CHAPTER VII

UNITED NATIONS AND IRAQ: POST WAR SCENARIO

This chapter covers considerable ground. It follows in as comprehensive a manner as possible all developments which have affected the status and definition of the boundary up to August 1993. By this time, the land boundary had been demarcated in its entirety by the UN, while delimitation had been announced between the two states for the Khor Abdullah, although the UN would insist, contentiously, that its delimitation for this stretch of water was a demarcation. The subjects covered in this chapter are: the border in the UN settlement of the Kuwait Crisis, April-May 1991; UN Iraq-Kuwait Observer Mission (UNIKOM) and incidents in the border zone, April-August 1991; the `northward migration' of Kuwait's international borders with Iraq, February-March 1992; the land boundary demarcation ruling and reactions to it, April-June 1992; the UN and the UN Iraq-Kuwait Boundary Demarcation Commission (UNIKBDC) verdict on the land boundary, July-August 1992; resurrection of the Iraqi claim to the entirety of Kuwait on the second anniversary of the invasion of the emirate, July-August 1992; the demarcation of the Kuwait-Iraq land border, the resignation of the UNIKBDC chairman and delays in announcing a water boundary for the Khor Abdullah, October-December 1992; border incidents and the expansion of UNIKOM's terms of reference, January-February 1993; border defences, `returned' oil wells and compensation for displaced Iraqis, February-June 1993; a median line for the Khor Abdullah, March 1993; and the UNIKBDC's final report, May 1993.

The 1991 UN border settlement of the Kuwait Crisis

On 3 April 1991 the UN Security Council passed Resolution 687 by an overwhelming majority.\(^{379}\) The cease-fire resolution, christened the `mother of all

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\(^{379}\) Cuba voted against the resolution, while Ecuador and Yemen abstained.
resolutions' because of its length and comprehensiveness, produced few surprises on the border issue. Its preamble welcomed:

the restoration to Kuwait of its sovereignty, independence, and territorial integrity and the return of its legitimate government, affirmed;
the commitment of all Member States to the sovereignty and political independence of Kuwait and Iraq...
noted;
that Iraq and Kuwait, as independent sovereign States, signed at Baghdad on 4 October 1963 'Agreed Minutes Regarding the Restoration of Friendly Relations, Recognition and Related Matters', thereby recognizing formally the boundary between Iraq and Kuwait and the allocation of islands, which were registered with The United Nations in accordance with Article 102 of the Charter and in which Iraq recognized the independence and complete sovereignty of the State of Kuwait within its borders as specified and accepted in the letter of the Prime Minister of Iraq dated 21 July 1932 and as accepted by the Ruler of Kuwait in his letter dated 10 August 1932 and was conscious;

Paragraph two of the resolution demanded;

Paragraph three called on;
the Secretary-General to lend his assistance to make arrangements with Iraq and Kuwait to demarcate the boundary between Iraq and Kuwait, drawing on

appropriate material including the map transmitted by Security Council document S/22412 and to report back to the Security Council within one month. In paragraph four the UN decided:

to guarantee the inviolability of the above-mentioned international boundary and to take as appropriate all necessary measures to that end in accordance with the Charter.\(^{381}\)

In announcing these measures to deal with the border issue, the UN relied, as it had done so to justify all actions taken since the outbreak of the crisis on 2 August 1990, on Chapter Seven of the UN Charter. By this the UN Security Council is empowered to ‘determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.’\(^{382}\)

Kuwait's Deputy Prime Minister and Foreign Minister, Shaikh Sabah al-Ahmad al-Jabir al-Sabah wasted no time in registering the emirate's acceptance of the cease-fire resolution, and, in a letter to the UN Secretary-General dated 4 April 1991, welcomed ‘the adoption of this resolution, which aims to eliminate the causes and the effects of the occupation'. In the same letter, Shaikh Sabah also communicated Kuwait's undertaking ‘scrupulously to comply with all of its provisions and to cooperate with you with a view to ensuring its implementation’.\(^{383}\)

Iraq communicated its grudging acceptance of the cease-fire resolution in two items of correspondence: the first a lengthy letter dated 6 April 1991 from its Foreign Minister Ahmad Husain addressed jointly to UN Secretary-General Perez de Cuellar and Security Council President Paul Noter daeme: the second a brief statement of the same

\(^{381}\) Ibid., pp. 21-2.
\(^{382}\) 'United Nations Security Council Resolutions relating to the Situation between Iraq and Kuwait', op.cit., p. 1
date from Iraqi National Assembly President Saadi Mehdi Salih that the Assembly had decided to comply with its terms.\textsuperscript{384} Aside from its tone - "it [Iraq] has no choice but to accept this resolution" - the Iraqi Foreign Minister's despatch was most notable for its castigation of the measures adopted by the UN for the settlement of the boundary question. Resolution 687 was described as an "unprecedented assault on the sovereignty" of Iraq. The Security Council was accused of having "determined in advance the boundary between Iraq and Kuwait" while Iraq sought to remind the Secretary-General "that in international relations boundary issues must be the subject of an agreement between States, since this is the only basis capable of guaranteeing the stability of frontiers".\textsuperscript{385} Iraq continued to adopt its well-worn line that the 1963 "Agreed Minutes" were null and void since ratification of this instrument had never taken place in Baghdad.\textsuperscript{386} Hence it considered the boundary question as "pending and unresolved". The letter further complained that the Security Council had "imposed on Iraq the line of its boundary with Kuwait" despite originally calling, in Resolution 660, for the two sides to settle their differences, which implicitly included the border question Iraq argued, directly through bilateral negotiations. Iraq concluded that in dealing with the boundary, "the Council resolution is an iniquitous resolution which constitutes a dangerous precedent... an assault on the sovereignty of states".\textsuperscript{387} Despite all this, Paul Noterdaeme acknowledged, in his note of 11 April to Iraq's Permanent Representative at the UN, that Baghdad's acceptance of Resolution 687, however grudging, was "irrevocable and unqualified".\textsuperscript{388}

With its acceptance of the UN's cease-fire terms in April 1991, Iraq had recognized formally the existing border-as mentioned in the 1963 "Agreed Minutes", which was the vague boundary delimitation established by the 1932 exchange of notes. The definition of this border, which has been referred to as the "delimitation formula" by the UN since April 1991 is as follows:

\textsuperscript{386} for a thorough treatment and convincing dismissal of this argument see Finnie, (1992).
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 Um Qasr leaving them to Iraq and so on to the junction of the Khor Zobeir with the Khor Abdullah. The islands of Warbah, Bubiyan, Maskan [or Mashjan], Failakah, Kubbar, Qaru and Umm-al Maradim appertain to Kuwait.389

This was thus the second time Iraq had committed itself formally to the old colonial delimitation since Kuwaiti independence. However, it had not committed itself, either previously nor now, to any one interpretation of this definition. There had been no mention of Britain's 1951 demarcation proposed in Resolution 687. Nevertheless, it remained the most detailed interpretation on record of the boundary introduced by the 1932 correspondence.

While Husain and Noterdaeme were exchanging letters, Perez de Cuellar was trying to make arrangements with Iraq and Kuwait to demarcate the boundary, as he was committed to doing by paragraph three of Resolution 687. He planned to set up a boundary demarcation commission comprising representatives from both Iraq and Kuwait and neutral surveyors and cartographers, which would then establish and demarcate a definitive boundary line. Perez de Cuellar's draft report along these lines, circulated in mid-April 1991, prompted no objections from Kuwait. The emirate registered its full acceptance in a letter dated 19 April 1991. However as with Resolution 687, the draft report was heavily criticized by Iraq. Iraqi Foreign Minister Ahmad Husain wrote on 23 April 1991 to the Secretary-General, the first half of the letter being identical to that section dealing with boundaries in his earlier submission of 6 April, reiterating his compliant that any final settlement of its southern boundary with Kuwait should properly be its own responsibility and should not be imposed from without. The remainder of the letter was dominated by Iraqi complaints concerning the Secretary-General's intended use of a series of maps showing the Kuwait-Iraq boundary, made available to the UN by the

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389 Letter dated 21 July 1932 from Nuri al-Said to the High Commissioner, Baghdad in FO 371/16006.
British Government in late March 1991. The Government of my country was not a party to the drawing of that map. It did not recognize the map, nor is there any proof of its having extended such recognition. Accordingly, the fact that you and the Council consider the map to be a part of the material to be drawn upon for the demarcation process constitutes an iniquitous and unilateral imposition against the will of Iraq, a sovereign State member of the United Nations, and a pre-judgement of the course of the land boundary before any commission embarks on the process of demarcating that boundary.

Iraq was clearly overstating the importance of these maps. In his letter of 28 March, Sir David Hannay, British Ambassador to the UN had written the following cover:

The maps have been produced on the basis of the letter of the Prime Minister of Iraq of 21 July 1932 and the letter of the Ruler of Kuwait of 10 August 1932. As you know these letters do not offer a precise description of the boundary on the ground.

Each sheet also possessed a standard Directorate of Military Survey disclaimer concerning the status and precise alignment of the international boundary. Even so, Iraq may have had a genuine if limited cause for complaint. The British maps were, strictly

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390 See letter dated 28 March 1991 from Sir David H A Hannay, Ambassador of the United Kingdom at the UN, New York to the Secretary-General in UN Security Council document S/22412.
speaking, based upon more than the 1932 definition itself, yet at this stage, following the passage of Resolution 687, the vague delimitation introduced by the diplomatic exchange of that year was all that Iraq had committed itself to. The lines shown on these modern maps basically represented the best interpretation of the 1932 boundary that the British Military Survey could come up with in 1990. They had been compiled from a wide range of sources, including maps produced by various British Government departments dating back to the mid-1930s and surveys undertaken of the borderlands generally in more recent years, though these had been necessarily limited to the Kuwaiti side of the border zone.

Britain's 1990 series of maps must also have made use of existing amplifications and clarifications of the original 1932 definition of the boundary, generally in the form of demarcation proposals which had not been acceptable to Iraq. Though it could not admit as much, the Military Survey had undoubtedly utilized Britain's 1951 interpretation to some degree, and also its precursor of 1940. Britain's 1951 demarcation proposal was ostensibly the boundary that the colonial power had intended to introduce with the 1932 exchange of correspondence. Furthermore, despite Hannay's disclaimers, the boundary depicted on the British maps had already been used to construct the demilitarized zone along the Kuwait-Iraq border, which had been introduced by paragraph five of Resolution 687.

Despite its strong reservations concerning the method by which the UN proposed to settle the border question, and the employment of the British series of maps in particular, Iraq agreed unconditionally to accept the Secretary-General's proposals for demarcation:

I also wish to note that, just as we accepted resolution 687 (1991) despite our objections to and criticism of its provisions, we will cooperate with you and will nominate a representative of our Government to participate in the Demarcation Commission, even if you take no account of the views and
comments we have expressed above. We do this because the circumstances forcing our acceptance persist.\textsuperscript{393}

Perez de Cuellar presented his report, as required, to the Security Council, on 2 May 1991. Its most salient points were as follows:

I will now establish an Iraq-Kuwait Boundary Demarcation Commission, to be composed of one representative each of Iraq and Kuwait and three independent experts who will be appointed by me, one of whom will serve as Chairman.

The terms of reference of the Commission will be to demarcate in geographical coordinates of latitude and longitude the international boundary set out [note\textsuperscript{394}] in the (1963) Agreed Minutes between Kuwait and Iraq...

[T]he Commission will also make arrangements for the physical representation of the boundary.

The coordinates established by the Commission will constitute the final demarcation [note\textsuperscript{395}] of the international boundary between Iraq and Kuwait in accordance with the Agreed Minutes of 4 October 1963.

The demarcation of the boundary will be accomplished by drawing upon appropriate material, ...and by utilising appropriate technology.

[A]ll costs ...should be shared between the two interested parties.

\textsuperscript{394} To describe the boundary as having been set out in the 1963 'Agreed Minutes' is perhaps misleading. The 1963 agreement merely mentioned the 1932 delimitation.
\textsuperscript{395} Up to and including the release of the 'Final Report on the Demarcation of the International Boundary between the Republic of Iraq and the State of Kuwait by the United Nations Iraq-Kuwait Boundary Demarcation Commission', submitted to the President of the Security Council on 21 May 1993 by UN Secretary-General Boutros Boutros-Ghali, the UN has continued on occasions to demonstrate a surprising confusion over what is actually meant by demarcation. Coordinates provide a detailed boundary delimitation. They are not physical objects like stones or fences which can demarcate (i.e. mark out on the ground) a boundary.
The Commission will take its decisions by majority. Its decisions regarding the demarcation of the boundary will be final.396

Later in May, Perez de Cuellar named the members of the UN Iraq-Kuwait Boundary Demarcation Commission (UNIKBDC). Mochtar Kusuma-Atmadja, formerly Indonesian Foreign Minister, was named as Chairman. British-born Ian Brook, then of the National Land Survey of Sweden, and William Robertson of the Department of Survey and Land Information of New Zealand were named as the independent experts on the commission. Iraq was represented by Ambassador Riyadh al-Qaisi, and Kuwait by Ambassador Tariq A. Razouqi. Miklos Pinther, Chief Cartographer at the UN Secretariat, was appointed Secretary to UNIKBDC.397

UNIKBDC first met in New York on 23-24 May 1991 to discuss procedural questions. Here the team apparently affirmed the technical, rather than political, character of its work, "the nature of its task was demarcation".398 The commission moved to the border zone for an initial reconnaissance in mid-June 1991, its technical experts taking the same opportunity to call on the respective national survey offices in Baghdad and Kuwait.

By this time the UN Iraq-Kuwait Observation Mission (UNIKOM) was already firmly in place in the demilitarized zone which straddled the border.

In paragraph five of UN Resolution 687 of 3 April 1991 the Secretary-General had been requested to institute a UN observer unit to patrol and monitor a newly-created demilitarized zone (DMZ) along the Kuwait-Iraq border:

398 ibid., p.21.
[The Security Council] [r]equests the Secretary-General, after consultation with Iraq and Kuwait, to submit within three days to the Security Council for its approval a plan for the immediate deployment of a United Nations observer unit to monitor the Khor Abdullah and a demilitarized zone, which is hereby established, extending 10 kilometres into Iraq and 5 kilometres into Kuwait from the boundary referred to in the `Agreed Minutes between the State of Kuwait and the Republic of Iraq Regarding the Restoration of Friendly Relations, Recognition and Related Matters' of 4 October 1963; to deter violations of the boundary through its presence in and surveillance of the demilitarized zone; to observe any hostile or potentially hostile action mounted from the territory of one state to the other; and for the Secretary-General to report regularly to the Council on the operations of the unit, and immediately if there are serious violations of the zone or potential threats to peace;

As previously noted, the DMZ was measured using the British Military Survey maps supplied to the UN in March 1991. The Secretary-General's plan for the establishment of UNIKOM was approved with the unanimous adoption of Security Council Resolution 689 on 9 April 1991. By 6 May 1991 UNIKOM had deployed itself fully within its allotted zone along the border. On 9 May 1991, after the UN observer unit monitored the withdrawal of all remaining military forces along the border, the DMZ came into effect. UNIKOM forces had deployed themselves, with the cooperation of both the Iraqi and Kuwaiti governments, in the three operational sectors (south, central and northern) of the DMZ, with six observation posts initially

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399 For complete text of Resolution 687 see 'United Nations Security Council Resolutions relating to the Situation between Iraq and Kuwait', op. cit., p. 22.
402 Although the DMZ is one undivided area of operation for UNIKOM, for operational purposes it was divided into 3 areas. The southern sector ran in a north-easterly direction from the trijunction of the Saudi-Kuwait-Iraqi international boundaries at Wadi al-Audja to a point approximately two-thirds of the way up the Wadi Batin. The central sector ran from the latter point up the remainder of the Batin which is coincident with the Kuwait-Iraq border, then ran eastward to Safwan. The northern section ran eastward from the latter oasis settlement to Umm Qasr, then along the Khor Abdullah to the waters of the Persian Gulf.

