

## บทความวิจัย (Research Articles)

### State's Obligations Under International Water Law on the Implementation of the Right to Water<sup>\*</sup>

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ภายใต้กฎหมายน้ำระหว่างประเทศ

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#### Abstract

By adopting the General Comment No. 15 concerning the human right to water, the water issue has been removed from other parts of the security of life and has been identified as an independent legal issue in human rights. This resolution obliges member states to provide their citizens with the right to access clean water and sanitation as their primary and independent responsibility.

So, riparian states which have several transboundary water agreements with their neighbors are obliged to fulfill the right to water for their citizens, and they have to follow some basic standards and rules for more cooperation on water utilization, management, and protection of international watercourses with other riparian states. In some countries, because of the dependency of their populations on the shared water resources, and fulfilling their water-

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related human rights, they could not be very successful in meeting their human rights obligations regarding the right to water. The research question which has been raised is what the state's responsibilities are in fulfilling the right to water according to International water law's principles and instruments, and what the solution is to address people's problems.

**Keywords:** The Right to Water, State's Responsibility, Transboundary Water, International Water Law

### บทคัดย่อ

จากการยกร่างข้อวินิจฉัยทั่วไปที่ 15 ว่าด้วยสิทธิมนุษยชนในการเข้าถึงน้ำ ปัญหาน้ำถูกยกเลิกจากส่วนอื่น ๆ ของความมั่นคงของชีวิตและถูกกำหนดให้เป็นประเด็นกฎหมายแยกออกมาจากปัญหาว่าด้วยสิทธิมนุษยชน ข้อมติดังกล่าวกำหนดให้รัฐสมาชิกมีพันธกรณีที่จะให้สิทธิแก่ประชาชนในการเข้าถึงน้ำที่สะอาดและถูกสุขอนามัย อันถือเป็นความรับผิดชอบหลักและเป็นเอกเทศ

ดังนั้น รัฐชายฝั่งที่ได้มีความตกลงว่าพรมแดนแม่น้ำระหว่างประเทศกับประเทศเพื่อนบ้านมีพันธกรณีที่จะต้องทำให้บรรลุถึงสิทธิในการเข้าถึงน้ำของประชาชน และต้องปฏิบัติตามมาตรฐานและกฎเกณฑ์พื้นฐานบางประการสำหรับความร่วมมือที่มากขึ้นสำหรับการใช้ การจัดการ และการป้องกันรักษาลำน้ำระหว่างประเทศร่วมกับรัฐริมชายฝั่งอื่น ๆ เนื่องจากการพึ่งพาอาศัยของประชากรในทรัพยากรน้ำที่ใช้ร่วมกันและการปฏิบัติตามสิทธิมนุษยชนที่เกี่ยวข้องกับน้ำ ในบางรัฐไม่สามารถประสบความสำเร็จในการปฏิบัติตามพันธกรณีด้านสิทธิมนุษยชนเกี่ยวกับการเข้าถึงน้ำ ปัญหาที่จะทำการศึกษาในบทความนี้ได้แก่ พันธกรณีของรัฐในเรื่องใดบ้างที่จะทำให้บรรลุสิทธิในการเข้าถึงน้ำตามหลักการและตราสารว่าด้วยกฎหมายน้ำระหว่างประเทศ และแนวทางใดที่จะสามารถจัดการปัญหาเหล่านั้นได้

**คำสำคัญ:** สิทธิในการเข้าถึงน้ำ, ความรับผิดชอบของรัฐ, แม่น้ำข้ามแดน, กฎหมายน้ำระหว่างประเทศ

## Chapter I. Introduction

States assume obligations and duties under International Law to respect, to protect, and to fulfill human rights, and recognition of the right to water as a human right cause to make an obligation for countries to set a priority for the realization of basic human needs. It means that states must provide access to water based on the legally binding instruments and people also instead of claiming to their needs can claim their rights.<sup>1</sup>

Sometimes, non-fulfillment of human rights obligations by one State is due to, its international disputes with the other states to implement obligations arising from an international treaty. For instance, some conflicts between countries with transboundary waters, stems from violations of accepted International rules and principles of international transboundary waters in their agreements, the same as Equity and Reasonable Use, No-Harm Principle and Duty to Cooperate, which their violations can be directly or indirectly affect the human rights of people living in river basins. And sometimes, it's because of the assignment of the state's responsibilities in supplying drinking water or ensuring about water quality to non-state actors, the same as private or transnational companies. In these cases, there are some controversies about the international responsibility of states or private companies for the realization of this right as a human right. So, in this paper it has tried to mention to the importance of identifying the human right to water that would raise the state's obligation in the realization of the rights to water to meet the basic human needs, and also examine the correlation of the human right to water and the principles of international water law.

## Chapter 2. The principles of international water law and the instruments on the right to water

International human rights and international water law are inextricably linked, and somehow, they can support each other mutually. Some rules of

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<sup>1</sup> Winkler, Inga T, *The Human Right to Water: Significance*, 2012, Legal Status and Implications for Water Allocation, HART Publishing, OXFORD AND PORTLAND, OREGON, p. 214.

customary International Law including substantive and procedural rules have codified in the UN Convention on the Law of Non-Navigational Uses of Watercourses.<sup>2</sup> States according to their commitments under the human rights law have direct obligations to fulfill the right to water for their citizens in the field of International Water Law. Also, in the principles of the IWL, it has stated that in the event of disagreements about the equitable and reasonable utilization of shared water resources, priority should be given to the primary and essential human needs to water which includes drinking water.<sup>3</sup>

The Convention on the Protection and Use of Transboundary Watercourses and International Lakes or Water Convention<sup>4</sup>, and the UN Watercourses Convention 1997<sup>5</sup> are the primary international water law's documents, which have cited to the right to water and the other related human rights explicitly or implicitly. UNECE didn't directly mention to the right to water, although its purpose is implicitly related to the right to water. The only and the first agreement which has presented the vital human needs term among the international water law treaties is the UNWC which contains a statutory utility in the establishment of the human right to water. However, still, the consideration to the human water needs by the IWL is not adequate.

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<sup>2</sup> GRECO, ROBERTA, The Silala Dispute: Between International Water Law and the Human Right to Water, 2017, QIL, Zoom-in 39.

Available at: [http://www.qil-qdi.org/wp-content/uploads/2017/07/03\\_Silala-Water-Dispute\\_GRECO\\_FIN.pdf](http://www.qil-qdi.org/wp-content/uploads/2017/07/03_Silala-Water-Dispute_GRECO_FIN.pdf)

<sup>3</sup> International Water Law Obligations Derived from International Human Rights Commitments, WaterLex, p. 3.

Available at: [https://www.waterlex.org/resources/documents/Int'l%20Obligations\\_HRWS.pdf](https://www.waterlex.org/resources/documents/Int'l%20Obligations_HRWS.pdf)

<sup>4</sup> The Convention on the Protection and Use of Transboundary Watercourses and International Lakes (Water Convention)

Available at: <https://www.unece.org/env/water/>

<sup>5</sup> UN Watercourses Convention (UNWC), 1997, article 10(1-1) Vital human needs.

Available at: <http://www.unwatercoursesconvention.org/the-convention/part-ii-general-principles/article-10-relationships-between-different-kinds-of-uses/10-1-1-vital-human-needs/>

The UNWC 1997, as one of the main instruments in IWL, had an effective role in the evolution of international water law, because of two reasons. The first reason is because of the recognition of substantive principles of international water law including the principle of equitable and reasonable utilization of water, cooperation, and the obligation not to cause significant harm, and the second one is because of as the protection of aquatic ecosystems and the human right to water.<sup>6</sup> Also, this convention includes the procedural rules including the duty to consult, prior notification and information exchange which may have negative effects on the other riparian states population.<sup>7</sup> So based on the substantive rules of the IWL, if unsustainable utilization or management of shared water resources leads to ignoring the basic human needs, it will consider as a violation of human rights standards.

