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INHERITED LINES AND NEGOTIATED FRONTIERS IN THE GULF. *UTI POSSIDETIS JURIS*, DELIMITATION AND DEMARCATION

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Abstract. It is tempting to describe the frontiers of the Gulf Cooperation Council states as British lines drawn across the desert and later accepted by the rulers concerned. The record does not sustain so neat an account. Kuwait, Bahrain, Qatar and the Trucial States left different treaty relationships with Britain. Saudi Arabia and Oman, by contrast, entered the period with their own international personality. The question is therefore not whether Britain drew the Gulf map. It is which legal arrangements survived the critical date and which parts of the present frontier rest on later agreement. The answer developed here is deliberately narrow. *Uti possidetis juris* supplied the starting framework, but it did not prove every sector of a boundary. A British decision or a pre-independence agreement survived only if its legal authority could be shown. The line still had to be recovered from the documents, the conduct of the rulers and, where necessary, judicial or arbitral determination. The post-independence instruments performed a different legal task. In the Saudi-Kuwaiti Neutral Zone and in the Saudi frontier agreements with Qatar, the United Arab Emirates and Oman, as well as the Oman-UAE instruments, they took an inherited territorial position and made it capable of survey and administration. In some sectors the agreed line also departed from that position. The judicial record points in the same direction. Qatar v Bahrain and the Dubai-Sharjah award dealt with different legal questions, so attribution of territory, land delimitation, demarcation on the ground and maritime delimitation cannot be collapsed into one operation. In the Gulf, *uti possidetis* is best understood as a rule against territorial uncertainty at independence. It does not prevent the states concerned from completing or altering a line by agreement.

Keywords. *uti possidetis juris*, Gulf Cooperation Council, state boundaries, delimitation, demarcation, state succession, protected states, Qatar, Bahrain, Kuwait, Saudi Arabia, UAE, Oman

УНАСЛЕДОВАННЫЕ ЛИНИИ И ДОГОВОРНЫЕ ГРАНИЦЫ В ПЕРСИДСКОМ ЗАЛИВЕ: *UTI POSSIDETIS JURIS*, ДЕЛИМИТАЦИЯ И ДЕМАРКАЦИЯ

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Аннотация. В литературе границы государств ССАГПЗ нередко сводят к линиям, проведенным Великобританией в пустыне и затем принятым местными правителями. Документы дают более сложную картину. Кувейт, Бахрейн, Катар и Договорные княжества прекратили договорные отношения с Великобританией, которые не были одинаковыми. Саудовская Аравия и Оман, напротив, сохраняли собственную международную правосубъектность. Поэтому вопрос ставится иначе. Следует определить, какие правовые положения действовали на критическую дату и в какой части современная граница обязана своим прохождением последующему соглашению государств. *Uti possidetis juris* сохранял исходную территориальную рамку, но не устанавливал сам по себе каждый участок границы. Значение британского решения или соглашения, принятого до независимости, зависело от его правового основания, полномочий соответствующего органа и согласия правителей. Саму линию приходилось устанавливать по документам и поведению сторон, а иногда в судебном или арбитражном порядке. Договоры, касавшиеся Саудовско-Кувейтской нейтральной зоны и границ Саудовской Аравии с Катаром, ОАЭ и Оманом, вместе с оманско-эмиратскими договоренностями решали уже практическую задачу. Они превращали унаследованное территориальное положение в границу, которую можно было вынести на местность и которой можно было управлять. При наличии взаимного согласия ее прохождение могло быть изменено.

Судебная практика приводит к тому же выводу. Дело Катар против Бахрейна и арбитраж Дубай против Шарджи касались разных юридических вопросов, поэтому принадлежность территории, делимитацию сухопутной границы, ее демаркацию и морское разграничение нельзя считать одной и той же операцией.

