



302684

UNITED NATIONS
SECURITY
COUNCIL



Distr.
GENERAL

S/9323
11 July 1969
ENGLISH

ORIGINAL: ENGLISH-
FRENCH

LETTER DATED 11 JULY 1969 FROM THE ACTING PERMANENT REPRESENTATIVE
OF IRAQ ADDRESSED TO THE PRESIDENT OF THE SECURITY COUNCIL

On instructions from my Government, and further to my letter of 13 May 1969, I regret to advise that there has not been a favourable development in the situation that resulted from the unilateral attempt of the Government of Iran to abrogate the Iraq-Iranian Boundary Treaty of 1937. In conformity with the statement contained in the penultimate paragraph of my above-mentioned letter, my Government has been patiently awaiting any indication that the Iranian Government was prepared to respect its international obligations and effectively substantiate its protestations of good-neighbourly sentiments.

I am distressed, however, to state that very little, if any, has taken place to meet my Government's expectations. On the contrary, Iran still persists in its intransigence, continues its demonstrations of force in acts of aggression in Shatt-al-Arab, violating thereby my country's sovereignty, threatening its security and endangering navigation in the River. It has become increasingly obvious that the Government of Iran is not prepared to listen to the voice of reason and that it is bent on pursuing an aggressive course. It has, apparently, escaped the Iranian Government that the show of force can hardly help an arbitrary denunciation of a binding treaty or give it any semblance of validity. If the Government of Iran was justified in its claims that Iraq had not lived up to its commitments under the Boundary Treaty of 1937, it should have resorted to a neutral judicial body, such as the International Court of Justice in order to obtain a compulsory judicial decision. Article 36 of the Statute of the Court states in paragraph 2 the following:

"The states parties to the present Statute may at any time declare that they recognize as compulsory ipso facto and without special agreement, in relation to any other state accepting the same obligation, the jurisdiction of the Court in all legal disputes concerning:

"... the existence of any fact which, if established, would constitute a breach of an international obligation."

On the part of the Government of Iraq, I am authorized to declare that it is willing and prepared to refer all disputes concerning the application of the Iraqi-Iranian Boundary Treaty of 1937 to the International Court of Justice, and to abide by the Court's decision thereon.

In order to dispel any illusions regarding Iran's obdurate refusal to honour its international obligations, I enclose herewith a brief study of the origins of the present dispute which leaves no shadow of a doubt of Iran's pursuance of a policy of expansion and aggrandizement.

I request that this letter, together with the enclosed factual study and all its annexes and attached maps, be published as a document of the Security Council.

Accept, etc.

(Signed) Adnan RAOUF
Acting Permanent Representative of Iraq
to the United Nations



FACTS CONCERNING THE IRAQI-IRANIAN BOUNDARY

I. PRESENT CRISIS

On 19 April 1969, the Deputy Foreign Minister of Iran in a statement made in the Iranian Senate, declared the "Iraqi-Iranian Boundary Treaty of 1937", of "no legal effect". Iran's denunciation of a valid and binding treaty was based on the allegation that Iraq had refused "to carry out its Treaty obligations in good faith..." and had led "to a situation resulting in the abrogation of the Treaty in its entirety". The government of Iran further alleged that the 1937 Treaty was concluded as a result of colonial pressure on Iran and that as long as "the conditions prevailing in 1937 when the Treaty was signed, have also been changed, the effects and the results emanating from colonialism must also vanish with it". Iran also claimed that the provisions of the Treaty did not observe the rule of equity in international law. At the same time, the government of Iran declared its preparedness to conclude another treaty with Iraq on the basis of "equal sovereign rights in Shatt-al-Arab.(1) This unilateral abrogation of the Treaty was accompanied by demonstrations of force in the forms of massive concentrations of Iranian troops and naval and air force units all along the Iraqi-Iranian borders and particularly in the area of Shatt-al-Arab. Iranian merchant vessels and vessels of other nationalities navigated the River accompanied by various Iranian gunboats and military aircrafts, and persistently refused to observe the regulations designed to ensure safe navigation in Shatt-al-Arab.

The position of the government of Iraq has been that the Iraqi-Iranian Boundary Treaty of 1937 is still valid and binding on both parties. Iran has no legal right to unilaterally and arbitrarily abrogate a treaty that was concluded in accordance with the rules of international law and by the free and explicit consent of two sovereign states. The government of Iraq reiterated its acknowledgment of the navigation rights of Iran in the Shatt-al-Arab which is an Iraqi national river. It also expressed its willingness to resolve any dispute with the government of Iran in accordance with the rules of international law, the principles of the United Nations Charter and the provisions of the 1937 Treaty.(2)

The following pages provide the basic facts on the origins and the historical background of the present crisis. A careful study of these facts should establish beyond any shadow of a doubt Iran's consistent intransigence motivated by its expansionist designs and its policy of aggrandisement.

(1) S/9190, S/9200 and 9200.Add.1

(2) S/9185, S/9185.Corr.1 and S/9205

II. GEOGRAPHY

Iraq occupies the land of ancient Mesopotamia (between the two rivers). The area (171,000 sq. miles) includes the great depression between the desert on the west and the mountains on the north and northwest, and is bounded by the Arabian Gulf and Kuwait on the south. In contrast to the mountainous belt in the north, the alluvial plain of the twin rivers extends southward and forms the fertile basin known for its ancient civilizations.

Shatt-al-Arab River is formed by the confluence of the Tigris and Euphrates rivers. It extends from Qurna at the junction of the two rivers to Fao on the Arabian Gulf. The importance of Shatt-al-Arab as a navigable river is restricted to its lower reach from Basrah port to Fao. The total length of Shatt-al-Arab is about 123 miles with an average breadth of 600 yards and, at some points, the River widens to a mile. The lower part of the River along which the Iraqi-Iranian frontier descends is about 85 miles long. (see attached map). The River is Iraq's only access to the sea and it handles considerable trade and shipping.

The estimated amount of silt coming down the River annually is about half a million tons. These deposits would render the River useless with continuous dredging, which is effectively maintained by the Iraqi authorities.⁽³⁾

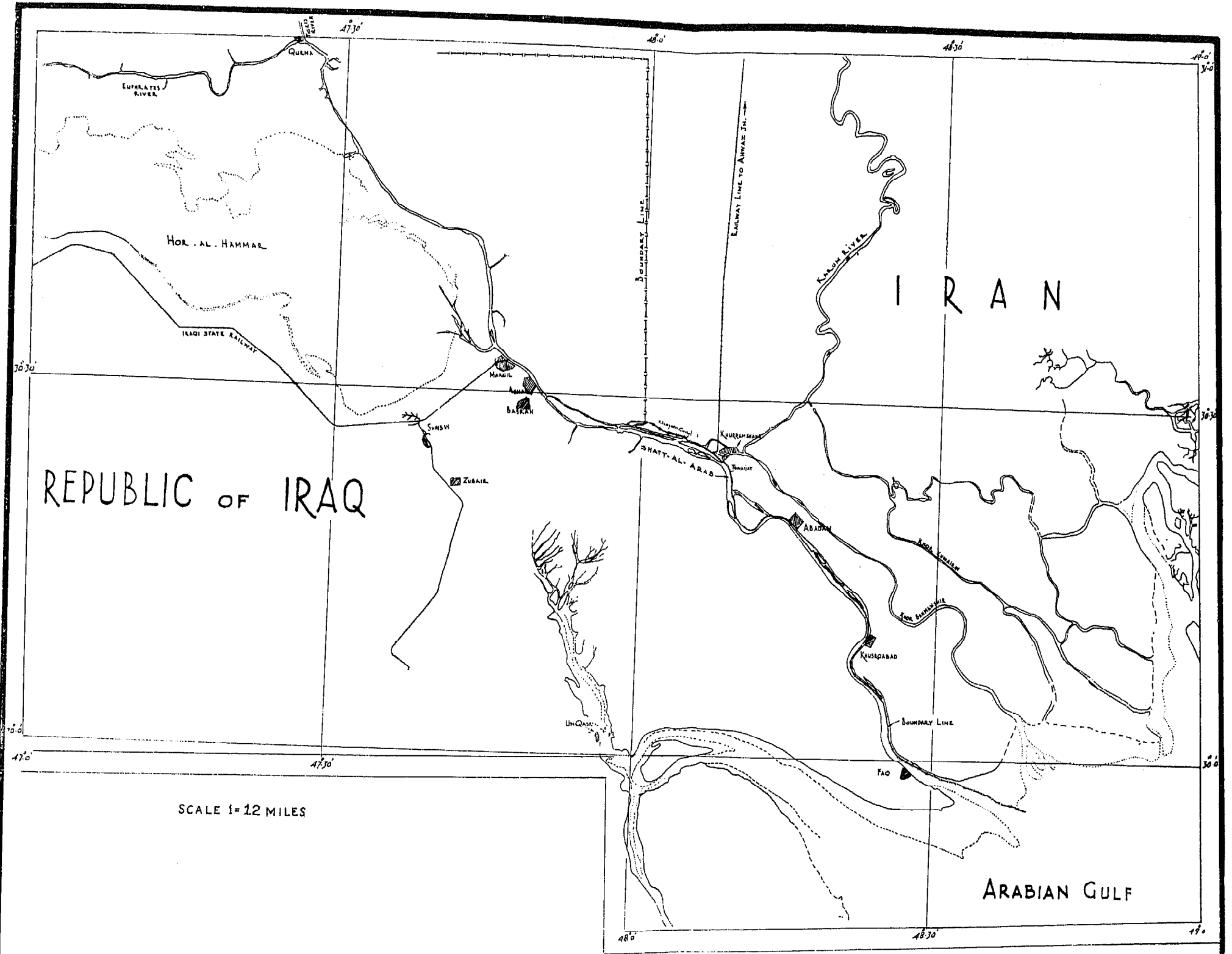
III. HISTORICAL BACKGROUND

The Iraqi-Iranian border issue goes far back into history. Iraq became a part of the Ottoman Empire during the reign of Sultan Salim I (1516-20), and from that time on the boundary question was a recurrent one between the Ottoman Sultans and the Persian Shahs. Iraq as a successor of the Ottoman Empire has inherited the border dispute.

