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IRAQ-KUWAIT INTERNATIONAL BOUNDARY REPORT 1

Territory—Boundaries—Land boundaries—Boundary dispute—Demarcation—Boundary between Iraq and Kuwait—Establishment of United Nations Commission—Task of Commission to demarcate existing boundary—Agreements between Iraq and Kuwait of 1923, 1932 and 1963 — Location of boundary — Difference between demarcation of existing agreed boundary and allocation of territory—Principles of demarcation

Sea—Maritime boundaries—Demarcation—Adjacent States—Boundary between Iraq and Kuwait—Demarcation of maritime boundary by United Nations Commission—Principles—Access to coast from open sea

International organizations—United Nations—Security Council—Collective security—Powers of Council under Chapter VII of the United Nations Charter—Iraq—Security Council Resolution 687 (1991)—Establishment of boundary commission

War and armed conflict—Use of force under authority of United Nations Security Council—Conflict with Iraq following 1990 invasion of Kuwait — Termination of conflict — Grounds for termination — Security Council Resolution 687 (1991) — Demarcation of boundary between Iraq and Kuwait

FINAL REPORT ON THE DEMARCATION OF THE INTERNATIONAL BOUNDARY
BETWEEN THE REPUBLIC OF IRAQ AND THE STATE OF KUWAIT

United Nations Iraq-Kuwait Boundary Demarcation Commission

(Kusuma-Atmadja, *Chairman*; Brook and Robertson, *Independent Experts*; Al-Qaysi, *Representative of Iraq*; Razzouki, *Representative of Kuwait*)

20 May 1993

SUMMARY: *The facts*—The boundary between what was to become the Republic of Iraq and Kuwait was first defined in the unratified Convention Respecting the Persian Gulf Area between the British Government and the Ottoman Imperial Government of 29 July 1913.¹ The line established in that instrument was confirmed in an undertaking given by the British High Commissioner for Iraq to the Sheikh of Kuwait in April 1923.² Iraq herself

¹ Reproduced in Lauterpacht, Greenwood, Weller and Bethlehem, (eds.), *The Kuwait Crisis: Basic Documents* (1991), 33.

² *Ibid.*, at 49.

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accepted the boundary in an exchange of letters of July and August 1932.³ In subsequent years, however, Iraq alleged that she had been constrained to consent to the boundary and, indeed to the existence of the State of Kuwait, and that this consent was, in consequence, without legal effect. Following Kuwait's independence in 1961 there was a confrontation between the two States, which terminated in 1963 when the Republic of Iraq concluded an Agreed Minute with Kuwait, recognizing "the independence and complete sovereignty of the State of Kuwait with its boundaries as specified in the letter of the Prime Minister of Iraq dated 21 July 1932 . . .". Although the Government of Iraq subsequently claimed that the Agreed Minute was not in effect since it had not received Iraqi parliamentary approval, it was registered as a treaty with the United Nations Secretariat.⁴

Throughout the years which followed, Iraq attempted to gain control over two Kuwaiti islands, Warbah and Bubiyan, which dominated Iraq's access to the Arabian Gulf. In the summer of 1990, Iraq also made territorial demands relating to the Rumeila oil fields. On 2 August 1990, Iraqi military forces invaded the State of Kuwait.

Iraq's forces were expelled from Kuwait in March 1991. The United Nations Security Council, acting under Chapter VII of the UN Charter, then adopted Resolution 687 (1991). In that resolution, the Council demanded that Iraq and Kuwait respect the inviolability of the international boundary and the allocation of islands set out in the 1963 Agreed Minutes. The Council also called on the Secretary-General to lend his assistance to make arrangements with Iraq and Kuwait to demarcate the boundary between the two States, drawing on appropriate material, including a map transmitted by the Government of the United Kingdom to the Security Council.⁵ Furthermore, the Council decided to guarantee the inviolability of the boundary.

