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STATE BOUNDARIES IN THE MIDDLE EAST AND THE ARAB WORLD

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State boundaries in the Middle East and the Arab world

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State boundaries in the Middle East and the Arab world

Part One: Security implications

Introduction

The importance of precisely delimited and demarcated boundaries has developed alongside the modern European concept of the territorial state. According to the 1933 Montevideo Convention:-

The State as a person of international law should possess the following qualifications: (a) a permanent population; (b) a defined territory; (c) government; and (d) capacity to enter into relations with other states. (Wallace 1986: 54)

State boundaries, then, are the limits to the defined territories of states within which the state may exercise its prerogative of territorial sovereignty - "...the right to exercise therein [i.e. within the state], to the exclusion of any other state, the functions of a state." (**Island of Palmas** case (1928), **UNRIIAA II** 829, 838; cited in Akehurst 1987: 143). They differ from frontiers in that the latter are **zones** of political influence delimiting the territories of neighbouring states, whereas boundaries are **lines** which provide a precise delimitation of political authority - sovereignty - and a precise demarcation of state territory (Prescott 1987: 1). The term "border", which is popularly considered to be synonymous with both "frontier" and "boundary", is technically reserved for the territory immediately adjacent to the boundary and is not relevant to the discussion here.

? | The development of the concept of state boundaries forms part of the European historical experience, largely because, from the feudal period onwards, administrative units were defined in precise territorial terms (Prescott 1987: 176). The associated concept of state sovereignty developed in the wake of the Augsburg Compromise (1555) - which established the principle of, "*cuius principio eius religio*" - and the Treaty of Westphalia (1647) - which first established the principle of the absolute sovereign rights of rulers and destroyed the pretensions of supra-state political orders, such as the Holy Roman Empire (Mazrui & Tidy 1984: 373-375). The pre-existing tradition of precise territorial delimitation for administrative purposes was, thereby, transferred to state practice. The allied vision of the state sanctified and legitimised by the nation which inhabited it was first manifested as a mature expression of political order in the French revolution at the end of the eighteenth century. This enabled the modern concept of the nation-state with precisely demarcated territorial boundaries to become the international norm, as European imperialism and colonialism reached its apogee during the nineteenth century.

Interestingly enough, however, European boundaries only began to take on a pattern recognisably similar to their modern form after the Congress of Vienna

in 1815. During the nineteenth century, further boundary demarcation in Southern Europe occurred as a result of the gradual collapse of the Ottoman empire. Similar events occurred in Imperial Russia, at the expense of the Ottoman and the Qajar empires. It was, however, only with the First World War and the events which immediately succeeded it that European boundaries were established in a manner that persisted up to the end of the 1980s and is now being radically revised in the former Soviet Union and, particularly, in the former Yugoslavia.

The security implications of international boundaries are obvious. Indeed, in Lord Curzon's famous phrase, "frontiers are indeed the razor's edge on which hang suspended the modern issues of peace and war." (Curzon 1907: 7). This, however, begs the question of whether boundaries may themselves be the cause of conflict or whether they become the symbol over which conflict stimulated by quite different factors is expressed. The reality is that both statements can be correct and that only an examination of the causes of a specific conflict can elucidate which is the appropriate explanation. It is, nonetheless, certainly true that poorly defined boundaries or boundaries that are imposed by one state upon another - whatever the justification - are likely to become, sooner or later, the cause of conflict.

The origins of boundaries in the Middle East

This consideration is particularly important in the context of the Middle East and the Arab world. Modern boundaries there generally date from the post-First World War period and reflect, in most cases, a colonial imposition on the region. Not surprisingly, therefore, they have been a constant source of instability and insecurity, as was most recently manifest in the Iraqi invasion of Kuwait. Many of the boundary problems in the region, however, are a cultural as much as an historical issue, for the very European nature of the concept of territorial boundaries sits ill upon the indigenous political culture, tradition and history of the region in three respects.

Contradictory definitions of sovereignty

The first reflects a basic philosophical contradiction over the nature of authority within the state. Boundaries, after all, separate sovereign regions from each other. The traditional view of sovereignty in the Islamic world, however, is that it is unitary and divine in nature (Kurdi 1984: 37). It refers to the whole Muslim world, not different sections of it, and is a divinely delegated power (Mawerdi 1982: 6, 30-32). Furthermore, it is primarily concerned with power and authority over a community - in this case the **umma** - and not over territory as such. Sovereignty in the Islamic world, therefore, refers to communal sovereignty. In this respect, it is completely unlike the European concept of territorial sovereignty.

Of course, it could be objected that there is evidence of border treaties in the Islamic, such as the earliest known treaty between two Islamic powers - the Ottoman empire and the Qajar empire. This is the Treaty of Zohab, signed in 1639. However, the treaty really defined a frontier march - a zone of land occupied by tribes over which neither empire could claim sovereignty. The essential communal nature of sovereignty in the Islamic world was thus preserved. Indeed, so was the essentially divine nature of sovereignty in this cultural and religious context. The treaty really defined a boundary between two different interpretations of Islam - two different Islamic worlds, as it were - the Sunni world of the Ottoman empire and the Shi'a world of the Qajars, for Shi'a Islam had become the official religion of the state in Persia in 1501. These assumptions tended to inform all subsequent treaties of this kind up to the period directly before colonialism during the nineteenth century.

Concepts of territoriality

In any case, and this is the second area of ambiguity, there always were concepts of territoriality - of territorial control - in operation in the Islamic world. As Mawerdi, writing in the first half of the eleventh century, made clear, ownership of land, or at least of usufruct, was well defined, as was the concept of concession (**iqta'**) (Mawerdi 1982: 409-427). Insofar as this was ultimately under the control of the imamate, it was a constitutional matter and necessarily modified the strictly communal nature of sovereignty. More

concretely, however, there were two other manifestations of territoriality which directly affected boundary definition later on. These were tribal concepts of territorial control and administrative territorial organisation by central government.

Tribal control of territory has traditionally played a vital role in determining the extent of political entities throughout the Middle East. In the Arabian peninsula, the sovereign extent of the early Saudi state was determined by tax payments - **zakat** - paid by the **bedu** tribes. Sovereignty over these tribes, as expressed by **zakat** payment, also defined territory because of tribal control of desert pasture regions, the **dira-s** (see Wilkinson 1991). Sedentary land - the **hima-s** - was less relevant in this context, for **zakat** paid there went directly to the local **bayt al-mal** and not to the administration controlled by the al-Saud (Wilkinson 1991: 5-6). The same was true in an inverse sense amongst the small emirates of the Gulf, where all sovereign control over the nomads of the interior was disclaimed in the pre-colonial period (Joffé 1994: 86).

Tribal territorial control in North Africa, particularly in areas outside the control of central power, was also a crucial factor in later attempts to determine territorial sovereignty. The eastern tribal boundary of the territory controlled by the Warghamma federation in the Jafara Plain of southern Tunisia determined the limits of beylical authority in Tunisia and of Ottoman power in the **vilayat** of Tripoli after 1835 (Martel 1965: I, 401-410). In Morocco, where the temporal authority of the sultan was limited to the **bilad al-makhzan**, his sovereign authority extended into the **bilad as-siba** as well because of the spiritual hegemony the office enjoyed as a caliphate (Lahbabi 1968: 1-25). Here, however, it was the territorial extent controlled by the tribes which recognised the sultan's spiritual authority which determined the traditional extension of Moroccan sovereignty. This, in turn, depended on the degree of safe conduct offered to travellers by tribal notables on payment of the **tattat** - a safe conduct fee. Equally, tribal control of pastureland (**agdal**, **igladen**) and oasis, whether in the High Atlas, the Middle Atlas or the Sahara desert fulfilled a similar objective.

Many other examples of tribal concepts of territoriality and of the political consequences for central authority could, no doubt, also be cited for other parts of the Islamic world. The point is, however, that the ideal concept of sovereignty as unitary and a divine attribute was modified in practice by the marriage between the concept of centralised communal authority and tribal control of territory. Indeed, in administrative terms, this became particularly important in regions where powerful regimes could institute effective centralised control. This was particularly the case with the Ottoman empire. The organisation of the empire required the Ottoman sultanate to delegate authority such that each **vilayat** or **mutasarrifiya** embodied the same principles of administrative organisation as did the Sublime Porte in Istanbul. There was a clear territorial imperative, for each administrative division had to be clearly delimited from its neighbours.

The Ottoman empire thus came to represent a chequerboard of delimited territories which could be -and were - represented on maps, giving the illusion

that its political sinews were, like its European counterparts, based on concepts of territorial sovereignty. This was not the case, however, for Ottoman administration was based on a social, not a territorial, reality. Administration was directed towards the control of urban and rural populations, whether sedentarised or nomadic, and was thus territorial in extent only indirectly. The result was that the actual territorial extensions of Ottoman administrative divisions were usually imprecise, ill-defined and variable - as they continued to reflect the underlying social reality.

The same was true elsewhere. In North Africa, for example, particularly in Morocco. The multitude of tribes into which the country was traditionally divided - the majority of which were said to be in the **bilad as-siba** - were not necessarily kinship-related entities, as anthropologists usually claim. In some cases, they represented administrative entities defined in communal terms which then acquired an internal tradition of common descent (Munson 1981: 249-255). Territorial control in the pre-colonial Islamic world, then, was usually concealed behind a normative political culture based on concepts of communal sovereignty.

The colonial experience

The colonial experience in the Middle East and North Africa was to transform the issue of international boundaries. In the place of the influence of a single power - the Ottoman empire - over the Levant and parts of the peninsula, with traditional concepts of power and sovereignty subsisting the remainder of the region, there was now to be a plurality of political authorities all dependent on metropolitan European powers and acutely concerned with precise territorial delimitation for internal administrative and international diplomatic purposes. The new political authorities, furthermore, had little interest in the historical record - except insofar as it facilitated the process of territorial delimitation - and no interest at all in the political aspirations of the populations over which they now ruled.

The way in which these objectives were pursued differed, however, from one part of the region to another. The Levant, for example, was primarily affected by the Sykes-Picot agreement which divided it between British and French spheres of influence and control. Although the agreement itself never actually went into effect, it provided the basis along which the new mandate system of the League of Nations was to be defined. The actual territorial delimitation of the new French mandates of Syria - which initially included Lebanon - and of the new British mandates of Palestine, Trans-Jordan and Iraq, however, owed much to previous Ottoman administrative practice, even down to **qaza** level.

- (1) Palestine and Trans-Jordan, for example, were delimited by a British administrative decision in 1922 on principles which owed much to simple geographic considerations derived from the concept of "natural borders" but which implicitly - and, as with the Semakh and Yarmuk triangles, explicitly - depended on prior Ottoman administrative practice. Palestine was created from the **sanjaks** of Acre and Nablus, both of

which came from the **vilayet** of Beirut, and from the **mutasarrifiya** of Jerusalem although, south of the Dead Sea, the 1922 line travelled down to Aqaba in land annexed from the **vilayet** of Suriya. Trans-Jordan was formed from the **sanjaks** of Hawran and Ma'an in the **vilayet** of Suriya, while the **sanjaks** of Damascus, Homs and Hama were united with the **vilayet** of Aleppo and the **mutasarrifiya** of Dayr az-Zur to form Syria. Lebanon was eventually created from the **sanjaks** of Beirut and Tripoli, together with the **mutasarrifiya** of Mount Lebanon - all part of the **vilayet** of Beirut, with the remaining part of the **vilayet**, the **sanjak** of Latakia, being transferred to Syria (Pipes 1990: 1-20).

- (2) Iraq, on the other hand, was simply created by the amalgamation of three former Ottoman **vilayets** - Mosul, Baghdad and Basra. In part this was not surprising, for the Mandates were, in effect created along the principle of **uti possidetis** as a result of the Treaty of Sevres in 1920 and the Treaty of Lausanne which replaced it in 1923. Both treaties effectively organised the dismemberment of the Ottoman empire after its defeat and collapse at the end of the First World War.

In the Gulf, on the other hand, boundaries resulted from British hegemony over the small city-states which lined the Gulf - the Trucial Sheikdoms and Kuwait - and over the Aden Protectorate. The issue became important as a result of the decline of the Ottoman empire and the growth of Saudi power after the First World War. The creation of specific autonomous political entities as a precursor to boundary delimitation was the first consequence of this British interest in the region.

British involvement in the Gulf region dated from 1793, when the Bushire Residency was established to promote British commercial interests in the region and to aid in the suppression of piracy there which threatened communications with India (Joffe 1994: 88). Throughout the nineteenth century, from 1820 to 1892, treaties with the small coastal Arab states created a network of indirect British control. From the turn of the century up to the First World War, Britain was determined to exclude Germany from the head of the Gulf and thus forced the Ottoman authorities there to delimit their respective spheres of influence. The first step in this process was a treaty with Kuwait in 1899 - which reversed the previous British policy of recognising Ottoman suzerainty - and by 1913, even the Ottoman empire was ready to sign away its pretended rights to the emirate.

It was only later on, in the 1930s and 1940s, that British and American interest in oil made precise territorial delimitations amongst the smaller states of the Gulf imperative. Even then, local rulers showed little interest in the matter of territorial sovereignty. In 1937, the Residency Agent in the Gulf reviewed boundary status there for the Colonial Office and reported:-

...that the rulers had admitted that they had no fixed frontiers with their neighbours, but that they had given him instead details of what they

considered their **ihram** (sacred possession and therefore inviolable).
(Said Zahlan 1978: 148)

It was only in the 1940s and 1950s that this attitude changed and the issue of territory became a vital consideration because of the growing importance of oil revenues. Britain then, as one of its last colonial acts in the Gulf region, began a process of delimitation and demarcation which is still not complete today.

Indeed, in the interior of the Peninsula, delimitation had begun much earlier as a result of British concern to exclude the Ottoman empire from the coastal regions. The Ottoman empire had been persuaded to undertake a general delimitation of Ottoman and British spheres of influence in 1913 and 1914, just before the First World War broke out. This had resulted in the famous 1913 "Blue Line", providing an easternmost limit to Ottoman influence in the Peninsula and the 1914 "Violet Line" which provided a similar southern limit and a frontier region for the Aden Protectorate (Schofield 1994a: 19). The collapse of the Ottoman empire and its replacement in the Peninsula by the new Saudi state - which was already dominant in the eastern part of the region even before the Ottoman empire disappeared - did nothing to impede British determination to convert these delimitations of spheres of influence into rigid boundary divides and much of the mid-twentieth century was taken up with negotiations between Britain and the new Saudi kingdom over their status. Agreement was never concluded, despite submissions by each side in 1935 on the Saudi Arabian-Aden Protectorate boundary, which resulted in the "Riyadh Line" (Britain) and the "Hamza Line" (Saudi Arabia) proposals. Britain did impose the Uqair Protocol on Ibn Saud in 1922, thereby freezing Kuwait's boundaries along the Red Line agreed originally with the Ottoman empire in 1913. The same treaty also delimited the Saudi Arabian-Iraqi boundary, while the Trans-Jordan boundary with Saudi Arabia was settled by a series of agreements in 1925, 1927 and 1932. The only boundary in the Peninsula in which Britain did not have a hand was the Ta'if line between Saudi Arabia and Yemen which resulted from the Treaty of Ta'if between the two countries in 1934. The treaty, in effect confirmed Saudi possession of the provinces of Asir and Najran which had been under Idrisi control despite irredentist Yemeni claims to them.

In North Africa the procedure of boundary definition was slightly different. As a result of the deterioration in Ottoman power in the Mediterranean in the eighteenth and nineteenth centuries, entities which were virtually independent states developed there. All, except Morocco, were successor states to administrative entities created by the Ottoman empire from the early sixteenth century onwards. As a result, colonial occupation - in what was to become Algeria in 1830, in Tunisia in 1881, in Egypt in 1882, in Libya in 1911 and in Morocco in 1912 - led to boundary delimitation, along the coast at least, which approximated to the administrative divisions created in Ottoman times. Inland, however, the situation was very different. African boundaries generally were defined after 1880, when the "Scramble for Africa" began, and rarely followed social or physical reality on the ground. Instead, they were often the result of diplomatic wrangling between the various colonial powers concerned in Europe. In North Africa, therefore, boundaries in the interior either resulted

from French, Spanish, British and Italian diplomatic negotiations or, in the case of Morocco, Algeria and the Western Sahara, from what were effectively French administrative delimitations (Joffé 1987: 24-53). These involved both delimitations between individual colonies and between the three major sections of the French colonial empire in Africa - French Equatorial Africa, French West Africa and France's colonies and protectorates in North Africa. Spain was virtually forced to acquiesce in the delimitation and demarcation of the boundaries of the Western Sahara, as it was in its own protectorate in Morocco.

LB/CAD

Further east the diplomatic option held sway. The modern boundary between Libya and Chad, for example, was first defined by a treaty between Britain and France in 1899, delimiting their relative spheres of influence. Since the reality of power in the north-eastern Sahara region was reflected by the Sanusi Order, rather than delimitations of this kind, the Ottoman empire, which had become the sovereign power in Tripolitania, the Fezzan and Cyrenaica after 1835, actually claimed territory as far south as Ain Galaka, close to Faya Largeau. Nonetheless, it was the diplomatic delimitation which became the basis of the international boundary and this contradiction, together with the abortive 1935 Mussolini-Laval Treaty, has bedeviled the status of the boundary ever since.

All these delimitations were primarily territorial in nature and in purpose. Their purpose was purely administrative and diplomatic. Where this was not the case, they involved territorial delimitation over access to resources - as was the case with the Red Line Agreement which delimited oil concession arrangements within the original territory of the Ottoman empire and which was intended to coincide with established international boundaries (Penrose & Penrose 1978: 67-8). The international boundaries of the Arab Gulf states, of course, served a similar purpose (see above). The result of this was that all disputes during the colonial period reflected either issues of sovereignty or boundary alignment. This, too, has had its echo in disputes between independent states since the end of colonialism in the region.

Independence

These principles and issues were carried over into the policies and basic assumptions of the independent states that were created in the Middle East and North Africa with the end of colonialism. In some cases, the departure of the colonial power resulted in transfer of sovereignty and territory by the process of **uti possidetis juris**, as occurred with the Arab Gulf states and Libya. In four cases, of course - Turkey and Iran; Saudi Arabia and Yemen - the states concerned had always been independent, even if subject to considerable colonial influence, so that there was no need for a transfer of sovereignty - although boundaries had not necessarily been properly delimited. In other cases, such as the Levant and North Africa, independence was achieved through violence as a precursor to a transfer of sovereignty.

These patterns of transfer of sovereignty concealed a very significant conceptual change within the region. Whereas before the colonial period, the fundamental assumptions behind state structures reflected Islamic constitutional precept, the

post-colonial period reflected European concepts of the state. Concepts of communal sovereignty, therefore, gave way to concepts of territorial sovereignty. Ironically enough, this was particularly true of cases where independence was wrested from colonial control by force. The reason was that even violence is, in a sense, a form of dialogue and often was directed towards stimulating negotiation. Negotiation, however, required a common political vocabulary and this, in every case, was European, rather than Islamic simply because negotiation took place over an entity which was a European construct and under European control.

MOR / SAH |

The consequence has been that the contradictions inherent in the colonial system of distribution of territory within the Middle East have been transferred into the independent states in the region. The states themselves thus behave - in the context of boundary issues, at least - as nation states primarily concerned with absolute sovereignty over territory. The picture is complicated, however, by the fact that ideological change within the region, particularly in the past decade, has re-introduced Islamic constitutional concepts as well. As a result, the justification of inter-state claims over boundary issues and over sovereign control is often ambiguous, involving implicit Islamic precept alongside explicit claims based on international law. One of the best examples of this process in action has been Morocco's claims over the Western Sahara (Joffé 1987: 23-28).

A further complicating factor is that there is no region-wide principle to resolve boundary disputes, when they arise. There is, it is true, the general proscription on violence as a means of settling disputes within the Arab world, as articulated in the charter of the Arab League. This has reduced the danger of hostilities over such issues between Arab states. It has not, however, eliminated it, as the Iraqi invasion of Kuwait in August 1990 demonstrated. Other examples would be Morocco's annexation of the Western Sahara in 1975 and the resulting conflict with the Polisario Front; the Bahrain-Qatar dispute in 1986 over Fasht al-Dibal, Fasht al-Jaradah and the Huwwar Islands or Qatar's dispute in 1992 with Saudi Arabia over the location of the common boundary.

1964
CAIRO
DECL

Nor does this Arab League principle impede violent disputes between Arab and non-Arab neighbours, as the Iran-Iraq war made clear. One of the major causes of conflict was, after all, the question of boundary location in the Shatt al-Arab. There are universal restraining factors which should limit such conflict, such as the general principles of international law, together with the restrictions on inter-state behaviour enshrined in the Charter of the United Nations. There is nothing, however, like the 1964 Cairo Declaration of the Organisation of African Unity which explicitly accepts the boundaries created in colonial times as the international boundaries of independent African states and renounces any attempt to change them. Interestingly enough, only Morocco and Somalia refused to endorse the Declaration because both had irredentist claims to territory under the control of other states to which they believed themselves entitled to recover control under the provisions of paragraph 6 of United Nations General Assembly Resolution 1514 (XV) of December 1960.

The contemporary security situation

The result of this history of boundary construction in the Middle East and North Africa is that, today, the region faces an estimated nineteen land boundary disputes, seven maritime delimitational disputes, eleven resource access disputes and four communications access disputes.

Boundary disputes in North Africa

Some of the land boundary disputes are, in reality, disputes over sovereign control of specific territories, rather than over boundary alignment. This is particularly true of Morocco's claim to the Western Sahara which is currently subject to a United Nations ceasefire regime in the runup to a referendum over self determination. Surrounding states, specifically Algeria and Libya, seem to have quietly acquiesced in Morocco's determination to maintain sovereign control over the region and the referendum, when it comes, is expected to provide international legitimisation to this situation. If this were not to occur, then there would be the potential for major hostilities within the region, as the Moroccan government cannot afford to abandon its position.

Most of the disputes or potential disputes, however, are concentrated in the Middle East, for North Africa's disputes have by-and-large been eased by the principles enunciated in the 1964 Cairo Declaration and have, as a result, often been solved by negotiation. Indeed, in 1983, Algeria was able to resolve most of its disputed boundary regions by negotiation, leaving only the issue of its boundary with Libya unresolved. The boundaries with Morocco, which had led to a brief war in 1963, were finally settled by negotiation in 1972 and the resulting treaty was ratified in 1989. Even the contentious boundary between Libya and Chad has now been settled by the International Court of Justice at The Hague, which rendered a judgement confirming the international boundary on February 4, 1994. Apart from the Western Sahara issue, the only remaining land boundary dispute in North Africa exists between Egypt and Sudan over the Halaib Triangle at the Red Sea terminus of their common land boundary.

Disputes between Arab states in the Middle East

In fact, in the Middle East with one exception - apart from the continuing tensions within the Peninsula between Qatar and Bahrain, Qatar and Saudi Arabia and Saudi Arabia and Yemen - all the major actual or potential disputes involve non-Arab states confronting Arab states. Even the Qatar-Bahrain dispute, which is really a maritime dispute over possession of the off-shore shoals around Bahrain and the Huwwar islands off the Qatari coast, is now to be settled by arbitration. It is thus unlikely to be a source of actual conflict, any more than the Qatar-Saudi Arabia dispute will be, since mediation by Egypt's President Mubarak in December 1992. The same is true of the complicated boundary dispute between Saudi Arabia and Yemen. Negotiations have begun between the two sides and, despite Saudi pressure on international oil companies operating in Yemen, it seems inevitable that the issue will eventually

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ALG/MOR
WAR 63
LIB/CHD
EGY/SUD

QAT/BAH
QAT/SAU
SAU/YEM

be resolved by negotiation. This will involve either a formal tribunal or state-to-state negotiation - Saudi Arabia's preferred option although an arbitral approach has not been ruled out; indeed recent archival evidence from British sources may persuade Riyadh that arbitration should be the preferred option. Yemen, however, would prefer to place the issue before a tribunal; either the International Court of Justice or, as was the case in Egypt's arbitration with Israel over the Taba enclave, in an *ad hoc* tribunal appointed by the parties involved.

Great uncertainty has, however, been thrown over these considerations by the civil war in Yemen, although it is likely that Sana'a will have to eventually compromise to ensure Saudi goodwill. In this respect, it should be borne in mind that Saudi border negotiations ultimately turn on political, not technical considerations and that there is also an innate desire to ensure that boundaries delimited by colonial powers should be revised as a matter of principle. In the case of the Hadhramawth and Marib regions, moreover, the intensification of oil exploration is bound to affect the way in which Saudi Arabia will view negotiations and the final solution.

IRA/KUW
| The one inter-Arab boundary in the Middle East that does contain the potential for a destructive conflict is Iraq's boundary with Kuwait. Although this has now been delimited and demarcated by the United Nations on the basis of English practice during the 1930s, the redefinition of the boundary from its original *de facto* to *de jure* status, which has also involved some re-alignment, is such that it has been rejected not only by the Iraqi government but also by the vast majority of disparate elements within the Iraqi opposition movement. Even though the United Nations Security Council has insisted that Iraq should accept UNSC Resolution 883 (1993) which establishes the new border, the general level of disaffection in Iraq over the issue will make this a very hollow gesture. The present situation is that Iraq has agreed to respect the newly aligned boundary without recognising it. Indeed, the Iraqi government has argued that formal recognition is unnecessary, since it accepted the principle of the secretary-general making arrangements for border demarcation under UNSC Resolution 687 (1990) and thus, in effect, implicitly accepted the outcome of that process. Nonetheless, the result now is that, unless eventually Kuwait and Iraq - under some acceptable successor regime - can find a mutually acceptable compromise, the boundary between them must remain a potent
X potential source of conflict in the future.

One of the problems that Iraq faces, quite apart from irridentist nationalist claims over the frontier region, is that, without some adjustment of the maritime and terrestrial boundaries in the region, it is effectively a land locked state (Schofield 1994b: 153-172). Land locked states, because of their dependence on transit regimes, are always acutely sensitive over boundary issues. Furthermore, such a geographic situation would also require Iraq to abandon its aspirations to operate as a state with strategic interests in the Gulf - a position it has held since at least 1971. This seems most unlikely to happen, either under the present or any conceivable successor regime.

...nine decades ago Lord Curzon and the Government of India...were motivated above all by a desire to prevent the Ottoman empire from having any developable coastline on the Gulf...In many ways the proof of their success is the instability that this geopolitical fact has fostered in the decades that have followed. Just how Iraq's deeply entrenched consciousness of being "squeezed" out of the Gulf...might best be addressed without compromising the legitimate concerns of Kuwait and Iran is the question that remains to be answered, notwithstanding the recent efforts of UNIKBDC. (Schofield 1994a: 14)

Disputes with non-Arab states in the Middle East

These potential areas of tension are located either in the Gulf region or in the Levant. The minor areas of potential tension, such as over Turkish rights of unilateral intervention in Iraqi Kurdistan under the May 1984 protocol between Baghdad and Ankara or the longstanding Turkish-Syrian dispute over Alexandretta will be left out of this discussion. They, after all, are unlikely to present a major threat to the stability or integrity of the Arab world in the medium term. Three other areas of potential dispute are far more menacing: the ambiguous status of the Shatt al-Arab boundary between Iran and Iraq; the ongoing disputes between Iran and the United Arab Emirates over control of the Tunbs islands and Abu Musa; and the complicated question of Israel's future boundaries with surrounding states.

IRN/Iraq
IRN/UAE
ISR/Tunbs

The Iran-Iraq Shatt al-Arab boundary was, after all, one of the specific causes of the 1980-1988 conflict between the two countries, as Iraq unilaterally abrogated the 1975 Algiers Accord, which had transformed the boundary from one along the low water mark on the Iranian side of the river to the **thalweg**, at the start of the war. In August 1990, however, Iraq once again, unilaterally restored the Algiers Accord boundary. No formal instrument ratifying the latest boundary change has yet been signed, however and Iraq may well try, in the future, to alter the boundary unilaterally once again. Iran is certain to resist such a move. Quite apart from nationalist motives, there are major economic considerations at stake. Control of the Shatt al-Arab also implies control of access to the Abadan refinery complex in Iran and to the port of Basra in Iraq. Further upstream, in the Huwaiza marsh area, there is a major oil field - the Majnoon Field - which is formally an Iraqi possession. However, Iran has irredentist claims on it, particularly if it feels that reparations for the damage caused in the 1980-88 war by Iraq may not be forthcoming.

