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Problems and Drawing Mechanisms of Iraq's Baseline

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Abstract:

Iraq is an important oil country, but it complains from its narrow sea front. It occurs at the end of the Persian Gulf. Iraq has two neighboring countries on the Gulf, Iran and Kuwait. Iran who has very long sea front, have seaports that are very close to the Iraqi borders so they make pressure on the Iraqi seaports as they make the sea paths narrower. The Iranian rivers, which pour water and mud in the gulf near the Iraqi borders, make the sea shallower and add to what is caused by Shatt Al-Arab River. Kuwait which has long sea front too, has its islands Warbah and Bobian which occur at the entrance of the Iraqi sea front, lead to blockage of this already narrow path. Therefore, we found it useful to draw the Iraq's baseline in order to decrease the harm that is inflicted on Iraq.

1. Introduction

It is well-known that Iraq is an important oil country in the Middle East. However, Iraq's location in the north east of the Arab Homeland, south west of Asia, and north of the Persian Gulf between Iran and Kuwait, has caused damage to Iraq and its sea front. Furthermore, Iraq's maritime outlet and its coast length cannot be determined accurately because Iraq's baseline, the corner stone in drawing maritime boundaries, has not been identified yet. No maritime boundaries can be drawn without such baseline.

Iraq's coast runs from Shatt Al-Arab estuary to the edge of the coast opposing the point where Khor Abdullah and Khor Al-Zubair meet. It consists of three parts: coast facing Kuwait that runs with a narrow channel: Khor Abdullah and has two ends, the first at Um Qasr and the second at Khor Al-Zubair; a coast adjacent to Iran, which is Shatt Al-Arab Estuary; and finally, a coast facing the open sea with two large oil harbours: Al-Amya and Al-Basrah, and five oil-pumping rigs. Iraq has five khors: Al-Zubair, Abdullah, Al-Khafka, Al-Amya, and Shaitana.

Despite the significance of this maritime outlet for Iraq, it has been neglected for decades, as consecutive Iraqi governments have failed to determine an appropriate mechanism for setting Iraq's baseline in an appropriate manner that would decrease, in way or another, the geographical damage Iraq is suffering for a variety of reasons, which are discussed in this research. Such reasons can be summarized as follows:

- Scarcity of legislations;
- Political instability and wars Iraq has been involved in;
- Inefficiency, poor performance and recommendations of committees formed to draw the baseline

Thereupon, the research plan is divided into two chapters.

- Chapter one: Problems of Iraqi Baseline
- Section one: Iraqi Baseline in National Legislation
- Section two: Kuwaiti Baseline in National Legislation
- Section three: Iranian Baseline in National Legislation
- Chapter Two: Stages and Mechanisms of Iraqi Baseline Demarcation
- Section one: Problems of Iraqi Baseline
- Section two: Attempts to Draw Iraqi Baseline
- Section Three: Mechanisms for Drawing Iraqi Baseline

2. Chapter One: Iraqi Baseline and Its Problems

2.1. Section one: Iraqi Baseline in National Legislation

Any talk about the Iraqi baseline will require us to go back to the establishment of the modern Iraqi state, the monarchy period. At the time, there was no Iraqi legislation to regulate Iraqi territorial sea. The Iraqi Government only issued a formal statement on 27/11/1957. Although it referred to territorial waters and declared Iraq's ownership of the wealth at sea bottom and beneath sea bottom, the statement did not identify Iraq's territorial waters and only asserted national possession of fortunes in the continental shelf⁽¹⁾.

On 10/04/1958, another statement was issued by the Iraqi Government, in which it asserted its previous one, emphasizing pure entitlement of Iraqi State to its territorial waters and the skies above. The statement further confirmed that Iraq had adhered to relevant international rules and the equal dimensions principle and objected to any declaration or legislation promulgated by a neighboring country that conflicted with such statement, a sign that Iraq wanted to ensure an outlet for itself to the high sea⁽²⁾.

On 04/11/1958 of the same year, the Republican Decree No. 435 was issued to assert Iraq's sovereignty over its territorial sea. It set, for the first time, the width of territorial sea at twelve nautical miles⁽³⁾. This was followed by the first law to identify territorial waters in Iraq: Law No. 71 for 1958. The law, which contained only six articles, confirmed Iraq's sovereignty over its territorial sea, which ran for twelve nautical miles from the baseline. In addition, the law dealt with the problem of territorial waters adjacent or opposite to Iraqi waters, recommending a solution in accordance with rules of international law and by agreement with related countries. The notable thing about this law is that it stated that the baseline started from the lowest water line that is according to general rules.

