
Dimensions of the UAE–Iran Dispute over Three Islands

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Introduction

The current dispute between the United Arab Emirates (UAE) and Iran over the three islands of Greater and Lesser Tunb and Abu Musa is a classic example of the perpetuity of historical disputes. Time may solve many problems, but not those related to the difficult issue of sovereignty and title between states. Legal rights that have been wholly or partly usurped do not disappear with the mere passage of time.

The crisis concerning the three disputed islands is multidimensional. Politically, it reflects the hegemonic attitude of major regional powers (major in terms of population, area and wealth). Economically it highlights the strategic importance of the islands' location as a toll booth to the Straits of Hormuz, controlling the passage of a vital regional commodity, oil, and even jeopardizing the very source of that commodity in a smaller state. Furthermore, the crisis has a historical-legal dimension. Unfortunately, however, this third dimension has not been adequately probed by those concerned with, or interested in, the crisis. This is probably due to the difficulty of research into the quagmire of history and international law, and to the scarcity of references and literature dealing with the dispute. In this chapter I shall deal with different axes indicating the historical dimension of the dispute which support the UAE's rightful title to the three islands and refute Iranian claims thereto. However, I must stress that I am wholeheartedly in favour of a peaceful solution, as strongly advocated by the UAE. The region should be spared the horrors of a further war, and should avoid anything that may unnecessarily drain its human and material resources and upset the regional balance of peace.

Historical Roots of the Dispute

The Arabian Gulf, all its waters, islands and coasts, 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. The legal status of the islands was closely linked to the legal status of the southern coast area until the presence of the European colonial powers early in the sixteenth century.



The rise of the Qawasim state and apportionment of the Gulf islands

On the fall of the Ya'aruba state in Oman (1624–1741), a new Arab maritime power rose to fill the vacuum. The new power was the Qawasim state based in Ra's al-Khaimah. By the middle of the eighteenth century, the Qawasim fleet was the principal naval power in the Gulf. The Qawasim eventually extended their influence to several regions in the Indian subcontinent and the East African coast. However, their power was concentrated on the southern coast of the Gulf, Ra's al-Khaimah and Sharjah being their major cities. In 1750 a faction of the Qawasim moved northward where they settled down in the area of Lingeh. The settlers eventually established an independent state in that region and sought to extend their influence to the islands and coastal areas of the Gulf.¹

Historical references point to a sharing of the Gulf islands by the two Qawasim factions: the islands of Sirri and Hengam became the property of the Lingeh Qawasim, while Abu Musa, Greater and Lesser Tunbs, and Sir Abu Nu'air came under the Qawasim of the southern coast (Ra's al-Khaimah and Sharjah). Such arrangements were already in being by 1835.²

Thus, the Qawasim of the coastal areas established and maintained unopposed legal and actual sovereignty over the islands. In 1864 their ruler sent an official message to the British Resident informing him that the islands of Abu Musa, Greater and Lesser Tunbs, and Sir Abu Nu'air had been ruled by his ancestors, and would, therefore, remain under his rule. This message was the first document asserting the UAE's legal title to the islands. Sovereignty was further demonstrated in various forms of protest against any intervention in the islands or violation of the agreement by the Lingeh Qawasim or neighbouring emirates. As early as the 1870s, Abu Musa island had become an agricultural centre and a resort for the Qawasim rulers of Sharjah.³

This separation of the two Qawasim factions is further confirmed by the fact that in 1873 the ruler of the Sharjah Qawasim, Sheikh Salem bin Sultan, dispatched 50 armed men to Abu Musa to drive away ships belonging to Lingeh Qawasim. Even earlier, in 1871, the sheikh of the Qawasim of Ra's al-Khaimah had denied Lingeh Qawasim entry into the Tunbs. He sent a message to the Lingeh sheikh protesting against unauthorized visits to the islands by his subjects. The Lingeh ruler replied confirming that the islands actually belonged to the Qawasim of the southern coast.⁴

The attitude of the then dominant colonial power (Britain, through the British government of India) was to consider the title to the islands and division thereof between the two Qawasim factions to be a purely local issue in which it had no desire to interfere. However, the British Political Agent, Haji Abdulrahman, who had broad commercial interests with the Lingeh Qawasim, tried to demonstrate, in his correspondence with the British government of India, that the islands belonged to the Lingeh Qawasim. He even ordered the ruler of Ra's al-Khaimah's Qawasim⁵ to quit them. However, the ruler of Ra's al-Khaimah stressed, in a message sent in February 1873, that the three islands were under his jurisdiction, and also indicated that Sirri island belonged to the Lingeh Qawasim. In a message from their ruler in 1877, the Lingeh Qawasim admitted that title to the Tunbs belonged to Ra's al-Khaimah Qawasim.⁶

A further proof that the Qawasim of the southern Gulf had title to these islands is that they exercised all aspects of sovereignty over them. In 1879, for example, the ruler of Sharjah, Sheikh Salem bin Sultan, exiled his political opponents to Abu Musa island. When he himself was overthrown by his nephew, Sheikh Saqr bin Khaled, in 1883, he chose to live on Abu Musa himself.⁷

In the late nineteenth century Imperial Iran began to spread its influence to the northern Gulf coast. In 1887, Persian armies invaded Lingeh and expelled the Qawasim governors who had ruled it for over 125 years. The Persians continued their offensive, ultimately occupying the island of Sirri. It is worth noting that in one of his reports, the Commander of the Iranian forces stated that the Qawasim had settled down in Abu Musa, which he regarded as their base.⁸

When Iran occupied the island of Sirri, the Qawasim of the southern coast began to have fears vis-à-vis the territorial ambitions of their northern neighbour. Their fears proved well-grounded when Iran set forth a series of claims to other islands. The British government protested mildly against Iran's occupation of the island of Sirri, while the Qawasim continued to affirm their title to it.⁹

In a note dated 11 March 1888 Britain demanded an explanation for the hoisting of the Iranian flag on the island. The note also asked for evidence of Iranian claims to the island, especially as it was being ruled by the Qawasim in their capacity as the ruling dynasty in Lingeh, and not as Iranian officials. On the same day, the Iranian Foreign Ministry replied saying:

*. . . It is to be stated that according to all laws of progressive countries, the strongest evidence of ownership (of places and territories) of a government is 'occupation' and 'possession', and hence there is no need for presentation of any other evidence.*¹⁰

In 1898, the ruler of Sharjah, by virtue of his sovereignty over the island,¹¹ granted three Arab nationals the first concession to prospect for red oxide in Abu Musa.

Iran claims Abu Musa

Territorial and political ambitions, combined with the economic interests of influential elements within the government, helped strengthen the first Iranian claim to the island of Abu Musa in 1904. Iran began to challenge Sharjah's sovereignty over the island, with its eyes on the island's resources, particularly the red oxide. It thus dispatched a mission, headed by a Belgian officer, to hoist the Iranian flag on the island. The ruler of Sharjah protested against this action, and his reaction was supported by the British Resident. The latter called upon Iran to submit evidence supporting its title to the island. Three months later, Iran quietly withdrew from the conflict, having failed to produce any evidence supporting its claim.¹²

Throughout the period of the British presence in the Gulf, the British Resident kept sending messages to the rulers of Sharjah and Ra's al-Khaimah stressing his country's recognition of their title to the three islands. Moreover, the Political Agent to the Trucial States (as the UAE was called before independence), Sir Donald Hawley, states in his book *Trucial States* that from the beginning of its presence in the Gulf, 'the British Government has regarded the two islands as belonging to the states of Sharjah and RAK (Ra's al-Khaimah) respectively'.¹³

In 1912, Britain and the ruler of Sharjah agreed to establish a lighthouse on Greater Tunb, with the assurance that this would not entail any encroachment on the ruler's sovereignty over the island.¹⁴ In 1923, the ruler of Sharjah granted a five-year red oxide exploration concession to a British national named Strick. Iran protested against the granting by the ruler of Sharjah of prospecting concessions in Abu Musa. This was followed by a lull in the dispute.