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established in each under the command of a regional sectoral headquarters (see Map 11).
In addition to these fixed observation platforms, UNIKOM soon started to deploy temporary observation points, mobile air and land patrols and free-ranging investigation teams. Aerial reconnaissance was the only means by which the maritime border zone along the Khor Abdullah was monitored. Umm Qasr had been designated as UNIKOM's central headquarters, though a Kuwait City hotel (until 15 June 1991) and a logistic base at Doha (Kuwait) had to suffice during 1991 as the badly-damaged Iraqi port awaited the return of basic infrastructural necessities, such as electricity, water and sewerage. In early May 1991 the total strength of UNIKOM military personnel was 1385. This comprised: 280 military observers; 556 personnel providing administrative and logistic support (this figure reflected the initial effort involved in setting up UNIKOM in their DMZ, but was thereafter reduced); and 544 blue helmets provided to protect the military observers in the form of five infantry companies assigned temporarily from the long-established UN peacekeeping forces in Lebanon (UNIFIL) and Cyprus (UNFICYP).

Though logistic support for UNIKOM's operations proved problematic in the early months because of the severe damage to the regional infrastructure sustained during the campaign to oust Iraq, the situation had improved by the end of the year by which time the UN observer unit enjoyed its full complement of transport and communications equipment. Much of this had needed only to make the short journey from the Iran-Iraq border, along which another UN observer mission (UN Iran-Iraq Military Observer Group - UNIIMOG) had been present until January 1991.

Iraq and Kuwait retained, of course, civil authority on their respective sides of the border. UNIKOM used the boundary line shown on the 1990 British Military Survey maps though, awaiting the deliberations of UNIKBDC, it could not and did not take a position on the precise location of this territorial limit. The 1990 British map line was utilized pragmatically therefore to facilitate UNIKOM's task, officially without prejudice.

403 By June 1991 this figure had fallen to 963.
404 Three of the five infantry companies were stationed one in each of the three operational sectors of the DMZ, the other two at Umm Qasr (UNIKOM headquarters-designate) and Doha (logistic base and temporary UNIKOM HQ from 15 June 1991).
405 The fact that UNIKOM was still deployed along the recently-demarcated Kuwait-Iraq border in September 1993 and that UNIIMOG needed to be present along the Iran-Iraq border further east for the period between both sides acceptance of UN Resolution 598 and January 1991 only underlines the territorial instability that has persisted and still prevails in the northern Persian Gulf.
to its position concerning the international boundary. By June, Iraq had 250 police in the
DMZ while Kuwait was in the process of planning to rebuild and man some 30 police
stations along its northern and northwestern borders. Already both governments had
apparently agreed to limit police armaments to sidearms. This later gave rise to
complaints from both Kuwait and Iraq that insufficient means were available to deal with
smugglers, who generally possessed rifles and sub-machine guns. By the end of 1991
Kuwait had established five police posts and one police observation point in the DMZ.
Iraq's presence in the DMZ had increased to four border police centres and ten border
police posts. Interestingly, five of these ten Iraqi posts were on the Kuwaiti side of the
boundary indicated on the 1990 British Military Survey map. Attempts at the UN in New
York as well as at the local level in the field to get Iraq to withdraw the offending posts
met with the response from Baghdad that such an action would be impossible to defend
politically, since these positions had been set up well before the Iraqi invasion of Kuwait
in August 1990. This was another practical example of the confusion caused, even at this
stage, by the presence of different de facto and de jure borders between Kuwait and
Iraq.

The presence of the five Iraqi posts in territory UNIKOM judged to be Kuwaiti
made a mockery of the 'reasonable distance' principle which the UN Observer group had
tried to establish for Kuwaiti and Iraqi civil authority along the border. Under this
principle, formulated ostensibly to avoid incidents and friction, the Iraqi and Kuwaiti
border authorities should have been limited to a distance of 1000 metres from UNIKOM's
operative border, i.e. along the British Military Survey map line of 1990. Kuwaiti and
Iraqi civil authority would have had the right to enter their last 1000 metres of territory if
they had consulted UNIKOM in advance. Kuwait stated that it would be willing to abide
by the principle, providing that Iraq also complied fully. However, according to
UNIKOM, not only did Iraq maintain five police posts in Kuwaiti territory but it
maintained a further two within its own 'reasonable distance' zone to the immediate north
of the operative border. With a mandate only to observe, there was little UNIKOM could
do at this stage other than request unavailingly that the posts be withdrawn to territory
lying indisputably within Iraqi territory. The posts were not withdrawn until January
clearly, there was not much hope in 1991 of the 'reasonable distance' principle becoming practice.\textsuperscript{406}

In the early stages of its operations at least, UNIKOM observed three types of border violations: minor incursions on the ground by typically small groups of soldiers; overlights by military aircraft; and the carrying by Kuwaiti and Iraqi policemen of weapons other than side arms. Initially the number of transgressions was large, not surprisingly since until June there had been no signs on the ground to show civil authority exactly where the DMZ began and ended. By the end of October 1991 UNIKOM had reported 210 violations by Kuwait and allied forces of the Iraqi border as defined on the 1990 British Military Survey map, and 29 violations of Kuwaiti territory by Iraq, excluding Iraq's five police posts which UNIKOM.\textsuperscript{407}

Undoubtedly the most-publicized violation of territory observed by UNIKOM occurred on 28 August 1991, when the Kuwaiti Coast Guard took 12 small vessels and detained 45 Iraqis in the Khor Abdullah off Bubiyan island. Original, over-dramatized Kuwaiti accounts of the incident announced that an armed Iraqi force approximately 80 in number had disembarked from gunboats and had attacked Bubiyan island. The Kuwaiti media alleged that the Iraqi force used heavy weapons and were backed by gunboat reinforcements sent from the Fao peninsula. After exchanges of fire, the defending Kuwaiti military repulsed the attack, or so Kuwait claimed, sinking seven boats and capturing over 40 of the invaders, while others in the Iraqi force either escaped or remained hidden somewhere on Bubiyan Island. Kuwait complained of Iraq's 'armed aggression' to the Security Council, its Ambassador at the UN, Mohammad Abdulhasan, explaining that 'this dangerous development demonstrates once again the aggressive intentions by Iraq against the security and peace of Kuwait and shows that Iraq has not learned its lessons'. Britain was quick to uphold the Kuwaiti complaint, even before


UNIKOM could corroborate the account. The Foreign Office delivered a stern protest to Iraq's envoy in London, Zuhair Ibrahim, and issued the following statement:

The landing by a large group of Iraqi military personnel on Bubiyan Island on 28th of August is the most serious Iraqi violation yet of the border with Kuwait, in direct contravention of the terms of the cease-fire contained in United Nations Security Council resolution 687.

We condemn this further example of the Iraqi government's refusal to meet its international obligations and congratulate the Kuwaiti armed forces on their prompt response.  

Washington also precipitately congratulated the Kuwaitis 'on their swift action in defending their lands'.

UNIKOM's investigation into the incident, published in early September, revealed Kuwait's account to have been heavily exaggerated. The captured Iraqis had been taken from fishing boats and a speedboat off Bubiyan Island, while no evidence had been found to support claims that weapons had been carried on these vessels, that Iraqis had hidden on Bubiyan nor that fighting had actually taken place on the island. No Kuwaiti vessels allegedly involved in the fracas sustained any visible damage did UNIKOM find traces of all of the Iraqi vessels allegedly by the Kuwaitis in the low-lying mud-flats flanking the main navigation channel of the Khor Abdullah. UNIKOM suggested that it was most likely that the Iraqis arrested were probably private profiteers collecting weapons, ammunition and other battlefield items for sale on the black market in Iraq. After all, similar operations by individuals dressed in civilian clothes and driving civilian vehicles were taking place in, along and probably south of the demilitarized land border zone further west. In a report dated 2 October 1991, UNIKOM commented:

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409 Ibid.
The question has been raised whether they are in fact military personnel but UNIKOM has not been able to establish that this is so. It has, however, been informed by the Iraqi authorities that they offer rewards to persons who retrieve weapons and ammunition from the battlefield. It has also had indications that there is an unofficial market for such items in Iraq.  

UNIKOM's account of the Bubiyan episode therefore went some though not all the way towards supporting the Baghdad government's protestations of innocence, that if there had been an incident on or off the island, then 'smugglers and pirates' might have been responsible.

When the Kuwaiti media on 5 September 1991 published only those portions of the UNIKOM investigation which supported their earlier, sensationalized accounts and the Kuwaiti National Assembly praised on the same day its armed forces for repulsing the infiltrating elements and arresting them, questions were raised about the emirate's treatment of the episode. Western commentators could not fail but to note that the Kuwait government had endorsed a bilateral defence agreement with the United States on 4 September 1991, the very day that UNIKOM's findings were made public in New York. According to Dhari al-Othman, the Kuwaiti Minister of State for Cabinet Affairs, an aim of the ten-year accord was to 'deter any aggression or threat to Kuwait's sovereignty, security and unity of its lands'. After the over-exaggerated Kuwaiti version of the Bubiyan episode, Othman could now feel justified in adding the following footnote to the above aim: '...bearing in mind the continuing hostile intentions of the Iraqi regime.' The lingering feeling that Kuwait had been somewhat less than honest in its treatment of

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the Bubiyan infraction and its chief Western allies less than objective in their responses was summarized by the British BBC correspondent, Gerald Butt:

The general conclusion in the region seems to be that the Bubiyan incident - a shabby episode - has brought no credit to Kuwait or the countries which fought for its freedom.413

The Bubiyan episode was to have two general but discernible detrimental effects for Kuwait.

Firstly, the Kuwaiti Government would claim privately in the period following the incident that the West did not treat seriously enough its future reports of Iraqi incursions. Secondly, the stern and Middle Eastern media would treat much more cautiously and critically future Kuwaiti announcements on border incidents and the issue of the UN demarcation of the border itself. Iraq’s case would get greater coverage than previously. Nowhere was this more clear than with the reports in the Western broadsheets early in 1992 that the UN was going to move the Kuwait border northwards by reallocating territory to the emirate at the expense of the Baghdad government.

**The ‘northward migration’ of Kuwait’s international borders with Iraq**

A flurry of articles in February 1992 in the respected British broadsheets414 predicted the loss of strategically-placed Iraqi territory to Kuwait with the impending announcement of the UNIKBDC verdict on the precise course of the land boundary, a decision which was not actually communicated until mid-April 1992. These reports were no doubt informed by various leaks but seemingly above all by the rather gratuitous comment of Dr Tariq A. Razouqi, UNIKBDC’s Kuwaiti representative and Ambassador of Kuwait to France, that ‘the demarcation of borders in 1992 will be totally different


than 60 years ago. The forecasts made in the British press that Iraq would be forced by the announcement of the UN demarcation decision to abandon oil wells in the southern tip of the Rumaila field, and to abandon the southern half of the modern port of Umm "Umm Qasr, turned out to be accurate, though no new boundary was being laid down by UNIKBDC as Razouqi's comments seemed to infer. It was merely that the old and vague de jure border was being delimited precisely and demarcated for the first time by the UN demarcation team. The UNIKBDC decision on the course of the land boundary would require Iraq to abandon all of the area it administered between the notional de jure border (i.e. the line temporarily regarded as being consonant with the line shown on the 1990 British Military Survey map series) and the de facto border further south; up to which it had systematically encroached during the thirty-year period between the first Kuwait Crisis of 1961 and the eve of the second on 1 August 1990:

With very few exceptions, the difference between the de facto and de jure Kuwait-Iraq borders had not been internationally debated nor recognized until early 1992. Even then it confused many observers, including the journalists cited above. As this second edition goes to press (September 1993), precise details of the southernmost territorial extent occupied by Iraq remain something of a mystery. Iraq's creeping annexation between the two Kuwait crises remains to be mapped accurately while the Kuwaitis have not yet made detailed information on the subject available to the public.

In a very general manner, it is worth recollecting just how and to approximately what extent Iraq had come to encroach over the notional or de jure border. The process started with the settlement of the 1961 Kuwait Crisis when Iraq extended its administration south to the Arab League Line, a track which ran roughly parallel to, but anywhere up to two kilometres south of, the notional de jure international boundary

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416 It is possible that some of the Iraqi military maps left behind in Kuwait after Saddam Husain's occupying force was forcibly removed from the emirate in the spring of 1991 might show the de facto border before August 1990.
417 Though to do so, as noted earlier, might be considered too sensitive politically by the Kuwaiti government.
418 Ibid.
with Kuwait. This track was probably established originally by the British forces stationed to defend Kuwait during the 1961 crisis. It was essentially the nearest decent Kuwaiti site for an east-west route to what was then considered to be the de jure boundary. When an Arab League force relieved the British border forces in October 1961, they positioned themselves no further north than this east-west link. The Arab League line was therefore established as the northern operative territorial limit for Kuwait, and Iraqi forces moved southwards to extend their administration to fill the narrow void. Iraq consolidated this small territorial gain in February 1963 when the thawing process in Kuwaiti-Iraqi relations, begun by the fall of Qasim, resulted in the departure from the borderlands of the Arab League force. Thereafter, Kuwaiti and Iraqi border patrols would each utilize the track that was the Arab League line. During the 1960s and 1970s, wells were sunk by Iraq at the southern tip of the super-giant Rumaila oilfield, directly above the Arab League line, which had essentially become in many places the de facto Kuwait-Iraq border. In the period thereafter further oilwells were sunk by Iraq in the Rumaila region south of the Arab League line itself.

The modern Iraqi port of Umm Qasr, opened officially in 1961 with prominent Kuwaiti ruling family members present, soon expanded south to the level of the same Arab League line. Urban sprawl continued further south of the extended Iraqi port, unchecked during the 1970s as the Baghdad government strove to change the political geography of the border zone. Kuwait, not generally in much of a position to protest against the encroachments of its more powerful northern neighbour, turned a blind eye to such developments but was careful never to give Iraq's creeping annexation any official recognition. The most important development in Iraq's encroachment had been the

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419 The most detailed existing interpretation of the Kuwait-Iraq boundary at this stage in the early 1960s was Britain's December 1951 demarcation proposal, assented to by the Ruler of Kuwait but never accepted by the Iraqi Government.

420 Indeed, the majority of wells lying nominally within Kuwaiti territory in Rumaila's southern tip, which the Iraqis have been required to abandon as a result of the findings of UNIKBDC (first announced on 19 April 1992), lie south of the Arab League line.

