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October 2015

GRM PAPERS

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Introduction

With the withdrawal of Great Britain from the Gulf in late 1971, Iran occupied two islands belonging to the emirate of Ras al-Khaimah. Since then, the UAE-Iranian territorial dispute has remained unresolved. Iran has consistently refused to consider third-party arbitration and that position has blocked the path to resolution. This paper focuses on two axes. One is the history of the disputed islands divided into three eras: pre-colonial, colonial, and post-colonial. The paper focuses mostly on the colonial period in order to examine the British decision over the disputed islands. It examines the question of why Britain's position shifted to the Iranian side when it announced in 1968 its official withdrawal by 1971. The second part of this paper examines the legal perspectives of the UAE and Iran in an attempt to evaluate the arguments of both sides. The study argues that the UAE's legal and historical arguments, based on British archive records and international law, are more persuasive than those on the Iranian side.

Strategic Importance of the Disputed Islands

The three islands Abu Musa, Lesser Tunb, and Greater Tunb, located in the strategically important Strait of Hormuz through which 40 percent of the world's

oil and most of the oil from the Gulf region passes,¹ differ greatly in size and significance. Lesser Tunb is the smallest, with an area of 12 square kilometers, and Abu Musa is the largest, with an area of 120 square kilometers and its population is estimated at 1,500 inhabitants.² Abu Musa has been mined for red iron oxide for over a century and is also rich in offshore oil and natural gas, currently shared by Sharjah and Iran. Historically, it has also been used for raising crops and cattle. Greater Tunb is somewhat smaller, with an area of 91 square kilometers and, while it has been used for agriculture, it has no significant natural resources. Lesser Tunb is tiny and uninhabitable because, unlike Greater Tunb and Abu Musa, it has no source of freshwater.³

Abu Musa, Greater Tunb, and Lesser Tunb are islands in the Strait of Hormuz that, if used militarily, could “command the traffic in the Gulf and virtually control it.”⁴ Also, it could hinder the flow of petroleum and other goods from the Gulf.⁵ In 1971, the former leader of Iran, Mohammed Reza Shah, stated that the islands “are of strategic importance to us as much as to the Persian Gulf states and to the peace and security of our region. Their geographic position can make them issues of tremendous military value.”⁶ The United States military considers keeping the Strait open a vital interest. According to retired US General Paul van Riper, “The strait

1. Richard Rousseau, *Strait of Hormuz: Iran's Bluff and the West's Fears*, <https://www.opendemocracy.net/richard-rousseau/strait-of-hormuz-iran%E2%80%99s-bluff-and-west%E2%80%99s-fears> (accessed July 12, 2015). In the early 2000s, 40 percent of the world's crude oil exports passed through the Strait of Hormuz. However Richard Rousseau indicates that this percentage has significantly decreased in recent years. Currently, only 20-25 percent of the world's total crude export is from the Gulf.
2. Ahmad Jal Al-Tadmori, *The Three Arabian Islands: A Documentary Study* (Ras al-Khaimah: RAK National Printing Press, 2000), 51-52.
3. Pirouz Mojtahed-Zadeh, “Iran's Maritime Boundaries in the Persian Gulf: The Case of Abu Musa Island,” in *The Boundaries of Modern Iran*, ed. Keith McLachlan (New York: St. Martin's Press, 1994), 106-109.
4. Al-Tadmori, *The Three Arabian Islands*, 49.
5. The name of the Gulf is disputed, with Iranian scholars (and most Western scholars) calling it the Persian Gulf, while Arab scholars refer to the Arabian Gulf. The term “the Gulf” has been applied in the text. Schofield writes that in 1845, the Persian Prime Minister, Haji Mirza Aghassi, “would claim all the waters and islands of the Gulf as Persian, seemingly on the basis that ownership followed from the name of the body of water.” For more details, see Richard N. Schofield, “Anything but Black and White,” in *Security in the Persian Gulf: Origins, Obstacles, and the Search for Consensus*, ed. Lawrence G. Potter and Gary G. Sick (New York: Palgrave, 2002), 184.
6. Mohammed Amaaieeh, “Gulf Islands in Tug-of-War: Leadership Change May Affect 25 Year UAE and Iranian Dispute” (MA thesis, University of Westminster, 1997), 16-17.

is always the key to war games in the Gulf.”⁷ Over the years, Iran has continued to militarize the islands and control the Strait of Hormuz. In 2008, Iran established a new naval base at Jask at the mouth of the Gulf to strengthen its military capabilities in the Gulf and the Strait of Hormuz.⁸

Historical Background of the Three Islands during the Pre-Colonial Period

Iran bases its claim to the islands on a chain of ownership through various ancient Persian empires dating back to the sixth century BCE. According to Pirouz Mojtahed-Zadeh, a professor of geopolitics at Tarbiat Moddarres University in Tehran, “the political geography of Eastern Arabia followed the same pattern of political development in that entire region since the dawn of history.”⁹ Guive Mirfendereski, a lawyer who supports Iran’s claim to the islands, writes, “the political and commercial domination of Iran over the Persian Gulf in the Seleucial (312–150 BC), Parthian (238 BC–224 AD), and Sassanid (224–641 AD) period points to the conclusion that in pre-Islamic times the [Tunbs] and Abu Musa most likely [emphasis added] belonged to Iran.”¹⁰ However, Richard N. Schofield asserts that, despite its claim of dominating the Gulf continuously for over two thousand years, Iran “has not yet come forward with any records of its own that display or document an earlier connection with the islands.”¹¹

Scholars who support the UAE’s claim to the islands disagree with the idea that Persian empires continuously ruled the Persian Gulf, especially after the rise of Islam. For example, Mohammed Abdullah Al Roken, who is an associate Professor of Public Law at the UAE University, states that the Gulf “became a purely Arab ‘lake’ with the Islamic conquests in the seventh century AD. Even in the periods following the decline of the early Islamic Caliphate, local powers, especially in Oman, maintained control and sovereignty over the region as a whole.”¹² Thomas R.

7. Anne Mulrine, “Putting War Talk on Hold,” *U.S. News & World Report*, August 15, 2008, 22.

8. Julian Borger, “Iran Opens New Naval Base at Mouth of Persian Gulf,” *Guardian.uk.com*, October 29, 2008, <http://www.guardian.co.uk/world/2008/oct/29/Iran> (accessed August 25, 2014).

9. Pirouz Mojtahed-Zadeh, “A Look at Some of the More Recently Propagated UAE Arguments,” *Geostrategics* (May 2006): 5.

10. Guive Mirfendereski, “The Ownership of the Tunb Islands: A Legal Analysis,” in *Small Islands, Big Politics*, ed. Hooshang Amirahmadi (New York: St. Martins Press, 1996), 120–121.

11. Richard N. Schofield, “Border Disputes in the Gulf: Past, Present, and Future,” in *The Persian Gulf at the Millennium*, ed. Gary G. Sick and Lawrence G. Potter (New York: St. Martin’s Press, 1997), 143.

