

PRINCIPLE OF THE INTANGIBILITY OF COLONIAL BORDERS IN THE FACE OF THE CHALLENGES OF LEGAL AND POLITICAL STABILITY OF THE STATES OF NORTH AFRICA



Dr./ Hamid Zaidi^{1,2,3}

¹ University of Tizi Ouzou, (Algeria)

² Lab: LAMOD

³ Corresponding Author: zaidihamid17@yahoo.fr

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Abstract:

The principle of the intangibility of colonial borders is a well- established principle in international relations. It is considered an imperative norm of international law or, in other words, a jus cogens norm in contemporary international law, it is the most appropriate means for the settlement of border disputes and regional.

"Uti Possidetis Juris (UPJ)" means "the principle of the intangibility of borders inherited from at the time of independence" is a principle of customary international law that serves to preserve the boundaries of colonies emerging as States; strict application of this principle is the only guarantee of peace, security and stability in the continent of Africa.

Key words: *Uti Possidetis Juris; Principle of effectiveness; Principle of the intangibility of borders; Principle of territorial integrity.*

Introduction:

The majority of the borders of African States - Modern Independence- Including the countries of North Africa were placed by the colonial Power. When the colonists effected the identification and demarcation of boundary of African continent they did not take into account ethnic, religious, and economic trend of the region.

The reason for the planning of the border in this continent was the search for a balance of power between the European colonies and Greediness of natural resources, which resulted in forcing peoples to respect the new boundaries, and adopted the planning in natural resources which led to the dismantling of the single people. This is what we observe through the dismantling of the Greater Maghreb.

Add to that, the Independent States always wanted to search for more space over which they exercise their regional competences exploiting and Taking advantage of the economic wealth. This greed in the Expansion is the reason of disputes over borders and territory.

The cause to embrace the principle of respect for the borders inherited from colonialism is the fear of disputes and clashes between African States, but that did not prevent its occurrence. The continent has faced devastating conflicts and several military clashes resulted in thousands of deaths.

Through the above, the problematic arises as follows:

Does adherence to these artificial borders hinder the integration of the countries in North Africa In all its political, social, and economic aspects?

In this study, we followed the descriptive method analytical based on treatment and examination through exposure to the principle of the intangibility of colonial boundaries and the account of its historical evolution through the historical method. we will precisely try to answer this question by adopting an analytical approach of the principle of intangibility of colonial borders inherited at the time of independence, and its consequences to the stability of the states of north Africa, by dividing the topic into two key axes:

The first axis relates to the content of the principle of the intangibility of borders inherited from colonialism **(I)** and the extent of the obstruction of this principle of integration and development in the countries of North Africa, in all aspects is developed in the second axis **(II)**

FIRST:

Content of the principle of the intangibility of the borders inherited from colonialism in the African Organization

The principle of the intangibility of the borders inherited from colonization is a well-established principle in international relations. It is *jus cogens* in contemporary international law and, it is the most appropriate means for the settlement of border disputes and regional. This has been evidenced by international courts decisions on these conflicts. Legal Studies have also shown that the principle of the intangibility of the borders inherited from colonialism is not a new principle Invented by African States But it was the principle used in the American Continent In the liberal states of Spanish and Portuguese colonialism. The concept and conditions for putting it into operation was derived from African States, It was reliable for the territorial integrity (1) and the principle of effectiveness on the other hand. (2)

1- The adoption of the principle of the intangibility of the borders inherited to achieve Territorial Integrity:

Under the principle « *Uti Possidetis Juris* » The new states must be respected and continue to retain colonial boundaries The moment of independence In view of the effectiveness of this principle as well as the many border disputes Its spread in all continents, Including the African Continent The majority of its countries liberated from colonialism after the Second World War.

The member States of the Organization of African Unity announced its support for the principle « *Uti Possidetis Juris*», that it is clear in its application on many occasions in the border issues.

The Article III of the Charter of the Organization of African Unity (OAU) of 26 May 1963 states: "**In order to achieve the objectives set out in Article II, the members of the Organization shall affirm and be bound by the following principles:.....3) Respect for the sovereignty, and territorial integrity of each State and their right to independence of its entity**".

The principle of the intangibility of the international border is based on clear bases that do not replace extradition random border changes consequently; new regional boundaries exist only in a limited scope. It is noted that the stability sought by all countries of the world, it is not meant to slow down the borders or its Absolute persistence. Man-made political boundaries, this man can turn to change.

For its part, international law does not object to the changes in the border by the will of the Parties; these changes do not constitute a violation of the peaceful of the principle of the intangibility of the International Border but in support of it and recognizing its continuation...(Marxsen Christian, 2015,p.p.7-12).

