



The Tahrir Institute
for Middle East Policy

Tiran and Sanafir: Developments, Dynamics, and Implications



The Tahrir Institute for Middle East Policy (TIMEP), a nonpartisan and nonprofit organization, is dedicated to understanding and supporting Middle Eastern countries undergoing democratic transitions and committed to informing international policymakers and the public of developments in these countries.

INTRODUCTION

On June 24, 2017, President Abdel-Fattah El Sisi officially [signed](#) into effect the controversial Tiran and Sanafir agreement, which has dominated Egyptian and international news and social media for over a year. The April 2016 [agreement](#) between Egypt and Saudi Arabia would [give Saudi Arabia sovereignty](#) over the two Red Sea islands at the mouth of the Gulf of Aqaba.

While Sisi's signature allows the government to begin [preparing](#) for the transfer of the islands, it does not necessarily mark the end of a 16-month debate over the agreement. The issue remains highly controversial, with arguments over the agreement's legality, authority, and implications occurring simultaneously in and among Egypt's executive, legislative, and judicial branches, and in public space. Not only are these debates extensive and complex, but they are impassioned: the fever pitch of response has led some observers to go as far as to [compare](#) the cession of the islands to the traumatizing 1967 defeat of Arab armies.

The repercussions of the various events set into motion by the April 2016 announcement, particularly the government's management of the matter, may not be fully and immediately apparent. What is apparent, though, is that the ordeal will undoubtedly have enduring implications for Egypt's major institutional and public dynamics. In order to establish a framework for understanding the immediate and potential continuing ramifications of the Tiran and Sanafir agreement, the Tahrir Institute for Middle East Policy has developed this comprehensive report.

The Tiran and Sanafir ordeal will undoubtedly have enduring implications for Egypt's major institutional and public dynamics.

The various sections of the report will serve to:

- 1 - Provide clarity on events and developments by providing a summary and timeline of events, as well as historical context and background;
- 2 - Document official positions and public responses to them;
- 3 - Provide a legal analysis of the ongoing judicial and legislative processes;
- 4 - Offer a political analysis of the agreement, its handling, and its potential implication for domestic and international affairs.

EXECUTIVE SUMMARY

Developments

- The Tiran and Sanafir agreement, announced after a series of meetings between Egyptian President Abdel-Fattah El Sisi and Saudi King Salman in April 2016, would allow Egypt's cession of two islands in the Red Sea to Saudi Arabia.
- The agreement caused a flurry of lawsuits for and against the legality of the agreement, as well as for and against the authority of various state bodies to participate in the decision. The Supreme Constitutional Court ruled on June 21, 2017, to suspend all previous rulings until it was able to reach a decision on the matter (anticipated for July 30).
- Despite ongoing cases against its authority to approve the agreement, Egypt's parliament voted on June 14, 2017 by show of hands in favor of the islands' cession. Ten days later, on the eve of Eid al-Fitr, Sisi ratified the agreement, ostensibly allowing the government to begin preparation of the transfer.

Responses

- Despite Sisi's reference to respect for the right of state institutions to make decisions, his government has questioned courts' jurisdiction and the State Lawsuits Authority, the legal representative of the state, has filed countersuits and motions in favor of the agreement.
- The debate has caused upheaval and polarization in the House of Representatives, though the body eventually ratified the agreement in June 2017 (despite uncertainty in the courts on its authority to do so). Before the final vote, a group of representatives chanted on the floor of the House that the islands were Egyptian, and some members have threatened resignation while others call for sanction against them.
- Public protests have been organized since the agreement was announced in April 2016, with renewed activity after parliamentary votes and around hearings in major court cases, with moderately sized but diverse crowds. Protests have been met with a heavy hand: raids, arrests, prosecutions, tear gas, and other repressive measures have been used against those demonstrating (or suspected of planning to do so).
- Media reaction to the agreement has been split. Some outlets' anchors, reporters, and analysts have declared that no person has the right to cede the islands, and others have aired pro-government figures promoting Saudi sovereignty.
- At the start of parliament's debate over the treaty, 62 international and domestic news sites were blocked, many of which published independent and critical reports; the number grew to over 112 by the time Sisi signed the agreement.

