



**Swiss Coalition of
Development Organizations**

Swissaid • Swiss Catholic Lenten Fund

Bread for All • Helvetas

Caritas • Swiss Interchurch Aid

www.swisscoalition.ch

March 2004

Versión española: www.swisscoalition.ch/english/files/T_WrSP.pdf

Version française: www.swisscoalition.ch/francais/files/D_PnDr2.pdf

WHY WE NEED AN INTERNATIONAL WATER CONVENTION

Rosmarie Bär
Development Policy Coordinator

rbaer@swisscoalition.ch

phone: +41 31 390 93 32

"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, 2001)

Swiss Coalition of Development Organizations
Monbijoustrasse 31, P.O. Box, CH-3001 Berne
Tel. +41 31 390 93 30, Fax +41 31 390 93 31
mail@swisscoalition.ch, www.swisscoalition.ch

The Swiss Coalition of Development Organizations is the joint development policy lobbying organisation of the six leading Swiss development organizations. It strives to influence Switzerland's policy for the benefit of the poor countries and their peoples. Its goal is sustainable development, as well as a more just, peaceful and environment-friendly world that offers equal rights and opportunities to all. This calls for economic and political changes – worldwide and in Switzerland. In pursuit of these goals,

the Swiss Coalition engages in active lobbying vis-à-vis politicians, the administration and the private sector as well as intensive outreach work (press conferences, meetings, publications).

An international water convention is needed

- To establish the right to water for all people in a binding manner.
- To guarantee the right to water for coming generations.
- To protect water as a public good belonging to mankind.
- To declare as a core task of governments that of guaranteeing the right to water, and making nation-States and their authorities responsible for the respect, protection and fulfilment of the right to water.
- To prevent water from being privatised and degraded to a tradable good.
- To ensure that the human right to water takes precedence over international trade law (e.g. WTO).
- To place springs, groundwater, rivers and lakes under the comprehensive protection of international law.
- To guarantee women's water-related rights as human rights.
- To protect the local and national water rights of indigenous peoples under international law.
- To enshrine traditional water culture and local water rights (e.g. of nomads) in national law.
- To ensure that the people have a democratic say in determining and deciding national and local water strategies.
- To provide all people both internationally and domestically with effective judicial remedies for demanding fulfilment of the right to water.

Why we need an international water convention

General Principles

Water needs the protection of international law. One of the central demands of the Swiss Coalition of Development Organizations (Swissaid, Catholic Lenten Fund, Bread for all, Helvetas, Caritas, Swiss Interchurch Aid) is that a water convention binding under international law should be worked out. In this way it champions a forward-looking water policy that is based on the human right to water, recognises water as a common good of mankind, safeguards the basis of life for future generations and creates equitable distribution.

The demand for a water convention is more than just a legal exercise of little practical relevance on the part of some specialists. Behind the call for binding law are questions of principle that will have to be decided as quickly as possible. Is access to water a human right or just a need? Is water a common good like the air we breathe or is it a commodity like Coca-Cola and refrigerators? Who is being given the right or the power to turn the tap on and off: the authority, the people concerned, i.e. the government – or the invisible hand of the market? To put it more concretely, who sets the water price for a poor district in Manila: the Chief Financial Officer of Suez Lyonnaise des Eaux sitting in Paris, or the locally elected water committee of the district concerned?

Water – challenge of the 21st century

No-one thinking about the future of humanity can overlook water. Water has become a fateful question. As the UN General Assembly declared the year 2003 the International Year of Freshwater, Secretary-General Kofi Annan warned that the global water crisis had become the major challenge facing the international community. The UN environmental authority UNEP echoed the same theme by stating that the freshwater crisis was of the same proportions and potentially as great a menace as climate change.

The following figures illustrate the scale of crisis:

- 1.4 billion people lack access to clean drinking water.
- by 2025 some 3 billion people will be suffering from water shortage. Over 80 per cent of them live in developing countries, predominantly in rural areas and in big-city slums.
- 3 billion people have no sanitary facilities.
- 80 per cent of all diseases in developing countries can be traced back to the use of polluted water.
- 6000 children under 5 years of age are dying each day from the consequences of polluted water.