Ключевые слова. *uti possidetis juris*, Совет сотрудничества арабских государств Персидского залива, государственная граница, делимитация, демаркация, правопреемство государств, государства под защитой, Катар, Бахрейн, Кувейт, Саудовская Аравия, ОАЭ, Оман

1. Introduction

A present-day map makes the Arabian Peninsula look more settled than its boundary history was. Straight lines meet at tripoints, cross sparsely inhabited desert and stop at the coast, where the sea seems to finish the task. The legal history is less neat. Several boundaries began as understandings about tribes, wells and spheres of protection. Others were recorded in British decisions made for oil concessions or for the prevention of local conflict. Some lines were agreed by rulers who possessed international personality but had accepted restrictions on their foreign relations. A further group was negotiated only after independence. Treating all of them as colonial administrative boundaries hides the question that matters. It is necessary to identify the legal quality of the line at the moment when the relevant state became independent.

This qualification is particularly important in a study of the Gulf Cooperation Council. The six present members did not share one constitutional relationship with Britain. Kuwait, Bahrain, Qatar and the Trucial States were connected with the United Kingdom by different exclusive or protective treaty arrangements. The protected rulers ceded control over foreign relations without transferring territorial sovereignty to Britain. Saudi Arabia stood outside that arrangement and its independence was recognised in the Treaty of Jeddah in 1927. Oman was also a treaty partner rather than a British colony, notwithstanding the depth of British political and military influence. It would therefore be inaccurate to write of the six GCC states as colonies which received one common set of administrative limits when Britain withdrew.

The difference does not remove *uti possidetis juris* from the inquiry. It changes the manner in which the principle operates. The International Court of Justice has distinguished a former internal delimitation, which may become an international frontier at independence, from a pre-existing international boundary involving a protected state which retained international personality [1, paras 23-24]. In the first situation *uti possidetis* performs a transformative function. In the second, continuity follows from the law of boundaries and state succession whether or not the Latin formula is used. Gulf practice contains both situations and also an intermediate category made up of British administrative decisions accepted by the rulers concerned.

The point is narrower. At the critical date, *uti possidetis* preserved a presumptive territorial framework. It kept independence from creating a legal vacuum, but it did not give boundary force to every sketch, oil-company map or British proposal. A claimant still had to show that the document expressed legal authority, agreement or a sufficiently established territorial division. Once independence had occurred, the states remained free to delimit a disputed sector, exchange territory, partition a neutral zone or adopt a new maritime line. Such agreements exercised sovereignty after the initial entitlement had crystallised. They do not contradict the principle [37, 38, 41].

2. Research design and sources

The inquiry is doctrinal and historical. It compares the legal function of the principal boundary instruments, rather than attempting a geographical description of every marker. Primary materials include the 1986 Frontier Dispute judgment, the 2001 Qatar v Bahrain judgment, the 1981 Dubai-Sharjah award, registered boundary treaties, British decisions discussed in the cases and the GCC Charter. The analysis also draws upon the major historical studies of boundary-making in eastern Arabia and the modern literature on *uti possidetis*, including the author's earlier studies [21-28, 37-41].

For each sector, the inquiry begins with the territorial position immediately before independence. It then asks what the alleged line actually was, whether a boundary, an administrative allocation, a provisional claim or merely cartographic evidence, and identifies the act that gave it final authority. The remaining issue is the task assigned to a boundary commission after signature. Keeping that order matters

because delimitation, demarcation and territorial attribution are related, but not interchangeable.

The article concentrates on boundaries between present GCC members. Boundaries with Iraq, Jordan, Yemen and Iran are mentioned only when they explain the legal technique used within the Council's region. Maritime delimitation is addressed where it formed part of the same settlement, although the application of *uti possidetis* offshore is necessarily narrower. The continental shelf and exclusive economic zone are legal regimes whose modern form often post-dated Gulf independence. Their delimitation ordinarily depends upon agreement and the contemporary law of the sea, not upon a mechanical projection of a former desert line.

