

THE UNIVERSITY OF HULL

**Peaceful Modes of Defining International Boundary Disputes with
Particular Reference to the Practice of the Kingdom of Saudi Arabia
and its Neighbouring States Regarding the Settlement of their Land
Boundary Disputes**

**Being a thesis submitted for the Degree of Doctor of
Philosophy in International Law
in the University of Hull**

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Dedication

*To the memory of my parents
To my wife
To my children
With gratitude, respect and love*

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Table of Abbreviations

AJIL	American Journal of International Law
ARAMCO	Arabian-American Oil Company
BFSP	British and Foreign State Reports
BYIL	British Yearbook of International Law
CASOC	California-Arabian Standard Oil Company
Cd.,Cmd. Or Cmnd	United Kingdom Command Papers
FO	Foreign Office
GCC	Gulf Cooperation Council
GCSS	Gulf Centre for Strategic Studies
HLR	House of Lord Reports
ICJ	International Court of Justice
ILM	International Legal Material
ILR	International Law Reports
IOR	Indian Office Reports
IPC	Iraq Petroleum Company
IPEC	Independent Petroleum Exporting Countries
LQR	Law Quarterly Review
NATO	North Atlantic Treaty Organisation
OPEC	Organisation of Petroleum Exporting Countries
PICJ	The Permanent International Court of Justice
PRO	Public Record Office

UAE	United Arab Emirates
UK	United Kingdom
UN	United Nations
UNTS	United Nations Treaty Series
US	United States
USSR	Union of Soviet Socialist Republics
YUN	Yearbook of the United Nations

GENERAL INTRODUCTION

1. Introduction

Saudi Arabia is located in the south west of Asia. It is the largest country in the Arabian Peninsula, occupying 80 percent of the total area.¹ It is bounded by seven countries and three bodies of water: Kuwait, Iraq and Jordan to the north, the Arabian Gulf, Qatar, the United Arab Emirates (UAE) and Oman to the east; Yemen to the south; and the Gulf of Aqaba and the Red Sea to the west (see map 1). The size of the country as estimated by the Saudi government is 2,240,000 square kilometres,² and according to the 1991 official census, the estimated population of Saudi Arabia is 16.9 million,³ the vast majority of whom are *Sunni* Muslims. For administrative purposes, the country is divided into thirteen provinces.⁴ Saudi Arabia's laws and regulations are entirely based on Islamic law, the *Shari'a*.⁵

The history of Saudi Arabia is often broken into three periods that follow the rise of Al Saud: the first, the second and third or modern Saudi states.⁶ The modern Saudi state was established by King Abdulaziz Al Saud when he retook Riyadh, the

¹ Metz, (ed.), *Saudi Arabia: a Country Study*, (Washington, Federal Research Division, Library of Congress, 1993), p. 49.

² *The Sixth five-Year Plan (1995-2000)*, Ministry of Planning, Archive of Ministry of Planning.

³ The General Census of 1991, Ministry of Planning, Archive of Ministry of Planning.

⁴ This division was reaffirmed in the Regulation of the Regional Authorities endorsed by the Royal Decree No. A/92 of March 1, 1992 as well as by the Regulations of Provinces (as amended) endorsed by the Royal Decree of September 16, 1993. Archives of the Council of Ministers.

⁵ This was confirmed in the latest constitutional and administrative reform of Saudi Arabia in 1992, Article 1 of Chapter one, General principles, of the 1992 Basic Law of Government of Saudi Arabia, See Aba-Namay, "The Recent Constitutional reforms in Saudi Arabia", (1993) 42 *International and Comparative Law Quarterly* 295, at 303, Bulloch, *The Shura Council in Saudi Arabia* (London, 1993). For further details about Islamic law in general, see Khadduri, "Nature and Sources of Islamic Law", (1953) 22 *The George Washington Law Review* 3, Anderson, *Islamic Law in the Modern World* (New York, 1959).

⁶ Al-Authaimin, *The History of Saudi Arabia* (Riyadh, 1997) (in Arabic) p. 10. For more details see also Al-Authaimin, *The History of Saudi Arabia* (Riyadh, 1995) ed. 6, vol.1, (in Arabic) pp.19-58.

capital of the Saudi state, in 1902,⁷ unifying the various weak and conflicting regions into one strong country. On September 23, 1932, the various regions and parts of Saudi Arabia were formally unified and the foundation of the modern Kingdom of Saudi Arabia was declared.⁸

Saudi Arabia became a member of the United Nations on June 26, 1945.⁹ It is also a member of both the Arab League, created in 1944, and the Gulf Cooperation Council (GCC) which was established in May 1981 and is composed of six Gulf countries, namely, Saudi Arabia, Kuwait, Qatar, Bahrain, Oman and the United Arab Emirates (UAE).¹⁰

Before the establishment of Saudi Arabia and its neighbouring states, the concept of international boundaries as understood in international law did not yet exist. The inhabitants of the Arabian Peninsula, who were tribal and nomadic people, used to move freely within an area encompassing Syria and Iraq to the north as well as the Arabian Peninsula itself; they never recognised political or legal boundaries¹¹(see map 2). Emirs of these tribes instead regarded deserts or mountain areas as separators between their own and other jurisdictions. Indeed, there were no fixed, precise boundaries between these entities. Territorial jurisdiction depended on the loyalties of the Bedouin tribes to the rulers of various divisions. Strong political authority was lacking, continuous unrest was common, and natural resources were inadequate to

⁷ Saudi Arabia observed on 5th Shawwal 1419 AH (corresponding to 22nd January 1999 AD) the centenary celebrations of its existence as a state, according to the Arabic calendar, under the slogan, "100 years of unification and building", see *Arab News*, vol. XXIV, No. 58 dated 25. 01.1999, p.1.

⁸ Royal decree No. 2716 dated 22.9.1932, Archives of Council of Ministers. The Royal Decree is also found in the Saudi official Gazette, *Umm Al Qura*, No. 406 dated 23.9.1932.

⁹ The Royal Decree concerning the accession of the Kingdom of Saudi Arabia to the International Organisation (the United Nations) was published in *Umm Al Qura*, No. 1075 of 12 October 1945.

¹⁰ For further details about the GCC see generally Al-Garni, *The Gulf Cooperation Council and the Challenges* (Riyadh, 1997) (in Arabic).

¹¹ Helms, *The Cohesion of Saudi Arabia* (London, 1981) p. 192.

sustain the unsettled population in most of the Arabia Peninsula. International boundaries in the Arabian Peninsula and its adjacent area, up to the nineteenth century, had never been heard of.¹² For four centuries, the whole area had been considered to form part of the Ottoman Empire. It is true that for a great part of that time the different provinces had been independent of the Ottoman Capital in Istanbul, but such a situation had, even so, never led to the establishment of boundaries in Central Arabia.

Following the collapse of the Ottoman Empire after the First World War, in addition to Saudi Arabia, other states also emerged in the Arabian Peninsula and the adjacent area. Now, instead of one state, the Ottoman Empire, there were many states, but their territories and boundaries were ill-defined. The presence of the British Empire as a colonial power in some parts of the Peninsula and the areas adjacent to it made the settlement of the Saudi boundaries with its neighbours of particular importance in order to define each state's jurisdiction and sovereignty.

2. Purpose of Study

There is more than one definition of a "boundary", but all of them connote any limit line or object which separates one land from another. One of those definitions may be quoted in this context, as a pattern to clarify the point. "A "boundary" is defined as the imaginary line which divides two pieces of land from one another".¹³

The importance of international boundaries in modern times is derived from the fact that they separate one sovereignty from another or others, and, as a result, each state knows exactly to what extent its jurisdiction may be extended, what belongs to it and

¹² Glubb, *War in the Desert* (London, 1960) p.62.

¹³ Cukwurah, *The Settlement of Boundary Disputes in International Law* (Manchester, 1967) p. 9.

what belongs to others, what is the limit of each state's rights and duties and so on.¹⁴ Just as in domestic affairs a land in private ownership must be well defined in order to avoid any overlap between different lands which may lead, subsequently, to various kinds of disputes and controversies between the concerned owners, so must international boundaries be well defined in order to avoid international disputes. International boundary disputes are in general concerned with disputes between adjacent states over the line to be drawn between their areas of sovereignty. They are usually concerned with ambiguities inherent in the instruments creating the boundaries or problems in fixing the alignment on the ground.¹⁵ Some delimited boundaries have not been demarcated at all, and others have been demarcated but because of poor maintenance the demarcation line has disappeared.¹⁶

The definition and settlement of international boundaries between Saudi Arabia and its neighbouring states and causes of their boundary disputes have been of particular interest to the author during his work in the Border Guard. Throughout his work, he experienced closely how these boundary disputes, before they were finally settled, constituted one of the major threats to international peace and security. Such a threat demonstrated clearly how important it was to settle and define international boundaries by peaceful means and not to leave any ground of dispute that may lead to armed conflict or the use of force in interstate relations. It was also found that all previous studies of the Saudi boundaries were carried out from purely geographical, political or historical viewpoints. There was a lack of legal study on the question of territorial and boundary disputes, as well as the methods of their settlement, in the light of the

¹⁴ See, for example, *Island of Palmas Case*, (1928) 22 *AJIL* 867, at 883, the *Guinea-Bissau v. Senegal* case, 83 *ILR* 1, at 36.

¹⁵ Cukwurah, *The Settlement of Boundary Disputes in International Law*, *op. cit.*, p. 78.

¹⁶ Examples of both cases will be seen throughout the thesis.

principles of international law. Thus, he hopes by writing this thesis, which is, as far as he is aware, the first comprehensive legal study in this respect, to contribute to the literature available in this field.

The main purpose of this thesis is to analyse and assess the practice of Saudi Arabia and its neighbouring states with regard to the settlement of their land boundary disputes in the light of the principles of international law. To this end, it will first try to discuss the evolution of the Saudi boundaries along with the acquisition of the Saudi territory and to determine the basic factors responsible for the land boundary disputes between the Kingdom of Saudi Arabia and its neighbouring states. Secondly, it will evaluate the peaceful methods which have been applied by Saudi Arabia and its neighbours in settling their boundary disputes. This study, however, does not extend to examine the settlement of Saudi Arabia's maritime boundaries with its neighbouring states. The reason for this is that the thesis focuses on international land boundaries, and to include maritime boundaries would broaden the subject and make it difficult to provide a proper discussion within the constraints of a PhD thesis. This is especially so as there are 10 states which share maritime boundaries with Saudi Arabia.¹⁷

3. Significance of the Study

As mentioned earlier, for a long time, international boundaries as now known in international law did not exist in the Arabian Peninsula. Moreover, even when the modern Saudi state was founded at the turn of the twentieth century, Western-style boundaries were not accepted by the people, who saw them as unsuitable for a nomadic people who had to move freely from place to place for grazing, hunting and other

¹⁷ These states are: Iran, Egypt, Sudan, Eritrea, Bahrain, Yemen, Jordan, UAE, Kuwait and Qatar.

sources of livelihood. In this difficult situation, Saudi Arabia succeeded in settling peacefully all its land boundaries with its neighbouring states before the end of the century. Consequently, international boundaries as understood in international law were established in the Arabian Peninsula to put an end to the state of warfare and unrest that had previously dominated the area. Now, each state has its own defined territory within which it exercises its authority and jurisdiction exclusive of others. The following paragraphs outline the significance of this study:

- (1) This study provides a contribution to international law by analysing the practice of Saudi Arabia and its neighbours in settling their boundary disputes and how they complied with, and were committed to, the general principles of international law, such as those governing territorial sovereignty, international boundaries and peaceful settlement of boundary disputes. It also contributes to Western literature about both the emergence and development of the Saudi territories and the evolution of its boundaries as a consequence. Further contribution is provided to an understanding of the acquisition of the territory of Saudi Arabia in the light of the rules and principles of international law, as well as its land boundary disputes, their causes and how they have been settled.
- (2) Although boundary disputes differ from each other and each case must be studied within its own circumstances and conditions, this study can help other researchers of boundary questions to understand the basic factors that are responsible for land boundary disputes in general and how such disputes can be settled.
- (3) Furthermore, this study will be of interest to third world countries as a source of information about the effective peaceful methods which are recommended to be applied by them in order to settle those land boundaries which have not yet been

defined.¹⁸ Such recommendations are based on the analysis of the practice of Saudi Arabia and its neighbouring states regarding the application of the peaceful methods which have been applied by them for settling their land boundary disputes.

4. Organisation of the Study

The study is divided into three parts. Part one is concerned with the Saudi boundaries with its northern neighbours, namely, Kuwait, Iraq and Jordan. It is divided into two chapters. Chapter I examines the evolution of these boundaries and the causes of boundary disputes. Chapter II discusses the methods which were applied by Saudi Arabia and these states in order to settle their boundary disputes. Part two is designated to examine the Saudi boundaries with its eastern neighbours, namely, Qatar, United Arab Emirates and Oman. It, too, is divided into two chapters, following the same structure as that of part one. Part three is about the Saudi boundaries with its only southern neighbour, Yemen. The same structure is applied as in the previous two parts. At the end of this thesis, a general conclusion is drawn. In this general conclusion the peaceful methods applied by Saudi Arabia and its neighbouring states for settling their land boundary disputes are assessed. In addition, the practice and attitude of Saudi Arabia and its neighbours as well as their contributions to international law are also evaluated. Some recommendations regarding effective peaceful methods of defining international boundary disputes and ways of maintaining such definition are suggested where appropriate.

¹⁸ There are several territorial and boundary disputes in the third world such as, for example, the territorial dispute between Iran and UAE over three islands in the Arabian Gulf, the territorial and boundary disputes between Iraq and Kuwait, the dispute between Pakistan and India over Kashmir and many others.

PART I

NORTHERN BOUNDARIES

Chapter I

The Evolution of the Northern Boundaries and Boundary Disputes

1. The Evolution of the Northern Boundaries

In the north of the Arabian Peninsula, Iraq and Jordan were parts of the Ottoman Empire, which was the last Islamic Caliphate, until the First World War (1914-18). During the War in 1916 Britain, France and Russia signed the Sykes-Pico Agreement of 1916¹ by which the region north of the Arabian Peninsula was divided between Britain and France, leading to the establishment of independent governments in Syria and Iraq.² Moreover, the San Remo Conference of 1920³ was considered to have made significant developments regarding the evolution of international boundaries in the area.⁴ In the Conference, agreement was reached on the implementation of the Sykes-Pico Agreement and on putting the new Arab states under the mandate system⁵ through the

¹ (IOR: L/P&S/18/B259), official documents reproduced in Tuson and Quick (eds.), *Arabian Treaties: 1600-1960* (London, 1992), vol. 1, p. 195.

² Fulton, France and the end of the Ottoman Empire, in Kent, (ed.), *The Great Powers and the End of Ottoman Empire* (London, 1996), 2nd ed. p. 164.

³ In Ridwan, *The International Boundary Disputes in the Arab World* (Beirut, 1999) (in Arabic) pp. 21-23.

⁴ Ridwan, *The International Boundary Disputes in the Arab World, op., cit.*, p. 23.

⁵ The mandate system was established by the League of Nations (Article 22 of the Covenant) after the First World War for dealing with the colonies of the defeated states of Germany and Turkey and place them under mandate. These territories would be governed by the mandatories on behalf of the League. When the United Nations replaced the League of Nations after the Second World War, the system of mandate was replaced by the trusteeship system (chapter XII of the UN Charter). For further details, see Duncan Hall, *Mandates, Dependencies and Trusteeship*, (1948) vol. I, pp. 598-911.

Allied Supreme Council. Under this system, Syria and Lebanon were mandated to France,⁶ while Britain controlled Iraq and Palestine.⁷ The mandate system introduced the phenomenon of international boundaries, which were, in reality, zones that had width and length, as the boundaries of the mandatory states remained the same as those before the mandate until they were finally defined in due time.⁸ Thus, international boundaries evolved among these newly emerged states as well as among the said foreign powers. After the defeat of the Ottoman Empire in the First World War, the Arab provinces of the Ottoman Empire in the Arabian Peninsula broke away and their political status was settled.⁹ In the Arabian Peninsula, however, four other sovereign rulers had emerged from the First World War in addition to King Hussain of Hijaz, namely, Ibn Saud, Ibn Al-Rashid of Jabal Shammer, Imam Yahya of the Yemen and Idrisi of Asir.¹⁰ Five new states emerged to the north of the Peninsula, among which were Iraq and Jordan.¹¹ As part of the Ottoman Empire, in 1917 Iraq was conquered by British forces and became a British mandate in 1920. Jordan, on the other hand, became a British mandate when it was part of Palestine in 1920. The Council of the League of Nations later confirmed this status in 1924.¹² With regard to Kuwait, it had already been under the British direct control since 1899.¹³

⁶ France, however, first intervened in Lebanon in 1860 to protect the Christian minorities. The same area was given to France by the Allied in 1920, see Duncan Hall, "The International Frontier", (1948) 42 *AJIL* 42, at 56.

⁷ Kent, Great Britain and the end of the Ottoman Empire, in Kent, (ed.), *The Great Powers and the End of Ottoman Empire* (London, 1996) 2nd ed. p. 187.

⁸ Duncan Hall, "The International Frontier", *op. cit.*, pp. 53-55.

⁹ Mansfield, *The Ottoman Empire and its Successors* (New York, 1973) p. 85.

¹⁰ Leatherdale, *Britain and Saudi Arabia, 1925-1939, The Imperial Oasis* (London, 1983) p. 26.

¹¹ *Ibid.*

¹² For further details regarding Iraq and Transjordan see, Seton-Williams, *Britain and the Arab States* (London, 1948) chapter II and chapter VI.

¹³ The text of the 1899 Anglo-Kuwaiti Treaty by which the latter became a British colony is found in (*IOR: L/P&S/10/606*), an official document reproduced in Tuson & Quick, (eds.), *Arabian Treaties, op. cit.*, vol. 1, p.557.

After the conclusion of the First World War in 1918, the British became the strongest power in the area and, as a result of the collapse of the Ottoman Empire, decided to remain in it through the medium of the mandates of Iraq, Jordan and Palestine. Because of the British promises of Arab independence, as well as the Arab revolt for independence,¹⁴ a compromise had to be found between the British desire to stay and the pressure to leave.¹⁵ These developments spelled the end of the classic age of imperialism, and a new age was born. As a consequence, Iraq gained its independence before the Second World War (1939-45) and became an independent state by means of the Anglo-Iraqi treaty of 1930,¹⁶ which was concluded on terms of complete freedom, equality and independence.

The establishment of the United Nations in 1945 resulted in the birth of the decolonisation process. Indeed, the UN Charter offered a two-pronged approach to colonial problems, namely, the trusteeship system¹⁷ and the Declaration Regarding Non-Self-Governing Territories.¹⁸ The trusteeship system offered the maximum amount of direct supervision of the UN through the trusteeship council.¹⁹ The Members controlling territories agreed to develop self-government in order to assist in the progressive development of free political institutions²⁰ and, as consequence, in 1946, the United Kingdom recognised the independence of Jordan. Kuwait, however, did not

¹⁴ Leatherdale, *Britain and Saudi Arabia, 1925-1939, The Imperial Oasis, op., cit.*, p.24.

¹⁵ *Ibid.*

¹⁶ In Tuson & Quick, (eds.), *Arabian Treaties, op., cit.*, vol. 1, p.417.

¹⁷ This system replaced the League of Nations mandate system.

¹⁸ In Chapters XII, XIII and XI of the UN Charter respectively. For a critical study of these systems, see Key, "The Politics of Decolonisation: The New Nations and the United Nations Political Process", (1967)

²¹ *International Organisation*, 786.

¹⁹ Chapter XIII of the UN Charter.

²⁰ Article 74 (b) of the UN Charter.

gain its independence until 1961 due to the discovery of oil in the area and Britain's desire to control Kuwait for this reason.²¹

When the Arab Ottoman provinces in the Arabian Peninsula broke away from the Ottoman Empire after its collapse, their administrative boundaries formed the international boundaries between them. It was, however, widely accepted that these boundaries were zones rather than precise lines of demarcation, as neither the leaders nor the inhabitants, who were tribal and nomadic used to move freely from one region to another searching for means of living, wanted to confine themselves within precise defined international boundaries as understood in international law.²² The conflict between these new political entities over the sovereignty of certain territories stimulated the intervention of the British Empire in the area to conclude treaties with them, in order to protect its interests in India²³, as the railway which linked the Mediterranean with the Arab Sea and then the Ocean passed across the territories of the entities. Such interests would have been at risk if these political entities had been in conflict because this railway was very important for British trade, and any unrest in the area would put British interests at risk. To avoid this, the British supported these entities and helped them to establish and stabilise their sovereignties over their regions and, as a result, recognise each other's boundaries.²⁴

From the above, it could be said that the evolution of international boundaries in the Arabian Peninsula resulted both from the intervention of the great powers in the area and from Arab nationalism, which stimulated the autonomy of the Arab entities in the

²¹ For further details about the British colonies and the decolonisation process in the Arabian Gulf see, McIntyre, *British Decolonization, 1946-1997* (London, 1998) chapter 5.

²² Ridwan, *The International Boundary Disputes in the Arab World, op., cit.*, p. 15.

²³ See *infra*, 1 & part II, chapter I.

²⁴ Ridwan, *The International Boundary Disputes in the Arab World, op., cit.*, p. 15.

region. Indeed, instead of one Islamic state, the Ottoman Empire, there came to be several Arabic Islamic entities and the Islamic concept of a state was replaced by Arab nationalism.²⁵ Therefore, according to the principle of *uti possidetis*, the boundaries of the Ottoman provinces became the *de facto* international boundaries of these new entities or states.²⁶ It should be noted that this remains the case, under inter-temporal law, for historic acquisitions, although it is now displaced by the ban upon aggression under the 1928 Pact of Paris (the Kellogg-Briand Pact)²⁷ and article 2(4) of the UN Charter, as will be discussed in detail shortly. According to the principle of *uti possidetis*, the administrative divisions of the Spanish Empire in South America, which existed at the date when the movement for independence broke out, were deemed to constitute the boundaries for the newly independent successor states.²⁸ The concept of the principle appeared in two manifestations, namely, *uti possidetis juris* and *uti possidetis de facto*.²⁹ The former referred to a legal line founded upon legal title, which was the rule adopted by the successor states to the Spanish Empire, while the latter was an interpretation founded on factual possession, maintained by Brazil, which was the successor to the Portuguese colony on the continent.³⁰ The effect of the principle, therefore, is to transform the internal administrative boundaries of an empire,

²⁵ The Islamic concept of a state is based entirely on a religious criterion because Islamic Law was designed to govern the relations between Muslims and non-Muslims, regardless of all other criteria which are taken into account by the relevant principles of current international law. Islamic law, therefore, divides the world community into two categories, namely, one Islamic state and other non-Islamic states, for further details see, Joffe, Concepts of Sovereignty in the Gulf Region, in Schofield, (ed.), *Territory Foundation of the Gulf States* (London, 1994) p. 79. For further details regarding Arab Nationalism, see Tibi, *Arab Nationalism: Between Islam and the Nation-State* (London, 1997) 3ed ed., chapters II and III.

²⁶ For further details regarding the Principle see, Shaw, "The Heritage of States: The Principle of *Uti Possidetis Juris* Today", (1996) 67 *BYIL*, 75, at 100, Kocs, "Territorial Disputes and Interstate War, 1945-1987", (1995) 57 *The Journal of Politics*, Issue 1, 159, at 195, *ICJ Reports*, 1986, p. 554. regarding the *Burkina Faso-Mali* frontier dispute case, *The Rann of Kutch* case, regarding the boundary dispute between India and Pakistan over what was known the Great Rann of Kutch or the Rann in 1968 (1968) 7 *ILM* 633, Wetter, "The Rann of Kutch Arbitration", (1971) 65 *AJIL* 346.

²⁷ "The Paris General Treaty for the Renunciation of War"(Pact of Paris), *United Kingdom Treaty Series*, (1929) Cmd 3410.

²⁸ Cukwurah, *The Settlement of Boundary Disputes in International Law* (Manchester, 1967) p. 112.

²⁹ Shaw, "The Heritage of States: The Principle of *Uti Possidetis Juris* Today", *op. cit.*, p. 100.

³⁰ *Ibid.*

such as a boundary between two or more colonies within an empire, into settled international boundaries at the time independence is achieved. Therefore, the external boundaries of post-colonial states would be legally settled if they were clearly defined at the time of independence.³¹

The question of *uti possidetis* was discussed by the International Court of Justice in the African context in the *Burkina Faso-Mali* frontier dispute case.³² The parties submitted the case to the Court by a special agreement specifying that the settlement of the dispute should be based upon respect for the principle of the “intangibility of frontiers inherited from colonisation”.³³ The Court noted that this principle had developed into a general concept of contemporary customary international law and was unaffected by the emergence of the right of people to self-determination.³⁴ Moreover, reference was made to the principle in the Asian context in the *Rann of Kutch* case,³⁵ regarding the boundary dispute between India and Pakistan over what was known the Great Rann of Kutch, or the Rann, in 1968. The Tribunal had to examine the sovereignty of the state of Sind, the predecessor of Pakistan, and of the state of Kutch, the predecessor of India, over the disputed area before the independence of India and Pakistan in 1947, when both states were under British control.³⁶ It had also to examine the boundary at the critical date, the date of the independence of India and Pakistan, between their predecessors, the province of Sind and the state of Kuch. Such examination of both the sovereignty of the predecessor states over the disputed area and their boundaries emphasised the significance of both the principle of *uti possidetis* and

³¹ Kocs, “Territorial Disputes and Interstate War, 1945-1987”, (1995) 57 *The Journal of Politics*, Issue 1, 159, at 195.

³² *ICJ Reports*, 1986, p. 554.

³³ *Ibid.*, at p. 557.

³⁴ *Ibid.*, at p. 565.

³⁵ *The Rann of Kutch case*, (1968) 7 *ILM* 633, Wetter, “The Rann of Kutch Arbitration”, (1971) 65 *AJIL* 346.

³⁶ *Ibid.*, at 665-678.

the principle of the stability of boundaries. It was noted by the Chairman of the Tribunal that it was “not open to the Tribunal to disturb a boundary settled in this manner by the British Administration and accepted and acted upon by it, as well as the state of Kuch, for nearly a quarter of a century”³⁷. On this basis, the Tribunal decided by majority that Pakistan had made out a clear title to the Rann.³⁸ Moreover, in the *Temple of Preah Vihear* case³⁹ concerning a boundary dispute between Cambodia, as one of the successors of France, Indo-China and Thailand, the International Court of Justice stated that sovereignty over Preah Vihear depended on a boundary treaty concluded in the period 1904-1908 between France and Siam, as Thailand was then called.⁴⁰ Here, the Court and the parties operated on the basis of the principle of *uti possidetis*, as it was accepted that the boundary between the two states was that existing at the time of the independence of Cambodia⁴¹, and that that boundary was based upon a series of Franco-Siamese treaties, as interpreted in the light of particular practice.⁴² The application of *uti possidetis*, therefore, cannot be denied either within the framework of decolonisation or in the context of independence from already independent states, which is outside the traditional decolonisation process as long as the administrative boundaries had been well defined before the independence. Indeed, In the *Eritrea-Yemen Arbitration*,⁴³ regarding the dispute between the two countries over the sovereignty of Greater Hanish island in 1998, the Tribunal declared that the principle of *uti possidetis* could be applied only where a precisely defined line existed.⁴⁴ Indeed, in the absence of defined lines or

³⁷ *Ibid.*

³⁸ *Ibid.*, at 704. For the Tribunal decision concerning the precise alignment of the boundary line between the two states, see *ibid.*, at 690-693.

³⁹ *ICJ Reports*, 1962, p. 6.

⁴⁰ *Ibid.*, at p. 16.

⁴¹ Thailand had always been independent.

⁴² For states' practice, see *Ibid.*, at pp. 22-5 and 28-32. The same point was made by the Arbitration Tribunal in the *Taba* case. For further details see 80 *ILR* 36.

⁴³ *Eritrea-Yemen Arbitration*, (1999) 114 *ILR* 7, Antunes, “The *Eritrea-Yemen Arbitration: First Stage—the Law of Title to Territory Re-averred*”(1999) 48 *International and Comparative Law Quarterly* 362.

⁴⁴ *Ibid.*, at 32 (para. 96).

in the presence of disputed lines the principle “ceases to be of use”.⁴⁵ The Tribunal in the *Eritrea-Yemen* Arbitration, therefore, rejected the applicability of the principle in the Middle East shortly after the conclusion of First World War.⁴⁶ However, in the *Qatar-Bahrain case*⁴⁷ concerning their dispute over the sovereignty of some island in the Arabian Gulf, Bahrain, relying on the decision of 11 July 1939 of Great Britain that the Hawar Islands belonged to Bahrain and not to Qatar, argued that the principle of *uti possidetis* is applicable in this case on the ground that both Qatar and Bahrain were former protectorates of Great Britain.⁴⁸ Qatar, however, opposed Bahrain’s argument and maintained that the principle of *uti possidetis* did not apply to the present case because the two states were neither colonies nor protectorates of Great Britain, and therefore, there was not any State succession, and consequently there was no “colonial heritage” any more than there was a “clean slate”.⁴⁹ Although the Court declined to rule on the applicability of the principle of *uti possidetis*,⁵⁰ it awarded sovereignty of Hawar islands to Bahrain on the ground that the 1939 British decision was not an arbitration that attained a *res judicata* character, but a valid political decision that binds the parties. Judge Al-Khasawneh in his separate opinion, although agreed with the majority view, supported the Tribunal’s view in the *Eritrea-Yemen* Arbitration regarding the inapplicability of the principle of *uti possidetis* in the Middle East.⁵¹

It can be deduced from the above discussion that the principle of *uti possidetis* could not be applied in the case of Saudi Arabia and its neighbours because of the

⁴⁵ Shaw, “The Heritage of States: The Principle of *Uti Possidetis Juris* Today”, *op. cit.*, p. 153.

⁴⁶ *Eritrea-Yemen* Arbitration, (1999) 114 *ILR* 7 at 33-4 (phase one, para. 99).

⁴⁷ *ICJ Reports*, 2001.

⁴⁸ *Ibid.*, para. 103.

⁴⁹ *Ibid.*, para. 105.

⁵⁰ *Ibid.*, para. 148.

⁵¹ *Ibid.*, separate opinion of Judge Al-Khasawneh in *Qatar-Bahrain case*, para. 9.

absence of any defined boundaries at the time when the Ottoman Empire collapsed following the First World War.

Let us now turn to examine the evolution of the northern Saudi boundaries with Jordan, Iraq and Kuwait. Generally speaking, the evolution of the international boundaries of Saudi Arabia paralleled the gradual acquisition of the state territory, or rather, the acquisition of the territory of the Ottoman provinces, and developed in a series of stages over time as the state's territory developed. The northern Saudi boundaries evolved as a result of the acquisition of the territory of Jabal Shammar, Wadi Sirhan, Jauf and the frontier near Jordan, Iraq and Kuwait in 1921.⁵² It should be noted that not all portions of the Saudi-Jordan boundaries evolved at this stage. Indeed, the utmost northwestern part, which was called the Hijaz-Jordan boundary,⁵³ did not evolve until four years later, when Hijaz was conquered.⁵⁴ As a result of the evolution of the northern Saudi boundaries, the Saudi state was brought into direct confrontation with its new neighbours, the Ashraf-ruled states of Iraq and Jordan and their British allies in Kuwait. This confrontation, as will be seen shortly, gave rise to boundary disputes between Saudi Arabia and these states, as evidence shows that most of the borderland territory between them was acquired by the Saudi state by way of conquest.⁵⁵ The losing states claimed the acquired territories on the ground that they were under their control before the acquisition, while Saudi Arabia claimed that it had acquired what had been part of the first and second Saudi states.⁵⁶ However, the

⁵² Helms, *The Cohesion of Saudi Arabia, op. cit.*, p. 37.

⁵³ See *infra* 4, (the Saudi-Jordan boundary dispute).

⁵⁴ Abu-Dawood, and Karan, *International Boundaries of Saudi Arabia* (New Delhi, 1990) p. 34.

⁵⁵ *Ibid.* For further details, see, Glubb, *War in the Desert* (London, 1960) pp. 52-55, Troeller, *The Birth of Saudi Arabia: Britain and the Rise of the House of Sa'ud* (London, 1976) pp. 13-19, Helms, *The Cohesion of Saudi Arabia, op. cit.*, pp. 102-8.

⁵⁶ A memorandum by the British Political Agent in Kuwait dated 13 June 1920, an official document reproduced in Schofield and Blake, (eds.), *Arabian Boundaries: Primary Documents 1853-1957* (London, 1988) vol. 9, p. 46.

question is whether international law recognizes a title asserted by conquest. Since both the Treaty Providing for the Renunciation of War as an Instrument of National Policy (Pact of Paris) of 1928⁵⁷ and UN Charter have prohibited the use of inter-state force, acquisition of territory by force alone is no longer valid. Article 2(4) of the Charter provides:

"All Members shall refrain in their relations from the threat or use of force against the territorial integrity or political independence of any state, or in any manner inconsistent with the Purpose of the United Nations." ⁵⁸

In addition, the Security Council's Resolution 242 emphasized the "inadmissibility of the acquisition of territory by war", and in 1970 the UN General Assembly adopted the Declaration on Principle of International Law concerning Friendly Relations and Cooperation among states, which provides that:

"The territory of a state shall not be subject of acquisition by another state resulting from the threat or use of force. No territorial acquisition resulting from the threat or use of force shall be recognized as legal." ⁵⁹

However, although conquest is no longer legal today,⁶⁰ it was historically, as already mentioned, important and certainly operative in the nineteenth and early

⁵⁷ *United Kingdom Treaty Series*, (1929) Cmd 3410. Article 1 of the Pact contained a declaration by the parties that they condemned "recourse to war of the solution of international controversies", and renounced war "as an instrument of national policy".

⁵⁸ There are, however, some exceptions to the prohibitions of the use of force, namely, the use of force in individual and collective self-defence in enforcement action taken by the Security and in enforcement action taken by regional organizations under the Security Council's authority. The most important point regarding these exceptions or the legal use of force is that their aims are to maintain and restore international peace and security. These aims stand in contrast to the acquisition of another state's territory by force. With regard the aforementioned exceptions see, Chapter VII of the UN Charter.

⁵⁹ General Assembly Resolution 2625 dated 1970, see Djonovich, (ed.), *United Nations Resolutions*, (vol. XIII 1970-1971) (New York, 1976) p. 337.

⁶⁰ When Iraq invaded Kuwait in 1990 and the Iraqi regime announced that Kuwait had been annexed to Iraq on the ground of historical right, almost all the world community rejected that view. The Security Council adopted Resolution 662 deciding that the declared Iraqi annexation of Kuwait "under any form

twentieth centuries as a method of acquiring territory. Indeed, under traditional international law, as reflected in the practice of states in the pre-1914 period, the acquisition of territory by conquest was regarded as valid to give title as long as it was followed by complete subjugation and the intention and ability to hold the territory as its sovereign.⁶¹ At that time, war was not outlawed and so territory could legitimately have been acquired by force. This is expressed by Andrews who states that this can be demonstrated by the historical fact that, at some stage, virtually every corner of the world has been annexed or subjugated by another state.⁶² Indeed, it was by right of conquest that the European powers acquired the greater part of the continent of America from the sixteenth to the nineteenth centuries.⁶³ Likewise, the great European powers engaged in colonial expansion in Asia acquired by right of conquest vast stretches of territory occupied by people who were not regarded as full members of the civilized society of states.⁶⁴ Shaw suggests that such states, or certain non-state entities, were considered capable in international law of holding title to territory and transferring it to other parties. Therefore, their territories were not treated as *terra nullius*, acquirable by occupation, but as territories the sovereignty of which could be acquired only by cession or conquest, in virtue of the presence of pre-existing territorial sovereignty implicitly recognised as such by Europeans.⁶⁵

and whatever pretext has no legal validity and is considered null and void'. States and international organisations were called upon not to recognize the annexation and to refrain from taking any action that might be interpreted as indirect recognition. For further details, see McCoubrey and White, *International Law and Armed Conflict* (Aldershot, 1992) chapter 9. In addition, numerous states and regional organisations issued statements calling for the restoration of the territorial integrity of Kuwait, see (1990) 44 *YBUN*, UN Publications, pp. 190-97, see also *Umm al Qura*, No. 3319 dated 18 August 1990 ff.

⁶¹ Korman, *The Right of Conquest* (Oxford, 1996) pp. 7-8 and pp. 94-98..

⁶² Andrews, The Concept of statehood and the acquisition of territory in the nineteenth century, (July 1978) 94 *The Law Quarterly Review* 408, at 409.

⁶³ *Ibid.*, p. 410.

⁶⁴ Lindley, *The Acquisition and Government of Backward Territory in International Law* (London, 1926) p.28.

op., cit., p.28.

⁶⁵ Shaw, *Title to Territory in Africa* (Oxford, 1986) pp. 44-45.

It should be noted here that according to the doctrine of inter-temporal law,⁶⁶ the act of conquest, or any other act, must be assessed against the law of the time when it was performed, and not against “the law in force at the time when the dispute in regard to it arises or falls to be settled”.⁶⁷ Thus, in the *Legal Status of Eastern Greenland case*,⁶⁸ the Permanent Court of International Justice, when examining the sovereignty of the Greenland, took into consideration the differing standard of international law in the thirteenth and fourteenth centuries.⁶⁹ Therefore, the acquisition of territory by conquest in the pre-1914 period should be assessed against the law applied at that time, when war was legitimate and conquest could give legal title as long as it was followed by complete subjugation and the intention and ability to hold the territory as its sovereign.

The acquisition of the territory of Saudi Arabia was strongly supported by several factors. First, the Saudis believed that they had a historic right to the territory which was under the control of the first and the second Saudi states. Secondly, the inhabitants of the region, who had endured Bedouin and Ottomans raids, saw a good chance to put an end to foreign occupation, which was represented by the Ottoman Empire. So, such inhabitants submitted to the Saudi rulers and showed their allegiance to them.⁷⁰ Thirdly, the Ottomans were weak, not only in this area, but also almost everywhere else and, as a result, the region might have been taken from them by the British who were in Bahrain, Qatar, the Trucial States (now UAE) and Oman, which shared boundaries with the Saudi state. Finally, as long as all the above areas were part of the Arabian Peninsula, any political developments in any one of them would

⁶⁶ For historical background of the emergence of the doctrine see, Elias, *The International Court of Justice and some Contemporary Problems* (London, 1983) chapter 6. See also, Waldock, “Disputed Sovereignty in the Falkland Islands Dependencies”, (1948) 25 *BYIL* 311, at 320-1.

⁶⁷ *Island of Palmas Case*, (1928) 22 *AJIL* 867, at 883.

⁶⁸ *Eastern Greenland Case*, *PICJ Reports*, (1933) series A/B, No 53, p. 151.

⁶⁹ *PICJ Reports*, (1933) series A/B, No 53, at 154-5.

⁷⁰ Assah, *Miracle of the Desert Kingdom* (London, 1969) pp. 24-27.

certainly affect the others. Thus, the presence of the British in the area would threaten the Saudi aims, which were based on Islamic revival and national unification.⁷¹

Furthermore, the conquest was followed by effective control of the territory by the Saudi state, as well as peaceful display of the state's authority. Support for this assertion is found in the radical change which King Abdulaziz brought about in the basis of economic and social life in his environment, in a manner which had no precedent in his country. He considered that the inhabitants should enter the stage of agriculture and settlement instead of roving around in search of pasture and water and that they should have a permanent means of livelihood instead of depending on marauding. The successful implementation of his social and economic programme helped him later to liberate and unify the provinces of Arabia and to establish the Kingdom of Saudi Arabia as an independent state with an area of over 1.8 million square kilometres.⁷²

Judge Huber in the *Island of Palmas Case* confirmed that: "a continuous and peaceful display of territorial sovereignty is as good as title".⁷³ He also emphasized that possession must be maintained by a display of state authority.⁷⁴ In the *Clipperton Island*⁷⁵ dispute between France and Mexico over an uninhabited island, the arbitrator

⁷¹ The Saudi state was first founded in 1744 when Sheik Mohammad ibn Abdul Wahaab, the founder of the religious reform movement, the *Wahaabi* movement, who came from Al-Uyaynah in central Najd, entered into an alliance with Emir Muhammad ibn Sa'ud, the ruler of Diriyah in central Najd and the leader of what may be called the political reform movement. According to the religious movement's principles, the faith of Islam had to be returned to the purity of its original form as stated by the Prophet Muhammad and practised by his companions and followers. Both movements worked side by side to change the prevailing religious and political situations and to establish, as a consequence, a new strong government to work together to alter the situation by, on the one hand, restoring the real spirit of Islamic faith, and on the other, establishing a modern Islamic country able to restore peace and security in the region. For further details, see Helms, *The Cohesion of Saudi Arabia* (London, 1981) p. 77, Rentz, *Wahhabism and Saudi Arabia*, in Hopwood, (ed.), *The Arabian Peninsula: Society and Politic*, (London, 1972) p.56, Metz, *Saudi Arabia: a Country Study* (Washington, 1993) p. 14.

⁷² Assah, *Miracle of the Desert Kingdom*, *op. cit.*, p. 28.

⁷³ *Island of Palmas Case*, *op. cit.* at 876.

⁷⁴ *Ibid.*, pp. 908-11.

⁷⁵ *Clipperton Island Case*, (1932) 62 *AJIL* 390.

emphasized that “the actual, and not the nominal, taking of possession is a necessary condition of occupation”.⁷⁶ The Permanent Court of International Justice in the *Legal Status of Eastern Greenland*⁷⁷ held that Denmark regarded itself as possessing sovereignty over all Greenland and displayed and exercised its sovereignty rights to an extent sufficient to constitute a valid title to sovereignty.⁷⁸ Therefore, the Danish claim to sovereignty was based upon peaceful and continued display of the state authority and the court awarded sovereignty to Denmark on this basis.⁷⁹ The Permanent Court of International Justice, by that decision, established two main elements for the occupation to be effective:

- (1) The intention or will to act as sovereign;
- (2) Some actual exercise or display of authority.⁸⁰

The doctrine of effectiveness⁸¹ has displaced the earlier doctrines of discovery and symbolic annexation as in themselves sufficient to generate title.⁸² However, in the *Legal Status of Eastern Greenland*, the Court, by establishing the aforementioned elements, affirmed that occupation must be effective in order to create a title. In other words, occupation is not sufficient by itself to create a title; it must be followed up by building settlements on the territory, accompanied by some formal act which announces that the territory has been taken possession of, and that the possessor intends to exercise its sovereignty over it.⁸³ In the *Minquiers and Ecrehos* case⁸⁴ regarding the dispute

⁷⁶ *Ibid.*, p. 393.

⁷⁷ *Eastern Greenland Case, PICJ Reports*, (1933), series A/B, No 53, 151.

⁷⁸ *Ibid.*, at 185.

⁷⁹ *Ibid.*

⁸⁰ *Ibid.*, at 171.

⁸¹ “*Island of Palmas Case*”, *op. cit.*, at 875-6.

⁸² For more details about the doctrine see in general, Heydte, *Discovery, Symbolic Annexation and Virtual Effectiveness in International Law*, (1935) 29 *AJIL* No. 3, 448.

⁸³ Oppenheim, *International Law* (London, 1958) vol. 1, 8th ed., pp. 55-6.

⁸⁴ *ICJ Reports*, (1953) p.47; 20 *ILR* 94.

between United Kingdom and France over the sovereignty of a group of islets and rocks in the English Channel, although the International Court of Justice examined the history of the region since 1066⁸⁵, its decision was based primarily on relatively recent acts relating to the exercise of jurisdiction and local administration as well as the nature of legislative laws regarding the disputed territory. On these grounds, the sovereign acts of the United Kingdom in respect of the islets outweighed any such activities by the French authority and therefore, British sovereignty was upheld and the claims of France were dismissed. With regard to this point, Jennings argues that the main problem is the definition both of the degree and kind of possession effective to create a title, and of the area of territory to which such possession must be said from time to time to apply.⁸⁶ Nonetheless, effective control varies with regard to the circumstances of the case, such as the geographical nature of the region⁸⁷ and whether or not competing claims exist.⁸⁸ Support for this is found in the *Island of Palmas case*, where Judge Huber stated that effective control “cannot be exercised at every moment on every point of the territory.”⁸⁹ In the case of Saudi Arabia, the effective control exercised by the Saudi state varied from one place to another, according to the importance of the place and whether it was close to or away from the core of the state. An example of such control is the social and economic programme mentioned earlier, which aimed to settle nomadic peoples in permanent houses and to teach them how to cultivate the land, instead of making a living by grazing camels and sheep and enduring an unsettled life in a desert country. Furthermore, the programme meant to replace the Bedouin’s individualism with a

⁸⁵ The date of the conquest of England by William, Duke of Normandy when England became united with the Duchy of Normandy, including the Channel Islands.

⁸⁶ Jennings, *The Acquisition of Territory in International Law* (Manchester, 1963) p. 20.

⁸⁷ *Island of Palmas Case*, *op. cit.* at 877.

⁸⁸ *Eastern Greenland Case*, *PICJ Reports*, (1933) 151.

⁸⁹ *Island of Palmas Case*, *op. cit.* at 877.

recognition of the state and its requirements.⁹⁰ Each settlement was built near a water source to serve farming purposes as well as daily needs. The settlers were provided with assistance to build a mosque and to construct houses instead of living in tents made of goat's hair. To each settlement, a man of religion was assigned to act as teacher, whose function was not only to teach the settlers the commandments of the Muslim law, but also to exhort them to cultivate the land, to adhere to the morals of Islam, to respect human life and property and to give up raiding and robbery as a means of living.⁹¹ The effective control of the Saudi state over its territory is also demonstrated by the regulations and rules set up by the Saudi government at every stage of the unification of the Saudi territory. During 1927, for example, King Abdulaziz issued a series of regulations by which several reforms and public administrations were established in order to provide public services to the Saudi population.⁹² In addition, in 1928, a royal decree was issued to establish a legislative assembly.⁹³ In 1932 another regulation provided for the establishment of a Council of Ministers to be generally responsible to the king for the administration of the state as a whole with individual ministers responsible for the administration of separate ministries.⁹⁴

It could be said from the above discussion of the effective control exercised by Saudi Arabia that it had the will and intention to exercise sovereignty over its territory, as it acted as sovereign and displayed actually the state's authority. The aforementioned legislative and administrative reforms set up by the Saudi government were among the

⁹⁰ *Ibid.*, p. 29.

⁹¹ *Ibid.*, pp. 29-31.

⁹² Such reforms and administrations as the Education, the Health, the Commission of enjoining goods and forbidding evil, the *Shari'a* Courts and many others, see *Umm Al Qura*, No.108 dated 7.1.1927, No. 113 dated 11.2.1927, No. 140 dated 19.8.1927.

⁹³ *Umm Al Qura*, No.208 dated 18.12.1928.

⁹⁴ Lipsky, *Saudi Arabia: its People, its Society, its Culture* (New Haven, 1959) pp.112-115.

most obvious forms of the exercise of the state sovereignty over its territory.⁹⁵ Both the effective control exercised by Saudi Arabia over its territory and the peaceful display of the state's authority were sufficient to create a title.

Saudi Arabia was recognised by both the Ottoman and the British Empires in 1914 and 1915 respectively. On May 15, 1914 the Ottoman government signed a treaty with the Saudis,⁹⁶ to regularise their reciprocal relations in Al-Hassa region. The treaty recognised Abdulaziz as the ruler of Najd⁹⁷ and Al-Hassa (now the eastern province of Saudi Arabia).⁹⁸ It also imposed other terms on him, especially in foreign relations and financial matters⁹⁹ in order not to allow Abdulaziz to contact their rival in the area, the British Empire. However, the advantage of this treaty was the Ottomans' recognition of the third Saudi state. On December 26, 1915, the first treaty between the British government and the Saudi state was signed.¹⁰⁰ This Treaty recognised the territorial sovereignty of Abdulaziz and the independence of the Saudi state,¹⁰¹ and was very important to the Saudi state, as it was the first international treaty affirming Abdulaziz's international status. As far as international law is concerned, recognition is very important for a new state to become an international person.¹⁰² However, there are two theories as to the nature of recognition, namely, the constitutive and the declaratory theories.¹⁰³ According to the former theory, it is the act of recognition of other states which creates a new state and endows it with legal personality.¹⁰⁴ The latter theory

⁹⁵ *Eastern Greenland Case, PICJ Reports*, (1933) 151, at 173.

⁹⁶ (IOR: L/P&S/10/385), in Tuson & Quick, *Arabian Treaties, op. cit.*, pp. 19-23.

⁹⁷ Najd or Central Arabia is the region where the Saudi state was first founded when King Abdulaziz captured Riyadh, the capital of the Saudi state in 1902. The Saudi state was known as Najd when Hijaz was out of the state, and Abdulaziz was known as Sultan Najd.

⁹⁸ Article 1 of the 1914 Ottoman-Saudi Treaty.

⁹⁹ Article 9 of the 1914 Ottoman-Saudi Treaty.

¹⁰⁰ (IOR: L/P&S/10/387), in Tuson & Quick, *Arabian Treaties, op. cit.*, pp. 29-40.

¹⁰¹ Article 1 of the 1915 Anglo-Saudi Treaty.

¹⁰² Oppenheim, *International Law* (1958) *op. cit.*, pp. 125-6.

¹⁰³ Brownlie, *Principles of Public International Law*, (Oxford, 1990) 4th ed. pp. 88-9.

¹⁰⁴ O'Connell, *International Law*, (1970) 2nd ed., vol. 1, p.129.

maintains that a new state acquires capacity in international law, not by virtue of the consent of other states but by the fact of its existence and its own efforts and circumstances.¹⁰⁵ Saudi Arabia, however, was granted *de jure* recognition by its predecessor, the Ottoman Empire, and Britain, the most powerful country in the region. Such recognition of the Saudi state by the British and the Ottoman Empires was very important as evidence of effective control of the Saudi state over its territory. It is an affirmation of the existence of a specific factual state of affairs.¹⁰⁶ Not only did this international recognition involve a means of creating rules of international law in terms of practice and consent of the two Empires, but it also validated the acquisition of the territory by the Saudi state. It can clearly be seen that the acquisition of the Saudi territory, therefore, rests upon the interplay of effectiveness, sovereignty and recognition.

From the internal perspective, King Abdulaziz was strongly supported by the inhabitants, who welcomed his rule after their sore experiences with other rulers who had set up regimes of violence and repression.¹⁰⁷ The role of the tribe was very important with regard to acquisition of territory in the Arabian Peninsula because a ruler claimed the right of a tribe's territory if the tribe had pledged its allegiance to him. Therefore, relying on both the inhabitants' allegiance and loyalty and the Saudi military capacity, in June 1924, Abdulaziz held a conference of tribal and military leaders in Riyadh. The conference agreed on a military advance to Jordan, Iraq and Hijaz.¹⁰⁸ Attacking Hijaz was allowed by Islamic law because of Al-Ashraf's refusal to allow

¹⁰⁵ *Ibid.*, p. 129.

¹⁰⁶ See the *Eastern Greenland Case*, *PICJ Reports*, (1933), at 46, 51-52.

¹⁰⁷ Apart from Abdulaziz's two rivals, namely, Ibn Al-Rashid of Hail and King Hussain of Mecca, the local Emirs and Sheikhs, as well as the inhabitants of most of the of cities and villages of the region welcomed Abdulaziz's rule and submitted to him without resistance. For further details, see Assah, *Miracle of the Desert Kingdom*, *op. cit.*, pp. 20-27&pp. 47-55.

¹⁰⁸ Rihani, *Modern Najd and its dependencies* (Beirut, 1954) 2nd ed. pp. 365-7.



Muslims from Najd to perform pilgrimage,¹⁰⁹ one of the pillars of Islam. After taking Hijaz, one of Abdulaziz's first duties was to ensure the safety of the pilgrimage and to show that the pilgrims would fare better under his jurisdiction than they had under that of the Ashraf.¹¹⁰ By doing so, the Saudis began to fulfil the promises they had made when they first started to unify the country. The Saudis devoted and committed themselves to alter the unacceptable situation, from which the Arabian Peninsula as a whole and the holy cities of Mecca and Medina and other shrines and sacred places in particular had suffered for a long time.¹¹¹

In 1925, Abdulaziz sent a circular note to the Governments of Egypt, Iraq, Persia, Turkey and Afghanistan in which he declared:

“I do not desire to make myself master of Hijaz or to take dominion over it. The Hijaz is a trust placed in my hands until the moment when the Hijazis shall elect a ruler from among themselves- a ruler who shall regard himself as a servant of the Islamic world and shall work under the control of the Moslem (Muslim) peoples.”¹¹²

Acting on this suggestion, a council of Meccan notables offered the title of King of Hijaz to the Sultan of Najd, provided that he ruled in accordance with the *Quran* and the *Sunna* of the Prophet. Thus, on January 8th, 1926, Abdulaziz became King of Hijaz, Sultan of Najd and its dependencies.¹¹³ Three months later, he received *de jure* recognition as King of Hijaz from the governments of the United Kingdom, France, the USSR and the Netherlands.¹¹⁴ In April 1926, King Abdulaziz issued invitations to a Muslim conference in Mecca. The conference, which opened on June 7th, 1926, and was

¹⁰⁹ Abdulaziz, *King Abdulaziz and the Kuwait Conference: 1923-1924* (London, 1993) p107.

¹¹⁰ See *Umm Al Qura*, No.7, dated 23.1.1924 under the title, Security in Hijaz: Past, Present and Future.

¹¹¹ Abdulaziz, *King Abdulaziz and the Kuwait Conference: 1923-1924, op., cit.*, pp. 108-109.

¹¹² Seton-Williams, *Britain and the Arab States, op., cit.*, p. 187.

¹¹³ *Umm Al Qura*, No. 55, dated 15.1.1926.

¹¹⁴ *Umm Al Qura*, No.111 dated 28.1.1927.

attended by sixty delegates, was a sign that King Abdulaziz's *fait accompli* was gradually coming to be recognised by other Islamic Powers.¹¹⁵

Furthermore, in 1927, Great Britain signed the Treaty of Jeddah with King Abdulaziz.¹¹⁶ This Treaty was very important for the Saudi states in several respects. First, under Article 1 of this Treaty, “His Britannic Majesty recognises the full and absolute independence of the Kingdom of His Majesty the King of Hijaz and Najd and its Dependencies”. Secondly, as King Abdulaziz acquired the territories mentioned in Article 1 by conquest, it could be said that the Article recognised the territories that Abdulaziz had acquired by way of conquest so far. Finally, King Abdulaziz was able to free himself and his country from the limitations imposed by the treaty concluded by him with Britain in 1915, mentioned earlier. According to Article 9 of the Treaty of Jeddah, “the treaty concluded between His Britannic Majesty and His Majesty the King of the Hijaz and of Najd and its Dependencies on the 26th December, 1915, shall cease to have effect as from the date on which the present treaty is ratified.” This recognition of the unrestricted sovereignty of the remaining parts of the mother country, along with termination of the old treaty of protection, were great achievements of the Saudi state.¹¹⁷

On September 22, 1932, King Abdulaziz issued a royal decree No. 2716 dated 22.9.1932 unifying all the provinces of the state established by King Abdulaziz “in

¹¹⁵ For more details about the Conference see *Umm Al Qura*, No. 75, dated 11.6. 1926. pp. 1-4.

¹¹⁶ The Text of the Treaty of Jeddah and the letters of ratification exchanged are found in *Umm Al Qura* No. 145 dated 23.9.1927, pp. 1-3, see also *Treaty Collection*, Ministry of Foreign Affairs, Riyadh, vol. I, No. 10.

¹¹⁷ This Treaty was renewed twice: the first time was on 3 October 1936 for seven years and some of its Articles were amended in the favour of the Saudi state, the second time was on 3 October 1943 without any amendment. This time the two parties agreed on the automatic prolongation of the Treaty every seven years unless either party expressed his desire for the termination or the amendment of the treaty on six months notice, see (*PRO: FO 371/20059*)&(*PRO: FO 371/35160*), in Tuson & Quick, *Arabian Treaties op., cit.*, vol. 4, p. 389 & p. 529 respectively. See also *Treaty Collection*, Ministry of Foreign Affairs, Riyadh, vol. I, No. 43&57 respectively.

compliance with the wish of the general public¹¹⁸ and for the desirable purpose of unifying the parts of this Arab Kingdom”.¹¹⁹ The name of the Kingdom of Hijaz and its Dependencies was changed to that of the Kingdom of Saudi Arabia. Thus, Saudi Arabia was the first Arab State to achieve political independence.¹²⁰ As a result of the establishment of the Kingdom of Saudi Arabia, its government succeeded the Ottoman government in the regions which were under the normal suzerainty of the Ottoman Empire, such as Al-Hassa and Hijaz and the area surrounding them.

State Succession in international law means “the replacement of one state by another in the responsibility for the international relations of territory.”¹²¹ This replacement in responsibility for international relations is connected with the special position of newly independent states and means replacement in the sovereignty over a given territory.¹²² Therefore, Saudi Arabia and its neighbouring states could only acquire from their predecessors as much territory as the latter possessed and could establish themselves only within the boundaries of the former sovereign.¹²³ This is the principle of continuity of state boundaries.

The basic idea was expressed in the *Island of Palmas case*,¹²⁴ when Judge Huber had to decide whether Spain (the predecessor state) had sovereignty over Palmas at the time of the coming into force the Treaty of Paris of 1898 by which Palmas was ceded to

¹¹⁸ The wishes and desires of the general public were expressed in many letters and cables sent to King Abdulaziz by local tribes' sheiks and emirs, in which they asked the King to change the name of the Saudi state to the “Kingdom of Saudi Arabia”. For more details about these letters and cables see *Umm Al Qura*, No, 404, 405, 406 and 407 dated 9. 9. 1932, 16.9.1932, 23.9.1932 and 30.9.1932 respectively.

¹¹⁹ *Umm Al Qura*, No. 406, dated 23.9.1932.

¹²⁰ Assah, *Miracle of the Desert Kingdom*, op., cit., p. 34.

¹²¹ Article 2(1/b) of the 1978 Vienna Convention on Succession of States in Respect of Treaties.

¹²² Tyranowski, “Boundaries and Boundary Treaties in the Law of State Succession”, in *Thesaurus Acroasium of the Institute of Public International Law and International Relations of Thessaloniki, National and International Boundaries*, (Thessaloniki, 1985) 459, at 466.

¹²³ O’Connell, *State Succession in Municipal Law and International Law* (Cambridge, 1967) vol.II, p.273.

¹²⁴ *Island of Palmas Case*, (1928) 22 *AJIL* 867.

US (the successor state).¹²⁵ In this case, however, it was decided that Netherlands, not Spain had sovereignty over Palmas before the ceding date and therefore, title was given to the Netherlands.¹²⁶ As a result, the USA could not acquire title to Palmas, and could instead only establish itself within the boundaries of Spain, its predecessor state. Thus, when new states emerge they always conserve some elements of their predecessors, and therefore, there is a certain *de facto* continuity because two of the four elements of statehood, namely, population and territory remain when new states emerge.¹²⁷

Moreover, in the context of Europe, the Final Act of the Conference on the Security and Cooperation in Europe of August 1975¹²⁸ introduced two principles, namely, the inviolability of frontiers¹²⁹ and the territorial integrity of states.¹³⁰ According to the principle of the inviolability of frontiers, boundaries between states cannot be changed by means of threat or use of force.¹³¹ These two principles seem to reaffirm the principle of continuity of state boundaries which already exist in international law as will be seen in the next paragraphs. Once international boundaries are created in accordance of international law, they are protected and assume finality and permanence. The only authorised territorial changes are those that take place peacefully through mutual consent of the states concerned.¹³² In the context of succession of states, the principles of inviolability of boundaries and territorial integrity of states mean the continuity of state boundaries regardless of all changes of

¹²⁵ *Ibid.*, at 880.

¹²⁶ *Ibid.*

¹²⁷ Mullerson, "The Continuity and Succession of States, By Reference to the Former USSR and Yugoslavia", (1993) 42 *International and Comparative Law Quarterly* 473, at 475.

¹²⁸ "Conference on Security and Cooperation in Europe: Final Act" (1975) 14 *ILM* 1292.

¹²⁹ Principle III, *ibid.*, p. 1294.

¹³⁰ Principle IV, *ibid.*

¹³¹ Piotrowicz, "The Relationship Between The Final Act of the Conference on Security and Cooperation in Europe-the Helsinki Final Act- and the Order-Neisse Line Legal Regime", in *Thesaurus Acroasium of the Institute of Public International Law and International Relations of Thessaloniki, National and International Boundaries*, (Thessaloniki, 1985) 896, at 903.