Analysis

- The variety of legal challenges has caused confusion about what might happen to the agreement. Debate largely centers around Article 151 of the Egyptian Constitution, which deals with authority on questions of sovereignty, and may negate the cession or require a public referendum.
- Concerns about the agreement reflect broader problems with the state's approach to governance and its unwillingness to transition to transparent and democratic public engagement that treats citizens as stakeholders in decision-making.

- This approach has dealt a blow to Sisi's credibility and popularity, also in decline due to the deteriorating economic situation for the average Egyptian, in the lead-up to the presidential elections scheduled for spring 2018.
- The competing perspectives and actions of the various state and public institutions have exposed centers of power at times in disagreement with each other and the executive, complicating a view that Sisi holds an unchallenged grip over all of Egypt's institutions.
- If it wishes to avoid future instability, the state must regain legitimacy by earnest actions to promote public engagement, respect for human rights, and efforts to strengthen state and public institutions and honor a balance of power between them.
- While the international community has largely left the matter of sovereignty and bilateral agreement to Egypt, the domestic implications should cause concern, and international parties should insist on transparency and respect for rule of law in future international agreements.

SUMMARY OF DEVELOPMENTS

Recent Developments

President Abdel-Fattah El Sisi's June 24 ratification of the border agreement with Saudi Arabia was only one part of the flurry of activity surrounding Tiran and Sanafir in recent months. It followed three days of debate in the House of Representatives and a vote by show of hands to approve the agreement on June 14, despite 11 lawsuits previously [filed](#) against the legality of their authority to debate the issue and [threat](#) of mass resignation from opposition parliamentarians. The ministerial cabinet had also [approved](#) the border agreement on December 29, 2016, in contradiction with administrative court rulings to halt the agreement's implementation that were still in effect at the time.

These actions were mirrored by months of court cases on authority and process related to the transfer as well; as of June 21, 2017, Egypt's Supreme Constitutional Court had suspended all previous rulings on the agreement and is set to rule on the legality of the matter on July 30.

The Supreme Constitutional Court ruling is only one piece of a tense, multilayered political and legal battle that has been waged in both the criminal and administrative court systems. The first lawsuit against the agreement was [filed](#) by a team of well-known rights lawyers, including Khaled Ali, Malek Adly, and Tariq al-Awadi, immediately after the agreement became public. The case was postponed several times before the First Circuit Court for Administrative Justice [ruled](#) to stop the implementation of the agreement on June 21, 2016. Court cases have since been filed back and forth: the Supreme Administrative Court, the highest court for government matters, [confirmed the original ruling](#) in an appeals hearing, and the Court of Urgent Matters ruled twice that these injunctions must be halted (despite not having [jurisdiction](#) on this matter or preeminence to overrule). Multiple appeals and injunctions were then [filed](#) by the original team of lawyers, though they were overshadowed by the pro-agreement [lawsuits filed](#) by state legal bodies.

Finally, the Supreme Constitutional Court [issued](#) the aforementioned temporary order to suspend all verdicts on the agreement—among them the conflicting Administrative and Urgent Matters rulings—until it makes a decision on the constitutionality of the agreement. Having thus established itself as the ultimate judicial body in the case, the court is [set](#) to discuss the matter on July 30, 2017. However, a separate case has also been [filed](#) with the Supreme Administrative Court to put the agreement to a national referendum, as Article 151 of the Constitution mandates for issues of sovereignty. Similarly, Khaled Ali responded to Sisi signing the agreement by [filing](#) a lawsuit in the Court of Administrative Justice to [halt](#) any action to hand over the islands to Saudi Arabia; the first hearing of the case was on July 2, 2017.

