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Positive Approach to the Disputes over the three Islands Abu Mosa, Tunb Al-Kubra and Tunb Al-Sughra-نظرة موضوعية في النزاع بين إيران ودولة الإمارات العربية المتحدة بشأن الجزر الثلاث

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ملخص

نظرة موضوعية

في النزاع بين إيران ودولة الإمارات العربية المتحدة

بشأن الجزر الثلاث : أبو موسى، طنب الكبرى وطنب الصغرى

د. مدوس فلاح الرشيدي

أستاذ حقوق الإنسان والقانون الدولي للبحار

في كلية الحقوق- جامعة الكويت

إذا مانظرنا إلى موضوع هذا النزاع نظرة موضوعية، فإننا نجد أن دول الخليج لم تطبق مبادىء القانون الدولي المعاصر لحل نزاعاتها الإقليمية مما أدى إلى قيام حربين في عام ١٩٨٠و١٩٩١، ومن الأمثلة الحية على ذلك الوضع المتفجر بين جمهورية إيران الإسلامية ودولة الإمارات العربية المتحدة بشأن النزاع على الجزر الثلاث، والذي من الممكن أن يقود إلى حرب خليج ثالثة آجلاً أم عاجلاً.

لذلك فإن مهمة هذه الدراسة، هي تأصيل وجهة نظر موضوعية، تتمثل بتحديد الأسس التي تقوم عليها الإدعاءات الإيرانية بالسيادة على الجزر الثلاث، والأسس التي يقوم عليها رفض إماراتي الشارقة ورأس الخيمة لهذه الإدعاءات، ثم مواءمة هذه الأسس جميعاً مع مبادىء القانون الدولي المعاصر لاكتساب الحق على الإقليم وماتقضي به هذه المبادىء في مثل هذا النزاع.

ولما كانت الإدعاءات الإيرانية بالسيادة على الجزر الثلاث قد ظهرت في وقت كانت فيه هذه الجزر تحت السيادة الواقعية لإمارتي الشارقة ورأس الخيمة، فإنه يقع على عاتق إيران عبء إثبات امتلاكها لهذه الجزر وفقاً لأي مبدأ من مبادىء القانون الدولي المعاصر بإمتلاك الإقليم، كمبدأ الحصول على الحق في الإقليم، أو مبدأ الأثر الفعال للسيادة على الإقليم، أو مبدأ الاعتراف الدولي، وهو أمر لم تستطع إيران إثباته حتى الآن. كما أن هذه المبادىء جميعاً تسند موقف الطرف الآخر على أساس أن هذه الجزر كانت تحت السيادة الإقليمية لإمارتي الشارقة ورأس الخيمة قبل الاحتلال الإيراني لها في عام ١٩٧١، كما أن الاعتراف الدولي بدولة الإمارات العربية المتحدة يتضمن الاعتراف بسيادة هذه الدولة الجديدة على إقليمها ومن ضمن هذا الإقليم الجزر الثلاث، وبالتالي فإن هذا النزاع ينبغي أن يحل وفقاً لقواعد القانون الدولي المعاصر.

ولايتأتى ذلك إلا بتطبيق مبدأ الامتناع عن التهديد بالقوة أو استخدامها في حل هذا النزاع، كما أشار إلى ذلك ميثاق الأمم المتحدة وميثاق منظمة المؤتمر الإسلامي، مما يعني أن الاحتلال الإيراني للجزر الثلاث عام ١٩٧١ يعتبر خرقاً فاضحاً لهذا المبدأ من ناحية، ومن ناحية أخرى يعتبر اعتداء يمنح دولة الإمارات العربية المتحدة اللجوء إلى حق الدفاع الشرعي في الوقت المناسب متى أصبحت قادرة عليه لاستعادة هذه الجزر، حتى ولو وافقت إيران على اللجوء إلى إجراءات حل النزاع بالطرق السلمية رجوعاً إلى الأصل في النزاع.

وإذا كان اتباع إجراءات حل النزاع بالطرق السلمية، التي تضمنتها المعاهدات

الدولية الشارعة، كميثاق منظمة الأمم المتحدة وميثاق منظمة المؤتمر الإسلامي، هو حق اختياري لكل دولة، فإن القانون الدولي والقانون الإسلامي لايعفي أياً من طرفي النزاع من مسؤولية الحل بالطرق السلمية، كالتزام تفرضه القواعد الآمرة في هذين النظامين.

فهذه القواعد قد نشأت وتبلورت عن القانون الدولي والقانون الإسلامي، ومن أهم هذه القواعد، بالنسبة لهذا النزاع، قاعدة حل النزاع بالطرق السلمية وقاعدة العقد شريعة المتعاقين، كما أشارت إلى هذه القاعدة الأخيرة المادة ٢٦ من اتفاقي فيينا بشأن قانون المعاهدات لعام ١٩٦٩. فقاعدة العقد شريعة المتعاقدين قد تم تبنيها في هذه الدراسة كوسيلة لإجبار طرفي النزاع للرضوخ إلى حل هذا النزاع بالطرق السلمية، حيث أشارت المادة ٣٨ (١) ج من النظام الأساسي لمحكمة العدل الدولية، إلى أن هذه القاعدة معترف بها في جميع الأنظمة القانونية، ومن بينها القانون الإسلامي. ولما كانت جمهورية إيران الإسلامية ودولة الإمارات العربية المتحدة قد أعربتا عن موافقتها المتضمنة في تصديقهما على ميثاق منظمة المؤتمر الإسلامي، هذا الميثاق الذي يعتبر معاهدة ملزمة لأطرافها، فإن التزام طرفي النزاع بحل هذا النزاع وفقاً للإجراءات التي حددها هذا الميثاق لم ينشأ بسبب تصديقهما على هذا الميثاق، بل بسبب قاعدة العقد شريعة المتعاقدين. وقد حدد ميثاق منظمة المؤتمر الإسلامي إجراءات هذا الحل في المادة (٢) ب٤، كالمفاوضات، الوساطة، التوفيق والتحكيم.

ولما كان القانون الدولي والقانون الإسلامي يمنح أطراف النزاع الحق في اختيار

الإجراءات المناسبة للحل، فإن طرفي النزاع كدولتين مسلمتين ينبغي عليهما اتباع ممارسات الدولة الإسلامية، والتي عادة ماتفضل إجراءات التحكيم على الإجراءات القضائية الأخرى، حيث أنه في إجراءات التحكيم يشارك أطراف النزاع أنفسهم في صنع القرار. وإذا كان ميثاق منظمة المؤتمر الإسلامي لم يخصص إجراءات معينة للتحكيم، فإن هذا الميثاق قد حدد إجراءات خاصة للمفاوضات والوساطة والتوفيق. وأخيراً وليس آخراً، فإنه ينبغي التأكيد في هذه الدراسة على أن حل موضوع هذا النزاع من خلال أي من هذه الإجراءات ليس فقط أمراً مطلوباً في القانون الدولي المعاصر، بل أيضاً أمراً إلزامياً بنص القرآن الكريم والسنة النبوية المطهرة.

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referred to in Article V (2) g. Lastly, it is to be emphasized by this study that the settlement of the present disputes through anyone of these procedures is not only obligatory under international law, but required by the Holy Qur'an and the *Sunna* as well.

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from the responsibility to settle their differences by peaceful means, as required by the principle of *jus cogens*.

The principle of *jus cogens* has evolved through conventional and customary international law, the importance of which, for the present disputes, are the principles of peaceful settlement of the disputes and of *pacta sunt servanda*, as defined in Article 26 of the Vienna Convention on the Law of Treaties.

The principle of *pacta sunt servanda* has been employed by this study as the key for the compulsory settlement of the disputes, whereas it is recognized by all legal systems, including the Islamic legal system as domonstrated by Article 38 (I) c of the I.C.J. Statute. Just in one single treaty, without exploring the rest, the principle obliges the parties to the present disputes on the grounds that the Islamic Republic of Iran and the U.A.E. gave express consent, embodied in their instruments of ratification to the Charter of the O.I.C., which, as a treaty binds the parties not because of their instruments of ratification, but specifically due to the principle of *pacta sunt servanda*. Under this principle, the two states are to apply the procedural mechanism of peaceful settlements embodied in Articel II (B) 4 of the charter of the O.I.C. to the disputes, such as negotiation, mediation, reconciliation and arbitration.

As compulsory procedures imposed by international and Islamic law, the parties have mutually to choose between the techniques employed by each procedure. As previously stated, the Islamic states usually prefer arbitration to ajudication, for the parties themselves take part in the decision. The Charter , however, does not specify any arbitral procedures, eventhough it invisages certain techniques for negotiation, mediation and reconciliation , as

solved by the most effective peaceful procedures.

4.4 The Islands and the Most Apligatory Procedures for the Peaceful Settlement of the Disputes over them :

As it has been pointed out, the three islands are in harmony with the concepts of territory and of islands in international law, for which the application of the procedures of international law for the settlement of disputes over pieces of land, are only required. The guiding principle of the application of these procedures is the faithful observance of the principle of abstention from the threat or use of force in settling the disputes, as asserted in the Charters of the U.N. and of the O.I.C. Accordingly, the forceable annexation of the three islands in 1971 by Iran, when the emirates were militarly vulnerable, which had no legal support of international law, constituted a breach of this principle. This act, under international law enables the U.A.E. to invoke the right of self-defence at any appropriate time in the future to recover the disputed islands from the Iranian occupation, unless Iran accepts the U.A.E.'s invitation to submit the disputes for peaceful settlement in accordance with the procedures recognized by international or by Islamic law.

It is true that these procedures are voluntary, but they are embodied in multilateral law-making treaties, such as the Charters of the U.N. and of the O.I.C. Article 33 and 37 of the U.N. Charter are embodied general proedures for the settlement of international disputes, which are reiterated in Articl II (B) 4 of the Charter of the O.I.C., such as: "negotiation, mediation, reconciliation or arbitration". The articles do not impose any obligation on the disputant states to follow any one of these procedures, but international and Islamic law do not release anyone of the disputant states

of their title to the islands.