¹³² Tyranowski, "Boundaries and Boundary Treaties in the Law of State Succession", *op. cit.*, pp. 468-9.

sovereignty.¹³³ However, any territorial changes are effected in conformity with the rules of general international law.¹³⁴ Indeed, what is established on the basis of the consent of states concerned can only be modified by the exercise of such consent. As the international Court of Justice declared in the *Temple of Preah Vihear* case,

“When two countries establish a frontier between them, one of the primary objects is to achieve stability and finality. This is impossible if the line so established can, at any moment, and on the basis of continuously available process, be called in question, and its rectification claimed, whenever any inaccuracy by reference to a clause in the parent treaty is discovered. Such process could continue indefinitely, and finality would never be reached as long as possible errors still remained to be discovered. Such a frontier, so far from being stable, would be completely precarious”.¹³⁵

As far as the devolution of treaty rights and obligations from a predecessor state to a successor state is concerned, it may be automatic or at the option of the new states, as the case may be. On a considerable number of occasions the devolution of treaty rights and obligations has been the subject of agreements between the predecessor and the successor states.¹³⁶ However, Article 8 of the 1978 Vienna Convention on the Succession of States in Respect of Treaties¹³⁷ provides that such agreements cannot, of themselves, become the obligations of the successor state towards other states, while Article 9, regarding unilateral declarations, emphasises that such a declaration by the

¹³³ *Ibid.*

¹³⁴ *Ibid.*, p. 469.

¹³⁵ *ICJ Reports*, 1962, at p.34.

¹³⁶ For further details, see generally, O’Connell, *State Succession in Municipal Law and International Law*, *op. cit.*, pp. 352-73.

¹³⁷ This Treaty entered into force on 6 November 1996.

successor state alone cannot, of itself, affect the rights and obligations of the successor state and third state.¹³⁸

Dealing with the “moving treaty-frontier rule”,¹³⁹ Article 15 of the Vienna Convention provides that where an existing state acquires territory which is not itself a state, the treaties of the predecessor state cease to be applicable with regard to the acquired territory, while the treaties of the successor state extend to the acquired territory. This Article seems to reaffirm the practice of states in this regard. For example, when the US annexed Hawaii in 1898, its treaties were extended to the islands and Belgium was informed that US-Belgium commercial agreements were thenceforth to be applied to Hawaii also.¹⁴⁰ Similarly, after the transfer of Alsace-Lorraine to France in 1919, a Belgian court held in 1925 that after 1919 German treaties would not apply to Alsace-Lorraine, while French treaties would thereafter be extended to that territory.¹⁴¹ These rules were applicable to the territory acquired by Saudi Arabia because such territory was not a state by itself. This means that the treaties of the predecessor state, the Ottoman Empire would cease to be applicable to the territory acquired by Saudi Arabia, and the treaties of Saudi Arabia, the successor state, were to be extended to the acquired territory.

Saudi Arabia, as a newly independent state,¹⁴² was deemed to benefit from the “clean slate” rule underlined by Article 16 of the 1978 Convention. This rule provides

¹³⁸ 1978 Vienna Convention on the Succession of States in Respect of Treaties, *Parliamentary Papers*, 1979-80, Cmnd 7760.

¹³⁹ This basic principle has been applied to cases of cession according to which, when territory undergoes a change of sovereignty, it passes automatically out of the treaty regime of the predecessor sovereign into the treaty regime of the successor sovereign. See Tyranowski, “Boundaries and Boundary Treaties in the Law of State Succession”, *op. cit.*, pp. 502- 6.

¹⁴⁰ O’Connell, *State Succession in Municipal Law and International Law*, *op. cit.*, pp. 377-78.

¹⁴¹ *Ibid.*, p. 379.

¹⁴² Article 2(1/f) of the 1978 Vienna Convention defined the new independent state as a successor state, which was a former dependent territory, i.e. a colony.

that a successor state “is not bound to maintain in force, or to become part to, any treaty by reason only that, at the date of the succession of states, the treaty was in force in respect of the territory to which the succession of states relates”. Therefore, Saudi Arabia was a “clean slate” at the time when it succeeded the Ottoman Empire, and, therefore, was not bound by any treaty in force at the time of succession.¹⁴³

The “clean slate” rule does not apply to boundary treaties, however, as they are among those treaties which are not affected by the succession of states and which thus bind the successor state automatically. This is expressed in Article 11 of the 1978 Vienna Convention, which declares that a boundary established by a treaty and obligations and rights established by a treaty and relating to the regime of a boundary, are unaffected by the succession. This Article applies only to boundaries established by treaties, so boundaries established by other means, such as, for example, by recognition or acquiescence are not covered.¹⁴⁴ Article 12, however, provides that a succession of states does not, as such, affect rights and obligations relating to the territory established by treaty with regard to other states. Examples of such rights and obligations might include port facilities, rights of transit and others. Saudi Arabia, therefore, was bound by the boundary treaties concluded between its predecessor and other states, such as the 1913-14 Anglo-Ottoman Conventions which will be discussed in detail in the next sections of this chapter and second chapter. These Conventions defined the Saudi boundaries with Kuwait, Qatar, UAE, Oman and South Yemen. These boundaries were not affected by state succession, and, therefore, were binding on Saudi Arabia and its neighbouring states as the successors of both the British and the Ottoman Empires. The

¹⁴³ Mullerson, “The Continuity and Succession of States, By Reference to the Former USSR and Yugoslavia”, *op. cit.*, p. 474.

¹⁴⁴ Shaw, “The Heritage of States: The Principle of *Uti Possidetis Juris* Today”, *op. cit.*, at 91.

validity of these Conventions, however, might have been affected by other reasons such as ratification, for example, as will be seen shortly, but not by state succession itself.

This exception to the “clean slate” rule was accepted by the International Court of Justice in both the *Tunisia/ Libya case*¹⁴⁵ concerning the continental shelf and the *Burkina Faso/Mali frontier dispute case*.¹⁴⁶ In the former case, the International Court of Justice stated that “this rule of continuity *ipso jure* of the boundary and territorial treaties was later embodied in the of the 1978 Vienna Convention on the Succession of States in Respect of Treaties”.¹⁴⁷ The Arbitration Commission established by the International Conference on Yugoslavia¹⁴⁸ stated that all external frontiers must be respected in line with the principle laid down in the UN Charter, in General Assembly Resolution 2625(XXV) and in the Helsinki Final Act.¹⁴⁹ It also noted that this principle underlies Article 11 of the 1978 Vienna Convention.¹⁵⁰ Practice relating to the dissolution of the Soviet Union confirms the obligatory nature of this rule. Indeed, following the dissolution of the Union, although Estonia, while defining its maritime boundary with Finland, held the position that it was not a successor of the former Soviet Union, both states accepted that the provisions of the old Finland-Soviet Union treaties in this issue would be applied.¹⁵¹ Similarly, the Estonia-Latvia- Sweden maritime

¹⁴⁵ *ICJ Reports*, 1982, at 18.

¹⁴⁶ *ICJ Reports*, 1986, at 554.

¹⁴⁷ *ICJ Reports*, 1982, at 66.

¹⁴⁸ The Conference was convened by the European Community and its Member states within the framework of European Political Cooperation in a Declaration of August 1991. The Conference was to bring together the Yugoslav Federal Presidency and Federal Government, the Presidents of the six Yugoslav Republics and representatives of the European Community and its member states. For further details on the Arbitration Commission, see “The Arbitration Commission of the European Conference on Yugoslavia”, (1993) 92 *ILR*, 162, see generally on the Arbitration Commission, Craven, “The European Community Arbitration Commission on Yugoslavia”, (1995) 66 *BYIL* 333.

¹⁴⁹ See Opinion No. 3 of “The Arbitration Commission of the European Conference on Yugoslavia”, (1993) 92 *ILR* 162, at 170-1.

¹⁵⁰ *Ibid.*

¹⁵¹ Franckx, “The 1998 Estonia-Sweden Maritime Boundary Agreement: Lessons to be Learnt in the Area of Continuity and/or Succession of States”, (2000) 31 *Ocean Development and International Law*, No. 3, 269, at 271-2.

boundary agreements confirmed that the maritime boundary established by the old Soviet Union constituted a *de jure* boundary.¹⁵² The 1998 Estonia-Sweden Agreement delimiting their boundaries was a copy of the old boundary agreement between Sweden and the Soviet Union, with some slight changes.¹⁵³

State practice before the 1978 Vienna Convention had always shown support for the idea of the sanctity of boundaries, which was repeated by the Convention. For example, when Texas became independent in 1840, its boundary with the United States was recognised to be that established in a treaty of 1828 between the United States and Mexico. Similarly, when Prussia annexed Hanover in 1866, it accepted the latter's boundary with Netherlands, which had been defined by treaty.¹⁵⁴ State practice in this field is furnished by the territorial inheritance of the new states which gradually emerged in Africa and Asia. The United Kingdom, for example, in her devolution agreements with the new states of Burma, Ceylon, Malaya, Nigeria, Sierra Leone and Uganda, consistently recognised that, in matters concerning "obligations and responsibilities", "reciprocal rights and benefits", only applicable treaties could devolve upon the new states.¹⁵⁵ Although the original alignments of the respective state boundaries might subsequently have been modified by act of new states, the fact still remains that at the "critical date"¹⁵⁶ of independence, none of the new states was in any doubt that it inherited what the parent state had possessed.¹⁵⁷

¹⁵² *Ibid.*, at 273-4.

¹⁵³ *Ibid.*, at 274-5.

¹⁵⁴ O'Connell, *The Law of State Succession* (Cambridge, 1956) p. 50.

¹⁵⁵ Cukwurah, *The Statement of Boundary Disputes in International Law, op. cit.*, pp.107-8.

¹⁵⁶ For more detail about this term, the "critical date", see Jennings, *The Acquisition of Territory in International Law, op. cit.*, pp. 31-35, Island of Palmas Case, *op. cit.*, at p. 875.

¹⁵⁷ Cukwurah, *The Statement of Boundary Disputes in International Law, op. cit.*, pp.107-8.

The boundary dispute between Iraq and Kuwait is also explainable on the ground of state succession. Iraq's claim of sovereignty over the whole of Kuwait for the first time in 1938 was justified by the Iraqis on the ground of succession. Iraq argued that Kuwait had been part of the province of Basrah in the Ottoman Empire, to which Iraq had succeeded on its establishment in 1921 and as a result, Kuwait had always formed an integral part of Iraq and had wrongfully been separated from it.¹⁵⁸ When Kuwait became independent in 1961 and applied to join the United Nations, Iraqi leaders claimed sovereignty over the whole of Kuwait for the second time.¹⁵⁹ This claim was rejected by the Arab League and most of the nations of the world, which recognised the independence of Kuwait which had been a *de facto* independent state.¹⁶⁰

As far as Saudi Arabia is concerned, its succession took place when the Saudi territory broke off and became an independent state. With regard to the critical date of the emergence of Saudi Arabia and its neighbouring states, it could be said that it was after the First World War with regard to Jordan, Iraq and Kuwait. With regard to Saudi Arabia, it first emerged as an independent state in Najd (central of Saudi Arabia) in 1902 before it succeeded the Ottomans. It then gained most of its territories, as mentioned earlier, by way of conquest during the existence of and after the collapse of the Ottoman Empire.

At the time of the succession, there was no mutual boundary agreement between Saudi Arabia and its neighbouring states in the north, either those which emerged out of the Ottoman Empire, or those which were British mandates. It could, however, be

¹⁵⁸ It was not entirely clear whether or not the Ottoman Empire claimed sovereignty or suzerainty over Kuwait. For more details about the question of Iraq and Kuwait in this regard see Mendelson & Hulton, "Iraq's Claim to Sovereignty over Kuwait" in Schofield, (ed.), *Territorial Foundation of the Gulf States* (London, 1994) pp. 126-128.

¹⁵⁹ Mendelson & Hulton, "Iraq's Claim to Sovereignty over Kuwait" *op. cit.*, p. 140.

¹⁶⁰ *Ibid.*

argued that defined territory is the fundamental concept of international law, as over such a territory a state has sovereignty and exercises its jurisdiction over its subjects to the exclusion of other states. Judge Max Huber in the *Island of Palmas Case*¹⁶¹ stated that:

“The development of international law has established this principle of the exclusive competence of the state in regard to its own territory in such a way as to make it the point of departure in settling most questions that concern international relations.”¹⁶²

Indeed, defined territory is one of the four qualifications which a state, as a person of international law, should possess. This was expressed in Article 1 of the Montevideo Convention of 1933 on the Rights and Duties of States, signed by United States and certain Latin American countries which provides:

“The state as a person of international law should possess the following qualifications: (a) a permanent population; (b) a defined territory; (c) a Government; and (d) a capacity to enter into relation with other states.”¹⁶³

Although it is widely accepted now that each independent state has its own territory within which it exercises its jurisdiction and sovereignty,¹⁶⁴ there are some exceptions with regard to (b) and (c) above. As to (b) a defined territory, the increase or decrease of a state territory does not change the identity of that state. Indeed, in 1990, the Yemen

¹⁶¹ *Island of Palmas Case*, (1928) 22 *AJIL* 867, at 875.

¹⁶² *Island of Palmas Case*, (1928) 22 *AJIL* 867, at 875.

¹⁶³ 165 *League of Nations Treaty Series* 19.

¹⁶⁴ Many of the fundamental principles of international law are concerning with maintaining and protecting the territorial exclusivity of the state. This was expressed in Article 2(1) of the UN Charter, which states that “the organisation is based on the principle of the sovereign equality of all its Members”. Moreover, the use of force is forbidden against “*the territorial integrity or political independence of any state.*” The sovereign equality of all states was also mentioned in the 1970 Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States. See General Assembly Resolution 2625 dated 1970, in Djonovich, (ed.), *United Nations Resolutions*, (vol. XIII 1970-1971) (New York, 1976) p. 337.

Arab Republic, or North Yemen, and the People's Democratic Republic or South Yemen agreed to be unified under the name, the Republic of Yemen.¹⁶⁵ Moreover, Israel's boundaries have been a subject of dispute for over forty years, and it is widely recognised as a state. As to (c) a Government, the temporary exile of the government, for example, while the aggressor state in a military occupation does not affect the existence of the state. One of the most recent examples of a government in exile was the Kuwaiti government, when Iraq invaded Kuwait in 1990. During his exile in Saudi Arabia, the Emir of Kuwait attended both the Arab League meeting on 10 August 1990¹⁶⁶ and the Gulf Cooperation Council meeting, held in Qatar on 22 December 1990¹⁶⁷. The Emir of Kuwait received in his residence in exile, and was received by, some heads of state.¹⁶⁸

The reason for the absence of defined boundaries between Saudi Arabia and its neighbours when succession took place was the nature of the inhabitants' life, which prevented the application of defined boundaries to separate people from each other. Furthermore, because the gaining of the territory and exercising of the sovereignty by the local rulers depended on the allegiance of the tribes, neither their territories nor their spheres of jurisdiction were stable and fixed. They used to extend and shrink according to the tribes' allegiance. Therefore, their boundaries overlapped most of the time. Territorial and boundary claims were accordingly based on the allegiance of the tribes, rather than the terms of a treaty or adjudication. However, Saudi Arabia succeeded the Ottoman Empire several decades before its neighbours under the British mandate gained their independence and then succeeded the British Empire. Taking into consideration

¹⁶⁵ *Al-Bilad*, No. 9480 dated 23 May 1990.

¹⁶⁶ *Al-Bilad*, No. 9549, dated 11 August 1990.

¹⁶⁷ *Umm al Qura*, No. 3338 dated 28 December 1990.

¹⁶⁸ *Umm al Qura*, No. 3318 dated 10 August 1990,

the 1913 Anglo-Ottoman Convention, the boundaries between Saudi Arabia on the one hand and its neighbouring states on the other were *de facto* boundaries.

2. The Saudi-Kuwait Boundary Dispute

After years of negotiations, the British and Ottoman Empires concluded the 1913 Anglo-Ottoman Convention on 29 July 1913.¹⁶⁹ This was a block of agreements aimed at resolving the outstanding differences between the two Empires in Arabia, as well as to define their respective interests in the region. One of the issues which was dealt with by the 1913 Anglo-Ottoman Convention was the definition of the Saudi-Kuwait boundaries as part of the definition of the two Empires' spheres of influence in the region.

The Convention established two semi-circles with twenty and forty mile radii respectively, drawn from the centre point of the city of Kuwait. The first semi-circle was defined by Article 5 of the Convention. It represented the inner zone of Kuwaiti authority, and was bounded by what was known as the Red Line, with Khawr Zubayr and Grane forming the northern and southern coastal limits (see map 9). Certain islands, including Warba and Bubiyan, were also designated as belonging to Kuwait. Article 6 defined the second semi-circle as the outer zone, which was wider than the first one and bounded by the Green Line. Thus, the Red Line defined the Saudi-Kuwaiti boundary, while the Green Line defined Kuwait's northern boundary with Iraq. In the inner or Red circle, the ruler of Kuwait had total autonomy, while in the outer or Green circle, he had rather more nebulous control, but was allowed to collect tribute from the tribes in the

¹⁶⁹ (IOR:L/P&S/18/B381) official documents reproduced in Tuson & Quick, (ed.), *Arabian Treaties: 1600-1960, op. cit.*, vol. I, pp.91-138.

area.¹⁷⁰ The Convention, which was signed by Sir Edward Grey on behalf of the British Government and Hakki Pasha on behalf of the Ottoman Government in London, was never ratified because it involved complex issues, such as the question of the Baghdad Railway and Shatt al-Arab, which were locked into the international economic and political scene.¹⁷¹ For example, the Baghdad Railway deal could never be concluded without the consent of Germany, and the Shatt al-Arab navigation had to be agreed upon by Russia, because both Germany and Russia would be affected by such deals.¹⁷²

As far as international law is concerned, ratification expresses a state's consent to be bound by the treaty.¹⁷³ It is only required when the treaty so specifies.¹⁷⁴ If the provisions of a treaty do not express the requirement of ratification before the treaty becomes legally binding, such a treaty becomes binding by signature.¹⁷⁵ This optional procedure was designed to facilitate international agreement between states whose executive branches of government may be disabled from contracting without legislative approval.¹⁷⁶ There is nothing to prevent states from ratifying a treaty on the day on which it is signed; however, parties to a treaty may benefit from the interval between the signature of the treaty and the exchange of documents of ratification, as such an interval allows extra time for consideration, once the negotiations process has been completed.¹⁷⁷ By providing for ratification, the feelings of public opinion have an opportunity to be expressed with the possibility that a strong negative reaction may

¹⁷⁰ Helms, *The Cohesion of Saudi Arabia, op., cit.*, p. 206.

¹⁷¹ For more details see Wilkinson, *Arabia's Frontiers* (London, 1991) pp. 65-99.

¹⁷² *Ibid.*

¹⁷³ Article 14 of the 1969 Vienna Convention on the Law of Treaties.

¹⁷⁴ Article 16 of the 1969 Vienna Convention on the Law of Treaties.

¹⁷⁵ Blix, "The Requirement of Ratification", (1953) 30 *BYIL* 352, at 380, See McNair, *The Law of Treaties*, 1961, p. 133.

¹⁷⁶ See O'Connell, *International Law, op., cit.*, vol. 1, p. 222 & p. 224.

¹⁷⁷ Blix, "The Requirement of Ratification", (1953) 30 *BYIL* 352, at 356-7.

result in the state deciding not to ratify the treaty under consideration.¹⁷⁸ If ratification is necessary for one side it is usual to require it of the other or others, and it is the exchange of ratification that completes the transaction.¹⁷⁹ In the *Ambatielos* case,¹⁸⁰ for example, the International Court of Justice had to interpret a Declaration of 16 July 1926 between the United Kingdom and Greece, on the ground that the provisions of the Declaration constituted provisions of a Treaty of the same date between the same parties, a Treaty which contained an express provision making the Court competent to interpret it. While the Declaration did not expressly specify the procedure by which it was to come into force,¹⁸¹ the Treaty expressly provided for ratification.¹⁸² The International Court of Justice decided that the Declaration was part of the Treaty and made a statement which is of particular interest regarding the necessity of ratification when required by the parties, it stated that:

“The ratification of a treaty which provides for ratification, as does the Treaty of 1926, is an indispensable condition for bringing it into operation, It is not, therefore, a mere formal act, but an act of vital importance”.¹⁸³

The International Court of Justice intended to express that ratification should not be regarded as a stereotypical formality, as it is rather of great judicial importance.

As the 1913 Anglo-Ottoman Convention was signed by the parties subject to ratification which never took place, it did not become binding on the concerned parties,

¹⁷⁸ *Ibid.*

¹⁷⁹ Fitzmaurice, “Do Treaties Need Ratification?” (1934) 15 *BYIL* 113, at 115-16.

¹⁸⁰ *ICJ Reports*, 1952, p. 28.

¹⁸¹ *Ibid.*, p. 36.

¹⁸² *Ibid.*

¹⁸³ *Ibid.*, p. 43.

and as a result, the Red Line defined by it was void. Indeed, the approval of the parties to the Convention was very important in order for them to be bound by it, as it concerned a vital issue, namely, the definition of their boundaries, that is to say, the definition of their sovereignty and jurisdiction. Generally speaking, the party or the parties to a treaty may choose not to ratify it after it has been signed by the representatives, because they may want to reconsider their positions and come up with different thoughts regarding their boundaries. Another reason for non-ratification could be that the parties' representatives might exceed their powers or instructions, and therefore, the boundary defined by a treaty does not reflect the desire and will of the party or parties.

In the case of the Red Line between Saudi Arabia and Kuwait, however, it was widely accepted that it was based on the power of the Amir of Kuwait, Mubarak, to impose order and levy taxes on his surrounding tribes.¹⁸⁴ This means that the Saudi-Kuwait boundary which was defined by the Red Line was based on the actual exercise of authority of the state of Kuwait over the territory within the Red Line, and therefore, was realistic. In the light of this, it could be argued that the territory which was left for Saudi Arabia beyond the Red Line had either been under effective control by the Saudi state, and therefore, was its territory, or it had been *terra nullius*, and therefore was open to be acquired by any state. The Saudis, however, claimed the territory beyond the Red Line on the ground that it had been their ancestral territory during the First and the Second Saudi states.¹⁸⁵

¹⁸⁴ Troeller, *The Birth of Saudi Arabia: Britain and the Rise of the House of Sa'ud*, op. cit., p. 171.

¹⁸⁵ In a memorandum by the British Political Agent in Kuwait dated 13 June 1920, an official document reproduced in Schofield and Blake, (eds.), *Arabian Boundaries: Primary Documents 1853-1957*, op. cit., vol. 9, p. 46.

If the 1913 Anglo-Ottoman Convention had been ratified, then, according to both the principle of state succession and the principle of *uti possidetis*, discussed above¹⁸⁶, the Red Line defined by the Convention would have been legally accepted as the boundary line between Saudi Arabia and Kuwait. Evidence, however, shows that the Saudi-Kuwait boundaries defined by the Red Line were straight lines, drawn on the map in order to solve temporally tribal problems rather than being permanent international boundaries, as understood in international law. As the British themselves admitted:

“The boundaries which did not give Koweit {Kuwait} quite so much as Mubarak {the Amir of Kuwait} claimed, were straight lines drawn on the map to include certain {water} wells which according to the best evidence available, were used by the Koweit {Kuwait} tribes. Such lines in fact mean very little.”¹⁸⁷

Therefore, this unratified Convention which contained the definition of the boundaries between the two predecessor Empires, although was controversial and had no legal effect from an international law viewpoint, gave rise to boundary disputes between Saudi Arabia and Kuwait. The dispute resulted from the British assertion that the Convention was binding upon Saudi Arabia and the Saudi refusal to accept this assertion. This dispute led, consequently, to another economic dispute, as the relations between the two states were strained for economic reasons resulting from territorial and tribal problems in the absence of defined territory. The dispute between them continued to worsen after the conclusion of the First World War, and hostilities broke out between the two countries. These clashes were occasioned by the Kuwaiti leader Shaikh Salim’s

¹⁸⁶ See *supra* 1.

¹⁸⁷ IO L/P&S/10/925, letter from Sir Arthur Hirtzel, Secretary of State, to Mr Churchill, 25 January 1921, an official document quoted in Helms, *The Cohesion of Saudi Arabia, op., cit.*, p. 207.

assertion of his jurisdiction over the tribes of Aujman, Mutair and Awazim within the area assigned to Kuwait by the Red Line and the refusal of the Saudi ruler, Abdulaziz, to accept this assertion.¹⁸⁸ Again, if the 1913 Anglo-Ottoman Convention had been ratified, there would not have been any doubt of its being binding on the successors, and then such refusal by Abdulaziz would have been a violation of the boundary agreement inherited from his predecessor. However, taking into consideration the effective control exercised by the state of Kuwait, which was the basis of the Red Line, it could be argued that if the case had been referred to an international tribunal, the decision would have been in Kuwait's favour on the ground that it had sovereignty over the disputed area at the time of colonisation.¹⁸⁹

In 1920, Salim, in order to press his claims, announced his intention to build a fort at Dauht Balbul, on the coast just north of Jabal Manifah, "to signify that this was his southernmost boundary"¹⁹⁰. Ibn Saud objected, claiming that Dauht Balbul was within his territory.¹⁹¹ As a result, war erupted between the two sides in which the Kuwait army was completely defeated.¹⁹² By that time the Treaty of Versailles had already been concluded (signed on June 28, 1919). Although the Treaty created the League of Nations after the First World War in hopes of preventing future wars and aggression, the League system did not prohibit war or the use of force, but it did set up a procedures designed to restrict it to a tolerable level.¹⁹³ Therefore, it could be said that

¹⁸⁸ Troeller, *The Birth of Saudi Arabia: Britain and the Rise of the House of Sa'ud*, op., cit., p.170.

¹⁸⁹ See, for example, *Island of Palmas Case*, (1928) 22 *AJIL* 867, *Eastern Greenland Case*, *PICJ Reports* (1933) series A/B, No 53, 151.

¹⁹⁰ Dickson, *Kuwait and her Neighbours* (London, 1956) p. 251.

¹⁹¹ A letter from Ibn Saud dated 1 February 1919, to the British Political Agent in Kuwait, in Schofield and Blake, (eds.), *Arabian Boundaries: Primary Documents 1853-1957*, op., cit., vol. 9, p. 7.

¹⁹² In a memorandum by the British Political Agent in Kuwait dated 13 June 1920, reproduced in Schofield and Blake, (eds.), *Arabian Boundaries: Primary Documents 1853-1957*, op., cit., vol. 9, pp. 26-31.

¹⁹³ Articles 10-16 of the Covenant of League of Nations.

war was not yet outlawed and title to territory could be acquired by conquest. When Abdulaziz won this war, he extended his territorial claim to include the whole territory up to the walls of Kuwait town,¹⁹⁴ basing his claim, as usual, on the extent of his forefathers' territories during the First and the Second Saudi states. Salim based his claim on the Red Line, which was based, as mentioned earlier, on Mubarak's power to impose order and levy taxes on his tribes.¹⁹⁵ In other words, while Abdulaziz based his claim on historical rights, Salim based his on Article V of the 1913-Anglo-Ottoman Convention by which the Red Line was defined, as well as on effective exercise of state authority. Historical claims, however, have been raised throughout history.¹⁹⁶ Iraq, for example, sought to justify its invasion and annexation of the neighbouring state of Kuwait in August 1990 on the ground that it has a historical right over the Kuwait. The response of the United Nations demonstrated that such arguments were unacceptable to the world community as a whole.¹⁹⁷ Another example could be Morocco, which has made extensive claims to Western Sahara as historically belonging to the old Moroccan Empire. In the *Western Sahara case*,¹⁹⁸ the International Court of Justice accepted the existence of historical legal ties between the tribes of the area and Mauritania and Morocco, but declared that they were not of such a nature as to override the right of the inhabitants to self-determination and independence.¹⁹⁹ A more recent example would be the historical claim made by Yemen in its dispute with Eritrea over the sovereignty of the Greater Hanish island in 1998.²⁰⁰ Yemen argued, in relation to its incorporation in

¹⁹⁴ In a memorandum by the British Political Agent in Kuwait dated 13 June 1920, reproduced in Schofield and Blake, (eds.), *Arabian Boundaries: Primary Documents 1853-1957, op. cit.*, vol. 9, p. 45.

¹⁹⁵ *Ibid.*, p. 46.

¹⁹⁶ See Jennings, *The Acquisition of Territory in International Law, op. cit.*, pp. 76-8.

¹⁹⁷ See *supra* footnote No. 51 on the invasion of Kuwait by Iraq.

¹⁹⁸ *Western Sahara Case, ICJ Reports 1975*, at 39.

¹⁹⁹ *Ibid.*, pp. 41-44.

²⁰⁰ Antunes, "The Eritrea-Yemen Arbitration: First Stage-the Law of Title to Territory Re-averred"(1999) 48 *International and Comparative Law Quarterly* 362.

the former Ottoman Empire that this did not deprive it of historical title to its territory. It also took the view that after the final fall of the Empire and the independence of Yemen in 1918, title reverted inevitably to Yemen. The Tribunal had to examine extensively Yemen's sovereignty over the island during the time of the Ottoman Empire until the date of the independence of Yemen. It found that the Imam of Yemen had neither sovereignty nor jurisdiction over the Red Sea coast where the island is located, and the Ottoman governor had exercised jurisdiction over the coasts until 1917.²⁰¹ On this basis, the Tribunal did not accept the historical claim of Yemen, and its argument that sovereignty over the island in dispute reverted to Yemen after the fall of the Ottoman Empire.²⁰² In the light of this, it could be said that the effective exercise of authority by Kuwait overrode the historical claims made by Abdulaziz.

Abdulaziz was informed that His Majesty's Government recognised the territory within the inner boundary defined by the Red Line in the 1913 Anglo-Ottoman Convention as unquestionably belonging to Kuwait.²⁰³ Some time later, Abdulaziz asserted that Salim had no jurisdiction at all over Jariya or any of the country claimed by him and maintained that he was unaware of any boundaries as laid down by the 1913 Anglo-Ottoman Convention.²⁰⁴ He then sent a letter to be signed by Salim, in which he would give away all the country he had claimed east and west of Jariya.²⁰⁵ However, Salim did not sign Ibn Saud's ultimatum, but instead signed a document in which he

²⁰¹ *Ibid.*, at p. 366.

²⁰² *Ibid.*

²⁰³ In a memorandum by the British Political Agent in Kuwait dated 13 June 1920, an official document reproduced in Schofield and Blake, (eds.), *Arabian Boundaries: Primary Documents 1853-1957, op., cit.*, vol. 9, p. 47.

²⁰⁴ Dickson, *Kuwait and her Neighbours, op., cit.*, p. 252.

²⁰⁵ Ibn Saud's letter to Salim, the ruler of Kuwait, dated 21 June 1920, in Schofield and Blake, (eds.), *Arabian Boundaries: Primary Documents 1853-1957 op., cit.*, vol. 9, p. 49.

declared that Jariya was a common property.²⁰⁶ At the same time, Salim was disappointed when he was told by the British that the 1913 Anglo-Ottoman Convention had been drawn up under conditions which no longer obtained, that he was not a party to this Convention, and that, in any case, it had been superseded by Article 6 of the 1915 Anglo-Saudi Treaty which provided that the Saudi-Kuwait boundaries would be defined later.²⁰⁷ According to international law, termination of or withdrawal from a treaty may take place by consent of all the parties.²⁰⁸ In particular, a treaty may be considered as terminated if all parties conclude a later treaty, which is intended to supplant the earlier treaty, or if the latter treaty is incompatible with its provisions.²⁰⁹ As far as the 1913-Anglo-Ottoman Convention is concerned, accepting for reason of discussion the British argument that it was valid despite non-ratification, it could be said that it was terminated and superseded by the 1915 Anglo-Saudi Treaty which was concluded between Saudi Arabia, as a successor of the Ottoman Empire and Britain. This termination of the 1913 Anglo-Ottoman Conventions with regard to the Saudi-Kuwait boundary had ignored the actual exercise of the authority of the state of Kuwait over the disputed territory. As a result, the disputed area had become open for fresh negotiations which might lead to fresh boundaries, as will be seen later in the second chapter.

3. The Saudi-Iraqi Boundary Dispute

When the 1913 Anglo-Ottoman Convention was concluded, the territory that includes

²⁰⁶ In a letter from Salim, the ruler of Kuwait, to Ibn Saudi (no date), in Schofield and Blake, (eds.), *Arabian Boundaries: Primary Documents 1853-1957, op., cit.*, vol. 9, p. 53.

²⁰⁷ Memorandum by the British Political Agent in Kuwait dated 17 July 1920, an official document reproduced in Schofield and Blake, (eds.), *Arabian Boundaries: Primary Documents 1853-1957, op., cit.*, vol. 9, p. 59.

²⁰⁸ Article 59 of Vienna Convention of the Law of Treaties.

²⁰⁹ Article 59 of Vienna Convention of the Law of Treaties.

the present Saudi-Iraqi boundary was part of the Ottoman Empire's internal territory, far away from the boundary lines (see map 9). Yet, when the Saudi boundary with Iraq evolved in 1921,²¹⁰ the new Saudi state was brought into direct confrontation with its neighbours, the Ashraf (the rulers of Iraq). The dispute between the two states was almost entirely economic, resulting from territorial and tribal problems.²¹¹ For example, local tribal troubles interrupted the natural migration, which had taken place from time immemorial in autumn by tribes of northern and northeastern Saudi Arabia towards Kuwait and Iraq to obtain the necessities of life.²¹² This led subsequently to several attacks and counterattacks between different tribes in the area.²¹³ Such tribal troubles emphasised the differences between European and Central Arabian attitudes towards political authority and jurisdiction. Whereas the former depends on a defined territory, the latter relies on the concept of the tribe. Such differences of attitudes made it difficult to make such people, who had to move freely from one region to another in search of the means of sustenance, recognise fixed boundaries through the desert, by which they were to be confined.

It was not until 1922 that the Saudis and Iraqis, at Muhammera on the Shatt al Arab, concluded a Treaty called the Treaty of Muhammera.²¹⁴ The Treaty was signed by delegates from Saudi Arabia and Iraq in the presence of Sir Percy Cox, the High Commissioner in Iraq on 5th May. Two years earlier, during the preliminary discussions between Cox and Ibn Saud, there had been a disagreement: Cox advocated fixed boundaries while Ibn Saud, aware of the problems of nomadic people, objected to

²¹⁰ See *supra* chapter II, 4.3.

²¹¹ Troeller, *The Birth of Saudi Arabia: Britain and the Rise of the House of Sa'ud*, *op. cit.*, p.174.

²¹² *Ibid.*

²¹³ Dickson, *Kuwait and her Neighbours*, *op. cit.*, p.266.

²¹⁴ (IOR: L/P&S/20/C158E), in Tuson & Quick, (ed.) *Arabian Treaties*, *op. cit.*, VOL. 4, pp. 55-64, *Treaty Collection*, Ministry of Foreign Affairs, Riyadh, vol. I, No.1.

boundaries based on territorial rather than on tribal lines.²¹⁵ Therefore, the Treaty did not make any reference to the boundaries between the two states; rather, it appointed a joint committee to establish them.²¹⁶ However, Article 1 of the Treaty decided the allegiance of the tribes and provided for punishment of raiding tribes and the safety of pilgrim routes. This decision of the tribes' allegiance was the basis on which their boundaries were defined as will be seen in the second chapter of this part.

King Abdulaziz refused to ratify the Muhammera Treaty because he claimed that his representatives to the negotiations had made unwarranted concessions about the Amarat and Dhafir tribes which were claimed by both Iraq and Saudi Arabia.²¹⁷ Another reason for the refusal to ratify the Treaty might be that King Abdulaziz was suspicious because the new Saudi state was surrounded by the Ashraf rulers²¹⁸ who had assumed control in Hijaz to the west of Najd, Jordan and Iraq to the north.²¹⁹

According to international law, if ratification is refused, as in the case of the Muhammera Treaty, no treaty has been concluded, but a mere mutual proposal to conclude a treaty has been agreed to.²²⁰ In other words, the signing of a treaty establishes "*a provisional status*"²²¹ between the signatories, which will terminate either by non-ratification or when the treaty becomes effective on ratification. As a consequence, the Muhammera Treaty was not binding on the Saudi state, and therefore,

²¹⁵ Helms, *The Cohesion of Saudi Arabia*, *op. cit.*, p. 204.

²¹⁶ Article 1 of the Muhammera Treaty.

²¹⁷ Rihani, *Ibn Sa'oud of Arabia: His People and His Land* (London, 1928) p.59.

²¹⁸ The three *Ashraf* rulers were King Hussain of Hijaz, his second son Abdullah Amir of Jordan and his third son, Faisal King of Iraq.

²¹⁹ Dickson, *Kuwait and her Neighbours*, *op. cit.*, p.267.

²²⁰ See Oppenheim, *International Law*, (1958), *op. cit.*, pp. 903-4.

²²¹ See "Reservation to the Convention on Genocide" (1951) Advisory Opinion, *ICJ Reports* 1951, 15, at 28.

Saudi Arabia was not bound by what had been agreed on by the representatives in the Treaty.

The Muhammera meeting was useful in bringing the parties together, but it left open the question of how far their jurisdiction extended. King Abdulaziz, however, subsequently ratified this Treaty when the boundary between Saudi Arabia and Iraq was defined, as will be discussed in the second chapter of this part. Abdulaziz decided to ratify the Muhammera Treaty subsequently because the Treaty became of less importance in terms of the settlement of the boundary dispute between the two states. Before the settlement, the Muhammera Treaty was very important, as it decided the allegiance of the tribes on which the boundary definition would be based. If Abdulaziz had ratified the Muhammera Treaty, he would have been bound by it and would have no other choice but to agree to the boundary definition. When Abdulaziz did not ratify the Muhammera Treaty, he freed himself from any obligations with regard to the settlement of the boundary dispute between his country and Iraq, and was in a position to discuss different boundary lines. Such settlement, nonetheless, was based on the Muhammera Treaty, as will be seen when this issue is discussed in detail later, although Abdulaziz fought for a different boundary line.

Although the boundary between the two states was to be based on the location of pasture and water wells used by the said tribes, due to the nature of the nomadic people's annual migrations, the Saudi delegation categorically refused to fix any boundary with Iraq. Explaining this decision, Lieutenant General Sir Glubb, who had much experience in southern Iraq during the 1920s as British Commander of the Iraqi Desert Police, stated that:

“The Nejed delegates were far more vividly aware than were Iraqis or the British that the very existence of nomadic tribes

depended on their power to migrate and graze freely. ...in some years the greater part of Nejed might be afflicted with drought, [so] it was essential for the very survival of the Nejed tribes that they be able to move northwards towards Iraq or Syria in search of some desert area where rain had fallen. Conversely the northern tribes might at times be obliged to migrate for the whole season to Nejed. To draw a hard and fast frontier across the desert waste seemed to the Nejedis to threaten the very existence of those tribes...constituted a great part of Ibn Saud's armed forces."²²²

King Abdulaziz also opposed the defining of any land boundaries, however, as he was intent on claiming everything that had belonged to the first Saudi state at the time of its maximum extent, on the ground that his ancestors had taxed the tribes as far north as Aleppo. A personal meeting, however, between him and Sir Percy Cox was arranged at Uqair in Al-Hassa in November 1922 in order to overcome the problem. This was the first step towards the defining of the Saudi-Iraqi boundaries, as will be seen in detail in the second part on the settlement of the Saudi boundaries with Iraq.

4. The Saudi-Jordan Boundary Dispute

The Saudi-Jordan boundary area, like those of Iraq, was part of the Ottoman Empire's internal territory, far away from the boundary lines defined by the 1913 Anglo-Ottoman Convention (see map 9). It was also, like those of Iraq and Kuwait subject to raids and counter-raids between the tribes who lived in that area.²²³ The area in dispute between the two countries was Wadi Sirhan (Sirhan Valley) to the north of Jabal Shammar, which occupied (along with its major oases, Jauf and Sakaka) a strategic position on the

²²² Glubb, *War in the Desert, op. cit.*, pp. 62-3.

²²³ Troeller, *The Birth of Saudi Arabia: Britain and the Rise of the House of Sa'ud, op. cit.*, p. 174.

British defence corridor, cutting off Iraq from Jordan. At the end of the Wadi were the salt villages or *Qurayat A-Milh* which were also referred to as Qaf. All tribes from both Saudi and Jordan territories grazed throughout the major Wadi and the four subsidiary Wadis that enter it from the west.²²⁴ Abdulaziz claimed the Wadi on the grounds that Al-Rashid had controlled it, and therefore, he was heir to their possession by right of conquest,²²⁵ while Jordan claimed that the Wadi was part of Syria and therefore belonged to Jordan, which was also part of Syria.²²⁶ The British High Commissioner in Palestine, Sir Herbert Samuel, who was also responsible for Jordanian affairs, disputed the Saudi claim to Jauf in the interest of Jordan.²²⁷ The Colonial Secretary in London, however, refuted Samuel's contention and stated that Jauf belonged to Nuri Al-Sha'lan of the Ruwala tribe, who had accepted Ibn Saud's lordship over Jauf according to his information and had agreed to hold it on his behalf.²²⁸ This latter view seems to be in harmony with the concept of allegiance of the tribes which, as mentioned earlier,²²⁹ determined the acquisition of the tribes' territory.

This concept was reflected by the allegiance of Nuri Al-Sha'lan, a tribal emir in the area. His allegiance since the end of the First World War had been something of an open question. For example, he gave allegiance to Faisal, the ruler of Iraq, between 1919 and 1922 and, after Faisal's expulsion, to the French in Damascus, then he turned to Abdullah of Jordan and later to Ibn Saud.²³⁰ These changes in the tribes' allegiance

²²⁴ Helms, *The Cohesion of Saudi Arabia*, op., cit., p. 212.

²²⁵ There is a dispute over whether or not Al-Rashid controlled Wadi al-Sirhan and Jauf. Nuri Al-Sha'lan, the Shaik of the Ruwala (one of the tribes of the area) claimed to have taxed the people of the area in return for his protection. Al-Rashid, however, once again took control in 1918 until he was expelled by Ibn Saud in 1921, see Helms, *The Cohesion of Saudi Arabia*, op., cit., p.223, footnote, 26.

²²⁶ In Schofield and Blake, (eds.), *Arabian Boundaries: Primary Documents 1853-1957*, op., cit., vol. 9, pp. 459-60, 511-19.

²²⁷ *Ibid.*

²²⁸ Troeller, *The Birth of Saudi Arabia: Britain and the Rise of the House of Sa'ud*, op., cit., pp.190-1.

²²⁹ See *supra* 1.

²³⁰ *Ibid.*, p. 191.

made it quite difficult to establish fixed boundaries, thereby contributing to the ongoing boundary disputes between Saudi Arabia and its neighbours.

Fearing that Ibn Saud might attack Jordan, the British sought to draw Jordan's boundaries with the Saudi state. According to their proposal, the boundary line would cut the Wadi Sirhan between Jordan and Saudi Arabia.²³¹ This boundary would make Jordan contiguous with Iraq in order to form a solid line of British protectorates from Persia to the Mediterranean.²³² Ibn Saud objected to the British line and suggested that the boundaries should be drawn so as to include the whole Wadi in his territory. This would cut off Jordan from Iraq and thus Abdulaziz would achieve one of his primary aims. When no agreement was reached, another *Ikhwan*²³³ attack took place in the disputed area between Saudi Arabia and Jordan. Other conflicts arose when Iraq continued to house some tribes from Shammar in the north of Saudi Arabia, who sought refuge in Iraq and transferred their allegiance to the Iraqi ruler. King Abdulaziz called for their expulsion from Iraq and claimed that his authority over them transcended state boundaries.²³⁴

In addition to the Wadi Sirhan dispute, another dimension was added to the Saudi-Jordan boundary dispute when Abdulaziz captured Hijaz, namely, the question of Ma'an and Aqaba, which belonged to Hijaz before it was captured. Abdulaziz claimed sovereignty over these two villages on the ground of state succession. As a result, the cause of this dispute was somewhat different from that of the Wadi Sirhan dispute. It did not involve the question of the allegiance of the tribes but, rather, was related to

²³¹ Note that the British abandoned the idea of incorporating Jauf into Jordan.

²³² Troeller, *The Birth of Saudi Arabia: Britain and the Rise of the House of Sa'ud*, op., cit., p. 192.

²³³ "*Ikhwan*" (Brothers) formed the nucleus of the army on which King Abdulaziz later depended to liberate and unify the remaining region of what is now Saudi Arabia, see Assah, *Miracle of the Desert Kingdom*, op., cit., pp. 29-31

²³⁴ *Ibid.*

state succession and the conflict over sovereignty before the succession, which had been ambiguous for a long time.

The sovereignty over these two villages can be traced back to the late nineteenth century when Aqaba was controlled by the Ottoman Empire for the first time. In 1910 the Ottomans incorporated Aqaba into the Damascus *Vilayat* (districts) in addition to Ma'an which had been ruled by the Ottomans from Damascus since the late nineteenth century.²³⁵ During the Arab Revolt against the Ottoman Empire, the Arab forces occupied Ma'an and Aqaba. Since then, both places had been regarded by the Ottomans as outside Hijaz, which was part of the Ottoman Empire. Nonetheless, since the conclusion of the First World War, Ma'an and Aqaba were, practically, part of the Kingdom of Hijaz, ruled by King Hussain who, in addition to his son Faisal, laid claim to the area. After Faisal's expulsion from Damascus, the question of the ownership of Ma'an and Aqaba became a particular interest of King Hussain and his son Abdullah, who was used by the British to rule Jordan, which they no longer considered to be part of Palestine (although it was administered by the Palestine mandate).²³⁶

However, when the British forces were withdrawn from the area east of Jordan in 1919, the local administrative arrangements were left confused. While the British Political Agent in Palestine proclaimed in 1920 that the whole area east and west of Jordan was under the control of the Palestine mandate, a local governor was appointed in Ma'an by Faisal. At the same time, King Hussain instructed his governor in Aqaba to extend his jurisdiction over Ma'an, which he effectively governed with no objection from Britain. In 1922 Hussain gave only administrative rights over Aqaba and Ma'an to

²³⁵ Leatherdale, *Britain and Saudi Arabia, 1925-1939, The Imperial Oasis, op., cit.* p.41.

²³⁶ *Ibid.*, p.42.

Abdullah, while legal possession remained with Hijaz. Britain, however, announced on a number of occasions that Jordan's boundary would extend to the west, to include Aqaba in its territory.²³⁷ This unilateral declaration by Britain did not give Jordan the right to possess Aqaba and Ma'an, because Jordan had only administrative rights over them, while their possession remained with Hijaz.

King Hussain claimed the sovereignty over Aqaba and Ma'an and based his claim on its occupation during and after the War. Occupation under international law is restricted to extension of sovereignty over territory which is not under rule or belonging to another state,²³⁸ i.e. *terra nullius*. The concept of *terra nullius* has changed over time, reflecting how law has followed on meekly from power. In Roman Antiquity, any territory which was not Roman was *terra nullius*; in the fifteenth and sixteenth centuries, any territory which did not belong to a Christian sovereign was *terra nullius*, and in the nineteenth century, any territory which did not belong to a "civilised" State was *terra nullius*.²³⁹ It is widely accepted, however, that uninhabited areas and areas inhabited by relatively few persons totally lacking in any kind of social or political organisation are considered to be *terra nullius*. As Lindley explained in 1926:

"If the territory is uninhabited or inhabited only by a number of individuals who do not form a political society, then the acquisition may be made by Occupation. If the inhabitants exhibit collective political activity which, although of a crude and rudimentary form, possesses the elements of permanence, the acquisition can only be made by way of Cession or Conquest or Prescription."²⁴⁰

²³⁷ *Ibid.*, pp. 41-2.

²³⁸ Oppenheim, *International Law*, (1958), *op. cit.* p. 555.

²³⁹ Shaw, *Title to Territory in Africa*, *op. cit.*, p. 33.

²⁴⁰ Lindley, *The Acquisition and Government of Backward Territory in International Law*, *op. cit.*, 45.

Indeed, in the *Western Sahara Case*,²⁴¹ the International Court of Justice held that Western Sahara was not *terra nullius* because it was inhabited by socially and politically organized tribes of nomads during the period of colonization (1884).²⁴² In the light of the above, Aqaba and Ma'an were not *terra nullius*, as they were inhabited by people who, although nomadic, were able to develop some kinds of social and political activities in the region, as illustrated from the history of the two villages just mentioned. As a consequence, Hussain's claim of Aqaba and Ma'an on the basis of occupation cannot be accepted. It could, however, be argued that Hussain possessed Aqaba and Ma'an by virtue of the exercise of his authority over them when they became part of the Kingdom of Hijaz after the War. Indeed, in the *Legal Status of Eastern Greenland*,²⁴³ which has already been considered in more detail²⁴⁴, the Permanent Court of International Justice held that the Danish claim to sovereignty was based upon peaceful and continued display of the state authority and it awarded the sovereignty to Denmark on this basis.²⁴⁵

When Abdulaziz captured Hijaz in 1924, he claimed sovereignty over Ma'an and Aqaba on the ground that he succeeded King Hussain in Hijaz, while Britain expressed on a number of occasions that the question of Ma'an and Aqaba was to be settled by negotiations.²⁴⁶ The British government warned Abdulaziz against any attack on the area under its mandate²⁴⁷ and its Office in Jerusalem sent a telegram²⁴⁸ to the

²⁴¹ *Western Sahara Case*, ICJ Reports 1975, 12.

²⁴² *Ibid.*, at 42.

²⁴³ *Eastern Greenland Case*, PICJ Reports, (1933), series A/B, No 53, p. 151.

²⁴⁴ *Supra* 1.

²⁴⁵ *Ibid.*, at pp. 176-7.

²⁴⁶ Foreign Office 371/10013, E 9019/5747/91, a telegram from Cybher to Mr. Bullard dated 20th October 1924, p.21, see also Foreign Office 371/10013, a telegram dated 30th October 1924 from the Secretary of State for the Colonies to the Officer Administering the Government of Palestine, p.45.

²⁴⁷ Foreign Office 371/10013, E 11148/5747/91, a letter sent from the Colonial Office dated 10th December 1924 to King Abdulaziz.

²⁴⁸ Foreign Office 371/10013, E 11149/5747/91, a letter from the British Government Office in Jerusalem dated 18th October 1924 to the British Representative in Amman, pp. 86-7.

British Representative in Amman suggesting a boundary line between King Ali of Jeddah,²⁴⁹ when he was about to fall, and Jordan. According to the proposed boundary line, Aqaba and Ma'an, which were under the *de facto* administration of Hijaz, were to be transferred to Jordan. If a treaty to this effect had been concluded then Jordan would legally have been able to claim Aqaba and Ma'an as its territory, because they had been transferred to it by a boundary treaty between it and the Kingdom of Hijaz (the predecessor of the Saudi state). According to the 1978 Vienna Convention which was a codification of pre-existing international customary law and states' practice before and after it, a successor state succeeds in international law to the treaty obligations of the predecessor state with respect to the boundaries defined by the treaty. These boundaries are unaffected by the succession. However, Britain, in July 1925, unilaterally claimed jurisdiction over Ma'an and Aqaba until the boundary was finally delimited.²⁵⁰

²⁴⁹ King Ali was, earlier, appointed Constitutional Sovereign of Hijaz after his father's abdication responding to the demands from the notable of Mecca and Jeddah, see Toynbee, "The Islamic World Since the Peace Settlement", *Survey of International Affairs 1925* (London, 1927), vol.1, pp. 299-300. .

²⁵⁰ Helms, *The Cohesion of Saudi Arabia, op., cit.*, p. 218.

Chapter II

The Settlement of Northern Saudi Boundary Disputes

In the Arabian Peninsula, as in many other areas of the world, external powers have imposed states' boundaries, and local interests and wills have been completely ignored and overridden by arrangements between the colonial powers.²⁵¹ Such colonial boundaries were believed to have devolved on Britain's former colonies, as successor states to Britain, with respect to each other, as well as to whichever of them shared boundaries with Saudi Arabia, as a successor state to the Ottoman Empire.²⁵² As will be seen shortly, throughout most of the history of definition of territories in the Peninsula and its adjacent areas, Britain had been the sole arbiter of boundaries, as the Ottoman Empire had been for some time before Britain and before its collapse. As a consequence, such arrangements for defining states' boundaries were made between the two rivals, the British Empire and the Ottoman Empire. The result was western-style boundaries of straight lines, meant in the first instance to define the two Empires' spheres of influence in the region.²⁵³

The northern Saudi boundaries with the British mandates of Iraq, Kuwait and Jordan were defined in the early twentieth century as a result of direct negotiations between King Abdulaziz and Great Britain along with representatives of the countries concerned. Both Ibn Saud and Great Britain attempted to settle their outstanding differences which had originated from Britain's delimitation of nation-states and boundaries in the post-World War I mandate period.

²⁵¹ Wilkinson, "Britain's Role in Boundary Drawing in Arabia: a Synopsis" in Schofield, (ed.), *Territorial Foundation of the Gulf States, op. cit.*, p. 95.

²⁵² *Ibid.*

²⁵³ *Ibid.*, pp. 95-6.

Parties to a dispute are not obliged to resolve their dispute at all, whether the dispute is a serious legal conflict or a simple political disagreement. However, parties to a serious dispute are urged to seek settlement of their dispute by peaceful means. Article 2(3) of the UN Charter provides that "all Members shall settle their international disputes by peaceful means".²⁵⁴ Indeed, the principle has been developed by the 1970 Declaration on Principles of International Law, which includes the use of peaceful methods for the settlement of international disputes. Article 33 (1) of the Charter describes the methods by which international disputes may be settled. The Article, however, gives the parties to such disputes the freedom to choose the method that is most suitable and convenient for them. It states that:

"The parties to any disputes, the continuance of which is likely to endanger the international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other means of their own choice."

It must be stressed, in this context, that the above peaceful means, as will be seen throughout this study, are not in any order of priority. Furthermore, the parties to a dispute have the duty to continue to seek a settlement by other peaceful means agreed by them, in the event of failure of one particular method. On the other hand, nothing can preclude the conjunction use of two or more of such peaceful methods. Indeed, that may be useful in some cases.

²⁵⁴ It should be noted that Article 2 of the Pact of Paris of 1928 obligated the parties to the treaty to settle their disputes by pacific means. See *United Kingdom Treaty Series*, (1929) Cmd 3410.

1. The Uqair Conference of December 1922: The Settlement of the

Saudi Arabian Boundary Dispute with Iraq and Kuwait

King Abdulaziz and Sir Percy Cox agreed to meet at Uqair in Al-Hassa, in the eastern province, in November 1922. In fact, it was King Abdulaziz who had suggested meeting the High Commissioner.²⁵⁵ The purpose of the meeting was to settle the boundary dispute between Saudi Arabia and Iraq, and to fix a boundary between Saudi Arabia and Kuwait. Iraq was represented by Sabih Bey, the Iraqi Minister of Communications and Works, Saudi Arabia by King Abdulaziz, and Kuwait by Major J.C. More, the Political Agent in Kuwait. Sir Percy Cox, who acted as mediator in this Conference, explained to the parties how “earnestly desirous was His Majesty’s Government, the friend of both parties, that an agreed and amicable settlement should be reached”.²⁵⁶ Such mediation by Britain in the person of Cox would provide a framework for the settlement of the boundary of Saudi Arabia and its neighbouring states. The 1899 and 1907 Hague Conferences for Pacific settlement of International Disputes laid down many of the rules governing mediation as a peaceful means of settlement of international disputes.²⁵⁷ Article 2 of the Conference laid a duty upon the parties to serious disagreement or dispute to resort to good offices or mediation, as far as circumstances allow, before having recourse to arms.

The Saudi-Kuwait boundary dispute was discussed at a special meeting between King Abdulaziz and the Sheikh of Kuwait’s representative, Major More, in the presence of Cox who was supposed to act as a mediator. However, throughout the talks, Major

²⁵⁵ Rihani, *Ibn Sa'oud [Saud] of Arabia: His People and His Land*, op., cit., p. 59.

²⁵⁶ Dickson, *Kuwait and her Neighbours*, op., cit., pp. 270-2.

²⁵⁷ From Article 2 to Article 8 of the Hague Conference.

More said nothing to protect the interests of the Sheikh of Kuwait.²⁵⁸ As a result, the Saudi-Kuwait boundaries were entirely determined by Cox, with some suggestions and agreement by King Abdulaziz, in whose favour the settlement was made. Cox dominated negotiations because both Abdulaziz and the Sheikh of Kuwait were in need of Britain's economic aid and they did not want to lose such aid by rejecting Britain's proposed boundaries. Britain took advantage of this and put pressure on the parties to accept the boundary settlement.

With regard to the settlement of the Saudi-Iraq boundary dispute, negotiations between King Abdulaziz and Cox were first held in a private Conference, which was followed by both open and secret sessions, attended by Sabih Bey, the Iraqi Delegation.²⁵⁹ Both parties, however, made unrealistic demands for each other's territory. Sabih Bey claimed a boundary only 19 kilometres north of Riyadh,²⁶⁰ which would have included Hail, Medina and Yanbo in the north and west of present-day Saudi Arabia, as well as Hufuf and Qatif (now part of the Saudi eastern province). King Abdulaziz, on the other hand, fought for a tribal, or anthropogeographic, boundary based on wells and grazing ground rather than a fixed and arbitrary boundary drawn on the desert.²⁶¹ Indeed, a fixed boundary was considered by King Abdulaziz to be impracticable because of the significance of the human features involved. He claimed sovereignty over the tribes of Amarat and Dhafir, which had been stated to be within Iraqi territory in the Mohammera Treaty, mentioned earlier²⁶², basing his claim on the ground that they had belonged to his ancestors. He therefore insisted that his boundary

²⁵⁸ Dickson, *Kuwait and her Neighbours*, *op. cit.*, p. 276.

²⁵⁹ Rihani, *Ibn Sa'oud [Saud] of Arabia: His People and His Land*, *op. cit.*, pp. 75-6.

²⁶⁰ Dickson, *Kuwait and her Neighbours*, *op. cit.*, p. 277.

²⁶¹ *Ibid.*

²⁶² See *supra* chapter 1,3 (the Saudi-Iraqi boundary dispute).

should extend right up to the Euphrates.²⁶³ It seems that the reason behind these demands was that the negotiations were dominated by economic, rather than political issues. British companies were focusing on the prospect of discovering oil and obtaining concessionary rights in the area. Indeed, parallel negotiations regarding oil concession took place between King Abdulaziz and oil companies, some of which were even backed by Cox himself.²⁶⁴

When Cox pointed out that King Abdulaziz's claim was completely infeasible²⁶⁵ on the ground that he claimed tribes that were assigned to Kuwait in the Muhammera Treaty, Abdulaziz was able to make concessions. He proposed a more flexible plan by which he would abandon his claim to the Amarat and Dhafir tribes in order to safeguard the rights of his own tribes to water and pasture.²⁶⁶ He suggested that each tribe would lay claim to its traditional wells and pastures, which were very well known by the people of the desert. These claims would be proven by the *wasms* (tribal marks) which each tribe had to put on their own belongings, and any wells which were common property should be declared neutral. Any dispute over the sovereignty of these wells could be referred to the *ahl al-khibra*, "people of experience" in the desert.²⁶⁷ The Iraqi delegates, however, did not accept Abdulaziz's suggestion and, as a result, there was no

²⁶³ Dickson did not mention King Abdulaziz's claim on the tribe of Amarat. He only mentioned his claim on the Dahfir while Rihani mentioned both tribes, Amarat and Dhafir. See Rihani, *Ibn Sa'oud [Saud] of Arabia: His People and His Land, op., cit.*, pp. 60-1, Dickson, *Kuwait and her Neighbours, op., cit.*, pp. 272-3.

²⁶⁴ In the same period there were negotiations about oil concessions in the region between British companies and King Abdulaziz and other Arab leaders. For further details see Rihani, *Ibn Sa'oud [Saud] of Arabia: His People and His Land, op., cit.*, pp. 79-89, Longrigg, *Oil in the Middle East* (London, 1961) 2nd edition, pp. 98-100.

²⁶⁵ Dickson, *Kuwait and her Neighbours, op., cit.*, pp. 273-4.

²⁶⁶ Rihani, *Modern Najd and its dependencies, op., cit.*, p.313.

²⁶⁷ This Arabic phrase "*ahl al-khibra*" was translated as "people of wisdom" by Dickson, who spoke the Arabic language, in his book referred to here and all other sources which used the material from Dickson's book. It seems to me that the correct translation of this Arabic phrase is, "people of experience", people who are experts in the desert and know it very well. Although the two translations are very close, the Arabic phrase, actually, has nothing to do with wisdom. See Dickson, *Kuwait and her Neighbours, op., cit.*, p. 273.

flexibility in the negotiations between Saudi Arabia and Iraq. Both parties held their positions and refused to make any further concessions. Unsurprisingly, the negotiations soon reached an impasse.

