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Water as a Human Right:
Challenges and Limitations

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Abstract:

In what follows, the first section presents an overview of where the right is by now; where it settles by identifying and compiling the relative data on it. Of particular study will be two approaches; the strategic approach and human-based water approach. In this regard, a brief characterization will be made on the amplitude and characteristics of the human right to water. The third section will aim to provide a vision on where security and human rights meet. Therefore, a study of the problem of water and the implications on the extent of water will be done; an analysis on the limitations and effects of the right will draw reasonable conclusions on the possible vindications and implications for the right to be accomplished. This section deals with the effects on the right as well as the impact on the realization of the right and its consequences. Finally, the conclusions and findings will be discussed.

Keywords:

Water, sanitation, human rights, sustainable development, SDGs.

Introduction

Water use has been growing at more than twice the rate of population increase in the last century, and, although there is no global water scarcity as such, an increasing number of regions are chronically short of water¹. Although much has been done, the predominant approach among states is the market as an instrument in regulating water scarcity. Water is mainly understood as a commercial product. However, the reality is different; water is not an inexhaustible source of income, first for its vital and irreplaceable nature, and second due to its growing scarcity.

Recent leading-edge research has analyzed that there is a prominent attention to the issue of water in recent times due to the desire of meeting the Millennium Development Goals, as well as an increasing shift in the conception of water, from a human right to human security problem. In this regard, this study focuses on the different approaches to the right from a strategic point of view, what is actually being done and what are the side effects of the different lines. Little attention has been paid to other approaches such as the human rights approach that can be seen as a supportive and important complement to other approaches to conferring water problems such as the one of global and collective security.

Hence, the innovative aspect of this study is to be found in the attempt to provide answers to the following research question: How could the conduct and approach of the states be oriented thought the observation of the treatment of the right to water?

The biggest failure of the commitment to end water scarcity and water stress is not due to the impossibility of the task, the lack of knowledge or the insufficient resources. The problem is not solved because it represents a great and difficult task for the international community to legislate on water due to its global nature. It represents a security problem as well as a paradox for human rights. The study of the effects and scope, as well as the

¹ *As many of the informal settlements in urban areas are unrecognized, the precise number of people living in these settlements is often unknown, as is the status of water provision. While people may use safe sources of water for some of their purposes, such as for drinking, this source may be prohibitively expensive to use for all domestic uses, forcing people to use unsafe sources. This is not echoed in the statistics of access to water supply.*

observation of the right to water treatment from different approaches provides a vision on how states act in relation with the developments in the right to water. This study poses the extension of the right as well as some limitations towards state action.

The strategic approach to water

The post-Cold War ideology is creating a growing interest in the political agenda and academic debate to the role that certain natural resources play in the international security agenda of the XXI century². Water is the most essential element for life. However its availability is highly variable and highly dependent on weather conditions and its access is very unequal. These features present a problem of security both environmental and human, that in many cases act as one entity.

In order to understand the challenges and limitations on the right to water is interesting to approach the issue strategically, that's to say, by the theoretical and empirical approach to the role water is playing it can be understood its future in the international security agenda of the early twenty-first century. The main concern with water is that scarcity was not an arisen problem long ago. The preoccupation for sustainability is a new concept related with that of water. The world economy is not sustainable; we consume more that we can produce. This is the time where we could ask ourselves if water would most likely be the new petroleum. The need for fresh water and its resources is used not only for human consumption or food production but also for extracting raw materials and for producing goods and energy. In addition, climate change and global warming are also factors to be taken into account, especially in countries suffering water stress.

In this worsening scenario, debates whether environmental and water stress will lead to cooperation or conflicts are being studied. As the experts, Patrick Mac Quarrie and Aaron Wolf show in *Water security*³, the popular claim that water wars will be definitive wars of this century may prove to be an exaggeration. What it can undoubtedly be said is that

²José A. Peña Ramos; Antonio J. Barbeito Cuadri, *Documento de Opinión 67/2013: El agua dulce en la agenda de seguridad internacional de comienzos del siglo XXI*, Madrid: Instituto Español de Estudios Estratégicos, 2013.

³Floyd; Matthew, *Environmental Security*, 2013, p 31.

scarcity and stress in fresh water resources cause conflict instead of promoting collaboration.

