



MALCOLM H. KERR
CARNEGIE MIDDLE EAST CENTER



MARCH 2021

Think Big: Why Broadening Negotiations Could Help Resolve the Kuwaiti-Iraqi Maritime Dispute

BADER AL-SAIF

INTRODUCTION

In February 2021, Kuwait commemorated the thirtieth anniversary of its [liberation](#) from Iraq. Since the 1990–1991 invasion by Saddam Hussein’s forces, the Iraqi-Kuwaiti relationship has moved from one of hostility to relative amity. The downfall of Iraq’s Baath regime in 2003 did not sweep away memories of the past, or mutual suspicions, yet much work has gone into rebuilding bilateral ties.

The United Nations was the main conduit for relations during the 1990s. Today, UN mediation has been replaced by an Iraqi-Kuwaiti ministerial committee. As with any relationship between states, Kuwaiti and Iraqi interests are not always aligned. This was evident between August 2019 and March 2020, when the countries expressed grievances over their maritime borders in letters to the UN. Although the UN demarcated the

Iraqi-Kuwaiti land border in 1993, it did not do so for the entire length of the maritime boundaries, leaving this to the two states.

However, dealing with the maritime issue in isolation of other problems has proven difficult. What is more likely to succeed is a package deal, one in which Kuwait and Iraq address their maritime boundary simultaneously with other outstanding matters that remain unresolved. By raising the stakes for both countries, by creating a broader negotiating format allowing for tradeoffs, such an approach could raise the price of failure, giving Kuwait and Iraq an incentive to compromise. Among the issues they could address is their respective construction of ports on a shared waterway, management of border oil fields, border security, and facilitation of trade and transport. Their success could offer a model for how former foes can overcome differences. It would also help advance peace and stability while presenting an innovative pathway to conflict resolution.



THE EVOLUTION OF KUWAITI-IRAQI MARITIME RELATIONS

Border disputes have long characterized the Middle East. Iraqi-Kuwaiti border relations are no exception. In 1961, when Kuwait became independent, Baghdad claimed it as Iraqi territory. However, by 1963 it had shifted. Iraq **recognized** Kuwait after reaffirming an agreement on borders laid out in an official **exchange of letters** between the two countries in 1932. However, that correspondence only defined the border vaguely. Iraq reversed itself again in 1990 by stating that Kuwait was an Iraqi province, after it had invaded the country in August.

In 1991, following the expulsion of Iraq's military forces from Kuwait, the UN was asked to formally demarcate the border between the two countries, which they had already delimited in their correspondence in 1923, 1932, and 1963. The UN confirmed the demarcation in **Security Council Resolution 833** of 1993. However, because the letters exchanged in 1932, and reaffirmed in 1963, did not directly address the maritime boundary between the two countries, only referring to it in relation to their land boundary, the UN's demarcation of the maritime border stopped at **Point 162**, the last point delimited by the Kuwaitis and Iraqis.

Settling boundary issues is a priority for Kuwait, given its complex border history and its loss of sovereignty during Iraq's occupation. That explains why it raised the maritime border issue early on in 2005, a year after the U.S.-led Coalition Provisional Authority in Iraq had transferred sovereignty to the Iraqis, and why it subsequently made repeated requests to finalize the maritime boundaries. However, these pleas did not lead to a breakthrough for various reasons.

First, Iraq has been mired in crises since the U.S.-led invasion of 2003. The country's attempts to rebuild institutions, combat terrorism, and curb corruption have not always succeeded. Instead, multiple power centers have competed for authority, resulting in a

