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**The Status of
the Greater and Lesser Tonb
and
Abu Musa**

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**“...(boundaries are) the razors edge on which hang suspended the
modern issues of war and peace, of life and death of nations”
Lord Curzon¹**

¹ Kratochwil, Friedrich, Paul Rohrlich, Harpreet Mahajan, **Peace and Disputed Sovereignty**, University Press of America Inc., Lanham, MD 1985, p 3

Introduction

Too often Great Powers assumed that the world was their playground. They drew lines on a geographic map, creating political entities -“facts on the ground”. This meddling in regional politics has come to haunt the world in the form of multiple border disputes. The Powers ignored the fact that no inhabited land is a “clean slate” and an unacceptable line in the sand sows the seeds of future conflicts.² Thus border conflicts have become part of the tradition of the postcolonial world.

One such dispute is brewing between Iran and the United Arab Emirates in the Persian Gulf over the status of three islands, Abu Musa, the Greater Tunb and the Lesser Tunb. In 1971 the United Kingdom abandoned its protector status over the Trucial States of the Persian Gulf giving the sheikdoms independence. Some of these states formed the United Arab Emirates³ (UAE) others such as Bahrain, Qatar and Oman retained their own sovereignty⁴. Ten years after independence, on May 25, 1981⁵, all these sheikdoms along with Saudi Arabia and Kuwait at a meeting in Riyadh formed the Gulf Cooperation Council (GCC). From 1993 onward the GCC in its annual meeting reiterates a statement about the above mentioned islands that *“all the peaceful measures and means which it deems necessary for recovering its sovereignty on its three island”*. Immediately the Iranian Foreign Ministry responds by proclaiming its *“irrevocable sovereignty”* on the same territory⁶.

The subject of this annual display has its roots in British haste to leave the Persian Gulf. In true colonial fashion, the rush to get out on a predetermined date left

² Kratochwil, Friedrich, Paul Rohrlich, Harpreet Mahajan, **Peace and Disputed Sovereignty**, University Press of America Inc., Lanham, MD 1985, p 3

³ United Arab Emirates is composed of the following: Abu Dhabi, Ajman, Dubai, Fujairah, Ras al Khaimah, Sharjah and Umm al Qwain

⁴ Ramazani, R.K., **International Straits of the World, The Persian Gulf and the Strait of Hormuz**, Sijthoff & Noordhoff, Alphen aan den Rijn, The Netherlands, 1979, p 7

⁵ Murden, Simon, **Emergent Regional Powers and International Relations in the Gulf: 1988-1991**, Ithica Press, New York, 1995, p174

⁶ Murden, Simon, **Emergent Regional Powers and International Relations in the Gulf: 1988-1991**, Ithica Press, New York, 1995, p317-318

the delineation of some of the borders unresolved⁷. One of these unresolved issues is the status of Abu Musa, Greater Tunb and Lesser Tunb islands. As can be seen from Figure 1, the value of these islands lies in their unmatched strategic significance. The Greater and Lesser Tunb sit right in the middle of the busiest tanker routes in the world⁸! This particular border dispute has several interesting legal points:

- *The dispute of national claims (the state's rights) vs. patrimonial claims (rights by inheritance) to territories.*
- *The issue of pre-colonial regional claims over post-colonial claims, i.e., claims of newly formed countries vis a vis existing countries.*

The boundary dispute over three islands involves three states different histories:

- *Abu Musa, an inhabited island, is claimed by Iran and Sharjah⁹*
- *The Greater Tunb has fresh water was at one time inhabited by transient fisherman, and is claimed by Iran and Ras al Khaimah¹⁰. Note: Mirfendereski states that at the time when Iran established sovereignty there were some people on the island.¹¹*
- *The Lesser Tunb is uninhabitable and has no fresh water and is also claimed by Iran and Ras al Kahaimah¹²*

Similar border issues have been decided in the past and may provide guidance. In these cases it interesting to consider how the proverbial Swiss arbitrator Max Huber would rule?

Historical Background to the Issue:

Numerous books have been written about the historic background to these islands. It is not the purpose of this paper to revisit these interesting details but a brief historic summary is essential to understanding the main issues.

⁷ bin Salman al Saud, Faisal, **Iran Saudi Arabia and the Gulf, Power Politics in Transition 1968-1971**, I.B. Tauris, London, 2003 p97-103

⁸ Ramazani, R.K., **International Straits of the World, The Persian Gulf and the Strait of Hormuz**, Sijthoff & Noordhoff, Alphen aan den Rijn, The Netherlands, 1979, p 22-23

⁹ Afshar (Sistani), Iraj, **Bumusa Island and the Great and Little Tonb Islands**, Publisher Afshar, Tehran, 1993 p 98-100 (text in Persian) NYU Library #DS326.A33 1993)

¹⁰ Afshar (Sistani), Iraj, **Bumusa Island and the Great and Little Tonb Islands**, Publisher Afshar, Tehran, 1993 p 109 (text in Persian) NYU Library #DS326.A33 1993)

¹¹ Mirfendereski, Guive, **Snake Island** (viewed 3/1/2008)

<http://www.iranian.com/GuiveMirfendereski/2000/August/Tonb/index.html>

¹² Afshar (Sistani), Iraj, **Bumusa Island and the Great and Little Tonb Islands**, Publisher Afshar, Tehran, 1993 p 125 (text in Persian) NYU Library #DS326.A33 1993)

With the arrival of the Portuguese in the 15th century, the character of the Persian Gulf, a virtual Persian-Ottoman Lake, changed. The Portuguese built fortifications on some islands and other land areas in an attempt to control trade. The Iranian Safavids (1502-1736) with the *hired* help of the British, specifically the East India Company, ousted the Portuguese and reestablished control on the eastern shores and islands¹³. The success of this military operation, however, opened the way for the British. By the mid 19th century the British government had replaced the East India Company and had established a presence in the Persian Gulf¹⁴.

British interest in the Persian Gulf was primarily for the safety and security of their trade with India, not establishing colonies. They assigned “residents” to promote security and prevent piracy but not to establish physical sovereignty. The Iranian governments from the 16th to the 20th century never recognized the political or territorial ambitions of the British. The British, however, recognized the legitimacy of the Iranian government on the eastern shores of the Persian Gulf and considered the western shores a “Pirate Coast” (see Figure 2)¹⁵. One of the many tribes of “Pirate Coast” was the “Qawasim” who attacked and pillaged British shipping¹⁶. Typical of many families of the area, it had ties on both sides of the Persian Gulf. The Sheikh of this tribe, similar to many other local sheikhs, ruled in Badar Lengeh by authority of the Iranian government¹⁷.

The British in the late 19th century considered the Persian Gulf as part of their sphere of influence, not part of their colonial empire. Iran was considered the dominant power in the region and the Iranian... “Government along the northern shores

¹³ Savoy, Roger, **Iran Under Safavids**, Cambridge University Press, Cambridge 1980, p195

¹⁴ Ramazani, R.K., **International Straits of the World, The Persian Gulf and the Strait of Hormuz**, Sijthoff & Noordhoff, Alphen aan den Rijn, The Netherlands, 1979, p 35-41

¹⁵ Curzon, George N., **Persia and the Persian Question**, Longmans, Green and Co., London, 1892, pp 464

¹⁶ Curzon, George N., **Persia and the Persian Question**, Longmans, Green and Co., London, 1892, pp 450-453

¹⁷ Mehr, Farhand, **A Colonial Legacy**, University Press of America, Lanham, 1997p 67 & 75-84

exercising a more vigorous and undisputed sovereignty...".¹⁸ To counter regional Iranian influence the British began establishing relations with these so-called "Pirates"¹⁹ and by 1887 had started to make claims on the islands of the Persian Gulf on their behalf²⁰. The Iranian government in writing and orally from 1891 onward repeatedly repudiated these claims²¹. The dispute between Britain and Iran continued and, once the League of Nations was formed, Iran in 1928 threatened to take its claims on the islands to that forum.²²

The British since the 16th century concluded many treaties with the Iranian Government including the exchange of maps delineating Iran boundaries in the Persian Gulf²³. In the 19th century to protect its trade and confront the Ottomans it also established contract relations with the sheikhs/emirs on the western shore of the Persian Gulf²⁴. These agreements are curious legal anomalies.²⁵ They were contracts with individuals, hardly a government in the Westphalian sense²⁶. Essentially the British were contracting the tribal sheikhs to stay away from their shipping while giving them a free reign to do just about anything else they pleased²⁷.