Translated into words, here is what these figures mean: lack of water leads to increased hunger, poverty, misery and disease, as well as desertification. People must migrate and flee. Social unrest, conflicts and the danger of war over access to water become intensified. UN Secretary-General Kofi Annan put it clearly at the start of the Year of Water: "No water – no future".

Policy failure

No discussion of water can avoid discussing policy. Water policy is closely tied in with land and farm policy, trade and economic policy, as well as environmental, social, health-care and equal opportunity policies. But above all, water policy is human rights and peace policy. Nothing has pervaded the history of human civilisation and its cultures as much as the handling, distribution and use of water.

It should be clearly understood from the very onset that the water crisis is not primarily a matter for planners and engineers. It cannot be addressed merely through technical measures, greater efficiency and capacity expansion. 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.

Policy measures are now needed above all else. It needs what is today known as good governance. Good governance requires binding legal bases that rest on universally applicable human rights. And above all, it calls for the political will to act, at all levels of the international community. More money is being spent annually in Europe and the USA on dog and cat food than would be needed to provide access to clean drinking water for all humanity. What this shows is that the struggle to secure a sustainable water policy is one for social change, economic advancement and social justice.

Water – much talk, little action

The first major water conference held in 1977 at Mar del Plata, Argentina, may be regarded as the starting point for a global water policy. For the first time the international community stressed that "All peoples [...] have the right to have access to drinking water in quantities and of a quality equal to their basic needs." Chapter 18 of Agenda 21, the Plan of Action of the 1992 Rio Earth Summit formulated and underlined this call in concrete terms.

It has been laid out in numerous UN documents over the past 30 years that access to clean drinking water is to be guaranteed. The action plans of the major UN conferences of the 1990s (*inter alia* Cairo, Copenhagen, Beijing, Rome) describe water as a key factor in overcoming hunger and poverty, and the lack of water, in contrast, as one of the greatest obstacles to development. The water decade that began in 1980, however, yielded a sobering outcome. The number of people without sufficient water was reduced only marginally.

At the Special Session of the United Nations General Assembly in 2000 the international community set itself a new and clear target, the so-called Millennium Goal: the number of people now without access to clean water is to be halved by 2015. This goal was confirmed at the World Summit on Sustainable Development (Rio+10) in September 2002 in Johannesburg. At the same time it was supplemented with the call also to halve the number of people without sanitary facilities by 2015.

Water – human right still a long way off

To date, the only mention of a binding human right to water occurs in the Convention on the Elimination of all Forms of Discrimination against Women,¹ and this with a view to access without discrimination. In the Convention on the Rights of the Child² adequate clean drinking water is stipulated as a prerequisite for implementing the right to health. A right

¹ Article 14.2(h)

² Article 24.2(c)

to water was also derived from the Universal Declaration of Human Rights of 1948, the "mother" of all human rights: "Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing..."³. This formulation was interpreted to mean that clean drinking water comprised an element of the right to an adequate standard of living. Today a right to water is derived by and large from the binding norms of the International Covenant on Economic, Social and Cultural Rights. The human right to water as a prerequisite for the realisation of the right to life, the right to adequate food, clothing and housing is derived from it⁴. This stance was reflected for example on World Food Day 2002 in the FAO motto "Water: Source of Food Security".

Individual States have hardly kept the political promises made at the major UN conferences of the 1990s. All the action plans – from the 1992 Rio Agenda 21 to the 2002 Johannesburg action programme – hardly ever moved beyond the paper stage. Instead, policy-makers are losing no time in utilising binding WTO agreements to pave the way for economic globalisation and to throw the door wide open to liberalisation and privatisation. It is more than fatal to construe good governance in such a way, that governmental responsibility for the basic needs of people and for protecting life-sustaining resources is being relegated to multinational corporations and placed in the invisible hand of the market. It is high time to counter this trend with a international water convention.

