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## Chapter 7

# Regionalism and the Law of the Sea: The Persian Gulf Perspective\*

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The Persian Gulf presents, in microcosm, the major issues in the international law of the sea. This paper focuses on the general approaches of two developing States, Iran and Saudi Arabia, to the changing law of the sea. The relationship between legal development and regional context is explored with a view to understanding the approaches of Iran and Saudi Arabia to the law of the sea, their role at the third United Nations Conference on the Law of the Sea, and the probable direction of future claims.

egal Development: Factual Background. The Persian Gulf is a semienclosed sea situated between the Arabian peninsula and Iran. It is roughly one-tenth the size of the Gulf of Mexico and is 97 percent bounded by land.<sup>1</sup> The Gulf's only outlet is the Strait of Hormuz, 20.75 miles across at its narrowest. The Gulf is a relatively shallow basin with an average depth of only 40 meters and a maximum depth of about 100 meters.<sup>2</sup> Numerous islands are scattered throughout the Gulf, but particularly along the Arabian shore. Deeper waters run along the Iranian coast and off the tip of the Musandam peninsula.

Seven States make up the Gulf littoral, and one insular State, Bahrain, lies within the Gulf. The coastlines of the Gulf States vary from 635 nautical miles for Iran and 296 nautical miles for Saudi Arabia to only about 10 nautical miles for Iraq.<sup>3</sup>

Although eight States have their borders touching the Gulf, legal development in the Gulf has been based primarily upon the precedents set by the two largest Gulf States, Iran and Saudi Arabia. The claims and agreements of Iran and Saudi Arabia have effectively established certain international legal norms that are not only complied with by other littoral States, but are also reflected in their respective claims.<sup>4</sup>

#### **National Claims**

Territorial Sea Claims. In 1934 Iran defined its initial claim to Persian "territorial waters." In its Act of 19 July 1934 relating to the Breadth of the Territorial Waters

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and Zone of Supervision, Iran claimed territorial waters extending to 6 miles and claimed that its islands also had 6-mile territorial waters. Iran implicitly used straight baselines in that islands forming an archipelago were deemed to form a single island.

Saudi Arabia, in its Decree No. 6/4/5/3711 defining the Territorial Waters of the Kingdom, 28 May 1949, 6 also claimed 6-mile territorial waters, specifically its coastal sea, as extending 6 miles from its coast. Saudi Arabia also claimed the use of straight baselines for areas having offshore islands and recognized the right of innocent passage.

Saudi Arabia redefined its territorial waters in its Decree No. 33 of 16 February 1958. It replaced the broader term "territorial waters" with the term "territorial sea," and expanded its claim to 12 miles. It also dropped its specific reference to "innocent passage."

Iran followed the Saudi example and claimed a 12-mile territorial sea in its Act of 12 April 1959, amending the 1934 Act relating to the Breadth of the Territorial Sea and Contiguous Zone of Iran.<sup>8</sup>

Resource Claims. Saudi Arabia, in its Royal Pronouncement with Respect to the Subsoil and Sea Bed of Areas in the Persian Gulf contiguous to the Coasts of the Kingdom of Saudi Arabia, 28 May 1949, established its first claim to submarine resources. Saudi Arabia claimed that "the subsoil and sea bed of those areas in the Persian Gulf seaward from the coastal sea," but contiguous to its coasts "appertain to the Kingdom of Saudi Arabia" and are "subject to its jurisdiction and control." Saudi Arabia provided that the boundaries of the subsoil and seabed contiguous to its coasts would be "determined in accordance with equitable principles" by the Saudi Government "in agreement with other States having jurisdiction and control over the subsoil and seabed of adjoining areas."

Iran had a bill defining its claim to the Persian Gulf subsea resources submitted to its Majlis on 19 May 1949, 10 but did not enact its "continental shelf" claim into law until 1955. In its Law of 19 June that year Iran claimed that "the area and the natural resources of the seabed and the subsoil thereof to the limits of the continental shelf... in the Persian Gulf and Gulf of Oman, belong to the Iranian Government." Iran also provided that "where the continental shelf... extends to the coast of another or coincides with that of a neighboring country, and if disputes arise concerning the limits of Iran's continental shelf, such disputes shall be settled in conformity with the rules of equity." (In its original 1949 bill the limits were to be fixed equitably with respect to the natural resources of the continental shelf.)