2.2. Section Two: Kuwaiti Baseline and National Legislation

Kuwait paid attention early on to issuing legislations concerning its territorial sea, with the first statement in this regard coming in 1949. It asserted its control over its continental shelf. By that statement, Kuwait declared it was not a party to the 1958 Convention on Continental Shelf but it adopted the midline to draw its boundaries with its Persian Gulf neighbours, and that it had sovereignty over its continental shelf⁽⁴⁾, something it further explained in its 1971 Decree, in which it adopted the midline also. The last law of such kind – No. 317 for 2014 – was the most precise and clear of all.

The 2014 Law provided for the use of the baseline that suited the nature of Kuwaiti coast and complied to international rules and existing national legislations. The law implemented the extraordinary baseline in three cases: the existence of a Kuwaiti island or protrusion, a bay, or a port. This law superseded the 1967 Decree⁽⁵⁾.

Article 4 of the Law identified territorial sea boundaries, stating that Kuwaiti territorial sea width was determined by Kuwait baseline and in case such line is interfering with the territorial sea of another country with which Kuwait has no maritime boundaries agreement, the midline would be the external boundary of Kuwait's territorial sea. The same legislation regulated the adjacent area issue and the economic area totally controlled by Kuwait. This is indicative of the great deal of attention given by Kuwaiti government and legislative body to laws regulating Kuwait's territorial waters and establishing its rights over other parts of the sea in accordance with United Nations' Convention on the Law of the Sea 1982 – an important thing that Iraq has never done⁽⁶⁾.

2.3. Section Three: Iranian Baseline and National Legislation

The first Iranian legislation was issued in 1955 to state and establish Iran's rights in the Persian Gulf Continental Shelf. Iran, however, adopted only the standard of justice in drawing boundaries within the continental shelf with other countries. This shows us that Iran has endeavored, since the beginning, to pass a law regulating this matter. Thereafter, the Iranian Continental Shelf Law for 1959 was issued. From the beginning, Iran tried to identify its borders with neighbouring and countries and those opposing its coasts on the basis of the midline, where points have the same distance from each other. At the same time, all Iranian islands within 12 miles in the Gulf, even the furthest in the Archipel, were deemed one island. This wasn't the only legislation on Iran's baseline. In 1973, the Decree No. 2/250-67, known as the 'Baseline of Territorial Waters and the Area Near Iran', was issued, whereby Iran adopted the straight line method to draw a 21-point baseline in the coast⁽⁷⁾.

This was followed by the Act on the Marine Areas of the Islamic Republic of Iran in the Persian Gulf and the Oman Sea, which consisted of three parts, the first of which dealt with the territorial sea and included 11 articles. This part described the Iranian baseline accurately and in length. Iran, in turn, asserted the midline for the pure economic area unless agreed otherwise, while affirming that the baseline for its territorial sea was the one identified in the Decree No. 2/250-76 for 1973⁽⁸⁾.

3. Chapter Two: Stages and Mechanism for Drawing the Iraqi Baseline

3.1. Section One: Problems of Iraqi Sea Outlet

When discussing Iraq's sea outlet –short geographically, forgotten economically and scarce in population – we must talk about two neighbours which have shared Iraq its history but not its geography and economy.

Let's start with Kuwait, Iraq's neighbor whose Bubiyan Island lies in Khor Abdullah near the place where Shatt Al-Arab flows into the Persian Gulf. The Island's north-west tip at longitude 48 east crosses the latitude 30 north, and is low, vast area of 36 and 12 miles in length and width respectively, and located east from Kuwait's island of Failaka (also known as Ras Al-Barsha), a dead island that once was the center.

The other island is Warya, located at the entrance of Iraqi territorial waters, which makes it an impediment for navigation in the Iraqi territorial sea. Kuwait not only damages Iraq geographically but legally as well. Warya is located south of Khor Al-Ubaya and Khor Abdullah section that lies between Shatt Al-Arab Estuary and Warya Island consists of very low aggradational deposits and in other sections of mud covered by weeds and herbs. Such areas are considered extensions of Shatt Al-Arab⁽¹⁰⁾.

Since the British political settlement known as Uqair Convention or Uqair Protocol 1922 till now – after UN Security Council Resolutions 687 for 1991, 773 for 1992, 833 for 1993 have been passed – Kuwait has never attempted to help Iraq limit the geographical damage it causes. Thus, the dispute between the two countries continued, with Iraq believing that having control over those two islands would widely open the Gulf for it, whereas Kuwait thinks that it is a part of the Kuwaiti region and cannot be waived even for a return despite that with the wide outlet she has, Kuwait won't be damaged by that.

