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# Investigating the Reasons for Iran's Absence from the International Court of Justice for the United Arab Emirates Claim over the Three Islands

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**Abstract:** *The present study was conducted to examine the reasons behind Iran's absence from the International Court of Justice (ICJ) following the United Arab Emirates (UAE) and its supporters call for bringing the dispute over the three islands before the ICJ. First, the historical background of Iran-UAE dispute over the three islands (i.e., Abu Musa, Greater Tunb & Lesser Tunb) was mentioned, and then, after explaining the geographic characteristics of the three islands (geopolitics of the region) and presuming Iran's ownership of the islands, the main reasons for Iran's absence from the ICJ were extensively discussed. Iran's statements for proving its ownership and rejecting the UAE's request concerning referring the case to the ICJ included referring to the documents and historical evidence for Iran's sovereignty, proving the United Kingdom's occupation, and citing the 1971 Memorandum of Understanding, the legal principle of estoppel, and territorial see as defined in the Law of the Sea. Finally, it was concluded that the Government of the Islamic Republic of Iran did not concur to refer the dispute to the ICJ on the basis of sufficient evidence and reasonable and robust policy.*

**Keywords:** *The Importance of the Three Islands, Iran's Sovereignty Over the Three Islands, The International Court of Justice, Persian Gulf.*

## INTRODUCTION

The global and regional issues of the Persian Gulf and its numerous islands have very important communicational, economic, political, geostrategic and geopolitical roles in the political, military, defensive and security matters of countries with a coastline on the Persian Gulf, especially Iran. In general, due to their location in the Persian Gulf region, the importance of the Strait of Hormuz, and their strategic role in Iran's overall defensive strategy, the three islands of Abu Musa, Greater Tunb and Lesser Tunb have geopolitical and strategic importance for the Islamic Republic of Iran. The UAE's claims, as a separatist policy and a historic conspiracy of the British Government supported by the Gulf Cooperation Council (GCC), are considered as an important matter, at least for the politicians of the Islamic Republic of Iran. These efforts are signs of the historic nature of this conspiracy that has been engineered to create new identities in the eastern and western parts of Iran; this conspiracy separated many regions from Iran. Analyzing Iran's position to either accept or reject the referring of the case to the ICJ, drafting clear legal documents proving Iran's ownership of the disputed islands, analyzing the UAE's legal policies and justifications with regard to the three islands and designing a clear argument addressing them, anticipating a bright future, developing strong legal arguments by employing specialists in the fields of geopolitics and international laws, and encouraging researchers to explore such issues made this study a significant contribution to the field. Thus,

the present study was conducted to examine the reasons behind Iran's absence from the ICJ following the UAE and its supporters call for bringing the dispute over the three islands before the ICJ.