421 It will be recalled that between 1969, when Iraqi forces positioned themselves in Kuwaiti territory south of Umm Qasr, ostensibly to guard against possible attack from Iran at a time of crisis over the Shatt al-Arab, and 1972, Iraq had constructed a road three or four miles into Kuwaiti territory close to the mouth of the Khor Zubair. Perhaps the best source on Iraq's southwards encroachment across the nominal de jure boundary during the 1970s is Al-Mayyal, A. (1986), op.cit.
construction of a naval base with Soviet support in the early 1970s, entirely within Kuwaiti territory according to the 1951 British interpretation of the boundary, and modern maps produced of the border, including the 1990 British Military Survey series. Tactical pilotage and operational navigation charts produced in the late-1980s, openly on sale in Britain, clearly showed the division of Umm Qasr into Iraqi old and Kuwaiti new, that is the pre-1961 settlement as lying within Iraq and its southern extension over the next three decades as lying within Kuwait. These and the 1990 British Military Survey series showed not just the Iraqi naval base but modern planned and unplanned housing, along with significant downtown areas of the expanded Iraqi port lying clearly within Kuwaiti territory and lying considerably further south than the Arab League line itself.

Certainly it was the fairly widespread leak in February 1992 that nearly half of modern Umm Qasr was to be recognized as belonging to Kuwait that sustained the rumour that territory was being reallocated. Umm Qasr as it existed in 1961 would be recognized as lying entirely within Iraq. The extension of Iraqi infrastructure southwards over the de jure border would be disallowed by the UN demarcation commission.

In the weeks preceding UNIKBDC's announcement on the course of the land boundary the a-it between the de facto and de jure Kuwait-Iraq borders was acknowledged but remained misunderstood. There were calls, many of them articulate, expert and intelligent, for the UN demarcation team to show more flexibility in the execution of their tasks. Specifically, it was suggested that they might come up with a line which was `politically defensible' rather than valid from a strict technical and historical perspective. It was suggested that this `politically defensible' line might extend southwards of what was likely to be confirmed as the de jure border at Umm Qasr and Rumaila so that Iraq need not abandon its oil wells and infrastructural development. In 1992 the criticism of the UN seemed a little flawed and unfair. It might have had more validity in March 1991, when the UN had discussed how the border issue should be

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422 For example, from Sir Anthony Parsons, formerly British Ambassador to Iran and to the UN, at an 'Anglo-Iranian Roundtable' held at Cumberland Lodge, Windsor, hosted and convened by the Royal Institute of International Affairs, 10-12 March 1992; also, Fred Halliday, London School of Economics and Political Science, University of London, quoted in an article by Caryle Murphy in The Washington Post, 5 May 1992.

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tackled in Resolution 687. UNIKBDC was purely carrying out its mandate when finalizing the existing boundary in law as defined previously by the 1932 exchange of letters. By extension, it had to ignore any temporary or de facto lines. There had been no criticisms of the UN directives for settling the boundary when the Secretary-General announced his plans in the spring of 1991. No-one then concerned themselves with, even if aware of, differences between de facto and de jure borders. The belated calls in the Western media for UNIKBDC to recognize the de facto border were of course, received enthusiastically in Baghdad. Unequivocal or apparently unequivocal neutral lobbying for its argument that UNIKBDC's verdict (when announced on 16 April 1992) was an unjust and unwarranted imposition probably encouraged Iraq to suddenly withdraw its delegate, Riyadh al-Qaisi from UNIKBDC.

By mid-April 1992, within a year of its formation, UNIKBDC had announced its decision on the course of the Kuwait-Iraq land boundary. The line to be demarcated was a refinement of the detailed demarcation proposal submitted unavailingly by Britain (with Kuwait's prior approval) to Iraq in December 1951. Right the way up to its invasion of Kuwait in August 1990 Iraq had made demarcation along the lines of Britain's 1951 interpretation contingent upon Kuwait first agreeing to cede or lease the islands of Warba and Bubiyan. Now Iraq was given a line, courtesy of the UN verdict, which approximated closely to the 1951 demarcation proposal but which contained no satisfaction on the islands issue. Indeed, as Umm Qasr expanded southwards across the nominal de jure border in the 1960s and 1970s, it was doubtful whether Iraq would have agreed to the 1951 demarcation proposal in its entirety, whatever the satisfaction given to it on the islands issue. For to have done so would have been to disallow this very encroachment in the same manner as the UN.

423 see the wealth of supporting (or apparently supporting) comment in Iraqi Foreign Minister Ahmad Husain's letter to the UN Secretary General of 21 May 1992 (UN Security Council document S/24044 of 1 June 1992), protesting against the course of the land boundary announced by UNIKBDC on 16 April 1992.

424 For details see 1951 demarcation proposal.
After its fifth session at UN Headquarters in New York, UNIKBDC announced the following decision on the course of the land boundary, communicated in a press release of 16 April 1992. The main points were:

Adhering to the delimitation formula, and based on the findings of the independent experts and the deliberations of the Commission, the Commission has reached the following decisions on the boundary by voting, with Iraq not participating in the vote:

1. That the boundary monument on the Iraq-Saudi Arabian border, Pillar No. 1, shall be the starting point for the boundary along the thalweg of Wadi Al Batin, and therefore, the tripoint of Iraq, Kuwait and Saudi Arabia;

2. That the boundary south of Safwan shall be located at the distance of 1430 metres from the south-west of the compound wall of the old customs post along the old road from Safwan to Kuwait;

3. That the boundary at the northern end of Wadi Al Batin shall be the intersection of the thalweg of the Wadi and the latitude of the point south of Safwan;

4. That the boundary south of Umm Qasr shall coincide with the location at which the boundary line on map sheet 5549-I of series K7611, edition 2 (1990), produced by the Military Survey of the United Kingdom, crosses the western shore of Khowr Zhobeir; and

5. That the junction of Khowr Zhobeir and Khowr Abd Allah shall be the one best identified for the Epoch 1932 and transposed onto modern orthophoto maps produced by the Commission.
The Commission has further decided that:

(A) the boundary line in the Wadi Al Batin shall be a series of straight line segments of about two kilometres length best approximating to the lowest point line in the Wadi;

(B) The boundary line from the point of the northern end of the Wadi Al Batin to the point south of Safwan shall be a line running along the common latitude of the points;

(C) The boundary line from the point south of Safwan to the point south of Umm Qasr shall be the shortest line between the points; and that

(D) The boundary line from the point south of Umm Qasr on the shore shall follow the low water line up to the location of directly opposite the junction of Khowr Zhobeir and Khowr Abd Allah.

The Commission has thus been able to draw the line of the boundary to the best of its ability and in light of all available information.\textsuperscript{425}

It will not surprise those familiar with the history of this troublesome territorial limit to learn that significant traces of Britain's demarcation proposal of 1951, the most detailed interpretation made to date of the 1932 exchange of notes, could be found in the line arrived at by UNIKBDC. Presented below is a brief commentary on the decisions reached by UNIKBDC for each prominent section of the Kuwait-Iraq land boundary, which makes use of information contained within UNIKBDC's final report of May 1993. Details are also given of the votes cast at the 36th session of UNIKBDC on 14 April 1992 for each important decision on various sections of the border. The Iraqi delegate to UNIKBDC did not participate in any of these votes.

**The boundary along the Batin**

The UNIKBDC land boundary utilized the *thalweg* of the Batin in the west, as had done Britain's 1940 940 and 1951 demarcation proposals. A *thalweg* delimitation for the Batin

\textsuperscript{425} See press release entitled 'Iraq-Kuwait Boundary Demarcation Commission completes fifth session, New York, 8-16 April', document number IK/101. 16 April 1992
had first been suggested in 1937. By adopting the *thalweg*, UNIKBDC sought to divide the traditional grazing lands of the Batin equally, which had been the intention in 1937, while the historically important wells of Hulaiba were left in Iraq. The deepest point of the wadi was probably as fair a division as any, though the shallowness of the feature meant that this was not always easy to establish precisely. It was perhaps a little ironic, at least to a geographer, that the *thalweg*, usually served to divide navigable international waterways, had been used for a dry wadi while later, in March 1993, the median line (tempered by equity) would be used for the navigable Khor Abdullah. The Chairman, the Kuwaiti representative and the independent experts voted in favour of the suggested *thalweg* delimitation, which was then adopted.

The point south of Safwan, so problematic in earlier periods of the border's evolution, was defined as lying 1430 metres south of the compound wall of the old Iraqi customs post. Britain's 1951 Demarcation proposal had nominated a point lying 1000 metres south of the customs post as the nodal point of the border. The `Final Report on the Demarcation of the International Boundary between the Republic of Iraq and the State of Kuwait by the UN Iraq Kuwait Boundary Demarcation Commission' explains of how UNIKBDC's 1430 metres figure was arrived at:

The Commission considered that the two most probable positions for the notice board were nearly 1609 metres (1 mile) and 1250 metres south of the southwest extremity of the customs post. In the absence of other reliable evidence, the Commission gave equal weight to both measurements and decided on the mean distance of 1430 metres from the south-west extremity of the old customs post along the old road as the most probable location of

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426 Ibid.
428 To compare the 1951 and 1992 distances from the former Iraqi customs post is slightly misleading since it was not until the recent survey operations of UNIKBDC that the exact location of the post could be established and then mapped with any degree of certainty
the noticeboard. The location of the point thus determined by the Commission is 180 metres farther south than the distance specified in the 1940 Iraqi protest note and 430 metres south of the claim made then and later for Kuwait [i.e. within Britain's 1951 demarcation proposal].

The general location of the customs post was established, on site, using GPS equipment and coordinates determined in 1942 from astronomical observations. Image interpretation using several aerial photographs, dating from 1945 to the present day, enabled the Commission to determine the south-west extremity of the old customs post with good accuracy as well as the alignment of the old road south of Safwan beside which the notice board had been located.

The representative of Kuwait and the independent experts voted in favour of the proposed boundary point south of Safwan. The Chairman abstained, perhaps because he sympathized to an extent with an Iraqi complaint, later to be articulated by Iraqi Foreign Minister Ahmad Husain in a better dated 21 May 1992 protesting to UNIKBDC that insufficient notice had been taken of arguments and evidence, for whatever reasons, in the shaping of the decision.430

UNIKBDC essentially agreed with the choice of point nominated in Britain's 1940 and 1951 demarcation proposals for the terminus of the land boundary on the Khor Zubair south of old Iraqi Umm Qasr, also with the rationale behind the earlier British interpretations.431 The relevant paragraph from the May 1993 Final Report read as follows:

The Commission decided that the demarcation of the intersection of the boundary with the shoreline at Umm Qasr should be in terms of the position of the Khowrs as shown on the 1936 map as it was considered that that was the position of the boundary as envisaged and intended from that time. This

430 IKBDC/Rep.6, p. 60.

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is also the position shown on the British 1:50 000-scale map transmitted by Security Council S/22412. This position has now been demarcated as the boundary at Umm Qasr by the Commission, leaving the Umm Qasr port complex and Umm Qasr village within Iraqi territory.432

Despite all of the intense media debate in February 1992, the decision on the terminus of the land boundary south of old Umm Qasr had been relatively easy to make, given that there was no Prospect of UNIKBDC recognizing the pre-August 1990 de facto border. Clearly no new de jure boundary had been drawn. The UNIKBDC decision was consistent with Britain’s 1940 and 1951 demarcation proposals and the terminal point shown on the British Military Survey map series of 1990. The Chairman, the Kuwaiti representative and the independent experts voted in favour of the proposed delimitation south of Umm Qasr, which was then adopted.433

The final section of the land boundary running from the point south of Safwan in a straight line to the junctions of the Khor Zubair and the Khor Abdullah west of Warba island was essentially defined to follow Britain’s 1951 interpretation. The whole of the waters of the Khor Zubair were thereby left to Iraq. Like the 1951 interpretation, the boundary hit the Khor Zubair at a point south of Umm Qasr (or, to be more precise, its geographical extent before 1960) and then followed the low-water springs into the water inlet’s western shore until its mouth was reached, after which it ran in an easterly direction through water to the junction of the khors.

There was a minor difference between the way in which UNIKBDC’s 1992 line and Britain’s 1940 and 1951 interpretations left the western/southern bank of the Khor Zubair to link up with the junction of the khors. Whereas the 1992 line followed the low water mark of the western/southern bank of the Khor Zubair to its mouth, Britain’s 1940 proposal had specified that, in the event that a line drawn straight from the point of

432 UNIKBDC Final Report, p. 23.
433 IKBDC/Rep.6, p. 61.
Safwan to the junction of the khors would touch the eastern/northern bank of the Khor Zubair - UNIKBDC soon found that this was indeed the case - the boundary should 'follow the low water line on the (western/southern) bank of the Khor Zubair to a point on the bank immediately opposite' the junction of the khors. Britain's 1951 demarcation proposal effectively prescribed the same formula as the 1940 proposal, though its wording was different:

a) From the point 1000 metres south of the building mentioned in sub-paragraph (b) above, the frontier shall follow the shortest line between that point and the point defined in sub-paragraph (d) above, but only as far as the spring tide lowwater mark on the right bank of the Khor Zubair. (f) From the point of the spring-tide low-water mark on the right bank of the Khor Zubair mentioned in sub-paragraph above to the point on that low-water mark nearest to the point defined in sub-paragraph (d) above, the frontier shall follow the low-water mark.

g) From the point on the low-water mark on the right bank of the Khor Zubair nearest to the point defined in sub-paragraph (d) above to that point itself, the boundary shall be the shortest line which can be drawn. Either way, it was the express intent of all three to leave the whole of waters of the Khor Zubair to Iraq.434

The Chairman and the independent experts voted for the proposed delimitation and, with the Kuwaiti voting against it, the proposal was adopted.435

From the point of Safwan to the junction of the khors: fixing the position of the junction of the khors. A precise location for the junction of the khors had proved somewhat more difficult to arrive at, as UNIKBDC explained.

The Commission decided that the position of the Khowrs should be the position as close as possible to that of epoch 1932. Its position was determined following studies of charts produced between 1907 and 1991, aerial photographs covering a period of some

435 IKBDC/Rep.h, p. 62

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40 years from 1951 and topographic maps. Although absolute positions varied, there was acceptably good agreement between the shore outlines on the maps and the details on the photographs, which led the Commission to rule out any significant effects of erosion or accretion around the junction of the Khowrs during the period covered by the materials studied.

Six identifiable junction points were plotted on the 1:25,000 scale orthophoto map from charts produced in 1907, 1932, 1939, 1948, 1971 and 1991. The best available chart produced closest in time to epoch 1932 was the chart produced by the Basra Port Directorate in 1939. With the exception of the point derived from the 1932 chart and from the 1991 British Admiralty Chart, these points fall within a relatively small circle.

The Commission decided to take into consideration the 1932 chart, despite its lower quality, in fixing the junction point, as it was produced at the time closest to epoch 1932. The final position was a weighted mean position. This has been considered as the most likely location of the position referred to in the British proposal of October 1940 and the December 1951 note verbale.

