

The Historical and Legal Foundations of Iran's Sovereignty over Tunb and Abu-Musa Islands

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Abstract

Throughout history, the Islands of "Tunb" and "Abu-Musa" have been parts of Iranian territory. In fact, since the beginning of history up to the 19th century, the Persian Gulf coastal areas and the islands have been under Iran's sovereignty. During this long period of history, the Persian Gulf was one of the internal seas of Iran. Even after the 19th century when the British government dominated the Persian Gulf, the evidence held by this government substantiates that these islands belong to Iran. At the outset of 20th century, the illegal occupation of the islands by the British government did not engender sovereignty to the detriment of Iran and in favour of the United Arab Emirates because this occupation was not free of interruption, discordance or objection. Also, the British reasons for the illegal occupation of the islands were legally spurious; accordingly, the British government had no choice but to opt for the word "disputed" to legally refer to the Tunb and Abu-Musa Islands. Ultimately, as the colonialism came to an end in 1971, the islands returned to their previous state, with Iranian sovereignty being exercised upon them again. The main question of the present paper is whether Iran's rights concerning these two islands have been fully restored after the end of colonialism. The main hypothesis of the paper is that, due to the imbalance of power structure between Iran and Britain, the Iranian government has had no choice but to back off from its previous positions, ignoring the Iranian national interests. The findings of the article show that Iran had adopted conciliatory stances, that is, it had relinquished its own rights to Bahrain, and immediately recognised the UAE Federation — what Saudi Arabia did three years later after having invaded parts of the UAE. In order to maintain its own sovereignty over Abu-Musa Island, the Iranian government had also conceded financial and economic privileges to Sharjah.

Key words: historical rights, British documents and maps, Arabs' expansionism, settlement of the issue of Islands.

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Introduction

Tunb and Abu-Musa Islands are three small Iranian islands in the Strait of Hormuz. Abu-Musa Island is approximately situated in the middle of Persian Gulf, with an area of about 12 square kilometres, just a few miles away from another Iranian island named Siri. The Greater Tunb Island, with an area of 11 square kilometres, is situated at a distance of 17 miles from Iranian southern coastal line. The Lesser Tunb has an area of 2 square kilometres and is 22 miles away from the Iranian mainland. Unlike Abu-Musa, the other two islands are uninhabited.

As they are situated near the Strait of Hormuz, the Tunb and Abu-Musa Islands are of strategic importance; strategically, the Strait of Hormuz and the three islands complement each other. The three islands are situated at the deepest parts of the Persian Gulf within two international traffic separation schemes. All the ships travelling through the Strait of Hormuz should necessarily pass through these islands; therefore, they are undeniably important in terms of free international sailing, Iran's oil exportation and, in general, Iran's foreign trade.

This paper will first deal with sovereignty as a theoretical issue and then will examine Iran's historical rights to Abu-Musa and Tunb Islands. Then the illegal occupation of these Islands by Britain as well as the documents presented by the British and UAE governments will be discussed. Then official British documents, which indicate that the two Islands belong to Iran, are introduced followed by a comparison between territorial policies pursued by Iran and Arab States. The

research method in this paper is the historical-legal method.

Sovereignty is the high power of the state, which is the both law-maker and executor of the law, and no power transcends that. Sovereignty contains concepts such as a) the power to enact and amend laws according to the statutory system of the country; b) the political and ethical power, since the state is considered the 'legitimate power' with its own territory; and c) political and judicial independence of the political society. The states' sovereignty was recognised since Westphalia Peace Treaty (1648) but from 1960s on, the ability of the states to maintain their sovereignty was increasingly questioned. During the 1990s, the perception that globalisation would wear down the states was strengthened and this trend was accelerated. Another, equally shocking development was the simultaneous expansion and deepening of the European Union, which highlighted the danger of weakening of sovereign states. In general, the sovereignty of no state is absolute, and certain international laws restrict the states' sovereignty. On the other hand, the principle of non-interference of states in each other's sovereignty has been accepted as a political and ethical principle. At the same time, sovereignty cannot be divided into parts.

The sovereignty theories can be classified into two groups: 1) the theories of external sovereignty or sovereignty of state; and, 2) the theories of internal sovereignty or sovereignty within the state.

External sovereignty or sovereignty of state indicates the distinctive legal and political personality of a nation-state and its independence from other nation-states; it means repudiating any type of dependency to foreign states or obeying them. A state can be said to have external sovereignty when it enjoys full equality with other nation-states in its mutual relations at the international level.

The concept of sovereignty has undergone changes through centuries. In his book *Six Books of the Commonwealth*⁽¹⁾, Jean Bodin defines sovereignty as follows: "the absolute and continuous power of the nation-state". Therefore, he does not differentiate the state from

sovereignty. Also Levaso believes that sovereignty is inseparable from state, asserting that if a state is denied of sovereignty, there will be no nation-state. These theories belong to a period when feudalism dominated Europe. During that period, no feudal unit could claim sovereignty or superiority over another one. At that time, only two powers claimed independence: the emperor and the church. After the collapse of feudalism, the powers of the emperor and the church died down simultaneously. Following the Westphalia treaty in 1648, a new power called "nation-state" emerged.

In international law, territorial changes and consequently transfer of sovereignty take place as occupation, conveyance, and prescription: 1) Occupation occurs on uninhabited and ownerless land. In the occupied territories, sovereignty should be exercised effectually; 2) Conveyance of territorial sovereignty is carried out by the states and through contracts as, for instance, in Istanbul Protocol 1913 through which swathes of Iranian lands were ceded to the Ottoman Empire; and, 3) The principle of prescription is another method for conveying the sovereignty of a territory from one state to another. This principle is applied to lands in abeyance where sovereignty is exercised in an unchallenged, undisturbed and continuous manner.