Let's go now to the other neighbour, Iran. Just like Warya and Bubiyan Islands have been a source of dispute between Iraq and Kuwait, Shatt Al-Arab has long been a cause of conflict between Iraq and Iran. According to First and Second Treaties of Arzarum, Shatt Al-Arab is wholly owned by Iraq, which means that the borders line with Iran runs on the other bank of Shatt Al-Arab and that the baseline for measuring the territorial sea is a straight line drawn alongside Shatt Al-Arab estuary in the Gulf. Such line has regressed however. Having demanded modification of Shatt Al-Arab border line before Al-Muhamara Port and alongside the border line, Iran reached its goal through the 1975 Agreement which considered the Talweg line as the border line in Shatt Al-Arab, deeply damaging Iraq's maritime borders, and eventually leading to costly, prolonged armed conflict.

3.2. Subsection Two: Attempts to Draw Iraqi Baseline

Iraqi governments' Interest in drawing a baseline for Iraq started with the discovery of oil sources and when parallel attempts were undertaken by some Gulf countries. In 1958 some maritime borders drawings and baselines appeared when the Norwegian Hydrographer Kosheron prepared a map showing Iraq's baseline. The map was originally made for the Iraqi Ministry of Oil with the purpose of establishing ports but the plan was axed because of the internal political situation and the fall of the Monarchy.

Interest was reignited in 2001 when a committee of experts was impanelled to set Iraq's baseline, but it didn't successfully perform the task assigned to it due to several political and technical reasons. Few years later, another inter-ministerial committee was formed by the Divan Order No. 47 for 2006, with the Ministry of Foreign Affairs as chair and Interior, Oil, Water Resources, Higher Education Ministries as members. The committee seat was Basrah University's Sea Sciences Center. A contract was entered with the said Center to conduct hydrographic surveys to draw Iraq's baseline. The Center did identify the baseline coordinates in accordance with the United Nations' Convention on the Law of the Sea.

The project was sent to the Council of Ministers by the Ministry of Foreign Affairs so that the Table No.2 would be adopted as a baseline for the Iraqi territorial sea and thereafter sent to the United Nations Secretariat to be incorporated into the UN documents on the Law of the Sea and to become a basis for negotiations with Iraq's neighbours aiming at defining Iraq's maritime spaces. On Mar 31, 2011, the United Nations Secretariat was informed through a letter sent by the Iraqi Foreign Minister and published in the Baseline Global Atlas.

3.3. Section Three: Mechanisms of Drawing Iraq's Baseline

A number of mechanisms have been used to draw Iraq's baseline, especially that it is a geographically-damaged country, in order to alleviate the injustice affecting it. Those mechanisms are as follows:

- Drawing Iraq's baseline as a straight baseline as such practice would secure more benefits for Iraq. A list of the baseline coordinates was made in the geographical and quadratic systems using the international system WGS84. 101 points were identified. Thus, Iraq would be able to benefit from the prominent points on the coast, especially for its port facilities like Basrah and Al-Amya ports. The glossary used in the United Nations' Convention on the Law of the Sea defines "port facilities" as "permanent man-made structures built along the coast with form an integral part of the harbor system like jetties, moles, quays or other port facilities, coast terminals, wharves, breakwaters, seawalls, etc."⁽¹¹⁾. Therefore, such facilities can be used as part of the baseline to define Iraq's maritime boundaries.
- Adopting (7) points instead of the (101) identified in 2007, then being limited to the (6) points given in the baseline maps for the years 2007 and 2012. It should be noted that those 6 points will add to Iraq a new land with an area of 53,3 km² in the Iraqi baseline, and consequently add the same area to Iraq's territorial sea.

4. Conclusion

From what is mentioned above, it can be found that for a country like Iraq it is necessary to draw a map for its baseline, as the latter is the main base for determining maritime boundaries. Such map should be drawn in accordance with

provisions of the United Nations' Convention on the Law of the Sea 1982. Furthermore, in order to preserve Iraq's maritime rights, certain main points should be adopted as the starting point for drawing Iraq's baseline map; Iraqi legislations tackling the baseline matter should be issued; Iraq's coast should be developed after a study on the coast topography and another one on water hydrology and tide are conducted; a thorough search for islands, no matter how small they are, and however short the period of its emergence after the tide ebbs (even if it is one hour) is, should be carried out.

It is further necessary to have in place procedures for observing changed occurring in Shatt Al-Arab Estuary by comparing maps before and after change. The Iraqi Ministry of Foreign Affairs should prepare maps for maritime boundaries in cooperation with its neighbours Iran and Kuwait, observing the baselines of those two countries. The geographical damage suffered by Iraq should be identified and used an element of negotiation with neighbouring states. The specific damage caused by constructing Mubarak Port in Khor Abdullah and Talug line movement in Shatt Al-Arab should be discussed in order to reach mutual solutions and avoid impending or probable conflicts in this vital area of the world.

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