Journal of University of Duhok.,Vol. 22, No.1(Humanities and Social Sciences),Pp 469-493, 2019
https://doi.org/10.26682/hjuod.2019.22.1.27

BOUNDARY DEMARCATION FOR A NEW STATE IN INTERNATIONAL LAW

DR. AYAD YASIN HUSEIN KOKHA
Dep. of Law, College of Law and Political Sciences, Salahaddin University, Kurdistan Region- Iraq
(Received: January 7, 2019; Accepted for Publication: April 1, 2019)

ABSTRACT

Boundary demarcation is one of the most important aspects of creating new states in the course of international public law. This issue is dealt with through two main problematic areas: on one hand, the existence of *uti possidetis* due to the phenomenon of colonialism, regarded as the rule of law (*jus cogens*), which is still valid to the present, and which causes many conflicts (particularly depriving indigenous peoples of their original boundaries). On the other hand, there is no obvious legal rule to bind concerned states to make a demarcation, and the laxity or non-control of a boundary creates a source of tension and a security threat for connected countries. This research mainly aims to render the boundary as a source of stability through encouraging the newly independent states to achieve the demarcation process as soon as possible, thus avoiding all relevant disputes. The findings of the paper show that it is necessary to provide adequate discretionary powers to the Joint Demarcation Commission (JDC)s, specifically those of new States, to overcome obstacles and difficulties for accomplishing demarcation's practical steps accurately and in a sophisticated manner. Moreover, there are alternatives able to settle related disputes peacefully, in order to stabilise new countries, strengthen them, establish their infrastructures, and evolve cooperation relations based on good neighbourliness among respective states. Eventually, this will contribute to the maintenance of international peace and security.

KEYWORDS: Boundary, Demarcation, Delimitation, New State, JDC

1. INTRODUCTION

Boundary demarcation is considered a modern phenomenon in the context of international law. Over the past two centuries, the number of states has increased, which has led to an increasing need for precise boundary determination that emphasises the defined separations among them. This has become a standard in which each state practices its legal, political and economic jurisdictions, meaning any breach to the statutes of these boundaries causes a legal problem under the state's sovereignty. It is noticeable that states' practices refer solely to boundary delimitation, which is not enough to give them the character of stability, particularly for a new state, unless translated into visible markers. This can be achieved through the *demarcation process*.

1.1. Research Importance and Objective

A boundary has dual characteristics: it is either a source of tension which creates enemies among concerned countries or a means of increasing understanding and cooperation that creates good friends at the international community level. The majority of states face obstacles to boundary security and management, regarded as one of the greatest challenges and threats to territorial integrity. In effect, the strategic significance of demarcation derives from the fact that it is an effective means for protecting a new state, as a factor of political and economic stability, as well as protecting the emergence of an idea of sovereignty when confronted with an adjacent state that may be stronger militarily, politically, or economically. If the demarcation process is executed correctly, and documented internationally, it will sanctify the new boundaries, thereby protecting the new state and avoiding future disputes to the fullest possible extent. However, this paper aims to make the boundary a method of maintaining international peace and security through encouraging new states to achieve a process of demarcation as soon as possible, to establish stability internally and internationally, to settle all relevant disputes peacefully, to evolve cooperative relations on the basis of good neighbourliness, and finally to promote open and secure boundaries and facilitate the legal movement of persons and goods.

Journal of University of Duhok.,Vol. 22, No.1(Humanities and Social Sciences),Pp 469-493, 2019
https://doi.org/10.26682/hjuod.2019.22.1.27

1.2. Research Problem

This paper concentrates on issues of new states in relation to disputes over the boundary demarcation process, which is considered a significant problem at the level of international law. The origin of this complexity is due to the fact that the majority of state demarcations were made by the phenomenon of colonialism in the past, but are still valid according to *uti possidetis* as a rule of law (*jus cogens*), which has created many conflicts, especially in regards to depriving indigenous peoples of their original boundaries and national right to pursue self-determination. This difficulty appears when a newly created state has neglected, postponed, or decided not to fulfil the demarcation process with its neighbours, especially since there is no any *legally-binding rule* on concerned states to engage in the process. Thus, this may evolve into armed conflict, reaping a lot of lives and funds, and is eventually conducive to threatening international peace and security. Ultimately, what makes this paper even more difficult is not the restriction to studying this subject in light of international law; but it also includes aspects of geography, geodesy, and cartography, as needed for accurate demarcation.

1.3. Research Questions

As it is known, during creating a new state in the context of international law and international relations, one of its prominent basic pillars is the territory (boundary) where the State exercises its sovereignty, jurisdiction, and programs in isolation from other countries. As a sequence, in order to apply the principle of stability of state boundary, it is essential to determine this boundary across a considered international instrument. Nevertheless, it does not mean boundary-making process is successfully done unless fulfilling the demarcation process in visible marking on the ground. Therefore, the research tries to find an answer for the following questions:

1. What does demarcation process means in this regard?

2. What are the principles and practical strides of it?

3. What are the advantages that arise from the timely accomplishing the demarcation by the new State? Other than that, what are the disadvantages resulted from poor demarcation or incomplete demarcation by the new State?

4. Finally yet importantly, what are the reasons and types of boundary demarcation disputes? How can the new State avoid itself from such conflicts? Alternatively, if they occurred, how can these disputes settle within the framework of international law and judiciary?

1.4. Research Methodology

The legal analytical approach is adopted in this research paper, this is done through selecting the texts of international agreements, taking views and analysis of the relevant international scholars into consideration. Furthermore, using the comparison method through discussing international jurisprudence and practice by comparing with other nations who have been subjected to demarcation process and demonstrating some models to reach the formulation of proposals and figure out appropriate-sophisticate alternatives for demarcating new states.

1.5. Research Outline

Accordingly, the paper analyses the aforesaid in three main sections. In the first section, the basic legal terms and concepts for the research title, such as new state, territory, and boundary demarcation, are outlined. In section two, the framework of demarcation for a new state is discussed via three sub-sections, covering the legal basis of boundary demarcation, its power, and its practical steps. The final section studies the powers of the Joint Demarcation Commission (JDC) and the legal value of its work on one hand, and then explains the reasons for demarcation disputes and their settlement.

2. BASIC TERMINOLOGIES AND CONCEPTS

There are some important and necessary international legal concepts directly related to the research topic, such as the new state, the territory, and boundary demarcation, as explained briefly below.

2.1. The New State

It is important to say that statehood in light of contemporary international law has not always been a clearly defined concept (Crawford, 2006, p. 31). However, in this respect, an expert Prof. Abou- El- Wafa argues that the state is an entity which is defined as a permanent territory in which lives a population; both elements are under the control of a government or a sovereign authority that has acquired international recognition as an independent country (Abou-El-Wafa, 2010a, p. 199). Subject to article 1 of the Montevideo Convention on the Rights and Duties of States, a

state should possess four qualifications, namely: a permanent population, a defined territory, a government, and capacity to enter into relations with the other sovereign states (Montevideo Convention on the Rights and Duties of States, 1933).

New States are usually established either in a legitimate peaceful manner or via coercive military means. However, in order to become more powerful and stable in the context of contemporary international law and international relations, those States should join United Nations (UN). Pursuant to article 4 of UN Charter, there are certain conditions for the admissibility of a state to the membership of UN, including: being a peace-loving state, accepting the obligations of UN, and being an able state and willing to carry out these obligations. The admission of such a state to UN membership will be effected by a decision of the General Assembly upon the recommendation of United Nations Security Council -UNSC- (UN Charter, 1945). Here it can be noted that another condition could be added to the above-mentioned ones, which is the unanimous approval by the five permanent members of UNSC for admitting this new state (pursuant to article 136 of UN Charter), naturally, in the framework of compatibility with their international political and economic interests; and then a new state can join UN as a real and formal member.

The above qualifications and conditions are required for the recognition of a new state as a subject of international law; then when a new state is established and admitted where its boundary is demarcated-clearly, all other states shall refrain in their international relations from the threat or use of force against the territorial integrity and political independence of this new state, as stipulated in article 2 (4) of UN Charter, besides the principle of sovereign equality of all states, together with other important principles affirmed by article 2 (1) of the Charter. Furthermore, the new state should have competent institutions that are able to respect its international obligations and obey the principles of international cooperation, good faith, and good neighbourly relations with other states.

Since the establishment of UN, until the present time, there are 193 UN member states (in addition to the Vatican and Palestine as observer members). Notable examples of the most recently established states and members of UN are South Sudan in July 2011, Montenegro in June 2006, and East Timor in May 2002 (UN Member States: Growth in UN Membership, 1945 – present).

2.2. The Territory (International Boundary)

Each state has a territory of its own, in which the existence of individuals and objects are subject to its jurisdiction. This territory represents one of the essential elements of a new state for its significance to its national security and economic stability. Consequently, every state exists within a specific area on the ground, and international law admits to its sovereignty over the territory that always consists of two elements: the land component (*lithosphere*) and the space component (*atmosphere*). There may be a third component of the state, namely a maritime component (*hydrosphere*) if the state overlooks the sea extensions; these three elements constitute the *biosphere components (*Abou-El-Wafa, 2010b, p. 224*)*. However, the territory for a new state raises, inter alia, one of the important questions here, namely the international boundaries.

The boundary is an important, complex, and controversial matter; it is a question which is essentially concerned with states. This does not mean, however, that the boundaries of all states are similar (Abou-El-Wafa, 2010a, p. 229). A boundary traditionally – in the international law perspective – refers to a line which separates two or several states, i.e. it is a line that determines the territorial boundaries and defines the limits of each state jurisdiction and has three dimensions in nature that come to include the terra firma along with the subsoil, the airspace, and the maritime domain (Law and Martin, 2009, p. 65). Strategically, the best type of international boundary is clearly defined, as they separate countries from each other completely in nature, and do not leave any loophole to be attacked by other states, and contributes to protect a state's security (Boggs, 1940, pp. 3-9).

It is necessary to distinguish the term '*boundary'* from the other terminologies or concepts that may be mixed or overlapped with it, such as '*border'*. The former is usually used in reference to the line that divides the territory of two or more states, while the latter refers to what has to be crossed when entering to a state. Occasionally, they coincide accurately, but it is more common for the border to include substructure such as customs facilities, fencing, immigration checkpoints, and in the status of international air or seaports, the border may be

located hundreds of kilometres from the boundary, which is essentially a line of definition, whereas a border is usually a more complex entity comprising various lines or areas, whose initial task is the regulation of movement of people and goods (Pratt, 2011, p. 8). There is another important distinction in boundary studies, distinguishing the English terms 'boundary' and 'frontier'. The term frontier (fringe/edge) is merely a zone of land abandoned because of its non-habitation by humans in the form of natural phenomena such as mountains, rivers, and marshes. Though quite a few writers have noted this distinction, the words 'boundary' and 'frontier' are still employed interchangeably as if they are synonymous; but geographically, the terms are not the same. While boundaries represent a legal-political phenomenon, whether natural or artificial (delimited and demarcated by humans), it can be changed if neighbouring countries agree (Bakhashab, 1996, pp. 33-34). It is, therefore, reasonable to briefly consider the universally accepted meanings of boundary and frontier. A boundary denotes a line whereas a frontier is more properly a region or area having a width as well as a length and, therefore, merely indicates an area without fixing the exact limit; a frontier is a vague term until a boundary sets a hedge between it and the frontier of a neighbouring state. Nowadays, frontiers have not remained on the political world map, which has all come to be possessed by different countries in the world (Abou-Zaid, 2006, pp. 10-14). Consequently, while taking into consideration the distinction among these terms in these previous studies, without any misconceptions, the term *boundary* is chosen here as it accords accurately with the subject of the research.