In the Gulf itself, the tensions that have revived over the control of Abu Musa island, currently shared between Iran and Sharjah, have revived the old anxieties over Iranian ambitions to control the region. These have intensified after the failure of negotiations in Autumn 1992, as a result of Gulf Cooperation Council initiatives to re-open the 1971 Memorandum covering the status of Abu Musa and, at UAE urging on behalf of Ras al-Khaimah, to question Iranian sovereignty over the neighbouring Tunbs islands (Schofield 1994a: 32-41). There is no question that Iran will ever consider abandoning its claim to the Tunbs islands or its position in Abu Musa. However, tensions over the islands

could well contribute to a generalised rise in tension in the Gulf region, given the precariousness of security arrangements there in the wake of the war against Iraq in 1991.

✕ By far the most acute boundary considerations in the region, however, involve Israel's boundaries with surrounding states. Egypt's boundary with Israel was established in the wake of the peace treaty between the two states in 1981, with the dispute over the Taba enclave being settled to Egypt's advantage - much to Israel's displeasure - in 1989. The other boundaries, however, are governed only by armistice instruments and await formal ratification as international boundaries in the wake of the creation of peace agreements with Lebanon, Syria and Jordan. In the case of Lebanon, this should not present much difficulty, once Israel has evacuated its "security zone" along the boundary on Lebanese territory. With Syria and Jordan, however, the situation is far more complicated. Syria, after all, is insisting on the restoration of its sovereignty over all of the Golan Heights. Israel has not yet indicated that it will accept this, so the boundary issue remains unclear. All that is clear is that Syria is most unlikely now to engage in open hostilities with Israel over the issue, although covert, low-intensity conflict continues to be a possibility as long as peace with Syria is not established and whilst Israel's relationship with a future Palestinian state is not determined.

ISR/SYR

ISR/JOR

Similar considerations apply with Jordan, where the boundary issue is far more complex. Any eventual boundary agreement will have to follow the lines laid down by the 1922 declaration over the Palestinian Mandate boundary with Trans-Jordan. This will probably involve a **thalweg** boundary along the Jordan river; and equi-distance line through the Dead Sea and a permanently marked **thalweg** line along the Wadi Araba to the point where such a boundary would link up with the small portion of demarcated boundary from the coast at Aqaba-Eilat. There are many complicating factors, such as the Semakh and Yarmuk triangle areas, which are in dispute. There is also the fact that much of this boundary delimits the occupied territory of the West Bank from Jordan. This territory may well become the territory of an independent Palestinian state and it is not clear that any future Palestinian government would necessarily consider itself bound by a boundary delimited and demarcated by Israel and Jordan.

There is also the horrendous problem of transforming the Green Line internal boundary between the West Bank and pre-1967 Israel into a formal international boundary. No attention has been paid to this yet, not least because of continuing ambiguities over the future status of Israeli settlements within the Occupied Territories. These matters will be of critical importance in establishing a viable and stable delimitation of authority between Israel and Palestine - although the actual peace process itself does not inspire confidence that such an objective will ever be achieved. The internal boundary between Israel and the Gaza Strip will present few such problems, unless territorial concessions are made to ensure that any future Palestinian state enjoys contiguous territory. This, in any case, is most unlikely.

Other sources of dispute

maritime
resources

Lib/

Territorial disputes are, however, rapidly being sidelined by other forms of dispute involving boundaries which have now come to prominence. In the context of the Arab Middle East, the most important arenas in which this occurs are those of maritime disputes and resource disputes. Maritime disputes are often, in any case, disguised resource disputes, for they can involve fishing rights or sub-aquatic hydrocarbon exploitation. In the Gulf region, for example, despite the fact that much of the maritime area has been demarcated, there is still a dispute between Qatar and Iran over the exploitation of the North Field/South Pars gas field. In the Mediterranean, Libya has undertaken two successful maritime delimitations with Tunisia and Malta before the International Court of Justice. In the case of Tunisia, the delimitation in 1986 involved decisions over the control of the Bourj oil field and associated structures.

In fact, maritime delimitations should not lead to conflict, for international law in this arena is far better developed than in the case of land boundary disputes. The basic principle is that all settlements must be according to "equitable principles", which usually involved an equidistance delimitation. In any case, there are now the basic legal principles contained in the results of UNCLOS-3 (the third United Nations Law-of-the-Sea conference) to guide negotiators (Blake 1987: 121-132).

The same is not true, however, for resource disputes. In the case of hydrocarbons, where reserves often pass underneath recognised international boundaries, neither of the adjacent states can lay claim to possession of the underlying resource-bearing structures. This can lead to disputes of the kind experienced by Kuwait in the claims made upon it by Iraq in 1990 over alleged illegal exploitation of the South Rumaila oil field structure.

water

Tigris-Euphrates
TUR/SYR/IRQ

The most dangerous kinds of resource disputes that now face the Middle East do not involve hydrocarbons, however. Access to water is likely to be the most serious problem of trans-boundary resource access in the decades to come. The two most likely areas for conflict are the Tigris-Euphrates basin and the Jordan river basin. The Tigris-Euphrates system involves Turkey (where both rivers rise), Syria and Iraq. If tributaries to the river Tigris rising in the Zagros mountains are included, then Iran is also involved. The problem here is that there are no international legal principles over downstream access to riverine water. As a result, downstream states, such as Syria and Iraq, are at the mercy of upstream states over water access. In 1990, for example, both states complained to Turkey over water flow down the Euphrates as the new Ataturk dam was being filled. Turkey had provided a flow of only 500 metres per second, whereas the two states had demanded a minimum flow of 700 metres per second.

Jordan

The Jordan river system, which involves the Dan spring and the Yarmuk river, satisfies the demands of southern Syria, Jordan and, particularly Israel for water. The Litani river may also be involved in any final distribution of water rights, once peace treaties are signed. There is also the question of

underground water rights, for much of the water supply for the region is provided by aquifers which are shared between Israel and the Occupied Territories. Israel has long been over-exploiting its access to water and now faces serious water provision difficulties in future. Water, therefore, could be a very dangerous source of conflict in the future (Joffé 1993: 68-94).

Conclusion

It is clear that the future stability of the Arab world and the Middle East is most strongly threatened by disputes between Arab and non-Arab states. With the exception of the continuing refusal of Iraq to accept the demarcation laid down by the United Nations for its boundary with Kuwait, Arab states generally resolve boundary disputes by arbitration. This is not the case as far as non-Arab states are concerned. It must therefore be the case that, as far as conflicts arising from boundary disputes are concerned, at least, regional security arrangements should take this issue into account. It is worth recalling, in this context, the old adage that, "Good boundaries make good neighbours". It must be remembered, however, that the real danger over such disputes in the future is far more likely to be related to the effect of boundaries on access to resources, particularly water, and there is an urgent need to establish water usage regimes that are cooperative in nature and are accepted region-wide.

There is another potential danger, however. This arises from the fact that few of the states in the Middle East and North Africa are genuine nation-states. They do not possess national communities which are homogeneous and unique. They often possess significant minorities, either religious or ethnic, and have access to ideologies which are supra-state in their basic assumptions. Both factors tend to disrupt the unity of the state and, whilst ideologies which seek to integrate political units beyond the limits of the state may minimise boundary problems - as is the case with Arab nationalism - this is not the case with minorities. Unless such elements can be brought successfully into a national consensus, there is always the danger that internal administrative boundaries can acquire the status of international boundaries with all the dangers that that might imply. Although Middle Eastern states are generally well-aware of such dangers and have thus taken measures against them, complacency is - in the modern post-Cold War context, at least - unwise. There are, after all, the examples of Ossetia, Abkhazia, Nagorno Karabagh in the Caucasus or the former state of Czechoslovakia and the former Yugoslavia, not to speak of what used to be the Soviet Union, as indicators of how an apparently permanent reality can be swiftly overturned by unexpected and unpredictable political events. The internal situation of Iraq contains some of the elements that could create a similar situation in the Middle East.

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Then finally, there is the inevitable caveat that international law, which is the key to the pacific settlement of boundary disputes, is itself an uncertain instrument of state and inter-state policy. By definition, the traditional definition of state sovereignty means that international law cannot normally be

enforced. Thus decisions by tribunals over boundary delimitation do not have to be accepted by the states concerned. Indeed, states can, at will, reverse such decisions. Then, unless other states, regional bodies or the international community are prepared to apply pressure or use force, there is little that can be done to reverse the situation. That situation argues ever more strongly for the need for states in the Middle East to be prepared to resolve such disputes by negotiation - unless they wish to appeal to the principles of intertemporal law and restore the constitutional principles of the pre-colonial era!

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State boundaries in the Middle East and the Arab world

Part Two: Status of disputes in 1994

x In the following pages individual briefs are provided for each disputed or unfinalised territorial limit in this region. For the purpose of this analysis, the study area is broken down into four realms: i) the non-Arab Middle East (essentially Iran and Turkey); ii) the Arabian peninsula and the Persian Gulf; iii) the Levant, and; iv) North Africa and the Horn of Africa. For each disputed/unfinalised boundary commentary is provided under three headings: contemporary status; instruments of governance, and, lastly; potential for dispute.

2.1. The non-Arab Middle East

2.1.1. Iran

2.1.1.1. Iraq (land boundary excluding Shatt al-Arab)

SUMMARY: AS WITH THE SHATT AL-ARAB DISPUTE, SOME DOUBTS REMAIN AS TO THE EXTENT TO WHICH IRAQ RECOMMITTED ITSELF TO THE TERRITORIAL PROVISIONS OF THE 1975 ALGIERS ACCORD WITH SADDAM HUSAIN'S STRATEGICALLY-MOTIVATED CLIMBDOWN OF 14 AUGUST 1990. THE PROVISIONS OF THE 1975 AGREEMENT WOULD APPEAR A SOUND BASIS FOR THE REGULATION OF THE BOUNDARY WITH ITS BORDERLANDS: DISPUTES PERSIST OVER THE IRAQI-OCCUPIED LOCALITIES OF ZAYN AL-QAWS, SAFI SA'D AND MEIMAK.

Contemporary status

The land border between Iraq and Iran and their predecessor states, the Ottoman and Persian empires, has a treaty history dating back three hundred and fifty years to 1639, when the Treaty of Zohab was signed - the first explicitly territorial instrument signed between states in this region. The "treaty of peace and demarcation of frontiers" was, in truth nothing more than a momentary truce in a long religious war between the Persian and Ottoman empires (as were successor treaties signed at Hamadan [1727], Kerden [1746] and Erzerum [1827]), establishing a wide strip of territory (at least 250 miles in width) in which the authority of both shah and sultan was disputed. Britain and Russia both intervened in the Perso-Ottoman dispute in the early 1840s, assuming mediatory powers on a border commission which would result in the land border being described in detail for the first time with the conclusion of the [second] Treaty of Erzerum in 1847. During the 1850-1852 period a four-power boundary demarcation commission tried to place into effect on the ground the vague land boundary prescribed by the 1847 treaty. With Persia and the Ottoman Empire each maintaining differing interpretations of the 1847 treaty text, the British and Russian representatives on the commission soon limited their ambitions to plotting the terrain through which the land boundary passed. Two decades later the European powers produced an "identic map", a huge,

lavish and error-strewn piece of colonial cartography, for presentation to the Constantinople and Tehran governments. This established a border zone (generally 25 miles in width) in which the boundary would in future be found to lie.

The Constantinople Protocol of November 1913 essentially incorporated descriptions of the boundary with Persia which the Russian (in the north) and British (in the south) governments had managed to get the Ottoman Empire to relent to during the previous couple of years. Crucially this instrument also provided for Britain and Russia to arbitrate, rather than merely to mediate, in any future disputes over the precise course of the boundary. Hence, the boundary was demarcated the following year by a quadripartite demarcation commission. The description of the land boundary contained in the 1913 Constantinople Protocol and the minutes maintained by the 1914 demarcation commission would become the principal points of reference for the most recent demarcation of the land boundary, following the conclusion of the 1975 Algiers Accord (see below).

Not many of the pillars and cairns emplaced to mark the land boundary in 1914 survived in the medium term - some lasted as little as a day: a few local tribes following the demarcation commission would reportedly uproot the emplaced monuments and furthermore, would openly boast of their intention to do so in advance. To address the problem of border maintenance (or the apparent lack of it) and following the conclusion in July 1937 of a further Iran-Iraq border treaty which dealt principally with the Shatt al-Arab (the Tehran treaty), Iran and Iraq agreed during December 1938 to form a commission to re-erect frontier pillars along the land boundary. For whatever reason it appears not to have undertaken its mission.

The 1975 Algiers Accord of 1975 and its origins are commented upon in detail in the treatment of the Shatt al-Arab dispute (see below) in the next regional section dealing with the Persian Gulf and Arabian peninsula (see 2.2). The 1975 accord, its follow-up treaties and protocols dealt comprehensively with the land boundary question.

The first of the territorial decisions taken by Iran and Iraq in the Algiers Accord of 6 March 1975 had been to "proceed with the definitive demarcation of their land frontiers on the basis of the Constantinople Protocol of 1913 and the minutes [proces-verbaux] of the Frontier Delimitation Commission of 1914".

Article One of the follow-up 13 June 1975 Iran-Iraq treaty on international borders and good neighbourly relations had read as follows:

The two supreme contracting parties confirmed that the international land borders between Iraq and Iran are those which have been re-demarcated in accordance with the principles and pursuant to the provisions of protocol for the re-demarcation of land borders and supplements thereto, appended with this treaty.

Article One of the (13 June 1975) interim protocol for the redemarcation of the land frontier between Iran and Iraq had read as follows:

The two contracting parties confirm and realise that the redemarcation of international borders between Iraq and Iran has been conducted on land by the joint Iraqi-Iranian-Algerian committee on the basis of the following:

- 1) The Constantinople Protocol of 1913 and the minutes of the Turkish-Persian Border Demarcation Commission of 1914;
- 2) Tehran Protocol, 6 March 1975;
- 3) Minutes of foreign ministers meeting, Baghdad, 20 April 1975 and minutes of committee entrusted with the redemarcation of land borders, Tehran, 30 March 1975;
- 4) Minutes of foreign ministers meeting, Algiers, 20 May 1975;
- 5) Descriptive minutes of the demarcation of land borders between Iraq and Iran written by the committee entrusted with the demarcation of land borders, 13 June 1975;
- 6) Maps scale 1/50000, on which territorial border line is demarcated together with the location of old and new crosslines;
- 7) Description cards of old and new crosspoints;
- 8) Document related to projection lines of border pegs;
- 9) Aerial photographs of Iraqi-Iranian border surroundings with the locations of old and new peg points;

It had not been possible to agree upon demarcation of the land boundary along one stretch of the border. The two states pledged to finalise demarcation in this region within the space of two months. At the end of 1975 (26 December) Iran and Iraq were able to conclude the "(final) protocol concerning the redemarcation of the land frontier between Iran and Iraq". This was essentially an update of the 13 June 1975 interim protocol. To the list immediately above could now be added the final coordinates of the border pillars.

Article Five of the 26 December 1975 protocol provided for the joint maintenance of the recently-emplaced border monuments. In Article Six, Iran and Iraq "solemnly [undertook] to respect their common and definitive frontier".

An additional protocol annexed to the 13 June 1975 Iran-Iraq treaty on international borders and good neighbourly relations had introduced a regime for the security of the borderlands.

Despite the comprehensive and imaginative nature of the 1975 treaty provisions concerning the land boundary (and also the Shatt al-Arab to its south) - they contained every conceivable safeguard against future dispute over its course and status. Iran and Iraq failed to implement or maintain all of the measures outlined in 1975. On unilaterally abrogating the 1975 Algiers Accord in September 1980 as a prelude to launching the 1980-1988 Iran-Iraq War (after having denounced it a full year earlier), Iraqi President Saddam Husain claimed that Iran had blatantly and frequently breached the June 1975 border security protocol and,

IRN/IRQ

specifically, that it had failed to return the areas around Zayn al-Qaws and Safi Sa'd as the Baghdad government maintains was apparently agreed back in 1975. In the run-up to the prosecution of war in the early autumn of 1980, Iraqi forces claimed to have removed Iranian positions from these disputed localities. Iran claims these territories, which, with Meimak, are still occupied by Iraq in the summer of 1994. Iran reckons that with Iraq's retention of Zayn al-Qaws, Safi Sa'd and Meimak, 600 square kilometres of its territory is currently occupied by Iraqi forces.

Following Iran's acceptance of Resolution 598, a United Nations observer force was put in place along the Iran-Iraq border. The United Nations Iran-Iraq Military Observer Group (UNIIMOG) remained in place along the border from August 1988 until January 1991 when it departed, apparently satisfied that its job was done. Before vacating, UNIIMOG announced that both Iran and Iraq had agreed to remove their border fences 1 kilometre in from the boundary so as to leave a narrow (2 kilometres) demilitarised buffer zone. Despite the institution of this demilitarised buffer, border incidents have continued to occur (some of them serious) in the three years which have elapsed since UNIIMOG departed the scene.

It is the conventional interpretation that Iraqi President Saddam Husain's famous letter of 14 August 1990 (referred to below in connection with the Shatt al-Arab dispute) basically, if a little ambivalently, committed Iraq to the territorial provisions of the 1975 accords, treaties and protocols. The one genuine point of discord over the course of the land boundary concerns the currently Iraqi-occupied localities of Zayn al-Qaws, Safi Sa'd and Meimak. These territories are claimed today by both Iran and Iraq.

Instruments of governance

- 1) *Constantinople protocol, November 1913.*
- 2) *Proces-verbaux of the Turco-Persian Frontier Commission, 1914.*
- 3) *Joint Iranian-Iraqi communique (Algiers Accord), 6 March 1975.*
- 4) *Treaty concerning the state frontier and neighbourly relations between Iran and Iraq, 13 June 1975.*
- 5) *[Interim] protocol concerning the redemarcation of the land frontier between Iran and Iraq, 13 June 1975.*
- 6) *Protocol concerning security on the frontier between Iran and Iraq, 13 June 1975.*
- 7) *[Final] protocol concerning the redemarcation of the land frontier between Iran and Iraq and new agreements on procedural arrangements, 26 December 1975.*

8) *Iraqi Revolutionary Command Council decision abrogating 6 March Joint Iranian-Iraqi communique (Algiers Accord) and Iraqi law no.69 of 1976, which ratified the 13 June 1975 treaty concerning the state frontier and neighbourly relations between Iran and Iraq, 17 September 1980.*

9) *United Nations resolution 598 of 20 July 1987: Iranian and Iraqi acceptance of..., July 1987-July 1988.*

10) *Husain-Rafsanjani correspondence culminating in Husain's letter to Rafsanjani of 14 August 1990, April-August 1990.*

Potential for dispute

* Assuming that the provisions of the 1975 Algiers Accord still hold good, there still seems to be some confusion about the alignment of the boundary in its middle course between boundary pillars 46 and 60, east of Khaniqin. It is not clear here that the operative boundary corresponds entirely with the agreed description of the territorial limit in international law.

* Iraq does seem to have a case for arguing that it occupies Zayn al-Qaws, Safi Sa'd and Meimak by rights following the agreements of 1975. Yet, Iran maintains a claim to these localities.

* One observer recently made the point that throughout their history Iran and Iraq have always had trouble reconciling themselves to the very fact that a precise boundary line separates them.

* The discovery of new oil fields close to the boundary has exacerbated the potential for dispute over its future course, notwithstanding the thoroughness of the 1975 settlement.

* As is the case with the Shatt al-Arab dispute, it must be hoped that ultimately the 1975 description of the land boundary is accepted once more formally and unequivocally as the definitive delimitation. The provisions in the agreements of that year for trans-border cooperation, for the peaceful resolution of future disputes over the status and alignment of the boundary, and for the maintenance of boundary monuments could scarcely be improved upon. Similarly, UNIIMOG's final act during January 1991 of instituting a 2km-wide demilitarised buffer astride the land boundary seems prudent.

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2.1.2. Turkey

2.1.2.1. Iraq

TUR/IRQ

SUMMARY: THERE IS VIRTUALLY NO PROSPECT OF FUTURE DISPUTE OVER THE COURSE OF THE BOUNDARY: THIS MATTER HAS BEEN SOLVED SINCE DEMARCATION OF THIS TERRITORIAL LIMIT IN 1927: TRANS-BOUNDARY RESOURCE AND FUNCTIONAL DISPUTES ARE LIKELY TO FIGURE IN THE FUTURE, AS NOW, WHILE THE POLICY OF CENTRAL GOVERNMENT TOWARDS THE BORDERLANDS IS LIKELY TO CONTINUE TO BE DICTATED BY THE PRESENCE AND ACTIVITIES OF KURDISH OPPOSITION GROUPINGS.

Contemporary status

There are no juridical disputes between Iraq and Turkey over the course of their land boundary, nor have there been since the 1920s. The setting up by the international community of a safe haven in northernmost Iraqi Kurdistan, guaranteed against attack from Iraq, following the uprisings in the spring of 1991, appears not to have affected the status or alignment of the border between the two states. The presence of the safe haven, whose northern limits are coincident with a short stretch of the 219 miles-long Turkey-Iraq land boundary, appears not to have affected Turkey's right to intervene unilaterally in Iraqi Kurdistan (for the purposes of national security), granted in a May 1984 protocol signed with the Baghdad government. This is not absolutely clear, however.

The historical evolution of the land boundary is as follows. In signing the August 1920 Treaty of Sevres, defeated Ottoman Turkey agreed (in Article 27) to a new and considerably foreshortened southern boundary coinciding with the northern limits of its former *wilayat* of Mosul. Kemalist Turkey subsequently denounced this treaty with the result that it was replaced by the June 1923 Treaty of Lausanne. Article Three of this treaty specified instead that the boundary between modern Turkey and the new British-manadated state of Iraq would be "laid down in friendly arrangement to be concluded between Turkey and Great Britain within nine months".

In consultations during the early summer of 1924 Britain and Turkey put forward different claims for an international boundary. Britain argued that a line running anywhere between 5-25 miles north of the old northern boundary of the Mosul *wilayat* would be most suitable for a northern Iraqi boundary on the grounds that it passed through some of the highest elevations in the Kurdish Alps and was therefore better suited strategically than the old Ottoman administrative boundary. This was an era, of course, in which the "natural" boundary found favour with many of Britain's leading political and military administrators. Kemalist Turkey, by way of contrast, urged that the new international boundary should follow the southern rather than the northern

border of the Mosul *wilayat*, on the basis that were a plebiscite held there, most of its population would elect for citizenship of the new Turkish state.

When no agreement was reached within the allotted time-period specified in the Treaty of Lausanne, the dispute was referred to the Council of the League of Nations in October 1924. Here the Council established the "Brussels line" as the provisional boundary between Turkey and Iraq, following, almost exactly, the old northern border of the Mosul *wilayat*. Between November 1924 and March 1925 a special three-member commission appointed by the League investigated the boundary problem. It recommended in July 1925 that the "Brussels line" be confirmed as the international boundary. This, too, was the finding of the Permanent Court of International Justice in the Hague, who passed an advisory opinion in November 1925, awarding the former Ottoman *wilayat* of Mosul to Iraq.

The Council of the League of Nations passed its decision on the course of the Turkey-Iraq boundary (following the "Brussels line") in Geneva on 16 December 1925. On 5 June 1926 the boundary question was finally settled with the conclusion of the tripartite Treaty of Ankara between Britain, Turkey and Iraq. By this the "Brussels line" was formally established as the boundary, save for a minor adjustment in the vicinity of the Turkish villages of Aluman and Ashuta. Here, a small rectification was made to leave the villages and a connecting road in Turkish territory. The June 1926 agreement lay the ground rules for the demarcation of the boundary, which had been completed by September 1927. In the course of their actions, the commission charged with the responsibility of demarcating the boundary noted an error in the description of the boundary contained within the text of the June 1926 treaty. This anomaly was addressed by an exchange of identic notes of late April 1927 between Britain and Iraq on one hand and Turkey on the other. The June 1926 treaty had also set up a special security regime for the borderlands, whereby no pillage or hostile acts would be allowed to take place across the border. During 1937 and again in 1946 the previous border treaty provisions were renewed.

oie { If no territorial disputes can be said to exist between Turkey and Iraq in 1994,¹ the same cannot be said for trans-boundary resource and functional disputes. The successive river water dispute between Turkey, the upstream riparian on the Tigris-Euphrates system, and Iraq (and Syria, too, for that matter) has already been covered in the introduction to this piece (see part one). The vulnerability of Iraq's oil exporting capacity via pipelines through neighbouring states was driven home one week into its occupation of Kuwait, when the Ankara government - complying with UN sanctions, closed down Iraq's pipeline link to Ceyhan on the Mediterranean.

¹ Residual claims by nationalist circles in Turkey to the former Ottoman province of Mosul surface occasionally but should not be taken seriously. As far as inter-state relations are concerned, Turkey has recognised Iraqi sovereignty over Mosul ever since the June 1926 tripartite Treaty of Ankara.

Instruments of governance

- 1) *Tripartite Treaty of Ankara, 5 June 1926.*
- 2) *Exchange of identic notes between the governments of Britain and Iraq on the one hand and Turkey on the other respecting rectification in text of description of boundary contained within Tripartite Treaty of Ankara, 28 April 1927.*
- 3) *Extension of Part Two of tripartite 1926 Treaty of Ankara, agreement of 28 April 1937*
- 4) *Treaty of Friendship and Good Neighbourliness (with Extradition Convention) concluded between Turkey and Iraq, 29 March 1946.*
- 5) *Turco-Iraqi protocol, May 1984.*

Potential for dispute

* No juridical disputes seem likely over the course of the land boundary. Residual claims to Mosul province are the occasional domain of Turkish nationalists.

* The presence of Kurdish opposition groups on both sides of the boundary will frequently dictate the policy of the Baghdad and Ankara governments to their respective borderlands. It is not clear to what extent the international community's institution and maintenance of the safe haven in Iraqi Kurdistan has affected Turkey's right to take unilateral actions on the Iraqi side of the border.

all | * Iraq's dependence on neighbouring states for the transit of oil exports is always vulnerable to a downturn in political relations, usually translating into the impermeability of borders: functional disputes may well continue in the future.

* Iraq needs to cooperate with Turkey on the Tigris/Euphrates question.

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TUR / SYR

2.1.2.2. Syria

SUMMARY: THE SYRIAN CLAIM TO ALEXANDRETTA (ISKANDERUN) AND THE HATAY HAS BEEN HELD IN CHECK FOR NEARLY FIFTY YEARS NOW BY THE PRAGMATIC UNDERSTANDING BROKERED BY IRAQI PREMIER NURI AL-SAID IN 1946. AS A RESULT TURKEY HAS NEVER SOUGHT FORMAL RECOGNITION FROM SYRIA OF ITS OWNERSHIP OF THE TERRITORY, CEDED BY FRANCE TO ANKARA IN 1939, WHILE THE DAMASCUS GOVERNMENT HAS NEVER LAID FORMAL CLAIM TO THE TERRITORY. THE AREA HAS NOW BEEN TURKICISED BUT STILL APPEARS ON VIRTUALLY ALL ARAB MAPS AS SYRIAN

Contemporary status

Many contemporary territorial disputes in the region result from the effect that defining boundaries had in cutting off portions of territory which were formerly considered as part of the state concerned. While territorial claims are not likely to be made good in international law so long as the general attitude holds that the current system of territorially-defined states should prevail, some claims are deeply rooted in the national sentiments of Middle Eastern states. France ceded Hatay to Turkey in 1939 ostensibly to preserve regional alliances and in return for Ankara's agreement to respect the remainder of the Turkey-Syria boundary and not to harbour any further designs on Syrian territory. Though no Syrian government would today actively and formally dispute that Hatay forms part of Turkey, it could not publicly say so. Maps produced in the Arab world today show Alexandretta (Iskanderun) and the remainder of the formerly Arab sanjaq of Hatay (that is before it was Turkicised) as lying within Syria. There is no legal strength in such claims, however.