4.3 Examination of the Bases of the Claims and Counterclaims against the Prevailing Principles of Contemporary International Law :

It has been noted also that Iran has raised her claims of sovereignty over the three islands while the islands were in the possession of Sharja and Ras al-Khaima; a fact which puts the burden of proof on Iran's part to support her claims of any one of the overruling principles of contemporary international law, such as the acquisition of title to territory; effectiveness; and recognition. Thorough investigation, however, of the application of each one of these principles to the basis upon which the Iranian claims are founded has clearly presented unsubstantial legal bases, or at least no support at all to the claims. The counterclaims presented by Sharja and Ras-al-Khaima have been equally treated as those of Iran, whereas the legal grounds of the counterclaims have been thoroughly examined against the overriding principles of contemporary international law, such as the principle of territorial sovereignty and of recognition of newly independent states. It has been evidenced that the principle of territorial sovereignty in both its negative and positive aspects runs contrary to the Iranian forceable annexation of the three islands in 1971. At the same time, the principle of territorial sovereignty has been firmly exercised by Sharja and Ras al-Khaima over the three islands. Upon the formation of the U.A.E., she was recognized as a newly independent state; a recognition which implied an acknowlegement of title to her territory, which means, under international law, that the three islands, as parts of her territory, came under the sovereignty of the U.A.E., and therefore, the disputes over them could be

in its merit in order to reach its full extent. Deep scrutiny, however, reveals that the disputes consist of claims of sovereignty over the islands which are founded in certain legal grounds alleged by Iran, and counterclaims based on other legal grounds maintained by U.A.E. on behalf of Sharja and Ras al-Khaima. The study has reached its aim through analysis of the issue, the balance bettween the two arguments in order to reach the basis of each of them, the examination of the basis of each argument against the overriding principles of contemporary international law, and the finding out of positive and effective procedural disputes.

4.2. The Bases of the Claims and Counterclaims :

The study has explored, for the investigation of the basis of the claims and of the counterclaims, the location of the three islands, whereas the three islands have been found as close to the two emirates as to Iran . The three islnds are populated by Arabs from the same origin as the populations of the two emirates, facts also which are more supportive to the U.A.E.'s counterclaims than to the Iranian claims.

The Iranian claims of sovereignty over the three islnds are merely founded on the principles of historical title, of geographical contiguity, of conquest in traditional international law, and of recognition, all of which have coincided with the threat of, or use of, force and its maintenance.

The principles upon which the Iranian claims are based have been countrclaimed by Sharja and Ras al-Khaima on the grounds that the three islands have been historically recognised as parts of the territories under their continuous soveriegnty, and the international recognition of the U.A.E. as a newly independent state has embraced the recognition

principles to many territorial disputes, resulting in the two horrible and destructive wars of 1980 and of 1991. This odd attitude has not been positively reconsidered by the Gulf states, as it can now be seen in the very boiling disputes between the Islamic Republic of Iran and the U.A.E. over Abu Mosa Island and the two Tunb Islands.

As an ongoing problem endangering peace and security in Gulf, the disputes between the Islamic Republic of Iran and the U.A.E. have attracted much more investigation here than others, in which historical facts have been employed for the realization of the practical application of the principles of contemporary international law.

As historical facts cinfirmed by official documents, the three islands had been in the possession of Sharja and Ras al-Khaima , before Britain entered the Gulf in 1820, and even before Iran raised her claims of sovereignty over the three islands at the beginning of this century. Political pressure, as exerted on the Ruler of Sharja to conclude the so-called Memorandum of Understanding with Iran in 1971, which resulted in the stationing of Iranian forces in Abu Mosa Island. The use of force, by the Iranian occupation of the two Tunb islands on 30 November 1971, has been hostorically evidenced as the reason behind the loss of the two emirates' possession of the islands. In spite of all these facts, which favorably add some legal weight to the U.A.E.'s counterclaims, the U.A.E. on behalf of her two component emirates, has occasionally endeavored to convince Iran to submit the disputes to an international body for peaceful settlement; a move which has been always rejected by Iran.

The realization of pratical application of the principles of contempoary international law to the disputes, as the aim of the study, requires the treatment of each aspect of the disputes

sunna, saying that : " But no, by thy Lord, they can have No (real) Faith, until they make thee judge in all disputes between them, and find in their souls no resistance against Thy decisions, but accept them with the fullest conviction".[1] The second case concerns the disputes btween couples and the submission of the disputes to arbitrators from both families[2]. This technique has been effectively followed throughout the practice of the Islamic state in settling disptues, the importance of which was the arbitration between the Prophet (peace be upon him) and Bani Quraza[3].

4. Conclusions :

Finally, we may summarise our conclusions as follows :

4.1. The Approach :

The enduring quest for a peaceful settlement of the disputes between the Islamic Republic of Iran and the U.A.E. over the three islands has potentially paved the way for the parties to accommodate their differences by replacing the rule of force with the rule of contemporary international law. For this end, the study has illustrated how the antecedent principles of international and Islamic law interacted through the practice of Islamic and non-Islamic states. From this process, certain apligatory principles for peaceful settlements of disputes have formed and have become generally binding on all states, including the Gulf states, as parties to several multilateral law-making treaties. Notwithstanding the recognition of the Gulf states of these principles, as promulgated in the treaties, it has been evident that some of these states have not, in practice, applied those

(1) The Holy Qur'an , Al-Nisa' IV, 65.

(2) Ibid, Al-Nisa' IV, 35.

(3) Ibn Hisham. Al-Sira al-Nabawiyya, edited by Mustafa al-Saqqa and others, Mu'assasat ' Ulum al-Qur'an, (no date), part 2, p.239.

Finally, if all these peaceful settlement techniques have been ineffective the parties should resort to arbitration.

The Islamic state usually prefers arbitration to a judication, since the parites to the disputes take part in the judgement. Article II (B) 4 does not specify the way of applying arbitration techniques to disputes between the member states. Regarding negotiation, mediation, and reconciliation, the Article envisions certain techniques, such as the use of diplomeatic channels and the good offices of a third party, or through the foreign ministers of the Islamic Conference, as referred to in Article V (2) g of the Charter of the O.I.C. The Charter, however, does not specify any body or bodies as arbitrators.

This mandate has been entrusted to the Council by Article 5 of the Chater of the Arab League to conduct arbitration and mediation, provided that the decision is taken by a majority of votes. The main deficiencies of the Article are the exclusion from arbitration of all disputes regarding the independence, soverignty and territorial integrity of any member state.[1] In addition the Arab states did not accept the compulsory jurisdiction of Council, and the Council had failed in many arbitration cases.

As it has never been impossible for any party to agree on the appointment of an arbitrator, the application of arbitration techniques to the present dispute is not only required by international law but also appligatory in the Holy Qur'an and the *Sunna*. Acknowledgedly, the Holy Qur'an refers to arbitration techniques in two cases : the first is to arbitarte to the prophet (peace be upon him), i.e. to the

(1) Foda, E. The Projected Arab Court of Justice, A Study in Regional Jurisdiction With Specific Reference To the Muslim Law of Nations,The Hague 1957, p.22.

in the terms laid down in Article 2 para. 4 of the U.N. Charter, the principle of peaceful settlement of disputes[1] and the principle *pacta sunt servanda*, as defined in Article 26 of the Vienna Convention on the Law of Treaties .

The last two principles effectively cover the prsent dispute and thus, provides a peaceful solution, not only in accordance with international law, but also with regard to Islamic international law. The principle of *pacta sunt servanda* binds the parties to the present dispute, as it draws its validity from the fact that it has always continued as an integral part of most legal systems, including Shari'a, to which Artecle 38 (I) c of the I. C. J. Statute refers asconstituting: "general principles of law recognized by civilized nationas". The Islamic Republic of Iran and the U.A.E. gave their express consent as embodied in their instruments of ratification to the Charter of the O.I.C.[2], as a treaty, which derives its binding force not from the instruments themselves, "but from the principle *pacta sunt servanda* - an antecedent general principle of law. The law is that the obligation must be carried out but the obligation is not, in itself law"[3].

The obligation ensuing from the Charter of the O.I.C. is that the two states should apply a peaceful settlement mechanism embodied in the Charter. Article II (B) 4 of the Charter of the O.I.C. contains various techniques for peaceful settlement, adopted from the practice of the Islamic state, among which the parties to the dispute ought to choose, beginning by negotiation, mediation and reconciliation.

(1) on general principles accepted as *jus cogens*, see: Ago, R. Hague Recueil des Cours, 1971, III, p.324.

(2) U.N.T.S., 1974, vol. 914, p.111.

(3) Fitzmaurice, Sir Gerald. Some problems Regarding the Formal Forces of International Law, Symbolae Verzijl, 1958, p. 153.

3.2.2.2. Application of the Most Appligatory and Effective procedures in Islamic Law to the present Disputes :

The question which arises here, is whether or not there are apligatory rules, in international law or in Shri'a to compel the parties to the present disputes to submit the dispute for a peaceful settlement, such as adjudication, conciliation or arbitration? Generally speaking, the submission of a dispute to adjudication or arbitration, in international law and Shari'a, is a voluntary act, but the settlement of the dispute by peaceful means may involve rules of *jus cogens;* rules which compel the parties to settle their dispute by peaceful means.