3. *Uti possidetis*, boundary continuity and the critical date

The Chamber's judgment in the Frontier Dispute supplies the legal test. *Uti possidetis* requires respect for the territorial limits in force when independence is achieved. Where those limits divided units subject to the same sovereign, the principle converts them into international frontiers. It gives priority to legal entitlement over possession and freezes the territorial position at the critical date [1, paras 20-26] [37, 38, 41]. The rule is conservative, but its conservatism has a limited object. It prevents a new state from having to prove its territory afresh on the first day of independence.

The same judgment cautions against forcing every succession problem into one formula. A boundary between an independent state and a protected state may already have been international before the end of protection. In such a case the duty to respect it follows from a general rule of international law, irrespective of whether it is described as *uti possidetis* [1, para 24]. This passage fits the Gulf more closely than the classic picture of neighbouring districts within a colony. Bahrain and Qatar, for example, were protected states. The International Court later treated their relations with Britain on that basis and did not describe Britain as territorial sovereign [2, paras 38-44]. The Eritrea/Yemen tribunal's caution about transferring *uti possidetis* to a distinct Middle Eastern setting confirms the need for this narrower inquiry [4, para 99] [39].

Boundary stability is reinforced by the law of treaties and succession. Article 62(2)(a) of the 1969 Vienna Convention excludes a treaty establishing a boundary from

the doctrine of fundamental change of circumstances [5]. Article 11 of the 1978 Vienna Convention on Succession of States in respect of Treaties states that succession does not as such affect a boundary established by treaty or the rights and obligations relating to its regime [6]. Not every GCC member is bound by each convention in the same manner, but the provisions state a wider principle repeatedly recognised in international practice. A change in international status does not reopen an established boundary.

Three consequences follow. First, the critical date is not the date on which a later delimitation treaty was signed. It is the date on which the territorial unit acquired or resumed full independence. Secondly, an earlier decision may remain relevant without becoming an international judgment retrospectively. Its effect depends on the authority which produced it and the consent given to that authority. Later agreement is not barred by the principle. Stability protects a boundary against unilateral revision, while leaving two sovereign states free to replace an uncertain sector with a negotiated line.

4. Independence in the Gulf and the inherited territorial units

Kuwait's special agreement with Britain was terminated by an exchange of notes on 19 June 1961 [18]. Bahrain and Qatar ended their special treaty relations in August and September 1971 [15-16]. The United Arab Emirates was formed on 2 December 1971 after the termination of the special treaty relations of the Trucial States [17]. Contemporary studies of the treaty system confirm that these rulers were not treated as ordinary colonial administrators [34-35]. These dates matter because the surviving territorial unit, not the whole field of earlier tribal movement, became the point of departure. Historical evidence remained relevant to show how a line had developed, but it could not be used to select whichever earlier period produced the most advantageous map.

The position of Saudi Arabia and Oman was different. The Saudi state stood outside the British protected system, although British diplomacy profoundly affected its frontiers with Kuwait, Qatar, Abu Dhabi and Oman. Oman likewise retained a separate international personality. The Buraimi dispute therefore involved competing claims by Saudi Arabia, Abu Dhabi and Oman, not the internal adjustment of a single British colony. In these sectors the principle operated indirectly. It protected the

territorial position of the newly independent or newly federated Gulf entities while the exact boundary still required agreement with an already independent neighbour.

The 1981 GCC Charter did not create a regional rule for inherited boundaries. It established a Commission for the Settlement of Disputes and a framework for coordination, but it did not transfer boundary competence from member states to the Council [7]. This institutional restraint is consistent with subsequent practice. The important settlements remained bilateral. GCC membership improved the political setting for negotiation, yet the legal source of a line continued to be a treaty, a binding decision or an adjudication accepted by the parties.

5. Kuwait, Saudi Arabia and the neutral-zone technique

The Saudi-Kuwaiti boundary shows why a critical date must be combined with the earlier treaty record. The Uqair arrangements of 1922 established the principal line and created a Neutral Zone in which neither side obtained exclusive territorial authority [20, 24, 27]. The arrangement was not an ordinary internal colonial division. It was a frontier settlement negotiated by Britain in the regional position it then occupied and accepted for the territories concerned. Kuwait’s independence in 1961 did not dissolve it. The boundary and the special regime survived.