¹⁸ Curzon, George N., **Persia and the Persian Question**, Longmans, Green and Co., London, 1892, pp 464

¹⁹ Ramazani, R.K., **International Straits of the World, The Persian Gulf and the Strait of Hormuz**, Sijthoff & Noordhoff, Alphen aan den Rijn, The Netherlands, 1979, p 113-121

²⁰ Movahed, Mohammad Ali, "**Mobalegeh Mostaar**", **Research into Documents of The Sheikhs Regarding the Claims to the Island of Lesser Tunb, Greater Tunb and AbuMusa**, Tehran, 2000 (Text in Persian NYU Library #KZ3881.A28M882001) P 142-156.

²¹ Afshar (Sistani), Iraj, **Bumusa Island and the Great and Little Tonb Islands**, Publisher Afshar, Tehran, 1993 p 66 (text in Persian) NYU Library #DS326.A33 1993)

²² Mojtahed-zadeh, Pirouz, **The Islands of Tunb and Abu Musa**, Center of Near and Middle East Studies, School of Oriental and African Studies (SOSA) University of London, London 1995, p 47

²³ Movahed, Mohammad Ali, "**Mobalegeh Mostaar**", **Research into Documents of The Sheikhs Regarding the Claims to the Island of Lesser Tunb, Greater Tunb and AbuMusa**, Tehran, 2000 (Text in Persian NYU Library #KZ3881.A28M882001) P 142-156

²⁴ Curzon, George N., **Persia and the Persian Question**, Longmans, Green and Co., London, 1892, pp 449 (see footnote)

²⁵ bin Salman al Saud, Faisal, **Iran Saudi Arabia and the Gulf, Power Politics in Transition 1968-1971**, I.B. Tauris, London, 2003 p 2 & 131.

²⁶ E. de Vattel, **The Law of Nations**, Janis, Mark W. and John E Noyes, **International Law Cases and Commentary Third Edition**, Thomson West, 2006, p 424

²⁷ Mehr, Farhang, **A Colonial Legacy**, University Press of America, Lanham, 1997 p 84 & Ramazani, R.K., **International Straits of the World, The Persian Gulf and the Strait of Hormuz**, Sijthoff & Noordhoff, Alphen aan den Rijn, The Netherlands, 1979, p 118-119 and Curzon, George N., **Persia and the Persian Question**, Longmans, Green and Co., London, 1892, pp 449 - 454

To further strengthen their sphere of influence, the British set-up regional offices around the Persian Gulf to guarantee their trade security²⁸. They assigned “residents” on the western coast to expanded relations with the local “sheikhs/emirs” and a senior resident in Bushier (on the east coast) to negotiate with Iran and the sheikhs on the Western coast²⁹. These residents occasionally visited the islands including the Greater and Lesser Tunb as well as Abu Musa.

British Departure and Boundary Conflicts:.

Scheduling of the departure of the British from the Persian Gulf was bound to the conflicts between the Labor and Conservative governments. This confused littoral states, primarily Iran and Saudi Arabia, as to their intentions³⁰. These governments had every intention of becoming the dominant forces in the area and the British actions were critical. The “post colonial” boundaries such as the neutral zone between Saudi Arabia, Iraq and Kuwait, the conflicts over Oman, the status of Bahrain as well as the matter of the Greater and Lesser Tunb and Abu Musa were among many issues partially resolved by British governmental uncertainty.

Negotiations about the status of Bahrain and Abu Musa and the Tunb were on going between Iran and Britain. There seems to have been a *quid pro quo* agreement where Iran would not press its territorial claim on Bahrain in exchange for the islands³¹.

Sir Denis Wright, (the British Ambassador to Iran) writes that in 1971:

*“... the Foreign Secretary, Sir Alex Home, (in his meeting with Mohammad Reza Pahlavi-the Shah) agreed to let the Shah have the disputed islands, though for years we (the British) had up held the Arab Sheikhs’ claims to them”.*³²

Mr. Alam, the Iranian Minister of Court, confirmed this matter in his memoirs:

²⁸ Wright, Sir Dennis, **Britain and Iran: Collected Essays**, The Iran Society, London, 2003 p 138

²⁹ Curzon, George N., **Persia and the Persian Question**, Longmans, Green and Co., London, 1892, pp 451

³⁰ Wright, Sir Dennis, **Britain and Iran: Collected Essays**, The Iran Society, London, 2003 p 138-142

³¹ Mehr, Farhang, **A Colonial Legacy**, University Press of America, Lanham, 1997 p 84 & Ramazani, R.K., **International Straits of the World, The Persian Gulf and the Strait of Hormuz**, Sijthoff & Noordhoff, Alphen aan den Rijn, The Netherlands, 1979, p 49

³² Wright, Sir Dennis, **Britain and Iran: Collected Essays**, The Iran Society, London, 2003 p 153

"The British Ambassador [Sir Denis Wright]... told me very confidentially that the case of the Tunb Islands is practically settled and it will definitely be given to Iran,... [and] the Sheikh of Ras al Kahaimah [has been informed that] Iran will lawfully ...[if necessary] forcefully take these islands..."³³

The Bahrain issue was solved through a United Nations sponsored plebiscite to save face for Iran. On the Abu Musa, issue the British brokered a memorandum of understanding between Iran and Sharjah. The matter of the Tunb islands, in spite of Sir Wright's notes, was not finalized. So on November 30, 1971, Iran, as discussed with the British Foreign Secretary Sir Alex Home, simply took over the Tunb islands.³⁴

Interestingly enough, at the time not one of the littoral states made a protest about Iranian action. However, the *then* radical Arab countries, Algeria, Libya, South Yemen, which did not border on the Persian Gulf and Iraq complained to the UN on behalf of the Arab populations of the world.³⁵ They presented a protest to the United Nations to which the Iranian delegate responded stating it was none of their business and that furthermore:

"arrangements made concerning Abu Musa have already met with approval and satisfaction of Sharjah ... and that (with regard to the Tunb islands) Iranian title to the islands is long standing and substantial."³⁶

At the time none of the other Arab countries took notice of this protest³⁷ as they were fully informed of the progress of the discussions with the British by the Iranian Foreign Minister in person³⁸. Nevertheless, this protest by Algeria, et al. has become integral to the current debate over sovereignty of these islands.

