Third World Quarterly
Publication details, including instructions for authors and subscription information:
http://www.informaworld.com/smpp/title=content=t713448481

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To cite this Article Elver, Hilal(2006) 'International environmental law, water and the future', Third World Quarterly, 27: 5, 885 — 901
To link to this Article DOI: 10.1080/01436590600780201
URL: http://dx.doi.org/10.1080/01436590600780201

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International Environmental Law, Water and the Future

HILAL ELVER

ABSTRACT This article focuses on the development of international law principles in the area of fresh water, one of the major emerging concerns at the global level. These principles, from the period of abundance to scarcity of fresh water, are evaluated parallel to changing economic, geopolitical and environmental conditions of world politics. Currently over a billion people in the Third World do not have access to safe drinking water. Is current international law capable of addressing the challenge of global water scarcity in 21st century? I will evaluate the moral principles of international human rights, and economic principles of free market ideology to solve the problem of access to fresh water resources for all for the future.

The development of international environmental law as a separate area of public international law began with the Stockholm Conference on the Environment in 1972, parallel to the rise of environmental consciousness in the early 1970s throughout the developed world, especially in the USA and Western Europe. Since then interest has steadily increased and, over the course of the next two decades, it became one of the fastest growing areas of international law. Current issues of environmental concern covered by environmental law include ozone layer depletion and global warming, freshwater scarcity, groundwater depletion, protection of wetlands, desertification, deforestation, water, soil and air pollution, international trade in endangered species (eg ivory trade), dumping and shipment of hazardous wastes to Third World countries, and high seas oil spills, transboundary nuclear accidents (eg Chernobyl), and an array of specific issues related to environmental degradation and resource depletion. Environmental law is also cutting across other new areas of international law, such as commercial/business law, trade, development and human rights.

In the past four decades a record number of international treaties and soft law documents has been created by international organisations with the cooperation of states. In addition, many domestic laws and regulations have been adopted to protect the environment. Nevertheless, despite all these seemingly positive developments as embodied in legal documents, both at national and international levels, major environmental problems persist, and

Hilal Elver is Visiting Professor at the University of California at Santa Barbara and can be contacted at 723 Alston Road, Santa Barbara, CA 93108, USA. Email: elver@global.ucsb.edu.
have became even more serious. The different priorities of developed and developing countries stemming from their uneven geographic, economic and political conditions, and their various geopolitical and resource interests, have often made international environmental issues impossible to resolve. During this period the promising commitments of the developed world to environmental protection gradually became elusive, and disagreements between North and South relating to environmental issues became deeper. There are many explanations of this disappointing track record in efforts to establish a regulatory framework for environmental protection. The close connection between environmental decisions and economic development, globalisation, international trade, corporate interests and an unconditional commitment to a free market economy, have made environmental law more difficult to implement than was the case in other normative international law areas. Moreover, the 11 September 2001 attacks on the USA, as well as the indifferent, if not hostile, attitude of the Bush administration to environmental protection, has shifted the global agenda further away from issues related to environmental protection and/or developing world concerns to security concerns. This is a very unfortunate development in an area that has already been problematic to deal with.