12. Mohammed Abdullah Al Roken, “Dimensions of the UAE-Iran Dispute Over Three Islands,”

Mattair, a consultant on Middle Eastern affairs, argues that from 850 CE onwards, Arab-ruled ports on the Persian coast of the Gulf, such as Old Hormuz and New Hormuz, were the main centers of Gulf trade: “This kingdom [New Hormuz], with its own fleet and army, ruled much of both shores of the Gulf and most major islands in the Gulf.”¹³

Unfortunately, there is a problem with both the Iranian and Arab versions of history: There is no surviving documentation from pre-colonial times about sovereignty over these three particular islands. However, in the period prior to the dominant role of Great Britain in the Arabian Gulf, Portuguese explorer Duarte Barbosa described the situation in 1518: most of the islands on the southern shore of the Gulf were part of the kingdom of New Hormuz and continuously ruled by Arabs.¹⁴ Barbosa’s account appears to be consistent with Thomas R. Mattair’s claim that New Hormuz exercised territorial sovereignty over the area that contains the disputed islands, but Barbosa does not refer specifically to sovereignty over Abu Musa and the Tunbs. It has also been suggested that the Yaruba dynasty of Oman once exercised sovereignty over the islands, but by the first half of the eighteenth century, the Yaruba dynasty had collapsed, and so had the Safavid dynasty of Persia. In 1747, the Safavid ruler of Persia, Nader Shah, was assassinated, prompting a power struggle between the Zand and Qajar tribes. While the Zands and Qajars battled for supremacy over Persia, the Qawasim tribesman of the southern shore of the Gulf established themselves on the island of Qishm and in the ports of Lingeh and Shias on the northern shore.¹⁵ According to Mojtahed-Zadeh, Karim Khan of the Zand dynasty was not entirely hostile to the Qawasim of Sharjah and Ras Al-khaimah: “unlike Nader Shah, the Khan of Zand preferred the friendship and co-operation of the Arabs on both [the northern and southern] shores in his struggle for power in [Persia]. His leniency towards Arab tribes proved most helpful for the [Qawasim] on their way to paramountcy in the subsequent period. They began their organized interference in the maritime trade and commerce in an effective manner.”¹⁶

in *United Arab Emirates: A New Perspective*, ed. Ibrahim Al Abed and Peter Hellyer (London: Trident Press, 2001), 179.

13. Thomas R. Mattair, *The Three Occupied UAE Islands: The Tunbs and Abu Musa* (Abu Dhabi: The Emirates Centre for Strategic Studies and Research, 2005), 29–30.

14. Mansel Longworth Dames, *The Book of Duarte Barbosa: An Account of the Countries Bordering on the India Ocean and their Inhabitants, Vol. I*. (London: Hakluyt Society, 1918), 73–74.

15. Farhang Mehr, *A Colonial Legacy: The Dispute over the Islands of Abu Musa, and the Greater and Lesser Tunbs* (Lanham, MD: University Press of America, 1997), 95.

16. Pirouz Mojtahed-Zadeh, *Security and Territoriality in the Persian Gulf* (Surrey, UK: Curzon, 1999), 166.

Thus it would seem that the demise of the Yarubi and Safavid dynasties resulted in a regional power vacuum characterized by political infighting in Persia and the rise of the Qawasim as a naval power. Further, the Qawasim were not welcome on the northern shore of the Gulf, yet, at the same time, were allied with the Zand who won control of Persia. This has led some Iranian scholars to argue that the Qawasim were not independent but instead agents of Persia. Schofield takes a more neutral approach:

Political and territorial control of the Lower Gulf region before Britain's arrival on the scene—and for a good while thereafter—was marked by its fluidity and impermanence [emphasis added]. As such, evidence for ownership of the islands located there before the mid-nineteenth century barely exists. Historically, there was a considerable degree of contact and interchange among the coastal communities of the Gulf, and Arab populations on both sides traditionally moved back and forth across this body of water.¹⁷

The Period of British Domination of the Gulf

David Seton, the British Resident stationed in Muscat, reported in his journals that in the first decade of the nineteenth century, the Qawasim of Ras al-Khaimah controlled Greater Tunb and Lesser Tunb.¹⁸ Within a few years of establishing its presence in the region, Great Britain launched naval campaigns against the Qawasim of Ras al-Khaimah and Sharjah. British strategy aimed at safeguarding shipping with British India. Beginning in 1820, Britain entered into a series of maritime treaties with the Arab rulers of the southern coast of the Gulf, culminating in 1853 in the Treaty of Perpetual Maritime Peace. Parties to the treaties included the Trucial States, so named because of the treaties with Britain, that would become the emirates of today's UAE – Abu Dhabi, Ajman, Dubai, Fujairah, Ras Al-Khaimah, Sharjah, and Umm al-Quwain.¹⁹

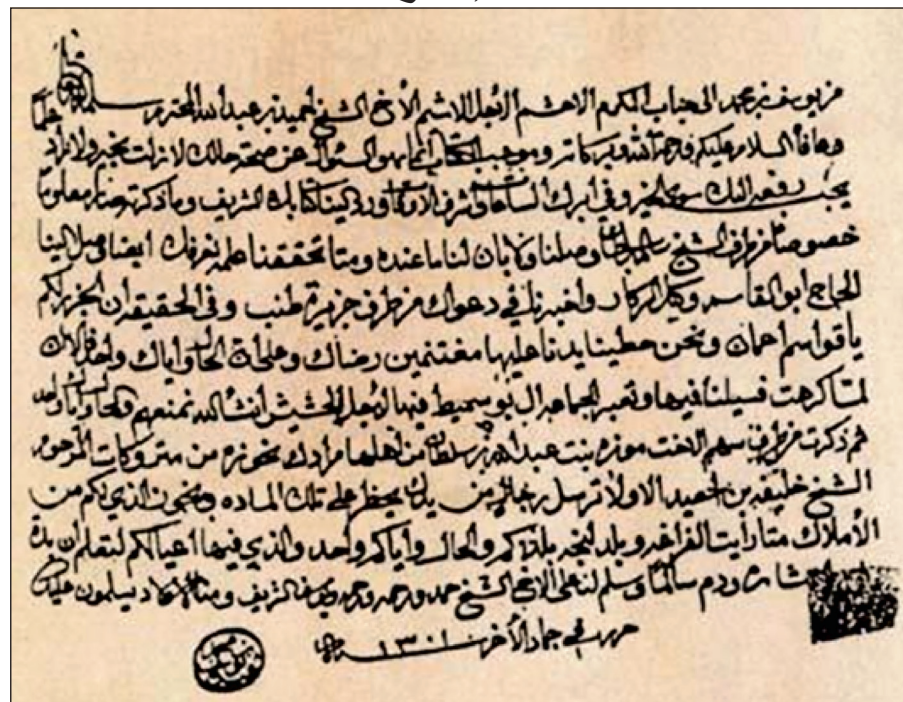
17. Richard N. Schofield, "Anything but Black and White," in *Security in the Persian Gulf: Origins, Obstacles, and the Search for Consensus*, ed. Lawrence G. Potter and Gary G. Sick. (New York: Palgrave, 2002), 178.

18. Sultan Muhammad Al-Qasimi, *The Journals of David Seton in the Gulf: 1800-1809* (Exeter, UK: University of Exeter Press, 1995), 19-20.

19. Kourash Ahmadi, *Islands and International Politics in the Persian Gulf: Abu Musa and Tunbs in Strategic Perspective* (London: Routledge, 2008), 10.

Britain became the arbiter of intergovernmental relations and security in the Gulf. The oldest recorded reference in British documents that the Qawasim of the southern coast of the Gulf claimed the islands dates to 1864, when the ruler of Ras Al-Khaimah, Shaikh Sultan bin Saqr, wrote to a British official and asserted “that Abu Musa and the Greater Tunb had belonged to his family for generations.”²⁰ In 1868, Ras Al-Khaimah became part of Sharjah and would not regain independence until 1921, when the British recognized Ras Al-Khaimah’s claim to the Tunbs and continued to support Sharjah’s claim to Abu Musa. In 1884, Shaikh Humaid of Ras al-Khaimah destroyed some date trees that had been planted on Greater Tunb by Shaikh Yusuf of Lingeh. Afterwards, Shaikh Yusuf wrote to Shaikh Humaid, “in reality, the island belongs to you the [Qawasim] of Oman.”²¹ This letter includes an apology for interfering in Ras Al-Khaimah’s sovereignty over Great Tunb (see Figure 1).

Figure 1: Letter from Yousef bin Mohammed, the Ruler of Lingeh, to Shaikh Hamed bin Abdullah Al-Qasimi, the Ruler of Ras Al-Khaimah



Sources: The United Arab Emirates official website, “The Occupied Three Islands Abu Musa, Greater Tunb and Abu Musa,” <http://www.emirates-islands.ae/docthp.htm> (accessed November 19, 2014).

