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Facts conc. The Iraqi-Iranian Frontier

(by Ministry of Foreign Affairs, Iraq)

- sent to D.H. by Jens Malling



REPUBLIC OF IRAQ

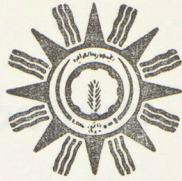
FACTS
Concerning
The Iraqi-Iranian Frontier



Ministry of Foreign Affairs

January 1960

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REPUBLIC OF IRAQ

FACTS

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Foreword

REPEATED official statements recently made in Teheran concerning boundary problems between Iraq and Iran have regrettably been contrary to the principles of International Law as well as to established facts which are supported by official international documents such as treaties, agreements and protocols entered into by the two governments concerned.

It is therefore necessary to clarify these problems by an objective and dispassionate presentation for the benefit of Iraqi public opinion, as well as public opinion in the Middle East and the world at large. It will be clear to the reader after appraisal of these facts that the peaceful policy declared by His Excellency Major-General Abdul Karim Qassim, the Prime Minister and Commander-in-Chief of the Armed Forces, on the dawn of July 14, 1958, the first day of our glorious Revolution, will remain now and in the future an irrevocable principle of the policy of the Republic of Iraq. The Government of Iraq is keen on the observance of its international commitments and always endeavours to settle international differences by peaceful means taking into consideration relevant principles embodied in the United Nations Charter and the interest of the people of Iraq as well.

FORWORD

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Boundary Agreements

THE Iraqi-Iranian dispute over certain parts of their joint boundaries is not a new development, as it is inherited from the Ottoman Empire of which Iraq was part prior to the First World War. Indeed the Ottoman and the Iranian Governments had pursued the path of negotiation and agreement in the demarkation of boundaries which is the appropriate method in the settlement of such dispute and which is wholeheartedly endorsed and adopted by Iraq.

The boundaries between Iraq and Iran are based on the Erzurum Treaty which came into effect in the year 1847, as well as on the Protocol for the demarkation of boundaries which was signed in Constantinople on the 4th of November 1913 by the Minister of Foreign Affairs of the Ottoman Empire and the Ambassador of Iran on behalf of their governments. The Ambassadors of Great Britain and Russia also signed on behalf of their respective governments in their capacity as mediators.

Article two of the Protocol of 1913 laid down the following :—

“The boundary line shall be delimited on the ground by a Delimitation Commission composed of the Commissioners of four governments.....”

Article five of the same Protocol states the following:—

“As soon as part of the frontier has been delimited it shall be considered as finally fixed and shall not be liable to any subsequent examination or amendment.....”

The Commission which was set up for this purpose completed the demarkation of the boundaries and the co-ordinates of their points on the ground and on the maps from North to South, the details of which were all set down in the Commission Proceedings of 1914. Thus the dispute over the boundaries should have ended between the Ottoman Empire and Iran and subsequently should have left no cause for violation of the boundaries between Iraq and Iran.

Violations

THE Iranian Government however violated the provisions of the Agreements following the Pahlavi Coup after the First World War in an attempt to secure to itself certain gains at the expense of its neighbours. It invaded Afghani territories by force of arms, and its armies, pressing deep into the interior of that country, were defeated and forced to retreat. Nevertheless, the dispute between Afghanistan and Iran persists until today over the waters of the Hilmand River.

The Iranian Government also encroached upon Iraqi boundaries violating the Agreements referred to above to which it was party. These violations of Iraqi-Iranian boundaries by Iran are still continuing and have indeed taken a provocative form since the Iraqi Revolution.

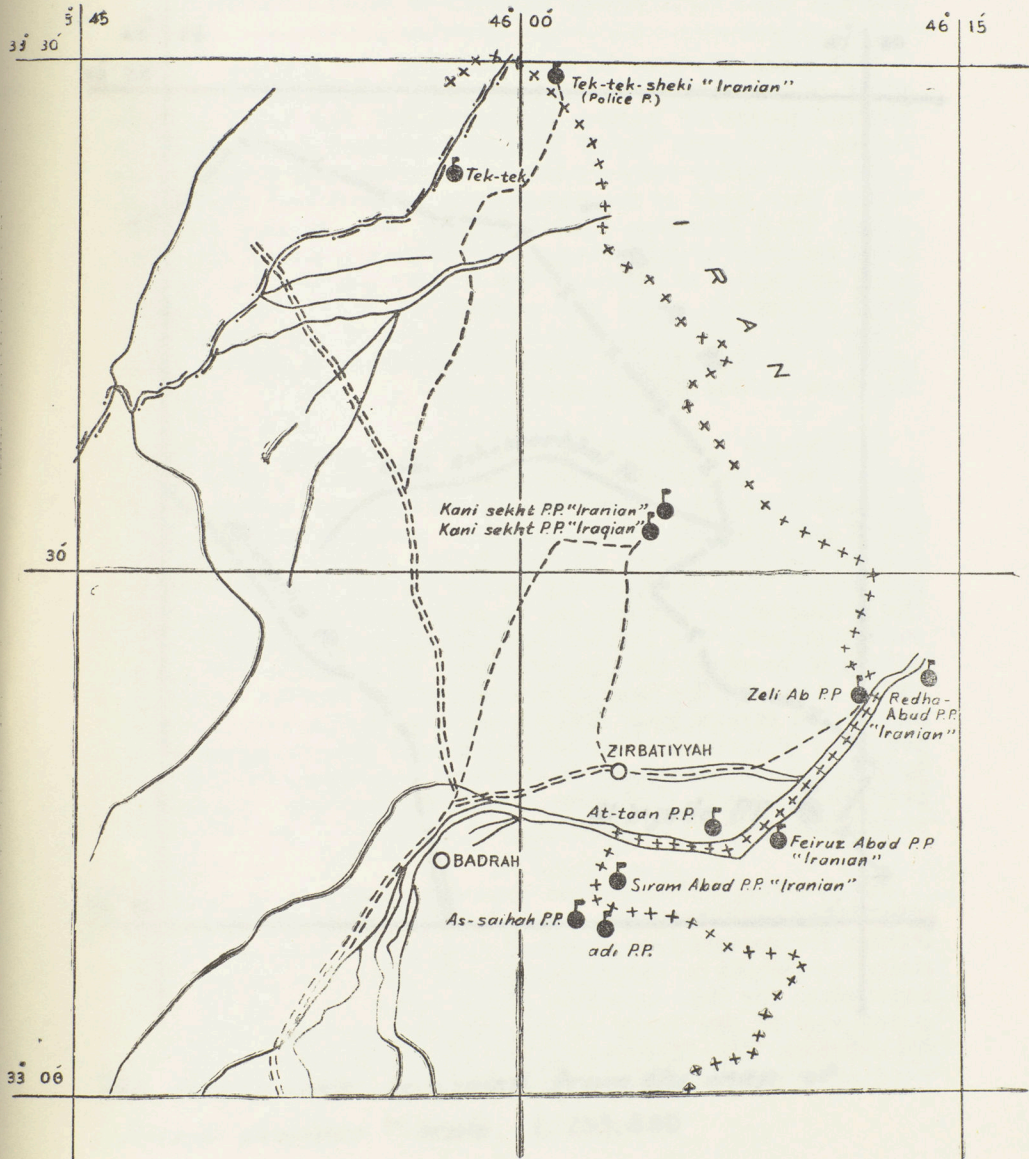
Violations Of Territorial Boundaries

IN its attempt to seize all it could of Iraqi territory, the Iranian Government established boundary guard-posts with military strength inside Iraqi territory. These guard-posts are:

1. Al-Bejailah: in Qal'at Salih administrative area which was established one Kilometre within Iraqi territory.
2. Kani Sekht: in (Bedra) administrative area, established six Kilometres within Iraqi territory.
3. Al-Ziadi: In Bedra established five Kilometres within Iraqi territory.
4. Tuk Tuk: In Bedra, established seven Kilometres within Iraqi territory.
5. Kalat Lan (Kalalan): in Mendeli administrative area, established one Kilometre within Iraqi territory.
6. Nee Khedher: in Mendeli, established also within Iraqi territory.

The Government of Iraq chose to pursue diplomatic means to safeguard its rights but its repeated protests and

A SKETCH MAP SHOWING THE LOCATIONS OF IRAQI POLICE POSTS IN RELATION TO IRAQI-IRANIAN BOUNDARY LINE



This sketch map is copied from the map of Kut province "scale" 1:253,440

Violations

The Iranian Government has violated the provisions of the 1925 Convention between Iran and Iraq after the First World War in order to secure to itself certain gains at the expense of its neighbours. It invaded Afghan territory by force of arms, and its armies, pressing deep into Afghan territory, have since the withdrawal of the British forces, retreated to the Afghan-Iranian frontier. The dispute between Afghanistan and Iran persists until today over the waters of the Helmand River.

The Iranian Government has encroached upon Iraqi boundaries violating the agreements referred to above to which it was party. The violations of Iraqi-Iranian boundaries by Iran are well known and have included a very provocative form since the Iraq-Iran dispute.

Violations Of Territorial Boundaries

In its attempt to seize all it could of Iraqi territory, the Iranian Government established boundary guard-posts with military strength inside Iraqi territory. These guard posts are:

1. Al-Bajalish in Qadisiyah administrative area which was established one kilometre within Iraqi territory.
2. Kam Sekhi in (Bada) administrative area, established six kilometres within Iraqi territory.
3. Al-Radi: In Badra established five kilometres within Iraqi territory.
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This sketch map is copied from the map of the Province of Amara

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communications were in vain since the Iranian Government persisted in its claim to these territories ignoring international documents especially Proceedings of the Boundary Commissions as well as the maps, descriptions of the boundary pillars and their co-ordinates annexed to those Proceedings.