Water security is defined as “ *the capacity of a population to safeguard sustainable access to adequate quantities of acceptable quality water for sustaining livelihoods, human-wellbeing, and socio-economic development, for ensuring protection against water-borne pollution and water-related disasters, and or preserving ecosystems in a climate of peace and political stability*”⁴. Water security lies at the center of many areas, each of which is knottily linked to the right to water. Therefore addressing this issue requires interdisciplinary collaboration between them. In the United Nations realm, UN-Water supports the inclusion of water security on the agenda of the UN Security Council⁵.

By the addressing of water security it can be seized all the issues interlinked with the concept, offering a broader vision and framework of action. Assuming water centrality for achieving security encapsulates the interconnection of the various dimensions linked. Therefore it requires the interdisciplinary collaboration across these sectors, communities and political borders, so the appearance of potential conflicts over water is adequately managed⁶.

Based on the analysis made by UNDP, *New dimensions of human security in 1994*⁷: Water must be placed within the existing paradigm of human security. In the past few decades, definitions of security have moved beyond a limited focus on military risks and conflicts and have broadened to encompass a wide range of threats to security, with a particular focus on human security and its achievement through development. Water security is human security as is the root for all the interconnections to flow correctly. As it

⁴UN-Water Task Force on Water Security, *Water Security & the Global Water Agenda: A UN-Water Analytical Brief Global Water Agenda, United Nations University, 2013.*

⁵*Ibid*

⁶Wouters, P.S Vinogradov and B.Magsis, *Water security, Hydrosolidarity and International law: a river runs through it, Yearbook of international environmental law, 2009.*

⁷UNDP, *New dimensions of human security. Human Development Report 199, New York, Oxford, Oxford University Press, 1994.*

will be further developed, the slowly integration of water security in human rights emphasizes the role of water and sanitation in ensuring water in a global realm.

The dimensions linked to water security

Environmental security

The impact of climate change is much higher in the most fragile and poor countries. Among its consequences include increased migration, land degradation and shortages of water and food resources which can lead to the appearance of conflicts over resources. For this reason, climate change has become a security issue the international community. This is represented in a change of mentality in addressing global warming. From the 1992 *Rio Earth Summit*⁸ there is an attempt to mobilize scientific evidence of global environmental change into a global policy agenda. Environmental security did not evolve as a homogenous concept but as a polysemous category: first analytical, then normative⁹. First there was an analysis and then the creation of a norm that came about after the consciousness of climate change in which human security was pending on. Climate change was linked to human security and vice versa.

Of main importance also is the effect on climate change and water security, which can have direct consequences such as the vulnerability of the population by the alteration of the water cycle. This variation can threaten all levels of the water infrastructure making population fragile and susceptible to every change. Ensuring security facing climate change can reached through appropriate measures such as political and governmental policies¹⁰.

⁸UNCED, *Earth Summit Agenda 21, 1992*.

⁹Floyd; Matthew, *Environmental Security, 2013, p 58*.

¹⁰*Millennium ecosystem assessments, Ecosystems and Human Well-being: a framework assessment, Washington, D.C: Island Press, 2003, p 245*.

Water scarcity

Water scarcity is among the main problems to be faced by the world. At least two-thirds of the global population, over 4 billion people, lives with severe water scarcity for at least one month every year¹¹. Another 1.6 billion people face economic water shortage (where countries lack the necessary infrastructure to take water from rivers and aquifers¹²). These water problems are set to worsen, according to the researchers, as population growth and increasing water use.

Water scarcity is both a natural and a human-fault related problem. As it happens with food, there is enough water on the planet for every human being but it is distributed unevenly and too much of it is wasted, polluted and unsustainably managed. The situation is worsening; population growth, and pollution, over urbanization have an impact on the environment and climate change. One of the main problems with water scarcity is that it will result in food shortages and therefore the creation of new conflicts and paradigms. Communities and societies who deeply rely on natural resources for their survival and who are limited in their ability to sustainably manage them are in particular risk of the impacts of human induced environmental transformation. Those living in developing countries are particularly tangled to their local natural resources and thus vulnerable to human induced pressure.

However, water and scarcity is not inevitable: the non-natural scarcity and human-based scarcity can be preventable. Influence of human behavior and social customs passed by policies and guidelines can make a change. In fact, much of what passes for scarcity is a policy-induced consequence of mismanaging water resources according to the UNDP Report¹³.

¹¹UNDP, *Human Development Report 2006, 2006*.

¹²UN-Water FAO, *Coping with water scarcity: Challenge of the twenty-first century, 2007*.