International boundaries are fixed and binding lines, whether land, air, or maritime, which reflect the extent of the area in which a state exercises its purviews, systems, and programs in a framework of legitimacy. A state has sovereignty and sanctity in confronting neighbouring countries or other countries in accordance with the principle of stability and finality of boundaries, a fundamental principle of contemporary international law which refers to the necessity of protecting boundaries and respecting all of the international agreements related to them. In brief, the concept and content of stable international boundaries is directly related to the accurate and perfect demarcation during the process of the establishment of a new state via legitimate means.

2.3. Boundary Demarcation

Boundary demarcation is defined as an action for fixing the boundaries or limits of something (Hawkins et al., 1990, p. 180). Originally, it comes from the German word for 'mark', which means a line, boundary or other conceptual separation between things. Geographically, it means surveying and mapping, via aerial and satellite imagery. The latter plays a great role in boundary making and represents an important fact in the physical recognition of boundaries (Al Sayel et al., 2009, p. 1). Legally, this term is commonly used in international law to mean having a function of separating states' territories under different jurisdictions (The US Legal Dictionary, n.d.).

Regarding boundary making, in light of contemporary international law, there are two main processes: *demarcation* and *delimitation*. Generally, the distinction between the processes is now accepted. Formerly, there were no precise terms distinguishing them from each other until some experts came to give different meanings to both words, after discovering that the dictionary treated them as synonymous. The modern theory of practical boundary making was created by many jurists, especially Lord Curzon (1907), Sir Thomas Holdich (1916), C. Fawcett (1918), and Sir Henry McMahon (1935). Their practical involvement, in this regard, gave their publications a special impact. Important attention was given to differentiating concepts of the boundary-making process, i.e. both terms, delimitation and demarcation. The former denotes the preparatory work and identifies the boundary in a treaty by maps, while the latter denotes the laying down of the line of the boundary on the ground after the treaty has been delimitated (See McMahon, 1935, p. 4; Pinther et al., 2013, p. 17).

Delimitation is allocation, which means the initial boundary division, i.e. it refers to all the proceedings related to the definition and determination of a boundary line according to any of these international instruments: a treaty, a UNSC Resolution, a judgment of the International Court of Justice (ICJ), an International Arbitration Tribunal (IAT) Award, or an executive order issued by a colonial authority; it requires a team of international law and international relations experts (Al-Fatlawi and Omran, 2009, p. 35). Obviously, delimitation alone will not give a

boundary line stability and finality unless implanting marks to all international boundaries through the demarcation process (Sharma, 1989, pp. 11-12).

The delimitation process involves making boundaries on a map (paper) within the text of an international instrument, while demarcation is the actual surveying of the boundary area and erecting marks on the ground or geographic features. Thus, visible demarcated lines may be conducive to eliminating ambiguity and facilitating boundary stability between adjacent countries (Williams, n.d., pp. 1, 3, 12). Accordingly, it will be necessary to fix the boundary position more definitely on the ground across the demarcation process, which represents the crux of the boundary-making process. Demarcation is a more mechanical process than delimitation, as it involves setting up pillars and posts, and numbering and recording these on maps by a delineation process (Pinther et al., 2013, p. 25). It requires a joint team of experts comprising JDC members from the concerned states with another neutral state respectively appointed by each side to carry out this spadework of boundary construction (Bakhashab, 1996, pp. 40, 59).

Finally, it can be mentioned that demarcation determines the final boundary from the process of boundary making, which must be distinguished from the delimitation of the boundary per se. Thus, demarcation is a technically-applied process in which the delimited boundary (a legal-theoretical process) is put onto the earth's surface, i.e. the placement of the boundary line on the ground after it has been identified or described through a delimitation process as an international legal instrument, and the clarification of this line and distinguishing of it by implanting signs at the boundary areas in a subsequent purely technical process through a JDC composed of an equal number of members from respective states. This is a voluntary, non-compulsory process, within the framework of international law that does not bind the concerned states to any international responsibility, unless the parties had previously agreed. In the face of slowdown or laxity in implementing demarcation process may cause problems and be considered a source of international tension to adjacent countries. Eventually, non-demarcation at the right time, especially by a new state, may lead to internal and international instability, disputes and effects on international co-ordination, and may create a threat and endangerment to the maintenance of international peace and security.

3. THE FRAMEWORK OF DEMARCATION FOR A NEW STATE

This section studies the international legal basis of demarcation for a new state and associated process steps, through dividing it into three important sub-sections: the legal basis of boundary demarcation; the competent power of demarcation; as well as the principles and practical steps of demarcation.

3.1. The Legal Basis of Boundary Demarcation

The idea of demarcation of permanent and stable boundaries was known to ancient peoples in various forms, such as the construction of the Great Wall of China, digging trenches as the Greeks did, or depending on natural features such as rivers in Europe, before the establishment of modern nation-states under the Treaty of Westphalia (1648). Then after the existence of states in their contemporary form, the idea of demarcation was developed, which represents states' scope to exercise their sovereignties and various powers. It is noteworthy that these boundaries, especially in Third World countries, were not solely the product of a normal demarcation, but, historically, there are other factors involved such as political coercion, particularly in light of the existence of the colonial phenomenon, which created many of these boundaries across colonial demarcations during the end of periods of war, e.g. armistice, cease-fire lines, and any other demarcation compatible with the colonisers' own interests and aspirations to seize wealth of the indigenous peoples, regardless of their specific circumstances. The boundaries demarcated in this way are called 'Superimposed Boundaries' (See Al-Zubaidi, 2014, pp. 31-32; Hamouda, 2013, pp. 20-21).

However, notwithstanding demarcation is a technical process preceded by the delimitation process, which is a legal process representing the legal basis of demarcation, as aforesaid, through a legally-binding instrument (treaty, international resolution, judicial decision, or administrative decision issued by a competent authority), it is important to state that there is another legal basis that precedes the delimitation process and which is lawfully enforced in the course of international law and international relations, where the demarcation of new states is currently carried out

through a process of transforming the internal-administrative border into an external-international boundary. This is derived from applying *uti possidetis juris.* The *uti possidetis* principle originated in Roman law and is regarded as a procedural rule that shifts the burden of proof to the party not holding the land. This doctrine established a rule and is considered superior to occupation, which used to define postcolonial boundaries, representing a doctrine under which newly independent states inherit the pre-independence administrative borders set by the former colonial authority where these prevail over any other competing claim. Thus, the doctrine is predicated on a rejection of self-determination and assumes that internal-administrative borders are functionally equivalent to international boundaries. Colonial boundaries were almost always vaguely drawn and did not correspond to local populations. Therefore, relying on *uti possidetis* may lead to many boundary disputes (Sumner, 2004, pp. 1790-1791).

The principle of the intangibility of the boundaries inherited from colonisation, which primarily aims to assure respect for the territorial boundaries at the moment of states' attainment of independence, so as to protect the new state's sovereignty and guarantee their stability instead of implicating them into boundary problems followed the withdrawal of colonialism. This is achieved by taking border possession accompanied with exercising judicial and administrative jurisdiction on the concerned areas, followed by the transformation of pre-existing boundaries among regions or cantons (under the colonial or mother state) into a recognised international boundary. This principle appeared most prominently in the Latin American countries which separated from the Spanish crown in the nineteenth century. After that, it gained a customary character when it was disseminated in Africa and Asia in the second half of the twentieth century. Later on, it was applied globally in light of the spread of liberation movements that prevailed in both continents, thus this principle became the rule of law (*jus cogens*) in the context of public international law (Al-Dessouki, 2011, p. 43 & pp. 47-50).

Accordingly, most international jurists, as well as UN International Law Commission, supported this principle by recognising it under article 11 of the Vienna Convention on Succession of States (1978). Their considerations and application were justified by establishing a legal status to be respected by all relevant parties for protecting international peace and managing international relations (Abou-Zaid, 2006, p. 56; Ramadan, 2013, pp. 80-96, & pp. 111-112). According to this trend, it had a direct result on the principles of *territorial integrity*, *state continuity*, the *rule of remain object) on* its *origin position*, and contributes to the application of the *rule for the inviolability of fixed boundaries*. Furthermore, this represents an exception to the *rule of changing the fundamental circumstances* during international succession and the principle of the *clean slate*, which states that the successor state is not obliged to keep any treaty, except in regards to the inherited boundary demarcated by the predecessor state, since the boundary treaty has an in-kind nature, and grants the rights and obligations related to the territory regardless of who has sovereignty over that territory. Otherwise, the respective states always fall into conflict, chaos, violence, and may reach the status of war between them, for each new state that dislikes the international treaties will attack their neighbours on the pretext of the emergence of conditions affecting their situation (Hameed, 2016, pp. 30-36).

The international judiciary has supported this principle too; for instance, the IAT has accepted it, as in the case of Honduras vs Guatemala, after the withdrawal of Spanish colonialism (1921); likewise the judgments of the ICJ admitted *uti possidetis* and regarded it as a principle of boundary continuity in the colonial era, which means what was owned by a state in the past will continue in the future as well. This is what the ICJ confirmed and ruled in regards to the Preah Vihear Temple between Thailand and Cambodia in 1962. The facts of this case can be summarized as that Cambodia brought this action against Siam (later called Thailand) for infringing its territorial sovereignty over the land surrounding the ruins of the Temple of Preah Vihear (an ancient sanctuary and shrine); then, Thailand denied all breaches of Cambodian sovereignty, claiming that the ruins were on its side of the common boundary. The Temple, a site of considerable artistic and archaeological interest, sat on the Thai side of the countries' common boundary, on an escarpment that jutted into the Cambodian plain. The dispute focused on a boundary treaty (1904) in which France and Thailand made the boundary that later separated Cambodia and Thailand. Thailand

asserted its claim to the Temple land on the theory that Cambodia could have no territorial sovereignty over land on the Thai side of the boundary; but the court rejected the Thai argument because maps drawn when the boundary was delimited, coupled with French and Siamese reliance on these maps, denoted that the entire Temple region was located in what became Cambodia. The 1904 French-Siamese boundary treaty substantiated the Cambodian claim to sovereignty over the Temple land. That treaty, according to the court, established the watershed line as the boundary, but rested ultimate authority to draw the boundary with the JDC. In tandem with demarcating the boundary, the JDC had the power to map the entire region, which was delegated, with the consent of the Siamese commissioners, to French officers, who mapped the area and placed the Temple in French Indochina. Neither France nor Siam ever formally adopted these maps, but each state implicitly accepted them; this implicit acceptance of maps showing the Temple in what became Cambodia substantiated Cambodia's claim against Thailand. The boundaries that they reflected devolved to Cambodia and Thailand under *uti possidetis*. Depending on the maps produced by the 1904 treaty, the court dismissed as legally indecisive all arguments made by Thailand by which it had asserted that acts subsequent to the treaty manifested its exercise of sovereignty. When Siam openly flouted French (and later Cambodian) sovereignty in the disputed area, the latter replied through diplomatic channels, reaffirming its rights to engage Thailand in dialogue. The court found this evidence of continued French and Cambodian jurisdiction over the Temple persuasive according to its judgment in 1962 (Sumner, 2004, pp. 1795-1796). The ICJ has lately (2013) ruled in favour of Cambodia by giving it the right to own the Temple's area, ordering the withdrawal of Thai troops from itSee Report of the ICJ, 2012-2013, Case A/66/4, para. 250).

