

REPUBLIC OF TURKEY
ANKARA UNIVERSITY
GRADUATE SCHOOL OF SOCIAL SCIENCES
DEPARTMENT OF MARITIME TRANSPORTATION
LAW AND POLITICS

**THE LEGAL REGIME OF ISLANDS OF ABU MUSA AND GREATER AND
LESSER TUNB IN THE PERSIAN GULF UNDER UNCLOS**

Master's Thesis

Khashayar SAFAVINIA

Ankara, 2021

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I state that all the information in my master's thesis titled " The Legal Regime of Island of Abu Musa and Greater and Lesser Tunb in the Persian Gulf Under UNCLOS (Ankara.2021)", which I prepared under the supervision of Prof. Ademuni ODEKE, PhD, was collected and presented in accordance with academic rules and ethical behaviour principles, I fully indicated the information I received from other sources in the text and in the bibliography, I declare that I have acted in accordance with the ethical rules, and I will accept any legal consequences in case the contrary arises.

**Date: 30/09/2021
Khashayar Safavinia**

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ABBREVIATIONS

ABC-CLIO:	American Bibliographical Centre
AD:	Anno Domini
BC:	Before Christ
CS:	Continental Shelf
CZ:	Contiguous Zone
EEZ:	Exclusive Economic Zone
GCC:	Gulf Cooperation Council
GENCONV:	Geneva Convention
ICJ:	International Court of Justice
KM:	Kilo Meter
LLC:	Limited Liability Company
MoU:	Memorandum of Understanding
NM:	Nautical Miles
OED:	Oxford English Dictionary
PCA:	Permanent Court of Arbitration
RUSI:	Royal United Services Institute
SIDS:	Small Island Developing States
SOAS:	School of Oriental and African Studies
TS:	Territorial Sea
UAE:	United Arab Emirates
UK:	United Kingdom

UN: United Nations

UNCED: United Nations Conference on Environment and Development

UNCLOS: United Nation Convention on the Law of the Sea

UNSC: United Nations Security Council

US: United States

USA: United States of America

USSR: Union of Soviet Socialist Republics

WWI: First World War

WWII: Second World War

INTRODUCTION

A) SUBJECT MATTER, AIMS AND QUESTION

The subject matter of this thesis is the Iran and the United Arab Emirates are at odds, and their backers over the sovereignty of the three Persian Gulf islands. Although the three Islands of Abu Musa, Greater, and Lesser Tunb, have belonged to Iran and Iranian rule over them like other Iranian Islands have a long history, the British Government claimed the islands for more than two centuries, and afterward by the newly established Government of the United Arab Emirates (UAE) as well.

The Qajar dynasty, who ruled Iran from 1789 to 1925, exercised weak sovereignty over the shores, and islands of the Persian Gulf. Consequently, the British, who were looking for an opportunity to increase their presence in the region, and to strengthen their influence in the Persian Gulf at the time, occupied the three Iranian Islands, in 1903, and subsequently handed them over to their protected emirates of Sharjah, and Ras al Khaimah, which became the UAE.

Nevertheless, after 68 years, the United Kingdom (UK) withdrew from the Gulf area in 1971, returning the three Islands of Abu Musa, Greater, and Lesser Tunb to Iran.

Since then, despite a solid historical, and lawful foundation for Iran's the islands' ownership, the UAE Government has asserted ownership of the islands.

In the summer of 1992, the Iranian Government, which has been in full control of shipping to Abu Musa Island following its deployment of forces there prevented Egyptian, due to low level of political relations, and several other third-country nationals from entering the Sharjah-controlled area south of Abu Musa Island.

This action provoked strong protests from the UAE and involved her extensive political activity in the international community against the occupation of three islands by Iran. Since then, the UAE, the Gulf Cooperation Council (GCC), the Arab League, and even those with close political ties to Iran, have called on Iran repeatedly, individually, and collectively to end the occupation of these islands.

Therefore, it is necessary to explain the history of Iran's sovereignty over the three islands from the Law of the Sea perspective and against the political and legal claims of the UAE, and her

regional and trans-regional allies. To reach this goal the study of the legal regime of the islands, in particular, the Abu Musa Island, the position, statements, and legal claims of the parties involved in the conflict is necessary.

The questions used in this study are:

- What are the most important bases for Iran's sovereignty over the three islands from the perspective of history and International Law of the Sea?
- What is the historical background of the dispute between Iran and UAE over Abu Musa Island?
- What are the impacts of the islands on the delimitation of the disputed maritime zones?
- What are the unique features of the islands which present their legal status, and how islands are entitled to maritime zones and, in what capacity?
- To what extent can states consider islands under their sovereignty?
- What suggestions could be made regarding the maritime boundary delimitation of Abu Musa Island in the Persian Gulf according to UNCLOS?

B) SCOPE AND STRUCTURE

The history of this region has shown that the strategic spot of Persian Gulf has always been the cause of different state's conflicts. For instance, the occupation of the Abu Musa, Greater, and Lesser Tunb Islands by Portuguese and the British.

The Abu Musa Island, located on Iran's first defence line in the Strait of Hormuz, is one of the Persian Gulf's most strategically vital islands. The waters surrounding Abu Musa Island are one of Iran's most important crude oil export sites. Abu Musa, together with Greater and Lesser Tunb, are strategically important since they ensure Iranian control over a large portion of the southern Persian Gulf, including the Strait of Hormuz. Besides, due to the appropriate depth, the only vital passageways for large oil tankers, and warships are within the islands.

The question of island statehood has undoubtedly been the most critical point of contention between the UAE, and Iran, and one of the most contentious issues between Iran and the Arab world in the last three decades.

This thesis, therefore, evaluates the legal regime of the islands, particularly, the Abu Musa Island, the position, statements, and legal claims of the parties involved in the conflict, and determines major legal points, and claims by Iran, and UAE. This thesis will draw on diverse approaches to the historical, political, economic, cultural, and geographical features of the islands with comparative law analysis view.

1- Terms and Concepts

UNCLOS, Legal Regime for Islands and Rocks, Terra Nullius, Condominium, Prescription, Equidistance Line, Median Line, Enclaving, Proportionality, Disproportionality Test, Iran-Sharjah MoU 1971, Global Warming, Blue Economy, The International Court of Justice, and United Nations Security Council.

2- Theoretical Discourse

The theoretical discourse of the thesis needing examination is the legal regime of the islands, and the issues therein and the characteristics of the islands in the Persian Gulf under international law and United Nations Convention on the Law of the Sea (UNCLOS).

C) METHOD OF DATA COLLECTION

The general guide of the research is the hypothesis by examining the background, and historical documents of the three islands. This thesis will be based on articles and books. The articles were extracted from different journals, and books to get recent and accurate information on the subject, the history of the region, and statutes of the islands and rocks under UNCLOS. The literature review will be examined according to the used publications.

I. HISTORICAL ANALYSIS

A) GEOGRAPHICAL SKETCH

Due to the vastness of its territory in the margins of the Persian Gulf, Iran has the longest coastline in this sea and has sovereignty over several valuable and strategic islands in the mouth of the Persian Gulf, and the Strait of Hormuz. Among the six islands, which make up Iran's defence line, the most important ones are Qeshm, Lark, Hormoz, Hengam, Greater and Lesser Tunb, and Abu Musa, which are located within a short distance of each other.¹

“The Abu Musa Island is located between longitudes 55-01' and 55-04' east and latitudes 25-51' north, and it is 50 Kilo Meter (KM) East of Sirri Island. The island is situated 67 KM from Bandar Lengeh and is almost rhombus in shape. The population of the island includes Bandar Lengeh Iranians and Sharjah Arabs.”²

“The Greater Tunb Island is located between longitudes 55-16' and 55-9' E and latitudes 26-15' and 26/19' N, and it is 27 KM south west of Qeshm Island and is about 2.5 miles wide. This brown circular island is situated 50 KM from Bandar Lengeh and 70 KM from Ras al Khaimah. The population of the island is a combination of Bandar Lengeh Iranians and Dubai Banyans Arabs.”³

“The Lesser Tunb, locally called Tunbo or Banitunb, which means small hill in the Persian dialect spoken in southern Persia, is located between longitudes 55- 8' and 55- 9' E and latitudes 26- 14' and 26- 15' N, and is situated 45 KM from Bandar Lengeh and 80 KM from the Ras al Khaimah in the Persian Gulf. This island is almost triangular and without inhabitants.”⁴

The location of Islands of Abu Musa, and the Greater and Lesser Tunb could be explained from different view as follow:

¹ Mojtahed-Zadeh, P.: *The Islands of Tunb and Abu Musa, an Iranian Argument in Search of Peace and Co-operation in the Persian Gulf*, SOAS occasional paper 15, chapter IV, published by Centre of Near and Middle Eastern Studies, University of London 1995, p. 27.

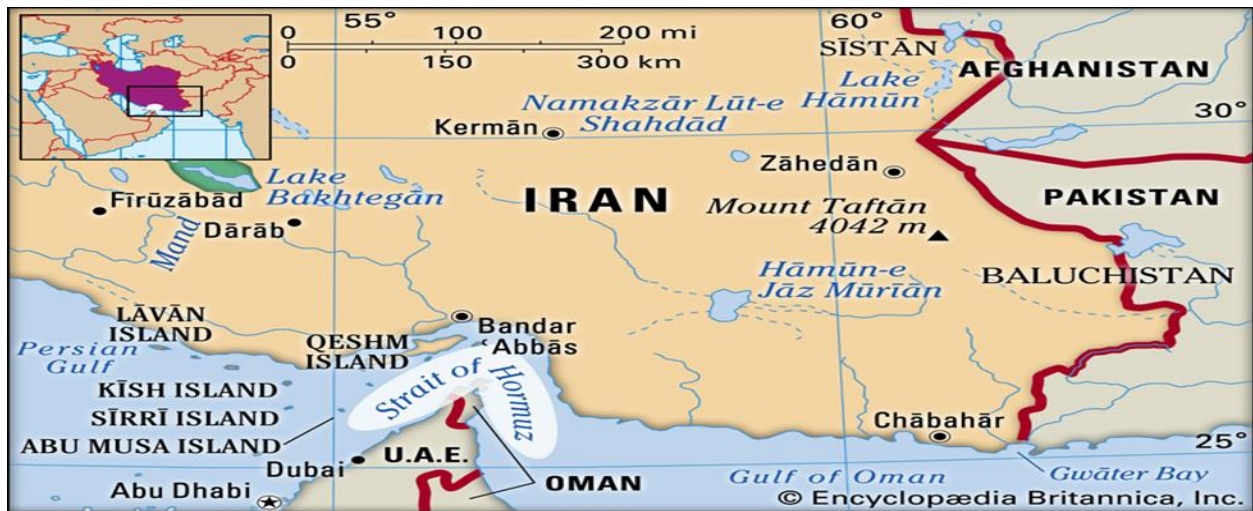
² Mojtahed-Zadeh, P.: *Greater and Lesser Tunb Islands: Guidelines for Peace and Security in the Persian Gulf*, Translated by Reza Malek Mohamadi Nouri, Foreign Ministry, Chap and Entesharat Institute, Tehran 1996, pp. 38-42.

³ Mojtahed-Zadeh, P.: *Abu Musa and Tunb Islands: A Guideline for Peace and Security in the Region*, Translated by Hamid-Reza Malek Mohamadi Nouri, Foreign Ministry, Chap and Entesharat Institute, Tehran 1992, pp. 88-89.

⁴ Ibid, pp. 89-90.

The islands are located near the Strait of Hormuz, where the Persian Gulf joins the Gulf of Oman. Persian Plateau surrounds the Persian Gulf to the north and the Arabian desert to the south (See Map One).

Map One: Shows the Location of the Islands of Abu Musa, and the Greater and Lesser Tunbs near the Strait of Hormuz, where the Persian Gulf joins the Gulf of Oman. Persian Plateau surrounds the Persian Gulf to the north and the Arabian desert to the south.



Source: Taken from <https://www.britannica.com/place/Strait-of-Hormuz>

1

According to the widely accepted geological theory, the greater part of the region known today as the Persian Plateau and Central Arabia, was during the Cretaceous Period, submerged in water, except for a strip of land, which is now called the Strait of Hormuz.²

At the close of the Miocene Period, due to a shake-up in the Earth's crust the Persian Plateau was born in Central Asia. The Persian Gulf was formed by a reversal process, a clastic sinking in Tertiary Periods (Cenozoic Era).³

The Earth is a dynamic planet and its surface has been in a process of continuous change and violent upheavals. Over a billion years ago, the continents and seas had different shapes and positions. Weathering, erosion, volcano, mountain buildings and other natural forces have contributed to both constructive and destructive processes, altering the landscape of the Earth.

¹ Location of the Islands of Abu Musa, and the Greater and Lesser Tunbs near the Strait of Hormuz, where the Persian Gulf joins the Gulf of Oman. Persian plateau surrounds the Persian Gulf to the north and the Arabian desert to the south: <https://www.britannica.com/place/Strait-of-Hormuz>. (Accessed on 13/09/2021).

² Sykes, P.: *A History of Persia*, Vol. I, 3rd ed, London 1951, p. 4.

³ T. Wilson. A.: *The Persian Gulf*, Oxford University Press London 1928, p. 3.

Orogenesis has been associated with large portions of the planet, folded, faulted, and generally distorted by immense forces.¹

In early Pliocene Time, the last epoch in the Cenozoic Era, “the Persian Gulf was confined to a narrow strip along the present coastal plain of Persia, extending as far as Laristan.” The powerful folding movements, which led to the formation of the Zagros Mountain ranges occurred during the Pliocene Period, and displaced the depressed zone to the northwest of Laristan to the southwest. Those changes gave rise to the formation of the present Persian Gulf, the great pressure that caused mountain formation in Western Persia during the Pliocene Era left the well-secured Arabian Plateau basically untouched. Oman had its strong folding and mountain-building process millions of years before in the mid-Cretaceous Period. The extreme pressure, caused by the mountain-building processes, squeezed thick deposits of metamorphosed sedimentary rocks out of the deep and remote parts of the Earth, which formed many islands and islets when they reached the surface of the Gulf.²

The Islands of Hormuz, Hengam, Larak, Abu Musa and the Tunbs are the result of such processes. The emergence of Mesopotamia out of the waters was the result of Earth's shake-up in Persia and Arabia, while silt deposits contributed by the rivers Tigris, Euphrates, and Karun formed the delta in the south. The Persian Gulf which once extended from Hit and Samara to the mountain barrier of Musandam, currently occupies an area of approximately 96,000 square miles, extending from the mouth of the Tigris-Euphrates rivers in the west to the Strait of Hormuz in the east.³

The Strait of Hormuz's length, is constituted from the head of the Gulf to the coast of Oman, which is about 500 miles, and its width ranges from 180 miles at its largest point to barely 29 miles at its narrowest point, presently, on the Persian side, the land edges seaward about 159 feet annually. Should the present trend continue, within two millennium the three Islands of Abu Musa and the two Tunbs will become annexed to the mainland.⁴

The geological structures in the region reveal that the Arabian Peninsula is the continuation of East Africa, and the Persian Gulf is an extension of the Persian Plateau. Before the mountain

¹ Ibid.

² Ibid, p. 4.

³ Ibid, p. 5.

⁴ Ibid.

formation in Western Persia, the coast of Muscat ran along the coast of Mukran, and Oman Mountains were a continuation of the range of Minab and Zendan.¹

The implication of the “plate tectonics” theory in geology, developed in the 1960, confirms the foregoing hypothesis: The Persian Gulf is part of the Eurasian Plate and the Arabian Peninsula is part of the African Plate. The Persian Gulf is a shallow sea, 40 to 50 fathoms (about 250 feet or 76 meters) throughout the Gulf, and about 80 fathoms (480 feet or 146 meters) in the Strait of Hormuz. Therefore, the sea floor incredibly quickly sinks to a huge depth of approximately 1800 fathoms (10,800 feet or 73-90 meters) midway through the Gulf of Muscat.²

The thalweg line is nearer to the mountainous site of the Gulf. The water in the Gulf is generally saline due to an almost lack of currents from the ocean. Only during the season of the southwest monsoon there is a slight inflow from the Gulf of Oman and, throughout the remaining portion of the year, a tiny bit outflow into the Gulf of Oman. The Tigris, Euphrates, Karkheh, and Karun supplies the habitual flows of water into the Persian Gulf, which receive water from tributaries running down the Zagros Mountain ranges in Persia and Mount Ararat in Turkey.³

Because of the shallowness of the Gulf, some 130 isles appear in the basin. Most of the islands are located near the shores in the western portion of the Gulf, and they differ in structure. Those which, are nearer to the Persian coast such as Hormuz, Qeshm, Sheikh Shuaib, Abu Musa, the Greater and Lesser Tunbs, Larak, and Hengam are rocky with steep slopes, having physical features like the Persian coast.⁴

The three Islands of Abu Musa and Tunbs, which lie between the mainland and the Persian Gulf's median line, are with shorter distance to Iran. The Greater and Lesser Tunbs Islands are about 26 miles (42 kilometres) off the Iranian Coastline while Abu Musa lies around 30 miles (48 kilometres) off the Iranian Island of Sirri. Al Jazirah Al Hamra in Ras al Khaimah, which is 46 miles (74 kilometres) from Greater Tunb, is the closest point on the Arabian side to the islands.⁵

¹ Mostofi, A.: “Khalij-e Fars: Its Geological Structure and Formation,” in proceedings of Khalij-e Fars Seminar Tehran, Vol I, 1962, p. 5.

² Ibid.

³ Ibid.

⁴ Ibid.

⁵ Ibid.

Greater Tunb is situated 23 miles (37 KM) off the Persian coast, 17 miles (27 KM) away from the Iranian Island of Qeshm, to the north of the median line. It is about 2.5 miles (4 KM) in diameter with sandy beaches and low rocky cliffs. It is an infertile land with a small number of trees, mostly palm and banyan. The island is sparsely inhabited. It has little or no cultivation. Scarce grass and shrubs on the island feed the few gazelles, goats, horses, and cattle kept by the inhabitants, who live in mud huts. The island has lack of fresh water, it has a small amount of bitter water infested with venomous snakes.¹

Lesser Tunb is located a few miles away to the southwest of Greater Tunb and 20 miles (32 KM.) from the Port of Lengeh. The island is one mile (1.6 KM) long and 3/4 mile (1/2 KM) wide. It is waterlogged, uninhabited and, like Greater Tunb, venomous snakes have infested it. Abu Musa is the largest of the three islands, almost rectangular in shape and three miles (4.8 KM.) in diameter. About fifty families regularly reside there.²

Half of the inhabitants are of Persian and half are of Arab origin. Abu Musa, unlike the two Tunbs, has fresh water, plantations of date trees, deposits of red oxide-iron, and proven oil reserves. Abu Musa is located on the median line of the Persian Gulf. The three islands, like other islands in the Gulf, have a hot and humid climate with limited rainfall. There are nine months of hot summer, and three months of cool winter. The annual average temperature ranges roughly from 10 to 32 centigrade (50-90 Fahrenheit) and the average rainfall ranges from 7 to 25 centimetres (3-10 inches), depending on the island. Treacherous winds, from south to north in summer and from east to west in winter, are frequent in the area.³

B) THE THREE ISLAND DISPUTE IN HISTORICAL ANALYSIS

1- Background of the Disputes Over the Three Islands

¹ Ibid.

² Ibid.

³ Farhang, M: *A Colonial legacy: The Dispute over the Islands of Abu-Musa and the Greater and Lesser Tunbs*, University Press of America, Lanham, New York, Oxford 1984, pp. 15-16.

