States behaving badly? The unique geopolitics of island sovereignty disputes

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States behaving badly?

The unique geopolitics of island sovereignty disputes

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I’d also like to take this opportunity to thank a series of people who continue to inspire my research into boundary and territorial disputes: my wonderful students on the MA in Geopolitics, Territory and Security programme in the Department of Geography, King’s College, London; my many friends who are former or current PhD students from SOAS and King’s – including, of course, that proud Korean Dr Sung-Jae Choi, who wrote a very perceptive doctorate on Dok-do a decade or so back; Carl Grundy-Warr and Clive Schofield, loyal friends from our IBRU days at Durham and co-conspirators in an ongoing academic investigation into Contested border geographies: history, ethnography and law (due for publication next year by IB Tauris); Robert Volterra and Stephen Fietta, inaugurators (with myself at KCL and the Law of the Sea Division at the Hydrographic Office in Taunton) of the London International Boundary Conference – which was launched in April 2013 and runs every other year.

I’d also like to extend my acknowledgements to my good friend and colleague, Larry Potter of Columbia University for enabling the partial republication in chapter 2 of this report of sections from an earlier 2002 article – “Anything but black and white: a commentary on the Lower Gulf islands dispute” from his edited publication (with Gary G Sick) of that year: Security in the Persian Gulf: origins, obstacle and the search for consensus. Thanks also go to its publisher, Palgrave in New York. Thanks, too, are extended to the original publishers of all the maps and diagrams included in the text – sources are fully acknowledged in the list of figures on p: 2-3 and within the main text body itself.

Most inspiring of all this year has been my youngest son, William – to whom this study is dedicated. He just keeps smiling!

Richard Schofield

King’s College, London

20th June 2014
1. **An introduction to the unique geopolitics of island sovereignty disputes**

1.1 **The practicalities and politics of island sovereignty disputes**

The visually dramatic naval power posturing in the waters of disputed islands in the East China Sea during the autumn of 2013 may have made for good television but surely surprised many observers with its essential crudeness. Maybe it shouldn’t have! While the contemporary social sciences might wish that states would behave in a more sophisticated manner that was easier to characterise within the improved analytical and methodological machinery developed to approach and critique territorial concerns in the period since the end of the Cold War, perhaps the spectacle only went to underline something that has always been apparent in the way states treat and conduct island sovereignty disputes. That is, more than for any other class of boundary and territorial dispute, states have a history of behaving badly when disputing insular features.

If that sounds crude in itself, let us consider what might come into the ‘states behaving badly’ bracket – and we’re generally talking about rather less dramatic actions than naval displays off the coasts of this or that rock, islet or island. Maybe it is rather states doing things that aren’t strictly authorised from the viewpoint of international law, or states being slow to respond to emergent regulation, or – in certain cases – trying it on to a certain degree (for some contemporary exemplification – the stories that have made recent headlines here, see 1.2.). But what the major theme of this report makes clear is that these sorts of thing have always gone on. It is just that the specific and contextual geopolitics of island sovereignty disputes have probably become much complex than ever before, while the incentives for claiming island sovereignty – or that various categories of insular feature actually constitute islands – have also undoubtedly grown.

How, therefore, might we characterise what this author sees as the unique geopolitics of island sovereignty disputes? I argue that any serious investigation of the salience and complexity of island sovereignty disputes must embrace and indeed integrate their main two dimensions – their pragmatics and their politics. They must also acknowledge that the local context and regional dynamics of disputes is utterly key to their understanding. For if one accepts that the rules of international maritime law, however unclear they may seem in defining insular features, as well as the interest of the major oil companies in securing stable supplies of oil and gas must both be regarded as constants, the specific context in which individual disputes may be viewed can only be found in their complex regional geographies and geopolitics.

1.1.1. **The pragmatics of island sovereignty disputes**

So, how might one summarise the pragmatics and politics of island sovereignty disputes? The former is easier to quantify, for any feature that meets the 1982 UNCLOS (Article 121) definition of an island can generate the same, full suite of jurisdictional zones as the
coastline of any mainland state. In a medium term likely to be dominated by resource scarcity, the incentives to prove ownership over insular features and therefore to gain access to the surrounding seabed will only increase. Also, and particularly at a time when sea level rise is the subject of such close scrutiny, the question of protecting insularity is likely to be an increasing concern.1 Even before climate change was seriously on the agenda, protecting claimed insularity in the face of wave erosion was (and remains) a controversial area – one only needs to look at Japanese actions in Okinotori-Shima (summarised in 1.2).

Let’s very quickly highlight the striking ambivalence of Article 121 of UNCLOS. As with several areas of the convention (one also thinks here of measures to deal with the regulation of various classes of fishing disputes and the definition of bays), the international community couldn’t arrive at a clear consensus over what defined an island, so the resultant legislation was a fudge, capable – perhaps always deliberately – of manipulation by states. The contents of this report will surely suggest that it papered over a huge variety in state practice and its very vagueness essentially provided for an umbrella of what was already out there.

As Symmons (1995) posited so usefully almost two decades back, four basic legal requirements can be ‘teased’ out of the definition provided for an island in Article 121’s first paragraph, that is any such feature should be “a naturally-formed area of land, surrounded by water, which is above water at high tide”.2 Yet it is the lack of concision in these requirements that has evidently left them open to interpretation and possibly abuse. A consensus that islands should be ‘naturally-formed’ has long been around, particularly after the International Law Commission’s detailed deliberations over artificial islands (and their entitlements) during the early 1950s but that hasn’t stopped states from building up low-tide elevations artificially into features that are ‘above water at high tide’ (see section 5). In supposedly constituting territory, it can be assumed that most islands have to be ‘land’ by definition though that hasn’t stopped some creative legal arguments holding that certain claimed features are not what they seem! Remember the 1996 American Supreme Court Dinkum Sands case (US vs. Alaska), where it was argued that a significant portion of the water column of the features in question comprised a dirty hybrid land/ice compact that couldn’t be considered as land alone.3 Even the ‘surrounded by water’ stipulation was theoretically questionable in certain circumstances – one thinks here of periodic linkages to mainland of drying features such as sand bars or even pack ice in the polar regions.

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2 Clive Symmons (1995) “Some problems relating to the definition and formation of ‘insular formations’ in international law: islands and low tide elevations”, Maritime Briefing (volume 1, number 5), International Boundaries Research Unit, University of Durham.
But this was nothing as compared to the complete lack of guidelines provided for Article 12’s threadbare definitional treatment of habitability and size, articulated in its third paragraph: “rocks which cannot sustain habitation or economic life of their own shall have no exclusive economic zone or continental shelf”. Leaving aside the question of what a rock comprised, many obviously uninhabitable such features had been claimed as islands, or an economic use argued for them, for decades before the convention began to be negotiated. In this regard changing British claims to Rockall are documented in section 5.2, while the continuing regional consternation caused by Japan’s stance over Okinotori-Shima requires no further elaboration.

1.1.2. The politics of island sovereignty disputes

Yet it is perhaps the politics of island sovereignty disputes that have perhaps become even more intriguing in recent years. Ever since the end of the Cold War, the conduct of regional politics in many areas of the world has increasingly devolved to the regional players themselves. In an instance of classical Ancienlens politics, island sovereignty disputes have visibly served as the manifestation or symbol of wider problems between states. In the last two decades this has been particularly discernible in East Asia and the Persian Gulf (see section 6 of this report). The conduct of Japan’s island disputes with its neighbours to the north, west and south-west has seen these features serve, to a greater or lesser degree, as symbols of contending nationalisms - and reminders of a painful historical past! Meanwhile, since its resurrection during 1992, Iran and the United Arab Emirates have often treated the dispute over the Lower Gulf islands of Abu Musa and the Tunbs as a symbol of regional (i.e., Arab-Persian) rivalries.

Yet, in both cases, the rhetoric and posturing joined by states in their articulation of rival claims often seems out of kilter with the reality and scope of the disputes themselves. Maybe this is because there is an element of safety in the conduct of island sovereignty disputes that is simply not present when disagreements concern adjoining, contiguous land territory – there is obviously less threat of physical conflict. This might be a case of island disputes acting like safety valves, if you will, for they often seem ideally suited to the rhetorical traditions for which they have become famed. For instance, no-one could underplay the seriousness of the Korean Foreign Minister’s statement of 9th March 2005 that “Dok-do ranks higher than Korea-Japan relations” when espousing that country’s ‘doctrine concerning relations with Japan’ on Tokyo’s nomination of a national Takeshima day (see section 6). Yet the two countries had recently staged the 2002 World Cup with great success and public visits between the two countries had never been more numerous. Similarly, going back a decade further in time, Iranian President Rafsanjani surely ruffled a few regional feathers with the following words during January 1993 – that were thereafter repeated routinely: “Iran is surely stronger than the likes of you... to reach these islands one has to cross a sea of blood... we consider this claim as totally invalid” (see section 6). But this was a broadside targeted entirely at a domestic audience, while, again - at the local level – the daily ferry was running as per normal between Sharjah and Abu Musa.
The easy visuality of many disputed insular features – especially those that can easily be shown or depicted in their entirety - is another factor that has encouraged emotive connections at the civil level, too. In some ways, the smaller these features are, the more they can be seen to possess an identifiable shape – easily represented on stamps, for instance - or even to assume a (politically-mobilisable) character. The recent publicity literature produced by the Korean government showing the rocks that comprise Dok-do as animated, colourful but above all friendly and smiley-face blobs almost suggest they can be seen as cuddly (see figure a).

Figure a: Cover from ‘Dokdo and the East Sea’, Pride GyeongBuk, Gyeongsangbuk-do, www.dokdo.go.kr
This image contrasts with the severity of those usually shown of Rockall (see section 5.2) – that evince remoteness and barrenness above all (see figure b).

Figure b: Rockall – 1974 HMS Tartar expedition, www.secretscotland.org.uk/index.php/Secrets/Rockall

Historic images of Heligoland, the subject of section 3 of this project, again must surely have evoked a series of powerful human responses when its fate was discussed in the media and political circles during the summer of 1890 (see figure c).
1.2 States behaving badly in contemporary island geopolitics?

Talking in very deliberately non-academic terms, the actions of states in the conduct of island sovereignty disputes can be seen in some instances to be ‘trying it on’. While a number of interesting security-related analyses try (at least partially) to explain recent Chinese shows of force off the Diaoyutai/Senkaku islands within the context of an expanding naval power trying to break out of the effective encirclement presented by island groups (or, more specifically, an inner and outer ring of island chains) being owned by neighbouring powers, most observers would still point to a growing nationalist appetite domestically within China that is far from satiated. But for as long as states – mainly the regional hegemons, it must be admitted – continue to behave so crudely in such classical instances of traditional game-playing, academics will develop such deterministic arguments as encirclement to try and get into their mind-sets.

Besides crude power-posturing and associated traditional game-playing, there are two other ways in which states can be seen to have been obviously ‘trying it on’ over islands. One is to knowingly claim or continue to claim features (or extend associated jurisdictional claims) when to do is clearly beyond what is sanctioned in international law. For a 21-year period until 1997 – when it acceded to UNCLOS, Britain claimed a 200nm Exclusive Fishing (Economic) Zone using Rockall as an integral base-point. Having courted much controversy and regional ill-will by doing so, it then backed down – while

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still claiming the rock as an island with a territorial waters belt, it was announced that it would no longer be regarded as generating any further jurisdictional zones. (see section 5.2). Until that point, Britain's claim was rather analogous to Japan’s continuing insistence that Okinotori-Shima generates a full 200 nm EEZ. The feature in question lies 1700 kilometres south of Tokyo (well to the south of an intervening area of High Seas) and comprises two tiny ‘rocks’ – that appear 1.6 metres and 1.3 metres above water with respective widths of around 6 metres and 2.7 metres (see figure d).^5

Figure d: Okinotori-Shima, various web-sourced images

Just as Britain’s 1976 Fisheries Act brought Rockall into effect as an EFZ base-point, Japan’s 1977 ‘Law on Provisional Measures Relating to the Fishing Zone’ did the same with Okinotori-Shima. Because of fears that wave erosion might eventually weather the features away below high sea level, there has been extensive investment here in protective cages and the like to fortify insular status of the features.^6 For were they to disappear, up to 163, 000 square nautical miles of EEZ might in theory be lost.^7

Even if this remains an extreme case, claiming more than one should under the Convention’s notoriously unclear provisions is hardly unprecedented. One thing that certainly was, however, was Qatar’s use of suspect evidence during the middle phases of its 1991-2001 case over the Hawar islands with Bahrain at the International Court of

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Justice. 82 suspect documents (textual and cartographic), mixed in admittedly with thousands of genuine ones, were included within the Qatari memorial and counter-memorial that sought to provide evidence for its ownership of the features during the latter part of the nineteenth century when under nominal Ottoman suzerainty. The trouble had been that the genuine evidence (from the British and Ottoman archives) did not exist to substantiate such arguments. Qatar would later insist that there is an established trade in Ottoman documents and that it employed these in good faith. Yet, it wouldn’t have taken any casual observer very long to ascertain that the 82 documents in question were fabrications – and poor quality ones at that! Supposedly official maps from the late-nineteenth century purported to be attached to (non-existent) treaties they preceded by a good decade. Purported Anglo-Ottoman treaties and official map annotations recognising Hawar as Ottoman were written in some rather primitive version of Arabic rather than English, Osmanli or more properly, the prevailing diplomatic language, French. The British Ambassador signed off his approval with the words, ‘OK’ – a term that didn’t come into popular parlance until the early nineteenth century and, even then, only in North America. A date of 1881 had originally been written as 1981 on one document and then penned over – the sorry list of impossibly bad errors went on and on (see figures e, f and g).

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8 This author was retained as an expert during the autumn of 1997 to pass opinion on their provenance after studying the said materials at the Peace Palace in The Hague.
Figure e: Purported ‘Ottoman map of Qatar and its borders with Bahrain’ dated 27th June 1967.
1.3 **Covering island sovereignty disputes**

Siegfried’s old caution about the dangers of bias and subjectivity in covering territorial disputes is never more apposite than when covering those over island sovereignty: “The study of boundaries is dangerous... because it is so thoroughly charged with political passions and entirely encumbered with afterthoughts. The people are too interested in the issues when they speak of boundaries to speak with detachment: the failing is permanent”. 9

Having covered the territorial and boundary questions of the Middle East region for nearly three decades now, this author has arrived at the mischievous and somewhat cynical thought that trying to cover the origins and evolution of a dispute neutrally and impartially will invariably end up offending both parties to it. The point is made partially in jest but does point to a consistent challenge for the scholar – a challenge that often manifests with the actual titling of books. Two titles about the Lower Gulf islands – a dispute that figures prominently in the pages of this project – come to mind here. Hooshang Amirahmadi’s edited collection of papers from 1996 constituted a direct and unabashed articulation of historical and contemporary Iranian claims to Abu Musa and

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the Tunbs – unquestionably useful but far from objective. Yet the book’s title, Small islands, big politics, was magnificent – insightful and intriguing (see figure h):

Contrast this title with Thomas Mattair’s 2005 work - The three occupied UAE islands: the Tunbs and Abu Musa11 – whose title suggests a much cruder (and more partisan) approach to the same subject since it is overtly hanging its colours on the front cover (see figure i).

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The irony is that Mattair’s work is by far the more balanced, deep and nuanced treatment – though you’d never guess that from its cover.  

Figure i: Cover, Thomas R Mattair (2005) The three occupied UAE islands: the Tunbs and Abu Musa, 2005, Emirates Center for Strategic Studies and Research, Abu Dhabi

China’s recent, highly visible posturings on the East China Sea remind us of the challenges involved in discussing contemporary boundary and territorial disputes. In the last couple of decades, the social sciences have developed sophisticated new critiques of bounding and bordering processes that centre around how boundaries are encountered, experienced, and negotiated. The critical borders project within geography has been

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much lauded for its theoretical rigour and adroit handling of the workings of power. Yet, while states continue to behave with surprising crudity, international boundary and territorial disputes are not something that gain a great deal of coverage in these new approaches. Geography’s preoccupation historically with inter-state territorial disputes is not something that is reflected upon with much satisfaction or pride by the discipline today – it is looked back upon as a hugely deterministic and subjective minefield, a theory-free zone in which practitioners largely wrote their own self-justifying narratives. Yet, at least until recently, it seemed that geography might be in danger of throwing out the baby with the bathwater in seemingly eschewing coverage of this most traditional and established category of inter-state disputes see figure. Particularly in the instance of island sovereignty disputes, it can only be a multidisciplinary approach that is capable of uncovering their essential complexity and hinting at the sensitivities and rivalries that surround them. To more effectively gauge and assess the essential dimensions and manifestations of their operation, we as academics need to connect the legal and technical details of dispute more closely with their historical and political drivers, all within the context of their own complex geographies. A multi-disciplinary challenge, if there ever was one!14

Admittedly, there have been some notable recent efforts within political geography to bring back the international boundary as a legitimate basis of study in its own right. For all the advances made in the study of the social processes of bordering and territorial identity creation, there is a feeling – even within critical geopolitics – that this traditional area of specialisation has been neglected.15 Significantly, two conventional wisdoms in geography’s long coverage of territorial questions appear to be being rehabilitated: 1) an admonition that one of the best contributions a geographer can make is to critically trace and contextualise the evolution of individual boundaries or disputed territories; 2) a reinforcement of the view that each and every boundary is obviously unique when explaining that the root explanation of any dispute may be found in the essential ‘messiness of the local’.

When part-acknowledging the marginality of international boundaries to recent strides made in elaborating an agenda for critical border studies, Megoran (2012) considers that we might be concentrating upon what individual boundaries have experienced and

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14 This was one of the defining challenges that underlay the inauguration of the London International Boundary Conference in April 2013 – a joint venture between KCL’s Department of Geography, Volterra Fietta and the UK Law of the Sea Division. See also Richard Schofield (2013) Back to 1975 and all that: linking the technicalities and underlying dynamics of international boundary disputes in the northern Persian Gulf, Working paper 45, EPD Research Group, Department of Geography, KCL, January 2013 – a piece that incorporates the bases of 2 journal papers that will be published later in 2014/early in 2015.

continue to experience that renders them more or less materially significant for those that confront them – his recipe for a ‘boundary biography’. Whether or not the central idea of critically charting how an individual boundary evolves (at whatever level of encounter) is new is not the point here - celebrated geographers have been developing boundary biographies of sorts for a good half-century now (the names of JW House, Doug Jackson, AE Maskie and Julian Minghi certainly come to mind here)! Any updated geographical methodology for exploring changing materialities in the evolution of a disputed borderland or territory can only be welcomed. For these efforts will only underscore what leading traditional boundary scholar Victor Prescott has always maintained: “[t]his study is an example of the best contributions of political geographers in unravelling the evolution of international boundaries whether or not they have been the subject of serious dispute”.18

The very same Victor Prescott has always reminded boundary scholars of a classic old caution from 1945: “[e]ach boundary is almost unique and therefore many generalisations are of doubtful validity”.19 It is more surprising to find echoes of this logic in Gerard Toal’s (Gearoid O Tuathail’s) critical geopolitical analysis of the 2008 South Ossetia crisis. For here critical geopolitics’ founding father underlines the central importance of acknowledging the messiness of the local before going on to show how the dispute expanded to operate at various regional and international scales: “[c]ritical geopolitics begins with the messiness of place… (and)... is sensitive to the importance of localized context and agency...”.20 Jones and Toal are separated by a good half-century and write from different perspectives but the clear emphasis laid upon embracing regional complexity joins them. It is as well to bear such a point in mind when viewing island sovereignty disputes.

As a geographer, I can only be encouraged that critical geopolitics appears to be upgrading its toolbox to better deal with international boundaries. Yet we have even further to go within the discipline to meaningfully critique the workings of inter-state disputes over boundaries, territory and maritime zones. A multidisciplinary approach to the study of international boundary disputes has never really enjoyed the success that it might have—largely because the constituent disciplines haven’t talked to each other as openly and constructively as they should. Technical experts will often bemoan academics’ imprecision in use of terms and definitions when discussing the evolution of particular boundaries—a complaint that will be certainly echoed by international lawyers.

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17 Megoran aims declaredly to “...explore how specific boundaries (and the borders that they produce) appear, reappear and change, and disappear or become less significant in different ways and in different spatial and discursive sites over time”, Megoran, 2012, op.cit., p: 468.


19 Stephen. B. Jones (1945) Boundary-making: a handbook for statesmen, treaty-editors and boundary commissioners, Carnegie Endowment for International Peace, New York, vi. While the phrase is commonly attributed to Jones, it should more properly be accredited to Samuel Boggs, who wrote the preface to this text.

 Conversely, historians and social scientists cannot always relate to technical analyses devoid of their human context, even if many of these relate to maritime boundary-drawing. And too often there has been a tendency to view a boundary question resolved under international law as a regional problem that’s been solved—clearly a misplaced notion if we look at the recent history of complex disputes. Yet all these academic constituencies can work together mightly effectively in the real and applied multidisciplinary context of cases before arbitration or adjudication. This is something that needs to be extended to the broader academic study of disputes.

To repeat my earlier conviction, academics need to do boundary and territorial disputes better, including those over island sovereignty. We need to connect the legal and technical details of dispute more closely with their historical and political drivers, all within the context of their own complex geographies.

1.4 Contents and logic of the project

One of the chief aims of the largely historical sections that comprise this study is contextual, to demonstrate that states have invariably been uncertain about the decisions they have taken in island sovereignty questions and that decisions have nearly always been made against a background of legal ambiguity. If states are behaving ‘badly’ today, then arguably they always have done. Given this author’s research record and specialisation, it will come as little surprise that what follows is largely a critique of British colonial policy to the emerging challenges presented by island sovereignty disputes in a variety of geographical, legal and political contexts and that many of the examples scrutinised involve the Persian Gulf. Quite deliberately, the chosen case-studies aren’t always the obvious ones, while the episodes covered here often deal more with the details of policy formation rather than just recording political outcomes. For it is sometimes more revealing to look at how emerging problems were identified and prioritised and look at the debates that took place before ultimate decisions were made about sovereignty and the associated territorial limits of maritime jurisdiction. The contents of much of this study are informed by freshly undertaken historical research undertaken by this author at the relevant British archives. Specifically, the relevant files were researched from the Admiralty, Cabinet Office, Colonial Office, Foreign Office and Ministry of Fuel and Power collections at the National Archives in Kew and from the Persian Gulf Residency Records, India Office and Government of India files in the India Office Library and Records collection housed at the British Library in St. Pancras.

Section 2 of this report comprises a test methodology for examining any individual island sovereignty dispute. With so many questions being asked today about what disputes represent, it is always a good idea to try and establish their essential materialities, the

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specific details in their origins and evolution. While focused on the Lower Gulf islands dispute, it is an approach that might well be transferred to other areas. It will soon be established that a documented history of human contacts with insular features does not necessarily make for a necessarily neat, convincing or conclusive claim to sovereignty at the state level. The situation is usually more complicated than that. It will also be underlined that, at least in this instance, the state actors in the dispute have often displayed little appetite for establishing the details of dispute.

Section 3 deals with what we might term old-style (pre or non-oil related) island sovereignty disputes – imperial island swaps of the late nineteenth century (Heligoland for Zanzibar), the changing post-WW1 status of those features originally occupied in the interests of maintaining imperial infrastructure (Qeshm and Henjam in the late 1920s/early 1930s) and deals that may or may not have been done in the course of Britain’s withdrawal from Gulf waters as protecting power (the Lower Gulf islands and Bahrain, 1968–1971). Examining the 1890 Heligoland-Zanzibar deal is instructive for a number of reasons. Britain’s strategically-motivated capture of Heligoland made sense in the Napoleonic wars of the early nineteenth century but was seen as a liability by the century end. Britain made sure that it extracted full value from Germany in a makeweight deal that saw its first territorial cession in peacetime. In the course of this hurried episode many interesting questions were raised about self-determination – though rarely for the right reasons! Any talk of concern for the sovereign fate of the islanders was motivated more by the rituals of imperial rivalry than their essential well-being. The internal debates within the British Government about the future of its little known imperial outposts on the Persian islands of Qeshm and Henjam up to the mid-1930s take up an awful lot of shelf-space in the vaults of the National Archives in Kew. They are particularly illuminating of prevailing attitudes towards maintaining the infrastructure of empire in the period after the Great War – with the Admiralty, in particular, slow or perhaps unwilling to recognise that the sovereign basis of territory had to be respected. Finally, in decolonising from the Gulf at the turn of the 1970s, many observers felt sure that Britain must have cooked a deal with the Shah which saw the resinson of Iran’s nominal claim to the sovereignty of Bahrain in return for an effective green light to move on the Lower Gulf islands. Again, as we shall see, it wasn’t as simple as all that.