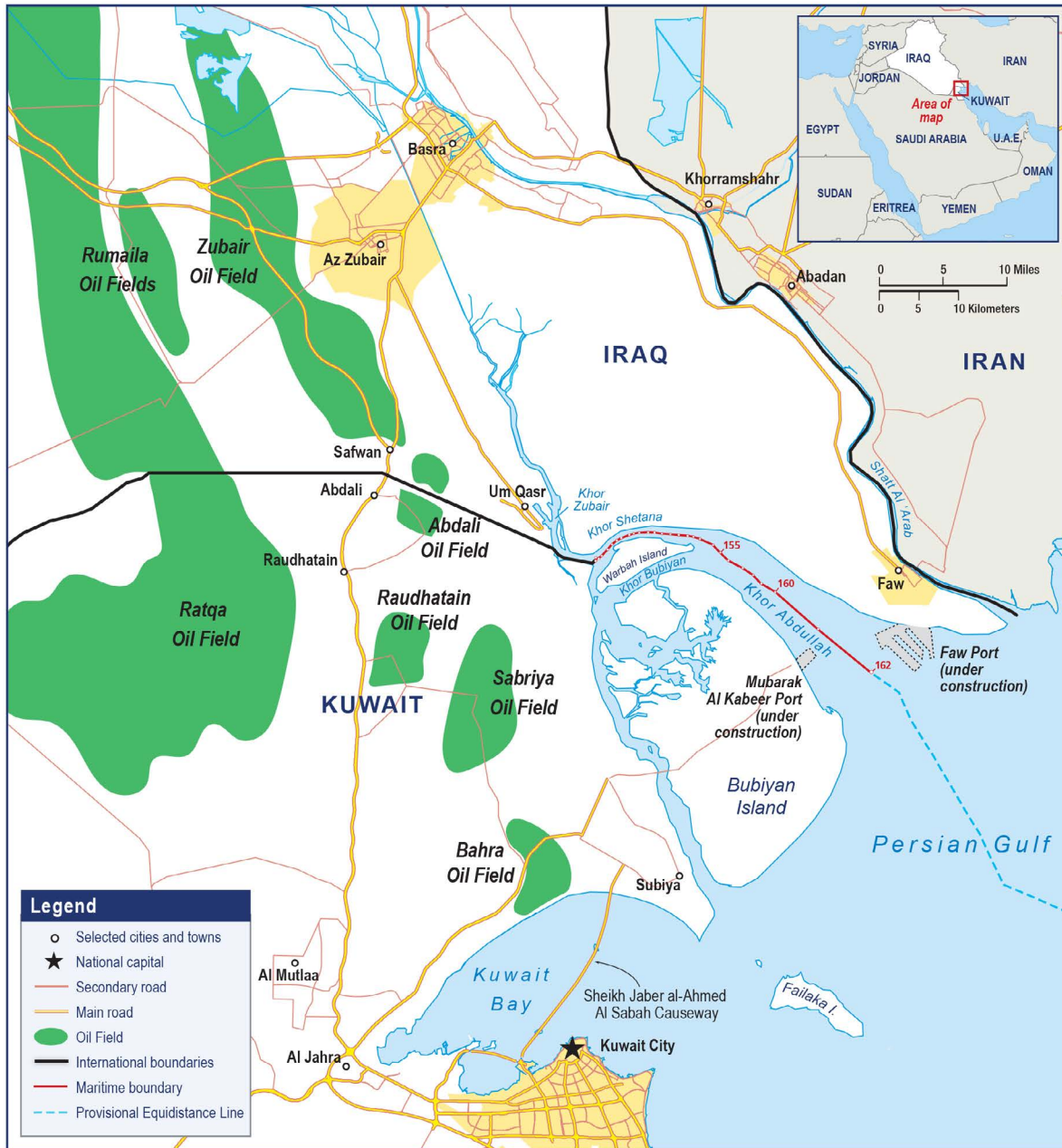
dysfunctional decisionmaking process and stalled development. This has negatively impacted progress on the maritime border.

Second, there is a prevalent Iraqi view of Kuwait as a state that usurped Iraq's lands and took advantage of its isolation during the last decade of Saddam Hussein's rule. Though this is not the government's position, the anti-Kuwait narrative persists. It is frequently a convenient domestic card to play, drawing on Iraqi nationalism and redirecting attention away from divisive internal issues, with **several Iraqi members of parliament** echoing such hostility. Moving beyond this will not be easy unless the state confronts these attitudes head on.

Finally, Iran's major role in Iraqi politics has also represented an obstacle to progress between Iraq and Kuwait. Because of U.S. sanctions on Iran, Iraq is the main Iranian **gateway** to the outside, and Tehran wants to remain Baghdad's dominant partner. A resolution of the Iraq-Kuwait border disagreement, accompanied by progress on other difficult matters, could undermine the exclusive relationship that Iran enjoys with Iraq, to the Iranians' disadvantage.