I- Background

After 20 years of silence, in 1992, the UAE levelled baseless accusations concerning the Iranian Islands of Tunb and Abu-Musa. The Director General of the UAE Foreign Ministry claimed that the Lesser Tunb and Greater Tunb Islands had since "long ago" been under the UAE government sovereignty. Also, the Foreign Minister of this country, addressing the UN General Assembly in 30 September 1992, claimed that these Islands belonged to the United Arab Emirates "since the beginning of history".

One might wonder how the Foreign Ministry officials of a

country, which has been created not earlier than 20 years ago, can talk about ancient times or the beginning of history. Should Iran mention its 7000 years of history? The truth is that if geographical borders are supposed to be demarcated based on historical claims, then many territories that belonged to Iran up to the 19th century should be returned to Iran. Nonetheless, Iran do not covet other territories, time and again voicing its official stance of maintaining the status quo of the borders. However, since Sheikhs of the Persian Gulf do not apparently know history or try to distort it, it seems necessary to briefly review the regional history here.

Geographically speaking, the Persian Gulf is the natural extension of Iranian plateau; therefore, it has always been influenced by the geopolitical attraction of the Iranian mainland, even being considered a body of water inside Iran. Historical evidences show that the Persian Gulf coasts and islands have been under the Iranian sovereignty since the dawn of history. For several centuries, many of the current bodies of water in the Middle East were actually Iranian internal waters, with the Persian Gulf serving as a connecting route between various parts of the Iranian Union, so to speak. "If we look back at Iran's old borders," writes Standisch⁽²⁾, "four seas, that is, the Black Sea, Red Sea, Caspian Sea, and Persian Gulf, were among the internal seas of Iran. Even the first Iranian states were established along the Persian Gulf coasts. The capital of the Elamite Dynasty — which dated back to BC 5,000 — was the city of Susa, near the Persian Gulf. During the Elamite period, the Persian Gulf coasts and islands up to the Mokran Sea (Sea of Oman) were under the sovereignty of the Elamites. As Ahmad Eghtedari puts it, the Elamites had Bahrain in their control.

During the Median Dynasty, especially under Cyaxares, the Persian Gulf coasts and islands were parts of the 14th province (or satrapy) of the Median government called '*Neguinaneh*'. After the Medes, the Achaemenids formed the Iranian Union, spanning from West Asia to Southeast Europe to Northeast Africa.

During the Achaemenian period, all the Persian Gulf islands and coasts were under Iran's influence. Furthermore, according to paragraph 6 of the column 1 of the Bisotun Inscription (a.k.a. Behistun), Abu-Musa Island was part of "Pars" province. Also, Oman was conquered by Cyrus and administered for years by an Iranian named Dara son of Bahman.⁽³⁾

After discovering the Persian Gulf coasts, the Achaemenian admiral *Silack* passed through the Strait of Hormuz by the order of King Darius and after travelling through the Sea of Oman and along the coasts of the Arabian Peninsula entered the Red Sea; thence he went to Egypt and then, via the Mediterranean Sea, to Libya. With 200 ships under his command, he made considerable discoveries. It was because of these discoveries that King Darius ordered to dig the Nile canal in Egypt in order to connect the Mediterranean Sea to the Red Sea; later, this brought about the idea of creating the modern day Suez Canal.

In geopolitical theories, Alfred Mahan is usually mentioned as the designer of sea power strategies, while in fact 25 centuries before him *Silack* founded this strategy. *Silack* believed that any country that is able to dominate three key points in the Persian Gulf region will dominate the whole world. These three points were Bahrain, Oman and Yemen, which are still of high significance in marine strategies. Based on *Silack's* theory, since the Achaemenids until Afshar Dynasty, i.e., for 23 centuries, the marine strategy adopted by Iranians was maintaining dominance over these three points, which, of course, was the case during the major portion of all these centuries. Two thousand years after admiral *Silack*, when the Europeans thought of making conquests, they found out the importance of these points. In the 15th century, Albuquerque the Portuguese sailor announced that any country that is able to dominate the three territories of the straits of Hormuz, Bab-el-Mandeb, and Malacca will dominate the whole world, an idea similar to that asserted by *Silack*.

During the Parthian Empire, too, the coasts at both sides of the Persian Gulf as well as its islands were parts of the Iranian territory. Parthians built buoyant ports on the northern and southern coasts. One of the main causes of wars between Iran and Rome was that the Romans sought to first conquer the Mesopotamia and then dominate the Persian Gulf, the key to trade with the Far East, hence transporting their commercial goods through the Persian Gulf as the shortest route between Rome and the Far East. Iranians, however, did not allow other people to dominate the Persian Gulf, the heart of the Parthian Empire and their naval, military and commercial base.

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

After the collapse of Sassanians, the Iranian rule over the southern coasts of the Persian Gulf apparently diminished. However, during the same period, Iranians founded several dynasties, such as Qarmatians in these areas. Qarmatians of Hasa region chose the southern coasts of the Persian Gulf as their capital; they also conquered Mecca and ruled the southern coasts for 150 years. In his famous itinerary Nasser Khosrow (the Iranian poet), who had travelled to Mecca at that time, writes, "Around AD 904, an Iranian man conquered Hasa, Bahrain, Oman and Yemen and established a large government".⁽⁴⁾

The effective dominance and control of Iran over the Persian

Gulf and its islands continued to the Buyid Dynasty (945–1055); they conquered Baghdad and ruled over Oman, Julphar, Hasa, Qatif and, in general, the whole southern coasts of the Persian Gulf and its islands for 100 years.

