



# Territorial Disputes: The Role of the International Court of Justice and the Issue of the Three Islands in the Persian Gulf

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## Article Info

### Article type:

Research Article

### Article history:

Received

2025-05-21

Revised

2025-10-12

Accepted

2026-01-08

Published online

2026-06-22



[https://ijicl.qom.ac.ir/article\\_4009.html](https://ijicl.qom.ac.ir/article_4009.html)

### Keywords:

Territorial Disputes,  
Iranian Three Islands,  
International Court of  
Justice, Principle of  
Effective Sovereignty,  
*Uti Possidetis Juris*.

## Abstract

Territorial disputes are among the most sensitive issues in international law, where non-intervention and respect for territorial integrity are crucial. The International Court of Justice (ICJ) has developed consistent jurisprudence emphasizing treaties, effective and continuous exercise of sovereignty, and tacit acquiescence in determining territorial title. This study applies these principles to the Persian Gulf dispute over the three Iranian islands of *Abu Musa*, *Greater Tunb*, and *Lesser Tunb*. Although not formally submitted to the ICJ, the dispute can be analyzed in light of the Court's precedents, highlighting the significance of tangible governmental acts—administrative, military, economic, and legal—in establishing ownership. Mere historical claims without effective control hold little weight in international law. The findings indicate that Iran's effective, manifest, and continuous sovereignty over the three islands consolidates its ownership, and the interruption caused by the British occupation does not impair this sovereignty and title. The UAE's historical claims predating its establishment cannot be relied upon before the Court because the acts occurred during occupation (not colonial rule) and are inconsistent with historical and formal documents confirming Iran's sovereign and ownership rights over the islands.

**Cite this article:** Ali Razavian, S.M., & Taskhiri, M., (2026). Territorial Disputes: The Role of the International Court of Justice and the Issue of the Three Islands in the Persian Gulf, *Iranian Journal of International and Comparative Law*, 4(1), pp: 74-91. <https://doi.org/10.22091/ijicl.2026.12960.1159>



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[doi](https://doi.org/10.22091/ijicl.2026.12960.1159) 10.22091/ijicl.2026.12960.1159

Publisher: University of Qom

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## Introduction

The settlement of territorial disputes is closely linked to the maintenance of peace and stability in the international arena. It has therefore always been regarded as one of the most sensitive issues in international relations. The resolution of such disputes involves political, historical, geographical, and legal dimensions, and various methods exist for their settlement, among the most important of which is recourse to international judicial bodies, foremost among them the International Court of Justice (ICJ).

Through numerous judgments, the Court has not only resolved individual disputes but also played a fundamental role in shaping customary international legal norms governing territorial disputes. Given the importance of territorial integrity in securing the sovereignty and security of States at the international level—and considering the Court’s increasingly prominent role as a fair and impartial authority in the determination of sovereign rights globally, as well as its function in establishing consistent judicial practice—analyzing the Court’s decisions is of particular importance. This analysis enables a better understanding of how the Court rules in such cases, providing a guide for anticipating its judgments and facilitating the resolution of international disputes.

The Court has repeatedly referred, in its judgments on territorial disputes, to its prior decisions in similar cases. This indicates that the Court assigns significant evidentiary and persuasive value to its own precedents in analogous matters.

In the present article, a descriptive-analytical method is employed to examine and assess the Court’s reasoning in territorial cases by reviewing its judicial precedents. In this regard, the Court’s decisions in *Nicaragua v. Honduras* (2007), *Namibia v. Botswana* (1999), and *Nicaragua v. Colombia* (2012) provide a reliable basis for identifying legal criteria relevant to the determination of sovereignty over disputed territories. Given that, in the aforementioned cases, the Court emphasized principles such as effective exercise of sovereignty, acquiescence and implied consent by the opposing party, the principle of possessory title, and the interpretation of historical treaties, the study proceeds to evaluate the legal position of the Islamic Republic of Iran regarding the three islands, based on these principles and within the framework of the Court’s judicial reasoning.

To this end, the legal status of the islands will be comparatively analyzed in light of the Court’s jurisprudence, thereby demonstrating the legitimacy and stability of Iran’s position within the framework of international law.

The objective of this article is to assess the jurisprudence of the International Court of Justice in addressing territorial disputes and to evaluate the applicability of the Court’s approach in the event of a potential dispute concerning the three Iranian islands in the Persian Gulf. Accordingly, this study seeks to answer the following questions: What approach has the Court adopted in territorial cases, and upon which principles has it relied? Does the Court follow a consistent methodology? In light of the Court’s precedent and their relevance to the status of the three Iranian islands, how might the Court approach the matter if such a dispute were to be brought before it?

It appears that the Court has adopted a consistent approach to the settlement of territorial

disputes, relying on principles such as the effective exercise of sovereignty, acquiescence and implied acceptance by the opposing party, the principle of possessory title, and the interpretation of historical treaties. On this basis, and considering the status of the three Iranian islands, it may be inferred that the Court's established jurisprudence in resolving territorial disputes could serve as evidence supporting the sovereignty of the Islamic Republic of Iran over the three islands.

## 1. The Concept of Disputed Territories in International Law

States exhibit a high degree of territorial sensitivity. Naturally, political leaders and State officials are particularly vigilant regarding territorial ownership. Moreover, such issues often provoke public sentiment, leading to strong national reactions when the sovereignty of an independent State over its territory is challenged. It is therefore unsurprising that a significant portion of the disputes referred to the International Court of Justice concern disagreements between States over territorial ownership.<sup>1</sup>

A dispute is defined as a disagreement over a legal or factual issue, a conflict, a divergence of legal opinions, or a clash of interests between two parties.<sup>2</sup> For a dispute to be considered international, its subject matter must fall within the scope of the international legal order and possess a legal character, even if its origin may be political in nature.<sup>3</sup> Accordingly, in international law, a territorial dispute arises when two or more States assert competing claims to sovereignty over a specific territory (such as land, a border, or a geographical area) in a manner that renders these claims mutually exclusive and the simultaneous exercise of sovereignty impossible.<sup>4</sup> These disputes may arise from ambiguities in boundary treaties, territorial occupation, geographical changes, colonial history, or ethnic, religious, and cultural factors.

