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Thank you.



# Boundary tales from the archives

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IBRU Workshop 'Evidence & Archive Research for Boundary  
Dispute Resolution'

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# Not only the primary source of key documentation but a goldmine of quotable quotes

Though their context and significance necessarily varies

- 1) The primary record of policy formulation and outcomes - **evidentiary grist for the mill** in boundary cases before arbitration and adjudication – not just treaty texts
- 2) **Critical reflection** and comments that **illuminate an issue or address the wider issues at stake** - sometimes most valuable academically
- 3) Surprises – uncovering and dealing with the **unexpected**
- 4) Used properly, they can shed light on the **essential complexity** of what are frequently **regional questions**
- 5) Looking beyond the usual sources – there is a lot more to be uncovered about the materialities of historic borderlands and we need to know more about them, how power was projected and resisted locally

# 1) Evidentiary grist for the mill

- 1a) Detailed **record of territorial agreements** concluded, also sometimes how and why: for some treaties introduced threadbare delimitations (Iraq-Kuwait & Jordan-Palestine)
- 1b) Also provides administrative records for **origins of dispute** – though this can be limited and contested (UAE-Iran and the Lower Gulf islands dispute)
- 1c) Reveals **important state acts of recognition** in the evolution of disputes (Israel and the [Palestinian/Jordanian] Aqaba boundary)
- 1d) All contemporary systems of boundary dispute resolution depend heavily on **the official historical record** – maybe a little too much! (Abyei at the PCA, 2008-9)

# 1a) Record of agreements

- The UNIKBDC delimitation formula, 1991 was actually an Anglo-Ottoman formula of 1913, pretty much unchanged

From the intersection of the Wadi-el-Audja with the Batin and thence northwards along the Batin to a point **just south** of the latitude of Safwan; thence eastwards **passing south** of Safwan wells, Jebel Sanam and Um Qasr leaving them to Iraq and so on to the junction of the Khor Zobeir with the Khor Abdullah...

- Palestine-Transjordan boundary introduced in 1922 by Order in Council

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

(Article 25 of the Palestine Mandate, Geneva, 23<sup>rd</sup> September 1922)

# UNIKBDC award, 1993



Assessing the historical in Middle Eastern trans-boundary resource disputes: Richard Schofield



Independent, expert and confidential advice on boundaries and territory

# 1b) Recording the origins of dispute

- Unsatisfactory though it may be, sometimes it seems all there is to go on in standard evidentiary terms
- The origins of the Iran-UAE dispute over the sovereignty of Abu Musa and Tunbs seems a good case in point
- Although patchy and disorganised, no-one has yet come forward to challenge the Britain's Residency record , as contained in the OIOC in St. Pancras
- Iran's rather contradictory position on this resource





# 1c) State acts during the evolution of disputes I

- Often what I (as a non-lawyer) judge to be significant doesn't turn out to be or presents a picture that is actually rather too grey for easy legal employment – for instance, the nineteenth century record of Bahrain-Qatar relations and associated questions
- One example that did prove significant was Israel (and Jordan's) seeming recognition during early 1949 in the context of Israel's occupation of Eilat and the conclusion of the armistice agreements of an earlier (May 1946) Palestine- Transjordan agreement that demarcated the southernmost stretch of the 1922 boundary delimitation at Aqaba

# State acts during disputes II

- May 1946 agreement
  - A) The point two miles west of Aqaba shall be measured from the most westerly house of Aqaba...
  - B) Since the two-mile point does not coincide with the centre of the Wadi Araba, which is further to the West, a line shall be traced due North from the said point until the thalweg is reached (FO 816/23, TNA) – see hard copy of map provided

Significance: line on map attached to April 1949 Armistice Agreement lay further to the west: by agreeing to the May 1946 line, Israel gained territorially but it had effectively lent its approval to the **thalweg** marking the centre of the Wadi Araba – important in context of negotiations during the early 1990s

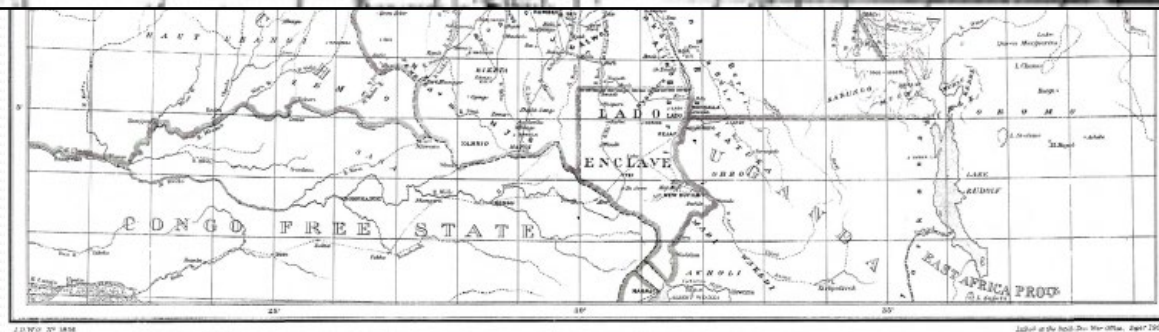
# 1d) Over-relying on the colonial record I

- A frequent postcolonial criticism is that too much emphasis is placed upon the colonial record in contemporary boundary/territorial dispute resolution
- Most prominently in instances where the colonial presence/interest was less marked or prominent – even more likely to be an issue in areas where regions of a state are trying to secede where provincial limits are reviewed
- Arguably became evident during the course of the recent (2008-9) Abyei case at the PCA where a territorial interpretation of the formula specified for defining the Abyei region brought up the question of the status and alignment of the provincial boundaries of the Anglo-Egyptian Sudan during the early years of the condominium government

# Over-relying on the colonial record II

- The Kordofan/Bahr al Ghazal provincial boundary in 1905
- Indications that the Bahr al-Arab may have been regarded as a boundary but in no way could this be held to constitute an agreed delimitation
- Huge confusion in the colonial administration as to which riverine feature constituted the Bahr al-Arab
- A basic lack of geographical knowledge and a lack of familiarity with a pronounced seasonal geography

# Anglo Egyptian Sudan (1904) (Gleichen 1905)



Subject: *Prov. Boundaries*  
No. *MSB-12/60/9.*

Intelligence Office

Madras Government

Madras ... 19. 6. 1967

I enclose, the boundary as line of your province. Province boundaries have however been altered from time to time & I am doubtful if the line shown is the present recognised boundary.