Landmark legal comment

UN human rights bodies were aware of the problem. This led the ECOSOC Committee on Economic, Social and Cultural Rights to make following complaint: "The Committee has been confronted continually with widespread denial of the right to water (...)." In November 2002 it published a "General comment on the right to water" (No. 15⁵). The Committee thus set a landmark for the right to water, and it should become the cornerstone of a future water convention.

General Comments are not binding law. They are "soft law". Legal experts are unanimous, however, in taking the Committee's General Comments as a sound basis for better realising the human rights enshrined in treaties. The Committee emphasises that the right to water is a prerequisite for realising all other human rights and for a life in dignity. But the major breakthrough resides in its approval of 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.*" What does this mean in reality?

Sufficient water means that "an adequate amount of safe water is necessary to prevent death from dehydration, to reduce the risk of water-related disease and to provide for consumption, cooking, personal and domestic hygienic requirements."⁶ The quantity of water available for each person should correspond to World Health Organization (WHO) guidelines.⁷

Safe and acceptable water means that it must not be a threat to a person's health and should be of an acceptable colour and odour.

³ Universal Declaration of Human Rights, 10.12.1948; Article 25(1)

⁴ Article 11.1

⁵ United Nations, Economic and Social Council, Committee on Economic, Social and Cultural Rights, General Comment No 15, 2002 (E/C.12/2002/11): The right to water (pursuant to Articles 11 and 12 of the International Covenant on Economic, Social and Cultural Rights)

⁶ Cited from *Rosemann, Nils*, "Ware Wasser", in *Eine-Welt-Presse*, 2003, No. 1

⁷ General Comment No. 15, para. 12(a)

Physical accessibility means that water must be accessible for each household, educational institution and workplace, which generally means having mains water supply in these facilities.

Affordable water means that the direct and indirect costs must not be high enough to hinder the realisation of other human rights. The Committee states with regard to affordability: "To ensure that water is affordable, States parties must adopt the necessary measures that may include, *inter alia*: (a) use of a range of appropriate low-cost techniques and technologies; (b) appropriate pricing policies such as free or low-cost water; and (c) income supplements."⁸

The Committee further emphasises that water should be treated as a social and cultural good, and not primarily as an economic good. It speaks out clearly against the commercialisation and commodification by which water is being degraded to a run-of-the-mill, tradable good. Of capital importance – precisely in view of the ongoing WTO negotiations – is the stated precedence of international human rights law over national undertakings under international economic agreements. In a nutshell, the Committee demands: "Human rights law must take precedence over trade law"⁹. This principle should be anchored in a water convention as a binding one. To date, this Comment has hardly been acknowledged in official political circles, no doubt because it so clearly goes to the crux of the matter.

Fatal paradigm shift

Countless conferences and forums outside the UN framework have been addressing water over the past two decades. Numerous organizations have also been created in order to be in on the "water business". This has meant that the hegemony over water policy has been gradually shifting away from the UN toward organisations in which the water industry, multinational corporations, World Bank, media and financial institutions are present and exert considerable influence. Thus, like the preceding ones in Marrakech and the Hague, the 3rd World Water Forum of March 2003 in Kyoto, Japan was under auspices of the World Water Council. Its Vice-President, for instance, is a representative of Lyonnaise des Eaux, the world's largest water multinational.

The shift toward non-UN bodies has had far-reaching implications. Country representatives have allowed themselves and continue to be carried along in the wake of multinational corporations and deregulation and privatisation enthusiasts. The result is contradictory policies. Hence the "right to water" approved by the community of States in UN resolutions has been downgraded at World Water Forums by the very same people to a "need for water". The "public good" became "an economic good", the provision of which was best left to private suppliers. In Kyoto for example, the Ministerial Conference refused to include a right to water in its final declaration as had been demanded by civil society. Not even the clear appeal from the UN High Commissioner for Human Rights, Sergio Vieira De Mello,¹⁰ and from three UN Special Rapporteurs on food, health and housing made any impact: "... we call for a clear recognition of water as a human right in

⁸ General Comment No. 15, para. 27

⁹ General Comment No. 15, para 35: "Agreements concerning trade liberalization should not curtail or inhibit a country's capacity to ensure the full realization of the right to water."