As Atabaks of Fars came to power, the southern coasts of the Persian Gulf and its islands went under the sovereignty of this dynasty. As Abu-Bakr Sa'd bin Zangi (Bahrain's ruler) disobeyed Atabak's order, he ousted him and appointed a new ruler. Then he embarked on an expedition to Qatif and Hasa (known as terrestrial Bahrain) and subdued these lands. He also appointed Roknoddin Mahmood as the ruler of Oman and Hormuz Island. Abu-Bakr's trade and maritime activities covered Indian coasts, eastern Africa and Suez port. With regard to his unprecedented maritime and trade power, Abu-Bakr has been rightly called 'King of the Earth'.

The successors of Roknoddin Mahmood are known as founders of the Kingdom of Hormuz because their capital was the small Hormuz Island. During the next 150 years (i.e. AD 1346–1500), all the islands and coasts of the Persian Gulf, including Oman, Bahrain, Qatif, and Hasa, were ruled by the Kingdom of Hormuz. These kings, who obeyed rulers of Fars and Kerman, gained an unprecedented maritime and trade power. The Hormuz Island can be compared with Venice, hence being called by some as the Asian Venice.

As the Portuguese set foot on the Persian Gulf in 1507, the king of Hormuz paid tribute to the Portuguese king for 100 years. It should be mentioned that during this period the territorial integrity of the Kingdom of Hormuz was untouched. As the Safavid Dynasty took power in Iran, all the islands and coasts of the Persian Gulf came once again under Iran's sovereignty. King Abbas conquered Julphar and Bahrain. Afterward, according to a treaty made between him and Portugal in 1625, all the territories in the Persian Gulf that previously belonging to Iran were reconveyed to Iran⁽⁵⁾. Therefore, we once again witness the emergence of an Iranian Union which lasts up

to the 18th century.

At the beginning of the 18th century, which was marked by the collapse of the Safavid Dynasty and internal skirmishes within Iran, we witness a power vacuum in the Persian Gulf, paving the way for piracy and spread of chaos, disorder and lawlessness. Taking advantage of this situation, the Muscat Arabs embarked on plundering the regional islands and coasts. This dire situation, however, did not last long; King Nader (founder of Afshar Dynasty) rose to power and brought back security and calm to the Persian Gulf making Iran dominant over the region again. On King Nader's order, Latif Khan Daryabeigi once again conquered Bahrain, Oman, Muscat and Julphar. Under Nader, the name of Julphar was changed into Ras-al-Khaimah (literally the head of the tent) indicating the erecting of Nader's tents.

Upon the sudden death of King Nader in 1747, Iran once again was divided by internal conflicts. From this time on, Ghassemis overwhelmed the Persian Gulf southern coasts, upsetting the regional security through piracy and banditry; it is in contrast to a 23-century-long rule of Iranians over this region (except for the short periods of invasions by Arabs and Portuguese) during which they established their traditional security over the Persian Gulf islands and coasts without any piracy or slavery.

Thus, since the beginning of history up until mid-18th century, all the northern and southern coasts of the Persian Gulf as well as its islands were under Iran's sovereignty, hence the lack of direct mention of the Tunb and Abu-Musa Islands as belonging to Iran in certain geographical and historical texts prior to the 18th century does not mean that the islands do not belong to Iran. In fact, due to their small area, lack or sparsity of population, shortage of fresh water, and hot weather, these islands did not attract the attention of historians, geographers, sailors or tourists until the 18th century. In addition, there is no evidence showing that Tunb and Abu-Musa Islands do not belong to Iran. However, with reference to the previous explanations,

and for the following reasons, these Islands have been situated within the territorial scope of Iran during various historical periods: 1) The Iranian territory included the northern and southern coasts of the Persian Gulf and even those of the Sea of Oman; and, 2) The political, military, economic, and cultural dominance of Iran over the Persian Gulf and the Sea of Oman.

II- The British Illegal Occupation of the Islands

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

On the other hand, great global powers such as Germany and Russia were already taking heed of the Persian Gulf. Germany had the intention of building a railroad from Berlin to the Persian Gulf. Also, the Russians, who had already dominated Central Asia, were trying to connect their railroads from the Central Asia to one of the Iranian ports and islands in the Persian Gulf. The British Government considered these moves as disturbing the status quo and a violating of its interests in the Persian Gulf. In this regard, Lord Curzon, the Indian vicegerent, had announced:

Granting any privileges to the Russians concerning a port in the Persian Gulf, done by any government, shall be an intentional disparaging of the Britain, disturbing the status quo, and intentional provocation of war; any British minister plenipotentiary who

consents to such concession shall be charged, by me, with treason.⁽⁶⁾

Following this announcement, the minister in charge of India wrote to Lord Curzon on 14 February 1900 via telegram: "The Indian Government should constantly raise the British flag in Hormuz, Hengam, Gheshm or any other Island as recommended by the naval officials".⁽⁷⁾

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

In 1904, the Belgian officials employed by the Iranian government entered the Greater Tunb and Abu-Musa Islands to establish customs posts. Since they considered these islands as Iran's territory, they lowered the flag of Sharjah and raised the Iranian flag instead. Then the British government threatened to resort to coercive measures. Being entangled with domestic problems and the Constitutional Revolution, Iran conceded, under duress, to conclude a temporary agreement with Britain concerning the Islands; both countries agreed to respect the status prior to 1903 and not to raise any flags on the Islands.⁽⁸⁾ Consequently, Iran removed its flag, however, Britain did not keep its promise to maintain the status quo, and the flag of Sharjah was raised on the Island instead of the Iranian flag.