In the same way they ruled in Mali regarding the boundary dispute with Burkina Faso in 1986, and in Salvador because of its conflict with Honduras in 1992. Thus the ICJ apply it, as a binding judicial precedent, on all boundary disputes that appear before it, since the principle has become a public order of the court, and likewise domestic law, so that the court applies it automatically even ignore to be submitted or adhered by any of the litigants ((Al Saud, n.d.).

Current states have also followed this principle. For example, the Czech and Slovak republics inherited treaties concerning boundaries demarcated by the former Federal Czechoslovak Republic that were signed in the post-World War I period, without any amendment, and these have not been intercepted or disputed by the neighbouring states of the two successor states; furthermore, it has been stated in the European Community Declaration on Yugoslavia in the 'Guidelines on the Recognition of New States in Eastern Europe and in the Soviet Union', which was adopted in Brussels on December 16, 1991, that the new states should respect *uti possidetis*, and cannot be modified only by peaceful means (European Community, 1992, pp. 1485-1487); consequently the former Soviet republics on December 21, 1991, declared the necessity of respecting the principle of the territorial integrity of other countries and the non-violation of existing boundaries (Ramadan, 2013, pp. 94-95).

Moreover, the administrative division of Ottoman Empire regarding Arab territories, which subsequently led to the formation of independent Arab states during periods of weakness of Ottoman rule; e.g. in the African part, there was the mandate of Egypt and the state of Tripoli (later became Libya) and the states of Tunisia, Algeria, and Nuba (later became Sudan). In the Asian part, the states of Lebanon, Syria, Iraq, Kuwait, Jordan, and Saudi Arabia; albeit in 1916, after the end of the First World War, with the defeat of Ottoman Empire, Britain and France signed a secret deal named 'Sykes-Picot Agreement', which determined these areas under control and influence of both parties over the Fertile Crescent region (Al-Sayed, 2014).

One of the most prominent criticisms of *uti possidetis* is that the old administrative boundaries were demarcated under colonialism, and were internal and administrative borders between the colonies. It is strange that a new state should retain the borders inherited from colonial regimes which represent merely an expression of their own political and economic interests, regardless of the original interest of the indigenous peoples who are the rightful owners, but who have fallen under colonialism, which demarcated their boundaries arbitrarily. This may damage the *principle of the sovereign equality of states and the right of self-determination* contained in articles 1 and 55 of UN Charter, especially the status of the new successor states, whose view of such boundaries is

unfair because of the invalidity of the concerned treaties, as concluded without the indigenous peoples' consent, who may wish to dispose of them in accordance with the principle of a clean slate. Therefore, not modifying these superimposed boundaries' conventions during international succession may become a source of danger and tension, in which international peace and security are not maintained (Ramadan, 2013, pp. 81-85; see also Al-Dessouki, 2011, p. 12).

Although the imposed principle applied by the new states may not be satisfied tacitly, this is justified for the purpose of surviving and avoiding failure for their crucial situation, and they are in dire need to establish infrastructures and fulfil the necessary developments for raising the standard of living in all political, economic, social, and cultural sectors. Meanwhile, the entry into conflicts with neighbouring countries would perhaps be a suicidal action for them if they attempted to modify or abolish *uti possidetis*. Therefore, these new states inevitably accept this principle in order to obviate themselves from entering into costly conflicts or wars (Al-Dessouki, 2011, pp. 44-45, 95).

Despite the sanctity of *uti possidetis* and its entry into force legally and practically at the international level (within the framework of the relevant conventions, state practices and majority views of jurists), it can be said that the arguments raised to support it are unconvincing for a simple reason: it is not merely superimposed and oppressive to boundaries, and/or it does not lead to the maintenance of peace and stability in the long term, but this demarcation was originally built on the basis of illegality, because the indigenous people (the new state) were not a party to the boundary-making treaties, or at least the latter were not made with their consent; and it is known, logically and legally, that 'what is built on falsehood is falsehood' , i.e. illegitimacy per se. The falsehood basis is usually conducive to tension and conflict, therefore the emergence of boundary disputes in the world can be considered a reason for applying this principle. There are many peoples whose land was divided against their will, or who might be deprived of their territories and left without boundaries; e.g. the people of Kurdistan, the Kurds, are the largest nation worldwide who still live without official boundaries and a state, having not been allowed to exercise their right to self-determination so far, living under the artificial, superimposed colonial boundaries within the framework of countries like Turkey, Iran, Iraq, and Syria.

3.2. The Competent Power of Demarcation

As mentioned above, demarcation refers to converting the previously determined imaginary line into reality, according to an international instrument, i.e. it is the surveying and mapping process (definition, delimitation), transforming this line onto the ground (demarcation, delineation) through the formation of an 'ad hoc commission' comprising an equal number of members from respective parties, as well a neutral party selected from experts, technicians, administrators, and politicians, to collect and prepare aerial photographs (satellite imagery) and a geographical survey of the concerned area, depending on the approved maps, and then to perform the process of delimitation (Al-Dessouki, 2011, pp. 55-56).

Obviously, it sounds from the above concept that the elements and how to implant marks in the demarcation process from the beginning to the end, depend upon the existence of a competent body. It is known in international law that demarcation is a technical function in practice, i.e. it is a technique rather than a science; therefore it is currently carried out by a joint specialised technical commission, the Joint Demarcation Commission (JDC), who have mistakenly been called the 'Joint Delimitation Commission' because of the previous confusion between the terms. The technical nature of the JDC's work was confirmed in the preamble to UNSC Resolution 773 issued on August 26, 1992, regarding the work of UN Iraq-Kuwait JDC that was established on May 2, 1991 (UNSC Iraq-Kuwait Resolution S/RES/773, 1992)). This was confirmed also by the JDC itself, in its final report submitted to UNSC on May 21, 1993, which indicated that its work is technical rather than political, and the nature of its mission is purely demarcation, while political actions fall within the domain of the delimitation stage that is assigned to the senior diplomats (Al-Zubaidi, 2014, p. 55).

JDCs for new states can be established according to one of the following methods:

1. A JDC may be formed under the terms of the delimitation treaties that specify the extent of its powers, as in article 2 of the boundary treaty signed between Ethiopia and Britain, which was the protector of Sudan (1902).
2. A JDC can be established by a special agreement between concerned parties in a subsequent period

to the delimitation treaties, as provided in article 5 of the Jordan-Syria Border Agreement 2005.

3. The JDCs maybe constituted by an IAT award or an ICJ judgment to form the JDC at the request of concerned parties, e.g. article 4 of a special agreement signed between Mali and Burkina Faso in 1983 concerning referral of the JDC's formation to the ICJ.
4. JDCs may be established through an international resolution issued by UNSC, e.g. Resolution 773 (1992), which established UN Iraq-Kuwait JDC.
5. Demarcation power may be accorded to one of the specialised companies in coordination with International Federation of Surveyors (FIG) entrusted by contracting parties to complete the demarcation process after they have determined to do so by an agreement or judgment, in order to benefit from qualified experts and modern technologies. Though they are neutral, their work is described as clear and accurate, which would contribute to preventing the respective governments from boundary disputes in the future that may result from the demarcation work, as laid down in article 3 of the boundary treaty between Saudi Arabia and Yemen in 2000 (For more details on these methods, see Al-Dulaimi, 2004, pp. 193-194; Taha, 2007, pp. 66-67).

Thus, the JDCs will be composed of a number of mixed members agreed on by the relevant parties. This number may be increased or decreased, provided they are equal between both parties. A number of technical personnel such as engineering surveyors, and geographical, administrative, political, and military experts may be added, especially in certain areas in which the inhabitants require special and precise care. Moreover, it is useful and appropriate to include members of some neutral nationalities who have the power to act as a separation authority in the disputed matters. For example, article 5 of the Lausanne Treaty (1923), related to the demarcation of the Turkish-Greek boundary, indicated that parties had chosen a neutral third member to serve as a chairman of the JDC (Al-Rawi, 1975, pp. 176-177).

At the end of the JDC's work in completing the tasks entrusted to it, the JDC must submit a detailed report on its achievements to the relevant parties in the form of records or protocol, in a number of copies signed by all commissioners after agreeing on the language in which the documents will be issued. International practice has been stabilised on using the official language of both concerned states if their language is different, as well as using another language of a neutral third state in the case of divergence of interpretation. It is also useful to attach to the records a special topographical map consistent with the data set forth in these records. All these documents are considered an integral part of the legal instrument for the demarcated boundary (Al-Rawi, 1975, pp. 78-79; Al-Dessouki, 2011, pp. 57-58).

One of the justifications for making this report is to prevent the loss of data that may be of value both to future JDCs and to future use, which includes a description of the demarcated boundary posts and marks, including their types, forms, and dimensions, and accurate comprehensive documentation supplying the technical solution for any potential dispute among respective parties, particularly at the international judiciary, which can make a judgement or award to the case by an ICJ or IAT, or at least, shorten the work of these courts. For instance, in the Treaty of Peace between Israel and Egypt that established a JDC (1996), the latter's work consisted of the delineation, including background data about chronology, concepts, boundary line route, a Global Positioning System (GPS) survey, the equipment, the data processing, the technical problems, and how the boundary line was to be maintained. The Annex to the documentation includes concerned clauses from the Treaty of Peace and a map album of the boundary pillars, showing for each boundary pillar three aerial photographs which were taken from a helicopter (one vertical, and one from each side of the boundary pillar), as well as coordinates and graphical schemes (Bakhashab, 1996, p. 60; Pinther et al., 2013, p. 29-30).

Subsequently, the demarcation process aims to mark the position of the boundary on the ground so that it is visible to all, through surveying, mapping, and adopting physical marks accurately to constitute the location of the delimited boundary, which is the initial stage of the demarcation. Then, the last stage is based on the requirements of the legal documentation, namely *delineation*: the graphical representation of the boundary which is to be attached to the treaties archived in UN. The JDC often undertakes both demarcation and delineation; its results include reports, photographs, maps, tables, and other illustrations showing the geographical positions of the boundary, used for the entire period of

fieldwork. Thus, delineation is a comprehensive description of the entire demarcation that is able to document the boundary for future uses in administration and development (Al Sayel et al., 2009, pp. 1-2). In practice, however, the process of boundary-making, whether delimitation, demarcation, or delineation, cannot be accomplished without establishing a JDC, entrusted with the task of executing the provisions of the boundary delimitation treaty. This can be certified or done according to internationally recognised qualification principles identified by the International Organization for Standardization (ISO). In this respect, boundary markers should always give the highest privilege to the necessity of the understanding of users (For more details, see Al Sayel et al., 2009, pp. 2-4; African Union Border Programme 2014, p. 32).

As for the total costs of the JDC's works, the contracting parties shall bear them equally, where each party shall bear the costs and wages of members and appointed delegates. Each relevant state, at its own expense, usually appoints and equips its own side of the mixed boundary commission with the materials necessary for the topographical and astronomical services indispensable for the execution of the mission, i.e. each party defrays its own expenditure and half of the costs of the general work of demarcation. (Cukwurah 1967, pp. 80-83; Bakhashab, 1996, p. 62).