The neutral zone also demonstrates that continuity does not require permanent institutional immobility. Saudi Arabia and Kuwait agreed in 1965 to partition the zone. Technical work then produced the supplementary agreement of 1969, the final report, minutes and map [11]. Each state acquired full sovereignty on its side of the dividing line while rights in petroleum resources were preserved through a special regime. Later agreements concerning the submerged area continued that separation between territorial sovereignty and shared resource rights [32].

Nothing in that sequence displaced *uti possidetis*. At the critical date Kuwait inherited a legally defined territorial relationship with Saudi Arabia, including the neutral regime. The later instruments converted joint territorial arrangements into a boundary and kept selected economic rights in common. The example is particularly useful because it separates three matters which are often confused. Territorial title was

settled through partition. The boundary was delimited in the treaty and technical annexes. Joint exploitation continued by a distinct legal arrangement.

6. Saudi Arabia, Qatar and the central Gulf

Saudi-Qatari relations present a different sequence. Earlier British and Ottoman instruments had identified Qatar as a distinct territorial unit, but the southern frontier remained contested [19]. The Agreement of 4 December 1965 delimited both offshore and land boundaries. It entered into force on 31 May 1971, shortly before the termination of Qatar's special treaty relations with Britain [8]. The timing is significant. The agreement did not create Qatar as a territorial entity. It specified the external line of an entity whose distinct status was already established.

The 1965 line did not disappear when relations later deteriorated. Qatar and Saudi Arabia reached another settlement in 1992, followed by work on the ground. The Joint Minutes of 2008 recorded both the land and maritime boundaries and took effect that December [33]. This chronology matters. Qatar existed as a distinct territorial unit before the frontier was fixed. The 1965 treaty delimited it, and the later instruments clarified the description and marked the agreed line on the ground.

Agreement also shaped the central Gulf at sea, although these maritime lines should not be labelled *uti possidetis*. Bahrain and Saudi Arabia agreed their continental shelf boundary in 1958 and created a separate regime for the Abu Sa'fah field [14]. Qatar and Abu Dhabi followed in 1969 with an agreement on their maritime boundary and the attribution of islands [13]. These agreements are important evidence of the legal capacity and territorial identity of the protected rulers before 1971. Their continuing force after independence and federation rests on consent and succession to territorial arrangements. It does not depend on imagining a British internal maritime boundary where none existed [36].

7. Buraimi and the south-eastern frontier

Buraimi resists any account based on a single inherited colonial line. Claims by Saudi Arabia, Abu Dhabi and Oman overlapped in an area where tribal allegiance, oasis settlements, oil concessions and British strategic policy did not point in one

direction. The arbitration initiated in the 1950s failed before it produced a final settlement. British action in 1955 restored the position favoured by Abu Dhabi and Oman, but the episode did not yield a boundary treaty binding all three claimants [24-27].

When the United Arab Emirates became independent in 1971, Abu Dhabi's territorial position formed part of the federal territory. *Uti possidetis* could protect that framework against the proposition that independence returned the region to an unallocated desert. It could not determine the Saudi line without addressing the Saudi claim. The Agreement of Jeddah of 21 August 1974 accordingly performed the decisive legal work. It delimited the Saudi-UAE land and offshore boundary in a definitive manner and entered into force upon signature [9]. The agreed line was a negotiated settlement between sovereign states. It was not merely a tracing of the British Riyadh lines.

The Jeddah settlement has generated disagreement over interpretation and cartographic presentation, especially in relation to access, maritime entitlements and the Khor al-Udaid sector. Those questions do not justify treating the treaty as provisional. A boundary treaty is presumed to settle the territorial line unless the parties agree otherwise or establish a recognised ground of invalidity. Political dissatisfaction with the bargain and disagreement over collateral rights must be distinguished from the legal existence of the boundary itself [5, art 62(2)(a)].