From the above, it could be said that this Conference was unusual, as Cox, instead of acting as a mediator was able to deal on behalf of two (Iraq and Kuwait) of the three parties involved. Thus, Cox and Abdulaziz were the only real negotiators. The evidence of this is found in Cox's decision to determine the Saudi boundaries himself, not only with Iraq but also with Kuwait, when no agreement had been reached by the sixth day of the Conference. Dickson, the Political Agent in Bahrain, who was present and acted as a translator and aid during the negotiations, reports:

“Sir Percy took a red pencil and very carefully drew in on the map of Arabia a boundary line from the Persian (Arabian) Gulf to Jabal Anaizan, close to the Transjordan (Jordan) frontier...he drew out two zones, which he declared should be neutral and known as the Kuwait Neutral Zone and the Iraq Neutral Zone”.²⁶⁸

So, Cox did not act as a mediator but rather as an arbiter. A third party acting as a mediator might intervene to reconcile the claim of the contending parties and to advance his own proposals and to interpret, as well as to transmit, each party's proposal to the other in order to bridge the gaps and reach an acceptable solution.²⁶⁹ It is true that the mediating party has a more active role and participates in the negotiations and directs them in such a way that a peaceful solution may be reached,²⁷⁰ but not to such a degree that he may impose the settlement himself. Indeed, the mediator's proposals, which are

²⁶⁸ Dickson, *Kuwait and her Neighbours, op., cit.*, p. 274.

²⁶⁹ Article 2 of the 1899 and 1907 Hague Conference for Pacific Settlement of International Disputes.

²⁷⁰ Waldock *International Disputes: The Legal Aspect* (London, 1972) pp. 83-84.

not of binding affect upon the parties, are made informally and on the basis of the information supplied by the parties.²⁷¹

The parties, however, signed on 2 December 1922 two Protocols which were known as the first and the second Uqair Protocols.²⁷² These Protocols were appended to the Muhammera Treaty, to which King Abdulaziz, when ratifying the two Protocols, agreed to put his signature. The First Protocol defined the Saudi-Iraqi boundary. Iraq was given a large area of the territory claimed by King Abdulaziz. It was, furthermore, given most of the wells, while Saudi Arabia was deprived of them.²⁷³ The Protocol, in addition, created a neutral zone between the two countries (see map 3). With regard to administration of this neutral zone, Article 3 of the first Uqair Protocol stipulated that this zone would remain ungarrisoned and that the tribes living on the borders between the two countries would have access to grazing and water in the area. In fact, Cox established these neutral zones because he believed, as others did, that oil existed in them and when it was exploited, as he declared, "*each side shall have a half-share.*"²⁷⁴ Abdulaziz accepted this boundary because he was compensated for the area taken from him and given to Iraq. Indeed, two-thirds of Kuwait's territory was given to him and he was also promised that Qoraiyat ul-milh near Jauf would be assigned to Saudi Arabia in the settlement of the Saudi boundaries with Jordan. This later promise was expressed in a cable sent by Cox to Churchill, the Secretary of State at the time.

Amin Rihani, a Lebanese poet and historian, and a close friend to King Abdulaziz, who assisted Cox with translations several times during the Conference,

²⁷¹ Article 6 of the 1899-1907 Hague Conference.

²⁷² (IOR: L/P&S/20/C158E), *Treaty Collection*, Ministry of Foreign Affairs, Riyadh, vol. I, No. 2&3. The texts of two Protocols are also found in Schofield and Blake, (eds.), *Arabian Boundaries: Primary Documents, 1853-1957, op., cit.*, vol. 9, pp. 377-9.

²⁷³ Article 2 of the First Uqair Protocol.

²⁷⁴ Dickson, *Kuwait and her Neighbours, op., cit.*, p. 275.

offered an interesting contemporary insight into British methods and the reasoning behind their actions. Quoting Cox's cable, which he translated for King Abdulaziz, he wrote:

“This is a part of the compensation made to him [Sultan Abdulaziz] for conceding to Iraq his right of sovereignty over the Amarat and Dhafir. We take from Ibn Saoud [Ibn Saud] to satisfy Iraq, and we take from Trans-Jordania [Transjordan] to placate Ibn Saoud.”²⁷⁵

In any dispute settlement, however, it is inconceivable that all parties will have exactly what they claim, as there will always been a winner and a loser, whatever the outcome of the negotiations might be. This is precisely what happened at the Uqair Conference, Saudi Arabia lost some territory to Iraq and gained some from Kuwait, while Iraq was a winner and Kuwait was a loser. Indeed, according to the second Protocol, which defined the Saudi-Kuwait boundary, Kuwait was deprived of almost two-thirds of the territory that had been given to it according to the 1913 Anglo-Ottoman Convention²⁷⁶ (see map 4). Kuwait, however, should not have lost this territory because evidence shows, as already discussed,²⁷⁷ that the 1913 Anglo-Ottoman Convention was based on the exercise of effective control by Kuwait over the territory and the tribes claimed by Saudi Arabia. Nevertheless, the Emir of Kuwait, although unhappy with the two-thirds taken from him and given to Abdulaziz,²⁷⁸ ratified the agreement because, when he was invited by Cox to send a representative, he replied that the Political Agent, Major More, was aware of his views and interests.²⁷⁹ All the parties eventually accepted the

²⁷⁵ Rihani, *Ibn Sa'oud of Arabia: His People and His Land*, *op. cit.* p. 79.

²⁷⁶ See *supra* chapter 1, 2 (the Saudi-Kuwait boundary dispute).

²⁷⁷ See *supra* chapter I, 2 (the Saudi-Kuwait boundary dispute).

²⁷⁸ This was expressed by the Emir of Kuwait to Cox when the latter went to tell him about the boundary definition, in Dickson, *Kuwait and her Neighbours*, *op. cit.*, p. 275.

²⁷⁹ Public Record Office, Colonial Office/730/26/ despatch No. 877, December 20, 1922 quoted in Finnie, *Shifting Lines in the Sand* (London, 1992) p. 61, footnote, 17.

agreement because they all wanted to gain Britain's trust for it for both economic and political reasons. Iraq and Kuwait were British colonies, while Abdulaziz did not want to lose the subsidy that Britain was giving him to support his people and his country (oil had not yet been discovered).²⁸⁰ This subsidy was in fact used by Abdulaziz to finance his military campaigns to gain more territory in the Arabian Peninsula.²⁸¹

The boundaries imposed by Cox were based on arbitrary, mathematical principles rather than geographical or tribal ones. This new style of European standard boundary was not suitable for the desert life and its inhabitants. Indeed, it ignored the geographical distribution of the population, and tribal life. In view of this point, Dickson comments:

“This arbitrary boundary of Western type between Iraq and Najd was, in my opinion, a serious error. It resulted in Ibn Sa'ud [Sultan Abdulaziz] for the first time in history, restricting the annual movements of Najd tribes towards the north...he...decided on diverting his people from their old and time-honoured communication with Iraq and Kuwait, trying instead to force to get the necessities of life and daily requirements from Uqair, Qatif and Jubail, his ports on the Persian [Arabian] Gulf.”²⁸²

As a result, these boundaries were not accepted by the inhabitants of Saudi Arabia, who were deprived of their rights of grazing and their access to the wells. This defect in boundary making brought tribal raids to the fore again. Indeed, it resulted in friction between Iraq and Saudi Arabia and was one of the factors which caused the *Ikhwan*

²⁸⁰ Abdulaziz used to have a monthly subsidy from the British Government of 5000 Pounds, see, Leatherdale, *Britain and Saudi Arabia, 1925-1939, The Imperial Oasis, op., cit.* p.18&p.53., Kelly, *Eastern Arabian Frontier* (London, 1964) p. 112.

²⁸¹ *Ibid.*

²⁸² Dickson, *Kuwait and her Neighbours, op., cit.*, pp. 276-7.

rebellion.²⁸³ Dickson, who had experience of tribal life, favoured tribal boundaries over fixed ones. He criticised Cox's decision to adopt the latter by stating:

“A much better solution than that decided upon at Uqair would have been the adoption of Ibn Sa'ud's suggestion for a frontier based on tribal boundaries. When I was Political Officer of the Muntafiq, I had bitter experience of the futility of the old Turkish arbitrary boundaries between *liwas*, and found relief from inter-*liwa* tribal fighting only when I was able to persuade Sir Percy Cox to allow me to adopt tribal boundaries. He would have done well to follow the same plan at Uqair.”²⁸⁴

Glubb also supported the idea of tribal boundaries instead of fixed ones, but he accepted that fixed boundaries were inevitable because they defined the authority and jurisdiction of the neighbouring states.²⁸⁵ Such fixed boundaries became a fact later, when Saudi Arabia's boundaries with its neighbours were settled. Therefore, the idea of tribal boundaries became impracticable and the inhabitants of the area where Saudi Arabia and its neighbours were founded accepted fixed boundaries. This change of attitude towards tribal boundaries and fixed boundaries resulted in a change in the inhabitants' lifestyle, since they had to accept being confined within a state's territory.

At least the drawbacks of a Western-style boundary in a nomadic society were partly offset by the neutral zones which contained some very good pastures and wells, and which tribes from all three states used. Moreover, the neutral zone between Saudi Arabia and Kuwait was the only practical solution to the potential discovery of oil there

²⁸³ King Abdulaziz's new policy of conciliation was one of the factors that stimulated the *Ikhwan* to rebellion against King Abdulaziz. For a full account of the *Ikhwan* rebellion see Helms, *The Cohesion of Saudi Arabia*, *op. cit.*, chapter 8, Dickson, *Kuwait and her Neighbours*, *op. cit.*, chapter 13.

²⁸⁴ Dickson, *Kuwait and her Neighbours*, *op. cit.*, p. 277.

²⁸⁵ Glubb, *War in the Desert*, *op. cit.*, p. 109.

and the inevitable dispute that would arise as a result.²⁸⁶ Indeed, these neutral zones, which also aimed to prevent inter-tribal clashes, were so important for the settlement of the Saudi boundaries with Iraq and Kuwait that some writers have argued that, without them, these boundary questions would never have been settled.²⁸⁷

It is clear from the above that Britain used its power in order to impose the boundary settlement between Saudi Arabia and its northern neighbours, with few suggestions from the concerned parties. It is widely accepted that the power of the mediator has an evident impact on the parties and a powerful mediator is likely to achieve success. In the dispute between India and Pakistan over Kashmir in 1965, both parties accepted the mediation of the Soviet Union, which was motivated by political interests, because war had already broken out and neither side had the power to go further and impose its own solution unilaterally.²⁸⁸ In the Saudi case, it could safely be said that although Cox exceeded his power as a mediator, he succeeded in settling the boundary dispute between these nomadic societies. The Uqair Conference, therefore, resulted in the acceptance of the principle of the boundary demarcation between the Arab states. Indeed, for the first time in history, an international boundary, as understood in international law, was drawn on maps and established in the Arabian Peninsula.

²⁸⁶ Troeller, *The Birth of Saudi Arabia: Britain and the Rise of the House of Sa'ud*, op., cit., p181.

²⁸⁷ See for example Blake, "Shared Zones as a Solution to Problems of Territorial Sovereignty in the Gulf States" in Schofield, *The Territorial Foundation of the Gulf States*, op., cit., pp. 200-210, Rihani, *The Modern Najd and its Dependencies*, Cairo, 1991, p. 313, Glubb, *War in the Desert*, op., cit., pp. 103, 118 and 187.

²⁸⁸ Merrills, *International Dispute Settlement* (Cambridge, 1991) 2nd ed., p. 31.

2. The Kuwait Conference (1923-1924): an Attempt to Settle the Saudi

-Jordan Boundary Dispute

Although the first Uqair Protocol defined the Saudi-Iraq boundaries, the trouble and inter-tribal raids on these boundaries continued because of the nature of the inhabitants' life, as they did not recognise fixed boundaries yet.²⁸⁹ Furthermore, the Saudi-Jordan dispute over Wadi Sirhan, mentioned earlier,²⁹⁰ and the raids and counter-raids that took place there, made the British Government think of organising the Kuwait Conference in 1923.²⁹¹ Britain chose Colonel Knox, the British Political Resident in the Gulf, to chair the Conference, the aim of which was to settle the boundary disputes between Saudi Arabia on the one hand and Jordan and Hijaz²⁹² on the other, as much as to discuss the outstanding issues between Saudi Arabia and Iraq regarding the Shammer tribes who sought refuge in Iraq.²⁹³ These Saudi refugees were part of the *Ikhwan*, who rebelled against Abdulaziz for his new policy of conciliation with his neighbours. They fled to Iraq in order to avoid Abdulaziz's punishment, and conducted violent raids into Saudi territory. Small parties of them set out to steal camels from Saudi territory.²⁹⁴

King Abdulaziz was willing to settle all the outstanding problems between himself and his neighbours by amicable means. Responding to Knox's invitation, he declared that:

²⁸⁹ For full accounts of these tribal raids and clashes see generally, Glubb, *War in the Desert, op., cit.*, chapter III & IV.

²⁹⁰ See *supra* chapter I, 4 (the Saudi-Jordan boundary dispute).

²⁹¹ Abdulaziz, *King Abdulaziz and the Kuwait Conference: 1923-1924*, London, Echoes, 1993, chapter, 4, Wahbah, *The Arabian Peninsula in The Twentieth Century* (Cairo, 1967) pp. 261-2, (in Arabic).

²⁹² Hijaz, to the west of Najd, was not mentioned earlier as a separate entity because it did not survive. A few months after the conclusion of the Kuwait Conference, King Abdulaziz recaptured Hijaz and annexed it to his country. See *supra* chapter I, 4.

²⁹³ A letter sent by Knox to King Abdulaziz inviting him to the Conference, *The Green Book*, The Kuwait Conference, pp.4-5, Archives of Ministry of Foreign Affairs.

²⁹⁴ For further details about the Najdi refugees, see Glubb, *War in the Desert, op., cit.*, chapter V titled "the *Ikhwan* refugees".

“Nothing would give me more pleasure than to be in agreement and on friendly terms with my neighbours. I have, therefore, agreed, with the utmost pleasure, to take part in the conference to be held either in Bahrain or in Kuwait”.²⁹⁵

In the same letter to Knox, King Abdulaziz showed his concern that the neighbouring three countries, which were all ruled by the *Ashraf*, should not form blocs against him. Therefore, he stipulated that each party should speak for himself and discuss his own issues. When the British government accepted King Abdulaziz’s conditions²⁹⁶, he nominated his representatives to the Conference and wished the Conference all success.²⁹⁷

The three *Ashraf* rulers, on the other hand, initially refused to attend the conference until King Abdulaziz had returned Jabal Shammer, which had been recaptured in 1921, to Al-Rashid. Some time later, however, responding to British requests and pressures, Emirs Abdullah of Jordan and Faisal of Iraq did agree to send their representatives. King Hussain of Hijaz refused to attend the Conference because Britain had not consulted him in advance.²⁹⁸

The Kuwait Conference was finally convened on 17 December 1923 after several postponements. The British policy, to which the Conference adhered, was that Emir Abdullah of Jordan would relinquish Qaf in return for acquiring Aqaba, that King

²⁹⁵ *The Green Book, op., cit.*, pp. 5-6.

²⁹⁶ A telegram sent by Knox to King Abdulaziz, *The Green Book, op., cit.*, pp. 6-7.

²⁹⁷ *Ibid.*, pp. 5-6.

²⁹⁸ Foreign Office E 1622/4/91, the document is a letter from the Colonial Office dated 9 February 1924.

Abdulaziz would withdraw from Al-Karmah and Turbah in return for Qaf, and that King Hussain Hijaz would give up all his claims in the area north of Al-Mudawwara.²⁹⁹

As far as the Saudi refugee problem is concerned, it will be considered here because it was related to the Saudi-Iraq boundary dispute which was settled in the Uqair Conference. The Iraqi delegates submitted their demands in the first session, according to which an agreement would be concluded between the two states to prevent tribal raids.³⁰⁰ Moreover, they demanded that King Abdulaziz would not communicate directly with Iraqi officials and tribal leaders.³⁰¹ In the second session, however, the Saudis submitted their demands which concentrated on the extradition of both the Saudi criminals who fled to Iraq and Shammer tribes who sought refuge in Iraq and carried out raids against Saudi Arabia from Iraqi territory.³⁰² The Iraqi delegates initially objected to the Saudi Arabia demand for the return of the Saudi refugees. They stated that extradition would be contrary to tribal tradition and hospitality. It was also pointed out that the return of refugees would not only have been against international practice but would also have been impractical, as Iraqi coercion would simply drive these refugees to settle on the Turkish-Iraqi border.³⁰³ Saudi Arabia proceeded to suggest that raiding be classified as an extraditable offence.³⁰⁴

During the negotiations, Knox was under the jurisdiction of the Colonial Office and reported directly to the Colonial Secretary. He acted as a mediator, and informed

²⁹⁹ Foreign Office 686/ 135, a telegram dated 18 November 1923 sent by the Foreign Office to the British Representative in Jeddah. Copies were sent to Bushire in Iran, Baghdad, Jerusalem and Knox.

³⁰⁰ *The Green Book, op., cit.*, pp. 22-3.

³⁰¹ *Ibid.*

³⁰² *Ibid.*, pp. 23-5.

³⁰³ Foreign Office Document 686/135, dated 18 December 1923.

³⁰⁴ Foreign Office 686/135, in a report sent by Knox to the Colonial Office in London dated 18 December 1923, also reproduced in Schofield and Blake, (eds.), *Arabian Boundaries: Primary Documents 1853-1957, op., cit.*, vol. 9, pp. 426-7.

the Conference that the British government would not want to be an arbiter of differences between the parties and that that his mediation efforts as a chairman of the Conference and a British representative would always be at their disposal.³⁰⁵ He tried during the Conference sessions to reconcile the two parties' differences and to offer some suggestions in order to make a move in the negotiations. As a result of Knox's efforts, negotiations between the two parties went well in most of the Conference sessions and, by the tenth session, the gap between the parties was about to be bridged and the parties were about to reach an agreement.³⁰⁶ The Iraqis abandoned their claim, which stipulated that their agreement depended on a satisfactory agreement being achieved between Saudi Arabia and Hijaz before it became Saudi territory. However, negotiations were deadlocked, partly because of the refusal of the Iraqis to accept the extradition of the Saudi refugees and partly because the Saudi delegation went back on their undertaking that the matter would be decided upon by tribal tribunal. As a result, the Conference was adjourned so the two delegations might return home in order to consult their governments for new instructions.³⁰⁷ However, when the Conference was reopened on 25 March 1924, the Iraqi delegation protested at the raids launched by the *Ikhwan* against some Iraqi tribes in the border. Thus, the Kuwait Conference failed to settle the problem of the Saudi refugees.

As far as international law is concerned, although refugees are not explicitly mentioned in the definition of protected persons in Article 4 of the Fourth Geneva Convention, they benefit from that protection as civilian persons. This assumption is

³⁰⁵ Foreign Office 371/9996 this was indicated in the instructions of Devonshire, the Secretary of State for Colonial Affairs, which were sent to Knox in 8 January 1924.

³⁰⁶ From the tenth conference session on 18 January 1924, in Schofield and Blake, (eds.), *Arabian Boundaries: Primary Documents 1853-1957, op. cit.*, vol. 9, pp. 539-42.

³⁰⁷ Foreign Office 271/9996, a report from Knox to the Secretary of State for the Colonies dated 21 January 1924.

based on Article 73 of the 1977 Geneva Protocol I, which provides for the protection of refugees by the state where they seek refuge. Furthermore, Article 32 of 1951 Convention Relating to the Status of Refugees provides for non-expulsion of refugees except in accordance with the due process of law. With regard to the extradition of criminals, states, in general, do not extradite criminals in the absence of a treaty or a municipal law, which empowers them to do so.³⁰⁸ Extradition, however, may take place in the absence of a treaty but as an act of grace and comity, rather than of obligation.³⁰⁹ In the light of the above, Iraq was obliged neither to return the Saudi refugees nor to extradite the criminals, because Saudi Arabia at that time had no extradition agreement with Iraq. For Iraq, however, these refugees were to be protected, having fled from Saudi Arabia for one reason or another, as war was ongoing in Saudi Arabia for the unification of the various parts of the country. The Saudi demand, therefore, was not only contrary to both international law and the practice of states but also contrary to Iraq's legislation, based on Arab customary law and tribal traditions, which considered refugees as part of the tribe with which they sought refuge.

Let us now turn to consider the attempt to settle the Saudi-Jordan boundary dispute which, up to that time,³¹⁰ centred on the conflict over the sovereignty of Wadi Sirhan.³¹¹ Both parties claimed the Wadi³¹² and Jordan maintained that there would be

³⁰⁸ Shearer, *Extradition in International law* (Manchester, 1971) p. 22.

³⁰⁹ *Ibid.*

³¹⁰ The question of Ma'an and Aqaba was not discussed in the Kuwait Conference because at that time they were under Hijaz control before the latter was captured by Ibn Saud, see *supra* chapter I, 4.

³¹¹ See *supra* part I, 4.

³¹² *Ibid.*

no peace unless the Saudi Arabia government relinquished Wadi Al-Sirhan, Jauf, Sakaka and all the territory of Hijaz.³¹³

Because of the strategic position of Wadi Sirhan, neither Emir Abdullah of Jordan nor King Abdulaziz was able to give it up. As the two parties' claims and demands conflicted, Knox, with the intention of removing the obstacles blocking the negotiations, suggested that there should be a plebiscite in Wadi Sirhan.³¹⁴ King Abdulaziz agreed, with the *proviso* that there was also one for the settlement of the Najd-Hijaz boundaries, which he was sure to win.³¹⁵ Emir Abdullah refused and suggested that the Wadi would be a neutral or buffer zone.³¹⁶ Emir Abdullah wanted the Wadi to be anything except Saudi territory, while King Abdulaziz wanted exactly the opposite. In addition to these suggestions, other suggestions were put forward by Knox in order to encourage the parties to reach an agreement, such as dividing the Wadi between them and establishing a buffer state in the Wadi under the leadership of Nuri Al-Sha'lan of the Ruwala tribe.³¹⁷ The Conference continued with more disagreement than accord and both parties rejected each other's claims and suggestions. Both parties insisted on their demands and were not able to make any concessions. It could be argued that although the Wadi was, strategically, very important for both Saudi Arabia and Jordan, it was less important for the British than the Saudi-Kuwait boundary, as it did not contain oil. Therefore, Britain, unlike in the Uqair Conference, left the parties to

³¹³ *The Green Book, op., cit.*, pp. 38-9, see also Rihani, *Modern Najd and its dependencies op., cit.*, p. 312, note that Knox warned Iraq and Jordan from speaking on behalf of the ruler of Hijaz, an official documents reproduced in Schofield and Blake, (eds.), *Arabian Boundaries: Primary Documents 1853-1957, op., cit.*, vol. 9, pp. 515-9.

³¹⁴ An official document reproduced In Schofield and Blake, (eds.), *Arabian Boundaries: Primary Documents 1853-1957, op., cit.*, vol. 9, pp. 478-9. Rihani, *Modern Najd and its dependencies, op., cit.*, p. 322.

³¹⁵ *Ibid.*, that was regarding the dispute over Al-Karmah and Turbah between Najd and Hijaz,

³¹⁶ *Ibid.*

³¹⁷ See *supra* Part I, 4.

decide matters themselves and did not want to act as arbiter. However, it could, equally, be argued that it was good of the British to leave the matters in the parties' hands, regardless of the reason for this.

It is obvious from the above that the reason for the failure to reach agreement is that the tension was very high between the parties and the atmosphere was far from optimistic. There was no good faith or trust between the parties as they were suspicious of each other. King Abdulaziz was concerned about the united stance taken by the *Ashraf*, so he demanded that the representative of Jordan would speak on behalf of his government only and that the point of difference between the two countries should be precisely defined.³¹⁸ Good faith, however, is one of the principles of international law according to which negotiating parties should act.³¹⁹ The principle is mentioned in the Charter of the United Nations, which calls upon the Members to fulfil in good faith their international obligations.³²⁰ As a legal principle, it must be applied where relevant, as it must be observed in all the obligations connected with negotiation, formation and performance of treaties.³²¹ It therefore requires that parties should be able to place confidence in each other while negotiating or concluding a treaty. Indeed, in 1903, after three of Venezuela's many creditors had staged blockade of her ports, Venezuela sent a representative to Washington with full power to negotiate with the creditor Powers. In the course of negotiations, the Venezuelan representative proposed to the representatives of the blockading Powers that "*all claims against Venezuela*" should be

³¹⁸ The reply of the Najd delegation to Jordan's demands, put forward in the meeting of 26 December 1923, an official document reproduced in Schofield and Blake, (eds.), *Arabian Boundaries: Primary Documents 1853-1957, op., cit.*, vol. 9, pp. 515-9.

³¹⁹ See generally Bin Cheng, *General Principles of Law as Applied by International Courts and Tribunals* (Cambridge, 1987) pp. 105-109.

³²⁰ Article 2 (2) of the United Nations Charter.

³²¹ O'Conner, J. F. *Good Faith in International Law* (Brookfield USA, 1991) pp. 123-4.

offered special guarantees.³²² A controversy arose as to whether the words “all claims” referred to all claims of the allied and blockading Powers, or to all the claims of every country, creditor of Venezuela. The Permanent Court of Arbitration decided that:

“The good faith which ought to govern international relations imposes the duty of stating that the words ‘all claims’ used by the representative of the Government of Venezuela in his conference with the representatives of the allied Powers....could only mean the claims of these latter and could only refer to them.”³²³

In case of doubt, however, words are to be interpreted against the party, which has proposed them, and according to the meaning that the other party would reasonably and naturally have understood.³²⁴

Another reason for the failure of the Kuwait Conference was the continuing border raids and counter-raids between Saudi Arabia on the one hand and its *Ashraf* neighbours on the other, during the negotiations. In this case, each party might have hoped to win the war and so acquire more territory from his neighbour. This is exactly what happened in the Falklands dispute, for instance, where the aims of the parties were diametrically opposed.³²⁵ While Argentina's objective was to rule the islands, Britain was prepared to relinquish sovereignty only on condition that the wishes of the inhabitants were respected. The mediation took place before the battles between the Argentine Air Force and the Royal Navy had indicated who had the military advantage

³²² *Venezuela Preferential Claims Case* (1904), 1, HCR. p. 55, at p. 61, note 1, quoted in Bin Cheng, *General Principles of Law as Applied by International Courts and Tribunals*, *op. cit.*, p. 107.

³²³ *Ibid.*, p. 108.

³²⁴ *Ibid.*

³²⁵ Merrills, *International Dispute Settlement*, *op. cit.*, p. 39.

and, as a result, both sides still had substantial hopes of a military solution and in that situation, the mediation had little chance of success.³²⁶ But this is not always the case, as war between the disputed parties may encourage them to settle their dispute by peaceful means. This is illustrated by the mediation of the Soviet Union in the dispute between India and Pakistan over Kashmir in 1965. Both parties accepted the mediation because they were exhausted after they had tried military actions and were looking for some alternative for a hope to settle their dispute.³²⁷ Although this mediation was unsuccessful, it was accepted by the parties as a method for settlement, because parties to any dispute always try different methods with the hope to find an acceptable solution.

Another reason for the failure of the Kuwait Conference might have been Knox's support of Jordan's demands³²⁸ an action, which might have interpreted by the Saudi delegation as partiality towards Jordan, making them more resistant towards such demands. This support might also have led the Jordanian delegation to perceive some sympathy from the British and they might have thought that with such support they could win the case against Saudi Arabia without making any concessions. The mediator, however, should be neutral and cautious about his behaviour during the negotiations in order not to be accused of being biased and then rejected by the parties to the dispute. Indeed, mediation may be objected to if one or other of the parties believes that any potential mediator would tend to be biased against itself and in favour of the other state. This was partly the case with regard to the Kuwait Conference which, as a consequence, dissolved on 12 April 1924 without any agreement.³²⁹

³²⁶ *Ibid.*

³²⁷ *Ibid.*, p. 31.

³²⁸ Foreign Office 371/9996, p. 3117, in a telegram dated 29 December 1923 sent by Knox to the Secretary of State for the Colonies in London.

³²⁹ Helms, *The Cohesion of Saudi Arabia, op., cit.*, p. 215.

3. Haddah and Bahrah Negotiations of November 1925

As a result of Abdulaziz's victory in the Hijaz war and the possibility of his threatening the other *Ashraf* countries of Jordan and Iraq, Britain decided to open negotiations with him in order to settle the outstanding issues between him and the said countries.³³⁰ Abdulaziz, for his part, had always favoured the amicable settlement of the boundary disputes between his country and his neighbours. Evidence of this might be found in his peaceful attitude towards his neighbours, which was expressed on a number of occasions.³³¹ For example, when he was informed by the British about the boundary line between Hijaz and Jordan regarding Ma'an and Aqaba mentioned earlier, although the boundary had not been mentioned to him before, he offered to negotiate with Britain '*at any time and place convenient to them*'.³³² As a result, Sir Gilbert Clayton was chosen to negotiate with Abdulaziz the Saudi-Jordan boundary dispute and the Saudi refugee problem between Iraq and Saudi Arabia, which had not been settled at the Kuwait Conference. However, the question of Ma'an and Aqaba, which was known as the Hijaz-Jordan boundary dispute, was not on the agenda of the Haddah and Bahrah negotiations, due to the unstable situation in Hijaz.³³³

The negotiations began on 10 October 1925 in a special camp set up by

³³⁰ Toynbee, "The Islamic World Since the Peace Settlement", *Survey of International Affairs 1925* (London, 1927) vol.1, p. 343.

³³¹ Foreign Office 371/10013, a letter from Abdulaziz dated 27th October 1924 to the Consul General in the Persian (Arabian) Gulf, Bushire, pp. 80-1.

³³² Foreign Office 371/10013, a letter from Abdulaziz dated 8th November 1924, and a report by the Political Resident in Bushire to the Secretary of State for Colonial dated 25th November 1924, P. 71.

³³³ Foreign Office 371/10013, a telegram dated 30th October 1924 from the Secretary of State for the Colonies to the Officer Administering the Government of Palestine, p.45. Note that because the Saudi state was known at the time as the Kingdom of Hijaz and the Sultanate of Najd and its dependencies, the Najd-Jordan boundary dispute was dealt with in exclusion of that of Hijaz-Transjordan although they both were within the same country.

Abdulaziz, midway between Bahrah and the Haddah oasis.³³⁴ With regard to the settlement of the Jordan boundary, Britain desired that the boundary would follow the same line as originally telegraphed to Knox before the Kuwait Conference, according to which, Jordan would relinquish Qaf in return for acquiring Aqaba.³³⁵ This time, however, the British desired to include Qaf in Jordan because of its strategic position as being at the north end of Wadi Sirhan, so Iraq and Jordan would be joined together to protect British interests. Qaf was to be ceded to Abdulaziz only if a deadlock over its inclusion in Jordan was reached.³³⁶

After several sessions of negotiations, Abdulaziz was made to agree essentially to the British boundary, but he ultimately persuaded Clayton to cede Qaf to him.³³⁷ Abdulaziz based his argument for the retention of Qaf on the fact that a boundary including Qaf had already been offered to him in His Majesty's Government's letter of the 23 October, 1924.³³⁸ He argued that when his people had protested against the mistreatment by Abdullah of Jordan of some members of his government, he had to tell them about the said letter in support of his contention that His Majesty's Government would deal fairly with them on the question of Saudi natural frontier.³³⁹ Public opinion, however, should not be ignored, especially when it is the source of sovereignty, as was the case in Saudi Arabia. Abdulaziz might have known that his leadership would be in question if Qaf was not ceded to him. The British, on the other hand, kept their word and acted with good faith in this regard.

³³⁴ *Hadah* and *Bahrah* are located halfway between Mecca and Jeddah in the western province of Saudi Arabia, see Collins, (ed.), *An Arabian Diary Sir Gilbert Falkingham Clayton* (Berkeley, 1969) p. 97-8 and p. 122.

³³⁵ See *supra* the Kuwait Conference, see also Collins, (ed.), *op., cit.*, pp. 101-2.

³³⁶ Collins, (ed.), *An Arabian Diary, op., cit.*, p. 103.

³³⁷ *Ibid.*, p. 113 and p. 116.

³³⁸ *Ibid.*, p. 99.

³³⁹ *Ibid.*

The willingness and determination of both parties to settle their boundary dispute, as well as the mutual understanding and flexibility which dominated the negotiations, resulted in the Haddah Agreement³⁴⁰ signed on 2 November 1925 by Sir Gilbert Clayton and King Abdulaziz to define the Saudi-Jordan boundaries (see map 5). The Agreement was reached after twenty sessions of negotiations took place in less than one month.³⁴¹ Each party was prepared to make concessions: Abdulaziz abandoned his claim to the whole of Wadi Sirhan from the south to the north, while the British gave up all of Wadi Sirhan, including Qaf but excluding the four smaller Wadis adjoining it. As a result, the defence corridor desired by the British was left to connect Iraq with Jordan.³⁴² Article 2 of the Agreement stipulated that Qaf could not be fortified. In Article 13, Britain guaranteed freedom of passage to Abdulaziz for his trade between Saudi Arabia and Syria and secured exemption from customs for all goods in transit. Article 12 dealt with freedom of passage to be accorded to pilgrims and travellers. To prevent friction between Saudi Arabia and Jordan, Article 3 provided for constant communication between the Saudi Governor in the Wadi Sirhan and the Chief British Representative in Amman. In addition to the definition of the Saudi-Jordan boundaries, this Treaty made a significant step towards the reduction of the likelihood of conflict between the two states by the restriction imposed regarding the Qaf. Furthermore, the freedom of passage of pilgrims greatly enhanced the prospect of peaceful coexistence. It should be noted that by awarding most of the Wadi Sirhan to Abdulaziz, the agreement secured his suzerainty over much of the Ruwala tribe. Although Britain could not delimit the Hijaz-Jordan boundary owing to the conflict in the Hijaz, as mentioned earlier, Clayton, following his instructions from the Colonial Office, was

³⁴⁰ (IOR: LP&S/20/C158), *Treaty Collection*, Ministry of Foreign Affairs, Riyadh, vol. I, No. 5.

³⁴¹ Collins, (ed.), *An Arabian Diary, op., cit.*, pp. chapter 2.

³⁴² For the actual line see Article 1 of Haddah Agreement.

able to persuade Abdulaziz to regard the possession of Ma'an and 'Aqaba as a "*chose jugée*".³⁴³

Let us now turn to the Bahrah negotiations which dealt specifically with inter-tribal raiding, as the Saudi-Iraq boundaries had already been determined in the Muhammera Treaty and the second Uqair Protocol already discussed.³⁴⁴ In the negotiations, Abdulaziz insisted on the demands he had already put forward in the Kuwait Conference regarding the extradition of Shammer refugees who carried out raids against Saudi Arabia from Iraqi territory. Iraq and Britain were unwilling to agree to Abdulaziz's demands. Indeed, Clayton specifically refused to extradite the Shammer tribe from Iraq, even though Abdulaziz insisted that they would be a constant threat to Saudi Arabia unless under his direct control. Again, as in the case of Haddah negotiations, there was give and take in the Bahrah negotiations and Abdulaziz was able to make several concessions as will be seen when discussing the agreement shortly. The reason for Abdulaziz's stance was that he wanted to win the Hijaz war, which was ongoing while the negotiations were in session. He might have preferred to achieve at least part of his demands in relation to the Saudi refugees in Iraq whilst taking Hijaz, rather than to achieve all of his demands but lose Hijaz. Indeed, gaining Hijaz was more important for Abdulaziz than solving the Saudi refugees' problem, which might be solved any time later. Taking Hijaz meant too much to Abdulaziz, who was surrounded by three *Ashraf* rulers (in Hijaz, Jordan and Iraq), and wanted to get rid of one of them at least. Furthermore, Hijaz occupied a very important area being bordered by two strategically and economically significant seas: the Gulf of Aqaba and the Red Sea to the west. The latter connects the Indian Ocean with the Mediterranean with a total

³⁴³ Troeller, *The Birth of Saudi Arabia: Britain and the Rise of the House of Sa'ud*, op., cit., pp. 229-30

³⁴⁴ See *supra* 1 of this chapter.chapter.

coastal length of about 1800 kilometres. It has many scattered islands, most of which are uninhabited. Among them are Farasan, Tiran, Sanafir, Saiad, Reman, No'aman, Zafer, Wagdah and Lobenah. Moreover, It links the Saudi politics and security position with those of Egypt, the Sudan, Ethiopia and Djibouti.³⁴⁵

Sir Gilbert Clayton and King Abdulaziz signed the Bahrah Agreement on 1 October 1925.³⁴⁶ It contained a compromise regarding the question of extradition, which had caused a deadlock in the Kuwait Conference whereby the two parties agreed to negotiate a special agreement between Iraq and Saudi Arabia for the extradition of common criminals within one year from the date of the ratification of this agreement.³⁴⁷ Moreover, Abdulaziz accepted the Colonial Office's proposal, put forward during the Kuwait Conference providing for the exaction of guarantees from a tribe which had emigrated from one territory to another and then raided in its former territory.³⁴⁸ Article 8 again embodied a proposition which the Saudi delegation at Kuwait Conference had rejected. It stipulated that, were a tribe in one territory called on by the other territory to provide armed contingents, it could only go if it left quietly and took its families and belongings.

Articles 1 to 7 of the Bahrah Agreement were similar to Articles 5 to 11 of the Haddah Agreement. They constituted regulations regarding the prevention of raids and tribal movements. Among these was a provision that raiding be considered aggression, requiring severe punishment. As a result, mixed Saudi-Jordan and Saudi-Iraq tribunals were to be set up to inquire into the facts of tribal aggression on either side, assess the damages and losses, and fix the responsibility. The decisions of these tribunals were to

³⁴⁵ Metz, (ed.), *Saudi Arabia: a Country Study, op., cit.*, pp. 40-59.

³⁴⁶ (IOR: L/P&S/20/C158), *Treaty Collection*, Ministry of Foreign Affairs, Riyadh, vol. I, No. 4.

³⁴⁷ Article 10 of the Bahrah Agreement.

³⁴⁸ Article 9 of the Bahrah Agreement.

be final and executory, the execution of the said decisions to be carried out by the government to whom those found guilty were subject. Tribes were not to cross the boundaries without a permit from their own government after the concurrence of the other government, but, “*in accordance with the principle of freedom of grazing*”, such a permit was not to be withheld if the migration was due to grazing necessities.

Shortly after the conclusion of the Haddah and Bahrah Agreements, Abdulaziz completed the capture of Hijaz and, as a result, the question of Ma'an and Aqaba arose with all the events that followed.³⁴⁹ Although King Abdulaziz and Britain signed the Treaty of Jeddah on 20 May 1927, no mention was made of the question of Ma'an and Aqaba, which was called the Hijaz-Jordan boundary.³⁵⁰ However, the Hijaz-Jordan boundary was mentioned in the Exchange of Notes between King Abdulaziz and Sir Gilbert Clayton, which were appended to the 1927 Treaty of Jeddah. In a letter to King Abdulaziz, Clayton confirmed that Ma'an and Aqaba were within Jordanian territory. Abdulaziz responded by confirming his desire to maintain cordial relations with Britain and promised to maintain the *status quo* in Ma'an and Aqaba until a final settlement of the question was reached.³⁵¹ Indeed, Abdulaziz had, in practice, accepted the British proposed line mentioned in Clayton's letters and recognised the *de facto* boundary between Hijaz or Saudi Arabia and Jordan. No further steps or proposed settlements were put forward by Abdulaziz until the British departure from the area.

However, the Saudi-Jordan boundary defined by the Haddah Agreement was arbitrarily amended by the British in the mid 1930s. The British discovered that there was a discrepancy, not in their favour, between the boundary line as officially notified

³⁴⁹ See *supra* chapter I, 4

³⁵⁰ See *ibid*,

³⁵¹ For the Exchange of Notes on Ma'an and Aqaba question and for the actual line proposed by Clayton, see *Treaty Collection*, Ministry of Foreign Affairs, Riyadh, vol. I, p. 40.

to the Saudi government according to the Asian map of 1918, and the boundary of their actual control.³⁵² This line would leave Tubaiq Mountain and the area to the south of it outside Jordan's territory. As a result, the British were concerned about the possibility of losing a very important area that could be used for military purposes. The British chose to amend the boundary line in such a way that the whole Tubaiq Mountain would fall within the Jordan territory, because they knew that the Saudi position would be stronger than theirs in the case of the question being referred to arbitration.³⁵³ The Haddah Agreement, however, did not specify the approach to be taken by the parties in case of disagreement over the interpretation of the Agreement. If the case had been referred to arbitration, the tribunal's decisions would presumably have been based on international law,³⁵⁴ as is normally the case unless the parties conclude an arbitration agreement by which they specify that the decision should be reached in accordance with "*law and equity*", which means that general principles of justice common to the legal system should be taken into account, as well as the provisions of international law. In the *Rann of Kutch* case,³⁵⁵ the parties asked the court to decide the case in the light of their respective claims and the evidence produced before it. In the *Trail Smelter* case,³⁵⁶ the law to be applied was declared to be United States law and practice with regard to such questions, as well as international law. In the case of the Haddah Agreement, however, no disagreement over the interpretation of the Agreement was involved, as the positions of the boundary lines were well defined in the Agreement. Therefore, the tribunal's decisions would be based on what had been agreed on by the parties in the Agreement. This would give Tubaiq to Saudi Arabia according to the Agreement.

³⁵² Al-Na'iem, *The Saudi Political Boundaries* (London, 1999) p. 36.

³⁵³ *Ibid.*

³⁵⁴ Article 37 of the 1899 and 1907 Hague Conference.

³⁵⁵ *The Rann of Kutch case*, (1968), 7 *ILM* 633, Wetter, "The Rann of Kutch Arbitration" (1971) 65 *AJIL* 346.

³⁵⁶ 92 *British and Foreign State Papers*, p. 970.

However, the amended Saudi-Jordan boundary remained *de facto* and each side held its own position.

Similarly, in 1937, a contradiction was also found between the Haddah Agreement and the First Uqair Protocol regarding the Saudi-Iraqi boundary, specifically the intersection where the Saudi-Iraqi-Jordan boundaries met. According to the Uqair Protocol, the Saudi-Iraq boundary line ended at Anaza Mount, while the Saudi-Iraq-Jordan boundaries, according to the Haddah Agreement, met at the conjunction of longitude 39 degrees East and latitude 32 degrees North. These two points were different and not congruent. Anaza Mount was around 23 miles to the northeast of the point defined by the Haddah Agreement. The matter became more complex when a Saudi-Iraqi team visited the disputed area and found that Anaza Mount had two summits which were 8 miles away from each other. The Saudi representative suggested that the two summits would be the point where the three states' boundaries meet, while the Iraqis argued that the nearest summit to the longitude 39 degrees East and latitude 32 degrees North would be the point where the aforementioned boundaries met. As a result of this complicated situation, the final boundary agreement concluded between Iraq and Jordan remained silent about Anaza Mount. Thus, the intersection where the Saudi-Iraqi-Jordan boundaries met remained in dispute between the three parties until final settlement of the Saudi-Jordan and Saudi-Iraq boundaries was achieved after years of negotiations.

The aforementioned two points fall within the category of what is called "geographical problems in boundary delimitation".³⁵⁷ Lack of geographical knowledge of boundary areas and, as a result, inaccurate prescription of the boundary sites on

³⁵⁷ Holdich, *Political Frontiers and Boundary Making* (London, 1916) pp. 179-200.

which the boundary treaties are based, may lead to faulty boundary delimitation. Boggs argues that most boundary disputes have arisen because too little was known of the geography of the country at the time when the boundaries were first defined.³⁵⁸ Proper definition of the boundary needs exact information, not only when the boundary is being demarcated in the ground but also prior to its delimitation in a treaty. The boundary dispute between India and China reflected this aspect of boundary making. Part of their boundary in the northeast sector is the "McMahon Line" which was delimited at the Simla Conference in 1914, by Tibetan and Chinese delegates and the representatives of British India whose chief was Sir Henry McMahon. The issue is that whereas the Peking Government repudiates the Simla agreement as void *ab initio* for want of authority on the part of Tibet, India, on the other hand, maintains the validity of the 1914 settlement.³⁵⁹

However, it may generally be said that the aforementioned negotiations of the boundary disputes and the subsequent settlements and agreements between Saudi Arabia and its neighbouring countries laid a working framework for the states' boundary system in the Peninsula. In the case of Saudi Arabia, these agreements were to help Abdulaziz in his policy of social transformation and political centralisation in a stable atmosphere. Indeed, these new governments now had the legal machinery to prevent populations from crossing their boundaries and were more able to control and sanction their tribes than ever. By the conclusion of the Haddah and Bahrah Agreements, a significant advance was made towards the settlement of the boundary disputes between Saudi Arabia and its *Ashraf* neighbours in the north. Although the Saudi northern boundaries were later amended, as will be seen in the next sections, their

³⁵⁸ Boggs, *International Boundaries* (New York, 1940) p. 17.

³⁵⁹ Cukwurah, *The Statement of Boundary Disputes in International Law, op., cit.*, pp.94-5.

settlements were a turning point in the concept of the international boundary in the Arabian Peninsula. Indeed, for the first time in the Peninsula, international boundary lines, as understood in international law, were delimited from the Arabian Gulf in the east to the Aqaba Gulf by the Red Sea in the west to separate the Saudi state from its neighbouring states in the north.

4. The Final Settlement of the Saudi-Jordan Boundaries (the Treaty of Amman 1965)

The Saudi-Jordan Boundary remained partly *de jure* with regard to that defined by Haddah Agreement and partly *de facto* regarding that amended arbitrarily by Britain until two decades after the independence of Jordan in 1946. During this time the relations between the two countries had substantially improved. In the 1960s, as a result of the Arab-Israel conflict, Jordan expressed its desire to negotiate a final boundary agreement in order to settle the pending issues which had not yet been settled between them, such as that of Ma'an and Aqaba.³⁶⁰ Jordan, moreover, desired to expand the area south of Aqaba in order to facilitate the defence of its only seaport.³⁶¹ Therefore, delegations of the two governments started boundary negotiations in Amman, the capital of Jordan, on 7 July 1965. After several rounds of negotiations, the two parties agreed on a final settlement of the Saudi-Jordan boundaries.³⁶² This was embodied in the Treaty of Amman which was signed on 9 August 1965, and which abolished all previous boundary Agreements contrary to the new delimitation.³⁶³ According to this

³⁶⁰ This was expressed by the King Hussain of Jordan and the Jordanian Foreign Minister and other governmental officials in a number of occasions while visiting Saudi Arabia, see *Umm al Qura*, No. biaby

³⁶¹ Abu-Dawood and Karan, *International Boundaries of Saudi Arabia*, *op. cit.*, p. 39-42.

³⁶² *Ibid.*

³⁶³ *Treaty Collection*, Ministry of Foreign Affairs, Riyadh, vol. II, No. 12.

Treaty, which was ratified by both parties,³⁶⁴ the new boundary line begins at 25 kilometres south of Aqaba instead of 7 kilometres according to the British line mentioned in Clayton's letters to King Abdulaziz. Now, Jordan's narrow coastline on the Gulf of Aqaba was accordingly lengthened to the southeast of the port. In return, the Saudis were given a substantial area of inland desert to the west of the main basin of Wadi Sirhan³⁶⁵ (see map 6). As a result of the aforementioned Saudi-Jordan exchange of territory, some tribes in Wadi Sirhan were reunited again under Saudi rule and became Saudi citizens. The Treaty of Amman was more important for Jordan than for Saudi Arabia because it involved exchange of territories between the two states, by which Jordan gained the only outlet to sea. According to international law, such exchange of territory is one of the peaceful methods by which a state might acquire a territory. It is an example of cession, which is a transfer of sovereignty over state territory by the owner-state to another state.³⁶⁶ Any state may cede a part or the whole of its territory to another state. It is a bilateral transaction that takes place voluntarily or as an outcome of peace negotiations or as a result of peace treaties which sometimes occur as a result of a threat or use of coercion.³⁶⁷ Under traditional international law, a cession imposed by use of force was legal until recent times when modern international law prohibited the use of force.³⁶⁸ Furthermore, Article 52 of the Vienna Convention on the Law of Treaties provides that a treaty concluded as a result of the threat or use of force is void.

³⁶⁴ Royal Decree No. 10 dated 21 August 1965, Archives of Council of Ministers.

³⁶⁵ Jordan agreed to give Saudi Arabia about 7,000 square kilometres along the border which runs north and south on the western side of Wadi Sirhan. Saudi Arabia, in return, agreed to give Jordan about 6,000 square kilometres along the western border which runs into the Gulf of Aqaba. See, Abu-Dawood and Karan, *International Boundaries of Saudi Arabia, op. cit.*, p. 42.

³⁶⁶ Oppenheim, *International Law*, (1996), *op. cit.* p. 679.

³⁶⁷ Sharma, *Territorial Acquisition, Disputes and International Law* (London, 1997) p. 137.

³⁶⁸ Article 2 (4) of the UN Charter, see *supra* part I, 1 of this chapter.

Cession can be effected by an agreement embodied in a treaty between the ceding and the acquiring state, which must be followed by actual handing of the territory to the acquiring state unless it is occupied by a third state at the time of cession.³⁶⁹ Cession, however, does not transfer territorial sovereignty until the receiving state has effectively established its authority over the ceded territory.³⁷⁰ The important point with regard to the exercise of rights over the ceded territory is that the acquiring state cannot exercise more rights than the ceded state had. That is what the arbitrator in the *Island of Palmas Case*³⁷¹ noted, saying, "it is evident that Spain could not transfer more right than she herself possessed."³⁷² The right of transferring inhabitants with regard to citizenship, property, and other obligations should be assumed by the acquiring state.³⁷³ The general principle with regard to the population is that persons in the ceded territory acquire the nationality of the new state and lose the nationality of the ceding state, unless they choose to keep their original nationality.³⁷⁴ If they do, and they are over eighteen, their choice covers their wives and children under eighteen, and they must in such circumstances remove themselves to the old state.³⁷⁵

5. The Division of the Saudi-Kuwaiti Neutral Zone (1965)

As mentioned earlier, the Saudi-Kuwaiti Neutral Zone of 5,790 square kilometres was established directly south of Kuwait by the Uqair Protocols, which stipulated that the governments of the two countries would share equal rights in it until a further agreement was reached. At the time of the conclusion of the Uqair Protocol, oil had not

³⁶⁹ *Ibid.*, p. 680.

³⁷⁰ Kelsen, *General Theory of Law and State* (Cambridge, 1949) p. 213.

³⁷¹ *Island of Palmas Case*, *op. cit.* at p..879.

³⁷² *Ibid.*

³⁷³ Lawrence, *The Principles of International Law*, (London, 1925) p. 157.

³⁷⁴ For further discussion regarding the right of self-determination of the inhabitants in the ceded or disputed territory of see *infra* part II, chapter II, 3 (the Buraimi Arbitration of 1954).

³⁷⁵ Oppenheim, *International Law*, (1958), *op. cit.* p. 506

yet been discovered in the area although, as mentioned earlier, it was thought likely to contain oil. As a consequence, no guidelines were laid down between the two countries for the joint administration of the area.

When oil was discovered in the Zone in the mid 1930s, both countries contracted with foreign oil companies to perform exploration work in the Zone.³⁷⁶ Oil production in the Zone in 1950s created strains and stresses between the two countries, and many difficulties arose as a result.³⁷⁷ Therefore, both Britain and Saudi Arabia, in a number of meetings and exchanges of letters, expressed interest in dividing the Zone between them.³⁷⁸ Actual direct negotiations between Saudi Arabia and Kuwait, however, did not start until after Kuwait gained independence in 1960.³⁷⁹ The two parties agreed to create a joint committee of experts in order to provide guidelines regarding the division of the Zone and after years of negotiations, the parties finally agreed on the memoranda exchanged on 5th August 1963, which laid down the principle of equal partition of the Zone. This was embodied in a Partition Agreement signed by Saudi Arabia and Kuwait on 7th July 1965³⁸⁰ and ratified on 20th July 1966.³⁸¹

The Agreement provided for the division of the zone geographically into two equal parts which would be annexed as integral parts of the parties' territories, each country administering its half of the zone (see map 7). Article 1 of the Agreement provided for setting up a Special Joint Surveying Committee in order to survey the Zone

³⁷⁶ (Foreign Office: 371/126933), official documents reproduced in Schofield and Blake, (eds.), *Arabian Boundaries: Primary Documents 1853-1957*, vol. 9, *op. cit.*, pp. 365-7, see also pp. 227-33.

³⁷⁷ Schofield and Blake, (eds.), *Arabian Boundaries: Primary Documents 1853-1957*, vol. 9, *op. cit.*, pp. 270-9. This was also mentioned in the preamble of the Partition Agreement.

³⁷⁸ (Foreign Office: 371/114646), official documents reproduced in Schofield and Blake, (eds.), *Arabian Boundaries: Primary Documents 1853-1957*, vol. 9, *op. cit.*, pp. 270-9. This was also mentioned in the preamble of the Partition Agreement.

³⁷⁹ Note that in the Uqair negotiations, Kuwait, as a British Protectorate, was represented by Major More.

³⁸⁰ *Treaty Collection*, Ministry of Foreign Affairs, Riyadh, vol. II, No. 20.

³⁸¹ Royal Decree No. M/3 dated 20 July 1966. Archives of Council of Ministers.

and provided for delimitation of the new boundary, which would divide the Zone equally, in the field. In order to do so, both countries contracted with the Pacific Airo-survey Company to perform the task under the supervision of the said Committee. When the task was completed and the actual boundary line was defined, the two parties agreed on the final report and map, which were provided by the company. Therefore, they signed a further Agreement in Kuwait on 18th December 1969 by which the Saudi-Kuwaiti boundaries were finally delimited in great detail.³⁸² This Agreement was appended to the Partition Agreement. The Partition Agreement guaranteed that the rights of both parties to the natural resources in the whole zone would continue to be respected after each country had annexed its half of the zone in 1966.

6. The Division of the Saudi-Iraqi Neutral Zone (1981)

The Saudi-Iraqi Neutral Zone, like the Saudi-Kuwaiti Zone, was established by the Uqair Protocols of December 1922. Although this Zone did not contain oil, the two parties, after their relations had been improved, signed an Agreement on 19 May 1938 regarding its administration.³⁸³

In 1973, negotiations between the two countries began in order to set up a framework according to which the boundary agreed upon at the Uqair Conference would be demarcated on the ground. Meanwhile, Saudi Arabia had suggested the division of the Zone and the Saudi delegation submitted the Saudi proposal to an Iraqi delegation when it visited Riyadh on 26 February 1973. Two years later, the first meeting was held between the two governments' delegations in Baghdad on 12 April 1975. Article 14 of the first meeting report mentioned the Saudi suggestion for the

³⁸² *Treaty Collection*, Ministry of Foreign Affairs, Riyadh, vol. II, No.19, p. 161.

³⁸³ *Treaty Collection*, Ministry of Foreign Affairs, Riyadh, vol. I, No. 50, p. 268.

division of the Neutral Zone and suggested that another meeting be held in Riyadh for the purpose of studying the possibility of dividing the Zone by as straight a line as possible.³⁸⁴ The second meeting was held in Riyadh on 28 May 1975 in order to discuss Article 14 of the report of the Baghdad meeting. As a result, the two parties initially agreed to divide the Zone into two equal parts, the northern part belonging to Iraq and the southern belonging to Saudi Arabia. On 2 July 1975, they signed the Riyadh report³⁸⁵ which also provided that a special joint committee would be set up for the purpose of choosing a proper company in order to work together to do the survey and the maps for the new boundary line. Once these works had finished, a final and permanent boundary agreement would be concluded between the two parties to replace those of Muhammera and Uqair.³⁸⁶

When the aforementioned Committee had completed its tasks and submitted its report to the two governments on 28 September 1980, the two parties concluded the Agreement of the International Boundaries between Saudi Arabia and Iraq, which was signed by the Ministers of Interior of the two countries in Baghdad on 26 December 1981³⁸⁷ and ratified on January 1982.³⁸⁸ As the parties were willing to define their boundary, not only did this Agreement divide the Neutral Zone but it also modified the Uqair boundary (see map 8). Indeed, Article 8 of the Agreement provided for the abolition of all previous boundary agreements including Bahrah Agreement of 1925 and the Agreement of 1938 which provided for the Administration of the Neutral Zone. The boundary was now a straight line, as most of the indentations of the old boundary line

³⁸⁴ *The Report of Baghdad Meeting of 1975*, Archive of the Saudi Border Guard.

³⁸⁵ *The Report of Riyadh Meeting of 1975*, Archive of the Saudi Border Guard.

³⁸⁶ *Ibid.*

³⁸⁷ *The Boundary Agreements*, Archive of the Saudi Border Guard.

³⁸⁸ Royal Decree No. M/10 dated 9 January 1982. Archives of Council of Ministers, also published in *Umm al Qura* No. 2918 dated 21 May 1982.

were avoided (although the indentations of the Uqair boundary line had been inevitable in order to include some wells within the territory of one country or the other. Now, however, a straight boundary line seemed to be more practicable and applicable than would formerly have been the case. The region had witnessed great economic and social developments during the years since the Uqair boundary was delimited. As a result, the wells and the tribal problems, which underlay the Uqair line, had become less important than they had been at that time. Article 7 simply provided that the two parties would conclude two Protocols, the first to organise the border authorities in the two countries and the second to regulate pasture rights.

The two Protocols were concluded by the parties on 22 February 1982 and signed in Riyadh by the Ministers of Interior of the two countries.³⁸⁹ They were ratified by both Governments on 27 April 1982.³⁹⁰ According to the first Protocol, the borderland was defined to stretch from the boundary line up to 10 kilometres in the parties' territories.³⁹¹ Moreover, both parties would refrain from establishing any constructions within one kilometre from the boundary line, except for official constructions such as those assigned for the guarding the border and other governmental constructions.³⁹² The Protocol also defined the cases that would be considered as border incidents and violations and the procedures which would be followed by the parties in order to deal with them, as well as the border authorities from both sides that would carry out this task.³⁹³ The Protocol, moreover, stipulated that the border authorities from both sides would define the positions of the border check and exit points and border

³⁸⁹ *The Boundary Agreements*, Archive of the Saudi Border Guard.

³⁹⁰ Royal Decree No. M/48 and Royal Decree No. M/49 dated 27 April 1982, Archives of Council of Ministers, also published in *Umm al Qura* No. 2918 dated 21 May 1982.

³⁹¹ Article 2 (1) of the Protocol regarding the organisation of the border authorities.

³⁹² Article 1 (2) of the Protocol regarding the organisation of the border authorities.

³⁹³ Articles 3-9 of the Protocol regarding the organisation of the border authorities.

guard stations.³⁹⁴ The second Protocol stipulated that pastures and movements would be prohibited within the borderland, which was defined as being 10km from the boundary line.³⁹⁵ Both parties would enjoy pasture rights within an area stretching up to 30km beyond the borderland and in the pasture seasons the inhabitants of both countries would enjoy movement from one country to another according to the regulations which were defined in the Protocol.³⁹⁶

From the above discussion of the settlement of the northern Saudi boundary disputes with Kuwait, Iraq and Jordan, it is clear that the boundary disputes arose when these states first emerged as successors of both the Ottoman and the British Empires. These states were born with no defined boundaries, with the exception of the Saudi-Kuwait boundary, which was defined by the 1913 Anglo-Ottoman Convention by a boundary line known as the Red Line. However, not only was this Convention not ratified, but it was also terminated and superseded by both the 1915 and 1927 Anglo-Saudi Treaties, which recognised the independence of the Saudi state and stated that its territory with the British colonies would “hereafter be determined”. Such termination, however, gave rise to boundary disputes between the two states because Saudi Arabia claimed the territory assigned to Kuwait by the terminated Convention on the ground of ancestral rights, while evidence showed that Kuwait exercised effective control over this territory. According to international law, however, Kuwait would have legally possessed such territory and the action of both Britain and Saudi Arabia, regarding the termination of its inherited boundary line, was contrary to the principles of international law governing territorial issues.

³⁹⁴ Articles 10-11 of the Protocol regarding the organisation of the border authorities.

³⁹⁵ Article 1 of the Protocol regulating pasture rights.

³⁹⁶ Articles 4-10 of the Protocol regulating pasture rights.

Taking advantage of the absence of any defined boundaries, Saudi Arabia fought to expand its territory at the expense of the territory of its neighbouring states in all directions. Saudi Arabia acquired most of its territory by way of conquest, which was at that time a legal way of creating title, as long as it was followed by effective control of the acquired territory. Such acquisition of territory gave rise to boundary disputes between Saudi Arabia and these states. Among these disputes were the dispute over the sovereignty of Wadi Sirhan between Saudi Arabia and Jordan and the territorial dispute over the territory located between Saudi Arabia and Iraq. Another dispute was the dispute over the two villages of Aqaba and Ma'an between Saudi Arabia and Jordan which were claimed by Saudi Arabia on the ground of state succession when it captured Hijaz and succeeded to the sovereignty of these two villages. These boundary disputes were aggravated by the clashes between the tribes of Saudi Arabia and its northern neighbours.