Finally, it can be deduced that demarcation or re-demarcation is a complex process which requires careful preparation, diligent execution and a comprehensive surveying of information assembled by a JDC during the fieldwork, assignments of responsibilities, tasks that must be clearly delineated, and a course of action that must be precisely coordinated.

3.3. The Principles of Demarcation and associated Practical Steps

As previously discussed, the demarcation process is the crux of all boundary making. It is very hard work, undertaken in complex conditions, e.g. the hazards of rugged, impenetrable jungles, adverse weather conditions, and mountainous terrain. The first task of demarcators is to fit the boundary line as reasonably as possible in conformation with the ground. Secondly, they should identify the sites for, and set up, appropriate marks, which must be accompanied by statements relating to the placing and inauguration of the boundary marks; on each mark, for instance, the correct longitude and latitude of the spot, should be indicated, together with the information and names of the contracting parties on each side of the mark. (Bakhashab, 1996, pp. 59-60).

The gaps between the sides, in regard to the respective areas and local inhabitants in terms of various issues, e.g. the use of water resources, ethnic problems, and economic or military considerations, can all frustrate the JDC's work at a great expense of labour, time, and money. This is especially acute with river boundaries, e.g. the boundary dispute between Brazil and Uruguay over Brasiliera Island in the Uruguay River. The experience of some states has revealed that good practice often relies on the JDC's knowing and understanding the conditions of the local landscape. Enough time is needed in fieldwork and adequate authorization for JDCs to address the ambiguities to resolve many severe disputes (Donaldson, 2011, pp. 11-12).

In some boundary treaties, the JDC is entrusted with demarcating the boundary line on the ground and is asked to employ the most efficient methods possible. Practically, it is necessary for commissioners to agree upon the point of departure, from which the rest of the boundary line will be identified by both states independently, in order to achieve a satisfactory deal. The methods by which the demarcation is actually effectuated have differed from time to time in accordance with the character of the state to be dealt with and the scientific means at the disposal of the demarcators; accurate boundaries could not be determined until the sciences of geography, geodesy, and cartography had reached the point of furnishing the data needed for demarcation (Bakhashab, 1996, pp. 60-61). On the other hand, a determined approach may well be stipulated for the JDC in such instruments; e.g. in the UK-Brazil Treaty (1930) for demarcating the boundary between British Guiana and Brazil, paragraph 7 provides for:

the mixed commission which shall proceed to establish the whole of the frontier described in Article (1) and its paragraphs of the General Boundary Treaty in April 22, 1926, by means of triangulation wherever possible. Where the nature of the terrain or consideration of time and cost render this method impracticable, the boundary may be based upon control positions fixed astronomically at intervals of not less than 25 nor greater than 50 miles, using wireless time signals

connected by traverse of the most accurate character practicable (Bakhashab, 1996, p. 61).

Therefore, the demarcation process is essentially a field operation; its initial stage normally starts with surveying, and its purpose is to place markers accurately on the location of the delimited boundary on the earth's surface, to be visible to all. Hence, the first practical step is the preparation, which includes:
reaching political consensus; establish an appropriate institutional framework; define the mandate of boundary commission and other bodies involved; secure financial, human, and technical resources; training of personnel; plan by the joint boundary commission, including a comprehensive collection of all boundary-related materials; agreement on common standards, and the establishment of a work plan and a timetable; and undertake a programme to sensitise the local population (African Union Border Programme, 2014, pp. 25-29).

Then the other main step is the fieldwork, which involves the following:
perform reconnaissance of the terrain to evaluate working conditions (presence of landmines, camping facilities, security constraints… etc.); identify and agree upon ground control points and geodetic control points; identify and recover existing old boundary markers; rebuild and/or replace destroyed or missing old boundary markers (if located); build new intermediate boundary markers to densify the boundary; survey all boundary markers; and perform computations and analysis (African Union Border Programme, 2014, pp. 25-29).

Thus, JDCs carry out their duties in demarcating the boundary lines as specified in the legally binding instrument of the new state's establishment. A JDC should abide by a body of principles during this process. The most important of these principles are respecting the unity of cities; facilitating the movement of people in boundary areas; respecting the unity of agricultural-vegetational lands and the status of nomadic tribes; and providing wells and grasslands for the use of concerned states' citizens, and other conditions of domestic exploitation. For instance, the boundary treaty between Yemen and Oman (1992), in its Appendix (II), guaranteed a maximum area of 25 km within the territory of both countries in order to regulate mobility, share mineral resources, and ensure grazing rights and common use of water resources, taking into account the tribal customs prevailing in the region (Al-Zubaidi, 2014, p. 56; Taha, 2007, p. 91). Moreover, Comprehensive terrain modelling and imagery were used by the JDC in its so-called 'Virtual Demarcation Exercise'. Currently, the ready availability of publicly-accessible technology, such as places for terrain visualization, Google Earth and analysis right in the delimitation phase (Milefsky, 2011, p. 26).

Demarcation is varied according to the angle from which it is seen. It may be in the land, sea, or air, depending on the nature of the area to be demarcated, by natural or artificial features. The first means physiographic demarcation, which can be done by identifying seas, rivers, lakes, forests, mountains, hills, valleys, plains, deserts, etc. as inter-state separators. If the area is mountainous, then the peaks of the mountains will be adopted, such as the peaks of the Himalayan mountain chains between India and China; and if the boundary is a river passing between two states, then the middle line of the main stream that extends in the middle of the deepest part of the river, called the 'Taluk Line' will be adopted; for instance, the boundary line between France and Germany in the Rhine River according to the 1815 Paris Treaty (Al Sayel et al., 2009, p. 1; Hamouda, 2013, pp. 23-30; Al-Zubaidi, 2014, pp. 29-30). Artificial demarcation, on the other hand, is marked by monuments, pillars, beacons, posts, concrete props, pyramids, poles, buoys, etc., based on astronomical or geometrical lines, such as longitude, latitude, barbed wire or high walls, depending on the morphological structure of the land in question. Geometrical demarcation is implemented by adopting a straight line between two known points or circle arches, such as the boundaries between the USA and Mexico or Egypt and Libya. Astronomical demarcation is based on longitude and latitude, e.g. latitude 38 that separates North and South Korea, or latitude 49 Northern which separates the USA from Canada (Al-Attiyah, 2008, pp. 312-314).

There is an international consensus to follow legal norms when demarcating any new boundary: at the atmosphere, it extends horizontally over all the territorial lands and waters of the state, while vertically it is not endless, but also limited in ending of the state sovereignty when outer space begins, which is considered a common heritage of humanity, like the high seas, in which states enjoy the freedom of air navigation and scientific

research, etc. (Hamouda, 2013, p. 34; Al-Attiyah, 2008, pp. 360-375).

Under the terms of article 3 of UN Convention on the Law of the Sea (1982), the breadth of *the territorial sea* of every state is up to a limit not exceeding 12 nautical miles measured from baselines; article 5 states that 'the normal baseline for measuring the breadth of the territorial sea is the low-water line along the coast'. According to the legal system of the seas, the territorial sea is located beside the *adjacent area*, with no more than 24 nautical miles from the baseline; this area is considered part of the *exclusive economic zone* that lies behind the territorial sea and is adjacent to it, and which stretches its width of no more than 200 nautical miles measured from the baselines of the territorial sea width. This area is not subject to the coastal states' sovereignty, and the principle of sea freedom applies, except with certain exceptions in accordance with article 56 of the Law of the Sea concerning sovereign rights for exploiting natural resources, conducting scientific research, and protecting the marine environment. Thus, the exclusive economic zone is different from the *high seas*, which is an international area regarded as a common heritage of humanity, free for the general use of all states and not subject to the sovereignty of any state; it is opened to all states for their utilization on an equal footing without discrimination (the 1982 UN Convention on the Law of the Sea).

Generally, demarcation may be *longitudinal*, such as the north-south states with longitudinal extension, e.g. Chile and Italy; or the eastern-western extension states, e.g. Russia and Panama; this boundary type may raise problems of internal and external control that require many tools and forces to protect longitudinal extension. Demarcation can also be a *compact form* in cohesively integrated limps (circular or square); these boundaries are short in length compared to the total area of the country's territory, thus facilitating the process of controlling and defending them against any external aggression, e.g. France or Egypt. Demarcation may also be in a *dispersed form*, in which the state consists of a number of unrelated parts, separated from one another by sea or by other states, e.g. Indonesia, consisting of the islands of Java, Sumatra, and other small islands; and Italy, consisting of the Italian mainland, and the Sicily and Sardinia islands. One of the disadvantages of this external form of state is the difficulty of protecting it against any external threat, as it is easy to cut any part from the centre in case of war. The demarcation may be in a *content shape*, so that the boundaries of the concerned state are surrounded by all other states, as in the case of the Vatican. There is another shape that is similar to this type but slightly different, called a *land-locked state* that lacks any sea outlet and is surrounded by a number of countries (not a single country); countries such as Bolivia, Uganda, Iraq, etc. Because of these forms of boundary, the given state is usually weak militarily and economically, and frequently living at the mercy of the adjoining states (Wadi, 2013, pp. 8-12).

Thus, it seems that the JDC's task is difficult and requires huge strides to make accurate demarcation in light of taking into account all these forms and types of boundaries. However, it can be deduced that whatsoever criteria are adopted in the demarcation process, the agreement remains master of the attitude, as these norms can be breached in accordance with satisfaction of the respective parties through concluding an international treaty that determines how to demarcate among them. Furthermore, whatever the *geographical nature* of the boundaries to be demarcated, internationally it is known that the geographical nature of the concerned area has a prominent role in the priority and superiority of these boundaries over others, politically and economically. The strategical boundary is still the most important in the international political equation, which is distinguished by nature in light of the availability of particular natural specifications that protects the relevant state from aggression and does not leave any loophole for it to be attacked by adjacent states, while at the same time it helps the newly concerned state to defend and protect itself or facilitate its attack against the enemy through the availability of its advantages and various natural phenomena, such as the existence of seas, mountains, hills, valleys, etc.

Eventually, the following are some recent models of the new independent States' situation and the extent to which the demarcation process had implemented:

1- South Sudan: The Republic of South Sudan attained independence in 2011, making it the youngest state in Africa. After becoming an independent state, South Sudan inherited several parts of the border of the previously unified Republic of Sudan. South Sudan regarded as a 'land-locked country' without an outlet to the sea.

It shares its land boundaries with six nations: the Central African Republic, Kenya, Uganda, Ethiopia, the Democratic Republic of Congo, and Sudan (Al-Faqi, 2011, p. 6). On October 31, 2017, Sudan and South Sudan governments announced that the demarcation of the boundary between the two countries would begin as soon as possible. The two sides agreed to continue joint meetings, and to submit an integrated report within the next six months on the status of the boundary, to initiate the process of demarcation. The work of JDC is still going on to resolve all issues. Thus, the JDC between the two countries is working in full coordination to implement the Comprehensive Peace Agreement (delimitation agreement) signed in 2005 between the two sides. In November 2017, JDC announced that the demarcation of the 2,000-to-400-km boundary had been completed by 80 percent on paper. Later on, Sudan and Southern Sudan, along with the oil-rich Abyei region, face disputes on a number of boundary areas due to the importance of the diversity of their natural resources, the high population density, and the abundance of water and animal wealth (Rahim, 2017).