## **Theoretical Foundation of the Study**

### **Historical Background of the Sovereignty Over the Three Disputed Islands**

Iran's historical sovereignty over the three islands of Abu Musa, Greater Tunb and Lesser Tunb (since 2000 BC) has been specified in previous studies. During the Achaemenid period, as specified in the sixth item of the first column of the Behistun Inscription, every island in the Persian Gulf, including Abu Musa, was a part of the Pars Province (Damayev, 1973: 343). Then, during the Parthian period, especially during the reign of Mithridates I, the entire Persian Gulf, including its ports and islands, belonged to ancient Iran. After that, the Gulf islands were under the jurisdiction of the Sasanian Empire (224-652 BC); during that period, the Gulf islands were parts of the Persian Satrap, and then parts of the Nimruz Province (Hekmat, 1971: 132). It can be stated that, during the ruling of the Safavid dynasty, except for the first 150 years in which the Gulf coast and islands were occupied by Portugal's maritime powers, all Gulf islands, including the three disputed islands, were tributaries of the Iranian Government. After the fall of the Safavid dynasty by the Afghans and the resulting chaos, Nader Qoli Beyg appeared on Iran's political scene and managed to conquer the Afghans and rule as Shah of Iran. In one of his most important actions, he ordered the formation of a navy and ultimately took Bahrain and Oman by creating a powerful naval fleet; his role in maintaining law and order in the Persian Gulf region was of great importance (Gulf Document Excerpts, 1993: 40). After Nader's death, Karim Khan Zand was ruling over the Persian Gulf and its islands. Over the past centuries, especially during the last three centuries, the colonial world's major powers have had a special interest in the world's seas, ports, and islands for achieving their expansionist goals. There is no doubt that, according to the authentic documents and available resources, the three Gulf islands have always been integral parts of the territory of Iran. Measures taken during the Qajar period were used and cited as records of Iran sovereignty over and presence in the three islands years later, when the British-made governments in the regions claimed ownership of some parts of Iran, including the three islands. Iran's rejection of the occupation of the three islands continued in subsequent years, and eventually, after a period of almost seventy years (1903-1971 BC), the three islands became parts of the territory of Iran again. Similarly, the Siri island returned to Iran's territory undisputedly in 1962 (Mojtahedzadeh, 1993: 98). During the Pahlavi period, Iran's request for ruling the three islands and exploiting Abu Musa's red iron oxide resources was an important matter. In 1971, Iran and Sharjah signed a *Memorandum of Understanding*, in which two sets of rights were mentioned: the rights of Sharjah citizens and the exclusive right of Iranian national sovereignty over the mentioned areas. In April 1992, it was reported that the Iranian Government had not let a group of Sharjah employees (workers, Pakistani/Filipino/Indian technicians & Egyptian teachers, who were not citizens of Sharjah) enter the Abu Musa island. Kamal Kharrazi, Iran's representative to the United Nations (UN), denied the news and stated that those who had not lived there, could not stay there any longer. Those statements were interpreted by some western authorities as only Sharjah citizens, who had a fixed relationship with the island, would be allowed to stay in it in the future. The Iranian Foreign Minister at the time, Ali Akbar Velayati, said that, according to the 1971 Memorandum of Understanding, only citizens of Sharjah had the right to stay on the island. A representative from the UAE visited Tehran and suggested to form a joint commission with representatives from Iran and the UAE to further analyze the issue, but Iran rejected that proposal as the conflict was between Iran and Sharjah.

### **The Importance of the Three Islands**

The disputed three islands have very important roles in ensuring Iran's security and protecting the Strait of Hormuz. The easy access of the islands to the Gulf region is another reason for their importance; Iran has always had sovereignty over the three islands. Moreover, about 80% of Iran's overseas trades (including both

imports and exports) are done through the Persian Gulf. Considering the critical role of the Persian Gulf in the world, the importance of the three Gulf islands for Iran becomes obvious (Jafari Valdani, 1997: 52). Basically, these three islands are important only in the context of the Persian Gulf. Thus, many of the geopolitical characteristics of the Persian Gulf can be generalized to these islands as well. The Persian Gulf is the intersection of the three continents of Europe, Africa, and Asia; beyond the Persian Gulf, the three countries of Iran, India, and China are located; and, as mentioned before, the most important reason behind the importance of the Persian Gulf is the existence of huge oil and gas fields within it (Ibid: 56). Another reason for the importance of the Persian Gulf is the existence of a large military equipment market in the Gulf region. It is clear that the Strait of Hormuz is the main and the most important way for the Gulf oil-rich countries to communicate with the world. Almost all Gulf countries are heavily dependent on the Strait of Hormuz for exporting oil and importing goods (Gulf Document Excerpts, 1993). However, the most important reason for the importance of the three islands is related to military issues. These three islands constitute a part of the defense and security system of Iran. In addition, their geographical location at the deepest parts of the Persian Gulf and within the two sweep corridors of the international ships trafficability has made them more strategically important (Hafeznia, 1992). Therefore, from a strategic perspective, the Persian Gulf, the Strait of Hormuz and the Gulf islands, including the three islands, completing each other, and their ownership strengthens the position of countries owning them and makes them in control concerning transactional, political and military issues.