It must however be recorded that the Iranian Government, subsequent to the abdication of the former Shah and the occupation of Iranian territories by the Allies in 1941 during the Second World War, discontinued for a while its aggressive policy towards Iraqi territories, and withdrew its forces from most of the guard-posts which it had established within Iraqi territory. Unfortunately, the Iranian Government reverted to its former policy after the end of the War as it attempted to reoccupy the former guard-posts. When Iraqi authorities stood firm against this move, the Iranian Government did not hesitate to use force of arms which was repelled by Iraqi Police. Nevertheless, there is still an Iranian force in Nee Kheder guard-post.

Although Iranian forces failed to reoccupy the other posts, they established two new guard-posts within Iraqi territory opposite the two Iraqi boundary guard-posts, Kani Sekht and Al-Ziadi, giving them the same names. The Government of Iraq missed no opportunity, before and after the last World War, of appealing to the Iranian Government for the settlement of the dispute by arbitration through neutral foreign experts. The Iranian Government, apparently, was not willing to have the dispute settled on an equitable and just basis; it evaded the issue claiming that the Islamic countries should not expose their differences to a foreign party. When the Iraqi Government, however, proposed the setting-up of a joint commission confined to Iraq and Iran to settle the dispute, the Iranian Government turned down the proposals under some pretext or another.

In the one instance when Iran agreed to set up a joint commission to survey the Bejailah boundary guard-post, the Iranian Representatives produced maps which were not officially recognised or authenticated and refused to pursue the negotiation for the definition of the exact location of the guard-post on the basis of the international map initially agreed upon. The Commission, of course, had no chance of success, and the dispute continued as before.



A SKETCH MAP SHOWING LOCATION OF THE TWO POLICE POSTS OF "NEE-KHIDIR" AND "QALA LAN"



This sketch map is copied from the map of DIALA province "scale, 1:500,000"

(1) Kankir River in Mendeli:

The share of Mendeli administrative district is clearly defined in Article (28) of the Proceedings of the Joint Iranian-Ottoman Boundary Commission for the years 1913 and 1914. Briefly, the Commission had agreed to divide the river waters in equal shares between Mendeli in Iraq and Sumar in Iran. The Iranian Government, unable to challenge this clear provision, resorted to the allegation that the waters had decreased, knowing full well that such a decrease was due to excessive and unlawful utilization of the waters in Iran before the river enters Iraqi territories. Iraqi Notes and Protests have been, however, of no avail. Nevertheless, the Iraqi Government suggested setting up an *ad hoc* joint Commission composed of farmers from both sides under the supervision of the Boundary Commissioners of both Mendeli and Sumar who were to be charged with surveying the waters of Kankir River from time to time to observe the condition of these waters and the manner of their division into equal shares on the basis agreed upon, and to safeguard the rights of farmers on both sides of the border, thus removing the cause of misunderstanding between the two Governments and their respective subjects. Unfortunately, the Iranian Government once more resorted to evasion, replying in its Note of 19th November, 1959, that it had issued instructions to give Mendeli's share of the water temporarily pending consideration of the matter by the Pillar—Fixing Commission. Needless to say, this did not improve the water situation in that area as Iran, regrettably, continued in its former manner of the disposal of the water.

The encroachment of Iran upon Mendeli's share in the waters of Kankir River resulted in the perishing of about 70 per cent of the orange, lemon and fruit trees as well as a decrease in the yield of palm-trees to about 30 per cent. This encroachment was also responsible for the people of Mendeli giving up vegetable cultivation and the emigration of more than 2,000 of them from the area.

(2) Zirbatiyah Waters:

The rights of the people of Zirbatiyah to the waters of Ginjan Jem are recognised in the Proceedings of the 26th meeting of the Boundary Commission for the years 1913 and 1914 which stipulate that the middle of the river, which orig-

inates in Iran, constitutes the boundary between Iran and Iraq for a certain distance and then enters Iraqi territory; thus, the two countries have a share in its waters.

The Commission, however, failed to provide a permanent basis for water distribution on both sides of the river, but permitted farmers of the two countries to open canals needed for the irrigation of their farms without making any reference to the construction of dams. Iraqi farmers continued to utilize the waters of Ginjan Jem through two branches, namely, Jazman and Sarkh in accordance with the old usage whereby Iraq had the major share in the waters as evidenced by the past prosperity of Zirbatiyah's orchards and its historic canals, whereas the canals on the Iranian side are of recent construction.

The Iranian Government, not being content with its repeated encroachments upon Iraq's share in the waters of Ginjan Jem, has started, of late, activities with the purpose of constructing a dam calculated to divert the river waters into Iranian territories regardless of all the dire consequences of this measure on the Iraqi farmers concerned, international practice, and of the Proceedings of the Boundary Commission.

(3) Al-Wand River in Khanaquin:

The area dependent on Al-Wand River was yet another part of Iraqi territory subjected to the encroachments of the Iranian Government. In 1953, the Iranian Government prepared a project for building a canal in Iranian territory from Kasir Shireen to Khesrawi which is situated on the border opposite Khanaquin on the Iraqi side with the intention of diverting the waters of Al-Wand River, on which Khanaquin depends; and it commissioned Linda Construction Company to complete the project.

In view of the seriousness of the situation and the dire consequences of this step to Iraqi interests, the Government of Iraq made every effort through diplomatic channels, including Notes and Protests, to persuade the Iranian Government not to go through with its plans. Nevertheless, the Iranian Government proceeded with these plans.

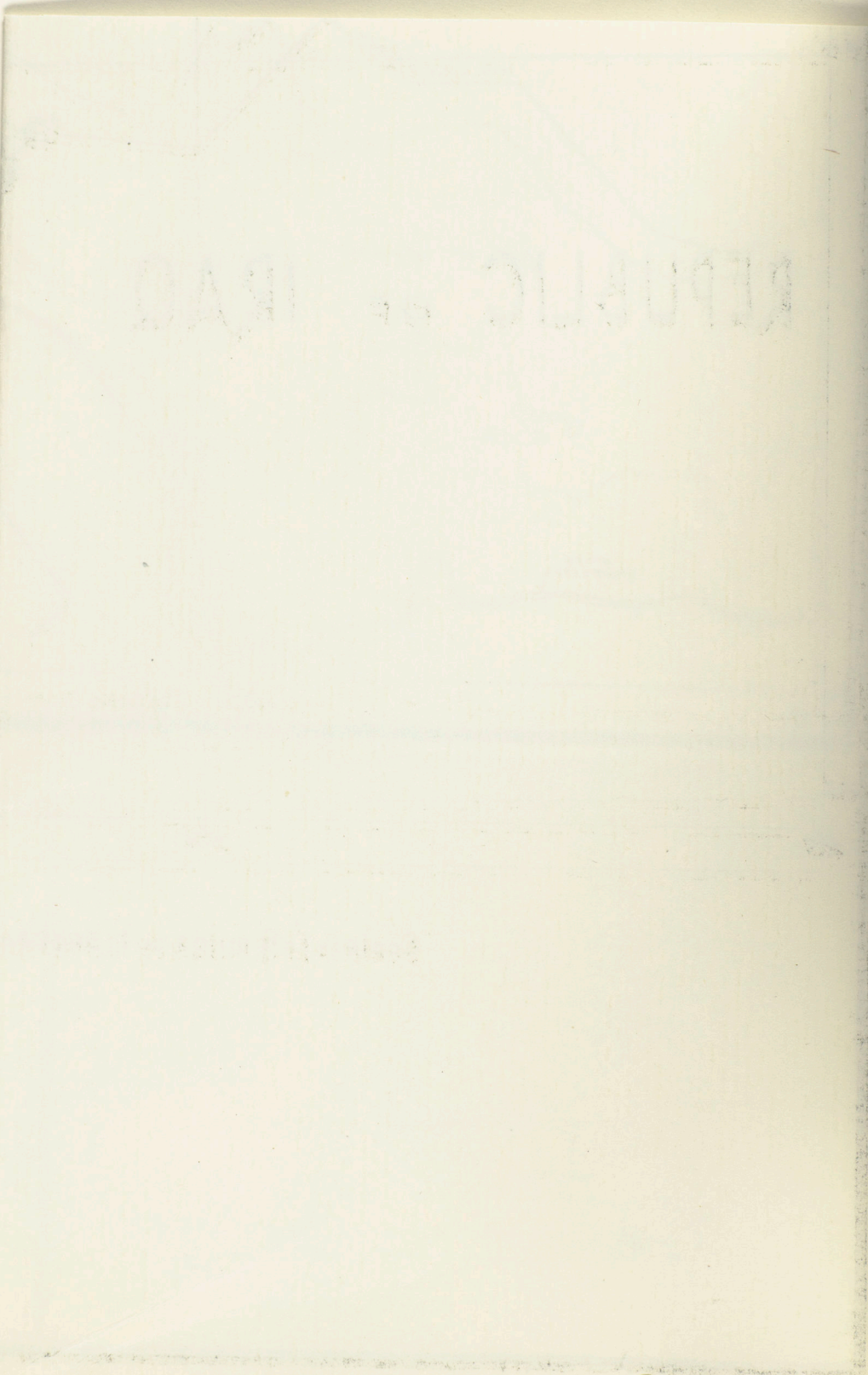
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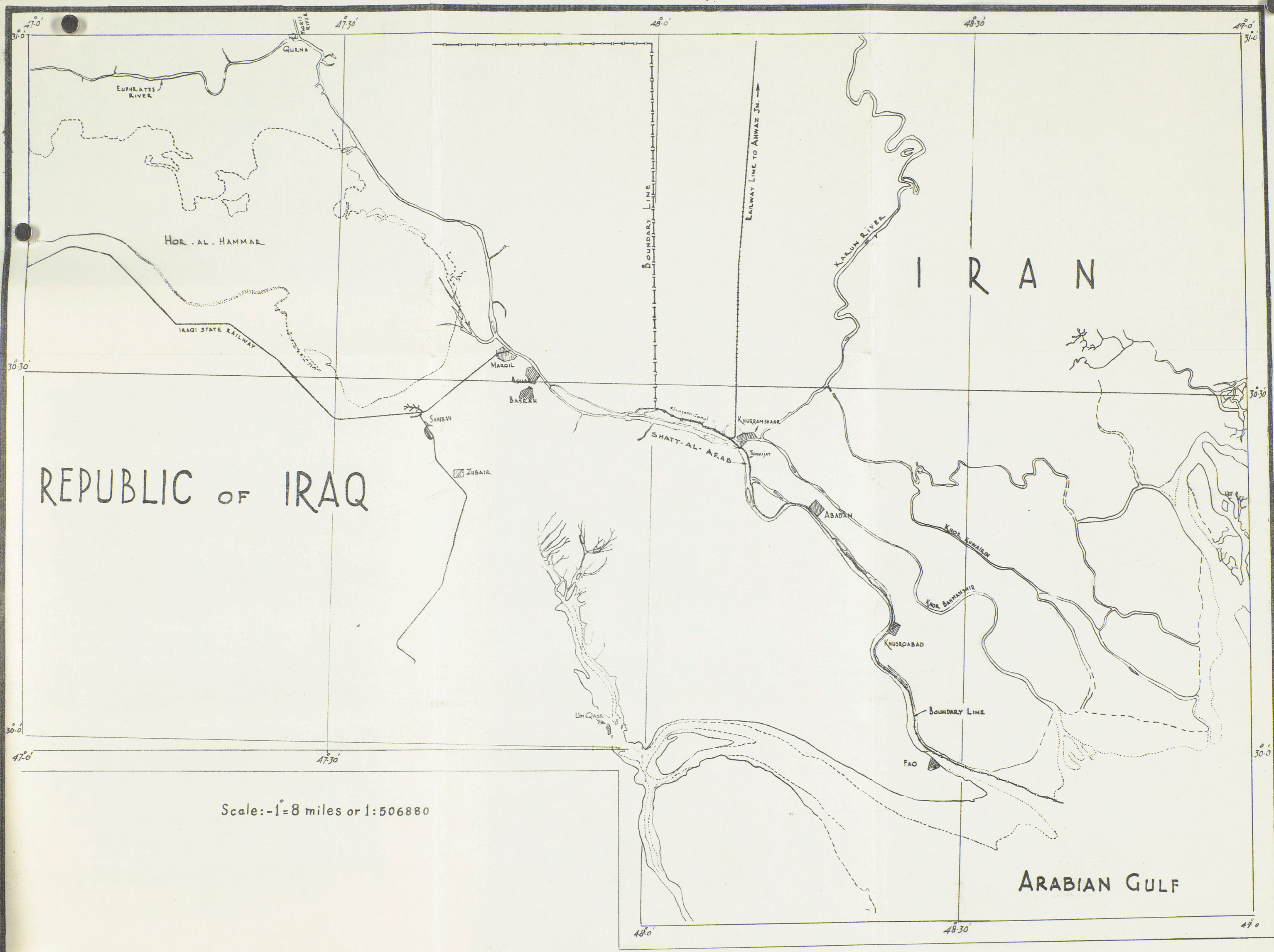
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REPUBLIC OF IRAQ