2- Montenegro: It also called "Black Mountain", which emerged as a sovereign state after the population opted for independence in May 2006 referendum. The vote heralded the end of the former Union of Serbia and Montenegro as a remnant of the former Yugoslavia. It borders Croatia, Bosnia, Serbia, Serbia's breakaway province of Kosovo and Albania (Government of Montenegro, 2010, p. 10). Concerning boundary demarcation of this new Republic with neighboring countries, it is uncompleted so far; where it had ratified a Convention with Kosovo. However, the demarcation had not yet begun, owing to the refusal of the Kosovar Parliament that had not ratified the agreement because of the opposition parties, which stand firmly, opposed and counted it as a concession of a part of its territory to Montenegro. More importantly, the process of demarcation between Serbia and Montenegro is still in progress. Both countries have created a JDC since 2008, but the body's work was halted when Montenegro recognized Kosovo's independence, for Serbia did not want to take part in negotiations about boundary unless Kosovo was not included in the process as part of Serbia. This caused deterioration of diplomatic relations between the two countries and postponed the negotiations on delineation. Political factors has interfered with the talks between Serbia and Montenegro as long as the status of Kosovo and Serbia is left unresolved (Brozovic, 2011, pp. 6-8).

3- East Timor: Is also known as Timor-Leste, historically, the country was long under Portugese colonial rule until 1975, when tried to become independent under the auspices of the UN, but fell victim to the Cold War after US lost its weight in Southeast Asia for its defeat in Vietnam; the region fell under the Indonesian occupation until 2002 when it became independent across 1999 referendum. The country is located in Asia, which situated on the eastern part of Timor, an island in the Indonesian archipelago. Geographically, countries bordering East Timor are only two neighbours: Indonesia and Australia; as a coastal country it is separated from Australia by a maritime border, in which the island of Timor is part of Maritime Southeast Asia, and shares a land border with Indonesia. East Timor is the largest island of the Lesser Sunda Islands, and is separated from Australia by the Timor Sea, the island is divided into two parts: east and west. The western part belongs to the Republic of Indonesia, and is sometimes referred to as West Timor, while the eastern part forms the nation of East Timor (Levinson and Christensen, 2002, p.314). As for the boundary demarcation with its adjoining countries, this process has not yet been completed with either Indonesia or Australia owing to its low capacities whether politically or economically, and the existence of many problems, particularly boundary disputes with Indonesia and Australia on the oil and gas resources in the maritime region (Hasan, 2009, pp. 257-259).

To sum up, despite years of their independence, it sounds that these newly emerging countries have not completed demarcation of their boundaries yet. Thus, it is utmost importance for any newly state to accelerate this process with its bordering countries, specifically with the state that separated from it, for getting political, security and economic stability. It is remarkable that the geographical location of new state, especially if it has a land locked boundary represents a first challenge factors that should be overcame by establishing good peaceful relations with neighbors. This will inevitably be conducive to take proactive and preventive measures for avoiding conflicts.

Journal of University of Duhok.,Vol. 22, No.1(Humanities and Social Sciences),Pp 469-493, 2019
https://doi.org/10.26682/hjuod.2019.22.1.27

4. POWERS OF A JDC AND ASSOCIATED DISPUTES

This section explores the powers of a JDC and the legal value of its works, then explains the reasons for demarcation disputes and their settlement.

4.1. Powers of a JDC and the Legal Value of its Works

It should be remarkable that JDCs are often faced with technical and practical difficulties that may hamper the accomplishment of the demarcation mission as described in the instrument of boundary establishment, such as penetrating private properties, which leads to abolishing or altering the features resulting from demarcation process. Practically, a disagreement of theoretical description of apparent natural features can occur during the demarcation process, which may be due to the ignorance of geographical data given by the officials in the areas where the delimitation is requested, and may cause damage to the local populations. The affected persons or states must be compensated in an adequate and equitable manner (Jones, 1943, p. 31). Most boundary experts agree that a degree of freedom is to be given to the JDC (in the words of one sensible delimitation agreement) for making such minor adjustments and rectifications as are necessary to eliminate the troubles which might arise from a literal interpretation of the treaty or any other obstacles (Pratt, 2011, p. 9). Consequently, the JDC requires *discretionary power* to make the necessary modifications or deviations that may conflict with the delimitation, in order to harmonise with the geographical, demographical, and economical requirements (Munkman, 1973, p. 116). In such a case, if these powers are stated in the international instrument, there should not be any problem. For instance, the British and Belgian Governments in 1927 gave advice to the JDC about the Northern Rhodesia-Katanga boundary as follows: 'The commissioners shall have the authority, generally, to make such minor rectifications and adjustments to the ideal watershed as are necessary to avoid the troubles which may arise from a literal interpretation of the treaty' (Brownlie, 1979, p. 709).

Nevertheless, if these powers do not theoretically exist, international practice has agreed on providing JDCs with discretionary powers on the basis of the principle that *the specific prevails over the general* (Abou-El-Wafa, 2007, p. 9), which is derived from the competent authority's possession of the precise and direct knowledge of the areas' specificities under the demarcation; and in case of deviation or adjustment, in favour of one party at the expense of other, the process is subject to *subsequent ratification* as a condition for possession, which acts as a binding character towards the parties involved. This was confirmed by the ICJ in its judgment on the Preah Vihear Temple between Thailand and Cambodia in 1962 (Al-Zubaidi, 2014, pp. 57-58; Al-Fatlawi and Omran, 2009, pp. 38-39; Sumner, 2004, p. 1795).

Regarding the legal value of the final works of a JDC, which is determined according to the instrument of right, it is considered to be valid, final, and enforceable towards all the concerned states, i.e. it has an automatic enforcement without the need for any subsequent ratification and will not be subject to any other scrutiny or modification by virtue of the *estoppel principle* enforced in the international judicial domains. There is no doubt that the boundary demarcation for a new state requires a legitimate basis, and produces important legal effects, leading to permanent boundaries binding in nature not only towards contracting parties, but also in relation to all adjacent states and others who have to deal with these boundaries as a stable legal and political fact, and obliged not to be affected or changed by force or violence, within the *principle of the stability of boundaries*, which are considered final lines and separations that may not be modified unilaterally without taking into account the will of all other relevant parties (Al-Dessouki, 2011, p. 60; Kaikobad, 1983, pp. 119-141).

For the demarcation process to be effective and perfect after completing all of the stages and taking all theoretical and practical measures for the boundary-making of a new state, another important phase then comes, namely the *boundary administration phase*. In order to finalise the new boundary, the relevant parties must respect and maintain the boundary-markers through specific structures, with follow-up and maintenance in the event of damage, distortion, or erosion. The intangibility of such boundaries is generally admitted in the policies and practices of states; this sanctity can advance or destroy the good-neighbourliness existing between adjoining parties. It is, however, necessary to manage the

exploitation throughout the boundary lines, to determine the nationality of a local population, to organise their movement across the border, as well as to intensify administrative and security measures in these places, especially when the state's security is endangered. This is stated in article 5 of the Land Boundary Re-demarcation Protocol between Iraq and Iran (1975). Thus, the function of the JDC throughout the boundary-making process, in all cases, is considered a significant factor in the efficient operation of the boundary task. Accordingly, mutual agreement upon precise documentation of the boundary and adequate ongoing maintenance and restoration of the boundary are regarded as the most important means for preventing loss of data, future disputes over the location of the boundary, as well as for maintaining continuous boundary stability, and peace and security for all parties, especially in areas of tension or conflict (Bakhashab, 1996, p. 62-63; Pinther et al., 2013, pp. 29-38; Al-Zubaidi, 2014, pp. 60-61; Al-Fatlawi and Omran 2009, p. 37).

Indeed the faultless demarcation process will create a sold international boundary, particularly for a new state, which plays a great role in performing the functions of protecting national security, defending against any external threats, and strengthening the state economy and avoiding future disputes between parties interested. Eventually, the regular surveillance and maintenance of boundary markers will certainly have a stabilising effect on common boundaries.

4.2. Reasons for Demarcation Disputes and their Settlement

There is no doubt that the creation of a new state is inevitably conducive to the formation of new international boundaries. This, in turn, may lead to many international problems or conflicts as a result of the new situations that are created by colonialism or the mother state. This can be in one of three different cases. First, the relevant matters to these may be the status of independence, where the majority of the independent states' boundaries have been made by colonial powers since the end of the Second World War, especially the boundaries of Third World countries, e.g. Asian and African countries that were demarcated according to *uti possidetis*, regardless of the historical and geographical data and conditions of those regions. Second, there may be a status of secession and division where many states have arisen as a result of division and demarcation of administrative units converted into international boundaries, as in the case of Bangladesh's secession from Pakistan (1971), or the division of Korea into North and South Korea (1945). Third, there may be an accession or annexation status, which affects pre-demarcated boundaries (Abou-Zaid, 2006, pp. 43-44); as happened lately when Ukrainian Crimea was annexed by Russia through the referendum conducted on March 16, 2014, which created new boundaries. These new circumstances constitute the most fundamental causes of boundary demarcation disputes.

However, the demarcation process for new states will confront many international disputes, which can be summarised and discussed in the following cases:

1. The frequent experiences and practices of states have shown that most of the boundary disputes in the world primarily arise out of legal disputes. Prior to the JDC's technical work, certain disputes between the interested parties might arise over the correct interpretation of a *delimitation treaty* under which the limits were set, by marking along the boundary line, and a possible *geographical mismatch* between the boundary on the map and the mark demarcated on the ground might occur, or the wording process in the delimitation negotiations might be considered flawed by the inaccuracy or faultiness of the words since they are not conclusive, or bear more than one meaning, and serious disputes may occur in such cases; one of the most important international negotiations in this respect is that which took place within the framework of UN on the Palestinian-Israeli conflict, the drafting of which was very important regarding the use of the word 'the' before word 'territories' in the Arabic version of UNSC Resolution 242 of 1967. The English version (drafted by British ambassador Lord Caradon, delegated to the Security Council at that time) was not found to use the definite article, so that the meaning of this definitional tool was changed in only one of the five official languages, which pushed each party to unilateral interpretation according to its will. Thus, the Israeli side later claimed that the content of the resolution insisted on withdrawing from 'occupied territories' rather than 'the occupied territory', i.e. the possibility of not withdrawing from all the occupied territories, while the Palestinian side insisted on the withdrawal from 'the occupied territory', i.e. from all the occupied territories.

https://doi.org/10.26682/hjuod.2019.22.1.27

Despite all the arguments and negotiations that each side has taken to defend its position, this dispute remains to the present day (Palani, 2008, p. 193). However, perhaps the delimitation treaty was drafted in a faulty manner by politicians or negotiators who ignored the nature of the land in question. Here, the essence of the dispute focuses on the definition of a treaty that includes the correct identification of the boundary, and it is the first consideration. For instance, the main lesson learned from Ukraine's experiences in boundary demarcations, since its independence in 1991 until the present, is that the quality of demarcation is based heavily on the quality of the delimitation data (Munkman, 1973, p. 21; Al-Dessouki, 2011, pp. 100-103; Taha, 2007, p. 68; Breskalenko, 2011, p. 20).