¹³UN-Water FAO, *Human Development Report 2015: Work for Human Development, 2015*.

Water sovereignty

The United Nations Human Right's Charter introduced an innovative principle on the notion of sovereignty, the relation between states and their own citizens was no longer on the exclusivity of the sovereign state itself but a new matter of international concern. Here of, the Charter keeps equilibrium between this new approach to sovereignty and non-interference in respect to human rights. This fragile balance is one of the cornerstones of international human rights law.

In this regard, state sovereignty lays out a conflicting matter with human rights; in times this prerogative has been used not to provide protection or fulfillment of rights in the name of state sovereignty. The coexistence of these two concepts has undergone a huge change in this half century due to globalization. The growth in the global recognition of human rights and their relevance to an ever-increasing number of areas that were considered unrelated to human rights, reassures the belief that the observance to human rights and the increase in their international substantive implementation in relation of national sovereignty, will also grow.

Talking on sovereignty, land sovereignty also implies the topic water sovereignty. Historically sovereignty on water issues has been looked at from a local national or regional perspective. Problems with water sovereignty have historically been resolved at as best regional or binational understandings. These issues are related with the sharing frontiers, transboundary rivers or seas, water shortages and water stress. This is a great example that in a globalized world the concepts water and sovereignty can coexist and complement each other¹⁴.

Another realm of water sovereignty is how the sovereigns itself use it as a tool. Resources are always a starting point of conflict to the extent in which they are scarce. Therefore they raise the struggle for its possession and control, which is the aggravating circumstance added to other causes of conflict.

Whatever the realm and extent on water sovereignty and its uses, it should be acknowledged that permanent sovereignty over water and other natural resources de

¹⁴Temmerman, *Bulk fresh water*, 2014.

facto is no longer something feasible. The veil of water and resource sovereignty shall to be pierced for the protection of the environment and the welfare of humankind.

Implications of state action regarding the right¹⁵

On poverty and development

In the theory of the resource curse¹⁶ poor communities are denied sufficient water for drinking and other basic needs even though there was abundance of water and financial resources. Poor people have fewer resources to handle the negative consequences of not having water and sanitation. The right to food of these communities is also diluted as without water they cannot engage in the growing of food and agriculture both for survival and economic purposes.

As the Manual on the right to water and sanitation by UN-Habitat states;

“There is a strong overlap between poverty and the lack of access to safe water and sanitation, with a lack of access to water contributing to levels of poverty, as well as poverty being a factor in why people do not have access to water. On average, those on low incomes spend a significantly greater proportion of their income on water than do the wealthy, thereby affecting their ability to provide for other basic needs such as food, shelter, clothing, housing, health and education. The absolute price they pay to water vendors can be ten times or more the price per liter supplied through the pipes¹⁷”.

As stated previously the issue of scarcity and its correlation with violent conflict has been highly studied and debated in the past years. On the one hand, special mention needs to

¹⁵COHRE, AAAS, SDC, and UN-HABITAT, *Manual on the right to water and sanitation*, Geneve, 2007, p 7.

¹⁶ While agreeing that scarcity and bad governance can cause a large scale of violence, it is true what matters most is how policy and state governance drive the “curse’ of natural wealth. This idea can be supported by a group of scholars concerned with so called Dutch disease an economic concept that explains the correlation between natural resource wealth and lower economic growth due to the rise in the real exchange rate of the resource exporter relative to other trading partners, leading to a less productive economy.

¹⁷UN-HABITAT, *Manual on the right to water and sanitation*, 2007

be taken into account is the African context where it faces the harshest conditions of scarcity, creating a cascade effect with the addition of bad governance and economic crises. In the other hand, some scholars have argued, that the risk of African conflict can be attributed to relative abundance of natural wealth, rather than its scarcity.

The gifted countries with resources could be some of the richest places on the planet if wealth were properly accomplished. Overcoming the “resource curse” might be a worthy challenge for global politics to address¹⁸. Further to these initiatives, institutions of global governance could step in to develop programs that could help these states manage their wealth better. The international policy community and perhaps also the academic communities, as the Special Rapporteur on Water, could work to increase transparency and awareness around how globalization can benefit these countries.

Despite it all, the point is that the resource curse may be overcome with conscious effect of implementation of better governance and policies. In this regard, the effect on globalization can be benefiting from guaranteeing security and development, avoiding the so called resource curse: the great task for global policies will be to direct trade and international investment toward the improvement of those economies. One of the greatest approaches to these developments in the water sphere will be that of human rights that will be further developed in this essay.