IRAN

ARABIAN GULF

Scale: -1"=8 miles or 1:506880

BOUNDARY LINE

RAILWAY LINE TO AHWAZ JN. →

SHATT-AL-ARAB

EUPHRATES RIVER

KARUN RIVER

HOR-AL-HAMMAR

IRAQI STATE RAILWAY

QURNA

MARGIL

Basrah

SHIRAZ

ZUBAIR

Khurramshahr

TUWAJAT

ABADAN

KHOR KUNAIRIN

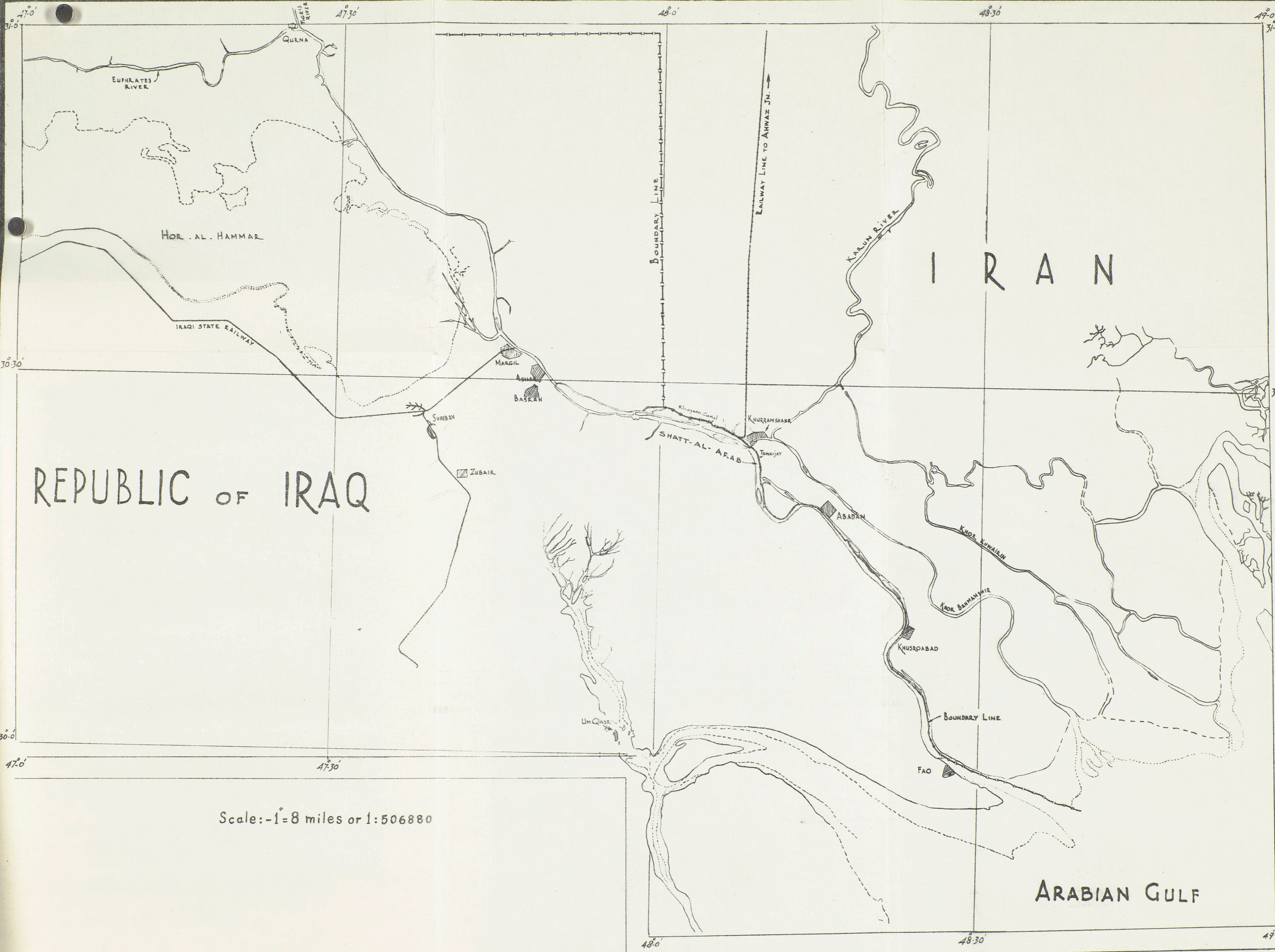
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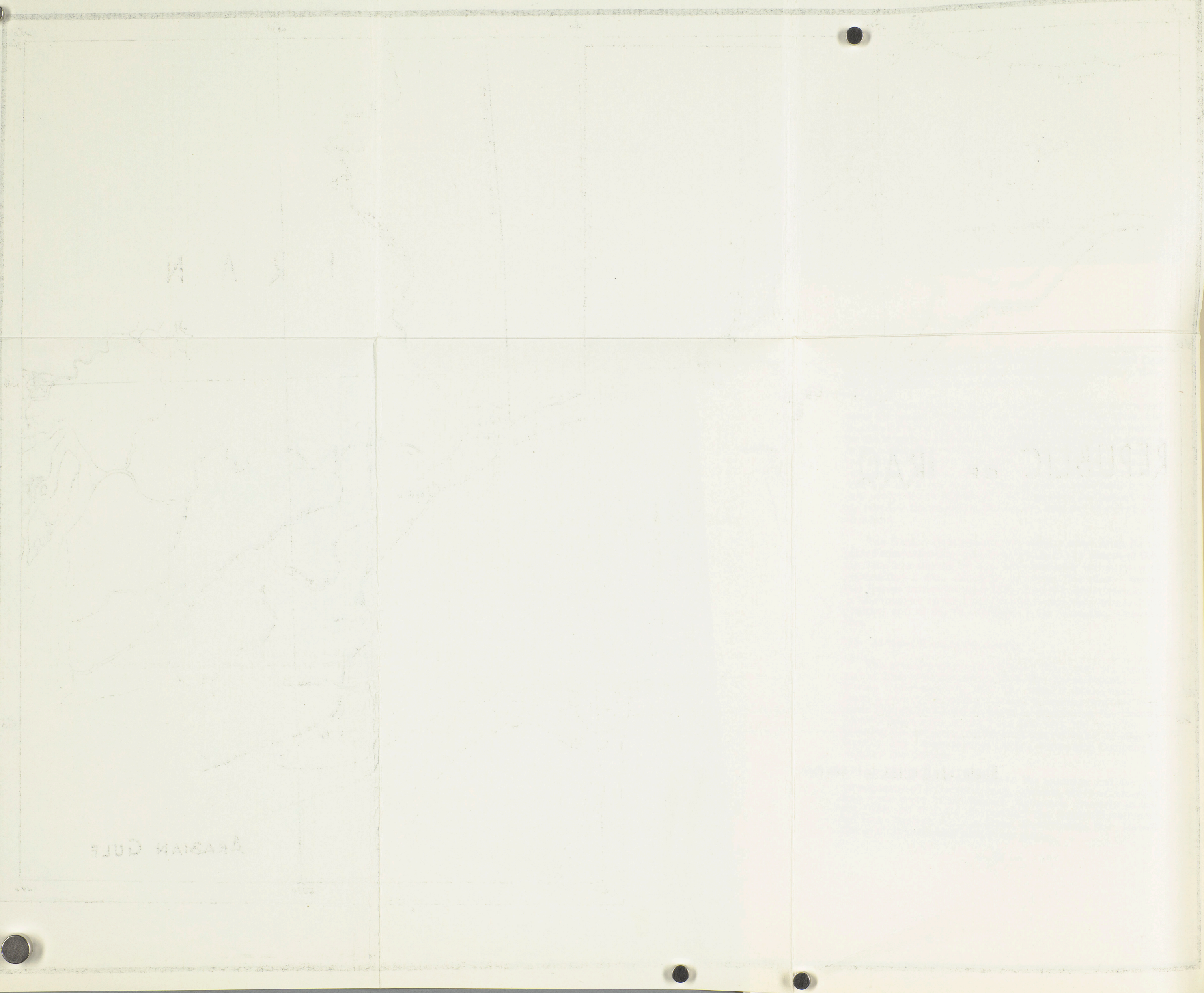
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ARABIAN GULF

