

# Water needs the protection of international law

For almost 30 years the United Nations has been proclaiming the universal right to sufficient clean drinking water. However, over 1.2 billion people still have no access to water. Various non-governmental organizations and movements from the North and the South are now calling for an international water convention under UN auspices in order to secure the binding right to water, to protect water as a public good and a life-sustaining resource, and to press governments into taking appropriate action.

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## Water, a challenge for the twenty-first century

Anyone concerned about the future of humanity must take water into account. "In this new century, water, its sanitation, and its equitable distribution pose great social challenges for our world. We need to safeguard the global supply of healthy water and to ensure that everyone has access to it", UN Secretary-General Kofi Annan wrote in 2001 when the World Water Day was launched. The United Nations Environment Programme (UNEP) echoed the same theme by stating that the freshwater crisis was on the same scale as, and as potentially menacing as, climate change.

The following figures illustrate the dimensions of the crisis:

- 1.2 billion people lack access to clean drinking water.
- By 2025, three billion people will suffer from water shortages. More than 80% of these people will live in developing countries.
- 3 billion people have no sanitary facilities.
- 80% of all diseases in developing countries can be traced back to the use of polluted water.
- 6,000 children under the age of 5 die each day from the consequences of polluted water.
- 50% of the world's rivers and lakes are dangerously polluted.

What these figures mean is that a lack of water leads to increased hunger, poverty, misery and disease. People are forced to leave their villages and their homelands. Social unrest, conflicts and the risk of war over the use of water intensify. "When water ends, so does the world", an Uzbekistan proverb says.

## Policy failure

Any discussion of water must include a discussion of policy. Water issues are closely tied to land and farm policy, trade and economic policy, as well as environmental, social, health and equal opportunity policies. But above all else, water policy is a human rights and peace policy.

The water crisis is therefore not only a matter for planners and engineers. It cannot be remedied simply by means of technology, increased efficiency and expanded capacity, nor by economic prescrip-

tions such as liberalization and privatization. The 2003 UN world water development report entitled "Water for People - Water for Life" is clear about where the main cause of the global water crisis lies. It states that owing to political inaction, the water shortage in many regions of the world is assuming hitherto unsuspected proportions.<sup>1</sup>

Water calls for policy measures first and foremost. It needs what is today known as good governance. Good governance requires binding legal bases that rest on universally applicable human rights. Water needs justice and justice needs legal anchorage. Water needs the protection of international law. A water convention is an international legal instrument in line with the spirit of good governance, based on law and not on economic power.

The struggle to secure a sustainable water policy is tantamount to a struggle for social change, economic development and social justice. The call for a water convention is not a quixotic legal exercise on the part of a few specialists; like the call for binding law, it is based on questions of principle. Water is a common good, like the air we breathe, and not a commodity like paper tissues and refrigerators. The right and the power to turn the tap on and off should belong to the authorities of the people concerned, rather than to the invisible hand of the market. Who sets the price of water for a poor district in Manila? Is it the chief financial officer of the Suez multinational corporation with headquarters in Paris, or the water committee elected by the people of the district?

## Much talk, little action

The first major UN Water Conference held in Mar del Plata, Argentina, in 1977 is regarded as the starting point for a global water policy, since it is where the following statement was made: "All peoples [...] have the right to have access to drinking water in quantities and of a quality equal to their basic needs."

Since that time many UN documents have reiterated the need to secure access to clean drinking water. The action plans of the major UN conferences of the 1990s also describe water as a key factor in overcoming hunger and poverty, and the lack of water as one of the greatest obstacles to development.

Goal 7 of the UN Millennium Development Goals (MDGs) states that the number of people without access to safe drinking water should be

halved by 2015. To this, the World Summit on Sustainable Development (Rio+10) held in September 2002 in Johannesburg added that the number of people without sanitary facilities was also to be halved by 2015. Additionally, World Water Day 2005 (March 22) marked the start of a new UN "Water for Life" Decade. A UN General Assembly resolution has designated it a Decade for Action, which is the only way to achieve the Millennium and Johannesburg goals with respect to drinking water and sanitary facilities.

## Human rights still a long way off

Participating countries have hardly kept the promises they made at UN conferences over the past 30 years. Instead, policymakers have lost no time in resorting to binding trade agreements to pave the way for economic globalization, thus opening the door to liberalization and privatization.

UN human rights bodies are aware of the problem. In November 2002 the Committee on Social, Economic and Cultural Rights published General Comment No. 15: "The right to water",<sup>2</sup> which constituted a landmark action by the Committee and should become the cornerstone of a future water convention. In the introduction it states that: "The Committee has been confronted continually with the widespread denial of the right to water in developing as well as developed countries."

The Committee affirms that the right to water is a prerequisite for realizing all other human rights and the right for a life of dignity. It approves the right to water as an independent human right: "The human right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses."<sup>3</sup>

The Committee further states that "water should be treated as a social and cultural good, and not primarily as an economic good." It disfavours the way in which water is being transformed into a tradable good through its commercialization and commodification.

## Public good or economic good?

Many non-UN conferences and forums have also addressed the topic of water over the past two decades. Meanwhile, numerous entities have been

1 [www.unesco.org/water/wwap/wwdr/index.shtml](http://www.unesco.org/water/wwap/wwdr/index.shtml)

2 Committee on Economic, Social and Cultural Rights. General Comment No 15 (2002). "The right to water (arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights)". Geneva, November 2002.