Historically, the Persians were among the first nations who settled in the southern parts of Iran and created the first government, and found the southern waters of Iran very valuable, and called them the Persian Sea.¹

Iranian domination of the southern shores of the Persian Gulf continued till the arrival of the Portuguese in the same area in 1507. The Portuguese, with their profiteering activities, entered the Persian Gulf and occupied the islands and their shores for about 117 years. At this time, the Portuguese ruled and took control of all major cities, islands, and ports of the Persian Gulf.²

In 1602, the Government of Shah Abbas Safavi was able to defeat the Portuguese, and established the sovereignty of Iran over the Persian Gulf and its islands, which were: The Governorate of Lengeh Port, including the ports of Charak, Kong, Assaluyeh, Khamir, and the Islands of Tunb, Abu Musa, Sirri and Kish. This rule remained in effect till 1720.³

After the collapse of the Safavids, Nader Shah Afshar's domination spread throughout Iran. He established stability in the Persian Gulf and in 1730, he again claimed control of Iran over the northern parts of ancient Mahun or the country now known as Oman. In 1727, Nader Shah dismantled the Eastern Indian Company facilities and extended the Iranian coast from Basra to Makran in current Pakistan under the rule of the Iranian Government. After occupying Bahrain and capturing some parts of Oman, he chose Bushehr (See Map Two) as the naval base.⁴

With the murder of Nader Shah, a group of local rulers including Mola Ali Shah, claimed independence in Bandar Abbas.⁵

In the meantime, Karim Khan Zand's Government, was rising, and locals robbed the consulate of the British political representative, located in Bandar Abbas. The British Government demanded compensation for the theft.

¹ Takmil Homayoun, N.: *The Persian Gulf*, Office Cultural Research. 3rd ed, Tehran 2002, p. 27, Eghtedary, A.: *The Persian Gulf*, Sepehr Printing House, 2nd ed, Tehran 1977, p. 2.

² R. I. Cole, J.: *Sacred Space and Holy War the Politics, Culture and History of Shi`ite Islam*, I.B. Tauris & Co Ltd 6 Salem Road, London, and New York 2002, p. 4.

³ Ibid, p. 42.

⁴ Afshar Sistani, I.: *Abu Musa Island and Greater and Lesser Tunb*, Office of National Political Studies, 3rd ed, Tehran 2001, p. 74.

⁵ Nourizad Bushehri, I.: *Current Iran and the Persian Gulf*, Omid newspaper printing house, Tehran 1946, p. 129. Movahed, M.: *Review of Case Documents which Sheikhs Cite in Claiming the Islands of the Abu Musa, Greater and Lesser Tunb*, Karnameh, Tehran 2001, pp. 94-97.

Map Two: Shows the Location of Bandar Bushehr which Was the Naval Base of Iran and Province of Fars in Iran's Territory.



Source: Taken from <https://www.britannica.com/place/Bandar-e-Bushehr>.

1

Iranian Government sent a force under the command of Sheikh Nasser Khan to Bandar Abbas to maintain security. In return, Sheikh Qasimi of Ras al Khaimah sent a force of one thousand armours to help Mola Ali Shah. Then from the outbreak of the three-year war between the two forces, a branch of the Qasimi of Ras al Khaimah (Julfar) reached the Port of Lengeh and settled there. This branch of the Qasimi was able to become governors of that region² after a while due to the weakness of Karim Khan Zand's Government.

After Karim Khan Zand, Agha Mohammad Khan, fought for nearly ten years successors of Karim Khan Zand and other claimants to the monarchy. He succeeded and dominated all of Iran, including the ports and islands of the Persian Gulf. During the reign of Fath Ali Shah, who ruled Iran after Agha Mohammad Khan the islands of the Persian Sea were part of the province of Fars.

In 1835, Captain Henel, the British political agent in the Persian Gulf, offered a maritime peace treaty to prevent clashes between Arab tribes in the southern shores of the Persian Gulf

¹ Location of Bandar Bushehr which was the naval base of Iran and Province of Fars in Iran's territory. Britannica, The Editors of Encyclopaedia. "Bandar-e Būshehr." Encyclopedia Britannica, 15 Dec. 2017: <https://www.britannica.com/place/Bandar-e-Bushehr>. (Accessed on 13/09/2021.)

² Ibid.

during the pearl fishing season that year. The Sheikhs approved this agreement. In this agreement, Captain Henel determined Arab's activities according to the official map of the sea in the Persian Gulf. In this map, the Ports of Lengeh, Left, Charak, Kong, and the Island of Abu Musa, Greater and Lesser Tunb were under Iran's sovereignty.¹

On another map, the Port of Lengeh and the Abu Musa Island were already in Iran in 1843. The British forced appointed sheikhs to sign another agreement in addition to the previous agreement in 1819, to prevent military operations at sea by the sheikhs. With this agreement, the British representative benefited much more from monitoring and controlling shipping in the Persian Gulf.²

In 1845, Haj Mirza Aghasi, the then Prime Minister of Iran, stated explicitly by issuing a declaration that Iran has sovereignty over the islands in the Persian Gulf. Although at that time British politicians called him crazy and a Russian agent, but neither in their actions nor in their official speech did not challenge the official declaration of sovereignty and ownership of Iran over the islands in the Persian Gulf.³

In 1853, the British to consolidate their dominance, gathered governors of the region together in a conference, and made an agreement called "Eternal Peace" in which, this agreement allowed the British to operate not only under the pretext of fighting pirates but also under the pretext of maintaining the security of the Persian Gulf to intervene in any incident that occurred on the shores of the Persian Gulf.⁴

In 1891, the British allied fleets of the Easter Indian Company, and a fleet of UK were sent to the Persian Gulf under the pretext of maintaining security. In Muscat the auxiliary fleet and forces of the sultan joined the British navy as well.⁵

The allied forces besieged the capital of Ras al Khaimah by sea and land, which finally fell after six days of resistance. This was a failure for sheikhs of the small Emirates, including Abu

¹ Afshar Sistani, I.: *Abu Musa Island and Greater and Lesser Tunb*, Office of National Political Studies, 3rd ed, Tehran 2001, p. 78.

² Ibid.

³ Schofield, R.: *The Territorial Foundation of the Gulf States*, London Routledge 1994, p. 35.

⁴ Afshar Sistani, I.: *Abu Musa Island and Greater and Lesser Tunb*, Office of National Political Studies, 3rd ed, Tehran 2001, p. 79.

⁵ Ibid.

Dhabi, Dubai, Sharjah, Ras al Khaimah, and Umm al-Quwain (See Map Three). From this time, the British moved to the Arab's coasts of the Persian Gulf. In the same year, due to the conflict between

Map Three: Shows the Location of Ras al Khaimah and other UAE's Emirates.



Source: Taken from <https://hcs-fze.com/page/infolist-ras-al-khaimah>.

1

Qasimi forces in Ras al Khaimah and the British forces, a group of Qasimi and their relatives had to become refugees in the Lengeh Port.²

The British Commander at that time, General Sir W. Keir Grant, who oversaw suppressing these forces (the Qasimi), sent letters to the crown of Fath Ali Shah Qajar and the ruler of Fars indicating that the intention was to eliminate Qasimi forces and not to invade Iran. During the interactions between the ruler of Fars at that time and the Shah of Iran with the British representative, they warned the British representative that Shah considers the Qasimi of Lengeh Port as Iranian citizens and agents and would not accept the aggression against the Iranian people.³

Due to the weakness and inability of the Qajar Government and the emergence of two superpowers, Russia, and British in the region, Iran's sovereign rights over the islands in the Persian Gulf area was questioned many times. However, these islands were constantly in

¹ The Location of Ras al-Khaimah and other UAE's Emirates: <https://hcs-fze.com/page/infolist-ras-al-khaimah> (Accessed on 13/09/2021)

² Jafari Valdani, A.: *A Historical Look at the Iranian Islands of Abu Musa and Tunb Islands*, Ministry of Foreign Affairs Publication Centre, Tehran 1997, p. 136.

³ Ibid.

possession of Iran. For instance, during this dynasty period, the Qajar Government administered the governor of Lengeh Port.¹

In the early twentieth century, the British were worried about Russian interference in the Persian Gulf, the result of which was a political agreement in 1902 between Iran and Russia, which increased the scope of the competition between British and Russia for their influence in the Persian Gulf. To counter this change, British decided to take the first step, occupying, and putting the Iranian Islands of the Strait of Hormuz under their direct control and putting others under the rule of appointed Qasimi Sheikhs.²

C) THE OCCUPATION OF THE ISLANDS BY BRITISH AND LEGAL RESPONSES

The British Government, to justify and cover-up for their imperialist goals, resorted to some principles of international law such as “condominium” and emphasized that the islands were under the sovereignty of Sharjah and Ras al Khaimah till 1903. Thus, by appealing to the principle of “*Terra nullius*” the British occupied the islands in 1903. Since the principle of *Terra nullius* was not applicable, the British had to find a different principle to justify their occupation, which was the “Principle of Prescription.”

The British made these claims, even though, the Islands of Abu Musa, Greater and Lesser Tunb were always under the rule of the Iranian Government and had never been free or abandoned land. For 67 years occupation of the islands, the Iranian Government denied the British evidence for their occupation and relied on documents, and reasons proving illegal occupation of the islands. the following definitions and explanations can cover the illegal occupation of the islands:

1- Terra nullius

Occupation of a territory could be the subject of taking land that does not belong to any state or the previous state abandoned the land who was ruling it.³

¹ Ibid.

² Ibid.

³ Musa-Zadeh, R.: *Requirements of Public International Law*, Mizan Publication, Tehran 2010, pp. 43-45.

Occupation is the acquisition of a right to a land that has no state, and the only way to gain the sovereignty of another land is to come under the authority and rule of the occupying state.¹ Free land is a land that, until its occupation, any other government has not ruled it. Free land must be uninhabited, and with real intent, the occupation and sovereignty take place.² According to international law, it gives priority to the occupation, which has the two following conditions:

- a) Without owner: As explained, land that is uninhabited and has not been under occupation until the new state; and
- b) Belonged to a state but abandoned by its government.³

The Iranian Government response was that according to international law, occupation of land creates a right if the occupant state fulfils the following conditions:⁴

- a) Intention and will to exercise sovereignty;
- b) Real acts of the sovereign;
- c) There is no stronger claim; and
- d) A land without an owner.

From the definitions explained above and factors which were supposed to defend the principle of *Terra nullius*, it is understandable that the islands did not have the required conditions to be as *Terra nullius*. Consequently, the British could not apply this principle since the islands were under the control and sovereignty of Iranian Governments throughout history and the British invocation of this legal principle is, therefore, not applicable.

2- Principle of Prescription

¹ Coplin, W.: *The Function of International Law: An Introduction to the Role of International Law in the Contemporary World*, Chicago 1966, p. 102.

² Tabarsa, N.: *Iran's Sovereignty over the Abu Musa, the Greater and Lesser Tumb Islands in the Iranian Foreign Policy Process*, Publication Centre of the Ministry of Foreign Affairs, Tehran 2008, p. 39.

³ Glahn, G.: *An Introduction to Public International Law*, Translated by Mohammad Hossein Hafeznia, Tehran Mizan Publication 2007, p. 88.

⁴ Tabarsa, N.: *Iran's Sovereignty over the Abu Musa Islands, the Great and Lesser Tumb in the Iranian Foreign Policy Process*, Tehran Publication Centre of the Ministry of Foreign Affairs 2008, p. 279

The British Government after failing to justify the occupation of the Tunb and Abu Musa Islands based on the principle of *Terra nullius*, referred to another principle of international law called the principle of prescription.

One of the methods of acquiring occupation results from the passing of time. According to international law, in exceptional circumstances, illegal ownership can become valid after the passage of a specific amount of time.¹ If the territory claimed by a state has been in occupation of another state for a long time, without serious opposition from the first government, the sovereignty will be handed to the occupying state.²

The acquisition of land sovereignty based on the principle of the prescription can occur under two conditions: firstly, no force made the land abandoned; secondly, over time, has lost its owner.

This principle, like the previous argument, was rejected totally by the Iranian Government, because the principle of prescription should be based on an acquisition of land sustained and continuous actions over a long time and has been done peacefully.

The acquisition of the sovereignty must be uninterrupted, undisturbed, and unchallenged.³

The British reliance on this principle to justify the occupation of islands was not accepted by the Iranian Government which from the beginning of the occupation in 1903 to its end in 1971 submitted successive correspondences to formally protest the presence of the British in the region.

Therefore, according to the issues raised and the available documents of Iran's Ministry of Foreign Affairs, justification and proof of any rights and entitlements on behalf of the British Government, and her promoter (the UAE), to occupy the Islands of Abu Musa, Greater and Lesser, Tunb is unsubstantiated.⁴

3- Condominium

¹ Roussau, C.: *Cours de Droit International Public*, Translated by Mohammad Ali HeKMat, Tehran University Press 1968, p. 260.

² Starke, J. G.: *Introduction to International Law*, 6th ed, London Butterworth 1967, p. 315.

³ Lesaffer, R.: "Argument from Roman Law in Current International Law: Occupation and Acquisitive Prescription," *The European Journal of International Law*, Vol. XVI, 1955, pp. 47-51.

⁴ Tabarsa, N.: *Iran's Sovereignty over the Abu Musa Islands, the Great and Lesser Tunb in the Iranian Foreign Policy Process*, Publication Centre of the Ministry of Foreign Affairs, Tehran 2008, pp. 283, 414.

A condominium island belongs to two states so that those states can control it together and exercise their rights jointly, without dividing it into “national” zone. For instance, the Islands of New Hebrides were in the sovereignty of France and British before their independence in 1980.¹

The British Government always construed that: The Sheikhs of Lengeh Port and Oman were the owners of the islands; these islands used to be governed as condominium lands, and Qasimi were part of Lengeh Port. However, the Iranian Government rejected this argument for the following reasons:²

- a) The social structure and geographical territory of the Sheikhs of Lengeh Port is different from those of the Qasimi tribes;
- b) There is no record regarding the presence of Qasimi in the Abu Musa and Tunb Islands;
- c) The rulers of Lengeh Port had political allegiance to the Iranian Government and they were subjects and agents of the Iranian Government, and
- d) Given that they were subordinate to the Iranian Government, there are not any records and/or evidence regarding the cooperation of the Sheikhs of Lengeh Port with other Sheikhs.

By considering the explanations of the principles mentioned above, understandably, none of the legal principles which were based on by the British are applicable because of the long history of Iranian sovereignty over the islands. Iran has not abandoned these islands, and never two states controlled the islands together; Iranian Government constantly challenged and warned the presence of the British over that period.

1- Prior To 1887

Historical evidence begins to reveal the exercise of acts of sovereign authority taken on or in relation to the islands, which were potentially enough to establish a claim of effective occupation. The summary of general nature and history of these acts are below:

The Tunb in 1801, a British official named David Seton who was stationed in the southern Gulf and undertook a tour of the area as part of his official duties wrote in his journal that a pearl

¹ Ziaei Bigdeli, M.: *Public International Law*, Ganje-Danesh Publication, Tehran 2006, p. 130.

² Tabarsa, N.: *The Three Islands of Iran in the Persian Gulf*, Tehran Abrar Moaser Publication 2011, p. 283.

fishery was operated on Greater Tunb by the people of the Qasimi capital, Julfar (Ras Al Khaimah) from the months of May through October. He added that the island had good anchorage, plenty of fresh water and fish and is capable of cultivation. While this single piece of evidence certainly suggests that the Qasimi rulers of the Arab coast had close connections with Greater Tunb, and may have already established some level of sovereign authority on the island by the very beginning of the nineteenth century, other evidence from the early part of the century (of the less direct evidence which exists) paints a more ambiguous picture.

For example, reports dating from the same time that the Imam of Muscat often hunted antelopes on Greater Tunb and “thinks of moving his port from Angami (Hengam Island) to this on account of its more convenient size and water”, and that “French privateers” operating in the Gulf generally and anchor under it, and a report from 1822 that British officials had visited the island to determine its suitability as a base for its Gulf detachment all suggest that the island was not under the undisputed control of any party in particular and could be, therefore, be resorted to by anyone with the ability and desire to use it.

Indeed, although the British did not consider the island suitable for their Gulf base, the 1838 report by a British naval officer, Lieutenant Whitlock, which referred to the Tunb Islands as “uninhabited”, noted that Greater Tunb was “much resorted to” by the British officers stationed at Qeshm Island for the purpose of hunting antelopes.¹

In the 1860s and 1870s, this ambiguous scene began to change. Documentary evidence dating from this period, and into the early 1880s, records a series of disputes over who could use and control access to the islands. In the context of these disputes, claims of ownership to the Tunbs were made and disagreements aired over their rightful owner. These disputes arose at times between different branches of the Qasimi family (those of the Arab coast and those of Lengeh Port) and at other times between the Qasimi of the Arab coast and other Arab rulers.²

This evidence, may be summarized chronologically as follows:

¹ Lieutenant Whitlock, “Descriptive Sketch of the Islands and Coast situated at the Entrance of the Persian Gulf”, *The Journal of the Royal Geographic Society of London*, Vol VIII, 1838, pp. 170-184.

² Ibid.

a) In 1864s, the Qasimi Ruler of Sharjah and Ras Al Khaimah claimed long standing ownership of Greater Tunb (as well as Abu Musa) in a message sent to the British Resident in the Gulf to seek his assistance in preventing people from Dubai from taking their horses and sheep to Abu Musa for grazing (“... Tunb, Bu Musa belong to me from the time of my forefathers (and) nobody went there without my permission.”). The communication added that if this practice did not cease, it would lead to “disturbances” and that “I will not give up my rights to it, neither will I allow anyone to interfere with it without my permission.”¹

b) In 1871, following the separation of Sharjah and Ras Al Khaimah, the Qasimi Ruler of the latter Sheikhdome claimed the Tunb as his territory in a letter written to the British, again warning that people from other coastal Arab tribes would not be permitted to bring their animals to the islands for grazing.²

c) In an exchange of letters in 1872, the Qasimi Ruler of Ras Al Khaimah protested to the Qasimi Ruler of Lengeh that people under the latter's authority had attempted to use Greater Tunb to graze their animals without permission, and in reply the Ruler of Lengeh apologized and acknowledged that the island belonged to the Ruler of Ras Al Khaimah.³

d) In a flurry of correspondence in February and March 1873 involving the Qasimi Ruler of Ras Al Khaimah, the local native agents of the British in Lengeh and the Arab coast, again demanded a dispute over access to Greater Tunb for the purpose of using it as pasturage for horses and other animals, a variety of positions were articulated as to the ownership of Greater Tunb.⁴

The Ruler of Ras Al Khaimah repeated in several of these back-and-forth communications in his claim of ownership of the island and his right to control it, while the native agent in Lengeh reported to the British that the Qasimi Ruler of Lengeh had told him that the island was “attached to Lengeh”, a view, which was then repeated by the native agent on the Arab coast in a subsequent correspondence. As for the British, their part in these communications was limited to reminding the Ruler of Ras Al Khaimah of his commitment under the 1853 Treaty of Peace in perpetuity to

¹ Duncan E.J. Currie, Jon M. Van Dyke.: “Recent Developments in the International Law Governing Shipments of Nuclear Materials and Wastes and their Implications for SIDS,” *Review of European Community and International Environmental Law*, Vol XIV, 2005, pp. 117-124.

² Ibid.

³ Ibid.

⁴ Ibid.

avoid disturbances at sea (which included disturbances on any island) and to seeking “further reports” on the matter of whom the Tunb Islands belong.¹

e) In 1877, the Ruler of Ras Al Khaimah once again wrote to the Ruler of Lengeh, asking the latter to prohibit tribe members under his authority from using Greater Tunb for pasturage. The Ruler of Lengeh replied by acknowledging that the island belonged to the Ruler of Ras Al Khaimah and that access to or use of the island was subject to his “consent.”²

f) In reply to a request of the British Resident in 1879 to compile “a complete list of the dependencies of each Trucial Chief”, the native agent on the Arab coast listed Greater Tunb as being owned by the Ruler of Ras Al Khaimah. He added, however, that the island was also owned by the Chief of Lengeh in part as he is also of the tribe of the Joasmees.³

g) In 1884, after the Ruler of Lengeh had planted date offsets on Greater Tunb without permission, the Ruler of Ras Al Khaimah uprooted the plants and sent a letter of protest to both the Ruler of Lengeh and the native agent of the British at Lengeh. The Ruler of Lengeh replied to this protest by apologizing and acknowledging in writing that the island belonged to the Ruler of Ras Al Khaimah. He also committed to prohibiting the tribe members from Lengeh who were under his authority from using the island to graze their animals.⁴

Other documented instances during the pre-1887 period of the nineteenth century involving claims of ownership of Abu Musa, or the use or defence of the island which were reflective of claims or established rights of ownership, as follow:

a) In correspondence dated December 1871 arising out of a dispute over the use of the island by other Arab tribes, including those from Dubai, the Qasimi ruler of Ras Al Khaimah advised the British Resident in the Gulf that Abu Musa had belonged to the Qasimi for generations and that they would not permit people from other neighbouring tribes “from the Omani coast” to bring their animals there for grazing.⁵

¹ Ibid.

