SUSTAINABLE DEVELOPMENT AND THE HUMAN RIGHT TO FRESHWATER

Written by ***Ivaylo Nikolchovski***
LLB International and European Law

ABSTRACT

The evolution of the right to water can be traced to the developments of the early 1970s. The main purpose of this thesis is to argue that, based on the developments in the field of internationallaw, today there is an emerging right to water. In support of my arguments, I will discuss the various legal measures in relation to the right to freshwater, adopted since the 1970s. I will analyze the resolutions and declarations of the different conferences and international forums that have been held since that time and the ways in which they have addressed the issue of the right to water.Although at the present moment the right to freshwater does not explicitly exist in the international legal plane, according to my research, the contextual interpretation of different international measures can provide evidence for the slow establishment of customary international law, guaranteeing the right to water. I strongly believe, that issues regarding freshwater, the access to it and its preservation for future generations, are closely connected to the principle of sustainable development, enshrined in the international environmental law as well as in the principles of international human rights law. It is scientific fact that water is essential for all life on earth. Life without water is simply not possible and consequently, issues regarding water and the access to it,do relate to various human rights, such as the right to life, health, sustainable development and many more.

The following chapters shall elaborate on the sustainable development and other principles of international law and their correlation to the Human Right to Freshwater.

The first section of this thesis, (hereinafter: **Part I**), covers the availability of freshwater as a common heritage of all humankind. While I am discussing this, I will take into considerations thesustainable development and other principles of international environmental law. These

principles will be subsequently discussed in **Part I**. Each principle will be examined in separate sub-part.

In the second part of the thesis, (hereinafter: **Part II**) I will put forth the right to freshwater in acontextual examination of several international human rights legal instruments. More to the point I will discuss the right to water and its connection to other human rights, such as the right to life, health and an adequate standard of living.

Part III, will examine, what exactly is customary international law and how it is established. Iam going to discuss, some of the international cases, relevant for the creation of customary international law. I am also going to present arguments, supporting the notion, that based on the developments in the international environmental and human rights law during the last forty years,there is a growing trend for the establishment of the right to water under the customary internationallaw.

In the last part of this document, namely **Part IV**, I will examine the so – called Hypothetical International "Framework for Water Management and Preservation" or just "the Framework". Thisis a hypothetical document that I would like to propose. The Framework will be dealing with the management and preservation of fresh water resources on international scale

In this legal document, I will try to unite the different principles of international environmental law with the principles of international human rights law, thus arguing, that there is a growing tendency by the international community to create and recognize customary right to freshwater. Inmy personal, legal opinion, such a right will be able to grant all people an equal access to freshwaterand *inter alia* preserve it for future generations. Furthermore, the adequate protection of the right to freshwater will greatly improve the living standard all around the globe, particularly in the leastdeveloping countries.

PART I

"Water is fundamental for life and health. The human right to water is indispensable for leadinga healthy life in human dignity. It is a pre-requisite to the realization of all other human rights."[i]

INTRODUCTION

Freshwater is an indispensable element for human life.[ii] It is one of the Earth's most precious natural resources and as such, it is not only inherent to human dignity and human rights, but it is also vital for the survival of human species. Today, the adequate access to clean, drinking water is a fundamental human rights concern.[iii] But why would we consider drinking water to be such a fundamental human rights concern, some may ask?

It is generally expected that by the end of the year 2030 if the current consumption patterns continue, the global freshwater needs will reach 6 900 billion cubic meters per year. There are a number of reports and studies, which suggest this worrisome pattern. One of the most authoritativeones is the report prepared by the DNI- the Director of National Intelligence office.[iv] This level of water demand will be more than 40% above sustainable supply.[v] Furthermore, the availability of freshwater is not only indispensable for the human life itself, but it is also closely connected with the social and economic development of each country and nation.[vi] In the 21st century, poverty is prevalent mostly in areas that face water shortage. Water-related diseases, caused by unsafe drinking water and the absence of proper sanitation facilities, are among the leading causes of deathin the developing world. Current predictions forecast that by the year 2050 at least one in four people are likely to live in a country which is affected by chronic or recurring shortages of fresh water.[vii] Some may claim that the year 2050 is so far ahead of time, that there is no point in discussing what will happen after such a long time – it is decades ahead of today. However, for me, this is a very short sided thinking and I believe that many will agree with me. The world population has more than tripled during the last century, while water uses for human purposes havemultiplied six-fold.[viii] The constant

increase of the global population further aggravates the international water situation and if we truly desire to do something about the situation, a period oftwo or three decades should not interfere with our efforts. After all, we need to think about our children and grandchildren and what world they will inherit from us.

In my personal, legal opinion, the right to water is probably the most, environmentally consequential human right in contemporary international law. There are a number of arguments supporting this statement. Probably the main reason for the importance of the right to water is thatit involves human access to a natural resource, that is vital not only to humans but to all living things in the global ecosystem. In 1997, the United Nations adopted the "Comprehensive Assessment of the Freshwater Resources of the World" (hereinafter: U.N. Freshwater Assessmentor the Assessment). The Assessment was created at the request of the UN Economic and Social Council and it attempted to provide a comprehensive summary of the global status of water. The Freshwater Assessment report clearly stated the following:

> "*Water use has been growing at more than twice the rate of the population increase during thiscentury, and already a number of regions are chronically water-short. About one-third of the world's population lives in countries that are experiencing moderate to high water stress partly resulting from increasing demands from a growing population and human activities. By the year 2025, as much as two-thirds of the world population could be under stress conditions.*"[ix]

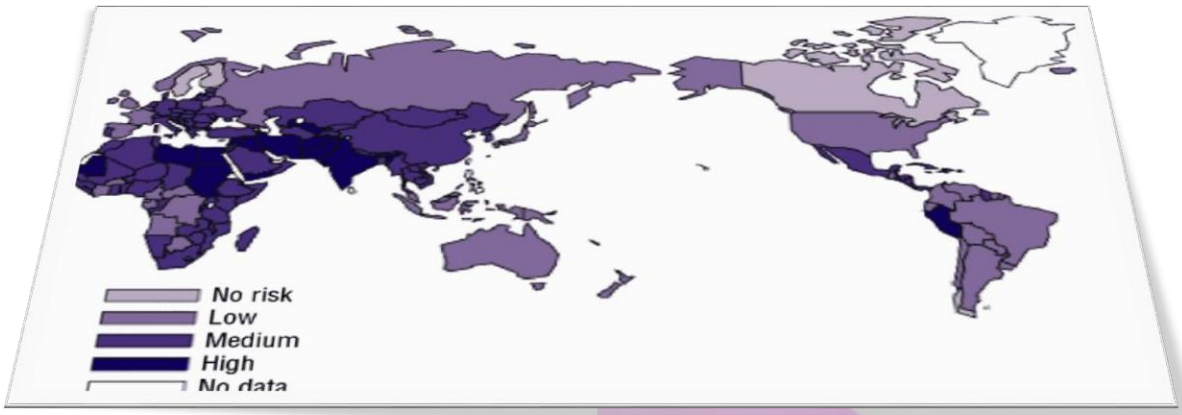
According to the information presented in the U.N. Freshwater Assessment, the main reason forthe growing water use is due to "*increasing consumption of food and industrial goods produced using water*," and also, because of the "*increasing demands for water supplies for industrial development, hydroelectric generation, navigation, recreation and domestic use*".[x] TheAssessment also noted that "*at least one-fifth of all people do not have access to safe drinking water, and more than one half of humanity lacks adequate sanitation.*"[xi]

As we can see, from information presented in several of the other UN's reports and inquiries, the unhappy conclusion is that in many countries water resources are scarce. This is

particularly true in many developing countries in Africa and Asia.[xii] Generally speaking, nowadays, poverty iswidespread and predominant mostly in areas that face water shortage. Examples of such areas include parts of Africa, Asia and the Middle East, Mexico and Australia. People living in poverty or in the developing world, are unavoidably more affected by the steady increase of competition for water. For example, in many African countries, women and girls often have to walk farther in search of water to meet minimal household needs.[xiii] Furthermore, in the least developed countries,one in five children dies before the age of five. This high rate of mortality is caused mostly because of water-related infectious diseases, which are arising from insufficient water availability, in bothquantity and quality.[xiv] Water-borne diseases, caused by unsafe drinking water or/and the absence of suitable sanitation facilities, are some of the leading causes of death in the developing world.[xv]

The graphic presented below is showing how bad are the water shortages in many different regions,all around the globe[xvi]:

Based on the existing predictions and forecasts, it is safe to conclude, that in the next three decades, or by the end of year 2040 at least one in four people are very likely to live in a country, which is affected by the constant (in other words, every day), shortages of fresh water.[xvii] We are not far from the moment when the quantity of freshwater is becoming insufficient and inadequate in many countries all around the world.[xviii] In spite of this, freshwater is still overexploited and ill- preserved. This is particularly true in the developing regions. It is estimated that approximately ninety percent of all wastewater still goes untreated into local water streams in the developing andleast developed countries.



It is also estimated that at the moment, forty-seven countries are suffering from medium to high water stress[xix] and that roundabout, five million deaths a year are occurring because of contaminated water.[xx] More to the point, around only 2.5 percent of overall water reserves in the Earth is freshwater, while the usable portion of freshwater is even smaller, orabout 0.01%.[xxi] The World Health Organization, (hereinafter: WHO), provides rough estimations that more than 1.1 billion persons lack access to an adequate water supply. According to the WHOthe overwhelming majority of these people live in rural areas,[xxii] while 2.3 billion people each and every year suffer from diseases linked to water.[xxiii]

I would like also to stress out the fact, that the right to access freshwater means more than just securing present generations with an adequate access to it. It also comprises means to secure and sustain the resource for all, *inter alia* future generations.

What we can deduct, from the above information is that water is vitally important for development. The human right to drinking water is fundamental to life, health, adequate standard of living and beyond. The adequate quantity and access to safe drinking water is a precondition forthe realization of all human rights. As a result of this, it is of no surprise, that many contemporarystudies state that the overcoming of the growing global water crisis – achieving water, food and environmental security simultaneously – is probably one of the tremendous challenges for sustainable development.[xxiv]

What exactly is sustainable development, and how important is the availability of water to this concept? The so-called concept of sustainable development is found in international environmentallaw as well as in international human rights law. The concept of sustainable development does notsimply establish a legal justification for a right to access freshwater; it also contextually creates a right to it. Furthermore, it also encompasses that freshwater has to be sustained for future generations. Sustainable development is a renowned international concept. It is proclaimed and mentioned in several international legal instruments, dealing with the topics of human rights, economics, andenvironmental concerns. Despite the fact, that the concept itself is not expressly defined it has become an important factor in the development of contemporary international environmental law.In time the concept greatly influenced third and the fourth generation human rights.[xxv]

At the present moment, there are several existing, deliberate declarations and general resolutions, nonbinding legal instruments and guidelines, which tries to regulate how to use, ensurepreservation and adequate access to freshwater.[xxvi] It is important to realize, that there is a substantiallack of compact, specific and legally binding instruments that would advance and ensure the preservation, usage and access to this common heritage. I believe, that the international communityhas an obligation to address these concerns in more strict, firm and well-considered manner and take measures to guarantee equal access to freshwater for all people. Some of the necessary measures already exist in current legal instruments relating to sustainable development and its sub-principles. Another option to protect the right to water is to ground this right, as a customary international law right. As I am going to present in my legal research, the international communityis already moving in this direction. Thus far, there is quite a substantial body of legal documents, commitments, and declarations, demonstrating that the state practice (*see Part III for more details*),necessary for the creation of a customary international right to water already exists.

Furthermore, it is possible, to codify the existing measures into a legally binding framework, such as the "Framework for Water Management and Preservation" that I am going to propose in the last part of this thesis.

We can consider the freshwater as a common heritage of humankind since water runs freely

through territorial limits and between countries. Freshwater resources are not constrained within the boundaries of one country or region and everyone needs these resources. If freshwater is to be further regulated it must be recognized as a common heritage of all humankind and not as a naturalresource belonging to a specific territorial boundary.

Modern International environmental law deals with freshwater protection[xxvii] mainly in areas withregard to its overuse and pollution. However, most of the existing regulations and regimes concerning water pollution, for example, have been created as an *ad hoc*[xxviii] response to problems with, let us say: particular rivers[xxix], lakes, and/or other freshwater ecosystems.[xxx] On one hand, as aresult of this *ad hoc* character, preventive measures are generally non-existing. On the other hand,the measures that are actually available only come into existence after the damage to a particular freshwater ecosystem has been done. Before I can continue with the examination of the principle of sustainable development in more details, I would like to focus the attention of the reader to some important jurisprudence, developed by the Permanent Court of International Justice, (hereinafter: the PCIJ) and other international institutions. The decisions are taken by the PCIJ and the other international arbitral tribunals, as well as the work of the International Law Committee, (hereinafter: the ILC) and private organizations, for example the International Law Association, (hereinafter: the ILA) have in most of the situations only dealt with concerns relating to the use of freshwater and its contamination by pollution. Unfortunately, the number of international environmental law rules and regulations, dealing with freshwater management (rules, which are actually enforceable) is still very limited. One exception is the currently existing regulations, relating directly to pollution – and even here, there is an exemption. These regulations are dealing mostly with pollution cases, caused by the so-called diffuse rivers. Moreover, that kind of pollutionis hard to trace since the pollutants are transported into the water supply in an indirect way.[xxxi]

The "Sustainable Development and the Human Right to Freshwater" thesis begins with the introduction of the concept of sustainable development. In the light of this, the logical question is,why the sustainable development principle will be examined at the beginning of the Thesis? Generally, there are two answers to this question. First of all, I decided to start with this particular concept, so that I can explain it in details. I strongly believe that sustainable

development is one ofthe most fundamental international concepts. Furthermore, I will also provide examples of the huge importance of the concept of sustainable development in relation to the right to access freshwater.Second, after I explore the different aspects of the sustainable development principle, I will be ableto dive into the vast ocean of information, concerning the availability of freshwater as a common heritage of all. Moreover, I will also recapitulate several sub-principles which call for the preservation and the sustainable exploitation of any freshwater resources. I will take the readers through exiting journey, spanning decades of international, legal advancement, including the development of the principles of Equity and Common heritage of Humankind.