20. Mattair, *The Three Occupied UAE Islands*, 157.

21. Ibid., 60.

It is important to note that Persia filed its first claim on the Greater and Lesser Tunbs in 1877 and claimed Abu Musa ten years later after the fall of Lingeh at the hands of Nasser Al-Din Shah. The Lingeh was established on the east coast of the Gulf by the Al-Qawasim tribe from the eastern coast who controlled it for approximately 125 years. By 1887, the military forces of Nasser Al-Din were engaged in an expansionist policy that cemented Persian control over several islands, including Bahrain, Bani Faror, and Sari, which had previously also been administered by the Al-Qawasim. Nasser Al-Din Shah staked his claim on the Tunbs and Abu Musa on his defeat of the Al-Qawasim at Lingeh. However, from the late nineteenth century onwards, the conflict over the ownership of the three islands, Greater Tunb, Lesser Tunb, and Abu Musa, started between the government of Persia and the Al-Qawasim.²²

In 1892, Britain entered into an Exclusive Agreement with each of the Trucial States. Under the Exclusive Agreement, Britain would be in charge of each emirate's foreign policy, and local rulers could not dispose of property or deal with foreign agents without British approval. According to George Joffe, "By the end of the [nineteenth] century, there were considerable [British] fears that the sheikhdoms might fall under Wahabbi as well as Ottoman influence. The result was the 1892 treaties."²³ Presumably, the British, under the Exclusive Agreement, gave the ruler of Sharjah permission in 1898 to grant a concession for mining red oxide on Abu Musa. In 1903, the Al-Qawasim raised Sharjah's flag over Abu Musa, but Persia, now under the leadership of Muzaffer Al-Din Shah, continued to dispute Sharjah's claim on the island; in 1904, a Belgian employee of the Persian customs department led a team on a visit to Abu Musa and the Tunbs, removed Sharjah's flags, raised Persian flags, and left armed guards behind. Acting under the authority of the 1892 Exclusive Agreement that bound Britain to protect the interests of the Trucial States, the British applied diplomatic pressure on the Persians, Persia's flags were removed, and Sharjah's flags restored within a few days.²⁴

In 1912, Great Britain and Sharjah jointly built a lighthouse on Great Tunb, claimed by Ras Al-Khaimah, which would remain part of Sharjah until 1921. According to a 1915 article published by Lorimer in the *Gazetteer of the Persian*

22. Aqeel Mustafa, *Policy of Iran in the Gulf Region during the Reign of Nasser Al-Din Shah (1848-1896)*, in Arabic (Doha: Publications of Dar Al-Thaqafa, 1987), 441.

23. George Joffe, "Concepts of Sovereignty in the Gulf Region," in *Territorial Foundations of the Gulf States*, ed. Richard N. Schofield (London: UCL Press, 1994), 88.

24. Sheikh Majid Abdulla Al-Moalla, "Is the Policy Adopted by Iran towards the United Arab Emirates Regarding the Three Islands (Greater Tunb, Lesser Tunb and Abu Musa) since 1971 a Policy Based on Imperialism?" Unpublished thesis, University of Hull, UK, 2007, 9.

Gulf, Oman, and Central Arabia, Tunbs had formerly been ruled by the hereditary Arab governors of Lingeh in their capacity of Qawsimi Shaikhs, not of Persian officials....The title of the Shaikh of Sharjah to possession of the island [Abu Musa] was indubitable. Nevertheless it was feared that actual and prospective loss of trade, if not further-reaching political considerations, might tempt the Persian Government to some act of annexation; and the attention of the [British] Government of India was drawn in this connection not only to the island of [Abu] Musa but also to that of Tunb, of which the status was precisely similar.²⁵

Great Britain continued to support Sharjah's claim to Abu Musa and Ras Al-Khaimah's claim to the Tunbs after 1921. In the same year, the Persian government descended into chaos under the Qajar Dynasty and Reza Shah deposed the last Qajari ruler. In 1925, he renamed Persia Iran and Iran renewed Persia's claims to the Tunbs and Abu Musa. For example, in 1928 Iran seized a boat from Dubai off the coast of Greater Tunb. In the incident, Great Britain successfully intervened with Iran and the Iranians freed the boat and its personnel.²⁶

In 1929, Reza Shah Pahlavi offered to buy Abu Musa, Greater Tunb, and Lesser Tunb. The rulers of Sharjah and Ras Al-Khaimah rejected the offer. According to Mohammed Amaa'ineh,

In October of 1930 the Iranian government made a second proposal to the ruler of Ras al-Khaimah in which it offered to lease the island of Greater Tunb for a period of 50 years, but was again rejected. The ruler of Sharjah, in the meantime, continued to grant several companies licenses to exploit iron oxide in Abu Musa in 1933 and 1935, the last having a 21 year term.²⁷

In 1931, Iran offered to lease the Tunbs for a period of fifty years, but the ruler of Ras Al-Khaimah rejected that offer, too. Throughout the 1930s, the Iranians made a series of symbolic landings on the islands. Iranian interest also increased when the ruler of Sharjah granted a concession for oil exploration to a British firm in 1937. The British strongly supported Sharjah and Ras Al-Khaimah during that period. The British attitude toward Iran became more favorable after 1941, when

25. J.G. Lorimer, "Attempted Annexation of the Islands of Bu Musa and Tunb by Persia," *Gazetteer of the Persian Gulf, Oman and Central Arabia*, Vol. 1 (Calcutta: Superintendent of Government Printing, 1915), 745.

26. Al-Moalla, "Is the Policy Adopted by Iran towards the United Arab Emirates Regarding the Three Islands (Greater Tunb, Lesser Tunb and Abu Musa) since 1971 a Policy Based on Imperialism?" 10.

27. Amaa'ineh, "Gulf Islands in Tug-of-War," 16.

Reza Shah abdicated his throne and his son, Mohammed Reza Shah, succeeded his father. During World War II, Great Britain, the Soviet Union, and the United States used Iran as a base in the fight against the Axis powers. In the postwar period, Iran became an important Cold War ally of Britain and the US. As early as the 1950s the British offered proposals to allow Iran long-term leasing arrangements that would give Iran use of the islands while retaining the sovereignty rights of the emirates, but the parties did not come to any agreement.²⁸

After 1953, when the US partnered with Britain to overthrow the democratically elected Iranian Prime Minister Mohammad Mossadegh and restore the Shah to the throne, the US gained great influence over Iran. Iran remained a key US regional ally against both Communism and Arab nationalism.²⁹

In 1968, Great Britain announced its intention to withdraw from the Gulf by the end of 1971. At that time, Iran pressed claims for Bahrain based on its majority population of Shia Muslims along with the presence of ethnic Iranians. However, the people of Bahrain voted for independence, achieving it on August 15, 1971. In the case of Bahrain, Iran argued a recurrent theme in territorial matters – that other countries had conspired against Iran. According to this argument, Mohammed Reza Shah wanted Abu Musa and the Tunbs as a political consideration after losing Bahrain.³⁰

The Memorandum of Understanding and Iran's Occupation of the Tunbs

In November 1971, just weeks before Britain's withdrawal from the Gulf, the British negotiated a Memorandum of Understanding (MoU) between Iran and Sharjah over Abu Musa. The British also approached the ruler of Ras Al-Khaimah but he refused to negotiate over the Tunbs. British officials told the rulers that Great Britain could not defend the islands from Iran's ambition to possess Abu Musa and the Tunbs.³¹ The emirates of the southern Gulf coast planned to form a federation after Britain left the Gulf. Sir William Luce, British Resident in the Gulf, told the emirates, "Iran would not permit the existence of a federated Arab state on the southern Gulf littoral

28. Mattair, *The Three Occupied UAE Islands*, 89-90.

29. Al-Moalla, "Is the Policy Adopted by Iran towards the United Arab Emirates Regarding the Three Islands (Greater Tunb, Lesser Tunb and Abu Musa) since 1971 a Policy Based on Imperialism?" 11.