Disputed territories refer to areas over which sovereignty is the subject of an official dispute between two or more States. A territory may be considered "disputed" when two essential conditions are met simultaneously: first, the claimant State (through its official executive authorities) asserts ownership or sovereignty over a portion of land that is under the control of another State, or fundamentally challenges that State's sovereignty over the area; second, the respondent State explicitly rejects these claims and continues to regard itself as the legitimate sovereign over the territory in question.<sup>5</sup> This definition is fully consistent with the accepted frameworks of international law, as it emphasizes the existence of a formal opposition between the positions of two States concerning the legal status of a specific territory. Such disputes may give rise to diplomatic negotiations, legal proceedings, or even a military conflict.

In cases where no agreement is reached between the parties, such disputes may be referred to the International Court of Justice. In its judgments, the Court typically relies on a relatively

1 Ian Brownlie, *International Law in the Last Years of the Twentieth Century*, trans. Saleh Rezaei Pish (Tehran: Office of Political and International Studies, 2004) 191-195.

2 Permanent Court of International Justice, 'Case concerning the Mavrommatis Palestine Concessions (*Greece v UK*) (Judgment of 30 August 1924)', Series A, no 11.

3 Beigzadeh Ebrahim, *International Law*, vol. 2, (Mizan 1401) 976.

4 Malcolm N. Shaw, *International Law* (8th edn, Cambridge University Press 2017) 485-500.

5 Huth, P. K., Croco, S. E. and Appel, B. J., 'Does international law promote the peaceful settlement of international disputes?' (2011) 105 *American Political Science Review* 415-36.

consistent set of principles, including: the principle of effective sovereignty exercised by States over the disputed territory;<sup>1</sup> the principle of explicit or implicit consent of the parties; the frequently invoked principle of possessory title; as well as maps, historical treaties, and established international customs. In the following sections, by examining cases brought before the Court and the judgments rendered, we will explore how these commonly applied principles are used to determine sovereignty and resolve territorial disputes.

## **2. Jurisprudential Approach of the International Court of Justice in Landmark Cases**

The International Court of Justice, as the highest judicial authority for the settlement of international disputes, has examined several significant cases concerning territorial disputes throughout its existence, thereby contributing to the development of consistent jurisprudence in this field. In this regard, the following section will analyze several prominent cases, including *Nicaragua v. Honduras* (1999), *Namibia v. Botswana* (1996), and *Nicaragua v. Colombia* (2012). It will be demonstrated that the Court has adopted a relatively coherent approach across all these cases and has consistently adhered to well-established principles of international law such as effective sovereignty, respect for treaties, and possessory title. The subsequent discussion will focus on the conditions under which the Court applies these principles and how it determines sovereignty.

### **2.1. Case of Nicaragua v. Honduras (1999)<sup>2</sup>: From Legal Argumentation to the Establishment of Effective Sovereignty**

The territorial and maritime dispute between Nicaragua and Honduras dates back to the time of their independence in 1821. Following their separation from Spain, both countries encountered difficulties defining their precise boundaries in the Caribbean. In 1894, the two States signed an agreement known as the *Gómez-Bonilla Treaty*, which delimited their land borders but left the maritime boundaries undetermined. Subsequent disputes arose regarding the maritime boundaries and sovereignty over certain islands. In 1906, a royal arbitration award by the King of Spain finalized the delimitation of the land border; however, this award still did not address maritime boundaries.<sup>3</sup> Ultimately, the dispute was brought before the international arena when, on 8 December 1999, Nicaragua filed an application before the International Court of Justice requesting the delimitation of the maritime boundary between the two States in the Caribbean Sea, and claimed sovereignty over islands such as islands Bobel Cay, South Cay, Savanna Cay, and Port Royal Cay.

Both parties submitted proposals to the International Court of Justice for resolving the dispute. Nicaragua, as the applicant, proposed that the maritime boundary be determined based on the “bisector method”, which corresponds to the natural configuration of the coastlines,

1 In cases such as the territorial dispute between Mali and Burkina Faso (1986), the Court emphasized that “the legal basis for the resolution of a territorial dispute is not mere history, but verifiable legal evidence of the exercise of sovereignty”.

2 *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v. Honduras)*, International Court of Justice. (2007).

3 *Ibid*, pp. 33-40

and that sovereignty over the disputed islands be established based on the adjacency principle. In Contrast, Honduras proposed that the maritime boundary should follow the 15th parallel north, which, according to Honduras, constitutes a “traditional boundary.” Furthermore, Honduras asserted that the disputed islands have always been under its historical and effective sovereignty. On this basis, Honduras rejected any solution regarding the islands other than the continuation of its sovereignty.

In its judgment of 8 October 2007, the Court outlined the criteria for resolving territorial disputes and determining sovereignty. The first and most important point in the Court’s ruling was the declaration of a “critical date.” The Court designated the year 2001 as the critical date, holding that any actions taken after this date would be regarded merely as attempts to strengthen legal claims or fabricate evidence, and therefore would not be deemed valid.<sup>1</sup>

The effects of post-colonial conduct formed the first criterion considered by the Court. In line with its previous jurisprudence, the Court reaffirmed that sovereignty over small maritime geographical features may be established through limited demonstrations of State authority. Several State actions may be considered expressions of sovereignty, including the issuance of fishing licenses by Honduras in the disputed area, indicating the State’s belief in its legal rights over the maritime zones surrounding the islands. Additionally, Honduras engaged in public construction activities such as authorizing the building of houses and fishing equipment storage facilities on the disputed islands.

Moreover, the enforcement of criminal and civil law—such as addressing criminal activities and cooperating with international institutions (e.g., the United States Drug Enforcement Administration)—as well as implementing immigration controls, including the inspection of foreign residents and issuance of work permits, and the establishment and operation of public infrastructure (such as the installation of a 10-meter antenna in 1975 to support oil exploration activities) were considered effective acts of sovereignty by Honduras over the contested areas.<sup>2</sup>

The next criterion employed by the Court to determine sovereignty was the principle of *uti possidetis juris*, which stipulates that newly independent States must retain the internal borders that their dependent territories had prior to independence. The Court examined whether the principle— “colonial borders shall remain intact unless lawfully changed”— could be applied in this case. However, the Court ultimately concluded that this principle could not assist in determining sovereignty over the disputed islands, as there was no clear evidence as to which colonial authority had previously exercised sovereignty over them.<sup>3</sup>

Thus, although the Court was unable to determine sovereignty in this case based on this principle—not due to the inapplicability of the principle itself, but rather due to the absence of necessary historical documentation—it seems that the Court’s engagement with this criterion signals its significance in determining sovereignty.

