I. Introduction

The conclusion of the “2000 Agreement demarcating the marine boundaries between the Kingdom of Saudi Arabia and Kuwait has once again drawn attention to the legal status of the two islands of Garuh and Umm Al-Maradim. It is particularly remarkable that this agreement, like preceding boundary agreements, is silent on this issue. \(^1\) [Henceforth, the non-facing of this pending issue by the two states, at that momentous time, was presumably because the Kingdom of Saudi Arabia had acquiesced to Kuwait’s title to the two islands, which were factually under the latter’s sovereignty, or the two states had agreed otherwise.] However, neither of these possibilities have been traced in official documents—mutually exchanged between the two states, nor in documents initiated by either one of them. Moreover, legal writings on this subject are scarce or, if they exist, are not abreast of the developments in international law of the 21st century—despite the economic and strategic importance of the two islands at the head of the Gulf. \(^2\) It is hoped that this article will shed some light on this issue, and draw attention to the literature that does exist.

Why did the “2000 Agreement” and its annex not attempt to address the issue of the legal status of the two islands? It will be shown that the real answer can be deduced from the circumstances surrounding the conclusion of that agreement, and from the nature of the agreement itself.

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The purpose of the agreement is to determine marine boundaries. The issue of the legal status of the two islands, by contrast, involves a question of title to pieces of land, the acquisition of which is, *mutatis mutandis*, governed by different legal rules than those regulating the definition of marine boundaries. According to prevailing views in international law, territorial disputes and those of marine boundaries are distinguishable in fact and in law. In fact, territories are the areas over which a state exercises territorial sovereignty and jurisdiction, whereas boundaries, are the limits of those territories making lines, which separate two different jurisdictions. In law, it is however generally accepted that even though boundary disputes are a particular type of territorial dispute, they can nevertheless interact with marine law in the sense that boundary disputes are regulated by special rules, such as those rules embodied in the 1982 U.N. Convention on the Law of the Sea concerning the definition of marine boundaries. Territorial disputes purely on land areas are by contrast subject to rules of international law relating to acquisition of title to territory. The application of rules on title to determine the legal status of the two islands will require assessment of the location of the two islands, the evolution of historical facts generating title to the two islands, the practice of the two states regarding the two islands, and the existing legal and academic debates on the issue.

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3 Id; Judge Huber stated that: “International arbitral jurisprudence in disputes on territorial sovereignty...would seem to attribute greater weight to—even isolated—acts of display of sovereignty than to contiguity of territory, even if such contiguity is combined with the existence of natural boundaries”, 1920 Island of Palmas Arbitration, 2 Reports of International Arbitral Awards (hereinafter R.I.A.A.) 855.

4 In the Mavromatis Case a dispute was defined as: “disagreement on a point of law or fact, a conflict of legal views or of interests between two persons”, P.C.I.J. Series A, No. 2, 11.


7 Jennings, supra note 6, at 16 ff.