³³ Mojtahed-zadeh, Pirouz, **The Islands of Tunb and Abu Musa**, Center of Near and Middle East Studies, School of Oriental and African Studies (SOSA) University of London, London 1995, p 56

³⁴ Mirfendereski, Guive, **Snake Island** (viewed 3/1/2008)

<http://www.iranian.com/GuiveMirfendereski/2000/August/Tonb/index.html>

³⁵ Wright, Sir Dennis, **Britain and Iran: Collected Essays**, The Iran Society, London, 2003 p 140

³⁶ Mojtahed-zadeh, Pirouz, **The Islands of Tunb and Abu Musa, Appendix III** Center of Near and Middle East Studies, School of Oriental and African Studies (SOSA) University of London, London 1995, p 98

³⁷ Wright, Sir Dennis, **Britain and Iran: Collected Essays**, The Iran Society, London, 2003 p 140

³⁸ Mojtahed-zadeh, Pirouz, **The Islands of Tunb and Abu Musa, Appendix III** Center of Near and Middle East Studies, School of Oriental and African Studies (SOSA) University of London, London 1995, p 57

Legal Points

Patrimonial Matters:

The patrimonial claims on the Tunb are based on two concepts:

- *Firstly, the basis of the British claim of the right to “transfer of title” was based on the hypothesis that the Tunb islands were res nullius or terra nullius and not part of Iran prior to the British incursion into the Persian Gulf.*
- *Secondly, a contradictory claim, that the islands were the patrimonial inheritance of the Qawasim, an Arab tribe that was resident on both sides of the Persian Gulf.*

As previously mentioned, the English East India Company had been contracted by the Safavid in the 16th century to expel the Portuguese from the Persian Gulf and *its* islands. Furthermore, documentation exists of Iranian sovereignty over these islands until the middle of the 20th century; for example, the letter in Figure 3a where the British acquiesced to Iranian demands to lower the English flag on Tunb Islands and Abu Musa. This was followed by a letter from Mozaffar al-Din Shah Qajar (1896-1907) directing the Iranian Prime minister to proclaim the islands indisputably Iranian territory (Figure 3b). Finally there is a letter from the India office dated 1914 with an offer to purchase or lease the islands (Figure 3c). All these letters show that the British did not believe they owned the islands nor considered them an integral part of their colonial empire while the Iranians certainly made their claims known in writing at every opportunity. Thus, lacking ownership, the British were not in a position to unilaterally cede these islands to anyone let alone the sheikhs.

Existing historic documentation shows the Qawasim were governors on behalf of the central government in Iran and paid taxes and customs duties to the central government³⁹. Thus, if the Qawasim were appointed to the region, that region and its tributaries were property of Iran. In 1886, the Qawasim were removed from the governorship of Bandar Langeh and a new governor was appointed, a Haj Mohammad

³⁹ Movahed, Mohammad Ali, “Mobalegeh Mostaar”, *Research into Documents of The Sheikhs Regarding the Claims to the Island of Lesser Tunb, Greater Tunb and AbuMusa*, (Text in Persian) Tehran 2000 p 93, (NYU Library #KZ3881.A28M882001)

Mehdi Malek al Tojar, who immediately took over the port and the islands of Tunb and Abu Musa and raised the Iranian flag on the islands.⁴⁰

The inheritance claims on the Tunb, presented by the British on behalf of the Qawasim, were based on the tribe's residence on both sides of the Persian Gulf. The British said that the eastern shore family transferred ownership of the islands to the western shore members. Thus, when the Trucial states were formed, these islands became part of their territory. It should be noted that the "western shore Qawasims" were not a state as per deVattel's 1758 definition of a state⁴¹. Besides, inheritance laws are subject to national laws and not *vice versa* and national sovereignty is not compromised by non-national ownership of its property. A non-national ownership of property in a state does that make that property *de facto* and *de jure* a separate country⁴². The fundamental concept that the Tunb islands are a patrimonial inheritance of the Qawasim and therefore part of the new sheikhdом of Ras al Khaimah is somewhat flawed.

Regardless, whether the islands were Iranian territory or patrimony of the Qawasim they could not be construed to be *res nullius* or *terra nullius* since they were already known, occupied and under "effective control" of a local state and could not be claimed by Britain.

Post Colonial Matters:

There is no doubt that the British from the mid 19th century to late 1960 established a sphere of influence in the Persian Gulf in spite of the efforts of regional governments. But, with the collapse of *Pax Britannica*, the British departed from the

⁴⁰ Afshar (Sistani), Iraj, **Bumusa Island and the Great and Little Tonb Islands**, Publisher Afshar, Tehran, 1993 p 68 (text in Persian) NYU Library #DS326.A33 1993)

⁴¹ Janis, Mark W. and John E Noyes, **International Law Cases and Commentary Third Edition**, Thomson West, 2006, p 424

⁴² "**Schooner Exchange v. McFadden**", Janis, Mark W. and John E Noyes, **International Law Cases and Commentary Third Edition**, Thomson West, 2006, p 833

region in 1971 and their legacy was a series of “facts on the ground”. These facts included the creation of a number of Emirates/Sheikhdom on the western bank of the Persian Gulf. In their rush to leave, the British failed to finalize interstate borders, thus, the current littoral states are now facing inherited boundary disputes. Furthermore, the regional powers, Iran and Saudi Arabia, have now developed different views of the regional hegemonic structure.⁴³

The Problem Defined in Contemporary Terms:

The problem of the islands can be divided into two distinct categories: first - Abu Musa (between Iran and Sharjah) and second - the Tunb (between Iran and Ras al Khaimah). Although, currently both sheikhdoms are part of UAE, Sharjah had signed a bilateral agreement with Iran over Abu Musa while Ras al Khaimah had not. The Abu Musa case, therefore, is revisiting of the 1971 Memorandum of Understanding between Iran and Sharjah, i.e., a treaty issue. The matter of the Tunbs, however, is open.

The Tunb Issue:

The Tunb islands are geographically on the Iranian side of the Persian Gulf. These islands were not permanently inhabited although the local sailors from time to time took refuge on them. At one point in the late 19th century the British had placed a lighthouse on the Greater Tunb and at another time the Iranian Government had tried to establish customs office on them⁴⁴. Although in the first half of the 20th century neither island was permanently occupied, they were certainly not *terra nullius* or *res nullius*. Both the Iranians and the British (on behalf of the Trucial States) had claims (See Figure 3 and 3a) and were actively involved in establishing control over the islands. With the British withdrawal, on November 30, 1971, the Iranians established a physical

⁴³ Sick, Gary and Lawrence Potter, **The Persian Gulf at the Millennium, Essays I Politics, Economy Security and Religion**, Macmillan New York, 1997, p 147-150

⁴⁴ Mojtahed-zadeh, Pirouz, **The Islands of Tunb and Abu Musa**, Center of Near and Middle East Studies, School of Oriental and African Studies (SOSA) University of London, London 1995, p 47

presence and established firm control on both islands. At the time, Ras al Khaimah, on whose part the British -as protectors- claimed the islands, did not issue a protest and matters were quiescent.

After the formation of GCC in 1981 and the events of the Iran-Iraq war, the UAE decided to revisit the claims of Ras Al Khaimah on the Tunb islands. The issue was finally articulated in the GCC meeting in December 1992 almost 20 years after the Iranian control of the islands.⁴⁵ As previously mentioned, they were based on the British idea of *res nullius* and the patrimony of the Qawasim tribes.

Abu Musa Issue:

The Abu Musa case is historically similar to the Tunb issue. Iran has always laid claim to Abu Musa. The British, however, late in the 19th century started a campaign to separate it from Iran⁴⁶. Regardless, as can be seen in the note from the Iranian Consulate General in India and the directive of the Shah of Iran in 1904, when the British attempted to raise the English flag on the Tunb and Abu Musa the Iranian government protested, and they lowered their flag (Figure 3a); a tacit British admission of Iranian sovereignty over the islands. Furthermore, the Shah of Iran explicitly stated in his letter of 1905 that Tunb and Abu Musa were indivisibly Iranian territory (Figure 3b).

