

A historical Review of British Role in Iran-Iraqi Dispute on the Shatt-al-Arab Waterway

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Abstract: Relations between the third world countries in different parts of Asia and Africa during the 19th and 20th centuries, to a great extent, were influenced by the presence and policies of colonial powers. Thus, for a better understanding of roots of disputes and issues existing between these countries concerning frontiers, disputed Islands, political and prejudicial tensions, we need to study past history, especially the history of colonial era, including presence, interests and policies of great powers, specifically that of British. As, established colonial interests dictated, arbitral boundaries were established without any regard to the interests of nations concerned, artificial religions and creeds were founded and propagated, claims or counter claims between neighboring countries waged and supported, all of which culminated in longstanding disputes between the nations which occasionally became the source of most cruel and deadly wars. In the Middle East, because of the British entrenched interests, this policy of “divide and rule” is much more obvious. Surprisingly, the nations of this region, which are caught in such disputes, it seems are not aware of real roots of these differences and the role of the British Colonial policies in dragging on such disputes for long time. It is hoped that these two nations have learned enough lesson from the past history and futile animosity, and by better understanding of policies of “divide and rule” of some powers, threw away all historical prejudicial views and grasp to the policy of coexistence and good neighbor policy for the sake of prosperity, calmness and peace.

Keywords: Arvand Rud, Waterway, Thalweg, British, Dispute, Iran-Iraq Relations, Frontier dispute

Introduction

Based on British sources, this Article intends to clarify the issue that how the interference, presence and intrusion of Britain in the issue of the Waterway between Iran and Iraq prevented solving the dispute, and it became a source of permanent tension and some destructive wars. The British government was involved in the issue ever since 1847, when the treaty of Erzerum of May 31, 1847 was negotiated and signed between representatives of Iran and Ottoman Empire as the main parties as well as the representatives of Russia and Great

Britain. Later, during demarcation of frontiers of these two countries, which was dragged on until 1913-14, the British played a crucial role. The dispute over the Waterway flowing between Iran and Iraq called "Shatt-al-Arab"(1), was an issue involving Iran-Iraqi relations. After the First World War as a successor state, but as until 1932 the British government had a mandate over Iraq, it was the Anglo-Iranian diplomacy which served instead. The Waterway dispute indirectly intervened in general negotiations between Iran and British governments during the reign of Reza Shan and become a source of conflict and strain for Anglo-

Iranian relations. Therefore, in order to understand the British role and its implications on this long standing dispute between two neighboring countries and the reasons why they dragged so long on this issue, that was solved finally in 1975 by Algeria Accord, a brief historical review will be presented here.

Historical Background

The Shatt-al-Arab dispute may be regarded as a legacy of the Ottoman Empire which Iraq, as successor state, inherited. Ever since 1516-20 when Sultan Salim I had extended the Ottoman sovereignty to the east, the border between Iran and Ottoman Empire was the fields of wars and almost un-intermittently the Subject of dispute between the two countries. The de facto frontier, which for much of the time was no more than a military front, had oscillated between the limits so wide apart that the whole of Iraq and a large part of Kurdistan had fallen within the zone of debatable territory (2) (Longrigg, 1926:15ff., Toynbee, 1934:347-402). In late seventeenth century, however, the frontier settled down along a vague Line which partitioned Kurdistan between the parties while leaving the main part of Iraq on the Ottoman side.(3) (PRO, FO371/18970:1935)

The basis for a settlement had been finally laid down in the treaty of Erzerum of May 31, 1847. According to this treaty in return for Iran's abandonment of all claims to the city and province of Suleimanieh "the Ottoman government formally recognized the unrestricted sovereignty of the Persian government over the city and port of Muhammerah (Khorramshahr), the Island of Khizr (Abadan), the anchorage, and the land on the eastern bank- that is to say, the left bank of the waterway which were all in the possession of tribes recognized as belonging to Persia. Further, Persian Vessels had the rights to navigate freely without hindrance on the Shatt-al-Arab from the mouth of the same to the point of the contact of the frontiers of the two Parties" (League of Nations, feb.1935).

The demarcation at the boundaries, however, which was to have taken place immediately, afterwards was delayed several times by European wars and pressure of Anglo-Russian rivalry. But the main cause of delay was the controversy which developed from the outset over the validity of the treaty of Erzerum itself. Iran had refused to accept the validity of a joint Anglo-Russian explanatory note, attached to the Treaty on the demand of Ottoman government, and the Ottoman government refused to recognize the existence of the whole Treaty unless it embodied the explanatory note (Ibid.,:217-21) However, when in 1910, the question of frontier was raised afresh, it was inevitable that the Treaty of 1847 was considered as a diplomatic basis. Moreover, on the question of Shatt-al-Arab, a Modus Vivandi had been reached on both territories under question and the line along the river. As regards the line along the river, it had been tacitly agreed to be the medium filum aquea, islands on the west and east of which belong to Iran and Ottoman empire respectively as riparian powers, and as to the water itself both Parties exercised rights of police and customs supervision, not without occasional bickering, but with a fair measure of agreement (Ibid.,:227ff).

In 1912, under the pressure of the two interested rival powers, Great Britain and the Russia, a commission was formed in order to demarcate the frontier. As a result, on November 4th 1913 a four powers protocol was signed in Constantinople by the representatives of the two parties and by the Ambassadors' of Great Britain and the Russia on behalf of their respective countries in the capacity of mediating powers. This protocol defined the boundary between Iran and Ottoman Empire along the Shatt-al- Arab as follows: "from this point (the mouth of the Nahr-Nazaileh) the frontier shall follow the course of the Shatt-al-Arab as far as to the sea, leaving under Ottoman sovereignty the river and all the Islands therein, subject to the following conditions and exceptions".