Anglo-Persian negotiations

On 24 August 1928 the British administration issued a memorandum on the status of the three islands. In that memorandum it was stated that the islands of Greater and Lesser Tunbs had belonged to Ra's al-Khaimah since its emergence as an entity independent of Sharjah, while Abu Musa belonged to Sharjah, whose ruler was entitled to the proceeds of exploiting the red oxide and had been for a long period of time.¹⁵ This memorandum was issued following a verbal understanding between the British and Iranian governments in which it was concluded that the three islands were Arab territories.¹⁶

The period 1929–1930 witnessed negotiations between Britain and Iran aimed at reaching an Anglo-Iranian treaty. During these negotiations, evidence emerged supporting the Qawasim's title to the three islands, and hence highlighting the weakness of the Iranian claims. In the draft of the treaty it was decided to recognize Iran's title to the island of Sirri, while the three other islands (the Tunbs and Abu Musa) would remain Arab.

The negotiations were almost a tug-of-war exercise between the two parties. The Iranian Minister of Court, Mr Taimurtash, expressed in August 1929 his country's readiness to withdraw its claim to Abu Musa, in return for recognition of its title to the Tunbs. Iran then offered to buy the Greater and Lesser Tunbs. In May 1930, Britain referred the Iranian offer to the ruler of Ra's al-Khaimah, in the presence of the ruler of Sharjah. The two rulers, however, strongly rejected the offer, and informed the British Political Resident, Mr Barret, that the two islands were not for sale, whatever the price.¹⁷

The attempt was repeated in October of the same year when Mr Taimurtash set forth a fresh idea, namely that Iran might lease the two islands for a period of 50 years. This was but a bid to save face in the wake of Iran's bitter failure to claim Bahrain. Britain welcomed the new

idea, as it would have enabled it, in turn, to lease the islands from Iran at the entrance to the Gulf once the lease was in effect. For several months, British officials exerted pressure on the ruler of Ra's al-Khaimah to persuade him to accept the new offer. The ruler eventually agreed, on the strict conditions that the Qawasim flag should continue to be hoisted on the two islands; and that Iran should refrain from inspecting Arab ships and boats, or even from issuing orders to them.¹⁸ In the end no agreement was reached and the islands were not leased to Iran. Thus, all Iranian attempts at expropriating the three islands failed, and Sharjah and Ra's al-Khaimah continued to exercise sovereignty over them.

In 1935, the ruler of Sharjah signed an agreement with Golden Valley Ochre and Oxide Company Ltd, to exploit red oxide in Abu Musa. That company continued to function until 1968.¹⁹ On 6 February 1953, the same company was granted exploration concessions in the Tunbs.

The exercise of sovereignty is further evidenced by the fact that on 3 March 1964, the ruler of Ra's al-Khaimah granted oil exploration concessions in the Tunbs to two companies: Union Oil Exploration and Production Company and The Southern Natural Gas Company. Meanwhile, Sharjah granted similar concessions in Abu Musa and its territorial waters extending 12 nautical miles to Buttes Gas and Oil Company.²⁰

Iran raises the stakes and occupies the islands

However, the situation was not uneventful throughout that period. Having failed to annex the island of Bahrain, following a United Nations resolution which endorsed Bahrain's independence on the basis of a referendum that was conducted in 1970, asserting the island's independence and its Arabism, Iran began to claim the three islands again, even more emphatically. The Iranian writer Pirouz Moojtahed-Zadeh said: 'The Iranians openly and vigorously asserted their claims of Tunbs and Abu Musa islands immediately after the settlement of Bahrain issue'.²¹

The linking between the islands issue and Bahrain is confirmed by British and Iranian documents. The Minister of the Imperial Court, the closest aide to the Shah, Amir Assdollah, stated in his confidential diary on 23 March 1969 that:

*The British Ambassador called. I told him we can reach no settlement in respect to Bahrain until we know the fate of Tunb and Abu Musa. In that case, he declared, we have all been wasting our time. So be it, I said.*²²

The British held intensive talks with Iran and the emirates of Sharjah and Ra's al-Khaimah in 1970–1971, through its representative, Sir William Luce, seeking to secure a toning down of Iran's threats to occupy the three islands by force, Sir William Luce set forth several compromise proposals aimed at finding acceptable negotiation terms.²³ The negotiations were overshadowed by aggressive statements by the Shah of Iran, whose prestige had been harshly bruised by failure to obtain Bahrain. In an interview with *The Guardian* published on 28 September 1971 he said, 'We need them (the islands); we shall have them; no power on earth shall stop us. If Abu Musa and the Tunbs fell into the wrong hands, they could be of a great nuisance value'.²⁴

By 'wrong hands' was meant at that time the communists and the leftist tide in the Arabian peninsula and the Middle East. The then Iranian Foreign Minister, Ardeshir Zahedi, said in a statement to the press, 'These islands have been ours, and they are going to be ours. There is no compromise. Look at the Chinese communities in Aden. If these islands go, all our interests will be damaged.'²⁵

British Foreign Office documents for 1969 (released early in 2000) indicated that the rulers of Sharjah and Ra's al-Khaimah continued to refuse to hand over the three islands, in spite of repeated British and Iranian pressures on them to accept an amicable settlement of the issue; one that would prevent direct military occupation by Iran depriving the two rulers of their sovereignty over the islands. Iran went as far as to send an envoy to the ruler of Ra's al-Khaimah urging him to sign a letter declaring Iran's sovereignty over the two Tunbs. The ruler, however, refused to do so in spite of all Iranian threats and deadlines. Britain had also repeatedly attempted to convince the two rulers to settle the dispute with Iran before its scheduled withdrawal from the region by the end of 1971. Such attempts clearly show that Britain wanted the two rulers to make significant concessions and to depart from the very position it had itself been supporting until 1969, namely the rejection of any bid to give up or to share sovereignty over the three islands. As the released documents indicate, Britain's aim was to prevent the Shah of Iran from seizing the three islands by force before its departure from the region, as such an occupation would involve it (Britain) in an Arab-Iranian confrontation, and thus hamper its plans for an orderly and safe withdrawal.²⁶ In the meantime, such arrangements would strengthen Britain's ties with Iran at the expense of the Arabs' rights to the islands.

British endeavours ultimately resulted in a Memorandum of Understanding which was signed by Iran and Sharjah on 30 November 1971. Under this agreement, Iranian troops could land on the northern part of Abu Musa. Ra's al-Khaimah, however, maintained its position of rejecting any concessions with regard to its title to the Tunbs. Iran responded to this outright rejection and refutation of its claims by forcibly occupying the two islands in an offensive that claimed the lives of two servicemen and five other citizens from Greater Tunb. The offensive also resulted in the demolition of a police station and a primary school on that island, and the eviction of its citizens, who sought refuge in Ra's al-Khaimah.

Basis of Iranian Claims and their Refutation

Initially it may be useful to refer to certain secondary claims cited by Iran. The first is that 'Tunb' is a word of Persian origin meaning 'hill' and that it is derived from a local Persian dialect known as 'Tangistani Persian'.²⁷ Apart from the legal invalidity of this evidence, because linguistic derivation is not a criterion for territorial title or sovereignty, it is also linguistically incorrect. 'Tunb' is a purely Arab word meaning 'a long rope used to erect a tent',²⁸ while the name 'Abu Musa' leaves no doubt as to its being Arabic.

Secondly, Iran claims that the three islands had for a lengthy period of time before the eighteenth century been under Persian occupation. Such a claim is disproved by historical fact. Moreover, the Persian occupation of the three islands lasted for a short while, and occurred as a result of internal conflicts and a subsequent period of weakness in the region. The Persians were soon driven out of the islands. The claim is also illogical in light of contemporary international relations. If such a short period of occupation were to be taken as the basis of proving a state's title to any particular territory, it would result in the undermining of international peace and security.²⁹

A third claim cited by Iran is based on geographical proximity. There is no factual basis for this claim, especially with regard to Abu Musa and, in any case, international law (to avoid

repercussions in the realm of international relations) does not recognize geographical proximity as valid evidence supporting territorial claims.³⁰

The fourth claim is that the Qawasim had ruled Lingeh in their capacity as ‘Persian officials’, and hence the islands belonged to Iran.³¹ Historical facts refute this claim; the three islands had never been under the rule of Lingeh Qawasim. Throughout the years they had always been ruled by Sharjah and Ra’s al-Khaimah Qawasim. Unfortunately, however, many British legal advisers had laboured under such a misunderstanding, drafting legal memoranda for the British government in which it was wrongly stated that the Lingeh Qawasim had exercised control over Greater and Lesser Tunb and Abu Musa. In fact they only ruled the island of Sirri.