2. *Non-implementation of the demarcation process* originally, or accomplishing it after a very long period of time has passed since the delimitation. Until the twentieth century, only a few boundaries were demarcated, and the colonial authorities preferred not to demarcate many boundaries due to economic reasons, mainly because the boundary was in an uninhabited zone. Certainly, the absence or lateness of the demarcation will raise many disputes, whether in terms of their delimitation, management, or function. At this stage, it is conceivable that there is a de facto boundary which may cause some conflicts between the concerned parties. Non-demarcation may be due to many reasons, including the considerable material cost of this process, particularly in vast desert areas; a lack of human beings capable of undertaking such hard work; the persuasion of the relevant states of the futility of this process, whether due to the weakness of regions being separated by the common line; or as a result of the absence of supervision and censorship system securing the JDC's final work. An example of a boundary that was delimited but non-demarcated for a long time is the joint boundary between Ethiopia and Somalia (when it was a British colony), where it was delimited in 1897 but demarcated only in 1933-1935. Despite all of these justifications, the disadvantages of non-demarcation are greater than the positives. Nowadays, in international practice, the trend is to implement the demarcation, but there are still some states avoiding it because of economic reasons, or in order not to enter into potential disputes. The logistical process of demarcation is now much easier than in the past because accessibility to difficult areas is much better. This is a result of the progress of modern transportation infrastructures, e.g. the use of field helicopters and other vehicles, and improved communication worldwide. There has also been a revolution in surveying tools, including satellite imagery, which leads to high-quality/precise reconnaissance, mapping, and measurement. The advance of international geospatial standards has contributed to collaboration among surveying states and has made possible the use of a mutual geodetic boundaries datum (Pinther et al., 2013, p. 26; Al-Sudairy, 2016, pp. 9-10; Ramadan, 2013, p. 67; see also Taha, 2007, pp. 67-68).

3. The *JDC's exceeding its jurisdiction*, the international engagement has stabilised on that the delimited treaty usually determines the validity of the JDC, which may be restricted within the limits set forth within it. If the JDC exceeds its powers, it may push one of the parties towards a dispute, whereas if the JDC has *restricted power* then its work is only routine and limited to translating the delimitation into a demarcated physical reality, and therefore cannot deviate or exhibit bias. The JDC may also have the *restricted discretionary power*, where it has to return to the contracting parties for subsequent approval to ratify any further action. Contradictorily, the JDC may have *absolute discretionary power*, to make any adjustments to the route of the boundary line consistent with geographical and population data in the context of administrative considerations. An international case related to the exceeding of a JDC's authority is the Preah Vihear Temple case, where Thailand complained before the ICJ about the JDC exceeding its jurisdiction by making deviations in the boundary line delimited in article 1 of the Treaty between Thailand and Cambodia (1904). The last judgment of the court (2013) was in favour of Cambodia, as previously stated, dismissing all of Thailand's arguments (Al-Dessouki, 2011, pp. 108-109; Al-Fatlawi and Omran, 2009, pp. 41-42).

4. Boundary disputes can result from a *JDC mistake*, the JDC may make a mistake in fulfilling its duties; this mistake may be serious and cause disputes, and the contracting parties must render every effort to settle it rapidly and in a friendly manner; alternatively, a neutral body will have to be consulted or the parties involved will need to resort to the judiciary. An example is Egypt-Israel dispute regarding the Taba area (1982-1989), where Israel argued before the IAT that the

English officer A. C. Parker, who was a governor of Sinai (1906-1923) and a member of a JDC at that time, made a factual mistake, because he put marker 91 in a place other than its original location, and also he was not originally authorised to participate in the works of the JDC; the IAT dismissed the Israeli rebuttal as not based on the law, according to subsequent conduct of both parties that definitely showed that Israel accepted what Parker had done and considered marker 91 the final line (Bakhashab, 1996, p. 61; Ramadan 2013, p. 69; Al-Sudairy, 2016, p. 10).

5. When one of the parties concerned raises a *plea to the JDC not having jurisdiction* to carry out the work originally, in considering the other party to have formed the commission unilaterally and contrary to the delimited instrument. Primarily, to form a JDC, it is necessary to have the consent of all the treaty parties, not just one of them, therefore the affected party will argue that the work of the JDC should be nullified for not depending on the right legal basis. For example, the Sudanese government unilaterally demarcated the Ethio-Sudanese boundary, during the years 1965 - 1972, by its leading representative Major John, without the presence or participation of Ethiopian government representatives; this contravened the treaty between both parties in 1902, which assigned the demarcation process to a JDC; eventually the demarcation was considered null and void (Al-Fatlawi and Omran, 2009, p. 41; Al-Dessouki, 2011, p. 111; Taha, 2007, pp. 46-47).

6. A dispute may arise in relation to the *legal value of the JDC's work*, as a result of one party's claim that the works of the JDC are final and binding, while the other party claims that such work requires subsequent ratification, i.e. the acts need to be authorised and approved by other authorities. This occurred in the Chile-Argentina boundary dispute in 1966 regarding the extent of the JDC's power to issue the binding decisions directly, or them only having the power of recommendation, with their decisions needing to be approved and ratified by the respective states (Ramadan, 2013, pp. 68-69).

7. Finally, boundary disputes may arise after the demarcation process has been completed as a result of the impact of the *administrative services* received by the residents of the neighbouring countries. In this regard, there may be, for instance, infiltrations, illegal entry, or a conflict of laws and regulations relating to customs, passports, or any other relevant disputes that may occur due to economic considerations and the need to exploit natural resources, e.g. the problem that arose after the boundary demarcation between Italy and France in the Alps in 1947 because certain pastoralist groups on both sides were deprived of their summer pastures. Practical reality can make agreement among the political, social and economic aspects difficult to reach, and sometimes leads to clashes on both sides of the boundary, and thus all of these create international disputes (Al-Sudairy, 2016, pp. 10-11; Al-Dessouki, 2011, pp. 113-119). In order to avoid these conflicts, it is necessary to build a stable status, especially by the new state, which lays the basis for ongoing cooperation and a good relationship that must keep the longest boundary among adjacent countries free from conflict.

Diagnosing these disputes can primarily be achieved through anticipative and preventive measures, in order to avoid surprising conflicts by taking the necessary precautions. But if a dispute occurs, undoubtedly the use of peaceful means to settle or resolve disputes will have a particular importance for a new state, especially at the beginning of the establishment of its infrastructures, where the stabilisation of the international boundary is critical, and will automatically lead to the stabilisation of its internal and external situations. Then, in the event of any such legal, technical, or administrative disputes as stated above, it is necessary for the new state to seek out an effective means of resolving or settling the dispute as soon as possible.

According to the rules of contemporary international law, the most appropriate manner is to resort to *peaceful means* to settle international disputes; these are categorised into three types: *political means*, also called diplomatic means (including negotiation, good offices, mediation and international organisations); *legal means*, also called judicial means including the IAT and the ICJ; and *mixed means*, i.e. peaceful political and legal means including an International Commission of Inquiry or an International Conciliation Commission (Shahab and Abdul-Rahman, 1994, pp. 167-180; Milefsky, 2011, p. 25).

It should be remarkable that the role of UN in this field, which has a relevant body, namely UN Cartographic Section (UNCS), is to provide geographic information to several branches of UN,

including the Secretariat, Security Council, and Peacekeeping Operations. Furthermore, this body provides technical assistance on demarcation issues, e.g. it assisted the Iraq-Kuwait JDC, the Line of Withdrawal (Blue Line) between Lebanon-Israel, and the North-South Sudan JDC. UNCS can assist in all phases of boundary-making and states should take advantage of available geospatial technologies. There is no doubt that UNCS has a prominent role in avoiding or resolving all demarcation disputes through its use of political and legal means, if it is properly activated (Eom, 2011, pp. 22-24).

Obviously, the majority of international disputes, whatever their type, including demarcation disputes, have a dual legal and political nature; therefore, automatically, they can only be resolved or settled in light of this dual nature. In accordance with international practice, both natures cannot be completely separated. Hence, disputes can only be settled by resorting to the use of legal and political methods together, so that the issue can be fully and positively resolved for all concerned parties, achieving good-neighbourliness in international relations, especially in the case of a new state, which is in more need of this than other pre-states, where making a boundary will contribute to political and economic stability, leading to infrastructure construction in all fields, achieving development and friendly cooperation among peoples and nations. Ultimately, the aim is to maintain international peace and security within the framework of public international law. The majority of demarcation disputes related to new states are considered legal disputes, and rarely considered political disputes, as previously noted, because most of their reasons are legal more than they are political. Thus, they are settled by legal-judiciary means (across IAT or the ICJ) in particular. As for boundary delimitation disputes, most of them are considered political more than legal because their causes are frequently political. Therefore, they will be settled by political-diplomatic means. Although demarcation issues are legal issues, and the decisions should be made on the basis of the law rather than political considerations, nevertheless political factors may have a significant impact in this regard. Legal means are based on precise clues to prove rights before the international judiciary, but their implementation remains subject to the will of concerned parties, where one of these parties may delay or evade executing its legal and judicial obligations, because the execution is a political issue left to the good faith of these parties. This is the nature of the majority of public international law issues.

5. CONCLUSIONS

There is no doubt that contemporary international law is focusing on boundary demarcation, which needs to be dealt with very precisely because of its direct relation with the supreme interests and sovereignty of states. Even so, the sanctity of *uti possidetis is a rule of law* for demarcating the boundaries of new states. The arguments supporting this rule, however, are unconvincing, for it is not a solely superimposed boundary that leads to instability in the long run, but because the indigenous people have not been a party to the delimitation instrument; therefore, the emergence of many relevant disputes could be considered a reason for the implementation of this rule. Many peoples have had their lands divided against their will or perhaps they have been deprived of all their lands and left without boundary and/or a state. This is a major imbalance in the future of international law in conformity with the *principle of self-determination*. Thus, reconsideration of this legal rule and the mechanisms for executing it, in the context of taking into account the rights of indigenous peoples to obtain their lands and boundaries, is a recommendation. In a similar vein, it is a ripe and open issue for additional research.

The JDC's task is arduous, and the difficulty increases if the neighbouring countries are multiple because of the area's expansion, which requires more exertion and money. It is important to avoid pressure on or unnecessary politicisation of the JDCs when completing their works, taking into account the particular geographical, political, and cultural contexts of local inhabitants; this needs a *strong political will* for building confidence among commissioners, meanwhile eliminating poor demarcation or non-demarcation, at the right time, which may create disputes.

Whatever the demarcation methods are – sophisticated or varied – the geographical nature of the newly-born state's boundary will have priority over other existing states which have a strategic-military condition separating them, in light of the availability of natural specifications such as the existence of seas, mountains, etc.,

which will protect the state from aggression and help it to attack others if it wishes.

Though the demarcation process is an advanced one, boundary disputes are unavoidable, and must be resolved peacefully within the rules of international law as soon as possible, in order not to allow these disputes to deteriorate into wars, especially for a new state, which is at the beginning of its infrastructural establishment and in urgent need of creating peace and stability for its internal and external situations. This can be, theoretically, be done by involving the surveying engineers and geographers of the region with diplomats in the negotiation of the delimitation treaty, for choosing a precise formulation and avoiding misconceptions and ambiguities that confuse the intended meaning on the ground. Practically, it is necessary to give a more effectual role to UNSC for positive intervention in the JDC's affairs, to ensure the availability of technical assistance, and to share the frequent experiences and practices of pre-states in this respect. Subsequently, this paves the way for the avoidance of future conflicts as much as possible, or at least, it will contribute to reducing their severity if disputes occur.