30. Schofield, "Black and White," 180.

31. Al-Tadmori, *The Three Arabian Islands*, 206

unless Iranian rights to Abu Musa and Tunbs were admitted and satisfied.”³² Shaikh Khalid bin Muhammad, ruler of Sharjah, later said,

I had spent about two years collecting documents proving that the island is Arab territory and that it belongs to Sharjah. I had asked a team of jurists to prepare legal documents and papers. These were presented to the Iranian government; however the logic of force and threat [emphasis added] allowed no room for reason and legitimate proofs.³³

As a result, the Abu Musa island is divided into parts. In fact, the MoU established a southern zone for Sharjah and a northern zone for Iran. Sharjah was allowed a police station and residents from Sharjah and Iran were given equal fishing rights around the island. Iran was allowed to place military troops within the Iranian zone, and it agreed to provide the island’s defense and security. Iranian occupation of Abu Musa went peacefully on November 30, 1971; on the same day, however, Iran occupied the Tunbs by force. Seven people, including three members of the Iranian navy, were killed, and Iran deported Arab residents of Greater Tunb to Ras Al-Khaimah. Mojtahed-Zadeh claims that “the return of the two Tunb islands to Iran by Great Britain took place on the basis of an unwritten understanding [emphasis added] between the two as Iran deemed that any written agreement would put her absolute sovereignty in doubt.”³⁴ The British attitude toward the islands is well summarized by this dispatch from the British Embassy in Tehran:

Concerning the restoration to Iran of the Tunbs and Abu Musa. Sir W Luce, the British Foreign Secretary’s special envoy, came several times to Iran and held discussions with the appropriate Iranian authorities on this subject. On the departure of the British Forces from the Persian Gulf, Iranian forces established themselves on the islands, which had been the subject of discussion on 30 November 1971[emphasis added].³⁵

32. Schofield, “Border Disputes,” 148.

33. Mattair, *The Three Occupied UAE Islands*, 175; Al Roken, “Dimensions of the UAE-Iran Dispute,” 193.

34. Pirouz Mojtahed-Zadeh, “Mind Your Own Business,” *The Iranian*, June 10, 2004, <http://www.iranian.com/Opinion/2004/June/PG/index.html> (accessed 16 June 2013).

35. N.W. Browne (Teheran), to B. Smith, (Foreign Office), “Green Book,” July 14, 1972, FCO8/1809/TNA, London in *Arabian Boundaries*, vol. 13, ed. Schofield, 668.

In light of this report, British officials in Iran considered the islands as belonging to Iran. They had upheld Sharjah's claim to Abu Musa and Ras Al-Khaimah's claim to the Tunbs for much of the twentieth century and had moved to Iran's side as the British withdrawal approached.

When Iran occupied the islands, some observers saw viewed it as Britain helping Iran at the expense of the emirates. For example, according to Anthony H. Cordesman, an expert on the Middle East who has worked at the US State Department, US Department of Energy, and the NATO International Staff,

Britain, which saw the Shah as the principal future source of stability in the Gulf, was not prepared to make an issue of the matter and an arrangement with Iran that would allow it to occupy the islands immediately after the British departure. The evidence is uncertain, but the presence of a British carrier in the immediate area during Iranian occupation, and a number of British actions, indicated British complicity in the Shah's invasion.³⁶

Interestingly, Britain and the United States did not criticize the Iranian occupation or support UAE's claim during the Shah regime. In fact, Iran was an important strategic partner of the US and the logical country to replace Britain as the protector of regional security. From Iran's occupation of the Tunbs in 1971 onwards, the Arab League has supported the UAE's claim, and "many Gulf Arabs believe that Britain chose to look the other way"³⁷ when Iran took possession of the Tunbs. Iran has maintained a presence on part of Abu Musa and the Tunbs from late 1971 to the present day.

The Postcolonial Period

In 1979, the Islamic Revolution in Iran removed the country from the Twin Pillar policy; as a result, the policy collapsed. In the same year, Iranians attacked the US, Embassy in Tehran and took the employees hostage. Since those events, both the US and Britain have supported the UAE claim on the Tunbs and Abu Musa. In this context, UAE officials hoped that the change in government might bring a change in Iran's policy toward the islands. As a result, Shaikh Saqr bin Muhammad Al-Qasimi, then ruler of Ras Al-Khaimah, sent a letter to Ayatollah Ruhollah

36. Anthony Cordesman, *The Gulf and the Search for Strategic Stability* (Boulder: Westview Press, 1984), 417.

37. "Abu Musa and the Tunbs: The Dispute That Won't Go Away, Part One," *The Estimate*, June 15, 2001, <http://www.theestimate.com/pulbic/061501.html> (accessed August 24, 2013).

Khomeini, congratulating him on the victory of the Islamic revolution. In the letter, he also reminded Khomeini that the occupation of the islands under Mohammad Reza Shah's government had not been adequately addressed. Shaikh Saqr wrote, "I do not need to remind you that the previous regime and the corrupt gangs you have defeated had been tempted to seize the two islands [Tunbs] which had belonged to the Emirate of Ras Al-Khaimah since the most ancient times."³⁸ However, Iran's policy toward the islands did not change. In February 1979, Hassan Ameenian, Iranian ambassador to the UAE, told Shaikh Saqr, "We are prepared to offer any amount you request provided you keep silent and abandon the case."³⁹ In 1980, the first president of the Islamic Republic of Iran, Abolhassan Bani Sadr, declared

Evacuate [the islands]? Who is going to take them? To whom do the islands belong? Not to anyone...In the south...[the Arab] states are connected with the United States and are not independent. At the end of the Gulf there is the Strait of Hormuz through which oil passes. They are afraid of our revolution. If we allow them to have the islands they will control the Strait. In other words, the United States would control the waterway....Is it possible to give such a gift to the United States?⁴⁰

Arab rulers did fear that the Islamic revolution would spread outside Iran, especially among Shia minority populations. Furthermore, the Iran-Iraq war (1980-88) severely strained Arab-Iranian relations. On September 22, 1980, a year after the establishment of Iran's Islamic Revolution, Saddam Hussein invaded Iran. During the war that followed, the "tanker wars" threatened oil shipping in the Strait of Hormuz as Iran fired missiles at Iraqi and Kuwaiti ships from Abu Musa island.⁴¹ The Arab Gulf states supported Iraq financially until, after the deaths of a million Iraqis and a million Iranians, the war ended in 1988. Meanwhile, and given this background, the Gulf States agreed on the need to establish an organization to define their common interests and to face the security challenges in the region. The inaugural meeting of the Gulf countries was held in Abu Dhabi in May 1981. The Gulf Cooperation Council (GCC) was established by Saudi Arabia, Oman, the UAE, Qatar, Bahrain,

38. Al-Tadmori, *The Three Arabian Islands*, 152.

39. Ibid., 159.

40. Hassan H. Al-Alkim, "The Islands Question: An Arabian Perspective," in *Security in the Persian Gulf: Origins, Obstacles, and the Search for Consensus*, ed. Lawrence G. Potter and Gary G. Sick (New York: Palgrave, 2002), 159.