In international law, *jus cogens* can be defined as being those principles or norms from which no derogation is permitted [1]. Acording to article 53 of the Vienna Convention on the Law of Treaties of 1969, it is an additional characteristic of a norm of *jus cogens* that it"... can be modified only by a subsequent norm of general international law having the same character". The principles of *jus cogens* evolve through multilateral law-making conventions, or throgh international customary law. Article 64 of the Vienna Convention on the Law of Treaties provides that : If a new peremptory norm of general international law emerges, any existing treaty which is in conflict with that norm becomes void and terminates". "It may be interpreted that the use of the word "emerges" in the previous article means that a norm of *jus cogens* could be one of the principles of conventional and customary international law, the importance of which, for the present dispute, are: the prohibition against the threat or use of force

(1) see generally: suy, E. and others. The Concept of Jus Cogens in International Law, 1967; Sztucki, J. Jus Cogens and the Vienna Convention on the Law of Treaties; A Critical Appraisal, 1974.

(I.C.J.), or to accept the submission of the disputes to this court by the U.A.E. The two states have to mutually agree to submit the disputes for judicial settlement; in this way, and only in this way, such submission is not regarded as derogation of sovereignty[2] by either one of the two states.

The Iranian attitude towards judical settlement of the present disputes is in conformity with the widely prevailing view in international law that judicial agenies are not suitable for settlement of all disputes which result from the conflict of interests[3]. The unilateral submission of the dispute to an international tribunal, or to an international organization or regional organization, is regarded by the other party as constituting a non-freindly act [4], It is also evident that Article 2, 33 and 37 of the U.N. Charter do not oblige any one of the disputant states to follow the procedures of the settlement numerated threin, but instead the articles leave this matter to the free choice of the disputant states. The failure of the disputant states, however, to reach a mutual agreement on following any one of these procedures resulted in the prolongation of the disputes and endangered international peace and security in the Gulf. Accordingly, a positive approach to the peaceful settlement of the present dispute makes it more pertinent to continue the investigation by looking for more appligatory and effective procedures for the settlement .

(2) Ibid.

(3) Anand, R. The Role of New Asian-African Countries in the present International Legal Order, American Journal of International Law, hereinafter refer to as : (A.J.I.L.), 1962, vol.56, p.393.

(4) Ibid, p .406.

declares that : "Should the parties to a dispute of the nature referred to in Article 33 fail to settle it by the means indicated in that Article, they shall refer it to the Security Council". These methods are, in one way or in another, reiterated in Article II (B) 4 of the Charter of the O.I.C., such as :"negotiation, mediation, reconciliation or arbitration".

Article 33 (I) uses the phrase " first of all " before the term: "negotiation", which may be construed as qualification of the settlement of the disputes through negotiations as the primary method. Hence, the Islamic Republic of Iran and the U.A.E. may rely, first of all, on the method of negotiation in settling their disptues over the three islands. If the disputing parties fail to succeed to negotiate, they may then resort to mediation, reconciliation, or arbitration.

Article 33 (I) of the U.N. Charter refers to "judicial settlement", that is not mentioned in Article II (B) 4 of the Charter of the O.I.C., which means that Islamic states, as has been the case with other states, do not always take a positive attitude towards the judicial procedures of pacific settlement of disputes. This attitude of states towards judicial settlement widely appeared in the declaration on principles of international law; despite the declaration was based on Article 2 (3) and Article 33 (I) of the U.N. Charter. In this declaration, the states place more emphasis on the principle of sovereignty in order to be free to choose the procedures of settlement [1] .

Therefore, the Charter of the O.I.C. does not impose any obligation on the Islamic Republic of Iran to submit the presrnt disputes to the International Court of Justice

(1) Continental Shelf Cases, I.C.J. Reports, 1969, p. 47; Brownlie, Basic Documents, opcit, p.40.

international disputes, as embodied in various treaties to which the two states are parties.

The principle of peaceful settlement of disputes, as embodied in Article II (B) 5 of the Charter of the O.I.C is intimately connected with the principle of the "abstention from the threat or use of force against the territorial integrity, national unity or political independence of any member State", as has also been laid down in Article II(B) 5 of the same Charter. Both articles are in conformity with the cardinal sense of Article 2 (3) and Article 2 (4) of the U.N. Charter [1].

Article2 of the U.N. Charter does not specify the methods or procedure by which states can settle their disputes, leaving this matter to Article 33 and 37. Article 33 and 37 are embodied general proedures specifically employed for the settlement of international disputes. Article 33 (I) of the U.N. Charter states that : " The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a soution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice". If any settlement of the dispute is not reached, in accordance with the previous Article, the disputant states may use the methods embodied in Article 37 (I) of the Charter, which

(1) Article 2 of the U.N. Charter states that :
"3. All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.
4. All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations".

states[1], the last but not least of which includes the Charters of the U.N. and of O.I.C. The provisions of some of these treaties, such as the Charter of the United Nations, are, in general, preserved and applied by non-contracting states; in other words, those states which are not parties to the Charter cannot contest the binding effects of the Charter provisions, such as the prohibition of the use of force, the obligation to settle disputes by peaceful means, etc. It is also evident that the said universal international rules are binding upon these not as conventional rules but as customary rules ensuing from general practice of states. The formation of these rules, like the conclusion of treaties, is subject to the will of the states. As the states can create and modify treaties by their consent, they can accordingly do so with regard to customary rules [2].

The creation of these customary rules are the result of a process in international law that is most difficult to trace, but the recognition of the rules as international customary rules can be ascertained unequivocally only when a state in its relevant practice clearly indicates its will and conviction that it accepts the rules in question as binding norms. As successors to the Islamic state, the consent of the Islamic Republic of Iran and of the U.A.E. to be bound by international conventional and customary rules can be asserted by the mere fact that the two states are parties to the U.N. Charter and members of the international community, and thus accordingly, they are bound by the overriding principles of international law which governs international disputes. One of these principles is the principle of peaceful settlement of

(1) Khadduri, M. War and Peace in the Law of Islam, 1955, p.202; Moinuddin, H. The Charter of the Islamic Conference, ClarendOn press, 1987, p.40

(2) Villiger, N. Customary International Law and Treaties, Martinus, 1985,p.4.

embodied in the present articles justify the conclusion that the legality of the Iranian use of force was exteremely doubtful as a means to settle the disputes over the islands, which were under the sovereignty of the two vulnerable emirates. In this case, the non-observance of the principle: "abstention from the threat or use of force" by Iran constitutes a breach of her international obligations; an action condemned by the international community. This conclusion also supports the U.A.E's claim to be entitled to use force individually or collectively in self-defence, at any approperiate time, to restore her sovereignty over the three islands.

The only remedy for the Iranian breach of international law and the prevention of the use of force by the United Arab Emirates, using her right of self-defence to restore her sovereignty over the three islands, is to be found in the immediate withdrawal of all Iranian forces from the three islands. Correspondingly, the two states must sincerely seek a peaceful settlement to the disputes in accordance with the procedures required by international and /or Islamic law.

3.2.2. Required procedures For peaceful Settlement of the Disputes in International and Islamic Law :

3.2.2.1.The procedures of International Law For the Settlement of the present Disputes :

As it is known, the material elements of international law are entirely composed of international treaties and customary rules, the crystalization of which has intimately attributed to states throghout their history. Since the rise of Islam, Islamic states to which the Islamic Republic of Iran and the U.A.E. are successors, have concluded many international treaties with non-Muslim

the O.I.C. and Article 51 of the U.N. Charter lead to a negative answer justifying the Iranian occupation of the islands, though this view is subject to examination. This can be understood from the language of Article 51 of the U.N. Charter, which requires that an actual armed attack must occur in order to use the right of self-defence[1]. The phrase : "if an attack occurs" creates a controversial issue regaring the so-called anticipatory self-defence. Some scholars have alleged that Article 51 does not prohibit this Kind of self-defence which can be used against an imminent attack[2]. This flexible interpretation of Article 51 may be embarked upon by Iran in order to justify her occupation of the three islands under the pretext of anticipatory self-defence, for the evaluation of the armed attack, as actual and imminent, is left to her discretion. Therefore, under Article II (B) 5 of the Charter of the O.I.C. and on Artical 51 of the U.N. Charter, Iran could have claimed that the islands had been taken from her by Great Britain, and then were given to the two emirates when these emirates were under the Btitish protection. Upon the withdrawal of Great Britain from the Gulf on 31 November 1971, there was an expectation of imminent armed attack on the three islands created by the forces of the Arab Emirates stationed around the islands, which justified the use of force to defend the Iranian sovereignty over them.

This contention is possilply relevant, notwithstanding that anticipatory self-defence is not only a controversial subject in international law, but also runs contrary to Article 2/3 of the United Nations Charter, which requires: member states to settle their disputes by peaceful means. Thus, there is no positive answer to this question. The principles

(1) Kelsin, H. The Law of the United Nations, London 1950, p. 914.

(2) Waldock, C. The Regulation of the Use of Force by Individual States in International Law, Recueil des Cours, 1952, vol. 8, p. 498.

addition, the two emirates have continued calling upon Iran, after the occupation of the three islnds, to withdraw her forces from the islands, and thereafter to submit the disputes to any international body [1], but the Islamic Republic of Iran met that call by a refusal and by threatening to defend her possession in the three islands by force. These facts lead to the conclusion that nothing to explain the replacement of Sharja and Ras al-Khaima by Iran in the three islands unless, by using non-provocative military forces by the latter; an action amounts to agression under international law.

It is noteworthy, however, that, if agression occurs, Article II (B) 5 of the Charter of the O.I.C. and Artical 2 (4) of the U.N. Charter do not impair the inherent right of self-defence[2]. If the U.A.E. had invoked force against the Iranian occupation of the three islands on 30th of November 1971, it would have been in accordance with article 51 of the U.N. Charter. The article states that : "the inherent right of individual or collective self-defence" is to be exercised "if an armed attack occurs". The enhancement of the principle of self-defence by the U.A.E. , at the time of the Iranian invasion of the islands, requires from the former available and ready military forces to resist the foreign invasion. No prompt resistance, it is to be noted, was taken by the forces of the two emirates, for they were militarly in a vulnerable possession. The question, which quests for an immdiate answer hereinafter, is, does the U.A.E. have the right, under conventional international law, to invoke the right of self-defence against the foreign invasion of the three islands at the approperiate time?