Another factor the Court invoked in determining sovereignty was the intention and will

1 Any government action after this date was no longer considered valid (effectivité) because it might have been taken merely to strengthen legal claims in the course of litigation.

2 *Nicaragua v. Honduras*, pp. 168- 208.

3 *Ibid.*, pp. 9-12.

to act as a sovereign. Honduras had undertaken consistent actions to exercise sovereignty over the islands and submitted relevant documentation to the Court, whereas Nicaragua failed to provide any indication of sovereign intent or action during the post-colonial period. Nicaragua's lack of objection against the sovereign acts carried out in the disputed areas over the years—such as authorizing economic activities—was also interpreted as an implicit acknowledgment of Honduras's sovereignty. This, in effect, contributed to the establishment of Honduras's sovereign title over time.

Moreover, in this case, maps and treaties involving third parties were submitted as evidence of sovereignty. However, the Court did not recognize third-party treaties as establishing sovereign rights and further found that the maps lacked probative value.<sup>1</sup>

The Court issued its final judgment and the legal consequences for the parties on 8 October 2007. The Court upheld Honduras's claim to sovereignty over the islands. It declared that Honduras has sovereignty over Bobel, Savanna, Port Royal, and the South islands, while Nicaragua's claim to ownership of the islands was rejected.<sup>2</sup> Regarding the delimitation of the maritime boundary, the Court accepted the equidistance method proposed by Nicaragua rather than Honduras's proposed 15th parallel north line. The Court emphasized that the judgment is binding on the parties and must be respected by both countries.

Among the legal consequences for Honduras, the recognition of its fishing licenses was seen as evidence of the country's exercise of sovereignty over the waters surrounding the islands. As a result of the ruling, Honduras acquired the right to exercise full sovereignty over the islands, including economic control, issuance of fishing permits, and the application of national laws. The judgment established a legal precedent for resolving maritime disputes in the Caribbean Sea and may be invoked in future cases involving Nicaragua and other States.<sup>3</sup> One of the most significant legal consequences of the ruling for the parties was the establishment of a mutually recognized boundary.

## **2.2. Namibia v. Botswana (1996)<sup>4</sup>: National Sovereignty and Treaty Interpretation**

During the colonial era, Britain and Germany delineated their respective spheres of influence in Africa through the 1890 Anglo-German Treaty, one point of contention being the area around Kasikili/Sedudu Island and the Chobe River. After Namibia gained independence in 1990, disputes arose between Botswana and Namibia regarding the delimitation of their border in this region. In 1992, both parties agreed to refer the matter to a joint technical team to determine the border. After failing to reach an agreement, the case was submitted to the International Court of Justice under the title of "Sovereignty over Kasikili/Sedudu Island and the Surrounding River Area," located in the Zambezi River, which forms the natural boundary between Namibia and Botswana. The islands lie near the shared border between the two countries. Namibia claimed sovereignty over the islands, while Botswana asserted that they fall within its territory.<sup>5</sup>

1 Ibid., pp. 219-209.

2 Ibid., pp. 12-13.

3 Ibid., pp 9-12-15-25.

4 *Kasikili/Sedudu Island (Botswana/Namibia)*1996.

5 Ibid., pp. 11-16.

In its judgment of December 1999, the Court set out the criteria for determining sovereignty over Kasikili/Sedudu Island and the boundary between Botswana and Namibia. One of the key considerations was the 1890 Anglo-German<sup>1</sup> Treaty concluded during the colonial period. Article III of the Anglo-German Treaty<sup>2</sup> addressed the delimitation of boundaries and spheres of influence between Britain and Germany across various regions of Africa. The aforementioned article designated the “center of the main channel” (Thalweg des Hauptlaufes) as the boundary between Botswana and Namibia. The Court first focused on interpreting the term “ [t]he border is in the center of the main channel of the Chube River.” This treaty, which established the respective spheres of influence of Britain and Germany, provided no precise instructions for identifying the main channel of the river in that region. Consequently, the Court resorted to established rules of treaty interpretation, including the 1969 Vienna Convention on the Law of Treaties. Referring to Article 31 of the Vienna Convention<sup>3</sup>, the Court emphasized that treaties must be interpreted in good faith, in accordance with the ordinary meaning of the terms used in the treaty, and in light of its object and purpose. Moreover, based on Article 33 of the Vienna Convention<sup>4</sup> concerning interpretation of treaties authenticated in two or more languages, the Court held that the term ‘center of the main channel’ in the English and German versions of the treaty should be interpreted as equivalent and having the same meaning.<sup>5</sup>

The Court relied on principles of international law and international practice to determine sovereignty over the island. In this regard, it referred to the principle of *uti possidetis juris*, which holds that sovereignty is determined based on the territorial status at the time of independence.

1 This treaty is also known as the Agreement on the Boundaries of Influence in Africa

2 Article 3: In Southwest Africa the sphere in which the exercise of influence is reserved to Germany is bounded: 1. To the south by a line commencing at the mouth of the Orange River, and ascending the north bank of that river to the point of its intersection by the 20th degree of east longitude. 2. To the east by a line commencing at the above-named point, and following the 20th degree of east longitude to the point of its intersection by the 22nd parallel of south latitude; it runs eastward along that parallel to the point of its intersection by the 21st degree of east longitude; thence it follows that degree northward to the point of its intersection by the 18th parallel of south latitude; it runs eastward along that parallel till it reaches the river Chobe, and descends the centre of the main channel of that river to its junction with the Zambezi, where it terminates.