REPUBLIC OF IRAQ



In its many Notes (such as the two dated Sept. 28, 1953 and Apr. 12, 1954 respectively) the Iraqi Government elucidated to the Iranian Government some of the arguments and evidences it deemed relevant to the question, drawing the attention of the latter to the following points:—

- (a) Iraq has been using since ancient times the waters of Al-Wand River for irrigating the adjoining area including all the towns and villages it contains.
- (b) The time-honoured right to the disposal of these waters entitles the area to an indisputable right in these waters.
- (c) The adverse effects of low water manifest themselves seriously in the summer months. Obviously, the diversion of water in Iran is bound to aggravate the existing difficulties, bringing serious harm to agriculture in the area.
- (d) No state is entitled to the diversion of the waters of an international river or to the use of such waters in a manner detrimental to other states, without reaching first a special legal agreement with the other states having shares in the waters of the river or, alternatively, securing the necessary approval of such states.
- (e) The waters diverted into the new canal will be drawn from Iraq's share, particularly in the summer crop season. This means incalculable loss of vast areas of agricultural lands as the volume of the waters flowing into Iraq during summer is not only used up completely but already falls short of Iraq's requirements.
- (f) The minimum discharge of the river in Iraq is estimated at about 5 cubic metres per second. This discharge could drop to as low as 2 cubic metres per second in the event of the opening of the projected canal, with dire consequences to the groves and other agricultural lands in the Iraqi area.

After ceaseless and strenuous efforts by the Government of Iraq, work on the project was stopped by the Iranian Government in recognition of its inequitable nature and its violation of international practice. It resumed construction on the project however without notice in 1958. The Iraqi Ministry of Foreign Affairs addressed a Note to the Iranian Embassy in Baghdad dated 20th October 1958, asking for immediate cessation of construction on the project pending an agreement on a suitable method for the division of the waters of boundary rivers in accordance with the status quo which had been mutually agreed to until the formation of the joint boundary commission which was intended to find solutions to boundary disputes between the two countries under the chairmanship of an arbitrator whom they had formerly agreed to choose from Sweden. The Iranian Government replied however that the use of the boundary waters did not fall under the agreed principle of maintaining the status quo on the pretext that it was an internal measure of a purely domestic nature and should not be regarded relative to boundary problems. The Government of Iraq in its Note of 28th March 1959, protested that riparian boundary problems were part of the total boundary problems awaiting settlement by the two countries, and the Government of the Republic of Iraq would not be in a position to enter into negotiations over boundary problems unless the question of International rivers was included. It also indicated that if the Iranian Government were to persist in diverting the waters of Al-Wand River, the Government of Iraq would be compelled to resort to international legal proceedings to safeguard its legitimate rights.

The foregoing is a brief account of the Iranian attitude toward the question of Riparian Boundaries. Obviously, all these rivers are International rivers as it is generally accepted that rivers which flow in more than one state are considered as International rivers. All these rivers originate in Iran and flow in Iraq. It is clear that International Rivers are governed by special considerations, as the great number of International Rivers in various parts of the world and the numerous disputes connected with them have led to comprehensive and objective studies of the problems of International rivers.

It is an internationally established axiom that states in normal circumstances should refrain from making changes in

the physical environment within their own territories which are likely to do damage to the physical environment in a neighbouring state. According to International Rules, not only is the state forbidden to block or divert the flow of a river which traverses its territory and continues its course into the territory of another state, but it is also prevented from the utilisation of the waters of such river in a manner detrimental to the interests of the neighbouring state in the use of these waters. Iran can therefore hardly find any legal justification for her acts of impeding the irrigation of Iraqi land and denying it its time-honoured rights on the plea that the projects undertaken by her are located within her own territory, since there is no escaping the fact that International Law imposes on the state unambiguous obligations in this respect.

It is difficult to believe that Iran is seriously convinced of the cogency of her arguments, for she has adopted a diametrically opposite attitude over the river Hilmand which originates in Afghanistan prior to its entry into Iran. Iran claims from its eastern neighbour (Afghanistan) what it denies to its western neighbour (Iraq), using in the one case arguments and evidences which she will not admit in the other. Furthermore, whilst Iran denies Iraq its unequivocal legal rights in the joint rivers, she is not satisfied with her full share in the river Hilmand which originates from Afghanistan but is claiming an additional share of the surplus waters made available by virtue of the dam the Afghanistan Government has constructed within its own territory. This example illustrates graphically the policy of the Iranian Government towards the neighbouring states.

Surely, it is anything but logical for one to claim a right for oneself and deny this very right, or even a lesser one, to others.

Boundaries in Shatt-al-Arab and the Iraqi-Iranian Boundary Treaty of 1937

WHEN Iran continued in its violations, the Government of Iraq lodged a complaint with the League of Nations in 1934 asking for the settlement of these disputes. The League recommended direct negotiations between Iraq and Iran.

The arrival, however, at a settlement for these disputes required a change of policy on the part of Iran as well as her recognition of the legitimate rights of its neighbour, Iraq. As this was not forthcoming, the disputes remained unresolved accompanied by lengthy controversies, successive protests, and continual appeals for help by Iraqi nationals living in the border areas.

Along with denying Iraq its legitimate rights, whether laid down in agreements between the two parties, or those supported by International Law, Iran began to claim privileges and interests in Shatt-al-Arab which are based neither on a written agreement nor on any internationally accepted practice.

For a full understanding of the above, it is necessary to recapitulate the boundary position in Shatt-al-Arab since the completion of demarkation in 1914.

Boundary status in Shatt-al-Arab.

Shatt-al-Arab begins at the point of merger of the Rivers Tigris and Euphrates at Qurna. It flows a distance of 204 Kilometres prior to its discharge into the Arab Gulf. It runs through Iraqi territory on either side for a distance of 102 Kilometres down to a point to the south of Basrah. The Boundary Commission completed in 1913—1914 the boundary delimitation of Shatt-al-Arab at its second and third meetings. These boundaries are defined in the Table of Description of the Boundaries annexed to the Proceedings of the Commission.

The following appeared in the Table of Description of the Boundaries:—

"The frontier comes from the open sea and touches the left bank of Shatt-al-Arab at a point located at a distance of two miles downstream the fort currently belonging to Shaikh Khazzal. The position of the fort was observed from the terrace of the Imperial Ottoman telegraph office at Fao where its azimuth with the north was ascertained to be (87°).⁽¹⁾

(1) The original French text reads:

La frontière vient du large pour toucher la rive gauche du Chatt-el-Arab à un point situé à une distance de 2 milles en aval du fort appartenant actuellement au Cheikh Khazzaal. La position de ce fort a été observée de la terrasse du bureau télégraphique Impérial ottoman de Fao où son azimut avec le nord fut constaté être de 87 degrés.

A partir de ce point, elle suit le niveau des eaux basses de la rive gauche du Chatt-el-Arab (rive d'Abadan) jusqu'aux deux îles situées devant Manyouhi (Mankouhi) qu'elle contourne de façon à les laisser à la perse. Elle vient, immédiatement rejoindre la ligne dudit niveau qu'elle suit jusqu'aux quatre îles situées entre Mouaouié (Maouiyé) et Choutait (Chetaït). Ayant contourné ces îles de manière à les laisser en territoire persan, elle se confond de nouveau avec la ligne du niveau des eaux basses et la suit jusqu'à l'île de Mahallé (Mouhalla), qui fait partie du territoire persan avec les deux îles situées entre celle-ci et la rive persane. Après avoir contourné Mahallé, en suivant toujours le même niveau, elle vient au point où commencent le port et l'ancrage de Mouhammerah. Ce point actuellement connu sous le nom de Touweïdjat, est situé à une distance de 4,650 pieds (1,417 mètres) du point le plus avancé de la rive gauche du Karoun près de sa jonction avec le Chatt-el-Arab.