Liberal interpretation of Artivle II (B) 5 of the Charter of

(1) see : Article II (B) 5 of the Charter of the O.I.C. , opcit .

(2) Bowett, W. Self-Defence in International Law, 1958, p.185.

The Islamic Republic of Iran has always contended that her action in occupying the three islands was in conformity with this principle in the sense that the islands had never been an integral part of Sharja and Ras al- Khaima, but parts of the Iranian territory, and maintained that Iran had never used force to occupy the three islands. Conversely, the U.A.E., according to the official view, has alleged that if the Iranian argument was accurate with regard to Abu Mosa island it was not so with regard to the Tunb islands, for the two islands were under the sovereignty of Ras al-Khaima up to the 30th of November 1971, the time of the landing of the Iranian forces on the islands. Gradually, the Iranian forces completed the occupation of the two Tunb islands, without due regard to the obligations stipulated in the 1971 Memorandum of Understanding between Iran and Sharja.

It seems here, from the two arguments of the disputant states that "the use of force" is one of the mian factors of the disputes over the islands, hence these claims should be investigated in the light of Conventional international law, Article II (B) 5 of the Charter of the O.I.C. and Article 2 (4) of the U.N. Charter use the term 'Force', as primarily denoting the use of : "armed forces", which includes the regular or irregular forces of a state [1], such as the military and police forces. From this definition, one may inquire how the Iranian forces stationed themselves in the three islands on 30th of November 1971 while the islands were under the *de facto* sovereignty of Sharja and Ras al-Khaima? If it was true that there was a Memorandum of Uneerstanding bettween Iran and Sharja to station some Iranian forces in certain part of Abu Mosa island,, there was not such agreement between Iran and Ras al-Khaima allowing the former to station any forces in the two Tunb islands. In

(1) Brownlie, I. Basic Documents in International Law, 1983, p.38.

This attitude contradicts the international obligations imposed upon Iran by U.N. Charter and by the Charter of the I.C.O.

Taking into account this argument, the examination of the Charters show that Article II (B) 5 of the Charter of the I.C.O. requires that : "The member States decide and undertake that, in order to realize the objectives mentioned in the previous paragraph, they shall be inspired and guided by the following principles : ... abstention from the threat or use of force against the territorial integrity, national unity or political independence of any member State.". The Article embodies one of the main principles in the O.I.C. ' s Charter, which is the principle of respect of the territorial integrity and political independence of each member state. This principle becomes meaningless if it does not prohibit the threat or the use of force to resolve the present disputes. The Article also contains the principle of "abstention from the threat or use of force", which has been adopted from Article 2 (4) of the U.N. Charter. The principle is of a fundamental nature in international law, for it contains contractual obligation, ensuing from the Charters, and as a customary rule having the same binding force on non-member states and member states of the O.I.C. and of the U.N.[1].

The preservation of the obligations ensuing from the principle by the disputant states means that the two states have to abstain from the threat or use of force "against the territorial integrity, national unity or political independence of" any one of them. Consequntly, any territorial claims arising between the two states should be settled in accordance with this principle, i.e., by peaceful means, not by force.

(1) Brownlie, I. International Law and the use of Force by States, Oxford 1963, p.113; Jessup, P. Non- Universal International Law, COlumbia Journal of Trans-National Law, 1973, vol. 12, p. 426.

Zone which was only ratified by the Islamic Republic of Iran. Article 10/1 of the 1958 Convention on the Territorial Sea and the Contiguous Zone and Article 121/1 of the 1982 Convention on the Law of the Sea define the term 'island'as: ".. a naturally-formed area of land, surrounded by water, which is above water at high-tide..". The legal nature of the disputed three islands complies with concept of "island", as crystalized in conventional international law. -They are naturally not artificially formed islands [1]; They are also surrounded by sea water and - They are above water at high-tide, i.e., the islands constitute natural pieces of land, and thus, the disputes over the islands are subject to certain rules of international law, which are somewhat different from those governing disputes over sea areas. This study is concerned with the former catagory of rules, eventhough the two catagories may submerge to cover one single dispute.

3.2 The Most Applicable and Effective Mechanism For Settling the Disputes over the Three Islands :

The settlement of the present disputes mainly depends on certain mechanisms embodied in principles and procedures defined by international law, for the parties to be reseved. The guiding principle of all is the parties' observance of abstention from the use of force in settling the disputes.

3.2.1. Application of the principle of abstention From the Threat or Use of Force to the Present Disputes :

Each one of the disputant states claims that the three islands constitute an integral part of its territory , but only the United Arab Emirates has alleged that Iran used military forces to annex the islands from the two emirates in 1971; and continued to threaten to defend her illegal position there.

(1) Sultan, Dr Hamid. Al-Qanoon al-Dawli al-'amm Fi Waqt al-Silm, Dar al-Nahda al-Arabiyya, 1974, p.673.

boundaries between the opposite states, such as the U.A.E. and the Islamic Republic of Iran . Such effects can be seen in the present case, since the disputes between the two states over the islands have led to other disputes concerning the definition of their maritime boundaries [1].

The concept of an island has been well defined in the practice of the Gulf States, even though it somewhat differs from that of international law, Article 1 of the Saudi Arabian decree on territorial waters of February 16, 1958 [2] defines the term : 'Island' as constituting any islet, reef, rock, bar or any permanent artificial structure not submerged at lowest tide. A different definition, which is more consistent with international law, adopted by Article 1 of the Kuwaiti Decree of December 17, 1967[3], which denotes the term 'island' as: "a naturally formed area of land surrounded by water, which is above water at mean high-water tides"[4].

The most recent concept of an island is embodied in the 1982 Convention on the Law of the Sea, which was signed, not ratifid, by the United Arab Emirates and the Islamic Republic of Iran on 10 December 1982 [5], and also before in the 1958 Convention on the Territorial Sea and the Contiguous

(1) Ely, M. Seabed Boundaries between Coastal States, the Effects to be given to Islets as Special Circumstances, International Lawyer 1972, vol. 6, No.2, p.219.

(2) United Nations Legistlative Series, hereinafter refer to as: (U.N.L.S.) National Legistlation and Treaties Relating to the Law of the Sea, 1974, p. 114.

(3) ibid, p.97.

(4) Different definition , however, is adopted by Article 1 of the Omani Decree of July 17, 1972, which considers the territorial waters of Oman starts from the low-water line of the coast of the main land or of "an island rock, reef, or shoal more than twelve nautical miles distance from the main land or another island, rock, reef, or shoal ", ibid, p.24.

(5) ST/LEG/SER.E/11, Multileteral Treaties Deposited with the Secretary General, status as at 31 December 1992,p.762.

under the newly independent state of the U.A.E., just as it would if the territory was ceeded to an old state. This was made clear in the Right of Passage Case[1]. The disputes over the islands could be submitted to an international body for peaceful settlement of the disputes.

As parties to the Charter of the O.I.C[2], and to the U.N. Charter, the disputes over the three islands between the two Muslim states should be solved in accordance with the most applicable principles of international law or of *shari'a* any one of which is mostly effective and applicable to the disputes. The solution, however, can be more effectively facilitated by the defintion of the legal nature of the disputed islands.

3. The legal Nature of the Three Islands and the Most Effective mechanism For the Settlement of the Disputes:

3.1. The Legal Nature of the Islands Under International Law :

The definition of the concept of islands, under international law, and its applicability to the three islands are very important matters in settling any disputes over these islands. It assists in clarifying whether the disputes are arising with regard to the sovereignty over islands or over only a piece of rock. Disputes over rock or bar and suchlike are considered maritime boundary disputes, which are covered by the 1982 Convention on the Law of the Sea. Conversely, claims of sovereignty over an island, in the sense of international law, are regarded as territorial disputes, which ara covered by the rules of international law governing the settlement of disputes over land areas. Moreover, islands, in the sense of international law, have certain effects on the definition of the continental shelf

(1) International Court of Justice, hereinafter refer to as : (I.C.J.) Reports, 1960, p.6.

(2) U.N.T.S., vol. 914, p. 111.

U.A.E.' s title to her territory[1]; for the statehood of the U.A.E. includes the notin of territory. However, recognition of U.A.E. does not necessarily oblige the recognized state or states with regard to any outstanding disputes, such as the dispute between Iran and U.A.E. over the three islands. Certainly, the U.A.E. came into existence as a newly independent state in accordance with contemporary international law; without any disputes over its territory, except the disputes over the three islands.

One key to the disputes over the three islands, pertaining to recognition, may be found in allowing that the investigation of the title to the islands go back beyond the moment of recognition of the U.A.E. Before their independence, the seven Arab emirates, including Sharja and Ras al-Khaima were under British protection and jurisdiction. Within that jurisdiction, there are a variety of ways in which British dependencies have emerged into newly independent states, ranging from violent revolution to gradual evolution of sovereignty or sovereignties .

The Arab emirate were born through an evolutionary process and according to international law, the evolution of the emirates and their titles to their territories were matters within the domestic jurisdiction of Great Britain, until the recognition of Sharja and Ras al-Khaima with the other five emirates in 1971[2].

Under customary international law, it has no longer been acceptable to regard that title to the three islands is settled by the mere fact of the recognition of the U.A.E., but that the three islands subsist as parts of the whole territory,

(1) CF. Jennings. The Acquisition of Territory, opcit, p.7 ff.

(2) Abu Dhabi, Dubia. Ajman, al-Fujaira, Um al-Qowain, frauke, H. From Trucial States to the United Arab Emirates, Longman, 1982, p. 347 ff.

was the ethnic relationship between the populations of the two emirates and the populations of the three islands, and the second was the flying of the flag of each one of the two emirates on the three islands[1]. Iran attempted implicitly to recognize the sovereignty of the two emirates on the three islands when the former requested, in 1930, to rent the three islands from the British Government for 50 years, but the Ruler of Ras al-Khaima stipulated the flying of his flag over the islands, a stipulation which was not accepted by Iran[2].