The only historic and legal difference between the Tunb and Abu Musa is the 1971 Memorandum of Understanding signed between Iran and Sharjah. This memorandum, a one-page document with an attached map (See Figure 4), is the epitome of ambiguity. It starts off with the statement:

⁴⁵ Long, David E., Chirstian Koch, **Gulf Security in the Twenty First Century**, I.B. Tauris, London 1997, p 160-162

⁴⁶ Afshar (Sistani), Iraj, **Bumusa Island and the Great and Little Tonb Islands**, Publisher Afshar, Tehran, 1993 p 68 (text in Persian) NYU Library #DS326.A33 1993)

“Neither Iran nor Sharjah will give up its claim to Abu Musa nor recognize the other’s claim. Against this background the following arrangements will be made:... ”⁴⁷

In short it did not clarify the matter of sovereignty nor did it solve the boundary issue. It deferred the decision of sovereignty to an undetermined later date and established a *modus vivendi*.

Interestingly, the 1971 Memorandum of Understanding became a recognized precedent for dealing with resources in other contentious border areas.⁴⁸ Specifically paragraph 4 of this memorandum discusses the exploration and exploitation petroleum, paragraph 5 fishing rights and paragraph 6 regarding financial assistance to Sharjah. Territorial claims and counter claims notwithstanding, pecuniary interests always prevail!

The negotiation of this agreement is most interesting. The British Foreign Office acted on behalf of the Sheikh of Sharjah. All communications written and oral about the island were between the Iranian government and the British government. There does not seem to be any communication between Iran and Sharjah dated to that time nor were any of the letters in Arabic. This is indicative that the British were actually “brokers” and did not really have sovereignty over the Abu Musa (see Figure 5 and 6).

Abu Musa and Tunb - Cases dealing with islands:

It is important to consider the definition of an island. According to Part VIII of the United Nations Convention on the Law of the Sea (UNCLOS) article 121, paragraph 2 an island is:

“Except as provided for in paragraph 3, the territorial sea, the contiguous zone, the exclusive economic zone and the continental shelf of an island are determined in accordance with the

⁴⁷ Mojtahed-zadeh, Pirouz, **The Islands of Tunb and Abu Musa**, Center of Near and Middle East Studies, School of Oriental and African Studies (SOSA) University of London, London 1995, p 90

⁴⁸ Masahiro Miyoshi, Clive H. Schofield, **The Joint Development of Offshore Oil and Gas in Relation to Maritime Boundary Delimitation**, Maritime Briefing Volume 2 Number 5, University of Durham, UK 1999, p 10-11

provisions of this Convention applicable to other land territory.” (paragraph 3 excludes rocks that cannot support human life and economic activity)

Thus islands, by definition, become extensions of mainland countries except when their territorial waters conflict with adjacent land areas.⁴⁹ In this case there is no conflict with contiguous main land areas and the islands extend Iranian territorial waters considerably. As can be seen in Figure 7 the strategic and political value of the Tunb and Abu Musa islands outweigh their economic potential.

Several previous legal decisions may provide guidance for claiming sovereignty over islands such as the Tunbs and Abu Musa. Some are:

- *Isle of Palmas*
- *The Clipperton*
- *Minquiers and Ecrehos*
- *Gulf of Fonseca*

The salient points of each case are:

- **Permanent Court of Arbitration, Island of Palmas Case (or Miangas) (United States v. The Netherlands) 1928⁵⁰,**
US claimed “contiguity” and “discovery”. Netherlands claimed “discovery” agreement with locals and historic, i.e., “effective display of authority”. Award to the Netherlands was based on “effective display of authority”, contiguity was rejected and “discovery” was based on historic documents.
- **Arbitral Award of His Majesty the King of Italy on the Subject of the Difference Relative to the Sovereignty over Clipperton Island, France v. Mexico, Jan. 28, 1931⁵¹**
In the decision the primary basis of award was “discovery” although the issue of “effective occupation” was raised. The award was to France.

⁴⁹ Van Dyke, Jon M., **Legal Status of Islands with reference to the UN Convention on the Law of the Sea** Presentation 12/9/1999 Seoul South Korea, <http://www.seastead.org/localres/misc-articles/DykeLegalStatusOfIslands.html> (viewed 3/31/08)

⁵⁰ Damrosch, Henkin, et al, **International Law Cases and Material** 4th Ed. West, St Paul, 2001 p 316-323

⁵¹ American Journal of International Law, Vol 26, January 1932 “**Arbitral Award of His Majesty the King of Italy on the Subject of the Difference Relative to the Sovereignty over Clipperton Island (France v. Mexico), Jan. 28, 1931**” p 390-394

- **International Court of Justice, The Minquiers and Echrehos Case, France v. United Kingdom, 1953⁵²**

The court awarded the islands to the United Kingdom based on historic documentation, continuous display of authority and control by the UK through the Isles of Jersey and Guernsey.

- **International Court of Justice, Case concerning Land, Island and Maritime Frontier Dispute (El Salvador v. Honduras: Nicaragua Intervening) 1992⁵³ (Gulf of Fonseca)**

In this case it was decided that *uti possidetis* was not frozen in time and could be modified when other factors are considered. In fact, “possession backed by exercise of sovereignty may be taken as confirming...title”, i.e., effective display of authority.

The over-riding principle in all these cases was effective control or occupation. In Isle of Palmas Case there were conflicting claims over property ceded by a departing power. The United States, while it had some claim based on Spain’s “discovery” and “contiguity” of the island to the Philippines, had not established “presence” on the island so its claims were not considered as strong as the Netherlands. In Tunb/ Abu Musa case the issue of discovery is moot. The island had been part and parcel of Iranian territory and an effective Iranian government existed and the islands were “visited” and known to Iranians, Dutch and Portuguese prior to the British. Furthermore the British in their Maps of 1888 indicated that these islands were within Iranian boundaries.

Although the “Minquiers and Echrehos”, “Clipperton” and “Isle of Palmas” cases show contiguity is not sufficient, Iran has used it to strengthen its case with regards to these islands. Not only are the islands closer to Iran but even the flora and fauna such as lizards, snakes and plants on the islands are similar to the ones on the eastern shore of the Persian Gulf rather than the western shore⁵⁴.

⁵² Janis, Mark W. and John E Noyes, **International Law Cases and Commentary Third Edition**, Thomson West, 2006, p 285-294

⁵³ Damrosch, Henkin, et al, **International Law Cases and Material 4th Ed.** West, St Paul, 2001 p 334-340

⁵⁴ Afshar (Sistani), Iraj, **Bumusa Island and the Great and Little Tonb Islands**, Publisher Afshar, Tehran, 1993 p 47-54 (text in Persian) NYU Library #DS326.A33 1993)

In the “Gulf of Fonseca”⁵⁵, the Central American countries were created from a uniform colonial empire. At some point in history, all countries in the area had been part of a common entity. The issues evolved as an outgrowth of the division of common property that once belonged to Spain, thus the concept of *uti possidetis* could be considered. This is not the case for the Tunb and Abu Musa. There is no question of dividing common property and neither Iran nor the precursors to the UAE were ever part of the British Empire (although they may have been under its “sphere of influence”). The British had no sovereignty in the Persian Gulf and were a “temporary” resident and the eventual protector of the sheikdoms. They were not in the position to cede or not cede any property to anyone, be it to the countries on the western shore or the eastern shore of the Persian Gulf.

The decisions reached on the above cases regarding uninhabited or partially inhabited islands lead to the following conclusions: discovery is important but not sufficient, historic documentation is important but in cases of ambiguity may be questioned, contiguity is not reason enough, but what is absolutely critical is *effective occupation and exercise of authority* over the island.