41. "Iranian Sensitivities over Disputed Island," BBC News, November 11, 2005, http://news.bbc.co.uk/go/pr/fr/-/2/hi/uk_news/4427778.stm (accessed 24 August 2013).

and Kuwait.⁴² Specifically, with respect to the UAE-Iranian islands disputes, Iraq's leader, Saddam Hussein, claimed that liberation of the islands from the Iranians was one of Iraq's goals. Iran also used the islands as a base for the Revolutionary Guard Corps. Saudi Arabia, Kuwait, and the other GCC States contributed significant aid to Iraq. According to Iranian scholar Jalil Roshandel, "Because of their massive assistance to Iraq during eight years of war with Iran, the Arab monarchies expected some direct or indirect retaliation by the Iranians."⁴³ But Arab scholar Hassan Al-Alkim argues that Arab rulers moved earlier to pacify Iran, that

Once it became clear that Iraq was unable to win a quick war, the [Gulf Cooperation Council] states pursued a dual policy toward Iran. While they continued to support Iraqi war efforts, some of them began to strengthen ties with Iran. As a result, the Iranian ambassador to the UAE assumed office in October 1982, and quiet payments to Iran started to take place. The Saudi fear of Iranian retaliation against the GCC states' oil installations, because of Iraqi bombardments of its oil installations, led them to export refined petrochemical products to Iran to make up for the shortage.⁴⁴

The situation was further complicated when Iraq, which was supported by the GCC, invaded Kuwait on August 2, 1990. In the same year, the Saudi government gave the US permission to base American troops in Saudi Arabia during the Allied effort to expel Iraq from Kuwait. This revealed the GCC's failure to provide a unified defense system for its members which would have precluded the need for external intervention.⁴⁵

The Events of 1992

The Arab League had supported the UAE in the islands dispute since the latter took its case – after its formation in 2 December 1971 – to the United Nations. The GCC had also announced its support of the UAE. Both organizations supported the

42. Charles W. Freeman, Jr., "The GCC at 25: A Tour d'Horizon", *Middle East Policy* 14 (Winter 2006): 148.

43. Jalil Roshandel, "On the Persian Gulf Islands: An Iranian Perspective," in *Security in the Persian Gulf: Origins, Obstacles, and the Search for Consensus*, ed. Lawrence G. Potter and Gary G. Sick (New York: Palgrave, 2002), 144.

44. Al-Alkim, "The Islands Question," 162.

45. David Priess, "The Gulf Cooperation Council: Prospects for Expansion," *Middle East Policy* 5 (January 1998): 17.

UAE in 1992 when Iran, after regular Iranian violations of the MoU since 1983,⁴⁶ prevented third-party nationals (neither from Iran nor Sharjah) from landing in the Sharjawi zone on Abu Musa. Iran claimed that Sharjah had violated the MoU by constructing new buildings without permission from Iran as well as importing third-party nationals. Jalil Roshandel remarks, “Abu Musa is not a tourist island.”⁴⁷ Mojtahed-Zadeh writes that the Iranians acted after Iranian security personnel performed long-term surveillance and verified the new Sharjah construction and that, apparently with the agreement of certain Arab countries, a number of non-native Arabs were to become residents on the island.⁴⁸ Other scholars characterize the incident quite differently. According to Ayman Alouri and Brian O’Connell,

In August 1992, the Iranian government imposed its full control on the entire island by annexing the other province that was administered and controlled fully by Sharjah. In addition, Iran prevented UAE citizens and residents from entering the island without obtaining an Iranian visa. In fact, Iranian authorities refused to provide urgent medical assistance or water to a large number of passengers including citizens and Arab teachers with their families.⁴⁹

In early September 1992, both the GCC Council of Foreign Ministers and the Arab League expressed full support for the UAE’s position and urged Iran to end its occupation of the islands in the interest of regional security. Representatives of the UAE and Iran met for direct bilateral talks in Abu Dhabi on September 27 and 28, 1992. Right from the start, the UAE demanded that Iran end the occupation of the Tunbs, honor the Abu Musa MoU, and agree to seek resolution of the dispute about sovereignty over Abu Musa according to a specific schedule.⁵⁰ The talks quickly broke down. The following December, the GCC supported a strategy of submitting the three islands dispute to the ICJ if direct bilateral talks between the UAE and Iran could not be restarted, and demanded that Iran ends its occupation of the Tunbs. In response, Iranian President Hashemi Rafsanjani said, “Iran is surely stronger than

46. Richard N. Schofield, “Borders and Territoriality in the Gulf and the Arabian Peninsula during the Twentieth Century,” In *Territorial Foundations of the Gulf States*, ed. Richard N. Schofield (London: UCL Press, 1994), 40.

47. Roshandel, “On the Persian Gulf Islands,” 139.

48. Mojtahed-Zadeh, *Security and Territoriality*, 177.

49. Ayman Alouri and Brian O’Connell, *Iranian Occupation of the Three UAE Islands: Toward a Peaceful Resolution and Regional Stability* (Washington, D.C.: Washington Center for International Studies & Government of Ras-Al-Khaimah, 2002), 64.

50. Al-Alkim, “The Islands Question,” 161.

the likes of you (...and) to reach these islands one has to cross a sea of blood...we consider this claim totally invalid.”⁵¹

The Arab League presented the islands dispute issue to the 47th Session of the General Assembly of the UN. The UAE received support from several European nations, including Great Britain, France, and Germany. By January 2, 1994, the UN Secretary General stated that the UN was ready to “play any role in resolving the dispute over the three islands within the context of diplomacy, mediation and arbitration, should the two parties seek its mediation.”⁵² Also in 1994, Britain, which had allowed Iran’s occupation of the islands to happen in 1971, announced support of the UAE’s demand that the dispute be referred to the ICJ after the failure of the UAE’s efforts to resolve the issue through bilateral negotiations.⁵³ The US also announced support for a resolution of the islands dispute in 1994, and in 1995 US Secretary of State Warren Christopher co-signed a communication with the GCC in support of taking the dispute to the ICJ if necessary. In November 1995, the UAE and Iran again met for direct bilateral talks in Doha, Qatar. However, negotiations again collapsed, reportedly because Iran continued to hold an uncompromising position.⁵⁴

In 2004, the European Union (EU) and the GCC held a meeting in Brussels. The parties discussed many political, economic, and security issues in the Middle East as well as the lack of progress toward resolving the UAE-Iranian islands dispute. Furthermore, they restated their support for a peaceful solution either through direct talks or by submitting the case to the ICJ.⁵⁵ In 2004, in response to the EU-GCC meeting, Mojtahed-Zadeh wrote a public letter to EU President Javier Solana, protesting EU interference and arguing that “the fact from the Iranian point of view is that there is no ‘dispute’ between the two countries and all that is there, is a one sided claim to the Iranian territories by Abu Dhabi.”⁵⁶

Iran has consistently rejected referral of the islands dispute to the ICJ or any form of third-party arbitration. According to an Iranian scholar, the Islamic regime in Iran is inherently opposed to any third-party role in the islands dispute because of

51. Schofield, “Border Disputes,” 152.

52. Al Roken, “Dimensions of the UAE-Iran Dispute,” 197.

53. Al-Tadmori, *The Three Arabian Islands*, 253.

54. Shereen Busheri, “GCC Wants UAE, Iran to Settle Islands Row,” *Arab News*, December 8, 2004. Available <http://www.arabnews.com/?page=4§ion=0&article=55735&d=8&m=12&y=2004> (accessed August 24, 2013).

55. European Union, “14th EU-GCC Joint Council and Ministerial Meeting,” May 17, 2004, http://ec.europa.eu/external_relations/gulf_cooperation/docs/14jcf.pdf (accessed April 14, 2009).