Prior to 1847 Shatt-al-Arab was an inland River running through Ottoman territory and the land surrounding both banks of the River were under unrestricted Ottoman sovereignty. This is clearly shown in the book by Sir Henry Layard, who was a member of the joint mediation commission offered by the British and Russian governments to Turkey and Persia. Among other things, Sir Henry Layard said in reference to the negotiations preliminary to the Treaty of Erzerum of 1847:

"The principal matters in dispute were certain parts of the frontiers between the two States. Persia claimed the left bank of the Shatt-al-Arab, or united waters of the Tigris and Euphrates,

(3) Encyclopedia Britannica, Vol. 15. pp.228-302;
Vol.20, pp.468, Chicago 1944.



REPUBLIC OF IRAQ

IRAN

ARABIAN GULF

SCALE 1 = 12 MILES

from about sixty miles of their junction with the Persian Gulf....The result of my examination of the evidence and maps furnished me was that the claims of Turkey to the left bank of the Shatt-al-Arab and to Muhammera were well founded. Persia had never exercised more than a nominal jurisdiction over the territory in dispute..." (4)

The Treaty of Erzerum of 31 May 1847 was considered the basis for settlement of the border dispute between Persia and the Ottoman Empire. The Treaty consists of nine articles.⁽⁵⁾ The Ottoman Empire in an effort to put an end to the dispute formally ceded to the Persian government the city and port of Muhammera (Khorramshahr), the island of Khizr (Abadan), the anchorage and the land on the eastern (left) bank of Shatt-al-Arab (Article 2), which was part of Iraq. "Iraq occupies most of the geographical region of Mesopotamia, although the eastern bank of Shatt-al-Arab is under the Persian rule".⁽⁶⁾ Freedom of navigation for Persian vessels on Shatt-al-Arab was granted (Article 2, par.3). Negotiations for settling all boundary issues were conducted under the mediation of two great powers, Britain and Russia (Article 4). "The demarcation of boundaries, however, which was to have taken place immediately afterwards, was three times delayed by wars in Europe..."⁽⁷⁾

On 21 December 1911, the Protocol of Tehran was signed by Persia and the Ottoman Empire.⁽⁸⁾ The Protocol was concluded in a desire to avoid any controversy in respect to the Ottoman-Persian frontiers. This Protocol provided the base for negotiations and the procedure for the delimitation of the frontiers. It also provided for the establishment of a commission to meet in Constantinople, entrusted with the task of delimiting the frontier. The work of the commission was based on the clauses of the Treaty of Erzerum. The Protocol also provided that in the case of divergent views on any issue, the question shall be submitted to the Court of Arbitration at the Hague.

(4) Sir Henry Layard, *Early Adventures in Persia, Susiana and Babylonia*, London, John Murray, 1887, Vol.11, pp.431-433.

(5) For text, see Annex I

(6) *Encyclopedia Britannica*, Chicago, 1944, Vol.15, p.292

(7) Majid Khadduri, *Independent Iraq*, London, Oxford University Press, 1951, p.240.

(8) For text, see Annex II.

The Joint Commission met in Tehran in 1912, but did not make substantial progress.

On 4 November 1913, the Constantinople Protocol was concluded between the Ottoman Empire, Persia, Great Britain and Russia, the last two governments acting as mediators. The Protocol provides for the establishment of a Delimitation Commission consisting of commissioners from the four governments (Article 2).⁽⁹⁾

The Delimitation Commission concluded its work in 1914, mainly by reference to geographical features. The proceedings of the meetings of the Commission define the frontiers in detail. The border dispute, therefore, was finally settled by virtue of Article 5 which reads:

"As soon as part of the frontier has been delimited, such part shall be regarded as finally fixed and shall not be liable to subsequent examination or revision".

Article I of the Protocol defined the Shatt-al-Arab frontiers as follows:

"From this point (i.e., from the mouth of the Nahr-Nazaileh canal) the frontier shall follow Shatt-al-Arab as far as the sea, leaving under Ottoman sovereignty the river and all the islands therein..."

A detailed description of the boundary line is embodied in the proceedings of the second meeting of the Delimitation Commission held on 12 January 1914, and reproduced in the Tableau Descriptif de la Line-Frontiere, annexed to the proceedings: "the line is described as following low-water level of the left bank of the Shatt-al-Arab, departing from it only to the extent necessary to leave in Persia the named islands referred to in Article I of the Constantinople Protocol of 1913, and the anchorage of Muhammara."

Therefore, the sovereignty of the Ottoman Empire extended over all the River of Shatt-al-Arab and the border line was fixed at the left (eastern) bank of the River. Iran was given the port and anchorage of Muhammara (Khorramshahr) and other islands mentioned in the Protocol. This settlement gave Iran certain territories which were integral parts of Iraq.

(9) For text, see Annex III

The attitude of Iran towards this final settlement was completely reversed after the defeat of the Ottoman Empire in World War I, and the emergence of Iraq. Under international law, Iraq inherited as a successor state the international frontier fixed in accordance with the proceedings of the Delimitation Commission in 1914. Iran, however, disregarded and violated the internationally recognized frontiers. Iran claimed to justify its attitude on the grounds that it did not recognize the validity of the agreements and protocols concluded between Persia and the Ottoman Empire.

The persistent violation of the Iraqi frontiers reached a breaking point in 1934 when Iraq was finally forced to submit a formal complaint to the League of Nations.

IV. IRAQ'S APPEAL TO THE LEAGUE OF NATIONS

Iraq did its utmost to settle the dispute brought about by Iran's disregard of the internationally established boundary through direct negotiations with Iran. Failing in this, Iraq was left with only one peaceful alternative - an appeal to the Council of the League of Nations.

Iraq's appeal to the League of Nations was in accordance with Article II, paragraph 2 of the League Covenant.

"It is also declared to be the friendly right of each member of the League to bring to the attention of the Assembly or the Council any circumstances whatever affecting international relations which threatens to disturb international peace or the good understanding between nations upon which peace depends".

In accordance with this "friendly right", the Iraqi government stated its grievances to the Secretary-General in a letter dated 29 November 1934.

The Iraqi position was principally based on juridical inheritance, treaty right and equity.

Iraq asked the League's Council to take up the issue of the Iraqi-Iranian frontier in view of Iran's numerous boundary violations. These violations were grouped under three categories: illegal interference with Shatt-al-Arab navigation; territorial expansion; and the diversion of Gunjan Cham waters.

The violations relating to Shatt-al-Arab consisted of Iranian gunboat interference with normal shipping activities; disregard of rules and by-laws of the Port of Basrah;

blocking the oneway dredged Rooka Channel; and rash seamanship. These grave violations have in some instances threatened to block the river and bring the whole Iraqi seaborne trade to a standstill (Shatt-al-Arab being Iraq's only access to the sea).

The letter of the government of Iraq to the Secretary General of the League, dated 29 November 1934, states inter alia:

"The boundary between Iraq and Persia is derived from the Treaty of Erzerum of 1847 and a Protocol signed at Constantinople on 4 November 1913, by the Grand Vizier and Minister for Foreign Affairs of the Ottoman Empire and the Ambassador of Persia, on behalf of the two parties and by the Ambassadors of Great Britain and Russia, on behalf of their respective countries in the capacity of mediating Powers. Section V of this Protocol specifically laid down that as soon as any part of the frontier had been delimited by the Delimitation Commission to be set up in accordance with Section II, that part should be held to have been finally fixed and should not be open to either to subsequent examination or to revision. The delimitation of the frontier on the ground provided for in Section II was carried out by this Commission in the year 1914.

In spite of the legal position as outlined above, the Imperial Persian Government has consistently disregarded and violated the boundary so established. A summary of some of the more flagrant acts of aggression, with copies of the relevant correspondence, is attached. As will be seen from this correspondence, the Imperial Persian Government attempts to justify its conduct on the ground that it does not recognize the validity of the boundary and does not consider itself bound by the arrangements by which it was determined. This view the Iraqi government is unable to accept.

The Royal Iraqi Government has hitherto been loth to formulate publicly a complaint against a neighbour and fellow-member of the League of Nations. It has left nothing undone in its endeavour to settle the matters at issue direct with the Imperial Persian government. As will be seen from the correspondence, the numerous conciliatory proposals which it has made, whether for the investigation by joint commission of particular problems affected by the precise alignment of the boundary or for the general examination of all causes of inconvenience to either side arising from that alignment, with a view to eliminating the inconveniences by appropriate administrative arrangements, have been consistently rejected or ignored".

While the Iraqi attitude was principally based on treaty rights and equity, Iran claimed that all international agreements concluded in the past were without binding force. This position was stated in the Iranian memorandum of 8 January 1935, to the League's Council:

"According to the government of Iraq, the boundary was fixed by the Treaty of Erzerum of 1847, and by the Protocol signed at Constantinople on November 1913...The Persian government is of the opinion that the Delimitation Commission of 1914, have no force either in law or in equity to determine the frontier..."(10)

This view was further expounded by the Iranian delegate at the Council with respect to the Treaty of Erzerum. This Treaty was described by him as "null and void" on the pretext that the Iranian envoy delegated to sign the Treaty had exceeded his instructions in accepting the explanatory note of the mediating powers. The facts concerning the explanatory note are as follows: Before the Treaty was signed the Ottoman Empire asked the mediating Powers (Great Britain and Russia) for certain explanations of the text. The two mediating Powers answered in an "Explanatory Note", which was to the satisfaction of the Ottoman Empire and was equally accepted by the Iranian envoy. Therefore, Iran's claim before the League was without foundation.

Furthermore, Iran actively participated in the Delimitation Commission, provided for by Article 3 of the Treaty, from 1849 until 1852 when the Crimean War intervened. Later in 1874 the Turco-Persian Commission met in Constantinople but the progress was interrupted by the Russo-Turkish War. If the Treaty was considered "null and void" by Iran, why did she take an active part in the Delimitation Commission set up by that Treaty?

Iran equally rejected the Protocol of 1913 on the grounds that it was based on the "non-existent" Treaty of Erzerum. In other words, Iran denied the validity of all frontier agreements signed with the Ottoman Government.