Notwithstanding of the exercise of territoral sovereignty over the three islands by Sharja and Ras al-Khaima, none of these emirates provided evidence of the mode by which she has acquired title to her respective islands. The two emirates only relied on the exercise of territorial sovereignty over the islands as parts of their respective territories, and left aside the question of title to the islands to be governed by the princiole of recognition of a nawly independent state.

2.2.2. The Principle of Recognition of a Newly Independent State :

It will be recalled that the three islands are in harmony with the concept of territory in iternational law, a territory which is one of the elements of statehood [3] of the U.A.E. It follows that when the U.A.E. was recognised by other states, this recognition embodied an acknowledgment of the

(1) As regards Abu Mosa Islands, it has been reported that the population of the island were 80 nationals, in addition to 7 Indian persons and two Iranians, Indian Office Library and Records, R/14/2/625, Confidential, B.O. No.88-0251, British Agency Sharjah - To C.J. Pelly, Eso. O.B.E., Political Agency, Bahrain,20th Jan . 1949, p.1.

(2) Said, Dr Rosemerie. The Conflict Over the Arab Islands in the Gulf, J.G.A.P.S., April 1976, vol. 2. No.6,p.22.

(3) In addition to : population, government and independence, Crawford. The Creation of States in International Law, opcit, p.36 ff.

exercised any kind of exclusive sovereignty over the islnds before 1971.

The two emirates have always preserved in their practice the meaning and spirit of the principle, according to which Iran has never been able to furnish any reliable evidence that the two emirates had, at any time in history, acquired the islands from her by force. At the same time, it has been evidenced that the two emirates had exercised exclusive sovereignty over the islands before 1971, the positive aspects of which are as follows :

- Conclusion of concessions with foreign companies : Shaykh Sultan Bin Saqr al-Qasimi of Sharja concluded with the Golden valley Ochre And Oxcide Co. Ltd, a concession in 1935 [1] for the explortation of Minerals Red Oxcide in Abu Mosa island.

  As the British agent in Bahrain did not oppose the concession, the silence of the agent may be regarded as *de facto* recognition of the protecting state (Great Britain) of the sovereignty of Sharja over the Abu Mosa island[2]. This practice has been followed by Ras al-Khaima in respect of the two Tunb islands, and has been recognised by the protecting state, i.e. Great Britain [3].

- Ethnic relations and the hoisting of the flags of the two emirates : Sharja and Ras al-Khaima actually exercised two aspects of sovereignty over the three islands : the first

(1) Indian Office Library and Records, R/15/2/894- Minerals Red Oxcide at Abu Mosa, 20 Feb. 1936- 6 Jan. 1948.

(2) The protecting state did not object to the concessionary company export of the red oxcide in April 1936, ibid.

(3) This was affirmed by the attempts of the Golden Valley Ochre And Oxcide Co. Ltd., to extent her concession to Tunb islands, Inian office Library and Records, R/15/2/893- Confidential No.C/133/24/1. Monerals Red Oxcide of Tamp Island Memorandum British Agency Sharjah to the Political Agent Bahrain. 9th Feb. 1938.

al-Khaima had never exercised territorial sovereignty in the sense of international law on the islands. These claims bring into the issue the necessity to examine the defintion of territorial sovereignty in international law in order to establish the limit of power of each one of the disputant states and subsequenty to find out whether or not the two emirates had ever exercised territorial sovereignty over the islands.

Since the Islamic Republic of Iran and the U.A.E- with which sharja and Ras al-Khaima united - are members of the United Nations and of the I.C.O., it is the task of international law to delimit the exercise of territorial sovereignty of each one of the two states[1], i.e., Iran and the U.A.E. Territorial sovereignty, in general, refers to the characteristics of rights over a territory, and has positive and negative aspects. The positive aspects of territorial sovereignty appear in the exclusive exercise of authority by the disputant states over their respective territories. The negative aspects of territorial sovereignty appear in the obligation imposed by international law upon each one of the disputant states not to infringe the territorial sovereignty, integrity and inviolability of one another[2].

If one applies the principl in its negative aspects to the disputed islands, one finds out that the Iranian forceable annexation of the islands in 1971, instead of settling the disputes by peaceful means, runs contrary not only to this principle but also to the obligation imposed on Iran by international law not to infringe the territorial integrity of the two emirates in any parts, even if these parts are subject to disputes. Moreover, the principle in its positive aspects does not support the Iranian claims, whereas Iran had never

(1) Seee generally: Jennings. The Acquisition of Territory, opcit, p.2.

(2) Cf. R.I.A.A., Island of Palmas Case, 1928, vol.2, p.839.

principles in the case of the two emirates, whih are somewhat different from those applied to the Iranain claims, may be asserted as that the three islands had been under the *de facto* sovereignty of Sharja and Ras al-Khaima before Iran occupied them in 1971, and union between the seventh emirates was recognized by the international community as a newly independent state. Hence, the legality of the possession of the two emirates in these islands can only be clarified by examining this claim of possession against these principles.

2.2.1. The principle of Territorial Sovereignty:

Before applying the principle of territorial sovereignty to the possession of the two emirates in the islands, the islands should be examined to see whether or not they meet the requirements of interanational law, regarding the concept of territory. Under international law, territory constitutes tangible framework within which a state manifests its power:[1] it includes islands, the territorial seas and the airspace above them[2]. It links a people and their government as a state, if the other requirements of statehood are met[3].

The three islands are in harmony with the concept of territory in international law, since they were parts of the territory within which Sharja and Ras al-Khaima had exercised sovereignty before the Iranian occupation of the three islands in 1971. However, the Iranian claims of soverignty only include the three islands from the rest of the territories of the two emirates, alleging that Sharja and Ras

(1) Hill, M. claims to Territory in international Law and Relations, 1945, P. 3.

(2) See Artical 56 of the 1982 Convention on the Law of the Sea, Doc. A/CONF. 62/122 and Corr. 1 to 11.

(3) Crawford. The Creation of States in International Law, Oxford 1979, p.36 ff.

recognition was an international or a bilateral one [1] .

In this case, Iran had to establish incontestable evidence that the international community as a whole has endoresed Iran's title to the islands, despite any other ambiguous or illegal situation. In the bilateral recognition, Iran would have had to furnish any proof that the two emirates or any other Arab state had recognized Iran's title to the three islands and, thererore, these states were estopped from denying the validity of the 1970 Iranian occupation of the island. However, Iran has been unable to furnish any evidence on any one of these recognitions, and thus, her action of occupying the three islands in 1971 is not only unjustified but also runs contrary to the overruling principles of contemporary international law, and also to the counter-claims presented by Sharja and Ras al-Khaima.

2.2. Applications of the Principles of International Law To the Counter- Claims Presented by Sharja and Ras al-Khaima :

Since Iran has not been able to furnish uncontestable evidence in accordance with international law to justify her claims of sovereignty over the three islands, which had been in the possession of the two emirates before the Iranian occupation in 1971, the balance btween the Iranian claims and the counter-claims maintained by Sharja and Ras al-Khaima requires the examination of the basis of the conter-claims against certain principles of international law, such as the principles of territorial sovereignty, and of recognition of a nawly independent state.

The justification underlying the employment of these

(1) See generally Akehurst, M.Modern Introduction to International Law, 1984, 5th ed. , p.146; Lauterpacht. Recognition in International Law, London, 1948, p. 165; Chen, T. The International Law of Recognition with Special Reference to Practice in Great Britain and the United States, 1951, p.221.

colony and annexed it by force. India justified her action before the Security Council on the grounds that Goa constituted an integral part of India that had been illegally occupied for some fifty years by a colonial power and for this reason force could be used to remedy this situation[1]. The majority of the Security Council took the view that Indian action was contrary to Article 2/4 of the U.N . Charter. Hence, the Indian action cannot be regarded, under customary international law, as a valid mechanism for acquiring title to the territory concerned, and accordingly, this would apply to the Iranian forceable annexation of the three islands, Similarly, when Indonesia forceably occuppied East Timor in December 1975, the U.N. General Assemly in Resolution 3485 (×××) called upon Indonesia to withdraw its forces from that territory, and so did the Security Council in its resolution 384. Both resolutions did not recognise the transfer of title to the territory to Indonesia by force.

The conventional and customary rules of international law invalidate conquest as a mode of acqiusition of title to territory, but Iran in her argument has contested that her forceable annexation of the three islands in 1971 occurred persuant to the recognition of her title to the three islands, an argument that merits further investigation.

2.1.2.4. Principle of Recognition :

For the sake of argument, if one presumes that Iran occupied the three islands in 1971 by force persuant to the recognition of her title to the islands, the uncertainty of the recognition is to be nullified by distinguishing whether that

(1) S.C.O.R., 16th year, 987th meeting, paras. 46, 60, 74.

and repeated in the Eastern Greenland Cae[1].

Accordingly, Iran cannot establish any evidence that she acquired title to the three islands in accordance with her effective control, since she has never exercised a continuous and peaceful display of territorial sovereignty over the islands, as a result of the conter-claims maintained by Sharja and Ras al-Khaima, whose acquiescence to the 1971 Iranian conquest of the islands may be taken as other grounds for futrer Iranian arguments.

2.1.2.3. The principle of Conquest :

The Iranian conquest of the three islands in 1971 may arguably be taken as mode of acquiring title to the islands, since the rules relating to forceable annexation of a territory afford the occupant some rights and impose upon it certain duties under international law.

This argument is true only to the extent that title *per se*[2] cannot be generated by force itself, nor may force validate, under conventional and customary internationl law, a possession in a territory, which is subject to disputes.

