



Security Council

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Letter dated 20 August 2019 from the Permanent Representative of Kuwait to the United Nations addressed to the President of the Security Council

On instructions from my Government, and with reference to the letter dated 7 August 2019 from the Permanent Representative of the Iraq to the United Nations addressed to Your Excellency (S/2019/642) concerning the construction by Kuwait of a platform in Fisht al-Aych in Khor Abdullah, I wish to convey to you the following.

First, Kuwait reaffirms that Kuwaiti territorial waters were delimited by a decree that was issued on 17 December 1967 concerning the delimitation of the breadth of the territorial sea of the State of Kuwait. That decree was updated by Decree No. 317 (2014), issued on 29 October 2014, concerning the delimitation of the maritime zone of the State Kuwait, in accordance with article 15 of the United Nations Convention on the Law of the Sea of 1982. The latter decree was deposited with the United Nations.

Second, Fisht al-Aych is a naturally occurring area of land that is above water at low tide and located within the territorial waters of Kuwait. Accordingly, the construction of this platform is a matter that is the exclusive prerogative of Kuwait in exercise of its sovereignty over its territory and territorial sea.

Third, the platform was built and installed in Fisht al-Aych in order to ensure safety of navigation in Khor Abdullah and provide support to the tower at the Port of Shuwaykh. The expected increase in the number of vessels and, more specifically, the absence of a means of visually monitoring and following ships in Khor Abdullah means that a command location must be secured in that area to coordinate the security of navigation and respond to environmental incidents.

Moreover, the security considerations of Kuwait and its need for a modern, advanced system to monitor and control the Khor Abdullah area requires a security presence to respond to repeated incidents of infiltration of Kuwaiti territorial waters by unidentified vessels. It is the exclusive responsibility of Kuwait to protect its maritime boundaries and, in accordance with the United Nations Convention on the Law of the Sea, it is the obligation of Kuwait to notify the other State, and that obligation has been honoured. Kuwait built this platform in September 2018 and informed Iraq of that, as indicated in the record of the sixth meeting of the joint Kuwait-Iraq committee on the regulation of maritime navigation in Khor Abdullah. That record was signed on 26 January 2017. We also made sure to inform Iraq of this by means of a communication dated 28 February 2017 addressed to the Embassy of Iraq to Kuwait.



Fourth, the State of Kuwait has not contravened paragraph 3 (a) of the joint plan to ensure the safety of navigation in Khor Abdullah, which was concluded in implementation of the agreement on regulating navigation in Khor Abdullah. That paragraph concerns determining means of communication between the two countries; therefore, there is no conflict or relationship between that paragraph and the construction of the platform.

Fifth, Kuwait, in communications dated 26 July 2017 and 26 September 2018 from the Embassy of Kuwait in Baghdad addressed to the Ministry of Foreign Affairs of Iraq, responded to the communications from Iraq dated 9 May 2017 and 12 September 2018 in which Iraq requested to delay construction until such time as the maritime boundary beyond point 162 had been established. Kuwait reiterated in its communications that building a platform in Fisht al-Aych is the exclusive prerogative of Kuwait in exercise of its sovereignty over its territory and territorial sea. As for the delimitation of the maritime boundary in that area, since 2005, Kuwait has called for negotiations to commence on the delimitation of the maritime boundary beyond point 162, which is delimited pursuant to Security Council resolution 833 (1993). Those calls are reflected in the records of all the high-level interministerial committees. At the seventh session, which was held in Kuwait in May 2019, Kuwait continued to call upon Iraq to commence negotiations to complete the delimitation of the maritime boundary between the two countries.

Sixth, Kuwait is cognizant of its obligations under the United Nations Convention on the Law of the Sea of 1982 and the measures and the actions that it takes in its territorial waters in relation to this matter are consistent with its obligations under the Convention.

Seventh, Kuwait would like to draw attention to matters that are no less important than the issues referred to above. The construction work that is currently under way in the Port of Fao had reached an advanced stage, yet no consultations have been held with Kuwait regarding that work, despite the obligations imposed by article 206 of the United Nations Convention on the Law of the Sea of 1982. This is particularly true with regard to assessing the environmental effect on the marine environment resulting from the construction of the Port of Fao and its breakwater, which was built in Khor Abdullah at a distance of 5.4 nautical miles from the coast of Iraq and less than 1.5 nautical miles from the navigational channel. In addition, there are the matters of the geomorphological effect on the bed of Khor Abdullah and the navigational channel, and the requirement to inform Kuwait of those effects under article 205 of the Convention.