Iran’s claim to the three islands is based on three major arguments. The first argument is that in terms of international law Iran says it has evidence supporting its claim of title to the islands. The second is that British maps refer to the islands as being under the sovereignty of Iran. The third is that Iran’s strategic interests dictate possession of the three islands, so that Iran may be able to safeguard its security in the Gulf.

Let us now consider each of the three arguments and refute them on historical and legal grounds.

Evidence supporting Iran’s claim to the islands

First of all, it should be stated that Iranian researchers proceed from a basic hypothesis that the three islands are under Iranian control by virtue of lengthy historical sovereignty. They allege that there was no sovereign state in the Gulf region other than Iran for 2500 years (itself demonstrably a historical fiction) and that Iranian public opinion sees the entire Gulf and its islands as Iranian. Therefore, there is no need to produce evidence for Iranian ownership of the three islands, and whoever claims otherwise has to present contrary evidence.³²

Furthermore, Iran claims that the three islands had been under its sovereignty until Britain occupied them in the name of the sheikh of Sharjah, and handed them over to him early in the twentieth century. Iranian writers differ as to the exact date of the alleged British occupation. Pirouz Mojtahed-Zadeh says it was June 1903, while Davoud Bavand states that it was April 1903, and Hooshang Amirahmadi claims it was 1904!³³

A story has been fabricated to justify this supposed episode. It states that Britain was concerned over Russian infiltration into Iran, and their possible subsequent arrival in the Arabian Gulf. Thus, it persuaded the ruler of Sharjah (who was under its protection) to claim ownership of Abu Musa island and hoist the Emirate’s flag thereupon as a sign of sovereignty over it. Iran did not recognize the resulting occupation of the island until April 1904. Protesting against such a step, it hoisted its own flag on the island, but again lowered it.³⁴

Davoud Bavand also constructs theories about what he called an ‘Anglo-Sharjah occupation of Abu Musa’. He describes how, in its bid to check Russian and Iranian influence alike, and in order to block Iranian customs from exercising their authority over Gulf islands, Britain ordered the ruler of Sharjah to hoist his flag on the island, thus signifying an unjustified occupation.³⁵

The story, however, ignores several facts, the most important of which is the historical correspondence concerning the Qawasim ownership of the islands that pre-dates 1904 by many years. It also ignores all aspects of sovereignty exercised by the Qawasim during the eighteenth and nineteenth centuries and the fact, admitted by Iranian researchers themselves, that Iran did not exercise any real or legal sovereignty over these islands for a long time. The central authority

in Iran had no sovereignty over the remote dependencies and provinces, let alone over islands that had never been under its rule. Thus, an Iranian researcher admits that:

. . . *Ill-defined relationships between the centre and its autonomous peripheries (principalities and dependencies) . . . resulted in the loss of territories all around the country. Wherever it was asserted that these principalities and dependencies were independent of Iran, Tehran failed legally to and/or physically to disprove this*'.³⁶

International law scholars are at one as to the existence of five conventional methods for the acquisition of, or claim to, sovereignty over a given territory. These are: occupation, accretion, conquest, acquisitive prescription, and cession.³⁷ It should be noted, however, that these methods came into being as justification for imperial European ambitions in the eighteenth and nineteenth centuries. I shall attempt briefly to explain them, and to pinpoint the extent to which each applies to the Iranian claims.

Occupation

By occupation is meant the capturing of 'no-man's land' by a state, with a view to extending its sovereignty over it. For occupation to be effected in this way, three conditions must be met:

- The territory to be thus occupied must be a *res nullius*.
- Occupation should culminate in imposing sovereignty over the occupied territory.
- A continuous and peaceful display of territorial sovereignty.

The basis for occupation has changed in European legal thought with the historical development of colonial expansion. Initially, it was based on a fifteenth century Papal decree; later, it was based on geographical exploration. Eventually, the basis of occupation became the actual acquisition of a territory, provided that other European powers were notified of this acquisition, in accordance with the 1885 Berlin Convention.³⁸

Let us now apply this concept to the three islands. Never have they been *res nullius* territory. They have been ruled by the Qawasim for over two and half centuries, as has been recognized by Britain and by Iran itself. Moreover, the acquisition of territory through the occupation method has declined in the twentieth century due to the absence of 'no-man's land' that may be occupied.

Accretion

Accretion means the acquisition by a state of new areas by virtue of natural factors or through human efforts, as when new islands emerge in the state's territorial waters as a result of volcanic activity, or when a state converts part (or parts) of its territorial waters into land.

The geographic reality of the three islands does not qualify either party to claim them on that basis. The three islands have existed in the Gulf since time immemorial, and have never been within Iran's maritime zone.

Conquest

A common practice before the emergence of the new world order, conquest meant the use of force to eliminate the legal existence of a state, or the annexation of a part of it to the invading state. Under contemporary international law, this method has become illegitimate, and therefore cannot be used as valid evidence supporting any claim to any territory.

Paragraph 4 of Article 2 of the Charter of the United Nations explicitly states that:

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 from acting in any other manner inconsistent with the purposes of the United Nations.

Rejection of this method was practically demonstrated by the international community through international decrees condemning conquest,³⁹ such as Security Council Resolution No. 242 (1967) which rendered illegal the acquisition of territories through war and invasion, and various Security Council resolutions on the Iraqi occupation of Kuwait.

Iran, therefore, cannot establish its claim to the three islands on the basis of a conquest that occurred in 1971. It cannot legally justify its occupation of Greater and Lesser Tunbs and Abu Musa under international law as conquest, since such a claim to sovereignty will be deemed null and void *ab initio*.

*Acquisitive prescription*⁴⁰

By acquisitive prescription is meant the laying of hands by a state upon a territory under the sovereignty of another, or the exercising of actual sovereignty over it publicly and uninterrupted for a period of time without opposition or protest on the part of the latter.⁴¹ Iran, which has been occupying the three islands for over 25 years, may thus base its claim to them on acquisitive prescription. However, acquisitive prescription as defined by international law sets forth certain conditions for a claim to a territory in this way:

- Laying hands upon a territory should be effected through the sovereign party by way of exercising its authority over it. Thus, the leasing of a territory, or administration thereof by a party that recognizes the sovereignty of another over it should not be regarded as a situation granting acquisitive prescription, whatever the duration of the lease or the administration. While administering part of Abu Musa, Iran admits that the issue of sovereignty over the island has not been settled in any way.
- Peaceful acquisition is another condition for acquisitive prescription. Thus, acquisition by force, as is the case with the Tunbs, does not support Iran's claim to the two islands on the basis of acquisitive prescription.
- Acquisition should be public, and uninterrupted over a long period of time. Legal scholars differ as to the specific period needed for acquisitive prescription to occur. Some have suggested 100 years, while others opt for 50. In the case of the Tunbs, longer historically-proven acquisition lies with the UAE, rather than with Iran.
- Submission by the party to which the territory belongs: i.e. lack of protest or opposition to laying hands by another state on the territory. Diplomatic protests and legal action thus undermine acquisitive prescription. Iran cannot, therefore, claim that the UAE has succumbed to a *de facto* rule over the islands, or relinquished its established title to the three islands. From the first day of the Iranian occupation of the islands, the UAE sought to prove their legal title to them. A message was sent to the United Nations by the emirate of Ra's al-Khaimah on 30 November 1971. Meanwhile, there was armed resistance on the Tunbs and the conflict resulted in some casualties. The UAE continued to defend its rights in United Nations lobbies whenever the issue of the three islands was raised.⁴²

Cession

By cession is meant the relinquishing by a state of its sovereignty over some part of its territory to another state through an agreement between both. The basis or mechanism of cession differs on a case-by-case basis. Cession may take place through barter, as in an exchange of territory or part of a territory. Cession may also occur in return for financial compensation, as happened with the acquisition by the US of Alaska from Russia in return for seven million dollars. Finally, cession may occur coercively as when a victor state exercises pressure on a defeated one, eventually forcing it to cede a particular territory or territories.