The Supreme Constitutional Court ruling is only one piece of a tense, multilayered political and legal battle.

Timeline of Developments ¹

2016

April 8 – The agreement was **signed** by representatives of Egypt and Saudi Arabia during King Salman’s visit to Egypt and **announced** to the surprise and consternation of portions of the public.

April 10 – A group of lawyers, including Khaled Ali, Malek Adly, and Tariq al-Awadi, **filed** a lawsuit with the administrative judiciary against the agreement.

April 15 – Activists called for a day of protest named “**Land Friday**.” Protests continued after this through much of April and May. Hundreds were detained by security forces.

May 1 – Police forces **broke into** the Journalists Syndicate for the first time in history in order to arrest two journalists who supported the protests and rejected the treaty.

June 21 – The First Circuit Court for Administrative Justice rendered a **ruling** to stop the implementation of the agreement.

September 28 – The Court of Urgent Matters **ruled** that the First Circuit Court for Administrative Justice’s original injunction must be halted.

December 29 – The ministerial cabinet of Prime Minister Sherif Ismail **approved** the agreement and reportedly **sent** it to parliament.

2017

January 16 – The Supreme Administrative Court **issued** a ruling upholding the Court of Administrative Justice’s original injunction against the implementation of the agreement.

April 2 – The Court of Urgent Matters **issued** a ruling to negate the Supreme Administrative Court ruling and allow the agreement to proceed with implementation.

April 10 – Speaker of the House of Representatives Ali Abdel ‘Al **sent** the agreement to the Constitutional Affairs Committee for debate.

June 13 – The Constitutional Affairs Committee **passed** the agreement after three consecutive days of presentations by government experts.

June 13 – Security forces **broke** up a demonstration in front of the Journalists Syndicate against the parliament discussing the agreement and arrested several leading opposition figures.

June 14 – A general session of parliament **voted** to officially pass the agreement.

June 16 – Further protests were held in response to the parliament passing the agreement. These **were** small, sparse, and quickly attacked by security forces.

June 21 – The Supreme Constitutional Court **suspended** all previous verdicts on the agreement until it makes a decision on it.

June 24 – **Sisi** signed the agreement into effect.

June 28 – Lawyer Khaled Ali **filed** a lawsuit in the Court of Administrative Justice to halt any action to hand over Tiran and Sanafir to Saudi Arabia.

October 3 – Eleven cases against the legality of the Tiran and Sanafir agreement, which were postponed in July, are **set** to be heard on this date after having been collectively **postponed** at least twice.