These exceptions comprise Islands belonging to Iran, modern port and anchorage of Muhammerah and the maintenance of the Sheikh of Muhammerah to enjoy the ownership in Ottoman territory. This created, as well be imagined, an anomalous situation at the modern port of Abadan situated alongside the river. In virtue of the 1913 protocol, a commission consisting of representatives of Iran, Ottoman empire, Great Britain and Russia proceeded to a delimitation of the frontier on the ground. In the south, the frontier line was described as following low water level of the left bank of the waterway, departing from it only to the extent necessary to leave to Iran certain Islands and the anchorage of Muhammerah (Ibid.,235-37).

From the start, however, the validity of instruments and procedures alternatively asserted, was denied and disputed by the parties, according to their momentary conveniences. Immediately after the start of the War, the control of the Waterway was temporarily vested under military law in the hands of the British chiefs of staff on the spot, when five years later in 1919, they had delegated their powers by proclamation to the Directors of the port of Basra, subject to the administration control of civil administration of Mesopotamia (The Near East and India, 1929:202).

After the first world war, this still disputed frontier between Iran and Ottoman Empire become a frontier between Iran on the one hand and the Republic of Turkey and the kingdom of Iraq on the other hand, as a result of the break up of the Ottoman Empire into these and other successor states. This change of regime on the western side of the Iranian frontier supplied new parties to the old boundary disputes without putting an end to the disputes themselves, and Iran of Reza Shah was engaged in border controversies with both Turkey and Iraq. The dispute with Turkey was settled in 1932, but the southern section between Iran and Iraq due to British reluctance to put an end to the dispute continued to be a source of bitter Contro-

versies to our days(4) (League of Nations, Official Journal. 1935:237-39).

Here we will concern ourselves to the extent that Great Britain as a mandatory power involved in the controversy and, therefore, undergo its implications for non-solution of the dispute.

The British Role in the Controversy

Under the existing treaties, the British and Iraqi governments claimed Iraq's Sovereignty and jurisdiction over the whole waterway. Iraq, it was agreed, was the successor state of the Ottoman Empire in this quarter(Ibid: 225-27). Accordingly, the regulations drawn up for guidance of the port directors was in conformity with this related treaty, and the ultimate control of the port directorate passed on the Iraqi government, subjected first to a great degree of supervision on the part of British high commissionaire. The effect of these arrangements was that the Iranian navigable waters of the river Karun, which debouched into the Waterway just below Mohammerah, were only accessible from the Persian Gulf via the territorial waters of a foreign state. Moreover, Abadan the most important Iranian port situated along the waterway lies in Iraqi waters. Furthermore, as the control of the river was vested wholly in one of the limitrophe states, namely Iraq, the Iranian government was unable to place police or customs patrol on the waterway, i.e., to prevent smuggling.

Due to these reasons, the Iranian government showed an extreme uneasiness about the unfavorable position of Iran in delimitation arrangement of 1913-1914. The Iranian government's just contention was that the present frontier was unfair to Iran, highly illogical in principle and contrary to international rules and universal custom which put the frontier between the two states on the Thalweg line. It is not reasonable that a state should have the ownership over along bank of a river and should at the same time be deprived of sovereignty over that river. That would be contrary to the most elementary care for security of riparian states. For the Ira-

nian government it seemed inadmissible that by a strange contradiction, warships of the riparian state authorized to navigate a river freely without let or hindrance should be obliged, on the side of their national bank, to take orders, even orders confined to navigation, from the delegate on the other bank of a foreign sovereign. Therefore, on the ground of equity, the agreements were null and void. (Ibid)

The Iraqi and British governments on their parts considered the demarcation of the frontier as final and subject to no examination and revisions (Ibid). Furthermore, Iran felt that the time had changed sufficiently since the treaty of Erzerum to justify her in wishing for equal rights in the waterway with Iraq whom the British had made the inheritor of ancient Turkey privileges and who without the British aid could not maintain them. If the treaties were to be respected, means must, in the long run, be found to modify them to meet changing conditions. The Waterway, in fact was the only international river of the old world which was subject to the unilateral control. And so long as the control of the river was maintained, it was to continue to separate rather than unite, and to be a source of friction, rather than an aid to communications.

Ever since the accession of Reza Shah, the Iranian government made one of its main objectives in its relations with Iraq and Great Britain to obtain an adjustment of this unfair position in the Waterway and to have the frontier line on the Thalweg line of the river instead of the left bank of the low water. It had become an urgent matter from the point of the southern terminus of the railway, which was planned to be constructed North-South and which had to be connected at least with a port whose waters was not contested. Moreover, all ships going to the Iranian ports of Abadan and Mohammerah had to pay dues to Iraqi port of Basra; indeed due for ships represented a third of revenue of the latter port. The obligations for ships going to Iranian port of Mohammerah, pay Basra port dues, naturally, mitigated against the choice of former town as the southern terminus of the pro-

jected trans-Iranian railway. The dispute gradually became an important subject of Anglo-Iranian diplomacy as the Iranian government could not deal directly with Iraqi native government. This naturally weights the scales unduly against Iran.