#### **UAE's Argument for the Ownership of Three Islands**

The UAE claims that the three islands have always belonged to the Arabs. They argue that the flag of Sharjah had been raising on these three islands for 68 years (1903-1971), and during that period, Ras-al-Khaimah and Sharjah rulers had built buildings and deployed officials. Therefore, their claim over the ownership of the three islands is time-barred and should be prioritized over Iran's claim. Another issue that Emiratis argue is related to the issue of "capture priority", based on which, Emiratis claim that, since Jasseemies were Arab and they were ruling those three islands before being occupied by the British Government, those islands belong to Arabs. Moreover, the UAE considers the 1971 Memorandum of Understanding a "moral" obligation, not a "legal" one. They argue that at the time of signing the 1971 Memorandum of Understanding, Sharjah was basically an England colony and its officials did not have the authority and right to sign such an agreement, therefore the 1971 document has only been a moral obligation. On October 27, 1992, the Emiratis wrote a letter to the UN claiming that Iran had imposed the 1971 Memorandum of Understanding on them, and they had signed it under compulsion. The United Kingdom (UK) acceptance of the UAE's sovereignty over the three islands is among their evidence. They eventually argue that the mentioned islands are closer to their lands than those of Iran. In other words, they geographically consider them below the half line of the Persian Gulf, and therefore, claim over their ownership.

#### **Iran's Argument for not Referring the Case to the ICJ**

In general, accepting the referral of the case to the ICJ means doubtfulness in the ownership of the three islands, which has always been rejected by the Islamic Republic of Iran. This study was conducted assuming the rejection of the UAE's proposal (referring the dispute to the ICJ) by Iran based on its legal and historical documentation, in which Iran's ownership of the three islands is explicitly emphasized. But, before presenting its documents before the ICJ to prove its legitimacy, the Islamic Republic of Iran faced a legal obstacle. Undoubtedly, one of the main obstacles in referring the case to the ICJ was the Constitution of the Islamic Republic of Iran, in which, every action that threatens the territorial integrity of Iran is banned. According to Articles, 152 and 153 of the Constitution of the Islamic Republic of Iran, the Iran Government had no right to refer this specific matter to the ICJ. According to the historical evidence, it can be said that Greater and Lesser Tunbs belonged to Iran from the beginning of the written history (550 BC-651 AD) (Mojtahedzadeh, 1994: 6). From the era of Sasanian Empire, Iran's power over the Persian Gulf increased, and based on

various historical maps, the UAE's claim over the three islands ownership can be ruled out (Vosoughi, 2005: 21). The Major-general Sir John Malcolm's representative committee reports to Fath-Ali Shah Qajar about the borders of the Iranian Government were published in 1813, with an introduction written by a political advisor to the mentioned committee; the reports titled "Geographical Notes" on Iran's geographical boundaries. In the mentioned geographical notes, Abu Musa, Greater Tunb and Lesser Tunb were mapped as Persian Gulf islands under Iran's power. Concerning the principle of capture priority, it can be stated that the Iranian Government has protested against the UK's occupation of the islands since it happened, and always insisted upon its historical sovereignty over those islands. Even in 1934, Iran's flag was raised in the three islands, indicating its definite ownership. Therefore, according to International Law, the UK's occupation of the three islands was an aggressive action, which could not create the right for the UK to rule the islands, let alone to introduce it as Sheikhs' islands.

According to Article 3 of the UN Convention of the Law of the Sea (1982), the marine territory of any country has a maximum width of 12 nautical miles (22.5Km). Furthermore, in three other UN conventions in 1958, 1969 and 1982, the minimum and maximum widths of any country's marine territory were respectively three and 12 nautical miles (Hafeznia, 1992: 384). According to this law and as recorded in the UN documents, all waters between Qeshm, Lark, Hormoz, Hengam, and Lavan islands Iran's internal waters. Therefore, if continuing 12 nautical miles from Qeshm island, and 12 nautical miles from Greater Tunb toward Qeshm we will realize that the distance between the two islands is less than 24 miles (i.e., 2\*12 miles). This also applies to the distance between Lesser Tunb and Abu Musa. Therefore, the Iranian territorial see continues to 12 miles from the south of Abu Musa island.