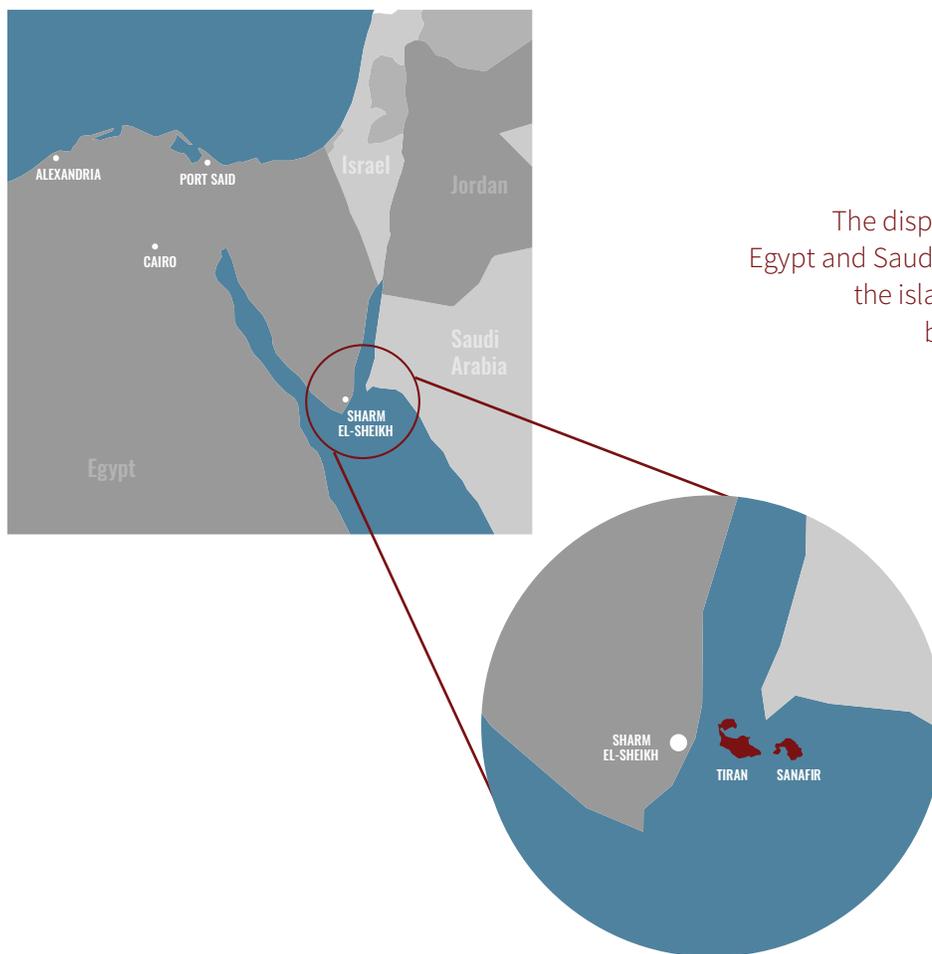
October 14 – Egypt’s Supreme Constitutional Court is set to determine which of the opposing rulings from the Court of Urgent Matters and the Supreme Administrative Court has jurisdiction over the Tiran and Sanafir agreement.

¹ For another timeline of events preceding January 2017, see Mada Masr’s detailed reporting: “A timeline of the Tiran and Sanafir islands legal contest,” <https://www.madamasr.com/en/2017/01/15/feature/politics/a-timeline-of-the-tiran-and-sanafir-islands-legal-contest/>

Background and Context

The initial agreement occurred when Salman visited Egypt in April 2016, on his first official trip to the country. During his visit, the Saudi king [signed](#) a number of multi-billion dollar development agreements with Sisi, as well as a \$23 billion petroleum agreement to supply Egypt with 700,000 tons of petroleum each month. Most notably, and unexpectedly, Egypt promised to relinquish sovereign control of the Tiran and Sanafir islands to Saudi Arabia.

Tiran and Sanafir are located in the Straits of Tiran, the eight-mile-wide passage at the mouth of the Gulf of Aqaba between the Sinai and Arabian Peninsulas. Egypt is required by the Israel-Egypt Peace Treaty, signed in 1979, to maintain freedom of navigation through the strait. The closure of the strait in 1967 was one of the [causes](#) of the Six-Day War, as the strait is Israel's only access from the Gulf of Aqaba to the Red Sea. Israel controlled the islands from 1967 to 1982, and Tiran is currently used as a base for observers from the Multinational Force and Observers.



The dispute between Egypt and Saudi Arabia over the islands extends back to 1950, and ended in a mutual agreement that Egypt would keep control of the islands because of its stronger navy and the two countries' shared [desire](#) to keep the islands out of Israeli control. In 1957, however, Saudi Arabia began to dispute Egyptian ownership of the islands at the United Nations.