REFERENCES

– Abou-El-Wafa, A. (2007). General Legal Principles. Dar Al- Nahda Al-Arabia: Cairo.

– Abou-El-Wafa, A. (2010a). Public International Law (3rd ed.). Dar Al-Nahda Al-Arabia: Cairo.

– Abou-El-Wafa, A. (2010b). The Mediator in the Public International Law -in Arabic- (5th ed.). Dnbbbar Al-Nahda Al-Arabia: Cairo.

{احمد أبو الوفا، الوسيط في القانون الدولي العام – باللغة العربية – (الطبعة الخامسة). دار النهضة العربية: القاهرة، 2010 ب}.

– Abou-Zaid, A. (2006). International Boundaries Disputes: A Practical Study -in Arabic- (2nd ed.). Dar Al-Nahda Al-Arabia: Cairo.

{عبد الناصر أبو زيد، منازعات الحدود الدولية: دراسة تطبيقية، دار النهضة العربية: القاهرة، ط2– 2006}.

– African Union Border Programme (2014). Delimitation and Demarcation of Boundaries in Africa: The User's Guide (2nd ed.). African Union Commission: Department of Peace and Security: Addis Ababa.

– Al-Attiyah, H. (2008). Public International Law -in Arabic- (8th ed.). Legal Library: Baghdad.

{عصام العطية، القانون الدولي العام، المكتبة القانونية – بغداد، ط7– 2008}.

– Al-Dessouki, S. (2011). Problems of the Boundaries in Public International Law: A Practical Study on Boundaries of the Gulf Cooperation Council States -in Arabic-. Dar Al-Nahda Al-Arabia: Cairo.

{سيد ابراهيم الدسوقي، مشكلات الحدود في القانون الدولي العام، دراسة تطبيقية على حدود دول مجلس التعاون الخليجي، دار النهضة العربية – القاهرة، 2011}.

– Al-Dulaimi, K. (2004). Legal Status of the Yemeni-Saudi Border -in Arabic-. Master's Dissertation, Faculty of Law: Babylon University.

{خالد عباس الدليمي، الوضع القانوني للحدود اليمنية السعودية، رسالة ماجستير –كلية القانون – جامعة بابل، 2004}.

– Al-Faqi, A. (2011), A Study in the Geography of the State of Southern Sudan, Diploma Research in Politics and Economics, Institute of African Research and Studies, Cairo University.

{عبير محمد احمد الفقي، دراسة في جغرافية دولة جنوب السودان، بحث لاكمال الدبلوم في السياسة والاقتصاد في معهد البحوث والدراسات الافريقية – جامعة القاهرة، 2011}.

– Al-Fatlawi S., and Omran, H. (2009). The Process of International Boundary Demarcation and their Disputes -in Arabic-. *Babylon University Journal for Humanitarian Sciences*, Iraq. Vol. 17 – No. 1.

{صدام الفتلاوي وهاني عبد الله عمران، عملية ترسيم الحدود الدولية والمنازعات الناجمة عنها، مجلة جامعة بابل للعلوم الإنسانية، المجلد (17)، العدد (1)، 2009}.

– Al-Rawi, J. (1975). The International Boundaries and Problem of the Iraqi-Iranian Border: Legal Documentary

Journal of University of Duhok.,Vol. 22, No.1(Humanities and Social Sciences),Pp 469-493, 2019
https://doi.org/10.26682/hjuod.2019.22.1.27

{محمد علي الزبيدي، نزاعات الحدود بين الدول العربية، دار النهضة العربية – القاهرة، 2014}.

– Bakhashab, O. (1996). The Legal Concept of International Boundary. *Journal of King Abdul-Aziz University*: Faculty of Economics and Administration, Jeddah, Saudi Arabia. Vol. 9.

– Boggs, S. (1940). International Boundaries: A Study of Boundary Functions and Problems. Columbia University Press: New York.

– Breskalenko, G. (2011). Co-operation and Confidence Building in Delimitation/Demarcation Issues: Applied Issues in International Land Boundary Delimitation/Demarcation Practices (Session II): *A Seminar Organized by the Organization for Security and Co-operation in Europe (OSCE) Borders Team in Co-operation with the Lithuanian OSCE Chairmanship (Vilnius, Lithuania)*, 31 May to 1 June (published by OSCE, Vienna). Retrieved February 10, 2018, from <http://www.osce.org/secretariat/85263?download=true>.

– Brownlie, I. (1979). African Boundaries: A Legal and Diplomatic Encyclopedia. C. Hurt: London.

– Brozovic, Z. (2011), Territorial and Border Demarcation Disputes in the Western Balkans: Case study: The Demarcation process between Serbia and Montenegro. Belgrade Centre for Security Policy.

– Crawford, J. (2006). The Creation of States in International Law (2nd ed.). Oxford University Press: Oxford.

– Cukwurah, A. (1967). The Settlement of Boundary Disputes in International Law. Manchester University Press.

– Donaldson, J. (2011). Defining International Boundaries: Concept, Aims and Approaches, Applied Issues in International Land Boundary Delimitation/Demarcation Practices Study -in Arabic-. Dar Al-Salam Press: Baghdad.

{جابر إبراهيم الراوي، الحدود الدولية ومشكلة الحدود العراقية الإيرانية – دراسة قانونية وثائقية، مطبعة دار السلام – بغداد، 1975}.

– Al-Sayed, A. (2014). How was the boundary among the Arab countries formed from the beginning of Islam until the present day? Retrieved March 15, 2019, from {علاء الدين السيد، كيف تكونت الحدود بين الدول العربية منذ ظهور الاسلام وحتى يومنا هذا؟}

– <https://www.sasapost.com/steps-of-formation-of-arab-states>.

– Al-Saud, K. (n.d.). Encyclopedia of Fighter from the Desert: Border dispute between Qatar and Bahrain, military-political studies. Retrieved November 24, 2017, from {خالد آل سعود ، موسوعة مقاتل من الصحراء: نزاع الحدود بين قطر والبحرين ، الدراسات السياسية العسكرية. من الموقع الالكتروني التالي}: <http://www.moqatel.com/openshare/Behoth/Siasia2/NeezaHodoo/index.htm>.

– Al-Sayel, M., Lohmann, P., and Heipke, Ch. (2009). International Boundary Making: Three Case Studies: *Paper presented at the Hanover Workshop of International Society for Programmetry and Remote Sensing.* Retrieved January 3, 2018, from <http://www.isprs.org/proceedings/XXXVIII/1_4_7-W5/paper/Al_Sayel-123.pdf>.

– Al-Sudairy, S. (2016). The Problem of Saudi-Yemeni Border -in Arabic-. *A Research Paper submitted to the Faculty of Regimes and Political Science: King Saud University*. Retrieved January 15, 2018, from {سارة فهد عبد الله السديري، مشكلة الحدود السعودية اليمنية، ورقة بحث مقدمة الى كلية الأنظمة والعلوم السياسية – جامعة الملك سعود، 2015-2106، متاح على العنوان الالكتروني الاتي}: <http://fac.ksu.edu.sa/sites/default/files.doc>.

– Al-Zubaidi, M. (2014). Boundaries Disputes among the Arab States -in Arabic-. Dar Al-Nahda Al-Arabia: Cairo.

(Session I): *A Seminar Organized by the Organization for Security and Co-operation in Europe (OSCE) Borders Team in Co-operation with the Lithuanian OSCE Chairmanship (Vilnius, Lithuania)*, 31 May to 1 June (published by OSCE, Vienna). Retrieved February 10, 2018, from <http://www.osce.org/secretariat/85263?download=true>.

– Eom, K. (2011). International Assistance in Land Boundary Delimitation/Demarcation: Multilateral and Bilateral Experiences, Applied Issues in International Land Boundary Delimitation/Demarcation Practices (Session III): *A Seminar Organized by the Organization for Security and Co-operation in Europe (OSCE) Borders Team in Co-operation with the Lithuanian OSCE Chairmanship (Vilnius, Lithuania)*, 31 May to 1 June (published by OSCE, Vienna). Retrieved February 10, 2018, from <http://www.osce.org/secretariat/85263?download=true>.

– European Community (1992). Declaration on Yugoslavia and on the Guidelines on the Recognition of New States. *American Society of International Law*. Vol. 31, Issue 6. Retrieved January 5, 2018, from <https://www.cambridge.org/core/journals/international-legal-materials/article/european-community-declaration-on-yugoslavia-and-on-the-guidelines-on-the-recognition-of-new-states/9E18813E91A38E78863DF5807B4B4796>.

– Government of Montenegro (2010). Montenegro Facts: Government Guide Series. Public Relations Bureau Publications.

– Hameed, Z. (2016). Contributions of the Principle of the Stability of Inherited Boundaries from Colonialism in Settling the Boundary and Territory Disputes within the framework of the Organization of African Unity: African Union. PhD Thesis, Faculty of Law and Political Sciences: Mouloud Mammeri University of Tizi-Ouzou.

{زايدي حميد، إسهامات مبدأ ثبات الحدود الموروثة عن الإستعمار في تسوية نزاعات الحدود والإقليم في إطار منظمة الوحدة الإفريقية/ الإتحاد الأفريقي، اطروحة دكتوراه ، كلية الحقوق والعلوم السياسية: جامعة مولود معمري – تيزي وزو، 2016}.

– Hamouda, M. (2013). International Boundaries: Their Definition, Types, Division, Demarcation and Disputes -in Arabic-. Dar Al-Fikr Al-Jamihi: Egypt.

{منتصر حمودة، الحدود الدولية – تعريفها، انواعها، تقسيمها وترسيمها منازعاتها، دار الفكر الجامعي – الاسكندرية، مصر، ط1 – 2013}.

– Hasan, T. (2009), East Timor: A Study in Political Geography. Journal of the Humanitarian College University, Najaf.

{تغريد حسن، تيمور الشرقية: دراسة في الجغرافية السياسية، مجلة الكلية الانسانية الجامعة، النجف، 2009}.

– Hawkins, J., Weston, J., and Swannell, J. (1990). The Oxford Study Dictionary. Oxford University Press, Oxford.

– Jones, S. (1943). Boundary Making: The Description of International Boundaries. *Annals of the Association of American Geographers*. Vol. 33, No. 4.

– Kaikobad, K. (1983). Some Observations on the Doctrine of Continuity and Finally of Boundaries. British Year Book of International Law, Oxford. Vol. 44.

– Levinson, D. and Christensen, K. (2002), Encyclopedia of Modern Asia, Vol. 2, China-India Relations to Hyogo, New York.

– Law, J., and Martin, E. (2009). Oxford Dictionary of Law (7th ed.). Oxford University Press, Oxford.