3 *Ibid.*



created to cash in on the business of water. In the absence of a legally binding convention or treaty, the decision-making power over water has moved increasingly away from the international community towards powerful global players such as the World Water Council, the World Bank and regional development banks, the World Trade Organization (WTO), and water multinationals.

This has given rise to highly contradictory policies whereby the “right to water” approved by the community of States in UN resolutions was downgraded by the very same people at world water forums to a “need for water”. The “public good” became an “economic good”, the provision of which should best be left to private suppliers.

The paradigm shift from water being a public good to being an economic good is reflected in the pressure exerted by the World Bank and International Monetary Fund on developing countries to deregulate and privatize their water systems. This has allowed for the rapid privatization of the world’s water services, driving up prices and cutting millions of people off from their water supplies.

But water is also on the table in the ongoing General Agreement on Trade in Services (GATS) negotiations in the WTO, where the European Union’s demand to 65 developing countries is to open up their water supply systems to foreign service providers. The EU has succumbed to pressure from the (mostly French and German) multinational water giants, who are keen to expand the reach of their business even further toward developing and transition countries, in what is ultimately a new form of colonization.

### Lack of funds as a way to pressure for privatization

Lack of funds, it is argued, is the reason why billions of people continue to live in degrading conditions and without access to water. Advocates of privatized water supply systems argue that governments by themselves are unable to come up with the requisite funding and that private sector funds are therefore needed.

There are countless examples, such as Buenos Aires (Argentina), Manila (Philippines), and El Alto (Bolivia) that make it clear that privatization of water supply systems does not solve the funding problem. Water prices rose exorbitantly in a short period of time and the poor were cut off from supplies: the outcome was social unrest.

Multinational corporations are interested only in existing water supply systems in megacities, where clients have the financial means and profit prospects

are good. Yet the vast majority of people without clean drinking water live either in rural areas or urban slums. The German NGO Bread for the World has produced a study on financial flows in the water industry showing that neither direct private sector investments, World Bank funds nor official development funds are reaching the countryside or the slums: “Least aid where people have least clean water.”<sup>4</sup>

Furthermore, private investments in water infrastructure have been in decline since 1997. Investments from the private sector, World Bank and official development agencies go mostly to a few major projects in a handful of countries. In sub-Saharan Africa where the needs are greatest, there are no flows either of funds or water. The study also concludes: “The role of [the] private sector [in] contributing to the Millennium Development Goals has been overestimated while the problems have been underestimated. (...) Even in the projects, where the private sector is involved, most of the project funds come from development banks and ODA.”

### Friends for an international water convention

An international water convention would build up a strong counter-strategy to the privatization trend. The main objective of a water convention is to anchor and protect the human right to water, in order to guarantee water for all. It is important to know that human rights are formulated in terms of the rights of individuals, not in terms of the rights and obligations of states vis-à-vis other states as is usual under the provisions of international law. A convention could merge the three main streams, namely social development, environmental ecosystem, and human rights into one mighty river. No long-term and sustainable approach to advancing the right to water can be divorced from the broader issue of the origin of freshwater. Nor can it be separated from the important role of healthy ecosystems in ensuring an adequate quality and quantity of freshwater for basic human needs, for social and economic development and for poverty alleviation.

Only a convention can ensure that water remains a public good, and that it does not become a simple commodity or an economic resource managed by international water companies. Such a convention can also help protect local and traditional cultural water rights, in particular those of indigenous peoples.

A number of development, environmental, human rights and consumer organizations from industrial and developing countries founded the network “Friends for the Right to Water” in 2004. Their common goal is the creation of an international convention on freshwater under the auspices of the United Nations. Their work is supported by experts in various legal specializations from the North and the South, and revolves around dialogue with the people affected. A water convention cannot become an end in itself, but rather, should effectively help empower those concerned, improve their quality of life, provide guidelines for the fair distribution of this scarce and vital resource and give it long-term protection. In workshops and discussion forums during the World Social Forum in January 2005 in Porto Alegre, Brazil, the network was able to acquaint a wider public with its work and expand its base. Since the Second Alternative World Water Forum in Geneva, Switzerland, in March 2005, other prominent NGOs have joined the network, notably some which have successfully resisted privatization in their countries, such as Uruguay, Bolivia and Ghana.

Working out and implementing a sound water convention will be an arduous task. The history of other conventions demonstrates this all too well. Implementation in individual countries is yet another challenge since participating states often only reluctantly recall the commitments they have made after ratifying agreements. All of these obstacles do not alter the fact that a water convention provides the indispensable legal groundwork and a political tool for forging a sustainable water policy. Having a water convention will not provide a solution to all our problems but it will surely help bring about a life of dignity for all on earth and protect the very basis of our own survival. ■

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See also: [Why we need an international water convention: www.swisscoalition.ch/english/files/T\\_WrWn.pdf](http://www.swisscoalition.ch/english/files/T_WrWn.pdf)

<sup>4</sup> Brugger, Fritz. “Some Water for All or more Water for Some?”. Bread for the World, 2004.