I enclose, the boundary as line of your province. Province boundaries have however been altered from time to time & I am doubtful if the line shown is the present recognised boundary.

In some cases the boundaries does not appear to have been published in the Gazette & if this is the case in your Province would you please in returning the sheets, furnish a draft for publication.

In some cases the boundaries does not appear to have been published in the Gazette & if this is the case in your Province would you please in returning the sheets, furnish a draft for publication.

*AS Poole*

1st Secy, Intelligence Office,

# Comparative Map of the Abyei Area

**Award Area Boundary**  
**Provincial Boundary, 1956**

River  
 Tropic } Source from GIS Abstract Figure 17 and SPM/A Memorial Map Atlas, Map 62.

Background drainage pattern source from Map 62 Abyei Area Nigk Data Province in 1905 from 1:250,000 Series Maps, Community Mapping Data (with Study Area), and Nigk Data Withm Studies prepared by International Mapping.

Highlighted towns derived from SPM/A Memorial Map Atlas, Map 7

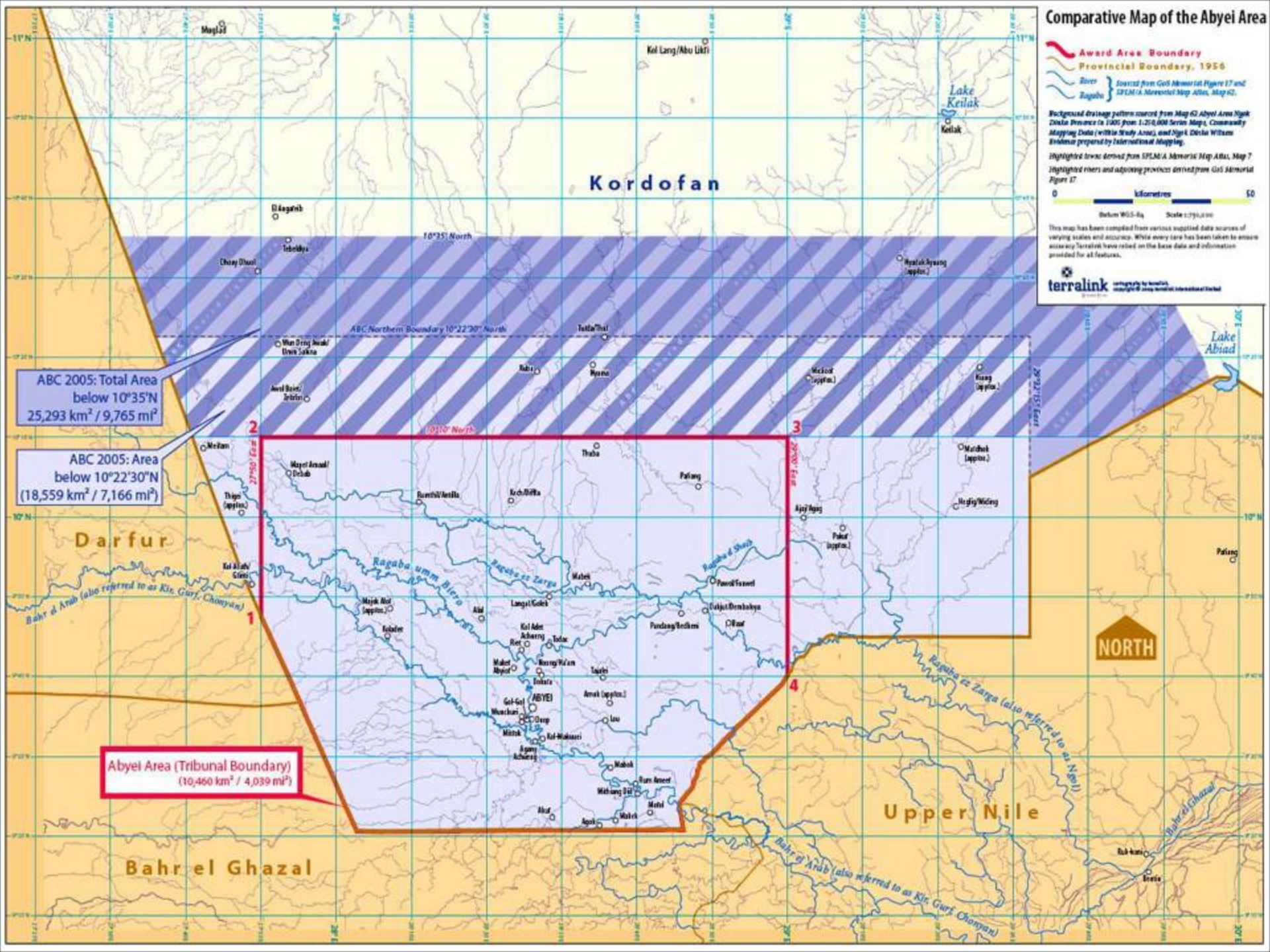
Highlighted rivers and adjoining provinces derived from GIS Memorial Figure 17

0 50 Kilometres

Datum WGS-84 Scale 1:750,000

This map has been compiled from various supplied data sources of varying scales and accuracy. While every care has been taken to ensure accuracy, Terralink have relied on the base data and information provided for all features.