Syria's northern boundaries under the French mandate had been regulated by a Franco-Kemalist (the Franklin-Bouillon) agreement of 20 October 1921. This had modified slightly the boundary suggested in the August 1920 Treaty of Sevres. Alexandretta fell well within the mandated territory. Even the boundary introduced by the 1921 agreement had been criticised by Syrian commentators who considered that the natural geographic border of Syria should more properly comprise the Taurus and Anti-Taurus mountains further north.

France's cession of Hatay with the 23 June 1939 treaty with the Ankara government upset many Syrians and had the effect of stimulating Pan-Arab and Pan-Syrian sentiment within Syria. This reached a height with widespread strikes in all major Syrian towns during 1945. After an intensification of calls in the Syrian media for the retrocession of Alexandretta and the Hatay, Nuri al-Said stepped in during March 1946 to broker something of a compromise understanding. So long as Turkey did not insist upon formal Syrian recognition of the incorporation of the territory within the Kemalist state, Damascus would not formally demand its return. The basis of Al-Said's pragmatic arrangement has survived to the present day. There can be little

doubt, however, that Syria continues to feel a sense of loss - maps produced to this day in Damascus, both official and unofficial, show Alexandretta and Antioch as Syrian. Meanwhile modern Iskanderun and Hatay has been, or so it would seem, successfully Turkicised.

Instruments of governance

- 1) *Franklin-Bouillon agreement, 20 October 1921*
- 2) *French cession of Hatay to Turkey by Franco-Turkish treaty of 23 June, 1939.*
- 3) *Nuri al-Said, Prime Minister of Iraq, brokers compromise deal, March 1946.*

Potential for dispute

* The Syrian claim to Alexandretta is likely to remain the domain of nationalist sentiment. Nuri al-Said's compromise solution of 1946 whereby Ankara would not seek Damascus' formal recognition of Turkish sovereignty over Hatay so long as Syria laid no formal claim to the territory has proved remarkably durable. Meanwhile it would seem that Hatay has been successfully Turkicised.

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2.2. The Arabian peninsula and the Persian Gulf

2.2.1. Iran

2.2.1.1. The Shatt al-Arab (with Iraq).

1RN/IRA
SUMMARY: THE DISPUTE OVER THE SHATT AL-ARAB BOUNDARY IS CURRENTLY DORMANT, NOT PERMANENTLY SETTLED. OSTENSIBLY, A THALWEG DELIMITATION HOLDS GOOD ALONG THE WATERWAY, FOLLOWING THE 1975 ALGIERS ACCORD. IRAQ'S NEGATIVE CONSCIOUSNESS CONCERNING ACCESS TO THE PERSIAN GULF LINKS TOGETHER INTIMATELY THE STATUS OF ITS BOUNDARIES WITH IRAN AND KUWAIT

Contemporary status

The dispute over the alignment of the boundary along the Shatt al-Arab waterway must be considered as currently dormant rather than permanently settled. Much like the Iran-UAE dispute over the sovereignty of Abu Musa and the Tunb islands (*see* 2.2.1.2.), controlled by a pragmatic Iran-Sharjah agreement of November 1971 until its most recent outbreak in 1992, the Shatt al-Arab dispute could be resurrected at short notice.

It is the opinion of most though not all observers that two weeks into its occupation of Kuwait, in the middle of August 1990, Iraq had agreed to respect the boundary introduced for the waterway by the March 1975 Algiers Accord and subsequent Iran-Iraq bilateral agreements signed in June and December of that year - this followed the *thalweg* (i.e. the middle of the navigation channel, the line of continuous deepest soundings). As a prelude to launching the 1980-1988 Iran-Iraq War, Iraqi President Saddam Husain had unilaterally abrogated the 1975 Algiers Accord, simultaneously claiming full sovereignty over the waterway, which, it was maintained, was an Iraqi "national river".¹ Right the way up to June 1990, member states of the Arab League had generally supported Iraqi claims to full sovereignty over the Shatt al-Arab.

Yet, in April 1990 Husain and Iranian State President Ali Akbar Hashemi Rafsanjani had embarked upon a dialogue aimed at establishing a permanent peace following their eight-year long war - a state of "no war, no peace" had prevailed since the summer of 1988. Back in July 1988 Iran had reluctantly accepted the UN-sponsored ceasefire arrangements for an end to the conflict, almost a year after UN "ceasefire" Resolution 598 of 20 July 1987 had been

¹ Prior to the signature of the 1975 Algiers Accord, international agreements going back to 1847 had basically recognised Ottoman/Iraqi sovereignty over the Shatt al-Arab, save for small adjustments of the boundary to the mid-stream opposite the Iranian Ports of Khorramshahr (in the 1913 Constantinople Protocol) and Abadan (in the 1937 Tehran treaty). Iranian demands that the boundary be adjusted to follow the *thalweg*, the international norm for navigable boundary rivers in law, were first entered in the late 1920s and maintained consistently thereafter.

passed. By May 1990, the Husain-Rafsanjani correspondence was already hinting at greater Iraqi flexibility towards Iran's preconditions for a formal peace. It was not until the end of July 1990, however, that President Husain showed any willingness to meet, albeit partially, Iranian territorial demands - he suggested that either: i) Iraqi sovereignty over the Shatt al-Arab should be recognized; ii) Iraq and Iran should enjoy equal navigational rights; iii) the Shatt al-Arab dispute should be referred to arbitration. Two weeks later, in his letter of 14 August 1990, Husain accepted Rafsanjani's insistence on "the necessity of working on the basis of the 1975 accord". This was taken by most observers and certainly the Islamic Republic of Iran to constitute Iraq's reacceptance of the *thalweg* boundary introduced by the 1975 Algiers Accord. Yet this admission was by no means absolutely cut and dry. Both Iran and Iraq soon registered the texts of the April-August 1990 Husain-Rafsanjani correspondence with the United Nations. Apparently unsuccessful efforts were made during the autumn of 1990 to follow up Iraq's strategically-motivated climbdown with the staging of high-level talks in Tehran (at which the then Iraqi Foreign Minister Tariq Aziz was present). There remains, in the summer of 1994, no evidence that Iran and Iraq have signed any document to formalize the Iraqi concession of August 1990. As such, and as stated at the outset, the Shatt al-Arab dispute must be regarded as dormant rather than settled.

Instruments of governance

1) Algiers Accord package of agreements, March 1975 and the subsequent settlement of the Iran-Iraq boundary by treaty, June-December 1975: ratification in 1976

- * Joint Iranian-Iraqi communique (the Algiers Accord), 6 March 1975
- * Treaty concerning the State Frontier and Neighbourly Relations between Iran and Iraq, 13 June 1975
- * Protocol concerning the redemarcation of the land frontier between Iran and Iraq, 13 June 1975
- * Protocol concerning the delimitation of the river frontier between Iran and Iraq, 13 June 1975
- * Protocol concerning security on the frontier between Iran and Iraq, 13 June 1975
- * Reconfirmation of Protocol concerning the Redemarcation of the Land Frontier between Iran and Iraq and new agreements on procedural arrangements, 26 December 1975.
- * Exchange of Iranian/Iraqi ratifications of the 1975 border agreements and annexed protocols, Tehran, 22 June 1976

Significance: With Iraq's strategically-motivated climbdown of 14 August 1990, the agreements and protocols of 1975 would seem to hold good once more, though Iraq's apparent reacceptance of a *thalweg* delimitation for the Shatt al-Arab has not been formalised.

2) Iraqi Revolutionary Command Council decision abrogating 6 March 1975 Joint Iranian-Iraqi communique and Iraqi Law No.69 of 1976, which ratified

the 13 June 1975 Treaty concerning the State Frontier and Neighbourly Relations between Iran and Iraq, 17 September 1980

Significance: Were Iraq to claim in the future that Saddam Hussain's letter of 14 August 1990 did not commit it to accepting once again the delimitation introduced by the 1975 Algiers Accord, the basis upon which the state unilaterally abrogated the 1975 agreements and protocols might come under scrutiny once more. It must be said, however, that there is no principle of international law which justifies the unilateral abrogation of valid frontier agreements.

3) *Husain-Rafsanjani correspondence, April-August 1990, especially:*

- * Letter from President of Iraq to President of the Islamic Republic of Iran, 30 July 1990

- * Letter from President of the Islamic Republic of Iran to President of Iraq, 8 August 1990

- * Letter from President of Iraq to President of the Islamic Republic of Iran, 14 August 1990

- * Letter from the Permanent Representative of Iraq at the United Nations to the UN Secretary-General, 15 August 1990

- * Letter from the Permanent Representative of the Islamic Republic of Iran at the United Nations to the UN Secretary-General, 17 August 1990.

Significance: As we have seen, no official steps have been taken since the late summer of 1990 to formalise Iraq's apparent reacceptance of the river boundary delimitation introduced by the agreements and protocols of 1975. There also remains some debate, after a close reading of the text of Husain's 14 August 1990 letter, as to how far Iraq actually went in apparently acceding to Iran's territorial demands - certainly its reacceptance of a *thalweg* delimitation was not unequivocal.

Potential for dispute

- * As noted, the Shatt al-Arab dispute must be characterised as currently dormant rather than permanently settled.

- * Historically, the temperature of the dispute has been closely connected with the status of Iraq's borders with Kuwait on the north-western Gulf (see below), lying a few miles to the west. Iraq's negative consciousness surrounding its lack of frontage on the shores of the Gulf and its resultant quest to improve access to these waters is an established phenomenon which is likely to underpin its future relations with both Iran and Kuwait

- * Following the recent (March 1993) decision of the United Nations to nominate a median line boundary for the Khor Abdullah (separating the Fao peninsula in Iraq from the Kuwaiti island of Bubiyan), the navigation channel dredged and deepened by the Baghdad government in the period up until the final quarter of 1990 has now been placed in Kuwaiti territorial waters. The rule of innocent passage means that Iraqi ships can still utilise the channel (with

the possible exception of military vessels), but the Iraqi authorities can no longer maintain this channel which requires constant dredging if it is not to silt up. This places a greater emphasis on Iraq's navigation channel along the Shatt al-Arab (technically this is now shared with Iran, if the 1975 *thalweg* delimitation still holds good). The channel along the Shatt to Basra, Iraq's principal dry cargo port (lying 72 miles up the waterway), has only recently (June 1994) been fully cleared of the rusting wrecks of vessels which have clogged up the waterway for over a decade since the early days of the Iran-Iraq War in September 1980.

* Today, maybe only temporarily, the Shatt al-Arab is of far greater economic importance to Iraq than it is to Iran. By the late 1960s, certainly the 1970s, the economic importance of the Shatt al-Arab for both Iran and Iraq had declined. The waterway could not accommodate the deep draughts of supertankers. Abadan lost its importance as an oil-exporting terminal. Khorramshahr was also abandoned as the base of the Iranian navy. Kharg island in the waters of the north-eastern Gulf was developed as Iran's principal oil-exporting terminal. Iraq invested in the construction of deep-water oil export terminals at Khor al-Amaya and Mina al-Bakr to avoid reliance on the Shatt. Also, with the capacity of Basra at saturation point, Iraq also pushed most of its resources into the development of Umm Qasr port on the Khor Zubair (on the Kuwait border). By early 1992 Khor al-Amaya and Mina al-Bakr were ready to resume exports with their pipeline links across the Fao peninsula to the southern Iraqi super-giant oilfields of Rumaila and Zubair fully restored. By mid-1994 berthage capacity at Umm Qasr had been reconstructed. Yet the continuing imposition of sanctions means that oil cannot be exported from the offshore terminals, while only vessels of reasonably shallow draft will, in future, be able to utilise the approaches along the Khor Abdullah to Umm Qasr (that is, unless some special agreement is negotiated with Kuwait in the future which ensures that the principal navigation channel can be dredged). Late during June Iran complained to the UN Security Council that Iraqi ships using the Shatt al-Arab were effectively breaking UN sanctions when hoisting the Iranian flag and declaring Iranian ports as their destination - they, in fact, allegedly preceded upstream to Basra. For the moment, therefore, the Shatt al-Arab remains a vital Iraqi access route to the Persian Gulf - this can be seen from the extensive investment made by Iraq in clearing and maintaining its principal navigation channels.

* While the boundary along the Shatt al-Arab has been a constant source of dispute, a joint arrangement for the conservancy of the waterway has been every bit as elusive as a territorial settlement. Preceding the considerable environmental damage inflicted by the eight-year Iran-Iraq conflict, were serious problems of saline water intrusion (damaging to the date groves flanking each shore of the waterway) and sedimentation (most of this accruing from the Iranian Karun river).

* Like many other serious territorial disputes in the region (Iraq-Kuwait, Abu Musa and the Tunbs), this has something of a cyclical nature to it. A ten-year cycle of dispute was discernible up until the Iran-Iraq War, with crises over the waterway in 1961, 1969 and 1979-80. It has generally been on those occasions when Iraq has had to back down after a crisis with Iran on the Shatt, that the

Baghdad government has sought to improve its access to Gulf waters at the expense of Kuwait. Iraq's perception of itself as having been "squeezed out" of the Gulf means that the status of its boundaries with Iran and Kuwait at the Head of the Gulf is intimately linked. United Nations observers forces have had to be placed along both of these boundaries in recent years. Iraq's geostrategic predicament and its proven inability to live with it means that territorial instability rather than stability will probably characterise the northern Gulf for the foreseeable future.

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IRN/QAT

2.2.1.2. The North Dome (North field/South Pars) gasfield (Qatar)

SUMMARY: THE 1969 MARITIME BOUNDARY HAS NEVER BEEN THE SUBJECT OF DISPUTE BUT THE AGREEMENT WHICH INTRODUCED IT FAILS TO REGULATE FOR TRANSBORDER RESOURCE DISPUTES: SEPARATE EXPLOITATION BY BOTH STATES OF MASSIVE NORTH DOME GASFIELD WHICH STRADDLES BOUNDARY HAS NOT BEEN A PROBLEM: DETERIORATION IN POLITICAL RELATIONSHIP BETWEEN TEHRAN AND DOHA MIGHT AFFECT ITS DEVELOPMENT IN FUTURE: NO TERRITORIAL DISPUTES ARE LIKELY TO BREAK OUT

Contemporary status

The Iran-Qatar maritime boundary introduced by an agreement of 20 September 1969 is not disputed. The western terminus of this 131 nautical miles-long territorial limit remains to be precisely fixed and is dependent upon Bahrain and Qatar eventually agreeing upon a maritime boundary delimitation. It is the location of the giant subsoil North Dome gasfield, called South Pars by Iran and the North field by Qatar, that is significant here, for it straddles the 1969 maritime limit, leaving most of the field to Qatar. The Doha government is already developing its share of the deep Khuff-4 structure, which has estimated recoverable reserves of 250 trillion cubic feet. Iran in late 1992 started to develop its part of the field which has estimated reserves of 100 trillion cubic feet.

Importantly, the September 1969 maritime boundary agreement contains no provisions for the development of subsoil hydrocarbon deposits straddling the territorial limit, nor are there any guidelines in this direction. Yet, save for a few difficulties most evident in 1990, there have been no great differences over the issue to date and the Tehran and Doha governments have consulted each other on their respective development plans. Initially, Qatar had sought to ignore Iranian claims to gas reserves straddling the maritime boundary. Then Iranian oil minister Gholamreza Aqazadeh announced his intention to visit Doha to arrange a political accommodation of the issue. Iranian claims of November 1990 that a joint exploration agreement had been drafted with Qatar appeared premature, to say the least. Various instances of cooperation between Iran and Qatar in the post Gulf War period are notable, especially considering this has generally been a period in which the GCC states and the Tehran government have been locked in a war of words over Gulf security issues and, more particularly and recently, the dispute over the islands of Abu Musa and the Tunbs. In November 1991 an agreement was signed for a feasibility study to be undertaken of running a water pipeline from the Karun river to Qatar. A high-profile exchange of diplomatic visits took place in the spring of 1992. Even after Qatar's signature of a defence agreement with the United States in June 1992, these visits and consultations would continue, with the Qatari Deputy Foreign Minister making the trip across the Persian Gulf to Tehran in October of that year.

Both Qatar and Iran therefore have apparently recognised the need to stabilize use of the transborder gasfield within the framework of technical cooperation.

Instruments of governance

1) Qatar-Iranian maritime boundary agreement, 20 September 1969

2) Declaration concerning the exclusive sovereign rights of the state of Qatar in the zones contiguous to the territorial sea, 2 June 1974

This reaffirmed rights to the natural resources of the seabed and subsoil of the Persian Gulf (as originally claimed during June 1949) as well as extending claims over a contiguous zone embracing the resources of the actual waters of the Gulf themselves. The outer limits of these zones were "defined according to bilateral agreements already concluded or to be concluded" (i.e., the 20 September 1969 maritime boundary agreement).

3) Issue by the Government of Qatar of a Decree extending territorial waters to 12 nautical miles and claiming a further adjacent area of 12 nautical miles, 16 April 1992.

4) Consultations since 1990 on the respective development plans of each state for the North Dome gasfield.

As alluded to above, there seems to have been no agreement to develop jointly the North Dome gasfield. Whether any procedural framework has been agreed bilaterally (informally or otherwise) for the development of both sides of the field is not known. All that can really be said is that the two states have consulted and continue to consult on this question.

Potential for dispute

* However unlikely the prospect currently sounds, a serious deterioration in political relations between Tehran and Doha could, of course, affect the development of the North Field structure.

* It seems highly improbable, even given a serious deterioration in political relations, that there is any basis upon which a territorial dispute could arise, for the maritime limit introduced by the 1969 agreement has never been questioned. Nevertheless no formal provisions exist for the management and exploitation of transborder resources between the two states.

* To an extent, Qatar has been able to use its relationship with Iran - which has needed to develop on a pragmatic footing so that the gasfield can be exploited to its maximum potential - as a lever to gain an advantage in the periodic difficulties it experiences with its GCC neighbours. Qatar holds some aces, to be sure, but this cuts both ways, naturally. Those fond of conspiracy theories saw Saudi displeasure at the development of Doha's ties with Tehran behind its

actions of attacking the Qatari border post at Khafus and in its barely-concealed siding with Bahrain in the Hawar/Dibal/Jarada dispute with Qatar from mid-1991 onwards.

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IRN/UAE

2.2.1.3. Abu Musa and the Tunbs (United Arab Emirates)

SUMMARY: THE CLASSIC CYCLICAL DISPUTE OVER THE SOVEREIGNTY OF ABU MUSA AND THE TUNBS WAS RESURRECTED IN 1992 BY IRAN'S ACTION OF DENYING ENTRY OF NON-UAE ARAB NATIONALS TO THE SOUTHERN SHARJAH-ADMINISTERED PART OF THE ISLAND: THE DISPUTE OVER ABU MUSA HAD PREVIOUSLY BEEN REPRESSED BY AN IRAN-SHARJAH MEMORANDUM OF UNDERSTANDING OF 1971 - THIS PROVIDED FOR THE DIVIDED ADMINISTRATION OF THE ISLAND BUT DID NOT ADDRESS THE QUESTION OF SOVEREIGNTY: THE UAE FEDERAL GOVERNMENT AND THE GCC ARE CURRENTLY PRESSING HARD FOR ARBITRATION OF BOTH THE ABU MUSA DISPUTE AND RIVAL CLAIMS TO THE IRANIAN-HELD TUNB ISLANDS: IRAN IS REJECTING THE CLAIMS OF THE UAE AND THEIR PROPOSALS FOR ARBITRATION, THOUGH IT HAS NOT RULED OUT NEGOTIATIONS: THE CONFLICT IS LIKELY TO REMAIN A WAR OF WORDS.

Contemporary status

This cyclical dispute was resurrected in 1992 when the Iranian military authorities on Abu Musa twice denied a party of non-United Arab Emirates (UAE) Arab teachers entry, in April and again during August, to that portion of the island administered by Sharjah. The response of the United Arab Emirates, in negotiations held to make good the damage during the following month in Abu Dhabi, was effectively to make its agreement to continue to abide by the November 1971 Iran/Sharjah Memorandum of Understanding [MOU] (the agreement by which administration of the island had been shared - see below) contingent upon Iran's willingness to submit the sovereignty of the Tunb islands to international arbitration. Iran has maintained something of a "Falklands" line as regards the Tunbs in the two-year period since, stressing that its sovereignty over the two (Greater and Lesser) islands, which it has occupied since 1971, is non-negotiable. As a consequence, the attitude of the United Arab Emirates towards the 1971 MOU over Abu Musa has been ambivalent.

The Federal Foreign Ministry in Abu Dhabi, the Gulf Cooperation Council (especially in the period since it has been headed by Riyadh al-Qasimi) and, most latterly, King Fahd of Saudi Arabia have all called for the return of Abu Musa, Greater and Lesser Tunb to the control of the Qasimi shaikhdoms of the UAE - prior to the Iranian move on the islands in 1971 on Britain's vacation of Gulf waters as protecting power, Abu Musa was governed by Sharjah and the Tunbs by Ras al-Khaimah. The UAE, the GCC and Saudi Arabia have also pushed the proposal that the sovereignty of not just the Tunbs but Abu Musa also should be referred to arbitration or to the World Court for an advisory opinion. Never have they done so more strongly than in the summer of 1994. As this review is compiled, reports are coming through that the GCC has unilaterally referred (or is just about to refer) the Abu Musa/Tunbs dispute to the International Court of Justice for an opinion - this is of no great significance

from a legal perspective since it takes two to tango, that is Iran's blessing for such a move is also required. It is, doubtless, however, an important political step which may well throw Iran onto the defensive. However, while all of the rhetoric would suggest that the UAE might not be that interested in keeping the 1971 Iran/Sharjah MOU alive, at a local level the 23-year old arrangement apparently continues to hold good. The ferry runs as per normal from Sharjah to the island and there is plenty of evidence that Iran/Sharjah relations over the island are much less fraught than two years previously.

Since the dispute over the islands' sovereignty is evidently still alive, a few words of historical background are necessary - about both the origins of the dispute and the nature of the 1971 MOU over Abu Musa. In 1864, the Qawasim of the southern Persian Gulf littoral (unified politically at this point)¹ first recorded a claim to ownership of Abu Musa and Greater Tunb. The Qajar government in Tehran did not claim Greater Tunb until 1887 and did not intimate that it might possibly also claim Abu Musa until 1888 - it would be a full sixteen years later before its claim to the sovereignty of Abu Musa was entered formally. Previously, successive Persian governments had merely claimed all of the waters and islands of the Gulf as Persian, without going into any details. Crucially, Britain advised the Qawasim to hoist their flag upon both islands in 1903. No sooner had the Qasimi shaikhs done so, than the Belgian-run Persian customs authorities removed them and hoisted the Shah's own colours on the flagstaffs. Britain intervened at this point to force the Persian government to vacate the islands and thereafter physically defended Sharjah and Ras al-Khaimah's claims to and administration of Abu Musa and the Tunbs. However, Persia/Iran's claims to the islands remained in constant force for the period up until 1971. The dispute caused problems for Britain, especially during the late 1920s/early 1930s, as it tried to negotiate a settlement of all outstanding disputes with the Tehran government during the abortive Anglo-Persian General Treaty negotiations. It was at this time that a fairly obvious trade-off was most frequently if informally mooted in consultations between Britain and Iran - the Tunbs, which lay closer to Iran than the southern Gulf coast, would be bought or leased by the Tehran government (the Ruler of Ras al-Khaimah did not always appear to Britain to be very interested in maintaining his control over these islands), while Abu Musa, which lay closer to the southern than the northern littoral, would be recognised by Iran as belonging to Sharjah. The fix never materialised, neither then nor twenty years later, when Britain, Iran and the oil companies were determined to divide the seabed of the Persian Gulf for the exploitation of offshore oil deposits.

From 1968, when Britain announced its intention to leave the Persian Gulf as protecting power, through most of 1971, Iran made it clear that it would "recover" Abu Musa and the Tunbs and, in its own view, restore them to their rightful owner. Certainly the Ruler of Ras al-Khaimah was given no choice to accede in the Iranian occupation of the Tunbs - had he consented to their move, rather than resisted it, he might have received some sort of compensation from

¹ Ras al-Khaimah would separate from Sharjah at the end of the 1860s and remain so for the rest of the century. It would reunite for two decades until 1920, after which point the split would become permanent.

Tehran, but not the reportedly huge amount of money he continually demanded, judged even by Britain itself to be ridiculous. While the Tunbs were not capable of sustaining a permanent human population, Abu Musa was home to a permanent Arab Sharqawi village. Perhaps it was because of this that the Shah ultimately consented to strike up an arrangement for the administrative division of the island between Iran and Sharjah - he had in any case apparently been impressed by the strength of Sharjah's historical claim to Abu Musa, after the presentation of a legal report from the Ruler of Sharjah, which had been produced by Coward Chance, an English law firm.

The beauty of the essentially pragmatic 29 November 1971 Memorandum of Understanding was the way in which it accommodated the claims of both Sharjah and Iran to full sovereignty over Abu Musa. The issue of sovereignty was effectively put to sleep in the MOU. Its first clause read as follows: "Neither Iran nor Sharjah will give up its claim to Abu Musa nor recognize the other's claim". By this agreement Iranian forces positioned themselves in key strategic areas (basically the range of hills in the north of the island) defined on a map attached to the text of the MOU. Within this designated area Iran possessed full jurisdiction, but outside it fell to Sharjah as before. Iran and Sharjah each recognized a territorial sea for the island with a breadth of 12 nautical miles in which nationals of both parties possessed equal fishing rights. The Buttes Oil Company would continue to exploit hydrocarbon reserves under the conditions specified in its concession agreement with the Ruler of Sharjah (for so long as these were acceptable to Iran), though revenue would now be shared on an equal basis. Lastly, Iran was to give Sharjah £1.5 million annually in aid until such time as its oil revenue reached £3 million a year - this would be a period of about half a decade.

The Ruler of Sharjah had arrived reluctantly, if voluntarily at the accommodation with Iran. Britain would later profess itself satisfied with the 1971 MOU when Iran's move on the islands was brought up before the UN Security Council during December of that year. On the face of it, and given the previous impasse in the dispute, an arrangement which allowed for the flying of each party's flag on Abu Musa seemed a fairly sustainable compromise. The 1971 MOU withstood several serious challenges in the following two decades. On announcing his decision to prosecute war against Iran during September 1980, Saddam Husain declared the restoration of Abu Musa and the Tunbs to the Arab homeland as a priority. During 1987 the regime set up by the MOU for Abu Musa was seriously infringed with an Iranian move into the southern Sharjah-controlled part of the island at the time of a coup-attempt in Sharjah. By the time that Iran realised that the coup had failed, the Iranian military had already lowered the Sharjah flag. They then hurriedly rehoisted it and returned to their allotted positions. Iran's infringements of the MOU and Iranian patrols into the south of the island had become an increasingly regular feature since 1983, in point of fact. At various intervals during the 1980-1988 Iran-Iraq War, Iran had expressed misgivings with the security situation on Abu Musa, claiming that its own encroachments from 1983 onwards were a response to the increasing visits by non-Sharjah nationals to the island. Iran's seizure and arrest of a Dutch sailor, "armed" with a flaregun, during the third quarter of 1991 led to the intensification of protests that too many unknown third-party

nationals were going back and forth between Sharjah and Abu Musa. In January 1992 Iran suggested that it should issue security passes to non-nationals visiting the island from Sharjah. During the very next month Iranian State President Ali Akbar Hashemi Rafsanjani visited Abu Musa and other Lower Gulf islands for the first time, perhaps suggesting a change of Iranian policy towards territorial issues in the Persian Gulf.

Instruments of governance

1) The Sharjah-Iran Memorandum of Understanding on Abu Musa, 29 November 1971

See comments above and below.

Potential for dispute

* It is difficult to envisage an arrangement for Abu Musa that improves on the 1971 MOU's pragmatic accommodation of rival Iranian and Sharqawi claims to full sovereignty over the feature. Yet the question of sovereignty was not broached in the MOU and therefore the arrangement it introduced cannot be regarded as a final territorial settlement. This lack of finality has meant that both parties to the dispute can maintain legitimate if wholly unrealistic stances in 1994, stances which do not augur well for a final settlement of the sovereignty issue. The MOU's treatment (or non-treatment) of the sovereignty issue means that the UAE, the GCC and even the Saudis can now claim that Sharjah owns the island by right. Equally, senior Iranian legal officials can claim that there was no mention of sovereignty in the MOU because "everyone knew it was vested in Iran".