A partir de Touweïdjat la ligne frontière se transfère en ligne directe au medium filum aqueo du Chatt, qu'elle suit en passant entre la rive persane et l'île qui porte le nom d'Oumm-er-Rassas dans sa partie orientale et d'Oumm-el-Khassasif dans sa partie occidentale, jusqu'à ce qu'elle arrive devant l'entrée orientale du Nahr-el-Khaiin.

La ligne frontière entre dans le Nahr et en suit le medium filum aqueo jusqu'à la borne No. 2.

From this point the frontier follows the low water line of the left bank of Shatt-al-Arab (the bank of Abadan) up to two islands located opposite Manyouhi which are encircled by the frontier in a manner leaving them to Iran. The frontier then immediately rejoins the low water line up to four islands located between (Maoui yé) and Shoteit. After encircling these islands in such a manner as to leave them in the Iranian territory, it rejoins the low water line and follows it up to the island of (Mouhalla) which together with the two islands located between it and the Iranian bank forms part of the Iranian territory. After encircling (Mouhalla) and following always the same low water line it reaches a point where the port and anchorage of Mouhammerah begin. This point is at present known by the name Touweidjat and is located at a distance of 4650 feet (1417 metres) from the most advanced point of the left bank of Karun river near its confluence with Shatt-al-Arab.

The frontier line then departs from Touweidjat in a straight line along the medium flum aquoe which it follows between the Iranian bank and the island known as Um-er-Rassas in its eastern part and Um-el-Khasasif in its western part, until it reaches opposite the eastern entrance of Khayeen river.

The frontier line enters the river and follows the medium flum aquoe up to land-mark No. 2." (1)

It is to be noted that the Ottoman Government thereby conceded the city of Mohammarah and its anchorage, which had belonged to Iraq, in a desire to settle boundary problems between the two countries.

The Government of Iraq did not raise the question of Mohammarah in subsequent years, also in a desire to end the boundary disputes and foster amity and stability between the two neighbouring countries. Consequently, the Iraqi boundary follows the low-water line of the Iranian bank all along Shatt-al-Arab except for a limited area close to Mohammarah port (Khurramshahr) as was indicated by the Proceedings of the Boundary Commissions wherein the median line of the river (medium flum aquoe) was considered the boundary line. This clearly meant that Shatt-al-Arab in its entirety was an integral part of Iraq save the area excepted around Mohammarah which was conceded to Iran.

(1) This part is about 7 kilometres long.

It is noteworthy to state here that there is no binding general principle in International Law for the delimitation of riparian boundaries, except what the parties concerned agree to adopt. Either the thalweg or the median line may be adopted as the mark for riparian boundaries. Or, alternatively, the whole river may be agreed to belong to one country in which case the bank of the other country becomes the boundary line. This last method was generally adopted in the demarkation of Iraqi-Iranian boundaries in Shatt-al-Arab. The two parties have accepted that arrangement in deference to time-honoured rights, and solemnly entered into binding agreements endorsing these principles, such as the Erzurum Treaty of 1847 and the Constantinople Protocol of 1913, as well as the Proceedings of the Boundary Commission for the year 1914 and lastly the Iraqi-Iranian Treaty of 1937.

This method of demarkation of riparian boundaries is not a novelty as many riparian boundaries the world over have been similarly demarkated. The river Le Doubs which separates France from the Swiss Canton of Berne belongs to France, and the bank of the said Canton is considered the boundary line while the entire river is French territory. Another instance is the river Le Vistule where the same method was adopted in 1919 for demarkating the boundary between Germany and Poland.

Any claim for a different arrangement for the boundary of Shatt-al-Arab other than that laid down in International Agreements cannot be seriously entertained. The recent declaration made by the Iranian Minister for Foreign Affairs in the Majlis may only be viewed in this context, as he claimed that International Law does not recognise any principle other than the thalweg for boundary delimitation in Shatt-al-Arab.

Furthermore, Iran has a sea coast on the Gulf extending over two thousand Kilometres. There are many ports and harbours on that coast. Khor Musa, for example which is 50 Kilometres to the east of Shatt-al-Arab, has a very good deep-water harbour. Iraq's only outlet to the sea is Shatt-al-Arab which is formed by the confluence of the Tigris and the Euphrates rivers. Shatt-al-Arab therefore has far greater significance to Iraq than it can ever have to Iran.

In spite of all the obvious rights of Iraq to its territorial and riparian boundaries, Iran continued its violations and

seized the opportunity of the Iraqi Coup of 1936 to exert all possible pressure on the new government of Iraq which was at that time in great need for internal stability and external peace in order to secure a new agreement embodying its ambition in Shatt-al-Arab, promising that she would resort to joint action with a view to resolving all outstanding frontier issues which had been subject to continued procrastination on her part.

The Iraqi-Iranian Boundary Treaty of 1937 was concluded and the two Contracting Parties affirmed in Article (1) thereof their obligation to observe the Protocol relating to the demarkation of the Ottoman-Iranian frontiers signed in Constantinople on November 4, 1913 as well as the Proceedings of the Boundary Delimitation Commission of 1914. The two parties further proclaimed that the boundary line between the two states is the same as the one delimited and demarkated by the said Commission, subject to one exception mentioned in Article (2) as will be seen later.

Gains for Iran

Under this Treaty, Iran achieved at the expense of Iraq certain gains unjustifiably and in return for nothing. The following are among such gains:—

1) Iraq conceded to Iran part of its territory in Shatt-al-Arab through the amendment of the Iranian-Iraqi boundary line opposite Abadan, under Article (2) of the Treaty, which laid down the following:—

“The boundary line on reaching the furthest point of longitude $48^{\circ} 19' 28''$ East) rejoins, in a line drawn perpendicular to the low-water mark, the thalweg of Shatt-al-Arab and follows it as far as a point situated opposite the existing jetty No. 1 of Abadan (approximately latitude $30^{\circ} 20' 8.4''$ North, longitude $48^{\circ} 16' 13''$ East). From this point the boundary line rejoins the line of low-water and follows the tracing of the frontier as described in the Proceedings of 1914 ” (1).

Thus the boundary line in the area defined by this Article became the depth line (Thalweg) after it had been the low water line of the Iranian bank.

(1) This portion is around 7 Kilometres in length.

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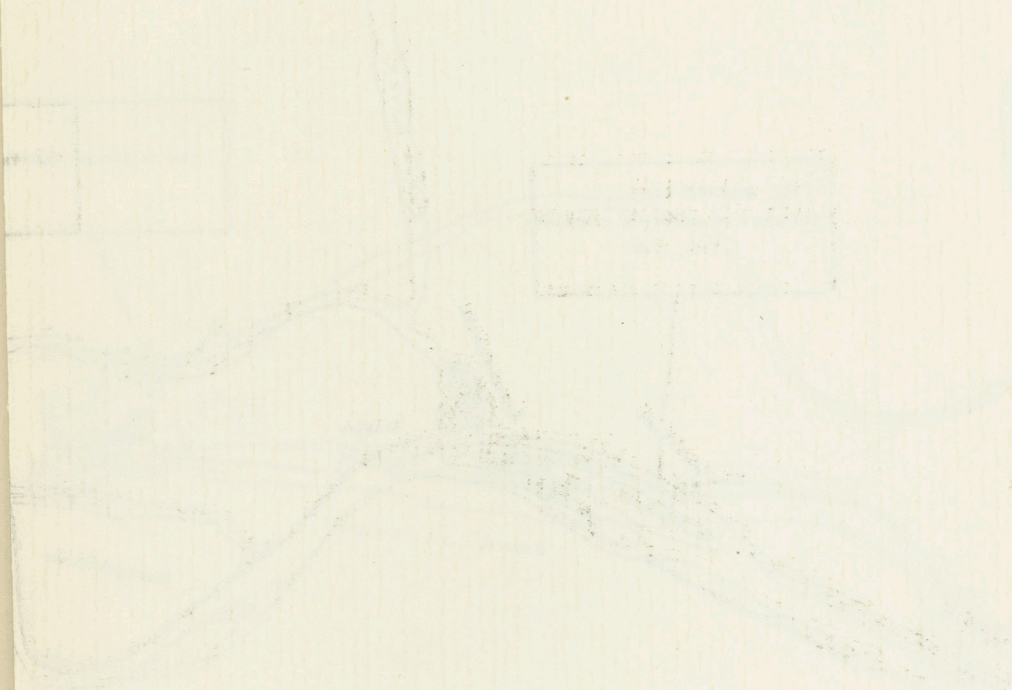
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Article (5) of the Treaty of Commerce and Consular Rights of 1913, which is a concession of an agreement concerning matters relating to the river, whereas Iraq holds the right in all such matters. It is a manner entirely at variance with the manner in which it was given, as will be seen.

Paragraph 3 of the 1913 Protocol laid down that the contracting parties for the benefit of the other party shall be considered as the other party.