Dispute become one of the causes of delay in Iran's recognition of Iraq, as the Iranian government openly expressed it would never recognize Iraq unless that state was prepared after recognition to discuss these frontier disputes in a spirit of goodwill and of the understanding of Iran's legitimate aspirations. To this end, Iranian Minister of Court, Teymourtash, chief of Iran's diplomacy, expressed frequently to the British representatives for an assurance that Iranian government could count on the good offices of the British government in inducing the Iraqi government to meet Iran half way (PRO.FO.371/13775:1928).

The British on their side acquired vested political, strategic, commercial and oil interest in the River, and preferred to preserve the waterway as it was de facto under the Iraqi's sovereignty which in turn was under the British Mandate. While the frontier was on the left bank of the river, the British enjoyed freedom of navigation in the River for vessels of all kinds, and at all times, of peace or war. Trade was the most important, but not the sole concern of the British in the waterway. More than 90% of shipping in the waterway was the British shipping. It was also the main artery for the export of Anglo-Iranian Oil Company from Abadan. Moreover, much of the carrying trade on the Basra-Baghdad run, for example, was carried by the steamers of Lynch Company, established in 1861. The company was closely linked to the British Indian steam navigation company. Security of Indo-European telegraph line was another matter; still the British clerk manned the post at Fao-terminus of the Baghdad and Bushahr lines. British bases in Basra and their strike forces to secure the oil had passed through the waterway and the British navy had to take its oil at Abadan on the River (Longrigg, 1956:33ff).

The British forces in 1920s had well established in Iraq and seemed as they would continue to have for many years to come some political control in this area. Therefore, little wonder, that Britain should keep close watch on the passage in the river, and having as official policy to take any endeavor to resist any alteration of Iraq-Iranian frontier which would bring the waterway under the political control of Iran. From the British point of view, the River was the only line of Iraq's communications with the Persian Gulf and thus any transfer of sovereignty over the river to Iran could give the means of interference in this line of communication to the Iranian hands and endanger the position of Great Britain (Documents on British Foreign policy, 1966:No.421). The strategic importance of the waterway to Great Britain clearly was underlined in Admiralty letter to Foreign Office as follows:

Although their lordships recognize that the present position of the frontier is unusual and may be regarded as an injustice to Persia, nevertheless the importance to the British Empire of the Persian oil supplies and river communication with northern Iraq is such that their lordships would prefer to maintain the present position under which the whole of the river is included in Iraq territory.... as the control by Persia of any part of the river would certainly be source of constant difficulty. This was from a military point of view essential that British existing freedom of navigation remained unimpaired, and status quo be maintained (PRO, FO. 371/13058,1928:27-8).

The British government, therefore, did not hesitate to counter the Iranian contentions. An interim report indicated that in return for recognition of Iraq by Iran and withdrawal of Iranian claims in

regard to Iranian subjects in Iraq, the Iraqi government might be induced to allow the frontier line to be moved to the center of Thalweg between Khorramshahr and Abadan, but at any rate not the whole of waterway (PRO, CAB16/93/cid.:11).

Iran, in fact, in the beginning of 1928 with a view to pursue its claim, disputed the legal validity of instruments on which the frontier was based and refused to recognize the frontier even as de facto one. It claimed that the documents related to the waterway had never been ratified by the Iranian Parliament (Majlis). Moreover, the Protocol was not any more in force and the Iranian government did not hold themselves bound by this Agreement on the ground that the new Turkish Republic officially refused to regard the Protocol as binding; since it had not been approved by the Ottoman chamber of deputies nor ratified by the Sultan, the chief of the executive at that time. Therefore, the dispute should be settled on a new basis. (FO.371/13058,1928: 3)

From this date open friction started. In April 1928, the Iranian custom launcher stopped a British ship in mid stream of the waterway, when it was approaching the Abadan Port. British emphatically protested against Iran's action. The British claimed that the Iranians had no right to interfere in any way with shipping on Iraqi side of the river, constituted the frontier line between Iran and Iraq. Thus the act of the custom launcher constituted a direct infringement of the rights of Iraq. (Ibid. FO. 371/13067:116) In reaction to the Iranian move, in the first place, the British government refused to discuss the question of the validity of the decision of the frontier commission and other legal documents. (Ibid. FO/371/12297,1927:210) The British argued that the terms of the Protocol of Nov. 1913 itself show clearly that the ratification was never intended to be required, as it provided that each part of the frontier should be considered as finally settled as soon as it was delimited (Ibid., 371/13058,1928).

Moreover the settlement had been tacitly accepted by the Iranian government, and even by the Majles itself for more than twelve years and thus its validity could not be opened to question. (Ibid. FO371/12297,1927:210) As regarded by the abrogation of the protocol by the Turks, the British government argued that Iraq succeeded to the boundary between Iran and Turkey and it was established on the date, and nothing that Turkey did or might do after that date can affect the rights of Iraq. Therefore, a joint Turk-Iranian denunciation of the treaty of Erzerum would not in any way affect the rights of Iraq as regards the boundary between Iran and Iraq(Ibid., FO371/13058, 1928:62). The British also questioned the Iranian claim to the invalidity of the protocol on the ground of equity. It was Iraq and not Iran, the British argued, that had grounds for complaint, as Iran possessed a coast line of almost two thousand Kilometers, whereas Iraq has only 70 miles with no ports; the waterway was Iraq's only access to the sea and Basra lies 100 Kilometers away from the mouth of the Persian Gulf. Therefore, it was highly undesirable for Iraq and the British view point that Iran should command this channel from one bank(Ibid).