Therefore, IWL principles to improve water management, resolving conflicts concerning shared water resources and also establish global peace and security are trying to extend a framework of minimum standards of human rights. As the basic human needs have supported by the two principles of IWL includes the principle of cooperation and the obligation not to cause significant harm to the transboundary waters.<sup>8</sup>

Alternatively, the principle of equitable and reasonable utilization which is connected to the fulfillment of the other human rights like the right to health, access to safe drinking water and sanitation. However, referring and applying to this principle by one of the riparian states may create some problems and violate human rights of the other riparian states populations. Nevertheless, this principle has developed in IWL, and it has counted as the best solution for water disputes especially in the water-scarce.

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<sup>6</sup> Tignino, Mara, Brethaut, Christian, Turley, Laura, Research Handbook on Freshwater Law and International Relation, 2018, Edward Elgar Publishing Limited, 2018, p. 83.

<sup>7</sup> Tignino, Mara, Brethaut, Christian, Turley, Laura, Research Handbook on Freshwater Law and International Relation, 2018, Ibid, p. 347.

<sup>8</sup> Leb, Christina, Cambridge University Press, 2013, Ibid, p. 203.

The principle of No-Harm is another principle in IWL, which is related to the equitable and reasonable utilization of water. It means that neglecting the equitable and reasonable use of shared water resources by one of the parties will cause significant harm to human health, safety, and environment of the others.

Even though the Substantive principles of IWL has given direct and indirect references to the observance of human rights standards, there are still a lot of problems and deficiencies in the application and full implementation of human rights law in IWL.

One of these problems is the absence of a comprehensive approach to the concept of the right to water. The absence of an extensive approach to the concept of the “right to water,” has led to a lack of acceptance and implementation of the human right to water. This comprehensive approach to the concept of “right to water” can be implemented through various methods to meet the human needs of the water. One of them is fulfilling the right to water for riparian states populations and indigenous people, and another one is addressing the public interest in the protection of the environment and also the human right to water which is done through the recognition of the treaty water right.<sup>9</sup>

However, some scholars the same as McCaffrey believes that the application and implementation of human rights to water for each within the territory of any states should be gradually completed.

Considering that the implementation of human rights in countries is not dependent on the extent of their development. Because many countries are economically developed and also accepted the right to water, but they have so many problems with the rules and regulations regarding access to safe drinking water and also fulfilling the right to water for their citizens. For example, California, which is economically at a high level in the world with more than 250,000 inhabitants, according to the report of the UN Special Rapporteur on the human right to safe drinking water and sanitation, has failed to fulfill the right to access to the safe drinking water and sanitation for its residents. So, the

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<sup>9</sup> SHEPHERD, HAROLD, Implementing the human right to water in the Colorado River Basin, 2011, [J] Willamette Law Review 425, Vol. 47, p. 427.

right to water will implement progressively.<sup>10</sup> Following the IWL's instruments, it seems clear that the IWL by considering to the basic human needs adequately and examining the interconnected standards to protect them may be able to provide a supportive and complementary role to human rights.

However, as regards the definition of the right to water and the instruments referred to this right, it can be stated that the right to water as a fundamental human right has not either defined or expressly recognized in International law. However, there are other rights derived from it. There are various International instruments which explicitly or implicitly are supporting the right to water. Some of them are binding and obliged stated parties to fulfill the human rights to water. For instance, the Convention for the Elimination of Discrimination Against Women<sup>11</sup>, the Convention on the Rights of the Child<sup>12</sup>, the U.N. Convention on the Law of the Non Navigational Uses of International Water Courses<sup>13</sup>, the Convention on the Rights of Persons with Disabilities<sup>14</sup>, and the Geneva Convention in

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<sup>10</sup> McCaffrey, Stephen C., The Human Right to Water: A False Promise?, 2016, The University of the Pacific Law Review, Vol. 47, pp. 230-232.

<sup>11</sup> Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), December 1979, Article 14(2)(h). The states parties have to ensure, *"To enjoy adequate living conditions, particularly about housing, sanitation, electricity and water supply, transport and communications."*

Available at: <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm>

<sup>12</sup> The United Nations Convention on the Rights of the Child, GAR 44/25 of 20 November 1989, entry into force 2 September 1990, in accordance with Article 49.

Available at: [http://www.unicef.org.uk/Documents/Publication-pdfs/UNCRC\\_PRESS\\_200910web.pdf](http://www.unicef.org.uk/Documents/Publication-pdfs/UNCRC_PRESS_200910web.pdf)

<sup>13</sup> UNWC, (1997). Article 10: *"1. in the absence of agreement or custom to the contrary, no use of an international watercourse enjoys inherent priority over other uses. 2. In the event of a conflict between uses of an international watercourse, it shall be resolved with reference to articles 5 to 7, with special regard being given to the requirements of vital human needs"*.

Available at: [http://legal.un.org/ilc/texts/instruments/english/conventions/8\\_3\\_1997.pdf](http://legal.un.org/ilc/texts/instruments/english/conventions/8_3_1997.pdf)

<sup>14</sup> United Nations Convention on the Rights of Persons with Disabilities, 6 December 2006.

International humanitarian law<sup>15</sup>, are International binding instruments which despite the lack of recognition of the right to water as an independent human rights entitlement explicitly, have pointed out to the state's obligations that are concerning to the right to water in different ways.

These documents, have mentioned the member states international commitments: to protect the right to enjoy adequate living conditions, protects the highest attainable standard of health, assert the priority of vital human needs, to secure that persons with disabilities have equal access to clean water and also to ensure the water accessibility for prisoners of war and civilians for their consumption and sanitation which are listed respectively. Others are non-binding documents which can use as interpretative guides for states to fulfill their obligations.

The Vancouver Declaration from the U.N. Conference on Human Settlement<sup>16</sup>, The Mar del Plata Action Plan from the U.N. Conference on Water<sup>17</sup>, The Dublin Statement on Water and Sustainable Development<sup>18</sup>, Agenda 21 from the U.N.

Available at: [http://www.un.org/disabilities/documents/convention/convention\\_accessible\\_.pdf](http://www.un.org/disabilities/documents/convention/convention_accessible_.pdf)

<sup>15</sup> Geneva Convention relative to the treatment of prisoners of war, 1949 (GENEVA CONVENTION III) Entry into Force: 21 October 1950, Articles 20, and 26, CHAPTER VIII, Transfer of prisoners of war after their arrival in camp, Articles 46 and 29.

Available at: [https://www.legal-tools.org/uploads/tx\\_ltpdb/GenevaConvention\\_3rd\\_Prisonersofwar\\_1949\\_\\_E\\_\\_05.pdf](https://www.legal-tools.org/uploads/tx_ltpdb/GenevaConvention_3rd_Prisonersofwar_1949__E__05.pdf)

<sup>16</sup> The Vancouver Declaration on Human Settlements: From the report of Habitat - United Nations Conference on Human Settlements, Vancouver, Canada, 31 May to 11 June 1976.

Available at: <https://unhabitat.org/the-vancouver-declaration-on-human-settlements-from-the-report-of-habitat-united-nations-conference-on-human-settlements-vancouver-canada-31-may-to-11-june-1976/>

<sup>17</sup> The Mar del Plata Action Plan, Resolution II on community water supply, Water: A Shared Responsibility, UNESCO, World Water Assessment, 2006, p. 63.

<sup>18</sup> The Dublin Statement on Water and Sustainable Development, Adopted January 31, 1992, in Dublin, Ireland, International Conference on Water and the Environment.

Available at: <http://www.un-documents.net/h2o-dub.htm>



Conference on Environment and Development in Rio de Janeiro<sup>19</sup>, and the Program of Action of the International Conference on Population and Development<sup>20</sup> are some of them.