² Ibid.

³ Ibid.

⁴ Ibid.

⁵ Ibid.

b) Arising out of this same dispute, the British agent sent several communications by on the Arab coast to the British Resident in December 1871 supporting the Qasimi claim over Abu Musa, and in particular noting that it has been customary from old times for the Chief of Sharjah to send his cattle to that island “and that the Chief of Dubai has been told on two occasions to keep away from that island.”¹

c) In the Spring of 1872, the Ruler of Sharjah wrote to the British Resident again asking for his assistance in preventing the people of other ports from sending their animals to graze on Abu Musa, noting that “I fear disturbances may take place on that island which may extend to the sea”. When people from two other Arab Sheikhdoms, Ajman, and Umm Al Quwain, then proceeded to send several boatloads of animals to the island, the Ruler of Sharjah launched a few boats with “articles of warfare” to defend the island.²

This confrontation ended peacefully when the Ruler of Sharjah agreed to allow the other tribes to use the island in that spring.

d) In 1874, armed men at Abu Musa under the authority of the Ruler of Sharjah fired upon a vessel from Dubai which was attempting to land on the island, wounding several persons.³

e) In 1875, the Ruler of Sharjah again notified the British that he would not allow the people from other Sheikhdoms to use the island, to which the British responded by advising the neighbouring Arab tribes not to enter the island.⁴

f) In reply to a request of the British Resident in 1879 to compile “a complete list of the dependencies of each Trucial Chief”, the native agent on the Arab coast listed Ruler of Sharjah as owner of Abu Musa.⁵

g) Reports from the early 1880 document the construction of small buildings (including a house for the Ruler), the maintenance of horses along with their keepers, the sinking of wells and the planting of date groves on Abu Musa by the Ruler of Sharjah.⁶

¹ Note from the British Residency Agent, Lengeh, to the British Political Resident Persian Gulf, dated April 4th, 1904.

² Ibid.

³ Ibid.

⁴ Ibid.

⁵ Ibid.

⁶ Ibid.

h) In November 1882, a report documented the burglary of the Ruler's house on Abu Musa by three persons, which led the Ruler to order an investigation by an “expert from Ras Al Khaimah”. The report also noted that servants of the Ruler lived on the island and that houses of fishers were also there.¹

i) In 1883, the Ruler of Sharjah’s nephew deposed him and allowed to live in virtual exile on Abu Musa, which he referred to as “an island dependent on Sharjah”. In various written correspondences to the British in 1884 dealing with the deposed Ruler, his successor documented Sharjah's rights and ownership of the island, noting that as “I have already said... Bu Musa is our island and a dependency of Sharjah” and that “I cannot dispense with the Island of Bu Musa as it is of great use to me.” For instance, in one communication he granted his uncle the freedom to live on Abu Musa, but conditioned his continuing presence on the island on his Abu Musa, but conditioned his continuing presence on the island on his agreement to live there “in peace” and without creating “disturbances.” In recognition of Sharjah's rights to the island, the Rulers of Dubai and Ras Al Khaimah had agreed to serve as “guarantors” of this agreement.²

¹ Ibid.

² Ibid.

II. SOVEREIGNTY OF THE ISLANDS

A) BACKGROUND

After 20 years of silence, in 1992, the UAE levelled baseless accusations concerning the Iranian Islands of Tunb and Abu Musa. The Director General of the UAE Foreign Ministry claimed that the Lesser Tunb and Greater Tunb Islands had since “long ago” been under the UAE Government sovereignty.¹

Also, the Foreign Minister of this country, addressing the United Nations’ General Assembly in 30 September 1992, claimed that these islands belonged to the United Arab Emirates “since the beginning of history”. One might wonder how the Foreign Ministry officials of a country, which has been created not earlier than 20 years ago, can talk about ancient times or the beginning of history. Should Iran mention its 7000 years of history? The truth is that if geographical borders are supposed to be demarcated based on historical claims, then many territories that belonged to Iran up to the 19th century should be returned to Iran.²

Nonetheless, Iran do not covet other territories, time and again voicing its official stance of maintaining the status quo of the borders. However, since Sheikhs of the Persian Gulf do not apparently know history or try to distort it, it seems necessary to briefly review the regional history here.³

Geographically speaking, the Persian Gulf is the natural extension of Iranian Plateau; therefore, it has always been influenced by the geopolitical attraction of the Iranian mainland, even being considered a body of water inside Iran. Historical evidences show that the Persian Gulf coasts and islands have been under the Iranian sovereignty since the dawn of history.⁴

For several centuries, many of the current bodies of water in the Middle East were Iranian internal waters, with the Persian Gulf serving as a connecting route between various parts of the Iranian Union, so to speak. “If we look back at Iran’s old borders,” writes Standish⁵, “four seas,

¹ Jafari Valdani, A.: “The Historical and Legal Foundations of Iran’s Sovereignty over Tunb and Abu-Musa Islands,” *Iranian Review of Foreign Affairs*, Vol. VI, No. 2, 2015, p. 158.

² Ibid.

³ Ibid, p. 159

⁴ Ibid.

⁵ Standish, J.: *Persia, and The Gulf: Retrospect and Prospect Survey*, Curzon press UK 1998, p. 34.

that are, the Black Sea, Red Sea, Caspian Sea, and Persian Gulf, were among the internal seas of Iran. Even the first Iranian States were established along the Persian Gulf coasts.

The capital of the Elamite Dynasty, which dated back to Before Christ (BC) 5000, was the city of Susa, near the Persian Gulf. During the Elamite Period, the Persian Gulf coasts, and islands up to the Makran Sea (Sea of Oman) were under the sovereignty of the Elamites. As Ahmad Eghtedary puts it, the Elamites had Bahrain in their control. During the Median Dynasty, especially under Cyaxares, the Persian Gulf's coasts and islands were parts of the 14th province (or satrapy) of the Median government called "Neguinaneh". After the Medes, the Achaemenids formed the Iranian Union, spanning from West Asia to Southeast Europe to Northeast Africa.¹

During the Achaemenian Period, all the Persian Gulf islands and coasts were under Iran's influence. Furthermore, according to the paragraph six of the column one of the Bisotun Inscription, Abu Musa Island was part of "Pars" province. Also, Oman was conquered by Cyrus and administered for years by an Iranian named Dara son of Bahman.²

After discovering the Persian Gulf coasts, the Achaemenian admiral Silack passed through the Strait of Hormuz by the order of Shah Darius and after travelling through the Sea of Oman and along the coasts of the Arabian Peninsula entered the Red Sea; thence he went to Egypt and then, via the Mediterranean Sea, to Libya. With 200 ships under his command, he made considerable discoveries.³

It was because of these discoveries that Shah Darius ordered to dig the Nile Canal in Egypt to connect the Mediterranean Sea to the Red Sea; later, this brought about the idea of creating the modern-day Suez Canal. In geopolitical theories, Alfred Mahan is usually mentioned as the designer of sea power strategies, while in fact 25 centuries before him Silack founded this strategy. Silack believed that any country that can dominate three key points in the Persian Gulf region will dominate the whole world. These three points were Bahrain, Oman, and Yemen, which are still of high significance in marine strategies. Based on Silack's theory, since the Achaemenids until Afshar Dynasty, i.e., for 23 centuries, the marine strategy adopted by Iranians was maintaining

¹Jafari Valdani, A.: "The Historical and Legal Foundations of Iran's Sovereignty over Tunb and Abu-Musa Islands," *Iranian Review of Foreign Affairs*, Vol. VI, No. 2, 2015, p. 159.

² Iraj, A.: *Abu-Musa and Lesser and Greater Tunb Island*, Office of National Political Studies, Tehran 2001, p. 60.

³ Ibid.

dominance over these three points, which, of course, was the case during the major portion of all these centuries.¹

Two thousand years after admiral Silack, when the Europeans thought of making conquests, they found out the importance of these points. In the 15th century, Albuquerque the Portuguese sailor announced that any country that can dominate the three territories of the straits of Hormuz, Bab-El-Mandeb, and Malacca will dominate the whole world, an idea like that asserted by Silack².

During the Parthian Empire, the coasts at both sides of the Persian Gulf as well as its islands were parts of the Iranian territory. Parthians built buoyant ports on the northern and southern coasts.

One of the main causes of wars between Iran and Rome was that the Romans sought to first conquer the Mesopotamia and then dominate the Persian Gulf, the key to trade with the far east, hence transporting their commercial goods through the Persian Gulf as the shortest route between Rome and the far east. Iranians, however, did not allow other people to dominate the Persian Gulf, the heart of the Parthian Empire and their naval, military, and commercial base. During the Sassanian Period, the Iranian rule over the southern coasts of Persian Gulf, Sea of Oman, and the Red Sea grew stronger.³

According to historians Tabari and Hamzeh Esfahani, the peoples of Oman, Julphar (modern-day Ras al Khaimah), Qatif, Bahrain, and Yemen paid tribute to Iran. In general, through the whole Achaemenian, Parthian, and Sassanian dynasties, Iran exercised sovereignty over both southern and northern coasts of the Persian Gulf and its islands. Throughout these historical periods, the Persian Gulf was considered an Iranian Lake, just as the Mediterranean Sea was once a Roman Lake. At that time, Iranian order and security dominated over this body of water, securing peace, tranquillity, and prosperous trade and communications.

¹ Ibid. p. 61.

² Jafari Valdani, A.: "The Historical and Legal Foundations of Iran's Sovereignty over Tunb and Abu-Musa Islands," *Iranian Review of Foreign Affairs*, Vol. VI, No. 2, 2015, p. 160.

³ Ibid.

After the collapse of Sassanians, the Iranian rule over the southern coasts of the Persian Gulf apparently diminished. However, during the same period, Iranians founded several dynasties, such as Qarmatians in these areas. Qarmatians of Hasa region chose the southern coasts of the Persian Gulf as their capital; they also conquered Mecca and ruled the southern coasts for 150 years. In his famous itinerary Nasser Khosrow (the Iranian poet), who had travelled to Mecca at that time, writes, “Around Anno Domini (AD) 904, an Iranian man conquered Hasa, Bahrain, Oman and Yemen and established a large government”.¹

The effective dominance and control of Iran over the Persian Gulf and its islands continued to the Buyid Dynasty (945-1055); they conquered Baghdad and ruled over Oman, Julphar, Hasa, Qatif and, in general, the whole southern coasts of the Persian Gulf and its islands for 100 years. As Atabaks of Fars came to power, the southern coasts of the Persian Gulf and its islands went under the sovereignty of this dynasty.²

As Abu-Bakr Sad ebin Zangi (Bahrain’s ruler) disobeyed Atabak’s order, he ousted him and appointed a new ruler. Then he embarked on an expedition to Qatif and Hasa (known as terrestrial Bahrain) and subdued these lands. He also appointed Roknoddin Mahmood as the ruler of Oman and Hormuz Island. Abu-Bakr’s trade and maritime activities covered Indian coasts, eastern Africa, and Suez port.³

Regarding his unprecedented maritime and trade power, Abu-Bakr has been rightly called ‘King of the Earth.’ The successors of Roknoddin Mahmood are known as founders of the Kingdom of Hormuz because their capital was the small Hormuz Island. During the next 150 years (i.e., AD 1346-1500), all the islands and coasts of the Persian Gulf, including Oman, Bahrain, Qatif, and Hasa, were ruled by the Kingdom of Hormuz. These shahs, who obeyed rulers of Fars and Kerman, gained an unprecedented maritime and trade power.⁴

The Hormuz Island can be compared with Venice, hence being called by some as the Asian Venice. As the Portuguese set foot on the Persian Gulf in 1507, the Shah of Hormuz paid tribute

¹ Jafari Valdani, A.: “The Historical and Legal Foundations of Iran’s Sovereignty over Tunb and Abu-Musa Islands,” *Iranian Review of Foreign Affairs*, Vol. VI, No. 2, 2015, p. 161.

² Ibid.

³ Ibid.

⁴ Ibid.

to the Portuguese king for 100 years. It should be mentioned that during this period the territorial integrity of the Kingdom of Hormuz was untouched. As the Safavid Dynasty took power in Iran, all the islands and coasts of the Persian Gulf came once again under Iran's sovereignty.¹

Shah Abbas conquered Julphar and Bahrain. Afterward, according to a treaty made between him and Portugal in 1625, all the territories in the Persian Gulf that previously belonging to Iran were reconvened to Iran². Therefore, we once again witness the emergence of an Iranian Union which lasts up to the 18th century.

At the beginning of the 18th century, which was marked by the collapse of the Safavid Dynasty and internal skirmishes within Iran, we witness a power vacuum in the Persian Gulf, paving the way for piracy and spread of chaos, disorder, and lawlessness. Taking advantage of this situation, the Muscat Arabs embarked on plundering the regional islands and coasts.³

This dire situation, however, did not last long; Nader Shah (founder of Afshar Dynasty) rose to power and brought back security and calm to the Persian Gulf made Iran's domination over the region again. On Nader Shah's order, Latif Khan Daryabeigi once again conquered Bahrain, Oman, Muscat and Julphar. Under Nader Shah's order, the name of Julphar was changed into Ras al Khaimah (literally the head of the tent) indicating the erecting of Nader's tents. Upon the sudden death of Nader Shah in 1747, Iran once again was divided by internal conflicts.⁴

From this time on, Qasimi overwhelmed the Persian Gulf southern coasts, upsetting the regional security through piracy and banditry; it contrasts with a 23-century-long rule of Iranians over this region (except for the short periods of invasions by Arabs and Portuguese) during which, they established their traditional security over the Persian Gulf islands and coasts without any piracy or slavery.⁵

Thus, since the beginning of history up until mid-18th century, all the northern and southern coasts of the Persian Gulf as well as its islands were under Iran's sovereignty, hence the

¹ Ibid, p. 162.

² Jafari Valdani, A.: "The Historical and Legal Foundations of Iran's Sovereignty over Tunb and Abu-Musa Islands," *Iranian Review of Foreign Affairs*, Vol. VI, No. 2, 2015, p. 162.

³ Ibid, p. 163

⁴ Ibid.

⁵ Ibid.

absence of clear mention of the Tunb and Abu Musa Islands as belonging to Iran in various geographical and historical sources prior to the 18th century does not imply that they do not so. In fact, due to their small area, lack or sparsity of population, shortage of fresh water, and hot weather, these islands did not attract the attention of historians, geographers, sailors, or tourists until the 18th century.¹

In addition, there is no evidence showing that Tunb and Abu Musa Islands do not belong to Iran. However, with reference to the previous explanations and for the following reasons, these islands have been situated within the territorial scope of Iran during various historical periods:

a) The Iranian territory included the northern and southern coasts of the Persian Gulf and even those of the Sea of Oman; and,

b) The political, military, economic, and cultural dominance of Iran over the Persian Gulf and the Sea of Oman.²

B) THE BRITISH ILLEGAL OCCUPATION OF THE ISLANDS

Since late 19th century and specifically early 20th century, new political developments occurred in the Persian Gulf, which both posed a threat to British's monopolar effect in the Persian Gulf and increased the strategic importance of Abu Musa and Tunb Islands. Since late 19th century, the Iranian Government launched new efforts to exercise more effective sovereignty over its ports and islands in the Persian Gulf, including establishing a small naval force, changing the administrative divisions and governmental agents, developing closer ties with sheikhs residing on the southern coasts of the Persian Gulf, and³setting up customs posts in certain Iranian ports and islands, such as Lengeh Port, as well as Tunb and Abu Musa Islands.

On the other hand, great global powers such as Germany and Russia were already taking heed of the Persian Gulf. Germany had the intention of building a railroad from Berlin to the Persian Gulf. Also, the Russians, who had already dominated Central Asia, were trying to connect their railroads from the Central Asia to one of the Iranian ports and islands in the Persian Gulf.

¹ Ibid.

² Ibid, pp. 163-164.

³ Ibid.

The British Government considered these moves as disturbing the status quo and a violating of its interests in the Persian Gulf.

Consequently, during a secret meeting in the British Foreign Office in July 1902, it was decided that the Tunb and Abu Musa Islands become occupied. The decision was immediately carried out, with Abu Musa and Greater Tunb being occupied in 1904 and the Lesser Tunb in 1908, hence the flag of Sharjah Sheikh, a *protégé* of British, was raised on this island.¹

In 1904, the Belgian officials employed by the Iranian Government entered the Greater Tunb and Abu Musa Islands to establish customs ports. Since they considered these islands as Iran's territory, they lowered the flag of Sharjah and raised the Iranian flag instead. Then the British Government threatened to resort to coercive measures.²

Being entangled with domestic problems and the Constitutional Revolution, Iran conceded, under duress, to conclude a temporary agreement with British concerning the islands; both countries agreed to respect the status prior to 1903 and not to raise any flags on the islands. Consequently, Iran removed its flag, however, British did not keep its promise to keep the status quo, and the flag of Sharjah was raised on the island instead of the Iranian flag.³

To justify its illegal occupation of these islands, the British Government resorted to various arguments, the same arguments deployed today by the United Arab Emirates. The Emirates Centre for Strategic Studies and Research published a book in 2005 in which, the same arguments of the British were put forward.⁴

At first, British claimed that the Sheikh of Sharjah has raised his flag on islands not yet occupied by either of the states, and since he has been the first person to occupy the island, he has the right to raise his own flag there. This British claim was contradictory to historical documents and evidences as well as the official maps and reports published by the British authorities.

According to these documents, the Tunb and Abu Musa Islands had been part of Iranian territory till 1903. Furthermore, the people of Lengeh Port would frequently use these islands for

¹ Ibid, p. 165.

² Ibid.

³ Ibid.

⁴ Ibid.

the purposes of fishery and grazing their cattle. Regarding the ostensible spuriousness of this argument, the British advanced another argument: prescription. Resorting to this principle is valid only if, according to the international law, the occupation has taken place throughout a long period of time in an uninterrupted, undisturbed, and unchallenged manner.

A brief glance at the events taking place since the occupation of these islands, however, shows the contrary. The Iranian Government has for several times lowered the flag of the Sheikdom and raised its own flag. Even the Sheikh of Ras al Khaimah is not willing to keep the Tunb Islands, hence lowering his own flag for several times.

Even once British raised its flag on this island because the Sheikh refrained from raising his own flag. During the years of occupation, the Iranian Government has sent the British Government about 30 notes of protest. She also has, at various times, conducted negotiations with the UK on Iran's sovereignty over the islands. Iranians visited the islands at various occasions, Iranian Government even making several efforts to occupy them, and even once in 1934 managed to return the islands back to Iran. Therefore, Becket, the legal advisor to the British Foreign Office, voiced doubts about resorting to the principle of prescription.

Since prescription could not be applied here, British resorted to another claim: creating a joint sovereignty or double liability for the Qasimi dwelling in Lengeh Port. Qasimi were the tribes who migrated to the Persian Gulf coastal areas in the 18th century was settling in Sharjah and Ras al Khaimah; one branch of them resided in Lengeh Port and took Iranian nationality. Their head officials used to be appointed by the Iranian Government as rulers of Lengeh Port as well as Tunb and Abu Musa Islands.¹

The British Government claimed that Lengeh's Qasimi have been administering this port city only, while the Tunb and Abu Musa Islands have been under the control of Qasimi dwelling in Sharjah and Ras al Khaimah. In other words, British claimed that the Tunb and Abu Musa Islands are joint properties of Qasimi of Lengeh and Qasimi living across the Persian Gulf. This claim was unacceptable due to the following reasons:²

¹ Ibid.