**terralink** cartography by terralink  
 copyright © 2009 terralink international limited



ABC 2005: Total Area  
 below 10°35'N  
 25,293 km<sup>2</sup> / 9,765 mi<sup>2</sup>

ABC 2005: Area  
 below 10°22'30"N  
 (18,559 km<sup>2</sup> / 7,166 mi<sup>2</sup>)

Abyei Area (Tribunal Boundary)  
 (10,460 km<sup>2</sup> / 4,039 mi<sup>2</sup>)

**Darfur**

Bahr el Arab (also referred to as Kfir, Gurf, Chonyen)

**Kordofan**

**Upper Nile**



**Bahr el Ghazal**

1  
 27°50' East

3  
 29°00' East

4

10°35' North

ABC Northern Boundary 10°22'30" North

10°10' North

Lake Keilak

Lake Abiad

Mayadi

Kel Lang/Abu Likki

Keilak

Bikaganih

Tebidiya

Chary Dhad

Win Diny Awad  
 Dima Sakna

Awad Bait  
 Zibidin

Medan

Maya Anad  
 Bobab

Thigo (Apples)

Kel Alady  
 Sino

Thaba

Bumthi Vethla

Indi Nika

Wabek

Langit Godek

Kel Adet  
 Acherry

Mahel  
 Abiyel

Kel Adet  
 Waman

Abiyei

Ge-Gel  
 Mwarhan

Mitha

Agony  
 Acherry

Mabok

Bum Anet

Wihary Dik

Mahel

Alat

Tulla Thi

Rabi

Myano

Wadud  
 (Apples)

Kisag  
 (Apples)

Mahabuk  
 (Apples)

Hagig Widing

Pafang

Kijj Agag

Palar  
 (Apples)

Powal Tawel

Duljet  
 Dmabkya

Q'Bar

Pindang Bedem

Amek  
 (Apples)

Lau

Mabok

Bum Anet

Wihary Dik

Mahel

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Wadud  
 (Apples)

Kisag  
 (Apples)

Mahabuk  
 (Apples)

Hagig Widing

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 (Apples)

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## 2) Critical reflection I

- 2a) Sometimes the essential territorial problem was recognised at the outset but diplomatic deals are generally about the art of the possible and expedient (Lord Palmerston and the Perso-Ottoman boundary during the mid-nineteenth century)
- 2b) Sometimes it is recognised that squaring circles is unlikely to yield dividends (Balfour's valedictory comments at the end of the Great War)
- 2c) It was often recognised that colonial boundaries did not make a whole lot of sense in the environment for which they were earmarked (Cox, Bell and the Syria-Iraq boundary)

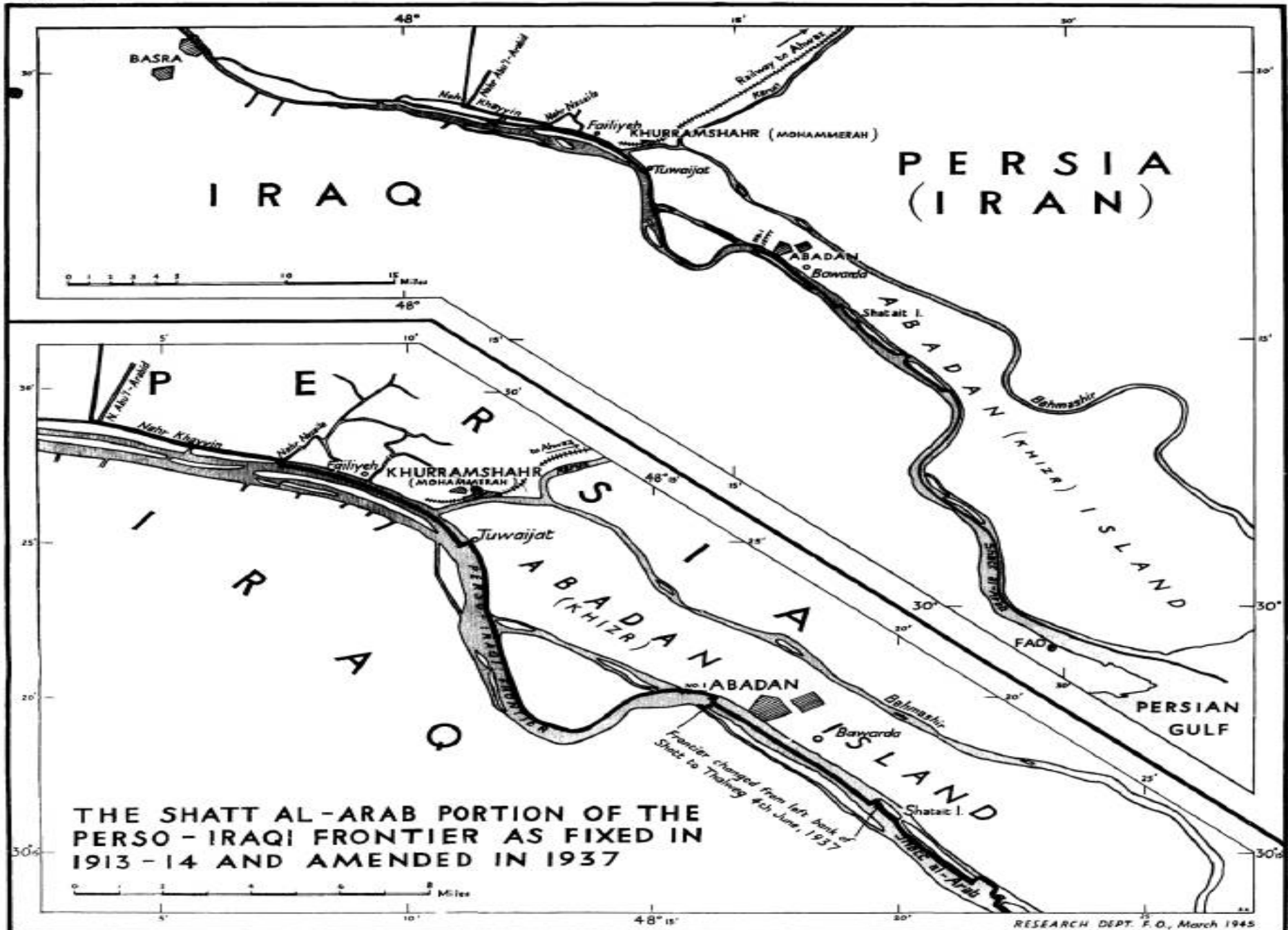


# Critical reflection 2

- 2d) Sometimes the essential character of a difficult dispute is appreciated and the best idealised long-term remedy prescribed (Lord Halifax and Iraq-Kuwait during the 1930s)
- 2e) In the post-colonial era – so, to a large degree, stripped from direct responsibility, certain FCO representatives can be remarkably candid (consideration of Kuwait following the Iran-Iraq settlement of 1975)