To justify its illegal occupation of these Islands, the British Government resorted to various arguments, the same arguments deployed today by the United Arab Emirates. The Emirates Centre for Strategic Studies and Research published a book in 2005 in which the same arguments of the British were put forward.⁽⁹⁾ At first, Britain claimed that the Sheikh of Sharjah has raised his flag on islands not yet occupied by either of the States, and since he has been the first person to occupy the Island, he has the right to raise his own flag there. This British claim was contradictory to historical documents

and evidences as well as the official maps and reports published by the British authorities. According to these documents, the Tunb and Abu-Musa Islands had been part of Iranian territory until 1903. Furthermore, the people of Lengeh Island would frequently use these islands for the purposes of fishery and grazing their cattle.

With regard to the ostensible spuriousness of this argument, the Britons advanced another argument: prescription. Resorting to this principle is valid only if, according to the international law, the occupation has taken place throughout a long period of time in an uninterrupted, undisturbed and unchallenged manner. A brief glance at the events taking place since the occupation of these Islands, however, shows the contrary.

The Iranian Government has for several times lowered the flag of the Sheikdom and raised its own flag. Even the Sheikh of Ras-al-Khaimah is not willing to keep the Tunb Island, hence lowering his own flag for several times. Even once Britain raised its flag on this Island because the Sheikh refrained from raising his own flag. During the years of occupation, the Iranian Government has sent the British Government about 30 notes of protest. It also has, at various times, conducted negotiations with the UK on Iran's sovereignty over the Islands in question. Iranians visited the Islands at various occasions, with Iranian Government even making several efforts to occupy them, and even once in 1934 it managed to return the islands back to Iran. Therefore, Becket, the legal advisor to the British Foreign Office, voiced doubts about resorting to the principle of prescription.

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

well as Tunb and Abu-Musa Islands.

The British government claimed that Lengeh's Ghassemis have been administering this port city only, while the Tunb and Abu-Musa Islands have been under the control of Ghassemis dwelling in Sharjah and Ras-al-Khaimah. In other words, Britain claimed that the Tunb and Abu-Musa Islands are joint properties of Ghassemis of Lengeh and Ghassemis living across the Persian Gulf. This claim was unacceptable due to the following reasons: 1) Lengeh Port as well as the Tunb and Abu-Musa Islands have always been parts of the Iranian territory. As discussed earlier, the British Government's official documents verify this claim; 2) The Ghassemi governors of Lengeh have been nationals and agents loyal to the Iranian Government; they administered the Tunb and Abu-Musa Islands on behalf of Iran; 3) Throughout the 19th century, there is no record indicating the joint ownership of the Tunb and Abu-Musa Islands by Ghassemis; 4) The Ghassemi sheiks of Lengeh have a socio-political structure totally different from that of Ghassemis living on the southern coasts of the Persian Gulf. Those dwelling in Lengeh gradually assimilated to the Iranian culture and civilisation; 5) In various cases where Lengeh sheikhs had been expelled or where the rule of Lengeh had been delegated to other Iranians, the administration of the Tunb and Abu-Musa Islands had undergone no change; and, 6) Logically, two legal statuses cannot be conceived for Lengeh sheikhs because the principle of sovereignty is inseparable.

Considering these points, the British Government tried to conclude a general contract with Iran in 1928–30 in order to impact the legal status of the Tunb and Abu-Musa Islands in favour of its clients. In 1929, the British Government presented a complete draft general treaty between Iran and Britain containing a list of the parties claims to be resolved through a kind of trade-off. The most important British requests in this draft were as follow” 1) Iran's waiving its rights to the Tunb and Abu-Musa Islands and Bahrain; 2) Britain's continuation of using the base in the Iranian island of Hengam; and,

3) Iran's territorial water limit not exceeding 3 miles.

In return, the British Government was ready to: 1) Waive its rights in Basid base; 2) Recognise Iran's sovereignty over Siri island; 3) Revoke the 1882 slave trade pact; 4) Transfer its mission building from Bushehr to another city; and, 5) Revoke Iran's debt.

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

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

III- The British Documents and Iranian Ownership

As discussed earlier, since the beginning of history until mid-18th century, the southern and northern coasts of the Persian Gulf have been under Iran's sovereignty. From this time on, Iran's influence over the southern coasts diminished but Britain's influence grew stronger. Nonetheless, the Tunb and Abu-Musa Islands have remained an inseparable part of Iranian soil throughout the 18th and 19th centuries. In addition, Britain, then a dominant power in the Persian Gulf, as well as the British government of India have named the Tunb and Abu-Musa Islands as a part of Iran in their official reports, correspondences, maps and journals. Some instances of these documents are referred to in the following: 1) In the report delivered by the British delegation headed by Sir John Malcolm to the *Fath-Ali Shah* court in 1813 titled "geographical notes on Iran's borders", the Tunb and Abu-Musa Islands have been mentioned as parts of Iran; 2) In a report delivered by Captain Brooks, East Indian Company

special envoy, in 1825, the Tunb and Abu-Musa Islands have been recognised as belonging to Iran; 3) In the report submitted by Captain Hein, the well-known hydrographer in the East Indian Company, in 1829, the Tunb and Abu-Musa Islands have been referred to as Iranian islands affiliated to Lengeh Port; 4) In the reports written by Colonel Robert Taylor dated 25 February 1836, and those by Captain Stiff and Constable dated 1854, the Tunb and Abu-Musa Islands are said to belong to Iran; 5) The reports prepared by the British Residency of the Persian Gulf dated 1875–76 indicate that the Tunb and Abu-Musa Islands are affiliated with the Fars Province, Iran; 6) In the Persian Gulf Guideline published by the British Maritime & Coastguard Agency published during 1883–89, the Tunb and Abu-Musa Islands have been mentioned as affiliated to Lengeh Port and under the sovereignty of Fars administration; and, 7) In a brochure published by in 1902, the Tunb and Abu-Musa Islands have been referred to as islands belonging to Iran.