² Ibid, p. 167.

- a) Lengeh Port as well as the Tunb and Abu Musa Islands have always been parts of the Iranian soil. As discussed earlier, the British Government's official documents verify this claim;
- b) The Qasimi governors of Lengeh have been nationals and agents loyal to the Iranian Government; they administered the Tunb and Abu Musa Islands on behalf of Iran;
- c) Throughout the 19th century, there is no record indicating the joint ownership of the Tunb and Abu Musa Islands by Qasimi;
- d) The Qasimi sheikhs of Lengeh have a socio-political structure different from that of Qasimi living on the southern coasts of the Persian Gulf. Those dwelling in Lengeh gradually assimilated to the Iranian culture and civilisation;
- e) In various cases where Lengeh sheikhs had been expelled or where the rule of Lengeh had been delegated to other Iranians, the administration of the Tunb and Abu Musa Islands had undergone no change; and,
- f) Logically, two legal statuses cannot be conceived for Lengeh sheikhs because the principle of sovereignty is inseparable.

Considering these points, the British Government tried to conclude a general contract with Iran in 1928-30 to impact the legal status of the Tunb and Abu Musa Islands in favour of its clients. In 1929, the British Government presented a complete draft general treaty between Iran and British containing a list of the parties claims to be resolved through a kind of trade-off. The most important British requests in this draft were as follow:¹

- a) Iran's waiving its rights to the Tunb and Abu Musa Islands and Bahrain;
- b) British's continuation of using the base in the Iranian Island of Hengam; and,
- c) Iran's territorial water limit not exceeding 3 miles.

In return, the British Government was ready to:

- a) Waive its rights in basic base;
- b) Recognise Iran's sovereignty over Siri Island;

¹ Ibid.

- c) Revoke the 1882 slave trade pact;
- d) Transfer its mission building from Bushehr to another city; and,
- e) Revoke Iran's debt.

None of the British suggestions were considered a valuable privilege for Iran; therefore, Iran rejected the draft and announced that the Tunb and Abu Musa Islands as well as Bahrain are inseparable parts of Iranian soil, and that the status of Siri is not negotiable.

The British Government then had to use the term "disputed islands" for the Tunb and Abu Musa Islands during the occupation period. For example, in the British maritime chart, the Persian Gulf islands have been classified A, B, and C. Group A, includes islands belonging to Iran, group B, belonging to Arabs, and group C disputed ones. Bahrain, Tunb, and Abu Musa Islands are in group C.¹

C) COMPARATIVE VIEW

Certain Arab States and their allies had and still have claim that Iran, both under the Shah and under the Islamic Republic, has always followed an expansionist policy to the detriment of the Arab States. "Reza Shah's expansionist policy was followed by his son," claims an Arab author, "he told his son, Mohammad Reza Shah, that they had already wiped Arabs off the eastern coast of the Persian Gulf and now it was time for the son to emancipate the western coasts."²

While making his country's claims concerning the Tunb and Abu Musa Islands, the UAE vice-minister of Foreign Affairs has said: "It seems that as the Islamic Republic rose to power in Iran, the country's foreign policy objectives have not differed from those pursued under the previous regime." He further claims that the Shah of Iran obtained half of Abu Musa Island and now the current Iranian Government has laid hands on the other half.

The claims of Iran's expansionist policies are not true at all.

¹ Ibid, p. 168.

² Ibid, p. 171.

Since the death of Nader Shah (of Afshar Dynasty) in 1747, Iran has not pursued any policy of territorial expansion. On the contrary, during these 2.5 centuries, it has melted from all directions just like snow.

A quick glance at the political map of Iran under Nader Shah shows that Iran's total area at that time was twice the current area. During this period, Turkmenistan, Uzbekistan, Tajikistan, Azerbaijan, Ghareh Bagh, Armenia, Afghanistan, part of Sistan-Baluchestan, Iraq, and Bahrain were separated from Iran. On the other hand, Iran has not invaded any country since late 19th century, while during the same time it has been invaded several times, including First World War (WWI), Second World War (WWII), and Iraq's invasion. ¹

While respecting the status of the borders, Iran has no territorial claim against any of its neighbouring countries. From among its 15 neighbours, Iran has had territorial disputes only with two countries, that is, Iraq and UAE, which are Arab countries.

If, as some Arab countries claim, Iran is seeking a strategy of advancement in the region, then how come this policy has not been applied to other countries such as Afghanistan or Central Asian countries or Caucasus? As was mentioned earlier, these countries used to be part of Iran in the past, but Iran asserts no territorial claim against them; therefore, one can conclude that it is not Iran which is coveting the two Arab countries, but rather it is Iraq and the UAE that are pursuing expansionist policies.²

A brief glance at the history of Iran proves that since mid-18th century Arabs and their allies have constantly threatened Iranian territorial integrity from two directions: west and south. From the south, as Iran weakened after the demise of Nader Shah, the Oman and Muscat sultans laid hands on Iranian southern regions, such as Bandar Abbas, Gheshm, and Hormuz. As Qasimi took power in Sharjah and Ras al Khaimah, they began to invade Iranian southern coasts, with one branch of them succeeding in settling in Lengeh Port.

After British dominated the Persian Gulf in early 19th century, Iran was threatened by this new power that was acting in favour of Arabs. British occupied many Iranian ports and islands in

¹ Ibid, p. 172.

² Ibid.

the Persian Gulf; it ceded the Tunb and Abu Musa Islands to its *protégé* sheikhs and kept Bahrain under its own occupation, ultimately separating it from Iran in 1970. ¹

Moreover, in the west of Iran, the expansionism of the Ottoman Empire from the 17th century on, has served to the detriment of Iran and in favour of modern-day Iraq. The skirmishes between Iran and Ottomans led to 24 battles and conclusion of 20 border treaties.

In most of these battles, one can spot the footsteps of western countries. Since the establishment of the Safavid Dynasty in Iran, the European countries tried to divert the Ottoman war machine, which was threatening the heart of Europe, into Iran, hence reducing its force in the western front by keeping it busy in its eastern front.

It was the reason Ottoman sultans had to invariably deploy half of their armed forces along the Iranian borders, and this stopped their conquests in Europe. Busbecq, the Austrian ambassador to the court of Suleiman the Magnificent, whose army proceeded up to walls of Vienna, once said: “only Iranians are situated between us and annihilation.” Also, as George Western asserts, “the Safavid Empire has put a bridle on Turks and hence protected the Christian world from incurring further damages.” ²

In any case, based on the treaty of Ghasr-e Shirin (aka Zuhab) (1639), Iraq was separated from Iran and ceded to the Ottoman Empire. As the country of Iraq was founded on the debris of the Ottoman Empire in the early years of the 20th century, the skirmishes continued and ultimately led to Iraq’s invasion of Iran. Iraq’s goal was to separate the Province of Khuzestan from Iran and annex it to Iraq.

Basically, Iraq and, in general, Arabs call this Iranian province as ‘Arabia,’ call the Persian Gulf as the ‘Arabian Gulf,’ and the Iranian Islands of Tunb and Abu Musa as the ‘occupied islands.’ Arabs expansionism did not terminate here; claiming that the three Islands of Tunb and Abu Musa belong to Iraq, the country’s representative to the United Nations (UN) in 1971 went on to say that “in fact, history clearly shows that not only the said islands have been under the

¹ Ibid, p. 173.

² Ibid.

sovereignty of Arabs, but also Arabs' dominance extended up to the Island of Gheshm, Strait of Hormuz, and sometime to the Iranian coasts"¹.

On 3rd of December 1971, a letter was written to the President of the Security Council to consider the situation of the Abu Musa, Greater, and Lesser Tunb Islands following their occupation by Iranian forces on 30th of November 1971. Algeria, Iraq, the Libyan Arab Republic, and the People's Democratic Republic of Yemen representatives asked a pressing assembly of the Security Council. On 7th of December 1971, the representative of Iraq transmitted another letter to the Secretary-General, which contained the message of the Ruler of Ras al Khaimah protesting the invasion, and aggression of Iranian troops in the Tunb Islands, and their occupation of parts of Ras al Khaimah.²

He also asked Iraq to require prompt and compelling activities to submit the matter to the Security Council, as well as the Council of the League of Arab States, which resulted in a discussion with the representatives at the 1610th Meeting on 9th of December 1971. At the 1610th Meeting on 9th of December 1971, the agenda was accepted without any objections. The representative of Iraq stated that the following actions in the Gulf were a significant security concern which puts the peace of the region in danger.³

The representative further mentioned: Iranian troops invaded the Greater and Lesser Tunb, which were in territory of Ras al Khaimah, and Abu Musa Island which was in the territory of Sharjah. Consequently, Iran has violated article 2 (4) of the UN charter. Article 2 (4) provides that:

“4. All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.”

The agent of Iraq further kept up that: Iran forcefully occupied the Arabian Islands to expand her territory. After the withdrawal of the British from the Gulf at the end of 1971, Iranian rulers claimed other parts and islands as well, and concentrated on the three Islands of Abu Musa, and the Greater, and Lesser Tunb. He further claimed that the two Tunb Islands were part of Ras

¹ Ibid, p. 174.

² UN.: *Repertoire of the Practice of the Security Council*, Slrpplemerit 1959-1963, pp. 204-206; *ibid.*, Supplement 1964-1965, pp. 153f.

³ *Ibid.*

al Khaimah, and the Island of Abu Musa was portion of the domain of Sharjah, which were Trucial States, and their protection and integrity was the responsibility of the UK, according to the “exclusive agreements” between the Sheikhs of the Trucial Coast and the UK on 6th and 8th of March 1892.¹

He continued that; the UK had failed to perform her obligation rightly in defending the islands. Furthermore, he mentioned that: Iranian violation threatened Iraqi interests according to UN Charter. Thus, the Iraqi Government could take any action to protect its territorial integrity and its vital interests in the Gulf. The Iraqi representative appealed to the Security Council to introduce Iran as a violator and the UK as a co-operator and asked for the withdrawal of the Iranian forces from the islands. The representatives of Kuwait, Algeria, the People’s Democratic Republic of Yemen, Libya, and the UAE shared the same view and requested the Security Council to take same actions as the Iraqi representative requested.²

On the other hand, the representative of Iran countered that: Iran had proceeded in a peaceful manner, and there was no violation since the islands were part of Iran’s sovereignty. The sheikh of Sharjah (Sheikh Qasimi) approved negotiable arrangements regarding Abu Musa Island, but there were no agreements regarding the Tunb Islands, therefore, Iran had no other choice but to protect its territorial sovereignty by occupying the Tunb Islands. The Iranian Government would not tolerate the violation of its island, nor would she allow sovereign rights over the islands to be questioned.³

The decision of the UK Government was repeated by the representative of the UK that the treaty between the UK and the Trucial Union would be abolished. by the withdrawal of the British forces by the end of 1971. Regarding Abu Musa, which is governed by Sharjah’s monarch and located in the direction of the Gulf’s Arab Peninsula, the UK representative noted that an agreement concluded between Iran and Sharjah. According to the agreement: neither state could claim sovereignty over the island; Iranian troops in the islands had to gather in a specific side of the island, and oil incomes allocated equally to Sharjah and Iran had to be honoured.⁴

¹ Ibid.

² Ibid.

³ Ibid.

⁴ Ibid.

In relation to the Tunb Islands (Greater and Lesser), the UK representative noted that no agreement was made, and observed that the withdrawal of British had increased the potential of conflicts among states. “The President (Sierra Leone) announced in the absence of objections, that the Security Council had decided to postpone the matter to a later date so that sufficient time was allowed for third-party efforts to materialize.”¹

All in all, the UAE argued that during the nineteenth century, Sheikh Qasimi ruled over the islands, and that the sovereignty of the islands should be returned after the official formation of the UAE in 1971. Iran opposed this claim by claiming that Qasimi local rulers, who settled on the Iranian coast for part of the 19th century, were subordinate to the Iranian Government.

In 1980, the UAE submitted its claim to the three islands to the UN. But at the time, the UN Security Council adjourned the complaint, and it was never considered.²

According to the fake and distorted maps and books published by Arabs, it has been claimed that all Iranian southern territories in the Persian Gulf area from the Strait of Hormuz to the river mouth of Arvand Rood belong to Arabs. Arabs’ plot is to cut Iran’s connection with the Persian Gulf. Lands spanning from the Strait of Hormuz to the Pakistani border are also shown as the ‘independent Baluchistan’ in the fake maps so that Iran’s connection with the Sea of Oman is disrupted. To achieve this goal, Iraq supported the idea of creation of independent Baluchistan for many years.

Nevertheless, Iran has acted in favour of Arab countries in many cases but received no appreciation. The following are just examples:³

a) In compliance with its official, announced policy of maintaining the status quo of the regional borders, Iran has defended the territorial integrity of Arab countries; for example, Iran has defended the territorial integrity of Kuwait against Iraq’s expansionism in 1961 and 1990, of Qatar against Saudi Arabia’s invasion in 1992, of Oman against Dhofar Rebellion, of Yemen against aggressive and secessionist measures of Saudi Arabia in 1990, 1994 and 2015, of Iraq against

¹ Ibid.

² Mojtahed-Zadeh, P.: *Boundary Politics and International Boundaries of Iran*, Universal Publishers Boca Raton, Florida 2006, p. 305.

³ Jafari Valdani, A.: “The Historical and Legal Foundations of Iran’s Sovereignty over Tunb and Abu-Musa Islands,” *Iranian Review of Foreign Affairs*, Vol. VI, No. 2, 2015, p. 174.

Turkey coveting north of the country, or the territorial integrity of Iraq after occupation of the country by the United States (US) and,

b) Iran has condemned Israeli occupation of Arab lands and has called for evacuation of the lands.

As result of Iran's pressure Israel returned the Sinai Peninsula to Egypt. Because of Abu Radis oil wells in the Sinai Desert, Israel did not want to evacuate the desert; Iran agreed to provide Israel with oil on the condition that this country leaves the Sinai Desert.

D)RESOLUTION OF THE DISPUTE

Since the occupation of the Tunb and Abu Musa Islands, Iran has repeatedly entered negotiations with British to return them back. Iran Considered the occupation of the islands an instance of colonialism, seeing British as the responsible party because, according to contracts concluded in 1820, the sheikhs of Sharjah and Ras al Khaimah were protectorates of British, hence lacking any independence. Therefore, Iran has never accepted the sheikhs of Sharjah and Ras al Khaimah as real parties or beneficiaries in the bilateral negotiations between Iran and British.¹

On the other hand, in the negotiations between Iran and British the parties raised the issue of islands to attempting to find an overall solution to this problem. The issue of Bahrain had also been addressed in Iran-British talks during 1928-30 and during the 1950s. Iran invariably considered Bahrain as part of its territory, never having recognized the British occupation of the island. Iran even went as far as to raising the issue of Bahrain in the League of Nations in 1927. Besides, Iran's National Consultative Assembly enacted a bill in 1957 announcing Bahrain as the 14th province of Iran, with two seats of parliament allocated to representatives this province.²

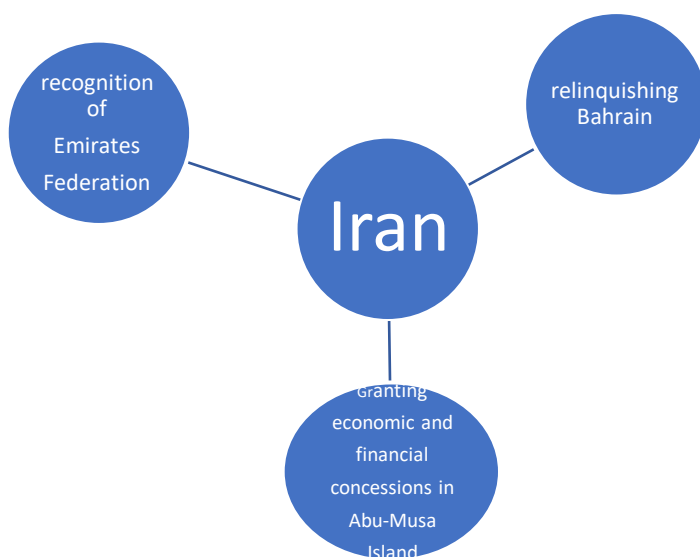
Reconciliatory Stances of Iran to Settle the Dispute over the Tunb and Abu Musa Islands in 1971 (See Diagram One):³

¹ Ibid, p. 175.

² Ibid, p. 176.

³ Ibid.

Diagram One: Illustrates the Reconciliatory Stances of Iran to Settle the Dispute over the Tunb and Abu Musa Islands in 1971.



Source: Taken from Jafari Valdani, A.: “The Historical and Legal Foundations of Iran’s Sovereignty over Tunb and Abu-Musa Islands,” Iranian Review of Foreign Affairs, Vol. VI, No. 2, 2015, p. 176.

In any case, as British announced its decision to pull out its forces from the Persian Gulf in 1968, a new opportunity for settling the issue arose. Through negotiations, Iran and British agreed to resolve the issue of Bahrain, Abu Musa, the Lesser Tunb, and the Greater Tunb through a package deal.

In general, Iran was the losing party in the case of the islands. Not only no balance was struck among counterclaims, common in political negotiations, but the results of the negotiations were totally to the detriment of Iran and unfair. The reason was that Iran relinquished its own historical right to Bahrain, regaining only 25 KM of its own territory (the area of the Tunb and Abu Musa Islands) *vis-à-vis* losing 622 KM (the area of Bahrain archipelago). Furthermore, considerable concessions were granted to Sharjah as well.¹

Caused the Iranian Government to face many difficulties convincing its people in terms of the bilateral agreements. Many internal circles strongly criticised the agreements. Fearing the accusation of treason in protecting the territorial integrity of the country concerning Abu Musa

¹ Ibid, p. 178.

Island, the Iranian Government had to keep the agreement secret. On the other hand, Iran's conciliatory position was commended by international circles that considered it as a step towards boosting regional peace and security.¹

The important point to be noted here is that Sir William Luce, British representative in negotiations with Iran, asserted in 1971 that "Iran and British have settled their disputes concerning the Islands".² It means that no issue has remained unsettled, and, in other words, old disputes between Iran and British have been resolved.

After Iran's sovereignty over the three islands was restored, the UAE, supported by British, announced itself as a new country, and Iran immediately recognised it. In 1975 when Iran and Iraq resolved their border disputes through the Algiers Declaration (a.k.a. Algiers Accord), the UAE's Foreign Minister noted that "the Algiers Declaration is an important step towards establishing security and stability in the Persian Gulf; as a result, the UAE refrains from raising the issue of the islands in the Strait of Hormuz".³ Therefore, the UAE accepted the resolution of the issue of the islands as well.

Accordingly, the international community, except for several countries, confirmed Iran's measures for restoring its sovereignty over the Tunb and Abu Musa Islands. The silence of the Security Council permanent members in December 1971 and their postponing the issue without setting a future date for further discussions proves this fact.

¹ Ibid, p. 179.

² Litwak, R.: *Security in the Persian Gulf: Source of Interstate Conflict*. London: International Institute for Strategic Studies, Gower 1968, p. 57.

³ Jafari Valdani, A.: "The Historical and Legal Foundations of Iran's Sovereignty over Tunb and Abu-Musa Islands," *Iranian Review of Foreign Affairs*, Vol. VI, No. 2, 2015, p. 179.

III. ENTITLEMENT OF THE ISLANDS TO MARITIME AREAS

A) THE LEGAL REGIME OF IRANIAN TERRITORIAL WATERS

The strategic importance of Iran's attitude toward the legal framework that applies to it is underscored by the Strait of Hormuz's strategic location. The transit of U.S. warships across the Strait has sparked other concerns, such as Iran kidnapping American sailors. Similarly, Iran and the United States continue to differ on the applicability of international law in the Strait of Hormuz.