3 Article 31 of the 1969 Vienna Convention on the Law of Treaties: 1. A treaty shall be interpreted in good faith and in accordance with the ordinary meaning to be given to its terms in the context of the text and in the light of the object and purpose of the treaty. 2. For the purpose of interpreting a treaty, the context of the text includes, in addition to the text, including the preamble and annexes, the following: a. Any agreement relating to the treaty reached by all the parties to the treaty in connection with its conclusion; b. Any instrument drawn up by one or more of the parties in connection with the conclusion of the treaty and accepted by the other parties as an instrument relating to the treaty. 3. In addition to the context of the text, the following shall also be taken into account: a. Any subsequent agreement between the parties to the treaty concerning the interpretation of the treaty or the application of its provisions; b. Any subsequent procedure in the application of the treaty which confirms the agreement of the parties to the treaty concerning its interpretation; c. Any relevant rule of international law applicable in the relations between the parties to the treaty. 4. If it is established that the parties to the treaty intended a particular meaning for a term, that meaning shall be given to that term.

4 Article 33 Interpretation of Treaties Authenticated in Two or More Languages 1. Where a treaty is authentic in two or more languages, the text in each of those languages shall be equally authentic unless the treaty provides, or the parties to the treaty agree, that in the event of a discrepancy, a particular text shall prevail. 2. A text of a treaty in a language other than the languages in which the treaty is authenticated shall be deemed authentic only if the treaty so provides, or the parties to the treaty so agree. 3. It is a principle that the terms of a treaty shall have a single meaning throughout. 4. Except where the text is the criterion under paragraph 1, if a comparison of the authentic texts of the treaty reveals a difference of meaning which cannot be resolved by the application of articles 31 and 32, the meaning to be chosen shall be that which best reconciles the subject-matter and purpose of the treaty.

5 *Kasikili/Sedudu Island (Botswana v. Namibia)*.

Another key criterion used by the Court was the existence of effective control (effectivités Occupation). The Court employed the concept of effective sovereignty to assess which country had historically exercised greater control over the island and its surrounding areas. In this respect, Botswana had maintained control over Kasikili/Sedudu Island from the outset, and historical evidence—including reports from British and German officials—demonstrated that Botswana had assumed sovereign responsibility over the island prior to Namibia’s independence in 1990. Botswana had consistently used the island for conservation and national purposes, such as establishing national parks and protected areas. In contrast, Namibia failed to provide sufficient evidence of effective presence or continuous use of the island.<sup>1</sup>

The Court applied hydrological criteria—such as the depth, width, and water flow of the channels—to determine the boundary between Namibia and Botswana. Based on these hydrological factors, the northern channel, having greater depth, wider breadth, and better navigational conditions, was recognized as the main channel. In addition to hydrological criteria, the Court also considered the river’s functional use, including navigability, transportation, and other economic activities. The Court examined which channel was more suitable for shipping and factored this into its decision. These criteria played a significant role in delineating the boundary between the two countries.

The Court issued its final judgment for the parties in December 1999. Accordingly, the Court declared that the islands of Kasikili and Sedudu are part of Botswana’s territory, and Botswana holds sovereignty over these islands. This means that all rights and responsibilities related to the islands, including the protection of natural resources and the control and management of the area, must be carried out by Botswana. Conversely, Namibia’s claim to sovereignty over these islands was rejected, and Namibia is obliged to recognize Botswana’s sovereignty. Furthermore, the parties are required to establish the border between Botswana and Namibia around Kasikili and Sedudu islands along the line of the deepest waters in the northern channel of the Chobe River. The Court emphasized that the judgment is binding on both parties and must be respected by both countries. The Court also underscored that the nationals and vessels of both Botswana and Namibia shall have equal rights to use the shared waterways. This decision reflects the principles of equitable and reasonable use of shared resources. Both Botswana and Namibia must comply with the ICJ ruling on sovereignty and border demarcation and cooperate to implement it. Such cooperation includes respecting sovereign rights and equitable use of water resources in the Chobe River.

### **2.3. Case Nicaragua vs. Colombia 2012<sup>2</sup>: Validity of Colonial Treaties**

The Caribbean Sea has always been one of the most contentious regions in terms of territorial disputes. Among these, the land and maritime dispute between Nicaragua and Colombia is one of the most challenging conflicts in the region. Its roots date back to the 1928 treaty<sup>3</sup> between the two countries and the 1930 additional protocol. In this treaty, Colombia’s

<sup>1</sup> Ibid., pp. 29-42 and 1045.

<sup>2</sup> *Territorial and Maritime Dispute (Nicaragua v Colombia)* 2012.

<sup>3</sup> Treaty between Nicaragua and Colombia, 1928.

sovereignty over certain islands, such as San Andrés, Providencia, and Santa Catalina, was recognized. However, ambiguities remained concerning the geographic scope of the term “San Andrés Archipelago” and the ownership of other smaller islands and surrounding waters.<sup>1</sup> These disputes intensified in subsequent decades, especially after 1969, with Nicaragua’s official protests against Colombia’s actions in the region. Eventually, on December 6, 2001, Nicaragua filed a lawsuit against Colombia before the International Court of Justice (ICJ), citing the American Treaty on Pacific Settlement of Disputes (known as the Bogotá Pact 1948).<sup>2</sup> Nicaragua claimed sovereignty over the disputed islands and sought delimitation of the maritime boundaries between the two countries. Additionally, Nicaragua accused Colombia of interventionist actions.<sup>3</sup> In contrast, Colombia asserted sovereignty over all the islands and argued for the delimitation of the maritime boundary based on the median line principle.<sup>4</sup>

The Court, in its preliminary judgment in December 2007, set out criteria for establishing sovereignty and resolving disputes regarding the maritime features claimed by the parties and the delimitation of boundaries in the Caribbean Sea. One of the criteria that received particular attention from the Court was the validity and binding nature of the 1928 Treaty and the 1930 Protocol. This treaty specifically addressed the status of the main disputed islands (San Andrés, Providencia, and Santa Catalina). Regarding the validity of the 1928 Treaty, Nicaragua initially claimed that the treaty was concluded “in clear violation of Nicaragua’s 1911 Constitution, which was in force in 1928,” and secondly, that at the time of the treaty’s conclusion, Nicaragua was under U.S. military occupation and was prohibited from concluding treaties contrary to U.S. interests or rejecting treaties desired by the United States. Therefore, Nicaragua effectively had no sovereignty during the colonial period. On the other hand, Colombia was aware of this situation, and it can be inferred that Colombia exploited Nicaragua’s occupation by the United States to conclude the 1928 Treaty.<sup>5</sup> The Court also referred to the principle of Nicaragua’s long silence and implicit acceptance (acquiescence): since the treaty was officially ratified by the Nicaraguan Congress in 1930 and registered with the League of Nations, no formal claim regarding the invalidity or nullity of the 1928 Treaty was made until 1980. Furthermore, when the Bogotá Pact was concluded in 1948, Nicaragua made no reservation regarding the 1928 Treaty. Consequently, Nicaragua’s over 50 years of silence were regarded as a practical and implicit acceptance.<sup>6</sup> Accordingly, the

1 International Court of Justice. (2007). *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, Preliminary Objections, Judgment of 13 December 2007, p. 5.