In the same direction, according to professor "BARDONNET" the existing international border cannot in any way slow down in a format that cannot be modified. All what this principle mean's, is to achieve a kind of relative stability and predictability of the international border, and to reduce the possibility of amendment in the scope and terms established by international law. (Bardonnnet, 1976, p.108)

Hence, the principle of the intangibility of the borders inherited from colonialism includes the inadmissibility of any amendments to the existing international border through the threat or use of force by one of the parties concerned and, on the other hand, do not mind making border adjustments through the agreement. (Bardonnnet, 1976, p.109).

Despite the adoption of this principle by the African Organization, in order to maintain territorial integrity, however this principle has not been without criticism either.

Since some author believed that the African version of the principle of the intangibility of the borders inherited came tinged with inaccuracy, (Touval Saddia,1993, p.126); the text of the article16/1 of the summit of African heads of state and government of 1964 held in Cairo, made reference to "the commitment of African States to respect the borders existing at independence,"

Under this formula, the state of "Morocco" managed to claim that Algerian areas and regions was a part of the Moroccan territory during its independence.

"Ethiopia" and "Liberia" took advantage of the same formula calling for regional expansion in the Territory of Neighboring States; this is because the formula mentioned above was not enough to prevent conflicts about the borders existing at independence, some countries went to that the meaning of the borders existing at independence, Realistic boundaries (de facto) while the majority confirmed that it is legal limits(de juris) . (Mohammed Ashour Mahdi, 1996, p. 198).

2 - The principle of effectiveness as a legal basis for the principle of the borders inherited:

The classical criteria for statehood were essentially based on the principle of effectiveness. The proposition that statehood is a question of fact derives strong support from the equation of effectiveness with statehood (Crawford James, 2007, p.96).

The principle of effectiveness is a rule of international law according to which the fact is binding on the law, and indicates that the acquisition of new territories by States is governed under international law by the rule of effectiveness. (Crawford James, 2007, p.96).

The principle of effectiveness played a major role in the adoption of the stability of the International Border. The fact that most of these borders are based in the legal existence of the principle of effectiveness is a principle recognized in national and international legal systems.

Internal Laws were adopted on the principle of the limitation period profit in order to preserve the apparent situation based on the principle of «Possession of document of the title and whoever claims otherwise, he has to validate what he claims. (Tariq Abdel Raouf Saleh Rizk ,1995, p. 188- p. 207).

Modern international law has taken the principle of effectiveness, given the strong interest to preserve the territorial integrity of member States of the international community; it has become dependent on this principle to settle disputes regarding territorial sovereignty, in order to maintain the existing regional conditions. (Zaidi Hamid, 2016, p. 37).

SECOND:

The enshrinement of the principle of the intangibility of the borders inherited from colonialism in the African organization.

The control of the African border led to conflicts between many African countries, In this regard, the Conference on "African Peoples" in "Accra" (Ghana) in April 1958; (BOUAITA Nabil,1981, p. 08). Condemned those colonial boundaries, which led to the division of the African peoples, the Conference called for the abolition of those borders. This was a popular position which reflects the emotional feelings of the African peoples. (Tredano Benmessaoud Abdelmoughit,1989, p.69).

On the contrary, the Organization of African Unity has a strategic position in favor of the principle of the intangibility of the borders inherited from colonialism, with a view to the maintenance of international peace and security among the States of the continent (1). The same approach was taken by the African Union, (2) despite the reservations made by some States (3).

1- Position in favor of establishing the principle of border intangibility:

The Organization of African Unity (OAU) rejected the reconsideration of the borders of the continent. In article III, paragraph 3, it expressed "**respect for the sovereignty and territorial integrity of each State and for its inherent right to independence**".

At its first meeting, held in "Dakar", "Senegal" in August 1963, the Council of Ministers of the Organization of African Unity (OAU) recognized the existing African border and decided that it should be respected. Then the work of the Organization took place at this pace, At the Presidents' Conference held in "Addis Ababa" in 1963, the prevailing view was to maintain the border between African countries as they were, in order to avoid bloody conflicts between neighboring.

The Ivorian president "**Félix Houphouët Boigny**" expressed that: "Although the current African people believe and hold on to unity, it is difficult to achieve this ... The search for unity requires a consensus between a great deal of caution and willpower in resorting to positive solutions to real problems, so that the solution is gradually phased and we leave the task of finding solutions To the issues that may divide us now into what I call "the dynamics of unity" Achieving this lofty goal, unity, cannot be achieved by questioning the limits inherited from colonialism".(Tredano Benmessaoud Abdelmoughit, 1989, p.74).

