

*From Cession to Conquest: A Brief Case Study of  
Al-Ahwaz and Self-Determination*

Aaron Eitan Meyer, Esq.

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Much of modern international law has arisen from the lessons of World War II, with a corresponding emphasis on preventing wars of aggression, as well as declarations relating to human rights, which has in turn led to selective interpretations of the doctrine of *uti possidetis* as applied to certain formerly colonized peoples.

This brief study will therefore eschew as inapposite resolutions<sup>1</sup> limited to territories held “in Trust and Non-Self-Governing Territories or all other territories which have not yet attained independence”,<sup>2</sup> which was in turn more clearly limited so as to not apply to “the territorial integrity or political unity of sovereign and independent States”<sup>3</sup>. Indeed, the inutility of applying developing international ‘law’ to cases that fall outside the popularized – and typically politicized – few instances is not merely due to the fact that “the great powers’ rule dictates results of self-determination quests”<sup>4</sup> but more broadly because the “fundamental difficulty of subjecting states to the rule of law is the fact that states possess power.”<sup>5</sup> However, even acknowledging the fundamentally Hobbesian nature of international law, which is what protects the current Iranian ruling regime in particular, the legal nature of the Ahwazi claim to independence can be briefly set forth, if without any realistic expectation of justice at this

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<sup>1</sup>Declaration on the Granting of Independence to Colonial Countries and Peoples, A/RES/1514 (XV) (1960)

<sup>2</sup>*Id* at section 5.

<sup>3</sup>Declaration on Principles of International Law Friendly Relations and Co-Operation Among States in Accordance with the Charter of the United Nations, A/8018 (1970).

<sup>4</sup>Serio, Milena, *The Right to Self-Determination under International Law: “Selfistans,” secession and the rule of the great powers*, Routledge 2013, at p. 22.

<sup>5</sup>Brierly, J. L., *The Law of Nations: An Introduction to the International Law of Peace*, Oxford, 4th Ed. 1950, at p. 49. In all candor, Brierly spends considerable effort opposing the notion of international law as fundamentally Hobbesian.

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Al-Ahwaz, most of which is currently and commonly referred to as the Iranian province of Khuzestan, consists of somewhere between 159,600 and 185,000 square kilometers in what is today southwest Iran, depending on how one views the redistricting of that area to remove some territory to the ethnically Persian provinces of Isfahan, Fars and Khorramabad.

Long populated by Arabs,<sup>6</sup> Al-Ahwaz was a strategically critical border between the Ottoman and Persian Empires, as it sits on the eastern bank of the navigable Shatt al-Arab River. The Shatt al-Arab in turn joins with the largely intra-Ahwaz Karun River before emptying into the Gulf.<sup>7</sup> The precise borders between the two empires were addressed through conflict and treaty on numerous occasions. The most crucial of these treaties for purposes of this brief study is the 1847 Treaty of Erzurum, the second treaty of that name, following its 1823 predecessor.

Article 2 of the treaty provided for free navigation rights on the Shatt al-Arab River, and further that “The Ottoman Government formally recognizes 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 the Shatt-al-Arab, which are in the possession of tribes recognized as belonging to Persia.”

The treaty, made between a Turkic empire on the one hand and a Persian empire on the other, did make note of the various tribes settled on the border, and specified that “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.”<sup>8</sup>

Thus, the Arab Ahwazi tribes fell under Persian rule. However, the specific reference to suzerainty is as critical as it has been largely ignored. An operative definition is that suzerainty refers to

“A nation that exercises political control over another nation in relation to which it is sovereign. Term is used as descriptive of relations, ill-defined and vague, which exist between powerful and dependent states; its very indefiniteness being its recommendation. While protecting and protected states tend to draw nearer, the reverse is true of suzerain and vassal states; a protectorate is generally the

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<sup>6</sup>Josef Wiesehöfer, *Ancient Persia*, I.B. Tauris Publishers, 2011 published edition, at p. 63. Translated by Azizeh Azodi, Wiesehöfer’s work is an excellent overview of ancient Persia.

<sup>7</sup>Encyclopaedia Iranica, “KARUN RIVER”, available online at [http://www.iranicaonline.org/articles/karun\\_1\\_2](http://www.iranicaonline.org/articles/karun_1_2), last accessed February 15, 2021.

<sup>8</sup>Second Treaty of Erzurum (1847) at Article 8.

preliminary to incorporation; suzerainty, to separation. It is said that suzerainty is title without corresponding power; protectorate is power without corresponding title”<sup>9</sup>

Suzerainty in turn presupposes some form of continued internal autonomy, which indeed was the case for Al-Ahwaz for several additional decades until early 1925 when Reza Khan directed his ethnically Persian military forces to occupy Al-Ahwaz, and subsequently removed the last Ahwazi ruler, Sheikh Khaz'al ibn Jabir to Tehran where he subsequently deceased under questionable circumstances.<sup>10</sup> From 1925 onward, the formerly suzerain relationship held between the Ahwazi sheikh on the one hand and the Persian/Iranian government operating out of Tehran was replaced by direct Iranian rule.<sup>11</sup>

This distinction is critical. If one accepts the Treaty of Erzurum as having established the Persian right to Al-Ahwaz by cession, *i.e.* the voluntary transfer of territory between sovereigns, then its specific reference to suzerain tribes constitutes an integral part of the treaty. Insofar as the treaty sought not only to delineate acceptable boundaries between the two empires but to effectively transfer the suzerain rights of local tribes, it must be construed in accordance with the canon of construction *benignius leges interpretandae sunt quo voluntas earum conservetur*, that laws are meant to be liberally intended to preserve their intent.