Between these non-binding documents, The Mar del Plata Action Plan from the U.N. Conference on Water has mentioned several times and it was one of the most oft-cited non-binding documents which explicitly has asserted all people have the right to drinking water (in quality and quantity) to fulfill their basic needs.

On the other hand, this declaration led to the following documents, which were related to the right to development, referred to the right to water regularly<sup>21</sup>, and at the end, some of them are international customary law<sup>22</sup>, which develops from the state's behaviors and practice. The International instruments include declarations, resolutions, and agreements since the 1970s

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Available at: <http://www.wmo.int/pages/prog/hwarp/documents/english/icwedece.Html#>

<sup>19</sup> The Rio Declaration on Environment and development, 1992, the earth summit and AGENDA 21.

Available at: [http://www.unesco.org/education/pdf/RIO\\_E.PDF](http://www.unesco.org/education/pdf/RIO_E.PDF)

AGENDA 21, United Nations Conference on Environment & Development, 3 to 14 June 1992, Rio de Janeiro, Brazil.

Available at: <https://sustainabledevelopment.un.org/content/documents/Agenda21.pdf>

<sup>20</sup> The Programme of Action of the UN International Conference on Population and Development, A/CONF.171/13, 1994.

Available at: [http://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A\\_CONF.171\\_13.pdf](http://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_CONF.171_13.pdf)

<sup>21</sup> McGraw, George S., Defining and Defending the Right to Water and Its Minimum Core: Legal Construction and the Role of National Jurisprudence, 2010-2011, Vol. 8, Issue 2, Loyola University Chicago International Law Review. 127, pp. 140-141.

Available at: <https://pdfs.semanticscholar.org/aed7/9fa21a70ba8758a6a06276737dbdc0519da1.pdf>

<sup>22</sup> McGraw, George S., Loyola University Chicago International Law Review. 127, 2011, Ibid, p. 139.

have done extensive support to recognize the right to water as an independent human rights entitlement.

Finally, after analyzing the documents which directly or indirectly referring to the right to water, it can be stated that, the right to water didn't identify explicitly in the Universal Declaration of Human Rights<sup>23</sup> and also in the International Covenant on Civil and Political Rights<sup>24</sup>, and the International Covenant on Economic, Social and Cultural Rights<sup>25</sup> of the UN as an independent rights, but by interpreting of this Covenant, we can infer the existence of the right to water implicitly, because in drafting process of article 11 has considered to the water which is necessary for fulfilling the other human rights which have mentioned in these two instruments, so maybe because of its apparent role in human life, they didn't refer to this right again.

However, these two instruments, especially the ICCPR, have considered as the guarantee and a means of realizing other human rights. The most important documents referring to the right to water explicitly, and have already been expanded in details are including international declarations.

These declarations divided into two groups of binding and, non-binding declarations. Among binding international conventions can be mentioned the four Geneva conventions, Convention on the Elimination of All Forms of Discrimination, the Convention on the Rights of the Child, and Convention on the Rights of Persons with Disabilities. Non-binding instruments are like the UDHR, declaration on the right to development, and international instruments related to the environmental law, which between them, the 1977 Mar del Plata Action Plan,

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<sup>23</sup> The Universal Declaration of Human Rights (UDHR), 2015, United Nations.

Available at: [http://www.un.org/en/udhrbook/pdf/udhr\\_booklet\\_en\\_web.pdf](http://www.un.org/en/udhrbook/pdf/udhr_booklet_en_web.pdf)

<sup>24</sup> International Covenant on Civil and Political Rights, Adopted and opened for signature, ratification, and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 23 March 1976, in accordance with Article 49.

Available at: <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

<sup>25</sup> International Covenant on Economic, Social and Cultural Rights, Adopted and opened for signature, ratification, and accession by General Assembly, resolution 2200A (XXI) of 16 December 1966, entry into force 3 January 1976, in accordance with article 27.

Available at: <http://www.ohchr.org/Documents/ProfessionalInterest/cescr.pdf>

and the 1992 Dublin statement are the most important instruments that have identified the right to water.

In addition, in order to promotion and protection of human rights, governments have also adopted international documents at the regional level, which among them the African charter 1990, and the protocol to the African charter 2003 were the only documents that referred to obligations with respect to the right to water.

Finally, the CESCR in it's General Comment 15<sup>26</sup>, has considered the human rights obligations concerning the right to water. These comments are not legally binding, but because of their authentic nature, it can be inferred that the right to water has counted as a self-standing right.

By examining the international instruments, we conclude that there is no ambiguity regarding the recognition of the right to water and also the state's obligations regarding the realization of this right. This right has been explicitly and implicitly recognized in various documents, and the only controversial issue with this right is the discussion of international obligations regarding international cooperation in the realization of the right to water.

### **Chapter 3. Legal analysis of State's Obligations for Implementation of the Right to Water**

One of the main reasons for the importance of recognizing the right to water by the States is non-infringement of this right by the other co-riparian states. If one state, among the other co-riparian countries, doesn't realize the human right to water, it will lead to more uses of shared water in the other co-riparian countries in different sections of agricultural, industrial and other areas, and also it may cause some pollution which affects the quality of water and also reduces the amount of water that is flowing into the other states territories.

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<sup>26</sup> General Comment No. 15: The Right to Water (Arts. 11 and 12 of the Covenant), Twenty-ninth Session of the Committee on Economic, Social and Cultural Rights, on 20 January 2003, p. 1.

Available at: <http://www.refworld.org/pdfid/4538838d11.pdf>

These are just some parts of the complications of non-realization of the human right to water in a co-riparian state, without the necessity of controlling or occupying its territory, as it has been mentioned in the Trail Smelter decision.<sup>27</sup>

By regarding the importance of the rights listed in the Covenant on Civil and Political Rights<sup>28</sup> which is related to the basic human needs, like the right to food and the right to water, states have applied some standards to evaluate their efforts in fulfilling the human rights based on their obligations under the ICCPR, as Mccaffrey has stated: “It may well be that certain rights under that instrument either are not of a fundamental nature or would require the establishment of national infrastructures and the like to ensure their fulfillment... However, other rights under the E.S.C. Covenant can hardly describe as being anything but fundamental.

Indeed, article 11 itself refers to the ‘fundamental right of everyone to be free from hunger.’ This fundamental right can only be interpreted as a right to life-supporting sustenance, which would include potable water”.<sup>29</sup>

So, states must fulfill, promote, and protect the right to water as a fundamental human need. States have the obligations to fulfill and protect the right to water because in most cases, they are in charge of water resources, and they should have an active protection against public or private subjects. They must promote the water services and facilities the full enjoyment of the right to water for all without any discrimination.

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<sup>27</sup> Reports of International Arbitral Awards, *Trail smelter case (United States, Canada)*, 16 April 1938 and 11 March 1941, Vol. 3, p. 62.

Available at: [https://www.ilsa.org/jessup/jessup17/Batch%202/Trail%20smelter%20case%20\(United%20States,%20Canada\).pdf](https://www.ilsa.org/jessup/jessup17/Batch%202/Trail%20smelter%20case%20(United%20States,%20Canada).pdf)

<sup>28</sup> International Covenant on Civil and Political Rights, Adopted and opened for signature, ratification, and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 23 March 1976, in accordance with Article 49.

Available at: <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

<sup>29</sup> Alvarez, Ignacio J., *The Right to Water as a Human Right*, 2003, The University of Arizona press, p. 78.

Available at: <http://wp.cedha.net/wp-content/uploads/2011/05/the-right-to-water-as-a-human-right.pdf>

The International Law Association, suggests that states, in addition to respecting the rights of individuals to fulfill their water needs, must provide access to adequate water, in order to meet their basic needs, also, it notes that, according to customary law, states should not be impeded with the realization of the right to access to water for residences of the other riparian countries.<sup>30</sup>

Therefore, based on the human rights principles states as duty-bearers have some responsibilities and appointed commitments concerning the full realization of the right to water for their residents as the rights-holders. Rights-holders can claim their rights and duty-bearers must guarantee the rights to water and sanitation-like other human rights-equally, without discrimination and by participation and accountability.