Every year, 12,000 ships pass through the Strait of Hormuz, with at least half of them transporting 150,000 tons of oil.¹

The most significant point of contention between the two countries concerns the right of passage of foreign warships, military aircraft, and submarines via the Strait of Hormuz. Furthermore, in recent years, Iran's nuclear program has heightened tensions between the two countries. In times of crisis, Iran has strengthened its grip on the strait, provoking U.S. retaliation. While Iran's actions under the nuclear non-proliferation regime have gotten a lot of attention, there is almost no current study of the deep divisions between Iran and the West.²

However, compliance of application by the two sides the most significant subject that should be tackled is international law rules. Iran's territorial waters are governed by a legislative framework which is the "Act on the Marine Areas of the Islamic Republic of Iran in the Persian Gulf and the Oman Sea of 2 May 1993" in Iranian Domestic Law.³

According to article 1 of the Act, one of the most important maritime claims of Iran is that, "the sovereignty of Iran extends, beyond its land territory, Internal Waters and its islands in the Persian Gulf, the Strait of Hormuz, and the Oman Sea, to a belt of sea, adjacent to the coastline, described as the Territorial Sea. This sovereignty extends to the air space over the Territorial Sea as well as to its bed and subsoil."

As a result, Iran has declared the Strait of Hormuz to be part of its territorial waters., and presumes that it can apply a regime extending its sovereignty over the Strait. However, a

¹ Bagheri, S.: "Iran's Attitude to Security in the Strait of Hormuz: An International Law Perspective," *New Zealand Yearbook of International Law*, Vol XIII, 2015, p. 83.

² Ibid, p. 84.

³ Act on the Marine Areas of the Islamic Republic of Iran in the Persian Gulf and the Oman Sea 1993.

comparative account of UNCLOS provisions on the extent of the coastal state's authority in its territorial waters is a point of reference.

UNCLOS has established the legal width of a coastal state's territorial waters, as well as the navigational regulations that apply to them. The Convention's regulations on international navigation via international straits where territorial waters overlap, such as the Strait of Hormuz, are important in this context.

On this subject, since neither Iran nor the U.S. have ratified the Convention, the Convention rules relating to the applicable passage regime in the Strait of Hormuz are not evident. Iran argues that UNCLOS was agreed as a 'package deal', in which they decided to give maritime powers preferred access to and sharing of seabed resources beyond national authority in exchange for a permissive policy of mobility of passage, including transit and archipelagic sea-lane passage. According to Iran, a littoral state is right to enact acts and restrictions to safeguard its security interests, which can include restrictions for prior authorization for warship. Therefore, because of the lack of a global or bilateral agreement applicable to the Strait of Hormuz, Iran enacted the "Act on the Marine Areas of the Islamic Republic of Iran in the Persian Gulf and the Oman Sea" in May 1993, which limits the exceptions to the right of innocent passage.¹

Iran's marine claims to its Territorial Sea (TS), Contiguous Zone (CZ), Exclusive Economic Zone (EEZ), and Continental Shelf (CS), as well as Iran's claims to authority in those places, are detailed in the Act. 21, significant portions of these claims, however, are incompatible with international law as expressed in UNCLOS. However, Iran justifies these claims by relating its regulations to the need to protect the stability of the region.

According to article 2 of the 1993 Act, "The width of Iranian territorial waters is 12 Nautical Miles from the sea-board. A Nautical Miles equals to 1852 meters. The islands belonging to Iran, whether situated within or outside its Territorial Sea, have, in accordance with this Act, their own Territorial Sea."

¹ Bagheri, S.: "Iran's Attitude to Security in the Strait of Hormuz: An International Law Perspective," *New Zealand Yearbook of International Law*, Vol XIII, 2015, p. 87.

The passage regime applicable to this region is innocent passage, regulated by article 5. As a result, except as stipulated in article 9, the idea of innocent passage governs the entrance of foreign vessels. if it does not jeopardize Iran's good order, peace, or security. Except in circumstances of force majeure, passage shall be continuous and prompt. In other words, the harmless transit of foreign vessels through Iranian territorial waters is subject to the terms of innocent passage, if it does not disrupt the country's discipline, tranquillity, or security.¹

According to article 6 of the 1993 Act, the passage of foreign vessels is not deemed innocuous if they embark on any of the following actions, and they will be subject to criminal and civil laws:²

- a) Any training or activity involving weapons of any type;
- b) Any act aimed at gathering information detrimental to the Islamic Republic of Iran's national security, defence, or economic interests;
- c) Any conduct of propaganda aiming at influencing the Islamic Republic of Iran's national security, defence, or economic interests;
- d) The taking off, landing, or shifting of any aircraft or helicopter, as well as any military devices or personnel, to another vehicle;
- e) Trying to load or discharging of any object, payment, or person in violation of the Islamic Republic of Iran's standards and procedures;
- f) Any act that pollutes the maritime environment is prohibited in violation of the Islamic Republic of Iran's rules and regulations;
- g) Any type of fishing or exploitation of marine resources;
- h) Conducting scientific study, cartography, and seismic surveys, or collecting samples; Interfering with the Islamic Republic of Iran's communication systems, as well as its other facilities and installations;
- i) Any activity that has nothing to do with the passage.

¹ Ibid, pp. 90-91.

² Act on the Marine Areas of the Islamic Republic of Iran in the Persian Gulf and the Oman Sea 1993, Art 6.

According to the Iranian State officials, the passing of foreign warships, especially US warships, through the Strait of Hormuz is not innocent. In accordance with article 9 of the 1993 Act, “Passage of warships, submarines, nuclear-powered ships and vessels or any other floating objects or vessels carrying nuclear or other dangerous or noxious substances harmful to the environment, through the Territorial Sea is subject to the prior authorization of the relevant authorities of the Islamic Republic of Iran. Submarines are required to navigate on the surface and to show their flag.”¹ In other words, the presence of these vessels in the region could threaten Iranian national security as a coastal state at any time. Correspondingly, Iran, may ban innocent passage in areas of its territorial waters to protect its national interests and security.²

To expand on the reasons made above, one of the most contentious problems throughout the discussions was the movement of warships into the jurisdictional waters of the states that led to the adoption of UNCLOS. In this case, the related provision of article 9 of the 1993 Act on the passage of warships is different from UNCLOS. To this effect, with respect to foreign nuclear-powered vessels are forbidden, as are ships carrying nuclear or other fundamentally harmful chemical cargo.

Article 23 of UNCLOS provides that these ships “... shall, when exercising the right of innocent passage through the Territorial Sea, carry documents and observe special precautionary measures established for such ships by international agreements” such as provisions of the International Convention for the Safety of Life at Sea (SOLAS).³ However, “tankers, nuclear-powered ships and ships carrying nuclear or other inherently dangerous or noxious substances or materials may be required to confine their passage to such sea-lanes”.⁴

From this point of view, it can be said that the first sentence of article 9 of the 1993 Act contradicts UNCLOS, conducting the safe passage of foreign vessels across a coastal state's TS does not depend on prior-authorization for warships under the Convention. But, the second sentence of article 9 has the same meaning under article 20 of UNCLOS Submarines are required to operate on the above and to fly their banner. However, their navigation on the surface has not

¹ Act on the Marine Areas of the Islamic Republic of Iran in the Persian Gulf and the Oman Sea 1993, Art 9.

² Act on the Marine Areas of the Islamic Republic of Iran in the Persian Gulf and the Oman Sea 1993, Art 8.

³ Bagheri, S.: “Iran’s Attitude to Security in the Strait of Hormuz: An International Law Perspective,” *New Zealand Yearbook of International Law*, Vol XIII, 2015, pp. 90-91.

⁴ United Nations Convention on the Law of the Sea, Art 22(2).

been subject to obtaining permission from the coastal state in the Convention. Accordingly, this section of article 9 is also different from the Convention's provisions.¹

Bearing in mind the framework discussed with respect to the 1993 Act, Iran will draft special regulations on an individual basis to protect the country's interests and the virtue of carrying out harmless passages. Similarly, to protect the country's security and to protect the country's high interests, Iran has the authority to prohibit all foreign vessels from passing through or remaining in Iranian territorial waters in a range of locations. Considering the Iran-US confrontations after 1979 in the Gulf region, especially in the Strait of Hormuz, any seizures from the U.S. Navy by Iran's Revolutionary Guard were claimed to be in accordance with the 1993 Act.

Although the Strait of Hormuz is situated in Iranian territorial waters, its dual position as an international navigation route necessitates greater discussion. Specifically, there needs to be an examination of the dispute over the Strait, with regards to the way the security of the Strait is established and maintained. Consequently, the next section is going to make several observations regarding the security of the Strait in line with its legal regime.

B) DISPUTED ISLANDS SOVEREIGNTY AND SECURITY OF THE STRAIT OF HORMUZ: TERRITORIAL DISPUTES BETWEEN IRAN AND THE UAE

The islands' status has become one of the problematic contemporary issues in International Law of the Sea worldwide, and has caused several disputes among states. There are two types of disputes in this regard; first, the disputes regarding sovereignty over islands; and second, the insular features of islands, which determine whether it is possible to consider authority and boundaries for the islands.²

Disputes over islands are generally over the uninhabited islands, rocks, low-tide elevations, and reefs, resulting in diplomatic exchanges between states with bilateral agreements or military confrontation. Article 121(2) of UNCLOS provides that "islands" are subject to the determination

¹ Ibid, p. 91.

² Schofield, C.: *Maritime Boundary Disputes, Settlement Processes, and the Law of the Sea*, Martinus Nijhoff, Leiden. Boston 2009, pp. 19-22.

of maritime zones, including the TS, CZ, the EEZ, and the CS, which the provisions of this Convention enforce to islands as efficient as mainland territories.¹

The importance of islands is more in respect to the fact that even a small island can give potential jurisdictional claims over large areas of ocean and, in addition to that, the marine resources within those areas. The EEZ and the CS are the subjects of these extensions. For instance, the CS could extend beyond 200 NM up to 350 NM, and the reason for the extension is accession to the resources such as fish stocks and off-shore hydrocarbons, which have great importance in terms of food, and energy resources.²

As a maritime security matter, the strategic location of islands has significant value for states. For instance, in the Abu Musa case, the Islands of Abu Musa, Greater, and Lesser Tunb create the defence line for Iran and are also the only way for the passage of oil tankers and maritime traffic in the region.³

Disputes over islands usually lead to overlapping claims among states. As mentioned earlier, disputes can occur for two reasons, namely, whether the dispute is over the sovereignty of the island or the insular features of the island that generate claims for maritime zones.

The Abu Musa, Greater, and Lesser Tunb Islands are the subject of a long-running dispute between Iran and the UAE. One of the most important of these islands, Abu Musa, is situated near the Hormuz Strait's entry and is approximately equidistant from both coasts. Currently Iran manages it as part of its Hormozgan province, although it is also claimed by the UAE as part of the Sharjah emirate.⁴

According to Iran, three islands were Iranian territory until British occupied them in 1908. In other words, three islands fell under the sovereignty and authority of the emirate of Sharjah after the occupation of the Gulf region by British in 1908. However, in 1968, British declared its intent to pull back from the Persian Gulf in 1971. On November 29, 1971 Iran and the emirate of Sharjah signed a Memorandum of Understanding (MoU) in which Sharjah agreed to maintain sovereignty

¹ Ibid.

² Ibid.

³ Al-Nahyan, K. S. Z.: *The Three Islands Mapping the UAE-Iran Dispute*, Published by Royal United Services Institute for Defence and Security Studies (RUSI) Whitehall, London 2013, p. 30.

⁴ Bagheri, S.: "Iran's Attitude to Security in the Strait of Hormuz: An International Law Perspective," *New Zealand Yearbook of International Law*, Vol XIII, 2015, p. 102.

over Abu Musa Island while Iran stationed military soldiers there. Iran moved armed soldiers to the island ten days later, on November 30, but then gained possession of two other neighbouring islands in the Strait of Hormuz, the Greater and Lesser Tunb. As a result, Iran's annexation of these islands sparked a major diplomatic row between the two countries.¹

In terms of the Memorandum, the island, as well as its energy resources, will be split between the two. By signing the Memorandum, the Sharjah emirate averted an attack by Iran, which had conquered two other disputed islands, Greater and Lesser Tunb, just two days before.² Currently, the UAE claims that most of the inhabitants of Abu Musa have been Arab for centuries. Accordingly, “Arabs from the eastern Gulf littoral have always controlled the islands and that Iran has no claim to either Abu Musa or the Tunb.”³

In contrast, Iran said that these islands had historically been a part of Iran and therefore Iran will not cede a single square mile of its authority.⁴ Nevertheless, the UAE took their claims to the U.N. Security Council in 1980, but these claims by the UAE were rejected by the Council because, Iran developed most of the island’s infrastructure, including roads, schools, and a university, and Abu Musa's governor is Iranian.⁵

The oil that runs through the Strait of Hormuz accounts for nearly half of all market oil in the globe; in other words, most of the oil that regularly flows through the Strait of Hormuz is shipped eastwards to Asia and westwards to Europe and the United States; therefore, ensuring the area's security is critical. As a result, closing the Strait would cut off supplies to consumers all over the world, particularly in Western Europe, which gets more than 70% of its oil from the Persian Gulf. The Islamic Republic of Iran occupied the islands in the post-revolutionary era, according to former Iranian Foreign Minister Abbas Ali Khalatbari, so that another country could not “threaten navigation in the Strait of Hormuz to the detriment of all littoral states.”⁶

Iran's claims to sovereignty and authority over Abu Musa and the two Tunb Islands in the Gulf are founded on regional security and stability. Iran was resolved to re-establish its sovereignty

¹ Ibid.

² Ibid, p. 103.

³ Ibid.

⁴ Ibid.

⁵ Ibid.

⁶ Ibid, p. 104.

over the three islands, recognizing the strategic importance of Abu Musa for regional peace and security. In addition, according to the 1971 Memorandum, Sharjah residents could live peacefully on Abu Musa Island alongside Iranian people. Despite honouring some administrative rights granted to the Sharjah administration, Iran's natural claim to island security has been recognized. Following this, Iran's parliament declared that it was Iran's inalienable responsibility to ensure the security of Abu Musa Island. Correspondingly, the security of the Strait of Hormuz is somehow bound to Iran's policy on these three islands.

According to the Iranian delegate, Iran had proceeded although there is no doubt that Abu Musa and the Tunb Islands belonged to Iran, Iran has pursued a peaceful solution in accordance with its peace-loving philosophy. While the UAE believes that if bilateral direct negotiations fail, the case should be referred to the International Court of Justice (ICJ), Iran has repeatedly opposed any form of third-party arbitration. It concluded that direct bilateral negotiations are the only other legal option, but such negotiations have already failed on numerous occasions. The failure of diplomatic negotiations on the Tunb Islands, on the other hand, left Iran with little choice but to establish the exercise of its sovereign rights over area that was previously Iranian.¹

The Iranian Government declared that the territory of its off-shore islands would not be invaded, and that its sovereign rights over the islands would not be harmed in any manner. It is also worth noting that Abu Musa Island provides Iran with a platform from which to project its strength and influence southward into the Gulf Cooperation Council (GCC). Control of Abu Musa also provides additional security to Bandar Abbas, which is an Iranian Port essential to the country's oil industry and military base.²

Despite everything, Iran currently argues that the main problem is provocation of Arab States by the U.S. via the GCC. In fact, according to the factors mentioned above, Iran, as the only power in the region opposing the U.S., plays the role of sovereign over the islands from a historic and strategic perspective. From this point, there is no valid counter-argument, between Iran and the UAE. Therefore, it should be noted that the UAE alleges possession over three islands located nearby the Strait of Hormuz are baseless.

¹ Ibid.

² Ibid.

In all, Iran's control over these three islands, regardless of the UAE's claims on the islands, formulates the passage regime of the Strait of Hormuz. Additionally, the control of these three islands is of great advantage to whatever power seeks to command the Strait.¹ Needless to say, it is the status of Iran's foreign policy and legal attitude that has significance in determining the legal regime applied on the Strait of Hormuz.

According to the first paragraph of article 121, there are four legal requirements to qualify an island:

“1. An island is a naturally formed area of land, surrounded by water, which is above water at high tide.”

a) “a naturally formed area of land;”

Regarding this insular feature, it is understandable that artificial islands have no such feature. For instance, the construction of low-tide elevations or reefs. Consequently, UNCLOS does not accept the island-building activities to raise claims for maritime zones.

b) “An area of land;”

Seemingly, it is a fair and plain feature regarding islands, although it can be problematic to some extent. It is the same as considering small features, being not more than sand bars, as islands;

c) “Surrounded by water;”

Accordingly, it is no doubt that if an island does not have such a feature, then it would follow the character of the mainland, and as a result, it would have full maritime zone claims; and,

d) “Above water at high-tide;”

This insular feature is essential in terms of between islands, which should be above water at high-tide, low-tide elevations above low-tide but submerged at high-tide, and non-insular features which submerge at low tide. To determine the category in which land is, the choice of vertical tidal datum is essential that afterward, enables states to claim extensive maritime authority.²

¹ Ibid, p. 105.

² Schofield, C.: *Maritime Boundary Disputes, Settlement Processes, and the Law of the Sea*, Martinus Nijhoff, Leiden. Boston 2009, pp. 24-25.

In the same Article, paragraph three provides that:

“3. Rocks which cannot sustain human habitation or economic life of their own shall have no exclusive economic zone or continental shelf.”

It is noticeable that rocks represent different categories with some issues regarding measurements of maritime zones. Therefore, it is vital to distinguish an island from rock because rocks could make rights only to a TS and a CZ for states.

There are interpretational problems regarding this paragraph. For example, it is not clear when a rock is incapable of supporting inhabitants or what it comprises financial structure. Furthermore, it is unclear whether the term rock refers to a solid portion of the Earth's surface or other enclosed features such as cays, sandbanks, islets, and barren islands.¹

For example, the South China Sea Arbitration Award of 12 July, 2016 (the Award) interpreted this significant critical paragraph for the first time. The Award considered clarification for the scope of Article 121(3), Using the methods established in the Vienna Convention on the Law of Treaties.

The Award made a comparison between the Oxford English Dictionary (OED) and the dictionary of the *Académie Française* to find the best definition for “rock.” As a result, the second definition of rocks by OED; “large rugged mass of hard mineral material,” equivalented the “Rocher,” in *Académie Française*.

Rocher means craggy masses of hard stone. Other languages such as Russian, Spanish, and Chinese, are on the same page with the French terminology. However, the tribunal considered the English version (This could be a plus point since it preserves, and maintain the world's order in prosecution of international cases).

Regarding the first definition of rocks by OED, it seems there is some ambiguity in it as; rocks “may consist of aggregates of minerals [...] and occasionally also organic matter [...]. They vary in hardness, and include soft materials such as clays.”

In this case, not rocky islands, which sand, mud, stones, or coral are part of their conformation, would generate vast maritime zones, contrary to islands made up of hard rock.

¹ Ibid, p. 26.

Concerning the issue that it is not clear when a rock cannot support human settlement or what consists the economic life, according to the tribunal, there should be a minimal “proper standard” to be considered for habitants regarding their economic activities and should be able to sustain and settle in the island within as specific amount of time and without any outside support.

In the Abu Musa case, due to the human habitation and their settlement in the island and their economic activities without external aid it is apparent that Abu Musa is an island and not a rock.

Under UNCLOS, several provisions regulate islands, although not all apply to islands. For instance, the Archipelagic Waters in article 46 provides that:

“(a) Archipelagic State" means a State constituted wholly by one or more archipelagos and may include other islands;”

“(b) archipelago" means a group of islands, including parts of islands, interconnecting waters, and other natural features which are so closely interrelated that such islands, waters, and other natural features form an intrinsic geographical, economic, and political entity, or which historically have been regarded as such”

And as understandable from the definition, waters and other geological areas that constitute a diverse geographic, economic, and political element, have their own rule of delimitating maritime boundaries, as defined in Article 47 (1):

“1. An archipelagic State may draw straight archipelagic baselines joining the outermost points of the outermost islands and drying reefs of the archipelago provided that within such baselines are included the main islands and an area in which the ratio of the area of the water to the area of the land, including atolls, is between 1 to 1 and 9 to 1”.