The governments of Iraq and Kuwait accepted Resolution 687 (1991), although the Government of Iraq indicated, in a letter to the UN Secretary-General, certain reservations concerning the demarcation of the boundary.⁶

The Iraq-Kuwait Boundary Commission was constituted in accordance with a report of the Secretary-General.⁷ It held its first meeting in May 1991. The representative of Iraq participated in the first five sessions of the Commission but did not attend any of the subsequent sessions. In May 1992, when the likely demarcation of the land boundary by the majority of the Commission became clear, the Government of Iraq formally challenged the proceedings.⁸ The Security Council responded by issuing a Presidential Statement confirming that the Commission was not reallocating territory, but merely demarcating an existing, agreed boundary. In August 1992, after the Commission had submitted a *Further Interim Report* detailing its

³ *Ibid.*

⁴ 485 UNTS 321.

⁵ The map, divided into several sections, is reproduced in Weller, (ed.), *Iraq and Kuwait, The Hostilities and their Aftermath*, (1993), 756, *et seq.*

⁶ *Ibid.*, at 433.

⁷ *Ibid.*, at 435.

⁸ *Ibid.*, at 439.

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deliberations on the demarcation of the land boundary and its decisions on that subject,⁹ the Council, in Resolution 773 (1992), formally welcomed the report and underlined the inviolability of the line as described by the Commission.

*Held:*¹⁰—(1) The western section of the boundary was that part of the existing frontier which led from the intersection of the Wadi El Audja and Wadi Al Batin northwards along the Batin to a point just south of the latitude of Safwan. The basis for the demarcation was the wording of the delimitation formula in the 1932 Exchange of Letters. The boundary along the Wadi Al Batin was to be demarcated in terms of the line of the lowest points (the *thalweg*). The boundary would be marked by a series of straight lines, approximately 2 kilometres in length, such that the aerial extent by which the *thalweg* departed from the boundary on the Kuwait side was equally balanced by the departure on the Iraq side (pp. 17-18).

(2) The northern section was that part of the boundary which, from the intersection of the *thalweg* of the Wadi Al Batin with the parallel of latitude that ran through the point just south of Safwan, eastwards along that parallel south of Jebel Sanam to the point just south of Safwan and thereafter along the shortest (geodesic) line to the port town of Umm Qasr, and from there to the junction of the Khowr Zhobeir with the Khowr Abd Allah. The point just south of Safwan was the probable location of a notice-board which had been erected at the time of the 1923 agreement and which was erected again in 1932. In order to determine the location of the junction of the Khowr Zhobeir and the Khowr Abd Allah, it was first necessary to identify the point at which the *thalwegs* of those two waterways merged. Guided by the 1940 and 1951 clarifications of the delimitation formula in drawing a straight line from the point south of Safwan passing south of Umm Qasr to the junction of the Khowrs, the Commission found that such a line would have sliced into the northern shore of the Khowr Zhobeir, thereby closing off the mouth of that Khowr. The demarcation of the intersection of the boundary with the shore-line at Umm Qasr should be in terms of the position of the Khowrs as shown on a 1936 map as that was the position of the boundary as envisaged and intended from that time (pp. 18-22).

(3) The closing statement of the 1932 delimitation formula gave an indication that the maritime frontier lay in the Khowr Abd Allah. It was appropriate to adopt the median line, it being understood that navigational access should be possible for both States to the various parts of their territory on each side of the demarcation line. The entrance to the Khowr Abd Allah from the open sea lay where there was a significant change in the direction of the coastlines of the two States (pp. 23-5).

⁹ *Ibid.*, at 457.

¹⁰ The map which is appended to this volume was issued by the Commission together with this report.