¹⁰ Third World Water Forum, Statement by Sergio Vieira De Mello, Kyoto, 17.3 2003: "I would encourage you to include an explicit reference to water as a human right in the Ministerial Declaration ..."

the Ministerial Declaration and other outcomes of the World Water Forum in accordance with international human rights instruments including General Comments."¹¹

The statements and decisions of these "non-UN" conferences are being cited with increasing frequency on an equal footing with UN pronouncements and regarded as guiding principles for a future water policy. On the one hand, the paradigm shift from water as a public good to an economic good takes the concrete form of pressure from the World Bank and International Monetary Fund (IMF) on developing countries for deregulation and privatisation. On the other – and this is highly topical – it can also be seen in the WTO GATS negotiations. There, the European Union is known to be demanding that 72 countries open up their water supply systems to foreign providers. The EU thus yielded to pressure from its multinational water giants, which are keen to expand the reach of their business even further toward developing and transition countries.

Lack of funds as a means of pressure to privatise

Uppermost on the international community's list of arguments is lack of funds – the reason why billions of people continue to live in degrading conditions and without water. Estimates of the extra funds needed to fulfil the UN Millennium Goals vary widely. UNEP reckons as much as 180 billion USD annually, whereas the World Bank assumes that annual investments will need to be doubled to 30 billion. This line of argument also relies on the so-called Camdessus Report¹² that was presented at the 3rd World Water Forum in Kyoto. This report had been commissioned by the Global Water Partnership and World Water Council. It was drawn up by 20 financial experts under the leadership of the former Managing Director of the International Monetary Fund, Michel Camdessus. The report is intended to serve the international donor community as a reference work for its future policies. The report again approves of major projects such as those carried out in many countries over the past 20 years, with the dire social and environmental consequences that are well known.

The additional funding required cannot be provided from public finances. The advocates of privatised water supply systems argue that this calls for additional private sector funding. There are numerous well-known cases in which indebted developing countries privatise their water supply systems under pressure from the International Monetary Fund and World Bank in order to obtain fresh loans.

The facts clearly show that privatising the water supply is the wrong path even from the financial viewpoint. The UN Millennium Goals will never be attained in this way. The multinational corporations are interested only in water supplies to megacities, where there is purchasing power and the promise of profits. Amongst others, examples such as Manila and Maputo show that multinational corporations will not hesitate to withdraw prematurely from their undertakings when profits do not live up to their expectations. It is the State that again becomes responsible for the "mess" left behind. Even the Public-Private Partnerships (PPP), much lauded for some years now and given an extra stamp of quality in the Johannesburg Action Plan, are oriented along the same mistaken lines and to date have made no contribution to solving the water crisis.

¹¹ Joint Statement by the Special Rapporteur on adequate housing, Special Rapporteur on the right to food, Special Rapporteur on the right to the highest attainable standard of physical and mental health under the Commission on Human Rights, Kyoto, 17 March 2003

¹² World Panel on Financing Water Infrastructure: "Financing Water for All", Kyoto 2003

The reality is that the vast majority of people without access to clean drinking water live either in rural areas or urban slums. A recent "Bread for the World" study¹³ clearly documents the fact that neither direct private sector investments, World Bank funds, nor official development funds flow toward those places: "Least aid where people have least clean water." Besides, private investments in water infrastructure have been in decline since 1997. Investments from 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. After all, the author of 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." These findings also finally demystify Public-Private Partnerships (PPP) or Private Sector Participation (PSP), which, especially since the Johannesburg Summit on Sustainable Development, have come to be seen by a good many States as the answer to the water crisis and the ideal way to a new water strategy.