2 On 25 February 2010 and 10 June 2010, the Republic of Costa Rica and the Republic of Honduras each filed with the Registry of the Court applications for leave to intervene in the case, invoking Article 62 of the Statute of the Court. In separate judgments issued on 4 May 2011, the Court found these applications inadmissible.

3 In addition to claiming sovereignty over the islands of San Andres, Providencia, and Santa Catalina, and their associated islands and cavities, Nicaragua also claims sovereignty over the islands of Cayos de Albuquerque; Cayos del Este Sudeste; Rancador Island; North Island, Southwest Island, and any other island off the coast of East Serrana Island; Beacon Island and any other island off the coast of Serranilla Island; and Lo Island and any other island off the coast of New Baja California.

4 International Court of Justice. (2012). *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, Judgment of 19 November 2012, pp. 11-12

5 Ibid, p. 7.

6 International Court of Justice. (2007) *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, Preliminary Objections, Judgment of 13 December 2007, pp. 8-10

Court found it lacked jurisdiction to adjudicate over the three main islands, as this matter had been resolved by the 1928 Treaty between the two countries, and sovereignty over these islands belongs to Colombia.<sup>1</sup>

One of the most frequently applied principles by the Court in such cases is the principle of *uti possidetis juris*. According to this principle, colonial-era borders are established as international boundaries after independence. However, in this case, the principle does not provide sufficient assistance. In fact, there is no clear evidence indicating whether these features were attributed to the colonial provinces of Nicaragua or Colombia. Therefore, the Court set aside this principle.<sup>2</sup>

Among the most important principles relied upon by the Court is the principle of effective exercise of sovereignty. When the Court has no decisive treaty document or the documents are ambiguous, it examines which state has continuously, openly, publicly, and without opposition from the other party exercised governmental authority in the disputed area. Regarding effective sovereignty, it should be noted that acts occurring after the date the dispute arose cannot be taken into account unless such acts are a normal continuation of previous acts and were not performed to improve the legal position of the party relying on them. The Court found that Colombia has effectively and continuously undertaken actions such as naval and military patrols, the issuance of fishing licenses, the enforcement of administrative regulations and laws, and the construction of public facilities on the islands. The practice of third countries and maps somewhat supports Colombia's claim. Conversely, Nicaragua has no proven executive, administrative, or security activities in the area, and this lack of action indicates the absence of sovereignty.<sup>3</sup>

The Court issued its final judgment in the territorial and maritime dispute case between Nicaragua and Colombia in November 2012. The Court, relying on the 1928 Treaty and the 1930 Protocol, recognized them as valid and binding. Accordingly, it affirmed Colombia's sovereignty over the main islands of San Andrés, Providencia, and Santa Catalina. Regarding the other disputed islands, the Court accepted Colombia's sovereignty based on the principle of effective exercise of sovereignty and Colombia's demonstrated control, coupled with Nicaragua's long-term silence.

Finally, while rejecting Nicaragua's claim to the continental shelf beyond 200 nautical miles, the Court delineated a new maritime boundary, observing proportionality between the lengths of the two countries' coastlines. The Court emphasized that the ruling is binding on both parties and must be complied with by both countries.

1 International Court of Justice. (2012b). Summary of the Judgment in the Territorial and Maritime Dispute (Nicaragua v. Colombia), 19 November 2012, p. 18.

2 *International Court of Justice. (n.d.). Territorial and Maritime Dispute (Nicaragua v. Colombia)*. ICJ. Retrieved May 12, 2025.

3 *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v. Honduras)*, Judgment, I.C.J. Reports 2007 (II), pp. 697-698, para. 117

### 3. The Three Iranian Islands and Compliance with the Practice of the International Court of Justice

With regard to the previous analysis on how the International Court of Justice (ICJ) handles disputes related to contested territories between states, this section aims to examine and assess the dispute concerning the three islands of Abu Musa, Greater Tunb, and Lesser Tunb within the framework of the general principles governing the Court's practice. Although the existing dispute between the Islamic Republic of Iran and the United Arab Emirates has not yet been formally submitted to the Court, an examination of various aspects of the issue based on the Court's jurisprudence in similar cases can provide a clearer picture of the legal status of the claims and how they might be evaluated if brought before international judicial bodies.

The newly emerged country, the United Arab Emirates, for the first time in October 1992—twenty-one years after its establishment—made a claim of sovereignty over the Iranian islands (Abu Musa and the Tunb islands). Since then, the UAE has consistently raised such claims in both reputable and less reputable international forums, yet it has not achieved any success. Over these years, traces of the sovereignty claim over the islands can be seen in documents submitted by the UAE to the United Nations Security Council and the UN General Assembly. Moreover, the issue of the Iranian islands is not only a recurring topic within the Gulf Cooperation Council but also receives support from Arab League member states.<sup>1</sup> Meanwhile, the Islamic Republic of Iran has repeatedly emphasized the non-negotiable nature of its territorial integrity and regards the UAE's actions as interference in Iran's internal affairs.<sup>2</sup>

According to the International Court of Justice's established jurisprudence, the Court first examines any existing boundary treaties between the parties. If a valid treaty confirming sovereignty exists, the Court does not give weight to other evidence or reasons and prioritizes the prior agreement between the parties. As explicitly stated in *Nicaragua v. Colombia*, the Court emphasized the 1928 treaty and rejected arguments seeking to invalidate it. In the *Namibia v. Botswana* case, the Court stressed the necessity of interpreting treaties in accordance with Articles 31 and 33 of the 1969 Vienna Convention on the Law of Treaties, declaring that treaties must be interpreted in good faith, in light of their object and purpose, and based on the ordinary meaning of the terms.

