

# The Usage of International Court of Justice in the Field of Border Delimitation Disputes

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**Abstract:** The paper presents the issues of the peaceful settlement of international border disputes on the delimitation of borders in the International Court of Justice. The definition of an international border dispute on the delimitation of borders is being formulated. It is revealed that the legal means of resolving international border disputes developed by the International Court of Justice influenced the development of international law. It is substantiated that for the effective settlement of border disputes on the delimitation of borders, it is necessary to evaluate the interrelation of territorial, ethnic, historical, social and environmental aspects. The tendencies and factors of development of the law enforcement practice of the International Court of Justice in the field of settlement of border disputes are determined.

**Keywords:** International border dispute, delimitation, border, International Court of Justice.

## INTRODUCTION

New current challenges determine the high importance of ensuring the legal regime of borders. As recent events have shown, the onset of a threat to the life and health of citizens associated with the spread of infection, inevitably led to the fact that one state after another began to "close" their borders. Thus, it can be argued that the principle of stability and inviolability of borders acquires the property of a special legal means of maintaining social security.

International border disputes have always been the main obstacle in relations related to the use and protection of borders. As a complex multidimensional phenomenon, the international border dispute entails a number of interrelated consequences of a legal, political, economic, social nature (Shaikhutdinova and Marsel, 2018).

Disputes about the delimitation of state borders are of particular importance in international law. The international border dispute on the delimitation of state borders is a disagreement expressed in the mutual claims of states related to the definition, change, clarification of borders, and the establishment of the fact of the passage of borders passing on the earth's surface.

The international dispute over border crossing affects a set of problems of international and national importance: the livelihoods of the population and the right of peoples to live in a certain territory, the implementation of economic and other economic

activities on the territory, the processes of resettlement of various ethnic communities, the maintenance of international security, environmental protection, etc.

One of the most effective instruments for the peaceful settlement of international border disputes is the International Court of Justice. The practice of the UN Court of Justice on the settlement of border disputes has acquired enormous importance for the development of international law. The UN Court has laid down a number of fundamental principles and instruments aimed at maintaining world law and order and security.

## METHODS

The usage of the International Court of Justice in peaceful settlement of border disputes has been built on the basis of unity and differentiation. The UN Court developed legal instruments, procedures and criteria for the implementation of delimitation common to all international disputes, systematized legal customs [16]. On the other hand, the differences in the specific circumstances of the case, historical, geographical, political, national characteristics predetermined the specificity of the means and principles used.

The methodological base of the research is represented by a set of general scientific and private scientific research methods. In particular, using the analysis, the practice of the UN Court of Justice in resolving significant international disputes on the delimitation of land borders was investigated, and the synthesis made it possible to consider the relevant practice in a systemic unity. The induction method established the patterns that arise in the process of identifying the key problems of the International Court of Justice that hinder the peaceful implementation of

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delimitation. The formal legal method was used in the interpretation of international legal regulators in the field of peaceful settlement of international border disputes.

## RESULTS & DISCUSSION

Most of the international border disputes took place after the liberation of a number of countries from colonial dependence, since the borders between countries were either not established or determined by the former metropolises that neglected national and ethnic characteristics. The International Court of Justice actually became the main legal instrument that ensured the peaceful end of many territorial border disputes and prevented military and other serious consequences.

The decision of the International Court of Justice on the border dispute between Burkina Faso and Mali on December 22, 1986, consolidated the fundamental role of the principle-instrument *uti possidetis* in maintaining the stability of the territorial border system and formed the main vector of development of territorial issues on the postcolonial African continent. The formula "own what you own" subsequently formed the basis of the practice of delimitation relations and was established as a general international legal principle of ensuring the stability of borders (Hasani, 2004).

The Burkina Faso/Mali case is also notable for the fact that the UN Court has formulated provisions disclosing the application of other international legal principles and procedures for the peaceful resolution of border disputes. Thus, the principle of justice was affirmed in the interpretation of the rules of law and the choice of methods of delimitation. The conditions for the use of cartographic materials in the context of proving ownership of the territory were determined. The issues of joint nature management and environmental protection in the regulation of border relations were legally substantiated.