So, even though there had been some difficulty establishing its precise location, UNIKBDC’s judgement on the junction of the khors, the easternmost point specifically defined in the UNIKBDC delimitation formula, again approximated closely to that envisaged in Britain’s 1940 and 1951 demarcation proposals. Voting for the proposed junction of the khors had been unanimous, apart from the abstaining Iraqi representative.

\[\text{\footnotesize UNIKBDC Final Report, p. 24}\]
\[\text{\footnotesize IKBDC/Rep.6, p. 61.}\]

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436 UNIKBDC Final Report, p. 24
437 the vague definition of the boundary contained within the 1932 exchange of notes actually referred to 'the junction of the Khor Zobeir with the Khor Abdullah'.
438 IKBDC/Rep.6, p. 61.
UNIKBDC's press release of 16 April 1992 had dealt only with the land boundary. It would be almost another year before its decision on the course of the water boundary along the Khor Abdullah was announced.

As announced in UNIKBDC's press release of 16 April 1992, the Iraqi delegate, Riyadh al-Qaisi, abstained in all votes on the boundary, an action clearly designed to try and dissociate Iraq from the verdict and the process which had led up to it. Until this point al-Qaisi had participated in UNIKBDC's sessions, even if only appearing to be going through the motions.

The immediate reaction in New York by Tariq Razouqi, the Kuwaiti representative on UNIKBDC, to the decision on the course of the land boundary, was one of delight. He described the verdict as a "magnificent achievement" for Kuwait, and that the emirate had "proved that Iraq up to now occupied Kuwaiti territory and [had] exploited part of our country", adding that "Kuwait will recover all its oil wells". Razouqi was technically correct when, two days later on his return to Kuwait, he stated that the UN decision was "definitive" and did "not need the approval of the Kuwaiti and Iraqi governments, which had earlier accepted resolution 687". Other senior Kuwaiti officials, though delighted at the pushing back of the pre-August 1990 de facto Kuwait-Iraq border for an average 600 metres along its entire 200 kilometre length, realized that a long diplomatic battle lay in store with Iraq before the UNIKBDC decisions could be fully implemented. "The diplomacy will extend for years and years about the results of the commission and the fulfilment of the resolution, but it is a battle of diplomacy", was a typical reaction from anonymous senior aide.

Kuwait was less than happy, however, with the UNIKBDC decision to place the whole of the waters of the Khor Zubair within Iraq. There had initially been an expectation by the Kuwaitis and experts close to the workings of the UN border

439 'Kuwait rejoices over recovery of oil-rich territory from Iraq', Taieb Mahjoud, 18 April 1992, AFP 180232, GMT Apr.92.
440 Diplomatic battle seen over Kuwait-Iraq border', Diana Abdullah, 20 April 1992, Reuter AG BEH, 162146 GMT Apr.92.
441 'Border demarcation deprives Kuwait of Khor al-Zubair', Kuwait Times, 4 May 1992, p. 2
demarcation commission, that the easterly Safwan-junction of the khors section of the boundary would follow a straight line no modifications so that much of the lower course of the Khor Zubair would have fallen within Kuwait. After all, this was the most logical interpretation of the vague 1932 definition of the boundary, if one took no notice of Britain's subsequent clarifications of 1940 and 1951. A straight line for this section of the boundary was also depicted on the 1990 British Military Survey map series. As already noted, one reason why UNIKBDC did not adopt the straight line option from Safwan to the junction of the khors was because to have done so would also have given the emirate a slither of the western/northern bank of the Khor Zubair, indisputably Iraqi territory. With L.NIKBDC basically affirming Britain's 1951 formula for this stretch of the boundary, there had been a split vote on this point, with Kuwait voting against the motion. Other confidential sources have commented that the Kuwaiti delegate's chief objection in all of this was simply the hurried manner by which the decision on this stretch of the boundary had been reached.

Interestingly, in May 1992, there had been reports that had Iraq taken a more accommodation accommodating view of the UNIKBDC decision, Kuwait might have been prepared to concede part of the territory which the UN had only recently recognized as belonging to the emirate. Presumably, this would have involved the southern, modern half of Umm Qasr (or perhaps the part of it occupied by the Iraqi naval base built with Soviet support in the early 1970s) which the Baghdad government was now required to abandon with the UNIKBDC verdict. Kuwaiti Defence Minister Shaikh Ali Sabah al-Salim Al-Sabah, allegedly made the following comments in Cairo on 4 May 1992:

Kuwait, in agreement with the international committee for border demarcations, submitted an initiative proving its good intentions by conceding part of its territory to Iraq for humanitarian reasons.

[T]his concession included an area bordering on the sea so that the Iraqi side will be able to use a huge commercial harbor. This is despite the fact that the border demarcation included this harbor as part of Kuwaiti territory, in

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442 UNIKBDC Final Report, para. 78, p. 23.
addition to another area in which a hospital was built which was also apportioned in Iraq's favor for humanitarian reasons.\textsuperscript{443}

This Kuwaiti initiative was to founder, or so it seemed, in the face of Iraq's denunciation/rejection of the UNIKBDC decision, not made officially until mid-May 1992.\textsuperscript{444} By the end of April 1992, however, Iraq had implicitly rejected the UN line, though perhaps Riyadh al-Qaisi's nonparticipation in the vote on the border had made this clear from the outset. Initially, unattributed noises were heard from Baghdad, claiming that UNIKBDC had used British maps, 'drawn up in the early part of the century with the deliberate aim of depriving Iraq of an outlet to the sea'.\textsuperscript{445} Upon his arrival in Cairo for the 97th ordinary session of the Arab League in late April 1992, Iraqi Foreign Minister Ahmad Husain commented 'that the imposition of new borders between Kuwait and Iraq is not the best means of establishing peace and security in the region'.\textsuperscript{446} Only a day earlier, Iraqi Deputy Prime Minister Tariq Aziz had claimed that the UN verdict on the boundary was 'not based on any legal documents' and that 'the West knows full well that these borders can never be accepted, that the problem will continue to be unresolved'.\textsuperscript{447} Perhaps more surprising to some circles in the West was the rejection of the UNIKBDC verdict by the very Iraqi opposition groups many states would prefer to see ruling, in one way or another, in Baghdad. Their rejection and criticisms, admittedly inspired by the media-influenced belief that the UN was reallocating Iraqi territory to Kuwait, appeared before the present Baghdad government gave official notice of its denunciation/rejection.

A press release signed by Saad Salih Jabir, Chairman of the Iraqi Free Council,
characterized the UN decision as 'a serious compromise of Iraqi territorial integrity'. The mixed group of prominent Iraqi exiles claimed that the UNIKBDC verdict would infringe on Iraqi sovereignty. The Shi’a al-Dawa Party recommended that a final delineation of the Kuwait-Iraq border should await the election of a legitimate and representative Iraqi government, after which bilateral negotiations would be set in train between the two neighbouring states to solve the issue once and for all. Finally, the London-based Joint Action Committee of the Iraqi Opposition Forces in Britain claimed that the UNIKBDC decision on the course of the land boundary had 'caused great apprehension among all segments of the Iraqi people' and had placed 'the region on the threshold of regional problems which will benefit the enemies of the nation and region'. The first notice of Iraq's official rejection of the UNIKBDC decision came on 16 May 1992, when its National Assembly 'denounced all resolutions adopted by the border demarcation committee'. The National Assembly objected to the methods employed by UNIKBDC, while Riyadh al-Qaisi, who had served for the last time on the committee (he was to be withdrawn officially in July 1992), 'stressed that the committee's resolutions constituted a flagrant intervention into Iraq's domestic affairs and ran contrary to all laws and charters concerning the demarcation of international borders'. It was now obvious that while Iraq had accepted, albeit with considerable reluctance, the existence and aims of UNIKBDC, it could not live with its findings. On 21 May 1992, Iraqi Foreign Minister Ahmad Husain addressed an extraordinarily long letter of protest, 44 pages with annexes, against the UNIKBDC verdict of the previous month.

It was another detailed Iraqi 'review of the facts of history and geography', reiterating complaints made initially during April 1991, as the Secretary-General had formed UNIKBDC. In places, the letter was undeniably of some interest, for instance in its documentation of the relationship between Britain, Iraq, Kuwait and latterly the Hashimite Arab Union for the 1956 to 1958 period.

Much of the British official record covering this subject has been withheld under the 50-year confidentiality rule. Ahmad Husain complained specifically that UNIKBDC had not made full use of the 'appropriate materials' which Iraq was prepared to make available to aid the demarcation team, charging that UNIKBDC had waited for a translation of photocopies of passports stamped at the Mitla ridge, which Kuwait had designated as the chief Kuwait-Iraq customs control post in the 1960s.\(^{453}\) Ahmad Husain charged further that the Commission, instead of being patient in deciding upon matters and waiting for the presentation of the documents and notes referred to by the representative of Iraq, prevented all that by adopting in clear haste substantive technical decisions in regard to the demarcation of the co-called land boundary. This was done under the influence of clear pressure from the representative of the ruler of Kuwait.\(^{454}\)

The majority of the Iraqi Foreign Minister's letter attempted to substantiate Baghdad's view that the verdict reached by UNIKBDC contradicted the facts of history and geography. In support of these arguments the opinion of neutral observers was quoted and, intriguingly, that of the UNIKBDC chairman himself.\(^{455}\) Ahmad Husain concluded that UNIKBDC's verdict was a 'purely political decision imposed by the Powers dominating the Security Council at present, particularly the Governments of the United States and the United Kingdom'. He charged that the principal Western powers wished to create a political climate in the region in which they could justify the perpetuation of their military bases and of the presence of their armed forces in a state of

\(^{453}\) It will be recalled from Chapter 5 that Edward Heath appeared to have accepted during the late summer of 1990 the groundless Iraqi argument that by moving its chief customs post 75 kilometres north from the Mitla ridge to Abdaly, Kuwait had shifted its boundaries with Iraq northwards by a corresponding distance.


\(^{455}\) These neutral observers ranged from British academics, including Fred Halliday and this author, to British, American and Arab journalists. Not all of the excerpts castigated the UNIKBDC verdict, but rather concluded (certainly this was the case with this author) that the problem of Iraqi access to the Persian Gulf was a geo-strategic fact which might well not disappear, whatever boundary line UNIKBDC had chosen to demarcate.
occupation which will enable them to continue extorting the ruling regimes in Kuwait and the region and pillaging the oil wealth of the area.456

His final word on the UNIKBDC decision was as follows: Any ratification by the Security Council of this unjust decision, which has been deliberately directed by two of its permanent members, will constitute a very dangerous precedent, contrary in substance and consequences to the duties and responsibilities entrusted to the Council by the Charter of the United Nations.457 An equally long letter of 9 June 1992 from Shaikh Salim Sabah al-Salim Al-Sabah, Kuwaiti Deputy Prime Minister and Minister for Foreign Affairs, to the UN Secretary-General wearily refuted one by one the Iraqi allegations. Kuwait reminded Iraq that it was its decision to invade Kuwait which had internationalized the question of settling borders.

Has Iraq forgotten that it was its treacherous act of aggression and its disregard of international legitimacy which placed this problem outside the regional context, thus moving its obligation to respect such legitimacy to an international context? Iraq having rejected all acceptable means of resolving the boundary dispute thus created, it was essential that the United Nations should intervene and take charge.458

Ahmad Husain's letter of 21 May 1992 was characterized by Kuwait as evidence of the continuation of Iraq's `long tradition of...challenging international legitimacy, persisting in its aggressive intentions, proclaiming its refusal and rejecting all agreements and conventions ratified by [the Iraqi state]'459

The response of the UN to Iraq's `wee opus' of late May was for Paul Noterdaeme, the President of the Security Council, to issue a note on 17 June 1992,

457 Ibid.
459 Ibid., p. 2.
which affirmed that 'the Boundary Demarcation Commission is not reallocating territory between Kuwait and Iraq, but is simply carrying out the technical task necessary to demarcate the precise coordinates of the boundary between Kuwait and Iraq for the first time.' Noterdaeme commented that Ahmad Husain's letter appeared 'to call into question Iraq's adherence to Security Council resolution 687' and expressed concern that the letter 'may be interpreted as rejecting the finality of the Border Demarcation Commission's decisions'. It ended with the following warning for the Baghdad government:

The members of the Council wish to stress to Iraq the inviolability of the international boundary between Iraq and Kuwait being demarcated by the Commission and guaranteed by the Council pursuant to resolution 687 (1991) and the grave consequences that would ensue from any breach thereof.

**UNIKBDC verdict on the land boundary**

As preparations were being made for UNIKBDC's sixth session in New York, scheduled for 15-24 July 1992, the Government of Iraq formally withdrew its delegate from future sessions of the border demarcation commission. In another letter to the Secretary-General, the Iraqi Foreign Minister concluded that: [a]fter a prolonged study of all factors and circumstances, we have come to the conclusion that Iraq's opinion is not being heard in the committee and that regardless of our efforts to make it heard, there will be no opportunity for us to create an atmosphere of objectivity and justice...Based on the above reasons, we do not find that our participation in the abovementioned committee will serve any useful purpose.

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460 the reiteration of this comment was probably intended as much for the Western and Arab media, who continued to question the wisdom of UNIKBDC's verdict throughout the late spring of 1992, as for the Iraqi Government itself.


Though Riyadh al-Qaisi attended no further meetings of UNIKBDC from July 1992 to May 1993, he was provided with copies of all the essential documentation reviewed in these sessions and of the authenticated minutes on each occasion.

UNIKBDC's sixth session resulted in a somewhat defensively-couched press release on 24 designed no doubt for a Western media which still maintained reservations over the April 1992 UNIKBDC award. In this it was noted that:

the oil wells in the fields between Safwan and the Batin exploited in the past by Iraq fell already in Kuwait according to the boundary shown on the British map referred to in Security Council resolution 687 (1991).

The Commission's demarcation leaves Umm Qasr port complex, including all the warehouses, crane installations, deep-water anchorage and two wide berths, as well as the whole of Umm Qasr village, the Navy hospital and the sulphur works within Iraqi territory. With the port and the Khor Zubair in Iraq, the Commission's decisions on this section of the land boundary affirm Iraq's access to the sea.

The Boundary Demarcation Commission is not reallocating territory between Kuwait and Iraq, but is simply carrying out the technical task necessary to demarcate the precise coordinates of the international boundary between Kuwait and Iraq for the first time. It unequivocally rejects any allegations of partiality.

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463 Some of the most consistently informed and critical reporting of the border issue has been provided by Wolfgang Kohler for the Frankfurter Allgemeine Zeitung. For example, 'Das Bild des Friedens bei Umm Qasr ist trügerisch: eine Fahrt an die unstrittene irakischkuweitische Grenze', 19 June 1992 and 'Die "vierte Mauer" Kuweits: Mif3trauen beherrscht die Frage der Grenzziehung mit dem Irak', 23 February 1992.

At the July session arrangements were made for the future demarcation of the line decided upon by UNIKBDC for the Kuwait-Iraq boundary, while a substantial interim report was finalized, in which UNIKBDC explained in some detail the basis upon which their decisions on the course of the land boundary had been reached. This report was released on 24 July 1992.\textsuperscript{465} The single map included within the interim report which purported to show the line of boundary decided upon by UNIKBDC was noteworthy (see Map 14). This showed the difference between the approximation of the \textit{de jure} boundary depicted on the 1990 British Military Survey map series and the line decided upon by UNIKBDC to constitute the final course of the international boundary. It would certainly have been helpful had UNIKBDC taken the same opportunity to plot the \textit{de facto} international boundary as it existed immediately preceding the Iraqi move on Kuwait (i.e. the southern most extent of territory effectively administered by Iraq), but this is an exercise which remains to be satisfactorily undertaken. As an educating exercise, it would clearly be in the interests of Kuwait to produce a detailed map along these lines to convince those sceptics who are still maintaining in September 1993 that UNIKBDC has reallocated territory.