Oil first enters our thinking only in Section 4, focusing upon how – in the pre-WW2 period - contemplation of extending hydrocarbon concessions offshore raised the status of insular formations beyond territorial waters. Bahrain with its energetic (and essentially American) oil company was at the heart of these deliberations during the late 1930s. The origins of the Hawar dispute are explored in detail, as is the question of putting down ‘sphere of influence’ boundaries for oil concessions at sea (concentrating upon Bahrain and Saudi Arabia), even though the basis in international law for doing so hadn’t yet been developed and wouldn’t crystallise for another half-decade until the issue of Harry S Truman’s famous declaration during September 1945. Consideration of extending operating spheres of influence for the oil companies out to sea to both sides of the main Bahrain islands paralleled negotiations towards the 1942 Gulf of Paria agreement between Britain (on behalf of Trinidad) and Venezuela – by which both states actually
annexed seabed areas adjacent to a line delimited through that body of water. As we will witness, there was considerable debate and no little prevailing confusion about what states could do to establish markers of ownership over insular features in the late 1930s. Britain’s tasks as protecting power in the Persian Gulf were complicated hugely by a traditional political geography in the region on land and sea that was essentially non-linear. That is, geographic propinquity did not work and it was historical human contacts by sea with locally important territorial nodes (both coastal localities and insular formations) that had dictated Britain’s earlier estimations on sovereignty rather than linear state control over neatly contiguous swathes of territory and their adjacent waters.

In some ways dealing with island sovereign questions and the accompanying extension of maritime jurisdiction during the 1950s had a bit of a ‘Wild West’ feel to it – previous provisional decisions on ownership of insular features had to be squared with the simplified geometries of emergent maritime law and increasing levels of interest and resultant pressures from aggressive oil companies. There were always going to be circles that needed squaring. So Section 5 reviews developing British governmental attitudes to artificial islands in the early part of that decade and reveals some surprising acts of state practice – including the Colonial Office sanctioning the ‘occupation’ during summer 1954 of low-tide elevations in the shape of the Mouchoir and Silver reefs on behalf of the Turks and Caicos islands, then considered dependencies of Jamaica. It then reviews the context for, background to and consequences of Britain annexing and occupying the remote rock of Rockall in the NE Atlantic in 1955. Bizarrely, this act wasn’t so much related to resources or oil – no matter how much the media satirists of the day assumed it might be – but rather pedantic (if far-fetched) Cold War strategic considerations. With the issue of Exclusive Fishing (Economic) Zones two decades later, this picture would change decidedly, of course! Finally, Section 5 reviews Britain’s decision to reverse during 1962 its earlier estimations of the sovereignty of Halul Island in Gulf waters, mischievously suggesting this may have had more to do with expedience than a strict weighing of the historical evidence it had collected over the centuries. The argument is far from clear-cut but the then-prevailing context was persuasive. Halul, a feature that Britain had previously recognised as belonging to the Ruler of Abu Dhabi, lay well within the concession areas that had been allocated to Qatar and the last thing it needed was another Hawar dispute.

Finally, section 6 looks at the evidence to suggest that islands in more contemporary times are serving as symbols of contested nationalisms, previously repressed regional histories and newly-emergent rivalries. Its first part concentrates on the manner by which the Dok-do question has been driven increasingly at the civil level in both Korea and Japan since the advent of democratic rule in Seoul and the end of the Cold War. The latter two factors are utterly key to understanding the operation of this complex dispute but also to others in East Asia. It seems clear that domestic political considerations are driving disputes and also changing the vocabularies with which claims are elaborated and articulated. Arguably, the symbolic is becoming more important that the specific materialities in the conduct of disputes. Section 6 then looks in some detail at how the Lower Gulf islands dispute between Iran and the United Arab Emirates served as the
physical expression – or at least as much as any territorial dispute may – of wider regional (Arab-Persian) rivalries throughout much of the 1990s. Again, the rhetoric of dispute here contrasted with its basic material realities – with inflammatory territorial claims and statements designed more for domestic consumption than anything else. With state nationalism far less developed on the southern shores of the Gulf than in the states of East Asia, the United Arab Emirates (UAE) decided to internationalise the Lower Gulf islands dispute in the early 1990s by invoking it as a symbol of Arab-Iranian rivalry. The strategy worked for a time but never once enhanced the material prospects of the features returning to UAE control.
2. Digging for the detail in island disputes – anything but black and white in the case of the Lower Gulf islands

It is being argued in this project that, as many times as not, the prime importance of island sovereignty disputes often lies in what they symbolise, rather than necessarily their precise detail – this seems particularly valid when scrutinising aspects of the recent conduct of the disputes over both the Lower Gulf islands and Dok-do (see section 6). Largely as a consequence, the detail of island disputes is often little-known, under-appreciated and frequently misrepresented.

It is ironic, therefore, that a close inspection of the specifics of Lower Gulf islands dispute and the evidence for its evolution ultimately leaves nearly as many questions unanswered as it does answered. In this short commentary, a selective examination of some of the key historical and contemporary episodes of the Lower Gulf islands will be made. These will serve to underline that a distinct lack of clarity has usually distinguished the finer print of the dispute over Abu Musa and the Tunbs, that even those parties claiming the features over the last century and a quarter have paid little attention to its details, and that exaggeration and misrepresentation have–especially in recent times–been a feature of pronouncements on the issue.

This author would suggest that the methodology employed here might well be extended with some prospects of success to other island sovereignty disputes. The critique below revolves around four sets of human perceptions and emotions: 1) irritation and impatience; 2) a distinct lack of clarity; 3) carelessness and a lack of concern for the details; 4) distortions and exaggerations.23

2.1) Irritation and impatience

It was not at all unusual for the colonial powers to be troubled by the resilience and intractability of certain territorial disputes, whose regional salience was generally – if not always – explainable. While, historically, the potential of Iraq’s boundary disputes at the head of the Persian Gulf to threaten regional stability had long been recognized by the British Government, other territorial disputes in the region were often regarded as tedious irritances. Occasionally the Lower Gulf islands would fall into this category.

Having been involved in efforts at various levels to resolve the Lower Gulf islands dispute while serving as a diplomat along the western and southern Gulf littoral, Sir Glen Balfour-Paul later commented that the dispute had, by the turn of the 1970s, assumed a scale in

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Anglo-Iranian relations “grossly disproportionate” to the size and importance of the islands.\(^4\)\(^4\)

Likewise, former British Resident William Luce, having been brought back at around the same time specifically to broker a settlement of outstanding issues with Iran in the face of Britain’s impending departure from the Gulf, was heard to mutter in a moment of obvious exasperation: “[t]he Persians took Sirri while we weren’t looking in 1887. I sometimes wish they had taken the Tunbs and Abu Musa as well”.\(^5\)

Also worth mentioning here is a candid, recently declassified FCO memorandum penned by the Foreign Office research analyst Donal McCarthy at the turn of the 1970s. This reviewed the status of the various, unresolved boundary questions that Britain would likely bequeath to the region on its departure in December 1971. Again, irritation was the predominant characteristic of the following, more general comment:

> “[t]he mentality of these rulers is such that they are prepared to dispute a barren sand dune till judgement day, while tribal views on e.g., access to wells are pressed with an urgency which does not comprehend Western ideas on rigid frontiers”.\(^6\)

In a sense, of course, this last quote was a bit rich. Having introduced a Western-style consciousness of territoriality to Arabia (or at least its rulers), it really ought not to have been a cause for complaint when the ownership of specific localities became the subject of fierce contention, albeit usually for reasons best explained by personal or dynastic rather than national rivalries.\(^7\)

2.2) A distinct lack of clarity

2.2.1. The allegiances of the associated coastal communities

Political and territorial control of the Lower Gulf region before Britain’s arrival on the scene in the early nineteenth century – and for a good while thereafter – was marked by its fluidity and impermanence. As such, evidence – or at least the form that lawyers would wish to see - for ownership of the islands located there before the mid-nineteenth century barely exists. Historically, there was a considerable degree of contact and interchange among the coastal communities of the Gulf, and Arab populations on both sides traditionally moved back and forth across this body of water. Since the economies of the coastal tribes were geared to exploitation of the resources of the Gulf waters


themselves, it follows that the inhabitants of the Lower Gulf littoral enjoyed appreciably more contact with their counterparts on the opposite shore than they did respectively with central authority in Persia or the resource-poor Arabian interior. 

2.2.2. The official record of the origins of dispute

Iranians are often frustrated by the tendency of non-Iranian historical accounts of the dispute to begin with the nineteenth-century record maintained in the files of Britain’s Persian Gulf Residency, based until Indian independence in the Iranian port of Bushehr. These files, recently re-housed at the British Library’s India Office Library and Records Collection (IOR) at St. Pancras in London, are patchy and disorganized but seemingly represent the only primary record of the origins of the dispute that has been publicly unearthed to date. The problem Iran has faced when arguing that the Qawasim, protected by Britain, had displaced its own administration of the Lower Gulf islands during the nineteenth century is that it has not yet come forward with any records of its own that display or document any earlier connection with Abu Musa or the Tunbs. Indeed, contemporary Iranian accounts of the dispute tend instead to make rather selective use of those minority sections of the British archives that support the Persian claim to the islands. Certainly where Abu Musa is concerned, the IOR record makes depressing reading for the substantiation of Iranian claims.

2.2.3. ‘Clear geography, unclear politics’

The geography of the nineteenth century dispute over the Lower Gulf islands is much clearer than its politics. All of the everyday contacts with the island of Abu Musa appeared to be from the southern Gulf littoral. The weight of documentation in the British archives suggests that Abu Musa was administered directly from Sharjah during the nineteenth century. From 1863 onwards, pearlers and fishermen visiting the island paid dues annually to the ruler of Sharjah, whose claims to the feature Britain actively defended from 1870. The issue during 1888 of the first, informal Persian claim to the island of Abu Musa (which was in truth more of an indirect mention but acknowledged internally by government departments in British India), had only been induced by the British Admiralty’s carelessness. The first edition of its Persian Gulf Pilot (1864) erroneously stated that the Qawasim at Lingah maintained contact with Abu Musa, in addition to Sirri and Greater Tunb. This was patently not the case, as evidenced by the issue of a request by the Persian authorities at Lingah during the late 1880s that the ruler of Sharjah return a fugitive who had taken refuge on the island.

The political situation with respect to the Tunbs was considerably less clear though virtually all of the contacts maintained with the islands were from the northern coast. Up until 1873, the Bushehr Residency had held that the Tunbs probably belonged to Persia,

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29 This tendency is illustrated perfectly by the four chapters in Amirahmadi’s edited collection that was referred to in section one: Small islands, big politics: the Tunbs and Abu Musa in the Gulf, op.cit.
because of the close connection of these islands with the port of Lingah. By the mid-1880s, however, Britain was increasingly of the opinion that the Qawasim ultimately held rights over the Tunbs. Though the Qawasim would effectively control Lingah until 1887, their main bases of power were located along the southern Gulf littoral. Britain’s opinion as to ownership of the Tunbs changed after it received original documentation suggesting that the Qawasim in Lingah were subordinate politically to their counterparts in Ras al-Khaimah. Following the expulsion of the Qawasim from southern Persia in 1887, Britain developed the following, rather bizarre explanation of the way in which the northern wing of the Qasimi federation had administered Sirri and, by extension, Greater Tunb before this point. They had governed Lingah in their capacity as Persian officials but had maintained contact with Sirri and Greater Tunb only as members of the Qawasim federation and as subordinates to their southern counterparts in Ras al-Khaimah. This was all a little contrived, to say the least.30

2.3.4. The lowering of the Qasimi flag on Greater Tunb in 1934

Briefly, the British authorities in the Gulf were hugely embarrassed when the ruler of Ras al-Khaimah withdrew the Qasimi flag from Greater Tunb in December 1934. There are two rival explanations of why such an action was taken that illustrate neatly the frequently inconclusive nature of archival sources as evidence for territorial claims. One stated that the flag had been lowered as the result of an exchange of correspondence entered into directly between the ruler of Ras al-Khaimah and the Persian Government. Before Britain eventually persuaded the Ras al-Khaimah shaikh to hoist his flag on the island in the late spring of 1935, its diplomats in Tehran had more or less resigned themselves to aiming for a compromise whereby Persian claims to the Tunbs would have been admitted in return for Tehran’s recognition of Sharqawi claims to Abu Musa. The other explanation for Ras al-Khaimah’s action went as follows: the shaikh had taken this action to draw attention to the fact that no rent was received from Britain for its use of the lighthouse on Greater Tunb. It will come as no surprise that funds were made available once the Qasimi flag was back in place.31

2.3.5. The 23 November 1971 Iran-Sharjah Memorandum of Understanding [MOU] regarding Abu Musa

This essentially pragmatic (and supposedly still valid) MOU was most notable for the manner in which it accommodated the full sovereign claims of both Iran and Sharjah to the island. The question of sovereignty was completely fudged in the agreement, which provided instead solely for the island’s divided administration (see figure 1). The preamble to the agreement read bizarrely as follows: “Neither Iran nor Sharjah will give up its claims to Abu Musa nor recognize the other state’s claims”. A distinct and

deliberate lack of clarity, yet again.


2.3) Carelessness and a lack of concern for the details

2.3.1. The British War Office map of 1886

Iran has always laid great stress on a British War Office map series in which all of the Lower Gulf islands were shown clearly in Persian colours. The series was presented to the Shah of Iran by Sir Henry Drummond-Wolff, British Minister in Tehran, on the instructions of Foreign Secretary Lord Salisbury during the summer of 1888. Britain's overriding concern in presenting the maps had been Persia's eastern frontier with British
India and all other details were evidently considered of marginal importance as far as the Foreign Office was concerned. Yet Britain had flagged the map series as authoritative. Drummond-Wolff had been instructed to “present this map to His Majesty’s Government with an expression of their hope that it might be useful and interesting to His Majesty as His Majesty has on several occasions asked to be supplied with geographic information”.

This was, of course, highly embarrassing for the British authorities, who were attempting to buttress Qasimi claims in the Lower Gulf following their banishment from Lingah and Sirri a year earlier. It was no wonder that the map series question had caused the Shah “so much satisfaction” (see figure k).

Figure k: The Lower Persian Gulf, section from 1886 British War Office map series

Yet the cartographic sloppiness would continue, underlining that in the wider realm of things, the ownership of this or that little island in Lower Gulf waters at this juncture of history was simply not a major British foreign policy concern. Incredibly, maps continuing to show the disputed islands in Persian colours would appear on the inside cover of Lord Curzon’s classic two volume 1892 work, Persia and the Persian Question. For no one would be more determined in the next decade and a half to maintain the Persian Gulf as a British lake and to deny the unwelcome claims of any power – regional or European – that might conceivably threaten this state of affairs.

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33 Despatch dated 17th August 1888 from the Persian Minister for Foreign Affairs to Drummond-Wolff in the TNA file: FO 406/93.
2.3.2. The events of 1992

Many observers were initially confused by what, exactly, had occasioned the resurrection of the dispute over Abu Musa during the spring and late summer of 1992. An often hysterical Arab media variously accused Iran of having invaded the island of Abu Musa or else of having taken over the southern, Sharjah-controlled part of the island. Both claims were and remain clearly erroneous. While Iran’s actions during 1992 and the period since may have altered the status quo on the island, whether they have contravened the express clauses of the 1971 MOU must be open to considerably more doubt – after all, the instrument effectively allowed development of the north as a militarised Iranian zone. Only by demonstrating that the territorial reality introduced by the MOU has been deliberately altered to its own permanent advantage by Iran could one claim that more than the spirit of the agreement has been broken. Despite frequent claims to the contrary, there is very little evidence – other than the extension of a landing-strip in recent years34- that Iran has brought large areas of the southern, Sharjah-administered part of Abu Musa under its aegis.

2.4) Distortions and exaggerations

2.4.1. Articles of faith and Iranian nationalism

As alluded to earlier, Iranians are often frustrated by the tendency for non-Iranian accounts of the origins of the islands dispute or of modern histories of the Persian Gulf more generally to be based so squarely on the British archival record. In Iran’s view, this inevitably presents a distorted picture in which its own earlier-established supremacy over the waters and islands of the Gulf is ignored. Whether or not history affords Iran the right to claim such a hegemonic position has to be balanced against the fact that most influential Persians, from the nineteenth century onwards, believe that it has: “Despite all the vicissitudes of its stormy existence in the past, contemporary Iran seems to perceive its role in the Persian Gulf as almost uninterrupted and as always active. Facts would not seem to support this perception, but the important point is that this belief influences Iran’s behavior today”.35 Such a point was reinforced rather eloquently by Fuller some two decades later when commenting of Iran’s role and regional self-image: “[t]he national memory is far more important than any reality or legal brief could be”.36

Until the last quarter of the nineteenth century, when reasonably specific and detailed territorial claims would be entered to Bahrain and the Tunbs on an individual basis, Persian claims to the islands of the Persian Gulf would be framed in a generalized, collective fashion. During the mid-1840s, for instance, the Persian Prime Minister, Haji Mirza Aghassi, would claim all the waters and islands of the Gulf as Persian, seemingly on

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34 Against which formal written protest were delivered to the United Nations by the UAE federal government.
the basis that ownership followed from the name of the body of water.\textsuperscript{37} Britain would get frustrated by the obvious vagueness of such a claim, with Lord Elphinstone of British India commenting as follows in the early 1820s: “[it is based] solely upon the argument that all the islands in the Gulf had once been Persian and that they still were, regardless of what had happened over the centuries”.\textsuperscript{38}

It is the widespread persistence of such articles of faith within Iranian society that partially explains the context for Iran’s resurrection of the contemporary phase of the dispute in 1992. It is a matter of debate as to whether Iran’s action of denying access to the southern, Sharjah-administered part of the island to non-UAE nationals was a local administrative blunder, a knee-jerk reaction to its exclusion from collective security arrangements for the Gulf or a calculated move designed to enhance its strategic position in the Lower Gulf. However, at a time when American policy was being formulated to isolate Iran (as well as Iraq) internationally, no Iranian was likely to disapprove of actions that might underlie to the Arab western littoral states that Iran remained a force to be reckoned with.

2.4.2. Iran’s seizure of the Tunbs in 1971

There remains some confusion about the degree to which the island of Greater Tunb was manned by Ras al-Khaimah nationals in the immediate period before its forcible capture by Iran on November 30, 1971. One source claims rather fancifully that 120 Qasimi inhabitants of Greater Tunb were expelled from the island to the Ras al-Khaimah mainland.\textsuperscript{39} Other reports testify that the Tunbs were uninhabited in the run-up to Iran’s move but that three officials from Ras al-Khaimah were stationed on Greater Tunb at the very last moment as a futile gesture of defiance. Of these, one was apparently killed.\textsuperscript{40}

2.4.3. Iran-UAE bilateral negotiations over the Lower Gulf islands, 1992 and 1995

There were two rounds of bilateral negotiations in the nineties between the Abu Dhabi and Tehran governments following the resurrection of the dispute in 1992. Both were very short-lived and failed, very conspicuously. The first round of negotiations between delegations of the Iranian and UAE governments took place in Abu Dhabi but soon broke down, ostensibly when the UAE demanded at the outset that Iran immediately end its military occupation of the Tunb islands.\textsuperscript{41} Yet, there were unconfirmed reports circulating at the time that the Iranian delegation had surprised their UAE counterparts by immediately agreeing to abide fully by the 1971 MOU over Abu Musa. According to this, alternative version, talks then broke down when the UAE delegation tied such an

\textsuperscript{37} Schofield (2002) “Anything but black and white…”, p: 184. Of course, the point resonates with continuing Chinese attitudes to nomenclature in the conduct of maritime disputes in the East and South China seas.


\textsuperscript{40} Confidential Sharjah-based sources.

agreement to demands that the future of the Tunbs should be decided by either third party arbitration or judicial settlement.42

The second round of bilateral negotiations took place in Qatar during November 1995 and broke down every bit as quickly as had been the case three years earlier. However, breakdown on this occasion had seemed inevitable, given the consistently stated position of each party over the previous months and years. The UAE government had published the agenda it would defend in advance of the negotiations themselves. Again, the first item on its published agenda was a demand that Iran terminate its military occupation of the Tunb islands. The talks collapsed amid mutual recriminations, some of which were directed at the conduct of the Qatar government, as host to the talks.

42 Confidential Sharjah-based sources.
3. Island disputes of old – territorial trades, imperial infrastructures and the bargaining of swaps and deals

The elaborate and somewhat mysterious deal reputed to have been struck between Iran, Oman and the United Arab Emirates in December 2013 reportedly concerning the grant of lease facilities on the Lower Gulf islands, construction of a pipeline under the Strait of Hormuz and the associated emplacement of storage and processing facilities in the Musandam peninsula may well never be actualised but does go to show that states still occasionally think – sometimes imaginatively - in terms of trades, linkages and packages when it comes to island sovereignty dispute settlement and management.

This section will ultimately review some of the packages that many people suspect were secretly connived between Britain and Iran over Bahrain and the Lower Gulf islands at the turn of the 1970s and – more broadly – the potential that always seems to have existed for doing deals over Abu Musa and the Tunbs. It begins, however, with one transaction that was very definitely done – Britain's 1890 cession of the strategically-placed island of Heligoland in the North Sea in return for Germany allowing a British protectorate to be established over Zanzibar off the central east African coast. This was a bizarre episode – ad constitutes the first occasion upon which Britain had ceded territory during peacetime. A second part shows how the British Government (or, to be more accurate, departments within it and principally, the Admiralty itself) was slow to realise that the world was changing in the period after the Great Wars in its treatment of island sovereignty questions. We look specifically at the evolution of its little-known dispute during the 1920s and 1930s over British rights in the Persian islands of Qeshm and Henjam. These were possessions that were of varying importance in the maintenance of imperial infrastructure. The case-study is particularly revealing of a certain disdain for the emerging realities of sovereign equality in international law and international affairs.

3.1) The murky interests of empire: the Heligoland for Zanzibar island swap of 1890

The chief conviction of most historical analyses has been that Heligoland was a mere makeweight in the deal to secure more formal control over Zanzibar and its adjacent mainland and that its chief import lay in instilling a more manageable territorial order in East Africa. This conventional interpretation has recently been questioned by Blass (2009). Rather than any ‘grand sweep of history’ explanation involving access to great rivers or imperial overstretch, he points to British Foreign Secretary Lord Salisbury’s deliberate and adroit linkage of more specific and localised concerns – a claustrophobic freelance colonial competition in Zanzibar (that was getting out of hand) and Kaiser Wilhelm II’s known coveting of a feature whose principal strategic value had long since

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disappeared for Britain and whose continued possession was seen as expensive and risky.\textsuperscript{44}

This quirky episode, the first occasion upon which Britain had ceded territory in peacetime, is summarised below. It connects to the treatment of contemporary island sovereignty disputes in an identifiable contextual civic dimension (see section 6). In the negotiation of the deal and its aftermath, both German officials and Salisbury remarked on the ‘jingoism’ of their domestic constituencies – a strident call for colonial/territorial acquisition that was befitting for the newly-emergent European superpower that was Bismarck’s unified Germany on the one hand and a paternalistic superiority complex on the other.\textsuperscript{45} Most of Britain’s domestic problems in defending the deal of 1890 would actually stem from the fact that the deal was done with Germany before the opinion of Heligoland’s 2000 islanders was ascertained. But did this evidence any great early love for the principle of self-determination? Not really, as we shall witness.