In the second part of the "Sustainable Development and the Human Right to Freshwater" thesis,I will provide examples and explanations how the right to access freshwater exist **contextually** invarious international human rights legal instruments. By doing so, I am going to argue, that the international community, is moving toward the establishment of the right to water as customary international law.[xxxii] I will also deliberate, why the protection of the right to water should not only be ensured through the contextual interpretation of legal documents, dealing with the already existing human rights but that the right to water should be separate right in itself. In Part III, I willprovide some clarification how the existing international legal instruments, are contributing towardthe creation of customary int. law to water.

International water conferences and forums have vacillated between declaring water a basic human need on the one hand, and a human right on the other. For example, later on, I will discussthe Mar del Plata Water Conference of 1977. According to the Water Conference final act, all people have the right to have access to water in quantities and of a quality equal to their basic needs. However, fifteen years later, the Rio Conference emphasized that priority has to be given tothe satisfaction of basic needs, and made no direct reference to the issue of a right to water. The different wording used in many of the international agreements, clearly shows how inconsistent is the international community when dealing with the right to freshwater and its protection.

Without further ado, let us move to the part, discussing the sustainable development concept.

SUSTAINABLE DEVELOPMENT

During the last decades of the 20th century, the human civilization struggled with different problems and challenges. However, I would say that there are four main topics, which were and still are common interests and ambitions pursued throughout the globe. These topics are peace, freedom, economic, social and cultural development, and environment.[xxxiii] It is only in the past fourdecades that the environment at local and also at international level became the main focus of the national and international law, institutions and organizations.

In the 1970s and 1980s, several international commissions and organizations were created.[xxxiv] Their main aim was to examine and research international problems and pressing social problems.Many of these commissions and organizations produced significant documents, which were oftenfollowed by global conferences. One important and common element of all of the documents, produced by these institutions, was the striving to bind together the ambitions of mankind and thedesire to demonstrate how the striving for one value sometimes requires the achievement of other requirements. Sustainable development, with its twin emphasis on some of the most important, contemporary issues, namely development and environment, is a typical example of such efforts. In the contemporary history, there are three fundamental events which created the basis of modern,international environmental law. These three events are the Stockholm Declaration, The World Commission on Environment and Development, or better known as the Report of the Brundtland Commission[xxxv] and of course the Rio Declaration. These three groundbreaking papers are all connected, either to sustainable development or to its components.[xxxvi] It is safe to say, that the Stockholm and Rio declarations are the main tools which created a broader understanding of the complexity and global nature of the world's environmental problems.[xxxvii] It is important to note the fact that none of these documents were binding on states at the time of their adoption. However, Ialso would like to note that, at the present moment, the situation has changed. Some of the clauses stipulated in these three documents are considered to be part of the customary international law.

One excellent example of a provision that has achieved the status of customary law, through state practice,[xxxviii] is Principle 21 of the Stockholm Declaration, the so-called ('good-

neighborliness' or "sic utere")[xxxix]. The Principle 21 is reaffirmed again, almost with the same words and meaning inthe amended form in the Rio Declaration.

The Stockholm Declaration

The Stockholm Declaration "is generally regarded as the foundation of modern international environmental law," and was the first major event legitimizing environmental policy as an international issue. Even more importantly, the Stockholm Declaration used wording recognizing that human beings are only one element in a greater ecosystem. The Declaration also seemed to acknowledge that human activity must inevitably be limited by ecological constraints. Furthermore, the Stockholm Declaration acknowledged a human duty to nature.

Brundtland Report

The most common definition of the concept of sustainable development was established in the Brundtland Report. The Report was made in 1987 by the World Commission on Environment andDevelopment (hereinafter: the WCED or the Brundtland Commission).

Unlike the Stockholm Declaration, for example, the Brundtland Commission, placed the concept of sustainable development on the top of its priorities and goals. With the creation of theBrundtland Commission Report, some important and influential changes took place.

Relying and using the conclusions and documents produced by the 1972 Stockholm Conferenceon the Human Environment and in the 1980 World Conservation Strategy of the International Union for the Conservation of Nature, the Brundtland Commission started its work, trying to achieve union between environment and development, instead of just focusing on developmental problems and needs and environmental issues in terms of environment versus development.[xl]

Taking radically new approach, the Brundtland Commission concentrated its work and affordsto create a solution, which could successfully combine environmental norms and issues with the need for development, in policies, strategies and programmes.

The WCED which created the report was chaired by the Norwegian Prime Minister, G.H. Brundtland[xli] and it developed one of the most popular definitions, answering the question, of whatexactly is sustainable development: "The development that meets the needs of the present withoutcompromising the ability of future generations to meet their own needs."[xlii] [xliii]

The above-mentioned definition, stated by the Brundtland Commission, comprises two typicalconceptions:

The first consideration is connected with, the so-called concept of 'needs'. The "needs" in this situation are generally, the particular essential needs of the world's poor to which main priority must be showed. The second conception deals with, the idea of the limitations imposed by the stateof technology and social organization on the environment's ability to meet present and future needs.[xliv] Generally speaking, according to the Brundtland Commission, natural resources must notbe used and exhausted only by a small number of already industrialized, developed countries. TheCommission also promoted the view, that the developing states have the right to use natural resources on an equal basis with the states that are already developed. To say it in other words, in addition to the access to natural resources, people from all around the world need equal chance to produce and consume these natural resources in a way that can satisfy their needs.[xlv]

It is also important to note, that the definition of sustainable development, provided by the Brundtland Commission, is more an aim than means to an end. This is the indispensable core of the concept, the facilitation of human development in harmonization with the needs of the environment and of future generations. The Brundtland Report also provided an additional explanation of sustainable development concept. According to the Report, in its essence, the sustainable development principle is a process of change. During this process, the exploitation of resources, the administration of investments, the specialization of technological development, andinstitutional change are all in harmony and enhance both current and future potential to meet human needs and goals.[xlvi] Taking into consideration the fact that the freshwater is one of the most vital human needs, the right to freshwater is therefore implicitly incorporated in the Brundtland Report. Sustainable development is, in essence, a general concept and as a result of its nature, the conceptneeds the support of other different sub-

principles. Such principles are, for example, the principleof the common but differentiated responsibilities, the common heritage of humankind, equitable and reasonable utilization, and inter-generational equity. In time, these additional sub-principles are becoming an inseparable part of the "main" concept of sustainable development. The additionalprinciples also define and clarify the sustainable development and aid the aim as means to an end.I will briefly discuss some of this additional sub-principles and their relation with the sustainable development concept in Part II of this thesis.

In time, the concept of sustainable development has changed from its first appearance in the Brundtland Report. In 1982, the United Nations member states adopted a new list of principles, which enumerated new duties and rights necessary for environmental protection. This new charter[xlvii] was called World Charter for Nature and its main goal was to establish five "principles of conservation by which all human conduct affecting nature is to be guided and judged." The renewed interest in the principle of sustainable development and its significance was clearly evidenced in the years, following the adoption of the World Charter for Nature. Less than a decade after Thirty-Seventh UN Session, the UN Conference on Environment and Development adopted several documents, each one of which proclaimed various definitions and explanations of what exactly issustainable development and how to achieve it. One of these documents was the Rio Declaration.[xlviii]

Rio Declaration and Agenda 21

The Rio Declaration supposedly intended to develop on the rights and obligations, which were first addressed in the Stockholm Declaration. In reality, however, the Rio Declaration served to unravel the main principles established in Stockholm by pushing an agenda of state sovereignty and economically motivated development.[xlix]

The policy shift between the Stockholm and Rio Declarations could be explained as a result of differing interpretations of international environmental standards and responsibilities between developed and developing countries. Professor David Fidler calls this different interpretation, "thebitter politics of North-South relations". According to professor Fidler "

tensions between developed and developing countries mark the politics of [many] international environmental problem[s] and create a difficult milieu in which to protect the environment."[l]

It is interesting to note, that the "Rio Declaration smothers international environmental law andpolicy by merging it, as it were, with international economic law and development law."[li] Anotherimportant aspect, concerning The Rio Declaration, which I would like to examine is the fact that the Rio Declaration does not import the term "international environmental law". In lieu of this theDeclaration refer to "sustainable development", and actually warns that, in the future, environmental considerations will have to be balanced with developmental ones.[lii]

This particular tension between environmental protection and the right to develop is also evidentin the tension between the obligation not to cause harm and the right to reasonable and equitable use, which we saw in the context of the law of international watercourses. Moreover, the fact that any environmental obligations placed on states will be diluted or neutralized by these rights makesit very difficult to compel any uncooperative state to conserve its freshwater resources.

Today the Rio Declaration (hereinafter: the Declaration),[liii] on Environment and Development is considered as the guiding and authoritative international authority on sustainable development. The Convention was adopted using the model of the Stockholm Declaration of 1972. In reality, it was made as a response to a request of the UN General Assembly to stop and turn round the disturbing patterns of environmental destruction "*in the context of increased national and international efforts to promote sustainable and environmentally sound development in all countries*".[liv]

Before we shift our attention to the Gabcíkovo-Nagymaros Project case, I would like to highlightthe fact that in a manner similar to the Stockholm Declaration, the Rio Declaration does not containany definition of sustainable development. Instead of this, the Rio Declaration incorporated different elements of sustainable development. These elements of sustainable development are incorporated in the twenty- seven principles established by the Rio Declaration. It is not going to be exaggerated to say, that the concept of sustainable

development seems to underline and influence the entire Rio Declaration and the negotiations that led to its adoption.[lv] A good example of an element of the sustainable development concept, which was included in the Rio Declarationis the Principle 4. Principle 4 of the Rio Declaration on Environment and Development provides that "*[i]n order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it."*[lvi]

The U.N. Conference on Environment and Development also incorporated in its final documentthe precautionary principle and the environmental impact assessment procedure.[lvii] Both of these principles are considered as important instruments for achieving the full potential of the sustainabledevelopment principle.[lviii]

Using and expanding the framework established by the Brundtland Report, negotiations that ledto the adoption of the Rio Declaration were held between as many as 200 governments and over fifty inter-governmental and non-governmental organizations. Different conventions, resolutions and approaches were negotiated on fundamental problems in relation to the climate change, biodiversity and deforestation. All of the negotiations that were held, led to the adoption of two multilateral treaties, which then were open up for signing, namely the Framework Convention on Climate Change and the Biodiversity Convention. Furthermore, non-binding document, called "theForest Principles" was adopted by delegates, as well as the - earlier mentioned - also non-binding but extremely important Rio Declaration. The Declaration contained twenty-seven Principles on Environment and Development and a so-called Agenda 21.[lix] The main goal of Agenda 21 was to be used as a blueprint for sustainable development. Up to the present moment, Agenda 21 is still one of the most elaborate and explicit schemes, delineating what would be required from member-states and international organizations on an international scale, in order to achieve environmental and developmental objectives.[lx] Before we can continue, I would like to point one very importantnote. Agenda 21 is uppermost a policy scheme. It was designed with the main goal to battle environment and development issues for the upcoming decades. Agenda 21 actually called for 'a balanced and comprehensive state of international law in the field of sustainable development (...) giving special attention to the delicate balance between environmental and development concerns.[lxi] I would like also to state, that Agenda 21 acknowledge that the path to sustainable

development requires constant and well-coordinated effort by many different players. According to the Agenda, such actors includes governments, industries, and citizens.

The UNCED in Rio de Janeiro led to:

- An increasingly growing corpus of environmental law;
- A large number of treaties;
- Emerging law-principles and
- Environmental legal decisions.

Moreover, Mr. Schrijver stresses out that, "*it seems as though international development law has stagnated and poverty-combat and Third World development, as set up by the UN after WorldWar II, are withering*".[lxii] But can we actually separate the desire for development, from the environmental issues, which can be caused by the extensive development and industrialization efforts, undertaken all around the globe? In my opinion, it is difficult, if not even impossible, to separate development from the consumption of the environment. The most alarming result of the overuse of the natural resources is that some of the damage to the environment is an inevitable andirreversible consequence of development.[lxiii] Thus, it does not automatically follow that sustainable development primarily deals with environmental protections. Lowe notes: "*not all aspects of the law relating to sustainable development are necessarily relevant to the protection of the environment, nor do all aspects of international environmental law concern sustainable development*."[lxiv]

It is interesting for me, that since the concept of sustainable development is implicit in its nature and articulation, it is expressed in a versatile manner in the different international legal instruments.However, when we compare these instruments contextually, the meaning of the principle of sustainable development is not that diverse.

So for example, despite the fact that the Rio Declaration, did not provide explicit definition about sustainable development, the explanations stipulated in the Declaration's 27 Principles are quite similar to the interpretation of what is sustainable development, included in the

Framework Convention on Climate Change. In the Framework Convention on Climate Change, sustainable development is set forth both as a right and as an inspiration of parties involved. The Kyoto Protocol[lxv] and Agenda 21 further elaborated on the principle of sustainable development.

The principle of sustainable development has evolved significantly since it first appeared in theBrundtland Report. For example, in The Hague Declaration on the Environment,[lxvi] the right to livein dignity was furthermore expressed. Another international document, dealing with the principle of sustainable development is the Framework Convention on Climate Change. The Convention, clearly established the sustainable development as a right but also, which is quite interesting, as an inspiration of the delegations that were involved in its adoption. Furthermore, the International Court of Justice (hereinafter: the ICJ) also examined the concept of sustainable development on several different occasions. One of the leading cases on the matter is the Gabcíkovo-Nagymaros Project case. In the following paragraphs, I would like to examine this particular case in more details, due to its tremendous importance.

Gabcíkovo-Nagymaros Project case

In the Gabcíkovo-Nagymaros Project case[lxvii], The ICJ clearly addressed the concept of sustainable development. The final verdict and particularly Judge Weeremantry *Separate Opinion* have furtherstrengthened legal justifications concerning the principle of sustainable development.