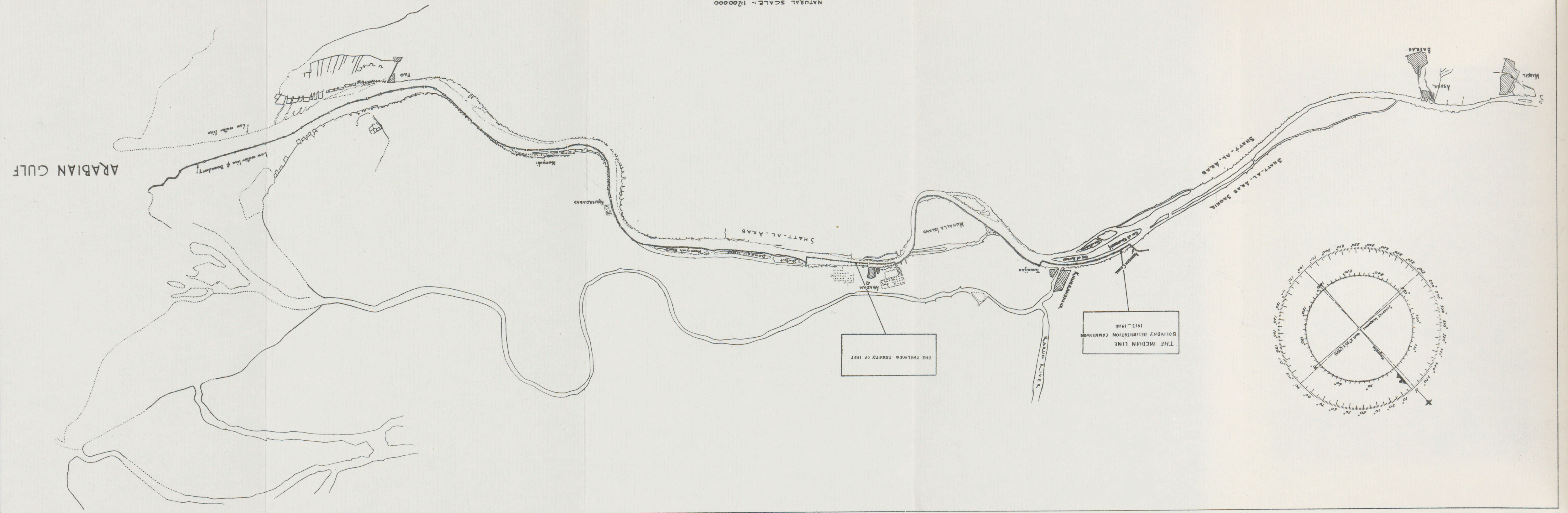
This constitutes another concession which we have duly appreciated and good-will in its use. It is to employ this right as a means of resorting to other means resorted to for the purpose of new gains.

The only price offered for the concession was her pledge to the Commission concerning frontier issues under the Protocol of 1913 and the Protocol of 1914 — a pledge which she has not met her own accord tens of thousands of legal obligations. She has not taken, as shall be seen.

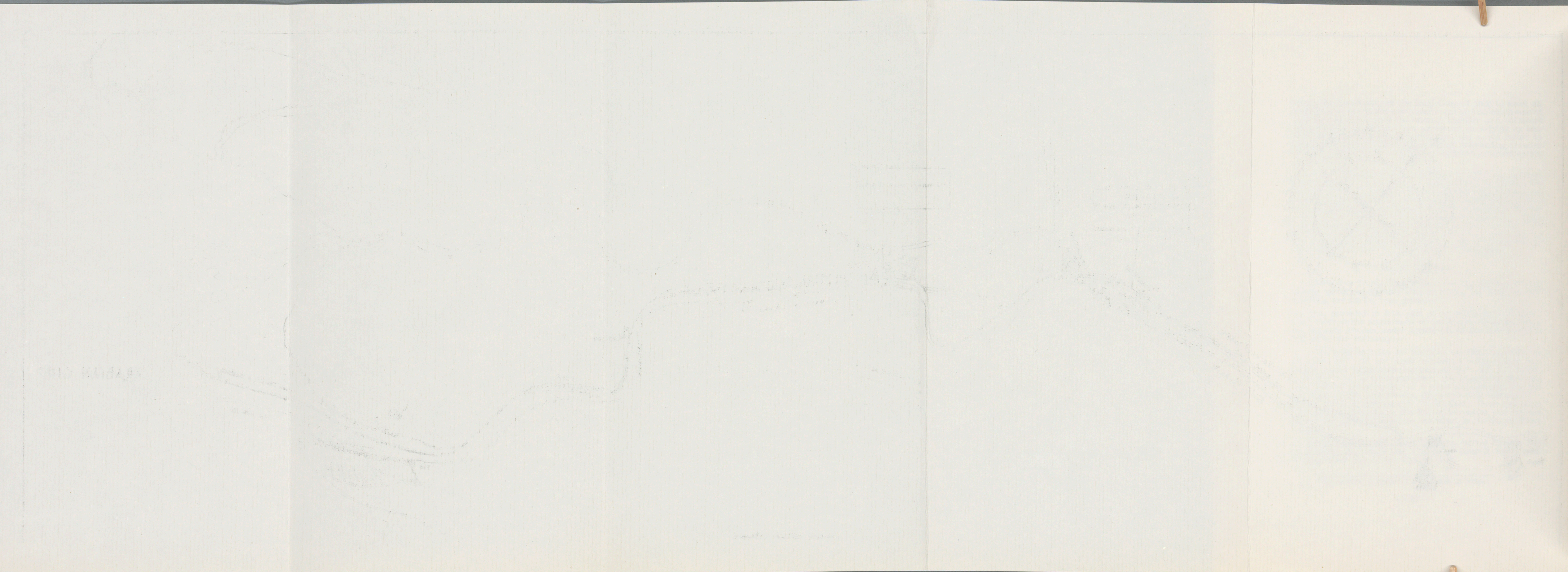
Oddly enough, she neglects all boundary issues which she has upon Iraqi lands and she recalls only her own obligations which she tries in vain to fulfil. It is in which she repeatedly has not met her obligations of the frontier issues, which she has not had granted her the right to Shatt-al-Arab only in return for her obligations.

Worse still are the obligations then by Iran, in some instances, sovereignty over Shatt-al-Arab. The principles of International Law clearly show that they have the right to the territory of another sovereign state and an Iraqi territory as

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2) Article (5) of the Treaty of 1937 provided for the conclusion of an agreement between the two parties concerning matters relating to navigation and maintenance of the river, whereas Iraq holds exclusively the right to legislation in all such matters. Iran tries to exploit this new gain in a manner entirely at variance with the true purpose for which it was given, as will be made clear later.

3) Paragraph 3 of the Protocol annexed to the Treaty of 1937 laid down that the permission given by one of the contracting parties for the entry of a man-of-war into its ports shall be considered as though it has been granted by the other party.

This constitutes another gain for Iran which she should have duly appreciated and demonstrated co-operation and good-will in its use. Instead, she has commenced of late to employ this right as a means of pressure along with the other means resorted to by her with the object of securing new gains.

The only price offered by Iran in return for these gains was her pledge to the Government of Iraq to have the outstanding frontier issues solved in accordance with the Frontier Protocol of 1913 and the Proceedings of the Commission of 1914 — a pledge which she should have honoured out of her own accord tens of years ago by way of respect for her legal obligations. She failed, however, to fulfil this undertaking, as shall be seen later.

Oddly enough, the Iranian Government continually neglects all boundary issues and overlooks her encroachments upon Iraqi lands and waters agreed upon a long time back, and recalls only her ambitions in Shatt-al-Arab, for which she tries in vain to find some grounds in the Treaty of 1937, which she repeatedly brings to the fore, ignoring the rest of the frontier issues, although she knows full well that Iraq had granted her the new privileges she is enjoying in Shatt-al-Arab only in return for her undertaking to resolve these issues.

Worse still are the pretensions made every now and then by Iran, in some of her Notes, to the right of sovereignty over Shatt-al-Arab. Anyone acquainted with the principles of International Law knows that no state could possibly have the right to exercise its sovereignty over the territory of another sovereign state. Shatt-al-Arab is essentially an Iraqi territory as established by the relevant treaties.

Responsible officials in Iran have lately come forward with a new argument, namely, that since, as alleged by them, three quarters of the vessels cruising Shatt-al-Arab enter into Iranian ports, they maintain that their right in Shatt-al-Arab is more substantial than that of Iraq, and this, according to them, gives them the authority to exercise "the right of sovereignty" over the river.

We need hardly say that the ownership of Shatt-al-Arab is one thing and the right of its use is another. The right of use, no matter how extensive, cannot have the least effect upon the right of ownership.

Such arguments and pretexts are examples illustrative of what the Government of Iraq has been going through for a good many years in her dealings with the Iranian Government.

The Agreement of Maintenance and Navigation in Shatt-al-Arab

Never did Iraq at any time deny Iran the right to navigation in Shatt-al-Arab; and yet Iran has been claiming more than what is her due under this right.

Under Article (5) of the Frontier Treaty of 1937 between Iraq and Iran, the two parties undertook:

"To conclude a convention concerning the maintenance and improvement of the navigable channel, dredging, pilotage, dues to be levied, sanitary measures, measures to be taken for the prevention of smuggling, and all other measures relating to the navigation in the Shatt-al-Arab as defined in Article 4 of the present Treaty."

Iraq did not deny her obligation under this provision or the necessity of concluding an agreement covering these matters, but what actually stood in the way of the conclusion of such agreement was Iran's attitude of trying to turn this into a means of claiming rights which have support neither in the Treaty nor in Iran's legal position in Shatt-al-Arab — a means of claiming a right in the administration

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of Shatt-al-Arab similar to that enjoyed by Iraq. This Iran did through alleging the necessity of setting up a Joint Commission for the administration of Shatt-al-Arab.