Access to the market

Developing countries lose a substantial percentage of GDP due to lack of productivity and other related costs from lack of access to adequate water and sanitation. The main burden rests with those living below the poverty line.

On disease

Water stress causes negative health consequences of poor water and sanitation due to other factors such as malnutrition and poor educational standards. Disease caused by lack of safe water and sanitation leads to illness and death. It also burdens those with low, or no income with high health care costs and loss of ability to work to secure one's

¹⁸ Floyd; Matthew, *Environmental Security, 2013, chapter 3: Environmental security and the resource curse.*

livelihood. Disease also causes children to miss school and adults to miss work. Safe water is also essential for home-based care of the sick or those who are HIV positive.

Unequal burden on women and children

The lack of adequate access to water in the context of poverty affects women and children in particular. Women and children have the traditional role of collecting water, often from great distances, affecting their health, their access to education and ability to earn a livelihood. They are in greatest physical contact in the domestic environment with contaminated water and human waste, exposing them to a host of biological pathogens and chemical hazards, including when disposing of their own family's waste¹⁹.

Approaches to the water problem; understanding the interrelation of water security

Where human rights and security meet

As it has been seen, the present water and sanitation crisis is caused by issues related to poverty, inequality and unequal power relationships. Water and sanitation policies and programs dismiss marginalized groups and areas such as informal settlements and arid zones. Nationally and internationally, the allocation of resources is insufficient. The lack of access is exacerbated by a challenging social and environment context: accelerating urbanization, increasing pollution and depletion of water resources and climate change²⁰.

The Resolutions of the General Assembly, in this case that of the human right to water, help bringing the larger water security agenda to the attention of the members of the Security Council and thus its actions. Recognition by the UNSC of water security issues would emphasize the need for states to clarify obligations to prioritize human water use at the individual and community level, for water security is dependent on an individual security. Given the inherent relationship of water to a wide range of cross sectorial issues, recognition of water security by the UNSC would be seen as a renewed effort to address

¹⁹UN-HABITAT, *Manual on the right to water and sanitation*, 2007, p 9.

²⁰UN-Water, *UN-Water Analytical Brief Global Water Agenda*, 2013.

water issues within national and international policy. This is especially crucial in light of increasing water stress, scarcity, and competition and water risks worldwide²¹.

Strategic and human rights lines for an effective protection on the right to water

To some extent, this human rights approach in public policy moderates the importance of political discourse, as food and hunger eradication is not only a matter of voluntary commitment but above all a legal obligation. Nevertheless, this recognition should clarify that the realization of this goal cannot be performed outside the definition of rights as provided in the International Covenant. It is true that human rights need concreteness and need to be set as global objectives, but this should not confuse or obscure its nature. States should continue to put the same energy, the same commitment to reduce the number of people suffering from thirst and proper sanitation among its population, since first of all it is a legal obligation and access to water is the main violation and breach²².

The human rights approach can be seen as a helpful and important complement to other approaches to discussing water problems. The integration of these human rights also emphasizes the right of water and sanitation in ensuring water security, two core identities as major blocks for the progressive realization of universal access.

This approach allows introducing the two concepts: the right of water and sanitation in ensuring water security; two core identities as major cornerstones for the progressive realization of universal access. It helps to define precisely how states should act in regard to human rights and policies.

The rights based approach

The primary objective of States is to promote and protect human rights. This promotion and protection is, as it has been shown, endorsed in the variety of treaties, declarations, resolutions and norms of international law. As it is known, the ratification of certain treaties

²¹*Ibid.*

²²J. Medina Rey, *La lucha contra el hambre desde el enfoque de los derechos económicos, sociales y culturales, alimentaria y políticas de lucha contra el hambre: seminario internacional sobre seguridad alimentaria y lucha contra el hambre, Cátedra de Estudios sobre Hambre y Pobreza, Servicio de Publicaciones de la Universidad de Córdoba y Oficina de Cooperación Internacional al Desarrollo, Córdoba, 2006, pp. 139-155.*

creates a binding obligation for the States to promote and protect these human rights. International human rights principles indicate that available resources need to be used effectively in order to realize the right progressively.