Which does not affect adjacent states economically, unlike islands. Article 53 (5) also defines it as follow:

“5. Such sea lanes and air routes shall be defined by a series of continuous axis lines from the entry points of passage routes to the exit points. Ships and aircraft in archipelagic sea lanes passage shall not deviate more than 25 nautical miles to either side of such axis lines during the passage, provided that such ships and aircraft shall not navigate closer to the coasts than 10 percent of the distance between the nearest points on islands bordering the sea lane”.

Another major issue regarding islands is the introduction of artificial islands, and their effects on boundary delimitation and legal sovereignty. UNCLOS allows the construction of artificial islands, but they are problematic in some aspects. For instance, the fact that they are not natural lands as defined in Article 121(1):

“1. An island is a naturally formed area of land, surrounded by water, which is above water at high tide.”

Due to this lack of characteristic, UNCLOS does not apply to them; the other problem is about the starting points of baselines to determine the maritime zones defined in Article 121(2) as:

“Except as provided for in paragraph 3, the territorial sea, the contiguous zone, the exclusive economic zone, and the CS of an island are determined following the provisions of this Convention applicable to other land territories”.

Which is, in some points, confusing since islands do not have the characteristic of a land or littoral state. Finally, are the problems caused by the determination of maritime zones and other related activities in those zones including, scientific research, right of innocent passage, and freedom of High Seas.¹For example, the artificial islands of UAE in the Persian Gulf.

C) CONSTRUCTION OF ARTIFICIAL ISLANDS BY THE UAE

The latest development and construction of islands by UAE is as follow:

“The Palm Jumeirah”

“The Palm Jumeirah is in the form of a tree. There is a crescent close to the palm that is a groin structure.”

“The World Islands”

“The World is an associate degree dry land of three hundred islands that organizes square measures to make a map of the Earth's continents. The concept is that every one of those islands is themed to correspond to a distinct country or region.”

“The Palm Jebel Ali”

“The Palm Jebel Ali is analogous in form to the Palm Jumeirah; however, it is five hundred times larger. Satellite pictures of the palm and crescent structures are observable; however, since construction stopped in 2008, the islands have remained largely undeveloped”.

“The Deira Islands”

¹ Odeke, A.: “The Legal Regime of Islands under UNCLOS, New Developments and Challenges,” *Journal of the Sea and Maritime Law*, Vol I, Issue 2, 2018, pp. 178-179.

“The Deira Islands were in the early stages of construction when they were put on hold in 2008. The first project, known as Palm Deira, was to be another set of artificial islands that formed sort of a tree.”

“The Bluewater’s Island”

“Bluewater’s Island is another artificial island in Dubai. The island options hotels, residential buildings, restaurants, shopping, diversion, and more.”

“The Burj Al Arab Jumeirah”

“Completed in 1999, the Burj Al Arab is a luxurious 5-star building whose location is on an artificial island”.¹

The construction of these islands leads to the following arguments:

1- The Legal Position in General

UNCLOS does not prohibit the construction of artificial islands. In terms of the role of synthetic islands, in changing the baseline, Article 5 of the 1958 Convention explicitly states that: artificial islands have no privileges for the coastal state, so according to the 1958 Convention, artificial islands cannot be the basis for measuring of the baseline.

UNCLOS has not changed the position of the 1958 Convention on the artificial islands. Article 11 of UNCLOS provides that:

“For the purpose of delimiting the territorial sea, the outermost permanent harbour work which forms an integral part of the harbour system is regarded as forming part of the coast. Off-shore installations and artificial islands shall not be considered as permanent harbour works.”

Artificial off-shore facilities and islands cannot be permanent port facilities. Furthermore, Articles 60 and 80 of this Convention have determined that artificial islands and facilities located in the EEZ or CS do not have a TS and have no effect on the state’s maritime boundaries. To recall, Article 80 provides that:

¹ <https://geology.com/satellite/artificial-islands-of-dubai/> (Accessed on 4/11/2020).

“Article 60 applies mutatis mutandis ¹to artificial islands, installations, and structures on the continental shelf”.

According to Article 87(d) of UNCLOS, all states can build artificial islands and other authorized facilities in the High Seas if this action does not damage the coastal state’s right in their CS. According to Article 2 and Article 17 of UNCLOS, states enjoy full sovereignty in the TS except for the innocent passage of ships. Therefore, it is possible to construct artificial islands in this location without violating the rights of other countries.

Besides, governments have the authority to construct artificial islands in their EEZ natural resources, whether alive or non-living, are studied, explored, exploited, conserved, and managed for the goal of study, exploration, exploitation, conservation, and management. Article 56(1)(b)(i) recognizes the right of states to build artificial islands.

2- The Legal Position Regarding the Persian Gulf

UNCLOS grants a coastal state the exclusive right to build artificial islands in the sea. EEZ, States should announce the construction of artificial islands in advance. Under Article 122, the Persian Gulf can be defined as a semi-enclosed sea, and Article 123 obliges and specifies littoral states of an enclosed or semi-enclosed Sea to cooperate in performance of their duties, management, maintenance, exploration, and utilization of living resources, and conservation of the marine environment, and conducting of scientific research.

Therefore, it is not acceptable that any state in the Persian Gulf that builds artificial islands in its TS does not consider the opinion of other coastal states, since its construction has dramatic consequences for the environment of the sea in particular; if there is an endless competition between the Arabian countries. As a result, it will be catastrophic for the Persian Gulf.

Pursuant to Article 11 of UNCLOS, artificial offshore facilities and islands cannot be considered as permanent port facilities. In other words, the coastal states cannot claim certain rights that apply to permanent ports since permanent ports and anchorage are the bases for determining the baseline and the maritime zones.

¹ The necessary changes. This is a phrase of frequent practical occurrence, meaning that matters or things are generally the same, but to be altered, when necessary, as to names, offices, and the like: Campbell Black, H.: *Black's Law Dictionary*, 4th ed, St. Paul, Minn. West Publication co 1968, p. 1172.

Artificial islands are not subject to the determination of maritime boundaries, but certainly, the case of advancing on the beach is a different subject. The UAE's artificial islands plan could make, profound changes in the structure of Dubai's shores, which are located at the opposite ends of Abu Musa Island.

Most of these island's locations are near the coast which causes the advance of the coast. Due to the drying up the sea, the options regarding negotiating of boundaries could have a better chance to claim Abu Musa Island's sovereignty because of the location of the artificial islands which are in the opposite side of Abu Musa Island. The median line between Iran and UAE has not drawn and yet the UAE, supported by the GCC, constantly claim the sovereignty of the disputed islands in Arab and regional forums.¹

The consequences that arise from the construction of the artificial islands are that: the process of agreement between the UAE and Iran will take a long time, the claims of UAE regarding Abu Musa Island will increase due to the short distance of the artificial island from Abu Musa Island, and this will worsen the already bad relations with Iran and provide reasons for the interference of other states in the region.²

3- The Environmental Concerns

In the development of synthetic islands, consideration of the interests of the international community is an essential priority. International marine environmental law also emphasizes this matter as the construction of artificial islands has harmful effects on the environment. Consequently, the international community's decision is more considerable than those of the constructing state.

The geographical scope of environmental treaties varies in extent with other treaties, because the common interest of humanity connects, and accepts environmental issues. These treaties in general, support plant and wildlife species, oceans, air, and soil. For example, the

¹ Yahia Safavi, Y. - Ghanbari, A.: "The Consequences of Constructing Artificial Islands in the Persian Gulf by the United Arab Emirates for Iran," *Geopolitics Quarterly*, Vol. VII, 2011, pp. 19-21.

² Ibid.

seventh principle of the Rio Declaration on Environment and Development 1992,¹ which states that:

“States shall cooperate in a spirit of global partnership to conserve, protect, and restore the health and integrity of the Earth's ecosystem. Given the different contributions to global environmental degradation, States have common but differentiated responsibilities.”

“The developed countries acknowledge the responsibility that they bear in the international pursuit of sustainable development because of the pressures their societies place on the global environment and of the technologies and financial resources they command.”

Developments in the littoral states of the Persian Gulf without considering sustainable coastal development and environmental issues indicate the incompatibility between the construction of these islands and the environmental rules of the sea, which undoubtedly, entails the legal and international responsibility for the state which was responsible for building artificial islands.

Regarding the concept of Global Warming, the construction of artificial islands in the Persian Gulf puts the life of people in danger. The rise of sea level not only threatens people's lives, and islands themselves but also affects human development activities.

As for the concept of the Blue Economy, construction activities in the Persian Gulf can reduce the oxygen level in water because of the accumulation of soil, sand, etc., or the changes which occur in the natural environment of the sea which could lead to the extinction of living resources.²

4- The Role of Islands in Maritime Boundary Delimitation

In International Law of the Sea, the main aim is to generate maximum maritime zone to manage the marine resources and maintain peace, and security in them. Overlapping maritime boundaries among states causes a maritime boundary circumstance.

Article 15 of UNCLOS applies to a situation where there are overlapping claims to TS up to 12 nm, which provides delimitation based on the “equidistance method”. The equidistance

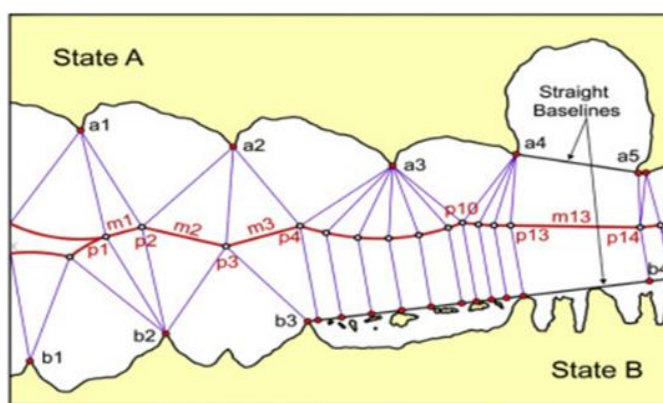
¹ The Rio Declaration on Environment and Development, often shortened to the Rio Declaration, was a short document produced at the 1992 United Nations “Conference on Environment and Development” (UNCED), informally known as the Earth Summit. The Rio Declaration consisted of 27 principles intended to guide countries in future sustainable development. It was signed by over 175 countries.

² Ibid.

method does not apply if parties agree to not follow this method. For instance, if historic title or when other special circumstances exist.

In Article 12 of the 1958 Geneva Convention (GENCONV) a similar concept distinguishes among states with neighbouring coastlines (equidistance) and states with opposing coastlines (median line), which both definitions have the same meaning (See Diagram Two).

Diagram Two: Shows the three situations can be observed when constructing a median line: Between two points, between point and line and between two lines



Source: Taken from Kastrisios, C.: “Methods of Maritime Outer Limits Delimitation,” *Nausivios Chora*, Vol. V, 2014, p. 17

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There are three different types of equidistance lines.

a) Strict Equidistance Line; a strict equidistance line considers all coastal base points permitted under UNCLOS. It could result in a complicated and inadequate line comprised of numerous turning points and short straight-line divisions (See Diagram Three).²

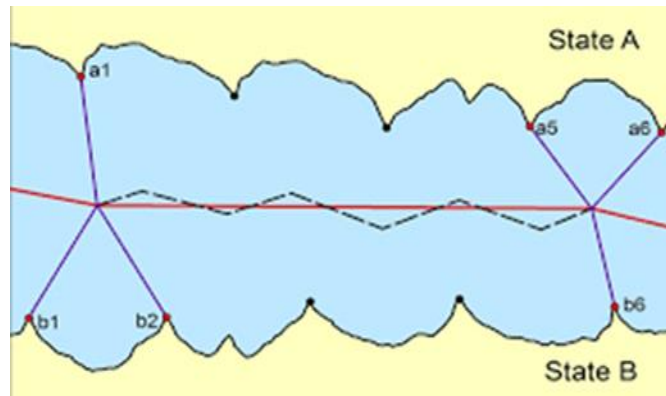
b) Simplified Equidistance Line; states can use a simplified equidistance line with fewer base points or turning points. Usually, this method makes no noticeable distinction concerning the net

¹ Three situations can be observed when constructing a median line: Between two points, between point and line and between two lines: Kastrisios, C.: “Methods of Maritime Outer Limits Delimitation,” *Nausivios Chora*, Vol. V, 2014, p. 17.

² Kastrisios, C.: “Methods of Maritime Outer Limits Delimitation,” *Nausivios Chora*, Vol. V, 2014, p. 18.

maritime area of the zone respecting to each littoral state involved in boundary measurement (See Diagram Three).¹

Diagram Three: Shows the Strict and simplified equidistant lines.



Source: Taken from Kastrisios, C.: "Methods of Maritime Outer Limits Delimitation," *Nausivios Chora*, Vol. V, 2014, p. 18.

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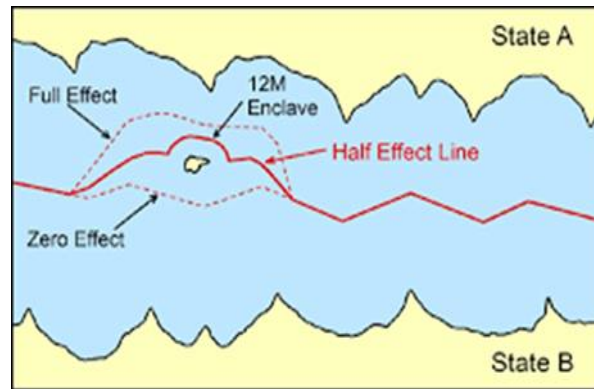
c) Adjusted or Modified Equidistance Line; in the modified equidistance line method, certain relevant geographical features (like rocks and islands) do not generate full effect in creating maritime areas (like CS or EEZ). The goal is to minimize the inequitable impact of these features based on equity or other considerations (See Diagram Four).³

¹ Ibid.

² Strict and simplified equidistant lines: Ibid.

³ Ibid.

Diagram Four: Shows the Half effect and modified median line



Source: Taken from Kastrisios, C.: “Methods of Maritime Outer Limits Delimitation,” *Nausivios Chora*, Vol. V, 2014, p. 19.

1

Some issues are if an island could generate an extra 12 miles at the edge of the TS, and the existence of reefs which cause other problems regarding the measurement of baseline as referred to in Article 6, thus: ²

“In the case of islands situated on atolls or of islands having fringing reefs, the baseline for measuring the breadth of the territorial sea is the seaward low-water line of the reef, as shown by the appropriate symbol on charts officially recognized by the coastal State.”

Articles 74 and 83 of UNCLOS determine general expressions to reach an agreement for the EEZ and the CS named “equitable solution”. According to the Articles, there is no preferred method of delimitation beyond the TS; instead, they specify only the objective of an equitable solution. It seems it is the decision of international courts and tribunals to identify the method of delimitation to pursuit equity.

Article 74 provides that:

¹ Half effect and modified median line: *Ibid*, p. 19.

² Odeke, A.: “The Legal Regime of Islands under UNCLOS, New Developments and Challenges,” *Journal of the Sea and Maritime Law*, Vol. I, Issue 2, 2018, p. 183.

“1. The delimitation of the exclusive economic zone between States with opposite or adjacent coasts shall be effected by agreement based on international law, as referred to in Article 38 of the Statute of the International Court of Justice, to achieve an equitable solution”.

“2. If no agreement can be reached within a reasonable period, the States concerned shall resort to the procedures provided for in Part XV.”

“3. Pending agreement as provided for in paragraph 1, the States concerned, in a spirit of understanding and cooperation, shall make every effort to enter provisional arrangements of a practical nature and, during this transitional period, not to jeopardize or hamper the reaching of the final agreement. Such arrangements shall be without prejudice to the final delimitation.”

“4. Where there is an agreement in force between the States concerned, questions relating to the delimitation of the exclusive economic zone shall be determined under the provisions of that agreement.”

And Article 83 provides that:

“1. The delimitation of the CS between States with opposite or adjacent coasts shall be affected by agreement based on international law, as referred to in Article 38 of the Statute of the International Court of Justice, to achieve an equitable solution.

2. If no agreement can be reached within a reasonable time, the States concerned shall resort to the procedures provided for in Part XV.

3. Pending agreement as provided for in paragraph 1, the States concerned, in a spirit of understanding and cooperation, shall make every effort to enter provisional arrangements of a practical nature and, during this transitional period, not to jeopardize or hamper the reaching of the final agreement. Such arrangements shall be without prejudice to the final delimitation.

4. Where there is an agreement in force between the States concerned, questions relating to the delimitation of the CS shall be determined following the provisions of that agreement”.

Concerning the equidistance line, the location of an island noticeably affects the maritime boundary delimitation, which is among the most difficult issues in the International Law of the Sea and has surged to many disputes. As mentioned earlier if an island fulfils the definition in UNCLOS it qualifies as a full-fledged island.

A fully-fledged island (See Diagram Five) does not guarantee the state to consider full effects in maritime delimitation, measurement in any method of its achievement. Therefore, an equidistance line is applicable to islands whether with full effect or partial effect. As an example, Gotland Island and Gotska Sandon were accorded 75 weights in maritime boundary measurement,

between Sweden and the USSR.¹ International courts and tribunals also consider modified equidistance line. The Scilly Isles, for example, were granted half-effect in delimitation lines.²

The goal of modified equidistance line method is to measure the breadth of CS and EEZ according to equitable principle and based on the type of geographical features. Consequently, one state in the delimitation benefits from a larger maritime territory. When an island is located with a distance from other geographical features of the coastal state, to prevent it from having disproportionate effects a modified equidistance line is useful.³

According to tribunals, international courts, and state practice, the other way to deal with islands is the enclaving methodology. Enclaving occurs in a condition that an island receives no or only partial effects. In a situation where the island location is on the incorrect side of the median line or it exists in the middle of the zone. In this circumstance, a certain width of maritime belt is drawn all over the island equal to the breadth of TS.⁴

An example of enclaving would be the Italy and Tunisia dispute in 1971. They were supposed to delimit the CS boundary in the Mediterranean Sea which ended up by partial enclaving and reduced effect on the delimitation line.⁵

¹ Schofield, C.: *Maritime Boundary Disputes, Settlement Processes, and the Law of the Sea*, Martinus Nijhoff, Leiden. Boston 2009, p. 33.

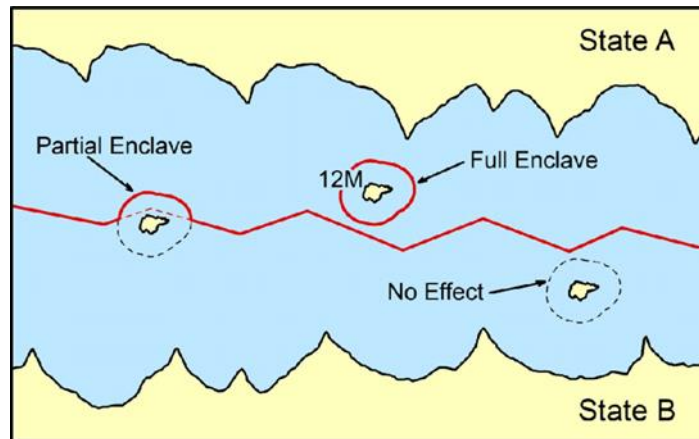
² Ibid.

³ Kastrisios, C.: "Methods of Maritime Outer Limits Delimitation," *Nausivios Chora*, Vol. V, 2014, pp. 18-19.

⁴ Ibid, p. 19.

⁵ Schofield, C. *Maritime Boundary Disputes, Settlement Processes, and the Law of the Sea*, Martinus Nijhoff, Leiden. Boston 2009, p. 33.

Diagram Five: Shows Fully and partially enclaved features of State B



Source: Taken from Kastirisios, C.: "Methods of Maritime Outer Limits Delimitation," *Nausivios Chora*, Vol. V, 2014, p. 19.