Because of its strategic premium at the time of the Napoleonic wars – thirty or so miles from the German coastline and commanding the approaches to the Eider, Elbe, Weser and Jade rivers, Denmark’s hold on Heligoland had been ended by a British invasion of September 1807. Despite early characterisations of the islanders as hostile to the institution of Britain’s latest colony – after all, who likes being invaded?, within no time Heligoland morphed into an upmarket bohemian tourist resort beloved of middle-class Brits and Germans, while its increasingly affluent locals understandably became enthusiastic Britons themselves (see \textit{figure c}).\textsuperscript{46}

With tourism providing the economic mainstay of the island by the early 1820s and the ultimate purpose of sustaining Heligoland as a British colony never really very clear once the Napoleonic wars had ended, its continued possession began to be seen as an extravagant luxury by the last quarter of the nineteenth century. To re-arm the island properly to ensure its strategic advantage in any future conflict would be expensive and obviously conspicuous - a threatening move regionally. Meanwhile, its increasing popularity as a retreat for German socialists had already been identified as a potential thorn in the side of relations with Berlin.\textsuperscript{47}

Heligoland’s possible value as a golden pawn in its dealings with Germany was recognised in British governmental reviews of the mid-1880s. These coincided or, more accurately, immediately followed a 2-year period (1884–1884) when Germany’s colonial possessions had grown markedly, despite Chancellor Bismarck’s deeply-harbour ed reservations about the colonial project and his fears of getting drawn increasingly into competition with his chief European rivals. It was this sheer rapidity of African territorial gains that was multiplying the potential for localised flashpoints between the colonial powers, such as in Zanzibar. Yet Salisbury perceptibly surmised that it was, above all, prestigious territorial or colonial gains that were likely to appeal most to Berlin, as well as the German public –

\textsuperscript{44}Ibid., p: 2-4.
\textsuperscript{45}Ibid., p: 3.
\textsuperscript{46}WG Black (1888) \textit{Heligoland and the Islands of the North Sea}, Blackwood, London
\textsuperscript{47}See materials in TNA file: CO 118/62, \textit{Heligoland: Original Correspondence}. 
as compared to their territorial extent as such. Construction in the last decade of the Kiel canal linking the North and Baltic seas surely must also have raised Heligoland’s strategic status – whoever for. So it was left to Lord Knutsford, Britain’s Under-Secretary for Foreign Affairs, to comment during 1887 on the island’s newly discovered status as a heavyweight bargaining chip in its immediate dealings with Germany: “Heligoland may be looked upon as a great makeweight in any future bargain with Germany. But it may fairly be reserved for a very big consideration, and I think the bid should come from Germany. But I do not think the people themselves would thank us”,\textsuperscript{48} The last observation would prove notably prescient, as we shall witness.

The likely use of the Heligoland bargain in East Africa increased with the large scale failure to usher in regional stability of an Anglo-German agreement of November 1886 that put down a line that approximates to the contemporary position of the Kenya-Tanzania international land boundary. Notably it had failed to forestall conflicts between the free-market colonialism being led by Livingstone, Peters at al., i.e., competing British and German trading companies. More focused, localised and thereby threatening were the competing efforts of the British and German consuls in Zanzibar to play into the same games – and, in this instance, a battle that was clearly being won by Germany. By the late 1880s there were three categories of dispute that were preoccupying London (and, almost certainly, Berlin): 1) over the precise location and sovereign destiny of important areas of the inland lake regions (Victoria, Tanganyika and Nyasa); 2) local quarrels between trading companies along the November 1886 sphere of influence line; 3) uncertainty over the future status of Zanzibar.\textsuperscript{49}

After toying with the idea of arbitration and the possibility of territorial trades within East Africa to progress treatment of these items, Salisbury elected to play his Heligoland card quite suddenly in May 1890 – as his daughter would later attest: “[r]arely can a political enterprise of equal importance have left behind so few traces of the process of its incubation”.\textsuperscript{50} He presented his scheme to Count Hatzfeld, Germany’s Ambassador in London, during mid-May. The bigger picture involved Britain making a number of territorial concessions around the Great Lakes in return for Germany renouncing its interests within a recognised British sphere. Predictably, however, the envisaged deal broker was “... that England should be permitted to assume a protectorate over the island of Zanzibar; in return for which, the British Parliament should pass an act handing over the island of Heligoland to Germany”.\textsuperscript{51} By the end of the month, Hatzfeld had been instructed to respond positively to the overture in no uncertain terms by German Foreign Secretary Baron Marschall, who rated Heligoland “of supreme importance... and... by far the most serious matter in the whole negotiation. His Majesty shares the Chancellor’s opinion that without Heligoland the Kiel Canal is useless to our Navy. We shall therefore, regard the acquisition of Heligoland as a gain in itself even as against the concessions


\textsuperscript{50} Quoted in Blass (2009), op.cit., p: 12.

\textsuperscript{51} Despatch dated 14\textsuperscript{th} May 1890 from Count Hatzfeld, London to (German Foreign Secretary) Baron Marschall in ETS Dugdale [ed.] (1929) German diplomatic documents, 1817-1914, London, Methuen.
mentioned... the subject of Heligoland having been introduced by Lord Salisbury, this at once becomes our chief consideration”.

Things moved quickly thereafter as the two sides moved decisively to close out details of the deal before the bill got its hearing in Westminster.

Before voting for the cession on July 21st 1890, the House of Commons had debated the resultant Cession of Heligoland Bill for a good while, with opposition to agreement falling generally within three headings: firstly, the loss of a valuable strategic asset that might be regretted in future European conflict; secondly, the perceived injustice being extended to loyal British Heligolanders; thirdly, fears that this might prove the thin end of the wedge in a wider desire for shrinkage of empire. Let us concentrate briefly on the second aspect here. With the Speaker of the House WH Smith’s attempt to reassure members with the stock phrase that Government was “well informed of the sentiment of inhabitants” not cutting sufficient ice, an amendment was proposed requiring that the cession “be subject to the consent of a majority of the male inhabitants of the island”.

Potentially threatening to the deal, this caused Under Secretary of State, Sir James Ferguson to be a little more transparent about Britain’s lack of ascertainment but to implore members to uphold the arrangement in the interests of empire: “It has been admitted from the first that the people of Heligoland were not formally consulted. It would be extremely difficult, if not impossible, to submit for the decision of the inhabitants a great Agreement with the German Empire, of which the cession of Heligoland is an essential part, and the Government cannot assent to the Amendment”.

The amendment was ultimately voted down though it had been a close-run thing and clauses had needed to be inserted in the agreement that exempted Heligolanders from conscription into German military service and allowed them to retain British nationality if so desired.

Privately, Queen Victoria would comment to Salisbury that it was “a shame to hand them (Heligolanders) over to an unscrupulous and despotic Government without first consulting them”. While underlining that a plebiscite was impracticable in his response, Salisbury also adroitly raised the dangers of allowing too much self-determination in colonial territories in his response: “...admitting the right of the inhabitants of an imperial post to decide for themselves as to the political disposal of that post (might be dangerous). It might be used by discontented persons in Gibraltar, Malta, Cyprus and even India”. The Queen would lend her provisional assent in mid-June but not before Salisbury had given further assurances about the favourable overall deal cession was accommodating and also laid stress on the fact that Britain’s stay in Heligoland was of

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55 Ibid.
56 GE Buckle [ed.] (1930) The letters of Queen Victoria, John Murray, London
57 Ibid.
relatively recent origin and was never really intended to be permanent. Its cession would not set a precedent.  

On 9\textsuperscript{th} August 1890 the British flag would be lowered on Heligoland and, on the following day, Kaiser Willhelm would make the following proclamation to the inhabitants of the island: “In consequence of an Agreement concluded with Her Majesty the Queen of Great Britain and Ireland, the sovereignty over Heligoland has been transferred to me. Thus you return in a peaceful manner to that relation to the German Fatherland which is indicated by history and by the position and conditions of communication of your island...”.

The island was soon fortified and would serve as a hugely important submarine base for Germany during the Great War. With Berlin’s defeat, Heligolanders lobbied for a return to Britain during 1919 or, failing that, Denmark. Britain, flattered but seeing no real purpose in its reacquisition, politely refused.

### 3.2. Struggling to adjust to an international order of sovereign equality: the strange case of Basidu and Henjam in the Persian Gulf

The redrawing of the political map and the emergence of new states and regional power structures following the Great War had the effect of highlighting the anomalous (and sometimes spurious) legal status of many important nodes in the imperial territorial infrastructures maintained by the European colonial powers. If the imperial powers still thought primarily in strategic terms, it wasn’t necessarily as easy to justify the possession of this or that insular feature on those grounds alone as it once had been – while there was clearly a long way to go, the notion of sovereign equality between states was forcing increasing engagement with the legal basis of possession and occupation. For the colonial powers, especially Britain, there would be considerable interdepartmental dissension over what a new post-war consensus over sovereignty meant and how far a leading imperial power ought to be bound by them in its dealings with regional powers.

Consideration of Britain’s rights during the decade-long period from the mid-1920s in the Persian islands of Qeshm and Henjam illustrates this uneasy transition beautifully. These islands flank the northern limits of the Strait of Hormuz and were deemed to possess a strategic premium long before oil became the central interest in this region for the Western world. If messy lease arrangements frequently characterise the original basis by which the colonial powers appropriated staging posts in key strategic nodes within their expanding imperial infrastructures, the murkiness was doubly pronounced here. For not only did Britain lease facilities on these features during the nineteenth century but the regional power with whom they signed off their rights (the Sultan of Muscat) was himself leasing the territories in question from Persia. It was this legal and geographical ambiguity that provided for a surprising exchange of views in Britain’s interdepartmental

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\textsuperscript{58} Ibid.

\textsuperscript{59} Translation of ‘Proclamation to the inhabitants of Heligoland’, item 179 in TNA file: FO 881/6146 (Confidential Print).
consideration of the question in the 1920s and 1930s, as Persia sought to assert its sovereign rights.

Reflecting their position as an active eighteenth-century regional player in Gulf waters and – despite being the sovereign power - the Persian state’s general lack of a strong, physical presence there, the Al Bu Said rulers of Muscat secured a lease from the Persian government in 1798 over its southern port of Bandar Abbas and the island dependencies of Qeshm, Larak, Hormuz and Henjam (see figure I).

Figure I: Qeshm (Basidu) and Henjam, section from Chart of the Gulf of Persia - constructed from the trigonometrical surveys made for the East India Company by George Barnes Brucks, 1830. Published 1st January 1832 – IOR X/3630/19/2. Reproduced as Chart 5 in Survey of the Shores and Islands of the Persian Gulf, 1820-1829, Archive Editions, 1990

In traditional Gulf geopolitics power tended to be maintained – and then usually only fleetingly - from the sea by control of key coastal and insular nodes, rather than through linear control of the water body’s shorelines on a contiguous basis.

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60 For the relevant original correspondence here see the materials collected in Richard Schofield [ed.] (1990), Islands and maritime boundaries of the Gulf, Archive Editions, Farnham Common (volumes 7 [1920-1930] and 8 [1930-1933]).

61 For further information, see Lawrence Potter’s excellent chapter in Roxane Farmanfarmaian [ed.] (2008), War and peace in Qajar Persia, Routledge, London,
As Britain moved to ease the conditions for its economic penetration on the Gulf region by suppressing what it regarded as the main regional sources of piracy – the Arab Qasimi federation based at Ras al Khaimah and Sharjah in the Trucial Coast and its northern outpost of Lengah in Persia, the Sultan of Muscat lent his written permission in 1820 to the stationing of a troop garrison in Qeshm island. After a couple of years testing out the suitability of various coastal sites on the island, Britain settled on Basidu (thereafter often referred to as ‘British Bassidore’) at the western tip of Qeshm as its preferred location. A furious Persian reaction necessitated their quick removal late in the same year but within 9 months they were back: “…as no other station could be found more convenient for a ‘naval depot and rendez vous for our cruisers’, Basidu was again occupied in 1823”. 62 A hiatus in Perso-Muscati relations led three decades later to the expulsion of the Sultan’s representative from Bandar Abbas followed by a swift treaty rearrangement of the original lease facilities three years later in 1856. Yet Anglo-Persian relations had been ruptured with the Herat crisis in the previous two year period – where Basidu was used constantly and significantly as a depot - and the Persian government had, in any case, never been anything but dismissive of successive British requests that they acquire military or naval bases in Persian territory. As the process of exerting a more direct and obvious Persian state presence and authority along the northern shoreline of the Gulf gathered pace during the late nineteenth century, 63 the renewed Muscati lease facilities seemed particularly vulnerable and it came as little surprise when they were finally annulled in 1868.

Yet Britain had moved in this short window of 12 years to potentially consolidate its presence in the island dependencies by signing an agreement of 1864 with the Sultan to allow construction of telegraph lines in Muscati territory, including in Article 6 a specific reference to Basidu as having been “freely granted by the Sultan’s father to the British government”. 64 A year on from Muscat’s expulsion from Bandar Abbas and its island dependencies, a telegraph station would be placed not at Basidu in Qeshm but on the smaller island of Henjam to its immediate south. Run by the Indo-European Telegraph Company, its establishment had the formal blessing of the Tehran government. 65 The concession granted to the company allowed “only the erection and maintenance of certain specified buildings, and the retention of a specified staff, for telegraph purposes”. 66 While there was no Muscati connection with this development, the population of Henjam village was almost entirely Arab, having migrated there from the Trucial Coast steadily from the 1820s onwards.

Britain’s attention would soon fixate more upon Henjam than Basidu. The garrison stationed at the latter locality was removed voluntarily in 1883 on account of its sickly summer climate, leaving just a coaling agent and a depot to serve under the British flag

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62 Foreign Office memorandum entitled ‘Status of Basidu’, 3rd August 1927 in TNA file: FO 371/12291
63 See Potter (2008), op.cit.,
64 Despatch from FB Prideaux, Political Resident in the Persian Gulf to HBM’s Charge d’Affaires, Tehran, 14th August 1926 in the National Archives (TNA) file: FO 371/11503.
66 Ibid.
that continued to fly there. And then only six years after the Persian Government had stationed a customs agent permanently at Henjam, the Admiralty transferred during 1911 its coaling depot from Basidu to the area of the telegraph concession at Henjam.  

Had its climate been better, Henjam might well have been appropriated as a defended naval establishment at the turn of the century – with or without the concurrence of the Persian government. One has to appreciate that at this time the Government of India saw the Persian Gulf as a British Lake but one that was coveted by its European imperial rivals, chiefly Germany, France and Russia. But while the decision not to push for such a move had ultimately been taken in 1903 for the same reason Basidu’s garrison was abandoned – namely, its oppressive summer climate, this would not prevent the relocated coaling station at Henjam from serving an appreciable regional naval function: “since 1911, …, the island has been employed by His Majesty’s ships serving in the Gulf as their principal base, and a canteen and playgrounds are maintained in the Telegraph Concession by the Naval authorities”.

In a real sense, the conclusion of the Great War saw all the European imperial challenges to Britain’s hegemony in the Persian Gulf disappear pretty much overnight. Regional accommodation now had to be sought between Britain (on behalf of its protégés along the western Gulf littoral) and Persia on a whole raft of regional issues, including some complex and entrenched territorial ones. While their significance should clearly never be underplayed, the traditional strategic stakes had seemingly lessened for Britain, as had the need for a serious naval presence. Perhaps the new Persian government of Reza Shah Pahlavi sensed this for fresh from having subsumed Khuzestan (Arabistan) more directly into the Persian state by ending the semi-autonomous rule of the Shaikh of Muhammara in the mid-1920s, Tehran began to fix its gaze on the anomalous status of Britain’s position at Basidu and Henjam.

Let’s now look at the initial response of Britain’s top man in the Persian Gulf – its Political Resident FB Prideaux, stationed in the Persian port of Bushire but answerable to the British Government of India - to charges of July 1926 made by the chief of Persian customs at Bandar Abbas that Britain was obstructing their operations at Basidu and Henjam. Noting that no fresh consignments of coals had landed at Basidu since 1911 but that the flag still flew over buildings that were maintained as ‘British Basidu’, Prideaux suggested that “as the village has been occupied as British territory for over a hundred years without the permission of the Persian Government, it is ours now prescriptively almost as much perhaps as is Aden!”. As far as Henjam was concerned, Prideaux noted that since 1911 the telegraph concession area had served as the Navy’s chief base in the Gulf but that the British position was ‘somewhat irregular’. Nonetheless, he underlined

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67 Ibid.,
68 Ibid.,
69 Belgium (or Belgian officials) had led the operations of the Persian customs authorities from the early years of the twentieth century. Monsieur Paquet was Director of Customs at Bandar Abbas in 1926 and responsible for challenging Britain’s behaviour at Basidu and Henjam.
70 Prideaux, op.cit.
that “the Naval authorities are extremely keen to continue their present facilities at Henjam, where they have a canteen and play-grounds for the men”.

There was a desire from all on the British side to keep the matter local to the southern Gulf, to placate Monsieur Paquet and the Persian customs authorities, to ensure that Britain paid its dues and levies and stopped interfering with dhows etc. etc. in the vicinity of its naval facilities. Or else the danger was seen as follows, should the matter be formally raised as an inter-state sovereign concern by Tehran: “Even if the Admiralty were prepared to waive their claim to Basidu, in view of the fact that they now practically never use it, it would be dangerous to allow doubt to be cast on the validity of the British rights to Basidu, which rest on undisturbed occupation over a long period. To admit the Persian claim would make it difficult to resist a similar claim to Henjam, which has been in British occupation for a much shorter period”.

Yet the Government of India would then surmise that both Paquet and his political bosses in Tehran were only too aware of the anomalous situation at Basidu and Henjam and that it would not be long before the Persian Government sort to assert its sovereign rights fully. Given that Basidu was essentially regarded as useless, the following deal was suggested in internal correspondence late during 1926 to enable continued naval use of Henjam should the Persian government press home its position: “If the Persian Government would grant lease in perpetuity of part of Henjam, I think sovereignty over Basidu could be formally resigned”. Meanwhile, the Admiralty would maintain its position that it wanted both facilities, pushing for retention of the status quo.

The Basidu for Henjam deal was heard sympathetically by Monsieur Paquet but ultimately not pushed by Britain in Tehran for fear of probable failure. Meanwhile during 1927 the Persian postmaster at Henjam erected a house within the limits of the (British) telegraph concession, while in the following year, the (Arab headman) Shaikh of Henjam was forcibly expelled from the island to the southern coast in the spring of 1928, after being refused refuge in the telegraph concession area which was then occupied by Persian troops. According to its own India Office experts, British acquiescence in that move meant that “Persian sovereignty even within the limits of the concession was thus recognised in a practical manner”. Meanwhile, the same source was quite candid about the unauthorised basis by which Britain had enhanced its position at Henjam in 1911: “The wireless station subsequently erected, the naval coal depot, the naval canteen and recreation grounds, all therefore represent an encroachment by His Majesty’s Government for which legal justification cannot be pleaded”.

Less, too, would be heard of prescriptive rights at Basidu. It had come to light during researches of 1927 that the Governments of Bombay and India had looked into this

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71 Ibid.
72 Despatch from L Oliphant, Foreign Office to Under-Secretary of State for the India Office, 6th November 1926 in TNA file: FO 371/11503.
74 India Office (Laithwaite) memorandum, op. cit., p: 4.
75 Ibid. p: 5.
matter very closely when Persia annulled the Sultan of Muscat’s leasehold rights over Bandar Abbas and its island dependencies back in 1868: “They reached the conclusion that ‘the station in question cannot properly be considered as British territory’. It may have been thought... that our rights over the town existed by continued usage, or that we had obtained a prescriptive title; but in looking closely into the question it becomes evident that our rights are subordinate to those of Muscat, which again are admittedly entirely subordinate to those of Persia...” 76

As tensions had heightened on Henjam during the latter months of 1928, it was the Foreign Office and the Admiralty who were perhaps furthest apart in their thinking with respect to British rights there. The Foreign Office would caution against the naval authorities coming into any conflict with Persian troops owing to the weakness of its position there, underlining that the Persian Government were within their rights in forbidding the landing of foreign naval officers and men on their own sovereign islands. 77 Meanwhile, the Admiralty maintained that for as long as there was a danger of a Persian move on Basidu, a British ship should remain there to protect the British flag. 78 For a while, these 2 departments were diametrically apart – and they would remain so into the 1930s, as we shall witness. It would be easy to interpret this as a Foreign Office having to mediate Britain’s interest in a changing international order more rule-based than ever and the Admiralty defending the strategic position of the operations of empire.

While the various British government departments involved would continue to debate what Britain should do about Henjam given its weak position there, all recognised the real value that continued connection with and use of the facility represented:

“The importance of maintaining that concession is, however, considerable. The strategic value of control of an island which commands the mouth of the Gulf, which has a good water supply and a good anchorage, needs no emphasis. The maintenance of the old coaling depot at present situated on it is desirable so long as the Persian Gulf Squadron contains coal burning units; while the recreational facilities at present afforded to that squadron at Henjam are not available elsewhere in the Gulf”. 79

Note that while there was mention of the island territories possible utility in imperial communications infrastructures – namely as nodes on air routes – there was no mention whatsoever of oil at this stage.

The fall-out from the events of 1928 was an admonition that “[t]he time appears to have passed for any such veiled form of transfer of sovereignty. Long lease or concession seems all that we can now hope for”. 80 With any pretence that prescriptive rights might be argued for Britain now seemingly abandoned – or at least that’s what it seemed like in

77 This would lead to a fairly thorough investigation of just which islands could be considered Persian.
78 See correspondence in Richard Schofield [ed.] (1990), op.cit., volume 7: pp: 393-484
80 Ibid., p: 8.
the autumn of 1928 - Laithwaite’s detailed review ended on a pragmatic if suitably downbeat tone: “if the Persians attempt to make us move, then we must demand sufficient time to prepare some other place, and must avoid any idea of being turned out in an undignified manner”. 81

So that was the end of that? Well no! Nearly a half-decade later, essentially the same voices were rehearsing the same arguments. British rights at Henjam had become but one package in a whole host of questions that were broached as part of the ultimately unavailing Anglo-Persian General Treaty Negotiations – these included Persia’s wartime debts, slavery, arms traffic, air routes as well as the status of residual Persian claims to Bahrain and, of course, the disputed status of the Lower Gulf islands of Abu Musa and the Tunbs. This incongruous mixture was never really likely to deliver neatly into one package and the individual issues themselves got blurred as one or the other party would propose – sometimes formally and sometimes informally - to relax its terms for settling one if it got satisfaction on all the others. 82 Therefore, the Admiralty would get momentarily encouraged when individuals close to the Persian Government intimated that an arrangement could be made for the navy to continue their stay at Henjam if Tehran got satisfaction on all other questions. Meanwhile, various departments in the British government at one stage tried to argue that Britain should refuse to vacate its facilities there until such time as Persia made good its wartime reparations.

Let’s fast forward to the last quarter of 1932, following the despatch of Persia’s formal diplomatic notes of 19th and 22nd September demanding Britain’s immediate evacuation of Henjam. While the Foreign, India and Colonial Offices regarded such a demand as ‘definite and final’ and concluded that the navy should be found new, alternative facilities in Bahrain as soon as practically possible, the service departments prevaricated to argue that something might still be retained from further negotiation, involving maybe the introduction of joint facilities there. 83 And that indeed seemed to be the intimation of the Persian Foreign Minister after discussions with his British counterpart in Geneva a week later: “If you give us what we want along the line in the treaty negotiations, there is no reason to suppose that we could not be able to come to some arrangement for the joint use of Henjam. But this will only be on condition that we, the Persian Government, get what we want elsewhere, and especially compensation for (dropping our claim to) Bahrein”. 84

But they were never going to get what was wanted elsewhere! As the British Government formulated its draft reply, the Admiralty – finally persuaded that time was being called on its unauthorised 20 year presence at Henjam - now seemed most exercised about the notice it would be given to pack its bags: “it is somewhat too forthcoming about our readiness to evacuate. . . , and the general tone of the second

81 Ibid.
83 Foreign Office memorandum by GW Rendel entitled “Persian negotiations”, 1st October 1932 in TNA file: FO 371/16071.
paragraph implies that we should not regard notice to quit as so very serious after all” \(^8^5\). In truth, many of their concerns were financial – how was any speedy relocation of their facilities at Henjam in Bahrain going to be paid for? “We are bound to recognise that if we have to leave Henjam we are faced with a very considerable expenditure for which we have at present no provision at all.” \(^8^6\)

Britain finally despatched a reply to the Persian note demanding immediate evacuation on 19\(^{th}\) November 1932 – though not before it had deliberated hard on how to respond. A suggested reply of late October from its Minister in Tehran made interesting reading, stating that Britain would like to negotiate an extension to its stay at Henjam as part and parcel of the General Treaty Negotiations, while admitting that Britain neither possessed any legal right to be there nor could ever challenge Persia’s sovereignty over the island. It then went on to add that Persia would be entirely within its rights to demand a British withdrawal should multilateral negotiations fail but that this would not generally be in Persia’s own best interests. If Britain had to evacuate, it continued, it should be given a 2-year grace period during which time reciprocal facilities might be offered to the Shah in Bombay. \(^8^7\) The first two points would form the mainstay of the reply officially communicated to Tehran but the latter two didn’t make the cut.