#### **UAE Policies and Measures with regard to the Three Islands**

The main objective of the UAE policy in recent years has always been to prevent any close relationship between Tehran and the Gulf's Arab countries until they regain their ruling power on the three islands.

- **Aligning the Positions of Arab Countries**

In the Arab Summit in Damascus, the issue of referring the UAE's claim concerning the three islands ownership was approved by all members, and it was the first time that all members had the same vote. Nevertheless, the issue was rejected based on the law of nations.

- **Instrumental Use of International Organizations**

Another measure of UAE was comprehensive efforts to bring the case before the GCC. After a lengthy fight with Saudi Arabia, the UAE managed to form a tripartite committee in 1999. By forming the mentioned committee, the UAE intended to use the Council to exert pressure on Iran and exploit Iran's considerations in its relations with the three countries of Saudi Arabia, Qatar, and Oman. In the 47<sup>th</sup> UN General Assembly in 1992, 12 countries took sides in relation to the three islands. The referral of the case to the ICJ was among the UAE's measures.

#### ***UAE's Main Objectives with Regard to its Claims for the Ownership of the Three Islands***

- **UAE Territorial Development**

The UAE considers the lack of land as one of its biggest problems. To solve this problem, the UAE has started to build artificial islands in the Persian Gulf. The Emiratis wish to take strong steps towards achieving its international goals and strengthen their military power in the Persian Gulf by imposing their sovereignty over the three islands. The UAE's access to the three islands practically extends its size, at least in the Persian Gulf. Due to the lack of strategic and military power, the UAE cannot use its military forces to achieve this goal. The UAE's efforts to internationalize the issue and refer it to the ICJ show its need for territorial development.

- **Nation Building/ Country-building**

In demographic terms, the UAE and many of the Gulf countries have racial, ethnic and religious diversities. The fact is that the UAE lacks an institutionalized, long-established historical background, and therefore, lacks the necessary political and social integrity (Mojtahedzadeh, 2012: 54). Given the UAE's nation-building

and country-building concerns, it can be said that the UAE attempts to develop its territories by asking for the ownership of the three Iranian islands, and protect itself against internal conflicts by projecting Iran as an external threat; doing so, the UAE tries to promote nationalism and create a national Arab identity (Mojtahedzadeh, 2012: 54). Thus, the problems made by the UAE against Iran are occasionally reflected in the three islands issue.

- **Causing Conflicts between Arabs and Iranians**

Conflicts between Iran and the Arab Gulf countries can be effective tools for the UAE to achieve its illegitimate goal concerning the ownership of the three islands. In this way, the UAE can also enhance its authority in regional transactions by gaining support from other Arab countries.

- **Gaining Support from the World Great Powers**

The UAE has allowed the United States and France to deploy military bases on its territory; it also has extensive military relations with the UK (ibid, 2012). The UAE's goal of gaining support from the world's major powers can be explained from two different points of view: 1) Emiratis feel that they will be successful in obtaining the ownership of the three islands by gaining support from the world's major powers, and 2) they feel that gaining support from the world's major powers can help them achieve their country-building and nation-building goals, and promote their authority in the Gulf region.

## **Conclusion**

According to the historical documents, the three islands have always been under Iran's jurisdiction, and this issue can be proved by solid legal arguments. In the 1971 negotiations, Iran followed the principle of peaceful settlement of disputes to achieve its historic rights, and this was also confirmed by the UN Security Council. On the other hand, according to the rules of International Law (e.g., treaties rights, the estoppel principle, ...), the UAE Government cannot claim over the three islands. However, due to its need for internal unity, the UAE plays a critical role in decreasing Iran's security by creating a national Arab identity, securing its security based on the world's powers' supports, projecting Iran as an external enemy, and ignoring the history and the law of nations. A legal review of these positions shows that the current claim made by the UK and UAE concerning Iran's occupation is basically unacceptable, and even unnegotiable, in legal societies; because, in International Law, there is a principle, based on which "contradictory statements are not heard"; therefore, the British Government cannot affirm Iran's sovereignty over the three islands in its official world maps, and simultaneously discredit it elsewhere.

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