It should be noted that, to date, Iraq has not submitted any studies on the environmental effects of the construction of the Port of Fao, or any environmental effects that may have occurred or could occur as a result of its construction, despite repeated requests from Kuwait.

Iraq has not provided Kuwait with information on the environmental effects or held consultations with Kuwait on the construction of a breakwater at the Port of Fao, in accordance with articles 123, 205 and 206 of the United Nations Convention on the Law of the Sea of 1982. Accordingly, on 23 May 2018, Kuwait sent a communication to the Secretary-General of the United Nations in which it points out that Iraq has failed to respond to Kuwait in that regard, with negative repercussions for the region. In that same communication, Kuwait urges Iraq to adhere to the United Nations Convention on the Law of the Sea of 1982, provide Kuwait with information on the environmental effects and hold consultations with Kuwait in relation to that matter, in accordance with the obligations of Iraq under the Convention.

Eighth, under articles 192 and 194 of the United Nations Convention on the Law of the Sea, Iraq must take the measures required to prevent, reduce and control pollution in this region.

Ninth, in response to the Iraqi request for a delay until understandings have been reached on the delimitation of the maritime boundary, we transmit herewith a list of meeting records that include undertakings Iraq has made to Kuwait concerning the commencement of negotiations on delimiting the maritime boundary beyond point 162 that Iraq has not fulfilled (annex I).

Moreover, Kuwait has called upon Iraq and sent it letters urging it to commence negotiations on delimiting the maritime boundary beyond point 162 on the basis of those undertakings (see annex II). However, Iraq has not responded to any of the calls that Kuwait has made with regard to delimiting the maritime boundary beyond point 162, calls that are reflected in all the records and in the communications addressed to Iraq.

Kuwait takes this opportunity to once again call upon Iraq to resolve this issue either by commencing negotiations on delimiting the maritime boundary beyond point 162 or by referring the matter to the International Tribunal for the Law of the Sea established by the United Nations Convention on the Law of the Sea of 1982.

I should be grateful if the present letter be circulated as a document of the Security Council.

(Signed) Mansour Ayyad Sh. A. **Alotaibi**
Permanent Representative

Annex I**Records of meetings at which Iraq made undertakings to commence negotiations on boundary delimitation (2005 to present)**

1. Record the first meeting of the joint Kuwait-Iraq committee on borders, signed on 21 November 2005, at which Iraq requested that consideration of this matter be postponed until the completion of certain technical matters related to determining base points on the Iraqi coast.
2. Record of the second meeting of the joint Kuwait-Iraq committee on borders, signed on 21 November 2006, at which the two sides agreed to form a legal and technical committee as soon as possible, in order to set out the principles in accordance with which the maritime boundary between the two countries will be delimited.
3. Record of the meeting between Kuwait and Iraq, signed on 5 February 2009, at which the two sides agreed on the need to complete delimiting the maritime boundary beyond point 162.
4. Record of the second session of the joint Iraq-Kuwait high-level ministerial committee, signed on 29 April 2012, at which the two sides agreed to form a joint technical and legal committee on delimiting the maritime boundary between the two countries beyond point 162.
5. Record of the fourth session of the joint Iraq-Kuwait high-level ministerial committee, signed on 28 December 2014, at which the two sides agreed to have experts from both countries continue examining, in the near future, the question of the maritime boundary beyond point 162. The place and date of the next meeting would be determined in accordance with diplomatic practice. Iraq indicated that it had finished determining its baseline and was in the process of documenting it with the United Nations.
6. Record of the meeting of the preparatory committee for the fifth session of the joint Iraq-Kuwait high-level ministerial committee, signed on 14 December 2015, at which the two sides agreed that experts from both countries would complete the delimitation of the maritime boundary beyond point 162. The date and place of the meeting would be determined as soon as possible through diplomatic channels.
7. Record of the meeting of the preparatory committee for the fifth session of the joint Iraq-Kuwait high-level ministerial committee, signed on 22 December 2015, at which the two sides agreed that experts from both countries would complete the delimitation of the maritime boundary beyond point 162. The date and place of the meeting would be determined as soon as possible through diplomatic channels.
8. Record of the sixth session of the joint Iraq-Kuwait high-level ministerial committee, signed on 28 December 2016, at which both sides reaffirmed what had been agreed upon at previous sessions of the committee with respect to delimiting the maritime boundary beyond point 162. The meeting was chaired by the heads of the legal departments of the Ministries of Foreign Affairs of both countries. It was agreed that it would hold its next meeting in Kuwait as soon as possible, and Iraq promised that it would respond to the request of Kuwait that these meetings should be held as soon as possible.
9. Record of the seventh session of the joint Iraq-Kuwait high-level ministerial committee, signed on 12 May 2019, at which the two sides agreed to hold meetings between legal and technical experts from the two countries to consider all outstanding issues, including the maritime boundary beyond point 162. Those meetings were to be held within three months of the signing of the record.