A human rights-based approach brings a new standard to the water sector: the provision of safe drinking water is no longer perceived as charity, but as a legal entitlement, with individuals at the center²³. Approaching the delivery of safe drinking water and sanitation from a human rights approach can act as a boost to mobilize individuals, and above all, an opportunity to improve its situation in concrete cases such as the poor and marginalized, inform them of their legal rights and empower them. While a human rights framework does not automatically resolve difficult policy issues about financing, delivery or regulation, it does provide international standards to guide political and economic decisions over the allocation of water resources; enables individuals to be heard in decision - making related to water and sanitation; and can strengthen States' accountability for the delivery of water and sanitation services²⁴.

Regarding the positive evolution of the concept of the human right to water, it can be stated that this is a moment of openness and feeling of integration by the different sectors to integrate its principles. In this moment the human right to safe drinking water and sanitation have been explicitly recognized and well developed to be put into practice²⁵. Since the adoption of the United Nations Resolution on the human right to water and sanitation an increasing number of states have explicitly integrated this right into national policy or its legislation through new strategies, laws and constitutional amendments. The formal recognition of the human right to safe drinking water and sanitation by the UNGA and the UNHRC is an important step towards guaranteeing water security at the individual and community levels. Progress toward realizing such fundamental human rights would strengthen the participation of all stakeholders, increasing their transparency and accountability²⁶.

²³UN, *OHCHR Fact Sheet No. 35 2010, p 15.*

²⁴*ibid*

²⁵*Ms. Catarina de Albuquerque, Responses to questions from interactive dialogue Human Rights Council session 27 session 9/10, September 2014.*

²⁶*UN-Water, UN-Water Analytical Brief Global Water Agenda, 2013.*

Challenges on the approach to the human right to water

On global public goods

One of the main difficulties when approaching water is its nature; it represents a value for the global community as a whole. A fruitful strategic approach would take its content rethinking water as a global common good.

As obvious as it may seem, the General Comment 15 states that water is a public good fundamental to life and that States should facilitate its realization at a global level. This position entails specific legal consequences, especially in the relations with the access to water; water for human consumption is a priority like as to have the water needed for agriculture is in a position to fight hunger-when in doubt about the crops to grow, countries should opt for those that ensure the vital needs of the population²⁷. In this sense, the right to food and access to drinking water should be included in the category of peremptory norms of international law and demanded respect as a humankind right.

It is not possible, according to the broad interpretation established in international treaties and mechanisms for the protection of United Nations on the right to water, that it can meet its international obligations if there is no effective coordination on the policies and interpretation of the right, as well as the view on security. It is no longer just a problem of application and development of the rules of international law in domestic law of States, but it is also necessary that those involved demonstrate that their implementation work responds to the commitments arising from treaties and they are not losing efforts along the way. If the latter requirement is missing, international obligation cannot be fully met.

It is true that there are some countries that have water scarcity and some that have more than enough fresh water resources available. In the realm of water governance, water-rich countries could share their resources with water-poor countries. This concept is something that can be seen positively applied in cases such as the Canadian one, which

²⁷Julia Gifra Durall; Susana Beltrán, *Cuadernos de Estrategia 161 Seguridad alimentaria y seguridad global*, Instituto Español de Estudios Estratégicos: Ministerio de Defensa, Madrid, 2012, p 59.

holding as much 20% of the world's fresh water resources, could help alleviate water shortages in the drought stricken south and South-Western parts of the United States²⁸.

As Brown-Weiss (2012) indicates, formally declaring fresh water a common concern of human kind could thus be done with an amendment to either the 1997 UN Watercourses Convention²⁹. But also an entirely new convention, where the principle to consider fresh water resources a common concern of human kind would be elaborated and applied to all global bulk fresh water resources, could be created³⁰. Formally declaring water a human kind concern is just the duty to collaborate and remains with no much legal consequences.

*The remedial approach*³¹

The remedial approach is an original idea that the former Special Rapporteur on Water Catarina de Albuquerque cites in her studies on the water field and human rights approach. It is based on identifying not who to blame but about to make a constructive and participatory dialogue on how to best remedy the different violations. This is of special utility in the violations happening on a systemic level by addressing the core structures causes of violations. She considers transformative remedies that can move claimants and other in a similar situation further towards the full enjoyment of human rights.

Of special importance is also awareness of the applicable human rights law. Creating such awareness should start by strengthening human rights education for the population at large and more specifically by ensuring that human rights are embedded in law school curricula as well as by providing on-going training. In this regard, the United Nations can play an important role in increasing the understanding of violations of economic, social and cultural rights.