4 UN IRAQ-KUWAIT BOUNDARY COMMISSION

The following is the text of the final report of the Commission:

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I. INTRODUCTION

1. The Security Council, by its Resolution 687 (1991) of 3 April 1991, affirmed the commitment of all Member States to the sovereignty, territorial integrity and political independence of Kuwait and Iraq. In that regard, the Council noted that Iraq and Kuwait, as independent sovereign States, had signed at Baghdad on 4 October 1963 the "Agreed Minutes Between the State of Kuwait and the Republic of Iraq Regarding the Restoration of Friendly Relations, Recognition and Related Matters", thereby formally recognizing the international boundary between Iraq and Kuwait and the allocation of islands. The Agreed Minutes were registered with the United Nations in accordance with Article 102 of the Charter of the United Nations (United Nations *Treaty Series*, vol. 485, No 7063).

2. Bearing in mind its objective of restoring international peace and security in the area, the Security Council, by paragraph 2 of its Resolution 687 (1991), demanded that Iraq and Kuwait respect the

inviolability of the international boundary and the allocation of islands set out in the aforementioned Agreed Minutes. By paragraph 4 of that resolution, the Council decided to guarantee the inviolability of the international boundary between Iraq and Kuwait.

3. Conscious of the need for demarcation of the said boundary, the Security Council, by paragraph 3 of its Resolution 687 (1991), called upon the Secretary-General to lend his assistance to make arrangements with Iraq and Kuwait to demarcate the boundary between them, drawing on appropriate material, including the map transmitted by Security Council document S/22412.

4. In a letter dated 4 April 1991 addressed to the Secretary-General by the Deputy Prime Minister and Minister for Foreign Affairs of Kuwait (S/22457), Kuwait expressed its intention to comply scrupulously with all the provisions of Resolution 687 (1991) and to co-operate with the Secretary-General with a view to ensuring its implementation. In accordance with paragraph 33 of Resolution 687 (1991), the Minister for Foreign Affairs of Iraq, in the penultimate paragraph of a letter dated 6 April 1991 (S/22456), notified the Security Council and the Secretary-General of Iraq's acceptance of the provisions of that resolution.

5. In letters dated 19 and 23 April 1991 respectively, Kuwait and Iraq agreed to co-operate with the Commission and to nominate representatives of their Governments to participate in its deliberations (see S/22558, annexes I and II).

6. After consultations with the Governments of Iraq and Kuwait, the Secretary-General, pursuant to paragraph 3 of Resolution 687 (1991), on 2 May 1991 established the United Nations Iraq-Kuwait Boundary Demarcation Commission, composed of five members—three independent experts to be appointed by the Secretary-General, one of whom would [9] serve as Chairman, and one representative of each Iraq and Kuwait—to carry out the technical tasks necessary to demarcate the boundary between the two countries (S/22558). Iraq nominated Ambassador Riyadh Al-Qaysi and Kuwait nominated Ambassador Tarek A. Razzouki as their representatives on the Commission (see S/22620).

7. In connection with the report conveying the decisions taken by the Commission on the demarcation of the land boundary, the Security Council, by its Resolution 773 (1992), expressed appreciation to the Commission for its work and welcomed those decisions. It also welcomed the Commission's decision to consider the eastern section of the boundary and urged the Commission to demarcate that part as soon as possible.

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II. MANDATE AND TERMS OF REFERENCE

8. The mandate of the Commission and its terms of reference are laid down in Security Council Resolution 687 (1991) and in the report of the Secretary-General on the establishment of the Commission pursuant to paragraph 3 of that resolution (S/22558).

9. The report of the Secretary-General provides that the terms of reference of the Commission are to demarcate in geographical coordinates of latitude and longitude as well as by a physical representation the international boundary between Iraq and Kuwait as set out in the Agreed Minutes. This was to be accomplished by drawing upon appropriate material, including the maps transmitted by Security Council document S/22412 (a set of 10 topographic maps at the scale of 1:50,000 by the United Kingdom Director General of Military Survey) and by utilizing appropriate technology. The physical representation will be carried out by the emplacement of an appropriate number and type of boundary pillars and arrangements made for maintenance on a continuing basis.