In other claims relating to offshore resources, Iran, in its Proclamation of 30 October 1973, claimed that its exclusive fishing zone would extend to the outer limits of the superjacent waters of its continental shelf in the Persian Gulf and 50 nautical miles in the Gulf of Oman. <sup>12</sup> Saudi Arabia made a similar claim to fishing resources in the Gulf in its Proclamation of 30 April 1974.

Bilateral Agreements. Numerous bilateral agreements delimiting offshore jurisdiction in the Gulf have been reached. These are commonly called continental shelf boundaries even though no shelf as such exists within the Gulf. They are all based upon equitable principles, but are flexible in their application of such principles. The first agreement, the Saudi Arabia-Bahrain Agreement of 22 February 1958, established a central boundary line between the two States based on equidistance. Also included in the treaty was the establishment of a hexagonal area under Saudi jurisdiction, but with half of the net income derived from the area to go to Bahrain. The Saudi Arabia-Kuwait Agreement of 7 July 1965 provided for joint ownership of mineral rights in the offshore neutral zone and joint exploitation unless otherwise agreed. 14

Perhaps the most significant agreement reached in the Gulf was between Saudi Arabia and Iran on 24 October 1968. It delimited the boundary line separating the submarine areas between the two States. The agreement, reached only after difficult negotiations, provided for a boundary having three distinct parts. Again the flexible application of equitable principles was necessary. The lower portion of the boundary essentially represented a median line. The central portion included two disputed islands. One island went to each State, with territorial seas recognized for both. The upper section of the boundary proved to be the most difficult. One compromise resulted in Kharg Island being given "half-effect." Also, the boundary line was drawn irregularly to divide equally the resources of an oilfield discovered after negotiations had begun.

Other boundary agreements were also reached between Iran and Qatar in 1969; Iran and Bahrain in 1971; Iran and Sharjah in 1971; Iran and Oman in 1974; and Iran and Dubai in 1974. Nevertheless, a number of boundaries remain in dispute, especially in the extreme northern and southern parts of the Gulf.

Multilateral Agreements. The only legal development in the Gulf based on multilateral action has involved the protection of the environment. First, the International Conventional for the Prevention of Pollution from Ships signed in London on 2 November 1973 provided for the designation of "special areas" that required more stringent protective measures for the preservation of the marine environment. <sup>16</sup> The Persian Gulf was one such area.

Subsequently, in April 1978, the Gulf States convened the Kuwait Regional Conference on the Protection and Development of the Marine Environment. At the conference the Kuwait Regional Convention for Cooperation on the Protection of the Marine Environment from Pollution was signed. Also a Protocol, providing for joint cooperation in the case of a major oilspill or other marine emergencies, was signed. <sup>17</sup>

Legal Development: Regional Context. When placed in a broader regional context, the substance and timing of the various national claims, bilateral agreements, and

multilateral actions can be better understood. Examining these claims and agreements in terms of the underlying national interests that exist within a given region can offer insights into the nature of legal development and its relationship to the regional context.

#### **National Claims**

Territorial Sea Claims. Iran's territorial sea claims were directly tied to the Gulf context. The 1934 claim to 6-mile territorial waters and the implicit use of straight baselines (made after Iran's participation in the 1930 Hague Conference) was tied not only to the geographical characteristics of the Gulf, but also to Iran's security interests and to its efforts to avoid becoming entangled in the ongoing European rivalries in the Gulf. Its subsequent claim to a 12-mile territorial sea in 1959 was directly tied to political developments in the Gulf and to Iran's security interests. Two days after Iraq's President Kassem called for Iraq "to restore" a 5-kilometer stretch of the Shatt-al-Arab River that had previously been granted to Iran, Iran extended its territorial sea from 6 to 12 miles for security reasons. The Iranian claim presaged the Shatt-al-Arab crisis.