Regarding inhabited islands, such as Abu Musa, some additional cases may also be considered, specifically:

- *The Aaland Island Question*
- *The Dispute between Denmark and Norway over the Sovereignty of East Greenland*

In both these cases the nationality of the inhabitants and, in fact, their preference was not even an issue and the court made its decision based on other parameters. The salient points of each case are:

⁵⁵ Land, Island and Maritime Frontier Dispute (El Salvador/Honduras; Nicaragua intervening), 1992 I.C.J. 351

- **Aaland Island Question-Report of the International Committee of Jurists on the Legal Aspects of the Aaland Island Question 1920, Sweden v Finland⁵⁶,**

Upon independence from Russia, Finland was in turmoil and the Aaland Islanders, based on “self determination”, historic, ethnic backgrounds and a plebiscite had decided to join Sweden. Based on maintaining the historic integrity of Finland and preservation of the minority rights, the International Court of Justice decided in favor of Finland.

- **The Eastern Greenland Case 1933, International Court of Justice, Denmark v Norway⁵⁷**

This case considers the validity of treaties and agreements. The holding that the oral statement by the Norwegian Minister of Foreign Affairs at a meeting with the Danish representatives was binding treaty allowed the court decide in favor of Denmark.⁵⁸

In the Aaland Island case the court’s decision in favor of Finland was based on proven historic sovereignty. The fact that the residents were Swedish and had voted to become part of Sweden was considered secondary to the political integrity of Finland.⁵⁹ The principle of “self-determination” was considered a lower priority than the right of the nation state to physical integrity. In the case of Abu Musa no plebiscite was held, nor was the local population consulted as to their preference. The idea that the inhabitants were related to the Arab population of Sharjah “by blood” is moot, they were of mixed blood as are all the people of the Persian Gulf⁶⁰. Claims to physical national integrity, ethno-religious similarity and historic documents would override “self determination”, even if it had been discussed.

The Denmark/Norway case on is more interesting. In this case the court, among other things, considered the oral statements made in a joint meeting by the Norwegian foreign minister, Mr. Ihlen, as binding. Furthermore, there seems to have been a *quid pro quo* agreement in this instance over the Island of Spitzbergen. Referring

⁵⁶ Janis, Mark W. and John E Noyes, **International Law Cases and Commentary Third Edition**, Thomson West, 2006, p 484-489

⁵⁷ Preuss, Lawrence, “**The Dispute Between Denmark and Norway Over the Sovereignty of East Greenland**” American Journal of International Law, Vol 26, January 1932 p 469-487

⁵⁸ **The Eastern Greenland Case**, Janis, Mark W. and John E Noyes, **International Law Cases and Commentary Third Edition**, Thomson West, 2006, p 85-86

⁵⁹ Luard. Evan ed., **The International Regulation of Frontier Disputes**, Praeger Publishers, New York, 1970 p.39,

⁶⁰ Mojtabeh-zadeh, Pirouz, **The Islands of Tunb and Abu Musa**, Center of Near and Middle East Studies, School of Oriental and African Studies (SOSA) University of London, London 1995, p 67

to the previously mentioned discussion between the Shah and the British Foreign Secretary Sir Alex Home, one may conclude that the British had decided in favor of Iran and furthermore, the British had withdrawal of the Tunb claim was a *quid pro quo* agreement over Bahrain. Since the British instigated the case then withdrew it, it can be concluded that the case had nothing to do with Ras al Khaimah and, in fact, no legal basis.

Conclusion

Reviewing the current status of the Greater and Lesser Tunb and Abu Musa, from the perspective of previous cases indicate a trend in legal thinking toward “effective occupation”. There seems to be some consensus that inhabited island should be treated differently than uninhabited islands, but regardless, the over riding concept is one of “effective control”. What constitutes effective control may be debated but physical presence, construction and occupation, as well as tax collection and governmental presence are no doubt good examples.

In the case of Abu Musa and the Tunb, judging by the aerial photographs courtesy of Google Earth (See Figure 8, 9 and 10), Iran has established effective control. Each island has an airstrip, a port facility and roads have been built. Also, every day, all weather channels in Iran from 1971 to the present announce the weather of each of these islands⁶¹. There is no question that Iran has occupied and established presence on these islands and it would require an act of war to remove them. (A repeat of the Falklands/ Malvinas incidents come to mind.⁶²)

⁶¹ I was working on Lavan Island in the Persian Gulf from 1969-1973 and was amazed that the daily weather reports of Abu Musa and the Tunbs after 1971, when Lavan and Kharg, major Iranian petroleum loading ports, were not!

⁶² Mehr, Farhang, **A Colonial Legacy**, University Press of America, Lanham, 1997 p 84 & Ramazani, R.K., **International Straits of the World, The Persian Gulf and the Strait of Hormuz**, Sijthoff & Noordhoff, Alphen aan den Rijn, The Netherlands, 1979, p 143, “On December 20, 1992, the Iranian President, Mr. Rafsanjani, was quoted to say “...to reach these islands one has to cross a sea of blood...”

But returning to Max Huber, if he was appointed as arbitrator over these islands, he would probably reiterate his views on the Las Palmas case:

*“International law in the 19th century, having regard to the fact that most parts of the globe **were under the sovereignty of States** members of the community of nations, and that territories without a master had become relatively few, ...laid down the principle that occupation, to constitute a claim to territorial sovereignty, must be effective, that is, offer certain guarantees to other States and their nationals. ...”*⁶³

⁶³ Permanent Court of Arbitration, **The Islands of Palmas Case (or Miangas)**, United States v. The Netherlands, Award of Tribunal, Arbitrator M. Huber, The Hague 14 April 1928, P 14

Figures

Figure 1

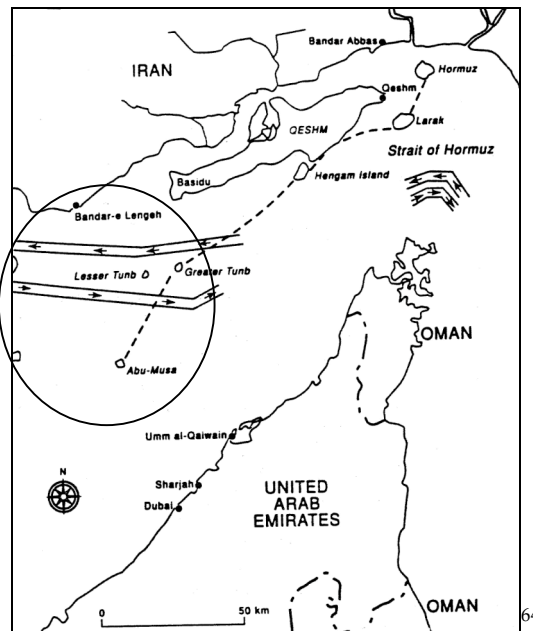
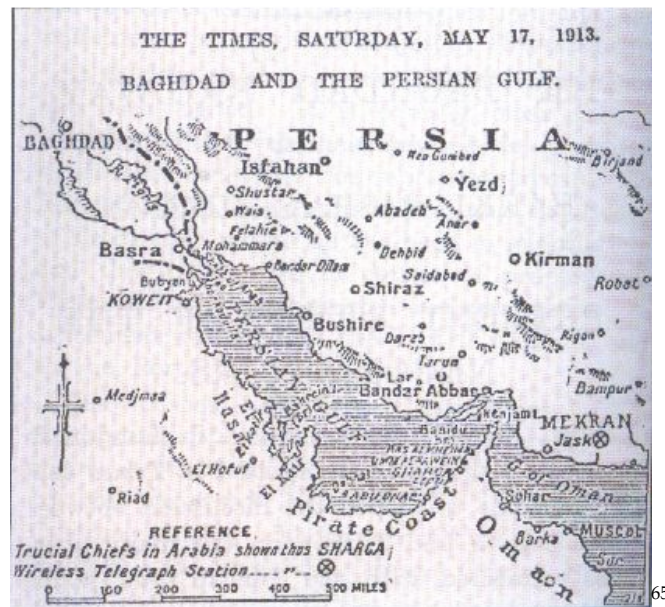