There would also be an intriguing (if somewhat desperate) Cabinet Office proposal of 1\(^{st}\) November that was aired and explored both before and after the reply was sent - i.e., “we should set up our claim to be repaid the one and a half million pounds of Persian War and post-War debt as a condition precedent to any evacuation of Henjam”. \(^8^8\) This got remarkably short shrift:

“... very awkward questions might arise if the matter were referred to a neutral body. Even if the debt were a sound one and were admitted by the Persians, any attempt to secure its repayment by the forcible occupation of Persian territory would raise far-reaching questions of principle of great importance. Sir Robert Vansittart has for instance pointed out that our conduct might in such circumstances be represented at Geneva as bearing a semblance to that of the Japanese in Manchuria”. \(^8^9\)

Foreign Office Legal Adviser WE Beckett arrived a little more functionally at the same conclusion in his opinion of 17\(^{th}\) November 1932: “I do not think that the defence that we were entitled to remain at the station until Persia had paid the alleged debt, in any way stands legal examination. The debt was not secured upon any rights in Persian territory, and under international law today a State has no right to occupy or use the territory of another in order to enforce the repayment of a debt”. \(^9^0\)

\(^8^6\) Ibid., p: 492.
\(^8^7\) Schofield [ed.] (1990), op. cit., volume 8, p: 506.
\(^8^8\) Foreign Office minute by GW Rendel, 9\(^{th}\) November 1932 in TNA file: FO 371/16071.
\(^8^9\) Ibid.
\(^9^0\) Foreign Office memorandum by WE Beckett entitled “Persian negotiations: legal aspect”, 17\(^{th}\) November 1932 in TNA file: FO 371/16071.
That was that as far as Henjam was concerned – the best that could now be hoped for was a decent period of notice from Persia to enable an orderly, planned withdrawal. So it would now come as a real surprise that the Admiralty began instead to dig its heels in over Basidu. It will be recalled that the British Government had concluded after a review of 1927 that any prescriptive claims it might have entertained were unfit for purpose and had no chance of prevailing in law. To be fair to the Admiralty, it was the Persian Gulf Residency and the India Office who charged at the beginning of 1933 that there might well be more strength to these arguments than had recently supposed – following a review of the available historical evidence maintained in the Residency records in Bushire. Yet nothing had been unearthed that would change Britain’s earlier assessment in the slightest, underlined in no uncertain terms by the release of an Advisory Opinion on the question of British rights at Basidu by the Law Officers of the Crown early during November 1933. This surmised that “…there is not sufficient evidence to establish a British title to Basidu by prescription or otherwise”.

While trying to resurrect claims to Basidu earlier in the year was essentially to clutch at straws once the untenability of maintaining its position at Henjam had finally sunk in, the Admiralty – still smarting at the likely cost and inconvenience of moving its facilities across Gulf waters - used the episode to push for the adoption of a much more aggressive stance vis-à-vis Persia. Its new stance had been fuelled when a detachment of Persian officers hauled down the British flag at Basidu during August 1933. While any fall out from this incident was addressed and contained diplomatically in Tehran, the Admiralty evidently was far from satisfied. For at a session of the Middle East Subcommittee of the Committee of Imperial Defence in October, it argued that Basidu should, to all intents and purposes, be regarded as a British colony. Furthermore the Admiralty would now patrol the waters astride its facility as such. A bemused George Rendel at the Foreign Office would comment that the “...the Admiralty now profess to regard the territorial waters lying off Basidu as British! In the Foreign Office view the British concession at Basidu – even if its continued legal validity can be established – amounts to no more than certain rights of use over the area concerned and cannot be regarded as removing any territory or territorial waters from Persian sovereignty”.

Shortly before this opinion had been ventured – in what seemed like a straight act of retaliation for the earlier flag incident - the Admiralty had given physical effect to this interpretation by arresting a Persian Customs mudir in his dhow in the belt of territorial waters lying off Basidu, effecting a minor diplomatic incident with Persia. Despite the displeasure this incurred in Tehran and Whitehall, the Admiralty repeated its actions quite deliberately within the month by warning off the Persian Inspector of Customs at Bandar Abbas in the same stretch of waters, apparently explaining and pointing out the extent of British waters quite precisely. This would lead to an almighty row with the Foreign Office:

91 See materials in TNA file: FO 371/16593, especially the lengthy despatch and enclosures from Lieutenant-Colonel TC Fowle, Political Resident in the Persian Gulf Bushire to the Government of India, 30th January 1933.
92 Despatch from TWH Inskip and Donald Somervell, Law Officers of the Crown to the Foreign Office, 9th November 1933 in TNA file: FO 371/16959.
94 Foreign Office minute by GW Rendel, 11th October 1933 in TNA file: FO 371/16965.
“It is absolutely deplorable that after all that has passed the Commander in Chief should still glibly refer to ‘British waters’ at Basidu, and that the naval officers on the spot should use this provocative and inaccurate language in speaking to Persian officials”.\textsuperscript{95} It was seemingly the Admiralty’s new-found conviction that Basidu was flanked by British territorial waters that irked the Foreign Office most: “Sir John Simon pointed out that the waters were not British and that our position would be quite untenable if the matter were taken to arbitration. Sir B. Eyres-Monsell (Admiralty) then stated that these waters had always been regarded as British and he did not see why we should not continue to regard them as such until the concession was definitely handed over to the Persians. I was able to explain, with the support of the India Office representatives, that neither the concession nor the waters had ever been regarded as British until (the Admiralty had deemed them as such on) October 10\textsuperscript{th} 1933”.\textsuperscript{96}

When the Admiralty’s rather desperate high stakes brinkmanship failed to persuade other governmental departments, and with Persia’s gaze now fixated upon Basidu, arguing for any further stays of execution seemed pointless. The Political Residency’s view - first proferred during April 1934 - that claims to Basidu ought to be abandoned while the chance remained of appearing to do so voluntarily won the day once the Admiralty’s all or nothing strategy backfired. By the summer the chief remaining question seemed to be whether Persia should be formally notified of Britain’s decision or whether it should just go ahead and evacuate unannounced.\textsuperscript{97} As ever, the Admiralty fell into line last but by October had agreed in principle to vacate the sites so long as alternative facilities could be found on the Arabian coast. As the prospects progressively solidified for developing equivalent facilities not just in Bahrain but also at Khor Kuwai (in Muscat’s Musandam peninsula) just over the other side of the Strait of Hormuz, any residual Admiralty objections waned – to the extent that they professed themselves ready to evacuate Basidu and Henjam during February 1935.\textsuperscript{98} This would ultimately be done in the first few days of April 1935, unannounced to Persia as such.

Of course, there was no mention in any of the accompanying press announcements of the Admiralty’s stubborn refusal for the previous decade to engage with the sovereign niceties of the Basidu and Henjam questions and the interdepartmental disputes this had occasioned. The Times explained Britain’s stay and departure from the northern flanks of the Strait of Hormuz in paternalistic terms: “Now that the Persians, reorganized by a strong ruler, can police their own waters there is no reason why the British Government should continue to follow a custom that grew up when the Shah possessed no fleet”.\textsuperscript{99} Similarly, the move of naval facilities across Gulf waters was characterised almost as modern and progressive: “The recent discovery of oil in these islands (Bahrain) has increased their importance and has incidentally added to their amenities. The crews of

\textsuperscript{95} Foreign Office minute by GW Rendel, 29\textsuperscript{th} November 1933 in TNA file: FO 371/16959.
\textsuperscript{96} Ibid.
\textsuperscript{97} See documentation in TNA file: FO 371/17885.
\textsuperscript{98} See associated documentation in TNA file: FO 371/18967.
\textsuperscript{99} The Times, London, 3\textsuperscript{rd} April 1935.
the four British sloops that are stationed in the Gulf will find Bahrein far healthier and far more attractive than feverish Hanjam or monotonous Basidu.100

So, oil got a mention in that short obituary to the British presence in the northern reaches of the Strait of Hormuz – even though it had not been afforded even the briefest one in the actual record of dispute for the previous decade. This was a dispute that belonged to a bygone era that was more about an imperial power adjusting to the concept of sovereign equality in practice than anything else. The Admiralty simply didn’t see why there should be a need to adjust to new realities, even if it was prepared to acknowledge they existed. And just to underline that its traditional mindset wasn’t budging, consider its response, post-evacuation, to Persian objections to the surviving inscription on a plaque at the old British military cemetery there: “Any desecration of the inscription ‘British Basidu’ at the British cemetery would have to be regarded as an act of vandalism and met with strong representations”.101 Unchanging to the last!

3.3) Linkage, packages and the Lower Gulf islands

As was clear from a reading of section 2 of this project, the nineteenth century histories of Abu Musa and the Tunbs were not one and the same. Yet there has always been a tendency to link the status of the Lower Gulf islands (see figure m).

![Maritime boundary delimitation in the Persian Gulf, 2014](image)

Figure m: Maritime boundary delimitation in the Persian Gulf, 2014 (author’s own map)

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100 Ibid.
101 See the primary correspondence in the TNA file: FO 371/18987.
This may be because for most of the twentieth century, the power that held one island also controlled the others. It also had much to do with further Government of India sloppiness. An evidently influential memorandum of 1928 held that what affected one island during the nineteenth century generally affected the other.\(^{102}\) Successful, derivative British memoranda perpetuated this misplaced notion of historical linkage.

All manner of schemes for territorial trade-offs would be discussed, formally and informally, between the British and Persian governments at the time of the General Treaty negotiations during the 1920s and 1930s. On several occasions the Persian government offered formally to drop its claim to Bahrain if Britain would recognize its claims to the Lower Gulf islands. On other occasions, Britain toyed with the idea of trying to persuade the Qasimi rulers to lease the features to Persia. The Persian Minister of Court, Abd al-Hussein Taimurtash, informally suggested in 1930 that the Tehran government might relinquish its claim to Abu Musa in return for Ras al-Khaimah dropping its claims to and administration of the Tunbs.\(^{103}\) Britain tried to re-float these ideas for territorial trade-offs during the mid-1950s but, again, to no avail.

The speculation surrounding linkage and possible island trade-offs naturally resurfaced once Britain, in January 1968, had declared its intention to vacate the Gulf as protecting power. It is often suggested that Britain’s eventual tolerance of Iran’s moves on the islands in 1971 was the price paid for the Tehran Government’s relinquishment of its historic (and long purely nominal) claim to the sovereignty of Bahrain. A close inspection of the British and American archives confirms that there was no such explicit deal before the shah of Iran announced in January 1969 that the inhabitants of Bahrain were free to determine their own political destiny. Yet a suggestion for an arrangement along these lines was broached directly to the shah in the spring of 1968 by the United States Government or, to be more precise, its Ambassador in Tehran, Armin Meyer. Since Meyer’s overriding concern was the facilitation of an Iranian-Saudi agreement on a continental shelf boundary in central Gulf waters,\(^{104}\) the following scheme was proposed: in return for the relinquishment of the Iranian historical claim to Bahrain, arrangements would be made through British auspices for the cession of Abu Musa and the Tunbs to Iran, while a joint economic zone for the exploitation of hydrocarbon reserves might be set up in the central Gulf between Saudi Arabia and Iran.\(^{105}\) Once the October 1968 Iranian-Saudi maritime boundary agreement had been concluded and seabed areas either side of it opened up for hydrocarbons development, American suggestions for territorial trade-offs disappeared.

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\(^{102}\) India Office 1928 memorandum by JG Laithwaite entitled ‘Status of the islands of Tamb, Little Tamb, Abu Musa and Sirri’ in IOR file: L/P&S/18/B397.

\(^{103}\) Although it should be pointed out that the Persian Foreign Ministry showed no formal inclination towards such a scheme.

\(^{104}\) This would ultimately be achieved with their 24th October 1968 maritime boundary agreement.

Britain had talked in terms of ‘packages’ rather than linkage, as such. There would be frequent suggestions for broader “packages” in the Foreign Office record for 1968, packages that would see the roughly simultaneous settlement of outstanding Anglo-Persian questions and disputes before Britain would leave the Gulf as protecting power at the end of 1971. One of these suggestions was broached directly by Denis Wright, the British Ambassador in Tehran, to the Iranian Government in August 1968. There was, however, no explicit deal within the arrangement whereby in return for abandoning the claim to Bahrain, Iranian claims to Abu Musa and the Tunbs would be admitted. By the end of 1968, the British Government seems to have concluded that since the individual components of any possible package were being addressed by bilateral negotiations anyway, no overall package could be guaranteed in any case. Furthermore, it appeared that one was no longer needed. For the British Gulf authorities were by now genuinely of the opinion that the shah was keen to dispose of the Bahrain claim on its own merits, without the need for any compensating inducements. As an FCO minute of the late autumn of 1968 would testify:

“...I told the Shah that HMG fully understood his anxieties and the importance of satisfying public...opinion: we felt however (and I know that he did not accept this point of view, which I had already voiced) that it would be possible for the Shah to abandon his claim in the context of an over-all settlement of the median line and the disputed islands, of our withdrawal from the Gulf in 1971, and an overall agreement with King Faisal over the future of the Gulf. The Shah made it clear that the inclusion of Bahrain in a package solution was not acceptable. If he were to abandon the claim in this way, it would be a one-man decision by himself which could be reversed by his successors. If the Bahrain issue was to be settled permanently it must bear the stamp of legality and recognised procedures for settling territorial disputes and not to be the decision of one man. In going so far as he was prepared to go he was taking considerable risks and doubted whether any other person (in the future I think he meant) would be in a strong enough position to do so”.

Let us now look at these developments in a little more detail. The general package settlement of outstanding Gulf problems suggested by Denis Wright to the Shah of Iran in May and August 1968 consisted of the following:

“...he [His Majesty] might drop his claim (to Bahrain) in the context of an over-all settlement of median line and disputed islands, the creation of the UAE, the British withdrawal from the Gulf and an agreement between Iran and Saudi Arabia”.

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106 Account of meeting held during October 1968 between British Ambassador Denis Wright and the Shah of Iran in FCO minute entitled “Persian Gulf/Union of Arab Emirates” dated 28th October 1968 in TNA file: FCO 8/938/1.
107 Telegram dated 29th October 1968 from Wright in Tehran to the FCO in TNA file: FCO 8/938/1.
Then, during February 1969, FCO research analyst Donal McCarthy would pen a highly revealing minute:

“When we discussed a possible ‘package’ settlement in the Gulf with the Shah last May we made it clear that since three different rulers were involved (Bahrain, Sharjah qua Abu Musa, and Ras al-Khaimah qua the Tunbs) a simple trading of an Arab solution over Bahrain for the Iranian acquisition of the other islands was not one we could negotiate. We also proceeded [sic.] on the assumption that the vital question was Bahrain; and while we could not give away the other islands we let the Shah understand that the Tunbs, being on the Iranian side of any median line, might well go to him in the end. Since then the Shah, while making it clear that he maintained his claim to both Abu Musa and the Tunbs, has not pressed it hard with us.”

How, precisely, did this overall package envisaged by Britain affect the islands of Abu Musa and the Tunbs? In a sense it did not, at least directly. There was the clear reality, though, that a median line maritime boundary agreed for the Lower Gulf between Iran and the future UAE would leave the Tunbs to its north and Abu Musa to the south. Iran may have been led to believe, as is partially supported by the above quote, that Britain expected the Tunbs to go to it in the future, even if Britain would continue to insist that their ultimate fate could only be decided through direct negotiations with the ruler of Ras al-Khaimah. Such negotiations would take place in the latter months of 1968. By way of contrast, in its communications with the rulers of the southern Gulf littoral, Britain could argue, technically correctly of course, that agreeing to a Lower Gulf median line in no way predetermined the sovereignty of Abu Musa and the Tunbs:

“Pol. Agent Dubai can give confirmation he proposes, but point out that median line even if settled does not in itself affect sovereignty of islands.

... that in our view he [Shaikh Saqr of Ras al-Khaimah] is in his rights in standing by his sovereignty over the Tunbs and that if Iranians want use of islands they must use the carrot and not the stick.”

After meetings of late October 1968, Britain would be left in no doubt about the attitude of the Iranian Government towards Wright’s “package”:

“2. Mr. Afshar told me that the Shah only that morning had impressed on him that he was to let me know that there could be no bargaining over the Iranian position on the various islands, which was well known to us. I said that I was sorry to hear this as it seemed to me that the only way of reaching a settlement was through a package deal such as I had outlined to the Shah in early August. I could see no

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109 Telegram dated 30th October 1968 from Sir Stuart Crawford at the Bahrain Residency to the FCO in TNA file: FCO 8/960/1.
settlement or possibility of compromise if the Iranians insisted on Abu Musa as well as Sirri and the Tunbs. Mr. Afshar took this but made no attempt to argue the Iranian case on the islands”.\textsuperscript{110}

All of this is on the record yet it is probably fair to surmise that Iran, one it had begun to rescind its claim to Bahrain (beginning with the Shah of Iran’s New Delhi statement of 4\textsuperscript{th} January 1969) hoped that Britain might play ball by allowing the Tehran government to make good its claims on the Lower Gulf islands. Afshar certainly indicated that this was the view of the Shah himself: “In turn, having demonstrated his goodwill over Bahrain, The Shah believed the British government was obliged to recognize his claims to Abu Mus and the islands of Tunbs”.\textsuperscript{111}

Yet this had never apparently been on the cards. There seemingly was no express linkage or explicit sovereign trade. The same Amir Afshar would comment and possibly confirm as much long into his retirement in January 1991: “[T]here was no tradeoff deal with the British during our negotiations on the separate issues of Bahrain and the three islands of the Strait of Hormuz”.\textsuperscript{112}

\textsuperscript{110} Wright’s account of his meeting with Iranian Minister of Court Asadollah Alam and Amir Khosrow Afshar, Iranian Deputy Foreign Minister, enclosed in despatch dated 24\textsuperscript{th} October 1968 from MCS Weston, Tehran to AI Beamish, FCO in TNA file: FCO 8/938/1.


\textsuperscript{112} Interview with Pirouz Mojtahed-Zadeh in Zadeh (1995) The islands of Tunb and Abu Musa, occasional paper 15, Centre for Near and Middle Eastern Studies, SOAS, p: 15.
4. Oil begins to prompt early consideration of the offshore political geography of (Persian) Gulf waters

Persia’s more determined efforts from the late 1920s to assert its own sovereign control over the northern Gulf coastline and its outlying islands had affected the course of deliberations over Henjam and Basidu, as we have just witnessed, but had also thrown the Lower Gulf islands dispute into sharp focus. It had occasioned a detailed 1928 India Office review of the sovereign status of Gulf islands, large and small – but one that was essentially geared towards establishing what Persia was within its rights to claim and specifying those insular features that Britain was obliged to defend under its treaty arrangements with the sparsely-populated shaikdoms of the western littoral.113 The assessments reached here – though obviously not without their bias - were reached squarely on the basis of what Britain’s own documented record said about human contacts with the islands in question. As such, they reflected traditional Gulf geopolitics where (often fleeting) control of coastal and insular nodes rather than the interlinking territorial swathes that connected them was the order of the day in what was a messy sovereign picture. On this basis, a recorded estimation of Kuwaiti rights to the central Gulf islands of Arabi, Farsi and Harquas may have had something going for it but the fact remained that they lay squarely between the state territories of Najd and Persia. No-one was looking forward at this stage to a potentially hydrocarbons-rich Gulf seabed, there was simply no reason to as yet. Had they done so, however, they would have seen how traditional patterns of territorial control and recognition could not have made for a tidy appropriation of natural resources.

Predictably, it was not until the question of securing commercial rights over potential offshore oil reserves for British (or British-registered) companies arose in the mid-to-late 1930s that the Gulf’s offshore political geography really became relevant. And there were very few regulatory guidelines to go on at this stage. Not for the first time, the Gulf would prove the guinea pig for state practice. We will briefly review three episodes here, taking us up to the Second World War and the subsequent issue of the September 1945 Truman Proclamation, by which the legal basis for extending jurisdiction over the resources of the seabed and subsoil was established. These are: 1) Bahrain’s attempt to define its Additional Area (offshore) concession area and Britain’s associated decision on the sovereignty of the Hawar islands and subsequent reactions, 1936-1941; 2) Saudi Arabia’s suggestion for offshore spheres of influence between Hasa and Bahrain for the purposes of oil development (a development that ran parallel to negotiations towards the 1942 agreement between Trinidad and Venezuela to annex seabed areas of the Gulf of Paria in establishing the world’s first maritime boundary), 1939; 3) the arguments of the Kuwait Oil Company that their mainland concession effectively allowed them to prospect in areas of the seabed beyond territorial waters, also 1939.

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113 See J.G. Laithwaite’s IO Memorandum on status of certain...
4.1) Bahrain’s attempt to define its Additional Area (offshore) concession area and Britain’s associated decision on the sovereignty of the Hawar islands, 1936-1941

The evidential basis by which Britain recognised the Hawar group as Bahraini in 1939 was essentially upheld in the ICJ award of July 2001 but it is as well to note that the British authorities possessed doubts and reservations both before and after that assessment. Let’s review some of these but, before doing so, briefly mention Britain’s vague earlier estimations of Hawar’s ownership (see figure n).

Figure n: Bahrain and the Hawar (Wardens) islands. Section from western sheet of the Chart of the Persian Gulf after the trigonometrical surveys of Captain GB Brucks made by order of the East India Company, 1830. Map 2 in Richard Schofield ed., 1990, Islands and maritime boundaries of the Gulf, 1798-1960 (vol. 19), Archive Editions

That much-celebrated geographical and historical font of regional knowledge, Lorimer’s Gazetteer, passed the following comment during 1909:

About 10 miles long, north to south, and roughly parallel to the Qatar coast. There are no wells, but there is a cistern to hold rainwater built by the Dawasir of Zallaq in Bahrain, who have houses at two places on the island...114

The next year Britain’s Political Agent in Bahrain confirmed the Bahraini connection but hinted that there was no real physical state presence at this stage:

... the Dowasir have two... winter villages. ... the Dowasir regarded Hawar as their own independent territory. ... the island would seem to be a dependency of the mainland state, which the Chief of Bahrain still claims as morally and theoretically his.\(^{115}\)

Fast forward to the mid-1930s when the holders of the mainland concessions for Bahrain and Qatar commenced negotiations with the Ruler of Bahrain towards a new agreement securing rights over the seabed area between the Bahrain main islands and the western coast of the Qatar peninsula, variously referred to as the Additional Area or Unallotted Zone. In all but name the Bahrain Petroleum Company was an American company, whose energy and activity contrasted with the general lethargy of Britain's Petroleum Concessions Limited (PCL) group that held the mainland contracts for Qatar, the Trucial Coast and Muscat and Oman.\(^{116}\) What an irony it would prove that no sizeable deposits of oil were ever discovered in Bahraini territory or waters – other, that is, than the Bu Saafah oilfield whose revenues are shared by agreement with Saudi Arabia.

Initially, PCL were surprised when the Ruler of Bahrain claimed the Hawar islands, as a communication of April 1936 makes clear:

... [He] has commenced by claiming that the island of Hawar is part of his dominions. The island is, in fact, situated off the west coast of Qatar, from which it seems to be not more than ¼ miles distant at its nearest point. The island is shown on the official map of Qatar which was signed by the Shaikh of Qatar and by Mr Mylles and which forms part of the Qatar concession. The map, I believe, was seen and approved by the Political Resident and, perhaps the India Office. All this points to its forming part of Qatar and not of Bahrain.\(^{117}\)

But during the same month, the Ruler of Bahrain's British Financial Adviser, Sir Charles Dalrymple Belgrave, despatched a memorandum to the British Agency in Manama presenting evidence for the Bahraini claim to the island group. This would prove decisive, running as follows. The people of these islands were and always had been under the jurisdiction of the Ruler of Bahrain. At least four of the islands in the Hawar group were inhabited by Dawasir fishermen, who, it was alleged, paid tribute to the Bahraini ruler. The claim also relied on the custom for fishtraps to be sold or granted by the Ruler of Bahrain to the fishermen inhabiting or frequenting the islands.\(^{118}\) Lieutenant-Colonel Percy Loch, Britain's Agent in Bahrain, was thereby “…inclined to think that there is real

\(^{115}\) Despatch dated 4th February 1909 from FB Prideaux, Political Agent, Bahrain to PZ Cox, Political Resident in the Persian Gulf, Bushire in TNA file: FO 371/776.