In this groundbreaking case, the ICJ reached the conclusion that "*This need to reconcile economic development with protection of the environment is aptly expressed in the concept of sustainable development.*"[lxviii] Furthermore, in his *Separate Opinion* , Judge Weeremantry stated thatthe concept of sustainable development has a normative character as far as it comprises a principlewhich allows for the balancing between environmental concerns and concerns regarding economic development.[lxix] Judge Weeremantry also reached two additional and extremely important conclusions. First that "The principle of sustainable development is thus a part of the modern international law by reason not only of its inescapable logical necessity but also by reason of its wide and general acceptance by the global community."[lxx] And second, that sustainable development was seen as an erga omnes obligation.[lxxi]

> *As we can see from the ICJ jurisprudence, as well as from the existing legal instruments, such as the Rio Declaration and the Framework Convention on Climate Change, the principle of sustainable development had gone through a great metamorphosis since the early 80s. It is clear that the principle of sustainable development is not just a concept, but the international legal actorsare considering it to be a legal principle. Furthermore, I would like to state in good conscience thateach component of the principle of sustainable development interrelates with a number of differentsub-principles in the area relating to the law of sustainable development.*[lxxii] *Furthermore, I believe that in the future those interrelations will further be recognized as constituting a general principle of international law.*

And again, as in the previous part of the thesis, we are considering the future. How can the

international community further strengthen the sustainable development principle? What will be needed in order for sustainable development to establish a comprehensive and efficient means forinternational co-operation in relations to the access and sustainability of freshwater? One possibility to do this is if the existing requirements established by the sustainable development principle are advanced, with the main aim to meet current and future needs of all people in accordance with increasing globalization. For example, currently, the existing international law which is dealing with the principle of sustainable development requires only the minimum standardfor international co-operation. There are a number of reasons for the establishment of such a minorrequirement. Probably the most important reason is that such a requirement from the States must be politically acceptable, as well as respect for other existing concepts, like the States sovereigntyprinciple and the right to self-determination. However, more is needed and a greater cooperation between the states, non-governmental organizations and the general public is required.

The past, current and the future possibilities for the development of the Sustainable developmentprinciple, clearly indicates, that the principle's main goals are to ensure equitable and sustainable use of natural resources in accordance with human needs. As I previously mentioned, the freshwater resources are not just natural resources, but they are a vital and indispensable element for all life forms. Because of this, it is imperious to consider the freshwater resources and the accessto them as a most fundamental concern in relation to sustainable development principle.

EQUITY PRINCIPLES

Generally speaking, "equity" could be examined in the context of adapting law to a particular set of circumstances or choosing between different interpretations of the law. The main goal when applying this principle is to fill the gaps in the laws as well as to provide a good reason for not applying unjust laws.[lxxiii] Of course, as one could imagine, the concept of equity was alsoexamined by various international and national court. In the Diversion of Water from the Meusecase,[lxxiv] Judge Hudson clearly stipulated in his separate opinion that the principle of equity had been a part of international law for a long time.[lxxv] Furthermore, in the case of North Sea Continental Shelf, the ICJ judges based their final decision "...*in accordance with*

equitable principles..."[lxxvi] The concept of equity has thus often been discussed and used by international arbitration and relied upon to mitigate inequities. Before I continue with the next equity principle, namely the Equitable and Reasonable Utilization principle, I would like to state thatthe principle of Equity was further strengthened and examined in the 1982 Law of the Sea Convention, Article 59. Article 59 stipulated that conflicts are to be resolved on the basis of equity and Article 74 referred again to an equitable solution of arguments another case, dealingwith the principle of Equity is the Case Concerning the Frontier Dispute.[lxxvii] During this particular case, the International Court of Justice stipulated that the frontier line of the river Soum should divide the pool equally, thus relying on the concept of equity once again.[lxxviii]

Equitable and Reasonable Utilization principle

The concept of equitable and reasonable utilization come out as a usefully tool of dispute resolution between watercourse States. The principle of equitable and reasonable utilization could be located in Article 5 of the UN Convention on the Law of the Non-Navigational Uses of International Watercourses (hereinafter: the Water Courses Convention or the Convention).[lxxix] I would like, to discuss the convention in some details, due to its prominent position on the international arena. It is important to note, that the Watercourses Convention is the result of more than twenty years of work by the International Law Commission (hereinafter: the ILC).[lxxx] Some of the Convention's articles, such as Article 10, has a lengthy historical background dating back to the early discussion within the International Law Commission (ILC). This was at the time, before the final parameters of the draft Convention were agreed upon.[lxxxi] Although one of the factors for determining equitable and reasonable utilization in Article 6 of the Convention relates to "*the social and economic needs of the watercourse States concerned*", there was concern within the ILC Drafting Committee about the absence of a priority principleconcerning the list of those relevant factors. To address this matter, the Committee suggested that, among the factors to be taken into account in resolving a conflict between uses, special attention should be given to the supply of water needed to sustain human life, including drinkingwater or water required for the production of food.[lxxxii] This interpretation was accepted by the Working Group and as a result, the Group added the

following statement of understanding regarding article 10 (2): "*In determining "vital human needs", special attention is to be paid toproviding sufficient water to sustain human life, including both drinking water and water required for production of food in order to prevent starvation*." Consequently, the United Nations Watercourses Convention does not directly address the problem of the human right towater. Instead of this, it confined its concerns to the issue of "*vital human needs".* In its work,the ILC not only used some of the already existing international laws but also developed somenew laws when drafting the Convention.[lxxxiii] As I previously mentioned, in the famous Gabcíkovo-Nagymaros case, the ICJ referred to equitable and reasonable sharing of theresources of an international watercourse as a basic right. Article 10 of the International Watercourse Convention stipulates that: "*In the absence of agreement or custom to thecontrary, no use of an international watercourse enjoys inherent priority over other uses*." Moreover, the convention clearly established that "*in the event of a conflict between uses of aninternational watercourse, it shall be resolved with reference to articles 5 to 7*", with special regard being given to the requirements of vital human needs. One of the most important aspectsof the Water Courses Convention, in my opinion, is the fact that the Convention clearly recognizes that an access to water must fall under the category of vital needs in particular in connection to human development. In the Statement of Understanding affixed to the Convention, it determines inter alia vital human needs, by paying special attention to the need for an access to freshwater, which includes drinking water as water for food production.[lxxxiv] I dobelieve, that this particular wording not only shows dedication to sustain freshwater supplies but it is also a strive to uphold human rights in regards to secure all the access to freshwater.

Common Heritage of Humankind

The "common heritage of mankind" or in other words the common heritage of humankind or humanity is a relatively new concept. It represents the notion that certain global commons or elements, which can be considered as beneficial to humanity as a whole, must not be unilaterally exploited by individual states or their nationals. This protection against over-exploitation also includes actions undertaken by corporations or other entities. The general notion of the "*common heritage of mankind*" is that these shared resources should be rather exploited under some sort of international arrangement or regime for the benefit of mankind as a whole. It is

important to highlight the fact, that the concept of common heritage has a double meaning. First, the concept could refer to all living and non-living resources of nature and second this concept can be understood in the context of the entire Earth's environment.[lxxxv] The promulgationof certain areas as the common heritage of humankind set up a new form of a territorial regime.For example, The Declaration of Principles Governing the Seabed and Ocean Floor[lxxxvi] stipulatesthat the areas in question and the resources located in this area are the common heritage of all humankind. This idea was further developed in the Law of the Sea Convention, in Articles 136and 137.[lxxxvii] The Law of the Sea Convention states that no sovereign or other rights are to be recognized in relation to the area, and that exploitation of this area must be conducted in accordance with the rules and structures found in the convention itself.[lxxxviii] In order to explain theconcept of Common Heritage of Humankind better, I would like to provide another example of such heritage. Common heritage of humankind is considered to be also the moon and other celestial bodies. This notion was established in the Agreement Governing the Activities of States on the Moon and Other Celestial Bodies,[lxxxix] as well as, the Treaty on Principles Governingthe Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies. All of these legal documents have common provisions, namely that theyall recognize the common interest of all in the progress of the exploitation and use of outer space for peaceful purposes. Similarly to the concept of res communes these particular areas are incapable of national occupation.

It is important to realize, that the legal status of the concept of the common heritage of humankind is still a long way from being clearly and unambiguously established. On one hand, the Moon Treaty that I mentioned in the previous paragraph, has only the bare minimum of ratifications[xc] and on another side, the Law of the Sea Convention has not been in force for long.[xci] Regardless of this, the principle of the common heritage of humankind clearly exemplifies the special position of global commons and thereof calls for an international administration. Another good example of the codification of the principle of the common heritage of humankind can be found in the African Charter on the right to development (hereinafter: the African Charter).[xcii] Article 22 of the African Charter discusses the principle ofthe common heritage of humankind and the result of this is that the principle does also exist at a national level. It is most unfortunate, that the principle of the common heritage of humankindis not therefore included in the most recent international treaties and document,

such as the treaty on climate change, biodiversity and in particular to freshwater resources. Instead, there has been a constant pattern just to refer to the principle of common concerns and not to actuallyincorporating the principle in the actual treaties. As Antoinette Hildering notes in her writings, *"water seems well suitable for being considered a common heritage of humankind*". The resultof such notion is that the general allocation of freshwater resources is brought in line with the sustainable development principle. Another reason to consider the sustainable use of water as aglobal issue and common heritage of humankind, which demands administration beyond that of a single state is the simple reality that most of the freshwater resources are passing through various countries and across the national borders, for example, rivers and groundwater as lakes.When we think about it, maybe it would be a better approach, in order to develop anadministration (capable of dealing with transnational waterfowls), that States would share moreof the burdens and benefits, as a common concern of humankind. The building up of a strongerawareness of the concept of common heritage of humankind is capable to inspire even further the involvement of the international community to provide all people access to water as a stronger awareness towards its sustainability. This would certainly not be an easy task. One ofthe main reasons for this is probably the fact that in modern times the international legal arena operates and exists on the basis of the concepts, such as sovereignty and territoriality. These two concepts are capable to cause divers complications in different manners. But let us imagine for a moment that freshwater resources were universally viewed as a common heritage of humankind within the international legal plain. If this is, in fact, the reality the concepts of sovereignty and territoriality would have to be altered drastically. It could even create an obligation for the developed countries which have enough freshwater supplies to share with lessfortunate countries. Some would say that "water as such is not at the present often specificallyclassified as one of the issues the concept of the common heritage covers."[xciii] However, I do notshare this view, or at least I do believe that it will change. In my view, the international relationsand positions are like water – they are constantly moving and shifting. Given enough time an increased necessity to manage water in a sustainable manner without compromising the free access to it, might inspire the international community to intertwine and further develop this concept in relations to sustainable development, in particular to the right to access freshwater. Perhaps, it is not just a dream, to imagine that one day, possibly in our own lifetime, the globalhydrological cycle will be regarded as a common heritage of humankind and moreover as an integral part of sustainable development. Thus

freshwater has to be recognized and accepted asa global good by the international community in general and this will result in establishing firmer obligations and duties upon it. The goal of these obligations will be to provide all humankind with freshwater for generations to come in an equitable manner.

Sovereignty over Natural Resources

When we are speaking about the state sovereignty over natural resources, it is important to understand that the contemporary International law is based on the idea of the sovereign State.[xciv]The result of this idea is that the States are based upon the concept of sovereignty. This conceptproclaims the supremacy of the State as a legal person. Sovereignty itself is based upon the factof an existing territory since without territory a legal person cannot exist as a State. Generally speaking, the principle of the state sovereignty is based on the notion that, each state has exclusive jurisdiction within its territory and people to:

- adopt laws (legislative sovereignty)
- enforce them
- administer the territory
- judge disputes that arise therein
- exclude other states from exercising
- sovereign rights (unless agreed on by contract)

The concept of the territory consists of islands, islets, rocks, and ocean reefs.[xcv] The application of the sovereignty principle into the field of environmental matters is much older than the Stockholm Declaration. Initially, the sovereignty principle was based upon the principle of permanent sovereignty over natural resources. This concept was formulated in various resolutions of the UN General Assembly, most of them adopted after the year 1952. Some of these resolutions are the:

- G.A. Res.523 (VI), Integrated Economic Development and Commercial Agreement;[xcvi]
- G.A. Res. 626 (VII), Right to Exploit Freely Natural Wealth and Resources[xcvii]

- G.A. Res. 837 (IX), Recommendations Concerning International Respect for theRight of Peoples and Nations to Self-Determination[xcviii]

Of course this not a complete list with all of the UN resolutions concerning the sovereignty over natural resources. However, these three resolutions are a good example, about the early formulation of this principle.