While in the last decade there have been no advances on agreeing a maritime boundary, Kuwait and Iraq have organized navigation in their shared waterway, Khor Abdullah (see map). In 2012, they signed the **Joint Agreement to Ensure the Safety of Navigation in Khor Abdullah**. The two countries hoped that closer coordination over the waterway would pave the way for a discussion of maritime borders. While Kuwait regards a maritime accord as safeguarding its sovereignty and allowing it to develop the country's north, it is equally if not more important for Iraq. Unlike its neighbors, Iraq suffers from limited access to the sea, having only **58 kilometers of coastline**. Khor Abdullah's narrowness, the shallow waters on the Iraqi side, and silt accumulation on both banks underline the benefits to Iraq of cooperating with Kuwait. Yet reaching an agreement over the maritime border remains a challenge, as the public disagreement in 2019–2020 illustrated.

MAP 1
KUWAIT AND IRAQ'S SHARED WATERWAY





In August 2019, Iraq sent an “official protest” letter to the UN in which it objected to Kuwait’s installation of an observation tower on Fisht al-Aych, a piece of land located beyond Point 162. Kuwait views Fisht al-Aych as a sovereign part of its territory, while Iraq said the move represented a change in the maritime boundary before an agreement had been reached. Complicating matters, both sides cannot even agree on the geographical status of Fisht al-Aych. Baghdad sidestepped the joint ministerial committee, thereby internationalizing the dispute. The [exchange of letters](#) exposed the parties’ mutual misunderstanding and suspicion.

What was more interesting is how the two states linked the maritime issue to other matters of disagreement. This suggested an implicit willingness to widen the scope of their discussions. Kuwait expressed concern about the fact that Iraq had not shared updates on its ongoing [construction of the nearby Faw Port](#), particularly its environmental impact, an obligation laid out in the United Nations Convention on the Law of the Sea to which the two states are signatories. Iraq, in turn, argued that delimiting its maritime border with [Iran](#) was a necessary precondition for settling the maritime boundary with Kuwait, although its waterways with Kuwait and Iran are unconnected. This indicated how [Iran’s political weight in Iraq](#) has impeded stronger ties with Kuwait.

Furthermore, in its letter to the UN, Iraq claimed that “[historical rights and special circumstances](#)” had to be taken into account when delimiting the remaining maritime boundary. This was language similar to what the Kuwaitis had heard during the Iraqi invasion. Iraq also underlined its limited maritime access, perhaps revealing a desire to modify its borders with Kuwait. However, doing so would mean undermining the preexisting arrangements between the two states, including the Khor Abdullah agreement of 2012 and Security Council Resolution 833. All this showed again that trying to address the maritime boundary on its own was unlikely to work given that it would hit up against

the same obstacles as before. Therefore, a broader, more comprehensive approach was needed, one that could increase the options on the table.

POSSIBLE ELEMENTS OF A COMPREHENSIVE AGREEMENT

To agree to their maritime borders, Kuwait and Iraq would benefit from an integrated negotiation process that simultaneously addresses a range of issues dividing them. This would increase the potential for compromises, giving both sides the flexibility to make breakthroughs. Among the issues that could be discussed, together with the maritime borders, are the ports that both countries are building on the Khor Abdullah waterway, shared oil fields, cross-border security, and trade. Some progress has been achieved on a number of these fronts, and this can be used as a catalyst for movement on all.

Both Kuwait and Iraq are currently building ports on Khor Abdullah. Kuwait is [constructing](#) the \$3.3 billion [Mubarak al-Kabir Port](#), while Iraq is building the larger \$6 billion [Faw Port](#). This will be Iraq’s first port with access to the open sea. The projects appear to be competing with one another, however whether that actually happens will be defined by the two countries’ outlook on what is possible.

Both states could turn the ports into a joint opportunity for boosting trade in the northern Gulf. In contrast, allowing the projects to strain the bilateral relationship will ensure financial losses for Kuwait and Iraq, as this will prevent synergies. Kuwait has [canceled](#) the final stage of its project in which it intended to build wharves closer to the Iraqi side, while Iraq has promised to share its environmental impact study,¹ which are promising signs of a desire to compromise. However, dealing with the ports alone will not dispel the fears each state has about how the actions of the other might impact its economy.