Annex II

Communications and appeals from Kuwait addressed to Iraq to commence negotiations on delimiting the maritime boundary beyond point 162

1. Letter dated 30 August 2005 from the Minister for Foreign Affairs of Kuwait addressed to his Iraqi counterpart in which he calls for discussions to commence on completing the delimitation of the maritime boundary between the two countries.
2. Letter dated 16 September 2007 from the Minister for Foreign Affairs of Kuwait addressed to his Iraqi counterpart in which he calls for the joint Kuwait-Iraq committee on borders to resume its meetings, with a view to implementing what had been agreed upon at previous meetings, including completing the delimitation of the maritime boundary.
3. Letter dated 5 May 2008 from the Minister for Foreign Affairs of Kuwait addressed to his Iraqi counterpart in which he calls for the joint Kuwait-Iraq committee on borders to resume its meetings, with a view to implementing what had been agreed upon at previous meetings, including completing the delimitation of the maritime boundary.
4. Letter dated 29 June 2016 from the Minister for Foreign Affairs of Kuwait addressed to his Iraqi counterpart in which he urges Iraq to implement what had been agreed upon in the meetings of the joint Iraq-Kuwait high-level ministerial committee, including with regard to delimiting the maritime boundary beyond point 162.
5. Letter dated 10 January 2019 from the Minister for Foreign Affairs of Kuwait addressed to his Iraqi counterpart in which he calls for the legal experts from both countries to hold a meeting in January 2019 in order to lay the groundwork for the expedited commencement of negotiations on delimiting the maritime boundary beyond point 162.
6. Communication No. 431/6, dated 4 January 2017, from the Ministry of Foreign Affairs of Kuwait addressed to the Embassy of Iraq regarding the implementation of what is set out in paragraph 3 of the record of the sixth session of the joint high-level ministerial committee. In that paragraph, it is stated that it was agreed that meetings of the joint committee on delimiting the maritime boundary beyond point 162 would be convened, and that they would be chaired by the heads of the legal departments of the Ministries of Foreign Affairs of the two countries.
7. Communications Nos. 5/2017 and 6/2017, dated 26 July 2017, from the Embassy of Kuwait in Baghdad addressed to the Ministry of Foreign Affairs of Iraq in which it once again calls upon Iraq to commence negotiations on delimiting the maritime boundary beyond point 162.
8. Communication dated 15 January 2018 from the Embassy of Kuwait in Baghdad addressed to the Ministry of Foreign Affairs of Iraq in which it calls upon Iraq to commence negotiations on delimiting the maritime boundary beyond point 162.
9. Communication No. 19/2018 dated 26 September 2018 from the Embassy of Kuwait in Baghdad addressed to the Ministry of Foreign Affairs of Iraq in which it once again calls for negotiations to commence on delimiting the maritime boundary beyond point 162.
10. Communication No. 34501/8, dated 30 July 2019, from the Ministry of Foreign Affairs of Kuwait addressed to the Embassy of Iraq in which it calls for the legal and technical experts to hold a meeting in August 2019 on delimiting the maritime

boundary beyond point 162, in accordance with what was agreed upon at the seventh session of the joint Kuwait-Iraq high-level ministerial committee.

11. Communication No. 14/2019, dated 30 July 2019, from the Embassy of Kuwait in Baghdad addressed to the Ministry of Foreign Affairs of Iraq in which it calls for the legal and technical experts to hold a meeting in August 2019 on delimiting the maritime boundary beyond point 162, in accordance with what was agreed upon at the seventh session of the joint Kuwait-Iraq high-level ministerial committee.