The British government until 1928 categorically refused to be drawn into a discussion of the Iraqi-Iranian frontier, and held that this was a matter for Iran to discuss directly with Iraq after recognition. (Ibid., :23) Being aware that any satisfactory settlement of the dispute required the good offices of the British government, as part of a policy to put pressure on the British, the Iranian government withheld its recognition of Iraqi regime. However, the British could not leave the affairs where they were. A continuous friction between Iran and Iraq in regard to the waterway might any time endanger the most important interest in Iran of the Anglo-Iranian Oil Company's oilfields and general relations with Iraq.

Ever since the middle of 1928, when the negotiations between Iran and Great Britain for a general settlement of all outstanding questions started,

Teymourtash, the Minister of Court, put much emphasis on the question of the waterway and it was considered as one of the most important desiderata to be solved if any general settlement had to be reached. (Document on British Foreign Policy, 1966:No.408) During his visit to London, in his talks with the British Foreign Secretary, Sir A. Chamberlain, Teymourtash stated that he and the Iranian government felt strongly disappointed, regarding the unsatisfactory position of the waterway where the question of the delimitation of the frontier militated severely to the detriment of Iranian interests. Chamberlain while pointed out that the British government was not prepared to reconsider the decisions come to some fifteen years ago, but "so far as practical politics were at issue, they were prepared to see whether some working arrangement satisfactory to both parties might now be reached, possibly by the inclusion of the Basra port Trust of a Persian representative."⁽⁵⁾ (Ibid.,Zargar, 1994:421ff) During the negotiations for a general treaty, although the issue of the waterway was not an item integrated into general treaty, Teymourtash made it clear frequently that no general settlement could be reached without a formal promise by the British government to offer her good offices and political leverage for some form of satisfactory settlement in the waterway.

At the start of the negotiations the British government was relatively well disposed to bring about a satisfactory solution to the deadlock between Iran and Iraq. The interests of Great Britain and Iraq stood in the long term to lose more than that of Iranian interests, by bad relations between the two countries. The British government in the hope of reaching a comprehensive settlement of all outstanding questions especially the regularization of their position in the Persian Gulf and on the Persian coast saw it necessary to make some efforts to meet the desire of the minister of court in regard to what he described as Iran's impossible position in the waterway. Moreover, on economic grounds, the question required urgent consideration. The

strained relations on the waterway could effect the position of Anglo-Iranian by a gradual reduction of the port of Muhammarah in favor of Khor Musa on the shore of the Persian Gulf where ultimately became the terminus of the railway. Thus there was a probability that unless the Persian government, obtained some satisfaction in the waterway, Anglo-Persian Oil Company would be forced over, eventually, to support the new port by directing part of their business there from Abadan. This would have caused considerable loss to the APOC as well as to the Basra port authorities. (Ibid. No.421:716)

In instructions sent to Mr. Clive, the British Minister in Tehran, for the purpose of starting negotiations on a general treaty, as regards the question of Waterway, the Foreign Office proposed that in return for the recognition of Iraq by the Iranian government and the withdrawal of the Persian claim for special judicial privileges for Iranian nationals residing in Iraq, the Iraqi government might be induced to allow the frontier line on the Waterway to be moved to the center of Thalweg between Mohammerah and Abadan.

Moreover, simultaneously with this concession a Basra port trust (comparable with the Danube commission) on which both Iraq and Iran would be represented should be set up to regulate and control the traffic of the river. The alteration in the frontier and the establishment of this commission would have to be simultaneous and closely bound up one with the other. (Ibid: 694) The realization of this proposal by the Foreign Office good offices was, however, Foreign Office emphasis, conditioned to a comprehensive settlement of all outstanding questions between Iran and Great Britain on the lines proposed by Foreign Office. (Ibid)

There were, however, practical difficulties in way of any rectification of frontier. First, it was physically impossible to meet the wishes of Iran and Iraq, for the Thalweg does not follow the line of midstream but crosses from one side of the river to the other. Any alternation of the frontier, there-

fore, to the center of the Thalweg is impracticable owing to the shifting nature of the banks forming the bars and shallow parts of the river. The second difficulty on the way of a rapid solution was the Iraqi constitution which precluded cession of sovereignty over any portion of Iraqi territory except by a constitutional amendment which was a tiring procedure (Ibid. No.432:727).

Therefore, Great Britain could not give any undertaking to the Iranian government on its proposal at the start of negotiations. Facing these difficulties and the Iranian pressure, the only practical solution seemed the internationalization of the river as was done for instance in the case of Danube, with an international commission to look after it. (Ibid., No.432:727-28, FO 371/13775,1929:154-59)

In return for internationalization of the river, Iraq, Foreign Office argued, entitled to receive some quid pro quo in the form of a solid economic right. In a telegram to Clive, British Minister in Tehran, Foreign Office proposed that, in exchange the Iranian government should give an undertaking not to delay unduly linking up of the Iraqi railway system from Khanikin eastwards with future North-South Iranian railway system.

At that time colonial office attached importance with a view to ensuring that east and west traffic between Iran and the Mediteranian over the projected Haifa-Baghdad railway should not be excluded from Iran. Moreover, Foreign Office emphasized that the internationalization of the waterway could only be recommended to the Iraqi government as part of a general settlement of all outstanding questions(Ibid).

Foreign Office actually authorized Clive to approach the Iranian Minister of Court tentatively on the lines of the proposal for internationalization of the river, if he considered this would help the negotiations between the two countries make a head way, but in the last minute. But on February 11, 1929, Foreign Office telegraphed Clive to suspend action on these instructions. (Ibid. No.444:749) The reason for suspension was that further exami-

nation of the case revealed that the British government could not possibly promise Iran their good offices in securing the internationalization of the river and the establishment of an international commission, such as Danube commission. However, the real reason seems fell outside these difficulties. The British actually did not want to see any alteration of the waterway position and they only interested somehow to satisfy Iran or turn her around until the end of the mandatory period. Thus when the Minister of Court intimated that if the Anglo-Iraqi judicial agreement of 1924 would be abolished, Iran might recognize Iraqi regime, the question of finding a solution to the waterway lost its urgency.