What was surprising about the UN July map was that for the section from the Batin to eastwards to Safwan, UNIKBDC's final decision of 1992 ran parallel to but some distance north of the line shown on Britain's 1990 Military Survey maps.\textsuperscript{466} There was no disparity at Umm Qasr As has already been noted, the UNIKBDC April 1992 line and the boundary depicted on the 1990 Military Survey series both hit the Khor Zubair at exactly the same place. The reasons given to this author for the divergence was simply that inadequate information existed in 1990 to depict the vague \textit{de jure} boundary with any

\textsuperscript{465} Further report of the United Nations Iraq-Kuwait Boundary Demarcation Commission', 24 July 1992, IKBDC/Rep.6. Those readers interested in the finer technical minutiae of UNIKBDC's operations should see this document, which is in restricted circulation. Subjects covered are: field work of the commission (datum survey, primary control survey, aerial photography, photo control survey, coordinate systems, orthophoto mapping); research and analysis of documentation, evidence and mapping of the border area (western section, northern section, eastern section, consideration of the boundaries); summary of the deliberations of the commission (western section, northern section, eastern section, the boundary in its totality); statements of positions (position of the representative of Kuwait; position of the representative of Iraq, response by the independent experts; response by the representative of Kuwait; response by the representative of Iraq, further response by the independent experts, concluding statement by the Chairman); further consideration of the eastern section; decisions (execution of the decisions, preparations for boundary demarcation on the ground); further work of the commission

\textsuperscript{466} IKBDC/Rep.6, p. 25.
great accuracy. After all, UNIKBDC's operations had involved the first joint survey of both sides of the border zone and the construction of more accurate maps than those existing previously, including the Military Survey series.\textsuperscript{467} The technical support lent to UNIKBDC's deliberations was impressive. In order to produce new and accurate maps of the border, four datum stations, 25 primary control stations and 137 photo control points were established between September and December 1991. Their positions had been respectively determined by GPS and Doppler observations. A series of 31 orthophoto maps was produced at a scale of 1:25 000 and several more ultimately produced for critical points on the boundary (e.g. Safwan and Umm Qasr) at the smaller scale of 1:7,500. Extensive aerial photography was also undertaken to assist with the preparation of maps: a series at 1:2,500 to depict the discontinuity/continuity in the Rumaila/Ratga oilfields and settled areas of the border near Safwan and Umm Qasr; and a series taken at a later stage (1993) to provide false colour imagery for the determination of the boundary along the low-water spring line for the west bank of the Khor Zubair and for the determination of the median line along the Khor Abdullah.\textsuperscript{468}

There is almost certainly no reason to doubt the explanation given for the divergence in the \textit{de jure} boundaries shown approximately by the British Military Survey in 1990 and the line ultimately demarcated by UNIKBDC. After all, the maps produced by UNIKBDC as a result of as deliberations depict prominent physical features that had hitherto escaped most modern maps of the region.\textsuperscript{469} It is perhaps regrettable, however, that UNIKBDC has not dealt more directly with the disparity between the lines in its various pronouncements and publications. At a time when even sections of the international media were convinced that Iraq's southern boundaries were being

\textsuperscript{467} UNIKBDC noted the necessity for new mapping at the outset of its operations, as recorded in the May 1993 final report: 'The maps and the related special data were, in the opinion of the experts, a necessary supplement to the existing maps and documents and would be required before demarcation on the ground could be carried out, as there were no adequate maps of the boundary area for the purpose of demarcation'. See UNIKBDC 'Final report', \textit{op.cit.}, p. 15.


\textsuperscript{469} for example, the far from insignificant water inlet lying off the western/southern bank of the Khor Zubair south-east of Umm Qasr.
foreshortened, the map enclosed within UNIKBDC's interim report of July 1992 only intensified arguments, especially since the point at which the 1990 Military Survey map and the UNIKBDC's demarcated line diverged most coincided with the disputed Rumaila/Ratga oilfield. Even before the release of the map in July, Iraq was fully aware that the line decided upon by UNIKBDC was, for the most part, less favourable than that depicted on the 1990 British Military Survey map series, about which it had expressed so much concern in April 1991. As Ahmad Husain had stated in his letter of 21 April 1992:

One of the striking facts relating to the work of the Commission is that the United Nations Commission came out with a boundary line on the basis of British sources and interpretations which is worse for Iraq's interests than the British line drawn on the basis of the same sources and interpretations on the British map (S/22412) referred to in Security Council resolution 687 (1991) and which successive Iraqi Governments did not recognise.470

UNIKBDC's detailed July 1992 interim report was presented to the Security Council by UN Secretary-General Boutros Boutros-Ghali on 19 August 1992. Within a week UN Resolution 773 had been passed, welcoming the UNIKBDC verdict on the course of the Kuwait-Iraq land boundary and urging the UN border demarcation commission to finally settle the water boundaries further east between the two states along the Khor Abdullah. Its most important provisions read as follows:

The Security Council:
1. Welcomes the Secretary-General's letter of the 12 August to the President of the Council and the further report of the Commission enclosed therewith;

2. Expresses its appreciation to the Commission for its work on the demarcation of the land boundary, and welcomes its demarcation decisions;

3. Welcomes also the decision of the Commission to consider the Eastern section of the boundary, which includes the offshore boundary, at its next session and urges the Commission to demarcate this part of the boundary as soon as possible and thus complete its work;

4. Underlines its guarantee of the inviolability of the above-mentioned international boundary and its decision to take as appropriate all necessary measures to that end in accordance with the Charter as provided for in paragraph 4 of resolution 687; 5. Welcomes further the Secretary-General's intention to carry out at the earliest practicable time the realignment of the demilitarized zone referred to in paragraph 5 of resolution 687 (1991) to correspond with the international boundary demarcated by the Commission, with the consequent removal of the Iraqi police posts. 471

It will be recalled, that at least until the end of 1991, Iraq retained police posts in Kuwaiti territory as defined on the 1990 British Military survey map. Though authorization to adjust the DMZ northwards had been given in UN Resolution 773 of 26 August 1992, it was not until January 1993 that this was completed, at a time when hostilities were briefly recommenced against Iraq. As a result Iraq was compelled to withdraw its posts that had quickly been recognized by UNIKOM as lying within Kuwait during 1991 and also those which were now lying in Kuwaiti territory as a result of the UNIKBDC verdict on the land boundary and the consequent northwards shift of the DMZ. 472

Resurrection of the Iraqi claim to the entirety of Kuwait

By the time Resolution 773 had been passed Kuwaiti anxieties had been heightened by the resurrection in the Baghdad media of the intermittent but historical

Iraqi claim to the entirety of the emirate. Prominent Iraqi officials had also begun to call once more for political unity with Kuwait. A Baghdad television documentary on 5 July 1992 on the history of Kuwait stressed the Iraqi identity of the state\(^{473}\), while Barzan al-Tikriti, Iraq's envoy to the UN in Geneva and the half-brother of Saddam Husain, called on the same day for Kuwait to unite politically with its motherland to the north.\(^{474}\) The Iraqi newspaper *Babil* called for Iraqi-Kuwaiti unity in mid-July, while at the end of the month the Baghdad (Baath Party) daily *al-Thawrah* published the findings of an Iraqi academic that Kuwait was 'part of Iraq'.\(^{475}\) The trickle of articles and broadcasts became a positive flurry by the second anniversary of the invasion itself. The army newspaper *al Qadisiyah* ran an editorial on 2 August 1992 under the banner 'The great Day of the Call and the mighty historic action'; *al-Thawrah* talked of 'The eternal Day of the Call' and *al-Iraq* of 'The glorious Day of the Call and Iraq's eternal territorial integrity'. The government daily, *Al Jumhuriyyah* predicted that 'Kuwait will eventually return to its rightful owners. How and when? History will answer this question.' The Iraqi media variously castigated Kuwait as 'an Iraqi town on the coast of the Gulf and its rulers, 'a mirage in the desert'.\(^{476}\) Also on 2 August 1990 former Iraqi Prime Minister Saadun Hammadi commented that 'Britain and the United States know the truth about Kuwait, that it belongs to the motherland, Iraq. They also know how they planted their agents, the Al Sabah family, to dismember and plot against the Arab nation'.\(^{477}\) The then Iraqi Prime Minister, Muhammad Hamza al-Zubaidi, then joined in the fray himself by labelling 2 August 1990 an `immortal day' and Kuwait a `usurped land'.\(^{478}\)

**The demarcation of the Kuwait-Iraq land border**

In their seventh round of meetings held in New York between 12-16 October, UNIKBDC made final preparations for the actual demarcation of the land boundary, to

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\(^{475}\) *BBC/SWB*, ME/1432 A/10, 14 July 1992, and ME/1448 A/2, 1 August 1992.

\(^{476}\) *BBC/SWB*, ME/1450 A/3-4, 4 August 1992.

\(^{477}\) *BBC/SWB*, ME/1449 A/8, 3 August 1992.

\(^{478}\) *BBC/SWB*, ME/1450 A/2, 4 August 1992.
start the very next week. The offshore boundary, which UNIKBDC had been 'urged' to finalize in UN Resolution 773 of 26 August 1992, occupied most of the energies of the commission, with the independent experts presenting their in-depth study of the subject. Ultimately it was decided that more information needed to be gathered before UNIKBDC could come to a decision on the course of the water boundary and, more pertinently, whether, as things stood, it possessed the mandate to nominate a boundary delimitation for the Khor Abdullah.

By the end of October 1992 the demarcation of the line decided upon by UNIKBDC in April was proceeding smoothly, with Kuwaiti Interior Ministry officials reporting that the Iraqis were no longer hindering the work of the UN border demarcation commission. Demarcation had started in the south-west at the Saudi-Iraqi-Kuwaiti international boundary tripoint at Wadi alAujah. Pillars were being laid every two kilometres along the line announced in April 1992. Each pillar weighed four tons, measured 3.3 metres in length (1.8 metres of which was buried underground once the pillar was in position) and measured 40 centimetres in diameter at its highest point and 90 centimetres in diameter at its base. A concrete collar weighing four tons was positioned over each pillar flush with the ground. Each pillar had two witness marks, to facilitate repositioning should this ever become necessary, one on the Iraqi and one on the Kuwaiti side of the border. By 26 October 1992, UNIKOM spokesman Abdullatif Kabbaj confirmed that 11 pillars along the Wadi Batin in the west were in place. A UNIKBDC team of 13 New Zealander surveyors and 45 Swedish constructors assisted a construction crew contracted from the Eastern Asphalt and Mixed Concrete Company (EAMCO) in positioning each boundary monument. By the end of October they were emplacing pillars at the rate of three a day. On 23 November 1992 the UN announced that the last of the 106 pillars demarcating the line announced on 16 April 1992 had been laid, somewhat

480 There were reports at the time of the seventh session that UNIKBDC's preference for a water boundary along the Khor Abdullah was along the median line rather than the thalweg.
481 The pillars and their concrete collars were manufactured by the Eastern Asphalt and Mixed Concrete Company of Bahrain. Each pillar was steel-reinforced and consisted of silica-mica aggregate concrete.
ahead of schedule. A UNIKOM spokesman confirmed that there had been ‘full cooperation from both sides’ in the marker-laying operation, perhaps a little surprising given Iraq’s withdrawal from UNIKBDC in July and the resurrection of its historical claim to the entirety of Kuwait soon afterwards.

In a letter of 4 November 1992 addressed to the UN Secretary-General, Mochtar KusumaAtmadja announced his resignation (to become effective from 20 November 1992) as Chairman of UNIKBDC, ostensibly for personal reasons. Though there is no question that the former Indonesian Foreign Minister probably wanted to move on to other things, it was no secret that the UNIKBDC chairman was troubled by what he regarded as the inadequate mandate possessed by the border demarcation commission to demarcate, or more accurately delimit, the boundary along the Khor Abdullah. The problem as he saw it was that no delimitation for the khor existed in UNIKBDC’s ‘delimitation formula’ (the boundary so vaguely described by the 1932 exchange of notes) which could then be demarcated. This he made clear in a letter addressed to the Legal Counsel of the UN on 6 November 1992. The current Minister for Foreign Affairs in Iraq, Muhammad Said al-Sahaf, used the arguments contained within Kusuma-Atmadja’s letter of 6 November 1992 to dispute the UNIKBDC’s award of a boundary along the Khawr Abdullah (the regard did not actually materialize until March 1993) in his letter of 6 June 1993, reacting against UN Security Council Resolution 833 of 27 May 1993.

On 6 November, the Chairman of the Commission addressed another, more detailed letter on the same subject [his resignation] to the Legal Counsel of the United Nations. This letter made it clear that the resignation was due to two causes, the first being a personal reason and the other being that he had ‘for some time [had] reservations about the terms of reference of the Commission’. The Chairman revealed in the above-mentioned letter how he had several times raised with the Legal Counsel some aspects of

484 Later, during April 1993, UNIKBDC laid down intermediate pillars within the 2 kilometres stretches, between those 106 pillars already established, on those occasions where intervisibility was impaired by interfering terrain. See UNIKBDC ‘Final report’, op. cit., pp. 27-8.
485 Ibid., p. 10.
the Commission's terms of reference; that the offshore boundary (Khawr Abdullah) was not specifically referred to in the 1932 Exchange of Letters, which meant that delimitation was lacking for the Commission on which to base the operation of demarcation entrusted to it; and how the Legal Counsel had explained to him `that any change in the mandate of the Commission was out of the question'. The letter explained also that the question had been discussed once again by the Chairman and the Legal Counsel in May and had also been discussed at two meetings held between the Chairman and the Legal Counsel, on the one hand, and the Secretary-General, on the other hand, in July and September 1992. And how the Chairman had `described' the situation that made it `impossible' for him to continue in office `unless certain modifications were made to the mandate of the Commission'.

So Kusuma-Atmadja resigned to be replaced as UNIKBDC Chairman on 20 November 1992 by the Greek jurist Nicolas Valticos, former Assistant Director-General of the International Labour Office. During the commission's eighth session in Geneva (14-16 December 1992), Valticos' first, was concluded, somewhat contentiously, that there was `sufficient basis to proceed with demarcation' of the Khor Abdullah.

Following deliberations on the matter, the Commission further decided that the principle governing the demarcation of the boundary line in Khowr Abd Allah should be the median line, it being understood that a principal object and purpose of the frontier settlement is navigational access for both parties.

Implementation of the median line principle in the form of an announcement of a boundary delimitation for the Khor Abdullah would not actually take place until March 1993. Before UNIKBDC could finalize maritime borders between Kuwait and Iraq in March, the land border erupted as an international flashpoint once again during the second week of January. Iraqi incursions over the newly-demarcated border contributed significantly to the United States and Britain renewing their bombing of southern Iraq on

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13 January 1993, albeit in a much more limited form than previously. It had ultimately been as a result of UN Resolution 773 of 26 August 1992 that Iraq was given a deadline of 15 January 1993 to retrieve property left behind in areas it used to occupy. These former areas of Iraqi occupation fell into two categories: i) not only was the Baghdad government required to abandon the police posts it had maintained in the Kuwaiti side of UNIKOM’s DMZ ever since the latter was set up in the late spring of 1991, but; ii) as a result of the DMZ shifting generally northwards on 15 January, to coincide with UNIKBDC’s April 1992 line, Iraq was also being required to vacate the area between the approximate de jure boundary shown on the 1990 British Military Survey map series and the ‘final’ de jure boundary as recently defined and demarcated. At the same time Kuwait was trying to establish new police posts on its newly-recognized northern limits. With UNIKOM empowered only to observe movements of the forces of the two states as the northwards shift of the DMZ to the demarcated border was being given physical effect, and with the demarcated border in itself offering no protection with pillars placed every two kilometres, all the ingredients for an outbreak of incidents were there.

