

## Legal Investigation of Construction of Artificial Islands in Persian Gulf

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**Abstract:** As a crucial and strategic waterway, Persian Gulf has a special status in the realm of international and regional developments of Middle East. Perpetual military, political, economical, social, and environmental changes in this region have led to different and continual transformations and developments which demand paying further attentions to legal dimensions of various upcoming activities and challenges. Construction of artificial islands in Persian Gulf is currently one of the newest and most significant challenges. Construction of artificial islands has not been prohibited in international laws but the conventions on laws of seas mainly focus on construction of artificial islands for research and exploratory purposes. Such islands would create no right and advantage for the owner and constructor country in terms of delineation of marine borders. However, it must be also noted that although construction of artificial islands cannot be essentially recognized as an illegal act but concept of security in the modern world is not limited merely to political and military scopes. Indeed, environmental damages and devastations are among the greatest human concerns which can presume this issue as one of the most important threats to the environment in Persian Gulf. Through reviewing laws of seas and Kuwait convention, it is attempted in the present research to investigate and analyze construction of these islands with a legal approach.

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### 1. Introduction

Persian Gulf is the main point for international trade of Iran, entrance to open seas, emission of energy and focus of foreign, regional and international policy of Iran. These characteristics concurrently lead to challenges and opportunities for benefits of Iran. If you pass over the Persian Gulf waters by airplane and have a look at this unique water zone, you will see palm-like structures which are moving to the seabed when you get close to waters of other coastal countries of this region. Drying the sea in waters of Persian Gulf and Oman Sea by the Arabic countries is a phenomenon which has affected environment of the south sea and faces progress of the new programs every day. Drying the sea and making artificial islands undoubtedly have effect on waters of the region. These countries which are seeking economic benefits and growth of tourist by executing their development plans have not studied long-term and short-term environmental effects of invasion of the sea coasts and Iran is not excluded from these consequences. Based on many international and regional reports, transportation of tankers, oil platforms, refineries and coastal installations converted Persian Gulf to the most polluted sea of the world. Under these conditions, construction of artificial islands intensifies this trend and causes irreparable losses for the coastal countries. In International Convention of Law of the Sea, attention to environment of the seas and benefits of other coastal countries has been regarded as one of

the main preconditions for construction of these islands. In this paper, attempt is made to study construction of artificial islands from the viewpoint of international law of seas and study geopolitical and environmental consequences of construction of artificial islands on Persian Gulf. Construction of artificial islands by the UAE in Persian Gulf is seriously considered by the public thoughts and Iranian media and recently led to critical reactions of the Iranian high-rank authorities. Sensitivity of this subject more depends on historical, identity, economic, political-security and environmental position of Persian Gulf in national benefits and security of Iran. Persian Gulf is the main point for international trade of Iran and entrance to open seas, emission of energy and focus of foreign, regional and international policy of Iran. These characteristics concurrently lead to challenges and opportunities for benefits of Iran so that one can regard Persian Gulf as important as national security of Iran. For this purpose, this paper seeks to answer this question that how one can prevent progress of island construction and excessive destruction of environment in Persian Gulf based on the legal approach by reviewing legal issues of International Convention of Law of the Sea and convention of Kuwait. Main hypothesis of this research is based on the fact that improvement of legal condition of the related organizations and conventions is effective on reduction of this trend progression.

## 2. Construction of Artificial Islands and Changes of Sea Borders

Although no criterion is considered for determination of border in international laws of artificial islands, certainly, the case is different for progress of coast. In fact, progress of coast in one of two countries increases ability of that country to determine borders. In international law of sea, artificial island means the man-made installations around which is water, which is seen in case of tide of sea water, is erected in a geographical point and for a definite term and is applied as a station for marine activities. Based on Convention of Law of the Sea 1982, artificial island cannot be regarded as a criterion for setting marine border of the countries, for this reason, it cannot create rights and privileges for the beneficiary states regarding baseline, land sea, exclusive economic zone. Based on International Convention of Law of the Sea, governance of states in Land Sea is absolute except in right of innocent passing for the vessels. Therefore, this right is granted to them to construct these islands or other artificial installations in this marine zone. In addition, in exclusive economic zone, states have been granted with right to construct artificial installations for research purposes and to extract mineral and non-animated resources in seabed. Article 56 of Convention of Law of the Sea 1982 has granted the states with right to construct artificial islands. Based on article 56 of Convention of Law of the Sea, states have governance to explore, extract, protect and manage animate and inanimate natural resources in exclusive economic zone. Of the cases that states have been recognized qualified based on this article are construction and use of artificial islands, installations and buildings (International Convention of Law of the Sea, 1982). In addition, article 60 of this convention entitled artificial islands, installations and buildings in exclusive economic zone stipulated that:

I-in exclusive economic zone, coastal country will have right to construct the following cases and allow constructing, executing and using them:

- A- Artificial islands
- B- Installations and buildings for the purposes mentioned in article 56 of exploration, extraction and exploitation of animate and inanimate marine resources and other economic projects
- C- Coastal countries will have exclusive jurisdiction over artificial islands, installations and buildings, customs, financial, hygienic, immigration and security laws and regulations.
- D- In order to construct these artificial islands, installations and buildings, appropriate announcement should be made and permanent

instruments shall be erected and installed for announcing and warning them.

- E- If necessary, the coastal country can create secure installations, buildings and zones around the artificial islands in order to ensure security of navigation.
- F- The coastal country will determine extent of the secure zones considering the international standards. These zones will be determined so that they are commonly related to nature and application of artificial islands, installation, buildings. Extent of these zones will not exceed 500 m around them with external corner being measured from any point.
- G- All countries are obliged to respect for secure zones and accept international standards regarding navigation near artificial islands, installation, buildings.
- H- Artificial islands, installation, buildings and secure zones around them will not be created in which they may interfere through necessary marine channels for international navigation.
- I- Artificial islands, installation, buildings have no condition of natural islands. They have no land for them and their presence is not effective on delimitation of Land Sea, exclusive economic zone or continental shelf (International Convention of Law of the Sea, 1982).
- J- Based on article 60 of International Convention of Law of the Sea, 1982, the coastal countries will have right to create artificial islands in the marine zones under their governance and jurisdiction and particularly in exclusive economic zone.

It has been stipulated in article 80 of the above convention regarding artificial islands in continental shelf that article 60 will be applied exactly and with appropriate considerations of artificial islands, installation and, buildings on continental shelf (International Convention of Law of the Sea, 1982).

In order to construct these islands, attention shall be made to fishing, marine environmental protection, maritime security, rights and duties of other countries. Artificial islands have no condition of natural islands. They have no land sea for themselves and are not effective on delimitation of marine zones and coastal states are responsible to other neighboring states for marine environmental protection and common benefits of the neighboring states (CYZBULKA and KERSANDT, 2000).

Based on article 87 of these conventions, states can take action regarding construction of artificial installations even in open waters beyond exclusive economic zone in order to perform research affairs but they have been prevented from owning open sea in marine zones. Establishment of these islands and

installations shall not be contrary to public international law. One of the rules which the states are obliged to follow to use these islands and installations is that they are used only for peaceful purposes. In other words, settlement of military forces and creation of eavesdropping and spying centers in those islands and the related installations (Moosa Zadeh, 2009). Therefore, based on rules of international law, all countries have right to construct artificial islands in marine zones and one cannot claim against any country for construction of the artificial installations unless it damages common benefits of other states or doesn't pay attention to marine environmental laws. Now, this question is raised: can coastal states construct artificial islands without considering benefits and rights of others? In this regard, judgment of Arbitral Tribunal of Marine Law about claim of Malaysia and Singapore clarifies this fact. Malaysia claimed that action of Singapore regarding establishment of artificial islands with negative effect on marine environment causes increasing erosion of coast, increasing sedimentation, pollution and salinity of sea water. The tribunal announced to investigate this claim and claims of Malaysia government announced that states shall evaluate environmental effects of construction of artificial islands and notify the beneficiary countries or cooperate with other countries for marine environmental protection. The tribunal also emphasized that the main duty of the state which constructs the island is to consider environmental concerns of other states through cooperation. Considering potential effects of Singapore's action on environment, the tribunal emphasized that foresight caused to apply strategies for risk assessment before executing the project. This sentence in judgment of the tribunal indicated necessity for considering principle of taking cautionary measures before action (Omid , 2007). Although construction of artificial islands was not prohibited by the states based on International Convention of Law of the Sea and article 60 of convention 1982 had explained the necessary facts, construction of these islands cannot be done without considering rights and benefits of other countries and the related environmental consequences. The constructing states are obliged to respect rights of other countries and observe the mutual benefits.