Figure 2



⁶⁴ Mojtahed-zadeh, Pirouz, *The Islands of Tunb and Abu Musa*, Center of Near and Middle East Studies, School of Oriental and African Studies (SOSA) University of London, London 1995, p 30

⁶⁵ *London Times*, Saturday May 17, 1913, *Bagdad and the Persian Gulf*, <http://www.persiangulfonline.org/images/sundaytimesMap.jpg> viewed 4/08/2008

Figure 3 a
Letter Confirming Removal of British Flags

جنرال قونسلگری دولت علیه ایران
در هندوستان
شماره ۱۳۳/۲۸
روزنامه مشرق پاریس در تاریخ ششم اکتبر در شماره ۱۳۳
که اظهار در ماه ژوئن در برقی دولت انگلیز را در فریدای
آب موسر و تنب و دفعی فارس زده بند با حکم صدارت
عظمی و استیلا یون برقی ما را باین آوردند که منتهای احترام
صدور میفرماید آنست که
ما که محمد بن نظام

نامه مورخ ۲۸ جمادی الاول ۱۳۲۲ ه.ق. جنرال قونسلگری
دولت علیه ایران در هندوستان

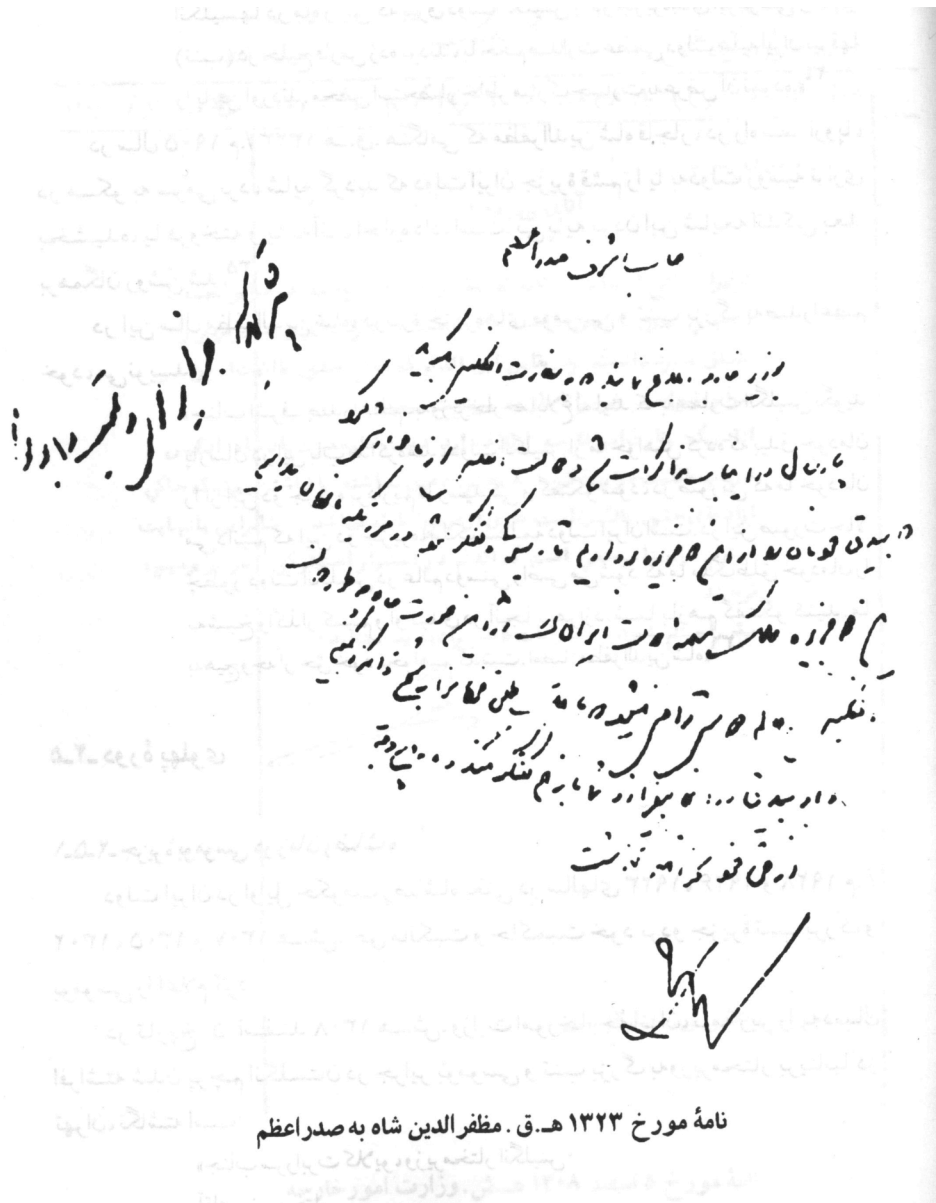
Translation:

General Consulate of The Government of Iran in India, Number 133/28,
Dated 28 Jumada 1, 1322 (October 8, 1904)

The official newspaper of Paris, published on 6 August, has written that the English, on the orders of the Prime Minister of the Government of Iran, have lowered the English flags, which they had raised in June on the islands of Abu Musa and Tunb in the Persian Gulf. We are informing his Majesty (the Shah) of this event. (Signature).⁶⁶

⁶⁶ Afshar (Sistani), Iraj, **Bumusa Island and the Great and Little Tonb Islands**, Publisher Afshar, Tehran, 1993 p 69-72 (text in Persian, personal translation) NYU Library #DS326.A33 1993)

Figure 3b
Letter of Mozaffar al-Din Shah Qajar
to the Iranian Prime Minister dated 1905



Your Excellency the prime minister, inform the foreign minister to tell the English embassy that last year we have discussed this matter. The English Government requested that we lower our flags on these two islands (Tunb and Abu Musa) until it has been researched and discussed. We, in fact, know that these two islands are the definite property of the Iranian Government. In view of this fact how can the English Government, that claims friendship with us, expect us to transfer the property that is exclusively ours to some sheikh and allow him to raise his flag there? You must continue the discussion. We will never and under no condition forego our rights (to these islands), signed Mozaffar al-Din Shah (ruling Iranian Qajar Monarch from 1896-1907)⁶⁷

⁶⁷ Afshar (Sistani), Iraj, **Bumusa Island and the Great and Little Tonb Islands**, Publisher Afshar, Tehran, 1993 p 69-72 (text in Persian, personal translation) NYU Library #DS326.A33 1993)