To put an end to these boundary disputes, both Britain and Saudi Arabia approached the problem in an attempt to define international boundaries of a kind understood by international law, separating each sovereign from others. They were all in full agreement that their boundary disputes must be settled according to the principles of international law regarding the settlement of international disputes by peaceful means. A state should have its own defined territory over which it exercises its authority and sovereignty. This settlement, however, was the first experience in the Arabian Peninsula regarding the definition of international boundaries. The problem was essentially legal: how to negotiate sovereignty rights and draw boundaries in the desert according to the contemporary of international law. At issue was not only the conflict between the parties' claims, but also the conflict between the concept of sovereignty in tribal law and in international law.

It could be said that Saudi Arabia and its northern neighbours have made a significant contribution to international law as was reflected by their practice, which was a response to the call made by international law for states to settle their disputes by peaceful means. Consequently, they all entered a new era of security, stability and coexistence in the region. Indeed, the concept of a modern sovereign state as recognised by international law has replaced the old concept of personal rule, whereby the allegiance of tribes was the source of sovereignty. Now, each state has its own defined territory over which its authority and jurisdiction are exercised, exclusive of other states. In the next chapter, the eastern boundaries will be examined. The discussion will include their evolution, the rise of boundary disputes and the methods of their settlement.

PART II

EASTERN BOUNDARIES

Chapter I

The Evolution of the Eastern Boundaries and the Boundary Disputes

When King Abdulaziz captured Al-Hassa region to the east of the Arabian Peninsula in 1913 and portions of the Empty Quarter to the south of Al-Hassa,¹ the new Saudi boundaries with Qatar, the Trucial states² (now the United Arab Emirates) and Oman evolved.³ These boundaries were in fact the first Saudi boundaries to evolve, and, for the first time since its creation in 1902, the Saudi political entity possessed a coastline. Indeed, by taking Al-Hassa to the east, the Saudis added a new dimension to their boundaries, an open door to one of the major maritime arteries in the Middle East. Not only did the Saudis accomplish their major goal of having a sea outlet, but they also gained a long coastline from the Kuwait border to the Qatar border.⁴

As far as Saudi Arabia's boundaries with its eastern neighbours are concerned, they were defined in the 1913 Anglo-Ottoman Convention⁵ as part of the definition of

¹ Troeller, *The Birth of Saudi Arabia: Britain and the Rise of the House of Sa'ud*, op., cit., pp. 44-53.

² The Trucial States or Trucial Coast are the seven states or Emirates which are on the Arab side of the Gulf, namely, Abu Dhabi, Ajman, Al Fujayrah, Dubai, Ras al Khaymah, Sharjah and Umm al Qaywayn. In 1971 they joined together to form a single independent country under the name, the United Arab Emirates (UAE). In 1819 a British fleet was sent from India to the Arab side of the Gulf in order to take control of the Gulf trading cities to maintain security on the route from Europe to India, so the merchants could safely send goods between India and the Gulf. The British fleet destroyed all ships along both sides of the Gulf. As the British were not interested in taking over the desolate areas, in 1820 they decided to leave most tribal leaders in power and concluded a series of treaties with them. It was as a result of these truces that the Arab side of the Gulf came to be known as the "Trucial Coast" or "Trucial States". This area has also been referred to as "Trucial Oman" to distinguish it from the part of Oman under the Sultan, that was not bound by the treaty obligations.

³ Abu-Dawood, and Karan, *International Boundaries of Saudi Arabia*, op., cit., p. 32.

⁴ *Ibid.*

⁵ (IOR:L/P&S/18/B381) official documents reproduced in Tuson & Quick, (ed.), *Arabian Treaties: 1600-1960*, (London, 1992) vol. I, pp.91-138.

the two Empires spheres' of influence in the region. Article 11 of the Convention defined the boundaries by a straight line, known as the "Blue Line", running due south from Zakhnuniyah island, lying some distance west of the Qatar peninsula and terminating in the desert wastes of the Empty Quarter, to meet the boundary between the Yemen and the Aden Protectorate. It defined the eastern boundary of the *sanjak* (district) of Najd (now Saudi Arabia) and separated it from the Peninsula of Qatar. According to this Convention, the area to the south and east of the Blue Line (now including Qatar, UAE and Oman) was acknowledged as within the British sphere, while the area to the north and west, including Hijaz, Najd and Hassa, went to the Ottomans (see map 9). As a result, the Ottoman Government renounced all its claims concerning the Peninsula of Qatar, which was accepted as an autonomous country. The Ottomans also renounced their claim to Bahrain. In return, the Turks were met on their requirements that Qatar should be ruled by Al Thani and that the Al Khalifa of Bahrain would not intervene in its affairs. In addition, the Ottomans gained Zakhnuniyah, which was just off the mainland, and the British agreed not to annex Bahrain.⁶

As in the case of the Saudi northern neighbours, boundary disputes arose between Saudi Arabia and its eastern neighbours on the ground of state succession when they succeeded the Ottoman and the British Empires. According to the principle of continuity of state boundaries already discussed,⁷ the successor states can only acquire from their predecessors as much territory as the latter possessed. As far as the validity of the Blue Line as the boundary line between Saudi Arabia and its eastern neighbours is concerned, it could be said that, although the 1913 Anglo-Ottoman Convention in

⁶ Wilkinson, *Arabia's Frontiers*, *op. cit.*, pp. 62-3.

⁷ See *supra* part I, chapter I, 2.

which the Blue Line was defined was never ratified,⁸ the reference to the Blue Line contained in Article 3 of the 1914 Anglo-Ottoman Convention (which was ratified) has given it legal validity as the eastern boundary of the Ottoman *sanjak* (district) of Najd.⁹ When this Convention was ratified, Abdulaziz had already concluded his 1914 Treaty with the Ottoman Empire in which he recognised the Ottomans' suzerainty over Najd and Al-Hassa, over which he ruled as Ottoman *vali* (governor). As a result, he was bound to abide by it and to observe the Blue Line.¹⁰ Indeed, according to the 1978 Vienna Convention and state practice before and after it, it could be said that Abdulaziz, when he succeeded the Ottoman Empire in Najd and Al-Hassa, succeeded in international law to the treaty obligations of the Ottoman Empire with respect to the boundaries of these districts. These boundaries are unaffected by the succession.

However, the Blue Line, as defined, would have given the Saudi eastern neighbours more territory than they had held at the time of the evolution of the Saudi boundaries with them. As a result, Abdulaziz never recognised the Blue Line as a boundary line between his territory and his neighbours', because he claimed the territory that his ancestors had ruled in the first and the second Saudi states.¹¹ Instead, he intervened in the territory which he claimed beyond the Blue Line, giving rise to boundary disputes between him and his neighbours. For example, responding to a call made to him by several tribes of the UAE for protection against other tribes there, Abdulaziz's governor in Al-Hassa, Ibn Jiluwi, dispatched strong troops to raid Abu Dhabi territory in 1925. As the allegiance of the tribes was the source of sovereignty in

⁸ The question of the non-ratification of the Convention and its impact and consequences according to international law was discussed in the previous chapter while discussing the Red Line as being the Saudi-Kuwaiti boundary which was also defined by the same Convention.

⁹ Kelly, *Eastern Arabian Frontiers* (London, 1964) p. 113.

¹⁰ *Ibid.*, p. 111.

¹¹ *Ibid.*, p. 123.

the Arabian Peninsula at that time,¹² the territory of the tribes who transferred their allegiance to Abdulaziz and accepted Saudi protection was to be considered as part of the Saudi territory. Therefore, a Saudi Agent accompanied by the local emirs of those tribes arrived at Abu Dhabi and told its ruler that Abdulaziz had taken the Awamir, the Duru and the Al Bu Shamis under his protection, and that the Saudi Agent was there to collect the *zakah* from them.¹³ Despite Sultan Ibn Zaid's refusal to recognise the Saudi claim, Su'ayyid Al- Arafa, a Saudi Agent, went to Buraimi Oasis, and during his stay there, he carried out the regular collection of *zakah* from the inhabitants of the Oasis and the Bedouin tribes of the vicinity.¹⁴ The Saudi Agent continued to collect *zakah* from some of the tribes of the Buraimi Oasis and in its vicinity every year until 1930.¹⁵

Furthermore, the 1915 Anglo-Saudi Treaty,¹⁶ which recognised the independence of the Saudi state, acknowledged that Najd, Al Hasa, Qatif and Jubail, their dependencies and territories, and their ports on the shores of the Persian Gulf were the territories of Abdulaziz and of his fathers before him and his descendants.¹⁷ Wilkinson suggests that some of the significance of the ancestral clause in the Treaty was that Abdulaziz was determined that the Treaty formally defining Saudi-British future relations should recognize the continuity of Abdulaziz's historical rights.¹⁸ Such confirmed historical rights would be in favour of the Saudi state whenever it discussed the problems of its territory and its boundary problems. This is the reason why the Saudis always based their arguments on these historical rights whenever they discussed

¹² See *supra* part 1, chapter 1.

¹³ Kelly, *Eastern Arabian Frontiers, op., cit.*, pp.115-6.

¹⁴ *Ibid.*, p.116, footnote 1.

¹⁵ *Ibid.*, pp. 118-21.

¹⁶ (IOR: L/P&S/10/387), official documents reproduced in Tuson & Quick, *Arabian Treaties, op., cit.*, pp. 29-40.

¹⁷ Article 1 of the 1915 Anglo-Saudi Treaty.

¹⁸ Wilkinson, *Arabia's Frontiers, op., cit.*, p. 135.

their boundary disputes. The Treaty, moreover, acknowledged that the boundaries of Saudi Arabia with its eastern neighbours were not defined.

“Bin Saud [Abdulaziz] undertakes, as his fathers did before him, to refrain from all aggression on, or interference with the territories of Kuwait, Bahrain, and of the Shaikhs of Qatar and the Oman Coast, who are under the protection of the British Government, and who have treaty relations with the said Government; and the limits of their territories shall be hereafter determined.”¹⁹

This was reaffirmed by the 1927 Anglo-Saudi Treaty²⁰ (or the Treaty of Jeddah) which, while recognising the territorial sovereignty of King Abdulaziz as the same territory as that confined within the Blue Line, recognised that the area had dependencies.²¹ Not only did both the 1915 and 1927 Anglo-Saudi Treaties not mention the boundaries of the new Kingdom but they also made no reference to the Blue Line as being the boundary line between Saudi Arabia and the British colonies to the east. The reason for this was that relations between the British and Ibn Saud had improved since the conclusion of the 1913 Convention with the Ottomans, so they ignored the Blue Line in Ibn Saud’s favour, as they did not want to limit his territory.²² In addition, the British recognised before the conclusion of the Treaty of Jeddah that Ibn Saud had established effective occupation over the territory, which was *terra nullius*, beyond the Blue Line, as it was later confirmed by the Foreign Office legal adviser, W T Beckett, in

¹⁹ Article 6 of the 1915 Anglo-Saudi Treaty.

²⁰ The Text of the Treaty of Jeddah and the letters of ratification exchanged are found in *Umm Al Qura* No. 145 dated 23.9.1927, pp. 1-3, see also *Treaty Collection*, Ministry of Foreign Affairs, Riyadh, vol. I, No. 10.

²¹ Article 6 of the Treaty of Jeddah.

²² See Wilkinson, *Arabia's Frontiers*, *op. cit.*, pp. 151-2.

a report sent to the Foreign Office dated 29 August 1934²³. Therefore, they left the area beyond the Blue Line undefined. However, such a contradiction between the 1913 Convention and both the 1915 and 1927 Anglo-Saudi Treaties gave rise to boundary disputes between Ibn Saud and his neighbours, as each of them claimed the other's territory. As a result of the improvement of Saudi relations with Britain, the British, at this time, did not recognise the Blue Line as a ground of the settlement of the boundary disputes which were to be settled some time later, as mentioned in the Anglo-Saudi Treaty of 1915.²⁴ In addition, this Treaty recognised Saudi sovereignty on the basis of ancestral territory, which extended beyond the Blue Line.²⁵ However, when oil was first discovered in a commercial quantity in Bahrain in 1932,²⁶ the British went back to arguing that the Blue Line was the boundary line between Saudi Arabia and its eastern neighbours.²⁷

The reason for this new argument was that the British wanted to limit the territory of Ibn Saud in their colonies' favour because of the potential discovery of oil in the disputed area.²⁸ Not only was this argument, which was rejected by Abdulaziz²⁹, contrary to the British attitude before the discovery of oil in the area, but it was also contrary to the British recognition of Abdulaziz's sovereignty over the territory beyond the Blue Line which was based on the effective occupation of *terra nullius*. This argument did not stand up in international law, as was admitted by W E Beckett, the

²³ Official documents reproduced in Schofield, (ed.), *Arabian Boundary Disputes*, (London, 1992) vol. 18, pp. 59-66.

²⁴ Article 1 of the 1915 Anglo-Saudi Treaty.

²⁵ *Ibid.*

²⁶ Metz, *Persian Gulf States, op., cit.*, pp. 124-28, Wilkinson, *Arabia's Frontiers, op., cit.*, p.169.

²⁷ A telegram from Sir A Ryan, the British Minister at Jeddah to Saudi Minister for Foreign Affairs dated 28 April 1934, an official documents reproduced in Schofield, (ed.), *Arabian Boundary Disputes*, (London, 1992) vol. 18, p. 47.

²⁸ Wilkinson, *Arabia's Frontiers, op., cit.*, pp. 183-5.

²⁹ A telegram from Fuad Hamza, acting Saudi Minister for Foreign Affairs dated 13 May 1934 to Sir A Ryan, the British Minister at Jeddah, an official documents reproduced in Schofield, (ed.), *Arabian Boundary Disputes*, (London, 1992) vol. 18, p. 48.

Legal Adviser at the British Foreign Office, in his report dated 29 August 1934.³⁰ Beckett concluded that Britain would not win before a tribunal deciding the matter on legal principles because Abdulaziz exercised effective control over the territory beyond the Blue Line.³¹ Indeed, if the case had been referred to an international tribunal, its legal decision would have been based on the principles of international law governing state sovereignty and the acquisition of territory.

For the purposes of international law, territory is divided into three categories: (a) Sovereign territory, which is actually under the sovereignty of a state; (b) territory which is not owned by anyone and is open to acquisition, known as *terra nullius*; (c) territory called *res communis* which is also owned by no one, but (in contrast to *terra nullius*) cannot be acquired or reduced to sovereign control.³² The prime instance of this is the high seas, which belong to no one and may be used by all states according to the rules of international law and with due regard for the interests of other states.³³ Other examples would be Antarctica,³⁴ outer space and the moon.³⁵

Prior to the establishment of Saudi Arabia and its neighbouring states, the territory of the Arabian Peninsula might have been divided into two broad categories. The first is territory which was totally uninhabited, such as some scattered islands in the Arabian Gulf and the Red Sea, as well as the large deserts such as the Empty Quarter.³⁶ In addition to the Empty Quarter there were the Dahana Desert in the western Saudi

³⁰ Official documents reproduced in Schofield, (ed.), *Arabian Boundary Disputes*, (London, 1992) vol. 18, pp. 59-66.

³¹ *Ibid.*

³² Brownlie, *Principles of Public International Law*, *op. cit.*, 4th ed. p. 107.

³³ Article 87 of the 1982 United Nations Conventions on the Law of the Sea, *the Law of the Sea, United Nations Conventions on the Law of the Sea* (UN Publication, Sales No. E.83.V.5).

³⁴ Article 4 of the 1959 Antarctic Treaty, *United Kingdom Treaty Series 97* (1961), Cmnd. 1535, 402. See generally O'Connell, *International Law*, *op. cit.*, pp. 448-50.

³⁵ Articles 1 & 2 of the Treaty on Principles governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Outer Celestial Bodies.

³⁶ Lipsky, *Saudi Arabia: its People, its Society, its Culture* (New Haven, 1959) p. 3.

Arabia and the Great Desert or Al-Nafud Al-Kahbir in the northern Saudi Arabia.³⁷ These territories were *terra nullius* because they were uninhabited areas.³⁸ Therefore, because Abdulaziz effectively occupied the *terra nullius* beyond the Blue Line and effectively exercised his authority over it, which was demonstrated by his levying *Zakah* from the inhabitants and their submission to the Saudi government, it could be said that a tribunal decision would probably have been in Abdulaziz's favour. Indeed, Judge Huber in the *Island of Palmas Case* confirmed that: "a continuous and peaceful display of territorial sovereignty is as good as title".³⁹ He also declared that the Netherlands possessed sovereignty on the basis of "the actual continuous of peaceful display of state functions"⁴⁰, evidenced by various administrative acts performed over centuries.

The dispute over the recognition of the Blue Line as being the boundary line between Saudi Arabia and its eastern neighbours became even more crucial when international oil companies started to carry out some geographical exploration in the area. It was necessary for both the companies and the states which had granted concessions to these companies to know the definition of the territory in which they were working. Now, the British were determined that their interests would prevail in their remaining territories.⁴¹ In 1933, King Abdulaziz granted a petroleum concession to CASOC. According to royal decree No. 1135, dated 7 July 1933, the concessionary area was to be "the eastern portion of our kingdom of Saudi Arabia, within its frontiers..."⁴². The royal decree did not specify the Saudi eastern boundaries because up to that time

³⁷ See the map of Saudi Arabia, *The Historic Atlas of Saudi Arabia* (Riyadh, 1999) pp. 182-3.

³⁸ For further details see *supra* part I, chapter I, 4.

³⁹ *Island of Palmas Case, op. cit.* at 876, see also *Clipperton Island Case*, (1932), 62 *AJIL* 390, *Eastern Greenland Case, PICJ Reports*, (1933) series A/B, No 53, p. 151.

⁴⁰ *Island of Palmas Case, op. cit.* at pp.867-8.

⁴¹ Wilkinson, *Arabia's Frontiers, op. cit.*, p.171.

⁴² *Umm AlQura*, No. 448 dated 14 July 1933.

they had not been authoritatively defined. When the United States Government made inquiries about the actual limits of the concession of the British Government, its Embassy in London was informed that the eastern boundary of Saudi Arabia was the Blue Line and that King Abdulaziz had succeeded to the Ottomans' sovereignty to the west and north-west of that Line.⁴³ The Saudi Foreign Minister at the time, Fuad Bey Hamza, disputed the Blue Line in view of the considerable changes that had taken place in the position of Saudi Arabia since the conclusion of the 1913 Convention and said that his government did not regard the Blue Line as the correct boundary line in the area.⁴⁴ So, the Saudis, as the successors of the Ottoman Empire, considered the 1913 Anglo-Ottoman Convention as having been terminated due to the changes that had occurred since the conclusion of the Convention. It is true that it is widely accepted under international law that a party may terminate a treaty on the ground that fundamental changes in the circumstances since the conclusion of the treaty have occurred,⁴⁵ but such termination is not applied to boundary treaties, as Article 62 (2a) of the 1969 Vienna Convention on the Law of Treaties excludes treaties which define a boundary from those which might be terminated on the ground of changes of circumstances.

Another Saudi argument put forward for not recognising the Blue Line was the reference to the 1915 Anglo-Saudi Treaty, in which the British Government had recognised Abdulaziz as the independent ruler of Najd, Al-Hassa, Qatif and Jubail and

⁴³British Foreign Office Document: E 2481/279/91, a telegram from G.W. Rendel to Millard dated 24 April 1934.

⁴⁴British Foreign Office Document: E 3651/279/91, a telegram from Fuad Bey Hamza to Ryan dated 13 May 1934, also reproduced in Schofield, (ed.), *Arabian Boundary Disputes* (London, 1992) vol. 18, p. 48.

⁴⁵ See *Fisheries Jurisdiction* case, *ICJ Reports*, 1973, p. 3, 55 *ILR*, P. 183.

their dependencies, which were to be determined thereafter.⁴⁶ The Saudi Foreign Minister argued that it might be deduced from this that the British Government had acknowledged King Abdulaziz's rights to his ancestral territories and his authority over the tribes inhabiting them.⁴⁷ An assessment of this argument was made above while discussing the 1915 and 1927 Anglo-Saudi Treaties.

With regard to the Qatari boundary, Fuad Bey Hamza, the Saudi Deputy Foreign Minister, stated that it was the boundary of the inhabited towns and villages.⁴⁸ Indeed, the Shaikh of Qatar, at the maximum, never claimed much below the base of the Qatar Peninsula. Evidence of this is found in the practice of the Shaikh of Qatar when he was about to grant an oil concession to the Anglo-Persian Oil Company (APOC) and sent some of his men with the APOC geographical survey team to show them his boundary; it was said that beyond the base of the Peninsula was a neutral zone.⁴⁹ Further support is found in a Lorimer's *Gazetteer* article about Qatar, based on special investigation before the First World War, in which there is no reference to any authority of the Shaikh of Qatar beyond the base of the Qatar Peninsula, although the boundary was indeterminate.⁵⁰ As for the rest of Eastern Arabia, Fuad Bey Hamza suggested that all the tribes living between the coastal towns of Qatar and those of Oman and Hadramout belonged to Saudi Arabia. They were entirely submissive to the law of the country, paid *zakah* and were obedient to the call of the Government in time of war.⁵¹

⁴⁶British Foreign Office Document: E 4451/279/91, a telegram from Fuad Bey Hamza to Ryan dated 20 June 1934, also reproduced in Schofield, (ed.), *Arabian Boundary Disputes* (London, 1992) vol. 18, pp. 54-5.

⁴⁷ *Ibid.*

⁴⁸ *Ibid.*

⁴⁹ Wilkinson, *Arabia's Frontiers, op., cit.*, p.172.

⁵⁰ Lorimer's *Gazetteer, op., cit.*, vol. I, part IB, chapter IV.

⁵¹ a telegram from Fuad Bey Hamza to Ryan dated 20 June 1934, an official documents reproduced in Schofield, (ed.), *Arabian Boundary Disputes* (London, 1992) vol. 18, pp. 54-5. Kelly, *Eastern Arabian Frontier, op., cit.*, pp. 124.

The boundary disputes between Saudi Arabia and its neighbours in the east continued to develop as a result of their competition for geographical survey and exploration in the area. For example, when Petroleum Concessions Ltd.⁵² resumed oil prospecting in the Trucial Shaikhdoms and Oman, and in particular, its surveying of the Buraimi region in 1947-8,⁵³ King Abdulaziz showed an interest in the region to the east of Jafurah after the lapse of more than a decade. Indeed, early in the following year, the Arabian-American Oil Company (ARAMCO) began its survey for the Saudi interest to the east of Qatar and in March another ARAMCO party travelled eastwards along the coast towards the town of Abu Dhabi, now the capital of UAE.⁵⁴ In April of the same year, a third ARAMCO party set up camp on the coast near Ghaghah Island. As a result, the British Political Officer in Trucial Oman, Sir P.O. Stobart, handed the leader of ARAMCO party a written protest asking them to withdraw, as their presence at a point North of Sufuq was considered as an intrusion.⁵⁵ ARAMCO replied by asserting that it had no right to intervene in the boundary dispute and any protest in this regard should be submitted to the Saudi Government.⁵⁶ ARAMCO withdrew their party from the disputed area because of the sensitive position, but asserted that this should not affect the Saudi rights in the area.⁵⁷ In response to Stobart's protest, the Saudi Government protested to the British Embassy in Jeddah, asserting that the ARAMCO party had camped within the Saudi territory, as was supported by the presence in the area of tribes

⁵² A Report of movements of a party from the south in Abu Dhabi, from the file of Petroleum Concession Ltd., dated 4 April 1949, an official documents reproduced in Schofield, (ed.), *Arabian Boundary Disputes* (London, 1992) vol. 18, pp. 556-8.

⁵³ The *Saudi Memorial* submitted to arbitration for the settlement of the Saudi boundaries with Abu Dhabi and Muscat in 1955, Archives of the Ministry of Foreign Affairs, Riyadh, 31. July 1955, vol. 1, pp. 396-7, from now on referred to as *Saudi Memorial*.

⁵⁴ *Ibid.*, p. 397.

⁵⁵ *Saudi Memorial, op., cit.*, vol. I, pp. 397-8.

⁵⁶ *Ibid.*, p. 398.

⁵⁷ *Ibid.*

owing allegiance to Saudi Arabia.⁵⁸ This claim was rejected by the British Government, which invited the Saudis to discuss territorial rights in the area.⁵⁹ The Saudi Government agreed to open the discussion, but stipulated that the starting point should be the conquest of Al-Hassa by King Abdulaziz in 1913.⁶⁰ Furthermore, they maintained that delimitation of the boundaries should be based on the evidence of the Bedouin tribes inhabiting the region and that the criteria for determination of sovereignty should be the effective levying of *zakah* and the existence of grazing rights.⁶¹ These Saudi stipulations were rejected by the British Government⁶² and many letters and views were exchanged between the two Governments before it was finally agreed to submit the Buraimi case to Arbitration, which will be discussed in chapter two of this part.

From the above, it can clearly be seen that the attitudes and stances of both King Abdulaziz and the British changed following the discovery of oil in Eastern Arabia. Both of them were more interested in the region than ever. Before the discovery of oil, there had been few problems in drawing the boundary line, even though the parties stood to lose some territory in the desert as a result. Now, however, the situation was completely different. Every effort was made to gain as much territory as possible, as it contained oil, which would change the life of the inhabitants of the region.

⁵⁸ A Note from the Saudi Arabian Ministry for Foreign Affairs to British Embassy at Jeddah dated 26 April 1949, an official document reproduced in Schofield, (ed.), *Arabian Boundary Disputes* (London, 1992) vol. 18, pp. 560-63.

⁵⁹ A Note from the British Embassy at Jeddah to the Saudi Arabian Ministry for Foreign Affairs dated 11 May 1949, an official document reproduced in Schofield, (ed.), *Arabian Boundary Disputes* (London, 1992) vol. 18, pp. 570-2.

⁶⁰ Wilkinson, *Arabia's Frontiers, op., cit.*, p. 143.

⁶¹ *Ibid.*

⁶² British Foreign Office Document: E 8082/1052/25, Aide-memoir to H.M. King Abdul Aziz ibn Sa'ud, 17 June 1949, also reproduced in Schofield, (ed.), *Arabian Boundary Disputes, op., cit.*, vol. 18, pp. 584-5, in *Saudi Memorial, op., cit.*, vol. I, pp..

Chapter II

The Settlement of the Eastern Saudi Boundaries

The eastern Saudi land boundary disputes with the British mandates of Qatar, UAE and Oman, unlike those of the British mandates in the north, were not settled during the mandate period, although several attempts at settlement were made. These disputes depended, in addition to the allegiance of tribes, on the oil factor, since oil was discovered in the area in the 1930s. Therefore, several attempts were made to define the boundaries between Saudi Arabia and its neighbours to the east. For example, during the Uqair Conference, Cox arbitrarily drew a line to separate Qatar from Al-Hassa in order to protect the British potential oil interests in the area.⁶³ The Cox Line began at the head of Salwa Gulf, leaving the Saudi *Anbak Hijra* (settlement) for the Saudis and ended to the north of Khaur al-Udaid, which he considered as belonging to Abu Dhabi. In addition to the Cox line, the Iraq Petroleum Company (IPC), which was a British company, produced a map in 1933, before it was granted the oil concession in the Qatar area, in which a boundary line was drawn to include all the Peninsula of Qatar within the territorial sovereignty of the Shaikh of Qatar.⁶⁴ This proposed line started at the coast to the south of Jabal Nakhsh, 10 miles away from city of Salwa, 12 miles to the north of the Gulf of Dauhat Salwa, and ran southwards and southeastwards until it reached a point 8 miles to the north of Khaur al-Udaid.⁶⁵ Although the Company was interested in including as much territory as possible for its own interests, its proposed boundary line did not go as far westward as the Blue Line did. Indeed, the two aforementioned proposed lines were different from the Blue Line with regard to the

⁶³ *Saudi Memorial, op., cit.*, vol. 1, p. 380, Al-Mansur, *The Political Development of Qatar: 1916-1949*, (Qatar, 1979) p. 77 (in Arabic).

⁶⁴ *Ibid.*, pp. 49-95 and pp. 443-509.

⁶⁵ Al-Mansur, *The Political Development of Qatar: 1916-1949, op., cit.*, pp. 81-2.

boundary of Qatar, as they left the territory between the Blue Line and the base of the Peninsula of Qatar out of the Qatar territory. This, however, supports both the argument that Saudi Arabia exercised effective control beyond the Blue Line up to the base of the Peninsula of Qatar, and the argument that the sovereignty of the Sheikh of Qatar never extended beyond the base of Peninsula of Qatar. The Sheikh of Qatar, himself, had already made an undertaking to the Saudi government while visiting Riyadh in 1933,⁶⁶ not to grant any oil concession in the area without Saudi consent, an undertaking which was later denied by both the British and the Qataris.⁶⁷ This undertaking, however, indicates that the Sheikh of Qatar recognised the Saudi sovereignty over the disputed area between the Blue Line and the base of the Peninsula of Qatar, otherwise he would not have made such an undertaking. The denial of the undertaking by the British and the Qataris resulted from the importance of the disputed area following the discovery of oil. The same thing happened regarding the Blue Line, when Britain did not initially recognise it as the boundary line between Saudi Arabia and its colonies to the east and then, following the discovery of oil, argued that it was the boundary line between them.

1. The 1934-7 Saudi-British Boundary Negotiations

While the Saudi government continued to deny that the Blue Line was its boundary with the British colonies to the east, whose emirs never claimed more than a small strip of the coastline, Britain was concerned about protecting its interests in the area after the discovery of oil,⁶⁸ and was more interested than ever in discussing the boundary question with the intention to make concessions to the Blue Line.⁶⁹ As a result,

⁶⁶ *Umm al Qura*, No. 457 dated 15 September 1933. For further details regarding the oil problem and dispute see Al-Mansur, *op. cit.*, chapter V.

⁶⁷ For further details regarding the oil problem and dispute see Al-Mansur, *The Political Development of Qatar: 1916-1949, op. cit.*, chapter V.

⁶⁸ Leatherdale, *op. cit.*, p. 231.

⁶⁹ *Ibid.*, p. 132.

negotiations between Saudi Arabia and Britain for the settlement of the Saudi boundaries with the British Protectorates to the east started when the British invited Fuad Bey Hamza, the Deputy Saudi Foreign Minister, to London in September 1934.⁷⁰

A series of preliminary meetings was held at the Foreign Office to enable each side to state its position more fully. Fuad Bey Hamza indicated that Abdulaziz intended to argue that the territories of tribes long under his rule should be included in his dominions. He made particular mention, in this connexion, of the Murrah and Manasir tribes. He was told in reply that while the Murrah might be regarded as subjects of Abdulaziz, the Manasir were mostly dependent upon the Shaikh of Abu Dhabi.⁷¹ As nothing more was heard of Abdulaziz's intentions in the months following these exchanges, the Saudi Government were asked at the beginning of 1935 for a definite statement of his claims.⁷² On 3 April 1935, Fuad Bey Hamza handed the British Minister at Jeddah a memorandum setting forth a proposed boundary of Saudi Arabia with Qatar, the Trucial Shaikhdoms, the Sultanate of Muscat and Oman, and the eastern Aden Protectorates⁷³ (see Hamza Line in map 10).

The proposed boundary with Qatar started on the west coast of the peninsula, about 15 miles from the head of the Dauhat Salwa, ran eastwards for about five miles, then turned south-eastwards to strike the east coast about seven miles north of Khaur al-Udaid. The line placed both Jabal Nakhsh, at the western foot of the peninsula, and

⁷⁰ Schofield, (ed.), *Arabian Boundary Disputes*, (London, 1992) vol. 18, p. 307.

⁷¹ British Foreign Office Document: British Foreign Office Document E 5908/2429/25, Record of Second Meeting, 20 September 1934, and E 5997/2429/25, Record of Fifth Meeting, 24 September 1934, also reproduced in Schofield, (ed.), *Arabian Boundary Disputes* (London, 1992) vol. 18, pp. 307-12, in *Saudi Memorial*, vol. I, pp. 382-3.

⁷² Record of discussion with Fuad Bey Hamza on 20-21 January 1935, official documents reproduced in Schofield, (ed.), *Arabian Boundary Disputes* (London, 1992) vol. 18, pp. 381-3.

⁷³ British Foreign Office Document: E 2700/77/91, Memorandum by Fuad Bey Hamza to Sir A. Ryan, 3 April 1935, also reproduced in Schofield, (ed.), *Arabian Boundary Disputes* (London, 1992) vol. 18, p. 69.

Khaur al-Udaid, at its eastern foot, in Saudi territory. The proposed boundary with the Trucial Sheikhdoms began at a point about 16 miles south of Khaur al-Udaid, ran southwards for about 10 miles, then east-south-east in a curve until it met longitude 56 Degrees East at its junction with latitude 22 degrees North. The proposed boundary with Oman ran down longitude 56 degrees East to its junction with latitude 19 degrees North, then turned south-westwards until it reached longitude 52 degrees East at its junction with latitude 17 degrees North.⁷⁴

The Saudi proposed boundary, which came to be known as the “Hamza Line” or the “Red Line”⁷⁵, which was based on the tribes and their loyalty, was reasonable, as it was in conformity with the Saudi sovereignty in the area. There were two Saudi *hijras* (settlements), Sikak and Anbak, to the east of the Blue Line and to the west of the “Hamza Line”. Support for this is found in a statement submitted later by the British traveller, Wilfred Thesiger, to the British Government in which he stated that the “Hamza Line” represented the true boundary between Saudi Arabia and the Trucial States and that in an arbitration which took account of all factors, this should not be difficult to confirm.⁷⁶ Although the British did not accept the “Hamza Line”,⁷⁷ they were willing to make a concession to the Blue Line. Their legal position for claiming the Blue Line was, after all, weak because it was contrary to the effective exercise of the State authority and sovereignty beyond the Blue Line.⁷⁸ Therefore, a settlement seemed possible in the form of a boundary somewhere between the 1913 Blue Line and the

⁷⁴ *Ibid.*

⁷⁵ In order not to confuse this Saudi Red Line with other Red Lines, namely, that defined by the 1913 Anglo-Ottoman Convention regarding the Saudi boundary with Kuwait and that proposed by IPC regarding the Saudi-Qatar boundary, this Line will be referred to as the “Hamza Line” from now on.

⁷⁶ In Schofield, (ed.), *Arabian Boundary Disputes, op., cit.*, vol. 18, p. 71, in *Saudi Memorial*, vol. I, pp. 713-6.

⁷⁷ British Foreign Office Document: E 3783/77/91, Aide-memoir from Sir A. Ryan to Saudi Government, 9 April 1935, also reproduced in Schofield, (ed.), *Arabian Boundary Disputes, op., cit.*, vol. 18, p. 71.

⁷⁸ See Leatherdale, *op., cit.*, pp. 229-31, Wilkinson, *Arabia's Frontiers, op., cit.*, p. 195.

1935 “Hamza Line”. Indeed, the Foreign Office tactic was to offer three alternative plans for conducting their negotiations with Saudi Arabia, which made gradual concessions.⁷⁹ On 9 April 1935, the British Minister at Jeddah, Sir Andrew Ryan, handed the Saudi Government an aide-memoir proposing a boundary, the “Green Line” which was the first British offer and made a slight amendment to the Blue Line.⁸⁰ When the Saudi delegates rejected this⁸¹, Britain proposed a “Brown Line”, as their second line, which also did not meet the Saudi claim, as it retained as part of Qatar both Jabal Nakhsh and Khaur al-Udaid, claimed by the Saudis.⁸² Therefore, Rendel, the leader of the British delegation, suggested, as the third alternative, a neutral zone, that would be created to include most of the Empty Quarter as a buffer zone or desert zone to separate Saudi sovereignty from that of Britain in the east and southeast of the Arabian Peninsula.⁸³ According to this suggestion, the Saudis would exercise jurisdiction in the neutral zone over the inhabitants, but not over the territory, and Abdulaziz’s tribes would be free to roam up to the boundary as his subjects. Should they cross it, however, then they would be treated as foreigners and subject to the authority of the local administration.⁸⁴ This kind of neutral zone seems to have been a hybrid solution between the European and tribal concepts of territorialism. However, Rendel’s suggestion was not formally submitted to the Saudi government, because

⁷⁹ A telegram from Sir A Ryan to Mr Stanley Baldwin dated 10 April 1935, an official documents reproduced in Schofield, (ed.), *Arabian Boundary Disputes, op., cit.*, vol. 18, p. 72.

⁸⁰ British Foreign Office Document: E 3783/77/91, Aide-memoir from Sir A. Ryan to Saudi Government, 9 April 1935, also reproduced in Schofield, (ed.), *Arabian Boundary Disputes, op., cit.*, vol. 18, p. 71, in *Saudi Memorial*, vol. I, pp. 385-6.

⁸¹ *Saudi Memorial*, vol. I, p. 386.

⁸² Records of several meetings with Fuad Bey Hamza held at the Foreign Office between 24 June and 18 July 1935, official documents reproduced in Schofield, (ed.), *Arabian Boundary Disputes, op., cit.*, vol. 18, pp. 445-50.

⁸³ A note from Mr Rendel, Foreign Office to Laithwaite, Indian Office dated 23 October 1934, an official documents reproduced in Schofield, (ed.), *Arabian Boundary Disputes, op., cit.*, vol. 18, pp. 324-6, also a note from Mr Rendel, Foreign Office to Laithwaite, Indian Office dated 7 November 1934, an official documents reproduced in Schofield, (ed.), *Arabian Boundary Disputes, op., cit.*, vol. 19, pp. 779-85.

⁸⁴ *Ibid.*

Britain feared that in practical terms the neutral zone would gradually come under Saudi sovereignty, as the Saudis considered the Empty Quarter to belong to them.⁸⁵ In addition, ARAMCO, which considered that its oil concessions included all the areas that Saudi Arabia had claimed so far, informed the British that they were not prepared to make any commitments regarding the neutral zone.⁸⁶

On the basis of the above Lines, negotiations were opened in London in June 1935. The Green Line was rejected by the Saudi government which could not retreat from the boundary defined by the "Hamza Line", based on the allegiance of tribes beyond the Green Line.⁸⁷ Indeed, when the Saudis were asked to define the tribes considered to be directly subject to Abdulaziz,⁸⁸ Fuad Bey Hamza produced a list of 161 wells running northwards from the Empty Quarter towards the Gulf coast, some of which had been excluded from Saudi territory by the Green Line.⁸⁹ Therefore, the Saudis, again, wanted a boundary line based on tribal allegiance, while the British opposed that on the ground that most of the areas concerned were deserts, over which several tribes with uncertain or shifting allegiances wandered.⁹⁰

As a result of this disagreement between the two parties, the London negotiations terminated in July 1935 on an understanding by the British delegation that

⁸⁵ Wilkinson, *Arabia's Frontiers*, *op. cit.*, pp. 189-90 and pp. 269-70.

⁸⁶ *Ibid.*, p. 269.

⁸⁷ British Foreign Office Document: E 4111/77/91, a memorandum by Fuad Bey Hamza to G. W. Rendel dated 2 April 1935, a summary of this memorandum is found in a telegram from Sir A Ryan to John Simon dated 6 April 1935 also reproduced in Schofield, (ed.), *Arabian Boundary Disputes*, *op. cit.*, vol. 18, p. 69.

⁸⁸ A telegram from Rendel to Fuad Bey Hamza dated 27 June 1935, an official documents reproduced in Schofield, (ed.), *Arabian Boundary Disputes*, *op. cit.*, vol. 18, p. 461.

⁸⁹ British Foreign Office: E 4314/77/91, Statement by Fuad Bey Hamza, 8 July 1935, reproduced in Schofield, (ed.), *Arabian Boundary Disputes*, *op. cit.*, vol. 18, pp. 459-63.

⁹⁰ British Foreign Office Document: E 3944/77/91, Record of First Meeting, with Fuad Bey Hamza 24 June 1935, reproduced in Schofield, (ed.), *Arabian Boundary Disputes*, *op. cit.*, vol. 18, pp. 445-7. For further details about the advantages and disadvantages of adopting tribal boundary or western-style fixed boundary see *ibid.*, pp. 313-50.

they would make a further study of the tribal situation in the areas east of the Blue Line to which Saudi Arabia laid claim.⁹¹ Based on the British investigations, it was decided, without withdrawing the basic objection to defining boundaries on the grounds of tribal lands and loyalties alone, to make some accommodation to Saudi Arabia's claims, especially in the Empty Quarter.⁹² As a result, on 25 November, 1935 Sir Andrew Ryan handed Fuad Bey Hamza at Riyadh a memorandum proposing, as the British final offer, a boundary known as the "Riyadh Line", which was radically more favourable to Saudi Arabia than the Green Line had been⁹³ (see map 10).

The "Riyadh Line" began at the head of the Dauhat al-Salwah and ran south-eastwards for 10 miles, skirting the southern tip of the Sabkhat Matti, and eastwards along the northern edge of the Empty Quarter to the junction of longitude 55 degrees East with latitude 22 degrees 30 minutes North. With respect to the Oman boundary, it ran from there south down longitude 52 degrees East to its junction with latitude 20 degrees North then turned approximately southwestwards to run in a straight line to the junction of longitude 52 degrees East with latitude 19 degrees North, then from this point to intersect at 18 degrees North with the "Violet Line".⁹⁴

The "Riyadh Line" differed from the "Hamza Line" in that it assigned more of the lower half of Qatar to that Sheikdom, retained Khaur al-Udaid in Abu Dhabi territory, and reduced the Saudi's claims upon Oman and the eastern Aden Protectorate. It conceded to Saudi Arabia the Bunaiyan Well, which was used predominantly by the

⁹¹ A telegram from Fuad Bey Hamza to Rendel dated 2 July 1935, an official documents reproduced in Schofield, (ed.), *Arabian Boundary Disputes, op., cit.*, vol. 18, pp. 75-6.

⁹² Kelly, *Eastern Arabian Frontiers, op., cit.*, p. 127.

⁹³ Note handed to Fuad Hamza at Riyadh on 25 November 1934 by Sir A Ryan, an official documents reproduced in Schofield, (ed.), *Arabian Boundary Disputes, op., cit.*, vol. 18, p. 89.

⁹⁴ *Ibid.*, *Saudi Memorial*, vol. 1, chapter V, pp. 389-90. The *Memorial* states incorrectly that the line passed through the junction of longitude 53 degrees East with latitude 19 degrees North.

Murrah, but retained for Abu Dhabi the Sufuq Well, which lay on the route from Abu Dhabi to Qatar and was much closer to the coast than had previously been supposed. With respect to Oman, this line left Shisor and Migshin as well as a great part of the eastern edge of the Empty Quarter within the Omani territory. Ryan told Ibn Saud that the Riyadh Line represented the furthest possible concession that his government could make.⁹⁵ Ibn Saud rejected it within 24 hours, however, maintaining his claim to Jabal Nakhsh and Khaur al-Udaid on the area around the base of the Qatar Peninsula. This was based on the actual exercise of the Saudi sovereignty in these areas,⁹⁶ while Britain's claim was based on the interests of IPC, which had already been granted oil concessions in Jabal Nakhsh.⁹⁷

Ryan protested that Khaur al-Udaid formed an integral part of Abu Dhabi,⁹⁸ and the disagreement over Jabal Nakash and Khaur al Udaid caused a deadlock of the negotiations.⁹⁹ In December 1937, however, the "Riyadh Line" was amended by the British in favour of Saudi Arabia as a result of the discovery of the correct location of the Sufuq Well.¹⁰⁰ The modification left the Sufuq Well in the Saudi territory, instead of being within Abu Dhabi territory, as it was according to the "Riyadh Line".

By 1937, World War II and the realisation of the magnitude of the problem in Palestine lent a new perspective to Anglo-Saudi relations.¹⁰¹ The British realised that Abdulaziz's friendship during that time was much more important to them than a few

⁹⁵ A report made by Sir A Ryan about his visit to Riyadh and his negotiations with Ibn Saud dated 7 December 1935, an official documents reproduced in Schofield, (ed.), *Arabian Boundary Disputes, op., cit.*, vol. 18, pp. 89-96.

⁹⁶ *Ibid.*

⁹⁷ *Saudi Memorial*, vol. I, pp. 387-8, Wilkinson, *Arabia's Frontiers, op., cit.*, p. 230.

⁹⁸ *Ibid.*

⁹⁹ Schofield, (ed.), *Arabian Boundary Disputes, op., cit.*, vol. 18, pp. 493-502.

¹⁰⁰ A letter from Sir Reader Bullard to Saudi Government dated 4 December 1937, an official documents reproduced in Schofield, (ed.), *Arabian Boundary Disputes, op., cit.*, vol. 18, p. 505 & vol. 19, pp. 817-9, in *Saudi Memorial*, vol. 1, chapter V, p. 393.

¹⁰¹ Leatherdale, *op., cit.*, p. 241.

hundred miles of desert, or even oil bearing area, and the outstanding difficulty with the boundary was largely concentrated on the Base of Qatar Peninsula.¹⁰² Therefore, Rendel visited Saudi Arabia to discuss the question of Jabal Nakhsh and Khaur al-Udaid and he and Bullard, the British Ambassador to Saudi Arabia, had several meetings with Abdulaziz and the Saudi Foreign Minister, Shaikh Yusuf Yasin, in Jeddah. Rendel pointed out that Khaur al-Udaid had been recognized as Abu Dhabi territory as far back as the 1870s. Saudi Arabia's claim to it for constructing a harbour was practically useless, as being ill-suited for this purpose and too shallow. Possession of its foreshore, on the other hand, was essential to Abu Dhabi as affording a land link with the adjoining Sheikdom of Qatar. Shaikh Yusuf Yasin promptly declared that Sufuq Well belonged to the Murrah. Rendel protested that this kind of progressive claim for the tribes of the Murrah could not be accepted.¹⁰³

During the negotiations, Rendel stated that his government wanted to leave aside historical arguments and seek a practical way of settling the boundary dispute. Shaikh Yusuf Yasin agreed and pointed out that if Abdulaziz was to claim all his historical rights he would claim what his ancestors had, which was beyond what they were negotiating.¹⁰⁴ It was reported, on the other hand, that the Californian Arabian Standard Oil Company (CASOC), which held the Saudi concession, was exploring in the disputed area east to the "Riyadh Line" but west to the "Hamza Line".¹⁰⁵ Therefore, the British drew the attention of the emir Faisal (later king), now Saudi Foreign Minister, to these reports and to prevent any misunderstanding, reminded the emir of the course of

¹⁰² *Ibid.*

¹⁰³ British Foreign Office Document: E 2124/258/91, Record of Discussion between Rendel and Yusuf Yasin, 19 March 1937, an official documents reproduced in Schofield, (ed.), *Arabian Boundary Disputes*, *op. cit.*, vol. 18, p. 505 & vol. 18, pp. 499-502. In *Saudi Memorial*, vol. I, pp. 392-3.

¹⁰⁴ *Saudi Memorial*, vol. I, pp. 392-3.

¹⁰⁵ *Saudi Memorial*, vol. I, p. 394.

the “Riyadh Line”.¹⁰⁶ They also expressed their willingness to re-open negotiations on the boundary on the basis of that line.¹⁰⁷ The Saudi government refused to accept the Riyadh Line as the basis of the suggestions.¹⁰⁸ The discovery of oil in large quantities in Al-Hassa in Saudi Arabia, Arab attitudes against the intervention of Britain in the Gulf and southern Arabia and the outbreak of the Second World War then put an end to the negotiations and postponed them for a decade.¹⁰⁹

Whilst neither side approached each other to find a way out of the impasse reached at the end of 1935, some progress was made in the British camp about the matter that had been left open, that is, the territory of the Sultan of Muscat and Oman. Sir Andrew Ryan had indicated that this part of the boundary offer might be improved, gradually extending it to somewhere east of meridian 55, as in the British “Riyadh Line”, but not as far as 56, as in the Saudi “Hamza Line”.¹¹⁰ Fuad Bey replied that the Sultan would agree to any boundary proposed by the British because of his own problems with “two personages” in the interior.¹¹¹ The Sultan, for his part, did not think that boundaries drawn with reference to latitude and longitude would necessarily define his boundary, which could not be established without careful enquiry. He was, therefore, not willing at that time to define an accurate line but had “no objection” to the line the British proposed. Major Watts put this reply down to laziness and believed that, were the Sultan at hand, he could be persuaded to commit himself to something more precise. The Foreign Office was beginning to learn that the Sultan’s policy for

¹⁰⁶British Foreign Office Document: 7572/258/91, Bullard to Faisal, 4 December 1937, also found in *Ibid.*, pp. 503-5, in *Saudi Memorial*, vol. I, p. 394.

¹⁰⁷ *Ibid.*

¹⁰⁸British Foreign Office Document: E 439/150191, Faisal to Bullard, 19 December 1937, in *Saudi Memorial*, vol. I, pp. 394.

¹⁰⁹ Leatherdale, *op. cit.*, p. 247.

¹¹⁰ Schofield, (ed.), *Arabian Boundary Disputes* (London, 1992) vol. 19, pp. 683-90.

¹¹¹ For Further details see, Wilkinson, *Arabia’s Frontiers*, *op. cit.*, pp. 48-51.

maintaining his interests was to commit himself to nothing. He never deviated from this reply and eventually the line beyond which he offered “no claims” became his official boundary.¹¹²

2. The 1949-54 Saudi-British Boundary Negotiations

After the Second World War Britain was not as strong as it was before the War and, as a result, its influence in the area shrank in the favour of the US, which became its rival in the area in order to protect its oil interests.¹¹³ Furthermore, the US diplomatically supported Saudi Arabia in its boundary dispute with Britain and tried to act as a mediator for the settlement of this dispute.¹¹⁴ Consequently, the British Government invited the Saudis to discuss territorial rights in the area.¹¹⁵ The Saudi Government agreed to open the negotiations but they stipulated that the starting point should be the conquest of Al-Hassa by King Abdulaziz in 1913. Furthermore, they maintained that delimitation of the boundaries should be based on the evidence of the Bedouin tribes inhabiting the region and that the criteria for determination of sovereignty should be the effective levying of *zakah* and the existence of grazing rights.¹¹⁶ The British informed the Saudi Government that they did not regard the stipulations laid down by that government as constituting, of themselves, a satisfactory basis for the delimitation of boundaries.¹¹⁷ Both parties were more concerned about the disputed area than ever. The discovery and exploitation of oil and increased governmental administration made the

¹¹² Wilkinson, *Arabia's Frontiers, op., cit.*, pp. 206-208, Schofield, (ed.), *Arabian Boundary Disputes, op., cit.*, vol. 19, pp. 683-96.

¹¹³ Al-Na'iem, *The Saudi Political Boundaries, op., cit.*, p. 76.

¹¹⁴ Wilkinson, *Arabia's Frontiers, op., cit.*, p. 291.

¹¹⁵ *Saudi Memorial*, vol. I, p. 407.

¹¹⁶ Wilkinson, *Arabia's Frontiers, op., cit.*, p. 143.

¹¹⁷ Foreign Office Document: E 8082/1052/25, Aide-memoir to H.M. King Abdul Aziz ibn Sa'ud, 17 June 1949, an official documents reproduced in Schofield, (ed.), *Arabian Boundary Disputes, op., cit.*, vol. 18, pp. 584-5.

demarcation of the boundary desirable. Indeed, the boundary would serve to mark the limits of concession granted by either party and the limits of their governmental suzerainty; should not have any other effect on the inhabitants of Arabia.¹¹⁸

Negotiations started at Riyadh in 1949, where the Saudi Government put forward its proposed boundary with both Qatar and Abu Dhabi (now UAE).¹¹⁹ The Saudi Government stated that, after detailed study of the tribal areas and of the facts, the Saudi Arabian Government considered that the boundaries between Saudi Arabia and Qatar were as follows:

(a) The frontier between Qatar and the Saudi Arabian Kingdom starts from a point at the coast of Dohat Salwa at 24 degrees and 56 minutes North (point A).

(b) From point (A) the line runs due east until it intersects longitude 51 degrees 00 minutes East (point B).

(c) The frontier runs in a straight line from point B until it reaches the sea coast at latitude 24 degrees 48 minutes North (point C), leaving Amirah to the Saudi Arabian Kingdom.¹²⁰

The Saudi Arabian Government considered that the frontier line between Saudi Arabia and Abu Dhabi started from a point on the Persian Gulf between Bandar Al

¹¹⁸ *Ibid.*

¹¹⁹ Foreign Office document: E 13024/1081/25, Statement by the Saudi Government dated 14 October 1949, an official documents reproduced in Schofield, (ed.), *Arabian Boundary Disputes, op., cit.*, vol. 18, p. 107, in *Saudi Memorial*, vol. 1 pp. 399-400. There seems to have been some confusion about the direction that the boundary with Abu Dhabi should take after leaving point 'A' on the coast east of Mirfa. In their Statement to the British Government of 14 October 1949, the Saudi Government stated that the line should run *south-west*; yet in the version of the same Statement reproduced in the *Saudi Memorial*, pp. 399-400 the line is made to run *south-east*. This latter could be merely an error, but it could also represent a modification of the claim between 1949 when the Riyadh Line was suggested and 1955 when the *Saudi Memorial* was prepared in Saudi Arabia's favour. See Kelly, *Eastern Arabian Frontiers, op., cit.*, p. 145, footnote 1.

¹²⁰ *Ibid.*

Mirfa and Bandar Al Maghira, two kilometres east of Bandar al Mirfa (point A). From this point the boundary ran in a straight line to the South West until it reached latitude 23 degrees 56 minutes North (point B). From there it ran due east until it intersected longitude 54 degrees 00 minutes East (point C) and from that intersection it ran in a straight line as far as latitude 24 degrees and 24 minutes North and longitude 55 degrees 36 minutes East (point D).¹²¹

The Saudi Arabian Government considered that these boundaries corresponded with reality, having regard to their authority and the authority of Abu Dhabi and relying on the fact that the lands thereby allocated to Saudi Arabia were inhabited by tribes owing allegiance to the Saudi Arabian Kingdom: the Bani Hajir, the Manasir, the Awamir, the Al Murrah, the Dawasir and other tribes. As regards what lay to the south and east of the position 24 degrees 25 minutes North and longitude 55 degrees and 36 minutes East, this was under the authority of Sheikhdoms which were not in treaty relations with the British Government. Therefore, the boundary between Saudi Arabia and these Sheikhdoms would be agreed between the Saudi Arabian Government and the Sheikhdoms in question.¹²²

This boundary was completely different from the first Saudi boundary of 1935 or the "Hamza Line", in that this boundary claimed more territory, namely, the Dhafrah desert, and the Buraimi Oasis.¹²³ The reason for claiming more territory was that the Saudis argued that their proposed boundary before the War was based on their minimum requirement,¹²⁴ because they were willing to conclude a compromise

¹²¹ *Ibid.*

¹²² *Saudi Memorial*, vol. I, p. 401.

¹²³ *Ibid.*, p. 399 & p. 402.

¹²⁴ *Ibid.*

agreement, despite their historical rights.¹²⁵ As no agreement was reached before the War, the Saudis considered themselves free from all previously proposed boundaries, which they considered to be void,¹²⁶ and were encouraged by the changes in the balance of world powers to come with a different boundary proposal, which constituted their maximum requirement.¹²⁷ Another reason was that Britain's admission that the area was *terra nullius* invited the Saudis to claim the whole territory, and to reinforce their own claim to "effective occupation".¹²⁸ As far as international law is concerned, this new proposed boundary was valid because it was based on effective occupation and the exercise of state authority over the claimed territory.¹²⁹

The British, nevertheless, rejected the new Saudi boundary on the ground that Saudi Arabia claimed territory which it had acknowledged in 1935 to belong to its neighbours. The British, therefore, went back to what they considered to be their legal rights under the 1913 Anglo-Ottoman Convention.¹³⁰ The Saudis, for their part, rejected the British argument of the Blue Line as a basis for negotiations and declared that their new claim was based on the rights of lawful possession reinforced by the continued exercise of sovereignty and influence.¹³¹ What is interesting here is that the new Saudi claim and the British counterclaim to go back to the Blue Line made all the territories east of this Line within the disputed area, including the territories which were claimed by both parties. Indeed, the reference to the Blue Line, as the basis of the negotiations,

¹²⁵ Wilkinson, *Arabia's Frontiers, op., cit.*, p. 194 and p. 296.

¹²⁶ *Saudi Memorial*, vol. I, p. 400.

¹²⁷ *Ibid.*

¹²⁸ Wilkinson, *Arabia's Frontiers, op., cit.*, p. 289.

¹²⁹ See *Island of Palmas Case, op. cit.* at p.876, *Clipperton Island Case*, (1932) 62 *AJIL* 390, *Eastern Greenland Case, PICJ Reports* (1933) series A/B, No 53, p. 151.

¹³⁰ British Foreign Office Document: E 14598/1081/25, Note from the British Embassy at Jeddah to Saudi Government dated 30 November 1949, reproduced in Schofield, (ed.), *Arabian Boundary Disputes, op., cit.*, vol. 18, pp. 108-9, in *Saudi Memorial*, vol. I, pp. 401-2.

¹³¹ British Foreign Office Document: 15073/1081/25, Note from Saudi Government dated 10 December 1949, reproduced in Schofield, (ed.), *Arabian Boundary Disputes, op., cit.*, vol. 18, pp. 110-11, in *Saudi Memorial*, vol. I, pp. 402-3.

meant that the dispute had effectively returned to square one, despite years of negotiations.

2.1. The Fact-Finding Commission

Saudi Arabia did not want any area that was not inhabited by its own people to be under its control.¹³² Therefore, it suggested a joint fact-finding Commission to determine accurately the loyalties of the tribes inhabiting the areas in dispute.¹³³ The British Government agreed that a joint technical commission might be set up for this purpose, but certain conditions must be observed, among them, that during the Commission's investigations both parties would abstain from any pressure on persons who may be called to give evidence before the Commission and that the Saudi Government should furnish detailed evidence in support of the claims east of the Blue and Violet lines of the 1913-14 Anglo-Turkish Conventions.¹³⁴ If the commission proved ineffective, then the boundary dispute might be submitted to international arbitration.¹³⁵

Britain could not refuse the Saudi suggestion of the fact-finding Commission, as it was reasonable, but invoked the Blue Line and put forward the conditions already mentioned.¹³⁶ With regard to the international arbitration, the British wanted a three-party mediation rather than to go to the International Court in the Hague, and they were convinced that the Saudis, also, did not want the matter to be referred to outsiders.¹³⁷ The Saudi Government accepted the conditions concerning the proposed joint boundary

¹³² *Saudi Memorial*, vol. I, p. 399 & pp. 402-3.

¹³³ *Ibid.*, p. 403.

¹³⁴ British Foreign Office Document: ES 1081/59, Aide-memoir to Saudi Government, 25 July 1950, reproduced in Schofield, (ed.), *Arabian Boundary Disputes, op., cit.*, vol. 18, pp. 618-9, in *Saudi Memorial*, vol. I, pp. 404-5.

¹³⁵ *Ibid.*

¹³⁶ Wilkinson, *Arabia's Frontiers, op., cit.*, p. 291.

¹³⁷ *Ibid.*, pp. 291-2.

commission and agreed that there should be no pressure or irregular influence exerted by either party upon the work of the commission, and that the *status quo ante* October 1949 should be respected.¹³⁸ On the other hand, they refused to accept the argument regarding the legal position established by the 1913 Convention and continued to assert that Buraimi did not lie within Abu Dhabi territory, nor the adjacent areas in Muscat territory, and that, consequently, the British Government had no legal standing in these areas. They were, however, willing for the boundary commission to examine the situation in Buraimi and its vicinity. The Saudis refused to supply detailed proof in support of their right to territory east of the Blue Line because they believed that proofs should be demanded only of one who claims ownership of what is not in his possession.¹³⁹ As a result, the British explained on 10 January 1951 that they had not intended that Saudi Arabia should be required to supply detailed evidence in support of its claims before the commission convened, but only that it should furnish such evidence during the commission's investigations.¹⁴⁰

2.2. The Dammam Conference of 1952

The British attitude towards the question of Saudi boundaries with the British colonies to the east changed when the Iranian Government nationalised Iranian oil.¹⁴¹ The British Government and the other western oil companies favoured settling the boundary disputes on the Arab side of the Gulf, in order to protect their oil interests and to make

¹³⁸ British Foreign Office Document: ES 1081/74, Memorandum from Saudi Government to the British Ambassador at Jeddah dated 22 September 1950, reproduced in Schofield, (ed.), *Arabian Boundary Disputes, op., cit.*, vol. 18, pp. 637-8, in *Saudi Memorial*, Vol. I, pp. 405-6.

¹³⁹ *Ibid.*

¹⁴⁰ Aide-memoir from the British Government dated 10 January 1951, an official document reproduced in Schofield, (ed.), *Arabian Boundary Disputes, op., cit.*, vol. 18, pp. 639-40, in *Saudi Memorial*, vol. 1, p. 407.

