



## Security Council

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### **Identical letters dated 9 March 2020 from the Permanent Representative of Kuwait to the United Nations addressed to the Secretary-General and the President of the Security Council**

On instructions from my Government, I should like to draw attention to the 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 ([S/2020/55](#)) concerning the construction by Kuwait of a platform in Fisht al-Aych in Khor Abdullah. In that connection, I should like to draw to your attention to some facts based in international law that clarify matters related to this issue.

First, Kuwait would like to reiterate what it stated in 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](#)), in which it responded to all the points raised by Iraq in the letters that it had addressed to the Security Council.

Second, Kuwait reaffirms that the platform is in its territorial waters, and Kuwait alone has the prerogative to exercise sovereignty over its territory and territorial sea.

Third, the letter from Iraq contained a great deal of erroneous information:

- Kuwait has not upraised Fisht al-Aych, and there has been no construction activity on Fisht al-Aych itself. The platform was placed in the deep waters that are next to that shoal.
- Kuwait reaffirms that Fisht al-Aych is a naturally formed area of land which is surrounded by and above water at low tide but submerged at high tide, as defined in article 13 of the United Nations Convention on the Law of the Sea of 1982. Moreover, Kuwait has never claimed that Fisht al-Aych is an island as defined in article 121 of the Convention. Nor is Fisht al-Aych an area of shallow water, as Iraq claims in its letter.
- The platform in Fisht al-Aych is not a port facility, as Iraq claims. That platform was put in place to provide support in the Khor Abdullah area to the observation tower at the Kuwaiti port of Shuwaykh. Such support is vital in view of the expected increase in the number of vessels and, more specifically, the absence of a means of visually monitoring and tracking ships in Khor Abdullah. Moreover, the platform plays a significant role in coordinating navigation security and responding to environmental incidents and repeated infiltration of Kuwaiti territorial waters.
- Kuwait has not violated the Joint Agreement to Ensure the Safety of Navigation in Khor Abdullah, which was concluded on 28 December 2014. The observation



tower at the Kuwaiti port of Shuwaykh continues to be responsible for regulating, coordinating and supervising navigation in Khor Abdullah in cooperation with the observation tower at Umm Qasr. Such an arrangement is perfectly consonant with article 3 (a) of the Joint Agreement to Ensure the Safety of Navigation in Khor Abdullah.

- Kuwait kept Iraq informed, at all times, of the platform's construction, something that is reflected in the record of the sixth meeting of the joint Iraq-Kuwait committee on the regulation of navigation in Khor Abdullah, signed on 26 January 2017, and also in the communication dated 28 February 2017 addressed to the Embassy of Iraq in Kuwait. In addition, Kuwait responded to 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, from Iraq by means of communication No. 5/2017, dated 26 July 2017, and communication No. 19/2018, dated 26 September 2018, from the Embassy of Kuwait in Baghdad addressed to the Ministry of Foreign Affairs of Iraq.
- Iraq erroneously cites article 7, paragraph 4, of the Convention. That paragraph does not apply to the elevation of Fisht al-Aych, because Kuwait did not use straight baselines to measure its territorial sea.
- Iraq, contrary to what it states in its letter of 20 January 2020, delimited and documented the baseline of its territorial sea in 2011. The relevant information was deposited with the United Nations and circulated on 9 May 2011 in Maritime Zone Notice M.Z.N.83.2011.LOS (see annex).

Fourth, Kuwait rejects the claim of Iraq that the basepoints of the maritime zones of Kuwait, as defined in the decree that Kuwait deposited with the United Nations, are not in accordance with article 15 of the Convention. Kuwait has the right to use Fisht al-Aych as a basepoint under article 13 of the Convention, and it therefore has the right to use that point to demarcate the boundary of its territorial sea, in accordance with article 15 of the Convention and the relevant rules and principles of international law. Thus, Kuwait has not taken any action that violates the Convention; it has simply adopted legally established basepoints to delimit its territorial sea.

Fifth, Kuwait reaffirms that Iraq has no historical rights or relevant special circumstances that should be taken into account when delimiting the baseline in Khor Abdullah, while reiterating that Iraq has a permanent right to use the navigational channel in Khor Abdullah without hinderance or restriction.

Sixth, Kuwait continues to fulfil its obligation to provide information to and consult with Iraq regarding construction activities in Khor Abdullah, but Iraq has not reciprocated. Iraq is pressing ahead with large construction projects at the Port of Fao that have a profound effect on the environment and geomorphology of Khor Abdullah. Iraq has never consulted with Kuwait regarding construction work at the Port of Fao, despite its obligations under article 205 and 206 of the Convention. The Port of Fao breakwater, which affects the environment, extends 5.4 nautical miles from the coast of Iraq and lies less than 1.5 nautical miles from the navigational channel. Moreover, Iraq is still refusing to provide Kuwait with any environmental impact studies or information on the geomorphological effects on the bed of Khor Abdullah and the navigational channel resulting from the building work that is taking place at the Port of Fao and from the construction of the port's breakwater, as required under articles 123, 205 and 206 of the Convention. Kuwait has repeatedly asked Iraq to comply with those requirements and has indicated that it is willing to hold consultations in that regard.

Lastly, Kuwait continues to urge Iraq to commence negotiations on delimiting the maritime boundary beyond point 162 and arrive at an agreement in that regard.

Kuwait has made that request repeatedly, as documented by the communications that it has sent to Iraq and the signed records of meetings that took place between the two countries.

Kuwait wishes to make it clear that the negotiations between Iraq and Iran regarding the river boundary in Shatt al-Arab have no effect on the boundary of the territorial sea between Kuwait and Iraq. Indeed, Iraq delimited and documented the baseline of its territorial sea in 2011, and it deposited the relevant documents with the United Nations, as we noted above. Accordingly, there is nothing to prevent Kuwait and Iraq from commencing negotiations. Alternatively, Kuwait is ready to refer the matter to the International Tribunal for the Law of the Sea, which was established pursuant to the Convention, with a view to delimiting definitively the maritime boundary beyond point 162.

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

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

**Annex to the identical letters dated 9 March 2020 from the Permanent Representative of Kuwait to the United Nations addressed to the Secretary-General and the President of the Security Council**

[Original: English]

9 May 2011

**United Nations Convention on the Law of the Sea  
Montego Bay, 10 December 1982**

**Deposit by the Republic of Iraq of a chart and a list of geographical coordinates of points, pursuant to article 16, paragraph 2, of the Convention**

The Secretary-General of the United Nations communicates the following:

On 15 April 2011, the Republic of Iraq deposited with the Secretary-General, pursuant to article 16, paragraph 2, of the Convention, a chart and a list of geographical coordinates of points defining the baseline of the territorial sea of the Republic of Iraq.

The list of geographical coordinates of points is referenced to the World Geodetic System 1984 (WGS84).

The chart and list of geographical coordinates of points, as deposited by the Republic of Iraq, are posted on the website of the Division for Ocean Affairs and the Law of the Sea, Office of Legal Affairs, at: [www.un.org/Depts/los](http://www.un.org/Depts/los). The list will also be published in *Law of the Sea Bulletin* No. 76. The original chart may be consulted at the Division (DC2-0458, tel. 963-3962).

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