Troubles began when, on 7 January 1993, Kuwait accused Iraqi forces of attacking one of its established frontier posts. Over the next four to five days, Iraq crossed the newly demarcated boundary with increasing regularity, employing ever greater numbers to retrieve everything it could lay its hands on before the UN deadline of 15 January 1993 was reached. Though Iraq argued that it had been given permission on 29 December to mount these ‘smash and grab’ raids, a charge denied by UNIKOM spokesman Abdullatif Kabbaj, it was the manner, intensity and scale of the Iraqi actions that most concerned the Kuwaitis and the UN. Iraq had been forbidden from destroying buildings or recovering its arms and ammunition which remained on the Kuwaiti side of the originally-defined DMZ, but on 10 January sent 500 civilians over the newly-demarcated border to the site of its former naval base in modern (Kuwaiti) Umm Qasr to strip an arms dump, and who proceeded to take away with them four Chinese-made anti-

488 There were a few exceptions. In a few small stretches, the DMZ in the Wadi Batin was shifted eastwards in Iraq’s favours since UNIKBDC’s 16 April 1992 decision on the boundary cut inside the line shown on the 1990 British Military Survey series in these places.
489 Reuters round-up by Inal Ersan, Kuwait, 7 January 1993.
ship silkworm missiles. Though Iraq was within its rights in retrieving all other materials, UNIKOM, who claimed that it should have been informed of each incursion in advance and that such actions should have taken place under its supervision, was evidently unprepared for the arrival of heavily-equipped salvage crews from the north. Also on 10 January 1993, UNIKOM reported that the same large body of Iraqis actually attempted to destroy the observer unit's own base at Camp Khor nearby. Once they had stripped former warehouses in confiscated Umm Qasr of all usable debris and metal scrap, the Iraqi salvage teams destroyed what remained of the shells of these buildings. They also recovered water tanks, electric cables and spare parts wherever possible.

On 11 January Kuwait urged the UN to take decisive action against Iraq over the incursions. UNIKOM and other observers sent to the scene in the next couple of days appeared to confirm the blatant flouting of arrangements by Iraq for its complete withdrawal from areas it formerly occupied and the aggressive, heavy-handed nature of its unauthorized retrievals. Iraq did: help its case with the issue of characteristic rhetoric in Baghdad. On 13 January, as the allied forces prepared once again to bomb Iraq, Abdul Jabir Mohsin, adviser to Saddam Husain, was quoted in al-Jumhuriyya as saying that Kuwait was 'an integral part of Iraq ...and will return to q despite the United States and the Security Council', while on the same day, Iraqi Defence Minister Ali Hassan al-Majid claimed that his forces were 'ready to free Iraqi territory, soiled by traitors from the north to the extreme south'.

The whole episode had essentially resulted from Iraq's resentment at having to comply physically on the ground with UNIKOM's April 1992 decision on the border, the content and of which, as we have seen, had never been acceptable to the Baghdad Government. After the limited allied air strikes and the passing of the 15 January deadline, after which the DMZ was moved northwards to coincide with the newly-

490 Perhaps some of the blame here lies with UNIKOM. Though only an observer force, with no powers to resist the heavy-handed Iraqi retrievals, it was supposed to have destroyed by the end of December 1992 all arms and ammunition, irrespective of their original ownership, lying within the DMZ.

491 Material on the Iraqi raids of January was taken from the following articles, amongst other sources, in the Arab Times (Kuwait): 'Back to the brink', 'Retrieval was on-going', 'UN urged to take decisive action', 12 January, p. 1; and 'Baghdad reiterates claim on Kuwait', 'Iraq: flashpoint on frontier', 14-15 January, p. 11.
demarcated boundary, Iraq withdrew on 17 January its 6 police posts remaining south of the UNIKBDC line, replacing them further northwards at points indisputably within Iraqi territory.\textsuperscript{492} The security situation improved markedly after this point. The chief result of the affair was that the mandate of UNIKOM, on the recommendation of the UN Secretary-General\textsuperscript{493}, was extended to actively resist serious Iraqi violations of the demarcated boundary in the future. When the Security Council passed Resolution 806 on 5 February 1993, therefore, UNIKOM became a genuine peacekeeping force rather than an observer unit. The essential provisions of the resolution were as follows:

\begin{quote}
The Security Council

Having considered the report of the Secretary-General of 18 January 1993 (S/25123),

Noting with approval that work is being completed on the realignment of the demilitarized zone referred to in paragraph 5 of resolution 687 (1991) to correspond to the international boundary demarcated by the United Nations Iraq-Kuwait Boundary Demarcation Commission,

Deeply concerned at recent actions by Iraq in violation of relevant Security Council resolutions, including the series of border incidents involving the United Nations Iraq-Kuwait Observation Mission (UNIKOM),

1. Underlines once again its guarantee of the inviolability of the international boundary between the State of Kuwait and the Republic of Iraq and its decision to take as appropriate all necessary measures to that end in accordance with the Charter, as provided for in paragraph 4 of resolution 687 (1991);
\end{quote}

\textsuperscript{492} "Kuwait says Iraqi raids continue", Arab News (Riyadh), 28 January 1993. At the end of May 1993 UNIKOM spokesman Abdullatif Kabbaj confirmed that Iraq had reestablished all of its police centres and posts that previously lay south of the April 1992 UNIKBDC line at a distance generally 1 km north of this newly-demarcated line; see "Baghdad pulls back 6 border posts, police centre despite rhetoric", A. Wahap Yazarglu in Arab Times, 27-28 May 1993, p. 1.

\textsuperscript{493} Paragraph 5 of report submitted by the Secretary-General to the Security Council, 18 January 1993 in UN Security Council document, S/25123.
2. Approves the report, and decides to extend the terms of reference of UNIKOM to include the functions contained in paragraph 5 of the report;

3. Requests the Secretary-General to plan and execute a phased deployment of the strengthening of UNIKOM.

5. Reaffirms that the question of termination or continuation of UNIKOM and the modalities of UNIKOM will continue to be reviewed every six months pursuant to paragraphs 2 and 3 of resolution 689 (1991), the next review to take place in April 1993; 

The effect of Resolution 806 was therefore to authorize the emplacement of a UNIKOM peacekeeping force of up to 3,600 blue helmets to patrol the recently-demarcated border. The force was to consist of three lightly-armed mechanized infantry battalions of 750 members each, plus support personnel. Deployment was to be phased, however, as noted above. By the end of May 1993 UNIKOM was still awaiting the arrival of a mechanized battalion of 775 soldiers and support staff to augment its 247 lightly-armed observers.

**Border defences in 1993, 'returned' oil wells and compensation for displaced Iraqis**

A demarcated border is a tangible feature but generally does not materially increase the security of the surrounding borderlands, especially in this case with pillars laid every 2 kilometres, except in its usual effect of eradicating future dispute over the precise course of the territorial limit. Ever since the UN-sponsored settlement of the 1990 Kuwait Crisis and the resultant 1991 Gulf War, Kuwait has been considering appropriate systems of border defences to guard against the contingency of future attacks from the north. In December 1991 it was reported that Kuwait was planning to construct an

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495 'UN battalion to patrol border' in *Kuwait Times*, 6 February 1993.
496 More troops to be deployed along border - Kuwait', *Arab News* (Riyadh), 31 May 1993.
elaborate 'Berlin Wall' system of defences at an estimated cost of £300m, consisting, for
the whole length of its border with Iraq, of an 'electrified fence, electronic sensors,
mines, automatic machine-guns and searchlights'. Further reports in February 1992
commented that Western companies were swamping Kuwait with high-tech proposals for
border defence systems, including a 'fence with rotating laser guns which would
automatically zap any living thing that approached'. By early May 1993, as the emirate
announced that it was to sign a fourth bilateral defence agreement with Russia to
supplement the three it had earlier concluded with Britain, France and the United States,
the Kuwaiti Cabinet finally plumped for an arrangement which will see a 3 metres deep-
ditch dug along the entire length (200 kilometres) of the land border. The ditch will be 5
metres wide and sealed on its Kuwaiti bank by the construction of sand hills to a height
of 4 metres. The arrest and imprisonment of a number of Westerners over the last year
for allegedly 'straying over the border' from Kuwait has only heightened Kuwait's
anxiety to see these plans become reality. Despite UNIKOM's tougher mandate since
February, there is a widespread belief that the latest people to be detained in this regard
(an Englishman and German during the early summer of 1993), were, like those before
them, probably apprehended south of the demarcated line within Kuwaiti territory.

By early March 1993 Kuwait had established control over all of the oil wells in
the southern tip of the super-giant Rumaila field which UNIKBDC had judged to lie
within the emirate. In total, eleven had changed hands. Eight of the wells worked by Iraq
until 2 August 1990 had been found by UNIKBDC to lie south of the Arab League line,
which, in many instances, had effectively formed the de facto border up to this point.
These were taken over by Kuwait on 18 January 1993. A further three lay between the
Arab League Line and the 'final, inviolable' de jure border demarcated by UNIKBDC.
These were taken over by the emirate in March, though Kuwaiti Oil Minister Ahmad al-

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Baghli had stated before this time that they (and the other eight) would not be exploited until the situation with Iraq had `settled down'.

It is interesting to look at the Rumaila/Ratga situation in the light of UNIKBDC's findings. There is now no doubt whatsoever that Ratga is the geological extension of the Rumaila field according to the UNIKBDC demarcation decision, it was Iraq, not Kuwait\textsuperscript{502}, who had been tapping its neighbour's oil in the years before 1990, though since no-one knew what the boundary was in this region before UNIKBDC's research, not even the British Military Survey, there seems little sense in pointing fingers too accusingly. Nevertheless, while Kuwait produced around 10,000 barrels per day (b/d) before August 1990 from Ratga, a figure of 20-30,000 b/d was typically -produced by Iraq during the same period from the 11 wells which have subsequently been recognized as belonging to the emirate.\textsuperscript{503}

In late January 1993 Kuwaiti Interior Minister Shaikh Ahmad al-Hamud Al-Sabah had predicted that agricultural projects along the newly-demarcated border were most likely to be the scene of future border incidents. Long-established Iraqi farms north of Abdaly jutted at the very 'east up to 1 kilometre inside the newly-demarcated boundary.\textsuperscript{504} At the beginning of the year access for about 50 Iraqi farmers in this region to their land (principally tomato crops) in Kuwait was relatively simple, since the only physical marker in their way was a sand berm which could be crossed easily by foot.\textsuperscript{505} This was for Iraqi farms which straddled the newly-demarcated boundary. Others have been left stranded wholly in Kuwaiti territory as a result of the UNIKBDC decision. By March, as we have seen, Kuwait was actively considering elaborate plans for border defence systems, which, when actualized, would cut off the Iraqi farmers from their


\textsuperscript{502} As Iraq alleged during July 1990 on the eve of its invasion of the emirate.


\textsuperscript{504} Mark Fineman, Middle East correspondent of the San Francisco Examiner (San Francisco), noted that UNIKOM patrols had been 'extremely sympathetic' to the plight of the disadvantaged Iraqi farmers: personal communication to author, summer 1992.

\textsuperscript{505} 'Kuwait says Iraqi raids continue', Arab News (Riyadh), 28 January 1993.
Kuwaiti land for good. No doubt realizing this, Shaikh Saad al-Abdullah Al-Sabah, the Crown Prince and Prime Minister, announced on 21 March 1993 that: 'the Government of Kuwait has decided to compensate Iraqi farmers for parts of their farms included within the Kuwaiti territories as a result of the border demarcation between the two countries.'\(^{506}\) Little more was heard of the issue before June, when Kuwaiti Foreign Ministry Undersecretary Sulaiman al-Shahin announced that a team of Swedish surveyors had been appointed to compile a report on Iraqi assets affected by the UNIKBDC demarcation. They had apparently been asked to 'survey the area where there are some farms, houses and people'. Kuwaiti officials confirmed that the UN had been asked to draw up recommendations for the possible compensation of Iraqis who have ended up in Kuwait as a result of the recent border demarcation. Iraq, of course, would be loath to accept such compensation if offered, since to do so would be to lend formal recognition to the UNIKBDC line and to admit Kuwait's rights over the territory concerned. Most of the 'stranded' Iraqis, 63 families to be precise, remain in the modern (post-1960), southern half of Umm Qasr recognized as belonging to Kuwait with the UNIKBDC demarcation decision.\(^{507}\) At least 50 Iraqi buildings remain south of the UNIKBDC line.

Having eventually decided, following the resignation of its chairman Mochtar Kusuma-Atmadja in November 1992, that it could 'demarcate' water boundaries without expanding its terms of reference, UNIKBDC announced in Geneva during its ninth session (15-18 March 1993) a median line delimitation (tempered by equity) for the final eastern, section of the border from the junction of the khors to the point where the Khor Abdullah meets the waters of the Persian Gulf proper.

The Commission then decided on ...the demarcation of the boundary along the median line in the Khowr Shetana and Khowr bd Allah. The Commission decided on the geographical coordinates which define the median line from a point nearest to the

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\(^{506}\) 'Kuwait to compensate Iraqis', Arab Times (Kuwait), 22 March 1993.

\(^{507}\) 'Kuwait may compensate Iraqis caught by new border', William Maclean, Reuters 09-1805: BC KUWAIT-IRAQ.
junction of Khowr Zhobeir and Khowr Abd Allah to a point at the eastern end of the Khowr Abd Allah where there is a marked change in the general direction of the coast.\(^{508}\)

UNIKBDC's eventual conclusion that a delimitation existed along the Khor Abdullah which could be demarcated was undoubtedly the most contentious aspect of its entire operation. There was nothing wrong with the boundary ultimately arrived at along the median line, that is providing UNIKBDC's contention was accepted that the water inlet constituted territorial sea and that no special circumstances applied. Iraq was not, as we shall see, to accept such reasoning, doubtless in part because the main navigation channel it had dredged and maintained over the years now lay, for the most part, to the south of the median line nominated by UNIKBDC.\(^{509}\) Whatever the rights and wrongs here, a more important question was whether the UN had possessed the right or the powers to announce a course of boundary for the Khor Abdullah. The border demarcation commission's first chairman had concluded that properly they did not. His comments concerning the issue when resigning have already been noted. Moreover, he recalled in the July 1992 interim report how the independent experts on UNIKBDC (Ian Brook and William Robertson) had earlier arrived at the same conclusion: the independent experts had at an earlier session responded to a request to demarcate the offshore section by stating in their view they could not do so.\(^{510}\)

The explanation given in UNIKBDC's May 1993 final report of the basis upon which they demarcated an existing delimitation for the Khor Abdullah is tenuous.