\(^{116}\) Because the 1928 Red Line agreement had specified that concession holders in Britain’s protégé shaikhdoms had to be British or Commonwealth or Dominion based, BAPCO was registered as a Canadian company.


substance in Shaikh Sir Hamas bin Isa’s claim”, adding that “it might in certain circumstances suit us politically to have as large an area as possible included under Bahrain”.\footnote{119}

This was enough for the India Office to advise PCL by July 1936 that “...on the basis of evidence at present before His Majesty’s Government, it appears that Hawar belongs to the Shaikh of Bahrain, and that the burden of disproving the claim would lie on any potential claimant”.\footnote{120} Belgrave didn’t leave it at that, however. Well-connected with oil companies, lawyers and British government officials, he was well aware that to maximise the concession area that could be offered to BAPCO or PCL (and it was always likely to be the former since they were already in place in Bahrain, paid better and were seen as obviously more dynamic), evidence of Bahraini ownership of all the islands, shoals and reefs lying west of the Qatar peninsula would have to be shown. So BAPCO requested of Belgrave a list of all the insular features claimed by Bahrain in the Unallotted Zone and then promptly placed beacons in the red and white colours of the shaikhdom on everything that appeared above water, high tide or low tide.\footnote{121} The more significant state act of stationing a garrison on the largest island in the Hawar group had also been undertaken by the end of 1936.\footnote{122}

These actions had been taken by the time (May 1938) the British authorities in the Gulf made their first detailed investigation of the Unallotted Zone to confirm what physical indicators of sovereignty existed there. Political Agent Hugh Weightman, Loch’s successor in Bahrain, carried this out after Qatari Ruler Shaikh Abdullah bin Qasim al Thani apparently first got wind that Hawar was disputed at all on complaining about Bahrain’s water drilling operations there in a note of February 1938. Shaikh Abdullah followed this up with an official letter of protest 3 months later, resting Qatar’s claim to the island group squarely on geographic contiguity or propinquity. This elicited a reply from Weightman stating Britain’s opinion that Bahrain had a \textit{prima facie} claim to the Hawar islands on the grounds of the shaikhdom’s limited presence there – however recently this may have been emplaced or reinforced. Furthermore, it would not seek to prohibit or restrict Bahrain’s occupation or activities there “until a contrary claim by you (Qatar) has been proved or accepted”.\footnote{123}

The Qatari ruler did his best to elaborate the propinquity argument in further statements of the early summer of 1938, both of which were forwarded on to the Bahrain government for rebuttal. By the year end Belgrave had submitted an immaculately presented, impressively argued and meticulously documented Bahrain claim, replete with testimonies and photographs.\footnote{124} By the end of March 1939 Shaikh Abdullah presented the Qatari counter which, while long, failed to really add anything to the earlier rehearsed
propinquity claims. It, too, was accompanied by an appendix of alleged testimonies – though their provenance clearly seemed dubious.\textsuperscript{125} Suspect documentation was an evidentiary theme that would recur spectacularly during the course of the 1991-2001 ICJ case (see section one).

There was only going to be one winner here and the rulers were respectively informed of Britain’s decision during July 1939 that the Hawar group belonged to Bahrain on the basis of proof of jurisdiction over the islands for a period of a good many years.\textsuperscript{126} Bahrain thanked the British authorities while Shaikh Abdullah asked for a consideration, only to be cautioned by Charles Prior, Britain’s new Political Resident in Bushire, that “…the decision of His Majesty’s Government… is final and… cannot be reopened”.\textsuperscript{127} Yet Britain’s decision of July hadn’t really done that much to dispose of the issue that had highlighted the Hawar group’s problematic location and disputed status three years earlier, the areal extent of the concession to be offered to the oil companies by Shaikh Hamad in Manama. Britain had idealistically (if naively) hoped that any concession covering the Unallotted Zone might be split between the mainland concession holders in Bahrain and Qatar or, failing that, an arrangement struck whereby at least that portion of the concession covering the Hawar group might fall to PCL.\textsuperscript{128} However, two months before the announcement of Britain’s ruling on Hawar, Shaikh Hamad had confirmed that BAPCO would not only be awarded the concession but get the whole of its area – including the island group. Undoubtedly, the Ruler of Bahrain would have seen the Hawar outcome as upholding the Bahraini claim to all the waters and insular features that lay to the west of the Qatar peninsula. Yet the award of July 1939 had not only failed to deal with the national character of the intervening waters between Bahrain and Qatar but, even where Hawar has concerned, had failed to specify the territorial extent of the island group, just where its territorial waters met those of Qatar and whether all the islets in the vicinity of Hawar main island actually belonged to Bahrain.

So how did Bahrain end up defining the area of the oil concession it was to offer BAPCO for the Unallotted Zone (Additional Area)? Unusually, in a word! After the advice of the British government, the wording used to define the area covered by the 19\textsuperscript{th} June 1940 ‘Deed of Modification of the Lease of 29\textsuperscript{th} December 1934’ (by which BAPCO acquired the Additional Area [Unallotted Zone]) allowed for the likelihood that sovereignty over the Fasht al Dibal and Jaradah shoals would eventually be confirmed in Bahrain’s favour: “all lands, islands, shoals, reefs, waters and submerged lands over which the Ruler had or might in future obtain dominion”.\textsuperscript{129} In October 1940 BAPCO had asked the British authorities in Bahrain for permission to drill structural holes in Hawar’s main island. Before serious

\textsuperscript{125} See original file material in Schofield and Blake [ed.s] (1988) op.cit., vol. 10.
\textsuperscript{127} Despatch dated 25\textsuperscript{th} September 1939 from CG Prior, Political Resident in the Persian Gulf, Bushire to Shaikh Abdullah in IOLR file: R/15/2/547.
\textsuperscript{128} Cabinet Office (1953) Historical Summary…[PG53], p: 33.
\textsuperscript{129} Ibid. 
consideration could be lent to the request, regional developments in WW2 obliged Britain to freeze BAPCO’s exploration activities in the Unallotted Zone.

Bit by bit, Britain was becoming aware of the inherent tensions between upholding traditional territorial claims on the basis of historical contacts and occupation and looking after the interests of (mainly) British oil companies who sought the most beneficial and straightforward arrangements for the tidy appropriation of natural resources. Maybe these conflicts soon began to dawn on Britain’s Political Resident Charles Prior for he would increasingly question the basis and fairness of the 1939 Hawar decision and evidently become irritated by what he saw as the aggressiveness of BAPCO, Bahrain and Belgrave in its aftermath. His antagonism towards the latter would become only too apparent (see below).

Seemingly troubled by the willingness of Britain’s authorities in Bahrain to collude with Belgrave and BAPCO (and thereby bolster Bahrain’s comparative position vis-à-vis Qatar) in the drafting of Article One of the aforementioned Deed of Further Modification, Prior had begun to question the legitimacy of recent Bahraini efforts to instil physical markers of ownership on the low tide elevations of the Unallotted Zone.

“It is ridiculous to suppose that territory can be acquired in these waters by the erection of ‘national marks’ and it is unfortunate that the Political Agent did not report it before…it (Fasht al Dibal) is almost entirely submerged and belongs to neither (Bahrain nor Qatar) and is resorted to by all fishermen under stress of weather…the fact that Bahrain placed a mark on it two years ago may be disregarded. The only equitable boundary for the two companies should be midway between respective shores.

I have grave doubts regarding justice of decision in Hawar case and am raising question after making further enquiries”.

Given that there was an obvious need to establish limits for BAPCO’s new concession, Prior’s questioning of the evidential basis by which states could establish ownership of low-tide elevations seemed appropriate and fair – after all, the same questions of where oil concessions were beginning and ending at sea (establishing a fledgling maritime boundary of sorts) had recently also arisen between Bahrain and its western neighbour, Saudi Arabia. And the Truman Proclamation was still a half-decade away! Prior’s comments a year or so later surrounding the Hawar decision more specifically were perhaps a little more unfocused, however – other than his accurate assessment of the vast comparative advantage Bahrain had enjoyed:

“The moment I saw the decision on the Hawar islands case I told Fowle that I thought it most unfair to Qatar and the explanations he gave me for his recommendations were not ones which would carry any weight with any Arab...

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130 Despatch dated 7th June 1940 from the Political Resident, Bushire to the Secretary of State for India in IOLR file: R/15/2/547.
The Hawar Islands case has been decided according to Western ideas, and no allowance has been made for local custom and sentiment... The viewpoint of independent Arabs is that Hawar belongs to Qatar and I am convinced the decision is inequitable, but I do not feel it is practical politics to reverse it now.

Bahrain never had any rules and regulations till it had an Adviser, and he has been collecting evidence of administration in Hawar for many years past with the object of making his claim, in which he has been very successful. Had Qatar had a British Adviser this claim could not have been made".\textsuperscript{131}

Certainly by this stage, Prior had adopted a dim view of Belgrave. While it was admitted that he served the interests of Shaikh Hamad very well in ably advancing the ruling family’s financial well-being, this was apparently at the expense of a complete regional disinterest beyond the walls of the Diwan. Or so was the view of Prior.

“...Belgrave is becoming increasingly unpopular except with the Shaikhs. His mental capacity has not kept pace with the growth of Bahrain, and owing to 15 years in a most debilitating climate, he appears to me to be losing his mental grip. He has become very arbitrary and dislikes criticism by any local inhabitants... in fact he has absorbed much of the Shaikh’s outlook himself. He and other Bahrain officials have had things their own way for so long without any supervision, inspection or control, that they have become a society of self-satisfied Czars, and Belgrave, in particular, who has marked likes and dislikes tends to be ‘inaccessible’ to any one except the Shaikhs, with whom, however, he is very good, and who take up a great deal of his time. He is under the impression that he is overworked, but this is largely due to lack of method and a tendency to waste his time on trivialities”\textsuperscript{132}

Prior’s successor as Resident, W (Rupert) Hay – the first to preside over the British Residency’s new post-war location across Gulf waters in Bahrain, would reach a similar conclusion over the much-maligned adviser.\textsuperscript{133} A decade and a half later still, the same Hay would highlight in retirement the irony that while the overriding context for Britain’s treatment of the Hawar dispute in the late 1930s had been in extending oil concessions from land to Gulf waters for the first time, “...no oil has ever been found on them, and they are only noteworthy as a haunt of flamingos”.\textsuperscript{134} While clearly an appropriate ruling from an evidentiary viewpoint that was not without its controversies, Britain’s 1939 award would soon highlight the difficulties posed by a complex traditional territorial geopolitics for the easy appropriation of offshore oil resources. This would become more

\textsuperscript{131} Despatch dated 25\textsuperscript{th} October 1941 from CG Prior, Bushire to RT Peel, India Office in IOLR file: R/15/2/547.
\textsuperscript{132} Despatch dated 15\textsuperscript{th} May 1941 from CG Prior, Bushire to OK Caroe, Secretary to the Government of India in IOLR file: L/P&S/12/3890.
\textsuperscript{133} “Belgrave has now been in Bahrain for 20 years and this long time in such a trying climate and constant association with Arabs has undoubtedly affected his mentality and sapped his powers of initiative”, despatch dated 19\textsuperscript{th} July 1946 from WR Hay, Political Residency, Bahrain to EP Donaldson, India Office in IOLR file: L/P&S/12/3787.
\textsuperscript{134} WR Hay (1959) The Persian Gulf states, Middle East Institute, Washington DC, p: 88.
evident as the regulatory guidelines for exploiting maritime reserves developed apace following the Second World War.

4.2) Saudi Arabia’s suggestion for offshore spheres of influence between Hasa and Bahrain for the purposes of oil development, 1938-1939

Of course, what affected one side of the Bahrain archipelago was relevant to the other – after all, the Additional Area that had been granted in 1940 also included waters to the west of Bahrain separating the sheikdom from the Hasa coast. BAPCO’s emplacement of national marks on every bit of land exposed at low tide in the waters surrounding Bahrain would elicit objections from the local Saudi authorities during 1938 as departments of the British Government joined the question of to what extent oil companies possessed the rights to prospect in shallows beyond territorial waters. By this stage, the British Government had already accepted such a right in principle with the precedent set in negotiations (undertaken on behalf of Trinidad) with Venezuela over the Gulf of Paria.\(^\text{135}\)

With its traditional concern to protect freedom of navigation, the Admiralty was now keen to ensure that any exploitation of oil under the high seas should not involve a significant extension in the breadth of territorial waters. In tow with the mainstream of thinking that was already foreshadowing the 1945 Truman Proclamation, they considered that it was the seabed that should be appropriated for such purposes but not overlying waters.\(^\text{136}\) When it came to local applications of such logic, however, the Admiralty would revert – if far less forcefully - to the conservative, strategic mind-set that had distinguished its stance over Basidu and Henjam. They preferred to think in terms of (primarily Western) oil companies practically dividing oil operations at sea to any harder divisions of state sovereignty as such. Yet it was realised that the two considerations were likely to be conflated. That is, a dividing line through the Unallotted Zone to mark the respective operating limits of PCL and BAPCO – a scheme generally favoured by most British government departments through 1938 – was palatable since both Bahrain and Qatar were under British protectorate arrangements and so any effect this pragmatic division of resources might have in foreshadowing a future state boundary division held few fears. The same could not be said of the waters separating Bahrain from the Hasa coast since Saudi Arabia was not in the British orbit. Therefore the Admiralty was anxious that all the insular features here – which now possessed red and white national markers courtesy of BAPCO - should be claimed on behalf of the shaikhdom so that any resultant advantage would confer upon Bahrain and its concession holders. A dividing line for offshore oil operations was viewed with less favour here therefore.

During the autumn of 1938 the Saudi authorities about the erection of a Bahraini national marker of Bain as Saghir island, though apparently not Bain al Kabir to its west. These 2

\(^\text{135}\) Though the agreement to establish a boundary line there – by annexing areas of seabed on either side – would not be concluded until 1942: see TNA files: POWE 33/205 Trinidad: proposed agreement with Venezuela for control of the submarine areas of the Gulf of Paria, 1940-46.

\(^\text{136}\) Admiralty minute dated 29th April 1938 by Seal in TNA file: ADM 1/10510, Persian Gulf: sovereignty of certain disputed islands, April 1938-January 1940
islands (described as “sandy and conspicuous” in the Admiralty’s *Persian Gulf Pilot*), along with smaller insular features in their vicinity, were referred to collectively as the Libainat islands.\(^{137}\) The charge elicited two sets of reactions from Britain – the first before it had checked out its facts (based upon erroneous or at least seriously outdated information held at the British Residency), the second once it had.

The Foreign Office’s initial reaction was as follows (with the status of the nearby Hawar island group very much on its mind!): “Although geographical contiguity by itself is never a good ground for territorial claims it seems in the case of Bain al Saghir Bahrain have a strong prima facie claim as it lies in territorial waters of Umm Na’san. Bain al Kabir presents a more difficult situation – it is three miles nearer Bahrain than Hasa but this does not prove anything – if the island was res nullius maybe it can be argued that Bahrain has established sovereignty over it by erecting mark”\(^{138}\). While careful not to raise the status of Bain al Kabir, Britain then advised the Saudis that Bain al Saghir lay within the territorial waters of Bahrain. What followed was rather confused. Not only did the Saudi authorities dispute this assertion but the India Office suggested that Bain al Saghir may well lay closer to the Hasa coast than Bahrain.\(^{139}\) No wonder that the India Office soon concluded that more information was required about the precise location of the islands.\(^{140}\)

By the early summer of 1939, Political Resident Trenchard Fowle had arrived at the opinion that Bahrain still had a strong *prima facie* claim to the Libainat islands. For evidence had now been uncovered from 1909 pointing to the Ruler of Bahrain’s collection of taxes from boats collecting turtle shells there. Then there was the much more recent BAPCO act of emplacing national markers on the features.\(^{141}\) By this stage Saudi Arabia (or was it SOCAL [the Standard Oil Company of California], the kingdom’s mainland oil concessionaire?) had suggested a line delimiting respective spheres of influence for oil development running through the Libainat islands – a line that would largely anticipate the Bahraini-Saudi seabed boundary delimitation agreed two decades later in 1958.

This was how the Admiralty summarised the position later on in the year: “Saudi Arabia rests case on belief that islands are nearer Hasa coast – this is true (marginally) of the north island (Bird island on charts) but only true of the southern island (marked as El Ben es Seguira) if distances are measured from the mainland and Bahrain itself – in any case geographical claims now take second place now that evidence of 1909 has been uncovered supporting Bahrain claim. Would now be best to take up suggestion already made by the Saudis that the whole area should be divided for exploration by the oil companies – PA, Bahrain has suggested a line (supported by PRPG) touching east coast of

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\(^{137}\) Minutes dated November 1938 by the Military Branch, Admiralty in TNA file: *ADM 1/10510*

\(^{138}\) Despatch dated 20th December 1938 from Lacy Baggalay, Foreign Office to Gibson, India Office in TNA file: *ADM 1/10510*.

\(^{139}\) Despatch dated 4th January 1939 from Gibson, India Office to Baggalay, Foreign Office in TNA file: *ADM 1/10510*.

\(^{140}\) Despatch dated 9th May 1939 from RT Peel, India Office to TC Fowle, Political Resident in the Persian Gulf, Bushire in TNA file: *ADM 1/10510*.

\(^{141}\) Despatch dated 13th June 1939 from RT Peel to Baggalay in TNA file: *ADM 1/10510*.
Bain al Kabir leaving it to Saudi Arabia and touching the west coast of Bain an Saghir leaving it to Bahrain – this is satisfactory as a working arrangement.“ 142

The Admiralty had changed its tune rather pragmatically in a short space of time over pushing for maximum territorial rights over the features, almost certainly a result of two realisations. First, it was clear beyond doubt by now that BAPCO was going to get the concession covering the Unallotted Zone (Additional Area) so there would be no clash of Anglo-American oil companies involved with the Bahraini award – essentially it was American-American. Second, there was no way that these sandy little features could be effectively occupied. In fact, the Admiralty now developed its own amendment of the proposal under discussion whereby both Saudi Arabia and Bahrain would renounce sovereign claims to the islands in question but accept that the line suggested by Weightman and the British Gulf authorities to serve as the effective limits for the operative spheres of influence for SOCAL and BAPCO, true to the basis of the original Saudi proposal.

This logic won the day. As the Foreign Office surmised:

“Initially we were inclined to think we could claim the islands for Bahrain and not attempt to draw line so as to divide them between Saudi Arabia and Bahrain – there is no rule of international law which would prescribe how the suggested line should be drawn. Expediency tells us, however, that it would be most useful to reach agreement whereby neither Saudi Arabia nor Bahrain would claim interests east or west of a certain line – in order to avoid disputes between the oil co.s we will therefore instruct our Legation in Jeddah to inform the Saudi Govt. that while we consider Bahrain to have prescriptive rights to the islands we would be interested to learn, without prejudice to the question of ownership, what the Saudi proposal that a line be drawn between Bahrain and the mainland entails”. 143

So this is where we got to by the time the Additional Area concession was awarded in June 1940. The Ruler of Bahrain (with BAPCO and Belgrave) wasn’t happy with discounting sovereign claims to Bain al Saghir and Bain al Kabir but, in a formal sense, didn’t have to because of Article One’s creative wording surrounding the ‘future dominions’ of the Ruler. Britain was keen that this was a dispute that should not develop seriously with Saudi Arabia144, so it was more than happy to see the commercially-driven compromise proceed. As the India Office surmised: “Political authorities now share view that the islands should be regarded as being incapable of effective occupation and use – this simplifies the task of dividing into Saudi and Bahraini spheres of influence”. 145

142 Minutes by Jarrett, Edgell and Wallworth, Military Branch, Admiralty in TNA file: ADM 1/10150.
143 Despatch from Eyres, Foreign Office to Peel, India Office in TNA file: ADM 1/10510.
144 Telegram dated 24th November 1939 from Foreign Office to Bullard in Jeddah in TNA file: ADM 1/10510.
145 Despatch dated 20th January 1940 from Peel, India Office to Jarrett, Admiralty in TNA file: ADM 1/10510.
4.3) Arguments of the Kuwait Oil Company that their mainland concession effectively allowed them to prospect in areas of the seabed beyond territorial waters, also 1939

It is as well to underline that the full title of the concession awarded BAPCO during June 1940 by Bahrain to cover the Additional Area was the ‘Deed of Modification of the Lease of 29th December 1934’. While it was a fresh agreement covering maritime zones beyond territorial waters and an area (albeit an indeterminate one) beyond that defined in BAPCO’s original concession of December 1934, it was clearly and deliberately linked. While Bahrain was exceptional regionally in comprising a state territory composed of islands, all of this raised an issue that would rumble on for a good decade before its final resolution in the late 1940s – that is, the question of whether holding the mainland concessions for the states of the western Gulf littoral entitled the oil companies to any rights in maritime areas beyond territorial waters. It didn’t of course but that would not prevent the oil companies trying it on in a succession of court cases of the late 1940s before the rights of states to grant separate maritime concessions was established beyond doubt.

During the summer of 1939 the Kuwait Oil Company (KOC) was the first to rehearse such an argument, claiming to be surprised after the Ruler’s office had forwarded a map section from an Admiralty chart a new offshore concession area beyond the shaikhdom’s territorial waters over which it was prepared to offer KOC first refusal as the existing mainland concessionaire. Naively, certainly mischievously and, very likely, disingenuously, the company tried to argue that their original agreement already conferred such rights. “As you are aware, the Company’s Concession agreement gives it the exclusive right to explore, search and drill for, produce at will within the State of Kuwait, including all islands and territorial waters appertaining thereto. The phrase ‘territorial waters’ was deemed to include all submarine areas over which His Highness has authority in any form, and, therefore, all areas over which His Highness could grant rights to any party. The intention, therefore of the concessionary provision... was to give the Company the above exclusive right over all areas which lay within the gift of His
Highness” (see figure n).146

Figure o: Kuwait Oil Company claims for rights to Kuwaiti maritime areas beyond territorial waters, July 1939 from TNA file: FO 371/23183. Reproduced in Richard Schofield ed., 1990, Islands and maritime boundaries of the Gulf (vol. 11, p: 384), Archive Editions

Mindful of recent developments further down the coast in Bahrain, experienced old Arabian oil-hand, New Zealander Frank Holmes – who had secured the first Hasa oil concession as an independent in the early 1920s but who now worked for the Ruler of Kuwait, now tried to politely correct the KOC’s apprehensions as follows:

“The area which I pointed out on the Chart mentioned above does not include any portion of the ‘Territorial Waters’ of either the mainland or the islands

146 Despatch dated 6th July 1939 from HT Kemp, Kuwait Oil Company to Major F Holmes, Millhill in TNA file: FO 371/23183.
belonging to the State of Kuwait. The whole of this area is situated outside the
limit of 3.45 statute miles (3 nautical miles) from high water mark which distance
is the internationally recognised limit of ‘Territorial Waters’. In other words the
area under discussion is ‘International Waters’ and His Highness is fully aware that
such is the status of the area.

His Highness has made no move, either officially or otherwise in respect of the
area in question, except to make a private enquiry, through me, from your
company as to whether your Board would be interested in such an area.

The position in respect of ‘International Waters’ situated opposite to territory
adjacent to the Arabian Coast – but excluding that opposite Kuwait – has changed
considerably of recent months, I understand that a large area, the greater portion
of which is International waters, has been offered to an American oil company by
His Highness the Shaikh of Bahrain.

