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Centre **for** International  
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# The Egypt-Saudi Arabia Deal on Tiran Law of the Sea and Security Issues

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The 'transfer' by Egypt to Saudi Arabia of sovereignty over two strategic islands located in the Tiran Strait, at the mouth of the Gulf of Aqaba, by means of a bilateral agreement signed on 8 April 2016, has attracted much attention in the Middle East. This further move by Saudi Arabia to assert its strategic interests in the Red Sea region has a number of international legal implications, as regards in particular maritime security and pending maritime delimitations in the area.

## Introduction

The recent visit of Saudi King Salman bin Abdel Aziz to Egypt (April 2016) was the occasion of the signature of a number of bilateral agreements, among which an agreement 'on maritime border demarcation' between Egypt and Saudi Arabia, under which sovereignty over the two islands of Tiran and Sanafir, located at the mouth of the Gulf of Aqaba, has reportedly been 'transferred' by Egypt to Saudi Arabia.<sup>1</sup>

<sup>1</sup> According to the Egyptian State Information Service, this agreement was signed on 8 April 2016 by Egyptian Prime Minister Sherif Ismail and Saudi Deputy Crown Prince Mohamed bin Salman bin Abdel, in presence of Egypt's president, Abdel Fatah al-Sisi, and Saudi King Salman. See 'Sisi, King Salman attend ceremony of signing cooperation agreements', *State Information Service*, 9 April 2016. See D. Walsh, 'Egypt Gives Saudi Arabia 2 Islands in a Show of Gratitude', *New York Times*, 10 April 2016.

## Strait of Tiran



While the text of the agreement has not been disclosed yet, Egyptian officials have reportedly made available documents supporting Saudi claims over the two islands. It was reported that the Egyptian Cabinet Information and Decision Support Center (IDSC) had asserted that all documents show that Tiran and Sanafir are two Saudi islands according to geographic charts<sup>2</sup>.

<sup>2</sup> See 'Egyptian Cabinet: Tiran and Sanafir are two Saudi islands', *Egyptian State Information Service*, 13 April 2016.

In a released statement, the IDSC indicated first that the agreement had been reached 'after thorough studies and after consulting the national committee for maritime border demarcation whose job on this score took six years' and 'after meetings between the two sides that lasted for months'.<sup>3</sup>

## Background

Sovereignty over the islands of Tiran and Sanafir has long been a matter of controversy between Egypt and Saudi Arabia. Egypt had asserted, for instance, before the Security Council in 1954 that the islands of Tiran and Sanafir were under its sovereignty, having been occupied in 1906 at the time of the delimitation of the boundary between Egypt and the Ottoman Empire. Further, Egypt had referred to evidence that the two islands had been used by it as part of its war efforts during World War II.<sup>4</sup> However, the Saudi government also claimed that the islands pertained to it, and in fact the question of sovereignty over Tiran and Sanafir was left unaddressed in the Saudi-Egyptian agreement of 1949, under which the islands were occupied by Egypt with the consent of Saudi Arabia, in order to exercise control over the transit of ships bound to Israel.<sup>5</sup>

## The Egyptian legal position

According to official press reports, Egypt has asserted that 'the chronological sequence of events shows that the two islands belong to the Saudi sovereignty according to an agreement that was signed between the two sides in 1950 whereby the two islands were just placed under the Egyptian administration out of the two governments' keenness on enhancing the Arab military stance in the face of Israel given the strategic location of the two islands'.<sup>6</sup> It was also aimed, at the time, to 'bolster the Egyptian military defenses in Sinai and the entrance of the Gulf of Aqaba'.<sup>7</sup>

<sup>3</sup> See 'Egyptian Cabinet: Tiran and Sanafir are two Saudi islands', *Egyptian State Information Service*, 13 April 2016.

<sup>4</sup> See Statement of Mr. Ghaleb and Mr. Amzi, Egyptian representatives, before the United Nations Security Council, *Official Records of the Security Council*, 659th meeting, 15 February 1954 (S/PV/659).

<sup>5</sup> Ali A. El-Hakim, *The middle eastern states and the law of the sea* (Manchester: Manchester University Press, 1979) 135-137.

<sup>6</sup> See 'Egyptian Cabinet: Tiran and Sanafir are two Saudi islands', *supra* note 3.

<sup>7</sup> See 'Egyptian Cabinet: Tiran and Sanafir are two Saudi islands', *supra* note 3.

Egypt has insisted that the agreement with Saudi Arabia 'was also reached in accordance with several documents including a cable sent from Saudi King at the time Abdel Aziz al Saud to the Saudi minister plenipotentiary in Cairo in February 1950 along with other letters that were exchanged between the Egyptian and Saudi foreign ministries in 1988 and 1989 regarding the two islands. These letters include one from the Saudi foreign minister urging restoring the two islands to the Saudi sovereignty after reasons of leaving them under the Egyptian administration had come to an end'.<sup>8</sup> It is difficult at this stage to assess the relevance of these materials, since the original documents seem not to have been made available yet to the public.