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509 This was certainly true of the most important stretch of the water boundary delimitation announced by UNIKBDC in March 1993 for the Khor Abdullah, as can be seen, though not always very clearly, in Map 15, a reduced copy of a UNIKBDC map produced in May 1993 entitled 'Khour 'Abd Allah demarcated by the United Nations Iraq-Kuwait Boundary Demarcation Commission'. Conversely, the shorter stretch of the water boundary delimitation along the median line of the Khor Shetana (the northernmost-westerly arm of the Khor Abdullah above Warba Island) left the navigation channel previously dredged and maintained by Iraq within Iraqi territorial waters. The UNIKBDC map did not ultimately find its way into the UNIKBDC's final report of the same month, presumably because of its poor quality. It had been produced simply by plotting a median line for the khors on the latest edition of the British Admiralty chart No. 1235 (18 October 1991).
By the Khowr Abd Allah section, the Commission refers to the maritime, or offshore boundary from the junction of the Khowr Zhobeir and the Khowr Abd Allah to the eastern end of the Khowr Abd Allah. The Commission felt that the closing statement of the delimitation formula, mentioning the islands of Warbah, Bubiyan, etc. as appertaining to Kuwait, gave an indication that the existing frontier in that section lay in the Khowr Abd Allah.

The Commission gave careful consideration to this section of the boundary. Having closely examined the language of the delimitation formula and the historical evidence on this part of the frontier, including earlier proposals for demarcation, and having taken into account the legal aspects of the matter, the Commission agreed that it had a sufficient basis to proceed with demarcation of the Khowr Abd Allah section. The Commission noted, moreover, that all the historical evidence pointed to the existence of a general agreement between the two countries on a boundary in the Khowr Abd Allah.\textsuperscript{511}

What had persuaded UNIKBDC that a boundary delimitation existed along the Khor Abdullah? As stated above, it was historic evidence. According to the border commission's third progress report of May 1993, the practice of both Kuwait and Iraq subsequent to 1932 had 'provided further evidence of the recognition of an agreed international boundary in the Khowr Abd Allah.'\textsuperscript{512} The then Iraqi Prime Minister had, during the mid-1930s, stated that it was difficult for Iraqi customs launches to know in whose territory they were, in the region of the junction of the khors. The same employees of the Iraqi customs service had instructions not to infringe the land or water boundaries of Kuwait. During 1934 and 1935, British Political Agent, Harold Dickson, had apparently produced several maps which labelled the centre line down the Khor Abdullah as the 'Kuwait boundary line' and these had been passed on to the Iraqi authorities. Twenty years later the map accompanying Iraq's request for leasehold rights over Warba and a 4-kilometre strip of land along the northern border also showed this boundary for the Khor Abdullah.\textsuperscript{513}

\textsuperscript{511} UNIKBDC 'Final report', p. 24.
\textsuperscript{513} Ibid., p. 8.
Yet surely all of this was best classified, like maps and documentation concerning other parts of the boundary, as 'appropriate material' upon which UNIKBDC could draw when trying to arrive at a more detailed interpretation of their vague delimitation formula. All the delimitation formula (the boundary defined in the 1932 exchange of notes) effectively prescribed for this stretch of the boundary was that the islands of Warba and Bubiyan belonged to Kuwait.

'The islands of Warbah, Bubiyan, Maskan (or Mashjan), Failakah, Auhah, Kubbar, Qaru and Umm-el-Maradim appertain to Koweit'.

That the Khor Abdullah separates Iraq (the Fao peninsula) from Kuwait (Warba and Bubiyan) is obvious, but the very fact that the boundary lies somewhere within the water inlet in no way: constitutes a delimitation. It might have been more reasonable for UNIKBDC to claim that the boundary had been allocated along the Khor Abdullah. Though UNIKBDC was probably justified in concluding that 'all the historical evidence pointed to the existence of a general agreement between the two countries on a boundary in the Khowr Abd Allah', it cannot escape, he fact that the 1932 delimitation formula said nothing of any line, however vague. It is the view of this author that UNIKBDC delimited rather than demarcated the Khor Abdullah section of the Kuwait-Iraq boundary. Clearly this is a serious charge, given that the border commission possessed no mandate to delimit and one cannot but feel some sympathy with the protests levelled against the UNIKBDC's verdict in this vein by the Iraqi Foreign Minister in his letter of 6 June 1993. He was essentially making the same point as had Kusuma-Atmadja in resigning as the first chairman of UNIKBDC.

It had taken until 1940, with the appearance of Britain's first clarification of the vague 1932 boundary, for an actual line to be nominated for the Khor Abdullah. This, as was the case with Britain's 1951 demarcation proposal, had run along the thalweg of the

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514 Ibid, pp. 9-10.
515 Allocation is the first stage of an international boundary's evolution, where the powers responsible merely allocate a strip of territory within which a boundary line will, in future be delimited precisely. In the case of navigable waterways, for instance, delimitation usually follows the thalweg.
water channel, essentially following Edmonds proposals of spring 1937. Though the thalweg has generally been regarded as the norm for boundaries along navigable rivers and waterways since the conclusion of the Versailles treaties of 1919, UNIKBDC decided to plump for a median line delimitation on the basis that the Khor Abdullah and, perhaps a little more arguably, its western arm along the Khor Shetana were territorial sea and therefore not subject to the set of circumstances which would usually have seen a thalweg delimitation nominated. There was a historic precedent: In 1959, Coucheron-Aamot, a Norwegian hydrographer, produced a report, officially authenticated by the Iraqi Ministry of Petroleum, which defined a median line as the boundary in the Khor Abd Allah. This official chart, taken from an annex to the Coucheron-Aamot report was transmitted to the Danish Embassy in Baghdad by the Iraqi Foreign Minister on 22 August 1960 and subsequently published in the Pleadings of the International Court of Justice.

The rationale behind the adoption of a median line delimitation was as follows: along the entire course of the Khor Abdullah (classified by UNIKBDC as territorial sea to which no special circumstances were applicable), "navigational access should be possible for both states to the various parts of their respective territory bordering the demarcated boundary." This statement resulted in part from a short statement prepared by the Office of Legal Affairs of the UN Secretariat on navigational access: The Commission views navigational access for both States to the various parts of their respective territories bordering the demarcated boundary as of importance for ensuring an equitable character and for promoting stability and peace and security along the border. In this connection, it is the opinion of the Commission that such navigational access is possible for both States through the Khowr Zhobeir, the Khowr Shetana and the Khowr Abd Allah to and from their own respective waters and territories bordering their boundary. The Commission notes that this right of navigation and access is provided for under the rules of international law as embodied in the 1982 United Nations Convention on the Law of the Sea ratified by both Iraq and Kuwait. Taking into consideration the particular

518 Ibid., p. 24.
circumstances of the area, it is also the view of the Commission that the right of access implies a non-suspendible right of navigation for both States.\textsuperscript{519}

In constructing a median line delimitation, UNIKBDC utilized the 1991 British Admiralty Chart No. 1235. The low-water spring lines shown on this chart were verified by infrared false-colour aerial photography. Established hydrographic techniques were used to construct baselines. These were acceptable to Kuwait while Iraq failed to respond either way. UNIKBDC determined the terminal point of the median line of the Khor Abdullah on the Persian Gulf by identifying a significant change in the direction of the coastlines of the two riparian states.\textsuperscript{520} Joining up the junction of the khors in the west with the median lines and dealing with a shoal to the immediate east of Warba island called for a little more imagination. As UNIKBDC’s final report testifies: The Commission determined that the boundary connection from the generalized median line to the junction of the khors was the shortest line between them. From that point the median line adopted by the Commission is defined by a set of coordinates which are calculated from the baseline points established on opposite low-water lines as depicted on the 1991 edition of British Admiralty Chart No. 1235. At the eastern end of Warbah, a drying shoal, called the Warbah spit, that could be subject to major change over the years, has been charted on the British Admiralty Chart. Here two median lines were calculated, one taking the shoal into account and the other ignoring it. Equal weight was given to both lines and an average line was calculated between the two medians to decide the demarcation line.\textsuperscript{521}

Physical representation (i.e. demarcation) of the UNIKBDC line for this section of the boundary (junction of the khors to the Persian Gulf) was deemed impractical and unnecessary. Demarcation of the low-water springs line along the western/southern bank of the Khor Zubair to the junction of the khors had been very limited. During the final field session [early spring 1993], a modified pointer pillar was placed on line between pillar No. 106 and the low-water springs line. Plaques were emplaced on the jetties where

\textsuperscript{519} Ibid., p. 27.
\textsuperscript{520} Ibid., p. 26.
\textsuperscript{521} Ibid., p. 26.
the low-water springs line continued beneath them. An offset mark was emplaced at the southern end of the stone-faced embankment, south of the southernmost jetty. Two pointer poles, which uniquely define the direction between the last point on the low-water springs line and the junction of the Khowrs, were also emplaced and three witness marks were established nearby.\(^{522}\)

Whilst Kuwait’s UNIKBDC delegate, Tariq Razouqi labelled the occasion of the finalization of the emirate’s borders with Iraq ‘a historical day in the history of Kuwait’,\(^{523}\) unease was clearly felt at Iraq’s continuing absence from the sessions of the UN border demarcation commission. Iraq expressed no immediate reaction to the border commission’s announcement of a boundary delimitation for the Khor Abdullah, though it was later to pass scathing comment in its Foreign Minister’s letter of June 1993 in reaction to Resolution 833 of late May. Though Kuwait could satisfy itself that Iraq had bound itself on paper to the future decisions of UNIKBDC in the aftermath of the 1991 Gulf War, it nevertheless sent a formal protest against Iraq’s continuing non-participation to New Zealander Terence O’Brien, President of the Security Council, a few Jays later urging that body to take ‘appropriate measures’ to ensure the Baghdad Government’s compliance with ‘the letter and substance of its relevant resolutions’.\(^{524}\)

UNIKBDC’s constitutes the ‘final’ delineation of the demarcated Kuwait-Iraq boundary

During its tenth session in Geneva (3 to 7 May 1993), UNIKBDC considered a draft report on its activities since July 1992\(^{525}\) and finalized a draft report on the history of the ‘demarcation’, which was to become the final report. At its eleventh and final session two weeks later (17 to 20 May 1993), UNIKBDC ‘approved the coordinates constituting the final demarcation of the international boundary between Iraq and

\(^{522}\) Ibid., p. 28.

\(^{523}\) ‘UN cornerstones equitability in demarcation of sea border’, Arab Times (Kuwait), 20 March 1993, p. 1.

\(^{524}\) ‘Protest against Iraqi absence in UN meeting’ Kuwait Times, 25 March 1993.

UN Secretary-General Boutros Boutros Ghali was himself present, receiving copies of these coordinates, a map illustrating the boundary and UNIKBDC's final report. The UNIKBDC press release on 20 May 1993 was careful to make the following points on the completion of the operations of the border demarcation commission: The Commission's task was to demarcate the international boundary between Iraq and Kuwait set out in the 'Agreed Minutes' signed by them in 1963. The nature of the task related solely to the demarcation of the boundary and its work was technical and not political. The Commission has made extensive efforts to obtain all appropriate material available for this demarcation and has given every opportunity to both parties to submit any materials and to present their views fully. Every aspect related to the demarcation of the boundary has received careful consideration from the legal, historical, technical and practical points of view.

The Commission has not reallocated territory between Kuwait and Iraq, but has simply carried out the technical task necessary to demarcate, for the first time, the precise coordinates of the international boundary reaffirmed in the 1963 Agreed Minutes. The same points were made the very next day by the UN Secretary-General in transmitting UNIKBDC's final report to the Security Council, with its coordinates for the boundary. Boutros Boutros-Ghali described how he had deposited one of the three certified copies in the archives of the UN for safe-keeping and how the other two would be sent on to the respective governments in Kuwait and Baghdad. The Secretary-General added that: the Commission has fulfilled its mandate. It demarcated in geographic coordinates of latitude and longitude the international boundary between Iraq and Kuwait set out in the [1963] Agreed Minutes, made arrangements for the physical representation of the boundary through the emplacement of an appropriate number of pillars or monuments and provided for arrangements for continuing maintenance and location.

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527 Ibid.
528 The 'Final report' receives no individual analysis in this section. However, the vast number of extractions from references to the document throughout this postscript bears witness to the critical importance of this primary source. The two maps included within the text of the UNIKBDC final report.
529 Letter dated 21 May 1993 from the Secretary-General addressed to the President of the Security Council enclosing the 'Final report', op.cit.
accuracy of the surficial boundary representation. The coordinates established by the Commission thus constitute the final demarcation of the international boundary between Iraq and Kuwait set out in the Agreed Minutes of 4 October 1963. In accordance with paragraphs 2 and 4 of Security Council resolution 687 (1991), both Iraq and Kuwait shall respect the inviolability of this international boundary and its inviolability will be also guaranteed by the Security Council.

In his next paragraph, the Secretary-General authorized UNIKOM to finalize realignment on the ground of the Kuwait-Iraq boundary in accordance with UNIKBDC’s demarcation decision. Since this had already been done for the land boundary demarcation in January with the DMZ moving generally northwards to correspond with the line announced in April 1992, one can only presume that UNIKOM were being requested to give physical effect to the delimitation recently announced letter from the Secretary-General dated 21 May 1993 for the Khor Abdullah, though there had been no realignment as such, as no boundary delimitation had previously existed for the water inlet.

Boutros-Ghali then appeared to demand of Kuwait and Iraq (or was he guaranteeing on the part of the UN?) that ‘personnel ... involved in the implementation of the arrangements for maintenance of the surficial representation of the boundary are to enjoy unimpeded freedom of movement in the area of the demarcated boundary as well as all necessary privileges and immunities for the fulfillment of their task.’ The maintenance or administration of a demarcated border is often regarded in political

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530 UNIKBDC, in its final report, had asked the Secretary-General to request that the survey organizations associated with the workings of the border demarcation commission over the last two years provide the following services on an on-going basis: a) to inspect the pillars and markers of the Iraq-Kuwait boundary on an annual basis; b) to report to [the Secretary-General] after each inspection; c) to take appropriate measures for repositioning, repairing or replacing those pillars and markers, as necessary; and d) to monitor the adequacy of and to emplace any additional boundary markers such as buoys, pilings or other markers, as may be deemed useful. UNIKBDC also considered that a cleared access road should exist alongside the recently-demarcated boundary to facilitate the future maintenance of the boundary pillars.

531 Letter from the Secretary-General dated 21 May 1993.

532 Ibid.
geography as the fourth stage in the evolution of an international boundary, after allocation, delimitation and demarcation.