Unimpressed by these facts, the World Bank seems to be clinging to its privatisation approach. All its latest strategy papers approve of greater private sector participation, favour Public-Private Partnerships and foster large infrastructure projects.¹⁴

The sum considered necessary by the World Bank and Camdessus Report for attaining the Millennium Goals was sharply contested by the Chairman of the Water Supply and Sanitation Collaborative Council (WSSCC) Sir Richard Jolly at the 11th annual meeting of the Commission on Sustainable Development (CSD) in New York. Were we to forego high-tech and high-cost projects, USD 10 billion per year would be enough to provide water and sanitary facilities for all. This difference over funding requirements is more than a fuss about figures. It reflects fundamentally different views of people as well as different worldviews. To put it graphically, for some it is massive dams with the inevitable forced resettlements and human rights violations, for others, small-scale irrigation plants for basic food supplies and self-managed springs for drinking water.

Escaping the finance trap

Today, there are annual flows of USD 50 billion in development funds from industrial countries to developing countries. If we take the WSSCC figures, at least 1/5 of that is needed to achieve the UN Millennium Goals concerned with water.

It is beyond dispute that achieving the UN Millennium Goals will call for increased financial endeavours. Protecting the public good that is water undoubtedly calls for more official funds. States came out in favour of this at the International Conference on Financing for Development held in March 2002 at Monterrey, Mexico. At the same time, they again confirmed the UN target of allocating 0.7 per cent of GNP for development cooperation. Most States are nowhere near this goal. Political will is needed here to translate promises into reality.

In addition, individual countries must gear their domestic budget priorities toward the basic needs of people. Already the 1995 World Social Summit in Copenhagen had pointed to a possible and meaningful avenue – the 20:20 initiative. Under this initiative, industrialised countries are to reserve 20 per cent of their development aid for basic social

¹³ „Stimmt die Richtung? Analyse der aktuellen Finanzströme im Wasserektor“ [The Right Direction? Analysis of current Financial Flows in the Water Sector], Stuttgart, January 2004 (Author, Fritz Brugger)

¹⁴ Water Resources Sector Strategy, WRSS, 2003; Private Sector Development Strategy, PSDS, 2002; Aktionsplan Infrastruktur 2003.

needs. These also include low-cost drinking water supply systems and sanitary facilities. Developing countries in turn must invest 20 per cent of their budget in this realm. UNICEF not least of all is still pressing for the initiative to be realised. For nowhere in the world was this forward-looking solution implemented. This is a crystal-clear illustration of the prevailing spirit of the times.

Water, sustainable development and international law

Twelve years ago at the Rio Earth Summit the international community committed itself to the path of sustainable development. In a rare show of unanimity, Heads of State and of Government then stated: "The only way to assure ourselves of a safer, more prosperous future is to deal with environment and development issues together in a balanced manner. We must fulfil basic human needs, improve living standards for all and better protect and manage ecosystems. No nation can secure its future alone; but together we can: in a global partnership for sustainable development."

Mention was made of five major global long-term problems that would have to be solved jointly, for the future of the earth and of mankind depended on it:

1. climate change
2. loss of biological diversity
3. land degradation
4. pollution and depletion of freshwater reserves
5. deforestation

It was also agreed that sustainable development should entail binding commitment. It was further agreed that the UN must create secure legal foundations for any sustainable "world domestic policy". Since then, environment policy – a central component of the concept of sustainable development – has been becoming an increasingly cross-cutting task directly linked to poverty eradication, conflict prevention and peace consolidation. Following this approach:

- climate change led to the *Climate Convention* and the *Kyoto Protocol*. The Climate Convention enshrines the atmosphere as a "common good of humanity".
- the loss the diversity of wildlife gave rise to the *Convention on Biological Diversity* and the *Cartagena Protocol*.
- soil erosion and loss of fertility led to the convention to combat the spread of deserts, the *Convention to Combat Desertification*.
- deforestation led to the establishment of the *UN Forest Forum*. There is the growing belief here that an *additional protocol* to the Convention on Biological Diversity is needed to protect forests, or a forest convention proper.