This action in respect of ‘International Waters’ may draw the attention of other
Rulers along the Arabian coast and naturally they may wish to protect, as far as
possible, oil rights over international waters lying adjacent to their respective
territories and may possibly do so on the same lines as Bahrain”. 147

Passing the buck somewhat, the Foreign and India Offices advised that a definitive ruling
on such issues would have to await a conclusion to the Second World War. While they
must have known that the KOC was trying it on with its attempt to redefine territorial
waters, they had a point about there not yet existing any mechanism in international law
by which jurisdiction of the state could be extended beyond these limits. That was
unless Kuwait went down the route Bahrain and BAPCO had been advised to follow with
Article One of their Additional Area concession: “[t]he Shaikh cannot grant any exclusive
rights over anything outside his territorial waters. But if the phrase ‘submerged land
belonging to the Shaikh’ were used in the concession, the effect would be that the
company would have the right to exploit immediately submerged land in territorial
waters and submerged land outside the three mile limit as soon as they had appropriated
it by sinking shafts”.” 148

The issue touched upon other underdeveloped areas of international law, for instance
the question of whether Kuwait Bay might be regarded as a territorial inlet – in which
case its waters might be covered by the original KOC mainland oil concession. While the
British Government passed the opinion that it was probably safe to regard it as such
during 1939, they were far less certain the following year. “It is... to be hoped that, if ever
the question arises, the necessary evidence of long-established exercise of jurisdiction
will be forthcoming, since otherwise hardly any of Koweit Bay... could be regarded as
Koweit waters at all”.” 149

147 Despatch dated 10th July 1939 from Holmes to Kemp in TNA file: FO 371/23183.
148 Despatch dated 2nd August 1939 from RT Peel, India Office in TNA file: FO 371/23183.
149 Despatch dated 2nd August 1939 from RT Peel, India Office in TNA file: FO 371/23183.
5. Adjusting to the developing rules of the game for a sovereign maritime order: the Wild West of the 1950s

The previous section highlighted how early consideration of the potentialities of oil began to occasion how the offshore political geography of resource-rich areas might be approached and defined. Following the issue of the Truman proclamation during September 1945, the post-WW2 era witnessed the efforts of states to translate and contextualise particularist concerns - the complex geographies and histories of potentially resource-rich regions - within the emerging, universalist rules of the game regulating exploitation of resources and the definition of insular formations. This was all set against an urgent clamour from the international oil companies for definitional clarity and operational security. There was always the potential for inconsistency in practice and also for opportunism and pragmatism and this would transpire, as we shall witness.

We will therefore review Britain’s treatment of three important issues in this connection from the mid-1950s to early 1960s: 1) consideration of the entitlement to maritime jurisdictional zones of artificial islands and the status of low-tide elevations, culminating in Britain’s decision to ‘occupy’ the Mouchoir and Silver banks during June/July 1954; 2) consideration of how sovereign claims to once strategically-valued rocks as islands should be bolstered in law with a review of legislation concerning Rockall during the mid-1950s, and, finally; 3) consideration of features whose previously-recognised ownership status provided problems for the issue of offshore oil concessions, explaining a possible reversion of Britain’s opinion that Halul island belonged not to the Trucial Coast but to Qatar in the early 1960s.

5.1) Consideration of the entitlement to maritime jurisdictional zones of artificial islands, culminating in Britain’s decision to ‘occupy’ low tide elevations in the Caribbean in 1954

It had been the recommendation of the International Law Commission in the early 1950s that artificial islands should carry only a ‘safety zone’ for safe and expeditious landings, rather than territorial waters – the essential origins of the position under international law of such features today. After a series of interdepartmental meetings, the British government decided to support the ILC proposal in February 1952.\(^{150}\)

At the beginning of 1951, the Foreign Office had been keen to obtain the Admiralty’s agreement to negotiations being opened for the political division of the Persian Gulf seabed on the basis that rubble mounds and artificial islands qualified for territorial waters. Conversely, the Admiralty argued against this line, except where such features had become ‘naturalised’ or, perhaps more predictably, where their purpose from the beginning had explicitly related to defence concerns.

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\(^{150}\) For their record, see the correspondence contained within the TNA file: ADM 1/21890, Artificial islands, 1950-1951.
Admiralty Hydrographer Day asked himself the following two questions in January 1951. Firstly, should any artificial islands carry their own territorial waters? Secondly, should any account be taken of artificial islands in the delimitation of the continental shelf? As regards the first question, the following points were itemised:

“Admiralty policy to restrict territorial waters so to keep the High Seas as extensive as possible – therefore no artificial island should normally be allowed territorial waters

No nation should have the right in any circumstance to impound any area of the High Sea as their own territorial waters (case is different for islands formed by silt and volcanic action: these are open to acquisition and carry their own territorial waters

Artificial islands should not carry territorial waters except possibly those built for defence purposes

The question of permanency of artificial islands should not be taken into consideration

Artificial islands may over the years become natural – if so, they should carry territorial waters

Conclusion therefore that artificial islands, including lighthouses and other navigational aids, and with the possible exception of defence structures, should not possess territorial waters”.

As far as the second question was concerned, Day continued as follows:

“This should not be taken into account at all as it would contravene the principle of equity upon which the continental shelf doctrine is based – if artificial islands constructed by the oil companies were to carry weight in the division of the continental shelf then the advantage in the acquired area would go to that country first making explorations near the possible limit – totally unsatisfactory!”

However, the Admiralty’s Military Branch had been assisting the Foreign Office in making provisional estimations for any division of the Persian Gulf seabed post- Truman proclamation and it was their turn to argue for a regional mediation of the wholesale application of such principles. As Broughton minuted during March:

“…we must exclude temporary pile structures, walls around wells but there are many forms of artificial islands in the Gulf built upon coral, which have a close assimilation to small, natural islands.

151 Admiralty minutes by Day, 6th January 1951 in TNA file: ADM 1/21890.
152 Ibid.
We have taken the line that artificial islands should not qualify in principle for territorial waters – our general strategic policy that territorial waters be kept as narrow as possible. But in the Gulf our economic interests appear to be well-served by allowing territorial waters to certain so-called artificial islands – FO are anxious to obtain our agreement being opened for division of the seabed on the basis that rubble mounds qualify for territorial waters – on such a basis with respect to the rubble mound that constitutes Fasht al Jarim, the line dividing the seabed between Bahrain and Saudi Arabia would be thrown over to the Saudi side”.  

So Broughton continued to suggest a hierarchy of conditions that any artificial island should satisfy before qualifying for territorial waters. Firstly, the feature in question should be “…of the nature of territory, solid through and through and not built up on steel girders or the like”. Secondly, it should display an appreciable surface area above the sea – though the extent was left unspecified. Thirdly, it should be reasonably permanent, with a suggestion that the condition should have lasted for at least 10 years. Finally, it was suggested that “…the party claiming territorial waters for artificial islands must exercise sovereignty over it”.

The status of Fasht al-Dibal, one of the two shoal features recognised as Bahraini with territorial waters on a Qatari seabed in the 1947 award Britain had issued for a maritime boundary between the two shaikhdoms, figured prominently in this thinking – with suggestions that a neutral academic lawyer might be approached to make a recommendation with the above 4 criteria in mind. Yet to proceed with such a course might prove injurious should the advice be to proceed with a course that contradicted the line Britain was taking in its negotiations with Saudi Arabia. BAPCO had made Fasht al Dibal into an artificial island in the late 1930s and Fasht al Jarim (on the other side of Bahrain) at the same time.

Another reality arguing for the application of this definitional hierarchy was that there were already important artificial islands in existence that possessed territorial waters, including – perhaps most famously – Eddystone Rock: “…an artificial structure built on an elevation of seabed not always above high water which carries territorial waters and has sovereignty exercised over it – it should be admitted with this precedent that there is nothing inherently impossible in an artificial island carrying territorial waters – it is not in conformity with pure naval policy to admit the principle but it is thought in these days our economic interests in this limited connection are paramount”.

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154 Ibid.
155 Ibid.
156 An award that would be rejected by both states: Bahrain on the basis that it claimed by right all of the waters and insular features west of the Qatar peninsula and Qatar on the basis that it confirmed Britain’s earlier (1939) award of the Hawar group to Bahrain. See Schofield (1994) “Borders and territoriality…” in Schofield [ed.] op.cit., p: ???
157 Minute by Broughton, op.cit.
The debate continued between the Admiralty and the Foreign Office throughout 1951 as an attempt was made to reconcile applicable legal principles with the pragmatics of regional economic development. By the spring, the Admiralty had seemingly concluded that economic rather than naval criteria were driving considerations, that artificial islands should not carry territorial waters (except where they had been constructed purely for the purposes of defence) and that the 4-fold test scheme was thereby redundant.\(^\text{158}\) Yet, by the autumn, it was equivocating on this position. Its Military Branch, that had been notably pragmatic in plotting the possible future division of Gulf waters, would argue that the Department needed to move more with the times: “(We are) anxious that some progress be made in the question of delimiting the seabed in the Gulf – in order to do this we need to admit the principle that some artificial islands carry territorial waters – we feel that in these days, when the exploitation of the seabed is so important, we must take into account new developments and mould our traditional policy to them, safeguarding as much as we can”\(^\text{159}\).

It was realised that to argue that artificial islands should not possess territorial waters but then to say, for instance, that Fasht al Dibal should constitute an exception – as had been done earlier in the year, was far from satisfactory. Hopkins had surmised back in the spring that here “an exception can be made... provided that it is recorded that this must not be considered as a precedent – all future cases must be decided on their own merits”\(^\text{160}\). Yet to argue that certain artificial islands should be allowed to carry territorial waters for the express purpose of delimiting the seabed – basically those that passed the outlined the 4-fold hierarchical definitional test, would only raise similar objections.

“(It) may be difficult to uphold that territorial waters should be given to artificial islands for one specific purpose and not for another. Here, we are mainly concerned with artificial islands in their relationship to the sub-division between states of the seabed in the Gulf – structures have been built essentially for the exploitation of oil – it may prove practicable to use a national form of territorial waters around them solely for the purpose of this division”\(^\text{161}\).

An Admiralty minute of 28\(^\text{th}\) February 1952 seemingly recorded the closure of this conversation, recording that the ILC’s safety zone proposal was supported – a position over which interdepartmental concurrence had now been reached - and that “...artificial islands should not have territorial waters”\(^\text{162}\).

Yet, by the end of the very next year, a complex set of questions were being mulled over by the same departments as Britain considered how it might best extend sovereignty for Jamaica over the Mouchoir and Silver Banks (see figure p) – features that had historically

\(^{158}\) Admittedly, by this stage, the ILC’s ‘safety cone’ proposal was winning a lot of support internationally, and particularly favoured by the US government. See minutes by Hopkins dated 2\(^\text{nd}\) April 1951 in TNA file: ADM 1/21890.

\(^{159}\) Admiralty minute dated 21\(^\text{st}\) July 1951 by Hanna (Military Branch) in TNA file: ADM 1/21890.

\(^{160}\) Minute by Hopkins, op.cit.

\(^{161}\) Admiralty minute dated 24\(^\text{th}\) September 1951 by Day (Hydrographer) in TNA file: ADM 1/21890.

\(^{162}\) Admiralty minute dated 28\(^\text{th}\) February 1952 by Hanna (Military Branch) in TNA file: ADM 1/21890.
been regarded as low-tide elevations - in the context of exploring for offshore hydrocarbons.\textsuperscript{163}

Figure p: Map showing location of the Mouchoir and Silver banks, Donzi Yachts by Roscioli website: http://www.donziyachts.com/article.php?file=1000_miles

Again, as with BAPCO in the late 1930s, a conspicuously active American oil company (on this occasion the Bahama California Oil Company, a subsidiary of Gulf Oil) sought to push the agenda and – at least in this instance – Britain seemingly used BAPCO's actions of that period in physically ‘occupying’ low-tide elevations as a precedent for actions taken nearly two decades later.

If it was found that the Mouchoir and Silver Banks lay above high water, it was thought that sovereignty could be extended over them. Conversely, as the Colonial Office commented during December 1953: “[o]ne cannot in these days claim sovereignty over a bank under the sea on which there is no land permanently above water and which is separated, as are the Mouchoir and Silver Banks, from the continental shelf of the Turks and Caicos Islands proper by passages more than 100 fathoms deep,...”\textsuperscript{164} But that’s just

\textsuperscript{163} For the relevant primary record here, see the materials contained within the following TNA file: ADM 1/24834, Oil exploration in the Turks and Caicos islands: query as to extent of continental shelf.

\textsuperscript{164} Despatch dated 10\textsuperscript{th} December 1953 from Burt, Colonial Office to RC Shawyer, Admiralty in the TNA file: ADM 1/24834.
what Britain would end up doing during the summer of 1954. Let’s now look at how this extraordinary episode unfolded in a little more detail.

By British colonial legislation passed at the three-quarter point of the nineteenth century, “all banks and cays, situate, lying and being to the east of the [said] Turks and Caicos islands” (i.e., the general area of the banks in question) were separated from the Bahamas and placed under the control of Jamaica. Then, during 1948, three years on from the September 1945 Truman proclamation, Jamaica (like all British colonies) issued its own equivalent legislation to establish in law the basis by which it was extending jurisdiction over the resources of the continental shelf. Under the Jamaica (Alteration of Boundaries) Order in Council no. 2575, the boundaries of the Colony of Jamaica were thereby extended to include areas of the continental shelf which lay beneath the sea contiguous to the coasts of Jamaica, including the coastlines of its dependencies such as the Turks and Caicos Islands and the Cayman Islands. This was the basis, therefore, upon which the D’Arcy Exploration Company Limited and the Bahama California Oil Company Limited each applied for oil exploration rights in the Turks and Caicos islands and surrounding seabed areas in 1953.

The maps and notes accompanying the oil company applications left little doubt that they coveted access to the seabed areas surrounding the Mouchoir and Silver banks. As the quote above makes clear, the Colonial Office considered that extending sovereign claims over these features would be problematic if they proved to be low-tide elevations. This was quickly recognised by Burt, who commented: “[a]re there rocks or banks in these two areas which are permanently above water?” If there were, it was considered that there would be no objections to including the reefs in the concession areas being offered to the oil companies. The obvious reality here, though, was that it was simply not known whether any rocks did protrude here permanently at high tide – yet the oil companies were pressing for quick results. In similar circumstances of geographical uncertainty, the British Government had defined the territorial parameters of concession agreements rather imaginatively, if not ingeniously. We have already covered BAPCO’s 1940 Additional Area Bahrain concession with its specification of that shaikhdom’s ‘future dominions’ (see section 4.1). This innovative Bahrain precedent had proved influential, as seen with the relevant clauses in the British Honduras oil exploration license granted by Britain during 1949 to the same Bahama California Exploration Company that was now hankering after rights to Turks and Caicos. For the area of the British Honduras concession was worded as follows: “the entire colony of British Honduras and its territorial waters including the continental shelf adjacent thereto and its islands, reefs, shoals, atolls, cays... and other islands, reefs, cays and atolls which are now or may at

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165 I recall the huge surprise of the late academic lawyer, New Zealander Geoffrey Marston, on checking through the documentation of this development back at the National Archives (or the Public Record Office as it then was), after I had pointed it out in the early 1990s.

166 Despatch dated 10th December 1953 from Burt, Colonial Office to RC Shawyer, Admiralty in the TNA file: ADM 1/24834

167 Rights could theoretically have been established had inhabitants of the Turks and Caicos islands consistently and exclusively used the banks for sedentary fishing purposes over a long period but there was little suggestion this was or could have been the case.
some future time become subject to the dominion of the Colony of British Honduras”. In a situation where the oil companies were pushing hard for the award of their licence and the Jamaican Government were only too eager to grant it, the Colonial Office didn’t want to wait an inordinate length of time long to confirm the insular status of the Mouchoir and Silver banks. In these circumstances they seemed initially disposed to follow the Bahrain and British Honduras precedents. As Burt suggested during December 1953: “[a] similar form of wording might be used in any similar licence granted for the Turks and Caicos islands”.168

By early 1954, the Hydrographic Department had collected together its existing information on the banks, all of which was pronouncedly historical in nature. As the Hydrographer Commander Kennedy surmised:

“There is no recent information in the Hydrographic Department, Admiralty concerning the Mouchoir and Silver banks. The sole authority on these banks on British charts is a survey by Commander Richard Owen in HMS Blossom in 1830. American charts follow the British detail here.

The actual wording of the original charts against the rocks on the Mouchoir bank is ‘Clusters of rocks nearly even with the water’s edge’ and against those on the Silver Bank is ‘Clusters of rocks even with the water’s edge’.

No mention is made as to whether the ‘water’s edge’ was at high or low water, but by common practice should be accepted as at low water. The range of the tide here is approximately 2 and a half feet only. No rock was charted on either bank in 1830 as permanently above water, nor are there any charted now”.170

Information contained within the latest (1946) edition of the Admiralty’s West Indies Pilot offered nothing further really. So Kennedy concluded his short memorandum with the assessment that, should Mouchoir and Silver be confirmed as low tide elevations, “it would seem that according to present United Kingdom policy these banks are res nullius”.171 He cautioned strongly that the Governor of Jamaica, Sir Hugh Foot, needed not only to ascertain the precise insular status of the banks but to be very sure of the provenance of any such assessment – so that Britain could not be later accused of trying it on: “It is recommended that such information be obtained from a reliable source rather than an oil company and that the results be made available to the Hydrographic Department, Admiralty so that charts may be amended if necessary, ensuring that the world at large will understand that a precedent is not being created”.172

168 It seems likely that the Bahama California Oil Company was already actively exploring in the vicinity of the banks by early 1954 in the clear expectancy that the concession would be granted to it by the Governor of Jamaica.
169 Despatch dated 10th December 1953 from Burt, Colonial Office to RC Shawyer, Admiralty in TNA file: ADM 1/24834.
170 Comments of Commander Kennedy, Hydrographic Department – “Continental shelves of Caicos Islands, Turks Islands and Silver Bank”, January 1954 in TNA file: ADM 1/24834.
171 Ibid.
172 Ibid.
It was Kennedy’s thought that the Mouchoir and Silver Banks might be res nullius that fixed British minds and altered the course of this bizarre episode. Admittedly, the Admiralty’s Military Branch would remain a little more circumspect when suggesting that such an opinion could only be provisional – “Commander Kennedy has only recently started a piece of research... until this investigation is completed, it would seem to me a mistake for us to take any step which might prejudice our attitude....” However, the dangers of a res nullius finding quickly mobilised Foreign Office thinking: “In fact, the effect of a finding of res nullius would be that the oil company would be automatically entitled to continue exploiting the banks. The danger then would be that by doing this they would lay a foundation to a claim by the United States Government”.174

Suitably energised, the Foreign Office mulled over the possibilities for arguing the exercise of Jamaican sovereignty over the features. It first asked whether the banks, while separated from the Jamaican Continental Shelf proper (or, to be more accurate, the shelf area surrounding the Turks and Caicos islands) were sufficiently proximate to be counted part of it. While there was apparently some support for such arguments in the recent writings of Eliyahu Lauterpacht, the dangers of taking such a line (and supporting arguments based upon geographic propinquity or contiguity) were soon recognised as outweighing any advantages it might present in the current contingency:

“...This course might however prove objectionable if it appeared that by adopting the principle of including separate banks in the continental shelf proper we should be logically bound to concede to other States areas which are or might be otherwise considered subject to British sovereignty; and in the particular case of the Mouchoir and Silver Banks, the adoption of this principle would mean that the Dominican Republic could lay claim to the Silver Bank which is much closer to the Dominican coast than to the Turks and Caicos islands. Thus on any fair division of the banks, we should lose the Silver bank”.175

So another more obviously particularist course of action was recommended by the Foreign Office.

“It would appear therefore better to follow an alternative course, and if these banks do not prove eventually to be within Jamaican jurisdiction as part of the Jamaican continental shelf, for Her Majesty’s Government acting through the Government of Jamaica, to make a special and independent claim to them and in effect, to “occupy” them. There is apparently nothing to prevent any country from appropriating the actual bed of the sea in any part of the world outside the jurisdiction of another State, provided it can do so in an effective manner. It might be undesirable to do this in the case of sea-bed situated just outside the territorial waters of another country and potentially part of its shelf – but that

172 Despatch dated 12th March 1954 from HL Lawrence Wilson, Military Branch, Admiralty to Burt (CO) and Peck (FO) in TNA file: ADM 1/24834.
175 Ibid.
does not arise here. Indeed in, in this case ‘occupation’ would be warranted, partly because even though the Banks may not be part of the actual continental shelf of Jamaica, they would be very close to it, and partly because, if they are only just submerged, it might be possible to place on them some physical marks which could constitute actual and not merely notional occupation”. 176

By the end of April, a consensus in support of occupation had quickly emerged within the British government. Crucial in this thinking was the reality that an American oil company was already there on the banks. Was nothing to be done to counter, as the Hydrographer would once again underline, “…it would have the effect of leaving an American oil company in occupation of certain areas of the seabed and thus establish an American claim to them”. 177 Or so was the perceived danger. Meanwhile, the Colonial Office’s legal advisers had concluded that the explicit references to ‘banks and cays’ to the eastward of the Turks and Caicos islands in formal colonial legislation of 1873 was “probably to be construed as meaning all banks and cays above water”. 178 The clear implication was therefore that “the Banks are not part of the Turks and Caicos Islands and no legislation of Jamaica or of those islands or any licence issued thereunder can apply to the Banks. They would therefore have to be formally annexed, probably by Order in Council under the Colonial Boundaries Act”. 179

There would be further interdepartmental consultations on the most suitable and practicable mode of occupation. No-one wanted this task left solely to an American oil company through the action of erecting a drilling rig or the like. While it would now be argued that the Bahama California Oil Company’s act of applying for a concession was, by extension, recognition of Jamaica’s rights in the area (while signifying no American claim of any description), the view had clearly emerged that the Governor of Jamaica should take some deliberate, physical act to establish occupation. 180

The Foreign Office had suggested that the following course of action be taken during late April 1954:

... assuming there are no dry rocks on the banks, the following action should be taken:

i) The banks should be occupied, e.g., by placing flagged buoys over them, and this occupation should be accompanied by a formal annexation by Order in Council under the Colonial Boundaries Act.

ii) An exploration licence should be issued without an escape clause (which can only weaken our position)

It is probably not strictly necessary for annexation to take place before the licence is granted, since the Order in Council can be regarded merely as a formal

176 Ibid.
177 Handwritten minute dated 28th March 1954 by Commander Kennedy in TNA file: ADM 1/24834.
178 Despatch dated 28th April from Burt to Peck in TNA file: ADM 1/24834.
179 Ibid.
180 Ibid.
confirmation of existing sovereignty, but occupation should certainly take place as soon as possible and before The Hague Court delivers its judgement in the Australian-Japanese case. If the Australians win the Court’s decision may, unless based on arguments which apply only to the case in point and have no general application, rule out Jamaica’s claim to the Silver Bank under international law, unless the bank has already been occupied…. In these circumstances the Dominican Republic could probably lay claim to the Silver Bank in the light of the Court’s decision, or alternatively the United States Government would have grounds for claiming the bank by virtue of its occupation by a United States company”.  

This recommendation would be relayed as an instruction from the Secretary of State for the Colonies to the Government of Jamaica a month later: “Even if dry rocks exist the banks should be occupied e.g., by placing flagged buoys over them, in order to support our claim to sovereignty”. Things hadn’t moved as quickly as Whitehall might have liked in ascertaining the insular status of the banks, with the Jamaican authorities claiming a lack of resources and facilities.

So the task of ‘occupation’ was left to the British Navy’s Commander in Chief, America and West Indies Station, one that was accomplished by the end of June – as reported in the following telegram:

“Flagged buoys have been placed on Mouchoir and Silver Banks by the captain of 
HMS Vidal, who does not consider that there are any rocks above high water on 
either bank, but an area on both is awash at low water”. 

HMS Vidal’s record of the operation provides a little more detail. On the Mouchoir Bank, a 30 foot bamboo carrying the Union Jack and Jamaican colours was anchored in a freshly emplaced concrete block. On the Silver Bank, another 30 foot bamboo with the same flag arrangement was sunk in an oil drum bearing the inscription HMS VIDAL 1954.