Maximizing the benefits of the two ports requires a more detailed discussion of what each side seeks to achieve. To improve the atmosphere of dialogue between the two states, they can build on the progress already achieved on other key issues that had once divided the two sides. This includes Iraq's willingness to identify the [remains of missing Kuwaitis](#) from 1990–1991 and to [return](#) the stolen Kuwaiti national archives and other property. Kuwait, in turn, had agreed to [defer](#) compensation owed by Iraq.

A second matter that Kuwait and Iraq could include in their talks is the two countries' border oil fields—Rumaila on the Iraqi side and Ratqa, Rumaila's southern extension inside Kuwait. In 1990 Iraq accused Kuwait of stealing Iraqi oil. Despite Kuwaiti denials and a lack of evidence, it used this as a pretext to invade the country. Iraq has been drilling in Rumaila since 1953, while Kuwait has been doing so in [Ratqa](#) since 1979. [Rumaila](#) is particularly important for Iraq since it is the country's largest oil field, and the world's third largest, producing 1.5 million barrels per day. However, neither oil field has been fully exploited. That is why investing in them as joint oil fields would yield better returns for both states. In 2019, Kuwait and Iraq contracted British Equipoise to develop a [technical study](#) for Ratqa and Safwan, which is next to Rumaila, providing a road map forward. While this was encouraging, it is at a preliminary stage. Arriving at a formula to cooperatively develop and manage the oil fields requires more talks.

Border relations, particularly border security, is a third matter the two countries can negotiate. Since 2003, the situation on the Kuwaiti-Iraqi border has been characterized by [minor skirmishes](#) and [demonstrations](#). Some of these have been organic, provoked by Iraqis angry with having been displaced by the UN demarcation of the border, while others were allegedly caused by Iraqi parties [antagonistic to Kuwait](#). The Kuwaiti and Iraqi governments publicly denounced these actions and took measures to preserve peace. Yet more is needed than denunciation. Iraq's instability, which has been exacerbated by terrorist attacks and

the presence of foreign-supported militias, may have serious repercussions on the border with Kuwait. That is why Kuwait and Iraq need to devise an alternative security architecture that can guarantee a more secure border area.

The fact that the two countries have already cooperated on specific border issues can help advance such an aim. Kuwait has built a [residential city](#) on the Iraqi side for those Iraqis displaced by the demarcation or who lived too close to the border, a move that Baghdad has welcomed. Kuwait has also [agreed to upgrade](#), at Iraq's request, the Iraqi border crossing of Safwan, so it can match the standards of Kuwait's Abdali crossing. There are numerous precedents of both countries getting things done, making it easier to move forward on other questions.

The limited cross-border flow of goods and people is a fourth major issue that has preoccupied policymakers. Kuwait's non-petroleum [exports](#) to Iraq were a modest \$105.3 million between April and September 2020. In comparison, Iran's [exports](#) to Iraq were estimated at \$2.4 billion during roughly the same period, between March and August 2020. As for the value of Iraqi exports to Kuwait, they [were a negligible \\$385,000](#) in 2019, the last year for which data has been published. Iraqi exports to Iran, in turn, were estimated at \$10.28 million in 2019, according to the [latest available Iraqi figures](#). Kuwait has proposed a system to facilitate overland transport and boost trade, and in 2019 it presented a draft treaty for creating a [free-trade zone](#). The Iraqis have yet to respond. Similarly, removing bureaucratic hurdles and simplifying visa requirements would ease the cross-border movement of people, enhancing bilateral relations.

Introducing confidence-building measures would ease the process of integrating these separate issues into an expanded negotiating framework. Some such measures have already been implemented, but the results suggest that a more focused approach may be needed. Kuwait has been at the forefront of supporting Iraq after the



downfall of Saddam Hussein's regime in 2003, but the impact has been limited. In 2018, Kuwait's humanitarian aid to Iraq equaled the totality of aid given by all other Arab states. Yet this assistance, support for development projects, and Kuwait's hosting of an international conference on Iraq's reconstruction neither removed the mutual wariness of both states because of their complicated history nor bolstered Kuwait's standing in Iraq.

What might help to remedy this situation is the way confidence-building measures are designed. Such measures have to include decisionmakers—members of government and parliament—who will decide on contentious matters between Kuwait and Iraq. They must also play on the fact that Kuwait and Iraq both have cultures that are receptive to personal touches and symbolic gestures. Therefore, the measures can even involve, surprisingly enough, engaging the decisionmakers in shared recreational activities with family members, setting the foundations for understanding that helps lead to solutions. This is especially necessary for Kuwaiti and Iraqi parliamentarians doubtful of their country's policies toward the other state. Each side can then identify potential allies in the opposite camp, as well as sources of discord. Not everyone will be won over, but the process can defuse tensions and expedite the fulfillment of shared goals.

