



Research Article

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The International Legal Status of Marshes of Iraq as Protected Natural Areas

Salwan Jaber Hashim¹

Valiullina Ksenia Borisovna^{2*}

Davletgildeev Rustem Schamilevich²

¹College of Law, Al-nahrain University, Republic of Iraq

²Kazan Federal University, Kazan, Russia

*Corresponding Author

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Abstract

The wetlands of the Republic of Iraq, being a natural area of protection, have unique environmental, historical and cultural characteristics and are significantly different from the existing wetlands of the world. However, despite this status, they are exposed to numerous negative influences. The authors point to the most important international legal instruments aimed at preserving this unique territory of the Republic of Iraq, namely, the Ramsar Convention on Wetlands. The Government of Iraq is committed to fulfilling international obligations related to this convention and to overcoming the obstacles encountered in their implementation. The authors have examined the main international commitments, obstacles and the main priority lines developed by the Government of Iraq in order to overcome these obstacles. In particular, the problem of Water constraints has been considered in connection with the embankments built by the Islamic Republic of Iran, doing natural environment damage to the wetlands of Iraq and the attempts of the Government of Iraq to resolve the current situation, including the involvement of the Ramsar advisory mission. The mission was organized in mid-2017. The authors also provide relevant recommendations aimed at enhancing cooperation between Iraq and neighboring (coastal) states, and contributing to the reasonable and equitable use of a shared watercourse using the 1997 UN Convention on International Watercourses. The authors put high hopes on attracting international attention to the problems of relations between the Republic of Iraq and the Islamic Republic of Iran in the use of the Hawizeh marshes site.

Keywords: Wetlands, Ramsar Convention, UN Convention on International Watercourses, Common Watercourse, the Republic of Iraq, the Islamic Republic of Iran

1. Introduction

The marshes of southern Iraq are among the richest areas that teem with fish, birds and abounds in plants, namely: 259 species of blue algae, more than 264 species of green algae, more than 32 species of golden algae, 209 species of rare plants, and groups of floating plants, used in the pharmaceutical industry. In addition, this region is placed on very valuable oil lakes.

Marshes are the environment for the survival and breeding of many species of animals, fish and birds, including birds of passage from around the world. The most important species are stork, duck, hoopoe and others. The southern marshes are home to millions of fish, which includes the best species in the region, breeding in spring and constantly increasing in number. Amphibians are represented by reptiles, such as turtles.

The importance of marshes in many areas is manifested in the preservation and retention of the rivers of Tigris, Euphrates and tidal estuaries, in the cleaning away of hazardous pollutants, metals and organic substances from water, where soil microbes process organic waste to reduce their harm.

The hydrological role of marshes in the biosphere lies in the fact that they serve as accumulators of a huge mass of fresh water of a unique "marsh" composition. The role of swamp water is extremely important in supplying rivers with the main substances of swamp origin (Veretennikova, 2005).

Low rainfall in the desert has a negative effect on swamps, resulting in dust storms that lead to climate degradation, damage to buildings, infrastructure, Iraqi cultural heritage, worsen the condition of archaeological sites, destroy crops, provoke diseases and death of livestock, and also entail worsening bird and wildlife watching that could attract tourists from all over the world.

On the reason of the difficult situation on the territory of wetlands, the country is required to adjust its activities, strategies and environmental legislation, having in consideration international cooperation in the field of environment conservancy. International cooperation is carried out by making various treaties, as well as consolidating the role of intergovernmental international organizations in order to preserve the biological system and sustainable use of water resources.

2. Methods

In the course of the research, we used the methods, such as comparative legal, special legal, the method of structural analysis, the method of comparative law.

3. Results and Discussion

The most important international legal instrument aimed at protecting wetlands as one of the most important areas of biological diversity is the Ramsar Convention on Wetlands (ratified in Iran in 1971 and entered into force in 1975). Subsequently, the Protocol of the Convention was amended, ratified in 1982 and entered into force in 1986.

The Ramsar Convention on Wetlands is the basis for international cooperation for the conservation and smart use of all wetlands. This is the only international environmental convention that deals with the special ecological regime of wetlands that ensure the biodiversity of plants and animals, including the source of freshwater resources.

The purpose of the Convention is the protection of wetlands and the recognition of the basic environmental functions of these areas, their economic, cultural, scientific and recreational value.

The Government of Iraq is committed to fulfilling international obligations concerning the Ramsar Convention (Iraq has acceded to the Ramsar Convention Law № 7 of 2007 on Accession to the Ramsar Convention on Wetlands. Iraq Chronicle, 2008). Three new sites were added to the Ramsar List of Wetlands (Central Swamp, Horm Hem and Lake Savva) in 2015. The Government of Iraq collaborated with the Convention secretariat on the implementation of certain issues related to the conservation of Iraq's nature sites.