For cession to hold, or to be regarded as an act transferring sovereignty, the following conditions must be met:

- The ceding state must have actual legal sovereignty over the territory to be ceded. On such a basis, Iran cannot claim that Britain had ceded the three islands to it before the termination of its treaties with the UAE and subsequent withdrawal from the Gulf. Britain was unqualified to do so, simply because it did not enjoy sovereignty over the islands. Meanwhile, the emirates of Sharjah and Ra's al-Khaimah have never ceded their sovereignty over them, notwithstanding the agreement concluded between Sharjah and Iran.
- Cession must occur peacefully and willingly. If effected under the threat of force, it shall have no valid legal consequences and the ceding state shall not be bound by it.
- The object of cession must be sovereignty over the territory in question, not simply the administering thereof.

British maps and their validity

The second consideration on which Iran bases its claim to the three islands is the presence of a British military map presented by the Foreign Office to the Shah of Iran in 1886. This map figures the Greater and Lesser Tunbs and Abu Musa in the same colour as that given to Iranian territories. Thus, Iran claims, the three islands have been under its sovereignty since that time.

Initially, it is necessary to discuss the status of geographical maps under Public International Law, and the extent of their validity as evidence supporting sovereignty rights over territories. Maps are of two kinds: official and private. Official maps are those annexed to international treaties or international arbitration verdicts. These have supplementary value, but do not by themselves create legal consequences. Private maps are those issued by geographical and scientific associations, or by specialized companies, or even by individuals. These lack the testimonial value of official maps.⁴³

Iran has pointed out that all the maps then issued by British authorities show the three islands to be part of its territories and that this is shown particularly clearly in the 1886 military map presented to the Shah by the British representative. Iran therefore argues that this map is a valid proof of its title to the islands.⁴⁴

In fact, the said map had first appeared in 1870, in the *Persian Gulf Pilot*. It attaches the three islands to Lingeh. However, it was but a private map, that was not formally part of any border treaty or agreement between Iran and rulers of the Qawasim. It should be noted that this type of map is not binding on the state in which it is issued, let alone on the states concerned. Moreover, this error was later corrected by British officials. Britain regarded

the content of these maps as ‘unintended’. The errors, therefore, should not be interpreted as an official statement on the part of the British government concerning ownership of the island. They were insignificant errors.⁴⁵

On the other hand, an earlier map published in 1864 by a German cartographer indicates that the three islands belonged to the southern coast Qawasim.⁴⁶ Meanwhile, international maps produced until 1870 referred to the Arab character of the islands. Many subsequent maps also gave clear indications that they belonged to the emirates. Recent maps, including some produced in Iran, also indicate that the Tunbs and Abu Musa are under the sovereignty of the emirates. The most valuable recent example is the map produced in 1955 by a specialized Iranian company indicating that the three islands are not part of Iran, and that they are Arab territories.⁴⁷

The said British map of 1886 cannot be taken as evidence supporting Iran’s claim to the three islands. Firstly, that map might at best be interpreted as an implicit recognition of Iran’s claim to the islands; but it is a recognition by a third party with neither right nor sovereignty over the islands, *nemo dat quod non habet*. Secondly, Britain itself had, as indicated in our introduction, repeatedly and explicitly recognized in official correspondence the sovereignty of Sharjah and Ra’s al-Khaimah over the islands. An implicit recognition whose validity and legal strength is doubtful cannot and should not supercede an explicit one to the contrary.

Iranian strategic interests

Iran recognizes the strategic importance of the three islands in the Gulf. They dominate its entrance and the lanes through which the bulk of Iran’s oil exports and its vital imports pass. Therefore, maintaining control over the islands would safeguard Iran strategically and maintain its national security.

This view poses an important question: Does a state’s strategic interests justify violation of international rules of law and define its territorial sovereignty? The answer must be in the negative. Whatever the importance of strategic interests, they cannot constitute a valid support for sovereignty over a territory.

Moreover, some scholars see a contradiction between the alleged strategic importance of the three islands and geographical reality; the location of the three islands cannot in any way be compared with the locations of the Iranian port of Bander Abbas and the island of Qishm, both at the very entrance to the Straits of Hormuz. Furthermore, the island of Sirri is only a few miles away from the three islands, especially from Abu Musa, and could thus provide the same strategic protection which Iran holds as a pretext for maintaining its occupation of the three islands.⁴⁸

The stated existence of Iranian strategic interests is a political rather than legal pretext. It reflects the hegemonic mentality that has been governing the Iranian political regime since the Shah’s era and up to the present. Some observers go so far as to suggest that the strategic claims are simply a cover for the Iranian leadership’s economic and ideological ambitions. They argue that Iran is seeking sovereignty over the three islands because its proven oil reserves are about to be exhausted; and that by exercising sovereignty over the three islands it can extend its territorial waters by an extra 12 miles. Such an act poses a threat to the Emirates’ offshore oil wells.⁴⁹

Irrespective of details of the Iranian strategy, it is important to stress that Gulf security is the responsibility of all Gulf states; it cannot and should not therefore be handled by a single state. Moreover, Gulf security can only be achieved through cooperation and neighbourliness, not by occupation of others’ lands, nor by military hegemony.

UAE's Rightful Title to the Islands

The preceding analysis indicates that Iran cannot support its claim to the three islands by any of the conventional methods referred to in Public International Law. Let us now consider the ways and means whereby the UAE may establish title to the islands.

Initially it should be noted that rights of sovereignty and of negotiations related thereto were transferred from the emirates of Sharjah and Ra's al-Khaimah to the new federal state of the UAE, which was proclaimed on 2 December 1971. In accordance with the Constitution of the UAE, the Federation exercises sovereignty over all the lands and waters encompassed by the international borders of the member emirates.⁵⁰

Scholars of international law assert that border treaties provide for succession, i.e. rights and obligations pass from the predecessor state to the successor state, in accordance with Article 4 of the 1969 Vienna Convention on the Law of Treaties.⁵¹ Moreover, the Supreme Council of the United Arab Emirates, which is the highest federal authority in the state, comprising the rulers of the seven member emirates, itself declared that agreements concluded by individual emirates with neighbouring states shall be deemed as agreements between the UAE and the said states.⁵²

The Emirates' ownership of the islands is based on legal documents, historical events and the actual exercise of territorial sovereignty. The legal documents include a collection of correspondence between the two branches of the Qawasim, correspondence between the British government (in its capacity as the protector of the emirates of Sharjah and Ra's al-Khaimah in accordance with a series of treaties between them) and the Iranian government, and a third collection of correspondence between rulers of the two emirates and British authorities in the Gulf. All such collections demonstrate:

- Clear-cut statements by the Qawasim rulers of Lingeh to the Qawasim of the UAE coast that the latter was the ruler of the three islands.
- A clear British recognition of the affiliation of the three islands to the emirates of Sharjah and Ra's al-Khaimah.
- Protestations by rulers of the two emirates to Britain against Iranian violations of their sovereignty over the three islands.⁵³

Adequate reference has been made in the first part of this study to historical events confirming the Emirates' right to the three islands. It may be appropriate here to discuss some theories that support the Emirates' claim to sovereignty over the three islands.

Acquisitive prescription

In his book entitled *The Issue of Gulf Islands and International Law* Mohammed Aziz Shukri endorses the method of acquisitive prescription to support the Emirates' title to the islands.⁵⁴ However, I disagree with this point of view. While the majority of the conditions required for acquisitive prescription to hold exist, the last one raises doubts as to the very source and base of the UAE's title to the three islands. If applied in favour of the UAE, this condition may be seen as an implicit recognition of Iran's original claim to them. Emphatically, this is not so and, therefore, the Emirates should not make us of this argument.

Immemorial possession

However, the UAE may establish their title on the basis of immemorial possession of the islands. In such a case, the origin of the status quo remains unknown or doubtful. Since it is impossible to establish whether the process leading to the establishment of this status quo is legitimate or otherwise, it becomes legitimate.⁵⁵ The UAE has been holding the three islands for over two and half centuries. It is therefore impossible to prove whether or not this possession was legitimate at the time it occurred, namely the middle of the eighteenth century.