In addition to the above-mentioned reports, a great number of official and semi-official maps, many of them coloured have been published by the Ministry of Defence and the British Maritime & Coastguard Agency as well as the British Crown Rule in India in all of which the Tunb and Abu-Musa Islands have the same colour as Iran. These maps include: 1) The marine map of the Persian Gulf dated 1786; 2) The map of Iranian Empire drawn by John McDonald Kintyre, the political advisor to Sir John Malcolm dated 1813; 3) The coloured map of the Persian Gulf prepared by Captain Brooks, representative of the East Indian Company, dated 1830; 4) The Persian Gulf map drawn by Col. Robert Taylor the political representative of Britain in the Persian Gulf, dated 1836; 5) The map of the Central Asia by Major Alex Burns dated 1834; 6) The lines drawn by Captain Henle and Captain Morris in 1835 and 1836 in order to prevent piracy within Iranian waters; based on these lines, the Tunb and Abu-Musa Islands are within the Iranian territory; 7) The map prepared by the British Maritime and Coastguard Agency in 1863, reprinted in 1876, 1890 and

1912; 8) The Persian Gulf political map drawn by Captain Saint John, by order of the minister for Indian affairs, dated 1876; 9) The map prepared by the British Naval Force in 1881; 10) Map of Iran prepared by the British Ministry of Defence in 1886; 11) Map of Iran prepared under the supervision of Lord Curzon vicegerent of India in 1891, reprinted in 1898; and, 12) Iran's official map prepared by the British Ministry for Indian Affairs in 1897.

There are also other maps prepared by other countries in which the Tunb and Abu-Musa Islands have the same colour as Iran does, indicating these Islands belong to Iran: for example, the map prepared by the Russian Government in 1909 published in the 15th Volume of the Great Encyclopaedia, or the map drawn by the Soviet Union Government in 1954 and published in the World Atlas.

A little explanation is needed here regarding the map of Iran dated 1886; this map was prepared by order of Lord Salisbury then British Secretary of State and sent to Tehran by virtue of the letter No 64 dated 12 June 1888; through a special ceremony, the map was submitted to Nassereddin Shah (King of Iran) by Sir Drummond Wolff, the British ambassador in Tehran. Noticing the colour of the Tunb and Abu-Musa Islands, Nassereddin Shah immediately said that by the testimony of Britain the Tunb and Abu-Musa Islands are part of the Iranian soil. The ambassador kept silent and then wrote, via letter No 176 dated 7 September 1889, to Lord Salisbury that the Iranian king considers the map as a decisive proof that the Tunb and Abu-Musa Islands belong to Iran. The same map was reprinted in 1891 and 1898.

In 1928, Max Huber, the arbitrator of Island of Palmas case between the Netherland and the USA referred to maps as proof of sovereignty. He asserted that a map can be proof of sovereignty on the condition that it is drawn with geographical exactitude, shows no discrepancy with existing realities, and be preferably an official or semi-official map. All these conditions prevail with regards to Iran's

map of 1886.

Nonetheless, years later, the British Foreign Office announced that the colouration in the map had been done incorrectly. Today, the UAE refers to the same point. In any case, the British Government's change of opinion was by no means acceptable, as, first of all, if there had been a mistake in the colouration, it should have been corrected in the next editions, but as discussed earlier the map was reprinted twice more with no changes in colouration. Secondly, based on the international law, including the maxim "allegans contraria non est audiendus" (contradictory statements are not to be heard), or the maxim of estoppel, the changing of opinion by the British Government is not acceptable. According to estoppel, if a government has adopted a certain stance concerning a legal case, it cannot adopt contrary stances in similar cases. In the case of *Temple of Preah Vihear (Cambodia v. Thailand)*, the International Court of Justice adduced the maxim of estoppel in 15 June 1962.

IV- Comparative View

Certain Arab States and their allies had and still have claim that Iran, both under the Shah and under the Islamic Republic, has always followed an expansionist policy to the detriment of the Arab States. "Reza Shah's expansionist policy was followed by his son", claims an Arab author, "he told his son, Mohammad Reza Shah, that they had already wiped Arabs off the eastern coast of the Persian Gulf and now it was time for the son to emancipate the western coasts". While making his country's claims concerning the Tunb and Abu-Musa Islands, the UAE vice-minister of Foreign Affairs has said: "It seems that as the Islamic Republic rose to power in Iran, the country's foreign policy objectives have not differed from those pursued under the previous regime". He further claims that the Shah of Iran obtained half of Abu-Musa Island and now the current Iranian Government has laid hands on the other half.

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

Since the death of Nader Shah (of Afshar Dynasty) in 1747, Iran has not pursued any policy of territorial expansion. On the contrary, during these 2.5 centuries, it has melted from all directions just like snow. A quick glance at the political map of Iran under Nader Shah shows that Iran's total area at that time was twice the current area. During this period, Turkmenistan, Uzbekistan, Tajikistan, Azerbaijan, Ghareh Bagh, Armenia, Afghanistan, part of Sistan-and-Baluchestan, Iraq, and Bahrain were separated from Iran. On the other hand, Iran has not invaded any country since late 19th century, while during the same time it has been invaded several times, including WWI, WWII and Iraq's invasion.