The Iraqi Government has fulfilled a number of international obligations to hold international scientific conferences, seminars and trainings; information and education programs for the population living in the immediate vicinity of the marshes, with the aim of raising awareness about the conservation of wetlands. We have explored and researched 32 natural wetland sites in Iraq, as well as the collected environmental, social and economic data necessary to include wetland sites in the list provided for by the Ramsar Convention; the representative of Iraq was ensured at the Committee's ongoing meetings over the past three years.

Within the framework of fulfilment of the obligations under the Ramsar Convention, the cooperation with the government agencies, being necessary to address some issues on the implementation of the Convention on the Conservation of Wetlands, especially in oil production and climate change has been achieved; environmental status has been determined, and ongoing activities to monitor water quality and biodiversity in Ramsar sites have been carried out (National report on the implementation of the Ramsar convention on wetlands, 2018).

Among the international commitments undertaken by the Government of Iraq are the development of plans, programs and strategies for the conservation of wetlands. The Wetland Conservation Strategy is based on poverty eradication; water management plans and water use efficiency improving; coastal and marine resource management plans; integrated coastal management plan; aquaculture and fisheries; conservation of biodiversity in wetlands, etc. (<https://www.ramsar.org>).

The main obstacles to implementing the Ramsar Convention in the Republic of Iraq are: poor community awareness of the importance of wetlands; the lack of an effective contribution to improving living conditions to be dependent on wetland resources; decrease in water flow in the swamps due to reduced water resources and climate change, which leads to increased environmental and economic consequences; problems of oil production and its impact on the environment of marshes; lack of experience in managing sustainable wetlands, as well as support for wetland management plans.

When it comes to water scarcity in wetlands, the result of it was a change in the flow of water in a number of rivers and tributaries and the construction of dams by the Islamic Republic of Iran, which caused significant damage to biological diversity in the marshes of Iraq, especially in the Hawizeh marshes.

The Hawizeh marshes are part of the marshes of Mesopotamia and the largest freshwater marshes of Western Eurasia, where marshes are considered an important international site of biological diversity (National report on the implementation of the Ramsar convention on wetlands, 2018). The Hawizeh site was identified by Iraq as a part of its accession as a Contracting Party to the Wetlands Convention, but in 2010, the Government of Iraq requested that the site be put into the Montreux Ramsar list with ongoing or expected environmental changes due to the threat of drying out and decreasing water flow and rainfall.

In 2011, the Government of Iraq invited the Convention Secretariat to determine the actual state of wetlands, which served as the basis for a preparatory visit of a group of experts from the Ramsar Secretariat to the Republic of Iraq. The main purpose of the visit was to hold a meeting with specialized experts to assess the conditions of the drought affecting the marshes and its negative influence on the environment and biological diversity (<https://www.ramsar.org>).

The report of the secretariat group notes that in 2001, a dam was built in Iran across the River of Karh, which flows into Khor Hawizeh and Khor Al-Azm. And in early 2000, the construction of the dam through the marshes, along the border between Iraq and Iran, began. The dam was completed in 2009 (Hawizeh Marsh placed on the Montreux Record). The Hawizeh area is mainly dependent on rainwater as well as river water and, as a result, a decrease in the amount of water will increase its salinity (Report on a Ramsar team visit to the Hawizeh marsh Ramsar site, 2014).

Following the review, the Ramsar group noted that the Iranian dam had reduced the water flow from the Khor Al-Azma swamp to the Hawizeh district. Despite the attempts between Iraq and Iran to negotiate on this difficult issue, there are no prerequisites for this issue to be resolved in the near future. In this regard, steps must be taken to strengthen confidence and consolidate cooperation between the relevant institutions in Iraq and Iran, with the purpose of preserving both Havr al- Hawizeh (Iraq) and Khor al-Azm (Iran).

Such steps on confidence-building can be taken through technical cooperation, as well as through joint ventures organized by a third party, such as the United Nations Agency and the United Nations Development Program (<https://www.ramsar.org>).

In mid-2017, the Government of Iraq requested the Ramsar secretariat to organize a Ramsar advisory mission on wetlands to determine the future cooperation between Iraq and Iran and as a first step towards the long-term conservation and sustainable development of the wetland region, including determining the methods to reduce sand and dust storms.