The Human Rights Committee in its observations to Israel, in the Third Periodic Report of States Parties due in 2007, has mentioned that the violation of the right to water could be violations of the other human rights including the right to life and equal protection based on the law.<sup>31</sup>

This case practically has proven that states have obligations for the respect, protection, and fulfillment of socio-economic rights which are legally binding because they have originated from article 11(1) of International Covenant on Economic, Social and Cultural Rights<sup>32</sup> and articles (11(2) and 12(1)) of the ICESCR.<sup>33</sup>

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<sup>30</sup> Bluemel, Eric B., 2004, *The Implications of Formulating a Human Right to Water*, ECOLOGY LAW QUARTERLY, Vol. 31, p. 976.

Available at: [http://cmsdata.iucn.org/downloads/cel10\\_bluemel.pdf](http://cmsdata.iucn.org/downloads/cel10_bluemel.pdf)

<sup>31</sup> *Human Rights Committee, Third Periodic Report of States Parties due in 2007- Israel*, Nov. 21, 2008, U.N. Doc., CCPR/C/ISR/3.

Available at: <http://unispal.un.org/UNISPAL.NSF/0/CF890DF7A2692BO9852576A80056B757>.

<sup>32</sup> International Covenant on Economic, Social and Cultural Rights, 1966.

Available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>

<sup>33</sup> McGraw, George S., 2010-2011, *Defining and defending the right to water and its minimum core: Legal Construction and the role of national jurisprudence*, Loyola University Chicago International Law Review, Vol. 8, Iss. 2, p. 148.

In other words, all co-riparian states based on different factors which include: the jurisprudence of the regional and international human rights instruments, the duty to respect, and also their de jure or de facto controlling over the water in the other co-riparian states territories, in the case of human rights violations which arises from their actions or omissions, have responsibility for their extraterritorial conducts.<sup>34</sup> The recognition of the right to water as an independent human right by General Comment 15, explicitly and implicitly has made some critical commitments to governments on the realization of this right.

### 3.1 State's Commitments under General comment No.15<sup>35</sup>

General Comment No. 15 on the right to water and sanitation in different parts has noted the importance of the fulfillment of the right to water in realizing the other human rights such as the right to health and adequate sanitation, life, human dignity, and privacy. It states: "The elements of the right to water must be adequate for human dignity, life, and health, ...".<sup>36</sup> General comment 15, has explained that states must extend safe sanitation services to rural and deprived areas.<sup>37</sup> Therefore, as recognizing the right to water as a human right, has created some rights for individuals, as it has mentioned: "everyone has the right to sufficient, safe, acceptable, physically accessible and

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Available at: <https://pdfs.semanticscholar.org/aed7/9fa21a70ba8758a6a06276737dbdc0519da1.pdf>

<sup>34</sup> Bulto, Takele Soboka, 2011, *Towards Rights-Duties congruence: Extraterritorial application of the human right to water in the African Human Rights system*, Netherlands Quarterly of Human rights, vol. 29/4, p. 523.

<sup>35</sup> *General Comment No. 15, The right to water (arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights)*, 2002, E/C.12/2002/11, 20 January 2003, COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS, Twenty-ninth session, Geneva, 11-29 November 2002, Agenda item 3.

Available at: [http://www2.ohchr.org/english/issues/water/docs/CESCR\\_GC\\_15.pdf](http://www2.ohchr.org/english/issues/water/docs/CESCR_GC_15.pdf)

<sup>36</sup> *General Comment No. 15: The Right to Water*, 2003, Ibid, (Contained in Document E/C.12/2002/11), paragraph 11.

<sup>37</sup> Ibid, paragraph 29, p. 11.

affordable water for personal and domestic uses,”<sup>38</sup> naturally it has created some duties for governments as well.

According to this document, governments should not deprive people of the minimum essential level of water due to their inability to pay for water supply services and facilities,<sup>39</sup> it means that governments must consider the financial capability of individuals before taking any decision or action which is related to the right to water as a human right of individuals. States parties based on the obligation to fulfill should ensure that water is affordable for everyone and must take some essential measures.<sup>40</sup>

Also, the states should provide the necessary facilities for accessing to properly maintained water facilities in rural and deprived urban areas.<sup>41</sup> Under General comment 15, the realization of the right to water by the state must be done without any discrimination between people.<sup>42</sup>

Thus, General Comment No. 15, in paragraph 16, declares that states should pay special attention to individuals and groups, especially indigenous peoples, women, ethnic minorities, refugees, and others, in the realization of their right to water<sup>43</sup>, and they “should provide resources for indigenous peoples to design, deliver and control their access to water;”<sup>44</sup> In two cases states may compensate, due to human rights violations especially the right to water. It is when states have violated the individual’s right to water, and also the traditional water sources of indigenous people expropriated. Also, General Comment 15 refers to the obligations and responsibilities that governments have for the present and future generations.

General Comment 15, explicitly has mentioned that one of the state’s duties to fulfill the access to safe and sufficient water for present and future

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<sup>38</sup> *General Comment No. 15*, Ibid, paragraph 11.

<sup>39</sup> Ibid, paragraph 56.

<sup>40</sup> Ibid, paragraphs 26 and 27.

<sup>41</sup> Ibid, paragraph 16 (c).

<sup>42</sup> Ibid, paragraph 14.

<sup>43</sup> Ibid, paragraph 16.

<sup>44</sup> Ibid, paragraph 16 (d).

generations are adopting comprehensive plans and programs by countries, so according to this paragraph<sup>45</sup>, a group of researchers argued that the right to water is not limited to the rights of individuals, but also includes environmental requirements for water.<sup>46</sup>

### 3.2 State's Extraterritorial Human Rights Obligations

States by reducing the quality and quantity of shared water resources, with commonly shared water resources, can cause human rights violations of people who are living in another state, without the need to occupy the territory under their sovereignty or control of the individuals living in another basin. So, the economic, social, and cultural human rights have created the extraterritorial obligations for states.<sup>47</sup>

International assistance and cooperation to realized political, economic and social rights as the two primary responsibilities of states and also two tools to fulfill the Economic, Social and Cultural Rights, have created the International obligations between states, and individuals beyond their borders or jurisdictions, concerning the realization of economic, social and cultural rights.<sup>48</sup>

The committee on economic, social and cultural rights (CESCR), in different General comments, has pointed out that, states should recognize the importance of international cooperation in the realization of ESC rights and also they

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<sup>45</sup> Ibid, paragraph 28.

<sup>46</sup> GOOD, MEG, *Implementing the Human Right to Water in Australia*, 2011, [J] UTasLawRw 14, 30(2), University of Tasmania Law Review 107, p. 115.

Available at: <http://classic.austlii.edu.au/au/journals/UTasLawRw/2011/14.html>

<sup>47</sup> Murillo Chavarro, JIMENA, *Extraterritorial Obligations to Ensure the Enjoyment of the Human Right to Water in a Transboundary Context*, 2015, [J] Hum.Rts. & Int'l Legal Discourse 9(1), pp. 90-91.

Available at: <http://heinonline.org/HOL/Page?handle=hein.Journals/hurandi9&collection=journals&id=89&startid=&end=110>

<sup>48</sup> Murillo Chavarro, JIMENA, *Extraterritorial Obligations to Ensure the Enjoyment of the Human Right to Water in a Transboundary Context*, 2015, [J] Hum.Rts. & Int'l Legal Discourse 9(1), pp. 91-92.