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5- The Situation of Three Disputed Islands

Regarding the Abu Musa, Greater and Lesser Tunb Islands, states have made no agreement except the following agreement;

"Iran-United Arab Emirates (Dubai)

This CS boundary agreement was signed on August 31, 1974. Iran ratified the treaty on March 15, 1975, but the United Arab Emirates has not. The boundary needs to be continued to the east and the west. An eastward extension will be complicated by the current sovereignty dispute between

Iran and the United Arab Emirates over the islands of Abu Musa, Tunb as Sughra, and Tunb al Kurba. The 1974 agreement establishes a boundary, 39.2 nautical miles in length, that appears to be equidistant from the respective mainlands and ignores the influence of islands. One section of the boundary follows the 12-nautical miles arcs drawn from the Iranian island of Sirri. Using all territories, the boundary is situated nearer to either the disputed island of Abu Musa or Sharjah's island of Sir Abu Nu'ayr than to any other Dubai territory (refer to *Limits in the Seas* No. 63)".²

¹ Fully and partially enclaved features of State B: Kastirisios, C.: "Methods of Maritime Outer Limits Delimitation," *Nausivios Chora*, Vol. V, 2014, p. 19.

² <https://www.State.gov/wp-content/uploads/2019/12/LIS-94.pdf> (Accessed on 7/11/2020).

The primary problem with this agreement is the names of the disputed islands, which are wrongly written as the correct form of the islands, would be the Greater and Lesser Tunb or Persian names, which are Tunb Kuchak and Tunb Bozorg; not Tunb as Sughra and Tunb Al Kubra.

The equidistance agreement, which was made could not be completed due to the complicated issue of the disputed island, and according to the map, just the westward line is drawn from the Iranian Sirri Island. These complicated issues that UAE causes by its demands and claims regarding the island might be first and for most regarding the sovereignty of Abu Musa Island which is uncertain, and other problems in delimitation of maritime zones. For instance, the existence of relevant circumstances which was first mentioned in 1969 North Sea CS judgment as; “delimitation is to be effected by agreement in accordance with equitable principles, and taking into account all the relevant circumstances”.

According to ICJ cases it is possible to categorize relevant circumstances into geographical and non-geographical circumstances. First category is: Configuration of the Coasts¹, Regional Geography², Proportionality of a State's CS Area to the Length of its Coastline³, The Presence of Islands and Rocks⁴ and second category is: Geology of the Shelf⁵, Historical Rights⁶, Conduct of Parties⁷, Economic Factors⁸, Security and Defence⁹, and Navigation¹⁰.

¹ <https://www.icj-cij.org/public/files/case-related/63/063-19820224-JUD-01-00-EN.pdf>: Para. 61. (Accessed on 9/05/2021).

² <https://www.icj-cij.org/public/files/case-related/52/052-19690220-JUD-01-00-EN.pdf>: Para. 91. (Accessed on 9/05/2021).

³ <https://www.icj-cij.org/public/files/case-related/52/052-19690220-JUD-01-00-EN.pdf>: Para. 44. (Accessed on 9/05/2021).

⁴ <https://www.icj-cij.org/public/files/case-related/132/132-20090203-JUD-01-00-EN.pdf>: Para. 180. (Accessed on 9/05/2021).

⁵ <https://www.icj-cij.org/public/files/case-related/52/052-19690220-JUD-01-00-EN.pdf>: Para. 95. (Accessed on 9/05/2021).

⁶ <https://www.icj-cij.org/public/files/case-related/63/063-19820224-JUD-01-00-EN.pdf>: Para. 95. (Accessed on 9/05/2021).

⁷ <https://www.icj-cij.org/public/files/case-related/94/094-20021010-JUD-01-00-EN.pdf>: Para 282 (Accessed on 5/9/2021).

⁸ <https://www.icj-cij.org/public/files/case-related/78/078-19930614-JUD-01-00-EN.pdf>: Para. 80. (Accessed on 9/05/2021).

⁹ <https://www.icj-cij.org/public/files/case-related/68/068-19850603-JUD-01-00-EN.pdf>: Para. 51. (Accessed on 9/05/2021).

¹⁰ <https://pcacases.com/web/send Attach/902>: Paras 313-314. (Accessed on 9/05/2021).

Normally, international courts consider geographical factors more than non-geographical ones in their judgments.¹

“The 1969 North Sea CS Sea”, also illustrated the Concept of Proportionality which means, in the maritime delimitation process the length of coasts of opposite states should be considered before determining any maritime zone for states involved in the dispute.

With respect to the maritime delimitation case between Romania and Ukraine in the Black Sea, the court introduced the “Disproportionality Test” to determine whether the delimited zones comply with equitable principle. Additionally, these following principles should be considered in delimitation process as well; non-encroachment, avoidance of cut-off effects, and disproportionate results.

The population of Abu Musa Island in the 2016 census was 4,213 people, including 857 households. Of this population, 2,788 were men, and 1,425 were women. A minority of Abu Musa Island’s residents are UAE citizens. Sharjah officials stated in 2013 that there were 300 Emirati residents in Abu Musa Island although the number of Emirati people living in Abu Musa Island was reported officially as 41, not 300.²

Iranians live in the north of Abu Musa Island, and Emirati people live in the south of the island. Iran governs most of the island and the City of Abu Musa is in the north western part of the island in Iranian territory. Among the towns inhabited by Iranians are Farmandary and Sayadan.³

The Emirati part consists of a small town called Abu Musa Town connected to the UAE territory by ferries. These people need a permit from the Iranian Fisheries Department to fish in the waters around Abu Musa Island. UAE citizens do not have the right to travel to the Iranian part of the island and Iranian citizens do not have the right to travel to the UAE part of the island, and it is possible only in emergencies. If Emirati residents of the island leave for more than six months, they lose the right to return to the island.⁴

¹ Karaman, I.V.: *Dispute Resolution in the Law of the Sea*, Martinus Nijhoff Publication, Leiden 2012, pp. 222-223.

²https://fa.wikipedia.org/wiki/%D8%AC%D8%B2%DB%8C%D8%B1%D9%87_%D8%A7%D8%A8%D9%88%D9%85%D9%88%D8%B3%DB%8C (Accessed on 7/11/2020).

³ Ibid.

⁴ Ibid.

The waters surrounding Abu Musa Island are among the most crowded zones in the Persian Gulf due to their depth and the presence of coral reefs abundant in fish, and marine aquatics favourable for fishing throughout the year. It has the potential to raise aquarium fish, corals, sponges, lobsters, green rocks, sea cucumbers, and seaweeds; but has not yet been funded.¹

The island's fisheries development allows for a stable population without dependence on government agencies. In 2012, the Hormozgan Fishery Department reported or estimated that the number of Abu Musa Island fishing activities was 300 and in 201 from 73 fishing vessels.²

Thus, considering the economic activities, human habitation, geographical shape of Abu Musa Island, and long history of Iranian control, it leads to a strong presumption that this is an Iranian Island. Thus, the UAE's referral of the dispute to international courts, e.g., the ICJ, is not appropriate, and by assuming that UAE accepts the sovereignty of Iran over the Abu Musa Island the determination through an equidistance solution to the eastwards of the island does seem practical.

The Persian Gulf is a semi-enclosed sea and accordingly, there might be ethnic, cultural, and religious similarity among Arabian Littoral States. The Arabian States share the same economic values since all of them are considered rich states but it cannot be a good reason for them and, the UAE to claim the sovereignty of the Abu Musa Island. These similarities have led to renewed interests and policies toward the Abu Musa Island which has increased the confidence of the UAE to claim the sovereignty of the island.

Regarding other factors. For instance, cultural and religious matters, there is a noticeable resemblance between Iranians who live in Abu Musa Island and ethnic Arabs, and there are no restrictions and problems for Sunni Arabs in the island.

The only issue is ethnic Arabs who regularly travel to the UAE for personal and business reasons, and this has become a lame excuse for the UAE to raise the issue of the presence of ethnic Arabs in Abu Musa Island as a reason for its sovereignty claims. Besides, the presence of ethnic Arab inhabitants on the islands was not an enough justification for a sovereignty claim since

¹ Ibid.

² Ibid.

Iranian could use the same reasons to claim for more than half of Iraq, Dubai, Sharjah, and Ras al Khaimah.

With some exceptions, it is possible to mention the Cyprus example in this subject. At first, there were four agreements involved in the Constitution of Cyprus. The people of Cyprus and Cyprus itself did not have anything to do with the establishment of Cyprus.¹ However, on the contrary to the Abu Musa Island dispute, it was the Iranian who ruled the island and governed it throughout history and created a system which attempted to consider the interests and protection of the minority ethnic Arab on the island albeit with restricted rights.

With respect to ethnic groups of Cyprus, it is not acceptable to consider any ethnic group for Cyprus since there must be a constitution defining Cypriot nation, which never existed. Cyprus reflects the former Ottoman Empire, which is part of the British Crown Colony² and in comparison, with the Abu Musa Island, there is no British Crown Colony involved in the history of Abu Musa Island. It is apparent that Abu Musa Island was under the sovereignty of the Persian Empire throughout history and now could be under the sovereignty of Iran.

According to the state practice and international jurisprudences islands affect maritime boundary delimitation, and may receive full effect, partial effect (partial enclave), or no effect (full enclave).

Two suggestions can be made to reach an equidistance agreement:

First, with respect to the delimitation of the Dayyinah Island in the agreement with Qatar, it is observable that the island is partially enclaved with partial effects. Consequently, Abu Musa Island could be partially enclaved. Therefore, suggesting a modified equidistant line for the Abu Musa Island could be considerable, and it will be accepted that the Abu Musa Island generates neither EEZ and nor CS. In this case, it is possible to consider historic rights of the island, which guarantees the TS for Abu Musa Island.

According to the Juridical Regime of Historic Waters, including the Historic Bays 1962 Convention, a historic title may apply to other parts of the sea in addition to bays. For instance,

¹ http://www.tuerkei-recht.de/downloads/cyprus_conflict_linest.pdf: p. 4. (Accessed on 18/02/2021).

² Ibid, p. 8. (Accessed on 18/02/2021).

straits or archipelagos, or islands. In the Fisheries Case (UK v. Norway), the UK, while accepting historical claims about the straits, stated that the waters of this strait do not have the status of inland waters, but should be considered TS.¹

Therefore, the UAE can claim that Abu Musa Island does have territorial waters. In confirmation of the historical claims related to the TS, the Legal Regime of Historical Waters provides that, effective sovereignty can be applied to internal and territorial waters.

If the government claims its authority over internal waters, the area claimed will be internal waters, and if the government exercises its authority over territorial waters, the claimed area will be territorial waters. For example, if the government authorizes the innocent passage of foreign ships across the claimed waters, the government cannot acquire historical sovereignty of these waters as internal waters but must claim them as territorial waters.² since Iran provide the security of the island according to MoU 1971, to not prevent innocent passage of vessels in Abu Musa's waters there must be TS for Abu Musa.

Thus, according to Article 15 of UNCLOS:

“Where the coasts of two States are opposite or adjacent to each other, neither of the two States is entitled, failing agreement between them to the contrary, to extend its territorial sea beyond the median line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of each of the two States is measured. The above provision does not apply, however, where it is necessary by reason of historic title or other special circumstances to delimit the territorial seas of the two States in a way which is at variance therewith.”

Regarding other relevant circumstances, for example, proportionality, a simple comparison determines that Iran shares longer coastline than UAE in dispute, and if Abu Musa Island partially enclaves it is according to equity principle. Afterward, the TS of Abu Musa Island will be in the UAE's CS which does not have cut-off effects since it does not affect coastline of UAE.

Second, according to Law of Marine Areas of the Islamic Republic of Iran³ in the Persian Gulf and Oman Sea, if the breadth of TS does not exceed twice the breadth of water between two islands, consequently, islands are in internal waters, and are under the sovereignty of Iran. Looking

¹ https://legal.un.org/ilc/publications/yearbooks/english/ilc_1962_v2.pdf: Paras 34, 46. (Accessed on 8/11/2020).

² Ibid, Para 164.

³ <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/84321/93653/F1149324061/IRN84321.pdf>: Art. 3 (Accessed on 9/05/2021).

at the median line of the Iranian TS and the three islands' location in the Persian Gulf and Oman Sea, by consideration of figures it is apparent that these islands are under the sovereignty of Iran, and remains no right for UAE to claim sovereignty of Abu Musa Island. Consequently, Abu Musa Island can generate full effect but due to distance of Abu Musa Island from coastline of Iran, and to avoid cut-off effects it is a low possibility to consider full effect for it.

The following four types of circumstances must be considered for delimiting maritime boundaries, and negotiations:¹

a) Political circumstances exist

For instance, that there is a state of war or there are no relations among states or there are weak relations, which prevents states from initiating negotiations on delimitation.² Regarding these circumstances, there is no state of war in the Persian Gulf although the presence of third nations' navies in the Persian Gulf increases the risk of war and conflict, and their presence has always been supported by the Arabian countries in the Persian Gulf.

Iran and the UAE have always had good relations but the "Normalization Agreement" on 15th of September 2020 between the UAE and Israel could be weakening the political relations.

b) Geographical circumstances might cause problems regarding negotiations.

For example, their location may be problematic for one of the states.³ In the Abu Musa case, there is no such inconvenience since the westward line is drawn and the only remaining issue is the acceptance of sovereignty of Iran over the island by UAE.

c) Issues regarding natural prolongation.

States which have short coasts, or adjacent states surround them, will probably disagree with the usage of equidistant lines as maritime boundaries.⁴ This might be the reason that why the UAE has built an artificial island to extend its shores.

d) The economic circumstance as a barrier for negotiations.

¹ Blake, Gerald, B.: *Maritime Boundaries and Ocean Resources*, First published in the USA by Barnes and Noble Books, Totowa, New Jersey 1987, p. 210.

² Ibid.

³ Ibid.

⁴ Ibid.

If there is a significant disparity in economic resources among two nations, the disadvantaged nation may require a larger share of the disputed zone. Also, the agreement may be complicated if a contested territory has a strong economic viability.¹ In the Abu Musa case, the difference of economic value is not high and a burden.

¹ Gerald, B.: *Maritime Boundaries and Ocean Resources*, First published in the USA by Barnes and Noble Books, Totowa, New Jersey 1987, p. 212.

IV. THE IMPACTS OF THE ISLANDS ON THE DELIMITATION OF THE DISPUTED MARITIME AREAS

A) THE EFFECT OF THE THREE ISLANDS

The effect of Abu Musa and the two Tunb Islands upon the median line depends primarily upon their legal status. Since the focus of this chapter is the maritime boundary and not the question of sovereignty, the task of determining where sovereignty over the three islands properties lies is beyond its scope, and it was mentioned in previous chapters.

However, it is possible to address the delimitation issue in the context of the two parties' positions on the sovereignty question. In such a case two likely scenarios with different view to the previous suggestions can be suggested:

The UAE secures sovereignty over the islands and Iran, therefore, drops its claims and withdraws from them or Iran gains the island and the UAE gives up its demands to have sovereignty over them.

Each possible scenario has its own impact upon the median line between the two neighbouring states. This median line is the provisional boundary line between the two party's CS and EEZ limit.

Since the width between the two sides of the Gulf is increasing in a westerly direction, the median line between the UAE and Iran constructed without reference to the three islands is a line every point of which is about 28.5 NM in Greater Tunb area, and about 32.5 NM in Lesser Tunb area and about 36.715 NM in Abu Musa area from each coastline.

Our discussion here, however, is limited to their TS and CS effect in a possible UAE-Iran CS boundary delimitation. This is because a single and one boundary line for the CS and the EEZ boundaries was adopted by Iran and the UAE. Moreover, a delimitation of an EEZ boundary will automatically bring about delimitation of a CZ boundary, since the latter forms part of the former.

The effect of Abu Musa, Greater and Lesser Tunb in respect of a TS and CS boundary in each of the two scenarios could be described as follow:

1- The Territorial Sea

In general, where the range among a shore and an island of an opposite or an adjacent state is 24 NM or more, entitlement toward a territorial water over 12 NM limit is not questionable. However, when the distance is compared with fewer than 24 NM, the median line system, in some cases, is the boundary line, whereas in other cases a modified median line is a more appropriate and equitable boundary line. The Court of Arbitration stated this in the Dubai/Sharjah Award¹ explicitly, that Abu Musa Island is entitled to a 12 NM TS limit.

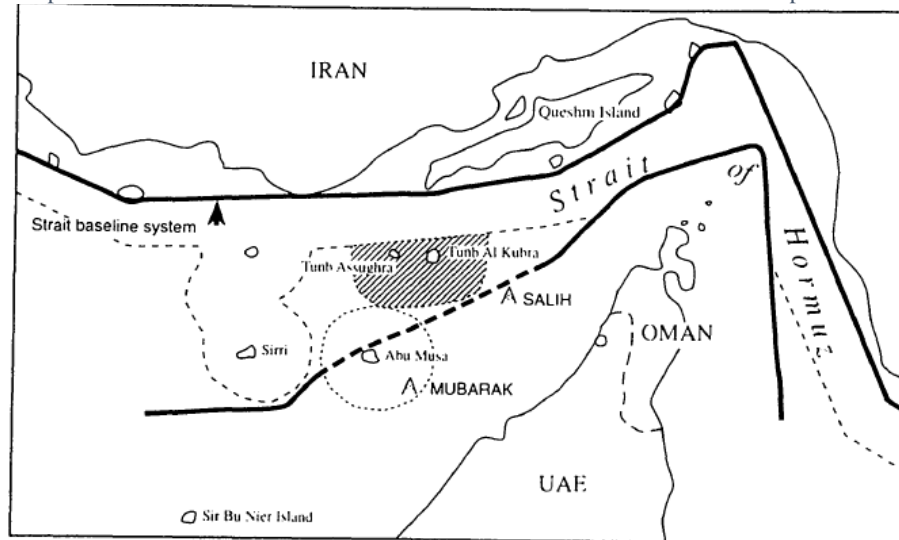
The TS limit of the disputed islands, namely, Abu Musa and the two Tunb Islands, in this case should be considered in the two possible scenarios. This, however, makes no significant difference to the Island of Abu Musa, since it is located mid-way between the two parties. Very likely a third party applying to international law would give that island a full effect TS limit, irrespective of whether it was UAE or Iran's territory. In doing so, the third party would be endorsing the decision of the Court of Arbitration in the Dubai/Sharjah Award, and at the same time be upholding the mutual recognition of Iran and Sharjah of a 12 NM TS for the island. Moreover, a full effect TS limit might be coherent with identical regional policy as applied to the al Arabiya and Fraise islands in the 1968 Saudi Arabia-Iran arrangement².

The case of the two Tunb is quite different. This is because they are located close to the Iranian mainland (See Map Four). Thus, if Iran obtained sovereignty over them, they would be viewed as islands proximate to their own mainland coast. In delimitation, this case usually causes no difficulty, and thus the two islands would be allocated a full effect TS limit.

¹ Bowett, D. W.: "The Dubai/Sharjah Boundary Arbitration of 1981", *British Yearbook of International Law*, Vol LXV, Issue 1, 1994, pp 103-133.

² Young, R: "Equitable Solutions for Offshore Boundaries: The 1968 Saudi Arabia-Iran Agreement" *American Journal of International Law*, Vol. LXIV, No. 1, pp. 152-157.

Map Four: Shows the location of Tunbs close to the Iranian mainland and their possible TS



 12 NM territorial sea limit for the two Tunbs in the seaward side.

Source: Taken from Matar Hamed Hlais Al Neyadi, *The Maritime Zones of the United Arab Emirates with refer to Delimitation*, Department of Public International Law Faculty of Law University of Edinburgh November, 1997, p. 296

1

The most compelling precedent of relevance is the Channel Islands² in the Anglo/French Arbitration. In this Award the Court of Arbitration gave the Channel Islands a three NM TS limit in the northern and western sectors of their coast towards the British coastline, despite their being on the French coastline. The three NM limit at that time, was the full effect TS limit under the British laws and not French laws. (Political and legal status of islands as sovereign right have outweighed the proximity).