* It is similarly difficult to envisage Iran ever relaxing its present hold over the Tunbs

* The dispute is likely to remain a war of words. Since the annual GCC summit at Abu Dhabi in December 1992, the rhetoric has had something of a familiar and recurrent tone. Every six months or so, the GCC will issue a statement supporting all peaceful measures that the UAE might take to recover its full sovereignty over Abu Musa and the Tunbs. Increasingly, as we have seen, it has also been pushing for arbitration. Typically, Iran will reject these claims outright, occasionally matching rhetoric for rhetoric. Rafsanjani's comment that the Gulf Arabs would have to "cross a sea of blood...to reach these islands", made initially following the GCC's uncompromising statement on Abu Musa in late December 1992, was repeated in the early summer of 1994 as King Fahd appeared to take a greater personal interest in the dispute. Iran has generally favoured bilateral negotiations rather than third party intervention as the means of treating any dispute over the islands.

* Frequently sensationalised and inaccurate media coverage of the resuscitated Abu Musa dispute during 1992 in the Arab and Western broadsheets - many readers were given the impression that Iran had invaded the island and that only

Sharjah had been in place on it before this time - probably only went to increase Iran's sense of isolation in the post-Gulf War Persian Gulf. Iran had been offered no prospective future role in collective security arrangements contemplated by the Arab Gulf states, while several of the latter had already signed bilateral defence agreements with the United States, Britain and France. Perhaps the Iranian actions on Abu Musa, which the Tehran government would later openly admit to have been mistaken and attribute to a local official who would later be sacked, were ones of defiance borne out of this very isolation - "this land is ours and we are still here". If the Arab media overexaggerated the 1992 episodes, commentary from Tehran tended to take a "crisis, what crisis" line, with one Iranian Foreign Ministry official commenting: "the volume of press coverage is bigger than the island itself".

* Territorial disputes often become the physical manifestation of far wider inter-state rivalries. They are easily identifiable and, for as long as there remains no prospect of force being used to make good claims - as would seem to be the case in this instance, they can act as convenient safety valves. The sometimes strong war of words over Abu Musa and the Tunbs is an important and, to date, a relatively safe channel for the articulation of Irano-Arab rivalries.

* While, to an extent, the Federal Foreign Ministry in Abu Dhabi and the GCC have used the islands issue as a political football, it is the shaikhdom of Sharjah which has the material connections with Abu Musa. The Mubarak oilfield lying in waters off the south-east of the island provides an important source of revenue, while the subjects of Sharjah constitute its only permanent civilian population - about 600-strong. Sharjah has depended on the existence of good relations with Tehran to safeguard its interests on the islands - the 1971 MOU has generally provided a reasonable basis for cooperation in this respect. The resurrection of the dispute in 1992 also highlighted important differences between Sharjah and the federal UAE government. The former was known to be displeased with the way in which the Federal Foreign Ministry brought the Tunbs issue back onto the agenda by linking their status with Abu Musa in the negotiations of September 1992, and with the way in which it has maintained an ambivalent stance towards the MOU in the period since.

* At a local level, the use made by the Sharjah authorities of moorings on the Iranian side of the island, rather than its own, which were damaged in the 1980s and which were inadequate in any case, has greatly increased the scope of local Iranian officials to intrigue. The "security issue", as perceived by Iran, may still present problems at a local level, for Iran has, on more than one occasion during the last year, hinted that anyone who wishes to visit southern (Sharqawi) side of the island from Sharjah is welcome to do so, so long as he or she first applies for the appropriate (presumably Iranian) visa.

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2.2.2. Iraq

2.2.2.1. Kuwait

SUMMARY: WITH THE UNANIMOUS PASSAGE OF UNITED NATIONS RESOLUTION 833 OF 27 MAY 1993, INTERNATIONAL RECOGNITION WAS GIVEN TO THE BOUNDARY NOMINATED BY THE UNITED NATIONS IRAQ-KUWAIT BOUNDARY DEMARCATION COMMISSION [UNIKBDC]: THERE REMAIN PROBLEMS WITH THE WATER COMPONENT OF THE BOUNDARY AND QUESTIONS AS TO WHETHER UNIKBDC POSSESSED THE MANDATE TO ANNOUNCE A DELIMITATION FOR THIS STRETCH OF THE BORDER: IRAQ ACCEPTED WITH RELUCTANCE THE UN'S PROPOSALS FOR SETTLING THE BOUNDARY QUESTION IN THE SPRING OF 1991 IN ADVANCE OF UNIKBDC'S OPERATIONS. IT HAS SINCE ALL BUT DISMISSED UNIKBDC'S VERDICT BUT HAS DONE THE BARE MINIMUM TO COMPLY WITH THE UN'S DIRECTIVES ON THE BORDER, i.e. IT HAS MOVED ITS BORDER POSTS AND STATE FUNCTIONS NORTH OF THE NEWLY-DEMARCATED BORDER. IT IS VITAL FOR THE FUTURE TERRITORIAL STABILITY OF THE NORTHERN GULF THAT IRAQ ULTIMATELY LOSES ITS NEGATIVE CONSCIOUSNESS SURROUNDING ACCESS AND NO LONGER FEELS "SQUEEZED OUT" OF THE GULF.

Contemporary status

It is the view of many, though not all international lawyers that territorial disputes between Iraq and Kuwait are now a thing of the past following the United Nations' settlement of the historically-troublesome border question during the 1991-1993 period. This would not, however, necessarily be the view of the historian, political scientist or political geographer. They might note that whatever the apparent successes of the United Nations, certain fundamentally negative constants in Iraq's view of itself in relation to the Persian Gulf could well have survived the climactic events of the last few years potentially to threaten regional stability in the future.

The United Nations Iraq-Kuwait Boundary Demarcation Commission [UNIKBDC], instituted by the then United Nations Secretary-General Perez de Cuellar in the late spring of 1991 to finally settle and demarcate the boundary on the basis of a vague, pre-existing colonial delimitation, announced its decision on the course of the land boundary in April 1992. Its line for the land boundary was demarcated in November 1992. Five months later UNIKBDC announced a median line boundary delimitation for the Khor Abdullah and in May 1993, the UN demarcation commission announced a detailed set of coordinates to comprise the entire length of the Iraq-Kuwait boundary, on presenting its final report to the Security Council. UNIKBDC's findings were unanimously endorsed by the UN Security Council as UN Resolution 833 was passed on 27 May 1993.

The basis of UNIKBDC's award on the boundary, referred to as its "delimitation formula", was a vague description of the boundary, which dated back - virtually unchanged - to the summer of 1913, when Britain and the Ottoman Empire first decided upon territorial limits for Kuwait. According to the 1913 Anglo-Ottoman settlement of outstanding Persian Gulf questions, the outer limit (Green line) of Kuwaiti authority, passed "along the Batin" (a dry wadi to the north-west), passed "just south" of Safwan and hit the Khor Zubair at a point "just south" of Umm Qasr. The boundary between Iraq and Kuwait was defined first in 1923 and later, more formally, in 1932, using this same, vague terminology. No mention was made of the water boundary between the two states along the Khor Abdullah, although the two islands lying to the south of this waterway, Warba and Bubiyan, were clearly specified as belonging to Kuwait. Significantly, in an agreement of 1963, Iraq signed an agreement which recognised Kuwait as an independent state for the first time - the vague boundary delimitation of 1932 was also accepted unequivocally by the Baghdad government. The 1963 agreement was the instrument referred to in United Nations Resolution 687 of 1 April 1991 to demonstrate that a pre-existing delimitation was in place which was capable of being demarcated, that is physically marked out on the ground.

Though Iraq and Kuwait had been able to agree in 1963 that there existed a boundary delimitation between them, its very vagueness meant that Iraq was not bound to any one interpretation. Crucially, the two sides could never agree upon a basis for demarcating the boundary. Britain had, by 1951, basically decided upon the line it had meant to introduce by the vague boundary delimitation of 1932. Its interpretation of 1951, having been approved by Kuwait, was offered to the Baghdad government as a basis for demarcation and would remain the most detailed interpretation of the vaguely-worded colonial delimitation until UNIKBDC announced its own verdict in April 1992. Iraq, however would never feel able to consent to demarcation - long a Kuwaiti objective, unless Kuwait would first ease Iraq's limited access to Persian Gulf waters by ceding or leasing Warba and/or Bubiyan island. Conversely, Kuwait would not even consider granting Iraq some sort of rights over Warba (concessions over Bubiyan were never contemplated) unless Iraq first agreed to demarcate the land boundary. This was the basic, entrenched nature of the dispute which had persisted for well over half a century before the Iraqi invasion of August 1990. Iraq's constant demands that Kuwait make concessions over the islands issue were not, as such, a territorial dispute. The Baghdad government recognised the islands as Kuwaiti, but would just much rather they belonged to Iraq. The section of this review dealing with the Shatt al-Arab dispute has already indicated the close interconnection between Iraq's boundaries with Iran and Kuwait at the head of the Persian Gulf. For the past half-century the relationship has run something like this: a crisis on the Shatt al-Arab will precipitate Iraqi demands that Kuwait make concessions to ease access to the sea for the Baghdad Government.

Iraq reluctantly accepted UN Resolution 687 of April 1991 and the UN Secretary-General's proposals for the final settlement and demarcation of the Iraq-Kuwait boundary. Having recognised the authority of UNIKBDC to make such decisions in advance of their operations, it really does not need to give its

blessing to the final coordinates announced for the boundary by the United Nations in May 1993. Iraq, like Kuwait, was represented on UNIKBDC, but withdrew its delegate on the demarcation commission's initial announcement of the land boundary in the spring of 1992 - it took no further part in its deliberations thereafter and virtually dismissed the conclusions which UNIKBDC reached on the course of the boundary. Kuwait, as well as the United States and Britain, would obviously like Iraq to give an unequivocal thumbs up to the coordinates announced in the late spring of last year. However, the United Nations seems to have taken the view that Iraq has done the bare minimum to comply with its directives on the boundary issue - it has moved all of its border posts and state functions to points north of the newly-demarcated boundary.¹

Iraq may yet be proven to have good grounds for protesting against the March 1993 decision on the course of the boundary along the Khor Abdullah, the access channel to Umm Qasr port which is flanked on the south by Bubiyan island and on the north by the Fao peninsula. For, as already established, UNIKBDC's delimitation formula contained no mention of any water boundaries. UNIKBDC's first chairman, an Indonesian lawyer, resigned during November 1992, in part because he believed that the UN demarcation commission did not possess sufficient authority to nominate a boundary delimitation for the Khor Abdullah. It is true to say that UNIKBDC's mandate was to demarcate and not to delimit the Iraq-Kuwait boundary. Before it got around to demarcating the border in November 1992, UNIKBDC had to spend much of its energies refining the vague colonial land boundary delimitation. When it came to the Khor Abdullah, however, it is hard not to arrive at the conclusion that there was no delimitation which could be demarcated.² It is the view of many commentators, therefore, that the United Nations delimited rather than demarcated the Kuwait-Iraq water boundaries. This is no idle charge for, strictly-speaking, it had no rights to do so.

Instruments of governance

1) The pre-1990 de jure boundary

- a) The Anglo-Ottoman settlement of outstanding Persian Gulf questions: articles relating to Kuwait, 29 July 1913
- b) Exchange of notes between Sir Percy Cox and John More, April 1923

¹ It was only when the mandate of the United Nations Iraq-Kuwait Observer Mission [UNIKOM] was expanded to resist forcefully future violations of the newly demarcated boundary early in 1993, that Iraq finally withdrew its positions fully to the north of the newly-emplaced border pillars. UNIKOM, instituted in the spring of 1991 to patrol a demilitarised zone along the border, had possessed only observatory powers before this time.

² The United Nations insisted during the 1991-1993 period that demarcation was not confined to marking physically on the ground, its usual meaning. Demarcation, they argued, could either be in this sense, i.e., physical demarcation, or by the nomination of coordinates. Therefore, they argued - a little tenuously, the Khor Abdullah had been demarcated by the nomination of coordinates.

- c] Exchange of notes between Nuri al-Said, Prime Minister of Iraq and the Ruler of Kuwait, July-August 1932
- d] Britain's demarcation proposals of October 1940 and December 1951
- e] Agreed minutes regarding the restoration of friendly relations, recognition and related matters, 4 October 1963

2) *United Nations Resolution 687, 3 April 1991*

3) *UN Secretary-General's mandate for UNIKBDC, April-May 1991*

4) *United Nations Resolution 833, 27 May 1993*

Significance: UNIKBDC's final report with its nomination of coordinates to constitute the Iraq-Kuwait boundary is accepted by the international community when it is adopted unanimously by the Security Council

Potential for dispute

* UNIKBDC's award was criticised heavily in the west and elsewhere for having reallocated Iraqi territory to Kuwait. This seems on the whole to have been a little unreasonable. It is true that Iraq has had, as a result of the UNIKBDC decision, to abandon the southern, modern half of Umm Qasr port and has also had to pass over a number of wells at the southern tip of the super-giant Rumaila oil field to Kuwait. The reason this has happened is that for the thirty-year period since the "first" KUwait crisis of 1961, Iraq gnawed away at Kuwait's northern borders and extended its effective administration to points well south of the line of the notional *de jure* boundary - most critically at Umm Qasr and Rumaila. In 1990, therefore, there was a *de facto* boundary that lay a few kilometres south of the notional line of the *de jure* boundary - the latter was best represented by Britain's 1951 interpretation - this was the line shown on most maps as constituting the boundary. Interestingly it was to the *de facto* and not the *de jure* boundary that Iraqi troops were required to withdraw to in the first UN resolution passed following Iraq's invasion of Kuwait - UN Resolution 660 of 2 August 1990. Ultimately, however, UN Resolution 687 and the Secretary-General's frame of reference for demarcating the boundary (passed and formulated in the spring of 1991) called upon UNIKBDC to establish the *de jure* boundary. It was simply not given the flexibility to make any allowances for the *de facto* boundary in areas such as Umm Qasr and Rumaila. UNIKBDC's execution of its mandate resulted in all of Iraq's development south of the *de jure* boundary during the previous three decades - which Kuwait had generally been powerless to resist but was loathe to publicise for fear of its embarrassing political effect domestically - being unceremoniously cancelled. Many commentators have argued that UNIKBDC should have come up with a line which was politically defensible and sustainable and which took account of the southernmost line of Iraqi administration in the pre-August 1990 period. Yet if there was a fault it lay in UN Resolution 687 and UNIKBDC's mandate, not the actual decisions they reached.

* As mentioned in the section of this review dealing with the Shatt al-Arab, it is UNIKBDC's decision on the course of the boundary along the Khor Abdullah which is potentially problematic. As a result of UNIKBDC's March 1993 nomination of a median line boundary for the waterway, the navigation channels which Iraq dredged and deepened up until the late autumn of 1990 (a process which did not finish until after its invasion of Kuwait) have been placed within the territorial waters of Kuwait. While Iraq is free, through the rule of innocent passage, to continue to make use of these channels, it has no right to maintain them. Cooperation will be required in future years between Kuwait and Iraq in the matter of the conservancy of the Khor Abdullah.

* Kuwait has been surprised that virtually all Iraqi opposition groupings, those who Washington in particular would rather see ruling in Baghdad, have rejected the UNIKBDC ruling on the boundary. It clearly underestimates the domestic difficulties that will be faced by any future Baghdad government if it gives its unequivocal blessing to the recently-demarcated boundary. The boundary question has long been a national issue for Iraqis. Iraqi agitation for greater access to the Persian Gulf predated the accession of Saddam Husain to power by at least three and a half decades. It may well survive his rule.

* Territorial stability will probably only come to this part of the world when Iraq reconciles itself to its disadvantageous position at the Head of the Persian Gulf, when it perceives itself as no longer "squeezed out". For the long-term stability of the northern Gulf it is perhaps more important for Iraq to lose its negative consciousness surrounding access than for the Baghdad government to have demarcated boundaries at the Head of the Gulf. Whether or not access is a genuine problem is less important than the fact that successive Baghdad governments and, to an extent, Iraqi public opinion also, has always believed it to be so. Whatever line the UN had nominated to settle the border, *de jure*, *de facto* or otherwise, Iraq would still, almost certainly, perceive itself as a "big garage with a very small door".

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2.2.2.2. Saudi Arabia

SUMMARY: NEITHER STATE WOULD SEEM DISSATISFIED WITH THE DELIMITATION INTRODUCED BY THE PRAGMATIC BORDER AGREEMENT OF DECEMBER 1981: HOWEVER, WITH ALLIED FORCES LINED UP TO MOVE ON IRAQI POSITIONS IN KUWAIT IN EARLY 1991, IRAQ TOOK THE STEP OF CANCELLING ALL CHARTERS AND AGREEMENTS ENTERED INTO WITH SAUDI ARABIA SINCE 1968: SAUDI ARABIA THEN TOOK THE STEP OF REGISTERING WITH THE UNITED NATIONS ALL BORDER AGREEMENTS CONCLUDED PREVIOUSLY (WITH THE COORDINATES THEY INTRODUCED) WITH THE BAGHDAD GOVERNMENT, NOT A STEP IT HAS GENERALLY FAVOURED WITH RESPECT TO ITS OTHER BOUNDARIES ON LAND OR SEA.

Contemporary status

? In a nominal sense, the contemporary status of the Iraq-Saudi boundary is less than clear. Operationally, it remains that introduced by eminently sensible bilateral agreements of 1975 and 1981. Yet in mid-January 1991, following the unleashing of hostilities from Saudi soil by the allied coalition against Iraqi positions in Kuwait, the Baghdad government took the step of cancelling all charters and agreements signed with Saudi Arabia since 1968. Most specifically, Iraq claimed that Iraq had violated the 27 March 1989 "Agreement on non-interference in internal affairs and the non-use of force between the Republic of Iraq and the Kingdom of Saudi Arabia". It was no doubt in response to the Iraqi action that Saudi Arabia registered the texts of all boundary agreements (with the coordinates they introduced) concluded previously with the Baghdad government with the United Nations in June 1991. For the Kingdom had shown no great inclination in the past to register its border agreements with this institution.

The December 1922 Uqair Protocol had originally nominated a boundary between the new state of Iraq and Ibn Saud's Najd. The territorial limit introduced at Uqair had generally utilised straight-line segments connecting hill tops, dry wadis and other natural features. At the eastern end of the delimitation a rhomboid-shaped neutral zone had been instituted, largely because Sir Percy Cox, the British High commissioner of Iraq presiding over the Uqair conference, considered that tribal affiliations in this area were particularly unclear. In this demilitarised area tribes from both states enjoyed equal rights to water and pasture.

The 1922 delimitation had also contained some particularly jagged straight-line sections midway along its course. After years of speculation Iraq and Saudi Arabia agreed, during July 1975, to partition the neutral zone equally among themselves: the fact that no oil had been found in the Neutral Zone made this decision much easier to arrive at. The agreed division of 1975 was formalised by a boundary agreement of December 1981, which also had the effect of smoothening and straightening the rest of the land boundary. Ratifications of

the 26 December 1981 Saudi-Iraqi border treaty were exchanged in February 1982, though it would take a full nine years before its text was registered at the United Nations and, even then, this was a unilateral action by the Saudi government.

Instruments of governance

- 1) *Saudi-Iraqi treaty, 2 July 1975*
- 2) *Saudi-Iraqi border treaty, 26 December 1981*
- 3) *"Agreement on non-interference in internal affairs and the non-use of force between the Republic of Iraq and the Kingdom of Saudi Arabia", 27 March 1989*
- 4) *Iraq cancels "all charters and agreements with Saudi Arabia", 21 January 1991*
- 5) *Saudi Arabia registers with the United Nations all previous bilateral boundary agreements concluded with Iraq, June 1991*

Potential for dispute

* Though Iraq would still probably argue that its January 1991 cancellation of all charters and agreements entered into with Saudi Arabia is still in effect, there can be no doubt that the modified border introduced by the agreement of late 1981 remains operative.

* Neither state has a history of territorial claims on the other - the border adjustment of 1981 seems to have been motivated by wholly pragmatic reasons.

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2.2.3. Saudi Arabia

2.2.3.1. Kuwait

Saudi/Kuwait
SUMMARY: A LOW-KEY DISPUTE OVER THE STATUS OF THESE ISLANDS, WHICH RESULTED ESSENTIALLY FROM THE CARELESSNESS OF THE COLONIAL POWER, BRITAIN, HAS BEEN IN TRAIN FOR DECADES NOW: IT IS ONE DISPUTE WHICH HAS NOT BEEN REFERRED FOR TREATMENT BY THE GCC: GIVEN THEIR GOOD RECORD OF COOPERATION OVER OTHER TERRITORIAL QUESTIONS WHERE MORE WAS AT STAKE FROM AN OIL POINT OF VIEW, ITS CONFLICT POTENTIAL MUST BE REGARDED AS EXTREMELY LIMITED, IF NOT NON-EXISTENT

Contemporary status

One of the choicest ironies of the allied campaign to oust Iraqi forces from Kuwait was that the islands of Umm al-Maradim and Qaru, the first pieces of Kuwaiti territory to be liberated from Iraqi occupation in February 1991, are claimed in partial sovereignty by Saudi Arabia.

By the time Britain departed the Persian Gulf as protecting power in 1971, Kuwait and Saudi Arabia had divided equally between themselves (in agreements of 1965 and 1969) their oil-rich Neutral Zone, also introduced by Sir Percy Cox in his famous Uqair award of 1922.¹ Problems would remain, however, over the status of a group of small islands lying off the coast of the former Neutral Zone.

A word or two about the historical background to this dispute. In the fifth article of the Anglo-Ottoman Convention of July 1913, the islands of Umm al Maradim and Qaru were stated to belong to the Kuwaiti ruler in full sovereignty, along with the other islands of Warba, Bubiyan, Mashjan, Failakah, Awhah and Kubr. Yet Qaru and Umm al-Maradim lay adjacent to the outer zone of Kuwaiti authority prescribed by the Anglo-Ottoman settlement, rather than, like the other islands, the inner, semi-circular area contained by the 1913 Red line. On the map annexed to the 1913 settlement Umm al Maradim and Qaru were therefore shown in a different colour from the other Kuwaiti islands. This was later to become important, for Saudi Arabia still claims that the islands should, at the very least, have been placed under the same conditions as the Kuwaiti-Najdi Neutral Zone, when Kuwait's southern borders were in effect foreshortened to the 1913 Red line by the 1922 Uqair Protocol. The Uqair Protocol made no mention of the status of Qaru and Umm al Maradim. Kuwait has in the past awarded oil concessions to cover the two islands and their territorial waters though these have never been operated fully, possibly out of sensitivity to the Saudi claim. Kuwait still claims full sovereignty over Qaru

¹ Though the Neutral Zone had been divided politically, with a new land boundary defined to bisect this area, a special regime still pertains in the area of the former shared political space for hydrocarbons development - this refers even today to the Divided Zone.,

and Umm al Maradim. The agreements of 1965 and 1969, by which the Neutral Zone was partitioned, also had made no attempt to address the dispute over the status of the islands.

Instruments of governance

- 1) *Anglo-Ottoman settlement of outstanding Gulf questions, 29 July 1913.*
- 2) *Uqair Protocol, December 1922.*
- 3) *Saudi-Kuwaiti agreements to partition the Neutral Zone and institute new land boundary, 1965 and 1969.*

Potential for dispute

* This is one dispute between GCC (Gulf Cooperation Council) member states which the Saudis have not sought to treat at ministerial level through GCC auspices.

* In the realm of things, this is not a terribly serious territorial dispute - much more had been at stake in the Neutral Zone and no unfathomable difficulties have been faced there. Ultimately, the dispute over Qaru and Umm al Maradim, which above all, was the product of colonial carelessness (on Britain's part), will probably be solved by a political agreement between Saudi Arabia and Kuwait.

CAT/sau

2.2.3.2. Qatar

SUMMARY: THE KHAFUS INCIDENT OF LATE SEPTEMBER 1992 INTRODUCED REAL STRAINS INTO THE POLITICAL RELATIONSHIP BETWEEN DOHA AND RIYADH: THE ROOTS OF THE BORDER INCIDENT SEEM TO HAVE BEEN MORE POLITICAL THAN TERRITORIAL: DESPITE AN AGREEMENT OF LATE DECEMBER 1992 TO DEMARCATATE THE BOUNDARY INTRODUCED BY THE BORDER TREATY OF 1965, THE TERRITORIAL LIMIT REMAINS TO BE MARKED OUT ON THE GROUND.

Contemporary status

In December 1992 President Mubarak of Egypt managed to get Saudi Arabia and Qatar to agree to repair the damage inflicted upon their political relationship by the Khafus border post incident of the early autumn of the same year. As well as mending political fences, the two sides committed themselves to demarcating the delimitation introduced by the 1965 boundary agreement. Following the Saudi-Qatari agreement of late December 1992, it was thought that the physical marking-out of this previously undemarcated boundary would take place within a year. To this author's knowledge it did not, and it would seem that the boundary remains undemarcated today.

For 27 years most observers had assumed that the border delimitation introduced by the 1965 Saudi-Qatar agreement was acceptable to central government in both Riyadh and Doha. Reportedly, the territorial limit established by the 1965 agreement approximated closely to long-standing Qatari claims which had previously been articulated through Britain, responsible for its foreign affairs in dealings with the Saudi government. Though the text of the 1965 agreement was not made public until the recent crisis over Khafus, it was known that the line agreed was basically that claimed on behalf of Qatar by Britain at the Anglo-Saudi Dammam Conference of 1952. Atlases and maps produced recently in both Qatar and Saudi Arabia show this same line, which has never been demarcated.

Despite Saudi Arabia's acceptance of the border introduced by their 1965 agreement in the years which have followed, difficulties began to surface in the early 1990s. Periodically throughout late 1991/early 1992 Saudi Arabia blocked an important transit route through the Khor al-Udaid at the south-eastern base of the Qatar peninsula to Qatari traffic. This action received most attention at the beginning of 1992, as Qatar and Iran were consulting on possible ways in which their huge, shared North Dome offshore gasfield (called the North Field in Qatar and the South Pars field in Iran) might be exploited. Commentators fond of conspiracy theories immediately concluded that Saudi Arabia was sending a clear message to Doha not to step out of line. This theory took on much more credibility with the Saudi attack on the Qatari police post of Khafus on the undemarcated border on 30 September 1992. An exchange of fire between the respective border patrols of the two states left two members of the Qatari armed forces and one Saudi dead. The incident was clearly the most serious internal challenge to the cohesion of the GCC since the armed clash on

the Dibal shoal (between Bahrain and Qatar - *see* 2.2.4.1.) some six years earlier in 1986.

The Saudi authorities initially suggested that the whole affair had essentially been a tribal feud, instigated by the action of al-Murra bedouin. They nevertheless launched a full investigation into the incident. The Qatari authorities viewed the matter much more seriously. They charged that the Saudi military had quite blatantly attacked the Khafus post, resulting not only in Qatari fatalities but considerable material damage. An emergency Qatar cabinet meeting of 1 October 1992 released the following statement:

...the incident took place without any justification and is considered a grave precedent in Qatari-Saudi relations. The cabinet has decided to sever the border agreement concluded between the two countries in 1965, and calls for the need to hold bilateral negotiations as soon as possible in order to agree on the final borders between the two countries.

The Qatari government explained a few days later that its act of severance had the effect of suspending the agreement rather than abrogating it permanently. Though one should not underestimate the serious nature of strains between Riyadh and Doha during the last quarter of 1992 - strains which, incidentally, would not disappear with the agreement signed during late December 1992, it was always a fair presumption that difficulties over the border would be transitory, since there was no real difficulty with the boundary line itself - other than the fact that it was not yet demarcated, though this had caused no problems for the last quarter-century. Tensions in late 1992 were clearly more political than anything else. It always seemed likely that the two sides, once they had begun to redress the immediate damage done by the Khafus incident, would take the fairly obvious step of demarcating the 1965 delimitation so as to ensure against any future dispute over its course. This is what happened late during December 1992 on the occasion of Egyptian President Hosni Mubarak's shuttle diplomacy between Riyadh and Doha. A joint statement by the Qatari, Saudi and Egyptian foreign ministers on 20 December 1992 announced the signature of an agreement to form a joint Qatari-Saudi committee which would "draw the final borders within a year". The text of the joint statement was soon published on 29 December 1992. Its most important provisions read as follows:

1) In implementation of the border agreement concluded between the Kingdom of Saudi Arabia and the State of Qatar on 11th Sha'ban, 1385 AH corresponding to 4 December 1965 AD, it was agreed to append a map between the two sides showing the final border line to which both states shall be committed

2) The formation of a joint Saudi-Qatari committee in accordance with Article 5 of the agreement to be entrusted with the task of implementing the 1385 AH/1965 AD, with all of its provisions and articles and the contents of the joint statement.