In conventional internationl law, Article 2/4 of the U.N. Charter declares that :"All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations". Furthermore, this principle has been established in state's practice, as in the case of Goa and of East Timor. In the first one, India occupied this Portuguese

(1) P. C. I. J., 1933, series A/B, no. 53.

(2) See generally: Mcdougal and Feliciano. Law and Minimum World public Order, 1961, p.733; Oppenhein. International Law, 8th ed., 1955, vol. II, p. 618.

2.1.2.2. Principle of Effectiveness:

The principle of effectiveness operates, in international law, as a criterion for defining particular facts which may have specific legal concequences[1]. The criterion apparently works more in the field of acquisition of title to territory than in any other field of international law, although in specific cases it operates in conjunction with the other relevant principles, such as sovereignty, conquest and recognition.

The application of this principle to Iran's claims requires that Iran must establish reliable evidence that she effectively controlled the three islands by means of occupation or prescription before the 30th of November 1971, the time of Iranian conquest of these islands, until then she would be regarded as acquiring title to the islands by the principle of effective control. Since: "the continuous and peaceful display of territorial sovereignty ... is as good as title "[2]. Yet, sovereignty has to be exercised by Iran with the intention of seeking control, although such intention may only be realized after the lapse of a certain time. If Iran relied on her claims on this principle, the amount of the Iranian effective control of the islands is varied with regard to the circumstances of the disputes, such as the geographical nature of the islands and the existence, or not, of the conter-clams presented by rival states, such as Sharja and Ras al - Khama, as well-established by Judge Huber in the island of Pamas Case[3],

(1) De Visscher. C. Theory and Reality In public International Law, 1968, pp. 3, 8; Kelsen. General Theory of Law and State, 1949. p.420.

(2) Island of palmas case, R.I.A.A., 1928,2, pp.829,839.

(3) IBID. PP. 829, 840.

territory under contemporary international law [1]. It is well-established that such principles cannot, by themselves, create a title to territory as emphasized in the Islands of Palmas Case[2]. In this case, the arbitrator stated that: "... it is impossible to show the existence of a rule of positive international law to the effect that islands situated outside territorial waters should belong to a State from the mere fact that its territory forms the *terra firma* (nearest continent or island of considerable size)". The only legal relevance of these principles, in the case of the Iranian claims of sovereignty over the three islands, is : "Contiguity is no more than evidence raising some sort of presumption of effective occupation; [by Iran] a presumtpion that may be rebutted by better evidence of sovereign possession by a rival claimant [such as the two emirates]"[3].

The principles of contiguity and of historical continuity can only be taken into account by an international tribunal, when there is genuine doubt about the effectiveness of a state's control over the disputed territory, since then in this case the principles may constitute evidence of effective control by the claimant state, i.e. Iran. This doubt, however, was removed, in the case of the Iranian claims of sovereignty over the three islands, by the mere fact that Sharja and Ras al-Khaima had exercised *de facto* sovereignty over the three islands before the Iranian occupation of the islands in 1971; an occupation which may be taken by Iran as constituting evidence of its effective control of the islands.

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(1) Jennings. The Acquisition of Territory, opcit, p.76.

(2) U.N. Reports of International Arbitral Awards, hereinafter refer to as : (R.I.A.A.) 1928, II, p. 829, 854.

(3) Jennings. The Acquisition of Territpry, opcit, p.75; the Eastern Greenland Case, opcit, pp. 45-52.

known from ancient times [1].

- Acquisitive Prescription: acquisitive prescription inicates the acquisition of title to the three islands by Iran through a long-continued and undisturbed possession [2] ; legal requirements negated by continuous conter-claims maintained by the two emirates.
- A Newly Independent State : Iran is an old state; only a newly independent state's recognition coves its title to territory so that this mode is more applicable to the two emirates than to Iran.

2.1.2. Application of the Other Principles of International Law to Iran's Claims of Sovereignty Over the Three Islands:

2.1.2.1. Historical Title and Geographical Contiguity :

It may be recalled that Iran alleged that : "for more than a century, beginning in 1770 British maps marked the Tunb islands as being Persian ... these islands ... formed part of a group of islands virtually constituting an archipelago, all of which has always been part of Iran"[3].

It is self-evident in this passage that Iran based her claim of sovereignty over the islands on the so-called principles of geographical contiguity, and of histotical continuity in traditional international law, both of which have become obsolete as modes of acquisition of title to

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(1) Accretion usually occurs as a result of the increase of land by new formations, while cession of territory occurs by agreement between two states, Oppenheim, A. International law 1955, pp.563, 547 respectively.

(2) In the requirements and origin of prescription, see: Jennings, R. The Acquisition of Territory in International Law, Manchester University Press, 1963, p.20

(3) See : statement made by the representative of Iran, S.C.O.R., 1971, 1610th Meeting, 9 December 1971, paras. 212, 215, p. 18.

territorial sovereignty over them at any period of time before the Iranian occupation of the three islands on the 30th of November 1971.

2.1.1.Application of the Principles of Acquisition of Title to Territory in International Law to Iran's Claims of Sovereignty Over the Three Islands :

Acquisition of title to territory in international law occurs through modes and is regulated by certain rules of international law. Any claim of sovereignty over a territory must prove that title to the territory concerned has been acquired through any one of these modes. These modes are : occupation, cession, accretion, acquisitive prescription and newly independent state.

The examination of Iran's alleged title to the islands against these modes shows the following lagal conclusions :

- Occupation : Iran has never alleged that she acquired title to the three islands through occupation; and if she has, the requirements of the occupation, as a mode of acquisition of title in international law are not proved to be available in the Iran's claims. Occupation, as a mode, only gives title to the occupant in respect of *terra nullius* territory, while the three islands were under the *de facto* sovereignty of Sharja and Ras al-Khaima when Iran first raised her claims until she occupied the three islands by force in 1971.
- Cession : the claim also cannot be based on cession, since there is no treaty concluded between the two Emirates and Iran to transfer title to the three islands to the latter.
- Accretion : the islands did not come into existence through accretion of the Gulf, since they have been

2.1.Application of the Principles of Acquisition of Title to Territory and Other Principles of International Law to Iran's Claims of Sovereignty Over the Thrre Islands :

Iran has claimed territorial sovereignty over the three island in accordance with certain legal grounds, while the islands were under the *de facto* sovereignty of Sharja and Ras al-Khaima. As there are intimate relations between territorial sovereignty and title to territory in international law, these legal relations require that Iran's title to the three islands must firstly be proved at any time before the Iranian occupation of the islands, in accordance with international law, before any exercise of territorial sovereignty over the islands by Iran. Iran's title to the three islands means the fullest extent of competence that can be exercised by Iran over the islands[1], only in this sense her title operates *erga omnus*.

Iran could only reach this stand by establishing beyond doubt its acquisition of title to the islands through any one of the five modes of acquisition of title to territory, recognized by contemporary international law, and moreover, prove that she effectively and peacefully controlled the three islands without objection from any other state or states. If all these principles of international law were established by Iran, she would meet the burden of proof required and her claims transferred into a real exercise of territorial sovereignty, eventhough the islands were under the *de facto* sovereignty of the two emirates. Therefore, we will apply the modes of acquisition of title to territory, and then the principle of effective control to Iran's claims of sovereignty over the three islands in order to see whether Iran acquired title to the three islands and controlled them effectively and exercised

(1) Cf. Eastern Greenland Case, Prrmanent Court of International Justice, hereinafter refer to as : (P.C.I.J.), 1933, Ser.A/B, No.53, p.46.

of the Iranian occupation of the islands, Ras al-Khaima was under British protection, and thus Great Britain was legally responsible to defend any part of Ras al-Khaima's territory against any foreign aggression [1].

From what has been presented in the arguments of Sharja and Ras al-Khaima regarding the issue of title to the three islands, it can be concluded that the two emirates have potentially emphazised that the three islands had been historically recognized as parts of the territory under their continuous sovereignty. In addition, the international recognition of the U.A.E., as a newly independent state, covers the recognition of their title to the three islands. Thus, the bases of the two arguments are now defined, but none of them can legally be balanced except by the examination of each basis against the overruling principles of contemporary international law.

2. Application of the Prevailing principles of International Law to the claims and Counter-Claims:

Since all states, Iran on the one hand, and Sharja and Ras al-Khaima (now included in the U.A.E.) on the other, claimed sovereignty over the three islnds, one should examine the grounds upon which each claim is founded against the principles of international law governing the acquisition of title to territory. It may be, however, more justifiable, once again, to begin with the Iranian claims, since they were launched while the three islands were in the possession of the two emirates. It follows that the onus of proof is on Iran's part to support her claims by the overruling principles of international law governing the acquisition of title to territory.

(1) The Times, 10 April 1974 .

carried out her claims on 30 November 1971 by sending her troops to occupy the two Tunb islands one day before the termination of the Treaty of Protection between Ras al-Khaima and Britain.

Subsequently, the Iranian occupation of the two Tunb islands was strongly opposed by the Arab states, and the Security Council on 9 December 1971 held a cession regarding the situation in the Gulf [1]. At this time, the representative of the United Arab Emirates described the Iranian occupation as constituting : unjustified action historically and judicially, and as running contrary to the Charter of the United Nations.[2] He added that: "the British government itself has on numerous occasions stated its belief that these islands were Arabs and that the Itanian claims to them was not based on any legitimate historical or legal basis" [3] . One of the Arab states whose representative criticized the Iranian action was the representative of Kuwait. He argued that Iran: "could refer the case to the International Court of Justice or accept arbitration. But all our bids for a peaceful solution were turned down, Iran cannot adjust itself, apparently, to the undisputed fact that these islands have always been Arab islands and that the continuation of the free passage through the Strait of Hormuz is not only essential to Iran's economic life but also equally essential and vital to Kuwait.." [4].

All Arab states blamed Britain for her inconsistant attitude towards the occupation on the grounds that at the time

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(1) S.C.O.R., 1971, Supplement for October, November and December, 1971, p.78.