RESPONSES

Official Positions

Throughout the controversy, President Abdel-Fattah El Sisi clearly stated that Egypt must respect the legal reality that the islands do not belong to them, and tempered any overt criticism of opponents of the agreement. He continued to refer to the legality of the handover and his respect for state institutions that would eventually make this decision. Nevertheless, his government has reportedly questioned the jurisdiction of administrative courts to rule on the issue. The State Lawsuits Authority, the legal representative of the state, has filed multiple pro-agreement motions, appeals, and suits in various court systems on the government's behalf. The Ministry of Foreign Affairs began this process almost immediately after the agreement was signed, saying that the return of territory to Saudi Arabia is not ceding sovereignty and therefore does not fall under Article 151 of the Constitution.

The cabinet has questioned administrative courts' jurisdiction and directed multiple pro-government countersuits.

Article 151 of the 2014 Egyptian Constitution:

The President of the Republic represents the state in foreign relations and concludes treaties and ratifies them after the approval of the House of Representatives. They shall acquire the force of law upon promulgation in accordance with the provisions of the Constitution.

With regards to any treaty of peace and alliance, and treaties related to the rights of sovereignty, voters must be called for a referendum, and they are not to be ratified before the announcement of their approval in the referendum.

In all cases, no treaty may be concluded which is contrary to the provisions of the Constitution or which leads to concession of state territories.

Additionally, the cabinet voted in favor of the agreement and organized multiple presentations by pro-agreement experts to parliamentarians, despite dozens of ongoing lawsuits over its constitutionality.

In the House of Representatives, statements by not only the traditionally oppositional 25-30 Bloc, but also members of the Coalition in Support of Egypt—the pro-government, majority bloc in parliament—conveyed a sense of discomfort with the idea of passing the agreement, despite a general consensus prior to January 2017 that the parliament should have the final say. Support and opposition for the agreement have only drawn further apart in the immediate aftermath of the June 2017 vote. Many representatives chanted in the parliament that the islands were Egyptian and a group of around 100 members were rumored to be studying mass resignation, while proponents of the agreement, such as Mustafa Bakry, have called for a black list of anyone contradicting the state narrative on the issue.

International parties have also weighed in on the controversy: Saudi Arabia's then-Deputy Crown Prince Muhammad bin Salman declared in May 2017 that the islands had been registered

After the agreement's approval in parliament, a large group of representatives chanted in defiance that the islands were Egyptian.

as belonging to the kingdom in Egyptian, Saudi, and international documents and thus the agreement merely respected this demarcation. Israel's public quietude around the deal, as well as reports that it was consulted prior to the agreement, seemed to indicate a tacit approval, and indeed when Sisi ratified the agreement, Israel made no move to oppose it.

Public Response

The April 2016 announcement of the agreement instigated mass public response: immediately after the deal became public, protesters took to the streets in Cairo to reject it. The next day, several politicians, political parties, and public figures announced their denunciation of the arrangement. Activists called for a “[Land Friday](#)” protest on April 15, 2016, attracting diverse groups of Egyptians across major cities, and protests continued for much of April and May of that year. A lull in protests followed this period as the debate moved to the courtroom. However, the passage of the treaty in parliament led many of the same parties and public figures to call for protests and sit-ins once again. These post-vote calls for civil disobedience were not as successful; after an intimidation campaign by security forces, protests called for on June 16, 2017, [were small and sparse](#). The response to Sisi’s ratification was even more muted, as it came on the eve of the Eid al-Fitr holiday.

The increasingly anemic nature of protests against the unpopular agreement parallels repression of any signs of public opposition to the treaty. In the June 2017 protests, security forces beat and fired tear gas on protesters in downtown Cairo. A series of national raids on opposition figures were carried out before and after the protests, with rights networks [reporting](#) at least 112 people, including leaders of the Social Democratic Party, Bread and Freedom Party, and the Dostour Party, as well as aforementioned lawyer Khaled Ali, arrested for disturbing the peace and calling for protests. A similar crackdown had followed calls for protest in April and May 2016, in which the Ministry of Interior forces [dispersed](#) protesters by force, [rounded up](#) known activists across Egypt, and [charged](#) them with inciting protests and spreading false information.