Saudi Arabia's initial territorial sea claims were closely tied to regional developments, specifically to Aramco's interest in exploiting offshore oil. Saudi Arabia, at the recommendation of Aramco, hired Judge Manley O. Hudson and Richard Young of Harvard Law School to draw up its offshore claims to insure that its offshore oil exploitation could succeed in a "sound legal environment." Upon the recommendation of Judge Hudson, Saudi Arabia accepted a "package deal." It provided for Saudi claims to: (1) territorial waters; (2) resources of the seabed and subsoil of areas contiguous to the coasts; (3) claims to certain offshore islands. Mr. Young, who participated in the writing of the claims, indicated that the 6-mile claim was based upon "regional precedent," dating back to the 1914 claim of the Sublime Porte of the Ottoman Empire that claimed 6-mile territorial waters in the Gulf. Moreover, the use of "straight baselines" was tied to the geographical configuration of the Gulf and based on the Norwegian legislation that was being considered by the International Court of Justice in the Anglo-Norwegian Fisheries Case.

The expansion of Saudi Arabia's territorial sea to 12 miles in 1958 was directly tied to Saudi Arabia's security interests. Of primary importance in this regard was the presence of Israeli warships in the Gulf of Aqaba.

Resource Claims. The Iranian and Saudi offshore resource claims were closely related to developments within the Gulf. Iran's "continental shelf" claim, as put forth in 1949, was not enacted until 1955 because of the Anglo-Iranian oil relationships. Also of importance were the results of the Qatar Case of 1950 and the Abu Dhabi Case of 1951 which indicated that prior concessions did not

include the seabed and subsoil of those areas contiguous to the territorial waters of the states involved.

According to Richard Young, the Saudi claim to the resources of the seabed and subsoil was directly based on the Truman Proclamation. The claim was altered, however, to conform with the geographical characteristics of the Gulf. Because the Gulf was essentially a basin and had no shelf as such, the Saudi claim was based upon the "principle of contiguity." (Iran's claim was to the continental shelf, but Iran does have a shelf extending into the Gulf of Oman.)

The fishing claims of Iran and Saudi Arabia supported two specific interests in the Gulf. First, the claims were in response to the presence of foreign fishing vessels, especially those of Japan. Thus an economic interest in the fishery resources was supported. Second, apart from conserving fishery resources, security interests were served. Foreign vessels, supposedly fishing, could no longer move freely in the areas contiguous to the territorial sea but became subject to regulation. This could limit subversive activities and foreign intelligence operations.

Bilateral Agreements. The Iranian and Saudi agreements delimiting offshore resource boundaries are closely tied to the Gulf context, both in terms of its geographical features and political developments. First the agreements were influenced fundamentally by the physical features of the Gulf, especially by the presence of islands and "known" fields of petroleum. Boundary lines were often adjusted to allocate resources in an equitable manner and to take into account certain islands, such as Kharg Island. Disputed islands often delayed and sometimes have prevented the delimitation of certain offshore areas. The dispute over Abu Musa and the two Tunbs has complicated boundary delimitation in the south. Similarly, the competing claims to Warbah and Bubiyan islands complicate boundary delimitations in the north.

Political developments have played a significant part in motivating States to seek agreements. For example, Iran and Saudi Arabia negotiated for years on their offshore boundary, but were able to reach a final agreement only after the British announced their withdrawal from the Gulf. Interests in regional stability led Iran and Saudi Arabia to move to resolve other lingering territorial disputes with their neighbors.

Multilateral Agreements. The Gulf efforts to protect the environment are also tied to both geographical and political considerations within the region. The danger of pollution in the Gulf is not only associated with the heavy tanker traffic, but also with the relatively slow interchange of water between the Persian Gulf and Indian Ocean. Moreover, the threat to the environment has direct political overtones within the region in light of the professed threats of terrorist attacks. In the summer of 1979 the United States warned its ships traveling through the

Strait of Hormuz to be on the alert for possible terrorists activities. Lloyds of London identified the Gulf as a "war zone" requiring additional insurance.

