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Identical letters dated 2 February 2024 the Permanent Representative of Kuwait to the United Nations addressed to the Secretary-General and the President of the Security Council

I write in reference to the identical letters dated 4 January 2024 from the Chargé d'affaires a.i. of the Permanent Mission of Iraq to the United Nations addressed to the Secretary-General and the President of the Security Council ([S/2024/23](#)) regarding Decree No. 317 (2014) concerning the delimitation of the maritime zone of the State Kuwait.

My Government wishes to reiterate what it stated in its notes Nos. 5/2017 dated 26 July 2017 and 19/2018 dated 26 September 2018, and 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 this connection. It would like to stress the following:

First, 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) concerning the delimitation of the maritime zone of the State Kuwait, in accordance with the United Nations Convention on the Law of the Sea of 1982.

Second, Fasht al-Ayk and Fasht al-Qayd both fall within the territorial waters of the State of Kuwait, which has exclusive sovereignty over them.

Third, Fasht al-Ayk 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.

Fourth, the platform was built and installed in Fasht al-Ayk in order to ensure safety of navigation in Khawr 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 Khawr 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 Khawr 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 Khawr Abdullah, which 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 in Kuwait.

Fifth, the State of Kuwait has not contravened paragraph 3 (a) of the joint plan to ensure the safety of navigation in Khawr Abdullah, which was concluded in implementation of the agreement on regulating navigation in Khawr 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.

Sixth, 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 Fasht al-Ayk 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.

Seventh, 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.

Eighth, 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 Khawr 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 Khawr 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.

Ninth, 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.

Tenth, on 5 September 2021, the Kuwaiti and Iraqi sides held the first meeting of the Kuwaiti-Iraqi joint technical and legal committee to demarcate the maritime border beyond marker 162, and the two sides continued to hold meetings through the sixth meeting of the committee, which was held on 14 May 2023.

In order to preserve the rights of both our countries in the maritime zones, negotiations must continue on the demarcation of the maritime boundary beyond point 162, which is delimited pursuant to Security Council resolution [833 \(1993\)](#). A seventh meeting of the Kuwaiti-Iraqi joint technical and legal committee to demarcate the maritime border beyond marker 162 must be held in the Republic of Iraq.

My Government therefore reiterates its call for the resumption of the meetings of the Kuwaiti-Iraqi joint technical and legal committee to demarcate the maritime border beyond marker 162.

I should be grateful if the present letter could be circulated as a document of the General Assembly, under agenda item 34, and of the Security Council.

(Signed) Tareq M. A. M. **Albanai**
Ambassador
Permanent Representative