56. Mojtahed-Zadeh, “Mind Your Own Business.”

its revolutionary commitment to Iranian autonomy in the context of foreign policy issues.⁵⁷ An independent and more cynical assessment is that so long as Iran possesses the islands, there is no incentive to accommodate third-party intervention.⁵⁸ Schofield suggests that the islands issue is crucially important to the domestic politics of Iran:

The imprint of the Abu Musa/Tunbs dispute upon the Iranian public mind should not be underestimated. In the minds of most Iranians, these islands were taken by Britain in the nineteenth century and “rightfully” returned to Iran on Britain’s departure from Gulf waters in 1971. For much of the past few years, they have assumed far greater importance to the average citizen than other foreign-policy concerns such as the future of Palestine and relations with Iraq.⁵⁹

In early December 2007, when Shaikh Khalifa bin Zayed (current president of the UAE, who has been in office since 2004) was asked about Abu Musa and the Tunbs, he said, “We will spare no effort in retrieving them and we demand that they be returned to our national sovereignty. We have made the international community and Iran’s leadership aware of our enormous concern about the continuing occupation of these islands.”⁶⁰ Later, the GCC took the unprecedented step of inviting the Iranian president Mahmoud Ahmadinejad to the bloc’s annual meeting, which he attended. However, at the end of the meeting, the GCC released a statement that repeated the UAE’s demands for bilateral talks and referral to the ICJ. It also expressed “disappointment that the contacts with Iran did not achieve any positive results that could solve the issue.”⁶¹

In May 2008, Mustafa Al Faqee, deputy speaker of the Council of Arab Parliamentary Union, recommended that the UAE keep the issue of the islands dispute separate from the controversial, potentially divisive, and distracting issue of Iran’s nuclear program and the confrontation between Iran and the US.⁶² In August

57. Roshandel, “On the Persian Gulf Islands,” 145.

58. “Abu Musa and the Tunbs: The Dispute that Won’t Go Away, Part Two,” *The Estimate*, July 24, 2001, <http://www.theestimate.com/public/072401.html>.

59. Schofield, “Border Disputes,” 155.

60. Lynne Roberts, “UAE Presses Gulf Island Claim,” *ArabianBusiness.com*, December 2, 2007, <http://www.arabianbusiness.com/505420-uae-presses-gulf-island-claims> (accessed August 24, 2013).

61. Simon Henderson, “Unwanted Guest: The Gulf Summit and Iran,” *The Washington Institute for Near East Policy*, December 7, 2007, <http://www.washingtoninstitute.org/templateC05.php?CID=2691> (accessed August 24, 2013).

62. Joel Bowman, “Arab Nations Urged to Pressure Iran on UAE Islands Dispute,” *Arabian Busi-*

2008, the UAE filed a formal protest with the Iranian ambassador to the UAE for “flagrant violations of the Memorandum of Understanding” and a UAE official stated that the MoU of 1971 had not transferred the sovereignty of Abu Musa island or any of its parts to Iran.⁶³ In fact, the opening sentence of the Abu Musa MoU states, “Neither Iran nor Sharjah will give up its claim to Abu Musa nor recognize the other’s claim.”⁶⁴

On December 2, 2008, on the thirty-seventh anniversary of the UAE’s independence from Great Britain, Shaikh Khalifa again repeated the UAE’s call for Iran to resolve the islands dispute through direct bilateral negotiations, international arbitration, or referral of the dispute to the ICJ. He also repeated the UAE’s frequent position that the country would accept the results “whatever they may be.”⁶⁵ It should be noted that the alternatives, direct bilateral negotiations and legal approach, have already failed on many occasions because of the Iranian stance. In fact, in all the GCC annual meetings, Arab Gulf states have supported UAE claims over the three islands and demanded that Iran submit the case to the ICJ. They have reiterated their firm rejection of Iran’s continued occupation of the three islands and expressed their support for the UAE’s right to, and sovereignty over, its three islands. However, Iran has remained silent towards these claims, as it believes that the islands belong to Iran and it is not a negotiable issue.⁶⁶

The Iranian Legal Argument

Immemorial Prescription

Under the principle of acquisitive prescription, a state can gain sovereignty over another state’s territory but possession must be uninterrupted, undisturbed, and

ness.com, May 11, 2008, <http://www.arabianbusiness.com/518890-arab-parliament-called-on-to-resolve-island-dispute> (accessed August 4, 2008).

63. Abdul-Hadi Al-Timimi, “UAE Condemns Iranian Move to Set Up Offices on Abu Musa Island,” Gulf News.com, August 15, 2008, <http://www.gulfnews.com/nation/Government/10237082.html> (accessed August 24, 2013).

64. Richard N. Schofield, “Boundaries, Territorial Disputes and the GCC States,” in *Gulf Security in the Twenty-First Century*, ed. David E. Long and Christian Koch (Abu Dhabi: The Emirates Center for Strategic Studies and Research, 1997), 157.

65. “Iran Should Take UAE’s Hand of Friendship,” GulfNews.com, December 20, 2008, <http://www.gulfnews.com/articles/08/12/20/10268546.html> (accessed January 4, 2013).

66. “Arab Leaders Support UAE Sovereignty over its Occupied Islands,” *The UAE interact*, March 27, 2014, available at <http://www.uaeinteract.com/news/default3.asp?ID=147#60776> (accessed October 22, 2014).

uncontested over an extended period of time.⁶⁷ Immemorial prescription, then, is a claim that goes back to ancient times. Iran claims continuous possession of Abu Musa and the Tunbs going back over 2,500 years. In 1971, Mohammad Reza Shah said, “what we are demanding is what has always belonged to our country throughout history...It is perfectly natural and reasonable that, now that imperialism is withdrawing, Iran should regain what has always been its possession historically.”⁶⁸ He also said, “The islands are ours, but some eighty years ago Britain interfered with exercise of our sovereignty and grabbed them for her wards, Sharjah and Ras al-Khaimah.”⁶⁹ The question is at what point was Iran’s possession interrupted. Iranian scholars claim Iran’s historical sovereignty was interrupted in 1903, when Sharjah raised its flag over Abu Musa with British approval. Thus, the argument goes that Iran had sovereignty over the three islands through a succession of Persian dynasties and the Islamic conquest until late in the period of British Gulf domination. However, there is simply no documentary evidence in support of Iran’s claims to the islands that dates back farther than the nineteenth century. Circumstantial evidence suggests that a claim of uninterrupted sovereignty over the islands is dubious. Certainly, the eighteenth century collapse of the Safavid dynasty could have interrupted the Iranian chain of sovereignty. Indeed, David Seton’s journal suggests that Persia did not control the Tunbs by the first decade of the nineteenth century. Duarte Barbosa’s account may push the date of interruption to at least the early sixteenth century, at least with respect to islands in general off the southern coast of the Gulf. Interestingly, Iranian lawyer Davoud H. Bavand argues “a country as ancient as Iran whose territorial character was formed more than two thousand years ago cannot be expected to produce a certificate of title, bill of sale, or a grant document for every inch of its present-day territory.”⁷⁰

Iran’s claim to Abu Musa and the Tunbs based on immemorial prescription seems quite weak. Persian dynasties over the centuries demonstrate significant shifts in territorial reach. It might be difficult to argue that Iran has historically been the same national entity from the Achaemenid times to that of the Sassanids. The Qawasim of the southern Gulf coast made historical claims on the islands so it would be difficult to make a case that Persian possession of them was continuous. Persian dynasties were administered by extensive bureaucracies, yet there is no documentary

67. Davoud H. Bavand, “The Legal Basis of Iran’s Sovereignty over Abu Musa Island,” in *Small Islands, Big Politics*, ed. Hooshang Amirahmadi (New York: St. Martin’s Press, 1996), 96.

68. Mattair, *The Three Occupied UAE Islands*, 181.

69. Ibid., 184.

70. Bavand, “The Legal Basis of Iran’s Sovereignty,” 78.

evidence that Persia exercised sovereignty over the disputed islands. As Schofield observes, “It [Iran] has not yet come forward with any records of its own that display or document an earlier connection with the islands.”⁷¹

Memorandum of Understanding

According to Iran, the Abu Musa MoU is an agreement between Iran and Great Britain, not between Iran and Sharjah. Thus, Iran has no obligation to deal with the UAE’s complaint in the islands dispute. Furthermore, Mojtahed-Zadeh describes the MoU as “a legal instrument which gives no right of interference to any third party.”⁷² At the same time, he argues that Sharjah is bound to abide by the terms of the MoU.