Figure 1: variations of flow in waters of Persian Gulf /picture 1: air photograph of Dubai coast which was taken on 5 March 2003, the areas which we marked with red strips are the parts in which three artificial islands are constructed. Picture 2: this photo was taken in 2011 using *Google Earth*. The areas which were marked with red strip are the parts which were not available in 2003.

Source: <http://www.anvarionline.net/wp-content/picture/2011/03/e-13.JPG>

### 3. International Law of Seas

In part 12 of convention of law of seas 1982, especially legal rules of environment of the seas have been mentioned. In other parts of this convention, subject of environment has been considered if necessary. About 60 articles of convention 1982 relates to this subject. Article 192 of this convention obliged the countries to protect and support marine environment. In article 193, sovereignty of the countries for exploiting their natural resources has been recognized on the condition of the marine environmental protection. In article 194, actions for preventing, reducing and controlling sea environmental pollution were discussed. Based on convention 1982, the countries are obliged to take all actions individually or collectively and based on convention which are necessary for preventing, reducing and controlling sea environmental pollution from any resource (Poor Noori and Habibi, 2004).

The countries shall take all necessary actions to ensure that activities under their jurisdiction are performed such that they don't cause damage to other countries or their environment resulting from pollution and don't expand pollution resulting from the events or activities under their jurisdiction or control beyond their sovereignty according to this convention. In addition, paragraph 5 of article 194 of convention of law of seas 1982 has emphasized on necessary actions for supporting and protecting rare and vulnerable ecosystems as well as the reduced habitats of marine creatures and all other marine creatures. In this convention, it has been pointed out

that the countries shall take actions for preventing , reducing or controlling marine environmental pollution such that they don't directly or indirectly transfer loss and damage from one area to another area or don't convert one type of pollution to another type((International Convention of Law of the Sea 1982). In Convention of Law of Seas 1982, necessity for paying attention to marine environment for constructing artificial islands has been emphasized so that the necessary condition for constructing these islands is not to damage marine environment and animate and inanimate resources available in seabed and sub bases because the states are responsible for supporting and protecting marine environment based on article 235 of Convention of Law of Seas 1982 and this responsibility is based on international law. In addition to convention 1982, other conventions have referred to subject of marine environment in some cases. In this regard, marine environment has been studied as an important and separate section in many international convention of environment. For example, subject of pollution was discussed as one of the important subjects in Rio Conference which was held in 1982 in Rio de Janeiro, Brazil in the presence of 172 states and 6 regional organizations affiliated with United Nations Organization or in important environment statement in Johannesburg which is known as summits sessions statement for sustainable development and was held in 2002 in presence of many summits and governmental and nongovernmental delegates of most countries. Generally, the following legal principles can be extracted from references of international law of seas:

- 1- Principle of states' liability in environmental protection: this principle means that states are responsible for environmental pollution originating from their land whether it is caused by the governmental agents or their citizens. This principle requires the states to prevent pollution with preventive measures.
- 2- Principle of good neighbor: on this basis, the states are obliged to think about necessary measures for protecting environment inside their borders considering integrity of the environment in order not to damage other countries due to their neighborhood.
- 3- Principle of precautionary measures before taking action: this principle means that users of modern technologies shall think about the inspiring measures in order not to leave negative effect on environment and in case they are harmful, they will be responsible. In other words, environmental effects shall be studied before exaction.

- 4- Principle of Paying Damage by the Pollutant State: the state which causes intentional pollution shall compensate for damage.
- 5- Principle of Sustainable Development: on this basis, environmental protection is an integral part of development in different dimensions (Omidi , 2007).

In order to construct artificial islands, it is very important to pay attention to benefits of international society. In international law of seas environment, this point has been considered. For this reason, if construction of artificial islands has harmful environmental effects, international law prefers benefits of international society over benefits of the state which constructs artificial islands. Geographical domain of the environmental treaty is very different from other treaties because environmental issues are regarded as rings of a chain connected to each other. These treaties usually have been accepted based on common benefits of humans and their goal is to protect life of wild plants and animals varieties, oceans, air, soil and generally nature. Principle 7 of Rio Declaration announces that: states have similar but different responsibilities to protect, support and recover health and integrity of the earth ecosystem with morale of global (Abbasi, 2011).