The Treaty contains no provision requiring agreement upon the formation of such Commission. Undoubtedly, the principle of good faith in the implementation of agreements by no means lends support to Iran in her allegation, since the entire river — save two minor exceptions ⁽¹⁾ — is an Iraqi territory. Furthermore, Shatt-al-Arab is a national river flowing in the territory of one state, starting from its head at Qurna down to Khayeen canal south of Basrah. On the basis of this legal position and by way of respect for the good faith in which the agreement should be implemented, Iran cannot possibly have the same authority exercised by Iraq in the administration of Shatt-al-Arab. Nevertheless, Iraq expressed its readiness to conclude the agreement and to have as well a Joint Commission set up with Iran and Iraq having equal representation, provided that such Commission shall be of a consultative nature. The Government of Iraq summed up this view, following subsequent correspondence, in a Note addressed by the Ministry of Foreign Affairs dated July 15, 1950, wherein it informed the Iranian Embassy in Baghdad that it considered the best means of achieving the purposes envisaged by Articles 4 and 5 of the Frontier Treaty was the adoption of the following two principles:—

1. Each party shall retain its sovereignty over such parts of Shatt-al-Arab as fall within its region but shall, however, undertake to exercise its rights in accordance with provisions to be agreed upon subsequently by the two parties.
2. The powers of the Commission shall be consultative and not executive, and its duty shall be to pave the way for the appropriate authorities of the two Contracting Parties, each in the parts belonging thereto, to adopt, to the maximum possible degree, unified systems for the administration of Shatt-al-Arab, and The Commission shall, further, receive

(1) These two exceptions total about fourteen Kilometres whereas Shatt-al-Arab itself is 204 Kilometres long. The part along which the Iraqi-Iranian borders descend to the river is about 102 Kilometres in length.

reports and other information including the tariffs relating to duties and charges, from the governments of the two parties, and shall undertake the study of such reports and information and communicate its comments and recommendations thereon to the two governments, who shall give such comments and recommendations due consideration.

The Government of Iraq made it clear that acceptance of these two principles should be conducive to the conclusion of an agreement for maintenance and navigation in Shatt-al-Arab.

The Iranian Government did not, however, agree to this arrangement, and observed silence for some time, only to raise the question anew in 1955 and to insist upon the Joint Commission having executive powers.

Obviously, Iraq is unable, no matter how keen she is on the improvement of her relations with Iran, to entertain these allegations which are inconsistent with the legal positions of the two states in Shatt-al-Arab.

Meanwhile, Iran continued her violations of the provisions of the relative treaties as well as her trespasses on Iraq's clear rights. We shall content ourselves with the following examples:—

1. Dredging and pilotage charges due to the Port from Iranian traffic.

Considerable sums have become due to the Iraqi Port Authorities from the Iranian merchant ships navigating Shatt-al-Arab. These sums have been accumulating since 1953 and they now stand at a total of Iraqi Dinars 23,377/476 representing dredging and pilotage charges in Shatt-al-Arab. In order to further clarify the matter we should point out that the dues charged on Iranian ships are no more than those charged on Iraqi merchant ships or other foreign ships, and that the entire amount of the dues levied goes usually to the improvement and maintenance of the navigational routes and the approach of the river and to meeting such expenses as are incurred for the benefit of navigation. Iraq accepted this principle in Paragraph (a) of Article (4) of the Frontier Treaty, which reads:

The Shatt-al-Arab shall remain open to merchant ships of all countries equally. All dues levied shall be in the nature of payment for services rendered and intended solely to cover in an equitable manner the expenses of maintaining the navigability, and improving the navigable channel and the approach, of the Shatt-al-Arab from the seaward side, or to meet expenditure incurred in the interest of navigation. The said dues shall be calculated on the basis of the official tonnage of ships or their draught, or both together.

In the last paragraph of Article (2) of the Protocol attached to the Frontier Treaty, the Iranian Government agreed to the Government of Iraq undertaking all services relating to maintenance, including the collection of the dues claimed by the Port, in conformity with the provisions of the said Treaty and the Protocol appended thereto.

Despite the elucidation of the above points to the Iranian Government, it failed, however, to effect payment of any part of these dues. It suspended the question pending the settlement of the outstanding issues between the two countries and the conclusion of a maintenance and navigation agreement in Shatt-al-Arab, which are questions entirely unrelated to the one at issue.

2. The Port of Khusroabad:

We were informed by the Iranian Government, through a Note dated May 7, 1959, addressed by its Embassy in Baghdad, that (Khusroabad has been declared a sea port attached administratively to Khorramshahr and the Government of Iraq is requested to recognise it as such). The Government of Iran was served with a reply contained in the Note of the Ministry of Foreign Affairs No. S/625/625/4 dated June 9, 1959, which stated that, from the technical viewpoint, Khusroabad was not suited to be a sea port. As to the legal point of view, the Iranian Government, was reminded that, under the relative boundary agreements, the Iraqi boundary in Shatt-al-Arab extends generally to the low water line of the Iranian bank, save two limited exceptions at the ports of Khorramshahr and Abadan, and consequently, the Iraqi boundary in the Khusroabad area embraces the entire waters of Shatt-al-Arab up to the low water line of the Iranian bank; hence, it was illegal to build an Iranian Port in this area, since its waters were in Iraqi territory falling under Iraqi sovereignty.

The Iranian Government followed an unfamiliar procedure in its request. It seized the opportunity of the arrival of some foreign ships at the approach of Shatt-al-Arab in the Arab Gulf and made the proclamation that Khusroabad was an Iranian Port attached administratively to the port of Khurramshahr, and asked the Government of Iraq to recognise it as such in four urgent successive Notes in addition to persistent verbal approaches, under the pretext that four ships were waiting in the Gulf and that their delay was costing them considerable amounts of money. The Iranian Consul in Basrah and the Iranian Port Authorities persisted in their contacts with the Iraqi Port Officials, although a decision on such a serious matter as the declaration of Khusroabad an Iranian Port, granting its feasibility from the legal and technical points of view, could only be taken after high-level discussions and negotiations between the two governments and not by surprise methods or through bringing pressure to bear on unauthorised technical personnel whose duties require them to observe fully the instructions in force and not deviate from or change such instructions. When the Ministry of Foreign Affairs elucidated the above points to the Iranian Embassy, the Iranian Government (as per its Embassy's Memorandum of June 6, 1959) resorted to threats, saying that Iran would for her part take all measures necessary for protecting what it called (its legal rights in the event of the failure of the Iraqi authorities to remove the obstacles they were placing in the way of these rights).

It would appear from this, that the Iranian Government intends to achieve its demands forcibly and in violation of the agreements in force, in a manner inconsistent with International Law.

3. Violation of the Port's Instructions and Orders:

The Iranian ships took to the violation of the Port's instructions which require the maintenance of control over ships and reporting on their movements as well as the announcing by such ships of their identities and their production of the necessary documents as well as compliance with local control measures. Such contraventions on the part of the ships constitute danger not merely to themselves but also to the movements of other ships arriving at and departing from the Port.

The violations committed by the Iranian ships working for the Iran are more frequent. These ships are making their way into the Shatt-al-Arab in Iranian gun-boats, with the authorities of Iraqi Ports and ports as required by the

To cite one example, (1) belonging to the Port of Basrah, Shatt-al-Arab on its way into the river under the escort of the wireless signals to the Port authorities. This act contravenes the Port instructions which require that ships should have in the possession of the Port Authorities a valid certificate, issued by the Port Authorities, under the guidance of a competent authority. Moreover, the Iranian Government has gathered to its contention that the Port, despite the fact that

These acts on the part of the Iranian ships become a menace to the interests in Shatt-al-Arab and constitute a violation of international law and the sovereignty of Iraq in its right to determine upon its territory the Iranian Govern-

The violations committed by the Iranian ships and those working for the Iranian Companies have of late become more frequent. These ships started to enter into Shatt-al-Arab making their way towards Khusroabad under escort of Iranian gun-boats, without obtaining the approval of the authorities of Iraqi Ports and without having on board Iraqi pilots as required by the established rules and regulations.

To cite one example, a ship by the name of Pant Oil (21) belonging to the Pan-American Oil Company entered into Shatt-al-Arab on its way to Khusroabad and later left the river under the escort of Iranian gun-boats, unheeding the wireless signals to halt given to her by the Iraqi Shore Authorities. This act constitutes a clear contravention of the Port instructions which lay down that the captains of ships should have in their possession a pilotage certificate issued by the Port Authority; and in the event of their not having such certificate, it becomes necessary to have the ship under the guidance of an Iraqi pilot holding such certificate. Moreover, the Iranian Government has recently amassed provocative military concentrations all along Shatt-al-Arab and adhered to its contention that Khusroabad was an Iranian Port, despite the fact that its waters are Iraqi waters.

These acts on the part of the Iranian Government have become a menace to navigation and to the international interests in Shatt-al-Arab. Furthermore, they constitute a violation of international rules and infringement of the sovereignty of Iraq in the river as well as an obvious encroachment upon its territory. These contraventions on the part of the Iranian Government are still continuing in the river.

Land Boundaries

THE Iraqi-Iranian boundaries were delimited by the Boundary Commission in 1914, as pointed out above. The descriptions of the boundary pillars are defined together with the co-ordinates of their location in the Table attached to the Proceedings of the Commission. Article (3) of the Boundary Treaty concluded between Iraq and Iran in 1937 laid down the following:—

Immediately after the signature of the present treaty the High Contracting Parties shall appoint a commission for the purpose of erecting the frontier pillars the location of which has been fixed by the Commission mentioned in paragraph (b) of Article 1 of the present treaty and of fixing additional pillars which it considers useful to erect.

The composition of the Commission and the programme of its work shall be fixed by a special arrangement between the two High Contracting Parties.

The two Governments signed, pursuant to the provisions of this Article, an agreement on December 8, 1938, for organising the work of the Iraqi-Iranian Pillar Fixing Commission.