Available at: <http://heinonline.org/HOL/Page?handle=hein.Journals/hurandi9&collection=journals&id=89&startid=&end=110>



should take all their steps and commitments toward the fulfillment of these rights. In other words, this committee has mentioned the states extraterritorial obligations regarding ESCs rights.<sup>49</sup>

In the case of extraterritorial obligations of countries, it should be stated that these commitments are always complementary to the domestic obligations of states and just the extraterritorial obligations of states to fulfill, somehow play a subsidiary role in states which are not able to meet these rights within their territory or borders. States need two sources to meet their economic, social, and cultural rights obligations: 1-economic resources 2-natural resources. Regarding access to water resources and to fulfill the extraterritorial obligations to states, General comment 15 has pointed to the availability of water resources.

Thus, not considering or neglecting the interests of other riparian states in the management and allocation of shared water resources like: diversion of water, the reduction of quantity and quality of water, dam construction, overexploitation and so on, can have a negative impact on extraterritorial obligations of states to realization of human rights of people who are living in other countries.<sup>50</sup> For instance, Nile River could be a clear example related to the importance of cooperation in the management and allocation of shared water resources, because more than eight countries have shared water in Nile River basin and Egypt as a downstream country depends on the Nile's water to fulfill the human rights of its population.<sup>51</sup> Although there is no doubt about the commitments of states to protect, respect, and fulfill the right to water of individuals, but about the international assistance which created the extraterritorial obligations between states, concerning the realization of economic, social and cultural rights<sup>52</sup>, there are some ambiguities. As Christina Leb also believes, the

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<sup>49</sup> Murillo Chavarro, JIMENA, *Extraterritorial Obligations to Ensure the Enjoyment of the Human Right to Water in a Transboundary Context*, 2015, Ibid, p. 95.

<sup>50</sup> Murillo Chavarro, JIMENA, *Extraterritorial Obligations to Ensure the Enjoyment of the Human Right to Water in a Transboundary Context*, 2015, Ibid, p. 99.

<sup>51</sup> Ibid.

<sup>52</sup> Murillo Chavarro, JIMENA, *Extraterritorial Obligations to Ensure the Enjoyment of the Human Right to Water in a Transboundary Context*, 2015, Ibid, pp. 91-92.

development in international water law can gradually compensate for this defect.<sup>53</sup> For instance, besides the prioritization of the basic human needs as a keyword in international water law treaties, article 32 of the UN Watercourses Convention to some extent, has pointed to the extraterritorial obligations between states, concerning the individuals and the realization of their human rights.<sup>54</sup> These cases illustrate how these two areas of international law can complete each other to fulfill the right to access to safe and sufficient water. It may be possible at the regional level, through the application of human rights principles and objectives within the framework of the shared water treaties, as well as promoting international cooperation on the realization of human rights, reduce the violation of this right and help to promote its fulfillment.

#### Chapter 4. State's Responsibilities for Human Rights Violations

To distinguish between disability and the unwillingness of a state to decide what action or omission leads to a violation of the right to water, the distinction between incapacity and the reluctance of a country to comply with its obligations regarding the right to water is essential. A government that is reluctant to use its maximum resources to fulfill this human right has violated its obligations under the Covenant on Economic, Social, and Cultural Rights. Violations of the right to water can be achieved through an action, ie, direct measures by governments or other entities regulated by governments, including:

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<sup>53</sup> Leb, Christina, *The right to water in a transboundary context: emergence of seminal trends*, 2012, [J] Water International, 37:6, 640-653, p. 650.

<sup>54</sup> Article 32 of the UN Watercourses Convention: *"Unless the watercourse States concerned have agreed otherwise for the protection of the interests of persons, natural or juridical, who have suffered or are under a serious threat of suffering significant transboundary harm as a result of activities related to an international watercourse, a watercourse State shall not discriminate on the basis of nationality or residence or place where the injury occurred, in granting to such persons, in accordance with its legal system, access to judicial or other procedures, or a right to claim compensation or other relief in respect of significant harm caused by such activities carried on in its territory"*.

Available at: [https://www.internationalwaterlaw.org/documents/intldocs/watercourse\\_conv.html](https://www.internationalwaterlaw.org/documents/intldocs/watercourse_conv.html)

adoption of restitution measures which are inconsistent with the essential obligations, abolition or formal revoking of the law that is require for the continued enjoyment of the right to water, adoption of the law or policies that are fundamentally inconsistent with the pre-existing national or international law obligations in relation to the right to water.<sup>55</sup>

Violations through the omission of the act include the lack of appropriate measures for the full realization of each person's right to water, the absence of a national policy on water and the non-implementation of relevant laws. Some examples of violations through abandonment include: Violation of the commitment to respect the right to water, breach of the obligation to protect the failure of a state to take measures to protect people who are under its jurisdiction against violations of the right to water by third parties, breach of a commitment to implementation which will be realized through the failure of States parties to the Covenant to take the necessary measures to ensure the fulfillment of the right to water, a breach of the obligation to implement that is achieved through the failure of States parties to the Covenant to take the necessary steps to ensure the right to water, and so on.

And regarding this issue, whether there is any possibility of litigations for economic, social, and cultural rights, the ICESCR committee in its general interpretation has tried to answer this question. According to this interpretation, States parties to the human rights treaties are committed to respect and support the rights contained in these treaties and to work towards their realization, and in terms of ESC rights including the right to water, to take steps to achieve the full realization of this right gradually.<sup>56</sup> These obligations include the inclusion of these rights in domestic laws and policies and the need to ensure non-discrimination in both law and practice. Imposing the right to water to the

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<sup>55</sup> Tavakoli, Mohammad Reza, *Right to Water from the Point of View of International Human Rights*, Thesis, Masters Research Paper or Project, 2007-2008, Allameh Tabatabaei University, Tehran, pp. 106-112.

<sup>56</sup> *General comment No.3*, 1990, UN Doc, E/199123, Annex 3, paras. 5-6.

Available at: <https://www.refworld.org/pdfid/4538838e10.pdf>

domestic law of a country should provide access to legal redress for violating the right of access to water for individuals and communities.

#### *4.1 State's Responsibility Based on National Participatory Approaches*

This section discusses how different countries adopted human rights approaches to improve their legal and policy framework concerning water and sanitation. Regarding the resolution of existing disputes over the allocation of transboundary water, several countries, including countries in Northern Africa, have taken two important factors as solutions, which failed to act effectively in resolving their conflicts. These two factors included the privatization of the water supply sector and the identification of the human rights to water. For example, these countries have identified water as a commodity by the privatization of the water supply sector, but regardless of its weaknesses and strengths, the plan has not been successful and has often led to increasing inequality, as it has happened in the Philippines which one of the world's most massive privatization has taken place there. In the Philippines, water rates went up, infrastructure has gotten worse, and there is a lack of private funding to help the poor.

In other words, even though there are two different sides to the argument (pros and cons), globally, public opinion is firmly against the private-sector management of water resources.

Moreover, people believe that water is a fundamental human right which should not be managed by private companies.<sup>57</sup>

In addition to that, some of the objections against privatization of the water were related to the human rights responsibility of these corporations<sup>58</sup>, because there are some Norms to defining the human rights responsibility for

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<sup>57</sup> Laudicina, Lee A., *International Water Disputes: How to Prevent a War over the Nile River*, 2007, Vol. 4, Iss. 2, 4 Loy. U. Chi. Int'l L. Rev. 235, pp. 244-246.

Available at: <https://lawecommons.luc.edu/lucilr/vol4/iss2/4>

<sup>58</sup> Rosemann, Nils, *The UN Human Rights Norms for Business: Towards Legal Accountability*, 2005, Amnesty International, 3.3 Business' Human Rights Obligations, p. 14.

Available at: [http://www.humanrights.ch/upload/pdf/100202\\_rosemann\\_un\\_norms.pdf](http://www.humanrights.ch/upload/pdf/100202_rosemann_un_norms.pdf)

corporations and “the Norms clearly state that states remain the primary addressees of human rights law.”<sup>59</sup>

Whereas, according to the UN Human Rights Norms for Business by Amnesty International<sup>60</sup>, human rights obligations are mandatory in legal and moral terms for corporations, and they are obliged to water consumers affected by their decisions.<sup>61</sup>

The other solution is to identify water as a human right in the domestic law of the countries. Although “the right to water has not reached the status as international customary law, textual support has increased recognition of the right to water,”<sup>62</sup> and some countries the such as South Africa and Ethiopia have started to recognize the right to water in their national legal system.