Regarding the Three Iranian Islands, the 1971 Memorandum of Understanding is highly relevant. Although this document does not explicitly affirm Iran's sovereignty, it allocates parts of Abu Musa to an Iranian military presence and accepts limited participation by Sharjah in local internal affairs.<sup>3</sup> It demonstrates a practical division of governmental authority with predominance of Iran's role. This can be considered a form of de facto boundary agreement.

1 General Assembly Security Council: Letter dated 15 September 1992 from the Permanent Representative of Qatar to the United Nations addressed to the Secretary-General (A/47/449, S/24566). Retrieved from <https://undocs.org/Home/Mobile?FinalSymbol=A%2F47%2F449&Language=E&DeviceType=Desktop&LangRequested=False>, pp. 4-5

2 United Nations Security Council. Letter dated 9 February 2016 from the Permanent Representative of the Islamic Republic of Iran to the United Nations addressed to the Secretary-General (No. S/2016/131). Retrieved from <http://undocs.org/S/2016/131>. p. 1

3 Heard-Bey, Frauke, *From Trucial States to United Arab Emirates* (Motivate 2004) p. 370.

Iran's non-violation of this memorandum over several decades, coupled with the absence of any serious countermeasures by the UAE, indicates the continuity of the agreed legal status.

The Court resorts to the principle of *uti possidetis juris* (stability of colonial boundaries after independence) as a secondary step in resolving disputes. In all three previous cases, the Court recognized this principle as legally effective only where clear and conclusive evidence of colonial boundaries existed. However, in *Nicaragua v. Colombia*, the Court explicitly stated that, due to the absence of reliable colonial documentation, the principle was not applicable.

In relation to the Three Iranian Islands, the United Arab Emirates' reliance on this principle lacks a legal foundation. These islands were under Iranian influence prior to the establishment of the UAE in 1971 and, at times, were subject to temporary British occupation. Nevertheless, there exists no definitive document from Britain or other colonial authorities attributing the islands to Sharjah or Ras Al Khaimah.<sup>1</sup> Moreover, no formal colonial administrative structure comparable to that of Latin America or Africa ever existed in the Persian Gulf. Consequently, in the absence of clearly defined colonial boundaries, invocation of this principle would, according to the Court's own logic, be untenable.

The principle of effective control (*effectivités*) is one of the most frequently invoked criteria in the Court's jurisprudence for the determination of sovereignty. In the cases of *Nicaragua v. Honduras* and *Nicaragua v. Colombia*, the International Court of Justice explicitly held that in the absence of conclusive treaties or where existing documents were ambiguous<sup>2</sup>. Effective control would serve as the primary basis for determining sovereignty—provided that such acts were continuous, public, manifest, and uncontested.

These acts include, but are not limited to, military patrols, issuance of administrative licenses, enforcement of national legislation, construction of public facilities, and management of natural resources. It should also be noted that the exercise of sovereignty must be before the critical date<sup>3</sup> is announced by the Court. *prima facie* the date at which the dispute on the issue of sovereignty 'crystallizes', with the date of crystallization being "the date at which the party not in possession of the territory makes a formal claim to it" and with such critical date marking, *prima facie*, the moment when all subsequent "acts and events" are excluded from consideration.<sup>4</sup>

When applied to the case of the Three Iranian Islands, it must be acknowledged that the Government of the Islamic Republic of Iran, particularly since 1971, has consistently exercised authority over the islands. This has been demonstrated through the establishment of

1 On May 24, 1904, the British Minister reported that the Iranian government, while reserving its right to negotiate with the British government regarding its sovereignty over the islands of Abu Musa and Greater Tunb, had ordered Bushehr to temporarily raise Iranian flags in order to prevent tension in the region. Al-Naqbi, Yousif Ebraheem Ahmed (1998) *The Sovereignty dispute over The Gulf Islands: Abu Musa, Greater and Lesser Tunbs* (glathesis:1998-2534) PhD thesis, University of Glasgow, Retrieved from <https://theses.gla.ac.uk/2534/>, 43-44

2 When we come to look more closely at the various modes which international law recognizes as creating a title to territorial sovereignty, we shall find that all have one common feature: the importance, both in the creation of title and of its maintenance, of actual effective control. Every mode, like the Roman Law counterparts, requires the presence of *corpus* as well as *animus*. Jennings, Robert Y. *The Acquisition of Territory in International Law*. Manchester: Manchester University Press, 1963, pp. 4- 5

3 Any sovereignty dispute can have more than one critical history

4 42 Charles L. O. Buderer and Luciana T. Ricart, *The Iran-UAE Gulf Islands Dispute: A Journey Through International Law, History and Politics* (Brill Nijhoff, 2018) 464.

military bases, the development of public infrastructure, the enforcement of port and maritime regulations, and the exercise of full administrative control.

All such actions fall squarely within the parameters of effective control as recognized by the Court. In contrast, the United Arab Emirates has not engaged in any documented governmental acts on the islands during this period. Its oral or written protests have not been sufficient to disrupt Iran's sovereignty in practice, nor to prevent its continuation.

This is particularly evident in the case of Abu Musa, where—following the 1971 Memorandum of Understanding—the exercise of governmental authority and administration of the island has remained in Iranian hands, with ample evidence of Iran's effective sovereignty.

In the jurisprudence of the International Court of Justice (ICJ), the principle of silence and tacit acceptance (acquiescence) has repeatedly been invoked as a reinforcing element in support of existing sovereign rights. Notably, in the *Nicaragua v. Colombia* case, one of the Court's central considerations was Nicaragua's conduct in the decades following the conclusion of the 1928 Treaty. The Court interpreted Nicaragua's prolonged silence, lack of formal objections, and even consistent conduct acknowledging the validity of the treaty as indicative of acquiescence.

Similarly, in the *Nicaragua v. Honduras* case, Nicaragua's failure to object to Honduras's sovereign activities over an extended period was a key factor in the Court's inference regarding the legitimacy of Honduras's sovereignty.