The Secretary-General concluded his letter on a hopeful and expectant note: As stated above, the decisions of the Commission concerning the demarcation ...are final. I believe that the work performed by the Commission will have a beneficial effect on the restoration of international peace and security in the area concerned, in conformity with the purposes of Security Council resolution 687 (1991). The certainty and stability of the boundary are in the best interests of Iraq and Kuwait and I expect the Governments of both countries to respect the objective and impartial results achieved by the Iraq-Kuwait Boundary Demarcation Commission.\footnote{Ibid.}

Within a week the Security Council had unanimously adopted UN Resolution 833 on 27 May 1993. By this, The Security Council,

Reaffirming its resolution 687 (1991) of 3 April 1991, and in particular paragraphs 2, 3 and 4 thereof, its resolution 689 (1991) of 9 April 1991, its resolution 773 (1992) of 26 August 1992, and its resolution 806 (1993) of 5 February 1993; Recalling the report of the Secretary-General dated 2 May 1991 concerning the establishment of the United Nations Iraq-Kuwait Boundary Demarcation Commission (the Commission), the subsequent exchange of letters of 6 and 13 May 1991 (S/22558, S/22592 and S/22593), and the acceptance of the report by Iraq and Kuwait; Having considered the Secretary-General's letter of 21 May 1993 to the President of the Security Council transmitting the final report of the Commission (S/2581I and Add. 1) dated 20 May 1993; Recalling in this connection that through the demarcation process the Commission was not reallocating territory between Kuwait and Iraq, but it was simply carrying out the technical task necessary to demarcate for the first time the precise coordinates of the boundary set out in the 'Agreed Minutes between the State of Kuwait and the Republic of Iraq regarding the Restoration of Friendly Relations, Recognition and Related Matters' signed by them on 4 October 1963, and that this task was carried out in the special circumstances following Iraq's invasion of Kuwait and pursuant to resolution 687 (1991)
and the Secretary-General's report for implementing paragraph 3 of that resolution (S/22558); Reminding Iraq of its obligations under resolution 687 (1991), and in particular paragraph 2 thereof, and under relevant resolutions of the Council, and of its acceptance of the resolutions of the Council adopted pursuant to Chapter VII of the Charter of the United Nations, which forms the basis for the ceasefire; Noting with approval the Secretary-General's instruction to the United Nations Iraq-Kuwait Observation Mission (UNIKOM) to finalize the realignment of the demilitarized zone with the entire international boundary between Iraq and Kuwait demarcated by the Commission; Welcoming the Secretary-General's decision to make the necessary arrangements for the maintenance of the physical representation of the boundary, as recommended by the Commission in Section X (c) of its report, until other technical arrangements are established between Iraq and Kuwait for this purpose; Acting under Chapter VII of the Charter of the United Nations:

1. Welcomes the Secretary-General's letter of 21 May 1993 to the President of the Council and the 20 May 1993 report of the Commission (S/25811 and Add.l) enclosed therewith;

2. Welcomes also the successful conclusion of the work of the Commission;

3. Expresses its appreciation to the Commission for its work on the land part of the boundary as well as the Khor Abdullah or offshore section of the boundary, and welcomes its demarcation decisions;

4. Reaffirms that the decisions of the Commission regarding the demarcation of the boundary are final;

5. Demands that Iraq and Kuwait in accordance with international law and relevant Security Council resolutions respect the inviolability of the international boundary, as demarcated by the Commission, and the right to navigational access;

6. Underlines, and reaffirms its decision to guarantee the inviolability of the above-mentioned international boundary which has now been finally demarcated by the Commission and to take as appropriate all necessary measures to that end in accordance with the Charter, as provided for in paragraph 4 of Resolution 687 (1991) and paragraph 4 of Resolution 773 (1992)

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6. Decides to remain seized of the matter.\textsuperscript{534}

UNIKBDC’s mission therefore had, according to the UN, been successfully completed, its decisions were final, while the demarcated line was to be guaranteed for the foreseeable future against possible future Iraqi infractions. At the same time as Resolution 833 was passed, the British and American members of the Security Council passed comment on the demarcated Kuwait-Iraq boundary. The British Ambassador to the UN, Sir David Hannay, held that ‘[t]he demarcation of this frontier, both on land and sea, is a crucial contribution to achieving peace and security in the region and to avoiding disputes such as that which preceded, but which certainly did not justify, Iraq’s aggression in August 1990’.\textsuperscript{535} US Ambassador to the UN, Madeleine Albright stressed, somewhat confusingly, that UNIKBDC ‘has not established a new boundary. The commission has, with impressive technical expertise, identified more precisely and marked on the ground a boundary that has existed since its acceptance by both Iraq and Kuwait on 4 October 1963’.\textsuperscript{536} Since the US is, of course, likely to be the main sponsor of the UN’s undertaking to guarantee the inviolability of the boundary, Albright’s following phrase was no doubt meant partially for Baghdad’s ears: ‘My Government wishes to underscore the importance it attaches to the inviolability of the demarcated boundary between Iraq and Kuwait and the seriousness of its guarantee by the Security Council’.\textsuperscript{537}

Three days before Resolution 833 had been passed, Shaikh Sabah al-Ahmad al-Jabir al-Sabah, Kuwait’s First Deputy Prime Minister and Minister for Foreign Affairs, had written to Boutros-Ghali, conveying the emirate’s ‘appreciation and gratitude for the historical and pioneering role played by the UN in enforcing the principles of justice and


\textsuperscript{535} Provisional verbatim record of the 3224th meeting of the Security Council, held at Headquarters, New York, 27 May 1993, S/PV.3224, 27 May 1993. It was noticeable, though not necessarily significant, that Hannay’s comments in this instance, taken at face value, supported the process of demarcation, if not the actual line of demarcation decided upon. This contrasted with statements of the US and other Security Council members.

\textsuperscript{536} Ibid. The clear implication of this statement, probably not intended, was that no Kuwait-Iraq boundary existed before October 1963.

\textsuperscript{537} Ibid.
peace and promoting the bases of security and stability in the world. He continued by expressing his `deep conviction that this historical achievement by the Commission is considered an effective contribution to the role of the UN in finalizing the boundary demarcation process which had always been a great actual threat to security and stability in this vital region of the world'. Just as predictable as Kuwait's welcome of the Secretary-General's letter of 21 May 1993 introducing UNIKBDC's final report was Iraq's castigation of the border commission's final decisions as formalized with the unanimous passage of UN Resolution 833. In his letter of 6 June 1993, Iraqi Foreign Minister Muhammad Said al-Sahaf, gave the `initial viewpoint' of his government, pending more detailed study and consideration of UNIKBDC's verdict and operations in the future, after which a fuller response would be forthcoming. The Iraqi Government reaffirmed points made in earlier letters of 6 April 1991 and 21 May 1992, reproducing the conclusion of the latter item as its closing statement. The vast majority of al-Sahaf's letter protested against the boundary delimitation announced by UNIKBDC for the Khor Abdullah. The right of UNIKBDC to demarcate a nonexistent delimitation was questioned, with some justification, as has already been seen. Special exception was taken Boutros-Ghali's covering letter of 12 August 1992 to UNIKBDC's interim report of 24 July 1992, which had, it will be recalled, laid out the basis upon which UNIKBDC had reached its April 1992 verdict on the course of the Kuwait-Iraq land boundary. In his letter of 12 August 1992 the Secretary-General had produced the following statement:

As far as the offshore boundary is concerned, the Council might wish to encourage the Commission to demarcate that part of the boundary as soon as possible, and thus complete its work. UNIKBDC, as we have seen, was urged to go on and do just this in Resolution 773 of 26 August 1992. Yet, as al-Sahaf continued with some logic, the UN Secretary-General's statement had been made `even though the Secretariat

538 letter from Shaikh Sabah al-Ahmad al-Jabir Al-Sabah, Kuwaiti Ministry of Foreign Affairs to Boutros Boutros-Ghali, UN Secretary General, 24 May 1993 in Demarcation of the International Boundary between the State of Kuwait and the Republic of Iraq by the United Nations, Centre for Research and Studies on Kuwait, Kuwait, p. 165.
539 Letter from the Minister for Foreign Affairs of Iraq, of 6 June 1993 to the Secretary-General in UN Security Council document S/25905, 8 June 1993.
540 Letter dated 12 August 1992 from UN Secretary-General Boutros Boutros-Ghali to Li Daoyu, President of the Security Council, New York.

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knew full well that the Commission had not yet agreed that it was competent under its terms of reference to demarcate the offshore boundary and although its Chairman’s position on this matter was very clear to it and reached the point of implied resignation if this matter was imposed on the Commission. Al-Sahaf’s letter has already been analyzed for its treatment of the resignation of UNIKBDC’s first chairman, Kusumaatmadja, during November 1992. The Iraqi Government then raised a number of legal questions in relation to UNIKBDC's maritime award of March 1992. Firstly, as we have seen, that there had been no delimitation agreed between Kuwait and Iraq in the past for the Khor Abdullah which could now be demarcated. Secondly, the Khor Abdullah had not been assigned the characteristic of the territorial sea in the 1932 exchange of letters which had defined the boundary (the "delimitation formula"). Iraq therefore doubted that its waters could be classified as territorial sea. Thirdly, even it was territorial sea, a set of "special circumstances" applied. Iraq argued that this had at one stage been affirmed by the independent experts on the commission, which mean that the median line need not necessarily be chosen, but rather a different delimitation altogether. Fourthly, Iraq asserted that the UN had no right to impose a boundary delimitation upon a member state.

Al-Sahaf further complained that UNIKBDC's nomination of the median line seriously threatened "Iraq's right to enjoy freedom of access to the sea by exercising its historic right to unrestricted and safe navigation in the Khawr Abdullah area, to an extent that will, in the future, place it in the position of a landlocked state". Here he was clearly mindful of the vast expense incurred by Iraq over the years in improving and maintaining navigation facilities along the Khor Abdullah, also that much of the main navigation channel customarily used by Iraq in the past lay on the Kuwaiti side of the median line. As the Iraqi Foreign Minister explained, somewhat exaggeratedly: Iraq has spent billions of dollars over scores of years on excavation works, the extension, improvement and maintenance of the channels, main and secondary navigation lanes leading into and out of

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541 Letter of 6 June 1993 from the Minister for Foreign Affairs of Iraq to UN Secretary General, op.cit.
542 Iraq enumerated these "special circumstances" as follows: first, delimitation of the Khor Abdullah boundary was being effected for the first time; second, Iraq had substantial historic rights in the Khor Abdullah, while Kuwait had traditionally not carried out substantial navigation along the water inlet.
the Khawr Abdullah and the erection of maritime installations, ports and wharves in the Khawr Abdullah area in order to ensure the flow of its maritime trade.\textsuperscript{543}

Kuwait, only a week earlier, had seemingly commented on the position of the Khor Abdullah’s principal navigation channel, previously maintained by Iraq, within (at least partially) Kuwaiti territorial waters south of the median line, indeed suggesting that some accommodation of probable Iraqi sensitivities might be made. Its Ambassador to the UN, Muhammad Abulhasan, was reported as stating that all Iraqi ships `whether commercial or military’ might be allowed to pass through Kuwait’s territorial waters from and to Iraqi ports, providing they represented no threat to Kuwait’s national security.\textsuperscript{544}

Iraq’s `initial viewpoint’ of 6 June 1993 prompted an almost identical response from the President of the Security Council to that which had greeted Ahmad Husain’s lengthy letter of 21 May 1992, protesting against UNIKBDC’s original announcement of its decision on the course of the land boundary. Again the members of the Security Council `noted with particular concern’ the Iraqi communication, again it was stressed that UNIKBDC had not reallocated territory but had simply carried out the technical task of `demarcation’ and again Iraq was warned of the `grave consequences that would ensue from any breach’ of the newly-demarcated boundary.\textsuperscript{545}

There can be little doubt that UNIKBDC’s 1992 land boundary demarcation is what Britain meant to introduce with its announcement of the vaguely-described border in identical, unchanging terms on various occasions in the early part of this century: as the outer limit of Kuwaiti authority when concluding the unratified Anglo-Ottoman settlement of July 1913; the Cox-More exchange of notes of April 1923; and the Kuwaiti-Iraqi exchange of notes in the summer of 1932. In the words of someone close to the operations of UNIKBDC during these last two years, UNIKBDC’s demarcation decision was effectively `a refinement’ of Britain’s earlier demarcation proposal of 1951, which had stood for nearly forty years as the most detailed existing interpretation of the

\textsuperscript{543} Letter of 6 June 1993 from Iraqi Minister for Foreign Affairs to UN Secretary-General, op. cit.
\textsuperscript{544} ‘Kuwait denies allegations on defining of borders’, Arab Times (Kuwait), 29 May 1993, p. 5.
\textsuperscript{545} note by the President of the Security Council, 22 June 1993.
vaguely-defined de jure Kuwait-Iraq boundary, even though it was not capable of being mapped in detail.

UNIKBDC appears to have adhered to its mandate in demarcating the land boundary. In April 1991 it was asked to settle along the line of the de jure boundary and, by extension, to ignore any de facto or temporary borders. As a result, the degree to which Iraq extended its administration southwards across the notional lie of the de jure boundary in the three decades between the `first' and `second' Kuwait Crises (the precise details of this extent still remain elusive to everyone but the UN and the Iraqi and Kuwaiti governments) has been disallowed by the UN. Beginning early in 1992, strong objections started to appear in the Western and Arab media when it was belatedly realized that UNIKBDC’s execution of its mandate was not only going to result in 30 years of creeping Iraqi annexation in the borderlands being disregarded but unceremoniously cancelled. In other words, it was as if the development of the borderlands during the last three decades simply had not happened.

UNIKBDC’s March 1993 prescription for a median line delimitation along the Khor Abdullah has left the principal navigation lanes of the water inlet, dredged and maintained by Iraq for the period since the opening of Umm Qasr port in 1961, largely within Kuwaiti territorial waters. UNIKBDC's nomination of the median line, though not without its problems, was much less contentious than its ultimate conclusion that a pre-existing delimitation existed which could then be demarcated. UNIKBDC's operations hit choppy waters in the Khor Abdullah. Its first chairman resigned, at least in part, because he considered that the border demarcation commission did not possess the mandate to nominate a boundary for the water inlet. Of all Iraq's grumblings about UNIKBDC over the last two and a half years, those concerning the Khor Abdullah seem the most justified. It is hard not to sympathize with the assertion of Mochtar Kusuma-Atmadja, echoed in subsequent protests from Baghdad, that UNIKBDC overstepped its authority when announcing a boundary delimitation for the Khor Abdullah.
After twenty-five years of dealings with Iraq, the Security Council at the end of 2005 was much changed 'that quarter-century of Council activity paints a remarkable portrait of political developments at the global level, and of their effect on the practice and prospects of the Security Council. In this chapter, I highlight four major trends derived from this narrative: (a) the instrumental multilateralism of all five permanent members on the Council; (b) the manner in which its encounters with Iraq forced the Council to confront new threats, and to address questions of legality and legitimacy, representation, and democracy; (c) the underlying evolutionary trajectory of Council practice, away from a politico-military mode in which it mediated between warring states, to a mode in which it sits at the apex of a global legal-regulatory architecture; and (d) the emergence of a comprehensive approach to peace, justice, security, and development, in which the Council occasionally and controversially legislates for all states on critical new security threats such as terrorism and WMD.

In order to secure Iraqi compliance with its decisions, the Council repeatedly threatened Iraq with serious or severe consequences of non cooperation, perhaps most famously in its ambiguous Resolution 1441 of November 8, 2002. In fact, serious consequences occurred all around when the Council failed to demonstrate unity in following up on that Resolution: the UN, trans-Atlantic relations, the European Common Foreign and Security Policy, the Arab League, and Iraqis soon found themselves rent by the fallout of the Council’s divisions.

The Council’s credibility, always under a degree of attack, was seriously undermined by its inability to unite on a strategy for Iraq in early 2003, and prospects for its continued relevance to the hardest security challenges at the end of 2007 seem uncertain.