Despite these actions of HMS Vidal during the summer of 1954, international law would soon move in a manner that meant the British (of Jamaican) claim to the Silver Bank could not be realistically maintained. A quick glance at any contemporary map will confirm that the feature (along with Navidad Bank to its south-east) falls within the EEZ of the Dominican Republic and is claimed by that state. Inspection of the map also goes a long way towards explaining why the Jamaican colonial government failed to undertake that survey of insular status back in 1954 as urgently as the Colonial Office might have wished for. The banks really were rather remote from Kingston with the large islands of Cuba and Hispaniola obviously lying much closer. The whole episode needed again to be

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182 Telegram dated 26th May 1954 from the Secretary of State for the Colonies to Jamaica in TNA file: ADM 1/24834.
183 Telegram dated 31st May 1954 from the Acting Governor, Jamaica to the Secretary of State for the Colonies in TNA file: ADM 1/24834.
184 Telegram dated 8th July 1954 from the Acting Governor, Jamaica to the Secretary of State for the Colonies in TNA file: ADM 1/24834.
seen in the context of the messy, non-linear and, in practical terms, largely inoperable colonial geography in the Caribbean. The Turks and Caicos islands would not survive the 1950s as a Jamaican dependency, being designated a separate colony in July 1959 – though the Governor of Jamaica would continue also as governor of the islands until Jamaican independence 3 years later in August 1962. The Turks and Caicos were now recast as a British Crown colony while from 1965 onwards, the British Governor of the Bahamas would also serve as governor of the islands, just like his Jamaican counterpart had done previously. When the Bahamas achieved their independence in 1973, the Turks and Caicos were redesignated yet again as a separate, autonomous British Overseas Territory (BOT), with their own dedicated Governor. Despite recurring suggestions that Canada has a say in their administration, the Turks and Caicos remain a BOT today, with the Mouchoir Bank lying within the EEZ claimed by (or for) the islands.\footnote{http://en.wikipedia.org/wiki/Turks_%26_Caicos.}

5.2) Consideration of how sovereign claims to rocks as islands should be bolstered in law with a review of legislation concerning Rockall during the mid-1950s

The detailed record of Britain’s claim to this remote Atlantic rock (see figure a) – “there can be no place more desolate, despairing and awful” as Lord Kennet commented in 1971 - is now well known and requires no great elaboration here. Britain’s decision to annex the feature in the 1955, ostensibly its last act of imperial territorial expansion, evidently related more to questions of Cold War security than it did any overt attempt to capture offshore resources but public commentators remained sceptical. Incredibly, the same ship that had been used to occupy the low tide elevations that were the Mouchoir and Silver banks during June 1954 was now used in the annexation of Rockall – from a tropical hurricane zone to the rather more foreboding NE Atlantic in the space of a year! Those celebrated satirical song-smiths Michael Flanders and Donald Swann would immediately and amusingly deride Britain’s act in annexing Rockall – for what else other than the potentiality for oil or fisheries would explain anyone taking such an action?\footnote{http://en.wikipedia.org/wiki/Rockall.}

Three decades later, Greenpeace activists would occupy the feature – christening it the Republic of Waveland during 1984-1985 to protest the greedy excesses of the major international oil companies - while Guardian cartoonist Steve Bell suggested that it might be more suited to annexation by penguins than humans.
Once the decision had been taken by Britain to actively claim sovereignty over Rockall as an island and then substantiate this with an physical act of occupation – contentious enough given the feature’s size, appearance and location, most of the remaining legal questions surrounded the steps that would need to be taken to distinguish and define the feature as part of the United Kingdom, as opposed to just another colonial possession. Eventually, Britain would need to pass its Rockall Act of 1972 to try and make clear its administration as part and parcel of the United Kingdom.  

The decision was made to annex Rockall by the British government on 21st July 1955, allegedly for a specific security reason. As the relevant Cabinet record reads:

“On July 21 the Cabinet decided that the Foreign Secretary, in consultation with the other Ministers concerned, should settle what steps, such as a proclamation of British sovereignty, should be taken to ensure that the Island of Rockall was not used by a foreign power to observe firing on the new guided weapons training range in the Hebrides.

It has now been agreed on the official level between the Foreign Office, Admiralty and Ministry of Defence that the proper course to adopt is to proclaim British sovereignty over the Island and that in order to make this act as formal as possible, it should be carried out by means of Queen’s Instructions to the

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Commander of the vessel which the Admiralty propose to send for this purpose”. 190

Things then moved rather quickly since it was considered that the likely deteriorating weather conditions from early autumn onwards would render any physical act of possession increasingly difficult and risky. The Warrant for the Annexation of Rockall read as follows:

“When Our Ship Vidal is in all respects ready for sea and all necessary personnel has embarked, you are to leave Londonderry on the Fourteenth of September, One Thousand Nine hundred and Fifty-five, or at the earliest date thereafter.

On arrival at Rockall you will effect a landing and hoist the Union Flag at whatever spot appears to you most suitable or practicable, and you will then take possession of the Island on Our behalf. You will keep a record of your proceedings...

When the landing has been effected and the flag hoisted you should cement a commemorative plaque to the rock as follows: ‘By authority of Her Majesty Queen Elizabeth the Second, by the Grace of God of the United Kingdom of Great Britain and Northern Ireland and of Her Other Realms and Territories Queen, Head of the Commonwealth, Defender of the Faith etc. etc. etc., and in accordance with Her Majesty’s instructions dated the fourteenth day of September, One thousand, Nine hundred and Fifty-five, a landing was effected this day upon this Island of Rockall from HMS VIDAL. The Union Flag was hoisted and possession of the Island was taken in the name of Her Majesty”.

The actual act of possession, as planned, was taken four days later than originally envisaged on 18th September 1955. This was not before there had been quite a bit of interdepartmental soul-searching on the precise pretext for establishing sovereignty, with the Ministry of Defence suggesting that Rockall’s place in the scheme for a new training range for guided missiles needed to be made much more central and explicit – something along the lines of the following: “...it will be needed for navigation purposes both now and as the range is extended to cater for training with longer range missiles”. 191

Before 1955 Britain had never claimed Rockall in sovereign terms as such or contemplated its insular status in any serious manner - and there had been very little incentive to do so. British scientist James Fisher would comment a year later that Rockall was “[t]he most isolated small rock in the oceans of the world” and no wonder! Look at what the Hydrographer of the Admiralty had had to say about the geography and history of the feature back in May 1955:

190 Proclamation of British sovereignty over the island of Rockall dated 21st July 1955 in TNA file: CO 1026/140.
191 Draft warrant for the annexation of Rockall in TNA file: CO 1026/140.
193 Wikipedia, op.cit.
“Rockall is a small detached precipitous rock situated in Latitude 57 degrees 36 minutes North, Longitude 13 degrees 41 minutes West (approx.) and about 200 miles west-north-westward of Barra head in the Hebrides. Its base is about 83 feet in length and it rises to a height of about 70 feet. It lies towards the northern end of a bank about 60 miles long having depths of less than 100 fathoms. This dangerous and almost inaccessible rock lies well clear of the Atlantic shipping lanes but the surrounding bank is visited from time to time buy fishing vessels.

It is exposed to the full fury of the Atlantic gales when it is washed over, and to the continual swell. At a distance it has been reported to have the resemblance of ship under full sail with white topsails and dark lower canvas.

The summit is sharp pointed and forms a short ridge running from East to West, and is whitened by deposits from sea birds. The rock is the abode of myriads of sea fowl. It is bare of vegetation except for an orange coloured lichen which has been observed there. From the few specimens of the rock which have been obtained, it has been found to be composed of a granite formation of similar analysis to some found in southern Norway”.194

Of course, the feature was in no way habitable, though documented British naval contacts in modern times date back to the early nineteenth century with Captain Basil Hall’s landing of that year and the efforts of HMS Pike to fix the rock’s position for navigational purposes some two decades later. Two Faeroese fishermen brothers twice took on the physical challenge of scaling Rockall in the late 1880s, while British and French ships led small-scale geological research there during the early twentieth century.195

Britain’s annexation of Rockall during 1955 produced little in the way of official protests from the Republic of Ireland, Iceland and Denmark at the time – with the move characterised more by bemusement than anything else in their respective national media. As late as 1973, a year after Britain had fully incorporated the rock within the UK’s various national and local administrative structures with its Rockall Act, Irish politicians would admit that they were “not really concerned with the British claims to Rockall itself”.196

Neither Ireland nor Iceland nor Denmark claim the feature.

The situation would change in the mid-1970s, however, with the realisation that Britain could (and probably would) use the rock as a base-point when defining extended fishing zones around the United Kingdom. Sure enough, with the passing of its Fishery Limits Act of 1976, Britain declared and defined a 200 nautical miles Exclusive Fishing Zone that utilised Rockall in just such a manner. This obviously resulted in a far more extensive EFZ claim than had St. Kilda been used for this purpose – its second most westerly land territory. With the issue by the other regional states of similar legislation in the mid to late 1970s and Denmark and Iceland’s continental shelf declarations of 1985 – all of which

194 ‘Rockall: Historical Note by Hydrographer’, May 1955 in TNA file: CO 1026/140.
195 Ibid.
196 Quoted in Coutinho (2000), op.cit.
ignored Rockall, we were left with a massive overlap of jurisdictional claims in the North-East Atlantic. Britain’s neighbours would thus both consistently protest British policy towards Rockall and counter-designate. Irish governmental statements during the 1980s certainly hardened in tone: “...successive governments have rejected purported British sovereignty over the rock and the present government continues to reject this”.\(^\text{197}\) It was a situation reminiscent of East Asia today, with Japan’s continuing claims that Okinotori-Shima is capable of generating an Exclusive Economic Zone.

Various factors probably contributed to Britain formally retracting its use of Rockall as a base-point in defining its EFZ when formally acceding to the United Nations Convention on the Law of the Sea during the summer of 1997. This was a process and re-evaluation that had begun before Blair’s Labour government was voted in during the late Spring of 1997.\(^\text{198}\) Yet Blair’s enthusiasm for Britain taking a more active role and lead in international institutions and legal regimes almost certainly hastened the process – shown with the determination to more fully incorporate the European Convention of Human Rights and the EU Social Chapter. A desire, too, to usher in the Irish Peace process that would result in the Good Friday agreement of 1998 also explained the incentive to mend easily repairable fences with Dublin.

Maybe what had stung the British government most of all were the frequent charges that it was essentially trying things on with its extended EFZ claims and that it was, at best, excessively interpreting UNCLOS provisions. As an established maritime power, and now as an avowedly good internationalist one, it did not want to be bracketed with Italy and Vietnam (with their excessive base-line claims) and the likes – never mind the rest of those states that were forever dithering over the question of UNCLOS accession. Moreover, and more pragmatically, Britain’s use of Rockall in its 1976 EFZ definition had precluded progress on the finalisation of maritime boundary delimitation in the NE Atlantic. With its new nomination of St. Kilda as base-point, the overlap in maritime claims with Iceland disappeared, while Denmark and Britain were able to establish a maritime (continental shelf) delimitation between the Faroe Islands and the United Kingdom with their agreement of 1999.\(^\text{199}\)

In the next world, Flanders and Swann might occasionally wonder whether the British flag still flies on Rockall? Well, the plaque that was placed there on 18\(^\text{th}\) September 1955 to formally mark its occupation by Britain is still there, while it is presumably still regarded by Britain as an island possession possessing 12-mile territorial waters.

\(^\text{197}\) Ibid.
\(^\text{198}\) For instance, Former Minister of State at the FCO, Lady Chalker, had admitted on 5\(^\text{th}\) July 1996 that: “measuring British fishery limits from Rockall...is inconsistent with the Convention” (quoted in Coutinho [2000], op.cit.)
\(^\text{199}\) ‘Agreement between the Government of the Kingdom of Denmark together with the Home Government of the Faroe Islands, on the one hand, and the Government of the United Kingdom of Great Britain and Northern Ireland, on the other hand, relating to the Maritime Delimitation in the area between the Faroe Islands and the United Kingdom’, 18\(^\text{th}\) May 1999, reproduced in ‘Current Legal Developments’ section of the International Journal of Marine and Coastal Law, pp: 551.
5.3) **Consideration of features whose previously-recognised ownership status provided problems for the issue of offshore oil concessions (explaining a possible reversion of Britain’s opinion that Halul island belonged not to the Trucial Coast but to Qatar in the early 1960s)**

A neat map showing median line divisions for water boundaries between the states of the Persian Gulf was produced by Samuel Boggs, the Geographer of the United States Department of State during June 1948, nearly three years since the issue of the Truman Proclamation by which the United States had extended jurisdiction over the subsoil and seabed of its continental shelf. It would be published a full year before Saudi Arabia (under American advice) and Britain's protégés would issue similar legislation to establish the legal basis of extending state authority offshore beyond territorial waters. While the Boggs map would be the starting point for a series of Anglo-American consultations towards establishing workable maritime divisions, its clean-looking geometry (that was obviously very oil company-friendly) completely overlooked the rather messy historical geography of human movement, territorial attachments and the recognition that Britain had previously lent to these. The map’s original simplicity would be stripped away as complexity was embraced in the Anglo-US talks and the documented links between this sheikhdom and that insular formation were charted. From the outset, however, the neat geometries of the map had been offset to acknowledge Britain’s previous recognition of Hawar as a Bahraini sovereign feature but possibly also Halul as provisionally belonging to Abu Dhabi – though this is much less clear (see *figure r*). The significance of the latter will soon become apparent.

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201 See the original documentation in TNA file: DO 35/3068, *Persian Gulf oil: jurisdiction over the subsoil beneath the sea, 1948-1951*. 

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By late 1951 the Anglo-Saudi talks towards establishing a boundary delimitation between Bahrain and Saudi Arabia were proceeding on three associated levels: 1) discussion of the principles that would govern the settlement of disputes over island sovereignty; 2) consideration of which low-tide elevations (mainly shoals and reefs) should merit singular treatment, and, finally; 3) further consideration of the principles by which the seabed should be delimited.202 Whether considering Bahrain and Saudi Arabia or Gulf waters in a wider sense, there was an obvious need to balance the newly-declared legal basis of

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Boggs’ crystalline geometry with the essential messiness of regional geography, history and politics. Britain came up with a suggestion to move negotiations along with Saudi Arabia in talks of the late summer in London, suggesting that any future joint boundary commission should base its conclusions upon the following methodology:

“1) the evidence to be found in the previous history of the islands in of a claim on legal grounds to sovereignty over the islands: the use of the islands [e.g. for fishing and pearling] by the nationals of a state is to be regarded as evidence in favour of a claim to sovereignty to be taken into account with other evidence [if any] and to be conclusive if there is no other evidence.

2) islands for which there is no evidence to support a claim under 1) shall belong to the state in whose seabed area they lie”. 203

It should be clear by now that the task of mapping complex traditional claims and human contacts onto a chart drawn to conform with an emergent legal maritime order (one that was premised upon equitable geometries and geographical contiguity) was always going to be a tough one – while the pressures being applied by the international oil companies to arrive at a scheme (and fast!) were only raising the stakes. The last thing Britain wanted was more Hawars – awards that flew against the logic (and legal assumptions) of propinquity. So would there be any notable equivocation in its future decisions on island ownership and was there any evidence of backtracking?

Well, in the decade before its own internal arbitration awarded Halul island to Qatar in 1962, Britain certainly changed its opinion about the ownership of the feature. 204 Until the 1950s, the view that the feature probably belonged to Abu Dhabi had, if anything, hardened since the question of its ownership had first been raised the previous century. While the question had hitherto never seemed of great moment, the need to make rulings on the provisional (or safe operating) limits of seabed oil concessions recently granted by Qatar and Abu Dhabi necessitated some sort of ruling over sovereignty (see figure s).

203 Ibid.
Halul lay closer to Qatar and well within the provisional limits of the maritime concession issued initially to Superior (a Canadian company) at the turn of the decade – rights over which were subsequently acquired by Shell in 1952. Britain was weary with the persistence of Qatar’s dispute with Bahrain over Hawar on the other side of the peninsula. Here, Britain’s 1939 recognition that ownership lay with Bahrain (confirmed by a ruling of the International Court of Justice in 2001), greatly complicated the issue of oil concessions since the island group lay only a few miles off the west coast of the Qatar peninsula. There would have been an appreciation that any ultimate finding that Abu Dhabi held sovereign rights over Halul might have raised similar, if less acute, problems.
So, after Qatar had formulated detailed claims to Halul for the first time, Britain’s Political Resident, Bernard Burrows, instituted the first extensive Foreign Office review into the question of sovereignty in 1955 — the conclusion of which was that Qatar’s arguments could not be dismissed out of hand.\(^{205}\) As Britain pondered the possibilities for arbitration, it was evidently surprised by the strength of feeling engendered by the issue in Doha and Abu Dhabi, with each side refusing to present further evidence of ownership for a feature each regarded as indisputably theirs. In particular, there seemed little possibility of placating Shaikh Shakhbut, Ruler of Abu Dhabi. His insistence that sovereignty over Halul was indivisible from the shaikhdom’s claim to Umm Said and adjoining coastal areas of the Qatar peninsula suggested little room for compromise.\(^{206}\) In the autumn of 1958, Britain, reckoning it had insufficient information to make a decision, adopted a holding position: “...[while] nothing should be done for the time being, [we] should deal with the situation on the basis, which we shall not necessarily declare, that Halul is neutral”.\(^{207}\)

Yet when Shell struck commercial quantities of oil in the vicinity of Halul in 1960, neutrality was no longer an option. Britain opted for a highly ‘qualified’ form of arbitration, asking its former Political Agent in Bahrain, Charles Gault, and SOAS legal expert JN Anderson, to review all of the available evidence and suggest the basis of an award. There would have been some relief at their finding in 1962 that sovereignty should be vested in Qatar. Yet questions remained. For a start, neither ruler was provided by Britain with a copy of the final report following determination of the verdict - indeed, as of 2014 it remains unavailable to the public at the National Archives in Kew. Bizarrely, the draft version of the Anderson-Gault report that can be accessed is prefaced by the observation that its main conclusions are “gratifyingly decisive in favour of Abu Dhabi”. This author has been assured by a former Foreign Office official close to its production that there was no sudden *volte face* and that this was most likely a mistake or typing error. Yet Britain’s own admission at the time of its release that the arbitral report constituted less than “an outright award” hardly suggested that the issue was completely settled.\(^{208}\) Questions remain about the rigour of the FCO’s internal arbitration process in this instance – ones that will not easily disappear until the final, complete version of the 1962 Halul report is made available.

One conclusion that might be drawn from the Halul arbitration outcome was that Britain’s previous recognition that a shaikhdom’s proven, even exclusive, historical contacts with scattered localities and islands in the Gulf was no longer a guarantee that the consequent territorial claims would be protected. This was, of course, a reflection that territorialities change and the influence and control of rulers waxed and waned, especially in an area characterised so markedly by human mobility. However, it also

\(^{205}\) Ibid.

\(^{206}\) Foreign Office minute dated 20th August 1958 by CTE Ewart-Biggs in TNA file: *FO 371/132801*.

\(^{207}\) Despatch dated 8th September 1958 from DMH Riches, Foreign Office to CA Gault, Political Agent, Bahrain in TNA file: *FO 371/132801*.

underlined that continued British recognition of the non-linear and fragmented regional spatialities of old was no longer a realistic prospect now that a precise framework of state territory was required on land and sea for the tidy appropriation of natural resources. There were other illustrations of this. 209 Well into the 1950s Britain continued to lend significant support to the Ruler of Kuwait’s claim to the island of Arabi in the central reaches of the Gulf - on the basis that the claim was considered to be the strongest at a specific time in the past. Yet any glance at the map would have shown that this island and nearby Farsi lay right in the middle of any waters that Saudi Arabia and Iran would end up dividing between themselves (as indeed they did in their 1968 maritime boundary agreement) and that this was more an American than a British area of influence. Times had changed and were changing!

6. Island disputes as contemporary symbols of national and regional rivalries

This section concentrates on the discernible manner by which the conduct and articulation of island sovereignty disputes have recently symbolised political rivalries in East Asia and the Persian Gulf. It is postulated here that the status and conduct of Japan’s island disputes with its East Asian neighbours find explanation in the contending state nationalisms of the post-Cold war period and that these have been driven essentially at the civic level—quite notably in the Dok-do dispute which we examine in the first half of this section. Conversely, it will then be suggested that patterns of dispute articulation for the Lower Gulf islands during the 1990s were more related to regional (Arab-Persian) rivalries—whereby the dispute momentarily became the focus of such rivalry. This is a focus that has since blurred as conduct of the dispute has returned to the (more usual) bilateral plane between Abu Dhabi and Tehran.

6.1) Contending nationalisms, Dok-do and other East Asian island sovereignty disputes

This sub-section briefly reviews newly-emergent realms of the Dok-do dispute since the advent of democracy in South Korea, primarily after the work of Choi (2005). The historical, legal and technical particulars of this dispute have been extensively rehearsed in the last two decades and the current project does not aim to replicate their details here. The focus here is in tracing the essential driving forces in the conduct of the Dok-do dispute to the civic level. A similar phenomenon can, of course be discerned in Japan—not just in relation to Dok-do (referred to as Takeshima in Japan) but island territories that are currently disputed with Russia and China/Taiwan.

A few preparatory – if very general - comments ought to be made about post-Cold War East Asian geopolitics. The end of that era saw the lid taken off a box of long-simmering national disputes that had been officially repressed since the conclusion of the Second World War. It also marked the return to a fluidity in the conduct of bilateral, inter-state relations that hadn’t been seen in the region for a far longer period still. Instead of

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211 The title of my former PhD student Sung-Jae Choi’s 2005 doctorate was “The transformation of an island dispute: identifying the emergent realms of the Dok-do question”, Faculty of Law and Social Science, SOAS, University of London.
predictably conforming to well-known Cold War lines and positions, states now began (with the obvious exception of North Korea) to ally or compete with each other on an issue by issue basis – whether this was trade relations, fishing or even more specifically relevant issues of maritime jurisdiction, such as conformity to UNCLOS provisions.\(^{213}\) In this more fluid regional geopolitics, it was arguably Japan that needed to be a little more cautious and consistent in its conduct of the island sovereignty disputes it was confronted with to the north, west and south. Firstly – and very much coupled with the End of the Cold War, the advent of democracy in South Korea and greater (though mainly economic) liberalisation within China were always likely to create the conditions in which Tokyo’s neighbours would attempt to seek some sort of redress for Japan’s misplaced historical adventurism and cruel colonial subjugation during the early twentieth century. Secondly – how Japan acted in one dispute was always going to be eagerly noted by its other East Asian neighbours. Any softening or hardening of its position in, say, the Dok-do dispute might well have implications for its other island disputes with Russia or China.\(^{214}\)

But let’s now turn to the manner in which the conduct of the Dok-do dispute quickly transformed as the 1980s progressed. Partially to address the controversy caused by publication of regionally unsympathetic Japanese historical schoolbooks during the previous year, Nakasone Yoshihiro became the First Japanese Prime Minister to visit Korea in January 1983. This successful visit resulted in an intensive period of bilateral fence-building between Seoul and Tokyo, not to mention the promise of a $40 billion US loan. So as not to threaten these developments, a Korean government ban was placed on the public singing of the popular old protest song, ‘Dok-do is our land’ for the second half of the year. With authoritarian rule still in place in Seoul, any possibilities for civic protests at the reactivation of ties with Japan were therefore firmly denied.\(^{215}\)

The dawn of the democratic transition in Korea from 1987 seemingly introduced a near immediate role for non-governmental actors in the Dok-do dispute. By the early 1980s, a collective ‘Dok Do movement’ had emerged, a coalition that included: the ‘National Headquarters for Defending Dok-Do (that itself comprised 16 smaller civic groups)’; the ‘Party for Tokdo Protection’; the ‘Korea Dok-do Research Association’; the ‘Council for Dok-do Residents’ and, also: the ‘Headquarters for Making Dok-Do an Inhabited Island’. The coalition staged frequent protest rallies and conducted widespread signature-seeking campaigns in its efforts to try and pressure the Seoul’s fledgling democracy into taking high-profile positions safeguarding Korean national rights over Dok-do.\(^{216}\) It was also successful in attracting influential Korean personalities with religious figures (including leading Buddhist monks and Christian ministers), trade union leaders, poets and artists being emplaced as officials or advisers.


\(^{214}\) Ibid.