Reference to the Permanent Court of International Justice

The debate at the Council came to a juridicial impasse. At this juncture, the representative of Great Britain suggested the following:

"...on juridicial issues of this nature, the most appropriate procedure may be to seek the opinion of an expert legal body, such as the Permanent Court of International Justice at the Hague."(11)

(10) League of Nations, Official Journal, February 1935, P.217

(11) Ibid., p.123

The representative of Iraq immediately accepted to refer the dispute "to the Permanent Court of International Justice for an advisory opinion".(12)

The Iranian representative, on the other hand, refused to agree to the suggestion.

Direct Negotiations

This juridicial impasse prompted the Rapporteur of the League's Council to use his good offices and urge the two parties to conduct direct negotiations. The Rapporteur's efforts proved successful.

Consequently, the Rapporteur requested the Council for adjournment of the debate. His request was adopted. On 27 April 1936, the Iraqi government asked the Secretary-General of the League for further delay as negotiations were still in progress.(13)

Finally, Iraq asked the Secretary-General on 27 August 1937, to withdraw the Iraqi complaint. The reasons for the withdrawal were stated as follows:

"...the negotiations between Ir and Iran regarding the frontier difference having fortunately resulted in an agreement between the two parties, the existing dispute concerning the boundary has been settled...request the Council to withdraw Iraq's application under Article 11, par. 2, from the agenda of the 98th session of the Council of the League of Nations"(14)

V. BOUNDARY TREATY OF 1937

The direct negotiations which were resumed during 1935-1937 encountered many difficulties and at one stage were about to break down. The Shah finally declared that "he wanted nothing from Iraq more than the deepest line of the river of the Shatt in front of Abadan".(15). Iraq under pressure and unfavourable circumstances, was compelled to surrender part of her sovereignty over Shatt-al-Arab. Although the result was unfavourable to Iraq, it demonstrated nonetheless, Iraq's sincere desire to put an end once and for all to a dispute which had dragged on for years because of Iran's procrastination.

(12) *Ibix.*, p.190

(13) *Ibid.*, June 1936, p.564

(14) *Ibid.*, December 1937, p.494

(15) Majid Khadduri, op. cit., p.245

A boundary treaty was finally concluded between Iraq and Iran on 4 July 1937. (16) Despite the intransigent attitude taken by Iran at the League of Nations, where she questioned the validity of the 1913 Protocol and the Proceedings of the 1914 Commission, the 1937 Boundary Treaty confirmed the validity of the past agreements which Iran had previously declared "null and void".

To this Treaty was annexed a protocol consisting of five articles in order to clarify the matter of the management and administration of Shatt-al-Arab. This protocol was considered an integral part of the Treaty and came into force at the same time as the Treaty. (17)

Under this Treaty and the protocol annexed to it, Iran, however, aside from extending her sovereignty over the part of Shatt-al-Arab in front of Abadan, made several other gains. Although Shatt-al-Arab is an inland river in Iraqi territory, Iran was given the right under Article 5 of the Treaty to conclude a convention with Iraq for the maintenance and improvement of the River. Moreover, Iran was granted permission under Paragraph 3 of the protocol for entry of vessels of war belonging to any state to its own harbors. Therefore, it can be safely said that the Treaty, in view of the many concessions made by Iraq, was a net gain to Iran.

Gains for Iran

None of the Treaties concluded between the Ottoman Empire and Persia prior to 1847 referred to Shatt-al-Arab. The reason was very simple: Shatt-al-Arab was recognized to be a national River and the sovereignty of the Ottoman Empire on the River and the land surrounding it on both banks.

Iran obtained its first territorial gain by virtue of the Treaty of Erzurum of 1847, whereby the Ottoman government formally recognized "the unrestricted sovereignty of the Persian government over the city and port of Muhammara, the island of Khizr, the anchorage and the land on the eastern bank. That is to say, the left bank of Shatt-al-Arab, which is in the possession of tribes recognized as belonging to Persia". (Article 2).

The fact that the "tribes" referred to in Article 2 of the Treaty were Arab tribes were attested to by Ramazani when discussing the preliminary activities of the Anglo-Persian oil company in procuring the oil concessions in Southern Iran early this century:

"The company also reached an agreement with the Sheikh of Mohammarah (now Khoramshahr), Sheikh Khaz'al,

(16) For text, see Annex IV

in 1909. He was the hereditary Arab ruler of an enormous territory on the eastern side of the Shatt-al-Arab, including Abadan Island which the company had selected as the site for a refinery".(18)

Iran's first gain, therefore, was the possession of the city and port of Muhammara, the island of Khizr (Abadan), the anchorage and the land in the eastern bank of the River. Further, the same article granted Persian vessels "the right to navigate freely without let or hindrance on the Shatt-al-Arab from the mouth of the same to the point of contact of the frontiers of the two parties.

The Ottoman government, however, insisted before finally signing the 1847 Treaty assurances regarding the exact meaning of certain stipulations. These were given in an "Explanatory Note" addressed to the ports by the British and Russian Ambassadors in Constantinople, and as far as the River boundary was concerned, made it clear that the "anchorage of Muhammara" was that in the Karun River just above its confluence with Shatt-al-Arab and not in the Shatt itself.

Nevertheless, Persian claimed at a later stage that the anchorage was on Shatt-al-Arab itself and managed to assert that claim, realising thereby its second gain. It will be recalled in this connection that the demarcation of the frontiers in accordance with the provisions of the Erzurum Treaty was delayed by two wars: The Crimean War (1854-6) and the Anglo-Persian War (1856-7). Further disput caused other delays in the actual work of demarcation, but negotiations and mediations continued intermittently until they were finally concluded by the Protocol of the Constantinople in 1913. Notwithstanding the assurances of the "explanatory note" of 1848, Persia was awarded the modern anchorage in the Shatt-al-Arab which extended some distance above and below the Karun confluence. This was done on the basis of the situation obtaining in 1913 as it had been agreed upon by the two Parties and the two mediating Powers in 1869.

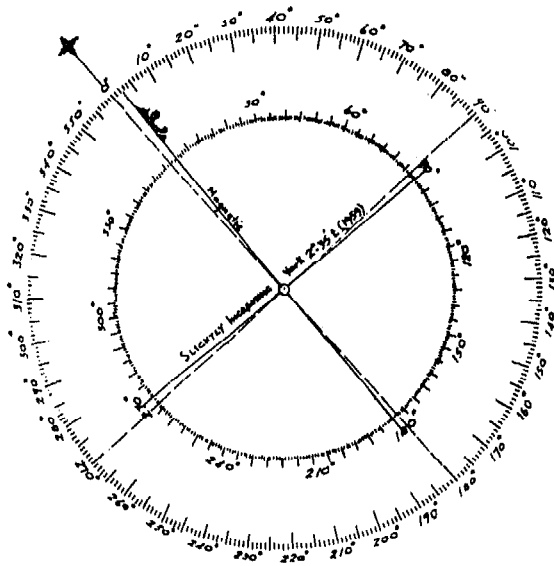
Needless to say that the third gain achieved by Ir was incorporated in the Treaty of 1937 whereby Iran managed to push the boundary line from the low water mark to the "Thalwag" of the River for a distance of 5 miles opposite Abadan. This is the gain referred to by the Shah of Iran, Riza Pahlevi, when he stated at the time that he "wanted nothing more from Iraq than the Thalwag of the Shatt in front of Abadan", (see attached maps, parts I and II).

(18) Ramazani, Rouhollah K.

"The Foreign Policy of Iran 1500-1941"

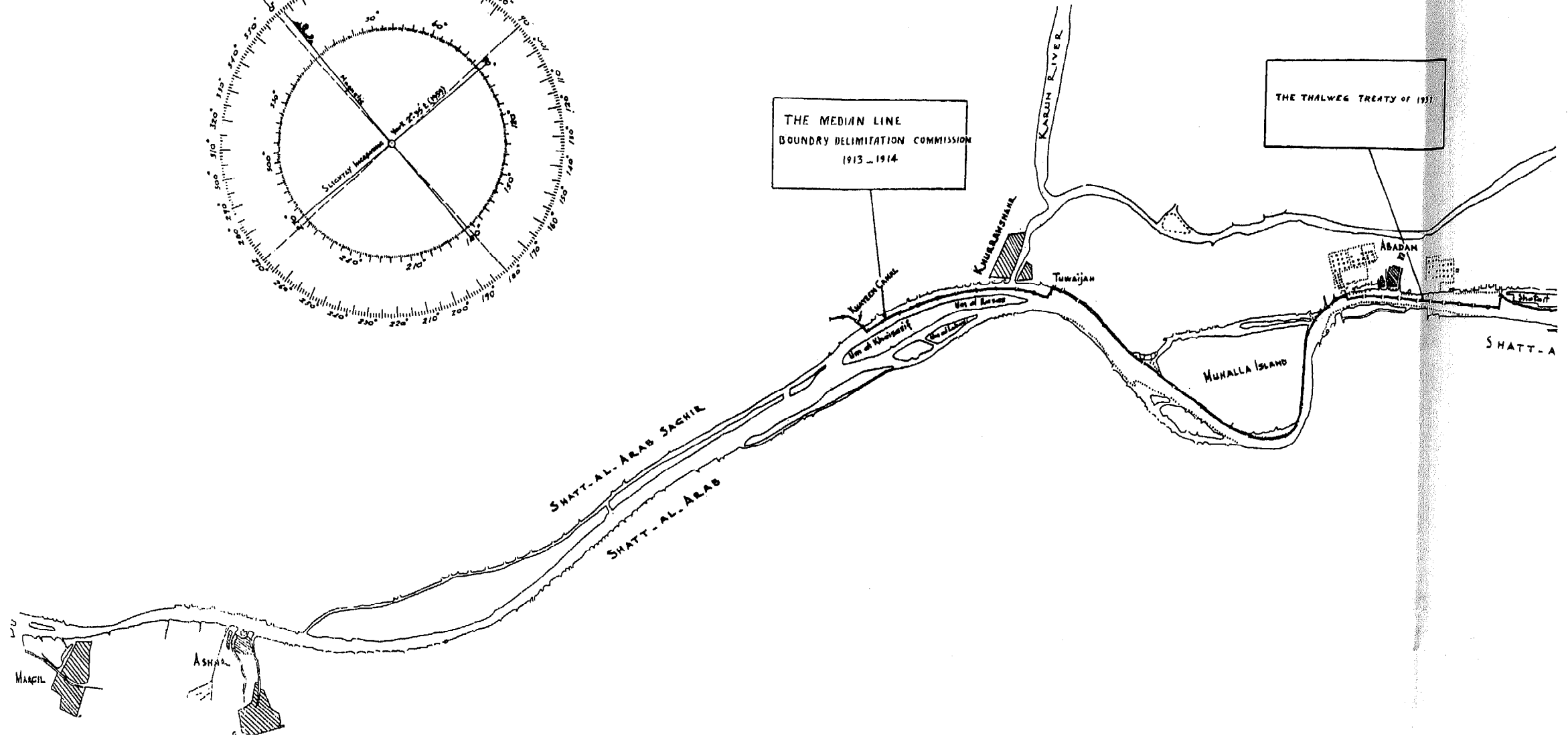
University Press of Virginia, Charlottesville, 1966,
p.122