²⁸Temmerman, *Bulk fresh water*, 2014.

²⁹ UN, *United Nations Framework Convention on Climate Change*, Rio de Janeiro, June 1992

³⁰Temmerman, *Bulk fresh water*, 2014.

³¹Catarina de Albuquerque, *Responses to questions from interactive dialogue Human Rights Council*, 2014, Para 13.

Extent of the right to water

It is important, however, to have genuine expectations with the relation of the right to water. There exist some limitations and impediments to the realization of the right. Those civil and political rights are punitive and negative in their nature of application: during armed conflicts, emergency situations and natural disasters, the right to water embraces those obligations by which states parties are bound under humanitarian law. There is also limited justiciability, as it happens in social rights, even the access to the courts is difficult, and recourse to the courts is only one of several means to implement the right.

It is important to notice that just the implementation of the right is not going to solve the water problem. The right needs to be used in conjunction with other development strategies. As it has been stated by the former rapporteur on the water issue, Catarina de Albuquerque, development needs to go hand in hand with the application and realization of the right.

The right is often not well understood, and thus requires significant levels of training and education. Some of common misunderstandings on the right to water are: the right entitles people to free water, the right allows for unlimited use of water, the right entitles everyone to a household connection, the right to water entitles people to water resources in other countries and country is in violation of the right if not all its people have access to water and sanitation.

Implications and limitations to the problem of water

Systematic problem

The right to water is a right indispensable for life; different from other rights that enhance the human condition, the right to water is essential. By this, its characteristics make it a need or an entitlement embodied as a right³². Similarly, while some rights ensure human flourishing, others, such as the right to water, are indispensable to bare physical subsistence³³.

³²*This classification can be inferred from the different resolutions, declarations, and action plans. These, instruments vacillated between dealing with water as a right or a need.*

³³*Salman; McInerney-Lankford, The human right to water, 2004, p 66.*

As the study of the Legal and Policy Dimensions on the Human Right to Water by the World Bank cites, the term “need” implies some sense of charity, and represents the recipients as passive beneficiaries, whereas “right” conveys a sense of legal entitlement, which should, in turn, result in a corresponding duty³⁴. The debate on the issue of the human right to water, and how to give effect to it, was heightened in November 2002, with the Committee on Economic, Social and Cultural Rights declaration that “The human right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses³⁵”.

Part of its nature is that the implementation of these essential rights was not conceived as immediately realizable. The core and exclusive reliance on the reporting mechanism as a means of implementation is also closely linked to this view. It is coped also that part of why the evolution of the Committee has been so extended, is directly related to the conception of rights under the ICESCR as vague and aspirational, rather than “true” justiciable, legal rights. Similarly, the obligations these rights entail have been characterized as “programmatic and promotional” rather than immediate and absolute³⁶.

The systematic problem comes not only with its definition but with the term ‘improved water supply’ used to check the improvement or evolution of the right; “*The obligation to fulfil requires States parties to adopt the necessary measures directed towards the full realization of the right to water. The obligation includes, inter alia, according sufficient recognition of this right within the national political and legal systems, preferably by way of legislative implementation; adopting a national water strategy and plan of action to realize this right; ensuring that water is affordable for everyone; and facilitating improved and sustainable access to water, particularly in rural and deprived urban areas*³⁷”.

It does not address certain aspects of the right to water and sanitation, for instance, whether the cost of the water is affordable, whether the stock is continuous, the time it takes to collect water and whether there are security concerns in the collection itself.

³⁴*Ibid*

³⁵UN, CESCR General Comment No. 15,2002, Para 2.

³⁶Salman; McInerney-Lankford, *The human right to water*, 2004, p 31.

³⁷UN, CESCR General Comment No. 15,2002, para 26.

Consequently, the number of people with access to water short of the requirements in General Comment is undoubtedly much higher than the number of people with access to improved water supply.

The key to this systemic problem both of the conception on the right and its evaluation is international human rights law and its implementation. In the absence of a clear, top-level norm, the protection of the human rights to water and sanitation may be fractional, spread over a number of provisions in different laws, regulations and policies, and be interpreted differently by different actors, which is one of the main problems. Its conception has this vague concept of improvement which allows for a negative wide interpretation of the right.