With respect to the MoU, the UAE argues that the agreement was reached without the true consent of the ruler of Sharjah. If the UAE can demonstrate that the ruler of Sharjah signed the Abu Musa MoU under duress, the MoU may not be a valid agreement. There is some indication that this was the case.

According to Article 52 of the 1969 Vienna Convention on the Law of Treaties, “A treaty is void if its conclusion has been procured by the threat or use of force in violation of the principles of international law embodied in the Charter of the United Nations.”⁷³ Addressing the UAE claim of duress, Mojtahed-Zadeh writes, “It was Great Britain with whom Iran had arrived at the Memorandum of Understanding, when the former was still a major power in the world, much stronger than Iran, and would in no way have accepted such an arrangement from Iran under duress.”⁷⁴ In an interview, Mattair characterizes Mojtahed-Zadeh’s argument for obtaining the MoU under duress as “legal sophistry.” The British would not have been able to mediate the MoU and satisfy Iran if Sharjah had not been threatened by the Shah publicly.⁷⁵

The allegation that the ruler of Sharjah acted under duress deserves more serious consideration than that provided by Mojtahed-Zadeh, because the Arab world believes that Great Britain was Iran’s partner in transgressing against Sharjah. Arab scholars argue that Iran has no legitimate claim to Abu Musa under cession according to the memorandum of understanding because, as the ruler of Sharjah

71. Schofield, “Border Disputes,” 143.

72. Mojtahed-Zadeh, “A Look,” 13.

73. Mattair, *The Three Occupied UAE Islands*, 176.

74. Mojtahed-Zadeh, “Legal and Historical Arguments,” 325.

75. Mattair, Interview, Virginia, US, March 23, 2009.

claimed, he had been coerced into cooperating with the Iranians. In fact, cession happens when a country gives up its sovereignty over a certain territory to another according to an agreement between them. For example, cession could be based on financial compensation, or could be accomplished by force when the conquering country exercises pressures on the defeated country to give it up. As discussed earlier, in the colonial period, the ruler of Sharjah was forced to give up his territories. So, Iran could not claim its sovereignty over Abu Musa based on the MoU.⁷⁶

British Maps

Scholars who support Iran's claim frequently criticize the role of Britain as a colonial power in the Persian Gulf during the nineteenth century. For example, Ali Rastbeen writes, "Britain took absolute advantage of her presence, primarily and legally as Iran's agent in the Persian Gulf, to secure the region for trade purposes but ultimately as an occupying alien force."⁷⁷ At the same time, Iranians use British evidence in support of their claim to Abu Musa and the Tunbs. For example, several official and unofficial British maps of the nineteenth century depict the disputed islands in the same color as Iran. To Iranian scholars, the most important of those maps was called The Map of the Persian Gulf and was made in 1886 by the Intelligence Division of the War Office of the United Kingdom. The British gave a copy of the map to the Persian ruler Nasser ad-Din Shah Qajar in 1888.⁷⁸ However, the circumstances under which this map was issued are unknown to Iranian and Arab scholars.⁷⁹ Iranian scholars take the map as evidence that at least as late as 1888 Britain recognized Persia's sovereignty over Abu Musa and the Tunbs. In the Island of Palmas case in 1928 between the Netherlands and the United States, the ICJ set out some criteria on which a map could be used as evidence either of recognition or the abandonment of rights:

The first condition required of maps that are to serve, as evidence on points of law is their geographical accuracy. Second, the map should not contradict the existence of legally relevant facts. Third, the map must be based on information carefully collected, preferably by researchers on the spot, for the purpose of indicating political distribution of territories. Fourth, the map must

76. Al-Moalla, "Is the Policy Adopted by Iran towards the United Arab Emirates Regarding the Three Islands (Greater Tunb, Lesser Tunb and Abu Musa) since 1971 a Policy Based on Imperialism?" 24.

77. Ali Rastbeen, "The United Arab Emirates and the Three Iranian Islands," Strategic, May 2006 http://www.strategicsinternational.com/Sem_RASTBEEN.pdf (accessed June 16, 2013).

78. Mojtahed-Zadeh, "A Look," 9-11

79. Mattair, Interview, March 23, 2009.

be, preferably, an official or semi-official map asserting the sovereignty of the country whose government has issued it.⁸⁰

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Given the ICJ's legal requirements for using maps as evidence of territorial claims, the Iranian scholars' enthusiasm for presenting British maps as evidence to support their legal argument seems contradictory. The 1886 map contradicts other evidence: British authorities defended the rights of Sharjah and Ras Al-Khaimah at that time and told Iran before and after delivering this map that the Iranian claim was not valid. As indicated earlier in the historical background section, Britain recognized Sharjah and Ras Al-Khaimah's rightful ownership over the three islands in official letters before producing this map. This map was based on nautical surveys, not political research. Other official and private British maps of the period portray the islands as Arab territory. In the case of the 1886 map, while it is an official map, there is no evidence that the map was supposed to indicate political control of territory or that Great Britain, the state that issued the map, intended to assert its own claims of sovereignty. In addition, Mattair writes that "after the Shah noted in 1888 that the islands were portrayed in the same color as Persia, the British Minister in Tehran, Sir Drummond Wolff, wrote to the Foreign Office that the gift of the map had 'certain results which were hardly contemplated.'"⁸¹ All of this demonstrates that the British did not intend to recognize the Iranian claim with this map. Furthermore, "international courts do not accept maps and have great reservations about them. They rely only on documented maps which are approved by both litigants and appended to international treaties or international arbitration decisions."⁸²

Persian Taxation in the Greater Tunb

Iranian scholars sometimes present documentation that refers to taxes collected by the Lingeh island (on the northern coast of the Gulf) authorities on behalf of Persia at Sirri Island from 1877 until 1887. These scholars argue that taxes might have been collected at Greater Tunb because of its geographical proximity to Sirri Island.⁸³ Iran does not make similar claims about the administration of Abu Musa because of its geographical remoteness, so it is important to distinguish between the case of Abu Musa and the case of the Tunbs. No reasonable person would conclude that records of Persian taxation at Sirri Island from 1877 through 1888 prove sovereignty over Greater Tunb, regardless of Greater Tunb's proximity to Sirri Island. The dates of

80. Mirfendereski, "Ownership of the Tunb," 133.

81. Mattair, *The Three Occupied UAE Islands*, 190.

82. Al-Tadmori, *The three Arabian Islands*, 277.

83. Schofield, "Border Disputes," 144-145.

taxation roughly coincide with Persia's claim to the Tunbs (1877) and Abu Musa (1887), but since Persia did not act on their claims until the early twentieth century, the idea that Persia taxed the residents of Great Tunb before that appears unfounded. In addition, the issue of Persian sovereignty over Greater Tunb raises the question of why the Iranians, during the Pahlavi regime, repeatedly made offers to buy or lease the islands, including Greater Tunb, during the twentieth century. The British documented several attempts by Iran to purchase or lease the islands, raising the question of why would Iran offer compensation for territory that already belonged to it?

In 2011 the ICJ ruled in *Qatar v. Bahrain: Maritime and Territorial Delimitation Questions between Qatar and Bahrain*, especially with respect to Bahrain's ownership of the Hawar islands. The ICJ actually did not rule so much on the disputed facts between the parties as on what the British position during the colonial period had been.⁸⁴ Viewed in terms of the UAE-Iran islands dispute, what is interesting is that the ICJ awarded Bahrain sovereignty rights over an area that had been under Qatar's control between 1868 and 1937. Interestingly, the Hawar islands are closer to Qatar than they are to Bahrain. In fact, Qataris can wade to them at low tide. When the ICJ awarded the islands to Bahrain, it demonstrated the international legal principle that geographical "contiguity is not a sufficient basis for a claim to sovereignty."⁸⁵

The UAE Legal Arguments

British Documentary Record

The British documentary record with respect to Qawasim claims on Abu Musa and Greater Tunb begins with a letter from the ruler of Ras Al-Khaimah to a British official in 1864. Afterwards, the British confirmed the existence of correspondence issued by the British Government of India to the effect that the islands belonged to the Qawasim of the southern coast of the Gulf. There is a letter from 1864 in which the Ras Al-Khaimah ruler claims hereditary title to the islands. In addition, there is also the 1884 correspondence between the Qawasim leaders in Lingeh and Ras Al-Khaimah which appears to support the claim on Greater Tunb by the Qawasim of the southern coast of the Gulf. However, Mirfendereski argues, "The originals of these letters do not seem to exist. Therefore, any translation thereof, which was undertaken by the British authorities, or by persons in their influence, must be viewed with a

84. "The Bahrain-Qatar Border Dispute: The World Court Decision, Part 1," *The Estimate*, March 23, 2001, <http://www.theestimate.com/public/032301.html> (accessed September 23, 2008).