PART I

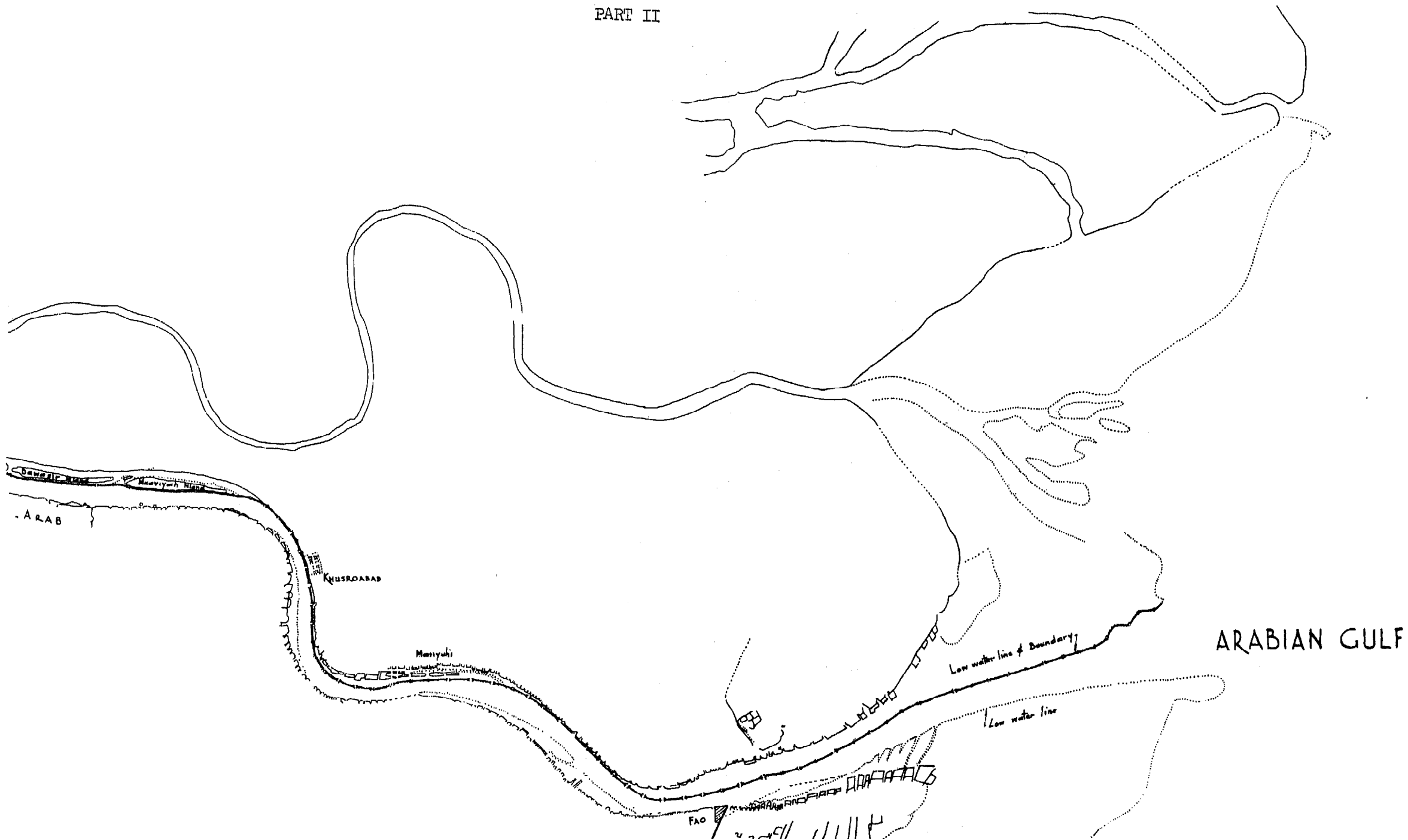


THE MEDIAN LINE
BOUNDRY DELIMITATION COMMISSION
1913-1914

THE THALWEG TREATY OF 1931



PART II



VI. THE BORDER PRESENT LEGAL STATUS

The 1937 Boundary Treaty between Iraq and Iran establishes the legal status of the present border. The Treaty was signed on 4 July 1937, and came into force with the exchange of the instruments of ratification on 20 June 1938, and registered with the League of Nations on 29 August 1938. It is principally based on "the doctrine of interstate consent" which is the most reliable basis of international law. The renowned American Jurist, Dr. Pitman Potter, states:

"The divergence which seems to be possible between justice and practice as sources of the authority of international law is to be bridged only by means of the doctrine of interstate consent...The express provisions of international agreements declaring the law of nations and incidents of international practice, embody what the states of the world agree constitutes justice in their relations one with another".(19)

With the conclusion of this Treaty, Iraq sincerely hoped that the long dispute had finally come to an end. However, not long after the Treaty came into force, Iran began committing flagrant border violations. Most of the violations were similar to those committed prior to 1934, which had prompted Iraq to seek the help of the international community and submit a complaint to the League of Nations. But, after the conclusion of the Treaty, the violations were more frequent and more extensive in scope than before.

The fact of the matter is that Iraq never denied its obligation under Article 5 of the Treaty, but Iran's attempt to exceed the rights granted to her in accordance with the Treaty of 1937 and her disregard of Iraq's lawful rights prevented the conclusion of a convention. Iran's policy has been not to conclude a convention but to insist on the setting up of a joint commission, which the Treaty did not provide for at all. Moreover, Shatt-al-Arab is an inland River in Iraqi territory -- with two minor exceptions -- hence, Iran cannot claim similar or equal rights of administration, to say nothing of equal sovereignty.

(19) Pitman Potter, An Introduction to the Study of International Organization, New York, Appleton - Century-Crofts, Inc., 1948, P.59

VII. IRAN'S ALLEGATIONS

As may be seen from the above facts, Iran's allegations could be categorized under the following:

- (i) The Treaty of 1937 was concluded under conditions of inequality between Iraq and Iran and that it is a relic of the colonial era;
- (ii) Iraq has failed to fulfill its obligations under the Treaty and the Protocol attached to it;
- (iii) The Shatt-al-Arab River is a boundary River and accordingly should be under the joint sovereignty of both Iraq and Iran.

These allegations have no basis whatever and they are never supported by historical facts nor by the tenets of international law.

1. It is true that the Treaty of 1937 was concluded under conditions of inequality between Iraq and Iran but the facts and the international situation at the time proves that the balance was tipped heavily against Iraq itself in favour of Iran. It shall be recalled that the European political situation had become increasingly alarming since the Nazis accession to power in Germany in 1933, and the Italo-Ethiopian war of 1935. The fear of a world conflagration was looming on the political scene and Great Britain and its allies were desperately trying to contain the axis powers. In order to placate the Iranian monarch at the time, Riza Pahlevi, Great Britain exerted all possible pressure to force the Iraqi government to concede to the Shah's demand to extend the border line opposite Abadan and for a distance of seven km. to the Thalwag line instead of the low water line on the east bank of Shatt-al-Arab. The Iraqi government reluctantly signed the Treaty in face of massive popular opposition. But once the Treaty was concluded, ratified and the instruments of ratifications exchanged, Iraq unswervingly honoured it and never reneged any of its provisions.

It is therefore a travesty of the facts to maintain that Iran rather than Iraq, was the victim of colonialism. It shall be recalled that Iran had been an independent country for several centuries, while Iraq had shed away the shackles of the British Mandate only five years earlier. At any rate, when the Treaty was signed both Iraq and Iran were sovereign members of the League of Nations and Iraq accepted and respected the rule of free consent, which forms a basic tenet of international law in respect of the Treaty.

2. It is equally unjust and untrue to maintain that Iraq had failed to conclude the convention stipulated in Article 5 of the Treaty and has therefore breached the provisions of the Treaty.

Iraq did not deny her obligation under this provision nor 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 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. Needless to say that Iran aimed, once this alleged right of joint administration is established, to make it a basis for future claim of "joint sovereignty" on the River.

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 -- 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.

Article 5 of the 1937 Treaty never mentioned the establishment of a joint commission for the administration of the River. It only stipulated that the two parties should conclude a convention to regulate navigation in Shatt-al-Arab, including the following:

- a. Maintenance and improvement of navigable channel;
- b. Dredging and pilotage of ships;
- c. Collection of dues;
- d. Health measures;
- e. Measures for preventing smuggling; and
- f. Other questions concerning navigation in the Shatt-al-Arab.

.../

Had it been the intention to form a joint commission for the administration of the River, Article 5 would have unambiguously stipulated that and enumerated the alleged joint commission's composition, functions and competence. This was not the case. Nor could it be assumed that the intention was implied, as such implication is not recognized by international law, particularly as it categorically violates the principle of the exclusive sovereignty of states over its national territories and waters.