Historical consolidation of title

The UAE may also establish their title to the islands on the basis of the ‘Historical Consolidation of Title’, a recent concept developed by Charles de Visscher, a judge and former President of the International Court of Justice. The essence of this concept is that it attempts to combine all sovereignty-conferring elements in a single process. It also concentrates on lengthy utilization of a territory as a claim-proving factor. The concept thus reflects a blend of inseparable connections and interests and is normally employed to settle conflicting claims to territories where there is no clear former possessor state.

Some British legal experts (Bathurst, Ely & Chance) suggest that the basis of the UAE’s sovereignty over the three islands stems from the above rule. They argue that the islands had not been regularly ruled by any particular state until they came under the control of the Qawasim who actually ruled them and in a peaceful manner. During their rule, the Qawasim exercised all aspects of sovereignty. Such an exercise was never accompanied by any change of intent on the part of the ruling authority; nor was it met by any significant opposition by neighbouring parties.⁵⁶

Sharjah and Ra’s al-Khaimah exercised all aspects of sovereignty over the three islands before the Iranian occupation. In addition to those aspects stated in the introduction to this study, the following may be listed:

- The governments of the two emirates exercised the right to levy and collect taxes and duties from pearl fishers and shepherds using the islands.
- Inhabitants of the islands carried the nationality of the two emirates respectively.
- Rulers of the two emirates were respectively represented on the three islands by governors.
- Public utilities on the islands, such as security, education, customs, health and mosques, were under the control of the two emirates.
- The governments of the two emirates hoisted their respective flags on the three islands, and applied their laws and regulations to their inhabitants.
- The governments of the two emirates maintained the right to grant concessions and licences to companies operating in the islands.⁵⁷

The exercise of all such aspects of sovereignty is the ‘root of title’ supporting the UAE’s title to the three islands. Iran, on the other hand, has never exercised any aspect of sovereignty over them. Professor Jamsheed Mumtaz, an Iranian academic, admitted in an article that Iran had at no time any tangible control over these islands; and was merely content to exercise remote and relaxed control over them, refraining from installing any official agency on any of the islands.⁵⁸

Moreover, a memorandum prepared by the British legal expert Mr Lacelle stated that for 184 years at least, Iran had never exercised any real authority on the islands.⁵⁹ Significantly,

that memorandum is dated 4 September 1934. Given the period that then elapsed prior to the Iranian occupation of the three islands, we may correctly conclude that the total period of rule by the emirates amounts to more than 220 years.

*Recognition and acquiescence*⁶⁰

Other significant evidence supporting the UAE's sovereignty over the islands relates to recognition and acquiescence. The UAE has been in possession of the islands for a long period and this has been recognized by a third state, Britain. In its correspondence with the rulers of Qawasim, Britain has repeatedly made a unilateral, express declaration recognizing the Qawasim's title to the islands. Moreover, Iran failed to protest over a long period at UAE possession of the islands.

Legal Characterization of the Status of the Three Islands, and the Memorandum of Understanding

What, then, is the legal status of the three islands at present? And what are the legal relationships resulting from the Iranian presence in them?

To begin with, it must be noted that the situation in the Greater and Lesser Tunbs is one of occupation by force as of 30 November 1971. The ruler of Ra's al-Khaimah had refused to sign a British-mediated Memorandum of Understanding with Iran. Consequently, the Shah ordered troops to land on the two islands and to occupy them by force. Thus, the current status of the two islands cannot be legally recognized, in accordance with the accepted legal principle which requires countries to refrain from the threat or use of force to gain acquisition of a territory or territories. Occupation dictates upon the occupier certain legal commitments which have to be observed while administering the occupied territory.

Moreover, Iran's occupation of the Tunbs constitutes the violation of another accepted principle in international law related to border issues, namely the principle of finality and stability of boundaries. It also violates the principle of inviolability of territorial integrity of states, a cornerstone in international relations.

The status of the island of Abu Musa is governed by a Memorandum of Understanding which does not, however, amount to a final agreement determining the status of the island. In spite of this bilateral agreement and understanding between the two parties, the Iranian government still views the Memorandum of Understanding as 'a temporary measure which would only postpone the eventual restoration of Iran's full sovereignty over the whole island.'⁶¹ Following mediation by Sir William Luce, as special British Envoy, Iran and Sharjah agreed upon the six article Memorandum. It is evident from the text of the Memorandum that Sharjah did not cede its sovereignty over Abu Musa, and maintained its right to demand restoration of the island in full.

In the preamble of the Memorandum, it is stated that: 'neither Iran nor Sharjah shall give up their claims to the island, and neither shall heed the other's demands.'⁶² Further scrutiny of the articles of the Memorandum would reveal a dual approach dealing with the presence of the two parties, i.e. Iran and Sharjah, on the island. The Memorandum refers to 'areas occupied by Iranian troops' and that Iran 'will occupy areas.' Meanwhile, it refers to the Emirate's peaceful presence saying, 'Sharjah will have full jurisdiction over the remainder of the island'.

It is thus clear that the island originally belongs to Sharjah, while the Iranian presence is but an occupation of the northern part of the island, a situation that came into being only recently.

It should be noted that Iran still recognizes the continuity and validity of the Memorandum of Understanding, as was stated by its Foreign Minister during a visit to Kuwait on 19 April 1992, and by the head of its negotiating team, Ambassador Mustafa Haeri, in September the same year. Meanwhile, Sharjah has continued to exercise all aspects of sovereignty over the island, including the hoisting of its own as well as the the UAE federal flags and the administering of health and education utilities for Emirates' citizens and Arab expatriates living on the island.

Quite apart from the political considerations that prevailed at the time of its signing, a purely legal examination of the Memorandum of Understanding shows it to be null and void. This nullification stems from a defect of substance relating to a signatory party (Sharjah), which signed the Memorandum under duress, as will be indicated later.

Duress and its invalidating consequences are considered differently by conventional and contemporary theories.⁶³ The conventional theory in international law distinguishes between two situations: duress exercised upon the representative of the state, and duress exercised on the state itself, upon signing an international treaty. Duress, material or moral, exercised on a state representative (head of state, foreign minister, ambassador or negotiator) annuls the treaty, and the state on whose representative duress was exercised is not bound by it. A very good example of this situation is the summoning by Nazi leader Adolf Hitler of the President of Czechoslovakia in 1939, whom he forced to sign a treaty under which the latter relinquished territories belonging to his country. Duress exercised upon the state itself, however, does not affect the validity of the treaty. Advocates of this theory argue that the threat to use force against a state is only a catalyst employed to urge it to sign a treaty. Legally speaking, the motive for contracting does not affect the validity of the contract. They also cite several examples of international treaties that have been concluded in the wake of wars, in which the victors imposed their will upon the defeated. They argue that any attempt to declare such treaties null and void would destabilize the world.

Under the new world order that emerged after the Second World War, and rejection of the principle of the use of force to settle disputes between states, a new theory was developed. This theory holds that duress, whether on the representative of the state or on the state itself, nullifies a treaty. Thus a treaty, concluded under duress or threat of force, shall not result in legal consequences to be complied with. An advocate of this theory, Hafez Ghanem, argues that the maintenance of unfair conditions resulting from treaties concluded under duress would not help stabilize international relations. On the contrary, such conditions would be a source of tension and instability, as the affected states would, sooner or later, seek to restore their rights through efforts to render such treaties null and void.⁶⁴ The stability cited by advocates of the conventional theory is based on unjust conditions, and as such cannot be regarded as real stability, this approach argues.

The late Sheikh Khaled bin Mohammed Al Qasimi, then ruler of Sharjah, explained the circumstances under which he found himself forced to sign the Memorandum of Understanding:

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 allowed no room for reason and legitimate proofs... Several factors contributed

to the delicacy of the situation, combining to form significant pressure: Britain had threatened not to maintain the status quo on the island; Iran insisted that the island was Iranian, and that they would seize it by force; unfavourable economic conditions placed Sharjah in an awkward situation and weakened its position, severely affecting its manoeuvrability; other powers came to support Iran . . . Thus, after consultations with brothers, I deemed it appropriate to seek a formula that would freeze the problem politically, while dealing with it economically. Hence came the said agreement.⁶⁵

From the above statement, it can be seen that the ruler was not acting of his own free will, and that he signed the Memorandum under an Iranian threat to use force, and due to a lack of support by Britain and neighbouring forces. Under such threats, the Memorandum of Understanding may be deemed abrogated as a contradiction of international law, on the basis of Article 52 of the Vienna Convention on the Law of Treaties (1969). As the Memorandum of Understanding is utterly null and void *ab initio*, military occupation can therefore be deemed the legal characterization of the status of the island of Abu Musa, the same status as prevails in the Greater and Lesser Tunbs.