While respecting the current status of the borders, Iran has no territorial claim against any of its neighbouring countries. From among its 15 neighbours, Iran has had territorial disputes only with two countries, that is, Iraq and UAE, which are Arab countries. If, as some Arab countries claim, Iran is seeking an expansionist policy in the region, then how come this policy has not been applied to other countries such as Afghanistan or Central Asian countries or Caucasus? As was mentioned earlier, these countries used to be part of Iran in the past, but Iran asserts no territorial claim against them; therefore, one can conclude that it is not Iran which is coveting the two Arab countries, but rather it is Iraq and the UAE that are pursuing expansionist policies.

A brief glance at the history of Iran proves that since mid-18th century Arabs and their allies have constantly threatened Iranian territorial integrity from two directions: west and south. From the south, as Iran weakened after the demise of Nader Shah, the Oman and Muscat sultans lay hands on Iranian southern regions, such as Bandar Abbas, Gheshm, and Hormuz. As Ghassemis took power in Sharjah and Ras-al-Khaimah, they began to invade Iranian southern coasts, with one branch of them succeeding in settling in Lengeh Port. After Britain dominated the Persian Gulf in early 19th century,

Iran was threatened by this new power that was acting in favour of Arabs. Britain occupied many Iranian ports and islands in the Persian Gulf; it ceded the Tunb and Abu-Musa Islands to its protégé sheikhs and kept Bahrain under its own occupation, ultimately separating it from Iran in 1970.

Moreover, in the west of Iran, the expansionism of the Ottoman Empire from the 17th century on has served to the detriment of Iran and in favour of modern-day Iraq. The skirmishes between Iran and Ottomans led to 24 battles and conclusion of 20 border treaties. In most of these battles, one can spot the footsteps of western countries. Since the establishment of the Safavid Dynasty in Iran, the European countries tried to divert the Ottoman war machine, which was threatening the heart of Europe, into Iran, hence reducing its force in the western front by keeping it busy in its eastern front. It was the reason why Ottoman sultans had to invariably deploy half of their armed forces along the Iranian borders, and this stopped their conquests in Europe. Busbecq — the Austrian ambassador to the court of Suleiman the Magnificent, whose army proceeded up to walls of Vienna — once said: “only Iranians are situated between us and annihilation”. Also, as George Western asserts, “the Safavid Empire has put a bridle on Turks and hence protected the Christian world from incurring further damages”.

In any case, based on the treaty of *Ghasr-e Shirin* (aka Zuhab) (1639), Iraq was separated from Iran and ceded to the Ottoman Empire. As the country of Iraq was founded on the debris of the Ottoman Empire in the early years of the 20th century, the skirmishes continued and ultimately led to Iraq's invasion of Iran. Iraq's goal was to separate the Province of Khoozestan from Iran and annex it to Iraq. Basically, Iraq and, in general, Arabs call this Iranian province as 'Arabia', call the Persian Gulf as the 'Arabian Gulf', and the Iranian islands of Tunb and Abu-Musa as the 'occupied islands'. Arabs' expansionism did not terminate here; claiming that the three islands of Tunb and Abu-Musa belong to Iraq, the country's representative to

the UN in 1971 went on to say that “in fact, history clearly shows that not only the said islands have been under the sovereignty of Arabs, but also Arabs’ dominance extended up to the Island of Ghesm, Strait of Hormuz, and sometime to the Iranian coasts”.⁽¹⁰⁾

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

Nevertheless, Iran has acted in favour of Arab countries in many cases but received no appreciation. The following are just examples: 1) In compliance with its official, announced policy of maintaining the status quo of the regional borders, Iran has defended the territorial integrity of Arab countries; for example, Iran has defended the territorial integrity of Kuwait against Iraq’s expansionism in 1961 and 1990, of Qatar against Saudi Arabia’s invasion in 1992, of Oman against Dhofar Rebellion, of Yemen against aggressive and secessionist measures of Saudi Arabia in 1990, 1994 and 2015, of Iraq against Turkey coveting north of the country, or the territorial integrity of Iraq after occupation of the country by the US; and, 2) Iran has condemned Israeli occupation of Arab lands and has called for evacuation of the lands. As result of Iran’s pressure Israel returned the Sinai Peninsula to Egypt. Because of Abu Rodiss oil wells in the Sinai Desert, Israel did not want to evacuate the desert; Iran agreed to provide Israel with oil on the condition that this country leaves the Sinai Desert.

The Islamic Republic of Iran has defended Palestinians against Israel (and still continues to do so). Iran believes that the Arab-

Israeli peace negotiations do not secure due rights of Palestinians. Presently, one of the political disputes between Iran and the US is, in fact, Iran's support for Palestinians.

After the six-day war in June 1967 and Israel's occupation of Jerusalem (al-Quds), Iran made a lot of efforts in order to prevent any changes by Israel in this Arab-Islamic city. Despite such efforts, Iran is witnessing distortion of the names of its territories and bodies of water by Arab countries.

While demarcating the borders of its continental shelf in the Persian Gulf, Iran has made sacrifices in favour of the regional Arab countries.

In 1970, Iran waived its rights to Bahrain. As for Abu-Musa Island, while maintaining its sovereignty over the Island, Iran ceded privileges to the sheikh of Sharjah. The settlement of the dispute over Bahrain, Tunb, and Abu-Musa Islands as a package deal ended up in favour of Arabs. The British permanent representative in the Security Council meeting of 9 December 1971 implicitly suggested that the resolution of this conflict required a kind of balance; the results, however, showed that the scale had completely tipped in favour of Arabs.