Obviously, all these pretexts and assumptions on the part of the Iranian government were advanced in order to deliberately obstruct the conclusion of the Convention stipulated in Article 5 of the Treaty of 1937. It was a standard practice by Iran in its pursuance of the technique of "Procrastination", to which Ramazani referred to in the chapter on "The Techniques of Iranian Diplomacy":

"Procrastination": This was an old technique and it took many forms. One was withholding or delaying ratification of signed agreements. A treaty on air rights had been signed with Great Britain, in 1925, but its ratification was delayed until Great Britain yielded on the matter of capitulations. The 1921 treaty with Russia was not ratified immediately in order to pressure Russia to withdraw its troops from Iranian soil, to relinquish its support of the Soviet Republic of Gilan, and to expedite the resumption of badly needed trade. In these two instances the desired result was produced. Riza Shah's grave mistake in the end was to apply the technique of procrastination during the Second World War when the vital interests of great powers were at stake. His delaying tactics at that time were partly responsible for the Allied invasion of Iran."⁽²⁰⁾

And even assuming for argument's sake that Iraq did breach the provisions of the Treaty, which is never the case, how could such an alleged breach be considered so serious and important as to give Iran the right to unilaterally denounce that treaty? The navigation in Shatt-al-Arab continued, since the conclusion of the Treaty, for 32 years without any adverse effects, apart from those resulting from Iran's contraventions of the Iraqi rules designed to ensure safe and unhampered navigation in the River.

Had Iraq really breached the Treaty, Iran would have been acting more in accordance with the rules of international law if, instead the abrupt attempt to denounce the Treaty altogether, it had pointed out the breach to the government of Iraq. If the Government of Iraq then rejected the claim, the dispute would become then an international one which should be resolved by peaceful means and through bilateral negotiations. Article 57 of the Draft Convention on the Law of Treaties,

(20) Ramazani, Ibid, p.309

prepared by the International Law Commission and approved unanimously at the United Nations Conferences on the Law of Treaties in 1968 and 1969, in both of which Iran was represented, states the following:

"Suspension of the operation of a treaty under its provisions or by consent of the parties

The operation of a treaty in regard to all the parties or to a particular party may be suspended:

- (a) in conformity with the provisions of the treaty;
- or (b) at any time by consent of all the parties after consultation with the other contracting States". (21)

It has to be remembered in this connection that Iran's invocation of the theory of rebus sic stantibus can hardly be justified in the regard to the Treaty of 1937. This Treaty is a boundary Treaty and, in accordance with the recognized rules of international law, boundary treaties are considered final upon their conclusion, and boundaries cannot change as a result of alleged change of circumstances. Furthermore, the application of this theory in this case would basically negate the principle of pacta sunt servanda, and the principle of free consent which are generally considered the fundamental bases of international law. In this connection we give hereunder the text of Article 62 of the Draft Convention of the Law of Treaties referred to above:

"Fundamental change of circumstances

1. A fundamental change of circumstances which has occurred with regard to those existing at the time of the conclusion of a treaty, and which was not foreseen by the parties, may not be invoked as a ground for terminating or withdrawing from the treaty unless:

a) the existence of those circumstances constituted an essential basis of the consent of the parties to be bound by the treaty; and

b) the effect of the change is radically to transform the extent of obligations still to be performed under the treaty.

2. A fundamental change of circumstances may not be invoked as a ground for terminating or withdrawing from a treaty:

a) if the treaty establishes a boundary; or

b) if the fundamental change is the result of a breach by the party invoking it either of an obligation under the treaty or of any other international obligation owed to any other party to the treaty.

3. If, under the foregoing paragraph, a party may invoke a fundamental change of circumstances as a ground for terminating or withdrawing from a treaty it may also invoke the change as a ground for suspending the operation of the treaty."(22)

3. Iran's third allegation is that Shatt-al-Arab is a boundary River and accordingly should be under the joint sovereignty of both Iraq and Iran. This allegation has no basis in fact or history, as the various international documents cited above from the Erzurum Treaty of 1847 to the Boundary Treaty of 1937 never considered Shatt-al-Arab except as a national River of Iraq, an inseparable part of the Iraqi territory, and subject to the exclusive Iraqi sovereign jurisdiction.

It is noteworthy, in this connection, 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.

VIII. CONCLUSIONS

This brief survey of the Iraqi-Iranian frontier question indicates that the problem is old, complicated and a cause of friction both between the Ottoman Empire and Persia and between present-day Iraq and Iran. The many agreements, protocols, treaties and boundary proceedings relative to this issue have not put an end to the problem, largely because of the absence of goodwill on the part of Iran. In fact, these international instruments have served only as palliative agents to prevent the situation from exploding. A few years after the conclusion of each one of

these instruments, new claims would arise on the part of Iran.

Iran's failure to honour its treaty obligations is evident throughout the history of the frontier issue, particularly in recent times. This failure was usually coupled with territorial claims.

Prior to 1847 the left bank of Shatt-al-Arab was under the sovereignty of the Ottoman Empire and the port of Muhammarah was established on Ottoman soil. In accordance with the Treaty of Erzerum in 1847, the Ottoman Empire relinquished its sovereignty over Muhammarah, and the Persian borders were moved westward to the left bank of Shatt-al-Arab. Further claims were put forward by Iran, and the Protocol of 1913 met some of them whereby the medium filum aquae was recognized opposite Muhammarah as the border line, and a few islands in Shatt-al-Arab were relinquished to Persia. The additional Iranian claims in the early nineteen thirties prompted Iraq to submit a complaint to the League of Nations, seeking the moral support of the community of nations to curb Iran's desire for territorial aggrandizement. The League's Council urged Iran to enter into negotiations with Iraq, with a view to arriving at a negotiated settlement. Finally, the two parties entered into negotiations, which resulted in the conclusion of the 1937 Boundary Treaty. Under this Treaty Iran made further gains by extending her sovereignty over the section of Shatt-al-Arab opposite Abadan to the Thalweg and some other gains relative to navigation and maintenance of the River.

The gains acquired during the last century have encouraged Iran to put forward more claims with a view to pushing her border westward at her neighbour's expense. Consequently, it is not in Iran's interest to settle the frontier issue once and for all. Firstly, the prospect of territorial gains is always there. Secondly, by keeping the frontier issue alive, it can be manipulated at will whenever the internal situation may require the attention of Iranians to be diverted to artificial external problems.

In the face of all provocations by Iran, however, the government of Iraq categorically rejects any claim of joint sovereignty on Shatt-al-Arab, which is a national River of Iraq. The government of Iraq refuses absolutely to cede any part of its national territory or its national waters.

The government of Iraq, in spite of Iran's allegations, remains motivated by the best of intentions towards Iran and the Iranian people. It reaffirms its willingness to abide by the rules of international law, the principles of

the United Nations Charter and the provisions of its Boundary Treaty with Iran. In demonstration of its good faith, the government of Iraq declares its willingness and preparedness to refer all disputes concerning the application of the Iraqi-Iranian Boundary Treaty of 1937 to the International Court of Justice and to abide by the Court's decision thereon.

What remains now is that the government of Iran should honour its international obligations and demonstrate its good faith in a similarly convincing manner.

Annex I

Treaty of Erzerum of May 31, 1847

Article 1

The two Mussulman Powers waive the totality of their existing pecuniary claims on one another, provided always that nothing in this arrangement shall affect the provisions made for the settlement of the claims to which Article 4 relates.

Article 2

The Persian Government undertakes to cede to the Ottoman Government all the lowlands -- that is to say, the land in the western part of the province of Zohab; and the Ottoman Government undertakes to cede to the Persian Government the eastern -- that is to say, all the mountainous -- part of the said province, including the Kirind Valley.

The Persian Government abandons all claim to the city and province of Suleimani and formally undertakes not to interfere with or infringe the sovereign rights of the Ottoman Government over the said province.

The Ottoman Government formally recognises the unrestricted sovereignty of the Persian Government over the city and port of Muhammara, the island of Khizr, the Abadan anchorage, and the land on the eastern bank -- that is to say, the left bank -- of the Shatt al-Arab, which are in the possession of tribes recognized as belonging to Persia. Further, Persian vessels shall have the right to navigate freely without let or hindrance on the Shatt al-Arab from the mouth of the same to the point of contact of the frontiers of the two Parties.

Article 3

The two Contracting Parties, having by the present Treaty waived their other territorial claims, undertake forthwith to appoint commissioners and engineers as their respective representatives for the purpose of determining the frontiers between the two States in conformity with the preceding article.

Article 4

Both Parties are agreed as to the appointment forthwith, by both Parties, of commissioners for the purpose of adjudicating and making a fair settlement in

all cases of damage suffered by either Party since the acceptance of the friendly proposals drawn up and communicated by the two Mediating Great Powers in the month of Jemaziyyu-' l-evvel, 1261, together with all questions of pasturage dues since the year in which the arrears in the payment of the latter began.

Article 5

The Ottoman Government undertakes that the fugitive Persian Princes shall reside at Brussa, and shall not be permitted to leave that place or maintain secret relations with Persia. The two High Contracting Powers further undertake that all the other refugees shall be handed over in conformity with the earlier Treaty of Erzerum.

Article 6

Persian merchants shall pay the Customs dues on their goods, in kind or in cash, according to the current present value of such goods, in the manner specified in the article relating to trade in the Treaty of Erzeum concluded in 1823. No additional charge whatsoever shall be levied over and above the amounts fixed in the said Treaty.

Article 7

The Ottoman Government undertakes to accord the requisite privileges to enable Persian pilgrims, in accordance with the former treaties, to visit the Holy Places in the Ottoman dominions in complete safety and without vexatious treatment of any kind. Further, the Ottoman Government, being desirous of strengthening and consolidating the bonds of friendship and concord which should subsist between the two Mussulman Powers and between their respective subjects, undertakes to adopt such measures as may be most appropriate to ensure the participation, not only of Persian pilgrims, but of all other Persian subjects, in all the said privileges in the Ottoman dominions, in such manner as to protect them from any sort of injustice, molestation, or incivility, whether in respect of their commercial activities or in any other respect.

Furthermore, the Ottoman Government undertakes to recognize Consuls to be appointed by the Persian Government in places in the Ottoman dominions where their presence may be required on account of commercial interests, or for the protection of Persian merchants and other Persian subjects, save only in Mecca the Revered

and Medina the Resplendent, and to respect in the case of the said Consuls all the privileges due in virtue of their official character and accorded to Consuls of other friendly Powers.

The Persian Government, for its part, undertakes to accord reciprocity of treatment in every respect to Consuls to be appointed by the Ottoman Government in places in Persia in which the latter may consider the appointment of Consuls to be necessary, as also to Ottoman merchants and other Ottoman subjects visiting Persia.

Article 8

The two High Contracting Mussulman Powers undertake to adopt and enforce the measures necessary to prevent and punish theft and brigandage on the part of the tribes and peoples settled on the frontier, to which end they will quarter troops in suitable localities. They further undertake to do their duty in respect of all forms of aggressive acts, such as pillage, robbery, or murder, which may occur in their respective territories.