The head of "Madagascar" "**Philibert Tsiranama**" added: "It was no longer possible, nor desirable to modify the boundaries of States on behalf of the criterion of race or religion..., if we take into account these criteria, there may be countries erased from the map of the African continent".(Tredano Benmessaoud Abdelmoughit, 1989, p.75).

The President of the Republic of Mali "**Modibo Keita**" affirmed: " If we actually moving a strong will for African Unity, it must take Africa as it is, and must give up any territorial claims if we are not to engage in Africa what can be described as an imperialist power black...African unity requires each of us absolute respect for the heritage that we inherited from the colonial regime, this means

maintaining the current borders of our States African unity It is necessary to put a practical end to all elements of discrimination, which must be crystallized through a treaty or non-aggression pact guaranteed by each of the States gathered here". (Boutros Boutros-Ghali, 1987, p.123).

The Prime Minister of Nigeria "**Aboubacar Tafawa Balewa**" expressed the same idea as he said:" It is regrettable that African States have been dividedby colonial Powers, and in some cases, we find that the tribe itself has been divided between four different countries, we can find the part in Guinea, and part in Mali, and part in Sierra Leone, and perhaps find a part in Liberia. We are not responsible for this, because those multiple groups exist since more than 30 years, and any attempt by any African state of the insurgency in this reality may cause disorders on the continent level, we must avoid these disturbances, for that reason, Nigeria recognize all existing borders in Africa, and recognizes the existence of all African States". (Boutros Boutros-Ghali, 1987, p.123).

Despite the inaccuracy of the African borders, and the existence of unconstitutional and irreconcilable historical grounds, the majority of States supported the idea of not compromising the borders inherited from colonialism. This is in view of the fact that recourse to the amendment of inherited boundaries inevitably leads to conflicts between these States. Thus, the third paragraph of Article III of the Charter of the Organization of African Unity (OAU) promotes the idea of respect for the sovereignty and territorial integrity of each State and its inalienable right to its independent existence.

In view of the political situation in the African continent, with the presence of many border disputes, the Heads of State and Government held the first conference, between 17 and 21 June 1964 in Cairo. The agenda of the conference included the proposal of the Government of Tanzania to study ways and means helps to avoid new conflicts between African countries. "The atmosphere of the conference was ready for discussion, given the incidence of border disputes such as: Algeria, Morocco, Ghana and Upper Volta, Somalia, Ethiopia, Somalia and Kenya. As a result, the majority of Heads of State and Government are of the view that the borders inherited from colonialism should be maintained and not affected. (Abdel Rahman Ismail Mohamed Al-Salhi, 1980,p.39).

Prime Minister of Kenya "**Jomo Kenyatta**" called to:" The need for a charter on maintaining the current status of borders " As emphasized by Mr. "**Albert Margai**", Prime Minister of "Sierra Leone" The day after the meeting: "Pointed out that the Charter of the Organization did not contain an explicit

confirmation of the current status quo of the border, and suggested that Member States should enter into agreements with their neighbors in order to accept the borders that existed at the time of the achievement of independence".(Abdel Rahman Ismail Mohamed Al-Salhi, 1980,p.39).

The President of the Republic of "Dahome" "Benin" and the Algerian President "**Ahmed Ben Bela**" stressed the need for the survival of the inherited borders at the time of independence.

The president of the Republic of Madagascar called for acceptance of the existing borders, warning that its non-acceptance would lead to permanent quarrels in the interests of the Organization. Any attempt to amend would be worse than the colonialists did.

If the Charter of Addis Ababa was not recorded in an explicit way the principle of the intangibility of the borders inherited from colonialism, in the Conference of African heads of State and Government, referred to earlier, the Conference decided to famous Decision AHG/Res.16(I) That each State Party undertakes to respect the borders existing at independence. The resolution is the first frank declaration of the adoption of the African States, the principle of the inviolability of the borders inherited from colonialism, African, which came in line with realistic considerations and a representative of the opinion of the majority of African States in this area. (Adel Abdallah Hassan Al-Massadi,1997, p. 209).

The organization considered the general principle governing the borders between African States, as expressed by some of the jurisprudence by saying: "The Organization of the principle of the sanctity of borders", in the sense that the border must remain as they are without modification or change even if the remnants of colonialism, because opening the door to reconsider the border may lead to tension and instability within the African continent, that is, the Organization of African Unity has recognized the old borders of all States, and the acceptance of the legacy of colonialism in all their artificial fragmentation of the African continent in order not to raise major problems do not end, are problems which threaten peace in the continent, will be raised by the international community as a whole.(El Husseini Messalhi Mohammed, 1976, p. 559; Mustafa Syed Abd al-Rahman, 1994, p. 188).