Only water, the basis of all life, is still without its own comprehensive international legal protection today. This contrasts starkly with the Rio Agenda 21, where the importance of water on the way to sustainable development is underlined: "The only sustainable approach is the equitable and fair distribution of water between the various user groups, between States, and between man and nature."

Water convention urgently needed

Creating a water convention would not be tantamount to opening the pearly gates. Formulating a water convention will surely be a highly demanding exercise. The history of the creation of other agreements under international law shows this all too well. Again, implementation within individual States is a feat and would merit a chapter all to itself. It is the nation-States that after signing the agreements often only reluctantly recall the undertakings made. The tug-of-war over the Kyoto Protocol is an inglorious example of this.

But all these hurdles in no way alter the fact that a water convention provides the indispensable legal groundwork and political opportunity for a forward-looking water policy. A water convention is an international legal instrument in line with the spirit of *good governance*, based on law and not on might. It must form part of a world policy that is people-based and anchored in international law. The right of future generations to safe and sufficient water must be the guiding principle for lawmakers.

It is only a convention that can merge into one powerful stream the three main currents of water that are development, environment and human rights. It would thus become a central tool for combating poverty and hunger and could do much to aid the implementation of the sustainable development model. Even if above-cited General Comment No. 15 on the right to water represents a milestone in water policy, crucial building blocks are still missing for the comprehensive protection of the life-sustaining resource. This does not solve the question of distribution amongst the various users of water. Not least of all, the question of irrigation water for farming is consigned to the realm of the "right to food". Given the conflict potential that resides in this increasingly scarce resource, rules of distribution are unavoidable. The role of private enterprises in the water sector has not been settled either. Besides, the environmental approach is too weak, and no sustainable water policy is possible without it. A sustainable water policy must begin with the long-term protection of headwaters and ground water. Otherwise the right to water will necessarily remain an empty promise. The Committee on Economic, Social and Cultural Rights was itself aware that its Comment was not enough to realise the right to water. "States parties should ensure that the right to water is given due attention in international agreements and, to that end, should consider the development of further legal instruments."¹⁵

A convention based on the right to water would bind individual States to align their national legislation with international law. In realising human rights, States have so-called "core tasks", which also come to bear on the right to water. These include the duty to respect, protect and fulfil a human right¹⁶.

A binding agreement under international law with reporting and control mechanisms affords the people in individual countries a significant "form of pressure" on their own Government. A convention would also provide judicial remedies for each individual: "Any persons or groups who have been denied their right to water should have access to effective judicial or other appropriate remedies at both national and international levels".¹⁷ The strengthening of human rights has never been a linear forward movement. In addition to responsibility on the part of governments, international organisations and non-governmental organisations, it demands the untiring commitment of the local people.

¹⁵ E/C.12/2002/11, para. 35

¹⁶ *Rosemann Nils*, "Das Menschenrecht auf Wasser unter den Bedingungen der Handelsliberalisierung und Privatisierung ...", [The Human Right to Water under Conditions of Trade Liberalisation and Privatisation...] a study commissioned by the Friedrich Ebert Foundation, Berlin und Geneva, November 2003, p. 38ff.

¹⁷ General Comment, para. 55

Tool in the hands of the people

The three Rio conventions currently in force (Climate Convention, Convention on Biological Diversity, and Convention to Combat Desertification) show that international law means neither centralistic solutions nor "measuring the whole world by the same yardstick". Instead they were elaborated in keeping with the Rio principle of "joint but differentiated responsibility" of industrialized and developing countries. The Convention to Combat Desertification for instance, is truly a "bottom-up body of rules". Decentralisation of decision-making powers, co-decision and a voice for the people and NGOs in converting the convention into national law and national action plans (NAPs) are established principles. Transparency and accountability are amongst the obligations of the Contracting States. This procedure can be a model for a water convention. Global law would thus give rise to custom-tailored protection for water, which is after all a local and regional good.

Besides, agreements under international law on environmental protection have prompted governments to draft environment legislation and take environmental action that, in the absence of international regulations, would either not have occurred or done so much later in individual States.