Stances of the United Arab Emirates and Iran after 1971

Following Iran's occupation of the Tunbs, and the landing of its troops in Abu Musa in accordance with the Memorandum of Understanding, the newly emerging state, i.e. the United Arab Emirates, asked her sisterly Arab states to assist it in bringing the dispute before the United Nations. The Security Council convened on 9 December 1971. The Council President, citing Article 36 of the Charter of the United Nations, called for a resolution of the dispute by diplomatic means. It was thus decided to defer debate on the issue to give an opportunity to a third party to consider it and find an appropriate solution.

As of 30 November 1971, the UAE began its unceasing efforts to win support on two issues: its title to the three islands and its desire to resolve the dispute in accordance with international customs and laws.

Regarding the first question, the UAE, on 17 July 1972, sent a note to the President of the Security Council in which it affirmed that the three islands were Arab territories. On 5 October 1972, a statement was read out before the twenty-seventh session of the General Assembly, in which the UAE reaffirmed its sovereignty over them. A similar statement was read out before the Security Council on 20 February 1974. A third statement was read out before the UN Special Political Committee on 19 November 1974. Other notes were sent to the UN Secretary General on 6 August 1980 and 1 December 1980, in which the UAE reaffirmed its unchanging policy of affirming its sovereignty over the islands.

On the other side, Iran under the Shah, and later under the Islamic Republic, continued to ignore its international commitments with regard to the Tunbs, and continually violated the Memorandum of Understanding governing the situation in Abu Musa. It looked upon the dispute as a mere territorial misunderstanding between the two parties.

During the Shah's reign, Iran adopted an approach of imperial arrogance, paying no attention to appeals by the UAE. This attitude continued, and took an even more emphatic tone after

the Shah's downfall. Since the early 1980s, Iran has been acting in ways constituting flagrant violation of the Memorandum of Understanding and open intervention in the internal affairs of the UAE. Iranian actions have included the following:

- Encroachment upon territories belonging to the UAE, outside the assigned area for an Iranian presence in Abu Musa, by constructing roads and an airport as well as other civilian and military installations.⁶⁶
- Moving troops in 1987 to the southern side of Abu Musa, and occupation thereof following an abortive coup in Sharjah.⁶⁷
- The imposition, late in 1991, of restrictions on third party citizens wishing to enter the UAE zone of Abu Musa by requiring entry permits. As the UAE rejected this measure, Iran ordered all foreigners off the island in April 1992.⁶⁸
- Preventing, late in August 1992, teachers working in Abu Musa, as well as some UAE nationals, from entering the island, and returning them to Sharjah harbours following three nights aboard ship.
- The launching, on 29 December 1994, of an air route linking Bandar Abbas and Abu Musa, an action that violates UAE sovereignty over the island.
- Conducting military manoeuvres in the UAE's territorial waters around Abu Musa island on 27 February 1999.⁶⁹
- Construction of military and civilian establishments on Abu Musa island, and the deployment of medium-range missiles therein in February 1999.⁷⁰
- Establishment of a municipality in Abu Musa affiliated to Bandar Abbas province and holding municipal elections therein.⁷¹

On 12 May 1993, Iran promulgated a law entitled 'Act on the Marine Areas of Iran in the Persian Gulf and Oman Sea'. Articles 1 and 2 of the said law define its scope. Article 1 states that 'sovereignty extends beyond its land territory, internal waters and its islands in the Persian Gulf'. Article 2 confirms that the islands belong to Iran. The two articles refer to the islands even more emphatically than Article 5 of a previous law promulgated in 1959, amending the law of 15 July 1934 on the territorial sea. These two articles together constitute a grave encroachment upon the sovereignty of the UAE over the three islands.⁷²

Iran's current position may be briefly stated as follows: the Tunbs are part of Iran whose sovereignty over them is not debatable. However, negotiations over Abu Musa may be conducted on the basis of the Memorandum of Understanding in such a way as would ensure Iran's security, economic and strategic interests in the Gulf.

The second issue concerns the UAE desire to solve the dispute peacefully. In spite of being the party affected by occupation, the UAE strongly advocates a peaceful solution. In an interview, the President of the UAE, Sheikh Zayed bin Sultan Al Nahyan, stressed the need to refer the dispute to the International Court of Justice.⁷³ Likewise, in his address on the occasion of the twenty-third anniversary of the proclamation of the UAE, he urged Iran to enter into an objective and constructive dialogue, or otherwise to resort to international arbitration to resolve the dispute over the islands.⁷⁴ Along the same lines, the UAE Foreign Minister has, in speeches at successive sessions of the UN General Assembly, expressed the UAE readiness to start immediate, direct and unconditional negotiations with Iran to terminate the latter's military occupation of the three islands.⁷⁵ When Iran did not respond, he demanded that the dispute be referred to the International Court of Justice, this being the international agency entrusted with resolving border disputes.

In contrast to this moderate stance, the Iranian government continues to be vehemently opposed to the idea of referring the dispute to the International Court of Justice. It insists on bilateral negotiations. It should be noted that Iran had, in 1929, proposed that the dispute over the three islands be referred to international arbitration. This occurred during negotiations with Britain on the conclusion of an Anglo-Persian treaty.⁷⁶ It should also be recalled that Iran itself has resorted to the International Court of Justice with regard to several issues. However, since the Shah's era, Iran has been adamantly against referring the dispute either to international arbitration, or to the ICJ. Iranian President Hashimi Rafsanjani, for example, stated that 'referring the issue to an international court would not be viable'.⁷⁷

Bilateral negotiations, however, have failed. They were started following the escalation of Iranian measures on the three islands in 1992. In the first round of negotiations, which was held in Abu Dhabi on 27–28 September 1992, the UAE delegation set forth several demands, the most important of which were: termination of the Iranian occupation of the Tunbs, reaffirmed commitment to the Memorandum of Understanding with regard to Abu Musa, non-intervention by Iran in any way in the UAE's exercise of its complete jurisdiction over the zone assigned to it in Abu Musa, and the finding of a decisive solution to the question of sovereignty over the island of Abu Musa. Iran, however, refused to debate the status of the Tunbs. Nor would it agree to refer the case to the International Court of Justice.

Following mediation by Qatar, a second round of talks was held in the period from 18 to 23 November 1995. The UAE delegation reiterated its previous demands. Unfortunately, however, no agreement was reached, even upon the agenda of the negotiations, due to Iran's refusal to debate the status of the Tunbs, and its rejection of a proposal to refer the issue to the International Court of Justice should negotiations fail to reach a solution within a specific period of time.

In a last-ditch bid to settle the dispute, the Foreign Ministers of the member states of the Gulf Cooperation Council announced on 3 July 1999 the formation of a tripartite committee that would set up a mechanism to start direct negotiation for settling the issue of Iran's occupation of the three island by peaceful means. The committee was made up of the foreign ministers of Saudi Arabia, Oman, Qatar and the Secretary General of the Gulf Cooperation Council. The Council's Ministerial Body had stated that the settlement of this dispute would certainly contribute to the betterment of relationships between GCC member states and the Islamic Republic of Iran. The United Arab Emirates welcomed the formation of the tripartite committee. While voicing optimism, it emphasized that success of the committee would depend on how far Iran was prepared to respond to its good offices. Contacts between the committee and Iran have not produced any encouraging signs so far.

It is thus evident that the stance of the UAE regarding the dispute over the three islands is based on the fact that although the Iranian occupation is *de facto*, the UAE cannot and will not relinquish its sovereignty over the three islands. In this connection, Hassan Al Alkim says:⁷⁸

The UAE sees the Iranians' occupation as de facto and cannot do anything about it; however, it has not ceded its sovereignty over them (the islands). The UAE, as a small state, aware of the imbalance of power with Iran, and the absence of a deterring force, whether regional or international, has preferred to keep a low profile on the issue. It has pursued a policy of peaceful co-existence with Iran, hoping that the development of good relations will inevitably lead to the settlement of the contentious problems.