The Organization of African Unity has renewed its commitment to the principle of respect for the borders inherited in the declaration issued by the Council of Heads of State and Government, held in Cairo in June 1993, on the

establishment of a mechanism for the prevention, management and settlement of conflicts.(Tariq Abdul Rauf Salih Rizk, 1995, p. 250).

In paragraph 14 of the declaration it is stated that the mechanism would be guided by the purposes and principles of the Organization of African Unity. It was between what is stated in paragraph 14 of the principle of respect for the sovereignty and territorial integrity of Member States, and the principle of the inviolability of the borders inherited from colonialism.(Faisal Abdel Rahman Ali Taha,1994, p.85).

The Constitutive Act of the African Union was adopted on the same approach adopted by the Organization of African Unity (OAU). Article IV, paragraph 2, which included the principles of the Union, states: "**Respect for the borders of independence**". The Protocol of the African Peace and Security Council, which entered into force on 26 December 2003 and came into force on 25 May 2004, also affirms that among its principles is "**respect for the inherited boundaries upon the attainment of independence**".

2- Opposition to the principle of border intangibility:

If the principle of the intangibility of the borders inherited from colonialism was fully supported by the majority of the heads of State and Government meeting in "Addis Ababa", there are two states that have opposed this principle, namely the Republic of Somalia and the Kingdom of Morocco.

The Republic of Somalia opposed this principle, its president "**Adel Abdullah Othman said**": "History has shown that the most serious obstacles faced by African unity is due to the artificial political borders imposed by the colonial power in wide areas of the African continent, and we have seen how that integrated communities since the team had been torn apart, and how those communities saw their territory fragmented to serve the selfish interests of other communities. Some said: "Any attempt to modify the current borders will not improve the situation as much as it hurts, and therefore things must remain as they are ... We do not agree with this view ... " .(Abdel Rahman Ismail Mohamed Al-Salhi, 1980,p.37).

We have noted that Somalia has not rejected the principle itself, but has been demanding the application of the principle of the right of peoples to self-determination, which was approved by the Somali president in the summit of the organization's constituent where he confirmed that:" It is not his country's desire to expand its territory and cannot wait of the inhabitants of the republic to be indifferent to the appeal made to them by their brothers, and the Somali

government to demand the application of the principle of the right of peoples to self-determination. Note that this principle is enshrined in the Charter of the United Nations...». (Boutros Boutros Ghali, 1973, p. 105).

The Personal Representative of the President of the Republic of Somalia, declared that the topic discussed by the Conference on respect for borders was related to that type of future dispute, and did not relate to existing conflicts, and considered that the effort required to provide a peaceful settlement of disputes would arise in the future and stated that Somalia would not draw its borders by any decision.

Somalia declared more than once during the conference, that the decision not to prejudice the borders inherited will not affect its borders, has announced in 24/07/1964, the refusal to adhere to the Fixed Boundary. in an official letter to the Secretary-general of the Organization, dated 01/08/1964, the same rejection. Somalia's protest was that the decision to respect borders meant creating new conflicts. (Abdel Rahman Ismail Mohamed Al-Salhi, 1980,p.40).

As for the Moroccan opposition, expressed in the memorandum submitted to the Organization of African Unity (OAU) when it asked "Morocco" to join the organization in September 19, 1963. In this note that Morocco, which declares its accession to the Charter of the "Addis Ababa", reservations with regard to the principle of respect for the existing borders. (Boutros Boutros-Ghali, 1987, p.125).

"Morocco" also indicated that the signing of the Charter of the Organization should not be interpreted as an explicit or implicit approval, which had previously rejected it, and rejected it on the respect for the existing borders. It also did not indicate in the decisions of the Conference. the Charter of the Organization expressly the principle, and that the Charter had explained in more than one subject to respect for the sovereignty and territorial integrity of States, referred to in the preamble to the Charter, and in article II and III thereof. In fact, respect for the sovereignty of the state means respect for its sovereignty within its territory. (Abdel Rahman Ismail Mohamed Al-Salhi, 1980,p.38).

Note that "Morocco" did not attend the summit "Addis Ababa" establishing the Organization of African Unity in 1963, despite the presence of the Moroccan delegation, headed by " Ahmed Balfrej," Minister for Foreign Affairs of Morocco, where "Morocco," declared its boycott of the Conference, and also did not participate in the preparatory ministerial conference in protest to subscribe

"Mauritania" and non-recognition of "Mauritania" by "Morocco". "Morocco" signed the Charter "Addis Ababa" and was considered an original member.