## The Security of the Strait of Tiran

Freedom of transit and navigation through the Strait of Tiran, which controls the entrance of the Gulf of Aqaba, is a recurrent matter of concern for Israel, as it was closed to Israeli shipping during episodes of the Arab-Israeli wars; it has now been recognized by agreements between Egypt and Israel, and between Israel and Jordan, as subject to freedom of navigation. It was reported that Israel is currently 'studying the legal status of the Tiran and Sanafir islands', following the transfer of sovereignty, and that will announce its official stance on the issue after the release of an inclusive judicial opinion on the matter, adding that if needed Israel will discuss the issue with Egypt.<sup>9</sup> This is probably to be related to the views expressed by some analysts, namely in Israel, according to which the maritime agreement is to be seen as an additional Saudi step towards reinforcing its strategic posture in the Red Sea region.<sup>10</sup>

<sup>8</sup> Other documents referred to by Egypt include a letter from then Egyptian foreign minister Esmat Abdel Maguid to prime minister Atef Sedki ; a classified cable to the US ambassador in Cairo in 1950 indicating that Tiran and Sanafir are two Saudi islands where the US secretary of state said that 'Egypt has placed the two islands under its control to protect them against the Israeli aggression through coordination with Saudi Arabia, which accepted this situation to ward off any foreign attack against the two islands' ; a text between the Egyptian chief delegate to the UN dated 27 May 1967 confirming that 'Egypt did not seek at any time to claim that the sovereignty of the two islands has been transferred to it. Rather Egypt only sought to take over defending the two islands'; a chart 'adopted' by the United Nations on 16 November 1973 showing that the two islands according to international law and the United Nations Convention on the Law of the Sea are located within the geographic borders of Saudi Arabia; a *New York Times* article of 19 January 1982 'confirming Israeli apprehensions over handing back the two islands to their original owners after Egyptian-Saudi relations returned to normal'; and an article by Mohamed el-Baradei published in 1982 in the *American Journal of International Law* ; and a Egyptian decree of 1990 'specifying the Egyptian major points for measurement of sheer Egyptian territorial sea and economic zone for notifying the United Nations asserted that the two islands are outside the Egyptian territorial sea'. See 'Egyptian Cabinet: Tiran and Sanafir are two Saudi islands', supra note 3.

<sup>9</sup> See 'Israel studying legal status of Tiran and Sanafir islands, announcement expected soon', *Daily News Egypt*, 11 April 2016.

<sup>10</sup> See e.g. Shaul Shay, *Bridge over troubled water - Egypt and Saudi Arabia to build the Red Sea Bridge* (IDC Herzliya, April 2016).

## Implications on Maritime Boundaries in the Red Sea

Prior to the Saudi-Egyptian agreement, maritime borders in the Gulf of Aqaba have been delimited between Israel and Jordan in the northern part of the gulf, pursuant to an agreement entered into force in 1996<sup>11</sup>, and between Jordan and Saudi Arabia in 2007.<sup>12</sup> It is unclear whether the new Egypt-Saudi Arabia Agreement covers the entire maritime zones of both countries (in the Gulf of Aqaba and southwards in the Red Sea proper), or if it is limited to the delimitation of the area of the Strait of Tiran. It is also unclear whether the agreement is supposed to be subject to provisional application as a matter of law of treaties. Riparian countries of the Red Sea and the Gulf of Aqaba should be advised to carefully examine the text of the agreement once (and if) it becomes public, and to assess its potential implications on the outstanding maritime boundaries in the region. Even if the 'transfer' of sovereignty over the islands of Tiran and Sanafir is likely to have a limited impact on the drawing of equidistance or median lines delimiting maritime boundaries between other States in the Gulf of Aqaba and the Red Sea, given the geographical location of the islands, States should carefully monitor consequences of the agreement and related developments, in light of all relevant elements including – but not limited to – straight baselines claims and state behaviour through e.g. public statements, protest notes, and naval and fishing practice.



The agreement on maritime delimitation between Egypt and Saudi Arabia also reportedly provides for the construction of a bridge between the two countries, crossing the Strait of Tiran from Saudi Arabia to the Sinai at Sharm El Sheikh. This was announced by King Salman of Saudi Arabia (left) at a meeting with Egypt's President Abdel al-Sisi (right).



<sup>11</sup> See Maritime Boundary Agreement between the Government of the State of Israel and the Government of the Hashemite Kingdom of Jordan, 18 January 1996, entered into force on 17 February 1996.

<sup>12</sup> See Agreement on the delimitation of the maritime boundaries in the Gulf of Aqaba between the Kingdom of Saudi Arabia and the Hashemite Kingdom of Jordan, 16 December 2007, entered into force on 10 June 2010.

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