10. With reference to the boundary, the 1963 Agreed Minutes provide that:

The Republic of Iraq recognized the independence and complete sovereignty of the State of Kuwait with its boundaries as specified in the letter of the Prime Minister of Iraq dated 21.7.1932 and which was accepted by the Ruler of Kuwait in his letter dated 10.8.1932.

11. The 1932 Exchange of Letters referred to in the Agreed Minutes contains the following description of “the existing frontier between the two countries”, which constitutes the delimitation formula for the demarcation of the Iraq-Kuwait boundary by the Commission:

From the intersection of the Wadi-el-Audja with the Batin and thence northwards along the Batin to a point just south of the latitude of Safwan; thence eastwards passing south of Safwan Wells, Jebel Sanam and Umm Qasr leaving them to Iraq and so on to the junction of the Kho[w]r Zhobeir with the [10] Kho[w]r Abdullah. The islands of Warbah, Bubiyan, Maskan (or Mashjan), Failakah, Auhah, Kubbar, Qaru and Umm-el-Maradim appertain to Koweit.

12. The report of the Secretary-General states that the Commission will take its decisions by majority and that its decisions regarding the demarcation will be final. It further states that the coordinates established by the Commission will constitute the final demarcation of the international boundary. They will be lodged in the archives of the Governments of Iraq and Kuwait and a certified copy will be

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submitted to the Secretary-General for transmittal to the Security Council for safe-keeping in the archives of the United Nations.

13. The Security Council took note of the Secretary-General's report and its provisions for the establishment and terms of reference of the Commission and expressed support for all his efforts in respect of the demarcation of the boundary (S/22593).

III. COMPOSITION AND RULES OF PROCEDURE

14. Pursuant to paragraph 3 of Resolution 687 (1991), the Secretary-General appointed Mr Mochtar Kusuma-Atmadja, former Minister for Foreign Affairs of Indonesia as Chairman; Mr Ian Brook, then Technical Director, Swedsurvey, National Land Survey of Sweden; and Mr William Robertson, Surveyor General/Director General of the Department of Survey and Land Information of New Zealand, as independent experts. Iraq is represented by Ambassador Riyadh Al-Qaysi and Kuwait is represented by Ambassador Tarek A. Razzouki (see S/22620). The views of the parties on the constitution of the Commission and the Secretary-General's response thereto are contained in annexes I, II and III to the report of the Secretary-General (see S/22558). Mr Miklos Pinther, Chief Cartographer of the United Nations Secretariat, was appointed Secretary to the Commission.

15. With effect from 20 November 1992, Mr Kusuma-Atmadja resigned as Chairman of the Commission for personal reasons. Consequent upon the resignation of Mr Kusuma-Atmadja, the Secretary-General appointed as his successor Mr Nicolas Valticos, former Assistant Director-General of the International Labour Office, and member of the Institute of International Law, who assumed his functions on the same date.

16. The Commission established its own rules of procedure (IKBDC/Doc.2). Rule 1 covered the composition of the Commission. Rule 2 provided that the relevant provisions of the report of the Secretary-General (S/22558) would constitute the terms of reference of the Commission. According to these rules, the decisions of the Commission regarding the demarcation of the boundary are final. The rules of procedure further stipulated that the quorum would be met by the presence of at least three members, including the Chairman and at least one representative (rule 3), and that decisions would be taken by majority (rule 5). The Commission carried out its work in closed meetings (rule 4), by [11] visits to the border area and through field work. The Secretary of the Commission was entrusted with making all arrangements connected with the work of the Commission (rule 8).

17. In his report of 2 May 1991, the Secretary-General proposed

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that all costs should be shared between the interested parties. The Commission prepared and approved a cost estimate for the totality of its work, which was submitted to the Secretary-General.