The Committee shall embark upon placing the border demarcations in accordance with the appended map.

Instruments of governance

- 1) *Saudi-Qatar boundary agreement, 4 December 1965*
- 2) *Saudi-Qatari-Egyptian joint statement, published on 29 December 1992*

Potential for dispute

- * The roots of the Khafus incident seem to have been political rather than territorial. There have been no serious territorial disputes between Qatar and Saudi Arabia in the period since the Second World War.
- * The fact that the boundary has apparently not yet been demarcated, nineteenth months on from the Egyptian-brokered understanding of December 1992, perhaps suggests that all is not as well as it could be between Riyadh and Doha.

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SAU/YEM

2.2.3.3. Yemen

SUMMARY: BILATERAL EFFORTS TO REACH A SETTLEMENT OF ARABIA'S LAST INDETERMINATE TERRITORIAL LIMIT, BEGUN OFFICIALLY WITH THE BEGINNING OF DIRECT NEGOTIATIONS IN JULY 1992, SEEM TO HAVE BEEN PUT ON ICE FOLLOWING THE DOMESTIC POLITICAL CHAOS IN YEMEN. THEY HAD NOT, IN ANY CASE, GOT BEYOND THE PROCEDURAL STAGE. PROBLEMS REMAIN WITH THE STATUS OF THE DELIMITATION FOR THE RED SEA-NAJRAN STRETCH OF THE BORDER INTRODUCED BY THE 1934 TREATY OF TAIF AND ALSO THE STANDING OF THAT AGREEMENT. TERRITORIAL CLAIMS PUT FORWARD ALONG THE INDETERMINATE BORDER ZONE FURTHER EAST OVERLAP CONSIDERABLY AND IF A BOUNDARY IS TO BE NEGOTIATED HERE, THE NEED FOR COMPROMISE IS OBVIOUS. YEMEN'S POLITICAL FUTURE AS A UNITARY STATE OR OTHERWISE WILL DICTATE SAUDI POLICY TOWARDS THE BORDER QUESTION. BEFORE THE END OF 1993 THE PROBLEMS OF UNITY WITHIN YEMEN WERE EVIDENT IN ITS TREATMENT OF THE BORDER ISSUE WITH SAUDI ARABIA.

Contemporary status

Given recent events in the Yemen culminating in San'a's capture during July 1994 of Aden following the two-month long civil war, the question of finalising the peninsula's last indeterminate territorial limit is probably not quite the immediate priority it had been for central authority in Saudi Arabia and Yemen. It should be stated at the outset that not all of the Saudi-Yemen border remains to be established. In 1934 the Imam of Yemen and Ibn Saud concluded a treaty (usually referred to as the Taif treaty) which introduced a boundary delimitation for the stretch of territory from the Red Sea to Najran - this was demarcated by commissions from both states in the following couple of years. Problems remain with the status of the border introduced by the Taif treaty and the nature of the agreement itself.

From July 1992 to the end of 1993, when internal rifts began to dominate Yemeni politics, talks had been in motion between the San'a and Riyadh governments to agree upon an approach by which a boundary might be decided for the long, inland stretch of territory between Najran and the westernmost point on the Saudi-Oman border, which had itself been defined by treaty only as recently as March 1990. Despite the long-standing nature of Saudi and Yemeni (including claims made by the British for the Aden Protectorate up until 1967) territorial claims in southern Arabia, the 1992-1993 negotiations represented the first serious efforts by the two states to arrive at a boundary delimitation. No-one underestimates the difficulties that will face Saudi Arabia and Yemen if and when they return to the negotiating table to recommence talks on borders. Final settlement will only come about when the two sides agree to compromise their long-established and frequently overlapping territorial claims in the region (see accompanying maps).

First, a few words of historical background concerning the boundary introduced by the 1934 Taif line. That the modern state territories of Saudi Arabia and the Yemen march together on the eastern shores of the Red Sea is only as a result of a series of agreements reached between Ibn Saud and the Idrisi of Asir during the 1920s. An agreement of 1920 had seen the northeastern half of Asir, formerly an Ottoman administrative unit linked indirectly to the *wilayat* of Yemen, incorporated into the expanded Najdi state, later to become the Saudi province of Asir Surat. Saudi-Idrisi agreements of 1926 and 1930 saw Ibn Saud extend protectorate facilities over and then formally annex the remaining portions of the Idrisi's territory (to become Tihamat Asir), including the Farasan archipelago. In the early 1920s the Idrisi had administered the coastal Tihamah plain as far south as Hudaidah, which had previously been regarded as an integral part of Yemen. The Zaidi Imam captured the Tihamah plain during the mid-1920s and advanced as far north as Saudi forces would permit. By 1927 a territorial equilibrium of sorts had been reached. According to the Saudis at least, it was this *de facto* line that was formally recognised as the Saudi-Yemen boundary by the ratified Taif treaty of May 1934, but not before Saudi forces had overrun the Tihamah, again as far south as Hudaidah, during the brief Saudi-Zaidi war fought out earlier that year. For the next two years, boundary commissions from each side co-operated in the final delimitation and demarcation of the Taif line. The Taif line was demarcated by stone cairns at intervals of approximately 1 km. Provisions in the 1937 annex to the treaty to convert them into permanent pillars, long a Saudi objective, have never been acted upon.

In signing the Taif treaty Yemen ostensibly dropped its claims to the "Greater Yemen" of the seventeenth century, which embraced most of southwest Arabia from the mountains of northern Asir on the Red Sea in the northwest to the Dhofar coast of the Arabian Sea to the southeast. The recapture of these "lost" territories has long remained a goal of Yemeni national settlement, however. The "Treaty of Islamic Friendship and Brotherhood", to use the Taif treaty's correct name, was far more than a border treaty *per se*. Interestingly, articles of the treaty called for renewal every 20 years. During the early-1950s this was done, but two decades later renewal of at least those articles dealing with territorial definition was seemingly obviated by the issue on 17 March 1973 of a joint communique by the Saudi Foreign Ministry and Abdullah al-Hajri, Prime Minister of the Yemen Arab Republic, during the latter's tour of Saudi Arabia and the Gulf states. The boundary established by the 1934 treaty was described in this rather obscure communique as "permanent and final". To link al-Hajri's assassination during July 1977 in London to this commitment, uncharitably characterised by many Yemenis in the intervening period as the "surrender" of the "lost provinces" of Asir and Najran, is to underplay the complexities of Yemeni politics. Yet the enduring sensitivity of the issue is evidenced by the fact that no Yemeni leader has ever felt able to ratify the March 1973 communique. In other words, the Taif treaty remains in effect but no Yemeni leader has been willing to agree publicly that the borders are final and permanent. Yemeni unification on 22 May 1990 resulted only in more frequent calls from the media and public for the newly-constituted republic to resurrect claims to Asir and Najran. During mid-April 1991 Saudi Arabia denied reports that its troops had occupied the Yemeni border post at Buq'ah lying just to the

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1990

east of the boundary delimited by the 1934 treaty. One of the latest comments made by the Yemeni government on the Taif line came in July 1992 from the then Yemeni Foreign Minister, Abdul Karim al-Iryani. He commented as follows:

...the Taif agreement is a fact. It was signed and ratified by King 'Abd al-'Aziz and Imam Yahya. A border demarcation committee was established and delineated the border from north of Midi to the Thar mountains. A demarcation committee prepared a memorandum which was handed to King 'Abd al-'Aziz and Imam Yahya and they both signed it.

As for the borderlands further east, no boundary line is in dispute because no boundary line exists. The indeterminate border between Saudi Arabia and what used to be the People's Democratic Republic of Yemen before Yemeni unification on 22 May 1990 remains the only international limit in Arabia which is unregulated by any kind of international agreement or bilateral understanding.¹ It would seem on the face of it that both the Riyadh and San'a governments currently hold radically different notions of where their respective limits to territory lie (see accompanying maps²). When Britain represented its protege states in the southern and south-eastern peninsula (Aden Protectorate, Qatar, the Trucial States and the Sultanate of Muscat and Oman) during the ill-fated Anglo-Saudi frontier negotiations, which ran intermittently from 1934 through to their breakdown in 1955, nowhere did the territorial claims of the two sides diverge more than in the desert and steppeland areas north of the Hadhramawt.

As can be seen on the accompanying maps, Britain basically rested its case for a northern border for the Aden Protectorate on the 1914 Anglo-Ottoman Violet line (this would mark the north-western limits of the Aden Protectorate) and its 1935 Riyadh line claim (this would mark the Protectorate's north-eastern limits) - the maximum territorial concession offered Saudi Arabia by Britain during the inconclusive 1934-1955 negotiations, summarily rejected within 24 hours by the Riyadh government. This combined Violet/Riyadh line would be unilaterally declared as the northern Aden Protectorate boundary by Britain early during August 1955 - two months later, Britain would physically remove those

¹ The border between Saudi Arabia and what used to be the eastern limits of the Yemen Arab Republic, i.e., lying to the south-east of Najran in the area of the Yemeni *mashriq*, is also indeterminate.

² Shown on the annexed maps is: i) the overlap between historic Saudi territorial claims and claims made historically by Britain on behalf of the Aden Protectorate; ii) the minimum area of disputed territory in 1994. As far as this author is aware, the Imamate of Yemen (or successor governments in San'a) has never made explicit the extent of its territorial claims in southern Arabia. It may have alluded to the historical basis upon which it would articulate its territorial claims, that is the national affiliation and origins of tribes, but it has never forwarded any detailed territorial statements or maps of its own. It may be presumed, however, that should the Saudi-Yemeni dispute ever go to international arbitration or to the ICJ for a ruling, historical claims will be forwarded at the outset by Yemen that extend considerably further north than the (British/Adeni) claims depicted on the annexed maps, for it is customary to present maximum territorial claims at the beginning of proceedings, which may then be gradually retracted in the interests of securing a favourable settlement.

Saudi forces which lay beyond the line to positions to its north following the acrimonious breakdown of the Buraimi arbitration proceedings in Geneva. In Britain's opinion, South Yemen inherited this *de facto* border on its independence in 1967. Hence it has often been referred to in recent times as the "independence line".

Saudi Arabia has never once officially departed from its April 1935 Hamza line claim for the territorial extent of the kingdom in southern Arabia: this is only in as far as it marches with the Aden Protectorate/People's Democratic Republic of Yemen/Yemen. As can be seen on the accompanying maps, this cut deeply into Protectorate territory as defined by the "independence line". When extending its territorial claims to include Buraimi in 1949, Saudi Arabia merely stated that its claims in the southern peninsula were under review and that a statement would be made in due course. The statement arrived on 18 October 1955. For the most part the line it described was fully consonant with the earlier Riyadh line claim of April 1935. It had, however, also introduced a new claim to territory that had previously been regarded as the preserve of the Imam of Yemen for the stretch between Najran (near the eastern terminus of the 1934 Treaty of Taif line) and Jabal Raiyan to the south-east (see accompanying maps).

So, when diplomatic relations were broken off following the Buraimi episode in autumn 1955, Britain and Saudi Arabia were really no closer to reconciling their original (1935) interpretations of where their boundaries should lie in this region. Until 1986 there was no evidence to show that Saudi Arabia had ever publicly retracted its claim of 18 October 1955 to territory in southern Arabia as far as it affected the borders of Yemen. Official and unofficial Saudi maps produced up to this point - for example, those produced by the Ministry of Petroleum and Mineral Resources during 1963, and Hussein Bindagji - show this claim line. The appearance of the Saudi military survey map of 1986 saw its October 1955 claim upheld for the most part (certainly as far as the borders of the People's Democratic Republic of Yemen were concerned) but a greater area of the Yemeni *mashriq* attributed to the Saudi state, seemingly encompassing tribal territories of the Dahm, Wa'ila and Abida (see accompanying map showing contemporary borders of southern Arabia).

The 1986 Saudi military survey map also witnessed the abandonment of traditional Saudi claims on the Oman border, recognition apparently being given to long-standing British and Muscati claims in south-east Arabia a full four years before Saudi Arabia and Oman finally agreed a boundary consonant with Britain's modified Riyadh line of 1937 (see accompanying maps). For the period up to its unification with the Yemen Arab Republic in May 1990, maps produced by the People's Democratic Republic of Yemen continued to show the "independence line", that is a northern border delimited by the 1914 Violet line and the 1935 Riyadh line. These limits are, not surprisingly, also generally shown on British maps of the region (and a few more besides).

Clearly, if any boundary agreement is ultimately to be negotiated between Saudi Arabia and Yemen for the stretch of the border zone between Najran and Oman, then either one or both parties will have to relax their widely divergent territorial claims in the region. If and when a negotiated settlement is reached, there is little likelihood of a boundary being agreed that resembles closely Saudi

Arabia's October 1955 claim in the southern peninsula. For Yemen has for some time now extended its effective occupation some way north of this limit.

From the mid-1950s onwards there is reasonable evidence to suggest that the Aden Protectorate and (since 1967) South Yemen have extended an effective administrative presence in the northwest up to the 1914 Violet line. Though Saudi Arabia has never accepted the Violet line as constituting what was the northwestern boundary of South Yemen, there is a case for maintaining that serious border incidents have occurred only when South Yemeni forces crossed the Anglo-Ottoman limit, most notably at al-Wadi'a in 1969. It is perhaps not unreasonable to suggest that for the north-western stretch of the former Saudi/South Yemeni border, the Riyadh government has respected the 1914 Violet line on a *de facto* basis. Saudi sensitivities may have been alerted during early 1992 when it was realised that the northern tip of the Yemeni al-Jana block oil concession probably transgressed the 1914 Violet line.¹ Yet, curiously, the northern tip of this oil concession extends into an area apparently not claimed by Saudi Arabia, that is if its 18 October 1955 claim and its slight modification in the 1986 Saudi military survey map still holds good. There is, therefore, apparently a small wedge of territory, possibly incorporating some of the tribal territories of the Saiar tribe, that has apparently not been formally claimed by either Saudi Arabia or Yemen (see accompanying maps). From 1991 onwards, the Saudi Economic and Development Company (SEDCO - later reorganised and registered as the Nimr Petroleum Company in the Cayman islands), a subsidiary of the National Commercial Bank of Saudi Arabia (owned by the Bin Mahfouz family, coincidentally of Saiar origin), has bought into Yemeni concession areas close to but significantly, south of the al-Jana block. Following intermittent and inconsequential consultations with the Riyadh government on the border issue in the two years preceding Yemeni unification, Yemeni President Ali Abdullah Salih launched a new initiative on Yemeni television during September 1991. He called for the final settlement of the state's northern and eastern borders with Saudi Arabia and Oman "with no reservations and in the context of the legal and historical rights of the parties concerned". Salih, who displayed a particular anxiety to settle territorial disputes with Saudi Arabia, also announced the formation of a Yemeni Boundary Demarcation Committee.²

¹ The al-Jana block was established as a joint exploration area between the Yemen Arab Republic and the People's Democratic Republic of Yemen in June 1988. Following Yemeni unification in May 1990, exploration work was stepped up in this 2100 square kilometres concession area, which stretches north of the Violet line to a point near 16°01'N, 46°12'E. However, exploration work was halted at the beginning of 1991, during the allied offensive during the Gulf War in the northeast of the Arabian peninsula. Drilling in the al-Jana block, originally scheduled to commence during the summer of 1991, began only a couple of months late in early September, though in areas safely to the south of the Violet line.

² On 1 October 1992 Oman and Yemen signed an agreement that provided for the demarcation of the international land boundary and the delimitation of the seabed boundary out into the Arabian sea in accordance with existing principles of maritime law. The Yemeni Cabinet ratified the agreement a week later on 7 October: "The demarcation agreement consists of 10 articles which defined the onshore boundary as a straight line running from a point at Ras Dharbat Ali through the Habrut region to latitude 19°N and longitude 52°E".

The winter of 1991-1992 witnessed informal exchanges between the Saudis and Yemenis on the border question, but procedural difficulties, principally concerning irreconcilable interpretations of various articles of the 1934 Taif treaty, soon bogged these down. The stakes appeared to be raised when in March 1992 the Saudi government addressed letters to foreign oil companies operating in concessions in northern Yemen, advising that these were areas claimed by Saudi Arabia and that operations should therefore be ceased henceforth. American companies were addressed through a memorandum despatched to the United States State Department. Both the Yemeni and US governments advised the oil concessionnaires to continue their operations and ignore the content of the Saudi letter. The State Department took a fairly uncompromising line on the whole issue, advising the Saudi government that its claims in the disputed border zone were not recognised and urging the peaceful resolution of any disputes, a stance welcomed by the Yemeni government. By the end of 1992 it certainly seemed that the State Department's prudent words were being heeded. Following a preparatory meeting in Geneva during late July 1992, Saudi Arabia and Yemen met subsequently on three further occasions during 1992, ostensibly to discuss technical issues. Even in late 1993, before Yemeni politicians were forced to direct all of their energies to the deteriorating domestic situation, these consultations remained a long way short of getting past the procedural stage. August 1993 had witnessed the despatch of a further series of letters from the Saudi government to foreign oil companies operating Yemeni oil concessions claimed to lie within the territory of the kingdom. The companies concerned appeared not to act upon their receipt.

Whereas for decades now Yemen (or the Aden Protectorate and the People's Democratic Republic of Yemen before it) has effectively exercised authority up to or beyond the Violet line to the northwest of the Hadhramaut, the extension of administrative control to the northeast has been much more gradual. This is the stretch of the border where the divergence in Saudi and British/Yemeni claims had traditionally been greatest (see accompanying maps). Most detailed maps of the region suggest that while Yemen has established effective occupancy in virtually all areas north of the Saudi Hamza line of 1935, Yemeni infrastructural development is often not extended on any consistent basis as far north as Britain's 1935 Riyadh line (see accompanying maps). Roads, for example, stop some distance south of this line. It might perhaps be argued, therefore, that there is, in effect, a desert zone stretching north from the northernmost limit effectively occupied by Yemen across the Riyadh line and into the Rub al-Khali to the southernmost limit effectively occupied by Saudi Arabia. It is possible that any boundary ultimately negotiated will fall within this zone. Alternatively, the two states might arrive in time at an accommodation whereby the area in question is jointly managed as some sort of common zone.

Instruments of governance

i) western boundary

- 1) "Treaty of Islamic Friendship and Brotherhood" (Taif treaty), May 1934.

- 2) Annex to the Taif treaty, 1937.
- 3) Joint Saudi/Yemen Arab Republic statement, March 1973

ii) eastern boundary

- 1) Anglo-Ottoman Violet line, March 1914
- 2) Saudi (Hamza line) territorial claim, April 1935
- 3) Britain's Riyadh line claim, November 1935
- 4) Britain's unilateral declaration of northern frontier for Aden Protectorate, August 1955 (enforced during October 1955)
- 5) Saudi territorial statement, October 1955
- 6) Saudi military survey map, 1986
- 7) Saudi-Oman border agreement, March 1990 (ratification in May 1991)
- 8) Yemen-Oman border agreement, October 1992

Potential for dispute

* There can be little doubt that the great strides Saudi Arabia has made to finalise its borders with states in the southern peninsula (Oman [1990], slight adjustment of 1993 to its 1974 border with the Abu Dhabi, leaving the latter more territory on the southern shores of the Khor al-Udaid, and the recent negotiations with Yemen) have been in part to facilitate the kingdom's new exploration drive for oil in its border regions - a policy started in 1990.

* If and when Saudi Arabia and Yemen get back to the negotiating table, there is ultimately - at least at face value - a fairly obvious deal to be struck. In return for granting unequivocal and binding recognition to the boundary delimitation introduced by the 1934 Taif treaty for the Red Sea-Najran stretch of the border (probably involving its redemarcation by permanent concrete pillars and fences), Yemen might insist upon Saudi Arabia granting recognition to South Yemen's old "independence line" - Britain's old claim comprising segments of the 1914 Violet line and the 1935 Riyadh line, as well as dropping its own Hamza line claim of April 1935 (which was repeated in its 18 October 1955 territorial statement). Such a trade-off may yet materialise. After all, when concluding the March 1990 border agreement with Oman, Saudi Arabia relented in full to the territorial claims Britain had always put forward historically on behalf of the Muscati sultan - in so doing Saudi Arabia had ostensibly accepted the eastward extension of Britain's 1935 Riyadh line, so why not its western extension in the future?

* Yet there remain stumbling blocks to the above trade-off, most of them on the Yemeni side. For a start, a formal admission that the territories of Asir and Najran were Saudi might still be very awkward politically for any government in power in San'a, including the present one. Secondly, when reviewing the historical evidence pertaining to this dispute, San'a has found it very difficult to convince itself that it will be best-served by occasionally utilising claims and arguments that were formerly put forward by the British when in control of Aden. In what was almost a mini-failure of unity, San'a would always prefer

to utilise claims put forward previously by the old Imamate of Yemen to, say the allegiance of tribes in the steppeland north of the Hadhramaut valley, rather than those of the Aden Protectorate, even when the available documentation suggested that the latter were perhaps more persuasive.

* Even if the Taif line/"independence line" trade-off was a starter, it would still leave the central, problematic stretches of the border zone between Najran and the 1914 Violet line claim to be addressed. If Saudi Arabia was ever to physically act to make good its 1986 claim (or its 1955 claim before it), it would be encroaching upon areas populated by the Wa'ila, Dahm and Abida tribes. All of these tribes consider themselves Yemeni but probably none of the three considers itself answerable to the San'a government. There is limited scope, should the Saudi government ever wish to take the risk, for a move into the area similar to that which occurred in 1949 at Buraimi in the eastern peninsula. The Yemeni government is aware of its own underdeveloped authority in these regions, yet Saudi Arabia probably also realises that any moves it makes to subsume these traditionally independent tribal components would be fiercely resisted.

* The territorial disaggregation of Yemen might well result in the institution of tribal entities which might be prepared to deal with the Saudi government on the border issue. This seems an unlikely possibility at this stage and all of this is necessarily speculative.

* Experience teaches us that the best prospect of a settlement of the border question is by a political fix. Despite noises in 1993 that Riyadh would be prepared to see this case go to arbitration, it would be surprising if this border is ultimately finalised by anything other than negotiation.

* Despite the North's current hold over Aden, a politically-fractured Yemen in the future might well convince Saudi Arabia that there is more benefit to be had from continuing with a situation in which the boundary remains undefined, especially since oil exploration in the eastern border region has still to bear any real fruits.

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BAT/QAT

2.2.4. Inter-GCC states

2.2.4.1. *Bahrain-Qatar (Hawar islands, the Dibal and Jarada shoals [and Zubara])*

SUMMARY: THE ICJ HAS FINALLY RULED THAT IT HAS JURISDICTION TO MAKE A RULING ON BAHRAIN-QATAR TERRITORIAL DISPUTES: EACH SIDE HAS FIVE MONTHS TO RESUBMIT ITS CASE, WHICH INCLUDES THE QATARI LOCALITY OF ZUBARA AS WELL AS THE HAWAR ISLANDS AND THE DIBAL AND JARADA SHOALS: SHOULD THE DISPUTE NOT PROCEED TO THE HAGUE FOR TREATMENT AS ENVISAGED IT IS LIKELY THAT SAUDI ARABIA AND THE GCC WILL CONTINUE TO ENSURE THAT THE DISPUTE REMAINS IN CONTROL.

Contemporary status

On 1 July 1994 the International Court of Justice in the Hague issued a ruling which seems set to ensure that both Bahrain and Qatar treat their long-standing dispute over the Hawar islands and the Dibal and Jarada shoals in the international courts. Having heard the pleadings of both states during March of this year, the ICJ ruled that it did have jurisdiction to rule on the Bahrain-Qatar territorial disputes. Ostensibly, this was a victory for Qatar, who had made a unilateral submission of the territorial disputes to the international courts in the summer of 1991. Bahrain had been arguing up to last week that Qatar had not possessed the right to take such a unilateral action. Yet, if one looks more closely at the 1 July 1994 ruling, it will be seen that ICJ Court President Muhammad Bedjaoui also stated that Qatar's unilateral application of the summer of 1991 had been incomplete, since it had made no mention of Bahrain's curious claim to Zubara on the Qatar peninsula's northwestern coast. Both parties, Bedjaoui continued in the ruling, were now being given the opportunity to submit to the ICJ the whole of the dispute (including Zubara). Bahrain and Qatar were reminded that previous agreements had obliged them to submit the territorial disputes to the court for a binding settlement. The end of November 1994 has been set as the date by which the two states must resubmit their respective cases - these can be presented either as separate submissions (surely the most likely outcome), or as part of a joint submission (the approach which Bahrain has favoured for the two years before the ICJ's recent ruling. Both states can profess some satisfaction at the 1 July 1994 ruling - surely this was intended to be the case. The prospects for the treatment of the dispute by the International Courts would now seem to be good.

Let us now say a few words in the way of historical background. The Bahrain-Qatar contest for the Hawar island group, lying off the western coast of the Qatar peninsula, and the shoals to the north-west (Dibal and Jarada) is certainly the most serious and enduring dispute in existence between Britain's former proteges on the western/southern Gulf littoral. Despite the close proximity of the Hawar group to Qatar, Britain found in favour of Bahrain's claims to the islands based upon effective occupation and utilisation (even though this was of

extremely recent origin) during the late 1930s, rather than Qatar's claims, which rested squarely on geographical propinquity, a reminder of the old adage that possession is nine-tenths of the law. Bahrain has occupied the island group ever since. Yet there would be interesting counterweights to the 1939 Hawar award. Just over 20 years later in the early months of 1962 a British arbitration panel apparently took propinquity into account as a determining factor when awarding Halul island to the east of the Qatar peninsula to Qatar rather than Abu Dhabi. Britain had previously tended to the view that Halul belonged to Abu Dhabi.

The Hawar dispute has been cited by more than one source as the principal reason why Qatar and Bahrain failed to join (along with the seven shaikhdoms which currently comprise the United Arab Emirates) a nine-state Federation of Arab Emirates, the institution of which had seemed more likely than not for most of the 1968-1971 period. When Britain left the Persian Gulf in 1971, Saudi Arabia accepted responsibility for mediation of the Hawar dispute. Saudi mediation efforts have been channelled through the offices of the Gulf Cooperation Council since its inception in early 1981, though successes in the period thereafter have been in controlling the dispute rather than making any great strides towards solving it.¹ During March 1982 a meeting of the GCC Council of Ministers reviewed the Hawar dispute after conspicuous muscle-flexing in Doha and Manama. At this Bahrain and Qatar agreed to "freeze the situation and not to cause an escalation of the dispute".

The disputed status of Hawar is only part of the problem for Bahrain and Qatar for the whole of their seabed boundary remains to be settled. In late 1947, with access to offshore oil reserves the critical factor in the resource geography of the Persian Gulf, Britain also ruled on the division of the seabed between Bahrain and Qatar. Their verdict was accepted by neither Bahrain nor Qatar, the former objecting on the grounds that its authority should properly extend over all and not just part of the seabed area (including intervening reefs and shoals) lying to the west and the north-west of the Qatar peninsula, the latter on the grounds that two low-tide elevations, the Dibal and Jarada shoals, had been recognised as Bahraini enclaves within the seabed area provisionally allotted to Qatar.

The disputed status of the shoals burst into the media headlines in the spring of 1986. Qatar's capture of Fasht al-Dibal (up to this point occupied by Bahrain) and its arrest of 30 contractors engaged in the construction of a Bahraini "coastguard station" - possibly a GCC project which Qatar had not approved - resulted in Bahrain strengthening its military garrison on Hawar. Qatar then declared Dibal and Jarada, along with Hawar, as military zones and mobilised its considerably superior firepower. Conflict was averted after the decisive intervention of Saudi Arabia and the other GCC states, who brokered a settlement whereby the two states would return the situation on the shoals to the

¹ Article 10 of the GCC Charter, signed on 25 May 1981, defined the responsibilities of that institution's "Commission for the settlement of disputes". Yet there is no evidence that this commission has ever met. Treatment of the disputes over the Hawar islands and the Dibal and Jarada shoals has been at ministerial level instead.

status quo ante. After the GCC had set up a monitoring group to ensure that the two sides implemented the agreement, Qatar evacuated Dibal in early June 1986. The incident remained, certainly until the Khafus border post incident on the undemarcated Saudi-Qatari border of late September 1992, perhaps the greatest internal challenge to have confronted the GCC and its settlement one of the institution's notable successes. Preserving the peace is, however, quite different to resolving the root problem which remained following the Fasht debacle.

