

THE INTERNATIONAL LEGAL REGULATION OF THE RIGHT TO WATER

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Abstract

Water is the primary source of life. Therefore, the guarantee and protection of this right through international, regional and local documents it is of particular importance.

The evolution of the right to water can be traced back to the events of the 1970s, but concrete steps were taken regarding the legalization of water rights during 1990s and early 2000s, when different groups of citizens from several developing countries were organized in order to protest against water privatization.

These movements led to the adoption of many legal and political documents, including international, regional and bilateral agreements, binding and non-binding acts such as declarations, reports, statements, political statements, peace agreements and the work of NGOs and international organizations, such as the World Bank and UN agencies, UNICEF, WHO and other organizations with legal and political relevance.

This paper aims to analyze the evolution of the international legal regime for the protection and promotion of the right to water, starting with the UN General Assembly Resolution, General Comment no. 15 of the UN Committee on Economic, Social and Cultural Rights of 2002, the UN Human Rights Council Resolution of 2010 to the latest legal acts adopted by international organizations.

Keywords: law, water, human rights, drinking water

1. Introduction

Water, for many years has been the subject of both conflict and cooperation between states but also the subject of many regional and international treaties.

The waters served as boundary markers between communities; as a vital component of military strategy; as an important economic factor for the regions; as a means of transport, as a facilitator of communication between independent people, and most importantly, the entire economic and social development of any country is strongly linked to water.

Since the end of World War II, human rights have emerged in the United Nations system as an important approach to international law for the protection of human life and the promotion of balanced development.

But in this period the right to water as a human right was not explicitly addressed or envisaged in international human rights documents because national security, external risks, economic crises were the first and foremost problems of states. But lately, since the environmental issues have grown into a major global concern, the right to water has become the subject of debates, analyzes, decisions, regulations, directives, conventions, resolutions, international agreements and international environmental conferences in the 1970s and especially during the 1990s.

To emphasize the importance of water, experts have begun calling it blue gold.

Due to the fact that the water is one of the most essential sources of life, this paper will analyze several international legal acts such as (conventions, generic commentaries, declarations and resolutions) that explicitly or implicitly recognize the right to water. These legal acts can help interpret and serve as guidelines to national constitutions and laws. Therefore, these legal acts besides providing for the right of access to drinking water, provide also other obligations related to water such as access to quality water, environmental protection and others.

The first part of the paper will focus on the historical development of the right to water, analyzing as well the declarations brought at several conferences.

The second section will analyze the provisions of several conventions that implicitly or explicitly refer to the right to water.

In the third part, this paper will focus on the analysis of the several resolutions adopted by the UN, which at the core they tackle the issue of the right to water as a human right.

1. The background of the right to water

a. United Nations Conference on the Human Environment–Stockholm

In 1972 the United Nations Conference on the Human Environment, held in Stockholm, identified water as one of the natural resources that needed to be safeguarded. Principle 2 of the Stockholm Declaration on Human Environment states that “the natural resources of the earth including the air, water, land, flora and fauna and especially representative samples of natural ecosystems must be safeguarded for the benefit of the present and future generations through careful planning or management, as appropriate.”¹

At this conference water was treated as a natural source and that was the first step towards water protection.

b. Mar del Plata Declaration- United Nations Water Conference

In 1977 the United Nations held the Mar del Plata Water Conference in Argentina.² That was the first time a global conference devoted itself fully to water resources.

The Action Plan included a number of recommendations and resolutions covering a wide spectrum of this issue.

The recommendations dealt mainly with the assessment of water resources; water use and efficiency; environment, health, and pollution control; policy, planning, and management; and regional and international cooperation. The resolutions addressed the issues such as: the assessment of water resources, community water supply, agricultural water use, research and development, river commission’s international cooperation, and water policies in the occupied territories. One resolution stated specifically that ‘*All people whatever their stage of development and their social and economic conditions have the right to have access to drinking water of quantities and of a quality equal to their basic needs*’.

The Mar del Plata Water Conference can be considered the starting point for the debate on the right to water.

c. International Conference on Water and the Environment- Dublin

In 1992 the International Conference on Water and the Environment was held in Dublin,³ Ireland. Principle 4 of the Dublin Declaration states that “*Water has an economic value in all its competing uses and should be recognised as an economic good*”.

¹ For the full text of the Stockholm Declaration see Declaration of the United Nations Conference on the Human Environment, June 16, 1972, https://www.ipcc.ch/apps/nj-lite/srex/nj-lite_download.php?id=6471

² Mar del Plata Declaration, https://www.who.int/water_sanitation_health/unconfwater.pdf

³ Dublin Declaration, <https://www.ircwash.org/sites/default/files/71-ICWE92-9739.pdf>

Managing water as an economic good it is an important way of achieving efficient and equitable use, and at the same time of encouraging conservation and protection of water resources.