#### 4. Convention of RAPME, Kuwait

After announcement of Persian Gulf as one of the special zone in environmental program of United Nations Organization, a conference was held in Kuwait by CEO of UNP with initiative of the region states from 15 to 23 April 1978 to protect and develop marine environment and coastal zones. The outcome was to hold regional convention of Kuwait for cooperation in marine environmental protection against pollution and cooperation protocol against sea pollution caused by oil and other harmful matters which was executed on 30 June 1978 i.e. 90 days after enactment of the fifth statement by Kuwait. This convention has thought about some measures for protecting natural ecosystem of the region by concluding the above convention and added protocols while announcing that Persian Gulf region is regarded as one of the special zones. In introduction of the mentioned convention, the member states were obliged to enforce the following cases:

- 1- Considering special hydrographic and ecological characteristics of marine environment of the zone and its special vulnerability to pollution and considering necessity for ensuring that activities relating to development of city and village and land use are performed such that marine resources and welfare installations and facilities of coast can be protected and this development doesn't damage marine environment.



2- Ensuring that industrial development doesn't damage marine environment of the zone and doesn't endanger the animate resources and human health.

3- Considering necessity for adoption of a total management method for the marine environment and coastal zones which makes possible to achieve the goals of environment, urban planning and development.

In article 3 of this convention, member states were obliged to take necessary actions individually or collectively according to this binding convention and protocols in which they are member in order to prevent or reduce environmental pollution in marine zone and control pollution. The obliged states cooperate with the international, regional and district competent organizations in order to enact and adopt regional rules and policies recommended for preventing or reducing pollution or controlling pollution resources based on goals of this convention and will help each other perform obligations (Fahim Danesh, 2006).

Article 13 of Kuwait convention has determined a general obligation for preparing regulations regarding liability and damage for the member states like article 235 of Convention of Law of Seas. Based on this article, the obliged states shall cooperate with each other in codification and acceptance of the regulations and methods of determining the following cases:

- 1- Civil liability and compensation for damage resulting from marine environmental pollution considering the related international regulations
- 2- liability and compensation for damage resulting from violation of the obligations of this convention and its protocols

In this article, there are two legal liabilities:

- A- liability resulting from violation of international regulations
- B- liability resulting from violation of convention obligations and its protocols

Under such conditions, the countries which are constructing artificial islands in Persian Gulf shall pay attention to regional regulations in addition to regulations of Convention of Law of Seas. Based on this convention, the states which construct artificial islands are responsible for any destruction of environment and in case they damage environment of the region or neighboring countries, they are obliged to compensate for damages while assuming the related responsibility. In addition, they are obliged to study and evaluate environmental consequences before any action and then take necessary actions.

## 5. Importance of Constructing Artificial Islands in Persian Gulf

It is important to construct artificial islands in Persian Gulf in different aspects:

First, energy security; Persian Gulf region is one of the richest energy resources in the world (oil and gas). Many of these resources are identified and divided among the coastal countries and many are gradually identified such as gas supplies in downstream zones of Persian Gulf near Hormoz Strait. This issue is important based on division of resources among coastal states or the presence of investors and foreign companies and foreign actors in the region.

Second, geopolitics of borders; although such artificial islands have their own rules and regulations based on rules of international law, for example, the land sea is not included or because these islands are connected to coasts, therefore, their conditions are different from artificial islands in the middle of sea, the important issue is rights and expectations which can be probably created in the future, for example, increase in the number of these islands in the region can be mentioned based on creation of baseline in connection of different parts of these islands and its related rights regarding sovereignty in local waters or creation of exclusive economic zones for exclusive exploitation of fishing etc.

Third; environmental issues which can be regarded as the most important threat. Persian Gulf has a marine closed ecosystem. Therefore, interference in natural system makes environment of the region vulnerable and its harmful effects are also related to coasts of Iran due to mutual environmental dependency. Construction of these islands will have harmful effects on the region due to damage of the plant and animal varieties of the water surface and seabed, damage of natural flows, entrance and exit of water flows of Persian Gulf bed as well as pollution resulting from the population and urban sewages of these luxurious islands. In particular, one of the most important political consequences of artificial islands development by UAE is as follows:

- 1- Developing marine borders of UAE; since artificial islands of UAE are regarded as water zone of this country, the UAE seeks to increase their water border and consequently to grasp more international common zones of waters and bed of Persian Gulf by expanding their islands. The UAE has expanded their coasts by constructing their coasts virtually and continuation of this trend will be harmful to Iran and other countries of the region.

- 2- Land developmentalism by transferring exclusive fishing area (12 miles ) from dry lands of south Persian Gulf to the farthest artificial islands from coasts of the UAE in order to threaten strategic depth of Iran in Persian Gulf
- 3- Stepwise occupation of continental shelf and Persian Gulf bed for getting closer to three islands and coasts of Iran based on the future Land developmentalism plans (Abbasi , 2011).