Many of the cases against these protesters are ongoing, though some protesters [have been released](#) from custody. Police forces [raided](#) the Journalists Syndicate for the first time in history on May 1, 2016, in order to arrest two journalists that supported the protests and rejected the treaty; again, in June 2017, [activists and journalists were arrested](#) outside of the syndicate for protesting the parliament’s decision. In addition to direct repression, the interior ministry has [refused](#) to receive the required notification for planned protests, [challenged](#) protests in court, and [established](#) a no-protest zone around public and government buildings, which surround most large public spaces in the country.

At the heart of the substance of the legal debate is the aforementioned Article 151 of the Constitution.

Media reaction to the agreement has varied widely. Those opposing have included [several](#) pro-government anchors, including Ibrahim Eissa, Youssef al-Hosseny, and Gaber al-Qarmoty, who have insisted that the islands are Egyptian and no one has the right to relinquish

them to another country, and several opinion pieces promoting continued Egyptian control over the islands were published in daily newspapers like *Shorouk* and *al-Masry al-Youm*. Sizable support for cession has been expressed as well, most notably from Ahmed Moussa and Mustafa Bakry, and some personalities like Amr Adib have given airtime to members of the military and government promoting Saudi sovereignty over the islands. Sixty-two news sites were [blocked](#) in Egypt prior to the parliament beginning its debate of the treaty, including many that published critical reports on the agreement. By the time Sisi signed the border agreement, the number of sites blocked had [grown](#) to over 100.

ANALYSIS AND AREAS OF CONCERN

Laws and Procedures

As described above, a variety of diverse legal challenges have been brought before the administrative, civil, and urgent matters court systems, creating some confusion as to what will happen to the agreement. Some have [argued](#) that in this situation of competing rulings from different court systems, the State Council (the administrative court system) should have final jurisdiction over the matter. On the other hand, Article 192 of the Constitution states that the Supreme Constitutional Court “is exclusively competent to...adjudicate...in disputes between judicial bodies and entities that have judicial mandate, in disputes pertaining to the implementation of two final contradictory rulings, one of which is issued by any judicial body or an agency with judicial mandate and the other issued by another body.”

The controversy reflects broader problems with the state’s approach to governance.

In addition to these procedural issues, other challenges before various courts have played out. At the heart of the substance of the legal debate is the aforementioned [Article 151 of the Constitution](#). A reading of the article produces two possible sources of debate: (1) whether this treaty leads to the concession of state territories and thus cannot be concluded in the first place, and (2) whether this treaty relates to the rights of sovereignty and would thus require a civilian referendum in addition to the process.

These issues, which consist of both procedural and substantive legal questions, continue to be litigated before the court system in power-dynamic battles between the executive and judicial branches, as well as internal battles between the various court systems and their proper jurisdictions. With an issue as complicated as a politicized treaty governing Egyptian territory, it is not surprising to see battles of jurisdiction and substance matter.

Although the administrative court rulings have [affirmed](#) that the prime minister’s signature on the treaty is insufficient to validate the agreement, it remains to be seen how the Supreme Constitutional Court will handle the issue. Of additional interest will be developments in the new, separate case before the administrative court system, which sidestep much of the existing process and instead request a national referendum on the treaty.

Domestic Politics

Ultimately, the manner of the agreement’s conception reflected an attempt to execute the transfer with neither a public presentation to prove Saudi Arabia’s right to the islands nor a transparent conversation around such evidence. This reflects broader problems with the state’s approach to governance and its unwillingness to transition to transparent and democratic public engagement that treats citizens as stakeholders in decision-making. This approach was exemplified when Sisi, in a speech following the initial uproar over the treaty’s announcement, scolded the public: “I don’t want to hear about this issue again.”