(2) S.C.O.R., 1971, 1610th Meeting, 9 December 1971, para. 266. p.23.

(3) ibid, para. 271.

(4) S.C.O.R., 1971, 1610th Meting, 9 December 1971, para. 134, 135, p.12.

of the unification of the seventh Arab emirates, including Sharja, has in every occasion invited Iran to withdraw her forces from the island. This position may be construed as implying the application of the principle of *clean slate*[1] to the agreement, as one of the unequal treaties[2]. Accordingly, the U.A.E. did not succeed to the obligations embodied in the ageeement. The ageeement was also opposed by the Arab states on the grounds that the then Sheykh of Sharja entered into the agreement under duress[3] ; a fact which is clearly evidenced by the Iranian attitude towards the Ruler of Ras al-Khaima who refused to enter into any agreement with Iran regarding the two Tunb islands.

1.2.2.2. Ras al-Khaima:

As historical facts, the two Tunb islands wera under the direct sovereignty of the al-Qawasim Rulers, to which the Ruler of Ras al-Khaima relates a *status quo* was recognized by Britain upon her entrance to the Gulf in 1820, a long time before Iran launched her claims of sovereignty over the islands. Later, when Iran raised her claims at the beginning of this century, Ras al-Khaima backed by Britain had continued to reject the claims. A different attitude, however, was adopted by Britain upon the declaration of her intention to withdraw from the Gulf at the end of 1971, since she had insisted that the Ruler of Ras al-Khaima negotiate the issue with Iran, despite the latter's demand that her alleged rights in the islands to be decided in her favour, and therefore, used this claim as a pretext for non-recognition as a newly independent state of the Union among the seventh emirates. When all of this pressure had failed to enforce the Ruler to enter into an agreement similar to that of Sharja, Iran

(1) For more dtails about the principle of clean-slate *(tabula rasa)*, see: Makonnen, Y. International Law and the New States of Africa, 1983, p.132.

(2) Chen, L. State Succession Relating to Unequal Treaties, 1974.

(3) M.E.E.S., No.6, 3 December 1971, p.2.

"(a) The security interests of a country cannot under any circumstances justify the occupation of another's territory, nor can the protection of sea routes be used as an excuse for claiming sovereignty over an island belonging to another state.

(b) Abu Musa has no military importance in the strategic sense, since it is well known that Iran possesses the most modrn aircraft and most powerful naval units and can therefore cover any area of the Arabian Gulf with its modern weapons without making use of Abu Musa. Moreover, Iran has seized the island of Sirri, only some twenty miles distance from Abu Musa, and, assuming its object is security and protection of sea routes, is capable of doing so from this island or other Iranian islalnds at the entrance of the Gulf, which forms a bottleneck known as the Straits of Hormuz"[1].

As mentioned above, Britain, as the protecting state of Sharja, paid intensive effort to mediate between Iran and Sharja in order to reach an acceptable solution to the dispute. The result was no more than the conclusion of an agreement embodid in a "Momorandum of Understanding"concerning the future arrangements of Abu Mosa and its territorial waters[2], which did not completely abolish the sovereignty of Sharja over the island. The legality of the memorandum, however, has always been internally and externally challenged. It was domestically rejected, as was seen by the prompt change of Sharja's Ruler. The new ruler announced on 2 Febuary 1972 that he would seek a new understanding with the Iranian government [3]. Moreover, the United Arab Emirates, which came into existence as a result

(1) ibid.

(2) M.E.E.S., No.6, 3 december 1971, p.4.

(3) M.E.E.S. No.15, 5 Febuary 1972, p.4.

principles against the Iranian arguments.

1.2.2. Background of the Emirate's Counter-Claims:

The Iranian claims and occupation were firstly directed to Abu Mosa Island, which belongs to Sharja and subsequently to the two Tunb Islands, when they were under the sovereignty of Ras al-Khaima. Sharja followed by Ras al-Khaima, has firmly counterclaimed that Iran has never at any time effectively controlled the three islands in the sense of international law.

1.2.2.1. Sharja:

Sharja, however, met the new developments of the Iranian claims by negating the basis upon which the claims were founded and emphasizing the recognition of her own sovereignty over Abu Mosa Island. In her response, she asserted that Abu Mosa Island "has since ancient times been recognised as an Arab island, and has never before been settled by any foreign power, having always been administered by its Arab rulers along the Omani coast...". The British government affirmed this historical right of the Arabs and of Sharja specifically on every occasion, and stated its official view through Sir William Luce, the representative of the British Foreign Secretary in the Gulf area, with the words:"The British Government did not seize Abu Musa from the Iranians and hand it over to Sharjah at the time of its entry into the Gulf. The British Government has since its entry into the Gulf considered Abu Musa to be Arab, and according to old documents in possession of the British Government the island was Arab..."[1]. Sharja also added in her response to the Iranian claims that:

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(1) For more details about these claime see: Albaharna. The Legal Status of the Arabian Gulf States, opcit, p.343.

Understanding, which was concluded btween Iran and Sharja on the 29th of November 1971, by 24 hours, the Iranian troops landed on and occupied the Greater and Lesser Tunb Islands and hoisted the Iranian flag there, justifying the action as merely restoring her sovereignty on the islands, which had been occupied for eighty years by: British imperialist forces"[1].

The Iranian Senator, Abbas Mas'udi[2] reiterated the bases of the Iranian claims arguing that :

- all geographical maps show the Tunb Island in the same colour of the other parts of the Iranian territory.
- the two Tunb Islands are closer to Iran than to Ras al-Khaymah.
- Iran had consistently protested against the British occupation of the islands and this protest had never been rejected by Britain.
- the Iranian and British governments consulted each other on the basis of Iran's rights in the islands after the latter's withdrawal of her territorial claim to Bahrain .
- the islands should be in Iranian's possession, since they are of paramount importance from the strategic point to Iran and to the Gulf region.

It may be concluded that the Iranian claims are based on the principles of historical title, geographical contiguity, recognition and factual conquest. However, Iran has not defined the mode by which she acquired title to the three islands. Yet, Sharja and Ras al-Khaima have constantly, before and after the Iranian accupation of the islands, maintained counter-claims based on certain facts and lagal

(1) Statement of the then Iranian Premier A. A. Hoveyda, Ramazani, R. The Persian Gulf: Iran's Role, University press of Virginia, 1972, pp.56-8 .

(2) He was the cheif editor of Teheran Ettelaat, Amin. International and Legal Problems of the Gulf, opcit, p.163 ff.

claim of sovereignty over the island as emphasized by the memorandum itself. Accordingly, it was agreed that the Iranian troops would station on certain areas of the island as shown in the map attached to the memorandum, over which Iran was given full jurisdiction and the right to fly her flag. Similarly, Sharja was given a full jurisdiction in the remainder of the island and the right to fly her flag over the police post [1]. The revenues accruing from oil exportation were equally divided between Iran and Sharja and Iranian and Sharja nationals shared equally fishing rights in the territorial sea of Abu Mosa [2].

It may be concluded from the memorandum experience, however, that Iran found this kind of solution was not effective in enforcing her claim of sovereignty over Abu Mosa Island. Therefore, in her next step, regarding the two Tunb islands, she embarked upon a different policy.

1.2.1.2. Greater Tunb Island and Lesser Tunb Island:

Similarly , Iran claimed soverignty over the two Tunb Islands alleging that: "for more than a century, beginning in 1770, British maps marked the Tunb islands as being Persian... these ilands... formed part of a group of islands virtually constituting an archipelago, all of which has always been part of Iran" [3].

These claimc coincided with threats that Iran would carry them out even by force, regardless of the treaty of protection between Britain and Ras al-Khaima, which was still in effect. After the announcement of the Memorandum of

(1) ibid.

(2) Ibid.

(3) See : statement made by the representative of Iran, Security Council Official Records, hereinafter refer to as :(S.C.O.R), 1971, 1610th Meeting, 9 December 1971, paras. 212,215,p.18 .

recognizing the Iranian ownership of the island. Moreover, it was claimed that the Iranian extension of sovereignty over the island was necessitated and justified by the maintainance of the security of the Gulf area[1].

The flexible position of Britain towards the new Iranian claims encouraged the Iranian government to become more insistent, as evidenced on 19 May 1970, before the real withdrawal of Great Britain from the Gulf, when the Iranian government informed Her Majesty's government that she considered the island of Abu Mosa and its territorial waters extending to 12 miles to be under her sovereignty [2].

No positive stand was taken by the British government to put an end to the threats directed against the territorial integrity of the vulnerable British protected emirate of Sharja, but rather the British government made an intensive effort to mediate between Iran and Sharja in order to reconcile their differences over the ownership of the island, This effort did not achieve much success, other than exerting havy pressure on Sharja to conclude with Iran the so-called (Momorandum of Understanding) on 29 th of November 1971, concerning the future arrangements of Abu Mosa and its territorial waters [3].

The examination of the memorandum, however, shows that it does not provide any solution to the issue of sovereignty over Abu Mosa island, No cession, recognition of title or transfer of sovereignty of any kind was recognized by any party to the memerandum. Each party reserved its

(1) See the Memorandum presented by Sharja to the Arab states concerning Abu Mosa island on 23rd August 1971, Middle East Economic Survey, hereinafter refer to as : (M.E.E.S.), 3 December 1971, No.6, p.4.

(2) El-Hakim. The Middle Eastern States and the Law of the Sea, opcit, p.122.

(3) M.E.E.S., No.6, 3 December 1971, p.4.

1.2.1.1. Abu Mosa Island :

since the arrival of Shah Mohammad Reza Pahlavi to the government of Iran, this state has embarked on an irredentist policy, in which it has claimed sovereignty over islands and areas of its neighbouring Gulf states on the basis of respect for the territorial integrity of its pre-British territorial extent. Relying on the map which was prepared by the Royal Geographical Society in 1892, Iran has insisted that the island of Abu Mosa is an integral part of her territory[1], She contended that following British occupation of the island, Brtitain handed it over to Sharja, despite the fact that previously, Britain had recognized Iran's ownership of the island.