Totally, in connection with the privatization of water, in addition to the opposition, which has briefly mentioned above, there are also positive comments that support the privatization of water. One of them is that, by applying human rights approaches to water privatization, it will point the positive achievements that will follow.

First of all, the application of the human rights approach to water privatization will reduce the injustice power between multinational corporations

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<sup>59</sup> Petrova, Violeta, *All the Frontiers of the Rush for Blue Gold: Water Privatization and the Human Right to Water*, 2006, [J] Brooklyn Journal of International Law, Vol. 31, Iss. 2, p. 612.

Available at: <https://brooklynworks.brooklaw.edu/cgi/viewcontent.cgi?article=1276&context=bjil>

<sup>60</sup> Rosemann, Nils, *The UN Human Rights Norms for Business: Towards Legal Accountability*, 2005, Amnesty International, 3.3 Business’ Human Rights Obligations, p. 14.

Available at: [http://www.humanrights.ch/upload/pdf/100202\\_rosemann\\_un\\_norms.pdf](http://www.humanrights.ch/upload/pdf/100202_rosemann_un_norms.pdf)

<sup>61</sup> Petrova, Violeta, *All the Frontiers of the Rush for Blue Gold: Water Privatization and the Human Right to Water*, 2006, [J] Brooklyn Journal of International Law, Vol. 31, Iss. 2, p. 613.

Available at: <https://brooklynworks.brooklaw.edu/cgi/viewcontent.cgi?article=1276&context=bjil>

<sup>62</sup> Laudicina, Lee A., 2007, Ibid, p. 247.

and governments in developing countries, and also, it can increase the participation of local people as shareholders in the process of privatization of water, which has many positive benefits for both investors and communities.

The second positive achievement that the human rights approach has in privatizing water is that, since water recognized as a human right, it creates obligations for private companies as water providers, which helps to achieve the global goal of access to safe drinking water for everyone.<sup>63</sup>

Hence, considering the division of human rights into welfare and liberty rights, the right to water the same as other social rights has counted as welfare right. State's right to water should be by the doctrine of equitable utilization of water.

However, the problem is that this principle contains ambiguous standards such as the definition of equitable utilization and also the determination of the economic capability of states. The result is that although identifying water as a human right increases standards of living and reduces poverty, it has not been an effective mechanism for settling disputes between African countries, because there is no guarantee of sufficient and adequate implementation against co-riparian states.<sup>64</sup>

#### *4.2 State's Responsibilities for Foreign Investors Violations*<sup>65</sup>

These days of globalization and economic liberalization, the classic point of views about the main actors of international public law as the responsibility for human rights violations has changed.

Nowadays, not only in International law but other areas of International law the same as economic law, international environmental law, and human rights law, non-states actors are counted responsible for the human rights violations in both areas of International law.

One of the main reasons for conceding such a huge responsibility to these non-state actors is that the states have changed some of their traditional functions and they have been privatizing them. For example, states had some

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<sup>63</sup> Petrova, Violeta, 2006, Ibid.

<sup>64</sup> Laudicina, Lee A., 2007, Ibid, pp. 244-248.

<sup>65</sup> (ETOs)

duties in supplying drinking water or ensuring about water quality, which has been given over to non-state actors, the same as private or transnational companies.

Sometimes these private companies which have the duties for the water supply and sanitation services could be a cause of human rights violation. In the beginning, a brief definition was provided by companies and their obligations regarding the right to water. Companies are independent legal entities with distinct personalities, rights, and duties and divided into two categories of commercial and non-commercial companies. Such companies and private sectors, through the production of goods and services, can have a great deal of impact on water resources, and somehow, they have been able to solve the water challenges in today's world.<sup>66</sup>

Although the international jurisdiction for legal entities has not fully developed, it should not be assumed that these companies do not have any legal obligations. Private companies, as legal entities and like the states, are committed to complying with the three principles of respect, protection, and realization of the right to water as a human right. The basis and origin of these obligations are the domestic laws and the rules of international law.<sup>67</sup> General Comment No. 15, in paragraph 33, states that not only states have obligations to respect and fulfill the right to water of individuals, but also corporations have this kind of commitments.<sup>68</sup> "Corporations can have a positive also, negative impact on the human rights of individuals, wider communities, and

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<sup>66</sup> *The CEO Water Mandate*, an initiative by business leaders in partnership with the international community, In January 2011, this CEO Water Mandate document was amended to refer to the 2010 UN resolutions which recognize the human right to safe drinking water and sanitation, UN, New York.

Available at: [https://ceowatermandate.org/files/CEO\\_Water\\_Mandate.pdf](https://ceowatermandate.org/files/CEO_Water_Mandate.pdf)

<sup>67</sup> Letnar Cernic, Jernej, *Corporate Obligations Under the Human Right to Water*, 2011, Denver Journal of International Law and Policy, Vol. 39, No. 2, pp. 305-318.

Available at: [https://papers.ssrn.com/sol3/papers.cfm?Abstract\\_id=1792446https://poseidon01.ssrn.com/delivery.php?ID](https://papers.ssrn.com/sol3/papers.cfm?Abstract_id=1792446https://poseidon01.ssrn.com/delivery.php?ID)

<sup>68</sup> *General Comment No. 15: The Right to Water*, 2003, Ibid, (Contained in Document E/C.12/2002/11). Paragraph 33.

indigenous peoples.”<sup>69</sup> For instance, they may increase the price of their services (water and sanitation) or do some discriminations in distributing water provision, which is the violation of the non-discrimination and equality principle.<sup>70</sup>

As it has been mentioned before, non-discrimination and equality is one of the factors that are necessary for fulfilling the rights of water and sanitation. Also, it is ignoring the availability as one of the normative content which states should take it into account in the area of water and sanitation service provision.

On the other hand, there are some extractive industries in different areas of oil, gas, and mining, which by their activities could be another cause of human rights violations, because of their actions they can affect the availability of water for residents and water evacuation.

As it can be observed, due to the extractive industries activities, some of the normative contents such as physical accessibility, availability and the quality and safety of water and sanitation could be ignored while the states should consider these criteria. One of the main problems that exist in identifying human rights obligations for companies is that “individuals do not have recourse to enforce their human rights and ideals against corporations,”<sup>71</sup> because “a substantive obligation only arises when joined with a jurisdiction that can enforce it.”<sup>72</sup> About the behavior of private actors, states have two significant commitments. They should ensure that private corporations do not ignore the right to water in other countries and also the states should take

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<sup>69</sup> Cernic, Jernej Letnar, *Corporate Obligations Under the Human Right to Water*, 2011, [J] Denver Journal of International Law and Policy, Vol. 39, No. 2, p. 305.

Available at: [https://papers.ssrn.com/sol3/papers.cfm?Abstract\\_id=1792446](https://papers.ssrn.com/sol3/papers.cfm?Abstract_id=1792446)

<sup>70</sup> Cavallo, Gonzalo Aguilar, *The Human Right to Water and Sanitation: Going Beyond Corporate Social Responsibility*, 2013, Utrecht Journal of International and European Law, Merkourios, Vol. 29, Iss. 76, pp. 39-41.

Available at: <http://www.utrechtjournal.org/articles/abstract/10.5334/ujiel.bm/>

<sup>71</sup> Letnar Cernic, 2011, Ibid, p. 310.