Contested tribes the suzerainty over which is not known shall be left free by the two High Contracting Powers to choose once for all and specify the localities which they will henceforward always inhabit. Tribes the suzerainty over which is known shall be compelled to come within the territory of the State to which they belong.

Article 9

All points or articles of previous treaties, and especially of the Treaty concluded at Erzerum in 1823, which are not specifically amended or annulled by the present Treaty, are hereby reaffirmed in respect of any and all of their provisions, as if they were reproduced in their entirety in the present Treaty.

The two High Contracting Powers agree that, when the texts of this Treaty have been exchanged, they will accept and sign the same, and that the ratifications thereof shall be exchanged, they will accept and sign the same, and that the ratifications thereof shall be exchanged within the space of two months, or earlier.

Annex II

Tehran Protocol of December 21, 1911

The Persian and Ottoman Governments, inspired by a common desire to avoid henceforward any subject of controversy in respect of their common frontiers, having instructed the Persian Minister for Foreign Affairs and the Turkish Ambassador at Tehran, respectively, to establish the bases of negotiations and the procedure to be followed for the delimitation of the said frontiers, the undersigned, after discussion, have agreed on the following points:

I. A commission consisting of an equal number of delegates of either Party shall meet as early as possible at Constantinople.

II. The delegates of the two Governments, furnished with all the documents and evidence in support of their claims, shall be instructed to establish the boundary-line separating the two countries in a spirit of sincere impartiality; after which, a technical commission shall have merely to apply the definite delimitation on the spot, on the basis laid down by the former commission.

III. The work of the Joint Commission, which will meet at Constantinople, shall be based on the clauses of the treaty known as the Treaty of Erzerum, concluded in 1847.

IV. Should the delegates of the two Parties fail to agree on the interpretation and application of certain clauses of that treaty, it is agreed that, at the end of a period of six months of negotiation, in order completely to settle the question of the delimitation of the frontiers, all the points on which any divergence exists shall be submitted together to the Hague Court of Arbitration, in order that the entire question may thus be definitely settled.

V. It is understood that neither of the two Parties may adduce the military occupation of the territories in dispute as a legal argument.

Done in duplicate and exchanged in original between the undersigned, acting on behalf of their Governments.

The Imperial Ottoman Embassy, Tehran, December 21, 1911.

(signed) Wossughed-Dowleh (signed) H. Hassib

Annex III

PROTOCOL RELATING TO THE DELIMITATION OF THE TURCO-PERSIAN BOUNDARY SIGNED AT CONSTANTINOPLE ON NOVEMBER 4, 1913.

The undersigned: His Excellency Sir Louis Mallet, Ambassador Extraordinary and Plenipotentiary of His Britannic Majesty to His Majesty the Sultan; His Excellency Mirza Mahmud Khan Kajar 'Ahd-i-Shamus Saltaneh, Ambassador Extraordinary and Plenipotentiary of His Majesty the Shah of Persia to His Majesty the Sultan; His Excellency M. Michel de Giers, Ambassador Extraordinary and Plenipotentiary of His Majesty the Emperor of Russia to His Majesty the Sultan; His Highness Prince Said Halim Pasha, Grand Vizier and Minister for Foreign Affairs of the Ottoman Empire; have met for the purpose of recording in the present Protocol the Agreement concluded between their respective Governments with regard to the Turco-Persian boundary.

They began by recapitulating the progress, up to date, of the negotiations recently instituted among them.

The Joint Commission provided for in Article 1 of the Protocol signed at Tehran between the Imperial Ottoman Embassy and the Persian Minister for Foreign Affairs with a view to determining the bases for the negotiations relating to the delimitation of the Turco-Persian boundary held eighteen meetings, the first on March 12, and the last on August 9, 1912.

On August 9, 1912, the Imperial Russian Embassy at Constantinople addressed to the Sublime Porte, under No. 264, a note stating that "the Imperial Government considers that too much emphasis cannot be laid on the necessity of putting into effect without delay the explicit stipulations of the Treaty of Erzerum, which are tantamount to the restoration of the status quo of 1848".

The Imperial Embassy at the same time forwarded to the Imperial Ottoman Government a memorandum showing in detail the frontier-line in conformity with the stipulations of the treaties in force.

The Imperial Ottoman Government replied to this communication by a note dated March 18, 1913, No. 30469/47. It stated that 'the Sublime Porte, being anxious to comply with the desire expressed by the Imperial Russian Government by eliminating any cause of difference in its cordial relations with the latter, and wishing, further, to demonstrate to the Persian Government its entire good faith in regard to the dispute existing on the subject between the two countries, has decided to accept the line mentioned in the aforesaid note and memorandum of the

Ambassador of His Majesty the Emperor of Russia for the delimitation of the northern part of the Turco-Persian frontier from Serdar Bulak to Bane -- that is to say, down to the 36th parallel of latitude."

Nevertheless, the Imperial Ottoman Government suggested a number of modifications in the line proposed in the memorandum annexed to the note of the Imperial Russian Embassy dated August 9, 1912, No. 264.

The Imperial Ottoman Government also appended to its note "an Explanatory note on the situation of the Zohab boundaries and the arrangement that it would be able to accept in order to reach a final and equitable understanding with the Persian Government on that part of the frontier."

The Imperial Russian Embassy replied by a note dated March 28, 1913, No. 78. It noted the statement "by which the Imperial Ottoman Government recognises as a principle for the delimitation of the Ararat-Bane section the exact sense of Article 3 of the Treaty of 1848, known as the Treaty of Erzerum, as set forth in the note of August 9, 1912, No. 264." As regards the modifications proposed by the Sublime Porte, the Imperial Embassy stated (with a reservation on the question of Egri-chai) that it could not sufficiently emphasise the necessity of making no change in the line established in its note of August 9, 1912.

As regards the question of Zohab, the Imperial Russian Embassy, while reserving the right to submit its detailed observations concerning that frontier, expressed "its opinion on the whole of the Ottoman draft, which does not seem to it to guarantee sufficiently, for the future, the maintenance of order and peace on the frontiers."

On April 20, 1913, the Russian and British Embassies addressed an identical note to His Highness Prince Said Halim Pasha, accompanied by a memorandum summarising their point of view regarding the delimitation of Zohab and the regions situated south of that district.

This exchange of notes was followed by conversations between Their Excellencies M. de Giers and Sâr Gerard Lowther, on the one part, and His Late Highness Mahmud Shefket Pasha, for the other part. The result of these conversations was recorded in an aide-memoire presented by His Excellency the Russian Ambassador to His Highness the Grand Vizier on June 6, 1913, and in

the note from the Sublime Porte addressed on June 26, 1913 No. 34553/95, to the Russian Embassy, and on July 12, 1913, to the British Embassy.

On July 29, 1913, a "declaration" was signed in London by Sir Edward Grey and His Highness Ibrahim Hakky Pasha concerning the demarcation of the southern boundary between Persia and Turkey.

The Imperial Russian Embassy then proceeded to recapitulate the principles of delimitation established in the correspondence concerning the Turco-Persian boundary. It addressed to the Sublime Porte a note dated August 5, 1913, No. 166. An identical note was addressed to the Sublime Porte by the British Embassy on the same date.

The Sublime Porte replied to these communications by identical notes dated September 23, 1913, No. 37063/113.

As a result of the subsequent negotiations, the four plenipotentiaries of Great Britain, Persia, Russia, and Turkey, agreed on the following provisions:

I

It is agreed that the boundary between Persia and Turkey shall be defined as follows:

The boundary in the north shall start from boundary-mark No. XXXVII on the Turco-Russian frontier, situate close to Serdar Bulak, on the crest between Little and Great Ararat. It shall then drop southwards by way of the ridges, leaving on the Persian side the valley of Dambat, Sarnvtch, and the water system of Yarym-Kaya, which rises to the south of Mount Ayubeg. The boundary shall then leave Bulak-bashi, in Persia, and shall continue to follow the highest ridge, the southern extremity of which is situate at about $44^{\circ}22'$ longitude and $39^{\circ}28'$ latitude. Then, skirting the west side of the marsh which extends to the west of Yarym-Kaya, the boundary shall cross the Sary-Su stream, pass between the villages of Girde-baran (Turkish) and Bazyrgan (Persian), and, ascending to the ridge to the west of Bazyrgan, follow the watershed formed by the Saranlı, Zenduli, Gir-Kelime, Kanly-baba, Geduki-Khasineh, and Deveji ridges.

After Deveji, the line shall cross the valley of Egrichal at the place to be designated by the Delimitation Commission in conformity with the status quo, leaving the villages of Nado and Nifto in Persia.

The ownership of the village of Kyzyl-Kaya (Bellator) shall be established after an examination of the geographical situation of the village, the western side of the watershed in that region being allocated to Turkey, and the eastern side to Persia.

Should the final boundary line leave outside Ottoman territory a section of the road which passes close to Kyzyl-Kaya and connects the district of Bayazid with the province of Van, it is understood that the Persian Government shall give free passage over this section of the road to the Imperial Ottoman Posts and to travellers and goods, other than military troops and convoys.

The frontier shall then ascend to the ridges forming the watershed: Kyzyl-Ziaret, Sarychimere, Dumnalu, Kara-burga, the hill between the reservoirs of Ayry-chai (Persian) and of Jelli-Gol (Turkish), Avdal-dashi, Reshkan, the hill between Akhurek and Tavra Bevra-begzadan, Gevri-Mahine, Khydyr-baba, Avristan.

As regards Kotur, the Protocol of July 15, 1880, known as the Protocol of Sary-Kamiche, shall be applied in such a way that the village of Kevlik shall remain in Turkey, and the villages of Bilejik, Razi, Gharatil (Haratil), the two Jelliks, and Panamerik, shall remain in Persia.

The frontier following the Mir-Omar ridge shall ascend the mountain of Surava, and, leaving Khanyga on the Turkish side shall pass by way of the watershed formed by the pass of Borush-Khuran, the mountain of Hravil, Beleko, Shinetal, Sardul, Gulambi, Kepper, Bergabend, Peri-Khan, Iskander, Avene, and Kotul. The valley of Bajirga shall remain in Turkey, and the villages of Sartyk and Sero in Persia, and the frontier shall pass from the southern extremity of Kotur over the ridge rising to the west of the Persian village of Behik, and, following the peaks of Seri-Baydost, shall join the crest of Mount Zont.