In the years following 1986, both Bahrain and Qatar kept themselves busy preparing defences of their claims to Hawar in anticipation of the dispute being referred to international arbitration or the international courts. A decisive departure from years of inconclusive Saudi mediation appeared to have been reached during the annual GCC summit in Doha in December 1990. Here a committee sat and reportedly stipulated that should no out-of-court settlement be attainable within six months, then the Hawar case would be forwarded to the International Court of Justice for a ruling. This at least was Qatar's interpretation - the Doha government also reckoned that such a procedure had been "concluded in the context of mediation of King Fahd of Saudi Arabia". Consequently, on 8 July 1991, with Qatar evidently convinced that the requisite progress had not been made, the Doha government referred the dispute to the ICJ.¹ The reference was to remain unilateral, however, for Bahrain contested the basis of jurisdiction invoked by Qatar in letters addressed to the ICJ of July and August 1991. For the period since, ending as recently as 1 July 1994, the international courts have been considering whether Qatar was acting within its rights when unilaterally referring the case to them for a decision. Bahrain continued to claim through the summer of 1994 that a renewed joint application should have been made. In July 1992 Qatar reportedly rejected a Bahraini initiative whereby a joint reference would be made in which all possible items of dispute would be placed on the agenda for treatment by the ICJ.

Included in this agenda by Bahrain was its shadowy if deeply-felt claim to extra-territorial rights at Zubara on the north-western coast of the Qatar peninsula. The curious dispute over Zubara, a seemingly worthless ruin, has embittered Bahrain-Qatar relations historically but has not been as important an issue as Hawar, Dibal and Jarada have been in recent decades. The unpromising locality of Zubara - the land here is barren, salty and waterless - has retained an enduring symbolic significance for the al-Khalifah in Bahrain to reflect its position as their ancestral home - their first ruler was buried here. Sir Charles Dalrymple Belgrave, political adviser to the Ruler of Bahrain from the mid-1930s onwards and who played an important part in Britain's original 1939 decision to recognise the Hawar islands as belonging to Bahrain, was continually surprised by the intense reaction a mere mention of Zubara would engender in the al-Khalifah:

¹ It is the opinion of some contemporary commentators that Qatar's referral of the disputes to the ICJ in July 1991 has since been interpreted by the Saudis as a rejection of their long-standing mediation in this problematic case. This stance has surprised and disappointed the Qatar government, which maintains instead that reference of the dispute was an agreed procedure, the culmination of two decades of inconclusive Saudi mediation.

When Shaikh Hamad died in 1942, I remembered the words which were attributed to Queen Mary Tudor: When I am dead...you shall find Calais lying on my heart, but in this case the word would have been Zubara.

From the 1870s onwards Bahrain has claimed rather ill-defined rights at Zubara, ranging from full sovereignty to jurisdiction over Bahraini subjects (Na'im tribesmen of north-western Qatar were claimed as Bahraini) in Qatar territory. Bahrain's ability to influence events at Zubara, certainly up until the mid-1930s, was facilitated by the seriously underdeveloped authority of the al-Thani shaikh of Doha in the north-western reaches of the Qatar peninsula at this time. After years in which the British authorities in the Persian Gulf had tried to persuade the Ruler of Qatar to allow Bahrain special facilities at Zubara, Political Resident Sir Bernard Burrows finally ruled, during August 1957, after the al-Khalifah state had apparently resurrected a claim to the sovereignty of the locality, that Bahrain should entertain no further hopes of being granted any extraterritorial privileges at Zubara. The ruined settlement remained every bit as integral a part of the state of Qatar as anywhere else along its shoreline. Much less was heard of the dispute after 1957, though here it is - as a result of the ICJ ruling - back on the agenda in July 1994.

The ICJ was originally due to rule on whether it possessed jurisdiction to deal with the Hawar and shoal disputes in the spring of 1993. A backlog of cases at The Hague meant that its ruling would not be announced until 1 July 1994 (see above). If the finer legal minutiae are put to one side, it might be as well to consider what political objections Bahrain had to seeing the disputes go to the courts for a decision. For the island state, in the opinion of some observers, had been dragging its feet over the years since Qatar's unilateral submission in July 1991. Perhaps the most obvious observation is that, with the exception of Zubara, Bahrain has virtually everything to lose. When the ICJ finally get around to dealing with the territorial dispute itself rather than the preliminary procedural matters that have bogged them down for the last three years, a ruling will be given on the ownership of three features - the Hawar group and the Dibal and Jarada shoals - which are currently occupied by Bahrain and which Britain, as was seen earlier, had recognised previously as belonging to the island state.

Instruments of governance

- 1) Britain's award of the Hawar group to Bahrain, 1939.*
- 2) Britain's nomination of an adjacent boundary delimitation for the Bahrain-Qatar seabed and its recognition of the shoals as Bahraini features, 1947*
- 3) Qatar unilaterally refers Hawar/Dibal/Jarada case to the ICJ, July 1991*

4) ICJ ruling of 1 July 1991: the international courts have jurisdiction to make a ruling: Bahrain and Qatar have five months to resubmit their cases, either jointly or separately: Zubara is itemised as one of the issues of dispute.

Potential for dispute

* As mentioned above, Bahrain must feel, whatever the strength of its claims to title to the features in question, that it has everything to lose and nothing to gain from an ICJ ruling - hence the politically astute move by the courts at the Hague of putting Zubara on to the agenda.

* Having said that placing Zubara on the list of disputed issues for treatment was astute politically, it would be astonishing if the courts took Bahrain's historic claims to sovereignty over this locality very seriously. This having been said, it would be very surprising if Bahrain puts forward a sovereign claim to Zubara later this year - it is much more likely to be a claim for some limited extraterritorial jurisdiction in the locality, i.e. special visiting rights without passports for Bahraini subjects.

* If, for whatever reason, the scheduled submittal of the dispute to the ICJ for a ruling runs into problems, it might still be expected that Bahrain-Qatar territorial disputes will be controlled as they have been for the last two decades - that is controlled rather than solved. In such circumstances Saudi Arabia's mediating role would continue to be important. The actions of a Saudi-dominated GCC seem certain to ensure that the territorial disputes never rage totally out of control in the future.

* Luckily, it seems that no oil underlies the Hawar group. Had it done so the stakes would have been raised much higher.

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2.3. The Levant

2.3.1. Israel

2.3.1.1. Palestine

SUMMARY: EVEN IF THE EXTERNAL BOUNDARIES OF A FUTURE PALESTINIAN STATE CAN BE RELATIVELY EASILY DEFINED, THIS MAY NOT NECESSARILY BE TRUE OF ITS ULTIMATE BOUNDARIES WITH ISRAEL. THESE DEPEND ON THE FINAL DEMARCATION OF THE "GREEN LINE" AND THE CONCLUSION OF THE FINAL STATUS NEGOTIATIONS IN 1999.

Contemporary status

The external boundaries of the Gaza Strip with Israel are not in dispute and they have been demarcated, in effect, by the defense systems that run along them. Within the Gaza Strip, where six Israeli settlements occupy 40 per cent of the land (with a population estimated variously at 3,000 to 6,000 persons), the final situation is far less clear. Three possibilities exist:-

- (1) The settlements are removed in their entirety by the final stage of the negotiations and the territory reverts to Palestinian control;
- (2) The settlement areas are reduced by mutual negotiation, with the land thus freed reverting to Palestinian control; or
- (3) The settlement areas are not reduced at all and remain under Israeli sovereignty (as provided for in Article VIII and Annex II-3 of the Oslo Accord). This outcome will not be acceptable to Palestinians, nor indeed will outcome (2). Israel may, nonetheless, insist on it and thereby provide a *causus belli* with more extremist elements within the 800,000-strong Gazan population.

The problem of the settlements is linked to that of access to water, as water in the Gaza area is brackish and the settlements receive a quite disproportionate amount. The settlement areas, however, have been able to use deep artesian wells, while the Palestinians have been prevented from boring similar wells. Once the Autonomy is established, then - despite the joint liaison committee envisaged in the Oslo Accord (Annex III-1) and the Cairo Agreement - there are bound to be serious and increasingly acrimonious disputes over access to water. Not even the provision of desalination plant, as anticipated in Annex IV-2B(4) of the Oslo Accord, will resolve this issue because of the urgency of water demand.

Similar problems exist in the West Bank where three separate issues exist:-

(1) **The Green Line**

This internal boundary arises from the armistice line created in 1948. However, Israel is bound to wish to modify it, particularly in the northern "Triangle" area just south of the West bank town of Tulkarim. Furthermore, the line, as at

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present defined, splits landed property and residential zones. There is bound to be pressure to remove these anomalies, although Israeli intransigence will make this extremely difficult. There is also a question over the actual status of the **Green Line**. Palestinians will still need access to Israel for employment and, if some kind of federal or confederal arrangement is finally adopted, then the **Green Line** will have to be porous, an arrangement which might have serious implications for Israeli security.

(2) **The issue of Jerusalem**

In theory, this should form part of the "permanent status negotiations", due to start at the latest in May 1997. Palestinians still insist on the return of East Jerusalem to their jurisdiction, at least in part. They are prepared to share sovereignty, provided that the Muslim areas and the Old City are preserved within their jurisdiction. Israeli public opinion is ferociously opposed to any breach of Israel's sovereign control over all of the city and is busy "creating facts". In spring 1994 it was announced that the Jewish population of the Jerusalem administrative conurbation (which now occupies 30 per cent of the Occupied Territories) was in a majority over the Arab Palestinian population there. Although the "permanent status negotiations" are supposed to establish the final status of Jerusalem, there seems virtually no possibility that Israel will concede over the issue of sovereignty. Yet, of all issues, this is the one over which the Palestinians cannot concede either.

(3) **Settlement areas**

The same considerations apply to the 150 settlement areas in the West Bank as in the Gaza Strip. There are, however, certain specific issues. The first concerns Hebron where the four Beit Hedassah settlements in the centre of the town and the suburb of Kiriya Arba will have to eventually be removed. If they are not, they will continue to be a source of friction and potential violence. The second concerns access to water where the settlement population uses three times as much per person as do surrounding Palestinians. The third concerns the location and transport infrastructure of the settlements. Under Road Plan 50, the settlement areas, which tend to surround major Palestinian conurbations - Jenin, Nablus, Ramallah, Bethlehem and Hebron - are linked together and into Israel by a new road system. In effect, the settlements surround these conurbations and divide them into three cantons. If Israeli sovereignty is retained over the settlements in the "permanent status negotiations" and if the settlement areas - which cover (including Jerusalem) 60 per cent of the total land area of the West Bank - are not reduced, then administratively and in terms of sovereign control, an independent Palestinian state (which is now generally expected to be the final outcome) will be fragmented and virtually impossible to control.

If these problems are not resolved before the end of the interim period, the stage will be set for a major security problem for Israel as the peace process loses credibility amongst Palestinians and they turn, instead, towards violence.

Instruments of governance

- (1) *The Oslo Accord, September 13, 1993*
- (2) *The Cairo Agreement, May 4, 1994*
- (3) *The armistice agreements, 1949*
- (4) *United Nations Security Council resolutions 242 (1967), 338 (1967), 425 (1982).*

Potential for dispute

- * Low intensity violence could erupt over any of the issues mentioned above.
- * The issue of Jerusalem will retard improved relations between Israel and the Arab world.
- * A misguided and too repressive Israeli response to Palestinian protest will reignite the **intifada**, only this time small arms will be extensively used.
- * The only group to gain from dispute in these areas will be Hamas and extremist secular groups.
- * The outlook is not good.

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2.3.1.2. Jordan

SUMMARY: IT SEEMS CERTAIN THAT THE 1922 MANDATE BOUNDARY DESCRIPTION WILL BE USED AS THE BASIS OF ANY NEGOTIATED AND FINAL INTERNATIONAL BOUNDARY DELIMITATION: THE CURRENT OPERATIVE BOUNDARY IN THE DEAD SEA SALT PANS IS LIKELY TO BE ESTABLISHED AS THE INTERNATIONAL BOUNDARY: OTHERWISE A THALWEG DELIMITATION IS LIKELY TO BE EMPLOYED FOR THE STRETCHES OF THE BOUNDARY ALONG THE YARMUQ AND JORDAN RIVERS AND THE WADI ARABA, AND A MEDIAN LINE DELIMITATION FOR THE DEAD SEA AND THE GULF OF AQABA.

Contemporary status

Following the initialling in Washington DC during September 1993 of an agreed Jordanian-Israeli agenda, which paves the way for a comprehensive peace treaty in future years, both states now apparently accept the mandate boundary description as the juridical basis of their mutual border north and south of the Dead Sea. It is as well to remind ourselves of this description at the outset. In September 1922 Britain described the following boundary to separate Palestine and Transjordan. Transjordan was defined as:

...the territory lying to the east of a line drawn from a point two miles west of the town of Aqaba on the Gulf of that name up the centre of the Wadi Araba, Dead Sea and River Jordan to its junction with the Yarmuk: hence up the centre of that river to the Syrian frontier.

Ultimately, the problem confronting both Jordan and Israel today is the same one that has faced central authority on both sides of the Yarmuq-Jordan-Dead Sea-Wadi Araba-Aqaba hydraulic divide ever since the 1920s: namely, of reconciling the vague description of the boundary in diplomatic correspondence with physical features on the ground. So the essentially technical question of reaching a mutually-agreeable interpretation of the 1922 definition which can then be demarcated on the ground perhaps looms largest of all for the Israelis and Jordanians in the months and years to come.

On the basis of historic evidence, i.e. the practice of each state towards the boundary as recorded in the British archives, it would seem, certainly in the pre-1948 period, that the *thalweg* of the River Jordan was taken to constitute the "centre" of that water course and therefore the boundary between Palestine and Transjordan/Jordan. Despite the non-navigability of the River Jordan,¹ it must

¹ The Versailles treaties of 1919 stipulated that it was usual for a boundary along a non-navigable river course to run along the median line of that feature, while along navigable rivers, a *thalweg* boundary delimitation would normally be nominated. A median line delimitation runs along a course which is equidistant at every point from the banks of a river or the shores of a lake, sea or water inlet. A

be presumed that the international boundary between Jordan and Israel will be established as running down the *thalweg* of the River Jordan and will also be established for the short stretch of the Jordan-Israel boundary along the River Yarmuq. Ever since 1927, following a ruling during that year by Lord Plumer - the then British High Commissioner in Jerusalem, the Palestinian and Transjordanian governments and the Israeli and Jordanian governments after them have seemed satisfied that the boundary along the River Jordan moves with the *thalweg* of that water body. There has, therefore, often been an exchange of state territory, admittedly small-scale, across the main channel of the river - especially in its northern, heavily-braided sections - following periods of avulsion. This continues to occur in modern times. During late 1978 a rise in the level of the Lower Jordan occasioned a westward shift in its main channel. The result was the transfer of a banana grove from Israel to Jordan. Only five years later and further down the river, heavy floods resulted in a shift in the river and the transfer of Israeli-occupied West Bank territory to Jordan. Obviously, any formal border agreement negotiated between the two states in the forthcoming months and years will have to take into account these exchanges of territory and provide for a system to deal with their consequences at the local level, i.e. the questions of compensation, or extra-territorial access across the main channel of the Jordan.

For the long Wadi Araba stretch of the border running up from the Gulf of Aqaba to the salt pans south of the Dead Sea, it would also seem likely that Israel and Jordan will eventually plump for a *thalweg* delimitation. By an agreement of June 1946, Palestine and Transjordan demarcated the southernmost four kilometres of their land boundary, in a straight line section from a point on the Gulf of Aqaba until "the *thalweg* of the Wadi Araba" was reached. This minuscule demarcation of state territory introduced by the 1946 agreement is operative today and seemingly accepted by both states.

The problem along the Wadi Araba has been that fences put up by the Israelis, especially from the mid-1960s onwards, have fairly obviously been placed in positions east of the *thalweg*, by anyone's reckoning. The positioning of these fences was a unilateral act and not the product of an agreed demarcation procedure: as a consequence, the boundary cannot be regarded as demarcated in international law. As a result of Israel's actions, maybe as much as a few hundred square kilometres of Jordanian territory remain in Israel's possession today. Almost certainly, these areas will be returned to Jordan following the formal conclusion of a peace/boundary agreement. There have also been leaked reports during the last year or so that Israel might ask for the territory in question to be leased back to it at a nominal rate, once Jordanian sovereignty over the area has been formally conceded. Originally, Israel probably emplaced itself east of the Wadi Araba for strategic reasons, with the higher ground on which fences were constructed providing better defensive positions than the dry valley bottom to its immediate west. Israel has, in 1994, however, some economic interests east of the *thalweg* of the Wadi Araba: firstly it maintains at

thalweg delimitation follows the deepest channel of a river (or, on land, a dry wadi for example), or, more correctly, the line of continuous deepest soundings.

least one notable area of irrigated agriculture in the territory in question; secondly, there is the odd pumping station for the exploitation of deep fossil water aquifers.

Establishing precisely the deepest point of the Wadi Araba may not be at all easy. For a start, the Araba has become a generic term for a system of successive (north to south) dry wadi structures. Secondly, the gradients involved in the area are typically shallow. Also, following occasional heavy rains, the *thalweg* is likely to change course. Many portions of the dry wadi system are heavily braided with little distinction in the depth of many of the parallel channels. This all suggests that while the *thalweg* will probably be chosen as the boundary for the Wadi Araba, a (joint) technical team entrusted with its demarcation should be given plenty of leeway in interpreting this delimitation on the ground. It might ultimately be most sensible to plump for an artificial line of demarcation which corresponds closely to the *thalweg* principle, but which is easiest to institute and maintain on the ground.

If concessions are to be made to Israel in any final border settlement it is likely to be in the area of the Dead Sea salt pans. The area of the Dead Sea has shrunk considerably since the original mandate definition of the boundary was drawn up in 1922. The area of the salt pans, long vital to the economies of both Palestine/Israel and Transjordan/Jordan because of its rich endowment of potash, includes territory that was formerly part of the Dead Sea (therefore most susceptible to a median line delimitation) and territory that straddles the northern tip of the Wadi Araba dry wadi system (for which, as we have seen, a *thalweg* delimitation would be most appropriate). The only sensible option here, given the long-established economic infrastructure in the salt pans area, would seem to be to establish the current *de facto* or operative territorial divide as the international boundary. History again suggests that the current operative boundary through the salt pans runs to the east of the *thalweg* line in this region.¹ To confirm the operative boundary as the international boundary here would therefore be beneficial to Israel for this reason. Jordan may yet seek retrospective compensation for Israel's exploitation of potash reserves which, by rights, probably lay within Jordanian territory.

A simple median-line delimitation commends itself for the diminished extent of the Dead Sea. We are, of course, only concerned with the southern half of the Dead Sea here. The northern half of the Dead Sea will ultimately be divided between Jordan and a Palestinian state (in whatever form), though the same principles will be utilised to delimit this water body.

There is an operative border in the Gulf of Aqaba, which works on the basis of a lateral median line delimitation bisecting this water body. Naval commanders in this region have also been given an indication of where provisional adjacent boundaries depart the coastline of the Gulf of Aqaba and meet this notional

¹ It would be almost impossible now to establish precisely where the *thalweg* of the northern end of the Wadi Araba ran in 1922 when the mandate boundary definition was drawn up. Perhaps this is another reason for opting for the current operative border.

lateral median line (this involves Egypt and Saudi Arabia as well as Jordan and Israel). No maritime boundaries have yet been formally agreed upon in the Gulf of Aqaba. When Israel and Jordan formally agree to a boundary delimitation, it must be presumed that the Government of Jordan will issue a simultaneous declaration of its boundaries with Jericho and the Israeli-occupied West Bank (for the whole of the border region from the Yarmuq down to the Gulf of Aqaba was, of course, regulated by the 1922 mandate boundary description). These will presumably be declared on the same basis as the boundary delimitation negotiated with Israel. In such circumstances it might be anticipated that a *thalweg* boundary will be declared for the border with Jericho/the West Bank along the River Jordan and that a median line delimitation will be declared for the northern half of the Dead Sea. There are complications here. Though King Husain appeared to withdraw Jordan's political claim from the West Bank in 1988, certain Jordanian sources continue to claim that administrative sovereignty is exercised over the West Bank, whatever this means.

Instruments of governance

- 1) *Mandate definition for boundary, September 1922.*
- 2) *Palestine-Transjordan agreement for demarcation of land boundary on the Gulf of Aqaba, April-June 1946.*
- 3) *Initialling of joint Israeli-Jordanian agenda, September 1993.*

Potential for dispute

- * It seems likely that the shape of a boundary agreement already exists. The basis of any agreement will be the old mandate definition of 1922. Israel will acknowledge Jordanian sovereignty over areas currently occupied by Israel east of the *thalweg* of the Wadi Araba. The current, operative boundary through the Dead Sea salt pans will be established as the international boundary.
- * The Armistice lines of 1949 hold no legal validity whatsoever as international boundaries and will not be used in any forthcoming agreement.
- * Compared to the thorny problems of trying to arrive at territorial limits to separate Israel and a future Palestinian state, this is one boundary that should not be too difficult to solve.

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2.3.1.3. Syria and Lebanon

SUMMARY: ISRAELI WITHDRAWAL FROM THE GOLAN HEIGHTS AND SOUTH LEBANON ARE VITAL PREREQUISITES FOR THE FULL (EGYPTIAN-STYLE) PEACE AGREEMENTS IT SEEKS WITH SYRIA AND LEBANON: SHOULD THESE DIFFICULT ISSUES BE SUCCESSFULLY NEGOTIATED, THE QUESTION OF EQUATING VAGUE COLONIAL BOUNDARY DELIMITATIONS WITH FEATURES ON THE GROUND (THIS WILL BE REQUIRED BEFORE INTERNATIONAL BOUNDARIES CAN BE FINALLY DELIMITED AND DEMARCATED) SHOULD BE SMALL BEER BY COMPARISON.

Contemporary status

The one issue dominating any consideration of the territorial relationship between Israel and Syria since 1967 has been the former's occupation of the strategically-vital Golan Heights. This issue has been covered so well in the literature that the historical details hardly need reiterating. The same goes for Israel's occupation of southern Lebanon for the twelve years since its 1982 move into that state.

Let us look briefly at the Golan issue in the modern context. In the aftermath of the 1991 Gulf War and the concomitant Soviet demise, Syria finally realised that any prospects of strategic parity with Israel were gone and that if a war did break out, it would stand little chance of replacing its weaponry - the Damascus government had lost much of its strategic relevance. Israel, concomitantly, had little choice but to consider territorial readjustment to the north, with the United States now pressing hard for stabilisation of the Levant. Significantly, the year after Syria had joined the US-sponsored Middle East peace process in July 1991, Washington informed the Israeli government that Syria could not be sidelined in any forthcoming regional peace.

Israel's unambiguous requirements for a comprehensive peace in the north would be the same for Lebanon and Syria. Large scale Israeli evacuation from the Golan and southern Lebanon would only result after the conclusion of full peace treaties on the Egyptian model (i.e., normalised relations), with the resultant guarantees against the reappearance of Syria's strategic challenge and against the recurrence of armed opposition to Israel from Lebanese territory.¹ For their part, Syria and Lebanon require that Israel withdraw to international boundaries, if they are to put their names to full peace agreements.

Before 1994 both Israel and Syria had a long way to go towards meeting the other state's demands. The Syrian Government moved only very slowly from a stance of non-belligerence to a preparedness to contemplate peace. Israel began to reconsider its previously implacable position on the sovereignty over and

¹ In the real world, these may, of course be very difficult promises to guarantee given the endemic social and communal ferment in Lebanon and the vagaries and uncertainties of a post-Assad Syria.

withdrawal from the Golan Heights. It would now seem, following fairly widespread leaks, that with the right guarantees, Israel will be prepared to admit Syrian sovereignty over the Golan Heights, and withdraw partially or wholly from its positions there, notwithstanding the massive domestic opposition that would be generated by abandoning its settlements there to an uncertain fate. In practice, however, this is going to be a difficult process. Imaginative mechanisms will need to be instituted for the demilitarisation and international supervision of the Golan Heights. The issues of water security and the Israeli settlements will also need to be broached with great sensitivity.

Only when Israel and Syria reach a formal peace and a final territorial settlement will the time be right for Israel and Lebanon to sign an agreement of their own, which should, in itself, provide the right conditions for the withdrawal of Israeli forces to the old Palestine/Lebanon colonial boundary.

The residual problems for Israel and Syria and for Israel and Lebanon of reaching a final agreement on the delimitation and demarcation of international boundaries pale by comparison. Essentially, it will be the same old task (as is the case for the Jordan-Israel boundary) of equating vague and dated colonial boundary delimitations with features on the ground. There is, of course, always the possibility that each side will manipulate the very vagueness of the original delimitations to advance and maintain unrealistic claims and negotiating stances, but these should not be unsurmountable problems, given, by this stage, that Israel's withdrawal from both the Golan and Southern Lebanon should have been successfully negotiated and accomplished. The question of the apportionment of water rights between the regional states is potentially much more problematical.

Instruments of governance

1) Anglo-French agreement, 23 December 1920.

2) Initialling of Anglo-French boundary demarcation agreement, 3 February 1922.

3) Ratification of 3 February agreement, 7 March 1923.

Potential for dispute

* Presuming (and this is a big presumption) that peace agreements are eventually signed between Israel and each of its northern neighbours and Israel withdraws to its colonial borders, however these are finalised and demarcated on the ground, it may still be very difficult for central government in Lebanon - given its characteristic weakness - to ensure against the contingency of future disturbances on the border.

* The fate of the Israeli settlements in the Golan will prove a political hot potato within Israel.

* Imaginative schemes will need to be devised for maintaining security and for diffusing tensions along the international boundaries, once they are finalised.

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2.4. North Africa and the Horn of Africa

Boundary disputes in Northern Africa generally have few of the tensions and sense of immediacy that characterise those of the Middle East. Most of them are latent; some have a potential for flaring up; and, in many cases, many are more directly concerned with the issue of state sovereignty than with considerations of boundary alignment. In addition, apart from the potential dispute over the waters of the River Nile, which will only become acute if Ethiopia engages in large-scale irrigation, there are no serious resources disputes. Egypt's complaints over the threat of damage to water flows in the River Nile as a result of excessive drainage of the Saharan aquifers by the Great Manmade River project in Libya are really at the level of diplomatic rhetoric rather than genuine statements of political concern.

2.4.1. East Africa and the Horn of Africa

In the Horn of Africa, the potential disputes revolve around Somalia and Ethiopia. One dispute - over the Ogaden - involves both states. The other two disputes are internal disputes which reflect the break-up of the state in each case.

2.4.1.1. Somalia/Ethiopia (the Ogaden dispute)

SUMMARY: SOMALIA CLAIMS THE OGADEN REGION OF ETHIOPIA ON THE GROUNDS OF POPULATION IDENTITY AND THE FACT THAT ETHIOPIA ONLY OCCUPIED THE REGION IN 1886-92. A SOMALI INVASION IN 1977 WAS REPULSED A YEAR LATER AND A NON-AGGRESSION PACT BETWEEN THE TWO STATES WAS SIGNED IN 1988.

Contemporary status

The Somali claim was based on the fact that Somalia, invoking the United Nations Charter and United Nations General Assembly Resolution 1514 (1960), demands that the Somali populations of the Ethiopian-controlled Ogaden region up to the Awash river should be "re-integrated" into Somalia. This area was only occupied by Ethiopia in 1886-92. It is on the basis of this demand that Somalia, like Morocco, has not subscribed to the 1964 Cairo Declaration of the Organisation of African Unity which established the principle of the intangibility of colonial frontiers in Africa.