## 2a) Lord Palmerston and the 19<sup>th</sup> century Perso-Ottoman boundary I

- “I have to state to you with reference to the pretension which has been advanced which has been advanced by the Porte to an **absolute right of sovereignty over the Chat el-Arab**, that when the opposite banks of a River belong as they will do in this case to the lower portion of the Chat el Arab, to different powers, it would be **contrary to International usage** to give to one of the Two Powers the exclusive sovereignty of that portion of the course of such River, and that therefore this proposal of the Turkish Government seems inadmissible” (3<sup>rd</sup> March 1847 in FO 78/2716, TNA)



THE SHATT AL-ARAB PORTION OF THE PERSO - IRAQI FRONTIER AS FIXED IN 1913 - 14 AND AMENDED IN 1937

RESEARCH DEPT. F. O., March 1945



Transliterations follow Col. C.H.D. Ryder's original sketch map of June 1925

# Palmerston and the 19<sup>th</sup> century

## Perso-Ottoman boundary II

- A much more pragmatic (if not resigned) Palmerston would make the following observation only half a decade later:

“the boundary between Turkey and Persia can never be settled **except by an arbitrary decision** on the part of Great Britain and Russia”

(11<sup>th</sup> October 1851, FO 78/2716, TNA)

## 2b) Looking back: Balfour reflects back on Britain's wartime deals

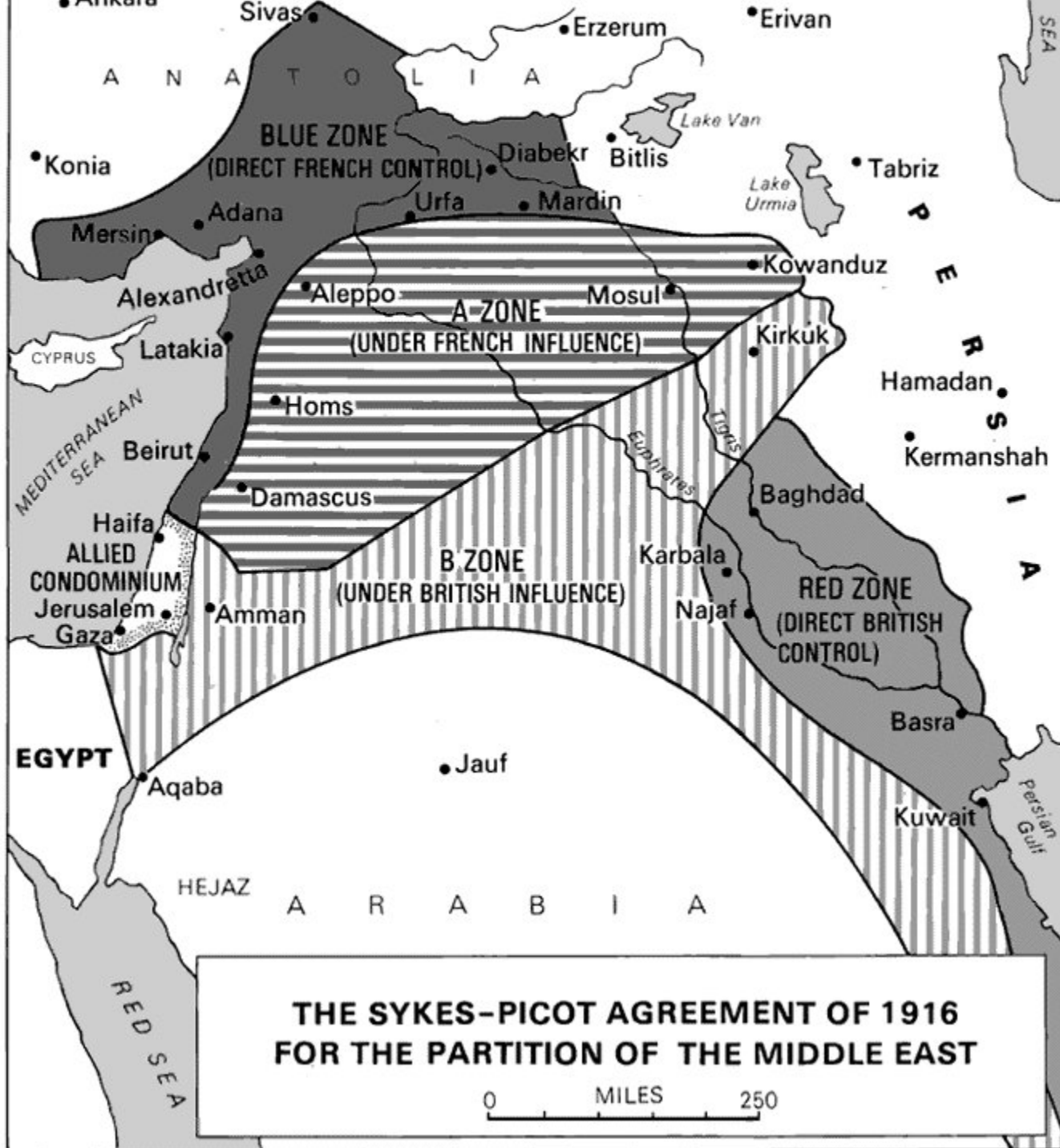
- On Britain's conflicting commitments made during WW1 to the Hashimites, the French and the Zionists:

“in short, ...the Powers have made no statement of fact which is not admittedly wrong, and no declaration of policy which, at least in the letter, they have not always intended to violate”

- And he calls for a more regionally-sensitised approach to colonial boundary-drawing in the region:

“...to make such international arrangements, economic and territorial, as will enable each region to develop itself to the best advantage without giving occasion for jealousies or disputes”

(Memorandum by Mr Balfour respecting Syria, Palestine and Mesopotamia, dated August 11, 1919)



## 2c) European boundaries don't make a lot of sense in the desert

- Quizzed about a notional territorial divide separating areas of Anglo-French influence between their future Iraqi and Syrian mandates, Arnold Wilson and Gertrude Bell (Iraq's chief imperial architects) opined:

“no government will exercise effective control over the Syrian desert. Governments are concerned only with the administration of settled districts, and the relation of tribes to cultivated land”

(India Office memorandum, “Settlement of Turkey and Arabian Peninsula, 30<sup>th</sup> November 1918)



## 2d) Iraqi access to Gulf waters recognised as a political problem...

- ...as early as the late 1930s!