Ways and Means of Settling the Dispute

In the contemporary world, states are required to resolve their border disputes by peaceful means. It is no longer acceptable that such disputes be resolved by force. Refraining from the use of force has become a binding legal rule in international law. It is more effective than resorting to force, which only deepens differences and further kindles conflicts between neighbouring countries from generation to generation.⁷⁹

International law provides several ways and means of settling disputes between states peacefully. These include diplomatic methods, such as negotiations, good offices, conciliation and mediation; political ways, such as resorting to regional and international organizations; and legal ways, such as referring the dispute to international arbitration or to the International Court of Justice.⁸⁰ Judicial settlement is normally effected through a neutral panel on the basis of the law, and the resulting verdict is thus legally binding.

In dealing with the dispute over the three islands, the UAE has adopted a peaceful approach compatible with its own capabilities, and with a respect for international law. Initially, it dispatched its Foreign Minister to Iran in April 1992 to discuss Iran's arbitrary measures. In September of the same year, it called for negotiations in Abu Dhabi to consider a diplomatic settlement. The attitude of the UAE delegation to these negotiations was prudent and balanced. It did not set forth prior conditions, such as the abrogation of the Memorandum of Understanding. On the contrary, it demanded full respect for it, while calling for a framework to settle the sovereignty issue within a specific time limit.

As diplomatic channels failed to produce a result, the UAE resorted to political means by referring the issue to the General Assembly of the United Nations. The UAE has indicated that it adheres to its right to exercise sovereignty over the three islands, stressing its title to them. Meanwhile, the UAE has offered to resolve the issue legally through the International Court of Justice in the Hague, in accordance with Article 33 of the Charter of the United Nations and Article 36 of the Statute of the International Court of Justice. However Iran, because of the weakness of its legal position and the difficulty of supporting its claim to the three islands, has rejected such an approach. Thus, the only remaining way is to submit the issue to the UN Security Council, which could pass a recommendation referring the dispute to the International Court of Justice, this being the appropriate channel for resolving it peacefully.

On 2 January 1994, the United Nations Secretary General stated that the world organization 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.⁸¹

¹ *Arabian Gulf Intelligence*, Selections from the Records of the Bombay Government, Oleander Press, p 300. Also see for the early history of the Arab people of this region, based on sources of the Dutch East India Company, B.J. Slot, *The Arabs of the Gulf 1602–1784*, (Arabic Translation) Abu Dhabi, The Cultural Foundation (1993) Especially chapters seven and nine.

² M.E. Bathurst, E. Northcutt, and C. Chance, *Sharjah's Title to the Island of Abu Musa*, unpublished report (September 1971) pp 2–4.

³ *Ibid.*, pp 4–5.

⁴ Mohammed Mursi Abdullah, *The United Arab Emirates and Its Neighbours*, (Arabic) Kuwait, Darul Qalam (1981) pp 323–4.

- ⁵ The Qawasim of Ra's al-Khaimah had separated themselves from Sharjah's Qawasim and established an independent emirate in the period from 1869 to 1900. They re-united in 1900 only to separate again in 1920 and remain so until today.
- ⁶ *Ibid.*, pp 324–5.
- ⁷ *Ibid.*, p 132.
- ⁸ Mohammed Hassan Al Aydaroods, *Arab–Iranian Relations (1921–1971)* (Arabic) Kuwait, Zatul Salasel (1985) pp 254–6. Also see Ibrahim, Abdulaziz Abdulghani, *Pax Britanica in the Arabian Gulf: 1899–1974* (Arabic) Riyadh, Darul Marrikh (1981) pp 305–7.
- ⁹ See R. S. Zahlan, *The Origins of the United Arab Emirates*, The Macmillan Press Ltd, London (1978) p 80.
- ¹⁰ Pirouz Mojtahed-Zadeh, *The Islands of Tunb and Abu Musa: An Iranian Argument in Search of Peace and Co-operation in the Persian Gulf*, University of London, SOAS, July 1995, p 36.
- ¹¹ Zahlan, *op.cit.* p 129. This contradicts a claim by Pirouz Mojtahed-Zadeh, Secretary of the London-based Society for Contemporary Iranian Studies, that Lingeh rulers were the first to grant exploration concessions. This was stated in his article entitled 'The Issue of Abu Musa Island From An Iranian Point of View' in *The Dispute Over the Gulf Islands*, London, Arab Research Centre (1993) p 22.
- ¹² See Waleed Hamdi Al Adhami, *The Dispute Between the United Arab Emirates and Iran over the Islands of Abu Musa, Greater and Lesser Tunbs in British Documents 1764–1971*, (Arabic) London, Darul Hekma (1993) p 31. In their correspondences, British circles stress that the main reason behind this move by the Persian Customs Director, Mr Dambrain, was Russian instigation for Iran to rival British presence in the Gulf. See D. Hawley, *The Trucial States*, London, George Allen & Unwin Ltd (1970) p 162.
- ¹³ *Ibid.*, p 162.
- ¹⁴ Telegrams from The Political Resident to Sheikh of Sharjah, 28 September 1912, and 22 October 1912. See Al Adhami, *op. cit.*, p 32.
- ¹⁵ FO 371/13010, India Office, Status of Islands of Tunb, Little Tunb, Abu Musa and Sirri, 24 August, 1928. See Al Adhami, *op. cit.*, pp 22–4
- ¹⁶ See Zahlan, *op. cit.*, p 90.
- ¹⁷ See Al Adhami, *op. cit.*, pp 61–5. See also Mojtahed-Zadeh (1995) *op.cit.*, p 49 and R.S. Zahlan, 'The Dispute over Arabic Islands in the Gulf 1928–1971' (Arabic) in *Journal of Gulf and Arabian Peninsula Studies*, Kuwait University, vol. 6, April 1976, p 21.
- ¹⁸ Zahlan, *op. cit.*, pp 126–7. Also see Ahmed Jalal Al Tadmori, *The Three Arab Islands, A Documentary Study*, (Arabic) Ra's al-Khaimah National Printing Press (1994) pp 79–80.
- ¹⁹ Abdulwahhab Abdoul, *The Three Arab Islands in the Gulf: Extent of the Validity of Regional Changes Resulting from the Use of Force*, (Arabic) Ra's al-Khaimah, Centre for Studies and Documents (1993) p 170.
- ²⁰ *Ibid.*, pp 279–80
- ²¹ Zahlan, *op. cit.*, p 24. Also see F. Heard-Bey, *From Trucial States to United Arab Emirates*, (2nd ed) Longman (1984) p 364.
- ²² Mojtahed-Zadeh (1995), *op.cit.*, p 55.
- ²³ *Ibid.*, p 365. For minutes of the meetings between the British Envoy and the Ruler of Ra's al-Khaimah, see Al Tadmori, *op. cit.*, pp 127–55.
- ²⁴ Heard-Bey, *op. cit.*, note 105, p 479
- ²⁵ Mojtahed-Zadeh (1995), *op. cit.*, p 56.
- ²⁶ These documents were translated into Arabic and published in *Al Khaleej* newspaper during the period of 1–1 to 4–2–2000. See especially issues no. 7545, 7550 and 7565.
- ²⁷ Mojtahed-Zadeh (1993), *op. cit.*, p 56
- ²⁸ Abdulwahhab Abdoul, 'Crisis of the Three Arab Islands Between a Clear UAE Attitude and a Contradicting Iranian Stance' (Arabic), a paper submitted to *Islands of Peace Seminar*, Ra's al-Khaimah, November 30 to December 1, 1994, pp. 9–11.
- ²⁹ Abdoul, (1993), *op. cit.*, pp 118–9
- ³⁰ *Ibid.*, p 175.
- ³¹ Zahlan, *op. cit.*, p 80.
- ³² Davoud H. Bavand, 'The Legal Basis of Iran's Sovereignty over Abu Musa Island' in Hooshang Amirahmadi (ed.) *Small Islands, Big Politics*, Macmillan Press Ltd (1996) p 78.
- ³³ *Ibid.* p 89, Mojtahed-Zadeh (1995) *op. cit.*, p 39. Hooshang Amirahmadi, 'Iran-Emirates Dispute: Political and Colonial Aspects' (Arabic) in *Shoun Al Awsat*, Beirut, vol. 44, Sept. 1995, p 32.
- ³⁴ Mojtahed-Zadeh (1995) *op. cit.*, p 40.
- ³⁵ Bavand, *op. cit.*, pp 89–93.
- ³⁶ Such weakness in proving Iranian sovereignty and political disorder is not confined to the twentieth century. In fact it goes back to the era of Safavids, then Nader Shah and on to Qajars. See Mojtahed-Zadeh (1995), *op. cit.*, pp 10–12.
- ³⁷ For further details on these conventional methods see C. Rousseau, *Public International Law* (translated into Arabic) Beirut, Al Ahliyah for Publishing and Distributing (1987) pp 147–51; et al.; Hamed Sultan *Public International Law*, (4th ed) (Arabic) Cairo, Darul Nahda Al Arabia (1987) pp 380–93; and Ahmed Sarhal, *Law of International Relations* (Arabic), Beirut, Al Jamiyah for Studies, Publishing and Distributing (1990) pp 147–60.