From Mount Zont the frontier shall follow continuously the watershed between the Persian districts of Tergever, Desht, and Mergever, and the Turkish sanjak of Hakkiari -- that is to say, the crests of Shiveh-Shishali, Chil-Chovri, Chel-Berdar, Kuna-Koter, Kazi-beg, Avukh, Mai-Helneh, the mountains to the west of Binar and Delamper; then, leaving on the Persian side the basin emptying by way of Ushnu into the lake of Urumiya, including the sources of the Gadyr river known as Abi-seri-gadyr (the valley of which is situate to the south

of Delamper and to the east of Mount Girdeh), it shall reach the pass of Keleh-Shin.

To the south of Keleh-Shin the frontier shall leave on the Persian side the reservoir of Lavene, including the valley of Chumi-Geli (situate to the east of Zerdegel and to the south-west of Spi-rez), and on the Turkish side the waters of Revnaduz, and shall pass by the following peaks and passes: Siah-Kuh, Zerdegel, Boz, Barzin, Ser-shiva, Kevi-Khoja-Ibrahim. Thence the frontier shall continue to follow towards the south the main chain of Kandil, leaving on the Persian side the basins of the affluents of Kialu on the right side: the streams Purdanan Khydyrava and Talkhatan.

It is understood that the Turkish tribes which are in the habit of spending the summer in the said valleys at the Gadyr and Lavene springs shall still have the use of their pastures under the same conditions as in the past.

Having reached the summit of Seri-Kele-Kelin, the line shall pass over Zinvi-Jasusan and the pass of Bamin, and shall cross the Vezne river near the Purde-Berdan bridge. The Delimitation Commission will have to decide as to the future of the village of Shenieh, on the basis of the general principle of the status quo.

After Purde-Berdan, the frontier shall ascend over the chains of Foka-baba-kyr, Berde-spian, Berde-Abul-Fath and the pass of Kanireh. It shall then follow the watershed formed by Lagav-Ghird, Donleri, the pass of Khan-Ahmed, and the southern extremity of Tepe-Salos. The Frontier will thus pass between the villages of Kandol (Turkish) and Kesh-keshiva and Mazynava (Persian), and reach the course of the Kialu river (the Little Zab).

After joining the course of the Kialu river, the frontier shall follow it upstream, leaving the Persian side the right bank (the Alani-ajem) and on the Turkish side the left bank of that river. Kialu on the left side), the frontier shall follow the course of that river upstream, leaving on the Persian side the villages of Alot, Kivero, etc., and on the Turkish side the district of Alani-Mavont. At the south-western extremity of Mount Balu, the frontier shall leave the course of the Khileh-resh river, and, ascending over the north-west extremity of the Surkey chain, extending to the south of the Khileh-resh river, shall pass over the Surkew ridge, leaving the districts of Siwel and Shive-Kel on the Turkish side.

On reaching the astronomical point of Surkew almost at latitude $35^{\circ}49'$, the frontier shall pass in the direction of the village of Champar-aw, the future of which shall be decided by the Delimitation Commission on the basis of the accepted principle of the status quo. The line shall then ascend over the chain of mountains which form the frontier between the Persian district of Baneh and the Turkish district of Kyzyieja; Galash, Berdi-Kechel, Pusht-Hangajal, Du-bera, Parajal, and Spi-Kana, after which it shall reach the pass of Now-Khuvan. Thence, still following the watershed, the frontier shall turn southwards and then westwards, passing by way of the summits of Vul-Guza, Pushti-Shehidan, Hazar-Mal, Bali-Keder, Keleh-Malik, and Kuhl-Koce-resha, separating the Turkish district of Teretul from the Persian district of Merivan.

From there, the frontier shall follow the course of the Khalil-Abad brook downstream as far as its confluence with the Chami-Kyzylja, and then this last-named river upstream as far as the mouth of its left affluent flowing from the village of Bnava-Suta; it shall follow this Bnava-Suta brook upstream and, by way of the passes of Keli-Naveh-Sar and Keli-Piran, shall reach the pass of Surene, known, it appears, by the name of Chigan (or Chakan).

The main chain of Avroman, extending in the direction north-west-south-east, shall then form the frontier between Persia and the Ottoman district of Shehrisor. On reaching the peak of Kemadjar (south-east of Kala-Selm and north-west of Sheri-Avroman), the frontier shall continue to follow the main ridge as far as its ramification on the western side, rising to the north of the valley of Dere-Vuli, leaving the villages of Khan-Germela and Nowsud on the Persian side. For the remainder of the frontier as far as Sirvan, the Commission shall - by way of exception - delimit the ground, taking into consideration such changes as may have occurred there between the year 1848 and the year 1905.

South of Sirvan, the frontier shall begin close to the mouth of the Cham-Zimkan, shall pass by way of the Beyzel (Bezel) mountain, and shall descend to the Chami-Zerishk watercourse. Next, following the watershed between this last-named watercourse and the river which, rising in the Bend-Bemo, bears, according to the identical map, the name of Pushti-Gherav (Arkhevendu), it shall ascend to the summit of Bend-Bemo.

After following the ridge of Bamu (Bemo), the

frontier on reaching the defile of Derbendi-Dehul (Derbendi-Hur), shall follow the course of the Zengeneh (Abbasan) river as far as the point nearest to the summit of Shevaldir (astronomical point) and situated below the village of Mamyshah. It shall ascend this summit and shall next pass by way of the crests of the hills forming a watershed between the plains of Tileku and Serkaleh, then by way of the chains of Khuli-Baghan, Jebel-Ali-Beg, Bender-Chok-Chermik, Sengler, and Asengueran, as far as the point on the Tengi-Hammam defile situated opposite the northern extremity of the Karawiz mountains.

Thence the frontier shall follow the course of the river Kuretu as far as the village of that name. The future of the village of Kuretu shall be decided by the Delimitation Commission on the basis of the nationality of its inhabitants. Thence the frontier shall pass by way of the road between the villages of Kuretu and Kush-Kurrek, then along the crests of Mounts Kishka and Ak-Dag, and then leaving Kala-Sebzi, in Persia, it shall turn southwards as far as the Ottoman post of Kanibez. Thence it shall follow the course of the Elvend river upstream as far as the point a quarter of an hour's distance downstream from its confluence with the Gilan watercourse; from that point it shall continue as far as the Naft-Su, skirting the Ab-Bakhshan in accordance with the line agreed upon with the late Mahmud Shefket Pasha and shown roughly on the map annexed to the note of the Imperial Russian Embassy dated August 5, 1913, and leaving Naft-Mukataasy to Turkey. Thence, the frontier-line, following the Naft-Deressi, on reaching the point where the Kassri-Shirin road cuts that waterway, shall continue along the mountains of Varbulend, Konerigh-Keleshuvan, and Jebel-Gerebi (the extension of the Jebeli-Hamrinach in).

The Delimitation Commission shall draw up a special agreement for the distribution of the Gengir (Sumar) waters between the parties concerned.

The part of the frontier between Mendeli and the northern point of the line indicated in the declaration made in London on July 29 (Shuaib) between Hakky Pasha and Sir E. Grey not having yet been discussed in detail, the under-signed leave the establishment of that part of the frontier to the Delimitation Commission.

As regards delimitation from the region of Hawizeh as far as the sea, the frontier-line shall start from the place called Um Sheer, where the Khor-el-Duvel divides from the Khor-el-Azem. Um-Sheer is

situate east of the junction of the Khor-el-Muhaisin with the Khor-el-Azem, nine miles north-west of Bisaitin, a place situate at latitude $31^{\circ}43'29''$. From Um-Sheer, the line shall turn south-westwards as far as longitude $47^{\circ}45'$, at the southern extremity of a small lake known also by the name of Azem and situate in the Khor-el-Azem some distance north-west of Shuaib. From this point the line shall continue to the south along the marsh as far as latitude 31° , which it shall follow directly eastwards as far as a point north-east of Kushki-i-Basra, so as to leave this place in Ottoman territory. From this point the line shall go southwards as far as the Khaiian canal at a point between the Nahr-Dialji and the Nahr-Abu'l-Arabid; it shall follow the medium filum aquae of the Khaiyin canal as far as the point where the latter joins the Shatt-al-Arab, at the mouth of the Nahr-Nazailah. From this point the frontier shall follow the course of the Shatt al-Arab as far as the sea, leaving under Ottoman sovereignty the river and all the islands therein, subject to the following conditions and exceptions:

(a) The following shall belong to Persia: (1) the island of Muhalla and the two islands situate between the latter and the left bank of the Shatt al-Arab (Persian bank of Abadan); (2) the four islands between Shetait and Maawiyeh and the two islands opposite Mankuhi which are both dependencies of the island of Abadan; (3) any small islands now existing or that may be formed which are connected at low water with the island of Abadan or with Persian terra firma below Nahr Nazailah.

(b) The modern port and anchorage of Muhammara, above and below the junction of the river Karun with the Shatt al-Arab, shall remain within Persian jurisdiction in conformity with the Treaty of Erzerum; the Ottoman right of usage of this part of the river shall not, however, be affected thereby, nor shall Persian jurisdiction extend to the parts of the river outside the anchorage.

(c) No change shall be made in the existing rights, usages and customs as regards fishing on the Persian bank of the Shatt al-Arab, the word "bank" including also the lands connected with the coast at low water.

(d) Ottoman jurisdiction shall not extend over the parts of the Persian coast that may be temporarily covered by water at high tide or by other accidental causes. Persian jurisdiction, on its side, shall not be exercised over lands that may be temporarily or accidentally uncovered when the water is below the normal low-water level.

(e) The Sheik of Mohammara shall continue to enjoy in conformity with the Ottoman laws his rights of ownership in Ottoman territory.

The frontier-line established in this declaration is shown in red on the map annexed hereto.

The parts of the frontier not detailed in the above-mentioned frontier-line shall be established on the basis of the principle of the status quo, in conformity with the stipulations of Article 3 of the Treaty of Erzerum.