“...it is understandable that the State which controls the Mesopotamian plain should desire to have undivided control of at least one good means of **access to the sea**, and Lord Halifax thinks that on a long view it is likely that, if Iraq were given this access, it would make for **steadier conditions** in that part of the world in years to come”

(Lacy Baggalay, 16<sup>th</sup> December 1939 in CO 732/86/17,TNA)

## 2e) A regional political shift in the northern Gulf in 1975 I

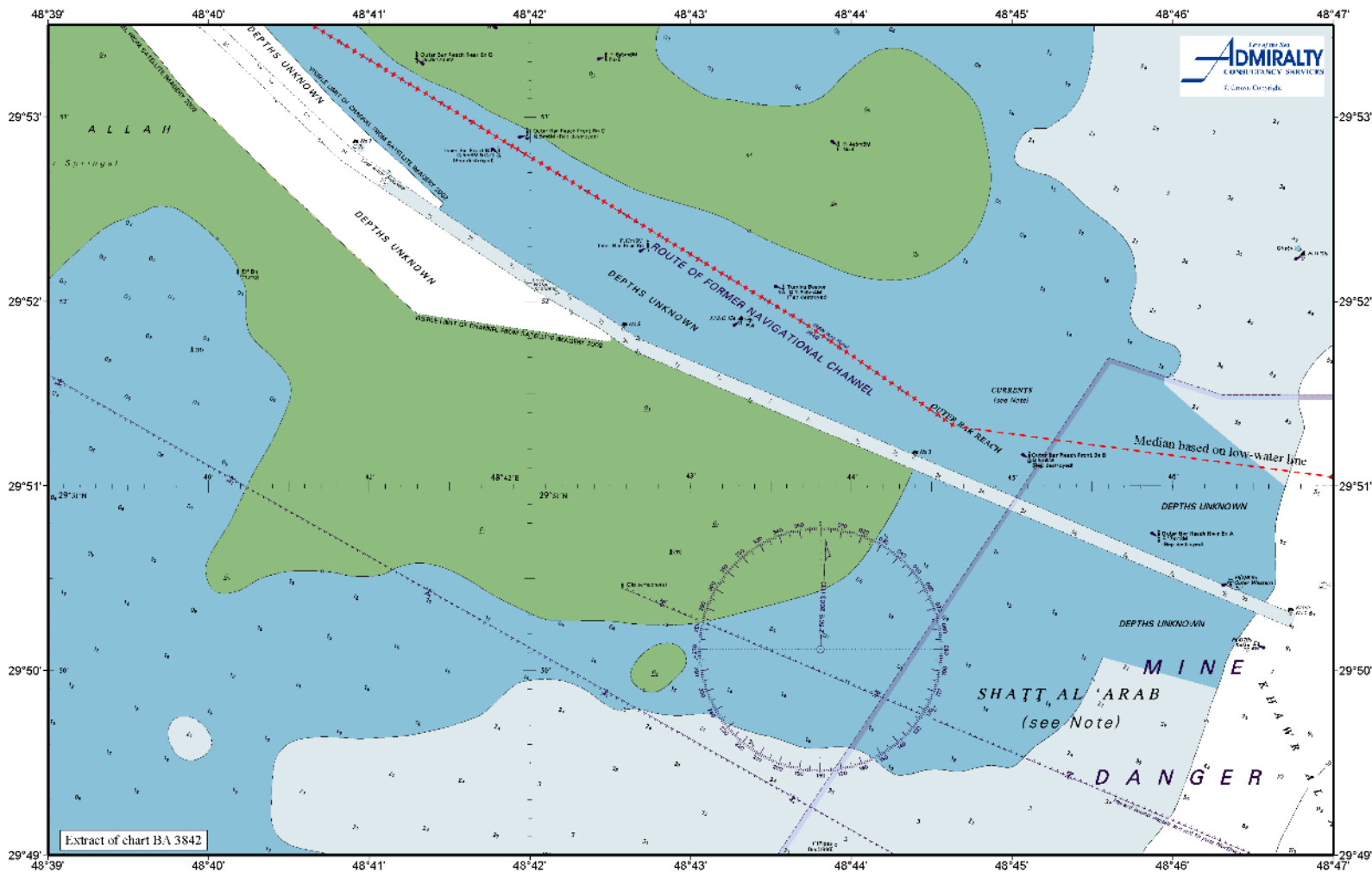
- Reaction to Iraq's dramatic (and genuinely unforeseen) abandonment of claims to the Shatt al-Arab river in the spring of 1975
- Given longstanding patterns in northern Gulf geopolitics, detailed conjecture of what this might mean for Kuwait and Western relations with the emirate
- Obviously, British diplomats concerned (Ambassadors in Iran, Iraq and Kuwait) were no longer representing the foreign affairs of their protected states but were now speaking as seasoned observers, perhaps more candidly as a consequence

# A regional political shift in the northern Gulf in 1975 II

- I am intrigued by the extent to which Kuwait was considered as having been placed at greater risk of an Iraqi invasion by the rapprochement between Baghdad and Tehran. Maybe Johnny Graham, Britain's Ambassador in Baghdad, was being mischievous when thinking aloud in March 1975 but there was no doubting his seriousness:
  - “This leads me to a heretical thought. ... In (his) last sentence, Lamb says the consequences of war in this area could be far-reaching and very serious for the Western oil companies and even for detente. I wonder whether this is not overstating the case or perhaps, to put it another way, whether an Iraqi take-over of Kuwait, especially if it were achieved ‘peacefully’ would or should lead to war. Indeed in terms of Western interests, or even in terms of specifically British interests, is the continued independence of Kuwait really a matter of such great moment?”