More specifically, Somalia rejects the 1897 British Somaliland-Ethiopia demarcation and demands revision of the 1908 treaty between Italian Somaliland and Ethiopia. In essence, therefore, the Somali claim to the Ogaden is a dispute over sovereignty, not boundary alignment. In July 1977, in the wake of the 1974 Ogaden famine which caused massive refugee movements into Somalia, Mogadishu launched an invasion of the Ogaden which it occupied up to Harar. The following year, Ethiopian forces, with Soviet and Cuban backing, were able to force Somali forces out of the region.

It was the Sayid Barre regime's failure to prosecute the war successfully that led to the regime's ultimate collapse at the start of the 1990s. Meanwhile, the border region with Ethiopia became an arena for constant friction between the Western Somalia Liberation Front and the Ethiopian-backed Somali Democratic Salvation Front. In April 1988, Somalia concluded a non-aggression pact with Ethiopia which effectively renounced its claims to the Ogaden. In 1991, the Siyad Barre regime finally collapsed and, given the state of anarchy reigning in Somalia at present, any question of reviving the claim to the Ogaden will be put to one side until order returns to the state.

Instruments of governance

1) *British Somaliland-Ethiopia Demarcation Agreement 1897*

2) *Italian Somaliland-Ethiopia Treaty 1908*

Dispute potential

- * Given the collapse of the Somali state, there is no current dispute potential;
- * Once Somalia is restored to order, claims may be rescussitated as a means of cementing national unity. Ethiopia, however, will resist any such claim;

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2.4.1.2. Somalia and Djibouti

SUMMARY: SOMALIA HAS INTERMITTANTLY LAID CLAIM TO PARTS OF DJIBOUTI ON A SIMILAR BASIS AS THE CLAIM TO OGADEN

Contemporary status

A similar, intermittent claim has been made on Djibouti because of the presence of the Issa tribe which is of Somali origin. The boundary was delimited by the Exchange of Notes between Britain and France on February 2-9, 1888. The tripoint with Ethiopia was established by the Abyssinian-French Convention of March 20, 1897 and this was accepted by Britain during its demarcation of the boundary in 1932-34. Somali claims on Djibouti, however, reflect both its claim to patronage over the Issa and the presence of Somali migrant workers in Djibouti. During the 1960s, tensions over the issues were acute. They have, however, subsided since.

Instruments of governance

- 1) Anglo-French exchange of notes, February 2-9, 1888.*
- 2) Abyssinian-French Convention 1897.*

Dispute potential

* None at present

2.4.1.3. Ethiopia and Eritrea

SUMMARY: THE INCORPORATION OF ERITREA INTO ETHIOPIA IN 1950 AND ITS ANNEXATION IN 1962 SET OFF A WAR WHICH WAS A POWERFUL FACTOR IN THE COLLAPSE OF THE MENGUISTU REGIME. ERITREA IS NOW, HOWEVER, AN INDEPENDENT STATE, A STATUS WHICH IS FULLY SUPPORTED BY ETHIOPIA

Contemporary status

Between 1865 and 1889 Italy established a presence in Eritrea and transformed its possessions there into a colony in 1889. The boundary between the Ethiopian empire and Eritrea was delimited by a treaty between Italy and Ethiopia in 1900 and renewed in 1902 in a treaty between Ethiopia, Italy and Britain in 1902. In 1947 Italy renounced all title to Eritrea and in 1950 Eritrea was transferred to Ethiopian sovereignty under a federal arrangement.

In 1962, Ethiopia annexed Eritrea and very soon found itself fighting two indigenous national liberation movements, the dominant Eritrean People's Liberation Front and the Eritrean Liberation Front. The war continued throughout the Ethiopian republican period after the overthrow of Emperor Haile Selassie in 1974, with the liberation movements achieving ever greater control of Eritrea itself. In May 1991, after the collapse of the Mengistu regime, Eritrea became self-governing and, on May 24, 1993, after a referendum the previous April, it became an independent state. As with the Ogaden dispute, the Eritrean dispute was an issue of sovereignty, not boundary alignment and there are no outstanding disagreements between Eritrea and Ethiopia.

Instruments of governance

1) Treaty between Great Britain and Ethiopia for the delimitation of the frontier between Eritrea and Ethiopia: Addis Ababa, July 10, 1900;

2) Treaties between Great Britain and Ethiopia, and between Great Britain, Italy and Ethiopia, relative to the frontiers between the Sudan, Ethiopia and Eritrea: Addis Ababa, May 15, 1902.

Dispute potential

* At present none.

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2.4.1.4. Somalia-Somaliland

SUMMARY: BRITISH SOMALILAND CEDED FROM SOMALIA IN 1991 AS SOMALILAND, ALTHOUGH IT IS NOT RECOGNISED AS AN INDEPENDENT STATE BY ANY OTHER STATE

Contemporary status

Independent Somalia was formed from former British and Italian colonial possessions and protectorates. The independent state itself came into being in 1960. The Italian colony of Somalia had been placed under British military administration during the Second World War and in 1950 it was restored to Italian control prior to being granted full independence. The division between British and Italian authority during this interim decade was established as the British "provisional line" proposed in 1950.

The collapse of the Somali state in the wake of the disappearance of the Siyad Barre regime in 1991 led to the appearance of an independence movement in former British Somaliland. Indeed, since 1991, Somaliland has been operating as a separate political entity within the boundaries set down by the 1950 British "provisional line" with the rest of Somalia, the 1897 line with Ethiopia and the 1902 boundary laid down with Djibouti. The new state, however, has not been recognised by any other state and thus has no status as a state in international law.

This inevitably means that, once order and government is restored to Somalia, an attempt will be made to re-integrate Somaliland with the remainder of the country. It is, at present, impossible to predict when this will occur, although it is certain that there will eventually be conflict over this issue, given the peculiar tribal structure of Somalia. Once again, however, the dispute is fundamentally one about sovereignty, not about boundary delimitation.

Instruments of governance

1) Treaty between Great Britain and Ethiopia, May 14, 1897;

2) Agreement of the Commission appointed to demarcate the boundary between the Empire of Ethiopia and the British Protectorate on the Somali coast, March 28, 1935;

Dispute potential

* Once Somalia is restored to order, its government will attempt to recover control.

* If Somaliland gains international recognition, particularly from its neighbours, this could worsen any future dispute with Somalia.

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2.4.1.5. East Africa - Sudan, Egypt and the Halaib Triangle

SUMMARY: EGYPT AND THE AUTHORITIES IN CONDOMINIUM SUDAN AGREED, FOR ADMINISTRATIVE REASONS, TO CEDE TERRITORIAL CONTROL OVER THE ABABDA AND BEJA BORDERLANDS. SUDAN NOW CONSIDERS THAT IT HAS SOVEREIGN RIGHTS TO THE HALAIB TRIANGLE THUS FORMED

Contemporary status

Egypt acquired control of what has become Sudan in 1841 as a result of a firman (decree) of the Ottoman sultan. In 1883, an independent state was created there by the Mahdi but this was eventually crushed by joint British-Egyptian military action in 1896-99. On January 19, 1899, Britain and the Egyptian Khedivate signed an Agreement relative to the future administration of Sudan. According to this agreement, Sudan consisted of all territories south of the 22nd parallel of latitude. Although the independent government of Egypt - after 1922 - did not recognise British sovereignty over Sudan, both countries signed an Agreement concerning Self-Government and Self-Determination for Sudan on February 12, 1953 which established Sudan as a sovereign entity. Egypt, in other words, made no claim on the territories administered by Britain which were to become the independent state of Sudan.

This becomes important because, although the 1899 Agreement established Sudanese territory as being south of the 22nd parallel, two Egyptian legislative instruments modified this position and have led to a territorial dispute between the two countries. In the first case, which is of minor importance, an Egyptian arrêté of March 26, 1899 ceded Sudanese control over the Wadi Halfa salient north of the 22nd parallel. The more important changes were made in 1902, when an Egyptian decree claimed control, for administrative purposes, of the lands of the Ababda tribe south of the 22nd parallel and ceded control of the grazing lands of the Beja tribe north of the 22nd parallel to the Sudanese authorities - who were, at the time, British.

This created the Halaib Triangle which has been in dispute over where the international boundary alignments should be ever since. In 1958, because of a Sudanese threat to hold elections in the areas it controlled north of the 22nd parallel, Egypt formally claimed all such areas - the Beja grazing lands and the Wadi Halfa salient - and renounced its control over the Ababda territories south of the 22nd parallel. Sudan, in response, in a letter sent to the United Nations Security Council on February 20, 1958 asserted its sovereign rights to the regions claimed by Egypt. The matter, however, remained dormant, with the administrative arrangements persisting undisturbed as set down in 1899 and 1902.

In late 1991 Sudan granted mineral exploration rights to a Canadian oil company. This excited immediate protests from Egypt and the two countries agreed to three days of meetings in Khartoum over the issue. The meetings did not produce a solution and, in August 1993, a joint commission, which met for the first time the following October, was set up to resolve the dispute. At

present the Egyptian government has renounced any question of unilateral action to regain control of the Halaib Triangle and seeks a negotiated or arbitrated solution. However, the possibility of violence cannot be ruled out, given the growing diplomatic tensions between the two states, particularly over the issue of Islamic radicalism.

Instruments of governance

- 1) Agreement between the British Government and the Government of the Khedive of Egypt relative to the future administration of the Sudan, January 19, 1899.*
- 2) Arrêté of the Egyptian Ministry of the Interior determining the jurisdiction of the Governorate of Nubia, March 26, 1899.*
- 3) Arrêté of the Egyptian Ministry of the Interior relating to the regions of the nomads of Egypt and the Sudan, and which comprise the tribes of Becharia and of Malikab North in the Sudan and the tribes of Abadia in Egypt, November 4, 1902.*

Dispute potential

- * At present the bilateral commission seems likely to defuse any dispute potential.
- * A change of government in Sudan could alter this situation.

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2.4.2. Libyan boundary disputes

Libya has been, in recent years, the most litigious state in North Africa over the issue of boundary delimitation. It has placed two maritime boundary disputes before the International Court of Justice at The Hague (with Tunisia and Malta) and has also placed its dispute with Chad before the same body. There is, however, a further outstanding dispute: with Algeria over the two countries' common border south of Ghat.

2.4.2.1. The Libya-Chad dispute

SUMMARY: LIBYA OCCUPIED AUZOU STRIP IN LATE 1972, JUSTIFYING ITS PRESENCE BY REFERENCE TO AN INCOMPLETELY RATIFIED TREATY OF 1935 BETWEEN FRANCE AND ITALY. THE ISSUE WAS EVENTUALLY DECIDED IN CHAD'S FAVOUR BY THE INTERNATIONAL COURT OF JUSTICE IN 1994.

Contemporary status

The background to the Libya-Chad dispute over the control of the Aozou Strip has been described above and arises, in essence, from the incompletely ratified 1935 Mussolini-Laval treaty which created the southern boundary of the Aozou Strip. The northern boundary was formed by what had, until then, been the internationally recognised boundary. Indeed, the new Mussolini-Laval line, which was never properly delimited or demarcated - nor, indeed, had its predecessor been! - was treated as the **de facto** boundary up to 1955.

In 1955 France and Libya signed a Treaty of Friendship and Good Neighbourliness in which the "existing" international boundary between Libyan and Chad was expressly recognised - Chad was then still under French control. France meant by this the boundary as defined prior to 1935, an intention which was reinforced by an exchange of letters between the two governments in 1956 in which the various instruments which France considered germane to the definition of the boundary were listed. The Libyan authorities appear to have been unaware of the implications of this exchange.

In late 1972, the authorities of the new revolutionary regime of Colonel Qadhafi occupied large parts of the Aozou Strip and introduced Libyan administration to it, despite protests from the Chadian government in N'Jamena and from the FROLINAT resistance movement which was fighting the Chadian government for control of the country. In fact the movement split into pro- and anti-Libyan factions over the issue of Libyan sovereign claims over the Aozou Strip. Libyan occupation of the region persisted until March 1987 when, after a short but decisive war, Libyan forces in Chad were forced out except from the military base at Aozou itself which straddled the international boundary.

During the following year, after an abortive mediation attempt by the Organisation of African Unity, Libya agreed to place the dispute before the International Court of Justice at The Hague. During the proceedings, Chad argued that the 1955 treaty and the 1956 exchange of letters were the instruments which defined the international boundary. Libya, on the other hand argued, first, that no boundary had ever been established and, second, insofar as there were relevant legal instruments, the only one applicable was the 1935 treaty. Libya also invited the Court to define the future boundary alignment.

In the event, on February 4, 1994, the Court decided in Chad's favour. Libya immediately arranged for the withdrawal of its forces, accepted the Court's decision and, in May, signed a boundary agreement with Chad confirming the Court's ruling. This would, therefore, suggest that this boundary issue is no longer in dispute and will, therefore, no longer be a source of conflict. However, the Libyan population as a whole does not accept the Court's decision and a successor regime might well renounce the agreement with Chad. The boundary dispute, in this case, is probably only quiescent at present.

Instruments of governance

- 1) *Anglo-French Agreement, June 14, 1898.*
- 2) *Anglo-French Agreement, March 21, 1899.*
- 3) *Franco-Italian Exchange of Notes, September 12, 1919.*
- 4) *Mussolini-Laval Treaty, 1935 (undated).*
- 5) *Franco-Libyan Treaty of Friendship, August 10, 1955.*
- 6) *Franco-Libyan Exchange of Letters, December 19-26, 1956*
- 7) *Decision of the International Court of Justice on the dispute between Libya and Chad, February 4, 1994.*

Dispute potential

- * None, given the recent treaty between Libya and Chad.
- * However, Libyan public opinion does not accept the loss of the Aozou Strip and, should the Qadhafi regime fall, its successor might well seek to re-open the question.

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ICJ (1994), The Hague.

2.4.2.2. Libya's boundary with Algeria

SUMMARY: THE BOUNDARY BETWEEN LIBYA AND ALGERIA SOUTHWARDS FROM GHAT TO THE TRIPOINT WITH NIGER IS UNDEMARCATED BUT ALGERIAN FORCES HAVE OCCUPIED LARGE TRACTS OF TERRITORY CLAIMED BY LIBYA.

Contemporary status

In 1983 Algeria offered treaties of concord and fraternity to its neighbour states. The only requirement for such a treaty was that the country in question would resolve any outstanding differences over their mutual boundaries first. This meant that Libya, which has an outstanding dispute over the boundary between Ghat and the tripoint with Niger, could not join. In fact, it was also made clear to Libyan delegates attending the sole meeting between Algerian and Libyan delegates on the issue that Algeria would not alter its claim through negotiations.

The northern portion of the Libyan-Algerian boundary was settled in the 1955 treaty between France and Libya. The portion south of Ghat was only defined in the most general terms as passing through the passes of Ghat and Tummo and through three points - the Takharkhourri Gap, the Anai Pass and Gara Derouel el-Djemel at reference point 1010 which is the Niger tripoint. The 1955 definition was an extension of the original 1919 exchange of notes between France and Italy, that the boundary, "sera déterminée".

To date no attempt has been made to delimit or demarcate the region and the boundary alignment remains completely indeterminate. This provides a serious danger of conflict because Algerian military forces have encroached onto territory which Libya claims, by as much as 100 kilometres in some cases. Libya has so far been unwilling to use force to assert its claim, but this always remains a possibility, despite the clauses of the **Maghreb Arab Union** agreement which guarantee the territorial inviolability of member states and enjoin them to settle differences by negotiation, rather than by war.

Instruments of governance

- 1) Franco-Libyan Treaty of Friendship, August 10, 1955.*
- 2) Franco-Libyan Exchange of Letters, December 19-26, 1956.*

Dispute potential

- * Serious, if general relations between Libya and Algeria should deteriorate.
- * Then Libya might move to expel Algerian troops; or

* A new, aggressive Islamist government in Algeria seeks to provoke confrontation with the Qadhafi regime in the hope of destroying it and used this dispute as an excuse.

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2.4.3. Morocco's borders

Morocco's borders involve disputes over both issues of sovereignty and boundary alignment. They fall into three groups: the desert boundary with Algeria between Figuig and Tindouf; the issue of sovereignty over the Western Sahara; and the issue of sovereignty over the five **presidios** along the Mediterranean coast which are currently occupied and claimed as sovereign territory by Spain.

2.4.3.1. The boundary with Algeria

SUMMARY: THIS BOUNDARY WAS CREATED BY FRENCH ADMINISTRATIVE FIAT AND HAS CAUSED ONE SHORT BORDER WAR IN 1963. A TREATY FOR ITS DELIMITATION WAS DRAWN UP IN 1972, RATIFIED BY ALGERIA IN 1973 AND BY MOROCCO IN 1989. IT HAS NOT YET BEEN DEMARCATED.

Contemporary status

Although the boundary with Algeria from the Mediterranean coast to Figuig was established, first by the Treaty of Lalla Marnia in 1845 to Teniet al-Sassi and, second, by three Franco-Moroccan instruments of 1901, 1902 and 1910 which extended the line to Figuig, no such certainty existed in colonial times over the westwards extension of the boundary toward Tindouf. In fact, during the colonial period, the administrative delimitations between the French authorities in Algeria and those in Morocco varied according to which administration was in the ascendent. In reality, the two administrations disputed control of what was known as the "Confins Algéro-Marocains", a border march region over which military control was weak.

By 1956, the two administrations accepted a compromise, the Trinquet Line, which was abandoned two years later - after Morocco had become independent - when French forces imposed a new line - la limite operationnelle - from the Jabal Grouz, via the Jabal Zelmou, north of the Hamada du Guir and the Kem Kem plateua to Ktaoua on the River Dra. This was eventually to become the boundary between Morocco and Algeria, although only after 1972. Between 1958 and 1972, Morocco and Algeria fought a short border war in 1963, with Moroccan forces attempting to capture Tindouf, and Morocco laid claim to the three provinces of Gourara, Touwat and In Salah which had been amputated from the pre-colonial Moroccan state by French administrative and military action before 1910.

The treaty which finally delimited the boundary was negotiated in 1972 and ratified by Algeria in 1973. It provided for a boundary line along "la limite operationnelle" and reflected what has been a "leit motif" of Algerian boundary policy. This is that Algeria's boundaries are justified entirely by reference to the principle of **uti possedetis juris** and the intangibility of colonial frontiers.

The Algerian authorities have never been willing to compromise on this issue, even when they cloak it with references to the principle of national self-determination. Morocco was prepared to accept this proposed boundary largely because the treaty also provided for Morocco to be a transit route for iron ore to be mined at a major deposit at Gara Djebilet, close to Tindouf.

Nonetheless, diplomatic difficulties, particularly over the Western Sahara, persisted and the treaty was only ratified by Morocco in 1989, when Algeria joined the **Maghreb Arab Union** and, thereby, renounced any ambitions it may have had towards regional hegemony. This has always been an objective of Morocco's regional policy. However, although the treaty delimits the boundary, no attempt has been made so far to actually demarcate it.

Instruments of governance

1) *Treaty of Lalla Marnia, 1845.*

2) *Agreement relating to the delimitation of the state frontier between the Kingdom of Morocco and the Democratic People's Republic of Algeria, June 15, 1972.*

Dispute potential

* This boundary dispute is quiescent and there is no reason to imagine that it will burst out afresh. The Moroccan government has been at pains to be on good terms with everyone in the Algerian political scene at present.

* However, should a radical Islamist regime come to power in Algeria, there might be renewed confrontation over the boundary alignment.

* It is more likely that the Moroccan authorities will attempt to find a basis for cooperation with a future Algerian government in order to finally demarcate the boundary.

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2.4.3.2. The issue of the Western Sahara

SUMMARY: THE WESTERN SAHARA, A FORMER SPANISH COLONY, IS CLAIMED BY BOTH MOROCCO AND THE WESTERN SAHARA NATIONAL LIBERATION MOVEMENT, THE POLISARIO FRONT. CURRENTLY, A REFERENDUM FOR SELF-DETERMINATION IS TAKING PLACE UNDER UN AUSPICES.

Contemporary status

This, unlike the issue of Morocco's boundary with Algeria which is concerned with alignment, is primarily an issue of sovereignty. In effect, Morocco claims that the Spanish occupation of the Western Sahara in 1884 injured the territorial integrity of the independent Moroccan state. Thus, in accordance with the provisions of Paragraph 6 of United Nations General Assembly Resolution 1514 (1960), Morocco is entitled to recover sovereign control of the territory. The Polisario Front, on the other hand, which was created in 1973, towards the end of the Spanish occupation, and which exploited a new strand of Sahrawi nationalism and led the struggle to force Spain to relinquish control, argues that the Sahrawi population, as a colonial people, has a right of self-determination, as provided for in the same resolution. It has been supported in this view by the Organisation of African Unity and the United Nations, as well as by 71 states worldwide.

In 1974, after a United Nations mission to the Western Sahara had established that there was widespread support for independence, the International Court at The Hague was asked to rule on the validity of Morocco's claim. The Court decided, in October 1975, that Morocco could claim traditional ties of allegiance but that these did not amount to territorial sovereignty. One month later, Morocco, claiming that the Court's judgement did support its claim, launched a massive popular invasion of 350,000 people into the Sahara. The move coincided with the constitutional crisis in Spain attendant on the final illness of Generalissimo Franco and, behind the scenes, Spain negotiated away the administrative control of the region to Morocco and Mauritania. Spain has, however, reserved to itself the legal sovereignty to the region.

Since that time, the Polisario Front, after setting up refugee camps for the tens of thousands of Western Saharans who fled the Moroccan occupation at Tindouf, has waged a military and diplomatic conflict to force Morocco to grant self-determination. Morocco has been prepared to accept a United Nations-sponsored referendum on the grounds that this will confirm its right to the region and a cease-fire has been in operation since September 1992. There have been great difficulties in establishing who may participate since Morocco objected to the original proposal that only those registered in the 1974 Spanish census of the region and their descendents could be involved. Rabat wished to include a further 120,000 persons who were descendents of Western Saharan populations which had been forced out of the territories by a combined Franco-Spanish military operation in 1958.

Eventually a compromise was proposed in which those who could demonstrate six years continuous residence or twelve years intermittent residence in the Western Sahara would also be entitled to vote. This, however, was only accepted by the Polisario Front in April 1994 and the referendum is now scheduled to go ahead at the end of 1994. It is inconceivable that Morocco will relinquish control of the region, however, should it lose and it is certain that everything that can be done to ensure a favourable result will be done, despite international observers. The Moroccan monarchy would probably not survive a defeat and, as a result, most Western states also wish to see a Moroccan victory.

This will then leave the residuum of the Polisario Front which cannot bring itself to make peace with Morocco and return to the territories - which are due to become an autonomous, self-governing region under the latest Moroccan administrative reform proposals. It is not clear where they will be able to go, although many of them who have Algerian citizenship will, no doubt, remain there. This does mean, however, that there will be a potential for an on-going guerilla or terrorist campaign against Morocco. This, in turn, will envenom relations between Morocco and any state suspected of harbouring such radicals - Algeria, Libya or Sudan. And that could lead to renewed tensions and even open hostilities between Algeria and Morocco, which would be disastrous for North Africa.

Instruments of governance

1) *Convention pour la délimitation des possessions françaises et espagnoles dans l'Afrique occidentale, sur la côte du Sahara et sur la Golfe de Guinée, June 27, 1900.*

2) *Decision of the International Court of Justice on the Western Sahara issue, October 4, 1974.*

3) *Tripartite agreement between Spain, Morocco and Mauritania, November 26, 1975.*

4) *United Nations Security Council Resolution 690 (1991), of May 17, 1991.*

Dispute potential

* The Polisario Front may refuse to accept the referendum result.

* Morocco may do the same.

* In such circumstances Algeria may support the Polisario Front and war between Morocco and Algeria might result.

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2.4.3.3. *The Spanish enclaves*

SUMMARY: SPAIN OCCUPIES FIVE ENCLAVES ON THE MOROCCAN MEDITERRANEAN COAST AND MOROCCO HAS WARNED THAT THEY MUST BE RETURNED WHEN SPAIN REGAINS CONTROL OF GIBRALTAR

Contemporary Status

Since the fifteenth century, Spain has occupied five enclaves - the **presidios** - on the Moroccan mainland: Ceuta, Melilla, Peñon de Alhucemas, Peñon de Gomez, and the Chaffarine islands. Only two of them have any economic or political importance - the coastal cities and ports of Ceuta and Melilla. Morocco claims all five **presidios**, however, but has been prepared to delay its claim because of its good relations with Spain. Nonetheless, King Hassan has warned that, once Spain recovers sovereign control of Gibraltar, Morocco will insist on the immediate return of the **presidios**.

The Moroccan political parties, particularly the **Istiqlal** party, frequently raise the issue, however, and the Moroccan authorities are finding it increasingly difficult to persuade them to be patient. The issue is also inflamed by Spanish actions: in 1986, for example, Spain passed a new aliens law as part of its process of joining the European Community. There were immediate reactions amongst the substantial Moroccan population in Melilla and, to a lesser extent, in Ceuta because of their fears that they would be excluded from the **presidios** or treated as full aliens, in contrast to the regimes they had enjoyed before. These demands for inclusion soon became transformed into demands for integration of the **presidios** into Morocco immediately when the Moroccan political parties became involved. More recently, a Spanish proposal this year to give the **presidios** autonomous status caused an official Moroccan protest.

There is no doubt that the **presidios** will eventually return to Moroccan sovereignty - and this is a dispute solely about sovereignty. The question is when and at what cost to good relations between Morocco and Spain. Spain is Morocco's most significant trade partner and the two countries will soon be lined by a gas pipeline from Algeria and, in the more distant future, by a road bridge across the Straits of Gibraltar. King Hassan is prepared to be patient but, in the end, he will have to have some satisfaction on this score. All that can be said is that, as Morocco becomes increasingly integrated into the European Union - a new free trade arrangement will begin to operate in a few years time - the danger of a violent takeover will recede.

And, then, there are powerful reasons to delay any takeover. There is, first, the cynical fact that both Ceuta and Melilla are vital to the local economies of northern Morocco. Both are free ports and smuggling goods into Morocco from them is big business which is treated indulgently by the authorities since it is estimated to generate up to 40 per cent of local economic activity. The biggest bar to integration, however, is the local Spanish population which is extremely rightwing and very hostile to any change in its status with Spain.

Instruments of governance

None, except for administrative arrangements.

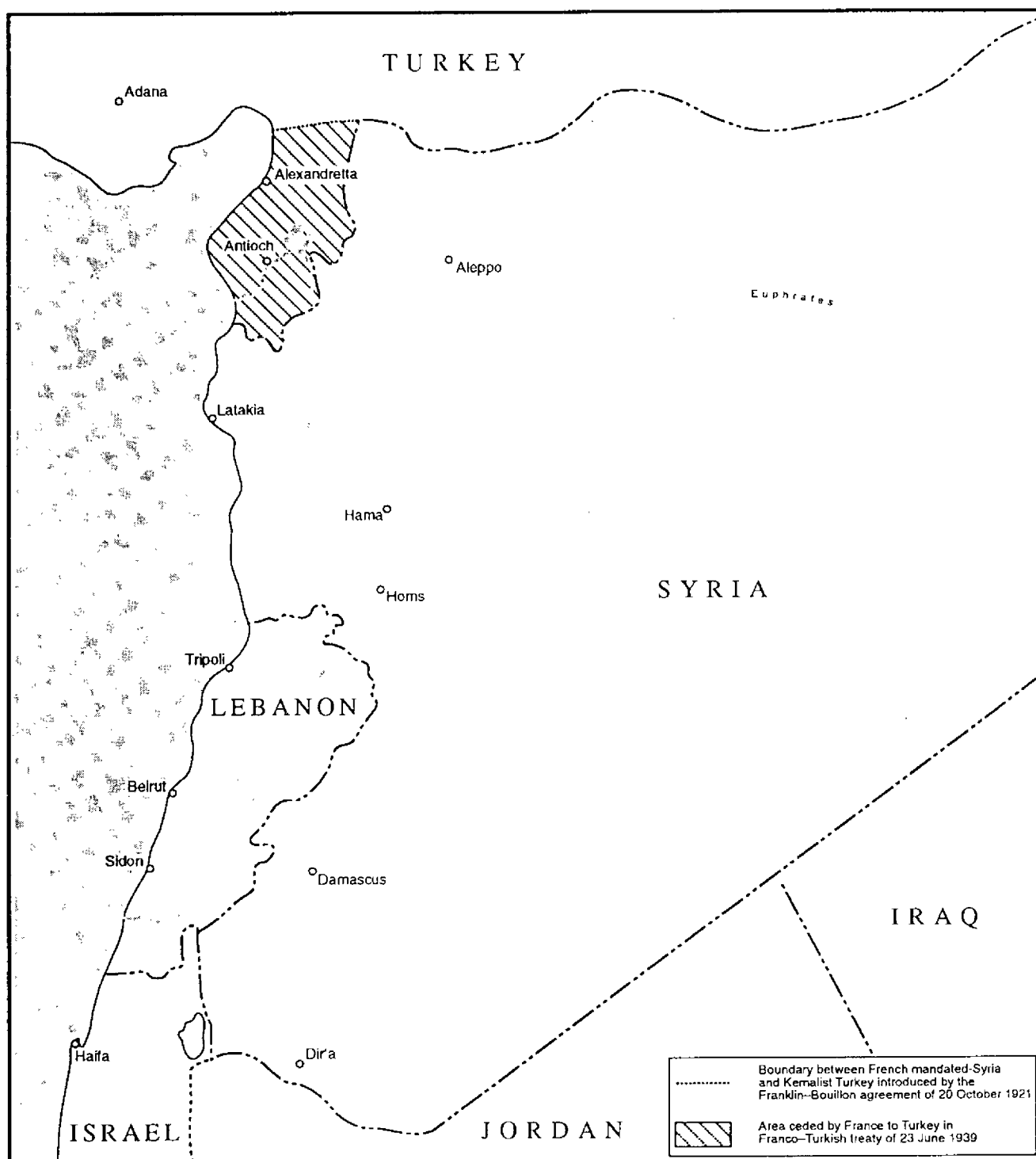
Dispute potential

* Changes in Spanish aliens law may provoke a unilateral Moroccan occupation.