The successful settlement of the border dispute was largely facilitated by the detailed contractual settlement of the main aspects of delimitation, the procedure for its implementation after the issuance of a judicial act (Merrills, 2017). The treaty model has subsequently been effectively applied in other border disputes (between Benin and Niger in 2005).

The decision of the UN Court of Justice on the territorial border dispute between the Libyan Arab Jamahiriya and Chad on February 3, 1994, contributed

to the withdrawal of Libyan troops from the territory of Chad and the cessation of prolonged military collisions between states. The main emphasis was placed by the Court on the interpretation of the 1955 Treaty between France and Libya and a number of additional regulators. Despite the fact that the term of the agreement was limited to twenty years, the Court confirmed that the existence of the border does not depend on the duration of the agreement.

International border dispute is an integrated formation that defines relations in various spheres of public life. By resolving border disputes, the UN Court consistently and systematically reflected the procedure for the settlement of many legal relations in the context of the changed legal regimes of the borders. This multifunctionality was vividly illustrated by the Decision of the International Court of Justice of Dec 13, 1999, on the border dispute between Botswana and Namibia in connection with the Sedudu Island.

The court declared the need to create equality of national regimes for the citizens of Botswana and Namibia (for example, in terms of exercising the rights to navigation, fishing, use of natural resources, free access to the territory around Kasikili Island), and also pointed out mutual obligations to protect the environment.

The judicial position, set out in the dissenting opinion of the Vice-President of Weeramantry, bears scientific and practical value in this decision (Oduntan, 2015). It introduces the concept of environmental aspects of joint use of border areas under different jurisdictions. Noting the problem of dividing the integrity of the ecological system in the context of providing equal national regimes on the territory of the island and adjacent waters, the judge suggested establishing a model of a common international legal regime for environmental protection. This regime presupposes joint management of natural resource extraction processes; general licensing activities; protection of flora and fauna; ensuring access for citizens and courts; regulation of tourism, etc.

In the "Border dispute on the delimitation of the land and sea border in Nigeria and Cameroon" case (Judgment of the International Court of Justice of October 10, 2002), the most important judicial conclusion was the confirmation of the primacy of legal title as a legal guarantee of sovereignty over the territory. However, this decision is not indisputable due to the fact that the Court did not recognize the validity

of the agreements between the metropolis and the ethnic groups of the Old Calabar colony.

A decision made by the International Court of Justice dated April 16, 2013, on the border dispute in Burkina Faso and Niger completed the delimitation of the disputed borders between three neighboring West African states. The court revealed and disclosed the grounds and limits of the use of colonial law in ensuring the interests of the population of border areas. The basic values that determine the order of delimitation of land spaces, proclaimed the principle of the unity of people and territory, the principle of humanism, solidarity, the need to consider the interests of the population, as well as their traditions, activities in resolving any border disputes, ensuring human security, protecting his rights by international justice (Jorge, 2003).

Border disputes in Latin America were mainly associated with maritime delimitation. At the same time, the activities of the International Court of Justice on the delimitation of land territories also contributed to the establishment and maintenance of peace. For example, the UN Court resolved a protracted border dispute between Honduras and El Salvador (Resolution of the International Court of Justice of September 11, 1992). The judicial conclusions were based on the principle of *uti possidetis juris*, which is fundamental in the light of succession, and effectivities were subsidiarily established based on the confirmation of acquiescence as a legal fact of recognition of management.

On February 2, 2018, the International Court of Justice resolved another complex case concerning the land border between Costa Rica and Nicaragua (Abdullin, 2015). The UN Court recognized the sovereignty of Costa Rica over the disputed territory in the Isla Portillos area, determining the legitimacy of the borders and ordering Nicaragua to remove the military camp from Costa Rica.