(J.A.N. Graham, Baghdad to FCO, 25<sup>th</sup> March 1975 in FCO 8/2443, TNA)

# Iran / Iraq Boundary



Extract of chart BA 3842



Prepared by UK Hydrographic Office, Law of the Sea Division 26 March 2007

# 3) Surprises

- 3a) Reacting to unexpected situations: e.g., the conduct of states during proceedings in major cases (the submission of suspect documents during the Bahrain-Qatar ICJ case, 1991-2001)
- 3b) The conduct of British territorial policy – no huge revelation here but sometimes governments do expedient things that seem out of kilter with what they were/are pronouncing at the time or what the law at the time suggests is appropriate
  - 3bi) Britain argues that the sphere of influence it defined with the Ottoman Empire in Arabia during 1913/1914 should devolve upon Saudi Arabia in the 1930s, despite knowing such a position is flawed
  - 3bii) UK emplaces flags to occupy low tide elevations (the Mouchoir and Silver Banks) during the mid-1950s despite admitting such features are not capable of occupation in international law

## 3a) Suspect documents and the Bahrain-Qatar ICJ case

- 81 documents submitted in the Qatari memorial and counter-memorial stood out as unusual in as much as they contradicted the known history of the area concerned (2 or 3 of them are reproduced here)
- Aim of their conclusion seemed to be to provide evidence for *inter alia* claims Qatar was making of links to the Hawar islands during the late nineteenth century
- Ultimately, Qatar asked the Court to disregard these documents as evidence in arriving at a judgement but what does a researcher like myself actually do to counter assertions that treaties have been concluded between Britain and the Ottoman Empire recognising the Hawar islands as Ottoman. One thing is to look for documents that state categorically that no treaties of this kind have been concluded

#29158



Handwritten Arabic text at the top center.

BAHRAIN

AMZOR  
JARAOS

ZBARA

BIDAH

KATAR



حدود القطر مع البحرين  
عنا نريد ان نطابقها

سنة ١٢١٤  
OBIB

OK.  
متفقاً ومصديقاً من سفير  
بريطانيا عظمى في بستانه  
في ١٢١٤ هـ الموافق ١٨٦٨ م



ضمير

Suspect Item II.21  
Front





# Negating the assertion that treaties were concluded

- Reported discussion between Ottoman Foreign Minister Fuad Pasha and British Ambassador in Constantinople, H.P. Barron, October 1867

“..., I have enquired of Fuad Pasha what were the intentions of the Porte with reference to the attempts made by the Ottoman authorities in Arabia to extend Turkish dominion in the Peninsula.

His Highness asserts that Arabia is a part of the Ottoman Empire...

I observed to Fuad Pasha that I was not prepared to discuss the sovereignty of Arabia”

(5<sup>th</sup> October 1867 in FO 78/1964, TNA)

## 3bi) Spheres of influence have no status in international law

- Britain wanted to argue that its 1913-14 Blue and Violet lines, agreed to separate Ottoman NW Arabia from a British sphere of influence in SE Arabia, devolved upon Saudi Arabia in the mid-1930s
- Yet it knew all along that such an approach, which it would go on and adopt as its *raison d'être* in 2 decades of ultimately inconclusive negotiations, was significantly flawed – look at what the Foreign Office's chief Legal Advisor said at the time:

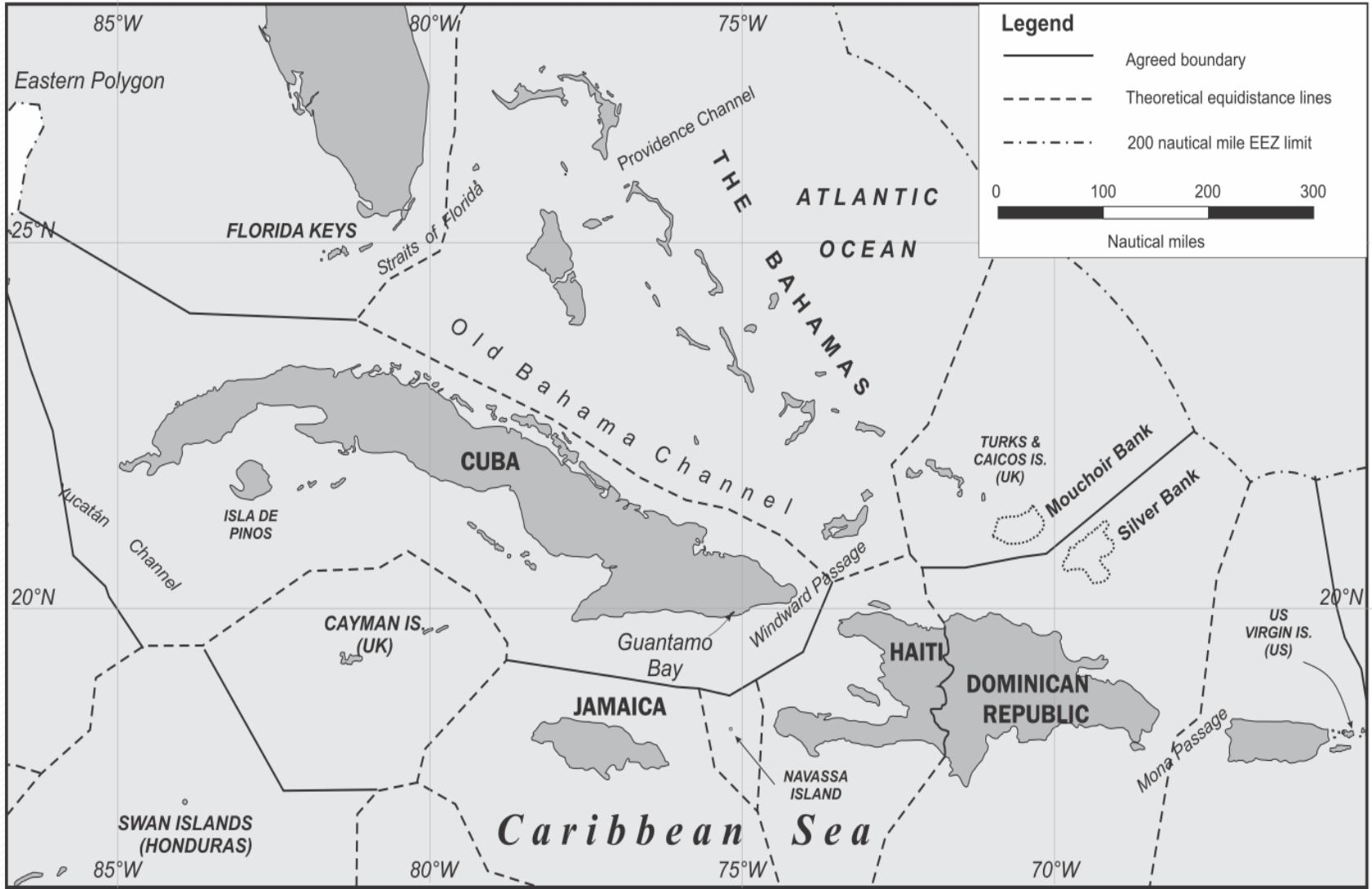
“It must be remembered that under international law territory is either under the sovereignty of a member of the family of nations, or it is not; if it is not, then it is open to acquisition by occupation by another power. Spheres of influence in international law, whatever their political significance, mean nothing at all” (W.E. Beckett, 29<sup>th</sup> August 1934 in R/15/1/603, OIOC)