– McMahon, S. (1935). International Boundaries. Journal of the Royal Society of Arts: UK. Vol. 84.
– Milefsky, R. (2011). International Assistance in Land Boundary Delimitation/Demarcation: Multilateral and Bilateral Experiences, Applied Issues in International Land Boundary Delimitation/Demarcation Practices (Session III): *A Seminar Organized by the Organization for Security and Co-operation in Europe (OSCE) Borders Team in Co-operation with the Lithuanian OSCE Chairmanship (Vilnius, Lithuania),* 31 May to 1 June (published by OSCE, Vienna). Retrieved February 10, 2018, from <http://www.osce.org/secretariat/85263 ?download=true>.
– Montevideo Convention on the Rights and Duties of States (1933). *The Seventh International Conference of American States in Montevideo,* Uruguay. Retrieved April 10, 2017, from <https://treaties.un.org/pages/showDetails.aspx?objid=0800000280166aef>.
– Munkman, A. (1973). Adjudication and Adjustment: International Judicial Decision and the Settlement of Territorial and Boundary Disputes: 46 BYBIL.
– Palani, A. (2008). International Negotiations and their Role in Solving International Disputes in the Framework of Public International Law. LLM Dissertation, College of Law and Political Sciences: Salahaddin University, Erbil.

{اياد ياسين حسين، المفاوضات الدولية ودورها فى حل المنازعات الدولية فى اطار القانون الدولي العام، رسالة ماجستير، كلية القانون والعلوم السياسية – جامعة صلاح الدين: اربيل، 2008}.

– Pinther, M., Robertson, W., Shoshany, M., Shrestha, B., and Srebro, H. (2013). International Boundary Making: FIG COMMISSION 1 – Professional Standards and Practice. International Federation of Surveyors (FIG): Copenhagen.
– Pratt, M. (2011). Defining International Boundaries: Concept, Aims and Approaches (Session I), Applied Issues in International Land Boundary Delimitation / Demarcation Practices: *A Seminar Organized by the Organization for Security and Co-operation in Europe (OSCE) Borders Team in Co-operation with the Lithuanian OSCE Chairmanship (Vilnius, Lithuania),* 31 May to 1 June (published by OSCE, Vienna). Retrieved February 10, 2018, from <http://www.osce.org/secretariat/85263 ?download=true>.
– Rahim, A. (2017). Sudan and South Sudan announce the start of demarcation within six months. Anatolia News Agency: Khartoum. Retrieved November 24, 2017, from <https://www.aa.com.tr/ar>.
– Ramadan, Sh. (2013). International Boundaries: Their Importance, Types, Reasons of Dispute, Bases and Methods for their Settlement -in Arabic-. Dar Al-Nahda Al-Arabia: Cairo.

{شريف عبد الحميد حسن رمضان، الحدود الدولية (اهميتها – انواعها – اسباب المنازعات – اسس وطرق تسويتها)، دار النهضة العربية – القاهرة، 2013}.

– Report of the ICJ (1 August 2012-31 July 2013). Request for Interpretation of the Judgment of 15 June 1962: The Temple of Preah Vihear (Cambodia v. Thailand). 19 April 2013. UN, New York. A/66/, Para. 250.
– Shahab, M., Abdul-Rahman, M. (1994). Legal Aspects for Settlement the International Boundary Disputes -in Arabic-. Dar Al- Nahda Al-Arabia, Cairo.

{مفيد شهاب و مصطفى سيد عبد الرحمن، الجوانب القانونية لتسوية نزاعات الحدود الدولية، القاهرة، ط1 – 1994}.

– Sharma, S. (1989). Delimitation of Land and Sea Boundaries between

Neighboring Countries. Lancer Books: New Delhi.

– Sumner, B. (2004). Territorial Disputes at the International Court Of Justice. Vol. 53, No. 6, Duke Law Journal, School of Law: Duke University, Durham, NC, USA. Retrieved from <https://scholarship.law.duke.edu/dlj/vol53/iss6/3>. Accessed on 15 Jun. 2018.

– Taha, F. (2007). International Law and Boundary Disputes -in Arabic- (3rd ed.). Abdul-Karim Ghani Cultural Centre: Khartoum.

{فيصل عبد الرحمن علي طه، القانون الدولي ومنازعات الحدود، مركز عبد الكريم مير غني الثقافي، خرطوم – السودان، ط3 – 2007}.

– The United States Legal Dictionary (n.d.). Demarcation Line Law and Legal Definition. Retrieved April 3, 2017, from <https://definitions.uslegal.com/d/demarcation-line>.

– United Nations Charter (1945). Retrieved May 3, 2017, from <https://www.un.org/en/sections/un-charter/un-charter-full-text>.

– United Nations Convention on the Law of the Sea (1982). The Division for Ocean Affairs and the Law of the Sea, Office of Legal Affairs, United Nations. Retrieved January 8, 2018, from <http://www.un.org/Depts/los/convention_agreements/texts/unclos/closindx.htm>.

– United Nations Member States: Growth in UN Membership, 1945–present. Retrieved December 12, 2017, from <http://www.un.org/en/members/growth.shtml>.

– United Nations Security Council Iraq-Kuwait Resolution S/RES/773(1992), adopted at its 3108th meeting on September 14, 1992. Retrieved June 8, 2017, from <http://unscr.com/en/resolutions/773>.

– Wadi, A. (2013). The State and Types of the Boundaries: Legal Research. *Al-Hiwar Al-Mutamaddin Journal – Axis: Legal Studies and Research*, 08 April 2013. No. 4056. Retrieved January 2, 2018, from

{عبد الحكيم سليمان وادي، الدولة وأنواع الحدود، بحث قانوني منشور في مجلة الحوار المتمدن–العدد: 4056 - 2013 / 4 / 8 - المحور: دراسات وابحاث قانونية، متاح بتاريخ 2018/1/2، المتاح على موقع}:

<http://www.ahewar.org/debat/show.art.asp?aid=353393>.

– Williams, P. (n.d.). Delimitation and Demarcation of Federal Boundaries-Comparative State Practice Memorandum. *Quick Guide: Public International Law and Policy Group*. Retrieved January 24, 2018, from <http://www.publicinternationallawandpolicygroup.org/wp-content/uploads/2016/03/Quick-Guide-Borders-Demarcation-and-Delimitation-of-Federal-Boundaries-Final-3.docx>.

Journal of University of Duhok.,Vol. 22, No.1(Humanities and Social Sciences),Pp 469-493, 2019
https://doi.org/10.26682/hjuod.2019.22.1.27

نەخشاندنا سنووران بۆ دەولەتەکا نوی د سایێ یقدەولەتی دا

پۆختە

نەخشاندنا سنووران بکە ژ گرنگترین ێنکاقان بۆ دامەزراندنا .ەولەتێن نوی د وارچۆقێ سایێ یقدەولەتی ن گشتی دا. سەرەدەری دگەل ن کێشێ ێکا دوو رفتێن سەرەکی هێتە کرن: ،مایێ سنووریێن بۆماوەیی ژبەر دیاردا گیرکرنێ کو هێتە هژمارتن وەک چینەکێ سایێ یقدەولەتی ن بگیرکری و هەتا مێ مە ن نوکە ژی ن کارایە، و دیسان ن بوویە ئەگەرێ گەلەک ناکۆکییان (نەخاسمە بەهرکرنا ەلێن رەسەن ژ سنووریێن خۆیێن رەسەن)، ئەڤە یەکێ. یەکێ دیڤە، د سایێ یقدەولەتی دا هیچ سایەکێ رۆهن و ئاشکرا نینە بۆ نەچارکرن و بگیرکرنا دەولەتان داکو ب پرۆسا دانان و نەخشاندنا سنووران رابن. هەروەسا، سستبوون یان نەکونترۆلکرن لسەر سنووران دبیت ژێدەرەکێ ێودلیێ و ەفێن یمناهی بۆ ەلاتێن پەیوەندیدار پەیدا بکەت. هەرچەوابیت، ئارمانجا ن ،کۆلینێ بشێوەکێ سەرەکی ئەوە کو هەول ددەت سنووران بکەتە دەرەک ژ ژێدەرێن ەقامگیریێ ێکا پالپشتکرنا .ەولەتێن سەربەخۆیی نوی لسەر بەجێکرنا رۆسێسا دانانا سنووران د بزیکترین دەم دا، و ێ چەندێ دێ خۆ ژ هەمی اکۆکییێن پەیوەندیدار دەنە پاش. ،نجامێن قەکۆلینێن دەرخست کو رەکێ یدقییە دەسهەلاتا فتارکرنێ یێن هەلسەنگاندی هێنە فراوانکرن و دابینکرن بۆ ژنێن نەخشاندنا سنووریێن هەقبەش ب تایبەت ن .ەولەتێن نو ژبۆ دەربازکرنا ئاستەنگ و رفتێن کو دبیت هێنە د ێکا ێنکاقێن کرداری یێن رۆسێسا نەخشاندنا سنووران بشێوەکێ هویر و پیشەیی. دەباریێ هندێ، هندەک یگوهۆر یێن هاتینە شنیارکرن بۆ چارەکرنا اکۆکییێن پەیوەندیدار بشێوەکێ ئاشتیخواز ب مەرەما بدەستڤەئینانا ەقامگیریێ د .ەولەتێن نوی دا بشێوەکێ سەرەکی، و داکو هێزتر ، هێن و شیان هەبن برخانەیا خۆ ئاڤا بکەن و ەیوەندییێن ەماهەنگییێن یقدەولەتی یێن پشت بەستن ب برانیێ دکەن یش بخن، و وماهیکێ ئەڤ چەندە دێ بیتە هۆکارەک بۆ پاراستنا ئاشتی و نێمناهییێن یقدەولەتی

Journal of University of Duhok.,Vol. 22, No.1(Humanities and Social Sciences),Pp 469-493, 2019
https://doi.org/10.26682/hjuod.2019.22.1.27

ترسيم الحدود لدولة جديدة في القانون الدولي

الخلاصة

ترسيم الحدود هو إحدى أكثر الخطوات أهمية لتأسيس الدول الجديدة في سياق القانون الدولي العام، حيث يتم التعامل مع هذه القضية من خلال اشكاليتين رئيسيتين: مبدأ الحدود الموروثة **(uti possidetis)** بسبب ظاهرة الاستعماروالتي تعد بمثابة قاعدة قانونية دولية ملزمة **(jus cogens)** لا تزال نافذة المفعول الى الوقت الحاضر، وتسببت في الكثير من الصراعات (خاصة حرمان الشعوب الأصيلة من حدودها الأصلية)، هذا من ناحية؛ ومن ناحية أخرى لا توجد في القانون الدولي أية قاعدة قانونية واضحة لإلزام الدول بالقيام بعملية ترسيم الحدود، كما أن التراخي أو عدم السيطرة على الحدود قد يخلق مصدرا للتوتر والتهديد الأمني للبلدان المعنية. على اية حال، فان البحث يهدف أساسا إلى محاولة جعل الحدود مصدرا للاستقرار من خلال تشجيع الدول المستقلة حديثا لانجاز عملية ترسيم الحدود في أقرب وقت ممكن، وبالتالي تجنب جميع النزاعات ذات الصلة. وقد أظهرت نتائج الدراسة بأنه من الضروري توفير صلاحيات تقديرية كافية للجان ترسيم الحدود المشتركة، وبالاخص التابعة للدول الجديدة، للتغلب على العقبات والصعوبات التي تجابه الخطوات العملية لعملية الترسيم بدقة وبمهنية عالية. علاوة على ذلك، تم طرح بعض البدائل لتسوية النزاعات ذات الصلة سلمياً بغية الوصول في المقام الاول الى تحقيق الاستقرار في البلدان الجديدة ، وجعلها اكثر قوة في وقدرة في تأسيس بناها التحتية، وتنمية علاقات التعاون الدولية القائمة على حسن الجوار، وفي نهاية المطاف سيسهم ذلك في حفظ السلم والأمن الدوليين