Local and traditional cultural and water rights of people and not least of all the water culture of indigenous peoples and access for nomads to traditional water supply points also need protection under international law. The integral use of water as portrayed in the actual work of development organisations can withstand the pressure for privatisation over the long run only with legal and political backing from the community of States.

The Swiss Coalition felt reinforced in its call for a water convention by a legal opinion that was commissioned by the Swiss Government (Department of Foreign Affairs, DFA, Human Rights Division). In it, the author Prof. Juliane Kokott (St. Gallen University) concludes: "The time is ripe for a universal code on freshwater. Only the sustainable stewardship of this resource can foster the human right of all to drinking water, over the long-term and for future generations. This speaks for considering both the human rights and environmental aspects of freshwater protection in the same instrument."¹⁸

Clean drinking water is essential to human survival. And this is among the core tasks of government. Only the government can guarantee that distribution is based on solidarity, that people have a democratic say and scope for monitoring, as well as ensure decentralised security of supply. Where governments are reluctant or unable to carry out their duty, it is incumbent on development cooperation to support States in implementation. A water convention would be a common, coherent body of rules for industrialised and developing countries alike.

Women's rights are human rights

The water crisis embodies a gender equality dimension that should not be underestimated. In developing countries, fetching water is the job of women and children. Women are the world's water carriers. Going for hours on foot, they carry home as much as 60 litres of water day after day for their family. Thus, a 65-year-old woman in Brazil's parched northeast has spent roughly a third of her life fetching water. Chronic health problems do result from carrying this heavy load. After such an expenditure of energy and time, there is no place left for school and education and, by extension, development and economic independence. Whereas women are water carriers, men are policy-

¹⁸ "The need for a world water framework convention or water charter, with special reference to human rights and environmental issues", Prof. Dr. Juliane Kokott, Chair for International Law, International Economic Law and European law of the University St. Gallen. (2001).

makers. It is the men who make up the water authorities and who decide about pumps, the location of wells and the distribution of water. But also in the pursuit of the UN Millennium Goals related to sanitary facilities, which are closely bound up with human dignity, women must be able to formulate their demands, which are different from those of men. This holds good not least of all for public areas as well, such as schools and market-places.

Women are not only the world's water carriers, they are also its breadwinners. Water and food go together; this has always been so. Women produce more than half the world's total food supply – 80 per cent in Africa. Their role as the ones responsible for the entire food chain contrasts starkly with their disenfranchisement when it comes to land acquisition and ownership, the provision of loans, seeds and technical assistance. Numerous action plans from UN conferences (e.g. Cairo, Beijing, Copenhagen, Rome) ascribe capital importance to the principle that "women's rights are human rights". Besides, gender equality is amongst the international community's Millennium Goals.

Equal access for women to water and land are key factors in the fight against poverty and hunger. Equal rights for women are a sound basis for food security. An international water convention would give women in all countries a binding, powerful instrument with which to enforce and demand fulfilment of their rights – even vis-à-vis their own (passive) local and national governments.

Responsibility of civil society

Time is pressing and we therefore cannot procrastinate. We must do the utmost to ensure that water remains a public good just like the air we breathe, for there is no substitute for either. The WTO agreements (GATS) through which water is being converted into a run-of-the-mill tradable commodity must be countered with a water convention. International law must ensure for all people on earth a basic supply of water, access to clean drinking water, fair distribution and protection from water pollution.

As representatives of civil society and Non-Governmental Organisations (NGOs), we have a duty to hold our governments to supporting a water convention internationally. Civil society and its non-governmental organisations have been extremely active in the realm of water in recent years. The fight against privatisation of water was major topic at the World Social Forums in Porto Alegre and in Mumbai. They have been similarly active at major international conferences, such as in Bonn in December 2001 or at the World Water Forums. Water also had a permanent place on the agenda at the Social Forums in the different parts of the world. Numerous declarations¹⁹, statements, protests and position papers were published during this time. It is now time to move forward to the commitment stage. We must now fight for water protection under international law. The Declaration of the Peoples World Water Forum, which has been published in January 2004 in New Delhi, India, states: "We call for an international convention on fresh water under the auspices of the United Nations ..."