The success of pollution control efforts and the Action Plan of the Kuwait Regional Conference are directly tied to the cloud of uncertainty hanging over the Gulf following the Iranian Revolution.

General Approaches to the Law of the Sea. While the relationship between legal developments and regional context is important, insights into the Iranian and Saudi approaches to the law of the sea can be realized by exploring the nature of their participation in the United Nations conferences on the law of the sea. Iran and Saudi Arabia have participated at all three U.N. law of the sea conferences. Their policy statements are revealing.

At the 1958 conference the Saudi delegate, Mr. Shukairi, suggested that certain rules of international law were outmoded and generally reflected the interests of only a few states. He indicated that international law should reflect 'the collective will of all States participating as sovereign States and possessing sovereign equality," with the developing States also taking an active part in the progressive development and codification of the law of the sea. <sup>18</sup> The Saudi delegate asserted that "it was only after the remnants of the antiquated rules of international law had been swept away that progressive development of that law could take place." <sup>19</sup> Mr. Shukairi maintained that the "vital interests" of all States must be "reflected in whatever code" was adopted.

Although Saudi Arabia identified itself as a developing State and charged that some laws were "antiquated" and based on the "customs and usage" of only a few States, it did not challenge the basis of modern international law. Rather, Saudi Arabia maintained that the very foundations of international law must be considered, and that the origin of such concepts as "territorial sea" must be reviewed. Saudi Arabia went to great lengths to indicate that its actions were "in conformity with modern trends and practice as well as with the (International Law) Commission's conclusions." 21

At the 1958 and 1960 conferences Saudi Arabia often challenged the positions assumed by the United States and Britain, two maritime powers. Saudi Arabia, however, did not challenge their "Western" law, but rather the American and British interpretations of it. Saudi Arabia often cited American and British precedents and quoted Western jurists, such as Philip Jessup, to support its position.<sup>22</sup>

Iran's general approach toward the law of the sea as expressed at the 1958 and 1960 conferences was not unlike that of Saudi Arabia. Iran recognized a basic cleavage between the interests of developing States and those of maritime powers. Iran called attention to certain inequalities that resulted in "obsolete customs and practices" that were "enshrined in conventions to which most of the states of Asia and Africa were not parties." Iran opposed certain prescriptive rights

"sought to perpetuate an unjust practice which many under-developed or former non-self-governing countries had been unable to combat." In its opposition to the American proposal for a 3-mile limit, Iran not only stated that a 3-mile limit would exclusively serve the interests of the maritime powers, but charged that "in fact, they were laying claim to hegemony of the high seas." Furthermore, Iran claimed that many States were "under-developed" because of "the policy of colonialism followed by the States which benefited from the freedom of the seas." <sup>26</sup>

Iran, in pointing out inequalities that have developed through time, nevertheless indicated that "a new era had begun" and that "the under-developed States of Asia and Africa, including all those which had recently become independent, were ready to cooperate in all honesty and without bitterness with the great maritime States if they showed understanding." Iran called for the progressive development of international law to be achieved through "compromise in a spirit of progressive realism." Iran recognized that inequalities existed and that maritime powers were pursuing their own interests, but called for the interests of the developing States to be recognized as well.

Iran, while noting that "unjust practices and customs" did exist, did not condemn international law. Instead, Iran called for its progressive development. In opposing the positions assumed by the maritime powers, Iran employed traditional international legal principles and cited American precedents and the work of the International Law Commission.<sup>29</sup>

Iran and Saudi Arabia did participate in the 1958 United Nations Conference on the Law of the Sea, but the law of the sea in the Persian Gulf is not directly tied to the 1958 law of the sea conventions. Iran did sign the four conventions, with certain reservations, but did not ratify any of them because of its Gulf neighbors' opposition to the conventions. Saudi Arabia and the other Arab Gulf States refused to sign the 1958 conventions because of the single article providing for Israeli access through the Gulf of Aqaba and Strait of Tiran. In other words, despite Iranian and Saudi participation and negotiations, their law of the sea claims were primarily determined by the regional context.

