

February 1, 1950

DRAFT AIDE-MEMOIRE FROM IRANIAN EMBASSY  
TO THE STATE DEPARTMENT

In reply to the State Department's memorandum of January 5, 1950, concerning the Hirmand River question, my Government notes with satisfaction the assurances of complete impartiality on the part of the United States and of the desire of the United States that the loan of the Export-Import Bank to Afghanistan be not prejudicial either to the work of the contemplated international commission or to the existing rights of Iran.

The Iranian Government has no doubt that the United States Government wishes to be completely impartial on the Hirmand question. However, the Embassy believes that a full appreciation of the Iranian position with respect to Seistan's participation in the use of Hirmand waters would have led the Export-Import Bank to delay implementation of projects which, though perhaps desirable in themselves, will have the effect of prejudicing the work of the neutral international commission. For this reason, the Embassy wishes to clarify to the Department the views of the Iranian Government with regard to the development of the Hirmand and particularly the development of agriculture in Seistan.

The Department was under a misapprehension in presuming that "the principal Iranian concern is to continue to receive the quantity of water promised to Iran under existing treaties and agreements." The Iranian Government intends to develop agriculture in Seistan by means of irrigation and reclamation projects, which projects will be undertaken as rapidly as the financial resources of Iran permit. For this reason, the Iranian Government is just as anxious as is the Government of Afghanistan to undertake the proper regulation of the flow of the Hirmand River. The scope of the projects which the Iranian Government will be able to undertake in Seistan, and the extent to which agriculture may be improved and expanded, will necessarily depend not only upon the regulation of the flow but also upon the amount of water which this area receives. This, of course, will be affected by the projects undertaken by Afghanistan further upstream. The principal concern of the Iranian Government is, therefore, to secure the cooperative development of the resources of the river basin so as to permit maximum benefit to both Iran and Afghanistan, and particularly, so as to guarantee that Seistan continues to receive supplies of water for the areas now under cultivation and an equitable portion of any additional supplies which improved regulation of the river may render available in the future.

In this respect, the Iranian Government cannot agree with the Department's view that an upper riparian is under no obligation to consult with a lower riparian when

undertaking the development of the water resources of an international river system. Under international law, both states are entitled to an equitable portion of the waters of the river basin. The portion to which the lower riparian is entitled is not limited to the amount of water which it has used in the past, but includes an equitable portion of the waters which are made available by regulation of the river through storage dams and similar engineering works. This principle was recognized by the United Kingdom in the course of the negotiations which led up to the exchange of notes in 1929 between Egypt and the United Kingdom regulating the use of Nile waters. The United Kingdom acknowledged

" . . . that Egypt has a prime right to the maintenance of her present supplies of water for the areas now under cultivation and to an equitable portion of any additional supplies which engineering works may render available in the future."

Any projects undertaken by the upper riparian which alter the natural flow of the river, and particularly any fresh appropriation of river supplies, are bound to affect materially the irrigation which may be undertaken in the lower riparian areas. In view of this fact, and also of the right of a lower riparian to participate in the benefits flowing from improvement of the regime of the river, the Iranian Government is definitely of the view that it is entitled under international law to prior consultation with the Government of Afghanistan in the undertaking of any projects affecting the flow of the Hirmand.

With these considerations in mind, the Iranian Government must continue to object to the granting of financial assistance to Afghanistan in carrying out these projects without consultation with the Government of Iran. The Iranian Government understands that these projects involve new diversions of water from the Hirmand, as well as sizable investments in dams, headworks and canals. If these projects are undertaken, even though not completed, before the joint international commission has had an opportunity to recommend the basis of a long-term agreement to govern the division of water, it is more than likely that the work of the commission will be prejudiced. If the commission should determine that the right of Iran to share equitably in the benefits flowing from improved regulation of the Hirmand will require that the Afghan projects be altered, or that some of them even be abandoned, the fact that the Government of Afghanistan has already made sizable investments in the present projects will diminish the likelihood of a long-term agreement being reached on the basis of the commission's recommendations.

The Iranian Government requests, therefore, that the State Department reconsider its position with regard to granting financial assistance to Afghanistan in undertaking these projects before the neutral international commission has recommended an equitable arrangement for the regulation and use of the waters of the Hirmand.