Figure 3c
India Office letter of 1914⁶⁸

<u>Confidential.</u>		C 141
Memorandum on possible Methods of Purchasing or Leasing the Islands in the Persian Gulf.		
<i>Scheme I.—Purchase.</i>		
1. If it should be decided to <i>purchase</i> the full ownership and sovereignty of the islands, and this cannot be acquired for less than 2,000,000L., the Government of India are prepared to share in the cost. (2,000,000L. down would be equivalent at 4 per cent. compound interest to an annuity of about 82,000L. a year for 99 years). But the Government of India stipulate that Persia's outstanding debts to the Imperial and Indian Governments should be set off against the purchase price.		(4) In view of the fact that about 296,500L. of the outstanding loans to Persia has been advanced by the Government of India alone, it would be necessary to make a special adjustment with the Foreign Office to equalise matters. This could be done either by the Foreign Office paying practically the whole of the lump sum payment of 300,000L., or by the Foreign Office bearing a larger share than India of the annuity.
These debts on 21st August 1914 were		37674. 1. 1903.
To India	£	
To Imperial Government	- 543,335	
	- 246,851	
	<u>790,186</u>	
Thus the purchase price to be paid to Persia would be 2,000,000L. minus 790,186L. = 1,209,814L.		The annuity to be entered in (3) would depend on whether the purchase basis is 2,000,000L. gross or something less. If it were 2,000,000L. gross the net sum left after deduction of (1) and (2) would be 910,000L. This would represent an annuity for a term of 99 years of 37,150L. on a 4 per cent. basis. If the gross sum were less—for instance, 1,836,390L.—the annuity, on the same interest basis, would be approximately 30,480L. If it were 1,500,000L. the annuity would be approximately 16,740L.
But since, of the outstanding claims on Persia, a sum of 296,478L. represents a loan (<i>plus</i> interest charges) made by India alone, the Treasury should pay half that sum (148,239L.) to us before the remainder of the purchase price is divided.		<i>Scheme II.—Various forms of lease.</i>
The remainder of the purchase price for equal division between India Office and Treasury would then be :—		1. The Government of India are prepared to share in a lease for 99 years at an annual rental of 100,000L., cost to be equally divided between India Office and Treasury. Three years' rent (300,000L.), would be advanced in equal shares by the Indian and Imperial Governments. The Government of India do not combine with this proposal any suggestion for the extinction of Persia's existing debts to the Indian and Imperial Governments. But a calculation has since been made that if Persia's existing debts were cancelled and an advance of 300,000L. made, a reduction of the rental from 100,000L. to about 55,450L. a year could be claimed in return for these concessions. Of this the Treasury would pay about 30,500L. and the India Office about 24,500L. But the Treasury might pay in some other way their share of India's separate loan (296,478L.), which figures in the debts to be extinguished.
	£	
minus	1,209,814	
	<u>148,239</u>	
	1,061,575	
of which India would pay half (530,787L. 10s.)		2. If a rental of 100,000L. is thought excessive, the Persian Government might be prepared to accept 50,000L. a year for a 99 years' lease on condition of receiving an advance of six years' rent (300,000L.). It would hardly be practicable to combine this with any proposal for the extinction of Persia's debts, as the rental left to be paid after such concessions would be only about 5,475L. a year.
Thus of the total purchase price of 1,209,814L. the shares would be :—		3. If this offer is thought too low, 75,000L. a year might be offered for a 99 years' lease, with advance of four years' rent (300,000L.). The offer in a modified form might include the extinction of existing debt and an advance of 300,000L. A calculation has been made that in that case a rental of about 34,470L. would remain payable. The Treasury might adjust their share of India's separate loan (296,478L.) either (a) by finding practically the whole of the advance of 300,000L., i.e., half the advance = 150,000L. + half the separate loan = 148,239L.; or (b) by bearing a larger share than India of the remaining rental of 30,000L.
India	-	£ s. d.
	-	530,787 10 0
Treasury	-	£ s. d.
	-	530,787 10 0
		<u>148,239 0 0</u>
		679,026 10 0
Total	-	1,209,814 0 0
2. An alternative form of purchase would be as follows :—		
(1) England and India to pay down, between them, 300,000L.		
(2) Persia's debts to India and England, amounting to about 790,000L., to be cancelled.		
(3) England and India to pay Persia an annuity of x pounds sterling for 99 years, the first payment to take place 12 months after the payment of the 300,000L.		

⁶⁸ Movahed, Mohammad Ali, "Mobalegeh Mostaar", Research into Documents of The Sheikhs Regarding the Claims to the Island of Lesser Tunb, Greater Tunb and AbuMusa, Tehran, 2000 (Text in Persian NYU Library #KZ3881.A28M882001) P 104 & 158-159

Figure 4 (see Footnote of Figure 6)

The Memorandum of Understanding as attached
to the letter of 18 November 1971 from the
Ruler of Sharjah to the British Foreign Secretary

MEMORANDUM OF UNDERSTANDING

Neither Iran nor Sharjah will give up its claim to Abu Musa nor recognise the other's claim. Against this background the following arrangements will be made:

1. Iranian troops will arrive on Abu Musa. They will occupy areas the extent of which have been agreed on the map attached to this memorandum.
- 2(a) Within the agreed areas occupied by Iranian troops, Iran will have full jurisdiction and the Iranian flag will fly.
- (b) Sharjah will retain full jurisdiction over the remainder of the island. The Sharjah flag will continue to fly over the Sharjah police post on the same basis as the Iranian flag will fly over the Iranian military quarters.
3. Iran and Sharjah recognise the breadth of the island's territorial sea as twelve nautical miles.
4. Exploitation of the petroleum resources of Abu Musa and of the seabed and subsoil beneath its territorial sea will be conducted by Buttes Gas and Oil Company under the existing agreement which must be acceptable to Iran. Half of the governmental oil revenues hereafter attributable to the said exploitation shall be paid directly by the company to Iran and half to Sharjah.
5. The nationals of Iran and Sharjah shall have equal rights to fish in the territorial sea of Abu Musa.
6. A financial assistance agreement will be signed between Iran and Sharjah.

Figure 4 continued (see Footnote of Figure 6)

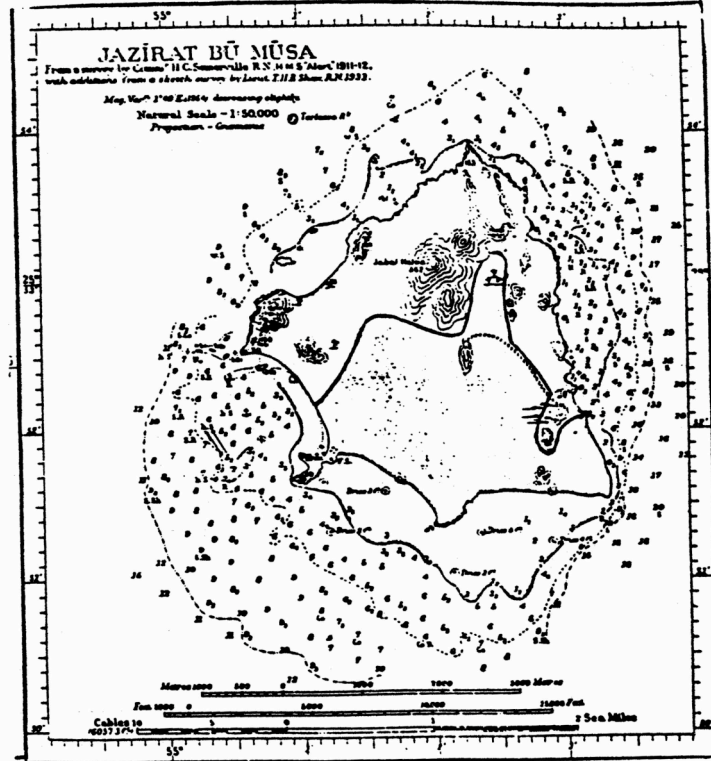


Figure 5 (see Footnote of Figure 6)

4 - Letter of 24 November 1971 from British Foreign Secretary to the Iranian Minister of Foreign Affairs asking for Iranian acceptance of MOU.

5 - Letter of 25 November 1971 from Iranian Foreign Minister to the British Foreign Secretary concerning Iran's acceptance of the MOU.



Foreign and Commonwealth Office
 London S.W.1
 24 November, 1971

I enclose a copy of a letter addressed to
 Her Majesty's Government from the Ruler of
 Sharjah, in which the Ruler asks for confirmation
 that the Iranian Government accepts the arrangements
 for Abu Musa set out in the Annex to his letter.
 I would be grateful for confirmation that the
 Iranian Government accepts the arrangements.