On March 9, 1929, Foreign Office in a telegram to Clive instructed him to explain to Teymourdash the reasons which rendered impracticability of any rectification of the frontier involving a cession of territory by Iraq. But he was to give him "a categorical assurance that if Persia will forthwith recognizing Iraq and will state in detail her practical grievances arising out of the present state of the affairs and the safeguards which she requires, His Majesty's government will definitely use their good offices with Iraqi government to assist Persia to obtain satisfaction in regard to such of her desiderata as upon examination appear reasonable." (Ibid. No.449:754)

As for the method of according Iran satisfaction for legitimate grievances, Foreign Office inclined to a tripartite treaty between Iran, Iraq and Great Britain, providing possible for the establishment of a special board to control the navigation of the river, on which Iran would obtain adequate representation, or for such other measures as may prove acceptable to the parties concern. This solution seemed satisfactory to Teymourdash. (Ibid. No.450:755)

The first question for any tripartite agreement was the recognition of Iraq by Iran. After the abolition of the Anglo-Iraqi judicial agreement in March 1929, the main obstacle on the way of Iran's rec-

ognition was removed. This action eased the tension between Iran and Iraq; and immediately the Iraqi government taking advantage of the situation, in April of 1929 sent a delegation headed by Mr. Rustom begs Haidar, King Faisal personal secretary, to Tehran to participate in the third anniversary celebration of Reza Shah. It was clear that the Iraqi government hoped Iran would in return grant diplomatic recognition to Iraq. The visiting delegates were received warmly by the host and at the dinner given in the honor of Mr. Haidar, the Iranian Prime Minister, Hedayet, read the following telegram he had sent to the Iraqi government. "The sincere and friendly sentiments created between the two sovereigns have led to gratify results, and as the abrogation of Iraqi judicial regime which has ever been the earnest desire of the Persian, is soon to be accompanied, it is no longer any obstacle to the establishment of official relations based on that friendship. In view of this, Iran to day recognizes Iraq, in the hope that their relations will be founded on the strong bases of true friendship and common interests and that all pending questions will be settled satisfactorily with all good will (The Times of London, April 26,1929:15)

The recognition of Iraq was the first step for any tripartite solution to the waterway question, as Iraq must inevitably be a party to any negotiations. The British Foreign Office and India Office wished that all treaties concerning the waterway should be signed by the Iraqi government itself, instead of British on her behalf. (Document on British Foreign Policy, 1966:771) The new British plan, which was maintained as the only solution until 1937 when the issue temporarily was resolved, consisted of a conservancy board composed of a representative of Iran, Iraq and Great Britain to control the waterway between the sea and the spot up-stream where the Iranian frontier leaves the river. The control of this part of the waterway would be entirely separated from the administration of the actual port of the Basra and from the port administration of Muhammarah and Abadan.(Ibid.,

No.448:753-54) It was hoped by the Foreign Office that by the adaptation of some such system and an arrangement designed to secure the removal of Iranian grievances arising out of the anomalous position at Abadan, to render the precise position of the border a matter of practical indifference to Iran and it was probable that some satisfactory arrangement could be made regarding the second Iranian grievance, i.e., the prevention of smuggling. (Ibid: 754) The most important feature of this solution was the benefit for Great Britain whose position in the waterway could be regularized. Teymourtash in his letter of 20th august, 1929 requested the inclusion of waterway into a global negotiation in order to obtain the British favor in this matter. Teymourtash wanted in the context of general negotiations to obtain a reasonable arrangement, agreeable to the Iranian government. (Ibid. No.476:801)

In April 1932, Mr. F. Humphrys the high Commissioner for Iraq visited Tehran, and discussed the matter with the Shah and other Iranian authorities. He explained the tripartite convention with the participation of the British. Iran and Iraq, in a conservancy board scheme as the only practical alternation. During these conversations, in order to make the scheme of a tripartite convention, attractive to Iranian authorities, Humpherys said that the convention might assure to Iran equal partnership with Iraq and Great Britain as regards the control of the navigation over the river for a period, as long as 50 years. Therefore, the convention would give Iran in practice all the advantages which she could reasonably expect to obtain (PRO, FO371/16061,1932:10-110). The Iranian authorities, however, insisted on their claim to a half share of sovereignty over the wanted Thalweg as the only solution and demanded the support of Britain in order to realize their desire. (Ibid) Despite the Iranian opposition, a draft tripartite conservancy board convention was elaborated in London with a view of setting up and joint control of the waterway. Iran and Iraq were to be equally represented

on the board which was to include a British member.

In this document, Great Britain was on precisely the same footing as the other two signatures in the legal matters related to the convention and had the same power in the board. The primary duty of the board was the maintenance and the control of the waterway, as a navigable river adequate to the needs of shipping. As regards the waters to be brought under the control of the conservancy board, included the whole of the waterway, including the seaward approaches, from the open sea to the point above the junction of the waterway with karun. Moreover, the last few miles of the Karun included some parts of other Iranian river Bahman-shir. Furthermore, the waterway should be opened to shipping of all nations with the equal treatment by the board of all shipping using the waterway, especially in the matter of dues.