85. Mattair, *The Three Occupied UAE Islands*, 194.

certain amount of healthy skepticism.”⁸⁶ Actually, photocopies of the original letters written in Arabic do exist (Figure 1.1). The British documentary record from the late nineteenth century through November 1971 strongly supports the claims of Sharjah and Ras Al-Khaimah to the islands, but the evidence is equivocal in some respects. For example, based on British historical documents Schofield writes

Britain recognized [Sharjah’s] hereditary estate over and exclusive right to Abu Musa from the end of the eighteenth century. Moreover, [Sharjah] points out that Britain actively defended its claims to the island from the early 1870s. [Sharjah] therefore claims prescriptive title dating back to 1872. While admitting that the administration of the Tunbs was in effect shared between the Qawasim sheikhs of Lingeh and Ras al-Khaimah [emphasis added] during the 1878-87 period, Sharjah’s rulers have denied that Abu Musa was anything other than directly administered by Sharjah itself. It is also claimed that pearlers and fishermen paid annual dues to the Ruler of Sharjah for the period from 1863 onwards.⁸⁷

British colonial documentation, now stored at the British Library’s Oriental and India Office Collection (OIOC) in London, does not support Persian sovereignty over the islands as Iranian scholars claim. As a result, Schofield writes that Iran is forced to “make rather selective use of those minority sections of the British archives that support the Persian claim to the islands. Certainly where Abu Musa is concerned, the OIOC record makes depressing reading for the substantiation of Iranian claims.”⁸⁸

Historical Consolidation of Title

As established by Charles de Visscher, a judge and former President of the ICJ, to achieve historical consolidation of title, a state must exercise multiple functions associated with sovereignty over a long period of time. According to Al Roken, at least from the first decade of the twentieth century, the emirates achieved historical consolidation of title to the islands. Sharjah and Ras Al-Khaimah appointed governors to the inhabited islands, collected taxes and installed utilities and public facilities. People living on Abu Musa were citizens of Sharjah and people living on Greater Tunb were citizens of Ras Al-Khaimah. Furthermore, the flag of Sharjah flew over Abu Musa from 1903 onwards and the flag of Ras Al-Khaimah flew

86. Mirfendereski, “Ownership of the Tunb,” 125.

87. Schofield, “Borders and Territoriality,” 36.

88. Schofield, “Anything But,” 179.

over the Greater Tunb from 1921 through 1971.⁸⁹ It could be reasonably argued that, under international law, Iran cannot claim the disputed islands based on the concept of acquisitive prescription. For acquisitive prescription to be valid, a state must exercise actual sovereignty over territory without protest from the formerly occupying country. Historical consolidation of title appears to be supported in the claim that Sharjah and Ras Al-Khaimah administered Abu Musa and Greater Tunb, respectively, from the late nineteenth century until 1971. Iran may claim sovereignty over the islands from ancient times onward but, whereas the UAE can document its claim based on historical consolidation of title, Iran cannot document its title based on immemorial prescription.

Occupation of the Tunbs: Iranian Violation of International Law

It is important to distinguish between conquest and occupation. Although it was formerly common practice to claim territory following conquest (for example, after the Islamic conquest of Iberia), conquest is no longer considered adequate to provide a legitimate claim under international law.⁹⁰ Occupation, on the other hand, occurs when a conqueror's forces actually take administrative control of conquered territory and the conquering state's control only extends to the actually occupied territories of the defeated opposing state, according to the 1907 Hague Regulation.⁹¹ Based on this definition, Iran used force to occupy a land where authority had been exercised.⁹²

According to Mattair, "Iran's occupation by force of the Greater and Lesser Tunbs on 30 November 1971 clearly constitutes a violation of the twentieth century legal principle requiring states to refrain from the threat or use of force to acquire territory."⁹³ Specifically, he claims that Iran violated Article 33 of the UN Charter that requires disputing states to try negotiations or some form of arbitration before

89. Al Roken, "Dimensions of the UAE-Iran Dispute," 191.

90. Al-Moalla, "Is the Policy Adopted by Iran towards the United Arab Emirates Regarding the Three Islands (Greater Tunb, Lesser Tunb and Abu Musa) since 1971 a Policy Based on Imperialism?" 23.

91. Occupation and International Humanitarian law: Questions and Answers, International Committee of the Red Cross, available at <https://www.icrc.org/eng/resources/documents/misc/634kfc.htm> (accessed November 6, 2014)

92. The distinction between conquest and occupation is relevant in the context of Persia's initial official claims to the Tunbs and Abu Musa in the latter part of the nineteenth century. While it is true that the Persians conquered the Lingeh in 1887, they failed to occupy the disputed islands, which remained under the administrative control of the Al-Qawasim rulers of Ras Al-Khaimah and Sharjah. Great Britain, which would not end its official presence in the Gulf until 1971, also supported the claims of the Emirates to the islands.

93. Mattair, *The Three Occupied UAE Islands*, 172.

using force. Iran's violation of international law with its occupation of the Tunbs in 1971 may be based on an extremely persuasive legal argument. Since Iran failed to reach an agreement with the ruler of Ras Al-Khaimah over buying or leasing the Tunbs during a span of over fifty years, the Iranian occupation of the Tunbs seems like an unjustifiable act of aggression. The Arabs say that Britain acted with Iran to deprive Ras Al-Khaimah of territory previously recognized by the British as belonging to the emirate. Mojtahed-Zadeh's claim that Iran's occupation of the islands occurred as a result of "an unwritten understanding"⁹⁴ is not persuasive in a legal sense. In fact, it is difficult to imagine the ICJ or any other impartial third party being persuaded on the basis of an unwritten agreement between Britain and Iran.

Conclusion

The historical and legal arguments presented by both Iran and the UAE are difficult to reconcile, but the Iranian arguments, based on British archive records, are far less persuasive than those of the UAE. The UAE's arguments are relatively short-term and documented, but the Iranian arguments are very long-term and undocumented. In short, based on international law, the Iranian legal arguments are weak in comparison with the UAE's legal arguments. As demonstrated, Iran took the Tunbs by force and used duress to establish a presence on Abu Musa. Both actions violated international law. In general, Iranian scholars attack UAE claims rather than providing evidence. During the colonial period, the UAE produced substantial documentary evidence supporting its claim from the late nineteenth century through to late 1971. During the post-colonial period, since Iran occupied the islands, the UAE has rallied support from the Arab League, the GCC, Western nations, the UN and the European Union. Whereas the UAE position calls for referring the dispute to the International Court of Justice if bilateral direct negotiations fail, Iran has consistently rejected any kind of third-party arbitration. It concluded that the only alternative to the legal approach is direct bilateral negotiations, but such negotiations have already failed on many occasions. It could be argued that Iran refuses third-party methods of dispute resolution because the Iranians know their historical and legal arguments are weak. To conclude, any future resolution is likely to be not legal but political, which in itself could prove extremely problematic because of the "national pride" the Iranians have invested in the issue.

94. Mojtahed-Zadeh, "Mind Your Own Business."

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