In relation to the Three Islands, particularly following the 1971 Memorandum of Understanding concluded between Iran and the Emirate of Sharjah (with the knowledge and involvement of the United Kingdom), the United Arab Emirates refrained for a significant period from any serious legal or practical actions to assert or exercise sovereignty over the islands.

While certain statements were made in international forums at various times, the UAE took no effective or tangible legal or factual measures to challenge Iran's sovereignty. In accordance with the Court's jurisprudence, such prolonged silence and inaction may be construed as a practical acknowledgment or acquiescence to the existing legal status.

disputes primarily rest on factual realities on the ground, the continuity of sovereign acts, and the absence of effective objection. From this perspective, the position of the Islamic Republic of Iran regarding the Three Islands—particularly in light of the 1971 Memorandum of Understanding and the longstanding and effective exercise of authority over the islands—is fully consistent with the established jurisprudence of the Court.

Even in the hypothetical scenario where this dispute is submitted to the Court, a reasonable projection based on prior ICJ rulings would suggest that, provided the Court affirms its jurisdiction and the parties' consent is properly established, the Court would likely uphold Iran's sovereignty over the islands. This outcome would be especially foreseeable in view of the patterns observed in the *Honduras* and *Colombia* cases, where similar criteria were determinative.

Iran's continuous protest and opposition to the British occupation of its islands during

the Qajar and Pahlavi eras (prior to the establishment of the Islamic Republic)<sup>1</sup> demonstrate the absence of any waiver or abandonment of sovereignty and affirm the ongoing exercise of Iranian sovereignty over the islands. Furthermore, the existence of numerous maps indicating Iran's entitlement to the islands,<sup>2</sup> The inapplicability of the doctrines of terra nullius and acquisitive prescription in the case of the three islands, and the availability of various legal documents—including legal correspondences, official and unofficial maps, and formal reports by British officials as the occupying power<sup>3</sup>—All serve as substantial legal evidence that reinforces Iran's position against the United Arab Emirates' claims.

The International Court of Justice, in the cases of *Nicaragua v. Honduras*, *Nicaragua v. Colombia*, and *Namibia v. Botswana*, has adopted a common pattern for the settlement of disputes. Accordingly, if there exists a definitive treaty or boundary instrument, such an instrument constitutes the primary criterion; however, if no such instrument exists or if it is ambiguous, the effective exercise of sovereignty serves as the principal basis for determining title.<sup>4</sup> On this basis, the most important and influential criterion of the Court in establishing sovereignty and settling territorial disputes is the effective exercise of sovereignty. It should be noted that the mere fact that a State has made a claim in the past, or has advanced such a claim earlier than the opposing party, lacks decisive effect unless such a claim is accompanied by actual and continuous governmental acts in the territory concerned.

From the Court's perspective, the effective exercise of sovereignty in the cases under consideration is understood as the actual and continuous presence of the State in the disputed territory, the performance of manifest governmental acts (administrative, military, economic, and legal), carried out either without objection or in the face of ineffective objections by the opposing party, over a prolonged period of time and prior to the "critical date" determined by the Court. Accordingly, the Court has emphasized that the mere date of the first claim, or even historical references to ownership, does not create or consolidate title unless accompanied by such actual and continuous acts<sup>5</sup>. In this manner, it may be considered that the Court regards the effective exercise of sovereignty, rather than the date, as the primary criterion for determining title to the disputed territory.

Fundamentally, the Court, in order to ascertain the existence of the date of a sovereignty claim, resorts to establishing the effective exercise of sovereignty. In fact, to confer evidentiary value upon the date of a claim, the Court refers to the effective exercise of sovereignty and indications of sovereignty throughout history. Accordingly, effective sovereignty takes precedence over the date of the claim, as the tangible and observable exercise of sovereignty

1 Wolf of Marquis of Salisbury, 27 August 1888. Enclosing Instructions to Mr. Churchill, 14 August 1888, and his Report, 26 August 1888. R/15/1/196.

2 F. O. to H. Wolff, No. 49, 22 May 1988

3 Tabrasi N, *The Three Islands of the Persian Gulf: A Historical-Legal Study* (Abrar Moaser Cultural Institute for International Studies and Research 2011).

4 International Court of Justice. (2012b). Summary of the Judgment in the Territorial and Maritime Dispute (*Nicaragua v. Colombia*), 19 November 2012. <https://www.icj-cij.org/case/124>, p. 2

5 International Court of Justice. (2007). *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v. Honduras)*: judgment of 8 October 2007; pp. 168-208. International Court of Justice. <https://www.icj-cij.org/en/case/133>.

can, if necessary, be subject to assessment. For this reason, it reflects the actual implementation of the title in the international arena. Under international law, territory belongs to those States that actually administer and control it, not merely to those that assert a claim to it.<sup>1</sup> In similar cases, the Court, to properly establish effective sovereignty and to prevent *self-serving evidence* (fabrication of evidence after the dispute), usually determines a date referred to as the “critical date” and recognizes only those acts of sovereignty performed prior to that date as valid, thereby identifying the rightful title. The date of the first claim, without the support of actual acts, is insufficient under international law and the Court’s jurisprudence. The Court prefers to determine title on the basis of objective evidence of effective and continuous sovereignty.

The three Iranian islands, both before and after 30 November 1971, the date of the United Kingdom’s Occupation and the restoration of Iran’s presence, have been under Iran’s extensive exercise of sovereignty to the present day<sup>2</sup>. Prior to the British occupation, Iran exercised sovereignty over matters such as the appointment of governors, the collection of taxes, and the establishment of maritime regulations in these islands. Following the British occupation, the first manifestation of the exercise of sovereignty was the deployment of Iranian armed forces on Abu Musa, Greater Tunb, and Lesser Tunb. In addition, the enforcement of Iranian port and maritime regulations, the application of national laws, the issuance of licenses, and maritime patrols are among the measures evidencing Iran’s administrative and legal control over these islands. Other sovereign acts undertaken by Iran in the islands include infrastructural management, exemplified by the construction of ports, airports, schools, water and electricity facilities, and similar projects.