## SUMMARY

The *uti possidetis* doctrine received an instrumental and ideological priority, based, *inter alia*, on contractual consolidation, and confirming the functionality of the internal administrative boundaries. Thanks to the activities of the UN Court, criteria for assessing the effective management of territories were also formulated to resolve the issue of the location of borders.

The specificity of the consideration of international border disputes by the UN Court has determined a pluralistic approach to the use of legal regulators. To clarify the legal meaning of the main regulators in the field of delimitation, the Court assessed both direct (international treaties) and indirect regulators (legal acts of the colonial period, the practice of relations between the parties, unratified treaties, tacit consent, legally binding cards, decisions of other courts, etc./).

A key feature of all international border land delimitation disputes is the direct connection with the human factor. As B. Samner rightly notes, "the symbiosis of population and territory is one of the main factors that must be taken into account when resolving border disputes" (Separate Opinion of Judge Cançado Trindade, 2020).

The most important task of the International Court of Justice is to balance the interests of various groups of nations and states on the basis of law and justice. Thus, the Decision of the UN Court of Justice on the dispute between Burkina Faso and Mali emphasizes that the consideration of legal and national aspects corresponds to the socialability arising from the *recta ratio* inherent in the foundation of international law. Today this is of key importance in resolving local and international conflicts related to territorial delimitation. No delimitation decision will be effective and enforceable without reflecting the interests of the population.

The resolution of any border disputes should be based on the mandatory consideration of natural factors, needs, living conditions of people, ethnic, historical characteristics of settlement, determination of the legal regime for joint use and conservation of natural resources, rather than on mechanical demarcation of the territory.

## CONCLUSIONS

The activities of the UN Court as a universal court is a reference point for various international and national judicial bodies Oduntan (2015). The methods of delimitation developed by the Court can be used in the settlement of intrastate territorial disputes.

At the moment, a number of border delimitation disputes are pending before the UN Court, in particular, the mixed border dispute between Guatemala and Belize, declaring a number of requirements for the delimitation of land spaces. The outcome of the case will significantly affect not only the international

relations of the disputing states, but also the system of economic and political ties in the region. It is interesting to note that the control mechanism of the Court implemented in this case at the stage of preliminary agreement of the disputing parties reflects a certain trend in the law enforcement activity of the International Court of Justice. This tendency is expressed in the implementation by the UN Court of the preventive function of preventing the threat of violation of the rights and interests of states until the conflict is resolved.

The International Court of Justice consistently and convincingly ensures the consistency of international law. As a universal judicial body considering border disputes of different nature, the Court maintains the unity and integrity of international law enforcement in the context of individual manifestations of international law fragmentation [19].

Another trend in the development of the law enforcement practice of the UN Court of Border Disputes is the strengthening of judicial control functions in ensuring environmental safety, including through the introduction of temporary environmental protection measures and differentiation of liability measures for transboundary environmental damage. In this regard, the decision of the Court on the border maritime dispute between Costa Rica and Nicaragua, which awarded compensation for environmental damage, became a turning point. [20] A similar legal structure, by analogy, can be applied to resolve other international border disputes.

Finalizing the above, we should say about the factors that will contribute to the improvement of the law enforcement activity of the UN Court:

- 1) More states to recognize the compulsory jurisdiction of the Court.
- 2) Contractual regulation of the conditions and procedure for the resolution of international disputes by the UN Court at all stages of the existence of a dispute and after its completion;
- 3) Development of domestic referendum mechanisms for making decisions to refer a dispute to the International Court of Justice;
- 4) Increased confidence in judicial proceedings on the part of states by creating a system of international legal and other (political, economic) incentives;
- 5) Systematization (for example, by incorporation) of a set of international legal rules, customs, principles, and other regulators in international dispute resolution in order to create certain legal models for the settlement of relevant disputes;
- 6) Active information support for the activities of the International Court of Justice;
- 7) Reduced time for consideration of international border disputes due to the institutional and functional reform of the International Court of Justice; and
- 8) Create of mechanisms for ensuring the execution of court decisions of the UN Court

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