The most important catastrophic environmental consequences of artificial islands of the UAE are as follows:

- 1- threat of biological security of the immigrant birds and animals of nonresidential islands of Persian Gulf
- 2- extinction of *live coral cover as one of the important potentials of bioaccumulation* in Persian Gulf
- 3- Destruction of natural zoning of seabed of the UAE has removed valuable deposits of Persian Gulf bed for constructing project of the islands and activity of machinery and extraction of granules from seafloor have seriously damaged zoning of the seabed.
- 4- Change in route of natural water flows which disrupts natural self-purification potential of Persian Gulf
- 5- Disrupting natural structure of Persian Gulf bed
- 6- Discharging all kinds of garbage , contaminating sewages and all kinds of phosphorous contaminants etc into Persian Gulf
- 7- Destruction of one of the most valuable marine ecosystems in the world by destroying aquatic habitats of Persian Gulf including 400 to 450 species of fish and 300 to 450 species of other aquatic animals such as sea turtles , special species of Persian Gulf region
- 8- Climatic and environmental side effects resulting from conversion of some zones of sea to dry land , reducing thermal capacity of the region and dryness of its climate and increasing dust storms which have direct effect on quality of economic and social life of the people in the region , particularly those who live along the coast of Iran.

## 6. Result and Conclusion

Persian Gulf is a region with environmentally special and vulnerable conditions and any action therein shall be environmentally considered. As mentioned before, coastal countries can take

action regarding construction of their artificial islands in their waters based on Convention of Law of Seas. Therefore, the countries have not been prohibited to construct artificial islands but environmental planning and mutual benefits of the marine neighbors shall be considered to construct these islands. Therefore, construction of these islands is not accepted from the viewpoint of international law of seas in case of neglecting benefits of other nations and destroying environment. Regarding Convention of RAPME, member states of this convention established RAPME regional organization in Kuwait in order to execute and perform supervision affairs but this organization couldn't have perform serious and inhibiting actions and only its performance has been announced. Because Convention of Kuwait is silent about artificial islands, it is necessary to rely on other international treaties for investigating subject of artificial islands in Persian Gulf. Considering the mentioned facts in this paper, construction of the artificial islands in Persian Gulf will lead to the following consequences:

- 1- Coral reefs as well as unique animate resources of Persian Gulf, sea plants, algae and Hara forests will be seriously damaged due to construction of these islands and increase of environmental pollution resulting from it.
- 1- Considering penetration of artificial islands in waters of Persian Gulf which extends to several kilometers, direction of water flows will change which leaves harmful effects on the land islands and coasts.
- 2- Slurry caused by construction of these islands contaminates clean waters around them and will cause problem in animal biodiversities.
- 3- High tide flows pattern in Persian Gulf which affects northern coasts of Persian Gulf and low tide flows which affect southern coasts of Persian Gulf will change.
- 4- Coastal sedimentation behind the artificial islands geopolitically will change effects of sea waves in addition to exploitation of thousand hectares of coastal land and increase of the coastlines which may lead some countries which construct artificial islands to claim in the future. At the end, the following cases are suggested considering what was mentioned above.
- 1- Countries of the region enliven convention of Kuwait with some reforms by holding summits meeting or put them aside by holding a new convention because this

convention is not accountable to the modern changes considering the wonderful regional changes.

- 2- Improving legal condition of RAPME Organization in order to increase importance of the organization and encourage the states to feel more responsibility for that. This organization is linked with Persian Gulf Cooperation Council to provide convergence of the countries in the region.
- 3- Although there are some challenges to regional arrangements for protecting environment considering high tendency of countries of the region to create artificial islands, success in this field will pave the way for cooperation in important political and security fields.
- 4- Based on clear principles of international law, shoreless states cannot establish artificial islands in Persian Gulf.
- 5- The state which constructs and holds artificial islands (UAE) shall notify the countries of region about environmental effects of artificial islands construction.
- 6- The state which constructs artificial islands shall not disrupt international free shipping.
- 7- Necessary strategies shall be presented for removing environmental harmful effects of these islands.
- 8- In case of environmental damages, necessary measures shall be taken for compensating the damage.
- 9- Other concerns of the neighboring countries of Persian Gulf shall be considered and necessary cooperation shall be made for removing this concern.

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