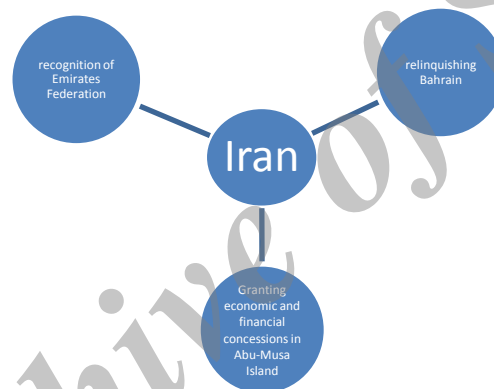
V- Resolution of the Dispute

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

On the other hand, in the negotiations between Iran and Britain, the parties raised the issue of Bahrain, too, attempting to find an

overall solution to this problem. The issue of Bahrain had also been addressed in Iran–Britain talks during 1928–30 and also during the 1950s. Iran invariably considered Bahrain as part of its territory, never having recognized the British occupation of the Island. Iran even went so far as to raising the issue of Bahrain in the League of Nations in 1927. Besides, Iran's National Consultative Assembly enacted a bill in 1957 announcing Bahrain as the 14th province of Iran, with two seats of parliament allocated to representatives from this province.

Reconciliatory Stances of Iran to Settle the Dispute over the Tunb and Abu-Musa Islands in 1971



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

As for Bahrain, Iran suddenly backed off its 150-year-long positions, relinquishing its own historical right. Upon Iran's relegating the issue to the United Nations, the UN Secretary General dispatched a fact-finding delegation to Bahrain to investigate the request of the people of Bahrain concerning the future of this territory. Ultimately, in 2 May 1970, the delegation reported that the majority of Bahraini people wanted

independence; therefore, Bahrain was separated from Iran. It should, of course, be noted that the method applied by the UN Secretary General to resolve the issue was not a referendum, that is, it was not the public opinions that was consulted, but rather the opinion of the ruling family and certain influential figures.

As for Abu-Musa Island, the Iranian Government maintained its sovereignty over the Island. Moreover, by virtue of the memorandum of understanding about Abu-Musa Island and its Appendix number M/21248 dated 25 November 1971, the Iranian Government was free to adopt any necessary measures in order to protect the security of the Island. Nonetheless, Iran granted some economic, financial and administrative concessions to Sharjah Sheikdom regarding Abu-Musa Island. As for administrative affairs, Sharjah nationals were allowed to stay in the Island, while Sharjah could have a police station to maintain order among its nationals. In the economic and business arena, Iran agreed that Sharjah exploit oil reservoirs of Abu-Musa Island. Also, it was agreed that Sharjah nationals and Iranian nationals have equal rights to fishing within Abu-Musa waters. Furthermore, Iran agreed to provide Sharjah with financial grants.

As for the Tunb Islands, situating above the bisecting line and near Iranian coasts, Iran and Britain arrived at a verbal understanding by virtue of which the Iranian sovereignty over the said Islands was restored. The British Government preferred to implement the agreement after the termination of its obligations with respect to the British support of Ras-al-Khaimah sheikh, while Iran insisted that the agreement should be implemented before that. Finally, one day before the termination of Britain's responsibility, Iranian forces entered the Tunb Islands. On the other hand, with its silence, the British Government remained loyal to the previous verbal understanding. Meanwhile, the sheikh of Ras-al-Khaimah, though fully aware of the agreement between Iran and Britain, did not question Britain's competency until the

last day and did not contest the concluded agreements. According to the indisputable international law principle of acquiescence, its prior consent cannot be overridden.

In general, Iran was the losing party in the case of the Islands. Not only no balance was struck among counterclaims, common in political negotiations, but the results of the negotiations were totally to the detriment of Iran and unfair. The reason was that Iran relinquished its own historical right to Bahrain, regaining only 25 km² of its own territory (the area of the Tunb and Abu-Musa Islands) vis-à-vis losing 622 km² (the area of Bahrain archipelago. Furthermore, considerable concessions were granted to Sharjah as well.

Satisfaction of Britain, UAE and International Community at Settlement of Islands Issue

Iran and Britain have solved their disputes concerning the Islands.	Sir William Luce, Britain’s representative in talks
The Tunb and Abu-Musa islands were disputed but finally settled.	Sir Colin Crowe, Britain’s representative in the Security Council
Upon entrance of Iranian forces into the islands, the British warships Eagle and Albion did not interfere.	Britain refraining from military action
Silence of the SC members and removing this issue from the agenda was considered recognition of the solution.	The Security Council view
International community, except several extremist Arab countries, accepted the resolution of the Islands issue.	International community
It accepted the resolution of the Islands’ issue, and its Foreign Minister announced in 1975 that he would refrain from raising the issue of Islands.	United Arab Emirates

Model by: Jafari Valdani

This caused the Iranian Government to face many difficulties convincing its people in terms of the bilateral agreements. Many internal circles strongly criticised the agreements. Fearing the accusation of treason in protecting the territorial integrity of the country concerning Abu-Musa Island, the Iranian Government had to keep the agreement secret. On the other hand, Iran's conciliatory position was commended by international circles that considered it as a step towards boosting regional peace and security.

The important point to be noted here is that Sir William Luce, Britain's representative in negotiations with Iran, asserted in 1971 that "Iran and Britain has settled their disputes concerning the Islands".⁽¹¹⁾ It means that no issue has remained unsettled, and, in other words, old disputes between Iran and Britain have been resolved.

After Iran's sovereignty over the three islands was restored, the United Arab Emirates, supported by Britain, announced itself as a new country, and Iran immediately recognised it. In 1975 when Iran and Iraq resolved their border disputes through the Algiers Declaration (a.k.a. Algiers Accord), the UAE's Foreign Minister noted that "the Algiers Declaration is an important step towards establishing security and stability in the Persian Gulf; as a result, the United Arab Emirates refrains from raising the issue of the islands in the Strait of Hormuz".⁽¹²⁾ Therefore, the UAE, too, accepted the resolution of the issue of the Islands.