This is while individuals appointed by the United Kingdom, both before and after the occupation, undertook no effective acts on the islands. Moreover, should the United Arab Emirates claim to have engaged in sovereign activities prior to 1971, it must be recalled that, at that time, there was in fact no entity by the name of the United Arab Emirates existing as an independent State in the international arena. Moreover, these islands, according to official maps and official reports, have belonged to Iran, and not to the Emirati claimants. In fact, under the 1971 Agreement concluded between Iran and the United Kingdom, Abu Musa Island, which had been under British occupation, was returned to Iran<sup>3</sup>. Furthermore, the two islands of Greater Tunb and Lesser Tunb were returned to Iran without a written agreement. This agreement was concluded two days prior to the issuance of the official declaration of independence of the newly established State of the United Arab Emirates; thus, there was, in essence, no sovereignty in existence that could have affected the islands. The United Arab Emirates began to raise objections nearly twenty-one years after the agreement, and such objections were merely in the form of statements or diplomatic correspondence, which, it

1 Lotfi, F., ‘The concept of recognition of states and governments in the international legal system’, *Ghanoon Yar International Journal*, no. 12, 2019, p. 15.

2 United Nations Security Council. 2014. Letter dated 23 October 2014 from the Permanent Representative of the United Arab Emirates to the United Nations addressed to the Secretary-General. S/2014/759, pp. 3-8

3 Heard-Bey, Frauke, *From Trucial States to United Arab Emirate* (Motive 2004) 370.

should be noted, are regarded in the Court's jurisprudence as "ineffective protests."<sup>1</sup> Notably, the twenty-year silence of the United Arab Emirates indicates that it was fully aware that these territories belonged to Iran and had no claim in this regard.

Furthermore, the United Arab Emirates claims that, at certain periods of history, these islands were, in practice, within the territory or under the influence of the Emirates' sheikhdoms or offices under British protection<sup>2</sup>. This claim is made to reinforce the historical basis of UAE sovereignty and to consolidate its legal position. As previously noted, the Court places significant emphasis on the effective exercise of sovereignty in order to corroborate or substantiate the date of a claim. Accordingly, the historical claim for the period 1907 gains validity only if it is accompanied by effective sovereignty; therefore, it appears that this short period would be insufficient before the Court. In contrast, Iran has continuously and openly exercised its sovereignty before, during, and after the occupation, up to the present.

The United Arab Emirates could have invoked the matter of the earlier date only if Iran had relinquished its prior title and sovereignty. In the case of the three Iranian islands, Iran has never abandoned its ownership or sovereignty; rather, the presence of the United Kingdom on these islands constitutes, from a legal perspective, a foreign occupation. Consequently, the United Arab Emirates cannot rely on rules governing colonial treaties in this context, especially given that none of the quasi-sovereign acts by the United Kingdom or its Emirati affiliates were undertaken without opposition. In practice, the earlier date claimed by the United Arab Emirates lacks any legal justification

Therefore, based on the Court's jurisprudence, Iran's effective exercise of sovereignty, both before and after the British occupation, is far stronger than the UAE's reliance on the dates it claims. History alone does not confer title or establish rights; rather, it is the effective and continuous exercise of sovereignty that consolidates ownership. The interruption caused by occupation does not impair Iran's title and sovereignty. In other words, the preference for "title derived from the effective exercise of sovereignty" over the mere "date of the first claim" is based on the fact that, under international law and the Court's practice, territorial ownership is established through actual and continuous control, not through historical claims lacking operative backing. Even if a State had previously asserted an older claim, this alone does not create or consolidate title. Consequently, effective acts of sovereignty carry far greater evidentiary weight in the Court's jurisprudence, and to substantiate a historical title, reference must be made to the effective exercise of sovereignty.

## Conclusion

Based on the foregoing analysis, it can be concluded that the International Court of Justice (ICJ), in adjudicating territorial disputes, adheres to a set of relatively consistent principles. The most prominent among these are the effective exercise of sovereignty, tacit acceptance

1 United Nations Security Council. Letter dated 10 December 2015 from the Permanent Representative of Saudi Arabia to the United Nations addressed to the President of the Security Council (No. S/2015/954). Retrieved from <http://undocs.org/S/2015/954>, pp. 7-8

2 United Nations Security Council. 2014. Letter dated 23 October 2014 from the Permanent Representative of the United Arab Emirates to the United Nations addressed to the Secretary-General. S/2014/759, p. 2

or silence by the opposing party, the principle of *uti possidetis juris*, and the interpretation of historical treaties. The Court's recent jurisprudence in three key territorial cases demonstrates that the primary basis for establishing sovereignty lies not in ambiguous historical documents, but in concrete and continuous acts of sovereign authority.

In addition, factors such as the lack of effective protest, the parties' consistent conduct, and the good-faith interpretation of agreements are essential components of the Court's reasoning. Nevertheless, the Court has shown contextual flexibility, adapting its application of these principles to the specific features of each case.

When applied to the case of the Three Iranian Islands, it is evident that many of the key elements recognized in previous ICJ judgments support Iran's legal position. The 1971 Memorandum of Understanding between Iran and the United Kingdom concerning Abu Musa, the numerous instances of Iran's effective administration over the islands, and the conduct of the United Arab Emirates, which—under international law—amounts to practical acquiescence in the existing situation, all serve as strong legal grounds in favor of Iranian sovereignty. Based on the International Court of Justice's jurisprudence, mere historical claims or earlier dates do not establish territorial title; rather, it is the effective and continuous exercise of sovereignty that consolidates ownership. Iran's uninterrupted and manifest sovereignty over the three islands, both before and after the British occupation, outweighs the UAE's unsupported historical assertions. Moreover, the Court has previously recognized artificial evidentiary constructions by disputing parties and has countered such attempts by establishing a critical date to prevent retroactive efforts to bolster claims.

While the case of the Three Islands has not yet been formally brought before the ICJ, the Court's jurisprudence demonstrates that international law provides reliable tools for asserting and defending territorial rights. Accordingly, a well-structured legal strategy grounded in the Court's precedents can serve as a powerful diplomatic asset for the Islamic Republic of Iran in the international arena. Given the documented legal foundations of Iran's position, it can be argued that Iran holds the upper hand and that any claim by the UAE constitutes a violation of Iran's territorial integrity.

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