

Existence of right to water in international human rights law

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I. The claims of new rights

In 1948, General Assembly of the United Nation adopted the Universal Declaration of Human Rights (UDHR). UDHR now is 65 years old and we can see how human rights possess a leading and main place in international law and international relation. 167 states are member of international convention of civil and political rights (UN, International Covenant on Civil and Political Rights, 2013) and 160 states are member of international convention of economic social and cultural rights (UN, international convention of economic social and cultural rights, 2013). In addition to international mechanism for protection and promotion of human rights, regional systems of human rights are in operation in Europe, Africa, and Latin America.

Human Rights domain and boundaries are continually expanding. We can observe the proliferation of human rights since the foundation of United Nation in 1945 until now.¹ Different civil, political, social, economical, and cultural rights have been recognized during a historical progress. One of The latest rights that came to existence is right to water.

Proliferation of human rights initiates with a Claim. New human rights claims can bear different meaning in different contexts. Sometime a right claim is only expressing an aspiration to future improvement. Such as; right to communication² and right to tourism.³ Sometime the claim of a right means that the current international human rights law entails this right or can support it. Sometime the claim only refers to ethical or rational entitlement of every individual in enjoyment of that right. For example when there is a claim on existence of a right to die, it does not mean that human rights law contain this right, this claim only refers to ethical bases to proof

¹ Henry J Steiner, Philip Alston and Ryan Goodman, *International Human Rights in Context: Law, Politics, Morals : Text and Materials* (Oxford University Press 2008) 2.

² Sean MacBride, *Many Voices, One World: Towards a New, More Just, and More Efficient World Information and Communication Order* (Rowman & Littlefield 2003).

³ UN Doc. E/1978/98, as cited by Philip Alston, 'Conjuring up New Human Rights: A Proposal for Quality Control' [1984] *American Journal of International Law* 607.

that individuals are entitled to decide over their life.⁴ There is a substantial difference between moral or ethical claims and legal claims in human rights literatures.⁵

In this writing, we specifically argue the legal grounds for right to access to water. Therefore, here “right to water” has come to be used to refer to a protected right under current international human rights law.

II. Legal sources of human right to water

The ‘International Bill of Human Rights’ consists of the Universal Declaration of Human Rights, the ICESCR, the ICCPR, and its two Optional Protocols. The International Bill of Rights is the basis for numerous conventions and national constitutions.

The ICESCR and the ICCPR are key international human rights instruments. The International Covenant on Civil and Political Rights (ICCPR) enumerates “negative,” liberty-oriented rights that a state is bound to forbear interfering with, such as freedom of expression, freedom of conscience, and freedom of association. The International Covenant on Economic, Social and Cultural Rights (ICESCR) addresses those aspects of the UDHR that pertain to people’s basic rights, such as food, shelter, and health care. In declaring the difference between these two kinds of rights As Alston and Quinn observe:

“Economic, social and cultural rights require active intervention on the part of governments and cannot be realized without such intervention on the part of governments. Closely linked to this is a distinction between resource-intensive and cost-free rights. Thus, it is said that civil and political rights can be realized without significant costs being incurred, whereas the enjoyment of economic, social and cultural rights requires a major commitment of resources.”⁶

The merely non-interference is not enough for implementing economic social and cultural right. These kinds of rights need greater state action for their realization than do civil and political rights. However, the nature of this positive obligation is progressive in nature. State Party undertakes to take steps to the maximum of its available resources with a view to progressively achieving the full realization of the rights recognized appropriate. Article 2 of the ICESCR obliges each State Party to take steps to the maximum of its available resources to achieve progressively the full realization of the rights under the ICESCR.

⁴ See, Raymond Whiting, *A Natural Right to Die: Twenty-Three Centuries of Debate* (Greenwood Publishing Group 2002).

⁵ Stephen P Marks, ‘Emerging Human Rights: A New Generation for the 1980s’ (1980) 33 Rutgers L. Rev. 435.

⁶ Philip Alston and Gerard Quinn, ‘The Nature and Scope of States Parties’ Obligations under the International Covenant on Economic, Social and Cultural Rights’ [1987] Human Rights Quarterly 156.

The matter is that we could not find an explicit recognition of “right to water” in ICESCR. Right to water has been recognized in international human right law documents for first time at 11 November 2002. It was through the General comment no.15 issued by Committee on Economic, Social, and Cultural Rights.

One mandate of the Committee on Economic, Social and Cultural Rights is preparation of “General Comments” on articles and provisions of the ICESCR.⁷ General Comments are reflective of the experience that committee gained during the years of the examination of states parties act or omission in respect of rights. General comments do not, and cannot, create “new obligations,” they clearly elaborate upon and clarify existing obligations of the States Parties under the ICESCR the various articles and provisions of the ICESCR.⁸ However, those Comments, as Craven noted, carry significant legal weight.⁹

III. General Comment No. 15: The Right to Water

General Comment No. 15 Paragraph 2 define right to water:

“The human right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses. 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.”