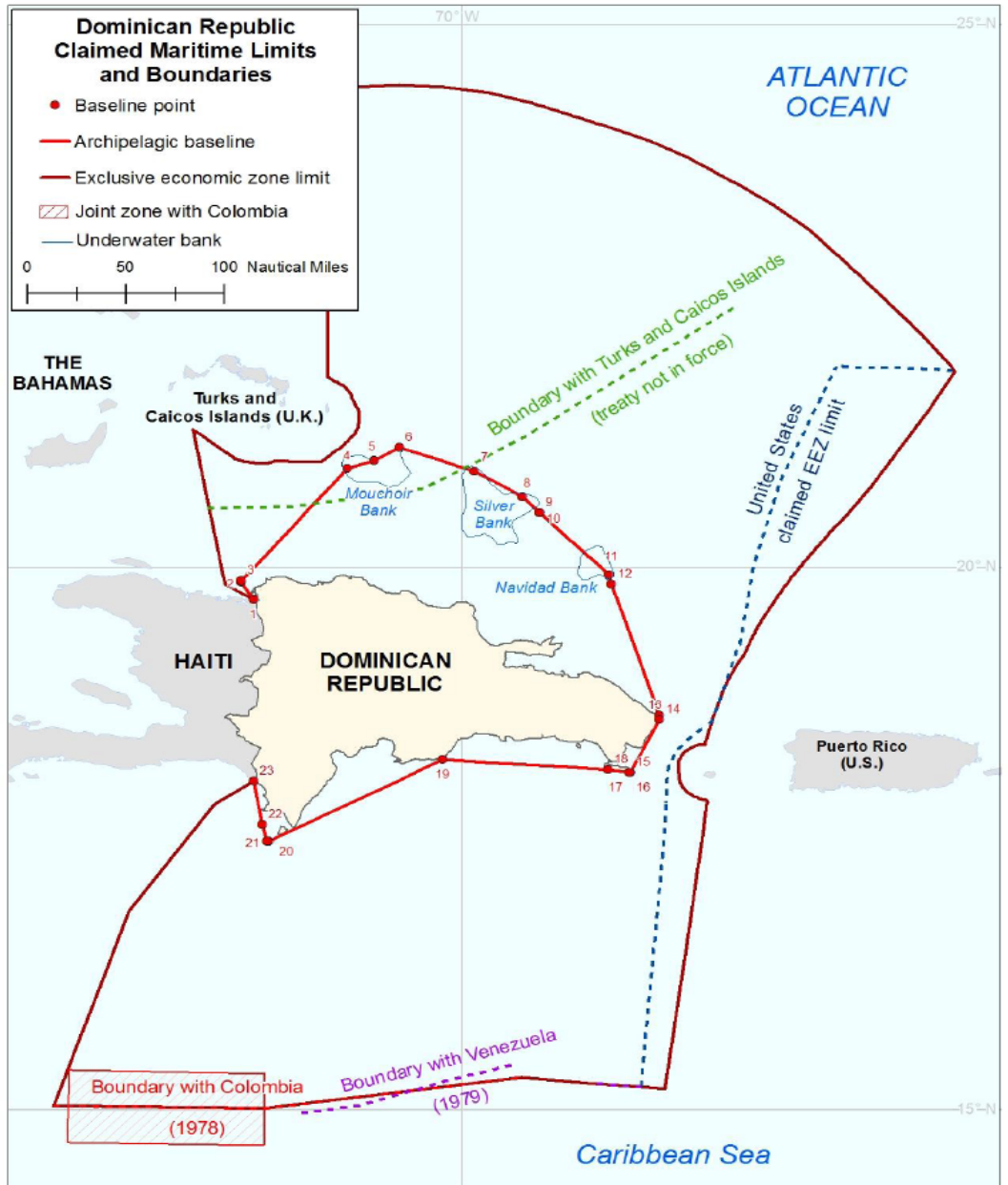
## 3bii) Making mischief on the Mouchoir/Silver Banks, 1953-54 I

- In the context of exploring for offshore hydrocarbons and a perceived threat from the projection of US oil interests, the question for Britain became how to extend sovereignty for Jamaica over the Mouchoir and Silver Banks
- If these features are found to lie above high water, it is thought that sovereignty can be extended over them
- Conversely, “[o]ne cannot in these days claim sovereignty over a bank under the sea on which there is no land permanently above water and which is separated, as are the Mouchoir and Silver Banks, from the continental shelf of the Turks and Caicos Islands proper by passages more than 100 fathoms deep,... (Burt, CO, 10 December 1953 in ADM 1/24834, TNA