The two governments set up the Iraqi-Iranian Boundary Commission which proceeded with its work in December, 1938 starting with Pillar No. 1 located at the confluence of the Khayeen River with Shatt-al-Arab. The Commission fixed 68 pillars the last of which was at the location of the old pillar No. (10) situated near (Al-Kushuk Al-Basri).

In view of the rise of certain differences and the inundation of the area by the waters of Karun river, the Commission transferred its activities to Amara Province at the place called (Um Sheir) where it carried out triangulation surveys for defining Shatt-al-Ama with a view to fixing accurately the boundary line and erecting the necessary pillars. Here it became clear to the Iranian side that there was considerable encroachment upon Iraqi lands as a result of the construction by the Iranian Government of many police posts inside Iraqi territory. The Iranian side invented various excuses to have the fixing operations halted, whereupon work actually came to a stop and the Iranian side withdrew under instructions from its Government in May, 1940. Since then, the question of boundary delimitation has remained suspended.

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Repeated Acts of Aggression

IN addition to all the foregoing, the Iranian Government has been indulging in provocative acts against Iraq during its Republican era on various occasions and all along the boundary line. Undoubtedly, these acts are not compatible with the good-neighbour policy purported to be followed by Iran, a policy which Iraq was, and still is, keen on pursuing. We would not like here to resort to expatiation by relating all these acts and their details. We shall confine ourselves to the mention of some of them by way of example:—

1. Violation of Iraqi air-space.
2. Trespasses against the Iraqi village "Kani Pasha" and other villages.
3. The detention of an Iraqi Patrol.
4. The detention of the Mudir Nahiya (Administrative Officer) of (Al-Masharrah) and his men.

1. Violation of Iraqi air-space by the Iranian planes:

Ever since the first months of the Revolution, the Iranian planes have been committing a series of encroachments upon Iraqi skies. It was explained to the Iranian Government on many occasions through Notes and interviews with responsible Iranian officials that the occurrence of such trespasses was a serious development that was hardly in keeping with the friendly relations existing between the two countries. Furthermore, these infringements did not occur in a single area but covered many areas stretching from north to south, which points to the fact that these incidents did not occur inadvertently or through a purely accidental mistake, and we had therefore to request the Iranian Government to take such measures as would guarantee the cessation of these encroachments and the non-repetition of similar incidents in the future. The Iranian planes continued, however, their violations of the Iraqi air-space and the Iranian Government failed to give due attention to our repeated protests and indulged itself in denials of these encroachments.

2. Trespasses against the Iraqi village "Kani Pasha" and other villages:

On September 22, 1959, at about 8.00 a.m. an Iranian armed force, numbering around a hundred persons mostly

Iranian soldiers, attacked (Kani Pasha), an Iraqi village attached administratively to the Qadha (Administrative District) of Halabcha, coming into clash with its inhabitants and looting its cattle. The Iraqi Government had previously complained to the Iranian Government on many occasions of the concentrations of the Qalkhaniya tribes along the frontiers and the waging by these tribes of aggressive attacks on the Iraqi villages located near the borders, such as the village of (Zazwar), administratively attached to the Qadha of Khanaquin, which was subjected to firing and encirclement by these tribes who looted most of its cattle. The Government of Iraq had likewise notified the Iranian Government of the encroachments of Iranian troops upon Iraqi lands and police posts, which are still continuing with the object of provocation and disturbance of the peace of Iraqi citizens. The Government of Iraq cited to the Iranian Government many examples of these acts such as the aggression of Iranian troops against the village of (Haj Hassan), attached administratively to the Nahiya of (Mardan), and the looting of its livestock, as well as against the Iraqi lands located between the Iraqi police post of Baznian and the Iranian police post of Hawani and their firing at the Iraqi Post (Da'iri Diwan).

The Iraqi Government protested to Iran against these aggressive acts through several Notes. The usual reply to these protests was either complete denial of the incidents or alleging their occurrence in a manner contradicting the facts.

3. The detention of an Iraqi Patrol :

The Iranian Government detained on the borders an Iraqi patrol assigned to the Iraqi post of (Kharnouba) in the Nahiya (Administrative sub-division) of Shatt-al-Arab. This took place in August 1959 while the patrol was on duty near the border. The patrol was taken to Khurramshahar and in spite of the Government's repeated requests for the release of its men and their hand-over to the Iraqi Border Authorities, the Iranian Government has not responded yet. The men of the patrol are still under detention and we hardly know what has become of them.

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4. The detention of the Mudir Nahiya (Administrative Officer) of (Al-Masharrah) and his men.

On December 8, 1959, the Iranian border authorities of Sosinkard located opposite the Qadha of Qal'at Salih arrested the Mudir Nahiya of Al-Masharrah and the officials in his company, while on an inspection tour, for no reason other than that their car had strayed a little beyond the borderline quite unintentionally and without any ill purpose. The Boundary Commissioner of Qal'at Salih consequently requested a meeting with his counterpart, the Boundary Commissioner of Sosinkard, in order to discuss with him the question of the detainees. The latter, however, turned down the request and ignored the former's correspondence on the matter, taking thereby an unfriendly attitude in violation of the Boundary Commissioners' Interim Agreement relating to the appointment of Commissioners on the Iraqi-Iranian borders, which calls for co-operation in the solution of such matters between the two parties. Furthermore, he showed undue strictness towards the detainees, and had them transferred under escort from Sosinkard to Al-Ahwaz. The authorities of Al-Ahwaz denied permission even to the Iraqi Consul at Khurramshahar to see these detainees. In a Note to the Iranian Government, the Iraqi Government related in detail the incident, pointing out that what had happened was no more than an occurrence that could happen to any of the official agents of the two states in the border areas. The Government of Iraq further indicated that the course pursued by Iran in connection with this incident was not one to be followed by a state keen on the maintenance of cordial relations with its neighbours. We have as yet received no reply to this Note.

CONCLUSION

WE have attempted in these pages to place on record the basic facts concerning the dispute raised of late by Iran over certain boundary issues between the two countries. These facts are based on the provisions of treaties, agreements, protocols, and the Proceedings of the Boundary Delimitation Commission, which are within reach of all. We have furthermore made a passing reference to certain principles of International Law and to the internationally recognised usage in this respect, in order that the reader, and every one having at heart the maintenance of peaceful and good-neighbour relations among nations, may be acquainted with the realities relative to the question at issue, so as to be able to pass judgement as to which party was responsible for the creation of the state of tension between Iraq and Iran, the two neighbourly countries bound together by historical and social ties as well as by a community of interests, which are of considerable importance not only to the progress of both the Iraqi and Iranian peoples but also to the cause of security and stability in the Middle East.

We have avoided going into the details of the question at issue for fear of expatiation. We feel confident, however, that this concise information and clear facts are bound to reveal the extent of tolerance exercised by the Government of Iraq in the face of Iran's transgressions on the rights of Iraq, her violation of pacts and infringement of the rules of International Law. The patience and tolerance shown by Iraq towards the attitude of Iran are not inspired by weakness or subservience but merely by Iraq's belief, Government and people alike, that the historical ties with Iran and her people bear great moral value which is not only worthy of respect but also of consolidation. This attitude, unfortunately, evoked neither response nor appreciation from the Iranian side. In point of fact, so challenging has been the Iranian side as to describe the attitude of Iraq as being motivated by an "imperialistic policy". This indeed calls for surprise as well as deep regret, particularly when the peaceful policy pursued by Iraq in her relations with all other countries has become apparent to all.

Iraq which has taken upon itself the pursuit of a policy of positive neutralism in all its relations with other countries and which has shown in practice its unwillingness to join international blocs as well as its untiring endeavours towards

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building its relations with all nations on the basis of friendship and mutual benefit, considers it an unfriendly gesture to be accused by its historical neighbour, Iran, of following "an imperialistic policy", especially when such accusation emanates from the highest Iranian personage—His Majesty the Shah.

In bringing this to mention, we sincerely hope that world public opinion will examine these recorded facts and recall to mind the series of constructive deeds and acts so far undertaken by Iraq, whether in its relations with the states with which it is bound by treaties and conventions, or in its conduct and attitudes in the United Nations and its Agencies. All this constitutes ample proof of Iraq's faith in the necessity of the prevalence of peace among nations as well as its good-will towards and respect for international obligations. In spite of the military concentrations amassed by Iran in the Shatt-al-Arab area and the charges heaped against Iraq by the Iranian propaganda organs and the utterly false descriptions formulated by these organs, with the object of confusing public opinion, the Iraqi Foreign Minister made a statement on December 29, 1959, in which he pointed out that:—

1. Iraq works towards the solution of differences through peaceful methods, direct and indirect, and, when necessary, resorts to the United Nations and other international bodies in the event of it becoming apparent that such methods are non-conductive to the desired results.
2. It abides by and respects treaties, agreements and conventions complying with the principles of International Law in the conduct of its foreign relations.
3. It observes and gives due consideration to the relations of neighbourhood, and works towards the promotion of good-neighbour relations, on the basis of historical ties and mutual benefits.
4. It adheres most firmly to its rights and defends them with the utmost vigour; and repels, by every legitimate means, any aggression directed against it.

In the light of the foregoing, there is hardly need for further assertion that Iraq is a state which believes in the necessity of establishing peace on the basis of understanding and mutual interests between nations. It works devotedly towards the consolidation of peace and security, in the world in general and the Middle East in particular, drawing support in the exertion of these endeavours from the adherence of all nations to the principles of the United Nations and the rules of International Law and their abiding by treaties and agreements, and the settlement of their differences through peaceful means.

Iraq is no different in this respect from other peace-loving nations working towards the establishment of a world community in which all live in fraternity and amity, guided by civilized rules and principles.



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