The Iranian government objected to such tripartite conservancy convention on two grounds: a) the fact that it was a tripartite and included Great Britain, which was a non-riparian state, b) the fact that the convention included the Karun and Bahman-shir, and the Iranian government was absolutely averse to the inclusion of this river into an international convention. Meanwhile Teymourtash, the chief Iranian negotiator one of whose main objective was to settle the waterway dispute, was eliminated from Iran's political scene, and by his disappearance the chance of a settlement became much remoter.

Meanwhile, in late 1932, the British mandatory regime in Iraq was terminated through the act of the admission of Iraq to membership of the League of Nations. However, the Mandatory position of Great Britain was substituted by the Anglo-Iraqi treaty of Alliance of 30th June 1930, which came into force in the close of 1932. Britain maintained military forces in Iraq to assist the protection of British communication system and facilitate the discharge of the obligations, namely to help Iraq if

it was attacked, undertaken by Britain under Article 44th of the treaty (Toynbee, 1930:317ff).

By the formation of Iranian Navy into the Persian Gulf, the Iranian government proceeded to assert its claim on the spot, by act and deed, and the incidents in the river between Iran and Iraq began to occur frequently. The Iranian government treated the waterway as being under joint Iran and Iraq sovereignty and having equal rights with Iraqi government. This attitude gave rise, on various occasions, to the Iraqi protests and complaint against the violation of its sovereignty by the Iranian government. This kind of complaint was generally met with reply that the incidents complained of, had occurred in the Iranian waters of the waterway.

In November 1932, the Iranian sloops and four gunboats entered the waterway and proceeded upstream to Muhammareh. In the course of an informal interview on March 19th, 1933, the Iranian senior naval officer stated to the port director that Iran does not recognize the sovereignty of Iraq over the whole of the waterway or the Basra port administration, and therefore, he could not comply with the rules.(6) (League of Nations, Council and member states, 1934:12)

In July 1933, even the Iranian Navy arrested the Harbor master of the port of Basra, Captain Macleod, who had warned the Iranian vessel Plang, and was sent to Mohammarah. In reply to the Iraqi protest, the Iranian government answered that the harbor of Abadan belonged to the Iranian territory; the appointment of a harbor master by the Iraqi government was, therefore, contrary to the international decision and practice (Ibid., Vol.280,1933:327).

The Case in the League of Nations

The dispute was not resolved in a direct agreement until it had culminated in an appeal by the Iraqi government to the League of Nations. This appeal took the form of a request under article 11, Para II of the Covenant which was presented in a letter of 29th 1934 to the Secretary General of the

League. In its appeal, the Iraqi government complained that the law was on the side of Iraq but that nevertheless the Iranian government had been perpetually committing acts of aggression, while at the same time rejecting Iraqi proposals for peaceful settlement by direct dealing between the two parties. (League of Nations, Official Journal, Vol.XVI, 1935:208) On December 23, the Iranian government approved the submission of the dispute, through their memorandum and oral expose.

In the League of Nations at Geneva, both tried to prove their points of view. The Iraqi government relied on several diplomatic instruments. The treaty of Erzerum, Protocol of 1913-14 and delimitation procedure, between Iran and Ottoman Empire, as sufficiently valid basis for that Iraqi government as the inherited country to exercise sovereignty De facto over the whole of the water of the waterway. On the other hand, the Iranian government did their best to repudiate the base of legality on which the Iraqi government based their case. The Iranian government argued that the treaty of Erzerum of 1847, the Constantinople Protocol of 1913 and consequently the delimitation attached by the delimitation commission of 1914 had no force either in law or in equity to determine the frontier. These claims were substantiated by the following arguments:

1. The Invalidity of the treaty of Erzerum

The Iranian government argued that according to Article 9 of the treaty of Erzerum the two parties agreed that when the text of the treaty is exchanged "they will accept and sign the same, and that the ratification thereof shall be exchanged within the space of two months, or earlier." After the acceptance of the treaty a joint Anglo-Russian explanatory note, given on the demand of the Ottoman government, was attached to the treaty (Ibid:231-32). The Ottoman Minister for foreign affairs in his reply to the powers made it a condition of his acceptance. "...on the understanding that the court of Persia will accept the assurances which have

been given by the representatives of the two mediating powers to the effect that it will raise no claim going counter to those assurances, and on further understanding that, in the event of any such claim being raised, the treaty will be deemed to null and void.”

The Iranian representative who had the instruction to exchange the ratification of the original treaty, on the insistence of the Ottoman government, included the explanatory note in his ratification, without communicating it to the Iranian government for acceptance. This act of Iranian representative, the Iranian government argued, exceeded his instruction. The treaty which was to be accepted, signed and ratified was in fact ratified without having been accepted. Since the acceptance of the explanatory note was the essential condition of the establishment of the contract, which would otherwise be “null and void” according to the Ottoman declaration, the treaty of Erzerum, on which the Iraqi government based its claim, was as stated in Ottoman note “null and void.” (Ibid., :217-18)

2. The invalidity of the Constantinople Protocol of 1913

The Iranian government claimed that the Protocol of 1913 had been forced over Iran by the two imperialist powers, Great Britain and Russia. These two powers were engaged at that time in dividing their spheres of influence in the Middle East and it was necessary for them to define the limits of their respective spheres, and that involved prevailing upon Iran and Ottoman Empire to fix boundary between them. They accordingly persuaded those states to come to a direct agreement upon a new procedure. The Iranian government argued that Iran and Ottoman Empire had agreed in December 21st 1911, on a Protocol in Tehran, on the formation of a commission consisting of equal number of delegations of their party aimed at establishing the boundary line between the two states: first the general fixing of a comprehensive

line, and secondly the fixing of that line on the ground. Commissioners responsible for the first stage were enjoining to act in a spirit of sincere impartiality on the basis of the clauses of the so-called the treaty of Erzerum spirit of sincere impartiality on the basis of the clauses of the so-called the treaty of Erzerum, the Article 4 of the Protocol provided for resort to arbitration at the Hague in order that the whole of question should be finally settled.