¹⁴¹ Al-Na'iem, *The Saudi Political Boundaries, op., cit.*, p. 77.

up for the shortage in oil from the Gulf territory.¹⁴² Therefore, the British Government invited Emir Faisal, the Saudi Foreign Minister, to London to discuss the outstanding differences between the two countries.¹⁴³ Faisal suggested that a round-table conference of the various parties might be held, to see whether a settlement could be reached. Here, Faisal insisted on the Rulers of the British colonies, not their deputies, because he wanted to discuss the matters with those who were directly involved.¹⁴⁴ The British agreed, and arrangements were then made for the curtailment of activities by the parties to the dispute in the areas concerned in the interval before the conference convened. Now, the fact-finding commission was replaced by the conference and the agreed résumé of the discussions, drawn up by Faisal at the end of the London meetings, stated that both parties agreed that, until the conclusion of the conference, the movements and activities of representatives of the oil companies on both sides and also movements and activities of the Trucial Oman Levies would be restricted to areas outside the disputed area.¹⁴⁵ The résumé further stated that the purpose of the conference would be to study what territory belonged to Ibn Sa'ud and to the other rulers concerned, in order to arrive at a just delineation of their boundaries.¹⁴⁶ The idea of a joint boundary commission had not been abandoned; provision was made for the setting-up of a commission to collect information on both the territories and the tribes involved.¹⁴⁷

The round-table conference was held in Dammam, on the Gulf coast of Saudi Arabia, between 28 January and 14 February 1952. The Saudi delegation was led by the Amir Faisal and included Sheikh Yusuf Yasin, deputy Foreign Minister, the Amir Sa'ud

¹⁴² Wilkinson, *Arabia's Frontiers*, *op. cit.*, p. 293.

¹⁴³ *Saudi Memorial*, p. 407.

¹⁴⁴ *Ibid.*, 409, Wilkinson, *Arabia's Frontiers*, *op. cit.*, p. 294.

¹⁴⁵ British Foreign Office Document: ES 1053/18, Agreed final text of Amir Faisal's résumé, in *Saudi Memorial*, vol. I, pp. 410-11.

¹⁴⁶ *Saudi Memorial*, vol. I, pp. 410-11.

¹⁴⁷ *Ibid.*

ibn Jiluwi, Governor of Nasa, and Sheikh Hafiz Wahba, Saudi Ambassador in London. The British delegation was led by the Political Resident in the Gulf, Sir Rupert Hay, who was accompanied by the Ruler of Qatar, Sheikh Ali ibn Abdullah Al Thani, and the Ruler of Abu Dhabi, Sheikh Shakhbut ibn Sultan.¹⁴⁸ The Sultan of Muscat refused to send a representative and continued to hope that no dispute would arise.¹⁴⁹ These Gulf Rulers, on whose participation in the negotiations Faisal insisted, were there not to speak for themselves, however, but for Sir Rupert Hay to consult, as he made clear to Faisal.¹⁵⁰ This is not surprising because the said Gulf states were British protectorates and, accordingly, Britain was responsible for conducting foreign affairs on their behalf. Britain, therefore, had the right not to allow them to participate directly in these negotiations which were carried out to settle the boundary disputes between these Gulf Rulers and Saudi Arabia.

The boundaries of Saudi Arabia with Qatar and Abu Dhabi were discussed by the principal delegates in seven plenary sessions, and by their deputies in five informal sessions. At the second plenary session, on 29 January, after consultation with the Sheikh of Qatar, Sir Rupert Hay put forward as the boundary claimed by the Sheikh a line beginning at Ghar al-Buraid on the Dauhat al-Salwah, and running eastwards through three named points to Hazm Sauda Nathil, and thence through Aqlat Manasir to a point on the western shore of Khaur al-Udaid.¹⁵¹ Such a boundary would retain for Qatar the strip of territory, roughly twenty-five miles deep, across the base of the peninsula, which had been included in the 1949 Saudi claim. At the third plenary session Hay put forward as the boundary claimed by the Sheikh of Abu Dhabi a line

¹⁴⁸ *Ibid.*, p. 412.

¹⁴⁹ Wilkinson, *Arabia's Frontiers, op. cit.*, p. 295.

¹⁵⁰ *Ibid. Saudi Memorial*, vol. I, p. 414.

¹⁵¹ *Saudi Memorial*, p. 414.

beginning at Hazm Sauda Nathil and running on a straight course to the southernmost tip of the Sabkhat Matti. From there, the line ran approximately southeastwards to al-Qurain, then roughly east-north-east to Umm al Zamul.¹⁵² The southern boundary so formed, it was later explained, included within Abu Dhabi territory the district known as Kidan, to the south of Liwa, to which it was more closely allied, topographically, than to the heavy sands of the Empty Quarter. Further east, the great sand dunes of the Ramlat ibn Su'aidan formed a natural boundary as far as Umm al-Zamul.¹⁵³

In the following meetings the Saudis contented themselves with rebutting all the evidence for Abu Dhabi's claim. Faisal denied that the British Government's recognition of the Sheikh of Abu Dhabi's title to Khaur al-Udaid could serve to transfer sovereignty to him. This, however, had not been the point made by the British delegation. The first recognition of Abu Dhabi's authority over the *khaur* in the 1870s had come about as a result of its being used as a refuge for pirates. Later recognitions were accorded because no one else could prove title to the place, and because the Ottomans and the Sheikh of Qatar had endeavoured, at various times, to occupy it. Saudi Arabia did not put forward a formal claim to its sovereignty until 1935. If the earlier recognition had been made with the object of thwarting Saudi Arabia's later ambitions, then the Sheikh of Qatar was crediting the British Government with remarkable foresight.

The positive arguments put forward by the Saudi delegation in support of the 1949 claim were concerned largely with the Dhafrah and the western areas in general. Faisal stated on 2 February that the Dhafrah was the *dirah* (territory) of the Manasir and

¹⁵² *Ibid.*

¹⁵³ British Foreign Office Document: ES 1081/63, Record of Fourth Meeting at Dammam, 31 January 1952, in *Saudi Memorial*, vol. 1, pp. 414-5.

that any other tribes found there were interlopers.¹⁵⁴ The Bani Yas in the Dhafrah did not outnumber the Manasir, nor were they all Abu Dhabi subjects. The Mazari' section owed loyalty to Saudi Arabia.¹⁵⁵ The Manasir, he went on, were a Saudi tribe, and the British Government had admitted this in a letter from the British Minister at Jeddah on 20 April 1942, concerning the Anglo-Saudi agreement of that year on Kuwait.¹⁵⁶ It was pointed out to Faisal that the letter referred to tribes in the vicinity of Kuwait, and that it did not actually admit the Manasir in that area to be a Saudi tribe.¹⁵⁷ He laid considerable emphasis, however, upon the *zakat* collected by Saudi Arabia from the Manasir and others in these areas. The *zakat* collected by the Shaikh of Abu Dhabi on dates at Liwa, he said, was not the *zakat* prescribed by the *Shari'ah* but merely gifts from Bani Yas tribesmen. The real *zakat* was that collected by the Saudi Government in Dhafara. Shaikh Yusuf Yasin went even further and asserted that the Saudi Government took *zakat* on livestock only and no *zakat* was ever taken on growing crops.¹⁵⁸

During the Conference, the Saudi-Qatar boundary was not an issue because completely amity existed between the two countries and it was said no barrier would ever stand between them.¹⁵⁹ Indeed, although their boundary was not formally settled at the Conference, both parties came to the Conference after having come to a secret understanding about their prospective boundaries at just about the time when the Saudis and the British negotiations were reaching a final deadlock before the War.¹⁶⁰ This secret understanding indicates the willingness of the two parties to settle their boundary

¹⁵⁴ *Ibid.*

¹⁵⁵ *Ibid.*

¹⁵⁶ *Ibid.*

¹⁵⁷ *Ibid.*

¹⁵⁸ *Ibid.*

¹⁵⁹ On the second day of the Conference, in 29 January 1952 the Sheik of Qatar declared that he had always considered King Abdulaziz as his father, and therefore, any boundary settlement by his Majesty between Saudi Arabia and Qatar would be accepted, in *Saudi Memorial*, vol. I, p.413.

¹⁶⁰ Wilkinson, *Arabia's Frontiers*, *op. cit.*, p. 287 and p. 296.

dispute and that the difficulties over these boundaries were caused by the British presence.¹⁶¹

On the other hand, Saudi relations with Shakhbut went from bad to worse during the Conference, and the British realised that any further detail would simply make settlement even more remote.¹⁶² Therefore, it was decided that a series of informal meetings between the Foreign Office officials without the leaders of the delegations or the rulers might help clear the ground.¹⁶³ However, in the informal negotiations the Saudi delegates spoke of past understandings, although no written supporting documents were produced, between Imam Faisal (one of the Saudi rulers of the second Saudi state which rose and fell between 1823-1891) and the British during the visit of Colonel Lewis Pelly, then the British Representative in the Arabian Gulf, to Imam Faisal in 1865. The Saudi delegates did not produce any evidence of this claim which suggests that no agreement had been concluded between the Saudis and the British in this respect. This view is supported by an undertaking¹⁶⁴ found in both the British and Saudi Memorials which was signed on 21st April 1866 by Mohammed bin Abdullah bin Maneh on behalf of Imam Abdullah bin Faisal, the son of Imam Faisal. The undertaking was a declaration by the Saudis of non-aggression against Muscat and the Trucial Sheikdoms.

Another claim put forward by the Saudi delegates was that there had been an agreement with Sir Percy Cox and General Clayton in 1915, and that Cox had said that

¹⁶¹ See *Ibid.*, p. 295.

¹⁶² *Ibid.*, p. 296.

¹⁶³ *Ibid.*, p. 297.

¹⁶⁴ See (IOR: L/P&S/6/544), Collection to Despatch no. 61 of 22 August 1866), in Tuson & Quick, (eds.), *Arabian Treaties, op., cit.*, vol. 4, p.17. For more details see, Wilkinson, *Arabia's Frontiers, op., cit.*, pp. 121-122, Troeller, *The Birth of Saudi Arabia: Britain and the Rise of the House of Sa'ud, op., cit.*, pp.17-18.

everyone knew that these Trucial Sheikhs' influence did not extend more than fifteen miles from their capitals. Since then, the Trucial Sheikhs' power had waned and it was only thanks to Britain that they had lasted.¹⁶⁵ Abdulaziz was convinced that there was an old agreement between the two countries, that this had been acknowledged in a formal agreement and that Britain had also recognized that Qatar and the Trucial Sheikhs did not have proper territories. The British simply replied that Cox could never have made such an admission, for he knew that the Blue Line had been agreed with the Ottomans within the last two years. This British argument seems to be untenable in the light of the fact that Cox and the Foreign Office considered the 1913 Anglo-Ottoman Convention, by which the Blue Line was defined, a dead letter in concluding the 1915 and 1927 Anglo-Saudi Treaties and Uqair Protocols.¹⁶⁶ In addition, Cox admitted the reduction of the status of Qatar and the Trucial Sheikhs without objection in 1915 with the conclusion of the 1915 Anglo-Saudi Treaty.¹⁶⁷ Abdulaziz's wording for Article 6 already quoted¹⁶⁸ was accepted and was also retained in the definitive 1927 Anglo-Saudi Treaty (the Treaty of Jeddah).¹⁶⁹

In the case of Kuwait, which was discussed in the previous part, Britain told the emir of Kuwait that the 1913 Anglo-Ottoman Convention was drawn up under conditions which no longer obtained, that he was not a party to this Convention, and that, in any case, it had been superseded by Article 6 of the 1915 Anglo-Saudi Treaty

¹⁶⁵ *Ibid.*

¹⁶⁶ See *supra* chapter I.

¹⁶⁷ (IOR: L/P&S/10/387), in Tuson & Quick, *Arabian Treaties, op., cit.*, pp. 29-40.

¹⁶⁸ *Supra* chapter I.

¹⁶⁹ The Text of the Treaty of Jeddah and the letters of ratification exchanged are found in *Umm Al Qura* No. 145 dated 23.9.1927, pp. 1-3, see also *Treaty Collection*, Ministry of Foreign Affairs, Riyadh, vol. I, No. 10.

which provided that the Saudi-Kuwait boundaries would be defined later.¹⁷⁰ In light of this, it could be argued that the same arguments could be applied to Saudi Arabia's boundaries with its eastern neighbours defined by the Blue Line, because this Line was defined by the same Convention and the provisions of Article 6 of the 1915 Anglo-Saudi Treaty, which stated that the Saudi boundaries with the British protectorate were to be determined hereafter, applied to all the British protectorate.¹⁷¹ As Britain, however, continued to insist on the validity of the Blue Line, this must have given the impression to Abdulaziz that the British were reluctant to accept the reality, which strengthened him in his new course of action to extend his boundary claim.¹⁷²

Clearly, then, agreement was some way off and deadlock had been reached. After consultations with London, Sir Rupert Hay proposed that settlement of the Abu Dhabi boundary might be possible if the Saudis returned to their 1935 position the (Hamza Line), but agreed to drop Khaur al-Udaid.¹⁷³ Emir Faisal agreed to lay this proposal before his Government and obtain its instruction.¹⁷⁴ However, in view of the fact that for the moment the Saudi 1949 statement was now a claim and not just a proposal, there was no alternative but to adjourn the negotiations *sine die* and allow the Saudis to consider this new British suggestion. It was agreed that in the meantime the restriction imposed on movements in the disputed areas would continue.¹⁷⁵

¹⁷⁰ Memorandum by the British Political Agent in Kuwait dated 17 July 1920, an official document reproduced in Schofield and Blake, (eds.), *Arabian Boundaries: Primary Documents 1853-1957, op., cit.*, vol. 9, p. 59.

¹⁷¹ See *supra* chapter I of this part for Article 6 of the 1915 Anglo-Saudi Treaty, see also *supra* part 1, chapter I, the Saudi-Kuwaiti boundary dispute.

¹⁷² Wilkinson, *Arabia's Frontiers, op., cit.*, p. 298.

¹⁷³ *Saudi Memorial*, p. 417.

¹⁷⁴ *Ibid.*

¹⁷⁵ *Ibid.*, p. 416.

Saudi Arabia suggested that the question should be settled by means of a plebiscite, and that a Saudi-British-American Commission should be set up to supervise it.¹⁷⁶ The British rejected this suggestion on the ground that Turki ibn Utaishan, the emir of Ras Tanura in the Al-Hassa region, had been sent to Buraimi for the purpose of ensuring, by means of bribery and intimidation,¹⁷⁷ that such a plebiscite would produce results favourable to Saudi Arabia.¹⁷⁸ A plebiscite, moreover, would not take into account the historical bases of the contending parties' claims.¹⁷⁹ Although the British did not submit any evidence regarding these allegations, it was self-evident that the presence of Turki ibn Utaishan in Buraimi helped to make the inhabitants pay their allegiance, which was the source of sovereignty in Arabia, to the Saudi Government. As no evidence had been provided by Britain, it could be argued that Saudi Arabia carried out its duty and responsibility towards its inhabitants by providing them with the services they needed, in the absence of any other responsible authority in the area. The presence of Turki ibn Utaishan in Buraimi, along with the loyalty of the inhabitants, might be viewed as evidence of the exercise of the Saudis' sovereignty over the Buraimi, especially as the Saudis denied that the loyalty of the inhabitants was gained by means of bribery.¹⁸⁰ They stated, moreover, that the loyalty was the will and desire of the inhabitants, as the Sheiks of the Buraimi tribes participated in several

¹⁷⁶ A telegram from ibn Saud to the British Government dated 23 October 1952, in *Saudi Memorial*, pp. 426-7.

¹⁷⁷ Note that the *Saudi Memorial* stated that Turki ibn Utaishan was appointed in 1952 as governor of Buraimi and was accompanied by a civil committee of forty persons in order to help him to carry out the responsibilities of his new position, *Saudi Memorial*, pp. 419-20.

¹⁷⁸ A note from the British Ambassador at Jeddah to the Saudi Government dated 2 April 1953, an official documents reproduced in Schofield, (ed.), *Arabian Boundary Disputes, op. cit.*, vol. 18, pp. 153-60, in *Saudi Memorial*, vol. I, pp. 426-7. *The Buraimi Memorial*, Memorial submitted by the Government of the United Kingdom of Great Britain and Northern Ireland. Arbitration Concerning Buraimi and the Common Frontiers Between Abu Dhabi and Saudi Arabia (Buckinghamshire, 1987) vol. 1, pp. 135-8, *Saudi Memorial*, vol. 1, pp. 426-7 and pp. 502-5.

¹⁷⁹ *Ibid.*

¹⁸⁰ *Saudi Memorial*, vol. I, pp. 421-22.

demonstrations expressing their allegiance to the Saudi Government.¹⁸¹ These Sheiks also signed a declaration of loyalty to ibn Saud and had it ratified not only by the Buraimi *Qadi* (Judge) but also by both the Judge of Sharijah, one of the UAE provinces, and Dubai's religious leader.¹⁸²

A few days later, other Sheikhs in the region signed similar declarations and, within one month from the arrival of Turki ibn Utaishan to Buraimi, the number of Sheikhs and nobles who had signed written declarations amounted to not less than 59.¹⁸³ However, as a result of the failure of the Dammam Conference to achieve any progress regarding the question of the Saudi boundary with Abu Dhabi, Saudi Arabia reassumed its official existence in the Buraimi Oasis and succeeded in rallying the tribes' support.¹⁸⁴ Britain, on the other hand, responded by setting a police check point four kilometres from the Buraimi.¹⁸⁵ British military aircraft, furthermore, flew daily over the Oasis and its villages at low level.¹⁸⁶

The US Ambassador at Jeddah intervened to mediate between the two parties and to reach a Standstill Agreement,¹⁸⁷ signed in Jeddah on 26 October 1952, which stated that the two parties were allowed to keep their present positions in Buraimi, but would refrain from any threatening move or provocative actions.¹⁸⁸ This agreement was a positive step towards preventing the exacerbation of the dispute, but it did not last very long. The British withdrew from it because they considered the activities of Turki

¹⁸¹ *Ibid.*,

¹⁸² Sharijah and Dubai were among the Sheikdoms which were under British protection at the time.

¹⁸³ *Saudi Memorial*, vol. I, pp. 421-2.

¹⁸⁴ *Ibid.*

¹⁸⁵ *Saudi Memorial*, vol. I, pp. 422-3, Schofield and Blake, (eds.), *Arabian Boundaries, Primary Documents 1853-1957, op. cit.*, vol. 18, pp. 675-692.

¹⁸⁶ *Ibid.*

¹⁸⁷ Schofield, (ed.), *Arabian Boundary Disputes, op. cit.*, vol. 18, pp. 149-52, in *Saudi Memorial*, vol. 1, pp. 408-11 and pp. 418-27.

¹⁸⁸ *Saudi Memorial*, vol. 1, p. 425.

ibn Utaishan, the Saudi governor in Buraimi, a violation of both the London Agreement and the Standstill Agreement.¹⁸⁹ Britain accordingly reserved complete freedom of action, both on its own behalf and on behalf of the rulers under its protection, with respect to the matters covered by the Standstill Agreement, and established several police posts in the disputed area.¹⁹⁰ The British considered the Standstill Agreement as being terminated on the ground that Saudi Arabia had violated its provisions by the activities of Turki ibn Utaishan in the disputed area.

International law recognises the right of a state to terminate a treaty if the other party commits a material breach of the provisions of the treaty. Article 60 (1) of the 1969 Vienna Convention on the Law of Treaties provides that:

“A material breach of a bilateral treaty by one of the parties entitles the other to invoke the breach as a ground for termination the treaty or suspending its operation in whole or part”.

But whether Saudi Arabia had violated the Agreement or not is in question. The Saudis argued that the Standstill Agreement did not extend to the Buraimi, as it only included oil companies and military activities, and not civilian employees such as Turki ibn Utaishan and his men.¹⁹¹ This issue, therefore, resulted from the dispute between the parties over the identities of Turki ibn Utaishan and his men. Britain considered them as a military force, and as a result, their presence in the disputed area as a violation of the Standstill Agreement. Saudi Arabia, on the other hand, insisted that they were civilian employees and their presence in the disputed area was legal because the Agreement was

¹⁸⁹ A statement of protest handed by the British Embassy at Jeddah to the Saudi Government dated 14 September 1952, an official British document reproduced in Schofield, (ed.), *Arabian Boundary Disputes*, *op. cit.*, vol. 18, pp. 153-60, in *Saudi Memorial*, vol. 1, p. 421.

¹⁹⁰ *Ibid.*

¹⁹¹ *Saudi Memorial*, vol. 1, p 421.

only concerned with military activities, not civilian ones.

Again, it was very important that both Saudi Arabia and Britain should act in good faith to carry out their obligations and refrain from any act, which was contrary to the provisions of the Agreement. Article 26 of Vienna Convention on the Law of Treaties provides that a treaty in force is binding upon the parties and must be performed by them in good faith. No one knew the real identities of Turki ibn Utaishan and his men except the Saudi Government, and therefore, they could have acted in bad faith by sending military people in civilian clothes. Similarly, if the British wanted to act in bad faith, they could use their allegations regarding Turki ibn Utaishan against Saudi Arabia as grounds for the termination of the Standstill Agreement. In addition to the problem of Turki ibn Utaishan, the Saudis met every accusation of irregular behaviour levelled against him with an accusation of a similar kind against the Political Officer or other British officials.¹⁹² Indeed, they stated that their sovereign rights were being infringed by the actions of British representatives in the Buraimi area, especially the visits of the Political Officer, Trucial Oman, to the oasis.¹⁹³ They also claimed that Britain had no right in Buraimi because it was not under the sovereignty of any of those who had a protection treaty with Britain, and Turki ibn Utaishan had been appointed as a Saudi governor after the Britain intervention in the area.¹⁹⁴

The US pressures on Britain, together with the Saudis' threat to resort to the Security Council,¹⁹⁵ made the British go back on their withdrawal from the Standstill Agreement. Under international law, any state, whether a member of the United Nations

¹⁹² Schofield, (ed.), *Arabian Boundary Disputes, op., cit.*, vol. 18, pp. 153-60, in *Saudi Memorial*, vol. II, Annex 85.

¹⁹³ *Saudi Memorial*, vol. 1, p. 419.

¹⁹⁴ *Ibid.*, p. 421.

¹⁹⁵ A personal letter from Ibn Saud to the British Foreign Minister handed by the Saudi Embassy at London dated 19 September 1952, in *Saudi Memorial*, vol. 1, p. 423.

or not, has the right to bring any dispute to the attention of the Security Council in order that the latter may investigate it and determine whether its continuance is likely to endanger the maintenance of international peace and security.¹⁹⁶ The Security Council may recommend appropriate procedures or methods of settlement taking into account the methods adopted by the parties to the dispute.¹⁹⁷ Further action may be taken by the Security Council under the function granted to it by Article 39 of the United Nations Charter, to determine the existence of any “threat to the peace, breach of the peace or act of aggression”. If any of the said actions is found by the Security Council, it may recommend or decide what measures shall be taken in accordance with Article 41 and 42 of the United Nations Charter to maintain or restore international peace and security. According to these two Articles, the action to be adopted by the Security Council might fall into two categories: (a) non-military action under Article (41) or (b) military action under Article (42) if the former is inadequate or insufficient to maintain or restore international peace and security.

Whether or not the Security Council would have recommended methods of settlement or determined the existence of a threat to the peace, breach of the peace or act of aggression in Britain’s action would depend on the consequences of Britain’s withdrawal from the Agreement. However, it is not likely that the Security Council would have taken any action or adopted any resolution against Britain, because Britain would have vetoed it. Britain did want the case to be taken to the Security Council because the British did want to be seen by the world community as violating international law by withdrawing from the Agreement. Saudi Arabia, on the other hand, might have known that resorting to the Security Council would have been useless, but it

¹⁹⁶ Articles 34 and 35 of the United Nations Charter.

¹⁹⁷ Articles 36 and 37 of the United Nations Charter.

might have wanted its issue to be given international attention, which might have helped it in the settlement of its boundary disputes in the future. Meanwhile, Saudi Arabia continued in this unstable period to observe the restriction in the disputed areas which was already agreed upon by the two parties, but as a result of a personal suggestion from the US Ambassador to Saudi Arabia, the two parties agreed that such a restriction would apply only to oil activities in the Buraimi Oasis.¹⁹⁸

Form the above, it could be said that with the exception of the Saudi-Qatari boundary dispute, the Dammam Conference failed to settle Saudi Arabia's boundary disputes its eastern neighbours. The reason for this was that the parties were in disagreement on the validity of the Blue Line, as well as the sovereignty over certain tribes in the disputed area. Another reason was that both the British and the Saudis acted in bad faith regarding the violation of the Standstill Agreement, as the parties accused each other of violating the Agreement.

3. The Buraimi Arbitration of 1954

In 1954, the idea of the neutral zones came to the fore again, but this time Saudi Arabia made the suggestion when the confrontation between the two parties reached serious proportions. According to this suggestion, Saudi Arabia would have Khaur al-Udaid, but the rest of the area between the Saudi claim of 1949 and that of the British of 1952 regarding Abu Dhabi should be a neutral zone.¹⁹⁹ In this neutral zone, the Saudis would grant their right over half the oil to a British company.²⁰⁰

In November 1952, the British Government suggested to the Saudi Government

¹⁹⁸ *Saudi Memorial*, vol. 1, pp. 423-5, see also Schofield and Blake, (eds.), *Arabian Boundaries, Primary Documents 1853-1957, op. cit.*, vol. 18, pp. 153-9.

¹⁹⁹ Wilkinson, *Arabia's Frontiers, op. cit.*, p. 270.

²⁰⁰ British Foreign Office Document: 371/109832, quoted in *Ibid*

that as the area of dispute regarding the boundary question was so great, the question should be submitted to arbitration.²⁰¹ The Saudi reply to this was to insist that Buraimi should be treated separately from the boundary problem as a whole, as it was a part of the Saudi Arabian Kingdom, and the people who lived in that area and its vicinity bore allegiance to the King of Saudi Arabia.²⁰² The British Government, however, did not agree to this, on the ground that Saudi Arabia had previously agreed to the inclusion of the oasis in the area to be examined by a boundary commission and the Standstill Agreement recognized that it was in dispute.²⁰³ The British expressed their intention to honour their obligation to the Gulf states and repeated the earlier offer to submit the whole boundary dispute to impartial arbitration.²⁰⁴ Ibn Saud replied that he wished to see a return to the situation created by the London Agreement and the Standstill Agreement.²⁰⁵ He was willing to consider arbitration as a means of settling the dispute, but he wished it to be combined with his government's earlier proposals for a plebiscite.²⁰⁶

Negotiations were re-opened shortly after this exchange to work out the basis of an arbitration agreement. In order to restore normality to the situation at Buraimi and to safeguard the chances of an impartial arbitration, the British and Saudi negotiators agreed on October 1953 to an interim regime for Buraimi and the other disputed

²⁰¹ A note from the British Government to the Saudi Government dated 22 November 1952, an official document reproduced in Schofield, (ed.), *Arabian Boundary Disputes, op., cit.*, vol. 18, pp. 703-5.

²⁰² A note from the Saudi Government to the British Ambassador at Jeddah dated 6 December 1952, an official documents reproduced in Schofield, (ed.), *Arabian Boundary Disputes, op., cit.*, vol. 18, pp. 706-8.

²⁰³ A note from the British Government to the Saudi Government dated 5 January 1953, an official documents reproduced in Schofield, (ed.), *Arabian Boundary Disputes, op., cit.*, vol. 18, pp. 708-11.

²⁰⁴ A letter from Sir Churchill, the British Prime Minister to Ibn Saud dated 2 April 1953, an official documents reproduced in *ibid.*

²⁰⁵ A note from Ibn Saud to Sir Churchill dated 20 April 1953, an official documents reproduced in Schofield, (ed.), *Arabian Boundary Disputes, op., cit.*, vol. 18, pp. 717-20.

²⁰⁶ *Ibid.*

areas,²⁰⁷ based upon a mutual withdrawal of forces and the maintenance of a small police force in the oasis by both sides to keep order during the period of arbitration.²⁰⁸ Discussions began in December 1953 on the terms of the arbitration agreement itself, and continued until the following July when the Arbitration Agreement²⁰⁹ was signed at Jeddah on 30 July 1954, coming into force on the same day. The independent and impartial tribunal was to decide:

(a) the location of the common frontier between Saudi Arabia and Abu Dhabi within the line claimed by the former in 1949 and that put forward on behalf of the latter in 1952; and

(b) sovereignty in the area comprised within a circle, having its centre in Buraimi village and whose circumference passed through the junction of latitude 24 degrees and 25 minutes North and longitude 55 degrees and 36 minutes East, i.e. through the terminal point of Saudi Arabia's 1949 claim.²¹⁰

The tribunal was to consist of five members: Saudi Arabia and Britain would each nominate a member, and the other three members, one of whom would act as president of the tribunal, would be chosen by agreement from persons not nationals of either party. The British member of the arbitration tribunal was named in August and the remaining members at the end of December. They were:

(1) Dr. Charles de Visscher (Belgium), a former judge of the International Court of Justice, president;

²⁰⁷ United Kingdom Treaty Series, 65 (1954), Cmd. 9272, p. 16.

²⁰⁸ Wilkinson, *Arabia's Frontiers, op. cit.*, p. 171.

²⁰⁹ Cmd. 9272, Treaty Series No. 65 (1954), an official documents reproduced in Schofield, (ed.), *Arabian Boundary Disputes, op. cit.*, vol. 18, pp. 161-68, *Umm al Qura* No. 1526 dated 6 August 1954.

²¹⁰ *Ibid.*

(2) Sir Reader Bullard (Britain), a retired member of the British Foreign Service who had been Minister to Saudi Arabia, 1936-9;

(3) Sheikh Yusuf Yasin, Deputy Foreign Minister of Saudi Arabia;

(4) Dr. Ernesto de Dihigo (Cuba); and

(5) Mr. Mahmud Hassan (Pakistan).

In conducting its proceedings and in formulating its award, the tribunal was to have due regard to all relevant considerations of law, fact and equity, brought to its attention by the parties concerned or disclosed by its own investigations. In particular, it was to take into account, in so far as they were relevant:

(a) historical facts relating to the rights of the rulers concerned and their forefathers;

(b) the traditional loyalties of the inhabitants of the areas concerned;

(c) the tribal organization and way of life of these inhabitants;

(d) the exercise of jurisdiction and other activities in the area; and

(e) any other considerations brought to its attention by either party.²¹¹

September 1955 had been fixed by the arbitration tribunal as the date for the submission by both parties of their memorials setting out their submissions on the territories and boundary in dispute. Afterwards, each party would have the right to submit, within a further period of six months, a reply to the memorial presented by the other. On the conclusion of these written proceedings the tribunal would hear oral

²¹¹ *Ibid.*

arguments by the parties, or, with their consent, it could dispense with such arguments. The tribunal would have the right to call witnesses, conduct inquiries, and visit the areas in dispute. Its award would be final, binding upon the governments concerned, and without appeal.²¹²

When the tribunal opened its hearings on 11 September, it faced many obstacles, as the British submitted complaints about various breaches of the conditions of arbitration committed by Saudi Arabia. At this sitting and the subsequent sittings, the tribunal heard evidence of Saudi bribery and gun-running, of the plot to overthrow the Ruler of Abu Dhabi, of the circumstances surrounding the fire at Hamasa, of the abuse of Saudi supply aircraft, and of other violations of the conditions of arbitration. Sheikh Zaid ibn Sultan gave evidence of last-minute attempts by Abdullah al-Quraishi, a member of the Saudi police detachment in Buraimi, to induce him to desert his brother and declare for Saudi Arabia.²¹³ The witnesses who gave evidence were Hazza' ibn Sultan, Sultan ibn Surur and Mani' ibn Muhammad of the Dhawahir, and Captain P. H. Clayton, the former commander of the Trucial Oman Levies detachment at Buraimi.²¹⁴ On their side, on 13 September, the Saudi Government brought forward Abdullah al-Quraishi to refute the charges brought against him. He denied that he had ever tried to bribe Zaid and said that Zaid, not he, had made the approaches.²¹⁵ On the other hand, numerous counter-complaints were made by Saudi Arabia against the British violations of the Arbitration Agreement in the Buraimi Oasis.²¹⁶ However, the assessment of these complaints and counter-complaints needs very careful study, referring to both the British and the Saudi documents, which is beyond the scope of this study.

²¹² *Ibid.*

²¹³ Kelly, *Eastern Arabian Frontiers, op., cit.*, p. 200.

²¹⁴ *Ibid.*, p. 201.

²¹⁵ *Ibid.*, for further details see *Umm al Qura* No. 1582 dated 16 September 1955.

²¹⁶ Kelly, *Eastern Arabian Frontiers, op., cit.*, p. 200.

The arbitration proceedings, already imperiled by the aforementioned accusations, finally broke down in mid-September when the British member of the Tribunal, Sir Reader Bullard, resigned.²¹⁷ Bullard explained in a statement that he had to resign because the Saudi member was acting in the proceedings on behalf of the Saudi Arabian Government and was representing that Government on this tribunal, rather than acting as an impartial arbitrator.²¹⁸ The Saudis argued that Bullard had been ordered to resign by the British Government because they knew that the Tribunal's decision would be in the favour of Saudi Arabia, as the inhabitants were loyal to Ibn Saud.²¹⁹ Some writers, however, are of the opinion that Bullard resigned because a judgment unfavourable to the British accusations was about to be produced.²²⁰

Saudi Arabia repeated its observation of the Arbitration Agreement and repeatedly asked the British to go back to it, but the latter declared that the Arbitration Agreement was void because of the Saudi violations.²²¹ Under international law, however, both Britain and Saudi Arabia, as parties to a judicial process, should have maintained the *status quo* in the disputed area by refraining from any act which might prejudice the eventual execution of the arbitration agreement. Indeed, the principle of good faith prohibits the evasion of an obligation as established by the common intention of the parties.²²² Both parties, therefore, should have waited until the final decision of the arbitration concerning the definition of the sovereignty in the Buraimi was made.

²¹⁷ Schofield, (ed.), *Arabian Boundary Disputes, op., cit.*, vol. 18, p. 817.

²¹⁸ *The Times*, 17 September 1955.

²¹⁹ *Umm al Qura* No. 1583 dated 23 September 1955, Wahbah, *Fifty Years in the Arabian Peninsula* (Cairo, 1960) p. 114 (in Arabic).

²²⁰ Wilkinson, *Arabia's Frontiers, op., cit.*, p. 323, see also some articles written by some neutral European writers in support of this argument, *Umm al Qura* No. 1587 dated 21 October 1955. .

²²¹ Kelly, *Eastern Arabian Frontiers, op., cit.*, p. 279, Schofield and Blake, (eds.), *Arabian Boundaries, Primary Documents 1853-1957, op., cit.*, vol. 17, pp. 327-43, *Umm al Qura* No. 1583 dated 23 September 1955..

²²² Bin Cheng, *General Principles of Law as Applied by International Court and Tribunals* , *op., cit.*, pp. 140-41.

Such a decision would be taken on the basis of the *status quo*, which would not be prejudiced in its effect by a unilateral act of one of the parties during the inevitable waiting time.

The *Samoa Claims Case*²²³, between Germany on the one hand, and the United Kingdom and United States on the other, illustrated the importance of maintaining the *status quo* by the parties to a dispute between two events. At the time in question, there were two contending parties in Samoa, namely, the Malietoans and the Mataafans. On 31 December 1898, the Chief Justice of Samoa declared Malietoa Tanumafili King of Samoa. By a proclamation issued on the 4th of January 1899, the Consular representative of the treaty powers in Samoa, owing to the then distributed state of affairs and to the urgent necessity to establish a strong provisional government, recognised the Mataafa party, represented by the High Chief Malaafa and 13 of his chiefs, as the provisional government of Samoa, pending instruction from the three treaty powers. The question submitted to arbitration was the legality of certain military measures taken unilaterally by the United Kingdom and United States in support of the Malietoans against the Mataafans in March 1899. The Arbitrator held that:

“The military action in question undertaken by the British and American military authorities before the arrival of the instructions mentioned in the proclamation, and tending to overthrow the provisional government thereby established, was contrary to the aforesaid obligation”²²⁴

The arbitrator thus found that according to principles of international good faith, those powers were bound to maintain the situation created by the proclamation of January

²²³ Papers related to the United States Foreign Relations, Washington 1862- quoted in Bin Cheng, *General Principles of Law as Applied by International Court and Tribunals*, *op. cit.*, pp. 140-41.

²²⁴ *Ibid.*

1899 until, by common accord a further decision was taken.

With regard to the resignation of the Britain representative, although there was no evidence that Britain ordered him to resign, he should have either waited until a final decision was taken or left it to the President of the Tribunal to assess the act of Saudi representative during the hearings, and then acted accordingly. Both parties, moreover, should have cooperated and made every possible effort to make the tribunal's decision possible. Indeed, in the *Interpretation of Peace Treaties, (second phase)*²²⁵ concerning the interpretation of the Peace Treaty of 1947 between the Allied Powers and Bulgaria, Hungary and Rumania, the International Court of Justice refused to accept the argument, reinforced by a long line of precedents in arbitration, which established that a party cannot prevent completion of arbitration and the rendering of a binding decision by the device of withdrawing its national representative from the tribunal.²²⁶ Both withdrawing a representative and failing to appoint one are against the principle of good faith which should prevail in any method of peaceful settlement. Judge Read, in his Dissenting Opinion, had no doubt about the relevance of good faith to the situation. He stated that:

“I am of the opinion that the principle established by these precedents is equally applicable to the case where a party to a dispute act in bad faith from the outset. And attempts to use the device of defaulting on its treaty obligation to appoint its national representative on the tribunal in order to prevent the provisions of the arbitration clause from taking effect”.²²⁷

²²⁵ *ICJ Reports*, (1950), p. 221.

²²⁶ *Ibid.*, at p.

²²⁷ *Ibid.*, at p. 348.

The observation of the principle of good faith by the parties is of great importance for the settlement of any dispute. The absence of good faith may lead to the breakdown of any attempt of dispute settlement. This what happened in the Buraimi Arbitration when both the British and the Saudi representatives failed to behave in good faith, which led to the breakdown of the arbitration proceedings.

The next British step was to occupy the disputed area by the use of force.²²⁸ Such action was contrary to international law. Indeed, international disputes must be settled by peaceful means and not by resorting to the use of force, which is prohibited²²⁹ in inter-state relations. Article 2 (4) of the United Nations Charter provides that:

“All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.”

The principle is embodied in Article 2 (3) of the Charter, which provides that " all Members shall settle their international disputes by peaceful means". Indeed, the principle has been developed by the 1970 Declaration on Principles of International Law concerning Friendly Relations and Cooperation among states, which includes the use of peaceful methods for the settlement of international disputes.²³⁰ Although

²²⁸ Schofield, (ed.), *Arabian Boundary Disputes, op., cit.*, vol. 18, p. 817, see *Umm al Qura* No. 1589 dated 4 October 1955 and No. 1590 dated 11 October 1955. It should be noted the Saudi Government announced that it reserved all its rights in the Buraimi Oasis and it did not recognise any oil concession that might be granted to any oil company. It also submitted a statement of protest to the Security Council through its ambassador at the US, see *Umm al Qura* No. 1589 dated 4 October 1955.

²²⁹ Important exceptions to Article 2 (4) on the prohibition on use of force, exist in the Charter, namely, the right of self-defence in Article 51 enforcement action by the Security Council, in Chapter VII and enforcement action taken by regional organizations with authorization from the Security Council, in Chapter VIII. Apart from those exceptions, the threat or use of force are totally and substantially prohibited. For further details, see generally McCoubrey and White, *International Law and Armed Conflict* (Aldershot, 1992).

²³⁰ General Assembly Resolution 2625 dated 1970, see Djonovich, (ed.), *United Nations Resolutions*, (vol. XIII 1970-1971), New York, Oceana Publications, 1976, p. 337.

Buraimi was a disputed area and its sovereignty was not yet defined, the use of force by Britain to remove the Saudis and capture it was against both the prohibition of use of force and the principle regarding the settlement of the international disputes by peaceful means.

Britain declared unilaterally on 26 October 1955 that the boundary between Saudi Arabia and Abu Dhabi was the Riyadh Line (as amended by Britain in 1937)²³¹ and that no unauthorized crossings of that line by the Saudis, by land or air, would be permitted.²³² According to this new boundary, Liwa Oasis and Khaur al-Udaid were preserved for Qatar while the Buraimi core area was reserved to Abu Dhabi. The nine villages of the Buraimi Oasis were divided between Abu Dhabi and Muscat; Muscat had three while Abu Dhabi had six. This line left a great area of territory for Oman, including some parts of the sand of the Empty Quarter, which the Sultan of Oman himself did not know about,²³³ let alone exercise sovereignty over.

In 1956 new developments took place such as the Suez crisis and the break out of the triple hostility against Egypt.²³⁴ As a result of these developments, along with the Saudi hostility against the Baghdad Pact²³⁵ and its orientation towards Egypt, Saudi

²³¹ See *supra* 1, footnote no. 100.

²³² The Speech of the British Prime Minister, Sir Anthony Eden to the House of Commons on 26 October 1955, Hansard, *Parliamentary Debates*, 5th series, H. of C., Vol. 545 (1955-6), cols. 199-200, also in Schofield, (ed.), *Arabian Boundary Disputes, op. cit.*, vol. 18, p. 817 & vol. 19, pp. 709-12.

²³³ For further details regarding the sovereignty of the Sultan of Oman see, Wilkinson, *Arabia's Frontiers, op. cit.*, pp. 48-51.

²³⁴ This was the war between Britain, France and Israel on the hand and Egypt on the other in 1956. For further details regarding the Suez crisis and its consequences, see *The Suez Canal Problem: July 26-September 22, 1956*, Documentary Publication (Washington, Department of State, 1956), Bowie, *Suez 1956* (Oxford, 1974). For further details regarding the settlement of the Suez dispute, see Lauterpacht (ed.), *The Suez Canal Settlement: a Selection of Documents* (London, 1960).

²³⁵ Baghdad Pact was a Treaty of mutual cooperation in matters of security and defence between Iraq and Turkey signed by the two states at Baghdad on 24th February 1955. The Pact aimed to ensure the stability and security of the Middle East. As it was open for accession to other states, Britain welcomed the Pact and became a member of it on 5th April 1955, for further details, see *The Baghdad Pact*, a document produced by the British Government as part of United Kingdom Overseas Information Services (London, December 1957).

Arabia severed its diplomatic relations with Britain and moved rapidly to the Soviet camp.²³⁶ US and Iraq, in order to contain the Arab nationalism movement and the communist influence in the region, advised Britain to leave aside its dispute with Saudi Arabia for a while. Within this framework,²³⁷ a further suggestion was made by the Americans known as “Dick’s memo”,²³⁸ according to which Qatar would get Khaur al-Udaid while the coast east of the latter as far as Jabal Dhanna would go to Saudi Arabia. The boundary with Abu Dhabi would remain the same as in the 1949 Saudi claim, except that it would now start further west along the coast, just to the east of Jabal Dhanna. In other words, Abu Dhabi would gain about 80 kilometres of coast with respect to the 1949 claim, but no further hinterland.²³⁹ This proposal was not submitted formally to Britain, although King Saud, the oldest son of King Abdulaziz of Saudi Arabia, mentioned this proposal to a British journalist in an interview with the *Daily Express* on 6 February 1956.²⁴⁰ If this proposal had been submitted to the parties, then Saudi Arabia would have objected because it retained Khaur al-Udaid for Qatar, which had always been one of the key issues throughout the Saudi-British negotiations. It caused a deadlock of the negotiations before the Second World War, as well as in the Dammam Conference.

Two years later, when tension arose between the Arab leaders who supported western regime around the Baghdad Pact and those who opposed it, the US believed that Saudi cooperation was fundamental for stability in the region. Therefore, the Americans put forward another suggestion, according to which the disputed area would

²³⁶ Kelly, *Arabian, the Gulf and the West* (London, 1980) p. 73, Wahbah, *Fifty Years in the Arabian Peninsula, op., cit.*, p. 115.

²³⁷ Schofield, (ed.), *Arabian Boundary Disputes, op., cit.*, vol. 18, pp. 869-80.

²³⁸ Manley O. Hudson Papers, Harvard Law School Library, (box 126, folder 10) quoted in Wilkinson, *Arabia’s Frontiers, op., cit.*, p. 325 and footnote no. 6 at p. 396.

²³⁹ *Ibid.*, pp. 325-28.

²⁴⁰ *Ibid.*, p. 328 and footnote no. 9 p. 397.

be established as a neutral zone under some administrative body, recruited perhaps from the Gulf Sheikhdoms, Pakistan, Tunis and Morocco, and in which all parties would pledge non-interference.²⁴¹ The American proposal aimed to reduce any potential friction between the American and British oil companies in the disputed area. The British, for their part, thought this proposal over for a while and made some changes by which Buraimi would remain outside the neutral zone, but the objection of the Aden Government to this change made the American proposal impossible.²⁴²

In the beginning of the 1960s, the General Secretariat of the United Nations intervened in this dispute obtaining an undertaking from both parties not to take any action which might lead to the escalation of the dispute.²⁴³ He suggested that a fact-finding commission might be set up in order to determine sovereignty in Buraimi.²⁴⁴ Both parties accepted this suggestion, and, thus the first International Fact-Finding Commission arrived in the Oasis and submitted its report, which suggested that a plebiscite would be carried out under UN supervision.²⁴⁵

Unlike arbitration and judicial settlement, and like all diplomatic means, the report of a Fact-Finding Commission is only a proposal and does not constitute a binding decision. Thus, parties retain full control over their disputes. Saudi Arabia accepted the Commission's report while Britain rejected it on the ground that it would be equivalent to a referendum²⁴⁶, which meant that the inhabitants would choose the state they wanted to belong to. This was an idea that the British had opposed for some

²⁴¹ Wilkinson, *Arabia's Frontiers, op., cit.*, p. 333.

²⁴² Schofield and Blake, (eds.), *Arabian Boundaries, Primary Documents 1853-1957, op., cit.*, both vol. 17, pp. 380-2 and pp. 387-8, and vol. 18, pp. 871-9 and pp. 881-91.

²⁴³ Kelly, *Arabian, the Gulf and the West, op., cit.*, p. 73.

²⁴⁴ Schofield and Blake, (eds.), *Arabian Boundaries, Primary Documents 1853-1957, op., cit.*, vol. 16, pp. 658-660.

²⁴⁵ *Ibid.*

²⁴⁶ *Ibid.*

time, because they knew that the inhabitants of this area would vote for Saudi Arabia, as it exercised its authority over the territory where they lived. A referendum involves the principle of self-determination where people exercise their right to choose their government or state. The principle of self-determination has led to the settlement of several boundary disputes by referenda of the inhabitants.²⁴⁷ Resolution 1514 (XV), the Declaration on Granting of Independence to Colonial Countries and People, adopted in 1960 stated that:

“All people have the right to the principle of self-determination; by virtue of that right they freely determine their political status and fully pursue their economic, social and cultural development.”

The principle was emphasised by International Court of Justice in the *Western Sahara* case.²⁴⁸ There, the Court concluded that the ties which had existed between the claimants and the territory during the relevant period of 1880s were not such as to affect the application of resolution 1514 (XV), the Colonial Declaration, in the decolonisation of the territory and in particular the right of self-determination.²⁴⁹ It is obvious that the right of self-determination was concerned with decolonisation process and the right of the inhabitants of colonial territory to determine their future. The question, which arises now, is whether the right is applicable to boundary disputes. In other words, do the inhabitants affected by the transfer of territory and the definition of a boundary disputes have the right to be consulted via referendum or plebiscite? In the context of cession and peaceful transfer of territory, Cassese maintained that such inhabitants should be consulted before any boundary agreements between the concerned parties are

²⁴⁷ Butler and Ranney, *Referendum Around the World* (Washington, DC, 1994) p. 2.

²⁴⁸ *Western Sahara Case, ICJ Reports*, 1975, p. 12.

²⁴⁹ *Ibid.*, at p. 68.

concluded.²⁵⁰ He stated that such boundary agreements would be declared void according Article 66(a) of the Vienna Convention on the Law of Treaties.²⁵¹ Brownlie, however, maintained the opposite view and argued that such transfer could not be void because the inhabitants' opinions were not taken into account.²⁵² This view is supported by Oppenheim who stated that it was doubtful whether the Law of Nation would ever make it a condition of every cession that it must be ratified by a plebiscite.²⁵³ Indeed, state practice showed that not all colonial boundaries coincided with ethnic lines, as some boundary lines cut off tribes amongst different states.²⁵⁴ Indeed, as will be seen throughout this study that international boundary disputes are usually discussed and settled between the head of states concerned regardless of the inhabitants' opinions. From the above discussion, it can safely be said that the right of self-determination was irrelevant with regard to the settlement of the Saudi boundaries with its eastern neighbours. These boundary disputes would be settled by other peaceful means apart from the right of self-determination.

When Sheikh Shakhbut of Abu Dhabi was deposed in favour of his brother Sheikh Zayid in August 1966, the latter, in April 1967 decided to visit Saudi Arabia and discuss the boundary question with the Saudis.²⁵⁵ He was presented with a new boundary proposal which bore an interesting resemblance to the American proposal, mentioned earlier, for the coast, but now the Abu Dhabi hinterland was extended to cover its producing fields north of the Liwa.²⁵⁶ Zayid never replied, partly because new oil fields were discovered in the area and partly because Britain was about to withdraw

²⁵⁰ Cassese, *Self-determination of Peoples: A Legal Reappraisal* (Cambridge, 1995) pp. 189-193.

²⁵¹ *Ibid.*

²⁵² Brownlie, *Principles of Public International Law*, op., cit., p. 173.

²⁵³ Oppenheim's *International Law* (1955) 8th ed. vol. 1 pp. 551-2.

²⁵⁴ Shaw, *Title to Territory in Africa*, op., cit., pp.98-99.

²⁵⁵ Kelly, *Arabian, the Gulf and the West*, op., cit., p. 74.

²⁵⁶ *Ibid.*

from the Gulf and started making arrangements for some form of federation of the lower Gulf Sheikhdoms.²⁵⁷ In May 1970, Zayid again visited Saudi Arabia and was met with a new boundary proposal by King Faisal of Saudi Arabia. The new boundary started on the same point of the coast at the eastern edge of Sabkhat Matti, as in 1967. The hinterland boundary now ran along 23 degrees North, thus granting to Abu Dhabi the area of no oil operations that existed during the 1954-5 arbitration proceedings and the main Liwa settlements.²⁵⁸ From there it ran due east to the end of that area, ie. more or less to the intersection of 23 degrees North and the Abu Dhabi-Muscat boundary, whence north-eastwards to the edge of the Buraimi arbitration area, around this and then back, direct down 56 degrees East. To solve the question of the ownership of the Buraimi Oasis, Faisal proposed that a plebiscite be held among its inhabitants after those who had fled had been allowed to return.²⁵⁹ Faisal demanded the cease of the oil activities south of parallel 23 Degrees North under threat of use of force.²⁶⁰ Although Zayid never replied to Faisal regarding the new proposal, he had to meet Faisal's demand regarding the cessation of oil activities when the British advised him to do so, and to hedge over Faisal's ultimatum, even though it was an open challenge to Britain's treaty rights and obligations regarding the Trucial Sheikhdoms.²⁶¹ This new boundary claim was certainly a retreat from the 1949 claim and only slightly different from the 1967 claim. It would give Saudi Arabia an outlet on the lower Gulf between Qatar and Abu Dhabi (the UAE). No agreement, however, was reached and, as a result, the boundary question remained untouched until after the independence of the UAE in 1971 when negotiations resumed again between the two parties.

²⁵⁷ Wilkinson, *Arabia's Frontiers, op., cit.*, p. 338.

²⁵⁸ Kelly, *Arabian, the Gulf and the West, op., cit.*, p. 75.

²⁵⁹ *Ibid.*

²⁶⁰ Wilkinson, *Arabia's Frontiers, op., cit.*, p. 339.

²⁶¹ Kelly, *Arabian, the Gulf and the West, op., cit.*, p. 78.

4. The Saudi-Qatari Boundary Agreement of 1965

The last formal declaration concerning the boundary with Qatar was the declaration made by the Sheikh on British orders at the Dammam Conference in 1952. Saudi Arabia and Qatar had always maintained friendly relations and had reached an informal boundary agreement behind Britain's back before the Dammam Conference.²⁶² Therefore, on 4 December 1965 a full formal boundary agreement was concluded between the two states²⁶³. According to this agreement, Dohat Salwa was to be divided between the two countries.²⁶⁴ Jabal Nakhsh went to Qatar; in return, Saudi Arabia retained the two *hijras* (settlements), Sikak and Anbak, and Qatar recognised Khaur al-Udaid as belonging to Saudi Arabia²⁶⁵ (see map 11). This boundary conformed with the Saudi proposed line in 1935 or the "Hamza Line", with the exception of Jabal Nakhsh which was assigned according to the "Hamza Line" to Saudi Arabia.²⁶⁶ However, the deal was at the cost to Abu Dhabi of Khaur al-Udaid, which had always been a complex issue during the previous negotiations. Therefore, the validity of this agreement was challenged on behalf of Abu Dhabi by the British Government²⁶⁷ and, as a result, the boundary was not demarcated at that time as stipulated in the Agreement.²⁶⁸ In this case Britain as a third state was affected by the Agreement because it was not consulted with regard to the boundary agreement, as the Saudi-Qatar-UAE boundary met in a tri-junction.

²⁶² See *supra* 2.2.

²⁶³ *Treaty Collection*, Ministry of Foreign Affairs, Riyadh, vol. II, No. 48, p. 465, *The Boundary Agreements*, Archive of the Saudi Border Guard.

²⁶⁴ Article 1 of the 1965 Saudi-Qatari Agreement.

²⁶⁵ Article 2 of the 1965 Saudi-Qatari Agreement.

²⁶⁶ See *supra* 1.

²⁶⁷ Wilkinson, *Arabia's Frontiers*, *op. cit.*, p. 324.

²⁶⁸ Article 3 of the 1965 Saudi-Qatari Agreement.

As far as international law is concerned, although consultations are not mentioned in Article 33(1) of the UN Charter as one of the peaceful means of settlement of international disputes, they are provided for in a growing number of treaties as a means of settling disputes arising from the interpretation or application of the treaty concerned.²⁶⁹ In other cases, consultations are resorted to when a state anticipates that a decision or a proposed action may harm another state, in order to avoid any trouble and create an opportunity for adjustment and accommodation. An example, which may illustrate the value of consultation, is provided by the practice of the United States and Canada in antitrust proceedings.²⁷⁰ With regard to the acts taken by a state in order to avoid trouble with another state, a distinction is sometimes drawn between acts of consultation such as those just been mentioned, on the one hand, and acts of notification or obtaining of prior consent of the state concerned, on the other hand. Indeed, notification is applied when a state notifies another state of imminent action that likely to affect the other state's interests. Such advance warning gives the state concerned time to consider its response in a way which may avoid any dispute. Obtaining of prior consent takes place when a state seeks the consent of the affected state for an action before taking it. In this case, the affected state enjoys the right of veto and it may use it to block such an action in the absence of its consent.²⁷¹ In the *Lake Lanoux* case²⁷² between Spain and France, Spain argued that under both customary international law and treaties between the two states, France was under an obligation to obtain Spain's consent to the execution of works for the utilisation of certain waters in the Pyrenees for a hydroelectric scheme. The argument was rejected, but the tribunal went on to hold that

²⁶⁹ Office of Legal Affairs, *Handbook on the Peaceful Settlement of International Disputes between States*, United Nations, New York, 1992, p. 10.

²⁷⁰ Merrills, *International Dispute Settlement*, Cambridge, *op. cit.*, p. 3.

²⁷¹ *Ibid.*, p. 4.

²⁷² *Lake Lanoux Arbitration (France v. Spain)* (1957) 24 *ILR* 101, at 127-128.

France had a duty to consult with Spain over projects that were likely to affect Spanish interests.²⁷³ In multilateral relations, however, the advantages of consultation in matters which are of concern to a large number of states, are evident. The Antarctic Treaty system, for instance, shows the value of "*anticipatory cooperation*" which refers to the capacity of member states to anticipate problems related to environmental and other issues in the region and undertake responsive actions before such problems become aggravated.²⁷⁴ In the light of the above discussion, both Saudi Arabia and Qatar should have consulted Abu Dhabi and obtained its consent before concluding the 1965 Saudi-Qatari Agreement, because this Agreement would have affected Abu Dhabi's interests, as the boundary of the three states met in a tri-junction.

5. The Saudi-Qatari Post-Independence Negotiations

The first step taken by Saudi Arabia and Qatar after the latter's independence²⁷⁵ towards the demarcation of their boundary dispute was the conclusion of the Security Cooperation and Criminals Extradition Agreement, which was signed by the Ministers of Interior of the two countries between 21-22 February 1982.²⁷⁶ This Agreement, which was ratified by both the Saudi and the Qatari Governments²⁷⁷ aimed, among other things, to prevent boundary incidents and smuggling into and out of the two countries by complete cooperation between the Border Guards of the two states.

The Agreement could have helped the final demarcation of the their boundaries, but in October 1992, a Qatari communiqué stated that Saudi military forces (on 1

²⁷³ *Ibid.*,

²⁷⁴ Joyner, "The evolving of Antarctic legal regime" (1989) 83 *AJIL* 605, at 617-618.

²⁷⁵ Qatar gained its independence on 3 September 1971.

²⁷⁶ *The Boundary Agreements*, Archive of the Saudi Border Guard.

²⁷⁷ Royal Decree No. M/20 dated 23 March 1982, Archives of Council of Ministers, also published in *Umm al Qura* No. 2912 dated April 1982.

October 1992) had seized al-Kafous Qatari border police station on the Saudi-Qatari border and forced the Qatari soldiers to leave it.²⁷⁸ In consequence, the Qatar Government declared that the Saudi-Qatari boundary agreement of 1965 was void on the ground that the Saudis had acted against international law.²⁷⁹ However, Saudi Arabia declared that according to the principles of international agreements, it rejected completely Qatar's unilateral declaration regarding the 1965 Saudi-Qatari boundary agreement and considered the Agreement as binding on both states.²⁸⁰ Indeed, hostile relations do not automatically terminate treaties between parties to a conflict, as many treaties including the United Nations Charters and Geneva Conventions of 1949 were binding to the same degree in the case of war.²⁸¹ Some kinds of treaties, however, are regarded as being suspended in the time of war, and war conditions may lead to the termination of treaties on the ground of impossibility of execution.²⁸² If the impossibility of execution may be temporary, the treaty is not void but merely suspended.²⁸³

It is widely recognised that according to the law of treaties, the denunciation of the 1965 Saudi-Qatari boundary Treaty by any of the parties might take place only according to the provisions of the treaty itself or the provisions of the Vienna Convention of the Law of Treaties.²⁸⁴ Article 60 (1) of the 1969 Vienna Convention on the Law of Treaties, however, provides that a material breach of the obligations of a treaty by one party entitles the other party to terminate or suspend the treaty on the ground of such a breach.

²⁷⁸ *Umm al Qura*, No. 3423 dated 2 October 1992.

²⁷⁹ *Umm al Qura*, No. 3424 dated 9 October 1992.

²⁸⁰ *Ibid.*

²⁸¹ Brownlie, *Principles of Public International Law*, *op. cit.*, pp. 616-7.

²⁸² Oppenheim, *International Law*, (1958), *op. cit.*, p. 945.

²⁸³ *Ibid.*

²⁸⁴ Article 41(2) of Vienna Convention of the Law of Treaties.

The material breach of a treaty is illustrated by the *Rainbow Warrior* case.²⁸⁵ In 1985 two French agents destroyed the vessel *Rainbow Warrior* in harbour in New Zealand. The United Nations Secretary-General mediated and both parties concluded the 1986 New Zealand-France Agreement²⁸⁶ which provided for the transference of the two French agents to a French base in Pacific, where they were to stay for three years and not to leave without mutual consent of both parties. France, however, allowed its agents to leave for France before the expiry of the period of three years without the consent of New Zealand. The 1986 New Zealand-France Agreement contained an arbitration clause, which was invoked by New Zealand, and arbitration between France and New Zealand took place in 1990. The Tribunal held that France had committed a material breach of the Agreement by permitting the agents to leave the island before the expiry of the three-year period.²⁸⁷ With regard to the situation of Saudi Arabia and Qatar, it could be said from the above discussion that the Saudi action, which was denied by Saudi Arabia, had nothing to do with the 1965 Saudi-Qatari boundary agreement, because this Treaty defined the boundary between the two states which was not affected by the Saudi action. Moreover, the 1965 Saudi-Qatari boundary Agreement did not stipulate that such an action taken by Saudi Arabia would result in the termination of the Agreement. Therefore, it could be argued that Saudi Arabia did not commit a material breach of the 1965 Saudi-Qatari boundary agreement and the Qatar had no right to denounce this treaty on the ground of the Saudi breach of an irrelevant principle. The Saudi action, although was a violation of international law, could not be taken as a reason by Qatar to terminate the Agreement because, as just mentioned, hostile relations do not automatically terminate treaties between parties to a conflict.