Saudi Arabia and Oman completed another side of the south-eastern framework through the International Frontier Treaty signed at Hafar al-Batin on 21 March 1990 [10]. Its annexes and maps supplied the technical description needed for demarcation. Oman and the United Arab Emirates then addressed their complex frontier, including sectors associated with enclaves and the Musandam Peninsula. Political agreement in 1999 was followed by the 2002 Border Agreement covering the sectors from eastern Uqaidat to Darah, with annexes and maps [12]. These instruments show the practical limits of the critical-date rule. It secures the states' territorial continuity, but a mountainous frontier broken by enclaves cannot be administered by a general principle alone.

8. British decisions in Dubai-Sharjah and Qatar-Bahrain

Two adjudications give the clearest legal treatment of British decisions in the Gulf. The first concerned Dubai and Sharjah. It was an inter-emirate dispute within the UAE, submitted to an ad hoc tribunal after federation. The award of 19 October 1981 considered land and maritime sectors and examined decisions made by the British official Julian Walker in the 1950s [3, 30, 39, 40]. The tribunal did not place those decisions on the same level as a treaty or an arbitral award. It nevertheless held that they had legal effect because the rulers had consented to British delimitation and had undertaken to respect the decisions.

The award did not treat an archived British document as self-proving. A protecting power's administrative act could bind only where the competent rulers had accepted the procedure, received the decision and subsequently acted upon it. The award also relied on local administration and conduct in sectors not conclusively settled by the British decisions. It therefore combined documentary title and conduct instead of treating one British map as conclusive [3, pp. 577-585].

The Qatar-Bahrain case concerned two sovereign states and produced a still more careful result. For Zubarah, the International Court traced the consolidation of the authority of the Sheikh of Qatar after 1868, its recognition in the Anglo-Ottoman Convention of 1913 and later events. It found sovereignty in Qatar [2, paras 70-97]. For the Hawar Islands, the Court held that the 1939 British decision was not an arbitral award. It was nevertheless binding because both rulers had consented to Britain settling their dispute, and it remained binding after the protected status ended in 1971 [2, paras 113-147].

The Court did not decide Hawar by applying *uti possidetis*. It expressly stated that the binding character of the 1939 decision made it unnecessary to address original title, subsequent conduct and the applicability of the principle [2, para 148]. That restraint should be preserved in any account of the case. The judgment is compatible with the stabilising function of *uti possidetis*, but its ratio rests on consent to a British decision. Judge Al-Khasawneh's separate opinion also questioned whether a doctrine

developed in decolonisation could be applied to Gulf protectorates in the same manner [29, paras 9-11].

The Janan question shows how much evidence broad labels conceal. British correspondence of 1947 placed the island outside the Hawar group. The Court read those letters as the authorised interpretation of the 1939 decision and consequently held that Janan and Hadd Janan belonged to Qatar [2, paras 149-165]. Geography alone did not decide the matter. The controlling point was the meaning of the decision which both rulers had empowered Britain to give.

The maritime part of the judgment followed a different legal path. The Court drew a single maritime boundary under contemporary customary law. It considered equidistance, relevant coasts, islands and low-tide elevations. It did not simply adopt the British seabed line of 1947 [2, paras 167-249] [31]. The reason is structural. *Uti possidetis* can preserve territorial sovereignty over coasts and islands. It does not relieve a court from delimiting modern maritime zones under the law applicable to those zones.

9. Delimitation, demarcation and agreed correction

Gulf boundary practice becomes clearer once four legal operations are separated. Territorial attribution answers which state inherited or acquired a place. Delimitation expresses the boundary in words, coordinates or an agreed map. Demarcation identifies it on the ground by pillars, surveys and geodetic work. Boundary administration governs movement, shared deposits, grazing, water and local access after the line has been established.