(ALEC DOUGLAS-HOPE)

His Excellency
 Dr. Abbas-Ali Khalatbari.
 Minister for Foreign Affairs, Iran.



Tehran, 25th November, 1971.
 No. W/21204

Your Excellency,

With reference to my letter No. W/21282
 of today's date and in reply to yours of 24th November,
 1971, I am instructed by my Government to inform you
 that Iran's acceptance of the arrangements relating to
 Abu Musa set out in the enclosure to your aforesaid
 letter is given on the understanding that nothing in
 the said arrangements shall be taken as restricting the
 freedom of Iran to take any measures in the Island of
 Abu Musa which in its opinion would be necessary to
 safeguard the security of the Island or of the Iranian
 forces.

I would be grateful for confirmation
 that this understanding has been conveyed to the Ruler
 of Sharjah.

Abbas Ali Khalatbari
 Minister for Foreign Affairs

The Principal Secretary of State
 for Foreign and Commonwealth Affairs,
 London.

Figure 6

6 - Letter of 25 November 1971 from the Iranian Foreign Minister to the British Foreign Secretary spelling out Iran's conditions and warnings relevant to Iran's acceptance of the MOU.

7 - Letter of 26 November 1971 from British Foreign Secretary to the Iranian Foreign Minister informing him that Iran's conditions and warnings had been conveyed to the Ruler of Sharjah. (It was agreed that an absence of reply from the Ruler of Sharjah to this letter would amount to his acceptance of Iran's conditions and warnings.)



Tehran, 25th November, 1971.
No. 11/21202

Your Excellency,

I confirm that my Government accepts the arrangements for Abu Musa as set out in the enclosure to your letter of 24th November, 1971.

A copy of the Memorandum of Understanding in which the arrangements are set out is annexed to this letter.

A. A. Khalatbari
Abbas Ali Khalatbari
Minister for Foreign Affairs



Foreign and Commonwealth Office
London S.W.1

26 November, 1971

Lydia Blagden
With reference to your letter number 11/21284 of 25 November 1971, I have taken note of the understanding on which your government's acceptance of the arrangements relating to Abu Musa is given and have conveyed that understanding to the Ruler of Sharjah.

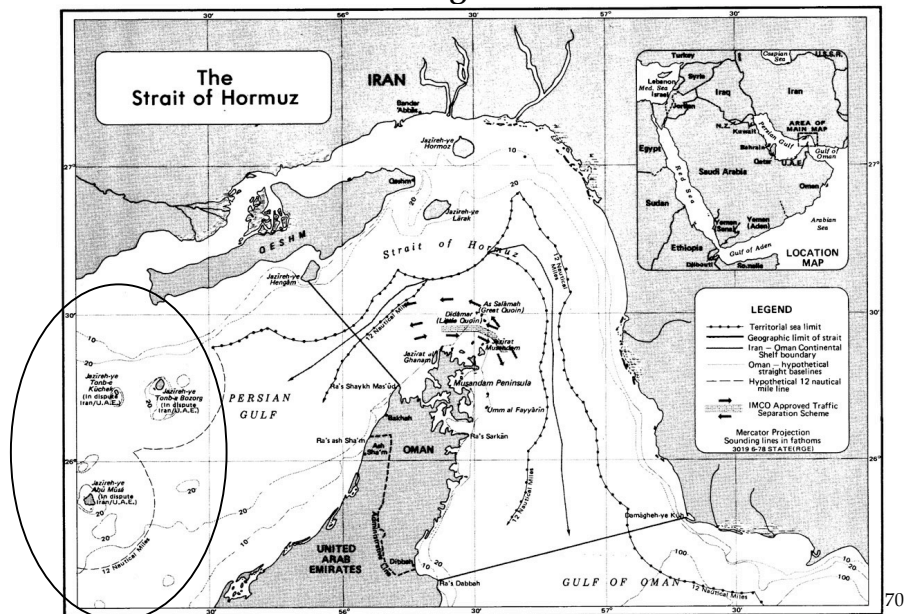
Alec Douglas-Home
(ALEC DOUGLAS-HOME)

His Excellency
Dr. Abbas-Ali Khalatbari.
Minister for Foreign Affairs, Iran.

The Principal Secretary of State
for Foreign and Commonwealth Affairs,
London.

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Figure 7



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⁶⁹ Mojtabeh-zadeh, Pirouz, *The Islands of Tunb and Abu Musa*, Center of Near and Middle East Studies, School of Oriental and African Studies (SOSA) University of London, London 1995, p 90-91

⁷⁰ Ramazani, R.K., *International Straits of the World, The Persian Gulf and the Strait of Hormuz*, Sijthoff & Noordhoff, Alphen aan den Rijn, The Netherlands, 1979, p 3

Figure 8 Abu Musa
 $25^{\circ}55'25.39''\text{N}$
 $55^{\circ}02'26.41''\text{E}$

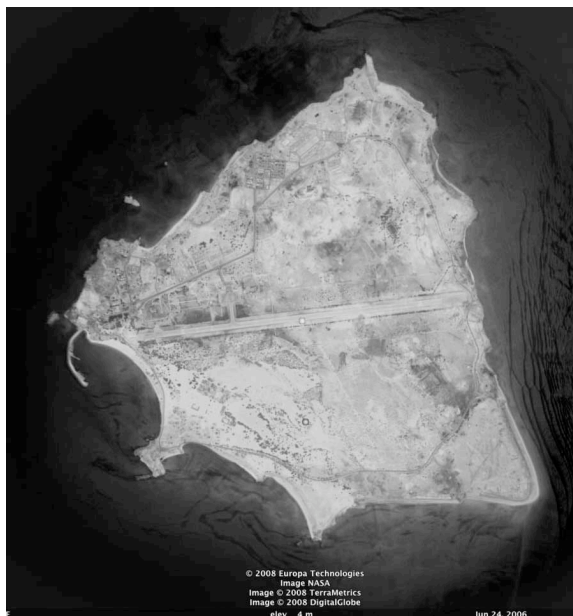


Figure 9 Greater Tunb
 $26^{\circ}15'36.55''\text{N}$
 $55^{\circ}17'47.23''\text{E}$

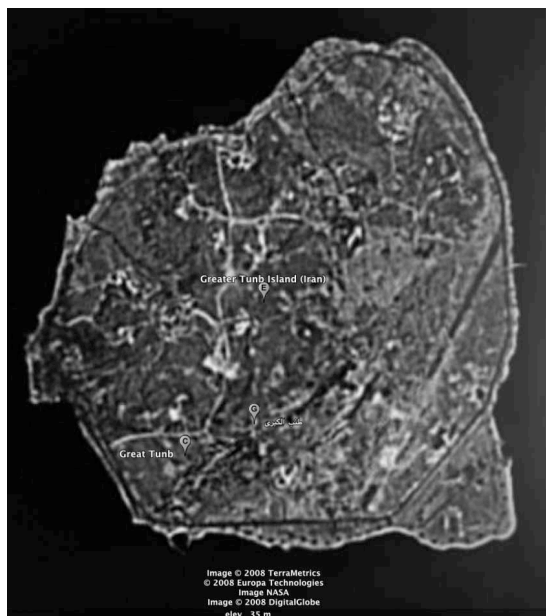


Figure 10 Lesser Tunb
 $56^{\circ}14'28.58''\text{N}$
 $55^{\circ}08'56.17''\text{E}$



⁷¹ Google Earth, Image©2008 DigitalGlobe viewed 3/31/2008
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