<sup>72</sup> Letnar Cernic, 2011, Ibid, p. 310.



appropriate measures to prevent violations of the right to water by private actor's behavior.<sup>73</sup>

In general, it can say that the root or the primary source of corporate commitments derive from these factors, respectively: 1-National constitutions 2-International law 3-Unilateral arbitrary obligations by the corporations or private sectors.<sup>74</sup>

International law sources include conventions or International treaties, general legal principles, customs, judicial decisions and at the end of Judicial doctrine. Among these sources, it can mention to the decisions of some arbitration tribunals about the company's obligations to exercise the right to water as a human right, while the main international human rights instruments do not directly mention companies' legal obligations regarding the right to water.<sup>75</sup>

Regarding International responsibility in International law, in case of human rights violations by private companies, corporations, enterprises, or other parties, there are two kinds of International human rights instruments:

- (1) Binding international human rights instruments
- (2) Nonbinding international human rights instruments.

The legally binding international human rights instruments, directly have mentioned to the violations of human rights obligations by individuals or private companies, the same as: The Elimination of all forms of racial discrimination against women, the Convention on the rights of the child, and the no binding International human rights instrument in this field is the General Comment No. 15 on the right to water, recommended to its states parties to prevent the violations of the right to water as a human right to citizens, companies and other communities who are living in those areas, by other parties including private companies or citizens.

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<sup>73</sup> Bluemel, 2004, Ibid, p. 998.

<sup>74</sup> Letnar Cernic, 2011, Ibid, p. 318.

<sup>75</sup> Letnar Cernic, 2011, Ibid, p. 324.

The two instruments are referring to human rights obligations indirectly.<sup>76</sup> The UN Norms on the Responsibilities of Transnational Corporations and other Business Enterprises about human rights was trying to address direct International responsibility to International companies for human rights violations or abuses.

Beside this instrument, we have some legally binding instruments in International Law, which have referred to the responsibility of legal persons. These instruments include: the Convention for the Prevention of Pollution of the Sea by Oil (1954), the Paris Convention on Third Party Liability in the Field of Nuclear Energy (1960), the Vienna Convention on Civil Liability for Nuclear Damage (1963), the Protocol of 1992 to Amend The International Convention on Civil Liability for Oil Pollution Damage, the Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment, and The Global Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal.

Moreover, CESCR or The UN Committee on ESCR has affirmed a direct corporate responsibility in the human rights area, for the states and other actors, especially in the field of the right to water and sanitation. States and other actors to fulfill the right to water and sanitation have some responsibilities, for instance; they have a duty to assist or cooperate in providing and promoting the water and sanitation's situations in their territories or other countries.<sup>77</sup>

In addition to these documents, there are non-binding international instruments or soft law international documents, such as the Universal Declaration of Human Rights, which, in its Articles 29 and 30, respectively has recognized the respect for others' rights as a collective duty for all individuals<sup>78</sup> and also states: a group or person do not have any rights to take any action or partnership that is intended to destroy any of the rights and freedoms outlined in this declaration.<sup>79</sup>

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<sup>76</sup> Cavallo, 2013, Ibid, pp. 44-45.

<sup>77</sup> Cavallo, 2013, Ibid, pp. 62-64.

<sup>78</sup> UDHR, published by the United Nations, 2015, Article 29.

Available at: [http://www.un.org/en/udhrbook/pdf/udhr\\_booklet\\_en\\_web.pdf](http://www.un.org/en/udhrbook/pdf/udhr_booklet_en_web.pdf)

<sup>79</sup> Ibid, Article 30.

In this regard, the company's obligations in relation to the promotion, respect, and protection of human rights principles listed in these documents: The OECD<sup>80</sup> Guidelines for Multinational Enterprises in 1976, which is the second part that is related to the general policies states that Multinational Enterprises should "Respect the human rights of those affected by their activities consistent with the host government's international obligations and commitments".<sup>81</sup> The 2003 UN Norms on the Responsibilities of Transnational Corporations and Other Business Corporations and Other Business Enterprises in its first paragraph states: "transnational corporations and other business enterprises have an obligation to promote, secure the fulfillment of, respect, ensure respect of and protect human rights recognized in international as well as national law".<sup>82</sup>

The ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, in principle 9, states: all members which include states and multinational companies as well, should have the contribution to the realization of the Fundamental Principles and Rights at work which have mentioned in 1998 ILO Declaration.<sup>83</sup>

In addition to Legally binding and non-binding international human rights instruments as sources of human rights obligations related to the right to

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<sup>80</sup> The Organization for Economic Co-operation and Development

<sup>81</sup> *OECD Guidelines for Multinational Enterprises*, published on the responsibility of the Secretary-General of the OECD, p. 14.

Available at: <https://www.oecd.org/corporate/mne/1922428.pdf>

<sup>82</sup> Weissbrodt, David, Kruger, Muria, *Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights*, 2003, [J] American Journal of International Law. 97, p. 912.

Available at: [https://scholarship.law.umn.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1247&context=faculty\\_articles](https://scholarship.law.umn.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1247&context=faculty_articles)

<sup>83</sup> *Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy*, Governing Body of the International Labour Office at its 204<sup>th</sup> Session (Geneva, November 1977) and amended at its 279<sup>th</sup> (November 2000), 295<sup>th</sup> (March 2006) and 329<sup>th</sup> (March 2017) Sessions, International Labour Office Geneva.

Available at: [http://www.ilo.org/wcmsp5/groups/public/---ed\\_emp/---emp\\_ent/---multi/documents/publication/wcms\\_094386.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_emp/---emp_ent/---multi/documents/publication/wcms_094386.pdf)

water, the third source of human rights obligations (right to water) for companies is arbitrary, unilateral obligations by the corporations or private sectors which has been recognized as codes of conduct. Both the Organization for Economic Co-operation and Development<sup>84</sup> and the ILO Tripartite Declaration<sup>85</sup>, have provided some definitions of codes of conduct.

The rules, norms, and principles contained in the codes of conduct originated from international human rights law, so many companies have adopted the codes of conduct in their guidelines, to ensure that their actions are according to the right to water principles and they take responsibility for the activities.

For example, Pepsi corporation was one of the companies which has officially assumed responsibility in its code of conduct for ensuring that its actions comply with the principles and rules of human rights to water, therefore, the UN Global Compact, in order to assist companies in developing, implementing and clarifying sustainable water policies and practices, has established the CEO Water Mandate.<sup>86</sup>

The corporate human rights obligations under the right to water, are the same as states obligations based on traditional doctrines of human rights, as the UN Norms for corporations also has addressed these obligations which include: the obligation to respect, obligation to protect and obligation to fulfill

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<sup>84</sup> *Codes of corporate conduct: An Inventory, Working Party of the Trade Committee*, 1999, Organization for Economic Co-operation and Development TD/TC/WP (98)74/FINAL, p. 5.

Available at: [http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?Doclanguage=en&cote=td/tc/wp\(98\)74/final](http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?Doclanguage=en&cote=td/tc/wp(98)74/final)

<sup>85</sup> International Labour Organization, Working Party on the Social Dimensions of the Liberalization of International Trade, *Overview of global developments and Office activities concerning codes of conduct, social labelling and other private sector initiatives addressing labour issues*, November 1998, GB.273/WP/SDL/1(Rev.1), 273<sup>rd</sup> Session, Geneva.

Available at: <http://www.ilo.org/public/english/standards/relm/gb/docs/gb273/sdl-1.htm>

<sup>86</sup> Letnar Cernic, 2011, Ibid, pp. 328-330.

the right to water.<sup>87</sup> The corporations must commit to these obligations within the framework of their actions and the effects, without any interfering or violating the human rights of the others, which means the obligation to respect.

To guarantee the obligation to respect the realization of the right to water by corporations, they should identify the right to water continuously in their policies and decisions.

Also, they should use the monitoring systems to monitor the human rights situation in the countries where these companies operate in them.

The purpose of monitoring corporate performance is to ensure that the policies applied by these companies are not in contradiction with the right to water.<sup>88</sup> The obligation to protect under the right to water has two aspects of internal and external. In the internal dimension, companies have a commitment to protecting the human right of people with regard to the right to water in their activities and the external dimension, the obligation to protect the right to water for companies, means corporations in relation to their business partners should protect the human rights of individuals and territorial integrity the same as local communities.