IV. MEETINGS AND FIELD SESSIONS

18. The Commission held 11 sessions encompassing 82 meetings; these meetings were held either at the United Nations Office at Geneva or at United Nations Headquarters in New York. The Commission was provided with, and approved, minutes of all its meetings and it approved and issued press releases at the conclusion of each session.

19. The Commission conducted an initial inspection tour of the border area between 15 and 19 June 1991, at which time the two independent experts and the Secretary also visited the national survey offices of Kuwait and Iraq. Following a decision by the Commission to undertake new surveying and mapping of the border area, a survey team was formed from the staff of the national survey departments of New Zealand and Sweden. To execute its task, the survey team undertook four sessions of field work, which also included the final emplacement of the boundary pillars, during the autumn of 1991, the spring and autumn of 1992 and the spring of 1993. At the end of each field session, the two independent experts inspected and verified the work of the survey team. The Secretary made eight visits to the border area to participate in site inspections, to make arrangements for the field work and to establish a field office for the Commission. At the conclusion of each major phase of its work, the Commission prepared and submitted a report to the Secretary-General.

V. PARTICIPATION

20. From the beginning of its work, the Commission requested the representatives of Iraq and Kuwait to submit all relevant documents and other materials for its consideration. This was a regular feature of the subsequent work of the Commission, and full opportunity was provided to both parties to submit all relevant materials and express their positions and views throughout the work of the Commission.

21. At the first five sessions, held between 23 May 1991 and 16 April 1992, at which the Commission adopted its rules of procedure, considered the Khowr Abd Allah section and considered and took decisions on the land boundary, all members participated. The representative of Iraq did not attend the subsequent sessions, held between 25 July 1992 [12] and 20 May 1993. However, copies of all documents and of the authenticated minutes were transmitted to the representative of Iraq.

VI. ORGANIZATION OF WORK

22. At its first session, held in New York on 23 and 24 May 1991, the Commission discussed the organization of its work and requested the secretariat to prepare rules of procedure, which the Commission adopted at its second session. It held an exchange of views relating to the schedule of work, the nature of the task, what constituted appropriate material, on-site visits and the possibility of participation by experts from both countries.

23. It was affirmed by the Commission at its first session that its work was technical, not political, and that the nature of its task was demarcation. This was later noted by the Security Council in its Resolution 773 (1992) of 26 August 1992, which recalled that

through the demarcation process the Commission is not reallocating territory between Kuwait and Iraq, but it is simply carrying out the technical task necessary to demarcate for the first time the precise coordinates of the boundary set out in the (1963) Agreed Minutes . . .

24. The Commission asked the independent experts to prepare a plan of action for the demarcation. Subsequently, the independent experts presented a discussion paper, the two parts of which dealt with boundary definition issues and with the technical aspects of surveying, mapping and physical representation.

25. Following a discussion on definition issues, the Commission decided to examine the boundary in three sections. The first was labelled the western section, and corresponded to the initial phrase of the delimitation formula, “from the intersection of the Wadi-el-Audja with the Batin and thence northwards along the Batin to a point just south of the latitude of Safwan”. The second was labelled the northern section, corresponding to the phrase “thence eastwards passing south of Safwan Wells, Jebel Sanam and Umm Qasr leaving them to Iraq and so on to the junction of the Khor Zhobeir with the Khor Abdullah”. The third section was called the eastern section, later termed the offshore section and finally called the Khour Abd Allah section. This part corresponds to reference to the junction, together with the final sentence of the delimitation formula: “the islands of Warbah, Bubiyan, Maskan (or Mashjan), Failakah, Auhah, Kubbar, Qaru and Umm-el-Maradim appertain to Koweit”.

26. The Commission adopted a *modus operandi* whereby, for each of the above sections, it deliberated on the interpretation of the applicable parts of the delimitation formula, took account of the 1940 and 1951 clarifications (see para. 36 below) and other relevant evidence, discussed the relevant demarcation issues, heard statements of position, took decisions where necessary and instructed its survey team to carry out the requisite technical tasks in the field.