As the time passed, the concept of sovereignty was also fleshed out in the case law of a number of international and national courts. A good example of such case law is the Island of Palmas Case.[xcix] This case was brought before the Permanent Court of Arbitration. In his opinion,Judge Huber stipulated that: "*...sovereignty in relation to a portion of the surface of the globe is the legal condition necessary for the inclusion of such portion in the territory of any particular State.*" Following the years after 1952 UN General Assembly adopted an extremely important resolution, which expressed the "*right of the peoples and nations to permanent sovereignty over their natural wealth and resources must be exercised in the interest of their national development of the well-being of the people of the State concerned."*[c] This particularresolution addressed matters concerning de-colonization, recognizing former colonies rights over their natural resources, such as freshwater. The principle of sovereignty over natural resources is also grounded in the Rio Declaration, Principle 2. Principle 2 clearly stipulates thatnationals have the sovereign right to exploit their own resources pursuant to their ownenvironmental and developmental policies, with the clause that they have to ensure that they donot harm the environment.[ci] This principle expresses not only a right belonging to the State but also expresses such a right belonging to its nationals, that is an individual right. The difficultprocess of balancing the notion of States sovereignty over freshwater, when the water resourceis an international watercourse (let's say river, passing between the borders of several states) is further addressed by the Watercourses Convention. Watercourses Convention and Article 5 inparticular, address this issue, mostly because of the fact that watercourse States are entitled to utilize an international watercourse in their respective territories. However, this must be done in an equitable and reasonable manner.[cii] As the reader probably notice, I mentioned on severaloccasions the term "watercourses". Here is the time to provide some explanation of what exactly are the "watercourses". Generally, international watercourses are systems of surface water and ground waters which are located in more than one state. This definition is provided not only in the Watercourses Convention, Article 2 (a) and (b) but also in the Article

1(1) of the Convention on the Protection and Use of Transboundary Watercourses and International Lakes[ciii] Usually such watercourses form one single water resource, which flows into a common terminus. The reference to an equitable and reasonable manner refers to the sub-principle of sustainable development of equitable and reasonable utilization and therefore refers to both present and future generations of all humankind. A great deal of confusion has occurred regarding the international watercourses throughout history, in particular in regards to river basins.[civ] The Customary international law has tried to quell this confusion by developing rules with regards to the concept of equal riparian rights to international rivers. One such attempt canbe found in the case relating to the Territorial Jurisdiction of the International Commission of the River Oder[cv] In the famous decision, taken in this case, the judges from the Permanent Court stated that: "*...This community of interest in a navigable river becomes the basis of a common legal right, the essential features of which are the perfect equality of all riparian statesin the user of the whole course of the river and the exclusion of any preferential privilege of anyone riparian state in relation to the others*."[cvi]

One could ponder why the principle of state sovereignty over watercourses is so important. The question is vast and complicated and I will not discuss it in a lot of details. The important bit of information is the fact that sovereignty of States over its natural resources has been considered important in order for them to implement the right to access freshwater. However, the fact that a given State exercises its right of sovereignty over freshwater resources does not automatically guarantee that the people will have access to the water resource. This is the exact reason why a close attention is paid to the significance of water being used in the interest of thepeople of a State. Such effort can be found in the Declaration on Permanent Sovereignty over Natural Resources,[cvii] as in Articles 2 and 7 of the Charter of Economic Rights and Duties, as well as in Article 21 in the African Charter.[cviii] Such requirements have to be the qualificationsof State's sovereignty over natural resources, such as freshwater. Moreover, that particular qualification could be further developed into an international co-operation amongst the global community, as a common heritage of all humankind. There are some legal obstacles in regardsto freshwater to be considered as a common heritage of all humankind. It is stated in the Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty that no State has the right to intervene, directly or indirectly, for any reason in the internal or external affairs of any other State. This

idea was further reaffirmed in the Declaration of Principles in International Law Concerning Friendly Relations, with the stipulation that not only was such demonstration condemned, but they were held to be in violation of international law. In the Preamble to the Conventionon the Prevention of Marine Pollution by Dumping of Wastes and Other Matter it is recognized that States have in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies, as the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction. The conclusion that can be drawn from all of the information presented above, is that it is implied that the sovereign right of a State to exploit their natural resources is not an absolute right. The relevant case law, supporting this argumentis the Channel case. In this case the ICJ declared clearly, that the alleged right of intervention was the manifestation of the policy of force and that this policy do not have a placein international law. The need for respect and preserve territorial unity and territorial integrity in regards to natural resources, in particular, water resources, was also reaffirmed in the GeneralAssembly's resolution No. 63/201. One of the main challenges facing the international community therefore, is the adequate balance between development and environmental protection as well as the matters relating to freshwater, which are by no means an exception. These challenges underline the contradicting interests created by the principle of Statessovereignty and the need for international co-operation. As a result of this, I would like to conclude, that the concept of common heritage of humankind in reference to sustainable development has to prevail and the concept of State sovereignty has to take a step back, or simply put to recoil. In Part III of this thesis, when proposing the hypothetical "Framework for Water Management and Preservation", I will make this argument again. In order to establish international and binding treaty, regulating the right to water and the equal access of freshwater, the international community needs to set aside some of the old concepts of international law, such as the principle of sovereignty. This must be done, in order for the community to be able to change the existing statuesque and developed new, more modern binding document, reflecting the growing water crisis.

PART II

HUMAN RIGHTS AND THEIR RELATIONSHIP WITH THE SUSTAINABLE DEVELOPMENT PRINCIPLE

Human Rights in a nutshell

Before we proceed with the discussion of the various Human Rights, relating to the Sustainable development, I would like to discuss what exactly Human Rights are. It seems likean easy question to be answered, however, defining human rights remains notoriously difficultand in itself consist of a vast and deep ocean of legal writings, documents, declarations and discussions. Basic definitions state that "every human being, in every society, is entitled to havebasic autonomy and freedoms respected and basic needs satisfied."[cix] Jack Donnelly offered the following definition 'the rights of man' are literally the rights that one has because one is human." Another author Maurice Cranston states that human right is "*a universal moral right,something which hall men everywhere, at all times ought to have, something of which no one may be deprived without a grave affront to justice, something which is owing to every human being simply because he is human.*"[cx]

It is most unfortunate that, the gap between those and other noble ideals what constitutes human rights and the reality of substantive commitments and entitlements has still quite wide. Gross violations of human rights are widespread, even in countries that are parties to international human rights treaties and conventions protecting the human rights. State sovereignty has often been posited as existing in conflict with human rights and has been mobilized in defense of a state's prerogative not to provide meaningful protection to such rights, or sometimes to supersede the obligations to implement human rights instruments.[cxi] What is undeniable, however, is the fact that the relationship between human rights and sovereignty hasundergone some significant changes during the last two decades. The difference between matters that are within the exclusive domestic purview, and those that are within the realm of the international community's concerns, is no longer so significant.[cxii] Furthermore, the slow but steady progress in the direction of the recognition by the global of human rights and their relevance to an ever-increasing number of areas that were hitherto considered

unrelated to human rights, should encourage a belief that the adherence to human rights standards, and the increase in their substantive implementation, will also grow in time. In the following paragraphs, I will discuss and analyze the concept of the human right to water and their application in the context of sustainable development. The thesis will examine the evolution ofthe international legal regime for human rights, paying particular attention to the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights. A separate paragraph will examine the General Comment the Committee on Economical, Social and Cultural Rights and its work regarding the human right to water.

Right to water

When we are discussing the right to water, it is important to note that, the actual definition and meaning of the concept of a "right" can be quite equivocal sometimes. This is mainly due to the vast differences in the judicial systems around the world and the interpretation of the international law. For you, the readers, it is important to take a note, that some rights are intended to be enforceable through binding commitments (for example, documents, frameworks, directives), while others rights only proclaim an aim or some sort of goal.[cxiii] The concept of human rights is most commonly associated with the period after World War II. Thehorrors of the World War II and the uncertainty during the following Cold War, motivated governments from all over the world to strive to solve their differences in a peaceful and more amicable way. The concept of human rights is now an established legal term, human rights arenow intertwined (one way or another) into different aspects of our life. Besides I am confident,that it will develop and progress even further with every passing year. The 1948 Declaration ofHuman Rights (hereinafter: the UDHR)[cxiv] clear the way for the adoption of the ICCPR and the ICESCR – two of the most fundamental documents existing today, on the field of social andeconomic rights. Today, human rights such as:

- The right to food;
- The right to a decent environment and
- the right to development is considered as third generation human rights, consisting of civiland political rights and consequently economic, social and cultural rights.[cxv]

On the other hand,the right to access fresh water is relatively new. This particular right is based

upon human rightsand further supported by the principle of sustainable development and its sub-principles. For example, the right of access to water is affirmed and recognized as a right in the Report of the United Nations Water Conference, Mar del Plata.[cxvi] The Mar del Plata Report, clearly stated that "*...all people have the right to drinking water in quantities and of quality equal to their basic needs...*"[cxvii] The groundbreaking Mar del Plata Report became the cornerstone for the adoption of the International Drinking Water Supply and Sanitation Decade.[cxviii] Following thesedevelopments, the UN General Assembly declared the year 2003 as the International Year of Freshwater.[cxix]

Inspire of all these efforts and the legal developments in the last two decades, there are still more than one billion people, that do not have access to sufficient and clean drinking water andapproximately three billion people still do not have access to adequate drainage and sanitation.[cxx] Taking into consideration the ever-growing Earth's population and our constant overexploitation of freshwater in order to survive, additional steps, needed to be taken in order to protect and preserve the fresh water resources. One such step was taken in the year 2002. During the World Summit on Sustainable Development in Johannesburg, South Africa, the importance of freshwater for sustainable development was fully recognized.[cxxi] One of the mostimportant commitments undertaken by the signatory states was to reduce in half, by the year 2015, both the number of people without access to safe drinking water and the number of people who do not have access to basic sanitation. This particular commitment was a reaffirmation ofthe Millennium Development Goals.

Still, despite the fact that the commitments stipulated during the Summit, highlighted the importance to access freshwater by States, I am sad to report, that there is still a lack of legally binding instruments that can enforce these right. Although there exists somewhat – developed body of international rules in regards to preventative measures relating to pollution in fresh water, measures regarding rivers, lakes, groundwater and reservoirs[cxxii], there is almost no international legal instruments such as treaties on matters concerning access and sustainability of freshwater.[cxxiii] Furthermore, the existing bilateral and regional rules have emerged for geographical and political reasons. The main reason for this, is a simple fact, that nearly one-half of the world's river basins are shared by two or more countries, which have called for international law in accordance with concepts as friendly relations and State's sovereignty over

natural resources.

Despite, that there is no explicit or concrete right to water, in any of legal instruments that I mentioned in the above paragraphs, in my opinion, the right to water is becoming more accepted and acknowledged by the international community and the United Nation bodies. For example: in its General Comment the Committee on Economical, Social and Cultural Rights (hereinafter: CESCR),[cxxiv] made a great and long-lasting contribution to the principle of the right to water. Before I could continue with the next part of this Thesis, namely "Right to Life", I would like to briefly examine the Committee on Economical, Social and Cultural Rights and its work inthe field of the "Right to water".

The CESCR and the Right to water

The Committee on Economic, Social and Cultural Rights (CESCR) is the body of 18 independent experts that monitors implementation of the International Covenant on Economic,Social and Cultural Rights by its States parties.[cxxv]

In its General Comment, the CESCR acknowledged the right to water as a human right andas a result of this acknowledgment the Member States have to arrange this right in reporting procedures on economic, social and cultural rights. Indeed, the Comment does not simply determine the right to water, it additionally state obligations upon the Member States to protect, respect and implement the right to water.[cxxvi] The General Comment clearly proclaimed that: "*Water is a limited natural resource and a public good fundamental for life and health. The human right to water is indispensable for leading a life in human dignity. It is a prerequisite for the realization of other human rights...*"[cxxvii] In addition to this, in Paragraph 2 of the Comment, it is also stipulated that everyone is entitled to water, which has to be, acceptable, safe, accessible, sufficient and affordable.

However, probably the most important contribution of the CESCR is the fact that, in its General Comment the Committee underlined the interrelationship between the right to water

and other human rights. The CESCR defined the right to water as interrelated to the right to thehighest attainable standard of health, which is stipulated in Article 12 of the ICESCR;[cxxviii] and the right to an adequate standard of living, stipulated in Article 11 of the ICESCR.[cxxix] It is interesting to note, that the CESCR also provided an additional opinion in regards to the allocation of water. The CESCR stated that priority for the right to water must be given for personal and domestic uses, as well as it states that water resources are entailed in measures that deal with starvation and disease control. According to the CESCR such measures are necessary if the States are to fulfill their core obligations of the above mentioned human rights.[cxxx]

Another unique aspect of the General Comment is pointed out in paragraph 11, namely that "*Water should be treated as a social and cultural good, and not primarily as an economic good."*[cxxxi] The importance of this particular paragraph is in the fact that it shifts the emphasis ofwaters economical value to its real value, which is its worth to the sustainable development ofall humankind. It also states that the right to water must be sustainable, and bear in mind presentand future generations.[cxxxii] I truly believe that all of these developments support my view, that the right to access water is becoming more established and acknowledged by the international community. Albeit little or no law exists in this area, water holds a unique position in the international legal arena. It is closely connected to economics, business, the environment, human rights and even to the humanitarian law. The international humanitarian law clearly proclaims that even in time of armed conflict (internal and external), water supplies necessary for the survival of the affected population must not be attacked.[cxxxiii]

However, more needs to be done and the concept of the human right to water needs further development. In other words, the concept needs to become a fully protected human as well as an environmental right, which creates a legal principle, based on more than willful declarations and comments.

Right to Health

The right to drinking water and sanitation is both a human right in itself and a basic requirement for the implementation of other rights including food and health.[cxxxiv] In its broad

interpretation the human right to health means that everyone has the right to the highest attainable standard of physical and mental health. More to the point, this human right also incorporates the access to all medical services, sanitation, adequate food, decent housing, healthy working conditions, and a clean environment. The human right to health is protected under various international legal instruments, such as the Article 25 of the Universal Declaration of Human Rights, Article 24 of the Convention on the Rights of the Child, Articles 12 & 14 of the Convention on the Elimination of All Forms of Discrimination Against Women, Article 12 of the International Covenant on Economic, Social and Cultural Rights and other. Inthe following paragraphs I will examine Article 12 of ICESCR.

The ICESCR in Article 12 clearly stipulates that everyone has the right to the enjoyment of the highest attainable standard of physical and mental health. I would like to stress out, that theabove statement can be interpreted to mean that the right to health requires an adequate accessto water, since water, as I already mentioned in the above paragraphs, is crucial in disease prevention and maintenance of health. Although the International Covenant on Economic, Social and Cultural Rights does not expressly refer to the word "water", the right to drinking water is clearly essential for realizing the right to an adequate standard of living, including health and food. Moreover, in article 24 of the Convention on the Rights of the Child(hereinafter: the CRC) is stated that a life in health requires a minimum of access to water. Thereason for this requirement is that a child cannot enjoy the highest attainable standard of health,without access to fresh drinking water and water resources in general, necessary for sanitationneeds.[cxxxv] Article 24 also establishes an obligation for the Member States to fight against diseases and malnutrition, which further implies the need for access to a clean drinking water. Another international instrument that proclaims the right to health within the soft law division is the already mentioned Rio Declaration. The Rio Declaration proclaims that: "human beings are at the center of concerns for sustainable development and they are entitled to a healthy andproductive life in harmony with nature."[cxxxvi] Article 24 of the CRC also indicates the preservationof nature inter alia freshwater. This principle stress out the part that sustainable development truly occupies in the international legal arena. Sustainable development is an international principle of human concerns which aims for the development of all humankind in harmony withnature and the available natural resources. It is important to

realize, that this ideal state of harmony cannot be easily obtained or uphold. Despite this, it is still the main goal of sustainabledevelopment.