\(^{216}\) Ibid.
By the new millennium, much of this campaign was spearheaded on the internet – particularly the ‘Party for Tokdo Protection’s’ quest to collect 10 million digital signatures to petition the Government into adopt an annual national Dok-do day on the 23rd October. The Dok-do newspaper was also launched to great success in June 2000.\textsuperscript{217}

While the Dok-do movement is wholly focused upon strengthening the Korean public’s support for the adoption of a strong Korean governmental stance towards defending sovereignty against Japanese claims, its general anti-Japanese stance has mobilised a wider collective of like-minded groups to join the cause. Taepyongyang Yuzokhoe (the Association for the Pacific War Bereaved Families), Jeongsiidea Deachaek Wiwonhoe (the Korean Council for the Woman Drafted for Military Sexual Slavery by Japan), Gwangbokhoe (the Korean Liberation Association), Deahamminguk Dongnip Yugongja Yujokhoe (literally, the Korean Association for the Men of Merit for the Liberation) and Keukil Undong Simin Yeonhap (the Civic Coalition for a Movement to Overcome Japan) are all organisations that have actively protested the Japanese claim to Dok-do.\textsuperscript{218}

Likewise the movement has found friends in civic groups that are neither explicitly Dok-do centred nor overtly anti-Japanese, including Heungsadan (the Young Korean Academy); the YMCA and Gyeongsilryeon (the Citizens Coalition for Economic Justice). With high visual drama, Pastor Choe Hun delivered a sermon before members of the Christian Council of Korea (CCK) entitled ‘God is with us’ on Dok-do itself on 19\textsuperscript{th} March 1996: “All Christians should take the lead in defending Dok-Do, our ownership of which is historically obvious... the Church of Korea and 12 million Christians make our position clear to this extent”.\textsuperscript{219}

The story from across the East Sea has similar parallels though, fairly obviously, it is the Northern Territories that are the big fish for most Japanese. The designation of Northern Territories Day on 7\textsuperscript{th} February 1981 reflected the enduring symbolic significance of its long-standing territorial dispute with Russia, immortalised with former Prime Minister’s Sato’s Eisaku’s famous words: “For Japan, the postwar period will not end until the Northern territories have been returned”.\textsuperscript{220} Northern Territories Day has become a big day on the civic protest calendar which leading Japanese politicians have used to proclaim their unflinching attitude towards getting the islands back. For example, Prime Minister Miyazawa and Foreign Minister Watanabe addressed a crowd of thousand in February 1993 under the pre-advertised theme, ‘no retreat from the struggle for the islands’.\textsuperscript{221}

\begin{thebibliography}{99}
\bibitem{217} Ibid., pp: 137-138.
\bibitem{218} Ibid., pp: 138-139.
\bibitem{221} Bruce Stronach (1995) \textit{Beyond the rising sun: nationalism in contemporary Japan}, Praeger, New York, p: 150.
\end{thebibliography}
Though traditionally never with anything like the same intensity as shown with the Northern Territories, *Nippon Izokukai* (the Japan War-Bereaved Families Association) led the civic charge over Dok-do (Takeshima) in Japan. Crucially, it was this long-established lobby group that helped persuade regional Japanese government in the Shimane Prefecture (which lies closest to Dok-do) to promote a ‘Takeshima movement’ back in the 1970s. Efforts made at the prefecture level, such as the institution during 1977 of the ‘Shimane Prefecture Council for the Promotion of the Takeshima Problem’, were initially designed to bolster civilian interest in the Dok-Do issue with greater public dissemination of slogans and songs, one of which was “Come Back Home, Takeshima”.

However, the most important effect of the Shimane’s prefectures efforts was to pressure the Japanese government into ultimately taking a much stronger national line over Dok-do. In 1996 the Shimane Prefecture Council would present a written opinion imploring the Japanese Government to establish a 200nm EEZ encompassing that encompassed the islands. Fast-forwarding to 2004, the Shimane Prefectural Assembly then presented a petition before the Japanese Government and Diet a petition calling for the designation of 22nd February as national Takeshima Day, having just passed a similar resolution at prefecture level. These efforts would bear fruit almost immediately with Japan’s nomination of a national Takeshima day during March 2005. The move was met with determined political and public resistance in Seoul and elsewhere in Korea, with the issue of the Korean Foreign Minister’s famous statement on 9th March 2005 that “Dok-do ranks higher than Korea-Japan relations”. The Korean government took the same opportunity to enunciate its ‘Doctrine concerning relations with Japan’, which equated the Japanese nomination of Takeshima day to a denial of Korean independence from Japan.

Yet it is all too easy to read too much into this escalating war of nationalistic words. However emotive the context of this symbolic island sovereignty dispute is, one should not forget that Japan and Korea successfully co-staged the World Cup football tournament in 2002, while there are more visits by nationals to and from each state than ever before.

6.2) The Lower Gulf islands dispute: representing regional (Arab-Persian) rivalries following dispute resurrection in the 1990s

For most of the 1990s, the Lower Gulf islands dispute served, as much as any territorial dispute may, as the focus of Arab-Iranian rivalry across Gulf waters. Facilitated by Iraq’s regional and international isolation, the dispute seemed to displace the Shatt al-Arab’s traditional symbolic role in this respect. The propensity for boundary and territorial disputes to reflect wider tensions between states has been noted for as long as social scientists have been writing about international boundaries. Certainly, Arab-Iranian rivalry has often found expression in territorial disputes and within a regional territorial

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222 Choi (2005), *op.cit.*, pp: 143-146.

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framework that is fast moving towards completion, the Shatt al-Arab and Lower Gulf islands disputes remain alive, albeit to varying degrees.

Yet, by the end of the decade, any ultimate willingness of Iran and the United Arab Emirates (UAE) to contemplate settling the Lower Gulf islands dispute on any terms other than their own was conspicuously lacking. Admittedly, since 1993 and for the remainder of that decade, the UAE consistently recommended reference of the Abu Musa and Tunbs dispute to the International Court of Justice for settlement, a proposal that consistently received solid backing from the Gulf Cooperation Council (GCC) and several Western states. Initially this standpoint appeared at variance with the then prevailing GCC policy towards its own, in-house territorial disputes, where a clear preference for settlement by bilateral negotiations over third-party intervention was expressed at the summit in Manama, Bahrain in December 1994. The nervous and uncertain silence with which the GCC viewed the ICJ’s treatment of Bahrain-Qatar disputes before the verdict in that case during the summer of 2001, contrasted rather starkly with its obvious enthusiasm to see the Lower Gulf islands dispute referred for judicial settlement in The Hague.

Why should this have been so? Primarily, there was and remains today a genuine belief in the UAE and the GCC that if the Abu Musa dispute was judged on its historical merits, the UAE’s sovereign claims would have a strong chance of prevailing. At the same time, the UAE must have realised that the prospects of Iran ever allowing reference of the Lower Gulf islands dispute as a whole to the World Court were slim. For Iran’s professed willingness during the 1990s to talk about the status of Abu Musa has contrasted with its steadfast insistence that Iranian sovereignty over the Tunb islands was non-negotiable. Even if reports of the murky package deal of December 2013 possess a semblance of accuracy, it seems unlikely that this position has changed. It is, as it always has been, the basic reality of who controls what in this dispute that has dictated the strategies of the dispossessed party and the degree to which the occupying power is prepared to compromise its own stance. The contemporary reality is that Iran has held all the aces in the three decades since Britain left the Gulf as protecting power in 1971, in as much as it has occupied the Tunb islands since that time and consented—in the run-up to Britain’s withdrawal—to a suggestion from Sharjah that the administration of Abu Musa island should be shared.

Since its formation as a federation in 1971, the UAE has sought to regain the control that Ras al-Khaimah had exercised over the Tunbs (under British guarantees of protection) for the previous century. Moreover, since Iranian heavy-handedness resurrected the Abu Musa dispute with the incidents of 1992, the UAE federal government has seemingly sought to gain more beneficial terms for Sharjah on the island than those defined by the

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224 This reality reminds us that the respective histories of Abu Musa and the Tunbs have never been one and the same. It is largely because, historically, the power that has held Abu Musa has generally also controlled the Tunbs that this linkage is continually made.
1971 Memorandum of Understanding. This was an agreement that had been concluded voluntarily, if reluctantly, by Sharjah on the basis that it was the best deal then attainable. The UAE argues that the Iranian actions of 1992 terminally damaged the validity of the 1971 MOU, even if Iran has repeatedly stated in the period since that it remains bound by the instrument’s provisions. Whatever the merits of that argument, the contemporary geopolitical context of the dispute is of a politically youthful though increasingly powerful and self-confident state attempting—albeit peacefully—to wrest back control of the features from its much larger, longer-established and more populous northern neighbour. The federal government in Abu Dhabi also had to be seen to be treating its component emirates equally and therefore, any resolution of the Lower Gulf islands dispute needed to deal with both Abu Musa and the Tunbs on the same footing at the same time.

It is this context that still – in 2014 - makes a reference of the dispute to the ICJ for judicial settlement unlikely, at best, for the foreseeable future. Not only does it take two to tango before a dispute can be settled at the World Court (i.e., the consent of both parties is needed for it to proceed) but, fairly obviously, in so doing, each party must be in agreement about the scope of the dispute itself. For the UAE, it involves all three of the Lower Gulf islands. Seemingly for Iran, if any legitimate dispute exists at all, it concerns the island of Abu Musa only.

Though wholly reasonable in itself, the UAE’s call for a reference of the Lower Gulf islands dispute for judicial settlement should be seen as part of a deliberate strategy to internationalise it. The most obvious tactic for achieving such internationalisation in the early 1990s was to allow the islands dispute to be symbolized in terms of regional rather than national rivalries. Whether or not the UAE federal government deliberately planned for the Lower Gulf islands dispute to inherit the Shatt al-Arab’s traditional mantle as a territorial symbol of Arab-Iranian rivalry is unclear but things did transpire this way. Pronouncements from both sides of the Gulf–but especially its western littoral–would soon directly employ much of the symbolic rhetoric previously directed at the Shatt. Certainly, the furor in the Arab media during 1992 was wholly disproportionate to anything that might have happened on the island itself.

So it was largely by “Arabising” the issue that the UAE government succeeded in internationalizing the Lower Gulf islands dispute. It had been the GCC summit in Abu Dhabi in December 1992 that would set the ball rolling in terms of both internationalizing the dispute and adopting it as a regional symbol. Here the GCC’s Supreme Council would affirm “…its complete solidarity and absolute support for the UAE’s position and all the peaceful measures and means it deems appropriate to regain its sovereignty over the three islands in accordance with international legitimacy and the principle of collective security”. The mention of ‘three islands’ strongly suggested, of course, that the UAE

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wanted more than the modification of the 1971 MOU that was offered. Tehran’s defiant riposte, to be repeated on many occasions in response to successive restatements of the above position, was colourful and dismissive but also underlined its comparative advantage in the dispute at the interstate level: “Iran is surely stronger than the likes of you...to reach these islands one has to cross a sea of blood...we consider this claim as totally invalid”.226

The war of words soon became stalemated but continued throughout the decade. It had been set in motion despite the fact that life at the local level on Abu Musa had soon returned to something approaching normal. Not long after the incidents of April and August 1992, the ferry was running to the island as normal from Sharjah while the oil-sharing arrangements for output from the nearby offshore Mubarak field had never even been interrupted in the first place.

The UAE’s successful internationalization of the dispute gathered pace after Sultan Fahim bin Sultan al-Qasimi’s accession to the post of Secretary-General of the GCC in 1993. The proposal was now made that the island disputes be submitted to the ICJ. Then, during the early summer of 1994, King Fahd of Saudi Arabia appeared to take a personal interest in promoting proposals for peaceably returning the islands to Emirati sovereignty. Iran took notice, repeating its warning of December 1992. The USA now took the surprising—albeit involuntary—step of departing from its traditional position of neutrality in the territorial disputes of the region. On March 12, 1995 in Jeddah, former Secretary of State Warren Christopher added his name to a joint communique issued by the Foreign Ministers of states signatory to the March 1991 Damascus Declaration. This read as follows: “[t]he ministers expressed their deep appreciation of the UAE’s efforts to peacefully resolve the issue of the Iranian occupation of the three islands – the Greater Tunb, the Lesser Tunb and Abu Musa, which belong to the UAE.”227 This would soon prove much less significant than it might have been. It transpired that a weary Christopher had somewhat carelessly added his name to a number of documents after a short, exhausting tour of the region. Once the mistake had been recognized, the US Government withdrew its support for the above statement.

The episode, however, illustrates the extent to which the UAE had successfully internationalized the islands dispute by the mid-1990s. Yet doing so and materially improving the UAE’s prospects of regaining territorial control were clearly not one and the same. Though the dispute had soon assumed the characteristics of a stalemated war of words, there were real concerns by the spring of 1995 that the waters of the Lower Gulf were becoming too militarized, the consequence of the large number of exercises being undertaken by the navies of Iran and the United States. Many of these exercises were taking place close to Abu Musa itself. Both formally and informally, currents of opinion within the UAE began to question the likely endgame of Abu Dhabi’s strategy of

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227 Ibid., p. 153.
internationalizing the dispute as an Arab-Iranian issue. For example, Crown Prince Muhammad of Dubai would comment during February 1995 that recent tensions over the islands had been “fabricated”\textsuperscript{228} Perhaps there was a general fear that a naval incident might occur between Iran and the U.S. in the vicinity of the islands over which the federal government could exercise no control. There were other complications, too. Sharjah’s interest in the continuance of the 1971 MOU which regulated Abu Musa’s status did not necessarily square with the obligation felt by the federal UAE government to deal with all three of the Lower Gulf islands on a more or less identical basis. Hence, Sharjah’s barely disguised disappointment at the manner in which the ill-fated bilateral Iran-UAE negotiations were conducted in the autumn of 1992. It is therefore a reality that there are three parties to the dispute over Abu Musa: Iran, the emirate of Sharjah, and the federal government in Abu Dhabi.

It was the response of Iran to the UAE’s successful internationalization of the Lower Gulf islands question that is of most relevance to this discussion and the prospects for the dispute’s ultimate resolution. For the UAE’s very success would engender a defensive posture in Iran and the adoption of the islands question as a national issue, one that was inextricably linked to regime legitimacy. At the risk of generalizing, it might be commented that the 1980-88 Iran-Iraq War was the first conflict of modern times in which the Iranian state did not lose territory. To the minds of many Iranians, Abu Musa and the Tunbs were wrongfully taken by Britain in the nineteenth century and rightfully returned to Iran on Britain’s departure from Gulf waters in 1971. The extension of such logic dictates that a regionally isolated and defensive Iran cannot entertain requests from a small state like the UAE that Iranian territory be handed over. The defensive posture engendered in Iran by the mid-1990s was reflected in its announcement in 1996 that plans were afoot to build a university on its half of Abu Musa. Should such an action ever be undertaken, it would be typical of the type of symbolic measures that states often resort to when trying to underline their control of a disputed feature.\textsuperscript{229}

One point that can be made quite validly about the Lower Gulf islands is that changes – intrinsic or merely perceived – in the power dynamics of the region have marked decisive stages in the history of the dispute. And, to a large extent, might has proven right. Back in 1887, the Persian Qajar government asserted its authority much more directly along the coastal tract to the west of the Strait of Hormuz, resulting in the banishment of the Qawasim from their northern outposts of Lingah and Sirri island and a retreat back to their principal power bases of Ras al-Khaimah and Sharjah along the southern Gulf littoral. Only a decade and a half later, in 1903, the British India government would advise the Qawasim to place flags on Abu Musa and the Tunbs. These were then removed by Belgian-run Persian customs officers, who hoisted the Persian flag. Britain then used the threat of force to get Persia to back down with the result that in 1904 the Qasimi flag was rehoisted on Abu Musa and Greater Tunb.

\textsuperscript{228} Ibid., p. 155.
Iran would move on the islands in November 1971, when Britain departed the Gulf as protecting power. Prior accommodation had been reached with Sharjah (reluctantly if voluntarily on the part of its ruler) for the shared administration of Abu Musa, though the Tunb islands were taken forcibly from Ras al-Khaimah. As already established, the period since 1992 witnessed the revival and internationalization of the Abu Musa/Tunbs dispute. Iran’s clumsy reactivation was almost certainly attributable to its frustration at being excluded from post-Gulf War plans for regional security.

So, having internationalized the islands question as an Arab-Iranian issue, perhaps the only route left to the UAE federal government at the end of the 1990s was to change strategy and reclaim the dispute as a national question. At least this might force a greater concentration on the specifics and details of the dispute. For the lesser the symbolic value of the dispute, the easier it may be to tackle directly. There is sometimes a value or convenience in keeping island disputes alive—or at least short of final settlement—to symbolize competing national or regional rivalries. One only has to look at the way in which the status of the Senkaku/Diaoyutai and Dok-do disputes symbolises national rivalries between Japan and China, Taiwan and Korea to see that this is not a phenomenon restricted to the Persian Gulf region (see 6.1.). Also, while island disputes have a proven utility in symbolizing rivalries, there is also arguably an element of safety in treating them as such. For surely the potential for a dispute over contiguous land territory (i.e., over an international land boundary) developing into actual conflict is much greater than is the case with a disputed island. This holds, of course, only if one accepts that there is no chance that an increasingly self-confident UAE will try and recover its control of the islands by resort to force – a safe presumption for the present.

Perhaps the more that Iran and the UAE address the specifics of the Abu Musa dispute in the future, the more they will appreciate that the imaginative if flawed accommodation of 1971 was by no means as bad a solution of a disputed island as it is sometimes portrayed. For to effectively managing this dispute may be a more realistic and durable option than trying to reach final agreement on sovereignty.
7. Towards a geopolitics of island sovereignty disputes

If elaborating a geopolitics of island sovereignty disputes precisely is likely to remain an elusive challenge, there are a number of characteristics that distinguish this most intriguing class of territorial disputes. Arguably, their symbolic importance has overtaken their material value in the conduct of many disputes that are rehearsed increasingly at the regional level in the post-Cold War era. If that represents a notable change in their dynamics, other characteristics remain more constant. The operative rules and regulations in international law that define insular status and what a state may claim or do remain murky, effectively allowing for the continuation of a wide variety in practice that has been there since colonial times. Meanwhile, oil and energy companies remain just as eager, responsive and opportunistic in pushing to operate in promising seabed geologies as they have been ever since the Second World War.

It is this mixture of politics and pragmatics that governs the conduct of island sovereignty disputes though their balance and intensity will depend upon prevailing regional politics. Section 6 remarked how island disputes have become tried and tested rhetorical devices in East Asia and the Persian Gulf for expressing national and regional rivalries. There has been a mismatch between the frequently sensational language in which disputes are couched and what is going on in or around the territories in question. While it is tempting to keep invoking the analogy whereby island disputes operate like safety valves – allowing sharp wars of words to be vented with little risk of physical conflict – the emotions being invoked domestically within the states of East and South East Asia are surprising observers with their depth, power and intensity. The same can be said, of course, for the crude military power posturing in waters astride disputed islands that has made for such dramatic television viewing over the last couple of years.

As was proposed at the outset of this report, a multidisciplinary understanding of island sovereignty disputes is vital if we are to understand the various realms in which they operate. Section 2 of this report suggested just how difficult it can sometimes be to establish the specifics of individual disputes but clearly we will be in a better place to interpret the record and detail if we are able to link their technical and legal status with their political and historical drivers and the complex regional geographies in which they operate.

The headlines being made in the first half of 2014 remind us of the differing ways in which the conduct of island disputes may be viewed and interpreted. China’s reported material enhancement of facilities during the late spring in the disputed Paracel group in the South China Sea unleashed a furious domestic backlash in Vietnam, much in the same way that Japan’s transactioning over Diaoyutai/Senkaku mobilised street movements in the major Chinese cities during the previous eighteen months. Disputed islands acting as symbols of Japan’s brutal colonial past or China’s more recent bullying hegemonic status seem more threatening when seen against the charges made by their East Asian neighbours that these powers harbour rejuvenated regional ambitions. Korea points to Japan’s developing remilitarisation while a much wider constituency still observes a China determinedly transforming its naval capability and an emergent superpower that has
strategically developed extraterritorial port capacity in key South Asian nodes so as to ‘encircle’ its chief rival, India. Certainly it seems to be these perceptions that are driving many contemporary security studies of island disputes. Mention was made early on of the way in which a series of disputed islands in the East and South China Seas could be represented as inner and outer chains on China’s maritime ambitions. A new raft of neoclassical geopolitical analyses – including those recently penned by Robert Kaplan - is therefore quickly responding to old-style state power posturing, sometimes unimaginatively if often sensationally.

The other report that raised a few eyebrows at the beginning of the year was the suggestion that a package deal might have been worked out between Iran, Oman and the United Arab Emirates over the Lower Gulf islands. It didn’t concern their sovereignty but rather hints that the Greater Tunb island might be leased back to its original sovereign (Ras al Khaimah) as part of a wider deal whereby a pipeline would be laid under the Strait of Hormuz and Iran allowed to develop storage and processing facilities in the Musandam peninsula. Section 3 of this report looked at the history of bargaining territorial swaps and deals in this part of the world. Imaginative deals are often suggested in a welcome spirit of cooperation but their actual negotiation often founders on the details and very few schemes are actualised. The reports of last December contained enough substance to suggest a broad deal may have been contemplated in principle but that doesn’t mean we should be holding our breath expecting it to manifest anytime soon. The logic of territorial trade-offs and deals – sovereign or non-sovereign has always been around – packages of convenience have always make sense and are likely to feature in future proposals for joint resource development, for instance.

Context has been provided in sections 4 and 5 of this report in the shape of selective episodes of British colonial practice for the contemporary view that states are claiming more than they are strictly entitled to in their island sovereignty claims. Our review of developments around Bahrain in the late 1930s in section 4 demonstrated how a series of very practical questions were broached in securing maritime space for hydrocarbons exploration. The practices of occupying low and high tide elevations by the emplacement of national markers and drafting the operative area of oil concessions conditionally to reflect geographical uncertainty date back to this region and period. So, too, do imaginative ideas to introduce oil company spheres of influence at sea in advance of the development of continental shelf legislation.

Perhaps the most remarkable single facet of section 5 was in uncovering that it had been the same boat, HMS Vidal, that had been used by Britain to ‘occupy’ the Mouchoir and Silver banks in June 1954 and annex the rock of Rockall a year and a quarter later. It had in a very real sense been geopolitics that was responsible for Britain’s surprising decision to occupy two low tide elevations – fears that it might ultimately lose out to the United States in developing the resource geography of the Caribbean. The move on Rockall was more rooted in the Cold War security calculations of the day but was openly ridiculed by the British press and media for its apparent pointlessness. In trying to apply the strict new geometries of emerging maritime law and harbour the aggressive interest of the oil companies, Britain found that the messy, non-linear political geographies of its regional
colonial possessions didn’t accommodate these rules and interests very easily. This was evidently true of both the Persian Gulf and the Caribbean. Of course, the question of whether Britain behaved ‘badly’ in moving to reconcile these complexities is a subjective matter of degree. Admitting that there was no basis in law for occupying low-tide elevations, Britain invoked special circumstances to justify that very action. With Halul in the Persian Gulf, there is a circumstantial argument to be made that expediency contributed to Britain’s decision of the early 1960s to reverse its thinking on the sovereignty of that feature in favour of Qatar rather than Abu Dhabi. If there was a period in which anything went, it was the mid-1950s – before the Law of the Sea began to be properly codified with the series of conferences and conventions that began in 1958.

This study has not sought to be at all comprehensive but to highlight a number of episodes that tell us something about how islands have been and continue to be treated by states. If the evident power of island sovereignty disputes to animate domestic political opinion seems a relatively recent phenomenon, their ability to excite individuals has always been observable. The quirky Heligoland saga of 1890 was classic Victoriana in many ways – with the British sovereign’s public if rather unconvincing concerns for the well-being and wishes of its 2000 islanders quietly talked down by a Foreign Secretary who realised that self-determination and empire did not sit easily together. Many British officials – low-ranking and high-ranking - would get frustrated by the emerging technicalities of disputes as law and resources added to their complexity from the late 1930s. As with imperial boundary-making more generally before this time, the agency, energies, proclivities and dispositions of individuals was key in many of the decisions reached. Their opinions and judgements were every bit as illuminating as the typically more celebrated statements of famous jurists and the like. Now, generally fuelled by civic pressures exerted domestically, politicians are playing to the crowd in saving their best rhetoric for island sovereignty disputes. This class of disputes has always provided a minefield of quotable quotes and likely always will do.

Understanding island sovereignty disputes is to recognise their modes of operation at various levels, identify their inherent contradictions and to embrace their essential complexity. Just as regional dynamics will be reflected in their conduct and determine the intensity of their politicisation, it is only at the regional level that these disputes can be effectively managed. Like all disputes over territory, they represent opportunities for conflict and cooperation. More than any other form of territorial disputes, though, they have always represented opportunities for states to play games – a result of their under-defined legal status, an essential visuality that can be manipulated and mobilised politically and a history to demonstrate that dramatic wars of words rarely develop into anything more serious.
The unique geopolitics of island sovereignty disputes