As the handbook³⁸ expelled by the expert on water recognizes this is problematic for two reasons: first, individuals will often find it difficult to identify and pursue their human rights. Second, legal frameworks are unlikely to do justice to every individual case. It is precisely in those cases where laws, regulations and policies – often unintentionally – do not provide for an individual's human rights to water and sanitation that a constitutional guarantee can override subordinate norms and grant the rights in practice. The formal recognition of the human rights to water and sanitation in a constitution ensures greater legal certainty regarding the existence and legal content of these human rights.

As it has been shown, international human rights law does not oblige States to include a guarantee of the human rights to water and sanitation in their constitutions, nor does it prescribe whether such a guarantee should be explicit or implicit. However, a constitutional guarantee is highly desirable if the rights are to have meaning within the legal framework of a country.

Privatization

Another ongoing debate on the extent of water is the privatization of water resources and supply systems to the usage of the scarce resources and proper management. The privatization approach can deliver helpful criteria for assessing cases such as it will make it easier in discussions with the WTO, World Bank or International Monetary Fund to question privatization concepts and to lobby for adequate regulation of water supplies which includes effective state control as well as a high level of commitment by the state

³⁸Catarina de Albuquerque, *Handbook Frameworks*, 2014, p 12.

to ensure water supply³⁹. However this approach should be delivered in the public realm by international organizations that govern for the world and not to a particular benefit or private profit, so water is not a business but guarantee.

Adaptation vs. Mitigation

The politics on the development on water are solely focus on the mitigation of the right. But it is also necessary to address adaptation regarding the future on water and climate change. From a committed point of view, setting objectives and allocating funds to projects that have a greater impact on increasing the resilience of populations of the most vulnerable countries. Adaptation improves the resilience of the populations making them less vulnerable to the consequences of climate change. Priority in adaptation measures includes the protection and management of water resource. Since as it has been state, water shortages directly affect human security and can generate destabilization and conflict. Adaptation versus mitigation is of particular urgency to undertake new adaptation measures since the temperature rise would continue over the coming decades by the inertial factor of climate change itself. Within adaptation, water security is one of the priorities set by the most vulnerable to the impacts of climate change. The types of actions are varied and range from the construction of dams to the use of renewable energy in desalination plants.

Meeting the Sustainable Development Goals

In the year 2000, the United Nations General Assembly adopted the United Nations Millennium Declaration⁴⁰ which set out the eight Millennium Development Goals (MDGs). Goal 7 contains a target to “Halve, by 2015, the proportion of the population without sustainable access to safe drinking water and basic sanitation.”

The problem with the present Sustainable Development Goals agenda is that States must reach a certain target, without the constraint to focus on precisely those people and areas that are currently in need. This means that at the moment, targets are being reached, with the possibility of leaving the most marginalized without any progress. On this regard the Post 2015 development agenda is of main importance since future goals and targets will

³⁹Temmerman, *Bulk fresh water*, 2014.

⁴⁰UN General Assembly, *United Nations Millennium Declaration A/RES/55/2*, 18 September 2000.

shape national legislation. A human rights approach in this instance is crucial into the development of water and its impact.

As the former rapporteur, Catarina de Albuquerque stated is not about adopting a certain approach to development, it is about integrating legally binding standards in relevant policy fields and ensuring policy coherence. Human Rights are a must in the new development agenda to policy fields and ensuring policy coherence. They should be explicitly referenced, but more importantly human rights principles and standards must be integrated in goals, targets and indicators. For water and sanitation, this implies, for instance, properly monitoring water quality and wastewater management, including the adequate management of human feces⁴¹. It is needed to see development beyond aggregate outcomes, figures and targets.

Community participation

Beholding water and sanitation from a human rights perspective shows that individuals and communities should have access to information and participate in decision-making. Poor people and members of marginalized groups are frequently excluded from decision-making regarding water and sanitation, and hence their needs are rarely prioritized. Community participation in the planning and design of water and sanitation programs is essential to ensure that water and sanitation services are relevant and appropriate, and thus ultimately sustainable⁴². Indeed, the participation of the communities in the actual management of the water facilities can be viewed as an alternative to privatization of such water services or facilities. Needless to say, in order for participation to be significant and operational, a reasonable measure of free expression and assembly must be permitted.