As I already indicated, in order for the human right to health to be fulfilled and respected it must also include the right to adequate drinking water and sanitation facilities. As I stated at the beginning of this thesis, thousands of people die every week because they do not have sufficient access to clean drinking water and/or sanitation. For me, it is beyond question that these people are in fact deprived of a non-derogated human right, namely the right to life in correlation with the right to health as well as the right to development. This is precisely the reason, why in my opinion, this gross and constant violation of human rights, should be further addressed by the international community. More efforts are needed, not only to protect the right to life in itself, but also to ensure, that the requirements for the achievement of this right, such as the human right to water, are also protected. Let us examine briefly, what has been done to ensure this protection. One such commitment was enshrined by the Plan of Implementation.[cxxxvii]In 2002 the delegates from 191 governments gathered in South Africa, Johannesburg for the World Summit on Sustainable Development. The primary goals of this event were to examinethe progress made on the outcomes of the 1992 Earth Summit in Rio. In the resulted document,the so- called Plan of Implementation, the colorations between a healthy life and access to waterwas established. The Plan states inter alia that an increase of access to sanitation is necessary, in order to improve human health. In order to achieve this, the Plan calls for further prioritizing, in regards to freshwater and sanitation into international sustainable development strategies andpoverty reduction strategies. This, in turn, would have a direct legal effect upon national strategies. My hope is that this cooperation will further develop in future international legal instruments. These instruments and legal documents will be binding in nature and will be dealing mainly with the human rights to life, health, water and development. This is a logical expectation, which is definitely not so far fetch, taking into consideration that those rights are in fact all entwined and even more importantly they are also conditionally dependent upon eachother.

Right to an Adequate Standard of Living

Today, the right to an adequate standard of living is recognized as a human right in international human rights plane. This particular human right establishes a minimum entitlement to food, clothing and housing at an adequate level.[cxxxviii] The legal bases on the right to an adequate standard of living are Article 11 of the International Covenant on Economic, Social and Cultural Rights and Article 25(1) of the UHDR. Article 25 in particular, clearly stipulates that: "Everyone has the right to a standard of living adequate for the health and well- being of himself and of his family, including food...security in the event of...sickness...or otherlack of livelihood in circumstances beyond his control."[cxxxix] Regardless of the fact that water is not expressly enumerated in Article 25, it can be deduced that food includes water. The reasonfor this is the simple fact that, water is the fundamental requirement for the producing of food.

Let us examine the following table:

Foodstuff	Quantity	Water consumption, litres
Chocolate	1 kg	17,196
Beef	1 kg	15,415
Sheep Meat	1 kg	10,412
Pork	1 kg	5,988
Butter	1 kg	5,553
Chicken meat	1 kg	4,325
Cheese	1 kg	3,178
Olives	1 kg	3,025
Rice	1 kg	2,497
Cotton	1 @ 250g	2,495
Pasta (dry)	1 kg	1,849
Bread	1 kg	1,608
Pizza	1 unit	1,239
Apple	1 kg	822
Banana	1 kg	790
Potatoes	1 kg	287
Milk	1 x 250ml glass	255
Cabbage	1 kg	237
Tomato	1 kg	214
Egg	1	196
Wine	1 x 250ml glass	109
Beer	1 x 250ml glass	74
Tea	1 x 250 ml cup	27

Source: IME

The general quantity of water, required to produce food supplies

From what we can see in the table, it is absolutely clear, that if there are no water resources available, or if they are contaminated or not in the sufficient quantity the food production will

be greatly obstructed.

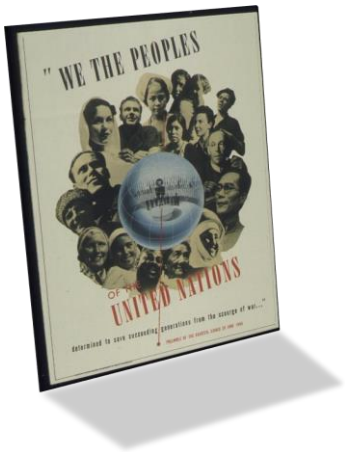
In addition, the right to security from sickness, at the very least indicates that there should be an adequate access to clean and drinkable water. Further justification for the right to access water could be found in the clause regarding the lack of livelihood, people who are deprived offreshwater live in circumstances where the lack is beyond their control. Article 11(1) of the ICESCR states: "...States Parties to the present Covenant recognize the right of everyone to anadequate standard of living for himself and family, including adequate food...and to the continuous improvement of living conditions..."[cxl] And again, as with Article 25, a no direct reference made to water could be found in Article 11 either. However, due to its irreplaceable role for the survival of the human civilization, water is implicitly implied in Article 11, since the adequate standard of living could never be obtained without a minimum access of water atleast. As a conclusion to this part of the Thesis, I would like to provide general information about some of the other international legal instruments, which are dealing with the standard ofliving and the right to water.

a) Convention on the Elimination of All Forms of Discrimination against Women (hereinafter the CEDAW).[cxli]

The CEDAW was adopted in 1979 by the UN General Assemblyand it is often described as an international bill of rights for women. Consisting of a preambleand 30 articles, it defines what constitutes discrimination against women and sets up an agendafor national action to end such discrimination. In its Article 14.2(h), the CEDAW clearly proclaims that water supply and sanitation are a part of adequate living conditions.

b) UN Charter.

The Charter of the United Nations (also known as the UN Charter) of 1945is the foundational treaty of the United Nations, as an intergovernmental organization.



It was signed at the San Francisco War Memorial and Performing Arts Center in San Francisco, United States, on 26 June 1945. At the time 50 of the 51 original member countries signed the Charted.[cxlii] In the Preamble of the UN Charter, a reference to better standards of lifeis expressed as the aim to promote social progress in larger freedoms.[cxliii]

c) Rio Declaration.

The Rio Declaration was discussed in more details in "Part I" of this Thesis. However, hereis the place to mention Principle 5. This principle stipulates the requirement that all people and States should co-operate in the eradication of poverty. Principle 5 also proclaimed that this cooperation, between people and States, is an indispensable requirement for sustainable development and its goals to decrease the inequalities in standards of living and to be able to adequately meet the needs of the majority of the world.[cxliv] Similarly to Articles 11 and 25 of the ICESCR, in Principle 5 we cannot find an explicit reference to the human right of water. However, how can the international community decrease the inequalities, without ensuring equal access to the most cardinal resource on the Earth – water? In my humble opinion, it simply is not going to be possible to achieve such an ambitious goal.

d) The Johannesburg Plan of Implementation.

In the Johannesburg Plan of Implementation, the right to an adequate standard of living is emphasized in regards to the fight for poverty eradication and within the context of food security and food safety.[cxlv]

It is clear, that the right to an adequate standard of living is well established in international law, through its close connections with the right to life and the right to health. Despite the fact that the right to water is not categorically enshrined in several of the legal documents, which established the right to adequate standard of living, health and life, the right to water is vitally important for the achievement of the above stated other human rights. The human right to water must be adequately established and protected, otherwise, the enjoinment of many of the other, already existing human rights will be impossible.

PART III

Customary international law and the right to water

International customary law is the prime and original source of law. The main purpose of international customary law is to govern the behaviour of independent States. This was codified in Article 38(1)(b) of the Statute of the International Court of Justice[cxlvi] (hereinafter: ICJ). When we speak of the role of international custom in the 21st century, it is important to remember that its role has significantly changed today, as treaty law has grown and expanded.[cxlvii] It is very difficult and troublesome to identify universal custom with more than 200 independentStates with varying political and legal systems.[cxlviii]

There are several criteria and questions which must be discussed, when we analyze customary international law. In this set of materials, the author will discuss the features of customary international law and the environmental principle not to cause damage to the environment of other States or of areas beyond the limits of national jurisdiction, as a customarynorm adopted in the field of environmental law.

Customary international law as a source of law[cxlix]

Customary international law derives from state practice and opinio juris.[cl] To become customary law, the particular practice must be generally followed, rather than just being the practice of a few countries. J.L. Brierly describes the customary law in the following manner:

"Custom in its legal sense means something more than mere habit or usage; it is a usage felt by those who follow it to be an obligatory one. There must be present a feeling that, if the usage isdeparted from, some form of sanction probably, or at any rate ought to, fall on the transgressor".[cli]

The custom in contemporary legal system is unimportant and complicated, as Mark Janis stipulated it in his book, *An Introduction to International Law*, "The determination of customary international law is more an art than a scientific method"[clii], however in International Law it isregarded as dynamic source of law, because international system is lacking of centralised government organs. Today, Article 38 of the Statute of the International Court of Justice refers to International custom, as a proof of a general practice accepted as law.

Custom is generally considered to have two main elements: state practice[cliii] and *opinio juris.*[cliv]

Elements of customary law (1): State practice

Customary international law develops from the practice of States[clv] and this practice has several important characteristics. Furthermore, it is essential that the acts must be approved under consensus by majority number of states and not be rejected by a considerable number ofstates.[clvi] The first element of state practice is duration. If it is provided the consistency and generality of a practice, generally no particular duration is required. However it is important toremember the fact that the passage of time will be part of the evidence of generality and consistency. Because of the fact that in some situations a long practice is not necessary, (rules concerning Airspace and outer space)[clvii] and in others, the process is much slower, duration is not consider as important element of state practice;

The second element is uniformity and continuity of the practice. Spacing about these two elements, it must be noted that the tribunal will have considerable freedom of determination ofmany cases. Despite of the fact that complete uniformity is not demanded, substantial uniformity is required. The ICJ stipulated that some degree of uniformity among the state practices was substantial before a custom could come into existence in the famous Anglo-

Norwegian Fisheries case.[clviii] In these cases the International Court of Justice enacted, that therehad not been sufficient uniformity of behaviour.[clix]

However, in the case of Nicaragua v. United States the court stipulated that it was not absolutely indispensable that the practice under consideration to be 'in absolutely rigorous conformity' with the purported customary rule. The Court continued:

"In order to deduce the existence of customary rules, the Court deems it sufficient that the conduct of states should, in general, be consistent with such rules, and that instances of state conduct inconsistent with a given rule should generally have been treated as breaches of that rule, not as indications of the recognition of a new rule".[clx]

The last distinction of state practice is the generality of the practice, or in other words the consistency. – It is accepted that universality is not required, but the real problem is, how to treat the decision of vast number of states to abstain from a particular practice, which is followed by others. In this particular situation, the relevant case law which will be helpful is the Lotus case. In the situation of the Lotus case, the predecessor of the ICJ, namely the Permanent Court of International Justice (hereinafter: PCIJ), established firm standard in respect of the states that abstain. The court decree, that abstention could only give rise to the recognition of a custom ifit was based on a conscious duty to abstain. To put it differently, the governments must be aware that they were abstaining from acting a given way because they were under a clear engagement not to act that way.[clxi]

Elements of customary law (2): Opinio juris

The so called *opinio juris* means that the practice is followed out of a belief that the practicesin which the state has been engaged are required by international law. Despite of the fact that some writers do not believe, that the psychological element is a requirement for the creation ofcustoms, it is in fact necessary component. The feeling of legal obligation, in contrary to thefairness, or morality for example is strong enough to influence the decisions taken by thegovernments.[clxii] We can find evidence of what states believe Actions and beliefs of governmental departments and officials, legal officers, legislative institutions, courts,

diplomatic agents and political leaders or reported in newspapers, historical records, official publications, official manuals on legal questions (e.g. military manuals), diplomatic exchangesor protests, comments made by governments on ILC drafts, decisions of national courts, etc.[clxiii] In the light of the information, presented in Part I and II, we can extrapolate, that there is a clearly growing pattern, state practice and will, from the international community to recognizethe right to water as part of the customary international law. Pursuant to my research, those are the main reasons, contributing to the development and the recognition of the right to water as customary international law:

a) International treaties and declarations provide significant support for the right towater and sanitation. There are already a substantial number of human rights treaties, which explicitly or implicitly recognize and guarantee access to water and sanitation asa human right, including, but not limited to including the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination Against Women, ICESCR;

b) There are several explicit provisions, protecting the right to water, included in different international treaties, such as Article 24, and Article 27 of the Convention on the Rights of the Child, Article 14 of the Convention on the Elimination of All Forms of Discrimination against Women, Article 28 of the Convention on the Rights of Personswith Disabilities etc;

c) There are also a number of implicit provisions, regarding the right to water and access to it, such as the provisions included in ICESCR, ICCPR and the International Convention on the Elimination of All Forms of Racial Discrimination;

d) International environmental also include multiple provisions that correspond to obligations contained in the right to water and sanitation. As I already mentioned, in theprevious parts, implicit provisions, regarding the right to water and sanitation are included in the Watercourse Convention and Biodiversity Convention;

e) International Declarations and Resolutions are political commitments, taken by States. Those commitments could be used to assist in the interpretation of international treaties and national legislative provisions. And as it was discussed previously, there isa vast number of declarations and resolutions, undertaken all around the world, protecting the right to water. Explicit provisions, dealing with the

protection of water resources or the access to water are included in Mar del Plata Action Plan, Programmeof Action of the International Conference on Population and Development, Rio Declaration and others. More implicit ones are enumerated in the Universal Declaration of Human Rights 1948, Guiding Principles on Internal Displacement, Agenda 21, Johannesburg Plan and so on.

f) In the last part of this Thesis (Part IV), I will also briefly discuss some regional human rights and treaties, which are particularly useful in supplementing international treaties and declarations, usually where the rights they contain are more extensive or clearly defined than in international texts

g) Under the customary international law, the widespread adoption of a treaty can be taken as evidence that the rules agreed to in that treaty are *opinio juris*. The result ofthis will be binding on all states regardless of whether they adopted the treaty itself.[clxiv] Furthermore, *Opinio juris* rules can emerge from treaties that are not currently inforce [clxv] and even old drafts of a treaty.[clxvi] It is also important to note, that a state is not necessarily excluded from the application of a customary international law, even whereit has adopted a different treaty, which contradicts the *opinio juris* rule.[clxvii]

Despite the fact that the currently existing international conventions do not hold any specific recognition of a human right to water as such, they evidently include recognition of contents orelements of the right to water. All of the different elements of the right to water, enumerated inthe different treaties, could provide the international community with the tools to identify the components of an independent right to water. The constant changes in the international legal environment, shows that the issues concerning the right to water are increasingly incorporatedinto conventional human rights documents such as child rights, women rights, and rights of persons with disabilities. There is not yet an explicit conventional recognition of the human right to water, but there are clear steps in that direction.

