



Security Council

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Identical letters dated 20 January 2020 from the Permanent Representative of Iraq to the United Nations addressed to the Secretary-General and the President of the Security Council

The Government of Iraq, in keeping with its desire to ensure that the rules of international law are applied and to preserve the sovereign rights of Iraq in Khor Abdullah, and having regard to the letter dated 20 August 2019 from the Permanent Representative of Kuwait to the United Nations addressed to the President of the Security Council (S/2019/672), would like to reiterate its longstanding position and once again state that it objects to the upraising of a shoal, which is designated as Fisht al-Aych on maps, and the building of a port facility there by the Government of Kuwait. By doing so, Kuwait has made geographical changes in the maritime area that lies beyond boundary marker 162. In that connection, we should to make the following observations regarding the letter of the Permanent Representative of Kuwait.

- The territorial waters of Iraq and Kuwait overlap one another in Khor Abdullah and the maritime boundary has not been delimited beyond marker 162. Accordingly, the decision of Kuwait, as set out in Decree No. 317 (2014), to demarcate the baseline of its territorial sea from Fisht al-Aych at low tide is contrary to article 15 of the United Nations Convention on the Law of the Sea of 1982. That article reads as follows: “Where the coasts of two States are opposite or adjacent to each other, neither of the two States is entitled, failing agreement between them to the contrary, to extend its territorial sea beyond the median line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of each of the two States is measured. The above provision does not apply, however, where it is necessary by reason of historic title or other special circumstances to delimit the territorial seas of the two States in a way which is at variance therewith.”
- The demarcation by Kuwait of the baseline of its territorial sea from Fisht al-Aych is contrary to the last sentence of article 15, which stipulates that it is necessary to take into account special circumstances and historic title when delimiting the baseline; Iraq has historical rights and special circumstances, both natural and geographical, namely, its limited access to the sea when compared to its neighbouring States, Kuwait and Iran.
- Moreover, the definition of island that is set out in article 121 of the United Nations Convention on the Law of the Sea does not apply to Fisht al-Aych. That article reads, in part, as follows: “An island is a naturally formed area of land, surrounded by water, which is above water at high tide.” Fisht al-Aych is a shoal that does not appear above water at normal low tide, but rather only at extremely



low tide and then very infrequently. Accordingly, neither the provisions concerning islands, and the legal implications thereof, nor article 4, paragraph 7, of the United Nations Convention on the Law of the Sea apply to Fisht al-Aych.

- Paragraph 3 of the letter of the Permanent Representative of Kuwait proves that Kuwait has violated article 3 (a) of the agreement that Iraq and Kuwait concluded on 28 December 2014. Under that agreement, which is known as the Joint Agreement to Ensure the Safety of Navigation in Khor Abdullah, navigation, including the entry and exit of vessels into and from the navigation channel, shall be regulated, coordinated and supervised through the observation towers at the Kuwaiti port of Shuwaykh and the Iraqi port of Umm Qasr, or by any other means of communication that the two parties agree upon later. Kuwait has added a third tower, in contravention of the above-mentioned article, which requires that additions must be approved by Iraq. That action is therefore considered to be an amendment of the above-mentioned agreement. Kuwait has also violated article 4 (d) of that agreement, which provides that the agreement may be amended pursuant to a written request and by the consent of the two parties through diplomatic channels. Iraq did not approve the construction of that tower, and it sent three diplomatic communications, Nos. 9/5/3/2593, 9/5/3/5616 and 9/5/3/6383, dated 9 May 2017, 12 September 2018 and 25 October 2018, respectively, to the Embassy of Kuwait in Baghdad in which it expressed the objection of the Government of Iraq to the commencement of work on and continued construction of the platform in question by Kuwait.
- In order to delimit the maritime boundary beyond point 162, the baseline of the territorial sea of Iraq must be demarcated and documented with the United Nations, and the technical aspects of the question of the river boundary in Shatt al-Arab must be resolved with Iran. The Government of Iraq is still in the process of completing the relevant procedures.

When delimiting the boundaries of States, a good deal of time is usually required to prepare the necessary studies and determine the right time for negotiation. That is something to which most States, including Kuwait, are accustomed. Indeed, Kuwait has still not settled the matter of its maritime boundary with the Islamic Republic of Iran.

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

(Signed) Mohammed Hussein **Bahr Aluloom**
Ambassador
Permanent Representative