It is strange that Morocco, which withdrew from the Organization of African Unity (OAU) because of the accession of the "Republic of Western Sahara" to it since 1973, also failed to attend the Lusaka summit in July 2001, in which the Constitutive Act of the African Union was declared, "In Libya, and did not attend the Durban summit in South Africa, which declared the end of the Organization of African Unity and the beginning of the African Union in July 2002. (Abdallah Al-Ashaal, 2003, p. 146).

3- Devoted to the principle of the intangibility of the borders inherited from colonialism in the Constitutive Act of the African Union:

Article 4 of the Constitutive Act of the African Union states that **"the Union shall act in accordance with the following principles: ... respect for the limits on the attainment of independence"**.

The text of article 4 of the Constitutive Act of the African Union, states that **"The Union works in accordance with the following principles: ...b __ respect for the borders existing at independence"**.

It should be noted that the text on the respect for the borders existing at independence, which came from between the principles of the African Union, is a confirmation of what went to the Organization of African Unity since the beginning of its work.

The protocol on the establishment of the Peace and Security Council of the African Union was adopted on the same principle, and in Article IV, paragraph 9, it states: **"Respect for the inherited boundaries upon the attainment of independence"**.

The artificial colonial borders, caused many conflicts between the countries of the African continent, and has remained a source of conflicts and differences between these countries. Although the African Union was dedicated to the principle of the intangibility of the borders inherited from colonialism, but that the delimitation and demarcation of the borders between African States, in good condition, led to the outbreak of conflicts between them, which charged the African Union to decide since 2007 to develop a program for the demarcation of the border and to eliminate these conflicts.

African Ministers on Border Issues issued a declaration on 27 March 2010 concerning the African Union border programs and follow-up methods and the acceleration of its implementation. The Declaration included several principles, including the principle of "respect for the borders that existed when African States obtained their independence" on the one hand, and on the other, the Declaration noted the danger of the continuation of more than half of the African border without specifying. (Hamid Mohamed Hamed, 2010, p.1).

In support of the African Union launched in 2007 to facilitate the delineation and demarcation of the African border and the promotion of cross-border cooperation, the French authorities handed over to the African Union on 29 November 2013 the digital versions of the French archives related to the African border. These documents relate to 45 treaties and a map of countries Western, Northern and Eastern Africa that belong to the period between 1845 and 1956.

Conclusion:

Although some African leaders have taken a hostile attitude to the idea of the intangibility of inherited borders, wishing to hasten the adjustment and elimination of the borders they inherited from colonialism, hoping for the natural resources of those territories, the majority of African leaders have clung to the colonialist boundaries. This is what has been emphasized in the African Organization, whether it was announced at the Cairo Conference in 1964, or as stipulated in the Constitutive Act of the African Union within its principles.

If the reason for embracing Africans is the principle of the intangibility of the borders inherited from colonialism, it is the fear of conflicts and clashes between African countries, but this did not prevent the occurrence, so the continent has known several military clashes that resulted in thousands of deaths.

For these reasons, urged the African Union to the inviolability of the borders inherited from colonialism, and included within its principles (article 4/3) on the one hand, and, on the other hand, making the objectives of the African Union, the need to accelerate the political, social and economic integration of the continent.

At first sight, there appears to be a contradiction between the objectives of the African Union, namely, the need for continental integration in various areas (article 3/3) and the commitment of African States to respect and not to prejudice the borders inherited from colonialism.

However, we believe that the third paragraph of Article III (3/3) came to reflect the complementary goal that Member States must strive to achieve. If the Union accelerates the political, social and economic integration of the continent, this does not mean the removal of inherited African borders. This is if the African model is modeled on the European model. If it is aimed at achieving what the late Libyan leader Muammar Gaddafi has achieved by establishing an African-style United States modeled on the American model, it is different.

Despite the strong criticism of the principle of intangibility of the borders inherited from colonialism, it is noted that the application of this principle was not a cause of conflict and border conflicts in Africa in general or North African countries in particular, and not to disrupt the work of the Organization of African Unity, The non-application of this principle has led to conflicts among the countries of the continent and therefore its non-application may hamper the integration of North African countries in particular and African countries in general.

So we see the **need**:

- Urging all countries of the continent to work to activate the survey of all its borders.

- To sensitize all countries of the continent to the need to expedite the appointment and planning of their borders.

- To make all States aware that border and territorial disputes can be settled in an effective and peaceful manner by applying the principle of the intangibility of borders that are inherited from colonialism and not to be questioned.

Thus, when defining and planning political boundaries in a precise manner, the social and economic integration of all countries of the continent.

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