Confidence-building steps not only can organize how the two parties deal with one another, but by taking into account possible friction, they can also help them to devise procedures for reducing this. For example,

had a mechanism been in place between Kuwait and Iraq to forestall a public confrontation over Fisht al-Aych, Baghdad might not have sent a written protest to the UN on the matter. Such mechanisms can only be established when the parties trust each other. But building such trust will not be a smooth process. There is plenty of room today for domestic and regional spoilers to derail such efforts.

A second factor that can lead to progress is for Kuwait and Iraq to advocate that their maritime border can offer shared benefits, rather than represent a zero-sum situation where one state's gain is the other's loss. The UN Convention on the Law of the Sea, the Joint Agreement to Ensure the Safety of Navigation in Khor Abdullah, and the median line principle on maritime boundaries all encourage coordination over shared waterways. There would be no better outcome than for Kuwait and Iraq to adopt an approach that focuses on how they can best capitalize on their cooperation. This could include laying down clear procedures for optimizing management of Khor Abdullah that would follow an agreement on their maritime border and safeguard their interests.

For Kuwait and Iraq to make headway in their negotiations, people in both countries need to be persuaded of the advantages of doing so. That means using media outlets and education to erode mutually antagonistic narratives. Showcasing the benefits of a peaceful and productive bilateral relationship will make the job of diplomats easier and would profit both countries down the road.



CONCLUSION

Kuwaiti-Iraqi relations are unique, having moved from antagonism following Iraq's occupation of Kuwait to mutual respect. The two states have been able to improve their ties since 2004, but the divisive geopolitical situation in the region and internal challenges in both countries have hindered the resolution of certain issues, of which the maritime border is one. The open disagreement over Fisht al-Aych and Iraq's decision to appeal to the UN rather than resort to the Kuwaiti-Iraqi committee only reaffirmed the potential for renewed tensions.

However, even if it is difficult to imagine an integrated negotiation process on the maritime border in the foreseeable future, several factors show that Kuwait and Iraq have a basis on which to move forward. Both have taken steps to help or reassure the other on long-standing disagreements. They also could gain economically from a collaborative effort to develop their ports in Khor Abdullah. That is why delaying a delineation of the maritime border indefinitely would constitute an opportunity cost for both sides. To avoid such an outcome, Kuwait and Iraq must give their relationship the attention it deserves. A possible way of doing so is to be ambitious. A grand bargain could be the pathway to success.

ABOUT THE AUTHORS

Bader Mousa Al-Saif is a nonresident fellow at the Malcolm H. Kerr Carnegie Middle East Center in Beirut, where his research focuses on the Gulf and Arabian Peninsula.



© 2021 Carnegie Endowment for International Peace. All rights reserved.

Carnegie does not take institutional positions on public policy issues; the views represented herein are those of the author(s) and do not necessarily reflect the views of Carnegie, its staff, or its trustees.



This material has been funded by UK aid from the UK government. The views expressed do not necessarily reflect the UK government's official policies.

ACKNOWLEDGMENTS

This publication was produced with support from the X-Border Local Research Network, a component of the UK Foreign, Commonwealth and Development Office (FCDO) X-Border Conflict Evidence, Policy and Trends (XCEPT) program, funded by UK aid from the UK government. The X-Border Local Research Network—a partnership between the Asia Foundation, the Malcolm H. Kerr Carnegie Middle East Center, and the Rift Valley Institute—carries out research work to better understand the causes and impacts of conflict in border areas and their international dimensions. It supports more effective policymaking and development programming and builds the skills of local partners. The findings, interpretations, and conclusions expressed in this publication are entirely those of the authors. They do not necessarily reflect those of the Malcolm H. Kerr Carnegie Middle East Center or the UK government.

NOTES

- 1 Author interview with a senior official at the Iraqi Ministry of Foreign Affairs (via WhatsApp Call), October 26, 2020.

For your convenience, this document contains hyperlinked source notes indicated by teal-colored text.