²⁸⁵ (1990), 82 *ILR*, p. 500.

²⁸⁶ The Agreement is found in (1987) 74 *ILR* 274.

²⁸⁷ (1990) 82 *ILR* 500, at 499, 564-6.

Returning to the Saudi-Qatari dispute, Saudi Arabia downplayed the incident and described it as a minor one carried out by unofficial and irresponsible persons which did not represent the position of the Saudi Government.²⁸⁸ As far as international law is concerned, it is a duty of a state, as far as possible, to prevent its own subjects and foreign subjects who live in its territory from committing injurious acts against other states.²⁸⁹ In practice, however, it is impossible for a state to prevent all injurious acts, which might be committed by a private person against a foreign state. Therefore, a state is only responsible for official acts committed by its agents or representatives. The International Law Commission's Draft Articles on State Responsibility provide that the conduct of any state organ either having that status under internal law or not part of the formal structure of the state is considered as an act of the state.²⁹⁰ In the *US Diplomatic and Consular Staff in Tehran* case (the *Tehran Hostage* case),²⁹¹ the International Court of Justice noted that the initial attack on the United States Embassy by militants could not be imputable to Iran, since they were clearly not agents or organs of the state.²⁹²

The Saudis also pointed out that al-Kafous border station did not originally exist in the Saudi territory and claimed that Qatar during the Gulf war of 1990-1 had penetrated the Saudi territory and moved al-Kafous border station from its territory into the Saudi territory.²⁹³ This Saudi argument seems to have been baseless, because Saudi Arabia remained silent for about a year since the conclusion of the Gulf war and did not protest against the Qatari penetration into the Saudi territory. If the Qataris had really penetrated into the Saudi territory and moved al-Kafous border station from their

²⁸⁸ *Umm al Qura*, No. 3424 dated 9 October 1992.

²⁸⁹ Oppenheim, *International Law*, (1958), vol. I, *op. cit.*, pp. 364-5.

²⁹⁰ Articles 5 and 7(2) of International Law Commission's Draft Articles on State Responsibility.

²⁹¹ *ICJ Reports*, 1980, p. 3, 61 *ILR*, 502.

²⁹² *Ibid.*, at p. 34-5.

²⁹³ *Umm al Qura*, No. 3426 dated 16 October 1992.

territory into the Saudi territory, Saudi Arabia must have known what was going on and would not have remained silent. If, however, it is accepted that the Qatari action had really happened, but Saudi Arabia failed to protest, this might be explained on the ground of the acquiescence of the Saudi state. Acquiescence occurs in circumstances where protest is expected but does not happen. In this case, the state making no objection is understood to have accepted the new situation.²⁹⁴ Indeed, failure to protest, especially when the situation is crucial, as in the case of the Saudi-Qatari boundary disputes, which were not finally settled, may be taken into account in determining acquiescence in the boundary demarcation.²⁹⁵

In the *Anglo-Norwegian Fisheries* case,²⁹⁶ the International Court of Justice held that Great Britain, being a maritime power with an interest in Norwegian waters, must have known the Norwegian method of baselines,²⁹⁷ and could not excuse her absence of protest, which was thus relevant in proving historical title.²⁹⁸ The importance of the Saudi protest in this case is self-evident because its boundary disputes with Qatar had been going on for years and the 1965 Saudi-Qatari boundary Agreement had been challenged by Britain on behalf of its protectorate to the east. Indeed, in such a situation, any movement on the boundary site might have been discovered by Saudi Arabia and then some kind of action could have been taken. In the light of the above discussion, it could be said that either the Saudi claim regarding the Qatari penetration into the Saudi territory and the movement of al-Kafous to the Saudi territory, was framed against Qatar or the Saudis had consented to the Qatari action by their failure to

²⁹⁴ Brownlie, *Principles of Public International Law*, *op. cit.*, p. 160

²⁹⁵ See O'Connell, *International Law* (London, 1970) 2nd edition, vol. 1, pp.424-5.

²⁹⁶ The *Anglo-Norwegian Fisheries* case, *ICJ Reports*, 1951, 116.

²⁹⁷ Instead of measuring the territorial sea from the low-water line, the Norwegians constructed a series of straight baseline linking the outermost parts of the land running along fringe of islands and rocks which parallel the Norwegian coastline.

²⁹⁸ The *Anglo-Norwegian Fisheries* case, *ICJ Reports*, 1951, at 138.

protest against it. This boundary incident, however, delayed the demarcation of the Saudi-Qatar boundary and brought the boundary dispute between the two states to the fore again. As a result, the Qataris became reluctant to demarcate the boundary, because they wanted to gain additional hinterland in al-Kafous region to the utmost southeast of the agreed boundary line of 1965, by moving their border police check points to the south, taking advantage of the non-demarcated boundary.²⁹⁹

5.1. The Egyptian Mediation and the Amendment of the 1965 Agreement.

In 1992 the Egyptian president intervened as a mediator between Saudi Arabia and Qatar in order to bring them to the negotiating table. He held several talks with both parties individually in Saudi Arabia and Qatar, and several letters and visits were exchanged between the three leaders and their officials.³⁰⁰ However, the contents of these letters and official visits were never revealed, as the two parties chose not to publish them for the benefit of the negotiations.³⁰¹ As a result, on 19 December 1992, a summit of the leaders of Saudi Arabia, Qatar and Egypt was held in Madinah in Saudi Arabia in which the three leaders discussed the Saudi-Qatari boundary dispute.³⁰² After the meeting, the Foreign Ministers of the three states signed a short communiqué on 20 December 1992.³⁰³ According to this communiqué, which was considered by the parties to be an integral part of the 1965 Agreement, Saudi Arabia gave up some of its territory to Qatar.³⁰⁴ In addition, the parties agreed on setting up a joint technical committee in

²⁹⁹ *Al-Hayat*, No. 12097 dated 8 April 1996.

³⁰⁰ *Umm al Qura*, No. 3415 dated 16 October 1992, No. 3428 dated 6 November 1992, No. 3432 dated 4 December 1992, No. 3433 dated 11 December 1992, No 3434 dated 18 December 1992 & No. 3435 dated 25 December 1992.

³⁰¹ King Fahd in an interview with the *Al-Siyassah*, a well-known Kuwaiti newspaper, in *Umm al Qura*, No. 3431 dated 27 November 1992.

³⁰² *Umm al Qura*, No. 3435 dated 25 December 1992.

³⁰³ *Ibid.*, also in *Treaty Collection*, Ministry of Foreign Affairs, Riyadh, vol. II, No. 5, *The Boundary Agreements*, Archive of the Saudi Border Guard.

³⁰⁴ *Ibid.*

order to supervise the boundary demarcation according to both the 1965 Agreement and what was agreed on in this communiqué.³⁰⁵ However, the committee faced some problems, as on 12 November 1994, Qatar sent a memorandum to Saudi Arabia about several armed incidents, which had taken place along the boundary between the two states in March and October 1994.³⁰⁶ Saudi Arabia, however, denied the incidents, claiming that it had been unaware of any problem until the receipt of the memorandum from Qatar.³⁰⁷ Moreover, Qatar was hoping that the Saudis would give it more territory in Khaur al-Udaid to the southeast of Qatar. In the aftermath of the coup on 27 June 1995 in which the crown prince of Qatar seized power from his father,³⁰⁸ the new emir outlined his position on Qatar's boundary disputes. He described the dispute with Saudi Arabia as a "simple problem" which he sincerely wished to solve.³⁰⁹ This positive Qatari position resulted from the circumstances that followed the coup, as Saudi Arabia was among the first states to recognise the new Emir.³¹⁰ The former Qatari emir, the father, went to Saudi Arabia in exile. The new Qatari emir, the son, wanted to conciliate the Saudis, to prevent them from trying to help his father in returning to Qatar and seizing power.

As a result of these developments, the foreign minister of the state of Qatar, Sheikh Hamad Bin Jasim Bin Jabr Al-Thani, met the deputy prime minister of Saudi Arabia, Prince Abdullah Bin Abdulaziz Al-Sa'ud, in Saudi Arabia on 7 April 1996.³¹¹ They decided to end the long-standing boundary dispute which had led to clashes in 1992 when they agreed to complete the demarcation of the boundary between the two

³⁰⁵ *Ibid.*, *Al-Hayat*, No. 11975 dated 5 December 1995.

³⁰⁶ *Saudi Press Agency*, Riyadh, 1 December 1994.

³⁰⁷ *Ibid.*

³⁰⁸ *Al-Hayat*, No. 11815 dated 28 June 1995.

³⁰⁹ *Al-Hayat*, No. 11827 dated 10 July 1995.

³¹⁰ *Al-Hayat*, No. 11820 dated 3 July 1995 & No. 11822 dated 5 July 1995..

³¹¹ *Umm al Qura*, No. 3597 dated 12 April 1996.

countries and resume the activities of the joint technical committee in order to agree on the choice of surveying company.³¹² A high level Qatari official stated that a Gulf state had played a vital role and mediated between Saudi Arabia and Qatar in order to bring them back to the negotiation table.³¹³ In the negotiation which led to this agreement, the Saudis insisted in settling the boundary dispute according to what had been agreed on in Madinah in Saudi Arabia on 20 December 1992, already mentioned, while Qatar wanted to be given more territory in Khaur al-Udaid.³¹⁴

On 7 June 1999, Saudi Arabia and Qatar signed demarcation maps of their common boundaries.³¹⁵ The accord also included the identification of the boundary point on the coast of Dohat Salwa, an area that the two sides had agreed to divide between them in the 1965 Agreement. The Qatari head of the joint technical commission said that the two sides had made great efforts over three years to achieve agreement.³¹⁶ Therefore, the two states signed in 21 March 2001, in Doha, the capital of Qatar, the final maps reflecting what had been achieved in demarcation of the land boundary between the two countries.³¹⁷

6. The Saudi-Abu Dhabi (UAE) Post-Independence Negotiations

The British decision to leave the Gulf at the end of 1971 encouraged the Gulf Sheikhdoms to develop their relations and to enter into some sort of unification in order to maintain their security and protect their interests in the area. Therefore, in 1971-72 a federation of seven separate emirates joined together to form a single independent

³¹² *Al-Hayat*, No. 12097 dated 8 April 1996, *Saudi Press Agency*, Riyadh, 7 April 1996

³¹³ *Ibid.*

³¹⁴ *Ibid.*

³¹⁵ *Al-Hayat*, No. 13241 dated 9 June 1999.

³¹⁶ *Ibid.*

³¹⁷ *Riyadh Daily*, No. 2087 dated 22 March 2001.

country, the United Arab Emirates, while Bahrain and Qatar decided to be independent states.³¹⁸

The increase in importance of the Iranian role in the Gulf in both the security and political aspects, encouraged the small Gulf states to improve their relations with Saudi Arabia in order to be able to challenge and minimise such a role.³¹⁹ As a result, the parties, within a very short time, reached agreements regarding their boundary disputes with Saudi Arabia. Indeed, in 1974, both King Faisal and Sheikh Zayid signed the Jeddah Agreement by which the boundaries between the two countries were defined.³²⁰ According to this agreement, Saudi Arabia's claim to sovereignty over the Buraimi Oasis was relinquished and the UAE retained the six villages of the Buraimi Oasis which it had before the agreement, and the Dhafrah desert. In return, Zayid renounced his claim to Khaur al-Udaid and gave Saudi Arabia an outlet to the lower Gulf west of Sabkhat Matti, which separated UAE from Qatar, and the bulk of Zarrara oil fields (see map 1). Article 7 of the Agreement provided for a joint technical committee to be set up, consisting of three members of each state, in order to carry out the boundary demarcation, but the committee never did so, as both parties agreed in 1993 to move the western end of their joint boundary line slightly to the west in Khaur

³¹⁸ For further details, see Metz, *op. cit.*, p. 203 ff.

³¹⁹ This was the starting point in the establishment of the Gulf Cooperation Council (GCC) which was established in May 1981 and is composed of six Gulf countries, namely, Saudi Arabia, Kuwait, Qatar, Bahrain, Oman and the United Arab Emirates (UAE). For further details about the GCC see generally Al-Garni, *The Gulf Cooperation Council and the Challenges* (Riyadh, 1997) (in Arabic).

³²⁰ *Treaty Collection*, Ministry of Foreign Affairs, Riyadh, vol. II, No. 5, *The Boundary Agreements*, Archive of the Saudi Border Guard. It should be noted that the two states signed in February 1982 a Security Cooperation Agreement. The Royal Decree No. M/22 dated 23 March 1982, see *ibid.*, also Archives of Council of Ministers, *Umm al Qura* No. 2912 dated 9 April 1982.

al-Udaid. The UAE was accordingly given more territory that it had held under the 1974 Jeddah Agreement.³²¹

7. The Saudi-Omani Post-Independence Negotiations

The departure of the British from the Gulf also affected Saudi relations with Oman. The criteria for dealing with the outside world had changed considerably since Sultan Qabus took power in 1970 and Oman at last began to open its doors to the outside world. The only formal dispute here is Buraimi. For the rest there is no specified Saudi claim and only the *de facto* boundary which was declared by the British on the Sultan's behalf in 1955. If Buraimi was still subject to adjudication, then the question that arises is the critical date for the formal dispute and what sovereign acts might now be held to have been designed to improve the parties' legal position since that date. It might well be held on one side that, post-1955, effective occupation had consolidated the titles to sovereignty claimed by the British on behalf of their colonies, but then Saudi Arabia might claim that its rights, established by both title and continuous manifestation of acts of sovereignty, had been usurped by force after the collapse of the arbitration, and that the case would have to be judged on the situation referred to arbitration under the 1954 agreement. Therefore, in 1971 both parties took the first practical step towards resolving the Buraimi dispute (which had always been the root of the dispute between the two countries) and the two parties signed an Agreement in 1971 by which Saudi Arabia conceded three of the Buraimi villages to Oman. In addition, the two states concluded a Security Cooperation Agreement in 1982³²² in order to prevent boundary incidents and

³²¹ *The Boundary Agreements*, Archive of the Saudi Border Guard. The Agreement was ratified by both parties, see the Royal Decree No. M/21 dated 23 March 1982, Archives of Council of Ministers, *Umm al Qura* No. 2912 dated 9 April 1982.

³²² *The Boundary Agreements*, Archive of the Saudi Border Guard.

regulate boundary security patrols.

Oman has become a vital ally for Saudi Arabia in the Peninsula as well as for the Gulf Cooperation Council (GCC). It has emerged as one of the leading Independent Petroleum Exporting Countries (IPEC) of the Middle East and thus found itself acting in some measure as a counterweight to Saudi Arabia, the “swing” producer of the Organization of Petroleum Exporting Countries (OPEC). Oman has been trying to settle its differences with its neighbours, whilst the intensification of its oil search with the discovery of fields near the disputed boundary (notably the Lekhwair field not far from Umm al-Zamul where production is scheduled to rise to 100,000 barrels a day) has given impetus to reaching an agreement with Saudi Arabia.

Both parties realised that to refer to the past was to make the issue even more complicated, ranging from the extremes of the Blue Line on the one hand, to claims to total sovereignty of the whole area up to Ras al-Hadd and beyond, based on the Al Saud’s ancestral rights, on the other. For Saudi Arabia, it was impossible to renounce these claims; the whole *raison d’être* of the state would be put in question. For some form of settlement to be reached, therefore, the Omanis would have to accept that there has never been a *de jure* boundary, and the Saudis that the *de facto* one is fair now that Oman is reunited. From that basis, a reasonable outcome might be that Saudi Arabia would accept the present situation, perhaps subject to some access to the south coast, and Oman might make a further gesture to recognizing the leading status of Saudi Arabia in the Peninsula in terms of its political and economic roles. The Saudi maps which were produced in that time showed that the Saudis relinquished their claim to Dhofar, and the Saudi boundary with Oman resembled that of the 1955 British

declaration.³²³ This positive indication was probably the sort of basis on which a settlement was reached in 1990. Therefore, King Fahd and Sultan Qabus met at head of state level in December 1989 to reach some basic understandings, whilst their respective ministers worked out details regarding pasture rights of the tribes and crossing points on the boundary.³²⁴

On 21 March 1990, Sultan Qabus visited Saudi Arabia and he and King Fahd and their delegations held a meeting in Hafr Al-batin in Saudi Arabia to discuss the final boundary agreement between the two states.³²⁵ The two parties accordingly signed the boundary agreement by which their boundary dispute was finally settled.³²⁶ The Agreement was ratified by both parties³²⁷ and the documents ratifying the Agreement were exchanged between them on 21 May 1991 at the Saudi Foreign Ministry in Riyadh.³²⁸ The Agreement was on the basis of the “declared line” or roughly the existing boundary (see map 1). Indeed, the boundary line started from the junction of latitude 22 degrees and 42 minutes and 30 seconds North and longitude 55 degrees and 12 minutes and 30 seconds East. Then it followed in a straight line to the junction of latitude 22 degrees North and longitude 55 degrees and 40 minutes East. From there the boundary stretched to the junction of latitude 20 degrees North and longitude 55 degrees East and then to the junction of latitude 19 degrees North and longitude 52 degrees

³²³ Schofield, *Border and Territoriality in the Gulf and the Arabian Peninsula during the Nineteenth Century*, in Schofield, (ed.), *Territorial Foundation of the Gulf States* (London, 1994) p. 24.

³²⁴ Saudi Press Agency, 26. 3. 1990. With regard to the pasture rights of the tribes and crossing points on the boundary, the Interior Ministers of the two countries signed on 21 March 1990 two Additional Agreements which were considered to be annexed to 1990 Saudi-Omani Boundary Agreement. *Treaty Collection*, Ministry of Foreign Affairs, Riyadh, vol. II, No. 5, *The Boundary Agreements*, Archive of the Saudi Border Guard.

³²⁵ *Umm al Qura*, No. 3301 dated 23 March 1990.

³²⁶ *Treaty Collection*, Ministry of Foreign Affairs, Riyadh, vol. II, No. 5, *The Boundary Agreements*, Archive of the Saudi Border Guard, also in Schofield, (ed.), *Arabian Boundary Disputes, op. cit.*, vol. 19, pp. 730-46.

³²⁷ Royal Decree No. M/23 dated 31 March 1990, *Archives of the Council of Ministers*, also in *Umm al Qura*, No. 3305 dated 20 April 1990.

³²⁸ *Umm al Qura*, No. 3358 dated 24 May 1991.

East.³²⁹ The Agreement set up a Joint Technical Committee composed of four members from each country in order to carry out the survey and supervise the demarcation process which would be carried out by one of the specialised companies.³³⁰ On 10 July 1995, the two states signed the demarcation maps in a signing ceremony in Riyadh, by which the demarcation of the 657.4km boundary between Oman and Saudi Arabia was completed.³³¹ The erection of 341 concrete boundary markers, which was completed in March 1995, took three years to complete and required formidable geographical obstacles to be overcome, including sand dunes reaching 200m high in some places.³³²

From the above, it could be said that the boundary disputes between Saudi Arabia and its eastern neighbours centred on the Blue Line defined by the 1913 Anglo-Ottoman Convention as part of the definition of the two Empires' spheres of influence in the Arabian Peninsula. Spheres of influence, however, have no legal status in international law, as it is rather concerned about the definition of international boundaries as separating each sovereignty from others, and according to which each state would have its defined territory, over which it exercises its authority and jurisdiction. Before the independence of the Saudi Arabia's eastern neighbours, Britain conducted the boundary negotiations with Saudi Arabia. Unlike Saudi Arabia's boundaries with its northern neighbours, these boundaries were not settled during the colonial period because of the discovery of oil in the area in the 1932. These boundaries, however, could have been settled as early as 1935 when the negotiations first started, if oil had not been involved. They could also have been settled some time during the colonial period, if Britain had let the rulers of its colonies speak for

³²⁹ Article 2 of the 1990 Saudi-Omani Boundary Agreement.

³³⁰ Articles 3 and 4 of the Agreement.

³³¹ *Al-Hayat*, No. 11827 dated 10 July 1995.

³³² *Al-Hayat*, No. 11828 dated 11 July 1995.

themselves and conduct negotiations directly with Saudi Arabia. Support for the first argument is found in the settlement of the Saudi boundaries with its northern neighbours, when no oil had yet been discovered there. The second argument is supported by the fact that all the Saudi boundary disputes with its eastern neighbours have been settled in a very short time following the independence of these states. Further support is found in the understanding reached between Saudi Arabia and Qatar, behind Britain's back, regarding the definition of their boundaries during the British negotiations with Saudi Arabia. Other factors that encouraged the settlement, however, should not be ignored, such as the improvement of Saudi relations with these states, along with the need for solidarity in the Arabian Peninsula, which could never be achieved without stable and defined international boundaries. In the next part, the settlement of the Saudi boundary dispute with Yemen will be discussed. This boundary dispute was the last one to be resolved.

PART III

SOUTHERN BOUNDARIES

Chapter I

The Evolution of the Southern Boundaries and the Boundary Disputes

It should be noted that at the time of the evolution of the southern Saudi boundaries, present-day Yemen was divided into two countries, namely, North Yemen and South Yemen or Aden Protectorate.¹ The Saudi boundary with North Yemen evolved as a result of taking the Asir region in several stages, while the Saudi boundaries with South Yemen evolved as a result of the Saudi advance into the Empty Quarter. These boundaries were the last Saudi boundaries to take shape.

The first stage of the evolution of the Saudi boundary with North Yemen took place when King Abdulaziz took Asir Al-Sarat, which constituted the northeastern half of Asir region, as a result of the 1920 Saudi-Idrisi Treaty which was concluded between King Abdulaziz and Al-Idrisi in 31 August 1920.² The area subsequently became the Saudi province of Asir Al-Sarat. This slightly altered the western and southwestern boundaries of the Saudi territories. Nevertheless, although the Saudis reinforced the new boundaries, demarcated and defined boundaries still did not exist in Central Arabia at that time. The second stage took place when the Saudi-Idrisi agreement of 1926, known

¹ In 1990, the Yemen Arab Republic, or North Yemen, and the People's Democratic Republic or South Yemen agreed to be unified under the name, the Republic of Yemen, *Al-Bilad*, No. 9480 dated 23 May 1990.

² This treaty specified the tribes which belonged to King Abdulaziz and that belonged to Imam Idrisi, see (PRO: FO 371/17930), in Tuson & Quick, (eds.), *Arabian Treaties, op. cit.*, vol., 4, pp. 41-50.

as the Mecca Agreement³, was concluded, by which the whole Asir region, including Tihamat Asir and the Farasan archipelago, became a Saudi protectorate. The final stage took place in 1930 when King Abdulaziz announced the annexation of Asir.⁴ This stage provided the final territorial acquisition of the Saudi state. Instead of being a Saudi protectorate, Asir was annexed to Saudi Arabia and became part of the Saudi territory. Although the annexation of Asir region was well received by the British, who benefited by having it as a buffer between Yemen and Hijaz that might have reduced tension in the area,⁵ such an annexation, though no force was used, was illegal from an international law viewpoint. Indeed, it was a violation of the provisions of the 1926 Mecca Agreement by which Asir region became a Saudi protectorate. Article 26 of 1969 Vienna Convention of the Law of Treaties states that treaties are binding upon the parties to them and must be performed in good faith.⁶ If it were otherwise, there would be no reason for states to conclude such treaties with each other. Although this Convention does not have retroactive effect, it is a compound of codification and of progressive development of customary international law.⁷ In respect of treaties, good faith must be observed by the parties in all the obligations connected with formation and performance of treaties.⁸

Now, instead of a mountainous boundary, about 350 kilometres of coastline on the Red Sea was added to the Saudi boundary in the west, increasing the Saudi coastline

³ (PRO: FO 371/12250), in Tuson & Quick, (eds.), *Arabian Treaties, op., cit.*, vol. 4, pp. 79-85, Treaty Collection, Ministry of Foreign Affairs, Riyadh No.7, Schofield, *Border and Territoriality in the Gulf and the Arabian Peninsula during the Nineteenth Century*, in Schofield, (ed.), *Territorial Foundation of the Gulf States* (London, 1994) p. 54, see also Umm Al Qura, No. 108 dated 7.1.1927.

⁴ (IOR: L/P&S/12/2064), in Tuson & Quick, (eds.), *Arabian Treaties, op., cit.*, vol. 4, pp. 127-135, see also Leatherdale, *Britain and Saudi Arabia, 1925-1939, The Imperial Oasis* (London, 1983) p. 146.

⁵ Leatherdale, *Britain and Saudi Arabia, op., cit.*, p.146.

⁶ Note that the references to good faith were also made in Articles 31 and 69 of the Convention.

⁷ See *Namibia case, ICJ Reports*, (1971) p. 16 at p. 47, the *Fisheries Jurisdiction case, ICJ Reports* (1973) p. 3 at p. 18, the *Nicaragua case (the Jurisdiction and Admissibility) ICJ Reports* (1984), p. 392.

⁸ O'Connor, *Good Faith in International Law, op., cit.*, pp. 123-4. See also the *Nicaragua case (the Jurisdiction and Admissibility) ICJ Reports* (1984), p. 392, at p. 418.

to about 1,800 kilometres.⁹ This coastal area began at the tip of the Gulf of Al-Aqaba in the north near latitude 29 degrees North and extended to the village of Mowsem near latitude 16 degrees North.¹⁰ This boundary later caused, as will be seen shortly, a conflict between Saudi Arabia and Yemen, although it was subsequently resolved.¹¹

Before proceeding to discuss the causes of the Saudi-Yemen boundary dispute, it is necessary to mention that the situations of North Yemen and the Aden protectorate or South Yemen in terms of the causes of their boundary disputes with Saudi Arabia were completely different. North Yemen was part of the Ottoman Empire until it became an independent state after the First World War. The Aden protectorate or South Yemen was within the British sphere in the 1914 Anglo-Ottoman Convention, which defined the two empires' spheres of influence in the Arabian Peninsula, and then became a British protectorate. As a consequence, the latter was affected by the boundaries defined by the Violet Line in the said Convention, while the former was not. However, when the two states became one country in 1990, this Line became applicable for the state of Yemen. Therefore, it is very important to bear this in mind while discussing the causes of the Saudi-Yemen boundary dispute, which will be discussed in the following paragraphs.

The Anglo-Ottoman Convention of 1914 was signed on 9 March 1914 and was ratified on 5 June of the same year.¹² The Ottomans' reason for defining the Aden boundaries was because it was believed at the time that the Hadramawt and its adjacent territory might contain oil deposits and the French and British might find a new base in

⁹ Abu-Dawood, and Karan, *International Boundary of Saudi Arabia*, *op. cit.*, p. 25.

¹⁰ *Ibid*, p. 35.

¹¹ See *infra* chapter II of this part.

¹² The text of the 1914 Anglo-Ottoman Convention and a map showing the Violet Line are found in Schofield, (ed.), *Arabian Boundary Disputes* (London, 1992) vol. 18, pp. 9-12.

the Hadramawt and Mahra territory.¹³ Article 3 of this Convention defined the Violet Line to link up the southern terminus of the Blue line with the Anglo-Ottoman boundary in southwest Arabia delimited during 1903-5 to separate the Ottoman *Vilayat* (districts) of Yemen or North Yemen from the “nine cantons” of British Aden or South Yemen¹⁴ (see map 12). The Violet Line ran at an angle of 45 degrees from Waldi Bana in the southwest in a straight line until it met the Blue Line at 20 degrees North in the middle of the Empty Quarter.¹⁵ Again, this Line had nothing to do with the Saudi boundary with North Yemen, because both Saudi Arabia and North Yemen were part of the Ottoman Empire and the Violet Line aimed to separate the British sphere from that of the Ottomans. Therefore, the Violet Line separated the South Yemen or Aden protectorate, as part of the British sphere from Saudi Arabia and North Yemen or the Imamate of Yemen, as parts of the Ottoman sphere. According to the 1978 Vienna Convention on the Succession of States in Respect of Treaties¹⁶ and the state practice before it, already discussed,¹⁷ boundary treaties are not affected by the state succession and thus bind the successor states automatically.¹⁸ As a result, both Saudi Arabia and South Yemen were bound by 1914 Anglo-Ottoman Convention concluded between their predecessors, and could only succeed to the boundary defined by this Convention which was the Violet Line. However, Imam Yahya of North Yemen repudiated the boundaries defined by the Violet Line between North Yemen and South Yemen, arguing that the 1914 Anglo-Ottoman Convention was concluded by two foreign

¹³ Wilkinson, *Arabia's Frontiers, op., cit.*, pp. 103-4.

¹⁴ That is to say between the Yemen Arab Republic, or North Yemen, and the People's Democratic Republic or South Yemen respectively when they were two separate states.

¹⁵ Kelly, *Eastern Arabian Frontier, op., cit.*, p. 19. See also Wilkinson, *Arabia's Frontiers, op., cit.*, p. 107.

¹⁶ This Treaty entered into force on 6 November 1996.

¹⁷ See *supra* part I, chapter I.

¹⁸ Article 11 of the 1978 Vienna Convention on the Succession of States in Respect of Treaties.

powers and so had no legal application to Yemen.¹⁹ Although this boundary is beyond the scope of this study, it should be noted that the North Yemen argument is untenable because North Yemen was bound by the 1914 Anglo-Ottoman Convention with regard to its boundary with South Yemen, as was Saudi Arabia regarding its boundary with South Yemen.

When the Saudi boundary with South Yemen evolved, another dimension was added to the land boundary dispute between the two countries. This was the allegiance of the tribes living in the borderlands along the edge of the Empty Quarter, which formed the boundary between the two countries.²⁰ Although some of these tribes were not subject to either country, as they were far from their core areas,²¹ both sides claimed sovereignty over them in order to gain as much territory as possible.²² However, most of the disputes focused on three areas: first, the area to the southeast of Najran; secondly, the land strip which separated Aden from the Empty Quarter, and thirdly, the Muhra region located to the utmost east of the disputed area.²³ The Saudi claims were, as in many other areas, based on historical rights on the ground that these areas had been parts of the old Saudi states and their inhabitants submitted to the Saudi rulers and paid *Zakah* to them even in the time of the modern Saudi state.²⁴ When oil was discovered in the early 1930s in the eastern region of the Peninsula, it was certain that the adjacent areas would soon be in demand. As a result, oil companies started searching for oil on

¹⁹ Leatherdale, *Britain and Saudi Arabia, op., cit.*, p.139.

²⁰ In Schofield and Blake, (eds.), *Arabian Boundary Disputes*, Buckinghamshire 1988, vol. 20, pp. 200-204.

²¹ Note that the uninhabited area of the Empty Quarter was to be considered in the pre-Saudi period as being *terra nullius*, see *supra* part II, chapter 1.

²² See the correspondence between King Abdulaziz and Imam Yahya of Yemen between 25.12 1351 and 17.12 1352, official documents reproduced in Akili, *The History of Al-Miklaf Al-Sulaimani* (Riyadh, 1982) vol. II, pp. 915- 22, (in Arabic).

²³ *Ibid.*, also a report produced by Research Department of the British Foreign Office dated 19 December 1954, in Schofield and Blake, (eds.), *Arabian Boundary Disputes, op., cit.*, vol. 20, pp. 200-6.

²⁴ Wilkinson, *Arabia's Frontiers, op., cit.*, p.189, *Saudi Memoial*, vol. I, pp. 469-76.

both sides,²⁵ and both Saudi Arabia and Britain became more concerned about the disputed area than ever. This, again, gave rise to a boundary dispute between the two countries.

Let us turn now to consider the causes of the boundary dispute between Saudi Arabia and North Yemen. The taking of Asir region and the evolution of the Saudi boundaries with North Yemen, as a result, gave rise to boundary dispute between the two countries. Indeed, the reassertion by Imam Yahya of North Yemen of claims to Asir led to friction and boundary clashes before the two parties signed a Treaty of Islamic Friendship and Arab Fraternity on 20th May 1934, known as the Treaty of Taif²⁶ This Treaty, which will be discussed in detail in chapter II of this part, defined part of the Saudi-Yemeni boundaries that contained the cities of Najran in Asir Al-Sarat and Jazan in Tihamat Asir and the surrounding areas. What is interesting about this treaty is that it did not settle the boundary dispute between the two countries finally and permanently, as Article 22 of the Treaty called for renewal every 20 years. This defect in the boundary making has accordingly given rise to boundary disputes between the two countries for years.

²⁵ For example two oil companies, namely, the Standard Oil Company of California or California-Arabian Standard Oil Company (CASOC) and the Iraqi Petroleum Company (IPC) started their competition for the geographical survey and exploration in the borderlands to the north and to the south of the Violet Line, In Schofield, (ed.), *Arabian Boundary Disputes*, Archives Editions, 1992, vol. 18, pp. 43, also in *Umm al Qura* No. 448 dated 14 July 1933, Royal Decree No.1135 Granting oil concession by Saudi Arabia to CASOC, Archives of Council of Ministers, also in *Umm al Qura* No. 448 dated 14 July 1933.

²⁶ (PRO: FO 371/17929 and FO 905/6), in Tuson & Quick, (ed.) *Arabian Treaties, op., cit.*, pp. 323-346, *Treaty Collection*, Ministry of Foreign Affairs, Riyadh, vol. I, No.30.

Chapter II

The Settlement of the Southern Saudi Boundary Disputes

For clarification, it should be noted that the settlement of the Saudi boundary disputes with North Yemen, as part of the Ottoman Empire, resulted from direct negotiations between Saudi Arabia and North Yemen. South Yemen, on the other hand, was a British protectorate, and therefore, the first attempt at defining its boundary with Saudi Arabia was the “Violet Line” as defined by the 1914 Anglo-Ottoman Convention. This boundary was first negotiated between Saudi Arabia and Britain while discussing the boundaries of the other British colonies examined in the first and the second parts of this study. Therefore, in this part, reference will be made to the two Yemen states as the former North Yemen and the former South Yemen in discussion of their boundary dispute before their unification, which took place in 1990.

1. The Saudi-Former North Yemen Pre-Unification Negotiations

As mentioned in chapter one, above, Asir region was the root of the boundary dispute between Saudi Arabia and the former North Yemen. Following the annexation of Asir region to the Saudi state in 1930, the boundary dispute between the two countries became over a narrow strip of 12 miles that stretched from the coast to Najran, on the western edge of the Empty Quarter. In order to settle this dispute, the two parties resumed direct negotiations which composed four rounds held, in rotation, in San’a, the capital of Yemen and Abha in the Asir region in Saudi Arabia. King Abdulaziz sent his delegation to discuss the matter with Imam Yahya’s delegation and the two parties held their first meeting in San’a, the capital of Yemen on 13. 12 1345 (1925).²⁷ After one

²⁷ Akili, *The History of Al-Miklaf Al-Sulaimani* (Riyadh, 1982) vol. II, pp. 915- 22, (in Arabic).

month of negotiations, however, the parties could not reach any agreement,²⁸ although they were at least, willing to discuss the problem and negotiate the boundary dispute.²⁹ Therefore, King Abdulaziz sent another delegation to Imam Yahya, which resumed negotiation on 6.6.1346 (1926) in San'a, holding several meetings with the Yemeni delegation.³⁰ This time the two parties were very close to reaching an agreement, as the Imam recognised for the first time the sovereignty of King Abdulaziz over what was under the Idrisi sovereignty, and over the whole of Asir region. They were in disagreement over Najran.³¹ Therefore, the Saudi delegation went back to Saudi Arabia carrying a letter from Imam Yahya to King Abdulaziz, suggesting he send a delegation to Mecca for further negotiations.³² After the departure of the Saudi delegation, Imam Yhaya sent his delegation to Mecca, but again no agreement was reached and the parties accused each other of not having good faith in their negotiations, which reached an impasse.³³

The situation remained calm for three years until Yemeni troops captured Al-Aur and Monabih Mountains, which belonged to the Idrisi in 1350 (1930). Saudi Arabia protested against this capture³⁴ but Imam Yahya justified his action by stating that the inhabitants of these two mountains belonged neither to Asir Al-Sarat nor to Tihamat Asir,³⁵ and that neither Asir Al-Sarat nor Tihamat Asir belonged to Saudi Arabia. The capture of Al-Aur and Monabih Mountains by Yemeni troops was a violation of

²⁸ *Ibid.*, p. 923.

²⁹ This was expressed in a telegram sent by Imam Yhaya to King Abdulaziz dated 21.1 1346 and Abdulaziz's reply dated 22. 4. 1346, in *ibid.*, pp. 923-24, also in *The Green Book, op., cit.*, p. 17.

³⁰ *Ibid.*, p. 924.

³¹ *Ibid.*, p. 925.

³² A letter from Imam Yahya to King Abdulaziz dated 4.8.1346, in Akili, *op., cit.*, pp. 925-6.

³³ A Report by a Member of the Saudi delegation dated 20.11.1346 and a Report by a member of the Yemeni delegation to the negotiations dated 2.12.1346, in *ibid.*, pp.

³⁴ *Ibid.*, p. 933.

³⁵ A letter from Imam Yahya to his Governor at Maida dated 29.3,1350, official documents reproduced in Akili, *The History of Al-Miklaf Al-Sulaimani, op., cit.*, pp. 933-4.

international law. War in inter-state relations was first outlawed in 1928 when the General Treaty for the Renunciation of War, also known as Pact of Paris (the Kellogg-Briand Pact)³⁶ was signed. This Treaty, which was adopted outside the framework of the League of Nations and which was the law of that time, prohibited the use of inter-states force. Article 1 of the Pact contained a declaration by the parties that they condemned “recourse to war of the solution of international controversies”, and renounced war “as an instrument of national policy”. It was also agreed that international disputes were to be settled by “peaceful means”.³⁷ Although Yemen was not party to the Pact of Paris, it could be argued that it was bound by it, since the Pact had been accepted by over sixty states, including all the Great Powers of that time.³⁸ As a result, the capture of Al-Aur and Monabih Mountains by Yemeni troops was unjustifiable and contrary to international law.

Both sides, however, agreed to resume negotiations in order to discuss the matter and the delegations held a meeting near the said mountains, but no agreement was reached. Imam Yahya suggested that he would leave it to King Abdulaziz to determine their sovereignty. King Abdulaziz reasserted that the Imam had no right to keep the Mountains, but decided to make a concession and abandon his claim to these two mountains and give them up to Yemen because he wanted to make progress in settling the boundary dispute between the two countries. In return, the Imam recognised Abdulaziz’s sovereignty over Fifa and Bani Malik.³⁹ As a result, the parties informally agreed that from Najran northward belonged to Saudi Arabia and from Wa’ilah

³⁶ “The Paris General Treaty for the Renunciation of War”(Pact of Paris), *United Kingdom Treaty Series*, 29 (1929) Cmd 3410.

³⁷ Article 2 of the 1928 Pact of Paris.

³⁸ The Pact was a law-making treaty, which was intended to have general relevance because it was signed by over sixty states, including all the Great Powers of that time.

³⁹ *Ibid.*, p. 935.

southward belonged to Yemen. With regard to Najran itself, King Abdulaziz explained to Imam Yahya that Najran naturally would belong to Saudi Arabia on the ground of historical rights which could be proved by the correspondence that took place between the ancestors of both Ibn Saud and the Najran tribes.⁴⁰ Therefore, the eastern Saudi-Yemeni boundary was settled and the two parties in 1950 signed an informal agreement which focused on the treatment of the nationals of each side towards each other.⁴¹

As a result of the failed Idrisi revolt against Saudi Arabia and his flight to Yemen, King Abdulaziz suggested to Imam Yahya that negotiations be assumed on the boundary question. When the Saudi delegations arrived on 6.2.1352 (1932) in San'a, they stayed two months during which the Imam neither nominated his delegation nor allowed the Saudis to contact their country.⁴² While instructing his delegations, King Abdulaziz insisted that modern political boundaries, such as those applied by western countries, should be defined between the two countries.⁴³ This instruction shows that Abdulaziz was aware of the importance of Western-style boundaries, as lines separating states from each other. Clearly, Abdulaziz's attitude towards Western-style boundary had changed from the one he held during the Saudi-British negotiations at the Uqair Conference for the settlement of the Saudi boundary with its northern neighbours, discussed in the first part. At the Uqair Conference, Abdulaziz fought for tribal boundaries rather than fixed ones. The reason for this new attitude, which was in conformity with international boundaries as understood by international law, might be that Abdulaziz realised, after his experience of defining fixed boundaries with his

⁴⁰ *Ibid.*, p. 1099.

⁴¹ *Ibid.*

⁴² A telegram from the Head of the Saudi delegation to his brother, the Minister of Finance asking him to inform King Abdulaziz about their situation, dated 4.4.1352, official documents reproduced in Akili, *The History of Al-Miklaf Al-Sulaimani*, *op. cit.*, p. 1046.

⁴³ King Abdulaziz's Instructions to his delegation, *Ibid.*, p. 1039.

northern neighbours, that tribal boundaries were no longer acceptable for separating states from each other. Therefore, he wanted a final and permanent definition of this boundary, which could not be achieved except by defining fixed boundaries, because tribal boundaries were changeable according to the change in the allegiance of the tribes.⁴⁴ Abdulaziz also stated that his Government did not ask Imam Yahya to concede what had belonged to the Idrisi before the Imam's troops entered Najran, especially Hodaidah and Maudi, because they had come under the Imam's sovereignty after the collapse of the Idrisi.⁴⁵ At that time, both Saudi Arabia and Yemen agreed that every side should keep its territory after the collapse of the Idrisi and before the capture of Najran. Abdulaziz also expressed his willingness to modify the western boundary line slightly in the Najran area if the Imam wished to do so.⁴⁶ The delegates of the two states held several meetings in San'a, but no agreement was reached, as the two sides disagreed over Najran.⁴⁷ During the negotiations, they suggested that the disputed area would be divided between the two countries by drawing a boundary line that conformed to the military meridians, which were in use at that time.⁴⁸ According to the repeated reports from the Saudi delegations, it would seem that Imam Yahya deliberately delayed the settlement of the boundary dispute in order to reinforce his position in the Najran area.

Najran came to be within the dispute area as a result of the competition between the two parties to expand their authorities. Yemen captured it with other parts of Asir in June 1933 and demanded the return of all the dominions of Idrisi, who had already

⁴⁴ As the sovereignty of the Rulers in the Arabian Peninsula depended on the allegiance of the tribes, their territories used to extend and shrink according to the tribes' allegiance and their boundaries overlapped most of the time. See *supra* part I, chapter I, 1.

⁴⁵ *Ibid.*, also in Akili, *The History of Al-Miklaf Al-Sulaimani*, *op. cit.*, p. 1039.

⁴⁶ *Ibid.*

⁴⁷ Akili, *The History of Al-Miklaf Al-Sulaimani*, *op. cit.*, p. 1046. 1049-53

⁴⁸ Al-Ra'ies, *Asir in the Saudi-Yemeni Relations*, Cairo, 1989, pp. 182-252.

abandoned all his agreements⁴⁹ with the Saudis when he fled to Yemen.⁵⁰ However, King Abdulaziz expressed his willingness to resume the negotiations, and put forward three subjects which the negotiations would cover, namely, the defining of the boundaries, the extradition of Idrisi and the determination of Najran sovereignty.⁵¹ He also expressed his willingness to modify the boundary line slightly in the Najran area in order that all the inhabitants of one tribe would be placed together in one country.⁵² While King Abdulaziz insisted on resuming the negotiations, Imam Yahya continued to delay them⁵³ until he finally agreed to resume them on 25.9.1352 (late 1933) and the two parties nominated their delegations which held their first meeting in Abha to discuss four things, namely, the Najran question, the boundaries, a 20-year friendly agreement and non-intervention in each other affairs.⁵⁴

As a result of the capture of Najran by Yemen, they returned to the last Saudi suggestion according to which each side would keep the territory they had in order to keep Najran.⁵⁵ Therefore, the boundary line would be drawn to the south of Najran to leave it within the Yemeni territory. Saudi Arabia strongly rejected this and proposed another suggestion that Najran would become a neutral zone, as a buffer zone between the two countries.⁵⁶ According to this suggestion, the two parties would undertake not to intervene in the interior affairs of Najran.⁵⁷ However, Yemen rejected this suggestion,

⁴⁹ Those of 1920, 1926 and 1930, see *supra* chapter I.

⁵⁰ Leatherdale, *Britain and Saudi Arabia, op., cit.*, pp. 150-1, for further details see Akili, *The History of Al-Miklaf Al-Sulaimani, op., cit.*, chapters 17,18.

⁵¹ Telegrams from King Abdulaziz to Imam Yahya dated 21.7 1951 & 8.8.1351(6 December 1932), official documents reproduced in Akili, *The History of Al-Miklaf Al-Sulaimani, op., cit.*, 1059.

⁵² Akili, *The History of Al-Miklaf Al-Sulaimani, op., cit.*, pp. 1037-39.

⁵³ See the correspondence between King Abdulaziz and Imam Yahya between 16.4. 1352 and 25.9.1352, in *ibid.*, pp. 1051-1092.

⁵⁴ *Ibid.*, pp. 1094-5.

⁵⁵ A telegram from Imam Yahya to King Abdulaziz dated 1.9. 1952, official documents reproduced in Akili, *The History of Al-Miklaf Al-Sulaimani, op., cit.*, pp. 925-1075.

⁵⁶ Two telegrams from King Abdulaziz to Imam Yahya dated 8.8. 1352 and 15.8.1352, official documents reproduced in Akili, *The History of Al-Miklaf Al-Sulaimani, op., cit.*, pp. 1063-65.

⁵⁷ *Ibid.*

insisting in keeping Najran under its authority.⁵⁸ Therefore, Saudi Arabia submitted its last proposal, that Najran would be partitioned equally between the two countries and Idrisi would be returned to Saudi custody, but Yemen, again, rejected it, and as a result, the last chance for a diplomatic solution collapsed and the negotiations reached an impasse.⁵⁹

As a result of the Yemeni procrastination, Saudi Arabia set up a date by which the Yemeni troops would be withdrawn from Najran in order to avoid any military actions on the ground that Najran belonged to Saudi Arabia.⁶⁰ When Yemen failed to withdraw, war erupted between the two countries, and in May 1934 the Saudis succeeded in recapturing the occupied area, including Najran, which up until then had been outside the Saudi domain.⁶¹ In addition, the Saudi troops penetrated into the Yemeni territory from the west and reached Hodeida, by the Red Sea.⁶² Such an armed attack, however, was like the capture of Al-Aur and Monabih Mountains by Yemeni troops, a violation of the principles of international law regarding both the prohibition use of force and the settlement of international disputes by peaceful means embodied in the 1928 Pact of Paris. Both Saudi Arabia and Yemen were bound to observe the provisions of the Pact of Paris, and to seek a peaceful solution to their boundary dispute instead of resorting to war.

⁵⁸ The Imam ignored the Najran question and did not mention it in all his telegrams to King Abdulaziz after the date of King Abdulaziz's suggestion, while keeping Najran, see the Imam's telegrams to King Abdulaziz after 9.8.1352 until the eruption of the war between the two states, official documents reproduced in Akili, *The History of Al-Miklaf Al-Sulaimani, op., cit.*, pp. 1066-1116.

⁵⁹ In telegrams from Ibn Saud to Imam Yahya dated 16.4, 8.8, 15.8, 27.11, 6.12, 10.12, 11.12, 17.12 1352. Leatherdale, *Britain and Saudi Arabia, op., cit.*, p. 153.

⁶⁰ See the correspondence between King Abdulaziz and Imam Yahya of Yemen dated 16.4, 8.8, 15.8, 6.12, 10.12, 11.12, 17.12 1352, official documents reproduced in Akili, *The History of Al-Miklaf Al-Sulaimani op., cit.*, vol. II, pp. 1051-4 &1063-5&1068-70 &1103-5 &1108-10.

⁶¹ Gregory Gause III, *Saudi-Yemeni Relations*, New York, Columbia University Press, 1990, pp.57-8.

⁶² *Umm Al Qura*, No.491 dated 11.5.1934.

Following the Saudi attack, the Imam appealed for outside aid. Britain, Italy and France, none of whom wanted the Saudis to be close to their colonies, Aden, Eritrea and Djibouti, sent warships to impress upon the Saudis the virtues of moderation.⁶³ It could be argued that the intervention of Britain, Italy and France was not justifiable because the Saudi attack did not extend to include their colonies and was never intended to do so, because the dispute was between Saudi Arabia and North Yemen. Another argument which might be put forward is that their intervention might be explained on the ground of collective self-defence which took place after the Imam's request for their aid. The 1928 Pact of Paris, which was the law of that time, remained silent regarding the machinery for collective action against a state that violated its provisions. The question now is whether or not the right of collective self-defence existed in customary international law at the time of the case in question prior to the UN Charter. The word "inherent" in Article 51 of the United Nations Charter suggests that the law of the Charter incorporated pre-existing customary international law, and the right of collective self-defence, therefore, exists in general international law.⁶⁴ As a result, states have been granted the right of collective self-defence by the inherent law, not by Article 51 of the United Nations Charter, which was merely declaratory of an existing right.⁶⁵ The existence of the right of collective self-defence in customary international law dated back to the emergence of the Monroe doctrine in 1823.⁶⁶ Warning the European states against the extension of their policy of the suppression of any revolutionary regime to the Western Hemisphere, the United States President Monroe said in his annual message to Congress of 2 December 1823:

⁶³ Gregory Gause III, *op. cit.*, p.58.

⁶⁴ Bowett, *Self-defence in International Law* (Manchester, 1958) p. 200.

⁶⁵ *Ibid.*

⁶⁶ For further details regarding the Monroe doctrine see, Hyde, *international Law*, 1945, vol. 1, p. 281, quoted in Bowett, *Self-defence in International Law, op. cit.*, p. 208.

“We owe it to candour, and to amicable relations existing between the United States the those powers [European States], to declare that we would consider any attempt on their part to extend their system to any portion of this hemisphere as dangerous to our peace and safety.”⁶⁷

Acting under the same principle, the United States Senate, fearing that Japan might indirectly acquire a footing in territory adjacent to Magdalena Bay, adopted in 1912 a resolution that:

“When any harbour or other place in the American continents is so situated that the occupation thereof for naval or military purposes might threaten the communications for the safety of the United States, the government of the United States could not see without grave concern the possession of such harbour or other place by any corporation or association which has such a relation to another government, not American, as to give that government practical power of control for naval or military purposes.”⁶⁸

The aforementioned two examples show that the United States, although no action might have been taken against it, considered its security so dependent on the security of the American continent as a whole that any attack on that continent would endanger its peace and safety, and as a result, it had the right to defend its endangered security.

The Monroe doctrine shifted from being a merely right of individual self-defence to become a right of collective self-defence of the continent as a whole when the American states in December 1938 agreed on “Declaration on the Principles of the

⁶⁷ Moore, *Digest of International Law*, vol. 6, pp. 401-3, for the full text of the message see Hyde, *international Law*, 1945, vol. 1, pp. 284-6, quoted in Bowett, *Self-defence in International Law*, *op. cit.*, p. 208..

⁶⁸ Hyde, *international Law*, 1945, vol. 1, pp. 289 quoted in Bowett, *Self-defence in International Law*. p. 209.

Solidarity of America” known as the Declaration of Lima.⁶⁹ Although the Declaration contained nothing more binding than an obligation of consultation at the initiative of any one of the signatory states,⁷⁰ further emphasis on the right of collective self-defence took place in the first and the second meetings of the American Foreign Ministers at Panama and Habana respectively. At the first meeting in October 1939, they adopted a resolution providing for consultation should any region of America subject to the sovereignty of non-American state be obliged to change its sovereignty and thereby produce a danger to the security of American Continent.⁷¹ At their second meeting in July 1939, the Foreign Ministers adopted a Convention⁷² which took into consideration the European war which might give rise to situations in the American colonies possession of the belligerent powers and create a state of danger to the peace of the continent. They declared that:

“Any transfer ...of the sovereignty [of] any such region to another non-American state would be regarded by the American Republics as against American sentiments and ...[the] American states [have the right] to maintain their security and political independence.”⁷³

Like the United States, Britain recognised the Monroe doctrine and maintained that its security demanded a claim of special interests in regions such as Afghanistan, Persia and Egypt, which were not under its territorial jurisdiction.⁷⁴ The British stated in a note

⁶⁹ The text of the Declaration is found in Hyde, *international Law*, 1945, vol. 1, p. 303, quoted in *Ibid.*, p. 210.

⁷⁰ *Ibid.*

⁷¹ *Ibid.*, pp. 210-11.

⁷² This Convention was additional to the Final Act which was adopted in the same meeting and which included a resolution known as the “Act of Habana concerning the Provisional Administration of European Colonies and Possessions in the Americas”. The text of both the Final Act and the Convention are set forth in the Department of State Bulletin, August 24th and 145 respectively. Quoted in Bowett, *Self-defence and International Law*, *op. cit.*, p 211.

⁷³ Quoted in Bowett, *Self-defence and International Law*, *op. cit.*, p 211.

⁷⁴ Pearce-Higgins, “The Monroe Doctrine” (1924) 5 *BYIL* 103, at 114.

sent in May 1928 to the United States government in connection with the Pact of Paris of 1928 Treaty that:

“There are certain regions of the world the welfare and integrity of which constitute a special and vital interests for our peace and safety. ... Their protection against attack is to the British Empire a measure of self-defence.”⁷⁵

As these regions were not subject to the sovereignty of the British Empire, the British claim could only be justified as self-defence if an attack on these regions was proven to be a threat to Britain’s security and safety.⁷⁶

From the above discussion, it could be said that the right of collective self-defence was well established under customary international law prior to the UN Charter. Further evidence of this is found in the *Nicaragua Case*,⁷⁷ when the international Court of Justice was obliged to reach a decision based upon the rules of customary international law by virtue of the United State’s reservation.⁷⁸ The Court stressed that the right to collective self-defence was established in customary international law.⁷⁹ The Court stated three requirements for the exercise of the right of collective self-defence. The first requirement is the occurrence of an armed attack against the victim state. The second requirement is that there has to be a declaration by the victim state that it has been attacked. The third requirement is that the attacked state must request assistance from the state or states coming to its aid.⁸⁰ In the case of Yemen, it could safely be said

⁷⁵ Cmd. 3109, p. 25; Cmd. 3153, p. 10.

⁷⁶ Bowett, *Self-defence and International Law, op. cit.*, p 213.

⁷⁷ *Nicaragua case, ICJ Reports*, (1986), p. 3.

⁷⁸ The United States Declaration of Acceptance of the Court’s jurisdiction excluded disputes arising under a multilateral treaty, unless...all parties to the treaty affected by the decision are also parties to the case before the Court. *Ibid.*

⁷⁹ *Ibid.*, pp. 103-5.

⁸⁰ *Ibid.*

that following the attack made by Abdulaziz, the Imam's appeal for the aid of Britain, Italy and France constituted both a declaration that Yemen was attacked and a request for aid from these three states. Yemen, therefore, had the right to request its allies, either within the framework of defensive pact or on an *ad hoc* basis, to help it defend itself, and Britain, Italy and France had legally exercised the right of collective self-defence.

The requirement of a request by the victim state means that the action remains one of self-defence, and that all the states involved in an action of collective self-defence must have special substantive interest which had been violated by the original attack.⁸¹ Indeed, Judge Sir Robert Jennings in his dissenting opinion in the *Nicaragua Case* suggests that in addition to the aforementioned requirements, the assisting state must be in some measure be defending itself and, in collective self-defence, there should be some real element of self involved with the notion of defence.⁸² In the light of Jennings' suggestion, it could be said that the intervention of Britain, Italy and France involved some measures of defending themselves because Abdulaziz, by attacking Yemen, might have attacked or threatened their colonies, whose security was very important for the interests of the three assisting states.⁸³

As a result of the a aforementioned intervention, King Abdulaziz announced on 13 May, a cease-fire on all fronts after a seven-week war⁸⁴ and both Saudi Arabia and Yemen resumed negotiations in Hijaz, as the Yemeni delegation which had already

⁸¹ McCoubrey and White, *International Law of Armed Conflict, op., cit.*, pp. 163-4.

⁸² *Nicaragua case, ICJ Reports*, (1986), p. 3, at p. 545.

⁸³ This is, as Jennings said in his dissenting opinion in the *Nicaragua case* the philosophy, which underlies mutual security arrangements, such as the system of the Organisation of American States, for which Article 51 of the UN Charter was specifically designed. *Ibid.*

⁸⁴ Al-Authaimin, *The History of Saudi Arabia* (Riyadh, 1995) 1st ed. vol. II, p. 286, (in Arabic).

arrived to Abha for negotiations before the war was still in Saudi Arabia.⁸⁵ These negotiations resulted in signing on 20th May 1934 a Treaty of Islamic Friendship and Arab Fraternity, known as the Treaty of Taif.⁸⁶ According to this Treaty, Abdulaziz would withdraw from Yemen in exchange for Yahya's recognition of Saudi sovereignty in Asir, including the disputed boundary areas of Najran and Jazan⁸⁷ (see map 12). The Treaty also defined part of the Saudi-Yemeni boundaries that contained the cities of Najran in Asir Al-Sarat and Jazan in Tihamat Asir and the surrounding areas. Generally speaking, the boundary starts at a point midway between the Saudi village of Al-Mowasem and the Yemeni village of Maida on the Red Sea and runs eastwards to Najran.⁸⁸ However, the eastern boundary between North Yemen and Saudi Arabia, which runs from Jabal Thar southeastwards until Jabal Al-Ryan at the edge of the Empty Quarter, was not mentioned in the Treaty, although the allocation of tribes had been agreed.

Not only did the Treaty of Taif, which was more than a boundary treaty *per se*, leave part of the Saudi-Yemeni boundaries undefined, but it also did not settle the boundary dispute between the two countries finally and permanently, even though the boundary was demarcated on the ground. Indeed, Article 22 of the Treaty called for renewal every 20 years. As far as international law is concerned, this treaty was to expire with the expiration of the period of 20 years unless it was renewed or prolonged for a further period.⁸⁹ This defect in the boundary-making process gave rise to boundary

⁸⁵ Note that the Yemeni delegations did not leave Abha to Yemen when the war erupted between the two states, but left to Jeddah and stayed there until the beginning of the current negotiations, see *ibid.*, pp. 286-7.

⁸⁶ Public Record Office: Foreign Office document 371/17929 and FO 905/6, reproduced in Tuson & Quick, (ed.) *Arabian Treaties, op. cit.*, pp. 323-346, *Treaty Collection*, Ministry of Foreign Affairs, Riyadh, vol. I, No.30.

⁸⁷ Article 2 of the 1934 Saudi-Yemeni Treaty (the Treaty of Taif).

⁸⁸ Article 4 of the Treaty of Taif.

⁸⁹ Article 54(a) of 1969 Vienna Convention on the Law of Treaties.

disputes between the two countries for years. As a result, the recapture of territory given up under the Treaty long remained a goal of Yemeni national sentiment. In 1973, this Treaty was renewed by the issue of a joint communiqué by the Saudi Foreign Minister and the Yemeni Prime Minister, Abdullah Al-Hajri, during the latter's visit to Saudi Arabia. In this communiqué, the boundary established by the 1934 Treaty of Taif was described as "permanent and final as defined by Articles 2 and 4 of the 1934 Treaty of Taif of Islamic Friendship and Arab Fraternity."⁹⁰ However, since the assassination of Al-Hajri in 1977 in London, which was linked with the commitment he made in this communiqué,⁹¹ this communiqué had never been ratified by any Yemeni leader until the final settlement of the boundary dispute between the two countries in 2000.

However, the rest of the Saudi Yemen boundary which was not defined by this Treaty, which located, as already mentioned between Jabal Thar and Jabal Al-Ryan at the edge of the Empty Quarter, remained calm until after the unification of Yemen.

2. The Saudi-Former South Yemen Pre-Unification Negotiations

The Saudi boundary dispute with Former South Yemen or the Protectorate of Aden was first discussed between Saudi Arabia and Britain in their negotiation of the Saudi boundaries with the British colonies of Qatar, UAE, Oman and Aden over 20 years, from late 1934 until their breakdown in autumn 1955. Therefore, almost all the boundary lines which were proposed by both Saudi Arabia and Britain covered the boundary of the former South Yemen or Aden Protectorate starting from the "Hamza

⁹⁰ Al-Gabba, *Saudi-Yemeni Relations* (Riyadh, 1992) p. 237 and 435, (in Arabic).

⁹¹ Schofield, "Border and Territory in the Gulf and the Arabian Peninsula during the Twentieth Century", in Schofield (ed.), *Territorial Foundation of the Gulf States* (London, 1994) pp. 54-5.

Line” until the bilateral declaration of the British boundary line of 1955 with some slight differences here and there.