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

Conclusion

The Tunb and Abu-Musa Islands have belonged to Iran since the beginning of history. Up until the 18th century, when the Iranian

territory included the northern and southern coasts of the Persian Gulf, these islands were inside the Iranian territory. During the 18th and 19th centuries, they were within jurisdiction of the Iranian port of Lengeh and part of Fars Province, being administered by Lengeh Port rulers, who were Iranians. Furthermore, the British Government and the British Crown Rule in India have mentioned the Tunb and Abu-Musa Islands as belonging to Lengeh Port and part of the Iranian territory in all their reports, correspondences, books, journals, and official or semi-official maps. In the reports compiled by Sir John Malcolm, Captain Hein, Captain George Barnes Brooks, Colonel Robert Taylor, Captain Stiff and Constable, the Tunb and Abu-Musa Islands have been mentioned as belonging to Iran. Moreover, in the British Government's administrative reports collection 1875–76, the first and second prints of the Persian Gulf in 1883 and 1889, as well as the brochure published by the British Maritime & Coastguard Agency in 1902, it has been explicitly mentioned that the Tunb and Abu-Musa Islands belong to Iran, more specifically, the Iranian Fars Province. In addition, according to the maps drawn up by the British Naval Force (1881), the British Maritime & Coastguard Agency (1863), the British War Office (1886), the Indian Survey Office (1897), and the map drawn up by Lord Curzon (1891 and 1892), the Tunb and Abu-Musa Islands have been coloured the same colour as Iran.

However, in the late 19th century, the Russian and German challenges for Britain to boost their presence in the Persian Gulf, as well as Iran's closer ties with Russia and Germany intensified Britain's concerns in the Persian Gulf. In order to prevent the presence of its rivals and to maintain its dominance over the Persian Gulf, the British Government occupied the Tunb and Abu-Musa Islands. Not accepting this occupation, the Iranian Government emphasised its right to sovereignty over the Islands through constant, categorical protests until 1971. Since, according to Treaty of 1892, the British

Government had become responsible for the Persian Gulf Sheikdoms' foreign affairs, the Iranian Government held only Britain accountable for illegal occupation of the Islands and the main party in the negotiations. Upon Britain announcing its decision to withdraw from the Persian Gulf in 1968, Iran tried to settle the disputed with Britain concerning the Tunb and Abu-Musa Islands. Therefore, Iran waived its right of sovereignty over Bahrain, and, in return, its sovereignty over the Tunb and Abu-Musa Islands was restored, hence the state of the Islands turned back to the colonial era. The claims levelled by the UAE, which are the same baseless claims put forward by ex-occupiers (i.e. Britain), have no legal ground. Just as they have been part of the Iranian territory, the Islands will, for ever, remain an inseparable part of the Iranian soil.

Note

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بنیادهای تاریخی و حقوقی حاکمیت ایران بر جزایر تنب و ابوموسی

اصغر جعفری ولدانی

دانشیار دانشگاه علامه طباطبائی

جزایر تنب و ابوموسی در گستره تاریخ همواره بخشی از سرزمین ایران بوده است. اصولاً از آغاز تاریخ تا قرن نوزدهم حاکمیت ایران بر سواحل در طرف خلیج فارس و جزایر آن اعمال می‌شده است. در این دوره طولانی از تاریخ خلیج فارس یکی از دریاهاى داخلی ایران بوده است. از قرن نوزدهم به بعد نیز که دولت انگلیس بر خلیج فارس مسلط شد، اسناد و مدارک این دولت بیانگر تعلق این جزایر به ایران است. در آغاز قرن بیستم اشغال غیرقانونی این جزایر به وسیله دولت انگلیس حاکمیتی به زیان ایران و به نفع امارات ایجاد نکرد. زیرا که این اشغال بدون انقطاع و بدون اعتراض نبود. دلایل دولت انگلیس درباره اشغال غیر قانونی جزایر نیز از نظر حقوقی ضعیف بود. بر این اساس دولت انگلیس ناگزیر شد برای جزایر تنب و ابوموسی از نظر حقوقی عنوان جزایر «مورد مناقشه» را به کار برد. سرانجام با ختم استعمار در سال ۱۹۷۱ این جزایر به وضع پیشین خود بازگشت و حاکمیت ایران بر آنها مجدداً اعاده گردید. سؤال اصلی مقاله این است که آیا با ختم استعمار حقوق ایران درباره جزایر خود کاملاً اعاده گردیده است. فرضیه اصلی مقاله این است که به علت عدم توازن در ساختار قدرت بین ایران و انگلیس، دولت ایران ناچار در مذاکرات از مواضع قبلی خود عقب نشینی کرده و منافع ملی ایران را نادیده گرفته است. یافته‌های مقاله نشان می‌دهد که ایران در مذاکرات مواضع سازشکارانه داشته است، از حقوق خود نسبت به بحرین چشم پوشی کرده، فدراسیون امارات عربی متحده را بلافاصله به رسمیت شناخته، کاری که عربستان سه سال بعد و بعد از تصرف بخش‌هایی از امارات آن را انجام داد. همچنین ضمن حفظ حاکمیت خود بر جزیره ابوموسی، امتیازات مالی و اقتصادی به شارجه داده است.

کلید واژه‌ها: حقوق تاریخی، اسناد و نقشه‌های انگلیس، توسعه طلبی اعراب، حل و فصل مساله جزایر.