PART IV

Hypothetical "Framework for Water Management and Preservation"

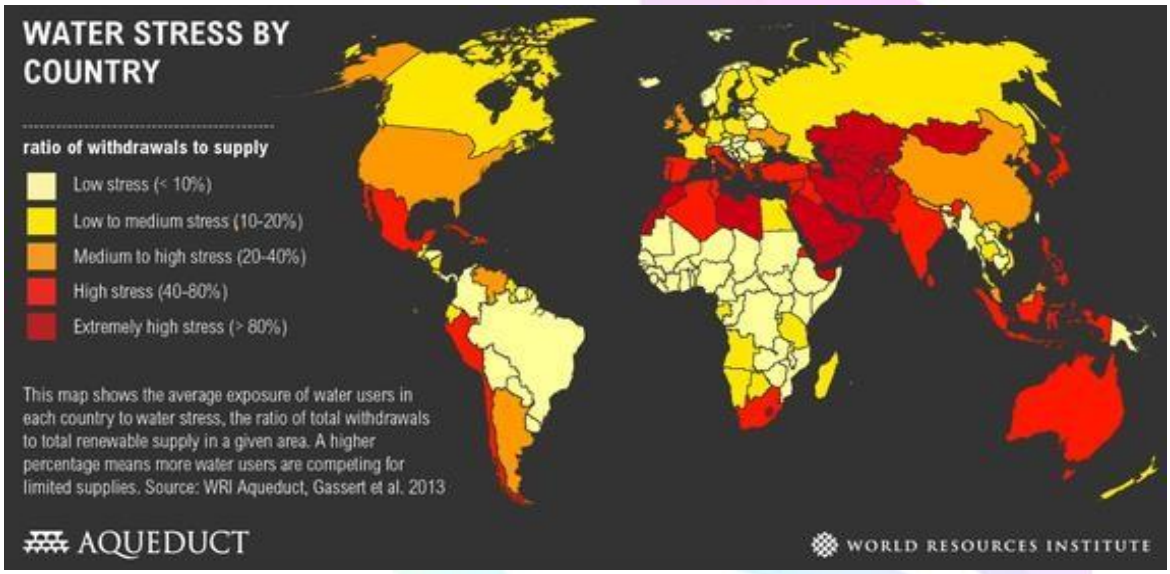
In this part, I will discuss the possibility for the creation of international, binding document, dealing with the allocation, redistribution, preservation and management of freshwater resources, namely the hypothetical "Framework for Water Management and Preservation".

We live in interesting and turbulent times. The 21st century has thus far been marked by the rise of a global economy and Third World consumerism, mistrust in government, deepening global concern over terrorism and an increase in the power of private enterprise.[clxviii] [clxix] The worldwitnessed civil unrest, natural and manmade disasters, radical social, media and political changes. Some of these changes can be characterized as positive, others…, let's say that the future will show whether or not, they would be beneficial or not. I would like to believe, that the human understanding of the Human Rights and the International Law, has also evolved in the last several decades. More and more organizations started to view the management of freshwater to be the biggest environmental challenge facing our civilization. The reason for thisconcern is simple: the Earth's water resources are getting more and more polluted and overusewith every passing year.[clxx] For example, in recent years, scientists have revealed that we are depleting our global groundwater reserves at an alarming rate. In some cases, these aquifer waters won't be replenished in this century, or ever.[clxxi] And of course, when we are speaking about fresh water, it is vitally important to understand that fact, that the constant depletion andpollution of freshwater resources is not a separate and unique problem, affected only some countries. The seemingly unstoppable water overuse, waste and contamination are affecting more and more regions, all around the word.

Below is a map by World Resources Institute. This map provides information about the water stress by country, with 36 countries displaying an "Extremely High Stress (>80%)," which means that "more than 80 percent of the water available to agricultural, domestic and industrial users is withdrawn annually—leaving businesses, farms and communities vulnerable to scarcity

Let us pause for a brief moment, and consider this map. What do you feel while you are seeing these numbers? Do you feel uncertainty, surprise or maybe even anger?

I will tell you, what I felt the first time when I looked at the map: it was shocking. I was shocked at the scale of the problem revealed by the numbers. Many of the countries that are inthe "medium", "high" and even extremely high" stress also happens to be the world's biggest food producers. For example, the United States of Amerika, Mexico, China and India. This scary statistic is really troubling for me, to look at, on the top of the challenges that we face forthe global food supply. Moreover, wasting water in a country where it may appear water just magically comes out of the tap (Example: the developed countries), is wasting a precious, vitalresource that millions[clxxii] don't even have clean, safe access to.



For years, the World Economic Forum (hereinafter, WEF) Global Risk Reports have identified water as one of the three most important challenges worldwide. In 2015 WEF, for the very first time, move the water pollution to the top of the list of the biggest societal and economic risk for the next ten years.[clxxiii]

Global risks from overuse and shortage, poor water infrastructure, management and the lackof freshwater have led to serious health problems and deaths of millions of people, which I do believe creates major human rights as well as an environmental concern.[clxxiv] In my personal opinion, the best way to combat this major international problem and the resultant issues is for,the international community to establish a binding legal "Framework for Water Management and Preservation" (Hereinafter: The Framework).

There are several crucial aspects, which I strongly believe, must be included in The Framework.

1. First of all, I do believe, that any sort of document, dealing with the availability, depletion, pollution and redistribution of water resources, must be a multinational effort. Onlyan agreement, reached through international deliberation and consensus can address such a sensitive matter, like the human right to water. Water is the key ingredient for life. It is central to societal development. Water risks affect industrialized and developing economies alike. Furthermore, the repercussions of its overuse and increasing shortage are multiple and complex,widespread and could lead to disasters of Biblical proportions.

2. Second, this hypothetical Framework must build upon the already existing internationalstandards and agreements. As the old people say, it is not necessary to invent the "hot water again", since it is already invented. We need to see how to improve the pipeline, through whichthe hot water is transported… And even more importantly, new agreements need to bedeveloped in an effective and practical manner. Generally speaking, at the present moment, thefreshwater is subject to a range of bilateral and regional agreements which specifically addressits use and protection from contamination by pollution. Apart from these principles and rules of international law, there is a scarcity of similar principles and law relating to the access of freshwater as its sustainability. However, it is important to note, that the international environmental law and the international human rights law are constantly progressing and evolving in accordance with present needs of the environment and humankind. The first step has already been taken in matters concerning the management of freshwater resources, on which further development might be constructed upon. In the past the main focus was the development of co-operative international arrangements to govern the use of freshwater,however, this tendency is changing. In the recent years, more attention is being paid to the freshwater conservation. Recent treaties such as the Watercourses Convention reflect the widelyheld view that States are no longer entitled to allow activities to take place which causes significant pollution to shared freshwater resources. Water quality issues have been articulatedon Continents that have made heavy use of their waters when pollution of certain rivers seemsto reach the point of no return. It is true, that some efforts to restore rivers have been undertaken,and I am sure, that this tendency is bound to continue in a better-organized manner in the future.The Water Framework Directive[clxxv] adopted by the European Union is an attempt to implement integrated water management in Europe.

Documents such as this are extremely important in myopinion because they are capable to pave the way in matters concerning freshwater managementand establish solid grounds for the development of The Framework. The Framework will regulate, not only how the freshwater is used, but it will also ensure, that the freshwater is alsopreserved for the future generations.

3. Existing rules and principles, regarding the right to water, have to be further developed and even updated in order to address the contemporary concerns regarding freshwater, since the existing rules which establish general standards and obligations including those establishedby customary law are inadequate.[clxxvi] These modifications will be vital in the establishment ofa modern and universal "Framework for Water Management and Preservation". For example,principles and ideas, such as the ones, enumerated in the Article 11 of ICESCR and 25 of the UHDR will be incorporated in the hypothetical Framework for Water Management andPreservation, however, the right of water will be expressly stated. In this way, it is not going tobe needed to interpret the articles, in order to determine that this particular right is included andprotected. Another important reason, why I am proposing that the "Framework for Water Management and Preservation" must be a globally negotiated and accepted agreement is the fact that the freshwater is a common concern of all humankind. It is not a resource that is foundonly in a given region or which is of concern only for a particular group of people. The Stockholm Declaration, in Principle 24 notes that: "*international matters concerning the protection and improvement of the environment should be handled in a co-operative spirit...*"[clxxvii],Principle 7 of the Rio Declaration underlines that "*States shall co-operate in a spirit of global partnership to conserve, protect and restore the health and integrity of the Earth"s ecosystem...*"[clxxviii] Principle 13 of the Rio Declaration, further expresses the need for national andinternational activities in this legal arena. And such should be the spirit for the adoption of the"Framework for Water Management and Preservation". Environmental law in regards to freshwater has to shift from being merely guiding principles into international general applicable principles and law. The Framework relating to freshwater must be much more than willful attempts to change the current situation or wishful commitments. It must be a binding declaration, capable of creating obligation and responsibilities for the Member States that signed it.

4. The explicit acknowledgment by the international community of a universal and separate human right to freshwater would increase clarity regarding its status in international

law and underline its importance for human dignity and development. In order to establish sucha right, it has to be codified or declared in an international legally binding treaty, such as the "Framework for Water Management and Preservation" that I am proposing, or by a codified declaration by the UN General Assembly. Since human rights established under treaty may constitute obligations erga omnes for the States parties; the right to water has to be firmer established in such a manner.[clxxix]

5. After the creation of the "Framework for Water Management and Preservation", the entire Framework or parts of it could be also added to the UN Charter or the ICCPR or ICESCR[clxxx] as an independent article. It is interesting to note, that in the last couple of years, many human rights activist started to argue for a new article in the UN Charter that would granta right to freshwater, in a similar manner, to the one that I am proposing.[clxxxi]

6. Is it possible to adopt a document, such as the "Framework for Water Management andPreservation"?

In order to answer this question, it is important to realize that a lot has changed, since the early deliberations, concerning the right to water. As I argued in the previous parts of this thesis,today the right to water could be derived from the ICCPR's inherent right to life as well as frommany other international treaties and documents. The principle of state sovereignty over natural resources as also evolved gradually in the last decades. Taking also under consideration the factthat 1.1 billion people live without safe drinking water, 2.6 billion people do not have access toadequate sanitation, and globally, almost 6000 children under the age of five die every day fromwater-related diseases, I believe that the obstacles to the adoption of a document, such as the "Framework for Water Management and Preservation" are slowly disappearing. A final push is needed by the international community, for the adoption of a groundbreaking international document, regulating the human right to water.

CONCLUSION

Freshwater resources must be guaranteed and used sustainably for the common concern of all humankind. It is also important to note the fact, that attempts have been made at the national level, to manage watercourse systems. One such agreement, for example, is the Agreement onthe Action Plan for the Environmentally Sound Management of the Common Zambezi

River System.[clxxxii] This agreement established a legal plan to strengthen regional cooperation for sustainable development in eight African countries. There are another two good examples for regional cooperation in the field of water preservation and sharing, namely:

1) The Protocol on Shared Watercourse System in the Southern African Development Community[clxxxiii] and The Agreement on Co-operation for the Sustainable Development of the Mekong River Basin.[clxxxiv] The idea for regional cooperation, to regulate water resources is not a new concept. For example, the PCIJ held in the famous River Oder Case, as it was stated above, that the utilization of international rivers, including their flow, was subject to international law and co-operation. From this principle, which reflects an approach that has received a broad support from States, it follows that these water resources which are subject of a "common legal right",including rivers; lakes or ground-waters. Furthermore, the water resources cannot be used by States in such a manner as to prevent or otherwise limit other riparian States from making full use of their right of un-impinged access to that shared resource. I would like to also point out, that according to the PCIJ decisions in this case and in other similar ones, states are subjected to a customary obligation to discuss and collaborate in order to reach an equitable solution to the problems posed by activities which may affect international rivers providing it is a shared natural resource, including water-pollution and excessive use. I would expect that such attemptswill gradually expand in the future. The new legal developments, taken together with the work,already done at the national level are excellent stepping stones for the adoption of the"Framework for Water Management and Preservation". Howшver, in the present moment, themost important thing, in my opinion, is that freshwater will be acknowledged and accepted as a common heritage of all humankind, which would, therefore, create a common legal right in relation to its management. If the freshwater, is accepted as a common heritage, this will be animmense step toward the creation of an international, legal and binding document, such as the "Framework for Water Management and Preservation", that I proposed above. The right to freshwater is a common concern of all humankind; freshwater is becoming scarcer and the needfor more direct and applicable rules is imperative. This need can be met with the principle of sustainable development in association with its sub-principles in incorporation with human rights; collectively they create stronger legal justifications for the right to freshwater and its

sustainability.