Finally, it is a commitment to realize human rights by which companies must decrease the human rights violations by assisting the state government in fulfilling their obligations. The obligation to fulfill contains some measures to ensure the availability, accessibility, and affordability of the right to water in international and external activities.<sup>89</sup>

The duties set forth by the World Health Organization for national and multinational companies regarding the right to water and based on the purpose of forming the company may include: “advance the provision of services so

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<sup>87</sup> *Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights*, Approved August 13, 2003, by U.N. Sub-Commission on the Promotion and Protection of Human Rights resolution 2003/16, U.N. Doc. E/CN.4/Sub.2/2003/L.11 at 52(2003).

Available at: <http://hrlibrary.umn.edu/links/norms-Aug2003.html>

<sup>88</sup> Letnar Cernic, 2011, Ibid, p. 338.

<sup>89</sup> Letnar Cernic, 2011, Ibid, pp. 338-341.

that the number of people served should always increase; establish sustainable policies towards water conservation for its own activities; use differential cost-recovery/progressive pricing to contribute to increasing coverage; ensure equity in reliability of services; give priority to supplies for the most marginalized communities; establish a responsible disconnection policy; ensure the participation of citizens in decision-making; provide clear and accurate information to all users”.<sup>90</sup>

As a final result of this discussion, it can be argued that, despite the sources of corporate human rights obligations regarding right to water, which includes domestic laws, international laws and unilateral, arbitrary obligations by the corporations or private sectors respectively, have mentioned in these sources, the exact commitments of corporations in support of the right to water are not transparent. Despite all of the progress that we had in International human rights law about the private corporate responsibilities, because of human rights violations, still, it has not clarified the statute of corporates responsibilities for human rights violations directly or explicitly.

So, although there is no barrier for recognizing the international responsibility, because of violations or abuses of the right to water, the necessity of the existence of regulations, state practice and opinion Juris in this area are needed.<sup>91</sup>

## Chapter 5. Conclusion

One of the essential human rights approaches to the UN Watercourses Convention is expanding the concept of international responsibility of States that governs the UNWC. This means that not only states have international responsibility on the contrary, but also it extends the responsibility of states to individuals too.

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<sup>90</sup> *The Right to water*, World Health Organization, Health and human rights publication series; No. 3., 2003, p. 36.

Available at: [http://www.who.int/water\\_sanitation\\_health/en/righttowater.pdf](http://www.who.int/water_sanitation_health/en/righttowater.pdf)

<sup>91</sup> Cavallo, 2013, Ibid, p. 64.

So, according to the International human rights regimes and especially the CESCR, states have the affirmative obligation<sup>92</sup> to protect, respect and fulfill human rights and more specifically, in this case, the right to water and sanitation which is a fundamental right for the realization of the other human rights.

Moreover, also, states and in particular, the riparian states, must prevent the violation of human rights in the other countries, even when they apply the principles of UNWC. For example, in the states with transboundary waters, any new decisions related to the water policies, water development plans, infrastructure projects, and privatization of water services will affect the people living along international watercourses, while they do not have so many opportunities to participate in watershed decision making. Countries through the Legitimize in IWL and also promotion in public participation in watershed management decisions will be able to modify international management and reduce potential conflicts on water issues.<sup>93</sup> Besides, legislation on International Water Law has led to an increase in international cooperation and equity on the utilization and exploitation of shared water sources. Also, the riparian states

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<sup>92</sup> Due diligence: “Due diligence is a well-known and accepted concept in international environmental law. In this field of law, due diligence has the meaning that legal subjects of international law must behave in such a way as to ensure that no damage will occur to the environment of other States or other areas, as a result of the activities under their jurisdiction and control. The principle of due diligence is present in a number of elements of international environmental law, for example notification, consultation and environmental impact assessment”. Flemme, Maria, *Due Diligence in International Law*, 2004, Faculty of Law, University of Lund, p. 39.

Available at: <https://lup.lub.lu.se/luur/download?Func=downloadFile&recordOld=1557482&fileOld=1564336>

<sup>93</sup> Bruch, Carl, Jansky, Libor, Nakayama, Mikiyasu and Kazimierz A. Salewicz, *Public participation in the governance of international freshwater resources (Water Resources Management and Policy)*, 2005, United Nations University Press, p. 3.

Available at: <http://archive.unu.edu/unupress/sample-chapters/publicparticipationGIFR.pdf>

can refer to these rules as evidence in their negotiations, the resolution of disputes, and agreements over the shared water sources.<sup>94</sup>

Riparian states should apply the rules and principles of the UNWC, Considering the basic human needs. Provided, the Convention on the Law of the Non-Navigational Uses of International watercourses and also International customary water law, unfortunately, do not have adequate support for fulfilling the basic human needs, and inaction, there are not appropriate enforcement guarantees.

By stopping the process of constructing dams on transboundary rivers, other basic human needs, and human rights both will protect mainly if the population who are living in the basins were mostly reliant on the river water for fulfilling their basic needs the same as accessing water for drinking, agriculture, sanitation or domestic uses.

Human Rights and International water law, both include rights and duties for states. So, States must comply with IWL and human rights obligations to fulfill the human rights of people living on their territories or protect them from the (in)action of a state, which may violate their human rights. Within the framework of existing transboundary water agreements between states and through the collaborative structures in those agreements, new issues and neglected issues can examine, and consequently, in the form of new independent agreements or as an attachment to the existing contracts can be raised and used. Nevertheless, the implementation of human rights in international transboundary water law have some results which relate to the deficiencies in the field.

The first one is that in the field of water legislation in international law, still there is ambiguity in nature of provisions, and there are many weaknesses, in the substantive stipulations primarily related to the sanitation.<sup>95</sup> It seems that

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<sup>94</sup> McCaffrey, Stephen, *The codification of universal norms: a means to promote cooperation and equity?*, 2013, International Law and Freshwater: The multiple challenges, Edward Elgar Publishing Limited, p. 139.

<sup>95</sup> Cahill-Ripley, Amanda, *the human right to water and its application in the occupied Palestinian territories*, 2011, Routledge, p. 178.



one of the most important reasons behind the lack of attention to human rights issues in the transboundary water agreements is the lack of provisions concerning the right to water. It is understood that in the first stage, the legal standing of the right to water as an independent human right must be legally promoted.

Moreover, in the second phase, as some scholars have suggested, to improve the existing situation of the right to water, the “advances in remedy for economic and social rights as a whole” should be implemented.<sup>96</sup> The second problem, as it has been mentioned before is that the private corporate responsibilities, in International human rights law, because of human rights violations, still, has not clarified the statute of corporates responsibilities for human rights violations directly or explicitly.

So, although there is no barrier for recognizing the international responsibility, because of the violations or abuses of the right to water, the necessity of the existence of regulations, state practice and opinion Juris in this area are needed.<sup>97</sup>

Another major problem encountered in most of the international treaties on transboundary water is that it does not provide an effective, adequate and immediate compensation mechanism for human rights violations, or if such a mechanism has been predicted, they are not as effective or efficient.

It seems that governments should explicitly and specifically refer to the public participation, principle in their transboundary waters agreements, and in their domestic water governance should clarify the type of public participation and also this question that which people should participate or which groups of the individual should be involved in the decision-making procedures. Finally, the countries, to the actual implementation of public participation obligations in both areas of international and domestic law, should do more empirical research.<sup>98</sup>

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<sup>96</sup> Cahill-Ripley, 2011, Ibid, p. 189.

<sup>97</sup> Cavallo, 2013, Ibid, p. 64.

<sup>98</sup> SPIJKERS, Otto, LI, Xian, DAI, Liping, *Public Participation in China's Water Governance*, 2018, [J] Chinese Journal of Environmental Law 2, pp. 55-56.