Towards the southwest of the two Tunb Islands is the Island of Abu Musa. In this case a local median line would be constructed between the two Tunb TS and the Abu Musa Island TS, since the distance between the two baselines is about 20 NM. This median line is necessary only where the Iranian view on sovereignty of Abu Musa prevails.

¹ Matar Hamed Hlais Al Neyadi, *The Maritime Zones of the United Arab Emirates with refer to Delimitation*, Department of Public International Law Faculty of Law University of Edinburgh November, 1997, p. 296

² The Islands are constitutionally unique in that they are not a part of the United Kingdom, nor a sovereign state, nor a colony. They are instead Crown possessions, with their own legislatures, fiscal and legal systems, judiciaries, and executive branches. The British Government is responsible for defence and international relations, whilst local affairs are looked after by the respective island governments.

2- The Continental Shelf

In the case of Abu Musa Island, the location of sovereignty, like the TS, would be irrelevant in determining its privilege to a CS impact in the delimitation of the median line between Iran and the UAE. The island, should have no impact beyond its TS limit.

Otherwise, an unfair and excessive claim to marine space between the two parties would result. To deal with disproportioned effect with this issue the island must become enclaved. The enclave methodology is the appropriate solution for islands that are located close to, or on the wrong side of the median line.¹

Accordingly, Vein Karl held that an island located close to the median line “is entitled only to a TS and not to be used as a basepoint or given any other significant effect in a delimitation.” Furthermore, M.A. Movahed, one of Iran's negotiators on CS delimitation, has emphasized that, except for Khark Island “no island in the Gulf should be given any CS rights.”²

Interestingly, the island itself was subject to a legal examination during the Dubai/Sharjah Award. The Court of Arbitration, it will be recalled, was charged with the task of determining the course of the boundary line between the land and maritime boundary of two member Emirates of the UAE. The Island of Abu Musa was located close to the equidistance line between Sharjah and Dubai. The Court of Arbitration rejected Sharjah's claim for a half effect CS for the Island.

Regarding the examination of the entitlement of the two Tunb Islands for a CS effect in the delimitation between Iran and the UAE can be said whereas the entitlement of Abu Musa Island for a CS effect should be zero, irrespective of the delimitation of sovereignty, the entitlement of the two Tunb Islands might be different due to their proximate location to the Iranian mainland. Therefore, it is necessary to examine the effect of the two islands in each scenario separately.

¹ Evans, M.D.: “Case Concerning Maritime Boundaries between Qatar and Bahrain, Jurisdiction and Admissibility,” Vol. XLIV, *Journal of International and Comparative Law Quarterly*, 1995, p. 149.

² Karl, D.E, “Islands and the Delimitation of the Continental Shelf: A Framework for Analysis,” Vol LXXI, *American Journal of International Law*, 1977, p. 658.

B) CONTINENTAL SHELF EFFECT OF THE TWO TUNB ISLANDS IF THE UAE WERE TO RESTORE ITS SOVEREIGNTY

Again, the case of the Channel Islands is the most compelling precedent of relevance. The Channel Islands, are in the English Channel and under British sovereignty, but located on the French coast, within the arms of a gulf, and only a few NM away.

The Court found the presence of these islands, *prima facie*, consequently, authorized a line other than the normal median line for delimitation. Professor Bowett, in his highly critical remarks on the Award, noted that the Channel Islands had been considered by the Court of Arbitration as special circumstances.

However, Professor Brown, although he agreed that the special circumstances apply to the Channel Islands, the Court however, opposed the conclusion of giving the islands no CS effect limit. He wrote that the decision of the Court was hard to justify, or to “square with Article I of the GENCONV and its endorsement by the ICJ as declaratory of international customary law.”

There is no room here to challenge Professor Brown's argument that Article I of Convention on the CS reflects present day customary law, and thus the entitlement of islands to a CS is well established.¹

The Court of Arbitration in that Award restricted the TS effect of the Channel Islands within their potential 12 NM TS limit, and rejected the British Government's claim to give the Islands any further maritime zone effect beyond that limit.²

This “was for their geographical location, as isolated islands, on the wrong side of the median line and between states which were otherwise in a situation of approximate geographical equality, which seemed to the Court to qualify the islands as special circumstances and to be *prima facie*, creative of inequity.”³

But the presence of the Channel Islands in that situation “disturbs the balance of the geographical circumstances which would otherwise exist between the parties in this region as a

¹ Gerald Blake, *Maritime Boundaries and Ocean Resources*, First published in the USA by Barnes and Noble Books, Totowa, New Jersey 1987, pp. 70-71.

² *Ibid*, pp. 104-105.

³ *Ibid*.

result of the broad equality of the coastlines of their main lands.” Therefore, it was necessary to minimize the knock-on effect of the location of these islands being close to the French coastline. The Court of Arbitration found this could be done by restricting the effect of these islands within their potential CS limit.

Likewise, the presence of the two Tunb Islands in a rich and semi-enclosed sea would result in depriving Iran in the Tunb Islands sector of any CS area were the two islands to have any effect beyond their TS limit. In addition to the foregoing, giving the two Tunb Islands no effect for the CS would be consistent with pre-existing practice in the Gulf. The case of the Iranian Island of Farise in the Saudi Arabia-Iran agreement of 1968 may be cited as an example of preventing an island situated on the wrong side of the median line from having any effect beyond its TS limit.

1- CS Effect of the Two Tunb Islands Were Iran to Gain the Islands

While the two Tunb Islands have the identical right to a TS limit, they may have different rights to a CS limit. The Greater Tunb and Lesser Tunb Islands can be distinguished here in terms of size and proximity to the Iranian mainland.

a) The Greater Tunb Islands

As mentioned above, approximately 3.98 square miles in size, this island lies 15 NM off the Iranian coast and 40 NM off the UAE coast. It has a permanent population of about 200. Iran could claim a full effect CS boundary in this context. Such a claim would, as noted earlier, run counter to pre-existing state practice, which prevents islands situated at a considerable distance from the mainland having full effect CS. The case of the Scilly Isles, located on the correct side of the median line (but 21 NM from the British mainland) in the Anglo/French Arbitration, may be cited as an example of denying full effect CS limit for an island located at such a considerable distance from its mainland. Professor Bowett, regarding the effect of islands with such a location, wrote that, where an island is lying outside the TS of a state, to which it belongs, the island should only have partial CS effect.¹

¹ Ibid, pp. 105-108.

Moreover, giving full effect CS would result in additional projection to the Iranian CS, brought about by cutting off an area which appertains to the UAE's CS and attributing it, thereby, to Iran.

Iran could convincingly argue for a half effect CS limit. The method of half effect, as we have seen, is mid-way between two equidistance lines drawn between, in this case, Iran and the UAE. The first is a line drawn without reference to the Greater Tunb Island, and the second is a line constructed using the Greater Tunb Island as a base point. The method of half effect is a line representing half way between these two lines.

Such an outcome can be justified on the ground that the island lies only 15 NM off the Iranian coast, and pre-existing practice in the Gulf gave half effect for an island with a similar geographical location. The case of the Iranian Island of Khark, although it is the only case in the region, may be cited as an example of giving half effect to an island situated 17 NM from its mainland.

This half effect CS would not have any impact on the median line between the two parties' continental shelves limit. Some calculations are necessary for illustration. The distance between the two main lands is about 57 NM and the median line between the main lands, if Greater Tunb Island did not lie where it does, would be a line every point of which would be situated at 28.5 NM from Iran and the UAE respectively.

The 28.5 NM is the full effect CS for each party's mainland. Now, turning to an interesting point, the distance between Greater Tunb and the UAE coastlines is 40 NM. So, the median line between these two coastlines is a line every point of which is situated at 20 NM from Greater Tunb and the UAE respectively. Again, the 20 NM is the full effect CS for Greater Tunb and the UAE coastline. Giving the island half effect would mean that the island would have 10 NM CS. This is less than the 12 NM TS limit. Accordingly, this half effect would not result in giving the island any effect beyond its TS limit.

b) The Lesser Tunb Island

This island is small, barren, uninhabited and waterless. It lies 20 NM off the Iranian coasts. With this geographical nature it might be a rock within the meaning of Article 121 (3), and thus it would have no CS effect. However, this denial depends on whether the Article is a part of

customary law. If the Article does not represent present-day, customary international law, and there was agreement to give the island a CS effect, this could not be a full effect for the same reasons suggested in the case of the Greater Tunb Island. In respect to a half effect CS limit, in practice, would give Lesser Tunb Island only 11 NM CS limit. This limit, as in the case of Greater Tunb, would be entirely within its 12 NM TS, and therefore would have no effect upon the UAE-Iran median line.

2- The Knock-On Effects of the Islands

These are the legal entitlements of the three islands. The governments of the two countries must be aware of these entitlements, and the disadvantageous effect on their maritime boundaries, if either had to give up its claim of sovereignty over the island. Such an effect, as is illustrated in the map produced below (See Map Five), on the loser's interests and maritime boundary limit may be centred, *inter alia*, on the following aspects.

a) In Respect of Abu Musa Island

In effect, if Iran obtained the ownership of Abu Musa Island, this would project the Iranian CS 15 NM beyond the median line. There would be less projection, however, were the converse to happen. This is due to the location of the island in the UAE side of the median line. Thus, there would be an 11 NM adjustment in the median line towards the Iranian coastline. Such an adjustment in the median line in the Abu Musa Island sector would result in putting the winner very close to the loser's mainland. This may be perceived as threatening the loser's vital interests, and preventing it from protecting interests which require protection.

In addition to the foregoing, the party losing the island would lose the right of exploration and exploitation of Mupark oil field, which is situated 9 NM to the south-east of the island's coast.

b) In Respect of the Two Tunb Areas

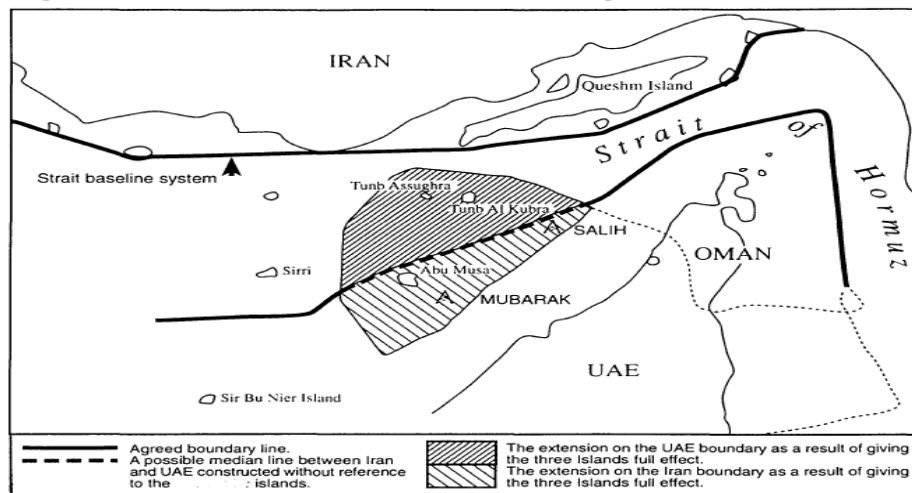
If Iran drops its claim over the two Tunb Islands in favour of the UAE, the two islands would add to the UAE maritime boundary enclaves of about 19.5 and 22 NM long and about 30 NM wide, completely isolated from other UAE maritime zones. This would deprive Iran of any CS rights in this area, and would also prevent Iran from supervising navigation in the designated traffic zone. On the other hand, it would give the UAE national sovereignty in an area just 7.5 NM,

in respect of the Greater Tunb area, and 10 NM in respect of the Lesser Tunb area, from the Iranian coast. However, should the Iranian view prevail, there would be no significant extension in its maritime boundary limit beyond the median line.

It seems fair to suggest that the Iranian Government's fear of the possibility of reducing its TS limit to less than 12 NM, and as a result preventing it from monitoring of a vessel's passage in the traffic route just outside its TS, should it give up control over the two islands, is the main obstacle in solving the crisis. This is because the two Tunb Islands, constitute strategic defence line.

The Iranian Cabinet, therefore, would be likely to continue to reject any offer from the UAE to negotiate over the sovereignty of the two islands; at the same time, they would continue to claim their legitimate presence on the islands, since this would be the only way that they could preserve their full effect TS limit, and preserve their entitlement to exercise legislative and enforcement authority on the traffic routeing area.

Map Five: Shows the Knock-On Effects of the Islands in two possible scenarios



Source: Taken from Matar Hamed Hlais Al Neyadi, *The Maritime Zones of the United Arab Emirates with reference to Delimitation*, Department of Public International Law Faculty of Law University of Edinburgh, November 1997. p. 306.

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¹ The knock-on effect of the Islands on the UAE's and Iranian boundary: Matar Hamed Hlais Al Neyadi, *The Maritime Zones of the United Arab Emirates with reference to Delimitation*, Department of Public International Law Faculty of Law University of Edinburgh, November 1997. p. 306.

CONCLUSION

The Tunb and Abu Musa Islands have belonged to Iran since the beginning of history. Up until the 18th century, when the Iranian territory included the northern and southern coasts of the Persian Gulf, these islands were inside the Iranian territory. During the 18th and 19th centuries, they were within authority of the Iranian Port of Lengeh and part of Fars province, being administered by Lengeh Port rulers, who were Iranians.

The British Government and the British Crown Rule in India have mentioned the Tunb and Abu Musa Islands as belonging to Lengeh Port and part of the Iranian territory in all their reports, correspondences, books, journals, and official or semi-official maps. In the reports compiled by Sir John Malcolm, Captain Hein, Captain George Barnes Brooks, Colonel Robert Taylor, Captain Stiff and Constable, the Tunb and Abu Musa Islands have been mentioned as belonging to Iran.

Moreover, in the British Government's administrative reports collection 1875-1876, the first and second prints of the Persian Gulf in 1883 and 1889, as well as the brochure published by the British Maritime & Coastguard Agency in 1902, it has been explicitly mentioned that the Tunb and Abu Musa Islands belong to Iran, more specifically, the Iranian Fars province.

In addition, according to the maps drawn up by the British Naval Force (1881), the British Maritime & Coastguard Agency (1863), the British War Office (1886), the Indian Survey Office (1897), and the map drawn up by Lord Curzon (1891 and 1892), the Tunb and Abu Musa Islands have been coloured the same colour as Iran.

However, in the late nineteenth century, Russian and German challenged British efforts to expand their presence in the Persian Gulf, as well as Iran's growing relations to Russia and Germany, heightened British anxieties in the region.

The British Government captured the Tunb and Abu Musa Islands to prevent the presence of its rivals and to retain its domination over the Persian Gulf. Not accepting this occupation, the Iranian Government emphasised its right to sovereignty over the islands through constant, categorical protests until 1971. Since then, according to Treaty of 1892, the British Government had become responsible for the Persian Gulf Sheikhdoms' foreign affairs, the Iranian Government held only British accountable for illegal occupation of the islands and the main party in the negotiations. Upon British announcing its decision to withdraw from the Persian Gulf in 1968,

Iran tried to settle the disputed with British concerning the Tunb and Abu Musa Islands. Therefore, Iran waived its right of sovereignty over Bahrain, and, in return, its sovereignty over the Tunb and Abu Musa Islands was restored, hence the state of the islands turned back to the colonial era.

The criteria for determination of sovereignty over disputed islands in international law are: historic, cultural, ethnic, social, occupation, economic, political, and geographical (e.g., proximity) it is possible also to refer to international courts jurisprudences, to look for judgments of each case regarding island' sovereignty disputes among states, to find out, which of the disputed states have sovereignty over islands and according to what regulations. Since the jurisprudences are part of customary international laws, they could be codified by states as their national laws so it become easier to solve sovereignty issues of islands.

In Abu Musa case, the official historic evidences, reports, maps as mentioned earlier proves that Abu Musa was under Iranian sovereignty and these days also, the island is governed by Iranian and their domestic laws and regulation in the island. The minority of ethnic Arabs live in the Abu Musa according to Iranian terms and conditions which is a prove of Iranian domination over the island. Geographically, the islands are in the Iran's plateau as explained before and distance of Abu Musa to Iranian coastline is lesser than to UAE's shores. The claims levelled by the UAE, which are the same baseless claims put forward by ex-occupiers (i.e., British), have no legal ground. Just as they have been part of the Iranian territory, the islands will, be an inseparable part of the Iranian soil.

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Abstract

One of the most sensational issues in the Persian Gulf is the issue of the three Islands of Abu Musa, Greater and Lesser Tunb and the false UAE's believe that these islands belong to her. According to solid legal and historical evidences, as well as, the geopolitical role of these islands and their impact on the extent of Iran's internal water regimes, the sovereignty and boundary delimitation issues have been precisely, thoroughly, and technically examined with respect to the dimensions of legal and historical affiliation of these islands belonging to Iran and its possible median line as the result of it. Therefore, the purpose of thesis is solid evidence within the framework of international laws. The thesis examines the historical and legal records of these islands belonging to Iran and rejects the false reasons of the UAE based on the critical reasons.

The nature of this thesis is legal and historical, and it discusses all legal matters and historical evidences. Consequently, from historical, and legal point of view, Iran's sovereignty over the three islands of the Persian Gulf (Abu Musa, Greater and Lesser Tunb) is therefore, certain and leaves no room to doubt, and it has been determined according to solid legal evidences and historical documents. In addition to the sovereignty issue which has been resolved according to customary international law and state practice, thesis, also deals with the delimitation issues regarding islands and in particular, their status in a semi-enclosed sea. Assuming that the sovereignty dispute in the Gulf is solved the possible scenarios are explained.

Keywords: Persian Gulf, Abu Musa, Greater and Lesser Tunb, UNCLOS, Legal Regime for Islands and Rocks, Terra Nullius, Condominium, Prescription, Equidistance Line, Median Line, Enclaving, Proportionality, Disproportionality Test, Iran-Sharjah MoU 1971, Global Warming, Blue Economy, The International Court of Justice, and United Nations Security Council.

Özet

Basra Körfezi'ndeki en sansasyonel konulardan biri, Abu Musa, Büyük ve Küçük Tunb adaları konusudur ve BAE'nin bu adaların kendisine ait sanmasıdır. Bu adaların jeopolitik rolü ve İran'ın iç su rejimlerinin kapsamı üzerindeki etkilerinin yanı sıra, sağlam hukuki ve tarihi kanıtlara göre, egemenlik ve sınırlandırma konuları, boyutlara göre tam, eksiksiz ve teknik olarak incelenmiştir. Bu kapsamda tezin amacı, uluslararası hukuk çerçevesinde somut delil olmaktır. Tez, İran'a ait bu adaların tarihi ve hukuki kayıtlarını incelemekte ve BAE'nin yanlış hamlelerini kritik sebeplere dayanarak reddetmektedir.

Bu tezin doğası hukuki ve tarihi olup, tüm hukuki ve tarihi delilleri tartışmaktadır. Sonuç olarak tarihi ve hukuki açıdan İran'ın Basra Körfezi'ndeki üç ada (Ebu Musa, Büyük ve Küçük Tunb) üzerindeki egemenliği kesindir ve şüpheye yer bırakmayacak şekilde sağlam hukuki delillere dayanmaktadır. Tez, uluslararası teamül hukuku ve devlet uygulamalarına göre belirlenen egemenlik konusuna ek olarak, adalara ilişkin sınırlandırma konularını ve özellikle yarı kapalı denizdeki statülerini de ele almaktadır. Ayrıca, Körfez'deki sorunların çözülmesi halinde ortaya çıkacak olası senaryolarda açıklanmıştır.

Anahtar Kelimeler: Basra Körfezi, Abu Musa, Büyük ve Küçük Tunb, UNCLOS, Adalar ve Kayalar için Yasal Uygulamalar, Terra Nullius, Müşterek Hakimiyet, Zaman Aşımı, Orta Hat, Anklav, Orantılılık, Orantısızlık Testi, Iran-Sharjah Mutabatak Zaptı 1971, Küresel Isınma, Mavi Ekonomi, Uluslararası Adalet Divanı, Birleşmiş Milletler Güvenlik Konseyi