- ³⁸ Faisal Abdulrahman Taha, *International Law and Border Disputes*, (Arabic) Abu Dhabi Printing and Publishing Company (1982) pp 21–2.
- ³⁹ Sarhal, *op. cit.*, p 148.
- ⁴⁰ For forms and conditions of acquisitive prescription see I. Brownlie, *Principles of Public Law*, (4th ed) Oxford, Clarendon Press (1990) pp 153–9.
- ⁴¹ Taha, *op. cit.*, p 26
- ⁴² This conduct was explained by Ali Humaidan, the first UAE envoy to the UN, in a lecture entitled, ‘Emirates’ Islands: Legal and Security Rights’, given at the UAE University in Al Ain, 26 October 1992.
- ⁴³ Taha, *op. cit.*, pp 135–42.
- ⁴⁴ Mumtaz, *op. cit.*, p 59.
- ⁴⁵ Bathurst, Northcutt & Chance, *op. cit.*, p 13. See also Abdoul (1993) *op. cit.*, pp 131–2 and Mustafa A. Al Najjar, ‘Britain and Sovereignty over Arabian Gulf Islands’ in *Journal of Arabian Gulf*, University of Basra, vol. 8, 1977, p 31.
- ⁴⁶ Bathurst, Northcutt & Chance, *op. cit.*, p 13.
- ⁴⁷ *Ibid.*, pp 11–4.
- ⁴⁸ Abdoul (1993) *op. cit.*, pp 144–75.
- ⁴⁹ Hassan Al Alkim, ‘The United Arab Emirates Perspective On the Islands’ Question,’ in *The Dispute Over the Gulf Islands*, London, Arab Research Centre (1993) p 31. He has noted that the Iranian oil reserve will not last more than three decades.
- ⁵⁰ Article 20 of the *Constitution of the United Arab Emirates*.
- ⁵¹ Ahmed Mohammed Rifaat, ‘Dispute over the Arabian Gulf Islands and the prerequisites for a settlement in accordance to the rules of International Law’, (Arabic), a paper submitted to Ra’s al-Khaimah, *Islands of Peace Seminar*, 30 November–1 December 1994, p 22.
- ⁵² The declaration was published in the *Official Gazette*, Issue no. 240, Year 22, July 1992
- ⁵³ Abdulwahhab Abdoul, ‘Legal Bases Supporting UAE’s Sovereignty over the Three Islands’, (Arabic) in *Arabic History*, Morocco, vol. 1, Nov.1996, pp 47–49.
- ⁵⁴ This was quoted by Al Aydarooos, *op. cit.*, pp 437–8.
- ⁵⁵ Taha, *op. cit.*, p 26.
- ⁵⁶ Bathurst, Northcutt & Chance, *op. cit.*, pp 15–18.
- ⁵⁷ For further details, see Abdoul (1993), *op. cit.*, pp 263–80.
- ⁵⁸ Mumtaz, Jamsheed ‘Legal Status of Some Gulf Islands: Abu Musa, and Greater and Lesser Tunbs’ in *Shu’un al-Awsat Journal* (Arabic), Issue no. 47, December 1995 p 59.
- ⁵⁹ Abdullah, *op. cit.*, p 366.
- ⁶⁰ See Brownlie, *op.cit.*, pp 159–62.
- ⁶¹ Mojtahed-Zadeh (1995), *op. cit.*, p 56.
- ⁶² *Al Khaleej* newspaper, Sharjah, published text of the Memorandum of Understanding in its issue no. 4865, 4 September 1992.
- ⁶³ For further details, see Esam Sadeq Ramadan, *Unequal Treaties in the International Law*, (Arabic) Cairo, Darul Nahda Al Arabia (1978).
- ⁶⁴ This was quoted in *ibid.*, p 350.
- ⁶⁵ Al Aydarooos, *op. cit.*, pp 427–428. Also see Jamal Zakaria Qasem, ‘Old Emirates and a New State’ in *United Arab Emirates: A Comprehensive Survey*, (Arabic) The Arab League Educational, Cultural and Scientific Organization (1978) pp 68–71.
- ⁶⁶ Al Tadmori, *op. cit.*, p 290.
- ⁶⁷ R. Schofield, ‘Abu Musa and the Tunbs: the historical background’ in *The Dispute Over the Gulf Islands*, London, Arab Research Centre (1993) p 15.
- ⁶⁸ J. Moberly, ‘Renewed Tension in the Gulf over Abu Musa and the Tunbs’ in *The Dispute Over the Gulf Islands*, London, Arab Research Centre (1993) p 16.
- ⁶⁹ An address by the United Arab Emirates foreign Minister before the seventieth session of the GCC foreign ministers, *Al-Khaleej* newspaper, 15 March 1999.
- ⁷⁰ Interview with Sheikh Hamdan bin Zayed Al Nahyan, Minister of State for Foreign Affairs, *Al-Khaleej* newspaper, 18 July 1999.
- ⁷¹ *Al-Khaleej* newspaper 15 March 1999.
- ⁷² For full text of the law, see: United States Department of State, Bureau of Oceans and International Environmental and Scientific Affairs; *Limits in the seas: Iran’s Maritime Claims*, No. 114, 16 March 1994.
- ⁷³ An interview with the London-based *Al Hayat* newspaper, 20 March 1994.
- ⁷⁴ Address by the President of the UAE, 2 December 1994.
- ⁷⁵ See for example, address by the UAE Foreign Minister before the 49th session, 5 October 1994 and his address before the 50th session, 4 October 1995. Also see an interview with Sheikh Hamdan bin Zayed, Minister of State for Foreign Affairs, in *Al Ahram* newspaper, Cairo, 3 June 1996.
- ⁷⁶ Mojtahed-Zadeh (1993), *op. cit.*, p 24.
- ⁷⁷ Abdoul (1994) *op. cit.*, p 47, quoting the London-based *Al Sharq Al Awsat* newspaper, Issue no. 5671, 8 June 1994.
- ⁷⁸ Al Alkim, *op. cit.*, pp 30–1.

⁷⁹ Rifaat, *op. cit.*, p 17.

⁸⁰ On ways and means of resolving international disputes, see J.G. Merrills, *International Dispute Settlement*, London, Sweet & Maxwell (1984); Mohammed Basheer Al Shafei, *Public International Law in War and Peace*, (Arabic) (4th ed) Cairo, Darul Fikr Al Arabi (1979) pp 603–40; Ahmed Abdulhamid Ashoushi & Omar Abubakr Bakhshab, *Concise in Public International Law* (Arabic) Alexandria, Shabab Al Jamiaa Establishment, (1990) pp 557–99; Mohammed Aziz Shukri, *An Introduction to Public International Law in Peace Time*, (Arabic) (4th ed) Damascus, Darul Fikr (1983) pp 423–38.

⁸¹ *Al Khaleej* newspaper, Sharjah, Issue no. 5349, 3 January 1994.

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