# A Jamaican dependency at the time!







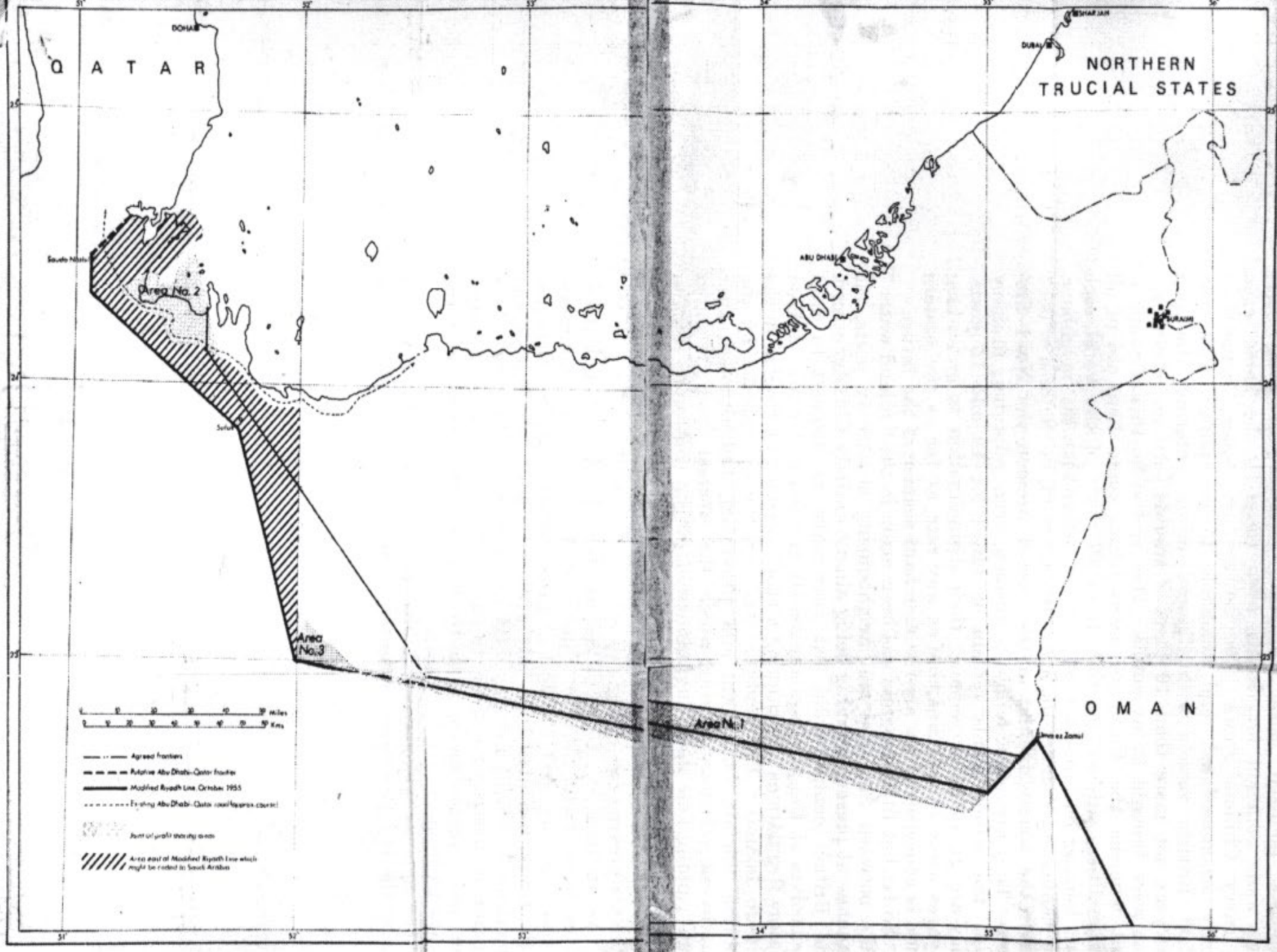
# Making mischief on the Mouchoir and Silver Banks, 1953-54 II

- CO advised to await the outcome of the (slightly similar fisheries) Japan-Australia case at the ICJ – though this would never fully materialise
- American oil company applies to develop territorial waters of Turks and Caicos and includes banks in projected survey area – pressure increasingly applied by oil companies
- FO argues for occupation of banks, even if the features are low tide elevations – citing 2 possible bases
- Acting Governor of Jamaica ultimately advised to occupy the banks by the Secretary of State for the Colonies
- In July 1954 it is reported that flagged buoys and one concrete block were placed and constructed on the banks which had been confirmed as low-tide elevations

## 4) Appreciating and embracing regional complexity

- 4a) Explaining what is certainly one of the world's most bizarre territorial settlements (the summer 1974 Saudi-UAE boundary agreement) is impossible without a detailed knowledge of what went on at the turn of the decade as Britain prepared to vacate Gulf waters as protecting power
- 4b) Wading through endless pages of (rather dull) detail can unearth lighter (even amusing) moments (the saga of the most southerly date palm at Safwan)
- 4c) Of course, the record never tells the whole story - and sometimes episodes are frustratingly left hanging in the air (gold and silver lines along the Perso-Ottoman boundary)







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Google

# The Anglo-Russian *carte identique*, 1869-1875



## 5) Looking beyond the usual sources

- In some cases, important evidence has been unearthed from unlikely sources – think back to the Taba arbitration of the 1980s
- Then we often get lucky as new material becomes available: I.B. Tauris's reprint later this year of G.E. Hubbard's *From The Gulf to Ararat* - the classic 1916 tale of the completion of Anglo-Russian efforts to finally lay down a Perso-Ottoman boundary on the eve of World War One. Fantastic new photographic plates from the family archive (courtesy of his granddaughter Susan Littledale)

# Hubbard's 'Confidence'



# Hubbard's 'Doubt'



# Hubbard's 'Confusion'



FROM  
THE GULF  
TO ARARAT  
G. E. HUBBARD



IMPERIAL BOUNDARY MAKING  
IN THE LATE OTTOMAN EMPIRE

Foreword by RICHARD SCHOFIELD

I.B.TAURIS