The Ramsar Consultative Mission is a consultative mechanism carried out at the invitation of the Contracting Party concerned. The mission is not a mechanism for verifying the compliance with the convention or a disciplinary procedure; its legal basis is the so-called "monitoring procedure" established by the decision of the Ramsar Standing Committee in 1988 and approved by Recommendation 4.7. of the Conference of the Parties in 1990 (Report on a Ramsar Team Visit to the Hawizeh Marsh Ramsar Site, 2014).

The Advisory Mission crossed the border with Iran and visited the Khor al-Azm associated with the Hawizeh marshes in Iraq. However, the construction of the dam along the international border in mid-2000 divided the marshes. Further, there was organized a meeting in the Iranian city of Ahwaz, the participants carried on the discussion on what they saw and heard during the visit, and more importantly, they confirmed future cooperation areas (<https://www.ramsar.org>).

In order to ensure fair and reasonable use of the Mesopotamian marshes, including the

Hawizeh site, as well as to enhance cooperation between Iraq and Iran on water resources management and wetlands conservation, we consider it appropriate to refer to international legal standards applicable to international watercourses, in particular to the 1997 UN Convention on the Law of the Non-Navigational Uses of International Watercourses (<https://www.ramsar.org>), which confirms the principle of good neighboring and the obligation to respect the rights of coastal states, as well as to ensure reasonable and fair use of common watercourse.

The United Nations Convention on International Watercourses was ratified by Iraq in 2001 and entered into force in 2014. It consists of 7 parts divided into 37 articles containing the most important characteristics of the Convention.

According to Article 2 of the 1997 Convention, "watercourse" means a system of surface and groundwaters, which, due to their physical interconnection, constitute a single whole and usually have a common ending, and "international watercourse" means a watercourse, parts of which are located in different states. In our opinion, the fact that the Mesopotamian marshes are part of the river complex of the rivers of Tigris and Euphrates allows to attribute them to watercourses according to Article 2. Unfortunately, the problem of applying the 1997 Convention to the Hawizeh wetlands is connected with the fact that Iran is not a party to it, but we can hope for the subsequent accession of the Islamic Republic of Iran to the Convention on International Watercourses.

The Convention is necessary to consider bilateral agreements with a view to bringing them into line with the basic principles of this Convention. As a Universal Agreement, it embraces three main issues: the lack of an international agreement between riparian parties to regulate the use of common rivers; the existence of an agreement or agreements between some but not all states participating in the international watercourse; the existence of an agreement between riparian states, but limited to specific aspects that do not encompass all areas covered by the 1997 UN Convention.

The Convention provides a list of factors and circumstances to be considered in order to reach a harmonious agreement regarding the definition of common, fair and reasonable use (<https://www.ramsar.org>; <https://documents-dds-ny.un.org>), it is the general basis for creating an obligation to the intended cooperation, exchange of information and non-discrimination between different uses of watercourse, since the order of preference for one type of use over another is absent.

4. Summary

To conclude the article, we can summarize:

- the main international legal instrument ensuring the conservation of Iraq's wetlands is the Ramsar Convention which implies the subsequent adherence to its norms in the activities of the Government of the Republic of Iraq;
- it is reasonable to continue to use the monitoring mechanism provided for by the Ramsar Convention concerning the work of the Ramsar advisory mission, in order to increase international recognition of the problems of relations between Iraq and Iran in the use of the Hawizeh marshes area;
- in order to achieve optimal and sustainable use of an international watercourse to the entire group of states participating in its use, and to comply with the obligations of the states to use an international watercourse on its territory, taking all appropriate measures being necessary to prevent significant damage to other states, it is required for Iran to join the 1997 Convention on International Watercourses;
- with the aim of prudent and equitable management of shared water resources and urgent appropriate measures to save the Hawizeh wetlands, it is reasonable to use the provisions of the 1997 Convention to resolve disputes between the Republic of Iraq and the Islamic Republic of Iran.

5. Conclusion

The marshes of Iraq are of great environmental, historical and cultural significance and are the cradle of the Sumerian, Akkadian, Assyrian and Babylonian civilizations.

The marshes of Iraq differ from the diversity of the marshes of the world, because their

environmental characteristics in terms of water movement, the amount of dissolved oxygen, the abundance of plants and species of biological diversity are radically different from existing wetlands.

A region that comprises these two elements: the history and richness of nature should have exceptional importance and value and be part of the world's treasures, the preservation and sustainability of which are international and national priorities.

The inclusion of Iraq's marshes as Ramsar sites of international importance attests the considerable efforts undertaken by the Government of Iraq. International obligations require the Government of Iraq to coordinate efforts between the Ministry of the Environment and other state institutions, and at the same time, international obligations consist in the fact that the Government of Iraq, together with the international community, must consolidate international cooperation in order to preserve the territory of wetlands that represents the heritage of all mankind.

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