REFERENCES

[i] The United Nations Committee on Economic, Cultural and Social Rights, Environment News Service, November 27,2002
[ii] Lozán, José L., S. Meyer & L. Karbe (2007): Water as the basis of life. In: Lozán, J. L., H. Grassl, P. Hupfer, L.Menzel & C.-D. Schönwiese. Global Change: Enough water for all? Wissenschaftliche Auswertungen, Hamburg.
<http://www.klima-warnsignale.uni-hamburg.de/ > accessed on 15.4.2018
[iii] *Supra* note 1
[iv] Office of the Director of National Intelligence, report: "Global Water Security: Intelligence Community Assessment,"
[v] *Id. Page 3-4.*
[vi] The Office of the United Nations High Commissioner for Human Rights, report "Relationship between the enjoymentof economic, social and cultural rights and the promotion of the realization of the right to drinking water supply and sanitation", E/CN.4/Sub.2/2002/10, para. 37.
<http://ap.ohchr.org/documents/alldocs.aspx?doc_*Id*=7360> accessed
14 February 2018
[vii] Water for People, Water for Life: "The United Nations World Water Development Report ",(World Water Assessment Program), 10 (UNESCO Publishing 2003)
[viii] William J. Cosgrove & Frank R. Rijsberman, World Water Vision—Making Water Everybody's Business (World Water Council), 4 (Earthscan Publications Ltd. 2000).
[ix] Comprehensive Assessment of the Freshwater Resources of the World: Rep. of the Secretary-General, U.N. Secretary-General, U.N. Doc. EICN.17/1997/9 (Feb. 4, 1997), para. 37.
[x] *Id*. para. 13
[xi] *Id.* para. 5
[xii] UN-Water factsheet on water security "Water scarcity" <http://www.unwater.org/publications/publications-detail/en/c/204294/ > **accessed** 14 February 2018
[xiii] Vicky Hallett, Millions Of Women Take A Long Walk With A 40-Pound Water Can, July 7, 2016 <https://www.npr.org/sections/goatsandsoda/2016/07/07/484793736/millions-of-women-take-a-long-walk-with-a- 40-pound-water-can > accessed 24 February 2018
[xiv] A Framework for Action on Water and Sanitation, WEHAB Working Group, August 2002.
[xv] UN-Water "THE GLOBAL ANALYSIS AND ASSESSMENT OF SANITATION AND DRINKING-WATER (GLAAS)" < http://www.unwater.org/publications/publications-detail/en/c/269604/ > accessed 14 February 2018
[xvi] The map shows the degree of risk of water shortages in various countries using composite indices based on the quantity currently used versus available aquatic resources as well as the relationship between the reliability of the water supply and national income. *The map was obtained from the Stockholm Environment Institute, report: "Comprehensive Assessment of the Fresh- water Resources of the World", 1997*
[xvii] Water for People, Water for Life: The United Nations World Water Development Report, (World Water Assessment Program), 10 (UNESCO Publishing 2003).
[xviii] Fred Pearce, When the Rivers Run Dry: Water--The Defining Crisis of the Twenty-first Century, (1st edn Beacon Press, 2006), pp. 125-140
[xix] Improving Water-Management-Recent OECD Experience, Organisation for Economic Co-operation and Development (OECD) : Executive Summary 1 (2003)
[xx] *Ib*. p. 4
[xxi] Antoinette Hildering, 2004 p. 417
[xxii] World Health Organization, The Global Water Supply and Sanitation Assessment 2000, Geneva, 2000 pp.1-2
[xxiii] UN Commission on Sustainable Development, Comprehensive Assessment of the Freshwater Resources of the World, Report of the Secretary General, New York, 1997 p. 39.
[xxiv] "No Water no Future: A Water Focus for Johannesburg", HRH the Prince of Orange, 14 February 2002
[xxv] Dav*Id* L. Brunsma and Brian K Gran, Handbook of Sociology and Human Rights (Routledge), pp. 451 - 454

[xxvi] Example of such nonbinding documents, include the Forest Principles, Agenda 21 of the Rio Declaration, General Assembly Resolution 35/8 , Habitat II, Plan of Action, note 21 *Supra*, The Rome Declaration on World Food Security and others.
[xxvii] This includes international watercourses.
[xxviii] Dav*Id* Hunter, James Salzman and Durwood Zaelke, International law and Policy (3d edn, 2007), p. 868
[xxix] *Id.* pp. 844-850
[xxx] *Id.* p. 849
[xxxi] Philippe Sands, Principles of International Environmental Law (2nd edn, Cambr*Id*ge University Press, 2003), pp. 340-351
[xxxii] The connection, between the existing, international instruments, and the customary international law, will be discuss in details in Part III , of this Thesis.
[xxxiii] National Research Council, Policy Division, Board on Sustainable Development, *Our Common Journey: A Transition toward Sustainability* (Washington, DC: National Academy Press, 1999), p. 22.
[xxxiv] Independent Commission on Disarmament and Security Issues, *Common Security: A Blueprint for Survival* (PalmeReport) (New York: Simon & Schuster, 1982); and Independent Commission on International Development Issues, *North-South: A Program for Survival* (Brandt Report) (Cambr*Id*ge, MA: MIT Press, 1980).
[xxxv] The WCED was chaired by then–Prime Minister of Norway Gro Harlem Brundtland, thus earning the name the "Brundtland Commission".
[xxxvi] S. Atapattu, *Sustainable development, myth or reality?: a survey of sustainable development under international law and Sri Lankan law,* Geo. Int'l Envtl. L. Rev.
[xxxvii] Dav*Id* P. F*Id*ler, *Challenges to Humanity's Health: The Contributions of International Environmental Law toNational and Global Public Health*, (2001), pp. 441-445 , pp. 437-440
[xxxviii] Statute of the International Court of Justice, Article 38
[xxxix] Robin Attfield, *Environmental Philosophy and Prospects: Principles and Prospects* (Aldershot: Avebury andBrookfield, Ashgate, 1994), pp. 205-220
[xl] Symposium, *The Road From Johannesburg*, 15 Geo. Int'l Envtl. L. Rev. 809
[xli] Antonio Cassese, *International Law* (2nd edn, Oxford University Press, New York 2005), p. 492
[xlii] Report of the World Commission on Environment and Development: Our Common Future, Chapter 2 §1, 4 August1987. Forty-Second Session, U.N. Doc. A/42/427 (1987**).** Also known as the Brundtland Report**,** from the WCED, < http://www.un-documents.net/ocf-02.htm > **accessed** 14 February 2016. The whole original report can be accessed on < http://www.worldinbalance.net/intagreements/1987-brundtland.php> accessed 14 February 2016
[xliii] World Commission on Environment and Development (WCED), *Our Common Future* (New York: OxfordUniversity Press, 1987), p. 8
[xliv] P. Sands, *Principles of International Environmental Law* (2003), p. 253
[xlv] N.J. Schrijver & E. Hey, *Volkenrecht en Duurzame Ontwikkeling, Preadviezen, Mededelingen van de Nederlandse Vereniging voor Internationaal Recht* (2003), p. 6
[xlvi] The Report was welcomed by the GA Assembly in Report of the World Commission on Environment and Development, U.N. Doc. A/RES/42/187 (11 December 1987) <http://www.un.org/documents/ga/res/42/ares42-187.htm> accessed 14 February 2016
[xlvii] World Charter for Nature, 28 October 1982, Thirty-Seventh Session, U.N. GAOR, U.N. Doc. A/RES/37/7 (1982)
[xlviii] United Nations Conference on Environment and Development (UNCED), Rio de Janeiro (1992)
[xlix] *Id*. at 256
[l] *Id*. at 441
[li] Pallemaerts, *Supra* note 78, at 263
[lii] *Id*. at 264
[liii] United Nations Conference on Environment and Development (UNCED), Rio de Janeiro (1992)
[liv] UNGA Res./44/228 (1989), para. 3, available at <http://www.environment.fgov.be/ Root/ tasks/atmosphere/klim/pub/int/unga/44-228_en.htm>
[lv] Matthijs S. van Leeuwen and Tanja de Vette "International Law of Sustainable Development: Legal Aspects of Environmental Security on the Indonesian Island of Kalimantan" Bronkhorst International Law Services 2005, pp. 10-15
[lvi] U.N. Conference on Environment and Development (UNCED), Rio de Janeiro (1992)
[lvii] P. Malanczuk, *Sustainable Development: Some Critical Thoughts in the Light of the RioConference*, Sustainable Development and Good Governance (1995), p. 23

[lviii] Matthijs S. van Leeuwen and Tanja de Vette "International Law of Sustainable Development: Legal Aspects ofEnvironmental Security on the Indonesian Island of Kalimantan" Bronkhorst International Law Services 2005
[lix] Agenda 21: Programme of Action for Sustainable Development, Forty-Sixth Session, U.N. G.A.O.R, U.N. Doc.A/Conf.151/26 (1992)
[lx] U.N. Department of Economic and Social Affairs, Division for Sustainable Development, at <www.un.org/esa/sustdev/documents/agenda21/index.htm> accessed 14 February 2016
[lxi] Agenda 21, *Supra* note 20, chapter 39, para. 1 sub a
[lxii] See Schrijver, *Supra* note 18, p. 16
[lxiii] OECD Observer May 2001, Harvard scientist warns environmental damage irreversible, OECD Forum, 14th May, 2001: Keynote Address "Future of Life"; moderator Donald J. Johnston <http://oecdobserver.org/news/archivestory.php/a*Id*/459/Harvard_scientist_warns_environmental_damage_irreversibl e_.html > accessed 19.3.2018
[lxiv] V. Lowe, Sustainable Development and Unsustainable Arguments, in Boyle & Freestone (1999), p. 24
[lxv] Kyoto Protocol to the United Nations Framework Convention on Climate Change, 10 December 1997 U.N. Doc.FCCC/CP/1997/7/Add.1 < http://unfccc.int/resource/docs/convkp/kpeng.pdf > accessed 15.1.2018
[lxvi] Hague Declaration on the Environment, The Hague, 11 March 1989, 28 I.L.M. 1308 (1989) <http://www.nls.ac.in/CEERA/ceerafeb04/html/documents/lib_int_c1s2_hag_230300.htm> accessed 14.6.2017
[lxvii] *Case Concerning the Gabcíkovo-Nagymaros Project (Hungary/Slovakia), (*Judgement) [1997] ICJ Rep.7
[lxviii] Case Concerning the Gabcíkovo-Nagymaros Project (Hungary/Slovakia), Judgement 1997. I.C.J. Rep.7, *Supra*, note29. §140
[lxix] *IbId*. Separate Opinion of Vice-Pres*Id*ent Weeramantry, at p.88. <http://www.icj-cij.org/docket/files/92/7383.pdf> accessed 3.8.2017
[lxx] *IbId*. p. 95
[lxxi] *IbId*. pp.117-118
[lxxii] Case Concerning the Gabcíkovo-Nagymaros Project (Hungary/Slovakia), Judgement 1997. I.C.J. Rep.7. , SeparateOpinion of Vice-Pres*Id*ent Weeramantry, at pp. 89 - 95
[lxxiii] Malcolm N. Shaw, 2003, pp. 97-100
[lxxiv] The Diversion of Water from the Meuse (The Netherlands v. Belgium), 1937, P.C.I.J, Series A/B No. 70-SeriesC No. 81. < . http://www.worldcourts.com/pcij/eng/decisions/1937.06.28_meuse> accessed 16.5.2017
[lxxv] *IbId*. p.78. "The general principle is a sound one that reparation is "the corollary of the violation of the obligations resulting from an engagement between States"; and "it is a principle of international law, and even a general conception of law, that any breach of an engagement involves an obligation to make reparation."
[lxxvi] In this case the concept equity was used in order to exclude the use of the equ*Id*istance method in the particularcircumstances. North Sea Continental Shelf, Judgment, (Federal Republic of Germany Denmark/Federal Republic of Germany/Netherlands) 1, I.C.J. Rep., p.3. < http://www.icj-cij.org/docket/files/51/5537.pdf > accessed 16.5.2017
[lxxvii] Case Concerning the Frontier Dispute (Burkina Faso/Republic of Mali), 1986, I.C.J. Rep.633. < http://www.icj-cij.org/docket/files/69/6447.pdf > accessed 9.4.2017
[lxxviii] Malcolm N. Shaw, 2003:101
[lxxix] Convention on the Law of the Non-Navigational Uses of International Watercourses, 21 May 1997, U.N. Doc A/RES/51/229 (1997). Although it is not yet in force, this Convention is the only multilateral treaty in existence on fresh water, which applies worldw*Id*e. < http://internationalwaterlaw.org > accessed 9.4.2017
[lxxx] Article 13.1(a) of the UN Charter prov*Id*ed the GA Assembly authority to establish the ILC as a permanentsubs*Id*iary organ in 1947. The ILC started its work on non-navigational uses of international watercourses in 1971.
[lxxxi] Attila Tanzi & Maurizio Arcari, *The United Nations Convention on the Law of International Watercourses*, (Kluwer Law International 2001), pp. 38 - 55
[lxxxii] *Supra*, note 76.
[lxxxiii] Antoinette Hildering, 2004: 418
[lxxxiv] International Convention for the Regulation of Whaling, 2 December 1946, 161 U.N.T.S. 72
[lxxxv] Patricia Birnie and Alan Boyle, 2002: 143
[lxxxvi] G.A. Res.2749 (XXV), Declaration of Principles Governing the Sea-Bed and the Ocean Floor, and the Subsoil Thereof, beyond the Limits of National Jurisdiction, 12 December 1970, G.A. Res. 2749 (XXV) U.N.GAOR < http://www.un-documents.net/a25r2749.htm > accessed 29.9.2017
[lxxxvii] Article 136 "The Area and its resources are the common heritage of mankind." Article 137 (1) "No State shall claim or exercise sovereignty or sovereign rights over any part of the Area or its resources, nor shall any

State or natural or jur*Id*ical person appropriate any part thereof..." Article 137(2) "All rights in the resources of the Area are vested in mankind as a whole..."

[lxxxviii] Malcolm N. Shaw, 2003:454

[lxxxix] The Moon Treaty, Article 4 (1) "The exploration and use of the Moon shall be the province of all mankind andshall be carried out for the benefit and in the interests of all countries, irrespective of their degree of economic orscientific development. Due regard shall be pa*Id* to the interests of present and future generations..."