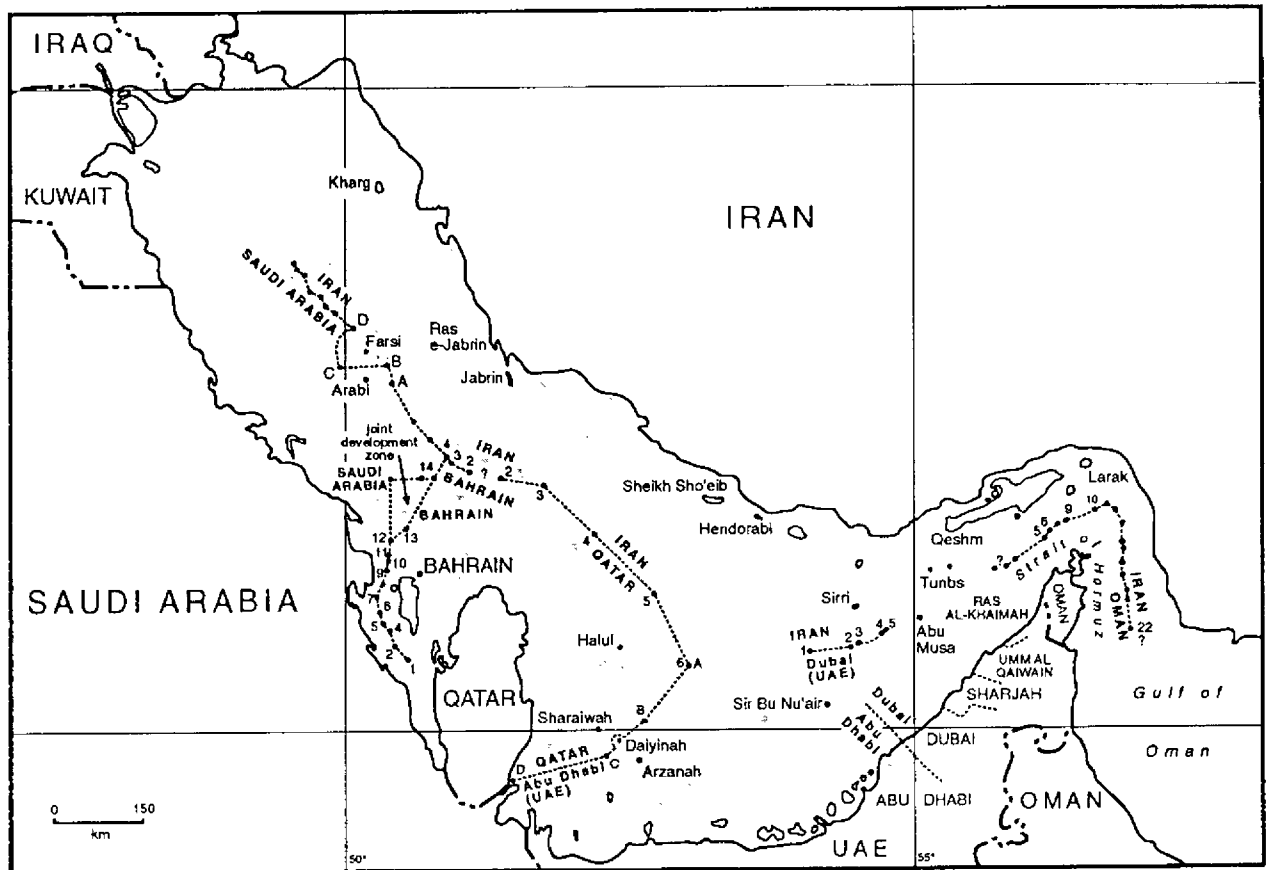
* Spain's recovery of the sovereignty over Gibraltar will trigger a similar Moroccan demand over the enclaves.

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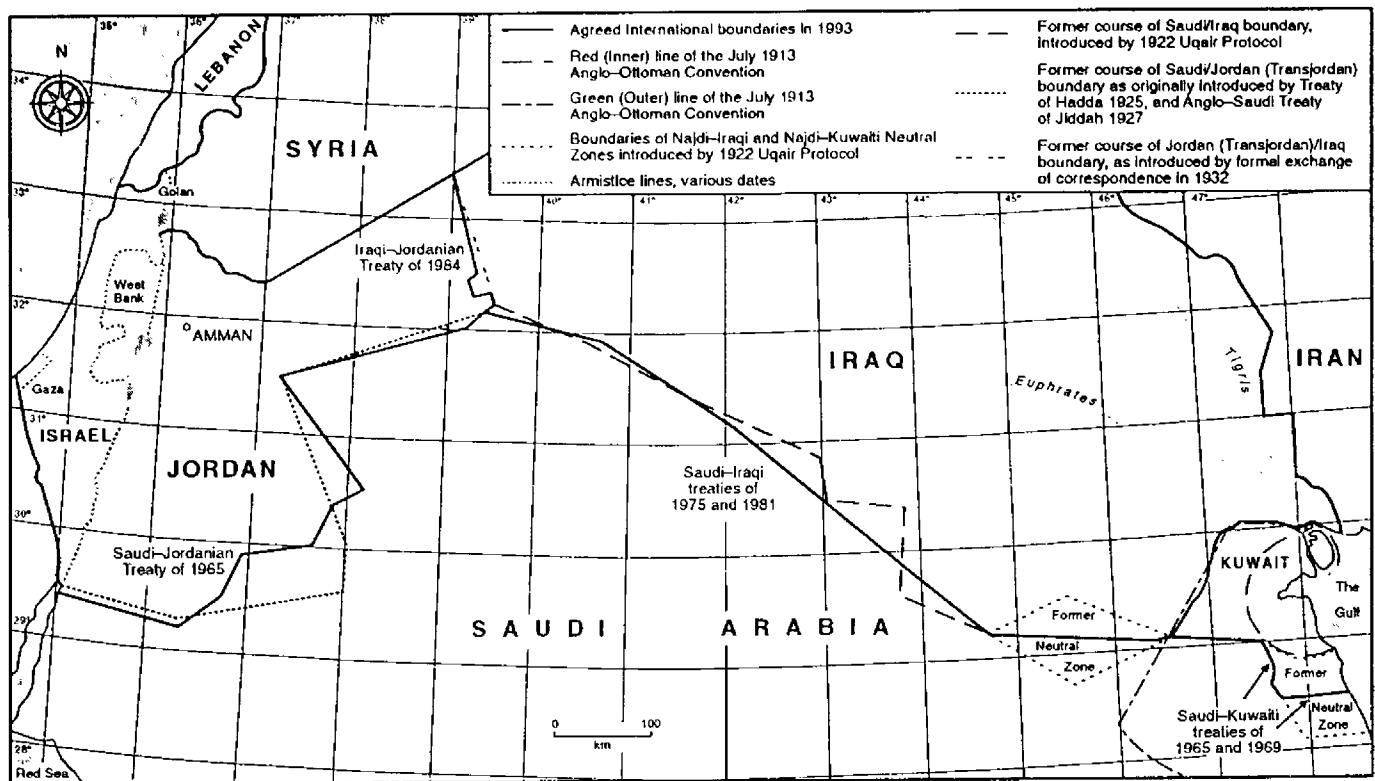
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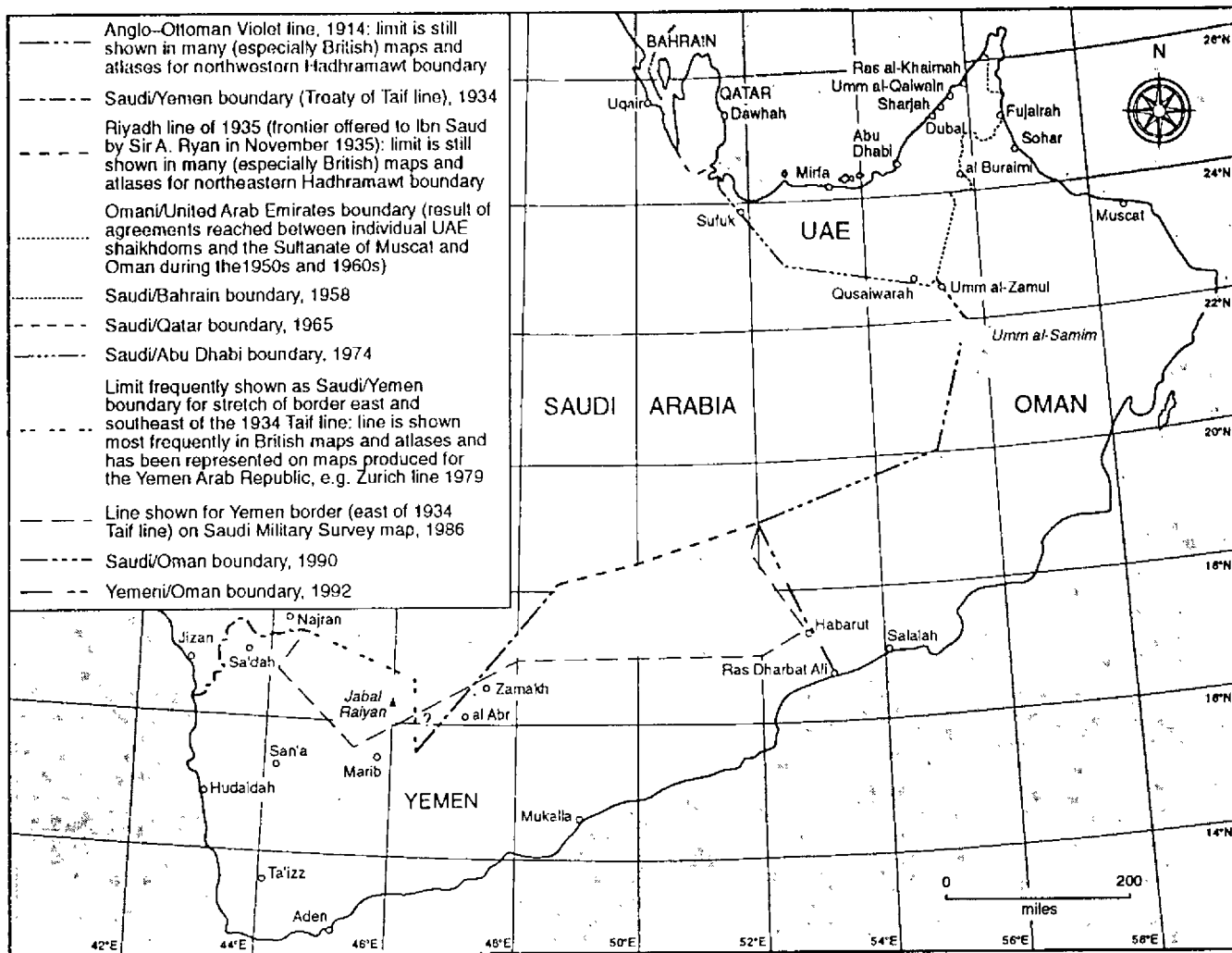
Map 1 The latent Syrian claim to Alexandretta (Iskanderun) and the Hatay



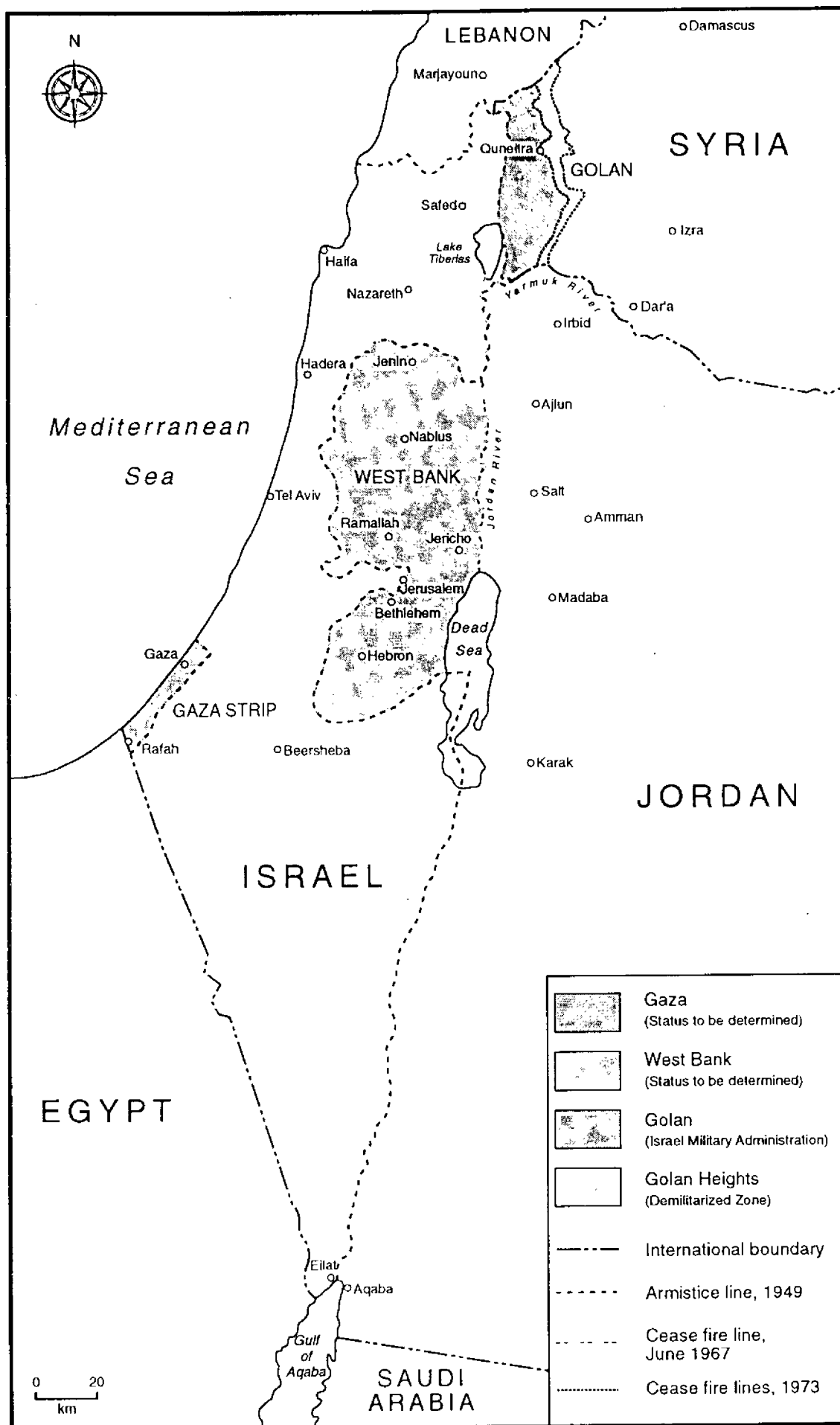
Map 2 Maritime delimitation in the Gulf, 1994



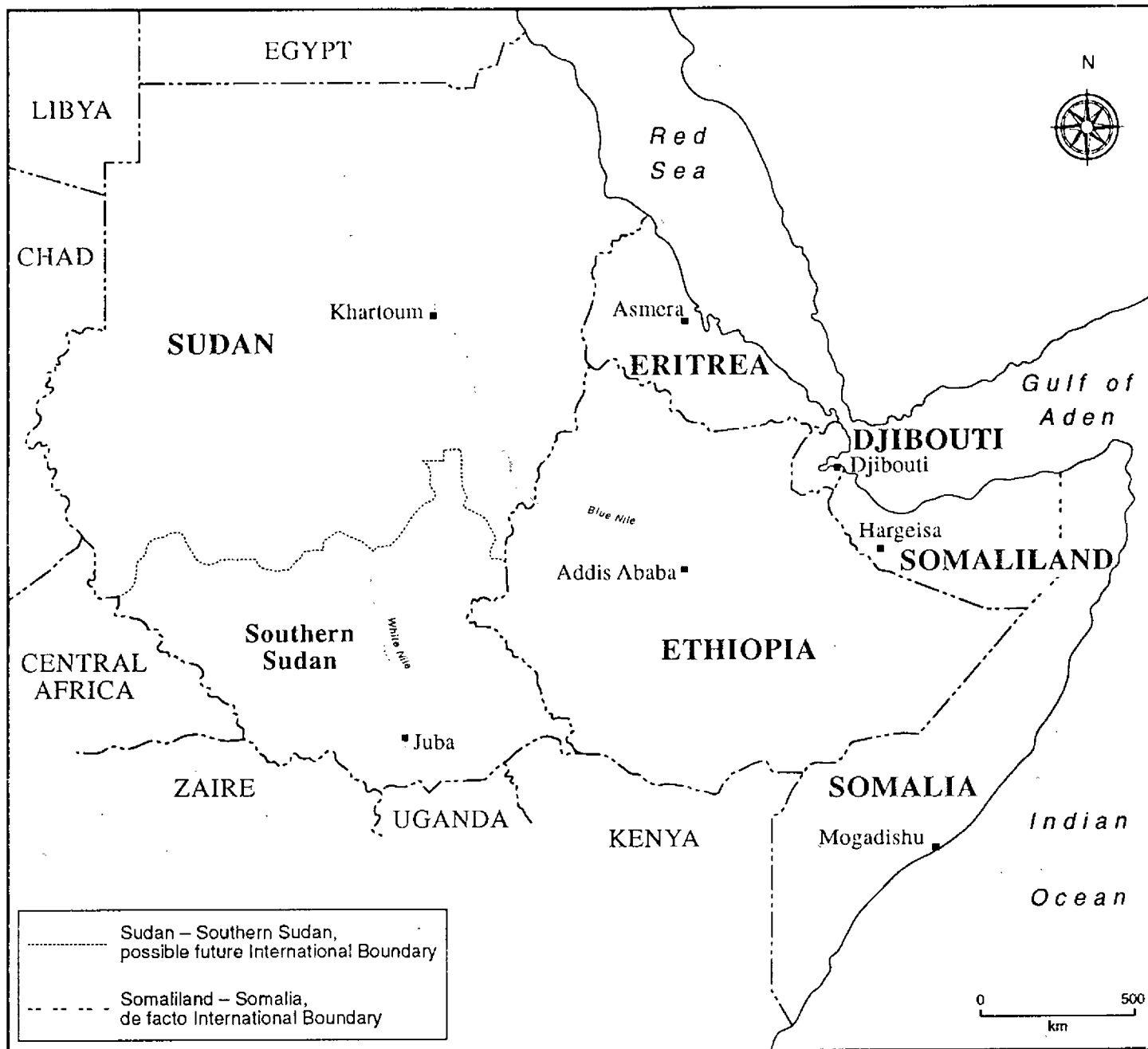
Map 3 Boundaries in northern Arabia, 1994



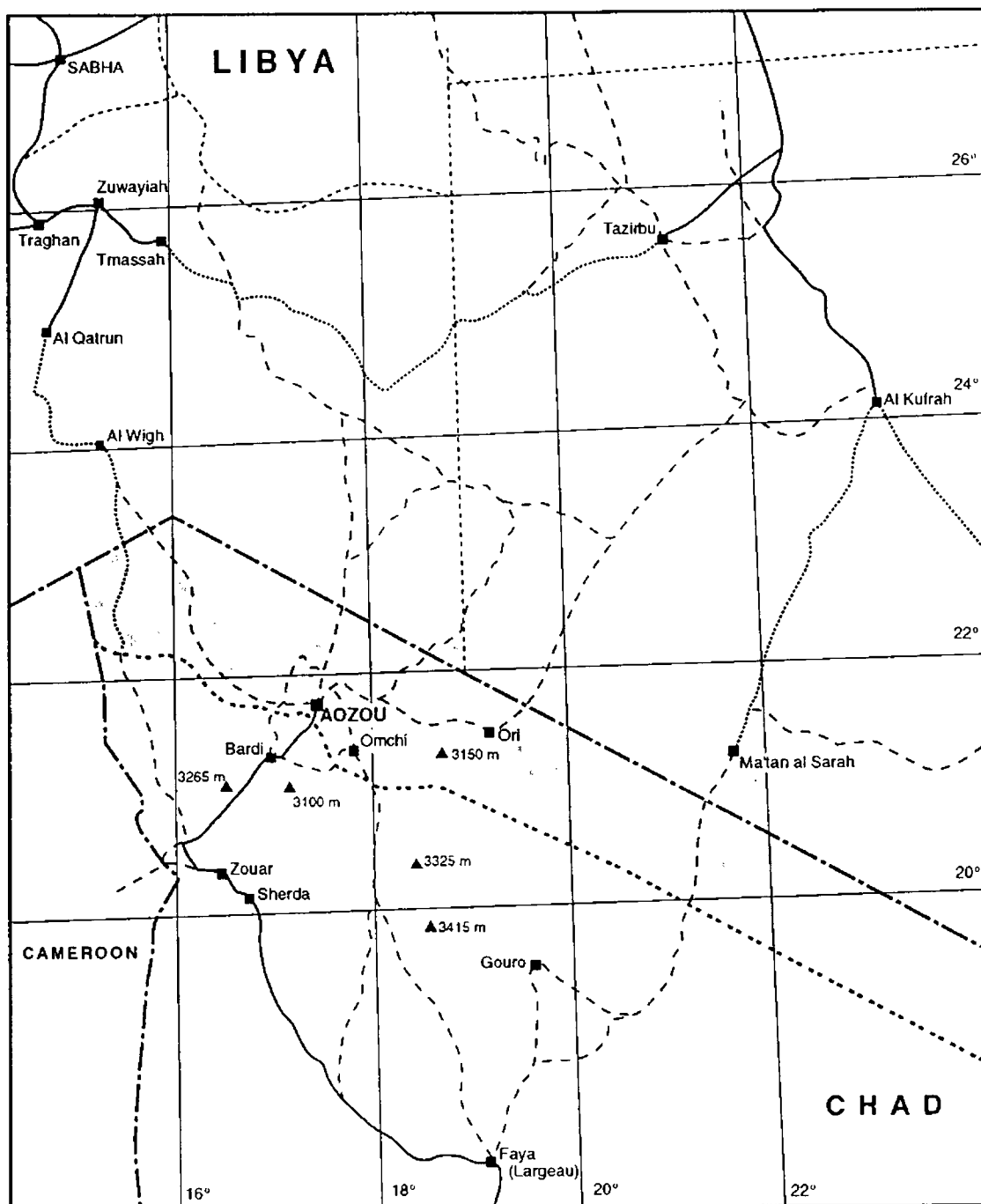
Map 4 Boundaries in southern Arabia, 1994



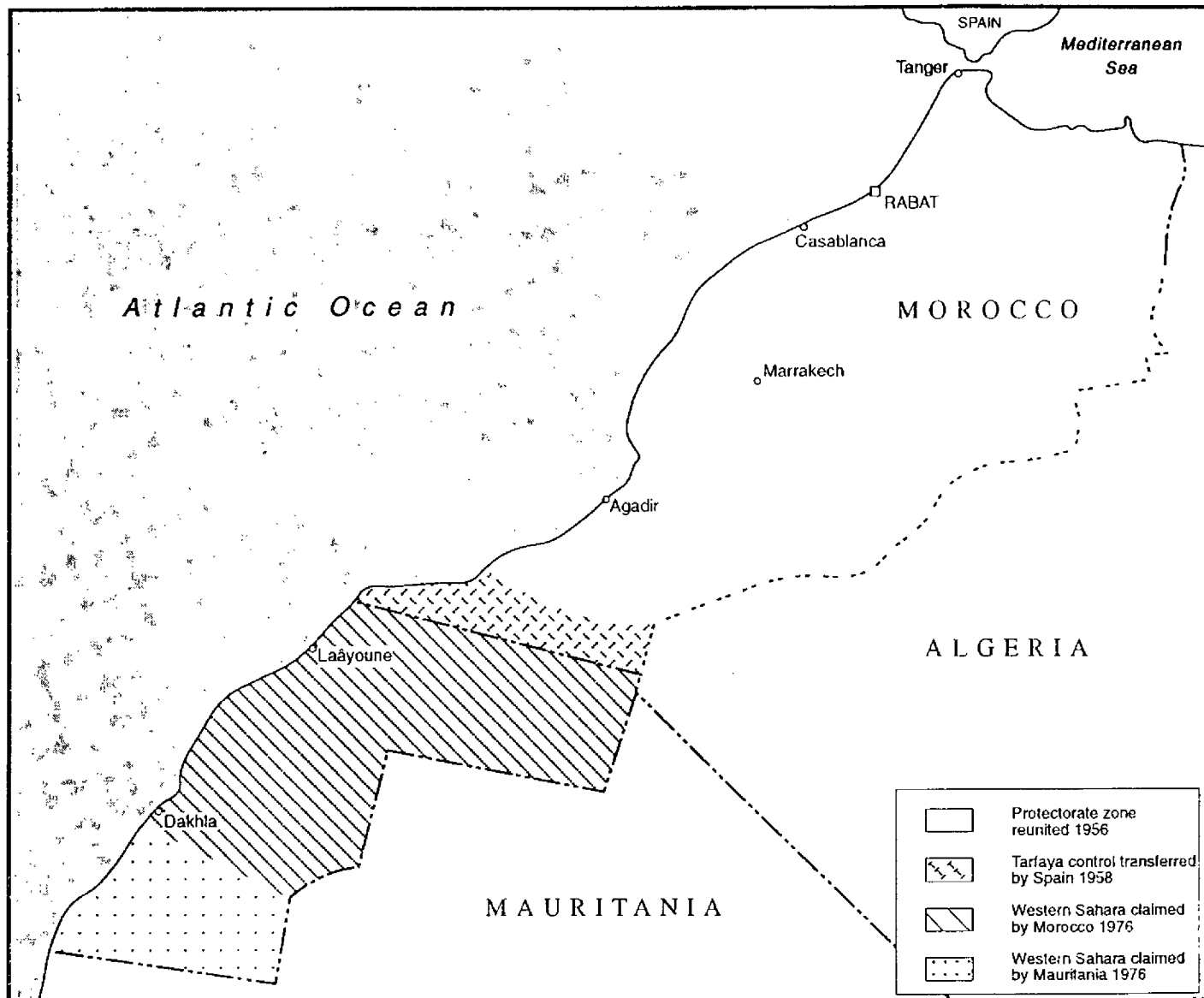
Map 5 Israel and the Occupied Territories - present



Map 6 The Horn of Africa, 1994



Map 7 The formerly-disputed Aozou Strip - awarded by the ICJ to Chad in February 1994



Map 8 Borders in the western Sahara area, 1994

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