The Dublin Statement indicates that the conception of water as an economic good must be limited by the concept of water as a human right in order to ensure equitable distribution of water.

So treating water as an economic good has as its primary purpose the protection of water from non-rational use.

2. Human Rights Treaties

a. Provisions of the Social Covenant

The juridical basis of the right to water in international law apart from some partial references derives from Article 11 “Adequate Standard of Living”⁴ and Article 12 “Health”⁵ of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR).

Under these provisions the right to water has been recognised implicitly: under Article 11 as a right within the entitlement to an adequate standard of living, which encompasses several individual rights within its ‘umbrella’ provision, for example, *inter alia* the right to food and housing, and under Article 12 as an element of the right to the highest attainable standard of health.⁶

Why water was not included in the process of drafting and elaborating the Covenant?

The reason most likely can be seen in the fact that water was not perceived to be as scarce as a resource as it is today; its availability was taken for granted – water was considered to be available as freely as is the air to breathe.

The CESCR notes that the list of rights included within the provision is not intended to be exhaustive, rather simply illustrative of the ‘catalogue of guarantees essential for securing an adequate standard of living’.⁷ Therefore the term ‘including’ can be said to encompass other comparable rights that are not specifically listed.⁸

The term ‘adequate standard of living’ is extremely difficult to define. No generally accepted definition has crystallised in human rights jurisprudence or scholarship. An adequate standard of living is met when individuals live in an environment and under conditions that allow them to participate in social life while maintaining their dignity and to realise their rights by their own means.

Thus, it contains an expansion of the notion of an adequate standard of living and shows that water is understood to be a component of this right although not explicitly stated.

⁴Article 11. 1 of the ICESCR “The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent. General comment on its implementation”,

<https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx>

⁵Article 12. 1. of the ICESCR “The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health”

⁶ See: Golay, C, the Right to Water Critical Report No 6, October 2009, Geneva: CETIM (Centre Europe Tiers Monde) Human Rights Programme, https://www.cetim.ch/legacy/en/documents/report_6.pdf.

⁷ General Comment 15, Para 3.

⁸ Langford, M, ‘The United Nations Concept of Water as a Human Right: A New Paradigm for Old Problems?’, (2005) Vol.21, No.2, Water Resources Development, p. 275, <https://www.tandfonline.com/doi/pdf/10.1080/07900620500035887?needAccess=true>

life and health. It also emphasizes that water is a prerequisite for the realization of other human rights. The Comment is thorough and comprehensive.¹⁸ The General Comment clearly states that water ‘should be treated as a social and cultural good, and not primarily as an economic good. The manner of the realization of the right to water must also be sustainable, ensuring that the right can be realized for present and future generations.’¹⁹

The crux of General Comment No. 15 is paragraph 2, which states: The human right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses.²⁰

General Comment No. 15 influenced the International Law Association’s (ILA) 2004, Berlin Rules on Water Resources.²¹ Article 17 of the Berlin Rules recognizes that: ‘Every individual has a right of access to sufficient, safe, acceptable, physically accessible and affordable water to meet that individual’s vital human needs.’

The Comment calls on the States Parties to “adopt effective measures to realize, without discrimination, the right to water as set out in this General Comment”.²²

c. Resolution A/64/292

On 28 July 2010, through Resolution 64/292, the United Nations General Assembly (UNGA) explicitly recognized the human right to water and sanitation and acknowledged that clean drinking water and sanitation are essential to the realization of all human rights. The Resolution calls upon States and international organizations to provide financial resources help capacity building and technology transfer to help countries, in particular developing countries, to provide safe, clean, accessible and affordable drinking water and sanitation for all.

This resolution can be understood as an extension of other human rights-related resolutions, such as the Vienna Declaration and Programme of Action²³, which establishes that human rights are universal and inalienable; indivisible; interdependent and interrelated, including the right to development.

The Resolution A/64/292 on the human right to water and sanitation was adopted with 122 States voting in favour, none against and 41 abstentions.²⁴

That same year, the UN Human Rights Council adopted the ‘Human Right on Access to Safe Drinking Water and Sanitation’ by consensus, affirming ‘that the human right to safe drinking water and sanitation is derived from the right to an adequate standard of living and inextricably related to the right to the highest attainable standard of physical and mental health, as well as the right to life and human dignity’.²⁵ This led the then UN Independent Expert on human rights obligations related to access to safe drinking water and sanitation to declare that ‘it means that for the UN, the right to water and sanitation is contained in existing human rights

¹⁸ General Comment No. 15 comprises 60 paragraphs divided into six parts: an introduction; normative content of the right to water; States Parties’ obligations; violations; implementation at the national level; and obligations of actors other than states

¹⁹ General Comment No. 15, n. 11 above, at paragraph 11

²⁰ Ibid., at paragraph 2.

