditional parts of the economy. The city was founded in 1797[14] in the area of a farm named Santa Catalina. The name "Guantánamo" means, in Taíno language, "land between the rivers". In fact, the history of the Guantanamo base echoes the quarrel between the rising American empire and the withering away of the Spanish Empire. In an effort to restrict Spanish ambitions in Cuba, Washington seized official control at the end of the Spanish-American War in 1898.[15]From then on, there was a series of conditional amendments and treaties that confirmed the American presence in the region. Washington issued the notorious Platt Amendment in 1901, allowing the United States to retain its military presence while claiming to be an advocate of Cuban independence.

The core of the agreement reserved the right of the United States to intervene in Cuban affairs and annexed land to the United States.[16] Subsequently, the Treaty of 1909, a lease agreement signed by the United States and Cuba, authorized the use of Guantanamo for naval and coaling stations under the presumption that a U.S. military presence could maintain stability in the region and deter further Spanish incursion. The long-term lease of Guantánamo Bay continues.

[12] ICJ reports, 1986, p.554; 80 ILR, p.459.
[13] ICJ reports, 1986, p.566; 80 ILR , p.470.
[14] Lars Schoultz. *Beneath the United States: A History of U.S. Policy Towards Latin America* (Cambridge: Harvard University Press, 1998)
[15] Parmly, Michael, "The Guantanamo Bay Naval Base: The United States and Cuba—Dealing with a historic anomaly", The Fletcher Forum of World Affairs
[16] U.S. Department of State, "The United States, Cuba, and the Platt Amendment, 1901," Office of the Historian

The Cuban government under Castro has strongly denounced the treaty as a violation of article 52 of the 1969 Vienna Convention on the Law of Treaties,[17] which declares a treaty void if procured by the threat or use of force. However, article 4[18] of the Vienna Convention states that its provisions shall not be applied retroactively.

Therefore, can one really try to justify the presence of an alien entity to such an extent that this presence supersedes the sovereign identity of an independent state such as Cuba? Which itself questions the whole notion of the sovereignty being achieved on the basis of the independence over a particular territory, On the other hand the I also believe that the economic and military strength of the United States of America ensures uninterrupted control over a naval base and detention center regulating in the area, but these strengths can only be safeguarded with the principle of *uti possidetis* acting as a shield over the agreement as such but then again one can one really justify and comprehend how a prison facility is justified in an area reserved for extraction of coal and naval stations only.

*****

[17] Article 52. *COERCION OF A STATE BY THE THREAT OR USE OF FORCE* A treaty is void if its conclusion has been procured by the threat or use of force in violation of the principles of international law embodied in the Charter of the United Nations.

[18] Article 4. *NON-RETROACTIVITY OF THE PRESENT CONVENTION*
"Without prejudice to the application of any rules set forth in the present Convention to which treaties would be subject under international law independently of the Convention, the Convention applies only to treaties which are concluded by States after the entry into force of the present Convention with regard to such States."

 [ISSN 2581-5369]