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The Shatt al-Arab river dispute

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PREFACE

This is a historical and legal study of the Shatt al-Arab dispute between the Imperial Government of Iran and the Republic of Iraq, a dispute which has not received the international attention it deserves and is a perpetual threat to peace in this area of the Middle East.

In fact the problems of frontier demarcation between Iran and Iraq is a very old one and can be traced back to the earliest period of civilization from which the states forming this part of the world sprang. Its roots go back as far as the era of Babylon, Nineveh and the Persian empire. In essence the conflict represents a tussle between two completely-different races and civilization the Persian population of Indo-European origin, and the Arab population of Semitic origin.

There were indeed times when Iraq fell under Persian rule or when Arabs came to dominate Persia, but as soon as they regained their separate entities the border problem between them became an issue. Dating from the division of the Arab Empire during one of the darkest periods of its history when Persia became an independent state and the Arab countries fell under Ottoman sway, the border between them has persisted to the present day. Not even the same religious faith in the two states could help them to reach a solution.

The dispute that existed between the Ottomans and the Persians and strained relations between the two, upon the dismemberment of the Ottoman Empire and the creation of the independent sovereign state of Iraq, came to the latter as a legacy. Iraq maintains that according to international law of succession, it has succeeded to the dispute together with all the past agreements and treaties bearing upon it.

It was in 1847 that the boundaries between the Ottoman Empire in Iraq and Persia were settled by the Erzerum Treaty. In pursuance of this treaty a protocol was signed at Constantinople on 4 November

1913, defining the demarcation of the frontiers between the two countries concerned. It was also signed by Great Britain and Russia in their rôle as mediators.

According to the Erzerum Treaty and Constantinople Protocol, Ottoman Empire was confirmed in its sovereignty and dominion over the entire river of Shatt al-Arab (except a minor section of it, which was given to Persia).

The Ottoman - Persian boundaries were fixed at the low water mark on the Ottoman side (left bank of the Shatt al-Arab). Thus the sovereignty of the Ottoman Empire extended over the whole river and the border line was fixed at the left (eastern) bank of the river.

As a successor state, Iraq, after the dissolution of the Ottoman Empire, to enforce its rights and privileges flowing from the above treaty and protocol, set up a directorate, the Basrah Port Directorate, to administer and control navigation along the river.

However, during the reign of Shah Reza Pahlavi, the Iranian government advanced the claim that the Shatt al-Arab was a border river between the two states and, being a navigable river it should be divided between Iraq and Iran according to the thalweg line.

This claim was quite unacceptable to Iraq and relations between the two countries became strained. There was a protected exchange of diplomatic memoranda between their foreign offices, but no solution could be achieved. Therefore, the matter was finally referred to the League of Nations. There again, in heated debates the main legal issues of the dispute were drowned. Therefore, the two governments agreed to negotiate without the League Council and these talks led to the conclusion of the Frontier Treaty of 1937, which basically confirmed Iraqi sovereignty over the whole of the Shatt al-Arab, except for a minor section of it opposite Abadan, where the thalweg principle was adopted.

But this did not quench Iranian ambition which aimed at nothing less than division of the entire river on the basis of

the thalweg line.

It was no surprise when the Iranian Government announced the unilateral abrogation of the 1937 Frontier Treaty in 1969. Its announcement was coupled with pleas and pretexts seeking justification of its action in international law.

An historical and legal study of the whole Shatt al-Arab dispute becomes therefore highly pertinent, in order to see how far Iranian claims can stand an impartial and objective scrutiny. Without such a study, it is impossible to appreciate the arguments put forward by the two sides.

I have attempted in the following pages to study this dispute as objectively as possible, relying upon Iraqi as well as Iranian sources. The aim has been to study the legal aspects of the various issues as they have evolved historically.

I hope that this work will help in solving this dispute which has for so long marred relations between Iran and Iraq. It is my belief, that understanding is the necessary preliminary condition of a just and fair solution.

Besides the Shatt al-Arab dispute, there are two other disputes between Iran and Iraq, namely, the dispute relating to common rivers between them, and the land frontier dispute, but these disputes are outside the purview of this work. It is my belief that the Shatt al-Arab dispute is a most difficult, knotty and complicated one. Its resolution, in a peaceful and just manner, might contribute to the solution of the other disputes.

I would like to take this opportunity to express thanks to the Netherlands Ministry of Education, who very kindly extended to me part of the finances to enable me to stay in the Netherlands where I prepared this study finally at the Peace Palace Library. The constant assistance of the staff of this library has put me under a deep obligation. The library of the Institute of Social Studies at the Hague, the Public Record Office in London, the Cairo University library, Dar el-Kutub el-Masriyyah (Egyptian

library), the League of Arab States Library at Cairo and the National Library at Baghdad cannot be mentioned without a special word of thanks.

My friends, everywhere, too numerous to be named, gave me both assistance and encouragement, and I am most grateful to them.

Above all I must thank my wife who has borne long months of solitude with patience, understanding and love.

The Hague,
June, 1971.

Kh.Y. al-Izzi