²¹ Berlin Rules on Water Resources,

<http://waterbeyondborders.net/wp-content/uploads/2018/06/Berlin-International-Water-Rules-2004.pdf>

²² See paragraph 1 of General Comment No. 15

²³ Vienna Declaration and Programme of Action

<https://www.ohchr.org/en/professionalinterest/pages/vienna.aspx>

²⁴ UNGA Resolution A/64/292, http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/64/292

²⁵ UN HRC, Human Right on Access to Safe Drinking Water and Sanitation, paragraph 3,

https://www.un.org/waterforlifedecade/human_right_to_water.shtml

treaties and is therefore legally binding'.²⁶ Nevertheless, some States continue to question the legal status of the right.²⁷

d. Resolution A/RES/72/178

On 19 December 2017, United Nations General Assembly adopted the Resolution "The human rights to safe drinking water and sanitation".²⁸

The General Assembly recalling its resolutions in which the right to safe and clean drinking water and sanitation is recognized as a human right, the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities and reaffirming all previous resolutions of the Human Rights Council regarding the human rights to safe drinking water and sanitation reaffirms that the human rights to safe drinking water and sanitation, as components of the right to an adequate standard of living, are essential for the full enjoyment of the right to life and all human rights and recognizes that the human right to safe drinking water entitles everyone, without discrimination, to have access to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic use, and that the human right to sanitation entitles everyone, without discrimination, to have physical and affordable access to sanitation, in all spheres of life, that is safe, hygienic, secure, socially and culturally acceptable and that provides privacy and ensures dignity, while reaffirming that both rights are components of the right to an adequate standard of living and calls the states to ensure the progressive realization of the human rights to safe drinking water and sanitation for all in a non-discriminatory manner while eliminating inequalities in access and continuously monitor and regularly analyse the status of the realization of the human rights to safe drinking water and sanitation. Also reaffirms that States have the primary responsibility to ensure the full realization of all human rights.

4. Conclusion

Since the 1970s water as one of the primary sources of life has been one of the main subjects of many conferences, declarations, conventions and resolutions. The first declarations related to this topic treated water as a natural resource which is very important for present and future generations, which should be protected, used efficiently and should have adequate quality. On the other hand, the Dublin Declaration treats water as an economic good and should be used effectively.

The social convention treats it as the basis for an adequate standard of living and housing, which are guaranteed as separate human rights. Although water is not a constitutive part of these rights, however, according to several interpretations, the term 'standard of living' is a broad term and extremely difficult to define and may encompass rights other than those expressly provided. So that water is understood to be a component of this right.

The Convention on the Elimination of All Forms of Discrimination against Women prohibits discrimination against women and stipulates that Member States should take all necessary measures to guarantee women adequate living conditions, including water as a condition.

²⁶ UN Office of the High Commissioner for Human Rights, 'UN United to Make the Right to Water and Sanitation Legally Binding' (1 October 2010),

<https://www.ohchr.org/EN/NewsEvents/Pages/RightToWaterAndSanitation.aspx>

²⁷ See S.C. McCaffrey.

²⁸ The human rights to safe drinking water and sanitation, <http://www.cawater-info.net/library/eng/n1745661.pdf>,

The same is emphasized by the Convention on the Rights of the Child. According to which countries are responsible for "ensuring access to clean drinking water and adequate sanitation.

Regarding the documents issued by other UN bodies, the Resolution on the Right to Development recognizes a human right to water.

A document that directly refers to the right to water as a human right is General Comment No. 15, which emphasizes that water is fundamental to life and health.

General Comment No. 15 in paragraph 2, states: The human right to water entitles everyone to adequate, safe, acceptable, physically accessible and affordable water for personal and domestic use. The Comment calls on the States Parties to "take effective measures to realize, without discrimination.

Resolution A/64/292, explicitly recognizing the human right to water and sanitation and acknowledging that clean drinking water and sanitation are essential to the realization of all human rights and calls States and international organizations to provide financial resources to provide safe, clean, accessible and affordable drinking water for all.

The last resolution of the UN General Assembly, which deals with water law as a human right, is Resolution A/RES/72/178. This resolution recognizes that everyone has the right, without discrimination, to have access to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic use.

Looking at the whole situation from the first declarations to the last resolutions which enshrined and guaranteed the right to water as a human right, we can conclude that the right to water as a separate human right is not guaranteed by any legally binding document.

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