Resources management

Another issue raised in the extent of the right to water is that of the management of water resources, and the role of users in such management. The General Comment is silent on this regard; it limits itself strictly to the role of interpretation and elaboration of the rights enshrined under the ICESCR. It does not place any corresponding duties on those who

⁴¹Catarina de Albuquerque, *Responses to questions from interactive dialogue Human Rights Council, 2014.*

⁴²UN, *OHCHR Fact Sheet No. 35, 2010, p 16.*

are to be convened with this right. In other words, the notion is unclear with regard to overall water resources management⁴³.

In the same line that privatization, the resource management approach notably requires that no population group should be excluded and that priority in allocating limited public resources should be given to those who do not have access or who face discrimination in accessing safe drinking water. A human rights approach in this regard, also apprises water management by prioritizing, in the allocation of water among competing uses, personal and domestic uses as defined in general comment No. 15.

As the academic work⁴⁴ of Salman & Mcnerney-Lankford states, rather than placing emphasis on the recognition of a human right to water, a more pragmatic approach could be the address the right to manage, or participate in the management of, the water resources.

Conclusion

The results show that the study of the extent of the right is central to understand the scope and reach of the right in order to implement the different approaches. The integration of different approaches is vital due to the human necessity of the right and its nature. According to the analysis it can be set out some conclusions that answer to the extension of the right as well as the conduct and approach of the states regarding the right.

Regarding how state's act and the two approaches strategic and human rights' approach it can be stated that, regarding the former, the impact of climate change is shifting the environmental problem in which water is paying the main role, to a security problem. Among its consequences include increased migration, land degradation and shortages of water and food resources which can lead to the appearance of conflicts over resources. For this reason, climate change has become a security issue in the international community. This is represented in a change of mentality in addressing global warming and how water is viewed. There exists some form of individual human right to environment, as well as a general right of the environment, whereby states must

⁴³Salman; Mcnerney-Lankford, *The human right to water*, 2004, p 74.

⁴⁴*Ibid*

acknowledge the importance of preserving nature for nature's sake. The veil of water and resource sovereignty shall to be pierced for the protection of the environment and the welfare of humankind.

What's more, by the addressing of water security it can be grabbed all the issues interlinked with the concept, offering a broader framework of action because it requires the collaboration of the different sections and approaches. Water has to be moved out of the limited focus of military risks and conflicts, with a particular focus on human security and its achievement through development.

In this regard plays an important role the latter approach, human rights. The human rights approach can be seen as a helpful and important to complement other approaches .It conveys a new view to the water approach: the provision of safe drinking water is no longer perceived as charity, but as a legal entitlement, with individuals at the center. States are accountable of their actions. Much of the problem of the conflict with water can be solved by policies in the realm of global governance because to some extent public policy regulates the importance of political discourse, is not only a matter of voluntary commitment but above all a legal obligation. Global governance, seeks to place the overall framework in which all public policies involving human rights must be developed. Human-based scarcity can be preventable with conscious effect of implementation of better governance and policies. In this regard, the effect on globalization can be benefiting from guaranteeing security and development: the great task for global policies will be to direct trade and international investment toward the improvement of those economies. Yet, it is true that human rights need concreteness and need to be set as global objectives, but this should not confuse or obscure its nature.

There is an inevitable and healthy interconnection between the areas of water. Addressing the right to water requires interdisciplinary collaboration. However, it is true that there is a need to have genuine expectations with the relation of the right. There exist some limitations and impediments to the realization of the right as: the lack of universality, affordable access, the need of wider sanitation services and the non-discrimination access to information and participation in hard to implement. This is of special importance in the violations happening on a systemic level. Transformative remedies can move further towards the full enjoyment of human rights by addressing the core structures causes of violations.

Finally, the study would also benefit from a consideration of wider aspects beyond the theoretical ones. Human rights law does not oblige states to include a guarantee of the human right to water and sanitation in their national policies. Also, the management on the right is a difficult one, it requires a commitment on the international community that inevitably passes for the private sector, where the general comment is silent, and the notion is unclear with regard to water resources management. It is important to notice that just the implementation of the right is not going to solve the water problem. The right needs to be used in alliance with other development strategies. It is not possible to meet its international obligations if there is no effective coordination on the policies and interpretation of the right, as well as the view on security. It is no longer just a problem of application and development of the rules of international law in domestic law of States, but it is also necessary that those involved demonstrate that their implementation work answers to the commitments. The recognition of the right does not guarantee the access, nor does it eliminate the scarcity, water stress or poor governance and inequalities. But it does create something of vital importance in international relations; political will. Political will provides a framework for action, creating accountability.

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