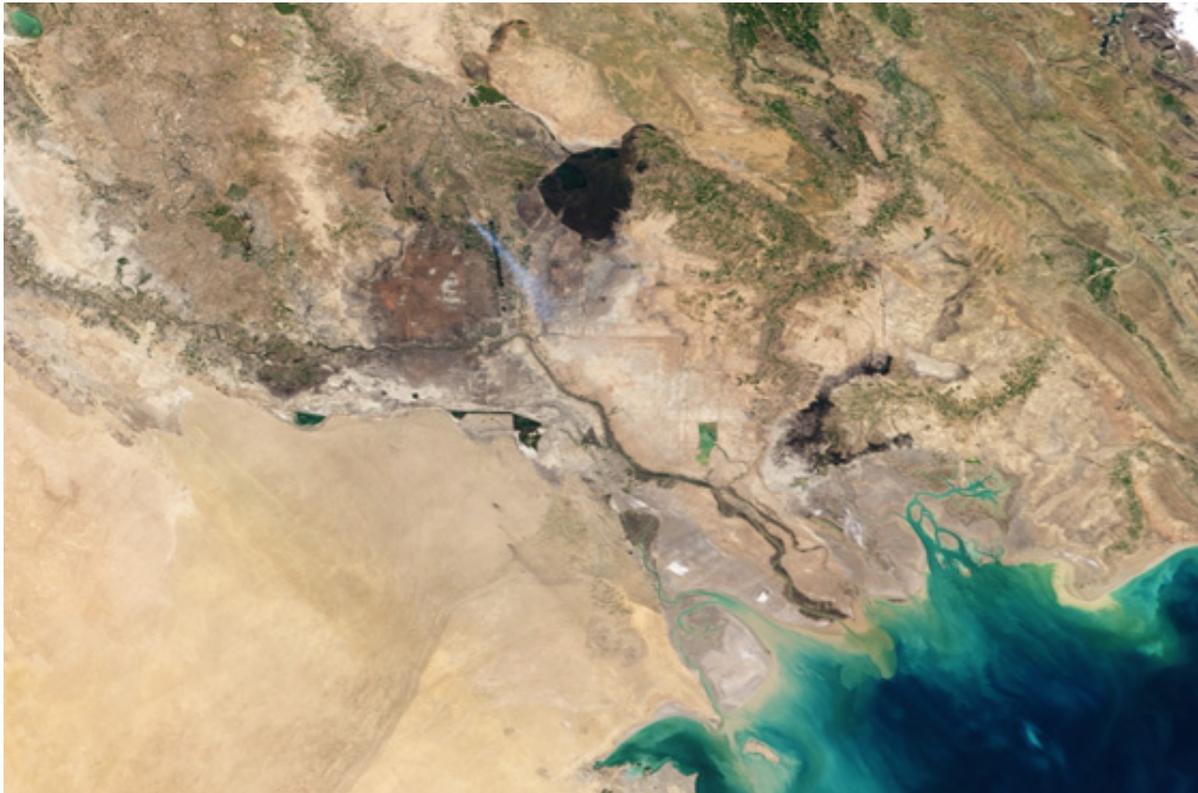


## ECOCIDE IN THE IRAQI MARSHES

At the end of the first Gulf war, the Iraqi Government caused three major environmental disasters: the burning of the Kuwaiti oil fields, the deliberate spilling of oil into the Persian Gulf, and the destruction of the Southern Iraqi Marshes. The former two, which resulted in the imposition of compensation for the damages caused, have been widely studied. The fate of the Marsh Arabs or Maadan (which took place inside Iraqi territory and was not reported as much as the Kurdish issue in the North) is less renown.



The Mesopotamian Marshes were the largest wetlands in Southwest Asia, extending along the Tigris, the Euphrates and the Shatt-el-Arab. They had been occupied by the Sumerian and Babylonian ancestors of the Maadan. Reeds were their main building material for houses and canoes, while rice, fish, water buffaloes and birds were their main source of food. The majority of the Maadan is composed by Shia Muslims, but include other religious minorities as the Mandeans. Religious scholars have located there the Garden of Eden, the Deluge and the place of birth of Abraham. In 1991 the Maadan and other Shia revolted against the regime and took refuge in the Marshes. The Government responded with a campaign against the “foreign, monkey faced” Maadan, and attacked the environment that supported them. In a few years they built a system of draining canals that reduced the marshes to 7% of their initial 15,000 km<sup>2</sup>. The wetlands turned into a salt crust, and the vegetation and life disappeared. The water flowed unfiltered into the Gulf. Iraq had a series of obligations according to Conventional International Law. Article 2.c of the Convention on the Prevention and Punishment of the Crime of Genocide forbids “deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part.”

The destruction of the ancestral territory of the Maadan is included in this definition. As the terms of this Convention are included in the statute of the Iraqi Special Tribunal, we will examine this point later. The Saint Petersburg Declaration of 1868 stipulated that “the only legitimate object which States should endeavour to accomplish during war is to weaken the military forces of the enemy.” Article 22 of the 1907 Hague

Convention stipulates that “[t]he right of belligerents to adopt means of injuring the enemy is not unlimited.” The 1949 Fourth Geneva Convention forbids the destruction of goods “except where such destruction is rendered absolutely necessary by military operations.” Article 3, common to all four of the Geneva Conventions, covers armed conflicts not of an international character and stipulates that “persons taking no active part in the hostilities,... shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth,” and could be applied to the case of the Maadan, as many were killed by Iraqi forces during the drainage operations, and many more were dispossessed of their homes and livelihoods.