Moreover, it remains the general rule that “treaties create rights and duties only for the parties to them; *pacta tertiis nec nocere nec prodesse possunt*.”<sup>12</sup> Thus, the tribes described therein according to their suzerainty were party to the treaty only insofar as their own limited sovereign rights were assigned to one empire or the other; with the subsequent extinguishment of said suzerainty, which occurred in Al-Ahwaz in 1924-1925 with the Persian military conquest, one cannot say that the treaty still rightfully binds the people of Al-Ahwaz by any fair interpretation, much less in such a fashion as to derogate their inalienable right to self-determination in light of the United Nations Charter.<sup>13</sup>

Rather, while the Erzurum treaty - as well as various subsequent treaties entered into between Persia/Iran and other nations as well as the more important political considerations that resulted in said treaties - effectively shielded the nation from foreign intervention, the con-

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<sup>9</sup>Black's Law Dictionary, 8th ed. 2004, at p. 1488.

<sup>10</sup> Strunk, William Theodore, “The Reign of Shaykh Khaz'al ib Jaber and Suppression of the Principality of Arabistan”, ProQuest Dissertations & Theses Global Indiana University PhD thesis 1977.

<sup>11</sup>See generally, Meyer, Aaron Eitan, “Erasing Arabistan: How Iran Seeks to Eliminate its Ahwazi Arab Minority to Consolidate Control over their Homeland's Resources”, Academia.Edu 2020, available online at [https://www.academia.edu/42632642/Erasing\\_Arabistan\\_How\\_Iran\\_Seeks\\_to\\_Eliminate\\_its\\_Ahwazi\\_Arab\\_Minority\\_to\\_Consolidate\\_Control\\_over\\_their\\_Homelands\\_Resources](https://www.academia.edu/42632642/Erasing_Arabistan_How_Iran_Seeks_to_Eliminate_its_Ahwazi_Arab_Minority_to_Consolidate_Control_over_their_Homelands_Resources), last accessed February 15, 2021.

<sup>12</sup>Brierly at p. 235.

<sup>13</sup>Specifically Article 1, section 1 as intended, not necessarily as selectively applied thus far.

quest of Al-Ahwaz, renaming as Khuzestan, and full incorporation into the Tehran-controlled state of Iran, were indisputably military in nature.

Coupled with the concomitant erasure of the prior suzerain relationship, Iran's control over Al-Ahwaz since 1925 must be termed as having been established through actual conquest, *i.e.* "the acquisition of the territory of an enemy by its complete and final subjugation".<sup>14</sup>

Therefore, the status of the Ahwazi people is properly understood as a people whose sovereignty is deprived by military conquest, and their homeland is not a merely federalized appendage of Iran pursuant to any right of cession. Beginning from this proposition, rather than the common but inapposite application of customary international law that begins by effectively assuming sovereignty, the unusual case study of Al-Ahwaz presents an unaddressed right of self-determination<sup>15</sup> which has led in turn to an entirely partisan legal system<sup>16</sup> and a series of overt human rights violations<sup>17</sup> that must be addressed on their own fact-specific merits since the *de jure* control exercised by Iran over Al-Ahwaz has not properly derived from cession since 1925, and therefore their right to self-determination has not been properly adjudicated. Upon recognition of this preserved right, the decades-long litany of human rights violations committed against the Ahwazi people can also be properly addressed and legally adjudicated.

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<sup>14</sup>Brierly at p. 147. Note that Iran did not need to declare its intention to annex due to the very cession that was eliminated by its military conquest.

<sup>15</sup>The attendant human rights violations routinely committed by Iran against the Ahwazi people must therefore also be addressed squarely upon consideration as to whether Iranian control over the territory derives from post-conquest subjugation or ongoing belligerent occupation. *See, e.g.,* Lauterpacht, Hersch *International Law, A Treatise*, 6th ed., 1940 at p. 467. Such an analysis will be the subject of its own note.

<sup>16</sup> Meyer, Aaron and Rahim Hamid, "Immunity through Impunity: Hypocrisy and Systemic Racism in Iran's Legal System", *Washington Institute of Near East Policy Fikra Forum*, August 17, 2020, available online at <https://www.washingtoninstitute.org/policy-analysis/immunity-through-impunity-hypocrisy-and-systemic-racism-irans-legal-system> (English) and <https://www.washingtoninstitute.org/ar/policy-analysis/alhsant-br-alafat-mn-alqab-alrya-walnsryt-almnhjt-fy-alnzam-alqanwny-alayrany> (Arabic), last accessed March 23, 2021.

<sup>17</sup>Hamid, Rahim and Aaron Eitan Meyer, "Iran's Systematic Environmental Destruction is Genocide Against the Ahwazi People", *Dur Untash Studies Centre*, Canada November 25, 2020, available online at <https://www.dusc.org/en/versions/9056/>, last accessed March 15, 2021.