A delay in demarcation does not normally suspend title. Nor does the replacement of old coordinates prove that the original boundary did not exist. Desert and mountain surveys often require conversion between datums, the identification of wells whose names vary and adjustment to physical features. Technical commissions are therefore not merely ceremonial bodies. Their task is to translate a legal line into an administrable one without reopening the whole territorial settlement.

Agreed correction is also lawful. *Uti possidetis* operates at the critical date and prevents unilateral selection of a different territorial past. Once sovereignty is

established, states can exchange land, divide a neutral zone or choose a practical line. Ratner's criticism that inherited boundaries may freeze poor colonial choices has particular force where a line separates communities or resources [22, pp. 590-624]. Yet the answer is not to deny the initial rule. It is to permit consensual correction while requiring clarity about the title from which each party negotiates.

The agreements do not fit a single political moment. The partition of the Saudi-Kuwaiti Neutral Zone, the Saudi-Qatari instruments, the Jeddah Agreement, the Saudi-Omani treaty and the Oman-UAE agreements were concluded in different circumstances. They shared one legal premise. A territorial change required the consent of the states concerned, and independence had not wiped away the preceding legal geography.

10. The legal pattern of GCC boundary-making

The regional record does not support the shorthand of "British-drawn borders". Britain supplied surveyors, proposals and decisions, but legal force often came from the rulers' consent, a bilateral treaty or later state practice. Nor did protection make the Gulf polities British territory. The continuity of their frontiers rested partly on their existing international personality and not simply on the conversion of colonial administrative lines.

The critical date nevertheless remains indispensable. It prevents a state from choosing among tribal history, oil-concession maps and later occupation according to immediate advantage. Earlier material may prove the inherited position, but it cannot displace the law governing the moment of independence. Legal entitlement and actual administration also do different work. If a competent instrument fixes the line, contrary local use will not ordinarily transfer sovereignty. If the documents fail to answer the question, peaceful and public administration may help locate it [37, 40].

Land and maritime boundaries must also be kept apart. The coastal entitlement preserved at independence is the basis of maritime rights, but the territorial sea, continental shelf and exclusive economic zone require a separate delimitation under agreement and the law of the sea. Qatar v Bahrain makes the point clearly. Historical

decisions settled sovereignty over Zubarah, Hawar and Janan, while the Court drew the maritime boundary under contemporary customary law.

Uti possidetis accordingly has a useful but limited role in the Gulf. It did not settle the region by itself. It preserved territorial continuity while negotiation, demarcation or adjudication supplied the missing precision. A state wishing to leave the critical-date framework therefore had to show consent, a valid treaty, a binding decision or another legal basis for correction. Geography and political preference were not enough [37, 38].

11. Conclusion

The GCC boundaries were not produced by one colonial map and were not all born in 1971. Their legal sources differ. Some were treaty boundaries already international before independence. Some were allocations or decisions made within the British protected system and accepted by the rulers. Some remained uncertain until sovereign states negotiated a settlement. Maritime boundaries followed their own chronology.

Uti possidetis juris is relevant to this record because it identifies the moment at which inherited territorial arrangements cease to be provisional features of a protected order and become the starting point of sovereign title. Its application must nevertheless reflect the legal status of the Gulf polities. In the case of a protected state, continuity may follow from a pre-existing international boundary. In the case of the Trucial States, the federal boundary also depended on the territory brought into the UAE by each emirate. British decisions mattered where they were authorised and accepted, not because Britain possessed territorial sovereignty over the rulers' domains.

The later treaties confirm, rather than weaken, that conclusion. Preservation of territory and operation of a boundary are different tasks. The critical-date rule addresses the first. Coordinates, markers, commissions and arrangements for resources and movement address the second. The GCC experience supports neither an unlimited doctrine of inherited borders nor the claim that desert frontiers remained legally empty until a modern treaty was signed. The more exact conclusion is that independence

preserved the legally identifiable territorial framework, while sovereign consent completed, corrected and administered the line.

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