Two articles common to the International Covenant on Economic, Social and Cultural Rights and the Covenant on Civil and Political Rights stipulate that “[a]ll peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence” and “nothing... shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.” The difficulty with these dispositions is the concept of “people.”

Should the Maadan people or the Iraqi people be the subject of this disposition? This ambiguity does not facilitate the application of the Human Rights Covenants. Iraq was part of fifty treaties that included environmental provisions. The Convention Concerning the Protection of the World Cultural and Natural Heritage cannot be applied because the Marshlands of Mesopotamia are not included in the World Heritage List. Besides, States have lower obligations towards objects located in their own territory than towards those located in another State.

The Kuwait Regional Convention for Co-operation on the Protection of the Marine Environment from Pollution and its Protocols can help compensate Iraq’s neighbours for the increase of the marine pollution, but it does not protect the Maadan for the loss of their marshlands. Some Treaties dealing with the conduct of war also include environmental provisions, but Iraq was not part of them. “The Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques (ENMOD) forbids large scale environmental modifications (such as deforestation, weather modification, or any other conduct ‘having widespread, long-lasting or severe effects’). To be banned, the techniques must have “widespread, long-lasting or severe effects” - one condition is sufficient. “Widespread” is defined as “encompassing an area of several hundred square kilometres; long-lasting as lasting for a period of months; and severe as involving serious or significant disruption or harm to human life, natural and economic resources or other assets.” The destruction of the Marshes fulfills all these conditions. Iraq, however, is not part to the Convention. Moreover, this is only applicable to international conflicts. The First Additional Protocol to the Geneva Conventions relates to the protection of victims of international armed conflicts (1977). It is also applicable in “armed conflicts in which peoples are fighting against colonial domination and alien occupation and against racist régimes in the exercise of their right of self-determination.” Article 35.3 prohibits “methods or means of warfare which are intended, or may be expected, to cause widespread, long-term and severe damage to the natural environment.” The threshold is higher than in the ENMOD (because of the conjunction and), but the damage caused to the Marshes largely fulfills these conditions. Article 54 forbids “to attack, destroy, remove or render useless objects indispensable to the survival of the civilian population.” Article 55 specifically protects the environment and the population that depends from it: “care shall be taken in warfare to protect the natural environment against widespread, long-term and severe damage.

This protection includes a prohibition of the use of methods or means of warfare which are intended or may be expected to cause such damage to the natural environment and thereby to prejudice the health or survival of the population. Attacks against the natural environment by way of reprisals are prohibited.” The provisions of the First Protocol would be applicable in case this treaty acquired the rank of customary law, or if it can be proved that the Maadan fought against a racist regime or in the exercise of their right of self-determination. Protocol II of the Geneva Conventions applies to non-international armed conflicts between the armed forces of a state and dissidents “which exercise such control over a part of its territory.” This Protocol does not include specific environmental protection provisions, but article 17 specifically forbids the

forceful displacement of civilians: "The displacement of the civilian population shall not be ordered for reasons related to the conflict unless the security of the civilians involved or imperative military reasons so demand... Civilians shall not be compelled to leave their own territory for reasons connected with the conflict." This provision was clearly breached, as the Maadan were displaced by the destruction of their environment, and not for security reasons or for imperative military reasons, given that by that time the armed conflict had already ceased. However, Iraq is neither part of Protocol I nor II, and it is not clear whether they have become part of customary law, because Iraq has consistently dissented.

The Rome Statute establishes an International Criminal Court to judge crimes against humanity. Article 8.2.b.iv forbids "Intentionally launching an attack in the knowledge that such attack will cause... widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated." It is clear that the attack to the Marshes was launched with the intention to cause widespread, long-term and severe damage to the environment and that it was excessive in relation with any military advantage obtained. Some of the provisions of the Rome Statute have been collected by the Supreme Iraqi Criminal Tribunal, created in 2003 and reformed in 2005. It has jurisdiction over Iraqi nationals accused of committing the following crimes between 1968 and 2003: Genocide, Crimes against Humanity, War Crimes and the violation of certain Iraqi laws. It defines environmental crime in the same terms as the Rome Statute. It could be useful to indict the officials of the previous regime for damage to the environment during the invasion of Kuwait, but not for the situation of the Marshlands, because it can only be applied to international conflicts. Genocide is defined (article 11.1) in the same terms as the Convention against Genocide. At least the three of the acts included in this definition were inflicted on the Maadan: "killing members of the group; causing serious bodily or mental harm to members of the group; deliberately inflicting on the group living conditions calculated to bring about its physical destruction in whole or in part."

As the act of rape was considered instrumental to commit genocide in Rwanda, similarly, the draining of the Marshes could be considered instrumental for the genocide of the Maadan. The destruction of the Marshes was therefore not only an environmental disaster, as its intention was the commission of a humanitarian atrocity. Article 12 lists ten acts as Crimes Against Humanity, including "other inhumane acts of a similar character intentionally causing great suffering, or serious injury to the body or to the mental or physical health." It does not require a link to an armed conflict. The environmental destruction thus turns into a crime due to its humanitarian consequences.

The future of the Maadan people is uncertain. Although part of the Marshes have been re-flooded, the construction of dams upstream and climate change have, nonetheless, reduced the amount of water available. Many have built a new life in urban environments and would not return to the Marshes. The best way to prevent other people from suffering a similar fate is to prosecute the perpetrators. Many officials of the previous regime have been prosecuted and some, including Saddam Hussein, have been executed, but none have been held accountable for the numerous environmental crimes committed. A conviction for such crimes would represent a beacon regarding the protection of the environment during armed conflict.

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