Nevertheless, the decision to follow through with the transfer of the islands has been the most unpopular political decision of Sisi’s presidency. In addition to the demonstrations against the deal, many media personalities who otherwise backed the president have questioned the decision and the domestic press has been unusually critical of both the agreement and the crackdown against the agreement’s opponents, despite the specter of an ongoing and expanding media blockade. The president’s credibility and popularity, in decline for some time now because of the deteriorating economic situation for the average Egyptian, have taken a blow in the lead-up to the 2018 presidential elections.

The debates over the agreement have also revealed some of the internal dynamics of the Egyptian state. The judiciary, which tends to prioritize its interests whether in agreement with the executive or in opposition, was in clear convergence with the executive in this case. Despite the final vote to approve the law, some in Egypt's parliament also expressed enormous defiance over the law: more than a hundred representatives [reportedly](#) voted against the bill and many stood in parliament [chanting](#) that the islands were Egyptian, effectively protesting in parliament itself. This crisis has thus exposed centers of power who at times disagree with the executive (and with each other). The fact that they often hold shared interest should not be misunderstood as Sisi's unchallenged grip over all of Egypt's institutions.

The government has effectively turned a cold shoulder to the legitimate grievances of the Egyptian people and their constitutional right to express their concerns. It has upheld charges against those facing prosecution for protesting or organizing protest over the cession of the islands, and it has put roadblocks in front of would-be demonstrators, notably by refusing to receive notifications of demonstrations, challenging demonstrations in court, and establishing a no-protest zone around public and government buildings. These attempts at control over physical public space are mirrored in the government's unconstitutional efforts to restrict independent media which, when coupled with a failure to properly inform the public of details prior to and during the processes described here, reflect an approach to public engagement that views citizens as passive recipients of, rather than engaged participants in, decision-making.

Such an approach will only serve to further marginalize and disenfranchise the public and public institutions, which have already shown that their support for the state is not a foregone conclusion. By suppressing legitimate grievances and peaceful expression of these demands, the Egyptian state, particularly its executive branch and security apparatus, is closing off avenues to regain and maintain legitimacy. While this may not have an immediate effect on stability, it is undoubtedly causing cracks at a critical moment ahead of elections—cracks that will not be mended except by earnest efforts at public engagement, particularly with the opposition; respect for human rights as protected by the constitution and international law; and efforts to strengthen state and public institutions and honor a balance of power between them.

International Politics

Perhaps the most significant consequence of this deal from a geostrategic perspective is [Israel's acquiescence to Saudi Arabia's](#)

control of such a sensitive waterway, whose closure was deemed by Israel as *casus belli* in 1967. Ultimately, this agreement is an undeniable step towards normalization between Israel and Saudi Arabia and suggests that the thaw in their relationship that has been rumored for quite some time is bearing significant strategic fruit, a fact that may be further underscored by the recent naming of Muhammad bin Salman as crown prince. Additionally, while King Salman's decision to press ahead with this agreement has come at the expense of the credibility of Sisi—whom Saudi Arabia has supported with tens of billions of dollars in aid—it has paralleled an alignment of interests in the region. This has been not only limited to friendlier relations with Israel, but also includes a renewed bond between Saudi Arabia and Egypt, as well as a regional alignment against Qatar and Iran.

While international parties may not have jurisdiction or mandate over the transfer of the islands, the implications for governance and Egypt's stability should be of concern.

Although the United States and Europe were involved in the conflicts over the islands decades ago, particularly through the brokerage of a resolution to the Suez Crisis and the Camp David Accords, the international community has remained relatively silent over what has been perceived as a matter of sovereignty and bilateral agreement (rather than conflict) on one hand, and a matter of domestic concern for Egypt in terms of backlash. However, while international parties may not have jurisdiction or mandate to consider the transfer of the islands, the implications for governance and Egypt's stability should be of concern. Thus, international parties, whether directly or indirectly involved in agreements and treaties made by the executive (such as loans from international financial institutions and the islands transfer), must insist on transparency, with information being made available to government institutions and the general public.



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