But in spite of the stipulations of protocol, four powers’ negotiations began which singularly overstepped the stipulations of the protocol of 21st 1911.” It was no longer” the Iranian government argued “ the Hague court of arbitration which in a spirit of sincere impartiality was to deal with the difficulties; it was direct negotiations by the mediating powers, either among themselves or with both or even one of the other two nations, which were to settle the differences arbitrarily....the mediating powers being anxious each to delimit its own sphere of influence to its own advantage, tended increasingly to act independent of the mediation procedure.”

The two powers after being direct parties to the negotiations, remained direct parties to the conclusion, and in this way arranged for a detailed delimitation without other purposes than to satisfy Russia’s interests in the north at the expense of Turkey, and Great Britain’s interests to the South at the expense of Iran. It would therefore be incorrect to represent the Protocol of 1913 as a simple technical application of an alleged agreement, the agreement Erzerum. Moreover, the new line of demarcation differs considerably from what had been said in the treaty of Erzerum, and both on the river and on the land, 1913-1914 line affected a considerable shifting on the territorial position.(Ibid.)

3. This shifting of territorial position

raised another legal point. According to the constitutional law any change of territorial position

needed the approval of the Majlis. But the Constantinople protocol was not approved by the Majlis, hence the condition essential for its validity, not only under municipal law, but also on the basis of the same law, is lacking under the constitutional law. The same condition was required by the Ottoman constitution and it was not fulfilled.

4. Regarding delimitations of the frontier on the ground, it should be mentioned that not only it was based on an entirely invalid protocol forced in fact upon the two parties, but also the delimitation was not carried out by the Ottoman Empire in practice. Where the frontier was to disadvantages of the Ottoman Empire its representative did not take part in the procedure, also, even the Turkish government refused to evacuate and hand over to Iran numerous localities which had to be detached from the Ottoman Empire. "... It is one of the highest principles of equity and logic which the parties cannot disregard in virtue of any valid convention, that the tracing of a frontier line forms a single and essentially indivisible operation. If the Protocol which fixes the frontier is disregarded, owing to the failure of one of the contracting parties to observe it, in respect of a certain part of the line it must also be disregarded in respect of the other parts. Thus the protocol and delimitation procedure should deliberately be rejected. (Ibid)

5. Finally, the Iranian government, in the support of its claim to the invalidity of the defined borders, argued that the same argument was adopted by the new Turkish Republic. The latter declared officially that : "The Protocol of 1913 cannot be regarded as a valid political instrument, since it has not been given the form indispensable for its validity- that is to say it was neither approved by the Ottoman Chamber of deputies nor ratified by Sultan, the Chief of executive of the Time" (Ibid.)

Because of these reasons the Iranian government did not recognize the validity of the title on which the Iraqi government thought it could rely for the

alignment of the frontier. After leaving by the League Council of the Iraqi and Iranian case on 14th and 15th Jan. 1935, respectively, Mr. Eden of Britain, Livinov of Soviet Union and Rustu Aras of Turkey made declarations of their governments' neutrality in the present dispute, in view of the fact that they had been parties to the diplomatic instruments which were disputed by Iran and Iraq.

The arguments of the two governments were so opposed to each other that it soon became evident that there would be little progress at Geneva. The League appointed a reporter, Baron Aloisi, the Italian representative, to try to reconcile the points of view of the two governments. Aloisi first suggested that the waterway be internationalized, but was unacceptable to either government as well as Great Britain. Aloisi then suggested direct negotiations between the two parties, which were accepted by them, and negotiations started in Tehran, to work out a practical settlement. On 25th sep. 1935, the two governments requested through Aloisi, that the case be removed from the Agenda of the forthcoming session of the Council. (Ibid.,1935: No.11, 1204-5) In Jan. 1936, however, the case was removed at the request of Iraq, from a forthcoming meeting and this act was repeated in sep. and again in May 1937 when the whole of the subject was withdrawn.

The negotiations, however, dragged on for two years mainly because of the British intrusion. The British government preferred a comprehensive frontier settlement which would include a tripartite conservancy board convention, and they insisted on being a party to the negotiations, a signatory to the relative agreement; and having executive place on a tripartite board (PRO, FO371/20045, E4359/10/34, 1936).

The vast British shipping in the waterway made the matter one of direct economic interests to the U.K. Moreover, the alliance with Iraq added to British strategic and political interests in the waterway. Because of these two reasons the British government desired to get a foot point in the river

and get a share in the control of the locality which was a great importance to it. The British, therefore, did not welcome bilateral agreement between Iran and Iraq and put the Iraqi government under pressure not to enter into an agreement on equal terms with Iran. As at that time the Iranian government as well as the British was very keen to enter into a regional negotiation to form a multilateral pact between Iran, Turkey, Iraq and Afghanistan, at the insistence and good offices of the British government, but an agreement was signed on 4th July 1937 between Iran and Iraq. According to this Agreement it was agreed that Thalweg line will be the frontier between the two countries for eight Kilometers in the front of ports of Abadan and Khorramshahr, and the remaining of water way remained under the Iraqi sovereignty. However, this agreement which was signed under the British pressure and intrusion could never solve the matter of waterway between the two countries and after the Second World War until 1975, the date of Algeria agreement was the main source of friction and tension between the two parties concerned.