In the UN Commission on Sustainable Development (CSD), water is the priority topic for the years 2004/05. Civil society must introduce the demand for a water convention here as well. At the same time, we must formulate and table for discussion our own ideas as to what a water convention ought to look like.

¹⁹ E.g. Rome Declaration that Water is a Human Right, 10th December 2003

Water ethics

Water needs a code of ethics. It must be inspired by the principles of precaution and mutual consideration and by the notion of justice and solidarity. It is water itself that teaches us the ethics. The following story should bear this out:

A wise man in ancient China was once asked by his disciples: "You've been standing for some time now beside this river, staring into the water. What do you see there?"

The wise man did not reply. He did not remove his gaze from the constantly flowing water. At last he said: "The water teaches us how we should live.

Wherever it flows it brings life and distributes itself to all who need it. It is kind and generous. It knows how to smooth out rugged terrain. It is fair. Without hesitating in its course, it plunges over steep precipices into the depths. It is courageous. Its surface is smooth and even, yet it can form hidden depths. It is wise. It flows around rocks standing in its way. It is peaceable. But its gentle power works day and night to remove any obstacle. It is untiring. Irrespective of the number of turns it must take, it never loses sight of the direction toward its eternal destination, the sea. It is single-minded.

And however often it is polluted, it endeavours unceasingly to become clean again. It has the power to renew itself time and again. It is for all these reasons", said the wise man, "that I gaze at the water. It teaches me true life."

In other words, water policy thus becomes what it must be – human rights and peace policy.

Bibliography

Barlow Maude/Clarke Tony, Blue Gold: The Battle Against the Corporate Theft of the World's Water, Earthscan, 2002

Brugger Fritz, Stimmt die Richtung? Analyse der aktuellen Finanzströme im Wassersektor, Brot für die Welt, Hintergrund-Materialien No 11, Stuttgart, 2004

Centre for Our Common Future, Agenda für eine nachhaltige Entwicklung, Geneva, 1993

Hamm Brigitte, Menschenrechte, ein Grundlagenbuch, Leske+Budrich, Opladen, 2003

Nowrot Karsten/Wardin Yvonne, Liberalisierung der Wasserversorgung in der WTO-Rechtsordnung – Die Verwirklichung des Menschenrechts auf Wasser als Aufgabe transnationaler Verantwortungsgesellschaft, Beiträge zum transnationalen Wirtschaftsrecht, Heft 14, Institut für Wirtschaftsrecht, Martin-Luther-Universität, Halle, Juni 2003

Petrella Riccardo, Wasser für alle, Ein globales Manifest, Rotpunktverlag und Helvetas, Zürich 2000

Roseman Nils, Das Menschenrecht auf Wasser unter den Bedingungen der Handelsliberalisierung und Privatisierung – Eine Untersuchung der Privatisierung der Wasser- und Abwasserversorgung in Manila, a study commissioned by the Friedrich Ebert Foundation, Berlin und Geneva, 2003

Swiss Coalition of Development Organizations Swissaid • Catholic Lenten Fund • Bread for all • Helvetas • Caritas • Swiss Interchurch Aid, Water, South Magazine, Berne, 2001

Swiss Coalition of Development Organizations Swissaid • Catholic Lenten Fund • Bread for all • Helvetas • Caritas • Swiss Interchurch Aid, The profits for the private sector, the risk for State?, Global⁺ Document No. 3, Berne, January 2004

The United Nations World Water Development Report, Water for People – Water for Life, Unesco-WWAP, 2003

United Nations, Economic and Social Council, Committee on Economic, Social and Cultural Rights, The right to water, General Comment No. 15, Geneva, November 2002

Windfuhr Michael, Das Menschenrecht auf Wasser – Was steht hinter dem Konzept?, Brot für die Welt, Hintergrund-Materialien No 9, Stuttgart, 2003

World Health Organization (WHO), The Right to Water, Health and Human Rights Publication Series No 3; 2003