The Third United Nations Conference on the Law of the Sea. At the Third United Nations Conference on the Law of the Seas (UNCLOS III) Iran and Saudi Arabia have each actively participated as they did in the first two United Nations conferences. Each has assumed what might be termed a Third World stance on such representative issues as the breadth of the territorial sea, marine scientific research, and the implementation of the concept of "the common heritage of mankind." The Iranian delegate, for example, called for a strong International Sea-Bed Authority with its powers being "as wide as possible." 30

While many of the issues are of interest but do not affect the Gulf States directly because of the relatively small size of the Gulf, two issues have been especially important to Iran and Saudi Arabia—the status of the straits used for international navigation and the preservation of the marine environment. At the heart of the two issues are two fundamental tensions confronting conference participants. First is the tension between the interests of a coastal State in regulating its adjacent sea and those of the international community in freedom of the high seas. The second is the tension between the particular needs of "special areas" and the attempt to establish general rules that would be universally applicable.

The question of transit through straits has been especially important to both parties. Iran has maintained that "the sovereignty of the coastal State was subject only to the exercise of the right of innocent passage of ships," and that "passage through straits used for international navigation must not affect the legal status of the territorial sea when the straits were situated within the territorial sea of one or more States." Iran, bordering on the strategic Strait of Hormuz, is especially interested in "regulating" passage through the strait. Free transit or innocent passage would exist as long as pertinent regulations were complied with.

Saudi Arabia "supported free passage in international straits connecting different parts of the high seas" and contended that a distinction should be made between straits. A Kuwaiti delegate, speaking for six Arab States including Saudi Arabia, stated that "the term 'straits used for international navigation' should be strictly confined to straits which connected two parts of the high seas." He further indicated that "the Governments on whose behalf he was speaking had not acceded to the Convention on the Territorial Sea and Contiguous Zone of 1958" because it "treated all straits alike." Thus, Saudi Arabia and others continue to show a security concern for any Israeli transit through the Gulf of Aqaba and Strait of Tiran.

Related to Iran's policy on straits has been Iran's concern for the special characteristics of the Persian Gulf as a semienclosed sea. In 1974 Iran called for a special status for semienclosed seas to be recognized. The Iranian representative, Mr. Kazemi, pointed out special problems of semienclosed seas, especially regarding the preservation of the marine environment, resource management, and international navigation, and asserted that their particular status constituted "an exception to the general rule." Mr. Kazemi indicated that "his delegation attached great importance to the protection of the marine environment and to the struggle against the pollution of the seas." Mr. Parsi, in the Second Committee, stated that "enclosed or semi-enclosed seas represented more acute problems which could not be solved by global norms applicable to all oceans," and that "they formed an intrinsic geophysical and ecological entity and were vulnerable to pollution and overfishing."

Because of the Iranian interest in the preservation of the marine environment and special consideration for semienclosed seas, Iran came to promote a "zonal approach to the marine environment." Subsequently, Iran stressed that "primary jurisdiction should rest with the coastal State," which should have "enforcement powers." <sup>38</sup>

Saudi Arabia also addressed the marine pollution problem. In the seventh session in 1978, Saudi Arabia, along with other Arab States, expressed a serious concern for establishing "responsibility and liability" for any damage to the marine environment.<sup>39</sup>

Future Legal Developments and the Regional Context: A Conclusion. When future possibilities in the Persian Gulf are considered with a view to previous experience, it is apparent that the regional concerns of the Gulf States would continue to predominate over the international law being developed at UNCLOS III. While Iran and Saudi Arabia have participated in the United Nations law of the sea conferences and have relied on "Western" sources and principles to support their claims, they have based their legal positions on their own national interests that have run counter to those of the maritime powers. Moreover, the political and geographic circumstances in the Gulf, the regional context, have proved to be the final determining factors in the substance and timing of their legal claims (and in their refusal to accept the 1958 law of the sea conventions).