However, before the “Hamza Line” of 1935, the British Chief Commissioner in Aden proposed a boundary line in March 1935 which aimed to push the Saudis as far to the north inside the desert of the Empty Quarter as possible in order for Britain to protect its political and economic interests.⁹² According to the Aden proposed boundary, a straight boundary line would be drawn between the junction of longitude 52 Degrees East with latitude 20 degrees North and the junction of latitude 18 degrees North with the “Violet Line”.⁹³ Aden justified its proposal on the ground that the Awamir and Manahil tribes extended to latitude 18 degrees North to the east end of its proposed boundary.⁹⁴ However, Saudi Arabia did not accept Aden’s proposal and proposed the “Hamza Line” which, as already discussed,⁹⁵ covered its boundaries with the British colonies in the east of the Arabian Peninsula. With regard to the Saudi boundary with Aden, the “Hamza Line” began at the junction of longitude 52 degrees East with latitude 17 degrees North and ran southwestwards until it met the Violet Line⁹⁶ (see map 10).

The difference between the Aden boundary proposal and the “Hamza Line” was that the latter left a wide strip to the south of the sand of the Empty Quarter within the Saudi territory. The width of this strip was approximately 160 miles at its eastern end, and it became narrower as it ran westwards. It would seem that the “Hamza Line”, in

⁹² Wilkinson, *Arabia's Frontiers, op., cit.*, p. 199.

⁹³ *Ibid.*

⁹⁴ A telegram from the British Political Agent in Aden to the Colonial Minister in London dated 29 March 1935 in Schofield and Blake, (eds.), *Arabian Boundary Disputes*, Buckinghamshire 1988, vol. 20, p. 123.

⁹⁵ See *supra* part II, chapter II, 1.

⁹⁶ *Saudi Memorial*, p. 385, Schofield and Blake, (eds.), *Arabian Boundaries, Primary Documents 1853-1957*, Archive Editions, 1988, vol. 16, p. 6., Wilkinson, *Arabia's Frontiers, op., cit.*, pp. 190-4.

general, was a moderate one in comparison with the “Violet Line” and the Aden proposal, as it left Sina’aw and Thamoud wells in the Saudi territory and the remaining territory of Al-Kathiri, Al-kutai’i and Muhrah within Aden’s territory. The “Hamza Line” was based on two grounds, namely, the list of tribes which belonged to Saudi Arabia that Fuad Bey Hamza, the Saudi Deputy Foreign Minister, had submitted to Britain in the course of the negotiations, as already mentioned,⁹⁷ and the loyalty of the same tribes to the Saudi Government.⁹⁸ Support for the Saudi claim is found in a report⁹⁹ produced, later, by the Research Department of the British Foreign Office which stated that the Saudi authority extended up to the south of the sand of the Empty Quarter with an area between longitude 51 and 53 degrees East. The report confirmed the traveller, Bertram Thomas’s information that many of the wells on the margins of the sand desert were held in common.¹⁰⁰ However, Britain rejected the “Hamza Line” because it did not accept that Sina’aw and Thamoud wells belonged to Saudi Arabia.¹⁰¹ As a result, Fuad Bey Hamza implied to the British that his government was ready to make concessions by negotiating a boundary line to be somewhere between the “Hamza Line” and the Aden Proposal, but Britain ignored it.¹⁰²

The Aden Government considered that they had gone too far in the concessions from the Violet Line in their first proposal, for they subsequently found that certain Hadrami tribes extended further north than they had originally believed. Therefore, the

⁹⁷ See *supra* part II, chapter II.

⁹⁸ Wilkinson, *Arabia's Frontiers, op., cit.*, p. 189, Wilfred Thesiger, *Arabian Sands*, p. 212 .

⁹⁹ The Report produced on 19 December 1954, in Schofield and Blake, (eds.), *Arabian Boundary Disputes, op., cit.*, vol. 20, pp. 200-4.

¹⁰⁰ In Schofield, (ed.), *Arabian Boundary Disputes, Archives Edition*, 1992, vol. 19, pp. 121-32, Wilkinson, *Arabia's Frontiers, op., cit.*, pp. 199-200.

¹⁰¹ FO E 3783/77/91, Aide-memoir from Sir A. Ryan to Saudi Government, 9 April 1935, also in Schofield, (ed.), *Arabian Boundary Disputes, op., cit.*, vol. 18, p. 71, in *Saudi Memorial*, vol. I, pp. 385-6.

¹⁰² Britain later regretted its neglect of the Saudi proposal when it wanted to go back to the “Hamza Line”, see *supra* part II, chapter II (the Dammam Conference).

Chief Commissioner in Aden, Sir Bernard Reilly, suggested a straight line from the intersection of parallel 18 with the Violet Line to the intersection of parallel 20 degrees with meridian 55 degrees; a line so drawn would provide a safer margin for the British sphere of influence, as it pushed Saudi Arabia as far away as possible.¹⁰³ This new line would give Aden more territory to the north, as it was moved from meridian 52 degrees according to the first Aden proposal to meridian 55 according to this proposal. The Aden Government argued that the boundary should not join the Violet Line below parallel 18 because it would cut into the Seiar steppe country.¹⁰⁴ However, Aden's argument was to be refuted by evidence from the travels of Bertram Thomas, who showed that a line below the 19th parallel would similarly cut into Mahra and Manahil territory in the east.¹⁰⁵

The Colonial Office reevaluated the British position regarding the boundary dispute on the light of the report of the Research Department of the British Foreign Office and the traveller Thomas's information, just mentioned. Britain was very concerned to maintain good relations with Saudi Arabia at a time when the Italian influence was increasing in Yemen and the area of the south Red Sea. In July 1935, the Colonial Office suggested that a modification of the aforementioned Aden proposal would be made. According to this modification, the Saudi Aden boundary would begin from the intersection of 22 degrees North and 55 degrees East, down that meridian to the intersection with parallel 20, thence to the intersection of meridian 52 degrees and parallel 19 degrees, thence in a straight line to the intersection of parallel 19 degrees and the Violet Line.¹⁰⁶ This boundary conceded to Saudi Arabia a narrow strip of territory to

¹⁰³ A telegram from the British Foreign Office to the British Political Agent in Aden dated 22 November 1935 in Schofield and Blake, (eds.), *Arabian Boundary Disputes, op., cit.*, vol. 20, pp. 141-2.

¹⁰⁴ Wilkinson, *Arabia's Frontiers, op., cit.*, pp. 199.

¹⁰⁵ In Schofield, (ed.), *Arabian Boundary Disputes, Archives Edition*, 1992, vol. 19, pp. 121-32.

¹⁰⁶ Schofield and Blake, (eds.), *Arabian Boundary Disputes, op., cit.*, vol. 20, pp. 143-144.

the south of the previous Aden boundary proposals, to include the common wells, mentioned in the Foreign Office's report and the traveller, Bertram Thomas's information, such as Shanna Wells. Nonetheless, it did not meet the Saudi claims, as it left more territory within Aden than that offered by the "Hamza Line".

So, the British Minister at Jeddah, Sir Andrew Ryan proposed what was described by the British as their final offer, known as the "Riyadh Line".¹⁰⁷ With regard to Aden's boundary with Saudi Arabia, the "Riyadh Line" began at the junction of longitude 53 degrees East with latitude 19 degrees North and ran in a straight line from this point to meet the Violet Line at its intersection with latitude 18 degrees North.¹⁰⁸ Although the "Riyadh Line" left a narrow strip of territory to the south of the previous British boundary proposals, it was deliberately defined to cut 20 or 30 miles into the Empty Quarter, so as to provide a defensive buffer for the Aden protectorate.¹⁰⁹ Saudi Arabia rejected this line on the ground that some wells, which were included in Aden territory, were part of the Murra's 161 wells, already submitted to Britain.¹¹⁰

In 1937, in order to appease the Saudis, particularly in the area requested, the Secretary of State for the Colonies pressed the Aden Government to see if it could not make some concession between parallel 17 and 18, particularly to the west of meridian 51. According to this new suggestion, the great sand of the Empty Quarter would be left to the north of new boundary line, that is to say, within Saudi territory. However, the Aden Government proposed a boundary line that contained only limited concession in

¹⁰⁷ See *supra* chapter II. 1.

¹⁰⁸ *Saudi Memorial*, vol. 1, chapter V, para. 28, p. 390, The *Memorial* states incorrectly that the line passed through the junction of longitude 53 Degrees E with latitude 19 Degrees N. (pp. 385-6).

¹⁰⁹ Schofield, "Border and Territory in the Gulf and the Arabian Peninsula during the Twentieth Century", in Schofield (ed.), *Territorial Foundation of the Gulf States*, *op. cit.*, p. 16.

¹¹⁰ See *supra* part II, chapter II, 1. EO: E 4314/77/91, Statement by Fuad Bey Hamza, 8 July 1935, in Schofield, (ed.), *Arabian Boundary Disputes*, *op. cit.*, vol. 18, pp. 459-63.

comparison with the previous proposals. It grudgingly conceded a twenty-mile wide strip parallel to the Violet Line, starting at meridian 48 degrees and terminating, some three hundred miles further east, at meridian 52 degrees. Since, however, it was felt by the Foreign Office that an offer of some six thousand square miles of desert in an area in which Ibn Saud was not really interested would not be looked on as a major concession, the offer was never put to him.¹¹¹ This proposed line was far away from the real British sovereignty in the area. Therefore, the Colonial Office emphasised that more information about the boundary area and the British sovereignty in it should be collected in order to be able to make a strong and real claim.¹¹² However, the outbreak of World War II put off the negotiations for a decade.

The aforementioned boundary suggestions put forward by both parties indicated that a solution for this boundary dispute was close. While there was divergence in the Saudi eastern boundary dispute which was discussed in the previous chapter, the Saudi-Aden boundary dispute was going to some extent differently. Indeed, in a very important step in the way of solution, both parties reached an understanding regarding the location of tribes.¹¹³ This understanding reassembled the Treaty of Muhammera¹¹⁴, which was signed in 1922 between Saudi Arabia and Iraq and defined the allegiance of the tribes, becoming the ground on which the final Saudi-Iraqi boundary settlement was based. Nonetheless, in the case of Aden, this understanding did not seem to be sufficient by itself to be the ground of any settlement, as further investigations regarding the tribes seemed to be essential. Indeed, it was necessary to agree on a definition of the *dera* (the tribe's territory) before any further progress could be made. However, the British did

¹¹¹ *Ibid.*, p. 315.

¹¹² Wilkinson, *Arabia's Frontiers*, *op. cit.*, pp. 225-30.

¹¹³ Schofield and Blake, (eds.), *Arabian Boundary Disputes*, *op. cit.*, vol. 20, pp. 169-77.

¹¹⁴ See *supra* part I, chapter I, 3.

not seem to have understood this point, or else they might deliberately have ignored it, as they confused between the *dera* (the tribe's territory) and the movement of the tribes within each others' *dera*. The tribal *dera* is an exclusive territory for a tribe over which its emir exercises its authority and determines who has the right of access, and this is what gives the tribes the right of movement within each others' *dera*. Consequently, movement within each other's territories does not mean that the moving tribes have any territorial right in such territory; they are only visitors for a period of time. The allegiance of the tribes of a certain territory to certain rulers gives such rulers legitimate right over these tribes' territory. This should be taken into consideration when attempting to define boundaries in the Arabian Peninsula. Indeed, any confusion or ignorance of the definition of the tribal territory would lead to ill definition of such boundaries, and as a result they would not be accepted by the parties to the dispute.

In 1937, the Aden Government was able to make a concession to the line already conceded to the Foreign Office, over such common wells as Shanna, and even then it would be more appropriate that they formed part of a common desert zone. Such a concession would modify that line so as to read: from the intersection of 22 degrees North and 55 degrees East, down that meridian to the intersection with parallel 20 degrees, thence to the intersection of meridian 52 degrees and parallel 19 degrees, thence in a straight line to the intersection of parallel 19 degrees and the Violet line. A modification was also sought, in British favour, of the Violet line between Beihan and the neighbourhood of the Hadrami Sei'ar, where their margin was too narrow. These concessions, including Shanna, reluctantly wrung out of Aden, were then more or less incorporated into the offer to be made to the Saudis, but Reilly was assured that no other major concessions would be made in his area.

3. The Saudi-Yemeni Post-Unification Negotiations

Prior to the unification of Yemen in 22 May 1990, much of the undefined Saudi-Yemen boundary from Jabal Thar to Jabal Ryan was not inhabited or exploited by either side. Therefore, all the proposed or claimed boundary lines, already discussed, had no particular legal weight, and most of the legal arguments rested in vague assertions of who has had constructive control over the area. However, after unification, the Yemeni Government accelerated its search for oil to support development efforts, and granted oil concessions in this area to several western oil companies.¹¹⁵ As a result, Saudi Arabia protested against the Yemen action and sent several warning letters to these oil companies in March 1992 and August 1993 informing them that they were working in Saudi territory.¹¹⁶ At the same time, Yemen asserted that its boundary claims included even more territory than those in which oil concessions had been granted.¹¹⁷ Yemen lodged an official protest with Saudi Arabia after Saudi weather reports had indicated that the Kharkhir region belonged to Saudi Arabia. Yemen said that the Kharkhir region belonged to it. Therefore, Yemen stated that it would not renew the Treaty of Taif, according to which Kahrkhir belonged to Saudi Arabia, which would expire in September 1994.¹¹⁸

However, the Gulf war of 1990/91, along with the unification of Yemen, resulted in the increased desire of both parties to settle their boundary disputes, both from Jabal Thar to Jabal Ryan and from Jabal Ryan until Muhra at the junction of Saudi-Yemeni-Omani boundaries. As a result, Yemen resurrected its claims to Asir and

¹¹⁵ Pike, "Cross-border hydrocarbon reserves", in Schofield (ed.), *Territorial Foundation of the Gulf States* (London, 1994) p. 187, at p. 193.

¹¹⁶ *Ibid.*, pp. 194-5.

¹¹⁷ *Ibid.*

¹¹⁸ Yemeni Republic Radio, 17 May 1993.

Najran.¹¹⁹ Therefore, the two parties became more desirous of settling their boundary dispute than ever. Indeed, the countries resumed negotiations when the Saudi and Yemeni Foreign Ministers held several preparatory meetings in July 1992 (between 17-22) in Geneva to exchange views on future arrangements to begin negotiations between the countries on the boundary dispute.¹²⁰ The negotiations, which were held in a cordial and fraternal atmosphere, were followed by several meetings on the level of bilateral technical committees during 1992.¹²¹ With regard to the issue of Article 22 of the 1934 Treaty of Taif, mentioned earlier, an important stance was expressed by the Yemeni Foreign Minister Abdul Karim Al-Iryani in a press conference held in San'a, the capital of Yemen, on 30 July 1992, in which he stated that:

“The Taif Agreement is a fact. It was signed by King Abdulaziz and Imam Yahya. A border demarcation committee was established and delineated the border from north of Maldi to the Thar mountains. A demarcation committee prepared a memorandum which was handed to King Abdulaziz and Imam Yahya and they both ratified it.”¹²²

This statement removed any doubt about the finality of the Treaty of Taif and paved the way for more understanding and efforts towards the settlement of the boundary dispute. Indeed, in this optimistic atmosphere, Saudi and Yemeni technical experts continued their negotiations in Ta'izz in Yemen for two days beginning on 16 August 1993.¹²³ Although no official communiqué emerged from the negotiations, the Yemeni side announced that they remained optimistic of a settlement similar to that between the

¹¹⁹ Schofield, “Border and Territory in the Gulf and the Arabian Peninsula during the Twentieth Century”, in Schofield (ed.), *Territorial Foundation of the Gulf States, op., cit.*, p. 54-5.

¹²⁰ Yemeni Republic Radio, 20 July 1992.

¹²¹ Yemeni Republic Radio, 10 August 1992.

¹²² Quoted in Schofield, “Border and Territory in the Gulf and the Arabian Peninsula during the Twentieth Century”, in Schofield (ed.), *Territorial Foundation of the Gulf States, op., cit.*, p. 55.

¹²³ *Al-Riyadh*, No. 9184 dated 16 August 1993.

Yemen and Oman.¹²⁴ The sixth round was held between 25 and 28 October 1993 in Riyadh, in Saudi Arabia and the committee issued a communiqué stating that the seventh round of talks would begin on 20 November 1993 in San'a.¹²⁵

However, the seventh round was not held in the time defined by the joint communiqué just mentioned, as the negotiations did not resume until January 1994 when the seventh round was held in San'a on 18 January 1994 in a cordial and fraternal atmosphere.¹²⁶ Although several differences arose between the two parties along with some boundary clashes in the borderland in the beginning of December 1994, both sides expressed their desire to solve their boundary disputes by amicable means.¹²⁷ As a result, the two parties signed a Memorandum of Understanding¹²⁸ on 26 March 1995, as the first step towards ending the 60-year boundary dispute.¹²⁹ The Memorandum, which was ratified on 15 May,¹³⁰ reaffirmed the finality of the 1934 Treaty of Taif,¹³¹ and set up six Joint Commissions in order to settle all the boundary disputes between the two countries as follows:

- (1) Joint Commission for the re-establishment of border markers set up following the 1934 Treaty of Taif;¹³²

¹²⁴ *Ibid.*

¹²⁵ *Saudi Press Agency*, Riyadh, 28 October 1993, *Al-Riyadh*, No. 9258 dated 29 October 1993.

¹²⁶ *Al-Riyadh*, No. 9339 dated 18 January 1994.

¹²⁷ A statement made by a Saudi Official Source, *Al-Riyadh*, No. 9664 dated 9 December 1993.

¹²⁸ *Boundary Agreements*, Archives of the Border Guards.

¹²⁹ Also in *Al-Hayat*, No. 11696 dated 27 February 1995

¹³⁰ *Umm al Qura*, No. 3552 dated 19 May 1995.

¹³¹ Clause 1 of the Memorandum.

¹³² Clause 2 of the Memorandum.

- (2) Joint Commission to negotiate the delimitation and demarcation the remainder of the land boundary from Jabal Thar until the end of the Saudi-Yemeni boundary to the east, and to agree on the arbitration procedures when needed;¹³³
- (3) Joint Commission for negotiating the determination of the maritime boundary between the two states in accordance with international law;¹³⁴
- (4) Joint High Military Commission charged for preventing military incidents on the boundary;¹³⁵
- (5) Supreme Joint Commission for supervising other commissions' work, facilitating their tasks and removing any obstacles that may challenge their ways.¹³⁶

Generally speaking, the boundary dispute between the two countries was over two points. The first was the boundary which was demarcated by the 1934 Treaty of Taif. This dispute concerned certain disputed landmarks, which Yemen considered to be at certain location while Saudi Arabia maintained that they were elsewhere.¹³⁷ The second concerned the undefined boundary from Jabal Thar up to the intersection of Saudi-Yemeni-Omani boundary. The main problem in this dispute was over the ownership of Sharurah and Al-Wadi'ah and the areas surrounding them, at the edge of the Empty Quarter.¹³⁸ While Yemen claimed these cities on the ground of its historical rights, Saudi Arabia based its claim on both historical rights and the exercise of the state

¹³³ Clause 3 of the Memorandum.

¹³⁴ Clause 4 of the Memorandum.

¹³⁵ Clause 5 of the Memorandum.

¹³⁶ Clause 7 of the Memorandum.

¹³⁷ Declared by the President of Yemen in an interview with *Al-Hayat*, dated 21 June 1998, in *Al-Hayat*, No. 12892 dated 21 June 1998. Also Abd-al-Karim al-Iryani, the Yemeni Prime Minister explained in a newspaper interview on 12 August 1998, *Al-Bayan*, Dubai, 10 October 1998, *Al-Sharq Al-Awsat*, London, No. 7277 dated 29 October 1998 & No. 7302 dated 23 November 1998.

¹³⁸ Declared by the President of Yemen in both an interview with *Al-Hayat*, dated 21 June 1998, in *Al-Hayat*, No. 12892 dated 21 June 1998 and in a press conference held dated 20.7.98, in *Al-Hayat*, No. 12922 dated 21 July 1998.

authority over the disputed area.¹³⁹ It has already been mentioned¹⁴⁰ that the exercise of the state authority overrides any kind of historical claim. Both Sharurah and Al-Wadi'ah and the area surrounding them had always been subject to the Saudi authority and sovereignty. It could be said, therefore, that such peaceful display of the Saudi sovereignty over the disputed areas was as good as title.¹⁴¹

On May 1995 the President of Yemen visited Saudi Arabia and had several meetings with the Saudis in order to define the representatives of the Saudi-Yemeni Joint Commission which would implement the Understanding Memorandum.¹⁴² On 15 May 1995, the first meeting of the Joint Commission established for delimitation of the undefined boundary was held in Jeddah, and on 16-17 June a meeting was held over the necessary measures and steps to be taken in the delimitation and demarcation process.¹⁴³ Prior to the meeting of the Joint Commission, the military committee charged with preventing military incidents on the boundary met on 1-3 April and again on 1-3 May.¹⁴⁴ Both meetings were reported to have been characterised by a "fraternal spirit and common understanding with regard to the way to implement the foundations and tasks agreed upon". The committee charged with locating the border markers on the basis of the Treaty of Taif held its first meeting on 13 July.¹⁴⁵

The Memorandum was also discussed during wide-ranging negotiations between King Fahd and President Salih in Jeddah on 5-7 June. The talks were characterised by

¹³⁹ *Al-Jazirah*, No. 9428 dated 22 July 1998.

¹⁴⁰ See *supra* part I, chapter I (the Saudi-Kuwait Boundary).

¹⁴¹ *Island of Palmas Case*, *op. cit.* at 876.

¹⁴² The President of Yemen in a press conference in Jeddah on the last day of his visit, *Al-Riyadh*, No. 9845 dated 8 June 1995.

¹⁴³ Yemeni Republic Radio, San'a 3 April 1995, 6 June 1995; Kingdom of Saudi Arabia TV, Riyadh 1 May 1995, 7 June 1995.

¹⁴⁴ *Ibid.*

¹⁴⁵ *Ibid.*

expressions of brotherhood, cordiality, cooperation and good neighbourliness, and concluded with a statement of commitment to the memorandum. Following the negotiations, President Salih mentioned the "splendid model" of the demarcation between Yemen and Oman, and noted that prior to Yemeni unity there had been an on-off dialogue for over ten years but, once unity had been achieved, agreement was reached in just four sessions.¹⁴⁶ It should be noted here that in April 1998 Saudi Arabia expressed its concern to preserve its national interests regarding the Omani-Yemeni boundary agreement through a memorandum submitted to the UN and Arab League because it was believed that this agreement included some of the Saudi territory.¹⁴⁷ The Saudis emphasised that they sought the "preservation of its national interests in keeping with the provisions of the Treaty of Taif."¹⁴⁸ Although this Saudi preservation seemed to have precluded the negotiations for a while,¹⁴⁹ the Omani Foreign Minister, on a visit to Saudi Arabia clarified the point for the Saudi government.¹⁵⁰

However, both parties were willing to settle their disputes by amicable means. Indeed, although several boundary incidents occurred during the negotiations,¹⁵¹ Prince Sultan Ibn Abdulaziz, the Second Deputy Prime Minister, stated that tribal differences in the area of the boundary would not affect the negotiations, which were proceeding well for the benefit of the two sides.¹⁵² Moreover, the Deputy Prime Minister of Yemen, Dr Abd al-Karim al-Iryani stated that the success of the Saudi-Yemen demarcation meetings has become a reliable guarantee against the recurrence of any tension.¹⁵³

¹⁴⁶ Yemeni Republic Radio, San'a 3 April 1995, 6 June 1995; Kingdom of Saudi Arabia TV, Riyadh 1 May 1995, 7 June 1995.

¹⁴⁷ *Al-Hayat*, No. 12919 dated 18 July 1998, *Al-Riyadh*, No. 10981 dated 19 July 1998.

¹⁴⁸ *Ibid.*

¹⁴⁹ A statement made by an Official Yemeni Source, *Al-Hayat*, No. 12921 dated 20 July 1998.

¹⁵⁰ *Ibid.*

¹⁵¹ *The Guardian*, London 12 December 1995.

¹⁵² *Saudi Press Agency*, Riyadh, 16-17.12.1995

¹⁵³ *Ibid.*

In May 1996, the Joint Yemeni-Saudi boundary Committee ended consultations in San'a and issued a communiqué in which both sides expressed pleasure over the progress made.¹⁵⁴ Although there had been no developments, and concrete progress still seemed unlikely, both parties expressed their satisfaction with the end of the sixth round of negotiations over the placement of new boundary markers along the boundaries defined by the Treaty of Taif.¹⁵⁵ They also felt that their viewpoints during their long-running wrangle over the demarcation of their undefined boundaries were coming closer.¹⁵⁶ Indeed, before the end of the year, both parties exchanged opinions on how the boundary line should be demarcated beyond Jabal Thar, so it would meet with the Saudi and Omani boundary.¹⁵⁷ Moreover, both parties signed a security cooperation agreement¹⁵⁸ on 27 July 1996 and a *cooperatio* agreement¹⁵⁹ on fighting drug trafficking and other types of smuggling. A trade agreement¹⁶⁰ was also reached on 10 October 1996, and Yemen removed import duties from some Saudi Arabian goods.¹⁶¹ These agreements were expected to improve and facilitate the negotiations over the boundary disputes even though they were not linked with them.

However, up to 1997, no significant progress had been achieved, as each party held its own position and was not able to make any concessions, although the committee working on the undefined boundary beyond Jabal Thar had already been upgraded.¹⁶² It would seem, therefore, that all three joint committees negotiating over the two countries' northern maritime boundary, the demarcation of the defined land boundary

¹⁵⁴ Yemeni Republic TV, San'a, 23 May 1996.

¹⁵⁵ Yemeni Republic Radio, San'a, 8 August 1996

¹⁵⁶ Yemeni Republic Radio, San'a, 30 August 1996

¹⁵⁷ *Al-Hayat*, No. 12283 dated 10 October 1996

¹⁵⁸ *Boundary Agreements*, Archives of the Border Guards.

¹⁵⁹ *Boundary Agreements*, Archives of the Border Guards.

¹⁶⁰ *Boundary Agreements*, Archives of the Border Guards.

¹⁶¹ *Ibid.*

¹⁶² *Al-Quds Al-Arabi*, London, 15 January 1997.

and the defining the former South Yemen's boundary with Saudi Arabia had failed to reach any positive results.¹⁶³ As a result, the resumption of meetings between the two sides was now dependent on the arranging of a summit meeting between the leaders of the two countries, the outcome to be referred to the committees for implementation.¹⁶⁴ Furthermore, relations between the two countries were in their worst state in more than a year following several boundary incidents and disagreements over perceived Saudi demands. The row began after Saudi Arabia objected to Yemeni moves to change the administrative divisions in Kitaf, Sa'dah Governorate and Hadhramaut Governorate, areas claimed by Saudi Arabia. Saudi Arabia claimed that most of the inhabitants of the areas concerned had actually taken out Saudi citizenship, to which the Yemen press responded by saying the Saudis were trying to annex the regions by winning over the inhabitants. The moves came after a Saudi request in 1994 that a referendum be held in the disputed regions; the request was turned down by the Yemenis, their Foreign Minister Al-Iryani saying that the dispute with Saudi Arabia was over land, not people.¹⁶⁵ But it is those people who have the right to determine the sovereignty of the land where they live through referendum which, as discussed in detail in the previous part,¹⁶⁶ involves the right of self-determination where the inhabitants vote in order to choose their government or state. The inhabitants of the disputed region had taken Saudi citizenship which indicates that they were integrated into the Saudi state. The Yemenis, therefore, opposed a referendum, because they were sure that the inhabitants would vote for Saudi Arabia. This, however, might be evidence of the exercise of the Saudi authority and sovereignty over the said disputed area otherwise the inhabitants would

¹⁶³ The President of Yemen in a press conference, *Al-Hayat*, No. 11696 dated 27 February 1995
Al Quds Al-Arabi, London, 27 June 1997.

¹⁶⁴ *Ibid.*

¹⁶⁵ *Al-Quds Al-Arabi*, London, 5 June 1997.

¹⁶⁶ See *supra* part II, chapter II.

not have taken Saudi citizenship. Such an exercise of effective control is considered by international law as being as good as title.¹⁶⁷

The Saudis were exerting particular pressure on Yemen to hand over the Ra's 'Ali area; it was claimed that they intended to build an oil pipeline along a 2km "land passageway" through the area to the Indian Ocean. On the other hand, the Yemenis claimed that the negotiations had so far not progressed because the Saudi government was making wide demands without being prepared to offer concessions.¹⁶⁸

Moreover, Clause 5 of the Memorandum of Understanding of 1994 stipulated that both parties would refrain from establishing any new construction in the borderlands. This was reaffirmed by both the High Joint Committee in its first meeting and the Joint Military Committee in its seventh meeting.¹⁶⁹ However, it would seem that neither party observed this, as the Joint Military Committee stated in its seventh meeting that any constructions taking place after the signing of the Memorandum should be removed.¹⁷⁰ Despite this statement, this issue seems to have remained unresolved, as the Joint Military Committee repeated its statement in its ninth meeting and, in an indication of the high tension between the parties, stated that both parties should refrain from the use of war or the threat of use of war for resolving any differences that may arise between them.¹⁷¹

¹⁶⁷ *Island of Palmas Case*, *op. cit.* at p.876, see also *Clipperton Island Case*, (1932), 62 *AJIL*, p. 390, *Eastern Greenland Case*, *PICJ Reports*, (1933), series A/B, No 53, p. 151.

¹⁶⁸ *Al-Quds Al-Arabi*, London, 5 June 1997.

¹⁶⁹ *Al-Sharq Al-Awsat*, No. 6958, dated 16.12.1997, *Al Hayat*, No. 11922, dated 13.12.1994 & No. 12693 dated 30.07.1997.

¹⁷⁰ *Ibid.*

¹⁷¹ *Ibid.*

Moreover, there was a dispute over the ownership of Al- Muhrah, to the utmost eastern end of their boundary.¹⁷² In this respect, Yemen suggested that in the event of the two sides being unable to reach an agreement through bilateral relations, there was an agreement to take the issue to arbitration.¹⁷³ It would seem that Yemen aimed to put pressure on Saudi Arabia to accept the Yemen boundary suggestion, which had already been submitted to Saudi Arabia. At the same time, Yemen suggested that the negotiations should be postponed for an unlimited time accusing Saudi Arabia of not being able to negotiate the boundary dispute any more.¹⁷⁴ Saudi Arabia, however, responded by issuing a very calm announcement in which it gave an assurance of its concern to resolve the rest of the undefined boundary between the two neighbours without any delay, especially as Saudi Arabia had already settled most of its boundary disputes with other neighbouring states by amicable means.¹⁷⁵

In May 1998, the negotiations between the two countries seemed to be likely to be resumed after the new Yemeni Prime Minister, Dr. 'Abd-al-Karim al-Iryani, who was the Yemeni Foreign Minister, showed interest in focusing on the Saudi-Yemeni boundary dispute.¹⁷⁶ In addition, Saudi Arabia expressed a wish to settle the boundary dispute and reinforce relations with Yemen.¹⁷⁷ However, a few days later, Saudi

¹⁷² *Al-Hayat*, No. 12709 dated 16.12.1997.

¹⁷³ Yemeni Foreign Minister Dr 'Abd-al-Karim al-Iryani in an interview with the London-based *Al-Quds al-'Arabi*, on 5 May 1997. It should be noted that both the 1934 Treaty of Taif and the 1995 Memorandum of Understanding contain clauses indicating that the issue should be taken to arbitration in the event of non-agreement.

¹⁷⁴ President of Yemen in a phone call with King Fahd of Saudi Arabia, *Al-Sharq Al-Awsat*, No. 6953, dated 11 December 1997 & no. 6958 dated 16 December 1997, *Al-Hayat*, No. 12708 dated 15 December 1997.

¹⁷⁵ *Al-Hayat*, No. 12709 dated 16 December 1997, it should be noted that by that time, Saudi Arabia had settled all its boundary disputes with its neighbours except its maritime boundary dispute with Kuwait, which was settled later on 2 July 2000 when both parties signed the Saudi-Kuwaiti Maritime Boundary Agreement. For further details, see *Al-Riyadh*, No. 11697 dated 3 July 2000.

¹⁷⁶ *Al-Quds Al-Arabi*, London, 18 May 1998.

¹⁷⁷ Prince Sultan Ibn Abdulaziz, the Saudi Deputy premier, in a press conference following a Saudi Military Exercise, in *Al-Hayat*, 12860 dated 20 May 1998.

military forces were reported to have invaded one of the Yemeni Islands, "Huraym" in the Red Sea.¹⁷⁸ Such use of force by Saudi Arabia was a violation of international law in respect of the prohibition use of in inter-state force¹⁷⁹ and the settlement of international disputes by peaceful means.¹⁸⁰

Negotiations were resumed between the two parties when Saudi and Yemeni legal and military experts met in Riyadh on 2 June 1998, with the aim of putting the final legal touches to the text of the final international boundary demarcation agreement.¹⁸¹ In the event, delegates from both sides agreed that the meeting was not to work out the legal formula of the agreement and that negotiations would have to continue, due to a divergence of opinions between the two sides.¹⁸² Therefore, the High Joint Committee held a meeting in Sana'a on 17-19 June 1998, which was described by the leader of the Saudi delegation Dr al-Nufaysah as having been conducted in a friendly atmosphere.¹⁸³ In addition, another meeting was held in Saudi Arabia between 29-30 June, in which both parties agreed to continue the negotiations in keeping with the report of the Joint Military Committee in which they set up regulations for preventing border incidents between the two sides.¹⁸⁴

However, another incident took place in Al-Duwaimah Island in July 1998 when both parties opened fire and tried to occupy the island. Both sides claimed the ownership of the island and accused each other of starting the aggression and occupying

¹⁷⁸ *Al-Quds Al-Arabi*, London, 26 May 1998.

¹⁷⁹ Article 2(4) of the UN Charter.

¹⁸⁰ Article 2(3) of the UN Charter provides that "all Members shall settle their international disputes by peaceful means". This principle has been developed by the 1970 Declaration on Principles of International Law, which includes the use of peaceful methods for the settlement of international disputes. Article 33 (1) of the Charter describes the methods by which international disputes may be settled.

¹⁸¹ *Al-Sharq Al-Awsat*, London, No. 7129 dated 3 June 1998.

¹⁸² *Ibid.*

¹⁸³ Yemeni Republic Radio, San'a, 19 June 1998.

¹⁸⁴ A statement by a Saudi Official Source, in *Umm al Qura* No. 3707 dated 24 June 1998.

the island. The Saudi Minister of the Interior confirmed that the Saudi Army had not started the exchange of fire on Duwayyimah island, but were in the position of self-defence.¹⁸⁵ As far as international law is concerned, the right of self-defence was well formulated both in customary international law before the 1945¹⁸⁶ and under the United Nations Charter. Article 51 of the Charter, which is the basic reference resorted to by states in justifying their use of force as self-defence, reads as follows:

“Nothing in the present charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a member of the United Nations, until the Security Council has taken measures necessary to maintain International peace and security. Measures taken by members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore International peace and security”

Although this article clarifies the circumstance in which the right of self-defence should be exercised and that is when an armed attack *occurs*, it does not elucidate when the use of force by one state against another can be regarded as constituting an actual armed attack. Nevertheless, more elaborate clarification of this matter is found in Article (3) of the United Nations General Assembly Resolution (3314) of the Definition of Aggression adopted on the 14th December 1974, which reads as follows:

Any of the following acts, regardless of a declaration of war, shall, subject to and in accordance with the provisions of article 2, qualify as an act of aggression:

¹⁸⁵ *Al-Jazirah*, Riyadh dated 22 July 1998.

¹⁸⁶ See the *Caroline case*, Jennings, “The Caroline and McLeod Cases” (1938) 32 *AJIL* 82.

- (a) The invasion or attack by the armed forces of a state of the territory of another state, or any military occupation, however temporary, resulting from such invasion or attack, or any annexation by the use of force of the territory of another state or part thereof.
- (b) Bombardment by the armed forces of a state against the territory of another state or the use of any weapons by a state against the territory of another state.
- (c) The blockade of the ports or coasts of a state by the armed forces of another state.
- (d) An attack by the armed forces of a state on the land sea or air forces, or marine and air fleets of another state.
- (e) The use of armed forces of one state which are within the territory of another state with the agreement of the receiving state, in contravention of the conditions provided for in the agreement or any extension of their presence in such territory beyond the termination of the agreement.
- (f) The action of a state in allowing its territory, which it had placed at the disposal of another state, to be used by the other state for perpetrating an act of aggression against a third state.
- (g) The sending by or on behalf of a state of armed bands, groups, irregular or mercenaries, which carry out acts of armed force against another state of such gravity as to amount to the acts listed above, or its substantial involvement therein.¹⁸⁷

¹⁸⁷ Djonovich, *United Nations Resolutions* (New York, 1984) pp.392-394.

Although the General Assembly used the term “aggression” in lieu of “armed attack” in the definition above, it is said that the concept of the term “aggression” in the definition is equivalent to the term “armed attack” used in article 51¹⁸⁸, inasmuch as an armed attack is a form of aggression¹⁸⁹. Hence, whenever a state is subject to any of the actions classified in the definition, it has the right to resort to the use of force under self-defence. Boundary incidents, however, are not classified as an armed attack in the definition of aggression in the aforementioned United Nations General Assembly Resolution. On this issue, Dinstein believes that there is no reason to separate small-scale armed attacks from more extensive armed attacks, because frontier incidents do in many situations involve a large scale of battle; therefore, it would be erroneous to separate them from other types of armed attacks.¹⁹⁰ Dinstein’s point of view is shared by Kunz, who believes that if what is meant by armed attack is an illegal armed attack, then this would include any illegal armed attack, even a small boundary incident¹⁹¹. On the other hand, McCoubrey and White disagree with the opinions mentioned above, declaring that boundary incidents do not amount to the level of an armed aggression within article 3(g) of the definition of aggression; and a state subject to such a situation is entitled to resort to limited counter measures instead of resorting to its right of self-defence.¹⁹² The International Court of Justice, in the *Nicaragua Case*,¹⁹³ distinguished between an armed attack and a mere boundary incident on the basis of their scale and effects. It held that the concept of an armed attack does not consist only of actions committed by regular armed forces across a states boundary but also the sending by or

¹⁸⁸ McCoubrey and White, *International Law of Armed Conflict, op., cit.*, p.52

¹⁸⁹ Dinstein, *War, Aggression and Self-defence* (Cambridge, 1988) p.173.

¹⁹⁰ *Ibid.* p.182.

¹⁹¹ Kunz, “Individual and collective self-defence in Article 51 of the Charter of the United Nations” (1947) 41 *AJIL* 872, at 878.

¹⁹² McCoubrey and White, *International Law of Armed Conflict, op., cit.*, p.90

¹⁹³ *Nicaragua case, ICJ Reports*, (1986), p. 14.

on behalf of a state, of armed groups which commit acts against another state of such gravity as to amount to an actual armed attack.¹⁹⁴ Turning to states' practice, in the 1979 China-Vietnam conflict which resulted in the loss of 20,000 lives and the occupation of five provincial Vietnamese towns by Chinese forces, although it may be possible to admit that the scale and effects of the Chinese actions may have amounted to the level of an armed attack which would entitle Vietnam to resort to its right of self-defence, instead, Vietnam resorted to counter measures to drive the Chinese troops out of its occupied territory.¹⁹⁵ With regard to the past two examples and McCoubrey and White's point of view, it would appear an exaggeration to classify a boundary incident as an actual armed attack which calls for the victim state to resort to its right of self-defence, because not all boundary incidents involve large-scale military engagements. Therefore, by classifying a boundary incident as an actual armed attack, this may indicate that this includes small-scale boundary incidents as well. In the case of situations which may involve the exchange of fire between a small minority of military forces from two neighbouring states, for the victim state to resort to its right of self-defence under article 51, if the attack could be repelled by the use of counter-measures, would be an excessive response by the victim state. So, whether the victim state resorts to the right of self-defence or to counter-measures depends entirely on the scale of the boundary incident. It must be stressed, however, that certain conditions are to be observed when exercising the right of self-defence. First, the right of the use of force by a state under self-defence is authorised only when an armed attack *occurs*. Secondly, the right of self-defence must be the only alternative for the victim state to end the aggression committed against it. Thirdly, the victim state must respond to the armed

¹⁹⁴ *Ibid.*, at p. 103.

¹⁹⁵ McCoubrey and White, *International Law of Armed Conflict, op., cit.*, p.65

attack immediately and without any delay by using force to repel it and any unjustified delay to the victim state's response may expose it to the possibility of being denounced as an aggressor itself.¹⁹⁶ Finally, the proportionality condition is that the victim state of an armed attack resorts only to sufficient use of force to repel the armed attack.¹⁹⁷ In the light of the above discussion, it could safely be said that the incident of Al-Duwaimah Island was not a large scale incident, as although involved the occupation of the island by Yemeni troops, only involved the exchange of fire between small army forces from both sides which did not amount to an "armed attack". In addition, since the boundary between the two states was disputed, the war could be seen as a mere boundary dispute rather than an "armed attack" by Yemen. Saudi Arabia, therefore, did not have the right to resort to the right of self-defence, but it did have the right to take counter-measures to expel Yemen out of the Island.

If, however, it is accepted that Saudi Arabia has the right to resort to its right of self-defence, the question, which arises now, is whether it might have lawfully obtained title to the territory of Al-Duwaimah Island in self-defence. Some writers have argued that the prohibition on the acquisition of territory by force applies only in the case of an aggressive, unlawful war and that a state may lawfully obtain title to territory acquired in self-defence.¹⁹⁸ This view is rejected by both state practice and resolutions of the United Nations.¹⁹⁹ The General Assembly Declaration on Principles of International Law Concerning Friendly Relations and Cooperation among States in Accordance with

¹⁹⁶ *Ibid.*, pp.96-97.

¹⁹⁷ *Ibid.*, p.96.

¹⁹⁸ Schwebel, "What Weight to Conquest?" (1970) 64 *AJIL* 344; Oppenheim, *International Law, op., cit.*, p. 703.

¹⁹⁹ Jennings, *The Acquisition of Territory in International Law, op., cit.*, pp. 54-6, Bowett "International Law Relating to Occupied Territory, A Rejoinder" (1971) 87 *LQR*, 473.

the Charter of the United Nations of 1970 draws no distinction between the lawful and unlawful use of force in providing:

“The territory of a state shall not be the object of acquisition by another state resulting from the threat or use of force. No territorial acquisition resulting from the threat or use of force shall be recognised as legal”.²⁰⁰

Although no United Nations resolution has described Israel as an aggressor in the Six-Day War of 1967, resolutions of both the Security Council²⁰¹ and the General Assembly²⁰² have condemned Israel’s purported annexation of East Jerusalem and the Golan Heights on the ground that “the acquisition of territory by force is inadmissible” with no distinction drawn between the lawful and unlawful use of force. The non-recognition of Israel’s annexation of East Jerusalem and the Golan Heights support the view that territory may not be acquired in war of self-defence. In the light of the above discussion, it could be said that Saudi Arabia could not acquire Al-Duwaimah Island on the ground that the acquisition had taken place in a war of self-defence. Therefore, the question of this island had to be settled peacefully through negotiations between the two parties.

Both parties emphasised their willingness and desire to deal with the incident with patience and to seek a solution through amicable means.²⁰³ Therefore, on the next day, some military members of both states held a meeting at a place near Al-Duwaimah

²⁰⁰ Resolution 2625(XXV), in Rausching, Wiesbrok and Laiacn, (eds.), *Key Resolutions of the United Nations General Assembly 1946-1996* (Cambridge, 1997), p. 3.

²⁰¹ See Security Council Resolutions 242 (1967) 21 *UNYB* at 257, 252 (1968) 22 *UNYB* at 264, 298 (1971) 25 *UNYB* at 187, 476&478 (1980) 35 *UNYB* at 358, and 497 (1981) 35 *UNYB* at 312.

²⁰² See, for example, General Assembly Resolutions 34/70 (1979) 33 *UNYB* at 375, ES-7/2 (1980) 34 *UNYB* at 391, 37/123 A (1982) 36 *UNYB* at 516 and 39/146 A (1984) 38 *UNYB* at 261.

²⁰³ President of Yemen in a press conference and the Saudi Interior Minister in a press conference on 20 July 1998, For further details about this incident and both parties’ claims and accusations, see *Umm al Qura* No. 3707 dated 24 June 1998, *Al-Jazirah* No. 9428 dated 22 July 1998, *Al-Hayat*, No. 12922 dated 21 July 1998.

Island in order to contain the problem.²⁰⁴ The meeting resulted in evacuation of the island and an agreement to wait for a final boundary settlement. Moreover, the Yemeni Foreign Minister visited Saudi Arabia in order to discuss with his Saudi counterpart the Al-Duwaimah Island incident.²⁰⁵ As a result, on 28 July 1998, both Saudi Arabia and Yemen signed an agreement²⁰⁶, which aimed to prevent any future border incidents and to activate the work of the Saudi-Yemeni Joint Commission, as well as prohibiting any military constructions in the disputed area until a final boundary agreement was reached.

In June 1999, further negotiations took place in Saudi Arabia by a Joint Saudi-Yemeni committee for renewing boundary markers for those boundaries which were already defined by the Taif Agreement. Four locations needed to be identified for the remaining 29 markers during this 15th session of the committee. The two sides agreed on 23 June, at the end of the negotiations, that the technical teams on the ground would continue their surveying work, and said that the discussions had been held in an atmosphere of amity and understanding.²⁰⁷ Both parties exchanged letters relating to the two states' views on their decades old boundary dispute.²⁰⁸ Although the precise contents of the letters were not revealed, it seemed that the boundary problem was approaching its end. Nevertheless, although it had been over three years since the signing of the Memorandum, this complicated problem could not be resolved in a short space of time.²⁰⁹

²⁰⁴ *Ibid.*

²⁰⁵ *Al-Hayat*, No. 12924 dated 23 July 1998

²⁰⁶ *Al-Hayat*, No. 12930 dated 29 July 1998 & No. 12931 dated 30 July 1998.

²⁰⁷ *Al-Riyadh*, No. 11318 dated 20 June 1999.

²⁰⁸ *Ibid.*

²⁰⁹ The Yemeni Information Minister 'Abd-al-Rahman al-Akwa' said on 30 June 1999 in a press conference relating to the boundary dispute, *Al-Bayan*, Dubai, 30 June 1999.

In June 2000, the President of Yemen, accompanied by a high-level delegation, made a state visit to Saudi Arabia. During the visit, official negotiations on the boundary dispute were held between the two sides under the co-chairmanship of the King Fahd bin Abdulaziz and President Ali Abdullah Saleh.²¹⁰ The two sides sincerely desired to reach a fraternal and amicable solution to the boundary dispute between them.²¹¹ As a result, a final and permanent agreement was reached in the boundary dispute, both that defined by the 1934 Treaty of Taif and the remaining boundary from Jabal Thar to the end of the Saudi-Yemeni-Omani boundary to the east. Indeed, the Saudi-Yemeni International Boundary Agreement²¹² was signed by the Foreign Ministers of the two countries in Jeddah in Saudi Arabia in 12 June 2000. According to the Saudi-Yemeni joint communiqué, which was issued on this occasion, “the two sides agreed on the demarcation of the geographical sites at the border, including the part covered by the Treaty of Taif, the border reports annexed to it”.²¹³ The Agreement was endorsed by the Consultative Council in 18 June²¹⁴ and ratified in 19 June 2000.²¹⁵ Not only did the Agreement settle the Saudi-Yemeni land boundary dispute, but it also defined their maritime boundaries to put an end to more than 66 years of boundary dispute and conflict between the two countries. According to this agreement, the two sides agreed on the demarcation of the geographical sites at the boundary, including the part covered by the Treaty of Taif, the boundary reports annexed to it and the part uncovered by the Treaty of Taif

²¹⁰ *Saudi Press Agency*, Riyadh, 12 June 2000, *Al-Jazirah*, No. 10119 dated 13 June 2000.

²¹¹ *Ibid.*

²¹² *Boundary Agreements*, Archives of the Border Guard.

²¹³ *Saudi Press Agency*, Riyadh, 12 June 2000, *Al-Jazirah*, No. 10119 dated 13 June 2000.

²¹⁴ A letter from the President of the Consultative Council to King Fahd No. 219/1/3S dated 16.3.1421AH (18 June 2000). Archives of the Consultative Council.

²¹⁵ Council of Ministers Resolution No. 73 of 17.3.1421 (19.6.2000), Archives of the Council of Ministers.

Saudi Arabia was prepared to make concessions and to give up some of its territory to Yemen. The first part of the boundary which was defined by the 1934 Treaty of Taif begins from a point at the Red Sea at the junction of longitude 42 Degrees, 46 Minutes East with latitude 16 degrees, 24 minutes North and stretched eastwards until Jabal Thar at the junction of longitude 44 degrees, 21 minutes East with latitude 17 degrees, 26 minutes North.²¹⁶ From this point, the line of the second part of the boundary, which had not been defined before, begins and run eastwards until it ends at the junction of longitude 52 East with latitude 19 North.²¹⁷ The Agreement stipulated that the identity of the villages located at this line would be according to the Treaty of Taif and its annexes, and if the line passed by any village, its identity would be determined according to its loyalty to either side, and as a result the boundary line would be changed accordingly.²¹⁸ The two parties also agreed that a specialist company would demarcate the boundary on the ground, carry out the survey and prepare detailed maps according to this Agreement, and after being signed by the two parties, these maps would be considered as an integral part of this Agreement.²¹⁹

As tribal clashes and border incidents had been of major concern for both parties, as they had been going on for years, the Agreement made provisions for maintaining peace and security in the borderland by keeping the parties away from each other as much as possible. Indeed, with regard to the first part of the boundary, the Agreement reaffirmed the provisions of Article 5 of the Treaty of Taif which stipulated that both parties would refrain from establishing any constructions within five kilometres from the boundary line.²²⁰ Therefore, both parties would have to evacuate

²¹⁶ Article 2(a) of the 2000 Saudi-Yemeni Boundary Agreement.

²¹⁷ Article 2(b) of the 2000 Saudi-Yemeni Boundary Agreement.

²¹⁸ Article 2(a) of the 2000 Saudi-Yemeni Boundary Agreement.

²¹⁹ Article 3(1&2) of the 2000 Saudi-Yemeni Boundary Agreement.

²²⁰ Article 4 of the 2000 Saudi-Yemeni Boundary Agreement.

and withdraw from any construction or military post, which had been established since the conclusion of the Treaty of Taif²²¹ As to the second part of the boundary defined by this Agreement, Annex 4 which was considered as an integral part of the Agreement regulated the pasture rights and the positions of the military forces on both sides of the boundary. Both parties would enjoy pasture rights within an area stretching not more than 20 kilometres from the boundary.²²² The positions of the military forces of both sides were to be beyond 20 kilometres from the boundary line, and the only military activities allowed within these 20 kilometres would be security patrols with light weapons, to guard the boundary and prevent smuggling into the countries.²²³ In addition, both parties, with the aim of reducing tension between them and preventing any future dispute, agreed that if any exploitable natural sources are discovered in the boundary regions, both parties will negotiate their joint exploitation.²²⁴

Both Ministers of Interior of the two states held the fifth meeting in Saudi Arabia between 3-4 April 2001 attending by military members of the joint committee to discuss the implementation of the boundary demarcation as well as the joint security patrols and coordination between border authorities.²²⁵ In a statement to *Al-Hayat* newspaper, Prince Naif, the Saudi Minister of Interior, asserted that both parties worked as “one team” and there were no points of difference between them.²²⁶ He also called for continuity of cooperation between the states in order to fight crimes of all kinds, blamed the tribal elements for armed clashes in the border region and praised Yemeni’s cooperation in the matter.²²⁷ After the meeting, both sides signed a joint communiqué in

²²¹ *Ibid.*

²²² Article 1(a and b) of Annex 4 of the 2000 Saudi-Yemeni Boundary Agreement.

²²³ Article 5 of Annex 4 of the 2000 Saudi-Yemeni Boundary Agreement.

²²⁴ Article 6 of Annex 4 of the 2000 Saudi-Yemeni Boundary Agreement.

²²⁵ *Saudi Gazette*, No. 8657 dated 4 April 2001.

²²⁶ *Al-Hayat*, No. 13898 dated 4 April 2001.

²²⁷ *Arab News*, vol. XXVI No. 129, dated 5 April 2001.

which they announced that they had signed, in a signing ceremony in Jeddah, a contract worth \$986 with the German Hanza Company, to carry out the demarcation of the boundary. This would take four years from the commencement of the work, which would be within 90 days.²²⁸ It should be noted that the length of the boundary to be demarcated is 1318km, most of which lies in a naturally difficult terrain, with mountains and sandy areas. However, the said German company has good experience in demarcating this kind of boundary, as it has already demarcated the Saudi-Omani boundary and the Omani-Yemeni boundary.²²⁹ The two sides also agreed on setting up a border commission to follow up issues that might arise from time to time and suggested the names of representatives on a panel, which would set up the border commission and hold its first meeting in San'a in Yemen shortly.²³⁰ In this meeting, they also discussed the exit points and agreed to set up four exit points along the boundary line.²³¹

The 2000 Saudi-Yemeni International Boundary Agreement was a breakthrough in the settlement of boundary disputes between the two countries. Indeed, the Agreement was final and comprehensive because it covered everything related to the boundary settlement and did not leave any ground for future conflict. Both parties were aware of their mutual interests and needs. Saudi Arabia wanted to settle the last boundary disputes that remained, because they caused it many troubles in terms of its internal security. Indeed, many border clashes had occurred over the past years, in which tens of soldiers and innocent people were killed on both sides.²³² In addition, evidence showed that those who blew up the American Military camp in Riyadh in 1998 brought the explosives from Yemen and smugglers helped them to get them across

²²⁸ *Ibid.*

²²⁹ *Al-Hayat*, No. 13899 dated 5 April 2001.

²³⁰ *Arab News*, vol. XXVI No. 129, dated 5 April 2001.

²³¹ *Ibid.*

²³² See *Saudi Border Guard Annual Statistic*, Archives of Saudi Border Guard.

the border.²³³ Security in the borders was loose because the boundaries were not defined and it was quite easy to cross the border in the absence of any cooperation between the competent authorities in both countries. In addition to the security element, economic and political factors were also involved. Yemen is the only state in the Arabian Peninsula that is not a member of the Gulf Cooperation Council.²³⁴ Following the invasion of Kuwait by Iraq in 1990, the Arab Cooperation Council, in which Yemen was a member beside Iraq and Egypt, collapsed. As a result, Yemen found itself isolated and then moved to improve its relations with Saudi Arabia and the other Gulf states. Following the Gulf War of 1990-91, some two million Yemenis who migrated to Saudi Arabia and settled there for years had to return to Yemen. The reason for this was that the said Yemenis were exempted before the War from any procedures that other nationalities had to follow, such as obtaining a visa or a working contract etc., as they were treated by the Saudi Government in the same way as its own citizens. After the war, however, such exemption was abolished and the Yemenis working in Saudi Arabia were given three months to settle their problems or leave the country.²³⁵ The return of the Yemenis affected the Yemen economy and became a heavy burden on the Yemen Government's shoulders.²³⁶ Yemen gained economic benefits as a result of the settlement of the boundary disputes, since Saudi Arabia promised Yemen to help it to resolve its economic problems by encouraging its businessmen to invest some \$300 million in Yemen in order to employ those who were not employed.²³⁷ Moreover, Saudi Arabia rescheduled the Yemen debt and proposed to write off some of it. In addition,

²³³ *Al-Jazirah*, Riyadh No. 9569 dated 18 December 1998.

²³⁴ See *supra* (general introduction).

²³⁵ Saudi Arabia took this stance because the Saudis believed that Yemen had politically sided with Iraq when the latter invaded Kuwait in August 1990.

²³⁶ *Al-Riyadh*, No. 9184 dated 16 August 1993.

²³⁷ A statement by the Yemeni President Ali Abdullah Salih in an interview with the *MBC* television dated 20.2.2001.

the Saudi Government promised to help Yemen to carry out some development plans in order to improve the Yemen infrastructure.²³⁸ The greatest benefit which Yemen gained, however, was its acceptance as a member of the Gulf Cooperation Council, which it had been promised by the Gulf states, once its boundary disputes with its neighbours were settled.²³⁹

Following the settlement of the Saudi-Yemeni boundary dispute, the definition of the check and exit points and the agreement of the security cooperation between the various competent authorities in both countries, both Saudi Arabia and Yemen hoped that they would eliminate border smuggling and incidents and improve their relations and mutual interests and understanding. Consequently, this settlement would contribute in maintaining international peace and security through maintaining internal ones, as both internal and international security are related to each other and it could be said that an improve in one of them would result in improvement in the another. By the settlement of the Saudi-Yemeni boundary disputes, Saudi Arabia has completed the settlement of its land boundary disputes with all its neighbouring states. International boundaries as understood in international law, separating states from each other and, as a result, defining their sovereignty and jurisdiction, are now applied in the Arabian Peninsula and widely accepted by its inhabitants, whose fathers and grandfathers opposed this kind of boundary.

²³⁸ *Ibid.*

²³⁹ Saudi TV news, 12.December 2001.

GENERAL CONCLUSIONS AND RECOMMENDATIONS

Following the end of the First World War, Saudi Arabia and its neighbouring states emerged in the Arabian Peninsula, as a result of which their former internal boundaries became undefined international boundaries. This enlarged the area in which boundary controversies occurred. Indeed, such boundary disputes constituted one of the major threats to international peace and security. It is clear that the greater the interaction between states, the more opportunity there is for disagreement. Consequently, the nature of the regional environment and boundaries between Saudi Arabia and its neighbours was extremely significant. Here, the social factor was important because of the inhabitants' reactions and involvement in the boundary disputes. This study has shown that the boundary disputes between Saudi Arabia and its neighbouring states arose as a result of the expansion of Abdulaziz's territory at the expense of that of his neighbours. Most of the Saudi territories were acquired by conquest which took place between 1902 (when taking Riyadh) and 1924 (when capturing Hijaz). It is, however, clear that title acquired by conquest before 1928, when war was outlawed by the Paris Pact, must be recognised as lawful in accordance with the principles of international law. Some territories which were *terra nullius* were acquired by occupation, while acquisition of territory by cession took place through exchange of territory between Saudi Arabia and Jordan by the 1965 Treaty of Amman as part of the settlement of their boundary disputes.

Another cause of Saudi Arabia's boundary disputes with its neighbours was the controversial inherited boundary lines, which were defined by the 1913-14 Anglo-Ottoman Conventions. The assertion of the validity of these boundary lines by Britain and their successors and the denial of accepting such validity by Saudi Arabia, the successor of the Ottoman Empire, gave rise to boundary disputes between these states

for years. The evidence showed that the consequences were fights between Saudi Arabia and its neighbouring states over their disputed boundaries, to gain a piece of territory, as well as inter-tribal clashes and frequent accounts of border incidents. Apart from the legitimate exercise of the right of self-defence, both individual and collective, the use of force, which unfortunately occurred very frequently in boundary disputes, is no longer compatible with the modern international law. The threat to international peace and security, therefore, called for urgent settlement of boundary disputes. To this end, in conformity with the United Nations Charter and in order to achieve stability and finality and reach permanent and final settlement of their boundary disputes, Saudi Arabia and Britain and representatives of the states concerned conducted a series of conferences and rounds of negotiations. As Saudi Arabia's neighbours were British mandates, the boundary disputes between them and Saudi Arabia were discussed together, most of the time. After the mandate period, however, further separate negotiations and agreements took place between Saudi Arabia and its neighbours, separately, by which the final settlements of their boundaries were reached.

It is obvious that the task was quite difficult because defining international boundaries means that certain limits of the states' jurisdiction would be imposed. From a practical viewpoint, the transfer of a piece of land from one state to another, as a result of the alteration and definition of international boundaries, may have far reaching consequences. Therefore, both the peaceful methods of settlement of boundary disputes applied by the states concerned and their consequences varied according to the circumstances and conditions of each case.

But what are effective peaceful means and what made them so? This thesis sought to answer this question by assessing and evaluating the practice of Saudi Arabia and its neighbours regarding the settlement and definition of their boundary disputes and the peaceful methods they have applied in this respect. The answer to this key

question is obtained from the answers to the following three questions. First, what are the factors that affected these peaceful methods and what made them either effective or ineffective? Secondly, were the practice and attitude of Saudi Arabia and its neighbouring states towards the settlement of their international boundaries in conformity with international law? Finally, have Saudi Arabia and its neighbours contributed to international law?

As parties' success in settlement of their boundary disputes varies from case to case, it depends very much on several elements and factors, which make up the whole process which, in turn, helps the parties to find an acceptable solution for their dispute. All disputes discussed in this thesis involved negotiations, but as a method of settlement it was evidently subject to some limitations, as will be seen shortly. The evidence showed that negotiations between parties to boundary disputes offered the widest opportunity for reaching an effective settlement of all forms of boundary disputes. Without doubt, the atmosphere for reaching an acceptable settlement is more readily attainable under diplomatic means which do not suffer from the constitutional limitations of adjudication. Such constitutional limitations made judicial settlement impossible between Saudi Arabia and the UAE in the Buraimi Arbitration. Both parties were under severe pressure and became very suspicious of each other, which led them to behave in bad faith. Judicial settlement usually takes the disputes out of the parties' hands, and as a result, the atmosphere is not as good as in the amicable methods. Litigation in international law is very much a matter of last resort when what is wanted is a binding decision.