According to general comment no.15 for adequacy of water according to right to water standard three factors must be considered:¹⁰

1. **Availability:** it means that the water supply for each person must be sufficient and continuous for personal and domestic uses.
2. **Quality:** the water required for each personal or domestic use must be safe, and therefore free from microorganisms, chemical substances, and radiological hazards that constitute a threat to a person’s health.
3. **Accessibility:** according to Committee, *accessibility* has four dimensions, which includes:

⁷ Implementation of the International Covenant on Economic, Social and Cultural Rights; General Comment No. 15 (2002), The right to water (arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights, U.N. Doc. E/C.12/2002/11 (Twenty-ninth session, 2002).

⁸ Committee on Economic, Social and Cultural Rights, Report of the Second Session, U.N. Doc. E/1988/14, paragraphs 366 and 367. *See also supra* n. 141, paragraph 9.

⁹ Matthew Craven, *The International Covenant on Economic, Social and Cultural Rights: A Perspective on Its Development* (Clarendon Press 1995) <<https://eprints.soas.ac.uk/id/eprint/5323>> accessed 24 March 2015.

¹⁰ Committee on Economic, Social and Cultural Rights, General Comment No. 15, Para12.

a. **Physical accessibility:** water, and adequate water facilities and services, must be within safe physical reach for all sections of the population. Sufficient, safe, and acceptable water must be accessible within, or in the immediate vicinity, of each household, educational institution and workplace. All water facilities and services must be of sufficient quality, culturally appropriate and sensitive to gender, life cycle and privacy requirements. Physical security should not be threatened during access to water facilities and services;

b. **Economic accessibility:** Water, and water facilities and services, must be affordable for all. The direct and indirect costs and charges associated with securing water must be affordable, and must not compromise or threaten the realization of other Covenant rights;

c. **Nondiscrimination:** Water and water facilities and services must be accessible to all, including the most vulnerable or marginalized sections of the population, in law and in fact, without discrimination on any of the prohibited grounds;

d. **Information accessibility:** accessibility includes the right to seek, receive, and impart information concerning water issues.

Committee based its argument on three analytic devices to conclude that there is a human right to water, because this right is not explicitly provided for in the ICESCR and, as mentioned before, a General Comment cannot create new rights beyond what is contained in the ICESCR.

¹¹These three bases are:

1. Derivation and Inference

The Committee relied upon the derivation of a right to water from Article 11 of the ICESCR. The Article confirms recognized “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 Committee indicated that the word of “including” in Article 11 when it speaks about “adequate standard of living **including** adequate food, clothing and housing” adequate food, clothing and housing.” The Committee set forth its argument by asserting that “The use of the word ‘including’ indicates that this catalogue of rights was not intended to be exhaustive.”¹² According to committee, “The right to water clearly falls within the category of guarantees essential for securing an adequate standard of living, particularly since water is one of the most fundamental conditions for survival.”¹³

In addition, The Committee went further and referred to Article 12 of the ICESCR and the right of everyone to the enjoyment of the highest attainable standard of physical and mental

¹¹ Philip Alston, ‘Establishing a Right to Petition under the Covenant on Economic, Social and Cultural Rights’ <<http://cadmus.eui.eu/handle/1814/3007>> accessed 24 March 2015.

¹² Committee on Economic, Social and Cultural Rights, General Comment No. 15, Para3.

¹³ Ibid

health. And the rights to adequate housing and adequate food (Aart. 11(1), para. 1). Generally speaking it tried to tie right to water to other recognized human rights “foremost amongst them the right to life and human dignity.”¹⁴

2. Centrality and Necessity

Committee provided an analysis of the centrality of water to other ICESCR rights. The Comment notes the centrality of water to States Parties’ duties under Article 1 (2) of the ICESCR. The Article states that a people shall not be “deprived of its means of subsistence” and requires adequate access to water for subsistence farming and realizing the right to adequate food.¹⁵ Water is central to environmental hygiene. Therefore, water is also a requirement for implementation of “the right to the highest attainable standard of health” (Article 12.1).

Briefly speaking without water many of the rights contained in the core international human rights instruments would be meaningless and left without of any practical effect. The Committee considers this when it indicated “the right to water clearly falls within the category of guarantees essential for securing an adequate standard of living, particularly since it is one of the most fundamental conditions for survival.”

3. Prior recognition

Referring to water as a human right has precedent in international human rights law. Committee in general comment no.15 indicated some of these Precedents. For example, committee-addressed right to water in General Comment No. 6 (1995) on the economic, social, and cultural rights of older persons was reaffirmed. In another case, The Committee also emphasized the importance of sustainable access to water resources for agriculture to realize the right to adequate food as elaborated in General Comment No. 12 (1999). In addition, the Committee restates the fact that it had consistently considered the right to water during its examination of States Parties’ reports.

IV. Conclusion

Thus, General Comment No. 15 recognizes the human right to water through derivation and inferences from Articles 11 and 12 in the ICESCR, through an analysis of the centrality and necessity of water to other rights under the ICESCR and the other documents of international human rights law. Now we can come to the conclusion that a human rights to war is exist under various other international legal instruments.

¹⁴ Ibid

¹⁵ Committee on Economic, Social and Cultural Rights, General Comment No. 15, Para7.