A significant develppment in the from and extent of the claims occurred upon British declaration of her intention to withdraw from the Gulf at the end of 1971, when Iran in several occasions had threatened to restore her alleged title to the island even by force without due regard to her recognition of Sharja and of the principles of international law as embodied in the United Nations Charter. In December, 1969, the occasion of granting an offshore concession to the Buttes Gas and Oil Company 1969 by the Ruler of Sharja, Iran reiterated her claims through the National Iranian Oil company (N.I.O.C.) . The company on 23 June 1970, submitted a letter to the Buttes Gas and Oil Company informing her that Iran reseved :" the right to take any action whatsoever to maintain its sovereignty over the Island of Abu Mosa and its territorial waters". Iran justified the new developments in her claim by stating that : she handed over the island to Sharja when Great Britain became predominant power in the Gulf and the protecting state of Sharja, though the British government continued

(1) Amin, S. International and Legal problems of the Gulf, London, 1981, p. 161.

island. It is about one mile long and 3/4 of mile wide[1].

1.2.The Exchange of claims and Counter-Claims of Sovereignty over the Three Islands :

Upon the discovery of great oil and red iron oxcide deposit in the islands, the disputes of sovereignty over them between Iran from one side and Sharja and Ras al-Khaima on the other, had gradually arisen at the beginning of this century onwards. The disputes took the form of claims of sovereignty over the islands presented by Iran, while the three islands were under the *de facto* sovereignty of Sharja and Ras al-Khaima. The two emirates have constantly counterclaimed the Iranian claims before and after the Iranian occupation of the islands at the end of 1971.

It is, therefore, of paramount importance, for the purpose of this study, to restate the backgrounds of the claims and of the counter-claims and to balance the two main arguments in order to reach certain legal grounds, which can be examined against the most prevailing principles of international law governing the acquisition of title to territory. The investigation begins with the definition of the legal basis of the Iranian claims, since it had been raised while the islands were under the *de facto* sovereignty of Sharja and Ras al-Khama, followed with those of the two emirates' counter-claims.

1.2.1. Background of the Iranian claims :

it is for convenience and for more careful examination one may throw some light on the development of the Iranian arguments with regard to the island of abu Mosa, and then with regard to the two Tunb islands.

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(1) ibid.

near the mouth of the Strait of Hormuz. It lies approximately 35 miles off the coast of the United Arab Emirates (Sharjah); and approximately 43 miles off the Iraninan coast[1].

The island possesses a surface area of approximately 35 square miles[2]. It has a population of some one thousand, five hundred persons, and the majority of them are related to the Arab tribes living along the omani Coast.

The island is surrounded by deep water providing good anchorage and contains in its surface extensive deposits of red iron oxide [3].

1.1.2. The Greater Tunb Island :

The Tunb island lies 20 km from Ras al-Khaimah, one of the members of the United Arab Emirates and about 17 miles from the Iranian island of Qeshm. The island of Qeshm is 60 miles long and is separated from the Iranian mainland by the narrow and intricate Clarence Strait.

The Greater Tunb island has a surface area of approximately 9 square Kilometers, and is populated by around two hundred prsons [4], most of them are of Arabian origins as those of the Abu Mosa population.

1.1.3. The Lesser Tunb Island :

This island is located about 90 km far from the coast of Ras al-Khaima. It also lies 8 m West from the Greater Tunb

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(1) El-Hakim, A. The Middle Eastern States and the law of the Sea, 1979, p.122.

(2) Al-Arabi Magazine, October 1968, issue No.119, p.38.

(3) Al-Feel, Dr. Muhammad. Al-Khalidj al-Arabi fi Muwajahat al -Tahaddiyat, Journal of the Gulf and Arabian Peninsula Studies, hereinafter refer to as: (J.G.A.P.S), October 1976, issue no.8. p.71.

(4) ibid; Al-Arabi Magazine, opcit, p.42.

in accordance with the principles of international law"[1]. Soon after, the Islamic Republic of Iran vigorously opposed the invitation of the G.C.C. Heads of States by defending her position in the islands and reiterated her claims of sovereignty over them.

Throughout the entire period of the disputes, a few legal studies have hastily come across the description of this issue without toggling it or providing an alternative legal solution. Therefore, it is the main purpose of this study to deeply scrutinize this problem, to balance the argument of each party against the prevailing principles of contempotary international law, and to provide a practical and positive legal mechanism for peaceful settlement of the disputes, if the parties faithfully agree to apply them.

1. Location of the Islands and the Exchange of Claims and Conter -Claims of Sovereignty over Them :

It is pertinent for the purpose of this study to concentrate hereinafter on the distances between the islands and each territory of the disputant states, their surface areas and the ethnic relations between the populations of the islands and those of the disputant states. These elements possess crtain lagal nexus with the principles of international law governing the acquisition of title to territory. Moreover, these elements will be of some help in assisting the claims and counter-claims of sovereignty over the islands.

1.1 Location of the Islands :

1.1.1. Abu Mosa Island :

As far as Abu Mosa is concerned, it is an island located

(1) Al- Qabas (Newspapers) 23 December 1993; Al Watan (Newspapers) 23 December 1993, p.22.

sovereignty of Sharja and Ras al-Khaima, before the formation of the U.A.E. Upon the declaration of Great Britain to withdraw from the Gulf at the end of 1971 and before the real withdrawal, Iran tried to carry out her claims though different means. She exerted heavy pressure upon the ruler of Sharja to sign the so-called Memorandum of Understanding on 29th of November 1971 according to which Iranian forces were stationed side by side with Sharja forces in the island of Abu Mosa. The next day, other Iranian forces accupied the two Tunb islands and hoisted the Iranian flag there without the consent of the Ruler of Ras al - Khaima .

After the formation of the U.A.E. and its admision to the membership of the United Nations and to the O.I.C., to which the Islamic Republic of Iran was a member, the government of the U.A.E., in several occasions, invited the Islamic Republi of Iran to settle peacefully the disputes over the islands though the coordinated and very effective mechanism for the settlement of international disputes as embodied in the Charter of these organizations. Until now, these invitations were to no avail. One of these occasions was the G.C.C. 14th session on 23 December 1993, in which the G.C.C. Heads declared that : " The Islamic Republic of Iran should affirmatively respond to the invitation submitted to her by the President of the United Arab Emirates for the assumption of direct negotiation regarding the Iranian occupation of the United Arab Emirates' three islands". The invitation continued, adding that: "The G.C.C. members completely support and absolutely agree with the position of the United Arab Emirates. They also support all procedures and peaceful means, which the United Arab Emirates may rely upon in order to resume her sovereignty over the islands

legally binding *erga omunes*, such as the principle of acquisition of title to territory; the principle of territorial sovereignty ; the princilpe of effective control as evidence of good title to territory; the principle of recognition; the principle that all members of the United Nations shall refrain from the threat or use of force against the territorial integrity or plitical independene of others; and the principle that the members of the United Nations shall settle their international disputes by peaceful means.

as an integral part of the international community and of the Islamic world, the Gulf states have recognized the validity and the binding force of these principles, as can be found in many international treaties, which will be mentioned. However, recognition of legal principles is not enough for the replacement of the rule of force by the rule of law in settling international disputes, as can be realized in the practice of these states.

The Gulf states have bitterly experienced the horrible and destructive wars of 1980 and of 1991, the underlying reasons of which were territorial claims and counter-claims, according to which none of these recognized principles had been applied in good faith. Unfortunately, the rise of the imminent danger of a third war can be expected sooner or later, as a result of the building up of the controversy between the Islamic Republic of Iran and the United Arab Emirates (U.A.E.). concerning the sovereignty over the three islands of Abu Mosa, and of Greater and Lesser Tunb[1].

The Iranian claims and the U.A.E.' s counter-claims of sovereignty over the three islands date back to the beginning of this century, when the islands were under *de facto*

(1) Albaharna, H. The Legal Status of the Arabian Gulf States, Manchester Univirsity press 1968, p. 304.

INTRODUCTION :

Although it seems that a positive approach intends to enter the arena of the very well-known controversy arising btween naturalist and positivist theories concerning the basis of obligaton in international law, we firmly adopt the most prevailing view in international law that the practice of states constitutes wide acceptance and recognition of the validity of international law as an obligatory system without requiring about the very debatable question of the basis of the obligation in international law.

This approach is more practical than theoretical and less controversial, at least with regard to the recognition of the emergence, in state practice, of many obligatory legal principles common to all legal systems of civilized nations. For instance, in the age of international organization, intrnational law and Islamic law have exchangebly intermingled and interacted[1], as a result of the participation of many Islamic states in the membership of the United Nations and its specialized agencies; and the establishment of many Islamic international Organizations by the same states such as the Islamic Conference crganization [2](I.C.O.) and the Arab League. Many modern legal principles, relating to international and Islamic law, have emerged from this very process of interaction and have become

(1) See: professor David De Santillana, on praising Islamic law and pointing out the contribution of it to the European law, in Schacht, J. and Bosworth, C. (eds) The Legacy of Islam, Oxford 1974, p.309; Marcel Boisard stated that the influence of Islamic ideas and legal princilples in the founders of Modern international law is far from remote, Boisard, M. On the Probable Influence of Islam on Western and Public International Law, International Journal of Middle East Studies, hereinafter refer to as: (I.J.M.E.S.) , 1980, vol.II, p.429 .

(2) On the Charter of the Islamic Conference Organiztion, see: U.N.T.S., vol . 914, p.111-116 .

POSITIVE APPROACH TO THE DISPUTES OVER THE THREE ISLANDS : ABU MOSA, TUNB AL-KUBRA AND TUNB AL-SUGHRA

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