Multilateral negotiations were carried out through conferences, which provided the framework for the negotiating process. Negotiations were successful when Britain acted as an arbiter in the Uqair Conference, and put pressure on the parties to the dispute and imposed the boundary settlement. The parties to the dispute in that case

were encouraged by economic factors, because they were in need of Britain's economic aid and they did not want to lose such aid by rejecting the Britain's proposed boundaries. Although the Western-style boundary imposed by Britain resulted in friction between Saudi Arabia and Iraq and caused raids and counter-raids between the tribes in both countries due to the nature of the inhabitants' life at the time, its shortcomings were offset by the neutral zones created by Britain between Saudi Arabia and both Kuwait and Iraq. These neutral zones were the only practical solution to the potential discovery of oil there and the inevitable dispute that would arise as a result, as well as the prevention of inter-tribal clashes. Without these neutral zones, boundary questions in the area would never have been settled. The Uqair Conference resulted in the acceptance of the principle of the boundary demarcation between the Arab states. Indeed, for the first time in history, an international boundary, as understood in international law, was drawn on maps and established in the Arabian Peninsula. Negotiations, moreover, were successful when the parties were willing and determined to settle their boundary dispute such as in the Haddah and Bahrah negotiations. The mutual understanding and flexibility, which prevailed during the negotiations, led to settlement of the Saudi-Jordan boundary dispute. Each party was prepared to make concessions and a compromise settlement was finally reached.

Needless to say, some negotiations which were successful in settling the Saudi boundary disputes with its neighbouring states took place when their relations were most cordial. Among such negotiations, are the unilateral direct negotiations between Saudi Arabia and Kuwait, Iraq and Jordan following their independence. These negotiations were motivated by the mutual interests of the parties and the need to maintain good relations and peaceful coexistence with Saudi Arabia, especially after the Arab conflict with Israel. The result was the partition of the Saudi-Kuwaiti and Saudi-Iraqi Neutral Zones, as well as exchange of territory between Saudi Arabia and Jordan

in their northwestern boundary, by which Jordan gained its only outlet to the sea. Furthermore, the negotiations between Saudi Arabia and Qatar, UAE and Oman following their independence were also successful for the same reason. The Saudi boundary disputes with these states had not been resolved before independence, despite years of negotiations between Saudi Arabia and Britain, which was responsible for the foreign affairs of these states, because oil was discovered in the area. Their negotiations following their independence were a continuation of uncompleted negotiations before independence. When their relations with Saudi Arabia improved after their independence and they became aware of their mutual interests, their boundary disputes were settled within a very short time.

However, it must be realised that the right moment cannot emerge all by itself without positive efforts on the part of the parties concerned. Therefore, it is always incumbent on them to strive to achieve that critical moment, while being able to recognise it as soon as it becomes apparent. For this reason, it is advisable for parties to boundary disputes to keep themselves constantly alive to the urgency of resolving their boundary disputes. To this end, it is suggested that one or more joint boundary commissions might be created, composed of equal members of members from each party to the dispute, like those created by the Memorandum of Understanding agreed to between Saudi Arabia and Yemen in 1995. This body would be advisory in nature. Its function would be to build up the parties' confidence and mutual understanding through frequent meetings in each state in rotation. In the meetings, their interests related to the boundary disputes would be discussed. Such an action would help to clear the picture and pave the way for successful negotiations. This commission would report to their governments about any progress or difficulties, in order that they may take the necessary procedures to enhance the commission's work.

In addition to good relations, economic and political factors also played a vital role in the settlement of the Saudi boundary disputes with its eastern and northern neighbours. Such disputes were likely to be settled when the Gulf states were about to be politically and economically integrated. Indeed, to prepare themselves for such an integration, which took place when the Gulf Cooperation Council was established, there had to be a high degree of readiness to lay aside their historic animosity, a high level of economic prosperity and no dominant state. In these circumstances, it is not surprising that they made every effort to settle their boundary disputes and to avoid any further disputes. This is not to suggest that the states concerned had settled all their boundary disputes by the time the Gulf Cooperation Council was established, but rather, most of their boundary disputes had been settled and others were ready for settlement because the advantages of their settlement outweighed the disadvantages. The case of the settlement of the boundary disputes with Yemen may also be explained on the ground of economic and political factors along with security one. Following the Gulf War of 1990-91, Yemen's need for economic aid from Saudi Arabia helped to create conditions conducive to settlement. The security factor and the need for tight security measures along the Saudi-Yemeni border also helped to define their boundaries.

Negotiations, on the other hand, were unsuccessful between Saudi Arabia and Jordan in the Kuwait Conference and between Saudi Arabia and UAE in the Dammam Conference. Evidence showed that the reason was that the parties had no good faith because negotiations were carried out at a time of very high tension between the parties. Indeed, bad timing accounts for many of the failures in diplomatic negotiations. During hostility is a most unsuitable time for effective and satisfactory diplomatic settlement, as illustrated by the Kuwait and the Dammam Conferences, when tribes from the negotiating states were engaged in raids and counter-raids. In addition to this, Saudi Arabia's boundary disputes with its eastern neighbours, discussed in the Dammam

Conference, were heavily influenced by the discovery of oil in the area. This economic factor caused the delay of the settlement of the boundary disputes between Saudi Arabia and its eastern neighbours for years.

In addition to negotiations, mediation played a vital role in settling the Saudi-Qatari boundary dispute following the latter's independence. In this case, the two parties were unable to settle their dispute directly between themselves by negotiation, because diplomatic relations were severed. Here, the intervention of the Egyptian president succeeded to break the impasse and bring the parties back to the negotiation table. He participated in the negotiations and directed them in such a way that a peaceful solution was reached. This mediation was successful because the mediator was accepted by both parties, as he was a friend of both of them. In addition, the power of the mediator, as the president of one of the most important states in the Arab world, helped to achieve a peaceful settlement of the boundary dispute.

Evidence shows that lack of geographical knowledge of boundary areas and, as a result, inaccurate prescription of the boundary sites on which the boundary treaties were based, led to faulty boundary delimitation or ill-defined boundaries. This happened three times in the settlement of the Saudi boundaries with its neighbours: first, the Saudi-Jordan boundary defined by the Haddah Agreement which was later arbitrarily amended by the British in the mid 1930s; secondly, the contradiction which was found between the Haddah Agreement and the First Uqair Protocol regarding the intersection where the Saudi-Iraqi-Jordan boundaries met; finally, the amendment of the "Riyadh Line" in December 1937 by the British in favour of Saudi Arabia, as a result of the discovery of the correct location of the Sufuq Well. Such ill-defined boundaries were a source of boundary and territorial disputes. These cases illustrate the need for exact information on the boundary site, not merely when a boundary is being demarcated on the ground, but also prior to its delimitation in a treaty. Documentary information such

as those relied on while defining the aforementioned ill-defined Saudi boundaries with its neighbouring states, is not enough. Prior inquiries and investigations regarding the boundary sites are essential, as through such inquiries and investigations, negotiators are in the long run better equipped to speak authoritatively about the alignment of the boundary region that is the subject of negotiations. It is, therefore, advisable that the representatives of parties to boundary disputes should, where applicable, visit the boundary and territorial area in dispute in person. An alternative would be to create several competent boundary commissions to carry out inquiries and investigations about the boundary site and furnish the negotiators with the boundary information they need. Such boundary commissions might be a geographical survey commission to deal with geographical matters such as the description of the boundary site; and a military and security commission to deal with military and security issues such as the positions of the military and security forces after the settlement of boundary disputes. The advantages of the boundary settlement, which will follow personal experience and good information on the boundary area, will outweigh the financial expense which such visits and creation of such commissions may involve.

As regard for international law is an integral part of boundary stability, the importance of the aforementioned geographical considerations is derived from the obligation of general observation of international law, which primarily entails compliance with exact boundary definition. Indeed, pre-negotiation investigations may reveal portions of a proposed boundary, where the interests of a third state would be affected by decisions taken by the negotiating parties. This usually happens when boundaries of three or more states meet, as in the case of the Saudi-Jordan-Iraqi boundaries, the Saudi-Oman-UAE boundaries and the Saudi-Qatar-UAE boundaries which meet at a tri-junction. Instances have been discussed in this study, where boundary settlement was precluded by a third state which was affected by the definition

agreed on by two states, because the third state had not been consulted about the matter that would affect it. The British Government, for example, challenged the 1965 Saudi-Qatari Boundary Agreement on behalf of the UAE, which was affected by the said Agreement because the three states' boundaries met at a tri-junction. The result was a delay of the boundary demarcation for years until the UAE was happy with the boundary agreement. In this respect, it might be advisable for parties to boundary disputes to give notice of the procedures to the state concerned, and if possible invite it to attend sessions at which matters affecting its interests are likely to come up. In this way it is hoped that exact boundary lines can be defined and potential sources of future boundary disputes be eliminated.

On the question of agreement between the practice of Saudi Arabia and its neighbouring states and international law, evidence shows that observance of the general principles of international law by them has been generally a cornerstone in both the settlement of their boundary disputes and the conclusion of the boundary agreements. In their negotiations at the Uqair Conference, for example, Sir Percy Cox, explained to the parties how "*earnestly desirous was His Majesty's Government, the friend of both parties that an agreed and amicable settlement should be reached*".¹ Similarly, King Abdulaziz expressed his willingness to settle all the outstanding problems between him and his concerned neighbours by amicable means. Responding to Knox's invitation to attend the Kuwait Conference, he declared that:

"Nothing would give me more pleasure than to be in agreement and on friendly terms with my neighbours."²

¹ Dickson, *Kuwait and her Neighbours*, *op. cit.*, pp. 270-2.

² *The Green Book*, *op. cit.*, pp. 5-6.

Moreover, when he was informed by the British about the boundary line between Saudi Arabia and Jordan regarding Ma'an and Aqaba, although the boundary had not been mentioned to him before, he offered to negotiate with Britain '*at any time and place convenient to them*'.³ Further evidence of the commitment of Saudi Arabia and its neighbouring states to the principles of international law is clear from their emphasis while concluding their boundary agreements on "*respect for the principles of international law*". In addition, Saudi Arabia was influenced by international law. Indeed, when concluding the 1934 Saudi-Yemeni boundary agreement (the Treaty of Taif) the two parties agreed to refer any boundary disputes between them to arbitration if they were not settled by other peaceful means. They also concluded an arbitration agreement, which was appended to the Taif Treaty. There were, also, references in their boundary agreements to their desire to maintain international peace and security by settling any disputes that might cause any conflicts in the future.

As the principles of international law crystallised and became clearer on certain aspects of territorial sovereignty and defined territory, Saudi Arabia modified its position on some issues to reflect these principles. In this respect, starting from the Uqair Conference until it was formally founded in 1932, it had refused to accept the idea of defined territory and fixed boundary and preferred tribal ones, which were based on tribal allegiance. However, Saudi Arabia modified its position and in the early 1930s sought to define its boundary with Yemen to be in conformity with modern political boundaries, in King Abdulaziz's words, "*such as those applied by western countries*".⁴ Furthermore, Saudi Arabia's territorial claims were based on historical rights until the

³ Foreign Office 371/10013, a letter from Abdulaziz dated 8th November 1924, and a report by the Political Resident in Bushire to the Secretary of State for Colonial dated 25th November 1924, P. 71.

⁴ King Abdulaziz's Instructions to his delegation to San'a in 1932 for discussing the Saudi-North Yemen boundary dispute, *The History of Al-Miklaf Al-Sulaimani, op., cit., p. 1039.*

early 1930s when the Saudis started to speak about the *terra nullius* and to base their territorial claims on the ground of effective occupation of such *terra nullius*, and effective and peaceful display of the state's authority. This can be seen as evidence that Saudi Arabia has been influenced by the principles of international law, because there were no place for other principles such as allegiance of tribes, which would not stand before international law.

On the question of its contribution to international law, evidence shows that Saudi Arabia has indeed, through its attitudes and policy while settling its boundary disputes, played a noticeable role in the theory of peaceful coexistence between neighbouring states. All its boundary agreements with its neighbours recognised and emphasised the mutual respect for each other's territorial integrity and sovereignty, mutual non-aggression, non-interference in each other's affairs and the principle of sovereign equality, as well as a condemnation of rebellious activities carried out from one state and aimed against another. These principles are already known and accepted as rules of international law.

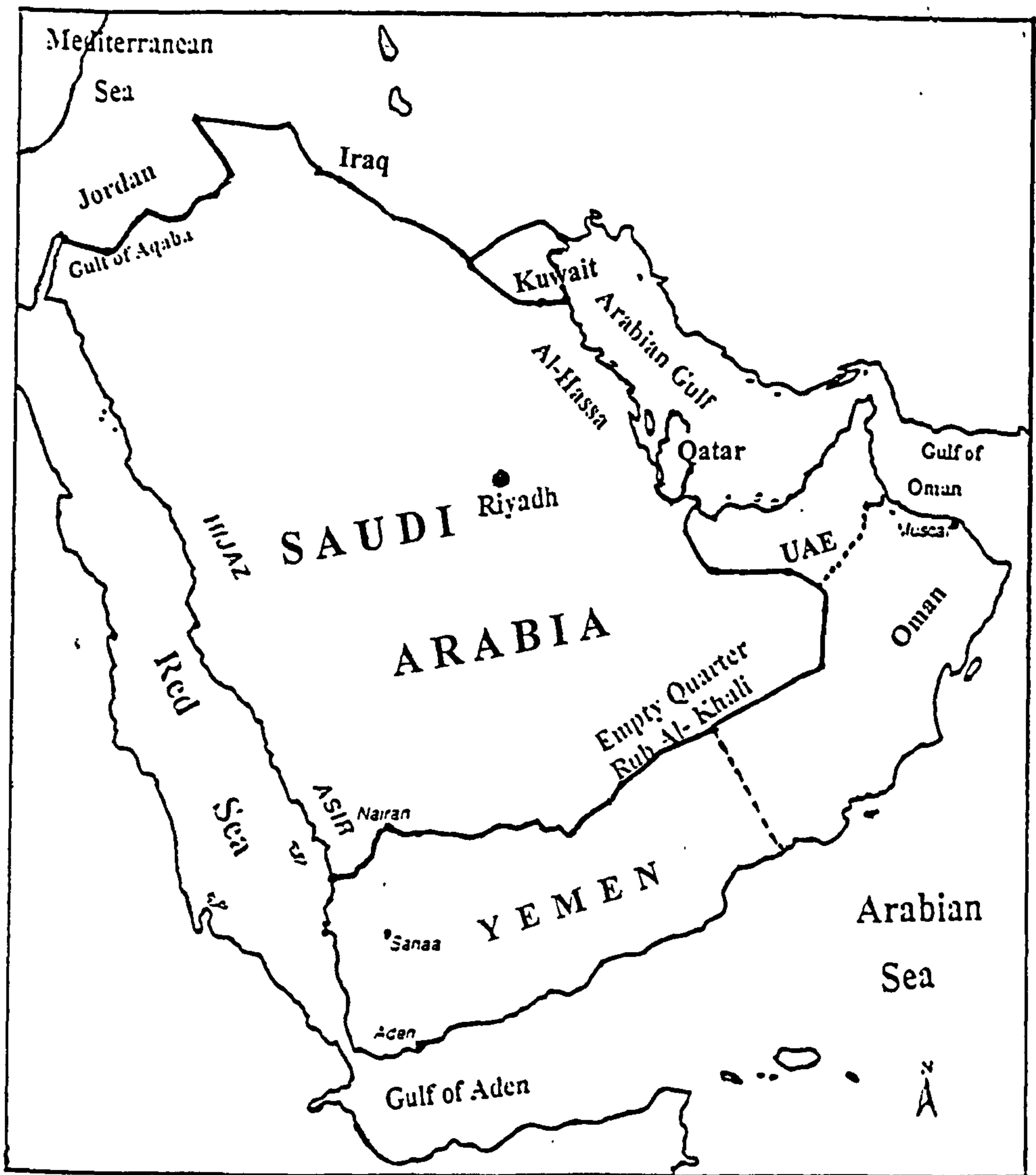
Furthermore, in its boundary agreements with its neighbouring states, Saudi Arabia has established a number of legal precedents. The first and the second Uqair Protocols between Saudi Arabia on the one hand and Kuwait and Iraq on the other respectively provided for the establishment of two neutral zones between Saudi Arabia and Kuwait and between Saudi Arabia and Iraq. These neutral zones would remain ungarrisoned and the tribes living on the borders between the two countries would have access to grazing and water in the area. With regard to oil, the parties agreed that when it was exploited each side would have a half-share. These neutral zones, which were the first to be established in the Arabian Peninsula, were very successful in settling the boundary disputes between the states concerned. This precedent was subsequently supported and followed in conventional law and cases alike. Indeed, it was followed by

many Gulf states, which found that these zones were an ideal solution to their boundary disputes.⁵ In addition to neutral zones, Saudi Arabia in its boundary agreements with its neighbouring states established another kind of neutral zone, a buffer zone in which activities were restricted. In such zones, drilling and military constructions were prohibited. They also defined the area in which they would enjoy pasture rights, as well as the area in which the military forces of both sides should be posted. The purpose of these alternative territorial strategies and procedures was to keep the parties as far away from each other as possible, in order to prevent any potential future boundary clashes, which may lead to armed conflict between them and, consequently, threaten international peace and security. To enhance these procedures, Saudi Arabia's boundary agreements with its neighbours were either immediately followed or accompanied by agreements on security cooperation and the extradition of criminals. By these agreements, they aimed to combine their efforts to create appropriate security measures which would subsequently eliminate or at least reduce factors that could lead to international boundary disputes between states.

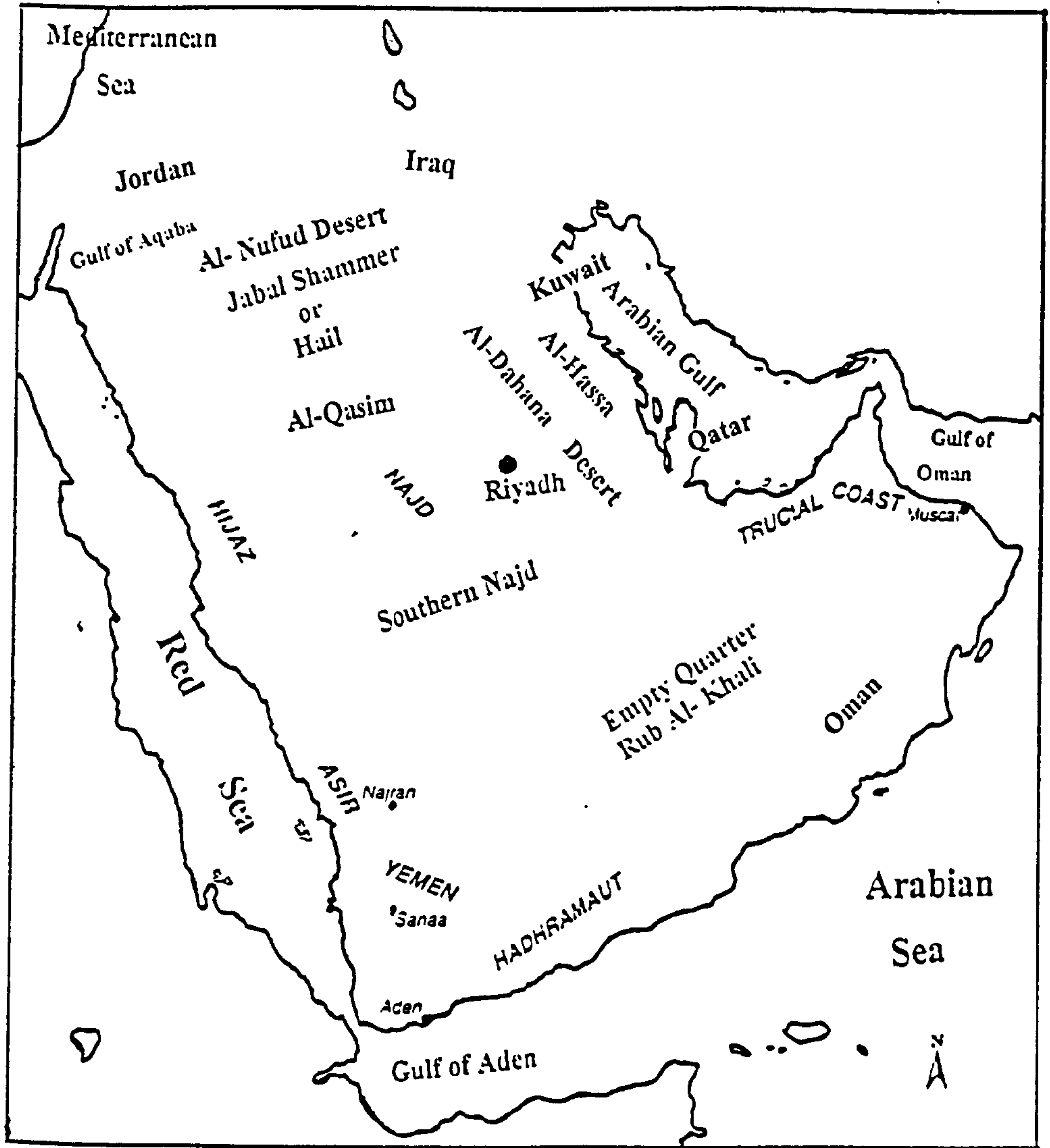
Thus, this brief review suggests that Saudi Arabia has not only accepted the principles of international law regarding the pacific settlement of territorial and boundary disputes but it has also effectively contributed to the maintenance of international peace and security. It could be said that Saudi Arabia and its neighbouring states succeeded in defining their boundary disputes by amicable means although conflicts and tribal clashes were going on. Indeed, all their boundary disputes have been settled through negotiation, because of its flexibility, as it was applied to all kinds of disputes, whether political, legal or technical, since only parties to the dispute were

⁵ The Abu Dhabi-Dubai neutral zone established in 1950, The Bahrain-Saudi Arabia maritime neutral zone established in 1958, The Abu Dhabi-Qatar maritime neutral zone established in 1969.

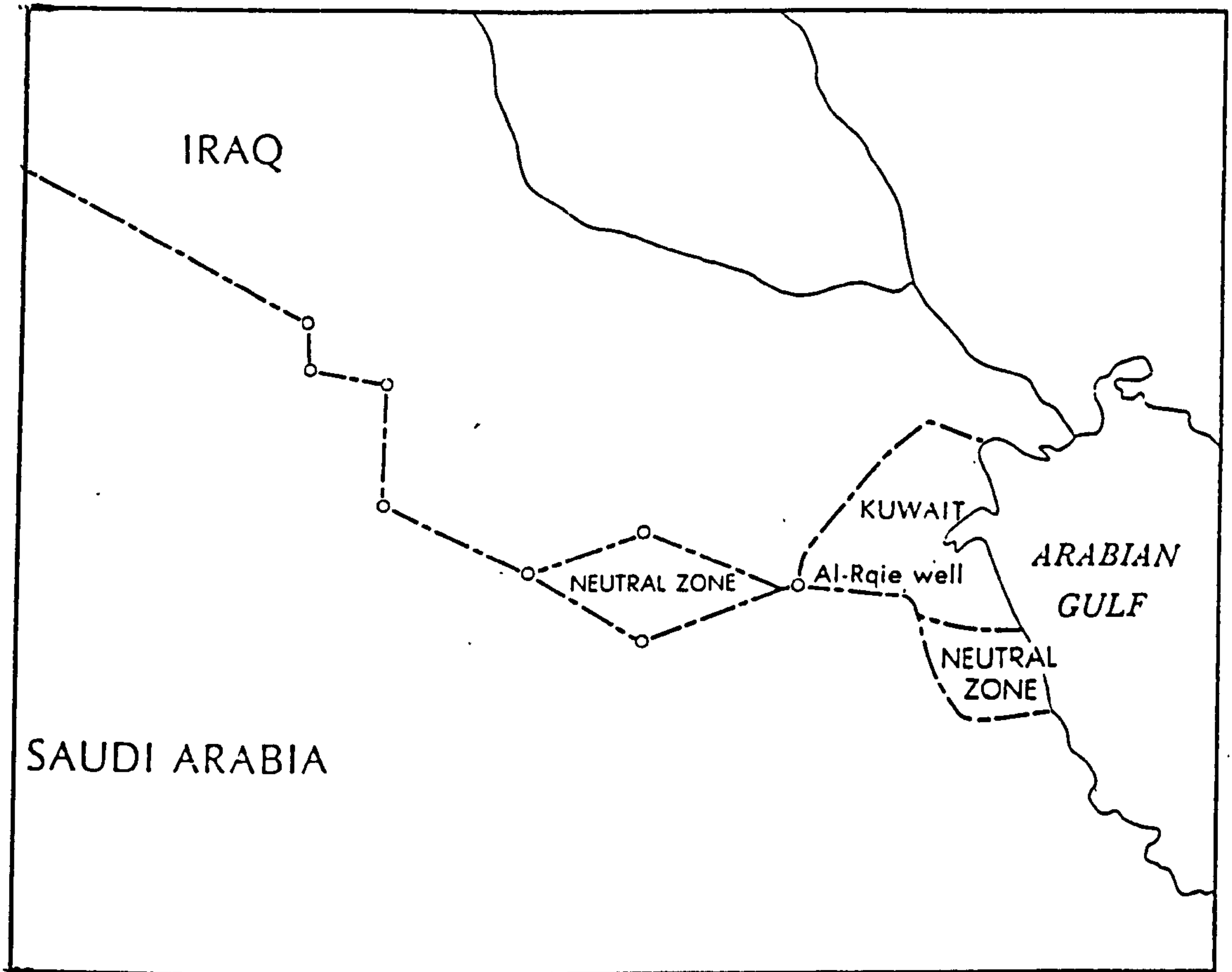
involved. Although the Buraimi dispute was submitted to Arbitration and a joint fact-finding Commission was created to determine accurately the loyalties of the tribes inhabiting the dispute area between Saudi Arabia and UAE, these two disputes were finally settled through direct negotiations between Saudi Arabia and the UAE after the latter's independence.



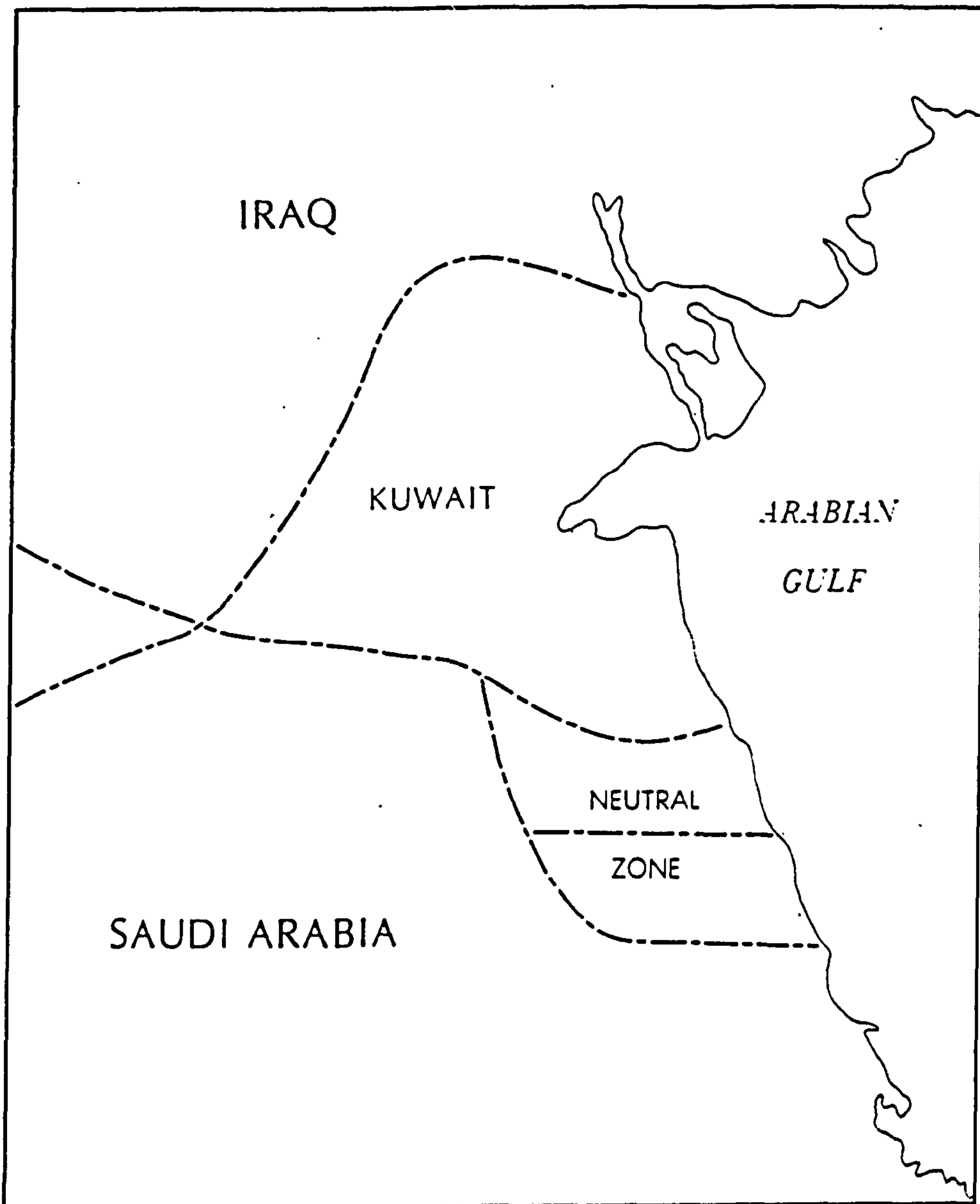
Map 1. International boundaries of the Kingdom of Saudi Arabia. The Kingdom is surrounded by seven countries and three bodies of water.



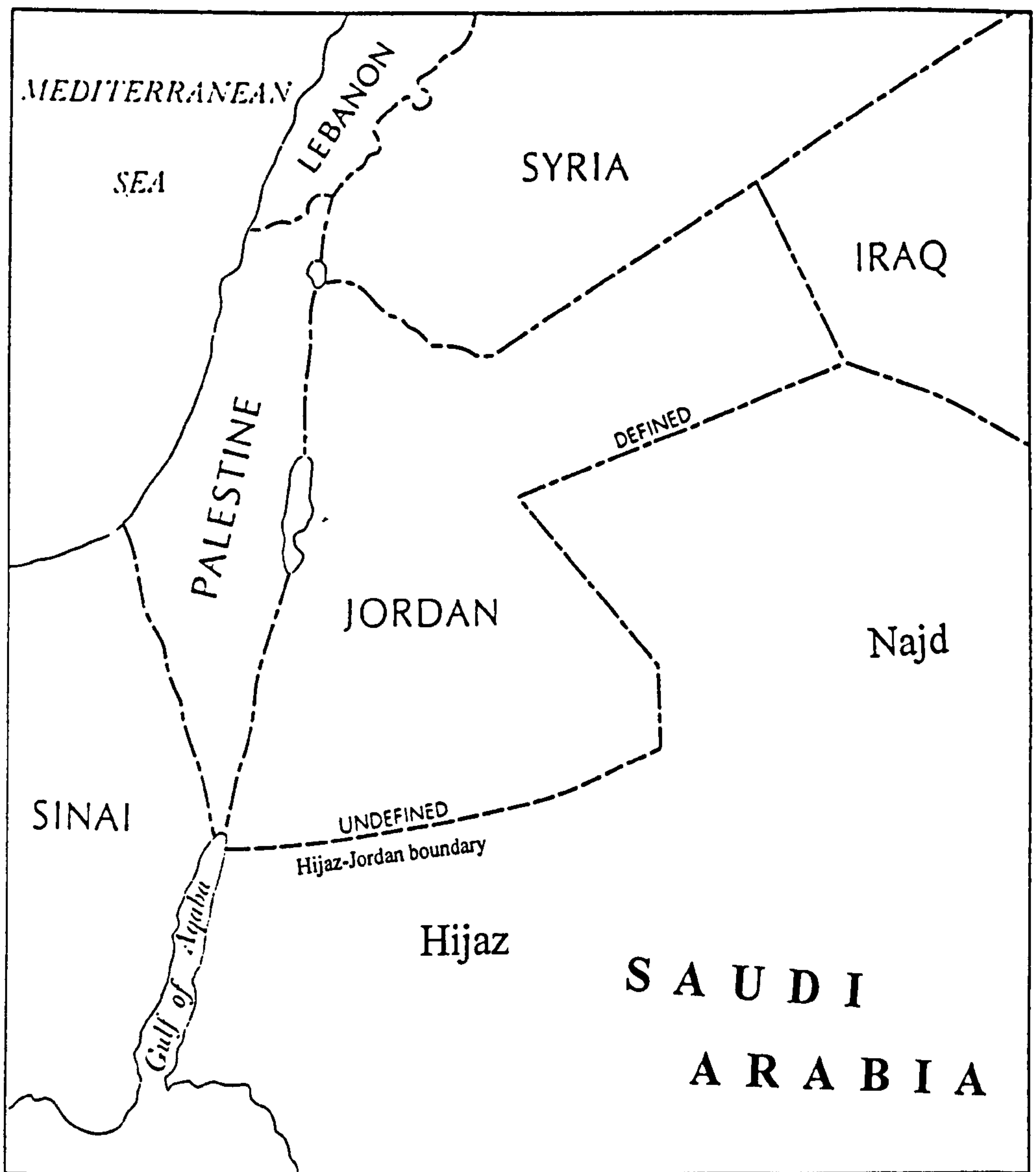
Map 2. The Arabian Peninsula in the nineteenth century before the establishment of the modern Saudi Arabia and its neighbouring states.



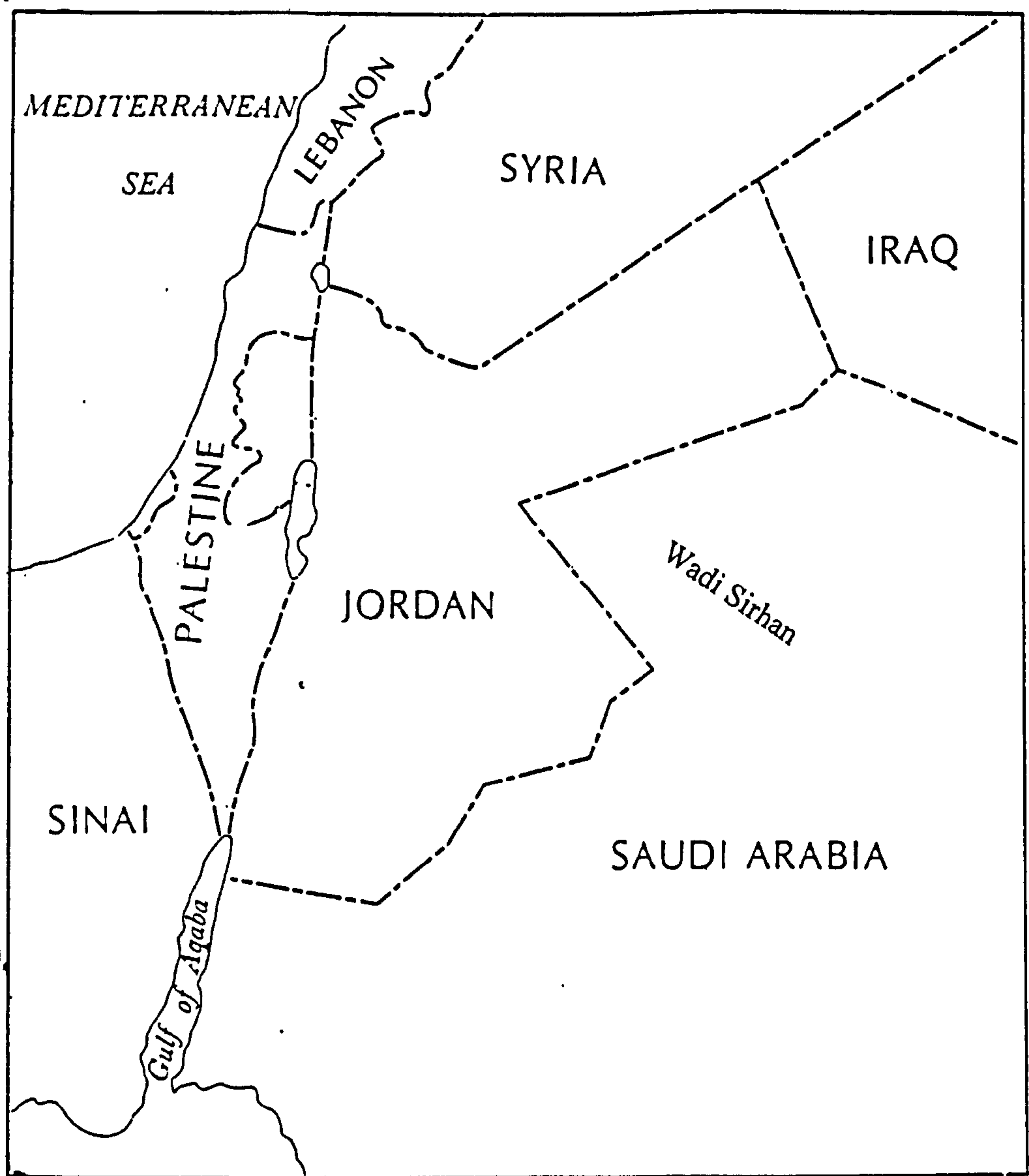
Map 3. The Saudi-Iraqi boundaries according to the First Uqair Protocol (1922).



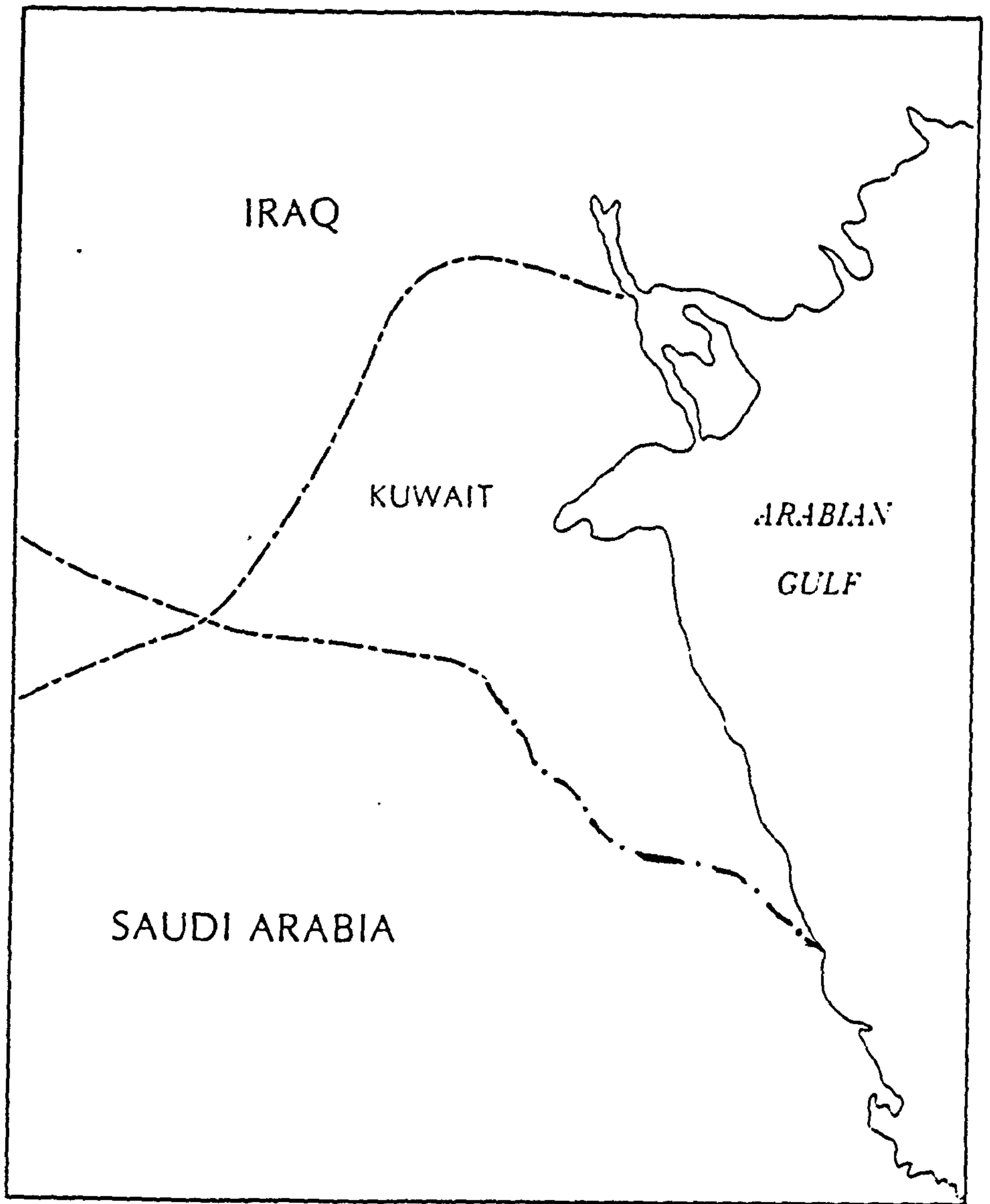
Map 4. The Saudi-Kuwait boundaries according to the Second Uqair Protocol (1922).



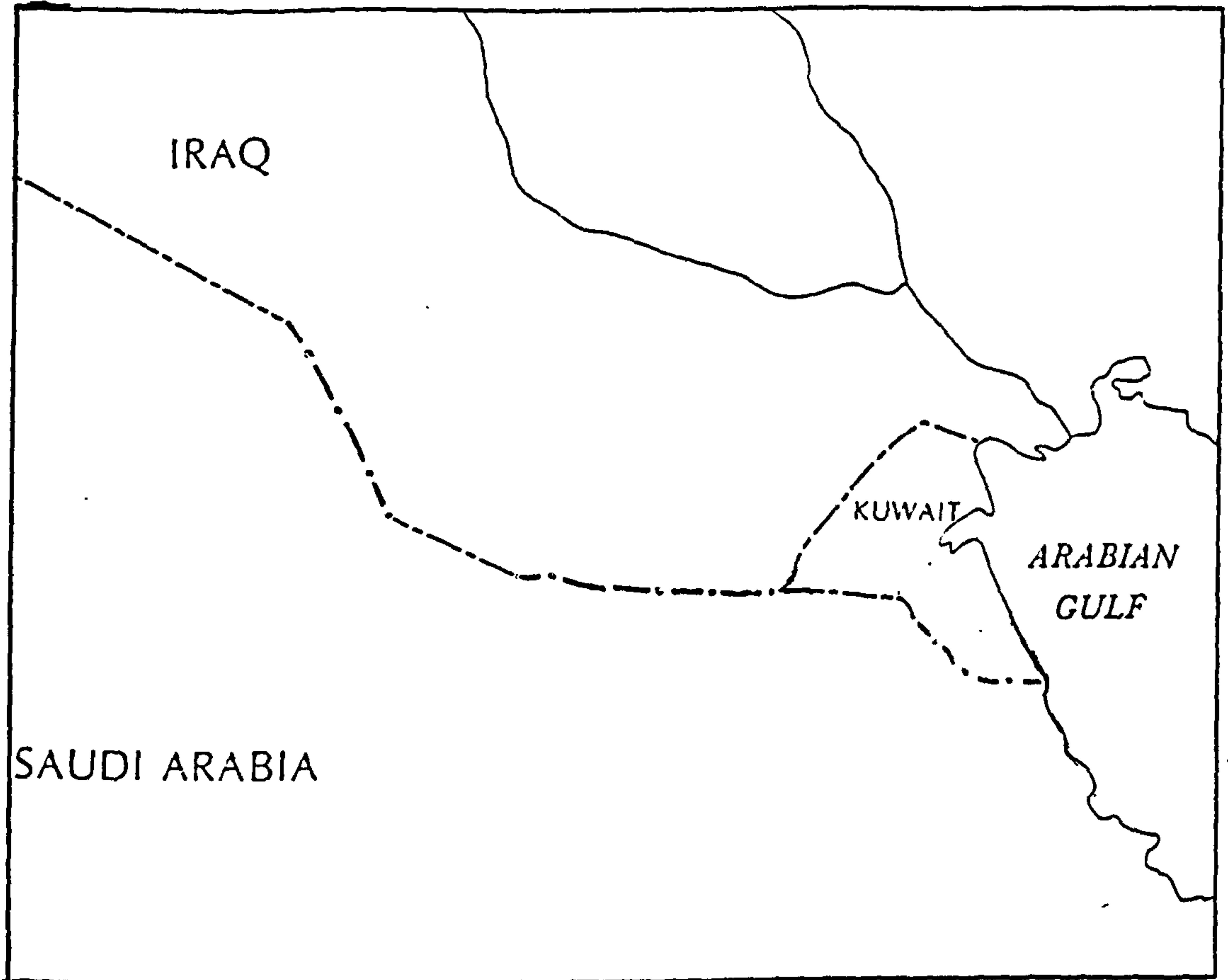
Map 5. The Saudi-Jordan boundaries according to Haddah Agreement of 1925.



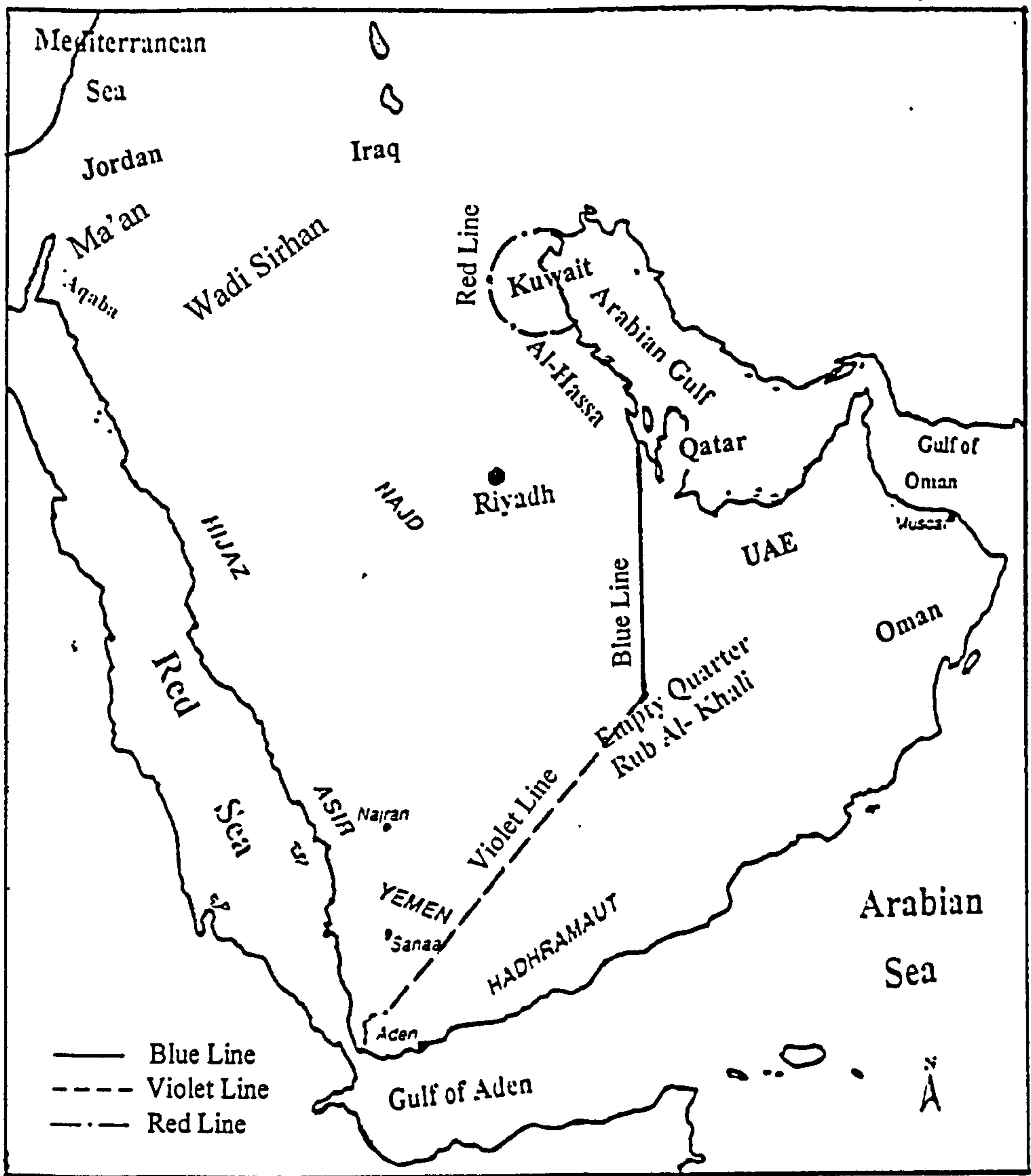
Map 6. The Final settlement of the Saudi-Jordan boundaries (the Treaty of Amman 1965).



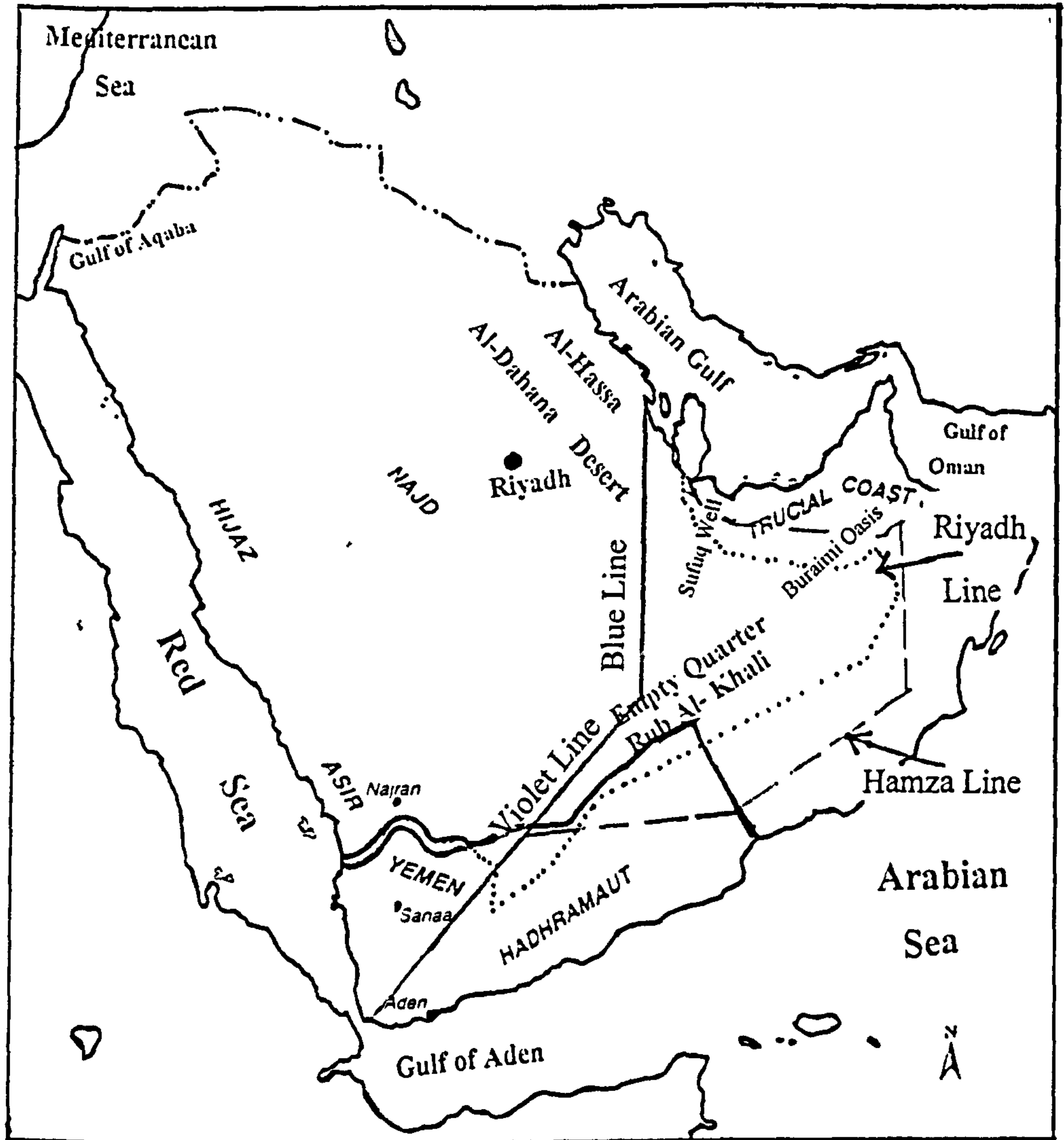
Map 7. The division of the Saudi-Kuwait Neutral Zone (1965).



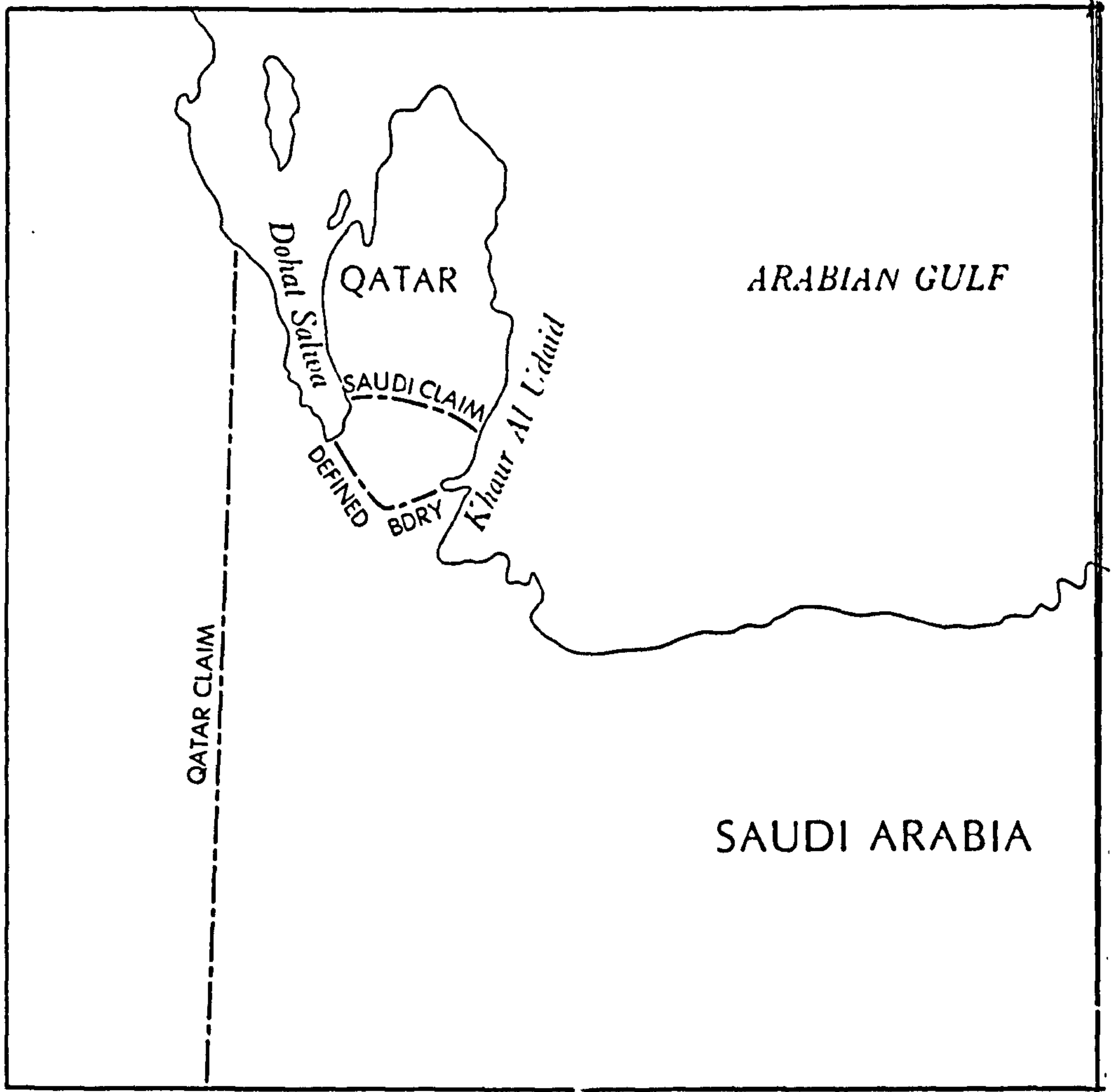
Map 8. The Division of the Saudi-Iraqi Neutral Zone (1981).



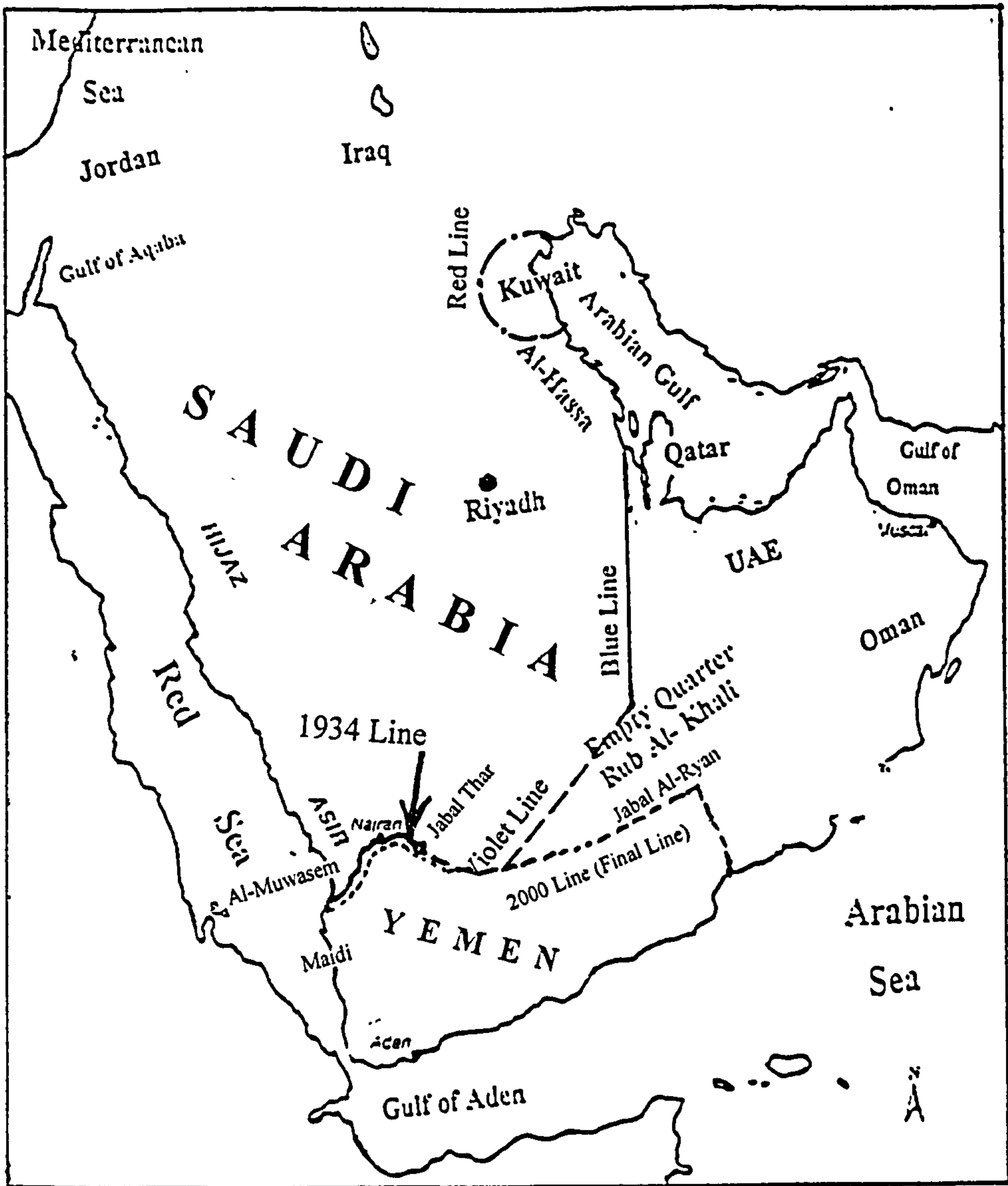
Map 9. The Blue, the Violet and the Red Lines introduced by the 1913-14 Anglo-Ottoman Conventions as part of defining the boundaries between their sphere of influence in the region.



Map 10. The Saudi Hamza Line and the British Riyadh Line of 1935.



Map 11. The Saudi-Qatar boundaries according to the 1965 Agreement.



Map 12. The Saudi-Yemen boundaries.

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