Conclusion

Ever since the presence of Great Britain in the Middle Eastern regions for the sake of preserving India's security, British main colonial prize, from the outside threats, the control of sea and land routes to India was one of the main concerns of British government. For this end, the British government took an active role in determination and any changes of frontiers between the nations of adjacent regions as well, that could be detrimental to the British interests. The Anglo-Russian rivalry in the regions adjacent to India rendered the British role in the establishment of frontiers much more sensitive and important, as any unfavorable change or demarcation of frontiers could result in spread of influence of the rival power in that region detrimental to British interests.

Therefore, the British played an active role in determining the frontier lines between Iran and Rus-

sia after Turkamanchaie defeat and later on between Iran and Afghanistan as well as between Iran and India itself, all by separating important parts of Iranian territories.

During the negotiations between Iran and Ottoman Empire in 1845-47, British and Russian representatives, as two rival powers pursuing their own interests, participated in the negotiations, and as a party to the dispute tried to influence the outcome, that is to say, the British supported the Ottoman's arguments and the Russian supported the Iranian side. Later on, by submitting a partial comment on the treaty provisions in favor of the Ottoman Empire, the treaty itself became a source of dispute between the two parties.

By the beginning of the twentieth century, the British commercial, strategic and oil interests in Iran and the whole region became more imminent. The presence of Anglo-Iranian oil Company in Southern Iran and the Waterway communication to the Northern Iraq became so important that the British preferred to maintain the Iraqi claim under which the whole of the river was included in Iraqi territory. During the World War I and the British mandate period over Iraq, from the military point of view, it was essential that the British freedom of navigation to be remained unimpaired and status quo be maintained.

Therefore, because of British intrusion in negotiations between Iran-Iraq on the dispute, no just and equitable solution could arrive at, and all efforts were failed, and tension and dispute were entrenched between two nations. Although the dispute finally, after years of strife on the subject was resolved through Algeria accord, past mischievous British policy and the resulted prejudices had lasting implications on Iran-Iraq relations that occasionally erupted into a bitter tensions and conflicts.

Footnotes

1. In Iranian literatures the waterway is called Arvand rud while in Iraq and historical documents it is called Shatt-al-Arab. The

waterway, the confluent of Tigris, Euphrates and Karun Rivers is both Iranian and Iraqi territories. The survival of old channels and presence of alluvial mud flats and marches meant that main route passed well inland and sizable towns were situated well up the river. Basrah the principal port of Iraq lies 70 miles up from entrance, extended along the Banks some 50 miles up stream on the Iranian side lays Khorran-shahr. For the geographical position see: George, B. Cressey, "The Shatt-al-Arab, Middle east Journal", Fall of 1958:448-60., Great Britain, Admiralty, Naval Intelligence Division, Geographical Section, Hand book of Arabia(1), General, London, 1920., U.S. Hydrographic Office, Persian Gulf Pilot, comprising the Persian Gulf, the Gulf of Oman, and the Makran Coast, Washington, 1920, :277-287.

2. For a detailed description of historical background see: Arnold J. Toynbee, A Study of History, Vol.1, London, milford, 1934:347-402; S.H.Longrigg, Four Centuries of Modern Iraq, Oxford, Clarendon Press, 1926; Majid Khadduri, Independence of Iraq, New York, oxford University Press, 1951:240ff.
3. A historical Memorandum on the frontier between Iran and Turkey and Iraq and Iran: 1639-1934, Public Record Office (PRO), Foreign Office (F.O.) 371/18970 E171/32/34, 1935.

It should be noted that the authority of both Iran and Ottoman Empire over the land which they respectively claimed at the head of the Persian Gulf neither was secure during the whole 18th and 19th centuries nor were geographically stable in condition. For instance Karun River which entered the Persian Gulf via khor musa far

in the East side of the waterway, changed its bed in 1766, and carved a new channel for itself towards marred and joined Bah-manshir and then Shatt-al-Arab. It was as a result of their Geographical change that the village of Muhammarah (Khorranshahr) began to assume commercial importance and to rival Basra as an emporium of trade. In the beginning of 19th century due to changed circumstances a diplomatic tug of war was started after the plunder of Mohammarah by Turks. Iran claimed indemnity of up to one million sterling and Turks claimed Mohammarah and Island of Abadan. As tension was high and danger of war seemed inevitable, Great Britain and Russia offered mediation and it was reluctantly accepted. See; The Near East and India, London, August 22, 1929:22

4. The Turk-Iranian Treaty of 23rd Jan., 1932 was arrived at by an exchange of territories in which Iran ceded to Turkey, in return for the receipt of the equivalent parcels of Turkish Territory in other sectors. For the text of the treaty see; League of Nations, Official Journal. 1935:237-239
5. British Documents on Foreign Policy, Vol.VII, Series IA, Document No. 408, For detail of these negotiations between Iran and British government see: Zargar, Ali Asghar, Anglo-Iranian relations during the reign of Reza Shah: 1925-1941, Tehran, Moin, 1994, Chap. 4:421, on Tay-mourdash conversation with Clive on the issue.
6. For details of this and other incidents which are communicated to the League of Nations by the Iraqi government in 1934, see: League of Nations, Council and mem-

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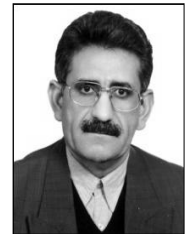
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