[xc] The Moon Treaty entered into force on July 1984. Since the 1st of January 2008 thirteen States have ratified it <http://www.unoosa.org/oosa/en/SpaceLaw/treatystatus/index.html >

[xci] The Outer Space Treaty entered into force October 1967. Since the 1st of January 2008, 98 States have ratified it <http://www.unoosa.org/oosa/en/SpaceLaw/treatystatus/index.html >

[xcii] African [Banjul] Charter on Human and Peoples" Rights, 27 June 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21
I.L.M. 58 (1982). < http://www.hrcr.org/docs/Banjul/afrhr.html >

[xciii] Antoinette Hildering, 2004, pp.423- 424

[xciv] Malcolm N. Shaw, 2003, pp. 407 – 410

[xcv] Ian Brownlie, 2003, pp. 104 –106

[xcvi] G.A. Res.523 (VI), Integrated Economic Development and Commercial Agreements, 12 January 1952, G.A. Res. 523 (VI), U.N.GAOR, <http://www.un.org/documents/ga/res/6/ares6.htm>

[xcvii] G.A. Res. 626 (VII), Right to Exploit Freely Natural Wealth and Resources, 21 December 1952, G.A.Res. 626(VII), U.N.GAOR, < http://www.un.org/documents/ga/res/7/ares7.htm >

[xcviii] G.A. Res. 837 (IX), Recommendations Concerning International Respect for the Right of Peoples and Nations to Self-Determination, 14 December 1954, G.A. Res. 837 (IX), U.N.GAOR, <http://www.un.org/documents/ga/res/9/ares9.htm >

[xcix] *The Island of Palmas Case (or Mianga) (United States of America v. The Netherlands),* Permanent Court of Arbitration, The Hague 4 April 1928, (Perm. Ct. Arb. 1928), 2 U.N. Rep. Intl. Arb. Awards 829). < http://www.haguejusticeportal.net/Docs/PCA/Island%20of%20Palmas%20PCA%20PDF.pdf >

[c] G.A. Res. 1803 (XVII), Permanent Sovereignty over Natural Resources, 14 December 1962, G.A. Res. 1803 (XVII), U.N.GAOR,< http://www.un.org/documents/ga/res/17/ares17.htm >

[ci] The Rio Declaration refers to sustainable development in Principle 1, 4, 5, 7, 8, 9, 12, 20, 21, 22, 24 and 27

[cii] Convention on the Law of the Non-Navigational Uses of International Watercourses, 21 May 1997, U.N. Doc A/RES/51/229 (1997). Despite of the fact, that the convention is not yet in force, it is the only multilateral treaty in existence on fresh water, which applies worldw*Id*e. < http://internationalwaterlaw.org >

[ciii] Article 1(1) of the Convention on the Protection and Use of Transboundary Watercourses and International Lakes, 17 March 1992, 1936 U.N.T.S. 269

[civ] Malcolm N. Shaw, 2003, pp. 790-793

[cv] Case relating to the Territorial Jurisdiction of the International Commission of the River Oder, 1929, P.C.I.J. Ser. A., No. 23, 1929. < http://www.worldcourts.com/pcij/eng/decisions/1929.09.10_river_oder/ >

[cvi] *Supra*, note 98

[cvii] *Supra*, note 96

[cviii] *Supra*, note 88

[cix] Jack Donnelly, *Universal Human Rights in Theory and Practice*, 7 (2d ed., Cornell University Press 2003)

[cx] Maurice Cranston, *What are Human Rights*, 36 (Taplinger Publishing Co. 1973)

[cxi] *The Transformation of Sovereignty* in *Proceedings of the Eighty-Eighth Annual Meeting, the American Society of International Law*, Washington D.C. (1994)

[cxii] Louis Henkin, *The Rights of Man Today*, 94 (Westview Press 1978)

[cxiii] Malcolm N. Shaw, 2003, pp. 247-48

[cxiv] G.A. Res. 217A (III), Universal Declaration of Human Rights, 10 December 1948, G.A., Res. 217 (III), U.N.Doc A/810 at 71 (1948), U.N.GAOR < http://www.un.org/en/documents/udhr/> accessed 1.10.2017

[cxv] Patricia Birnie and Alan Boyle, 2002: 92

[cxvi] Report of the United Nations Water Conference, Mar del Plata, 14-25 March 1977, U.N. Doc. E/CONF.70/29.
<http://data.iucn.org/dbtw-wpd/html/EPLP-051-water-humanright/II.%20Does%20international%20law%20recognise%20a%20human%20right%20to%20water.html > accessed 4.9.2017

[cxvii] Second example, example can be found in the 1999 Protocol on Water and Health to the 1992 UNECE Convention on the Protection and Use of Transboundary Watercourses and International Lakes.17 June 1999, MP.WAT/2000/1EUR/ICD/ECHO020205/FIN, Entered into force 4 August 2005

[cxviii] UNGA, 1985, International Drinking Water Supply and Sanitation Decade,17 December 1985, U.N. Doc.A/RES/40/17, 10 December 1948
[cxix] UNGA, 2000, International Year of Freshwater, 20 December 2000, U.N. Doc. A/RES/55/196, 20 December2000 < http://www.un-documents.net/a55r196.htm >
[cxx] For additional information on the subject, please visit : <http://water.org/learn-about-the-water-crisis/facts/>
[cxxi] World Summit on Sustainable Development, Johannesburg, 26 August-4 September 2002. U.N. Doc. A/CONF.199/20, < http://www.johannesburgsummit.org/ >
[cxxii] Almost all of these measures are set forth in bilateral and regional treaties. These bilateral documents concernonly the states parties to the treaty and do not create internationally binding documents
[cxxiii] Philippe Sands, 2000, p. 346
[cxxiv] United Nations Committee on Economic, Social and Cultural Rights. General Comment No. 15 (2002), Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social and CulturalRights, The Right to Water (arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights), 20 Jan. 2003, U.N. Doc. E/C.12/2002/11
[cxxv] ECOSOC Resolution 1985/17". UN OHCHR. 28 May 1985
[cxxvi] Antoinette Hildering, 2004, p. 407 - 409
[cxxvii] *Supra*, note 96
[cxxviii] Hereinafter the ICCPR. International Covenant on Civil and Political Rights, 16 December 1966, 999 U.N.T.S.<http://www2.ohchr.org/english/law/ccpr.htm>
[cxxix] *Supra*, note 99
[cxxx] *Supra*, note 96
[cxxxi] *Supra*, note 96
[cxxxii] Antoinette Hildering, 2004: pp. 407 - 409
[cxxxiii] Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I),6 August 1977, 1125 U.N.T.S. Article 54(2) prohibits the attack, destruction, removal or rendering useless of objects indispensible to the survival of the civilian population such asdrinking water installations and supplies and irrigation works
[cxxxiv] "Relationship between the enjoyment of economic, social and cultural rights and the promotion of the realization of the right to drinking water supply and sanitation", Mr. El Hadji Guissé, report in pursuance of decision 2002/105 of the Commission on Human Rights and resolution 2001/2 of the Sub-Commission on the Promotion and Protection of Human Rights, E/CN.4/Sub.2/2002/10, par. 19
[cxxxv] Convention on the Rights of the Child, 20 Nov. 1989, 1577 U.N.T.S. 3; <http://www2.ohchr.org/english/law/crc.htm >
[cxxxvi] The Rio Declaration refers to sustainable development in Principle 1, 4, 5, 7, 8, 9, 12, 20, 21, 22, 24 and 27
[cxxxvii] Johannesburg Plan of Implementation of the World Summit on Sustainable Development, 5 Sept. 2002, U.N.Doc. A/CONF.199/20
http://www.un.org/esa/sustdev/documents/WSSD_POI_PD/English/POIChapter1.htm
[cxxxviii] Thomas Pogge, "Poverty and Human Rights"
<http://www2.ohchr.org/english/issues/poverty/expert/docs/Thomas_Pogge_Summary.pdf >
[cxxxix] *Supra*, note 96
[cxl] *Supra*, note 110
[cxli] Convention on the Elimination of All Forms of Discrimination against Women, 18 December 1979, 1249 U.N.T.S. 13. < http://www.un.org/womenwatch/daw/cedaw/cedaw.htm >
[cxlii] Poland, which was not represented at the conference, signed the Charter two months later
[cxliii] Charter of the United Nations, 26 June 1945, 892 U.N.T.S. 119
<http://www.un.org/en/documents/charter/index.shtml >
[cxliv] *Supra*, note 122
[cxlv] *Supra*, note 122
[cxlvi] Statute of the International Court of Justice, Article 38
[cxlvii] UN Treaty Collection - Treaty Gu*ide*
[cxlviii] Arnulf Becker Lorca "Universal International Law: Nineteenth-Century Histories of Imposition and Appropriation*" Harvard International Law Journal* (Volume 51, Number 2, London 21 Summer 2010). Available at http://www.harvardilj.org/wp-content/uploads/2010/09/HILJ_51-2_Becker-Lorca.pdf, accessed 2 January 2011
[cxlix] Josh Goodman, "The Administrative Law of Nations: A New Perspective on Sosa, the Alien Tort Statute, and CustomaryInternational Law" 950 HARV. INT'L L.J. ONLINE 1 2009) <http://harvardilj.org/online/164> accessed 2 January 2011

[cl] Shabtai Rosenne, *Practice and Methods of International Law* (Oceana Pubns July 1984)
[cli] Brierly, J. L. , *The Law of Nations: An Introduction to the International Law of Peace*, (6th ed. , New York: OxfordUniversity Press 1963) p. 59
[clii] Janis, Mark W. , *An Introduction to International Law*, (4th ed., Aspen Publishers, New York, 2003) p. 44
[cliii] Antea Elizabeth Roberts "*Traditional and Modern Approaches to Customary International Law: A Reconciliation*" (2001) University of Toronto Law Journal, Vol. 12 < http://links.jstor.org/pss/2674625> accessed 2 January 2011
[cliv] Restatement (Third) of the Foreign relations law of the United States §102(2) (1987); Ian Brownlie, *Principles of PublicInternational Law* (5th ed. 1998) 4–11; Michael Byers, *Custom, Power and the Power of rules*, (1999) 130-210
[clv] Thomas Buergenthal, *Public International Law in a Nutshell* (3rd edt., West Group, August 1, 2002) p22-23
[clvi] Evans, MD, *International Law* (Oxford University Press, London 1999) 40-42
[clvii] B.L. Zimnenko, *International Law and the Russian Legal System* (Boom Eleven International, March 2007) 15-40
[clviii] Martin Dixon and Robert Mccorquodale, *Cases and Materials on International law* (Second Edition, 1995) 411-412
[clix] *Anglo- Norwegian Fisheries Case*, (*UNITED KINGDOM v. NORWAY*) [1951] ICJ Rep, p.116
[clx] *Military & Paramilitary Activities in and Against Nicaragua* (*Nicaragua v. USA*) (Merits) [1986] ICJ Rep 12, p.14 para.190
[clxi] *S.S. Lotus (France v. Turkey)*, 1927 PCIJ Rep Series A No. 10 (Sept. 7)
[clxii] Ian Brownlie, *Principles of Public International Law* (Fourth Edition, Clarendon Press, Oxford, 1990) 7-10
[clxiii] Brian D. Lepard**,** *Customary international law : a new theory with practical applications* (ASIL studies in internationallegal theory Series, Cambr*Id*ge University Press, New York, NY 2010)
[clxiv] *North Sea Continental Shelf, Judgment, I.C.J. Reports 1969*, p. 3. at para 63
[clxv] *Continental Shelf (Libyan Arab Jamahiriya/Malta) Judgment, I.C.J. Reports 1985*, p. 13, at para 26-27
[clxvi] Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1982, p. 18 at para. 49, 109;cited in Rosenne, S 2004 The Perplexities of Modern International Law, Martinus Nijhoff Publishers, p. 37
[clxvii] Dispute regarding Navigational and Related Rights (Costa Rica v. Nicaragua), Judgment, I.C.J. Reports2009, p. 213. at para 35-36
[clxviii] When and where d*Id* the new Millennium officially start, and why?". Royal Observatory Greenwich
[clxix] Majority of Americans distrust the government". Reuters. April 19, 2010
[clxx] *State of the Planet*, University of Columbia, Earth Institute <http://blogs.ei.columbia.edu/2017/05/08/study-overuse-of-water-threatens-global-food-supply/ > accessed 7.10.2017
[clxxi] *IbId*
[clxxii] According to Water.org, more than 663 million do not have access to clean and safe water <https://water.org/our-impact/water-crisis/ > accessed 7.10.2017
[clxxiii] World Economic Forum, 5 risks from water overuse <https://www.weforum.org/agenda/2015/01/5-risks-from- water-overuse/ > accessed 7.10.2017
[clxxiv] *IbId*
[clxxv] Directive 2000/60/EC of the European Parliament and of the Council establishing a framework for theCommunity action in the field of water policy. 23 Oct. 2000, Directive 2000/60/EC (O.J. L 327)
[clxxvi] Philippe Sands, 1995: 366
[clxxvii] *Supra*, note 57
[clxxviii] Malcolm N. Shaw, 2003, pp. 770 –773
[clxxix] *IbId*. p.257
[clxxx] International Covenant on Economic, Social and Cultural Rights, 16 December 1966, U.N.T.S. 3, < http://www2.ohchr.org/english/law/cescr.htm >
[clxxxi] The Petition for Article 31: Everyone has the right to clean and accessible water, adequate for the health and well-being of the indiv*Id*ual and family, and no one shall be deprived of such access or quality of water due to indiv*Id*ual economic circumstance
[clxxxii] Agreement on the action plan for the environmentally sound management of the Common Zambezi River System. 28 May 1987, 27 I.L.M. (1988), 1109. <http://www.fao.org/docrep/w7414b/w7414b0j.htm > accessed 7.10.2017
[clxxxiii] Protocol on shared watercourse systems in the Southern African development community (SADC) region, 28 August 1995, < http://www.fao.org/docrep/w7414b/w7414b0n.htm > accessed 7.10.2017

[clxxxiv] Agreement on the Cooperation for the Sustainable Development of the Mekong River Basin, 5.April 1995, 34 I.L.M. 864 (1995), <http://www.mrcmekong.org/agreement_95/agreement_95.htm > accessed 7.10.2017