Self-determination, *Uti Possidetis* and Boundary Disputes in Africa

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African practice has contributed much to the development of the international law of territory in several distinct waves. The colonial experience, the “Scramble for Africa”, marked the reshaping of the classic concept of the protectorate with the accepted continuity of the sovereignty of the entity in question into the colonial protectorate, whereby any underlying sovereignty of the entity was extinguished turning the territory into the sovereign possession of the colonial power. This experience also resorted to the extensive use of the treaty form so as to transfer such sovereignty and title to the colonial power ostensibly through the consent of the indigenous entity. Cynical though it undoubtedly was, it served its purpose of minimizing inter-colonial conflicts and, in the longer term, it laid the foundations, it could be argued, for self-determination.1

The second wave, that of decolonisation demonstrated the rising influence in international law of the doctrine of, and ultimately right to, self-determination, coupled with the acceptance of the separate status in law of the colonial territory as distinct from the metropolitan power. The excitement and achievement of self-determination, however, was mitigated by the reception of the doctrine of *uti possidetis* or territorial integrity in the transitional process leading to independence due to growing concerns over possible disorder, whether internally or externally generated. The third and current wave is marked by the complicated interaction of the principles of self-determination and territorial integrity in the post-colonial phase, importing notions of human rights and stability. Focus upon the people is matched by the fear of secession and the potential for violence and chaos. Thus, Africa stands out as a key battleground of ideas and practice in testing times.

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More generally, there is and remains a long-running, complex and challenging tension between the territorialist and individual or group-oriented concepts of international law. The former approach is predicated upon and underpins the State-centred dynamic that has fuelled the development of international law particularly since the Westphalia peace agreements of Osnabrück and Münster in 1648 concluding the Thirty Years War. States as the basis of the new world order necessitated clear boundaries, territorial sovereignty, domestic jurisdiction and non-intervention in order to function conceptually. Accordingly, the principle of territorial integrity evolved as a critical part of the equation and the dominant identity of the individual was forged as a consequence of territorial location through nationality. The doctrine of *uti possidetis* may be seen as one aspect of the wider principle of territorial integrity and one that posits essentially that the boundaries of a new State are co-terminous with the frontiers of the preceding entity, whether a colonial territory or a constitutionally distinct area of an already independent State which has seceded.2

The group or people oriented approach focused rather upon the wishes and aspirations of objectively identifiable and distinct entities, based usually upon religious, ethnic or racial characteristics. What mattered were the demands of such a group to fulfill their own particular requirements, be they religious autonomy or ethnic control. The source of the dominant identity of the individual was therefore the shared peculiarity of the group, rather than the factual coincidence of territorial residence. This approach necessarily impacts upon the norm of territorial integrity since the fundamental focus is laid upon the people and not the territorially organized residence. The right of self-determination as the proclaimed “right of all peoples” to determinate their own political status thus re-orientates the historically territorial and statist paradigm.3

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