With future developments tied to their interests within the Gulf, their real legal focus is probably going to be on the achievements of the Kuwait Regional Conference and the preliminary efforts to form a permanent regional organization for the control of pollution in the Gulf, rather than on how the final UNCLOS III treaty will deal with pollution control or the preservation of the marine environment. Furthermore, the security interests of the Gulf States in light of their mutually expressed desire to avoid any superpower presence within the Gulf will be more fundamental to the establishment of a special regional regime than any agreement at UNCLOS III. Whether the Persian Gulf will lose its previous status as high seas and actually become a "closed sea," will be determined by the interests within the region. The Persian Gulf perspective on the law of the sea is essentially a regional perspective determined by the geographic peculiarities and factors and forces within the Gulf.

#### Notes

Charles McDonald received his Ph.D. from the University of Virginia. He was an assistant professor in the Department of International Relations of Florida International University at the time he wrote this article.

<sup>1.</sup> U.S. Dept. of State, Bureau of Intelligence and Research, Sovereignty of the Sea, Geographic Bulletin No. 3, rev. ed. (Washington: U.S. Govt. Print. Off., 1969), at 18-27.

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- 2. Depths up to 146 meters have been reported off the Musandam Peninsula. For a detailed geographic and hydrographic description of the Gulf see U.S. Defense Mapping Agency, Hydrographic Center, Sailing Directions for the Persian Gulf, Pub 62, 5th rev. ed. (Washington: 1975).
  - 3. U.S. Dept. of State, at 19-21.
- 4. See MacDonald, The Roles of Iran and Saudi Arabia in the Development of the Law of the Sea, Journal of South Asian and Middle Eastern Studies 3-10 (Spring 1978).
- 5. For text see United Nations, Law and Regulations on the Regime of the Territorial Sea, United Nations Legislative Series, (ST/LEG/SER.B/6) (New York: 1957), at 24-25.
  - 6. For text see 43, Supplement to the Am. J. Int'l L. 154 (1949).
- For text see United Nations, Supplement to Laws and Regulations on the Regime of the High Seas and concerning the Nationality of Ships, United Nations Legislative Series, (ST/LEG/SER.B/Suppl.) (New York: 1957), at 29-30.
- 8. For text see United Nations, Second United Nations Conference on the Law of the Sea, A/CONF.19/5 (Geneva: 1960), at 15.
  - 9. For text see 43, Supplement to the Am. J. Int'l 156 (1949).
  - 10. For text see Revue Egyptienne de Droit International, v. 5, 1949, at 347.
  - 11. For text see CHURCHILL, VOL. 1 NEW DIRECTIONS IN THE LAW OF THE SEA 307-308 (1973).
- 12. For text see United Nations, National Legislation and Treaties Relating to the Law of the Sea, United Nations Legislative Series (ST/LEG/SER.B/18) (New York: 1957), pp. 334-335.
- 13. For text see U.S. Dept. of State, Continental Shelf Boundary: Bahrain-Saudi Arabia, International Boundary Study Series A-Limits in the Seas, No. 12, 10 March 1970.
  - 14. For text see 60 Am. J. Int'l L. 744 (1966).
  - 15. For text see 8 I.L.M. 493 (1969).
  - 16. For text see 12 I.L.M. 1319 (1973).
  - 17. For conference documents see I.L.M. 501 (1978).
- 18. See United Nations, United Nations Conference on the Law of the Sea, A/CONF.13/39 (Geneva: 1958), v. III, at 3.
  - 19. *Id*.
  - 20. Id. at 36.
  - 21. Id.
  - 22. Id. at 130.
  - 23. Id., v. IV, at 23-24.
  - 24. Id., v. II, at 41.
  - 25. Id., c. IV, at 23.
  - 26. Id.
  - 27. Id.
  - 28. Id. at 24.
  - 29. See U.N. Second Conference on the Law of the Sea, p. 103.
- 30. United Nations, Third Conference on the Law of the Sea, A/CONF.62/SR-51 (New York: 1975), v.1, at 72.
  - 31. Id., v. II, at 123.
  - 32. Id., v. I, at 144.
  - 33. Id., v. II, at 139.
  - 34. Id.
  - 35. Id., at 273.
  - 36. Id., v. 1, at 73.
  - 37. Id., v. II, at 115-116.
  - 38. Id., v. IV, at 90.
  - 39. Id., v. X, at 185-186, 188.