II

The frontier-line shall be delimited on the spot by a Delimitation Commission, consisting of commissioners of the four Governments.

Each Government shall be represented on this Commission by a commissioner and a deputy commissioner. The latter shall take the commissioner's place on the Commission in case of need.

The Delimitation Commission, in the performance of the task devolving upon it, shall comply:

- (1) With the provisions of the present Protocol;
- (2) With the Rules of Procedure of the Delimitation Commission annexed (Annex (A)) to the present Protocol.

IV

In the event of a divergence of opinion in the Commission as to the boundary-line of any part of the frontier, the Ottoman and Persian commissioners shall submit a written statement of their respective points of view within forty-eight hours to the Russian and British commissioners, who shall hold a private meeting and shall give a decision on the questions in dispute and communicate their decision to their Ottoman and Persian colleagues. This decision shall be inserted in the Minutes of the plenary meeting and shall be recognised as binding on all four Governments.

V

As soon as part of the frontier has been delimited, such part shall be regarded as finally fixed and shall not be liable to subsequent examination or revision.

VI

As the work of delimitation proceeds, the Ottoman and Persian Governments shall have the right to establish posts on the frontier.

VII

It is understood that the concession granted by the Convention of May 28, 1901 by the Government of His Imperial Majesty the Shah of Persia to William Knox D'Arcy and now being worked, in conformity with the provisions of Article 9 of the said Convention, by the Anglo-Persian Oil Company (Limited), having its registered office at Winchester House, London (the said Convention being referred to hereunder as "the Convention" in the Annex (B) to the present Protocol, shall remain in full and unrestricted force throughout the territories transferred by Persia to Turkey in virtue of the provisions of the present Protocol and of Annex (B) thereto.

VIII

The Ottoman and Persian Governments will distribute among the officials on the frontier a sufficient number of copies of the delimitation map drawn up by the Commission, together with copies of translations of the statement provided for in Article XV of the Commission's Rules of Procedure. It is understood, however, that the French text alone shall be regarded as authentic.

(signed) Louis Mallet, Etechamos-Saltaneh Mahmud,
Michel de Giers, Said Halim

Rules of Procedure of the Delimitation Commission

The four commissioners shall enjoy exactly the same rights and the same prerogatives, whatever their personal rank may be.

The commissioners shall act in rotation as Chairman at meetings of the Commission.

The same principle of perfect equality shall apply both to the relations inter se of the deputy commissioners and to the relations of the other members of the Commissions performing similar functions.

II

The original identic map communicated in 1869-70 to the Ottoman and Persian Governments shall serve as a topographical basis for the delimitation.

III

In case of sickness or for any other reason, any commissioner may be represented on the Commission by his deputy. In such cases, the deputy shall enjoy all the rights of the commissioner whom he represents.

IV

The official language of the Commission shall be French.

V

The Commission shall meet once a week, or oftener in case of need, to take note of the work of delimitation carried out on the spot.

Minutes shall be kept of every meeting. Such Minutes shall be read at the beginning of the following meeting and, after having been duly approved by the commissioners, shall be signed by them. These Minutes shall contain a detailed description of each boundary-mark and of the frontier.

The frontier line, as and when it is finally delimited, shall be marked on the identic map, which shall be initialled by each commissioner.

VI

The Commission shall make the necessary arrangements for the work of the secretariat, which shall be

responsible for the drafting of the Minutes and for any other work that the Commission may think fit to entrust to it. The members of the secretariat shall be present at the meetings of the Commission.

VII

Copies of the Minutes shall be communicated in due course by the commissioners to their respective Governments.

VIII

The nature of the boundary-marks to be set up shall be decided by the Commission; the cost of their erection shall be divided equally between the Ottoman and Persian Governments. The costs of construction shall be approximately fixed for each stage by the Commission; the sum indicated shall then be paid over, half being paid by the Ottoman and half by the Persian commissioner, and shall be expended under the supervision of the Sub-Commission provided for in Article IX. The Commission shall keep accounts with a view to the final allocation of the costs between the two Governments.

IX

As the position of the boundary-marks is finally fixed, the Commission shall appoint a Sub-Commission to supervise their erection. This Sub-Commission shall be composed of not less than two members selected either from among the commissioners or from among members of the staff. The Sub-Commission shall submit to the Commission a detailed account of its work at the earliest possible date.

This report shall be inserted in the Minutes of the Commission.

The Sub-Commission may be appointed in a permanent capacity.

X

In case of need, other special Sub-Commissions may be appointed by the Commission under the above-mentioned conditions, subject to the approval of their work by the four commissioners in plenary session.

XI

Should the commissioners consider it desirable to reinforce their personal escorts, the Ottoman or

Persian commissioner, as the case may be, shall be responsible for making the necessary representations to the local authorities.

Each commissioner, with his personal escort, shall have the right to cross the frontier without restriction.

XII

The Commission shall decide on its movements by joint agreement. Each commissioner may, however, choose the site for his own camp; on condition that he shall fall in as far as possible with the movements of the Commission.

XIII

The Commission shall have the right to adjourn the delimitation of a part of the frontier temporarily for climatic or other reasons. Decisions to this effect shall be taken by a majority vote.

XIV

As soon as possible after the final completion of the work of the Commission, copies of the map mentioned in Article II, signed by all the commissioners, shall be prepared and distributed as follows: to each of the Governments represented on the Commission, one copy; to the Turkish Embassy and to the Russian and British Ministers at Teheran, one copy each; to the Ambassadors of Great Britain, Persia and Russia at Constantinople, one copy each.

XV

When supplying the above-mentioned frontier map to the four Powers, the commissioners shall submit at the same time a statement giving a detailed description of the frontier; this description shall follow textually that of the Minutes of the Commission and shall bear the signatures of the four commissioners.

(signed) Louis Mallet
Ehtechamos-Saltaneh
Mahmud
Michel de Giers
Said Halim

BOUNDARY TREATY BETWEEN THE KINGDOM OF IRAQ AND THE
EMPIRE OF IRAN

Signed at Teheran, July 4, 1937

His Majesty the King of Iraq, of the one part,

and

His Imperial Majesty the Shainshah of Iran,
of the other part,

Sincerely desirous of strengthening the bonds of brotherly friendship and good understanding between the two States, and of settling definitively the question of the frontier between their two States, have decided to conclude the present Treaty and have to that end appointed as their Plenipotentiaries:

His Majesty the King of Iraq:

His Excellency Dr. Najj-Al-Asil, Minister for Foreign Affairs;

His Imperial Majesty the Shahinshah of Iran:

His Excellency Monsieur Enayatollah Samiy,
Minister for Foreign Affairs;

Who, having communicated their full powers, found in good and due form, have agreed as follows:

Article I

The High Contracting Parties are agreed that, subject to the amendment for which Article 2 of the Present Treaty provides, the following documents shall be deemed valid and binding, that is to say:

- (a) The Turco-Persian Delimitation Protocol signed at Constantinople, November 4th, 1913;
- (b) The Minutes of the meetings of the 1914 Frontier Delimitation Commission.

In virtue of the present Article, the frontier between the two States shall be as defined and traced by the Commission afore-said, save in so far as otherwise provided in Article 2 herein-after following.

Article 2

At the extreme point of the island of Shutait (being approximately latitude $30^{\circ}17'25''$ North, longitude $48^{\circ}19'28''$ East), the frontier shall run perpendicularly from low water mark to the thalweg of the Shatt al-Arab, and shall follow the same as far as a point opposite the present Jetty No. 1 at Abadan (being approximately latitude $30^{\circ}20'8.4''$ North, longitude $48^{\circ}16'13''$ East). From this point, it shall return to low water mark, and follow the frontier line indicated in the 1914 Minutes.

Article 3

Upon the signature of the present Treaty, the High Contracting Parties shall appoint forthwith a commission to erect frontier marks at the points determined by the commission to which Article 1, paragraph (b), of the present Treaty relates, and to erect such further marks as it shall deem desirable.

The composition of the commission and its programme of work shall be determined by special arrangement between the two High Contracting Parties.

Article 4

The provisions hereinafter following shall apply to the Shatt al-Arab from the point at which the land frontier of the two States enters the said river to the high seas:

(a) The Shatt al-Arab shall remain open on equal terms to the trading vessels of all countries. All dues levied shall be in the nature of payments for services rendered and shall be devoted exclusively to meeting in equitable manner the cost of upkeep, maintenance of navigability or improvement of the navigable channel and the approach to the Shatt al-Arab from the sea, or to expenditure incurred in the interests of navigation. The said dues shall be calculated on the basis of the official tonnage of vessels or their displacement or both.

(b) The Shatt al-Arab shall remain open for the passage of vessels of war and other vessels of the two High Contracting Parties not engaged in trade.

(c) The circumstance that the frontier in the

Shatt al-Arab sometimes follows the low water mark and sometimes the thalweg or medium filum aquae shall not in any way affect the two High Contracting Parties' right of user along the whole length of the river.

Article 5

The two High Contracting Parties, having a common interest in the navigation of the Shatt al-Arab as defined in Article 4 of the present Treaty, undertake to conclude a Convention for the maintenance and improvement of the navigable channel, and for dredging, pilotage, collection of dues, health measures, measures for preventing smuggling, and all other questions concerning navigation in the Shatt al-Arab as defined in Article 4 of the present Treaty.

Article 6

The present Treaty shall be ratified and the instruments of ratification shall be exchanged at Baghdad as soon as possible. It shall come into force as from the date of such exchange.

In faith whereof the Plenipotentiaries of the two High Contracting parties have signed the present Treaty.

Done at Tehran, in the Arabic, Persian and French languages; in case of disagreement, the French text shall prevail.

This fourth day of July, one thousand nine hundred and thirty-seven.

NAJI AL ASIL

SAMIY

PROTOCOL

At the moment of signing the Frontier Treaty between Iraq and Iran, the two High Contracting Parties are agreed as follows:

I

The geographical co-ordinates designated approximately in Article 2 of the Treaty aforesaid shall be definitively determined by a commission of experts consisting of an equal number of members appointed by

each of the High Contracting Parties.

The geographical co-ordinates thus definitively determined within the limits fixed in the Article aforesaid shall be recorded in Minutes, the which, after signature by the members of the said commission, shall form an integral part of the Frontier Treaty.