**Development of international water law principles**

In this article the main purpose is not to address this failure of international environmental law in general, or to assess global environmental problems overall. I will specifically emphasise the problems of fresh water scarcity and the responses of international law and policy to this emerging global threat to human health and the environment. There are several reasons for choosing freshwater issues as the subject matter of the paper. First, in 2000 freshwater scarcity and management was recognised as a global problem and it has been included in the ‘Millennium Development Goals’ of the UN Secretary General, being listed as one of the major concerns that humanity faces in 21st century. The second reason is that water scarcity and management is one of the key issues in the developing world, not only as part of the environmental protection related to resource depletion, but also because water is the major development issue. Especially countries situated in arid and semi-arid areas confronted by population pressure and economic trouble are already subject to serious water shortages, and are paying a heavy price, in particular in human health. Many of these countries are developing countries in Africa, the Middle East and Asia. The third reason is that freshwater scarcity and management is one of the most difficult challenges facing international law. Solving freshwater scarcity in an equitable manner contradicts the vital principles of international law, such as ‘absolute state sovereignty’ over natural resources. The location of water resources, as with many other resources, does not always follow political boundaries. Most rivers and groundwater resources are shared by at least two or more states that economically, ecologically and politically are unequal one to another. Traditional principles of international law simply do not provide an easy
answer about how to share fresh water resources among riparian states in an equitable manner. Moreover, a new generation of international human rights principles provides persons with a right to have access to drinking water. While states have a responsibility to obtain water for their citizens and residents, is it possible to ignore downstream states’ right of access to water? Or is it fair that economically and technologically advanced states have already obtained access to ample water, while less developed riparian countries must be content with what remains, which more often than not is already polluted? There are many questions of this sort that international water law experts and policy makers are currently faced with as part of this challenge of hydropolitics in the early 21st century.

The period of abundance: the eurocentric international water law

Water law principles have a long historical background. They were born in Mesopotamia at a time when ancient civilisations were preoccupied with major water projects. From these points of origin the Middle East and the Mediterranean have remained important as regions where major legal ideas about water law and rights arose and spread to the rest of the world. Since the early period of traditional international law, international rivers conflict and management has been an important subject matter, although its initial preoccupations were quite different from those of the current period. In the ‘period of abundance’ rivers basically constituted boundaries among states, providing major transportation roads, essential for international trade and commerce in Europe. Many bilateral agreements were signed and ratified that dealt with various management issues, including even issues of water pollution. This early development of international law with respect to freshwater resources can be divided into two distinct periods, the first emphasising navigational uses, and the second non-navigational uses of international rivers. The first period was distinctly eurocentric, with the major effort devoted to the commercial and navigational activities associated with international rivers. These two periods were exclusively state-oriented, which was consistent with the general preoccupation of international law. Chronologically this period starts in the 17th century with the Peace of Westphalia and ends after World War II.

The 19th century witnessed the climax of economic liberalisation in Europe. The successful establishment of freedom of the seas had already facilitated the economic and strategic expansion of the colonial powers. These European countries took advantage of rivers in Africa and other continents as a ‘right’ associated with colonial administrations. Freedom of navigation on international rivers was the only way for the products of landlocked areas in colonial territories to reach the sea, and the presence of such realities generated a practical necessity to accommodate them. The transportation of goods, passengers and vessels on European waterways was considered of vital importance until the first half of the 20th century. Because water was generally abundant, the utilisation of water did not often create a conflict over use that extended beyond national borders. In this period Europe was in the grip of
intense commercial competition that amounted to an early and limited version of economic globalisation, taking the main form of expanding international trade. Clashes over trade policies arose between inland and maritime economies that led European countries to a series of wars. The outcome of these wars determined which country controlled particular rivers, which navigation regulations were adopted, and which principles of natural and national law were relied upon as the basis of international legal authority. In this period most multilateral water agreements concentrated on defence arrangements, as well as confirming navigational rights and freedoms. In what would become a common pattern of international watercourse law, political victors used navigation provisions and principles to enhance their economic trade positions.\(^4\) The exclusion of powerless states from access to rivers was a major issue in this period of hydropolitics.

Beyond Europe water treaties were generally influenced by legal developments in Europe. Colonisation led to a new pattern of multilateral agreement in the 1800s. In Asia and Africa bilateral agreements included provisions that that gave monopolistic access and trading opportunities to European powers with respect to international rivers in colonies. Demarcation and cession of territory was a common feature in these agreements made during the colonial era. Various European colonial ventures produced increasing contact, conflict and collaboration, part of the broader effort to co-ordinate colonial interests outside Europe. Not surprisingly, the progressive development of international water law was easier to agree upon and apply in these distant territories in which European powers had substantial economic interests but were less deeply embedded in historic territorial concerns. In North America, too, treaties between the US government and Indian tribes often skipped the process of concluding commercial agreements governing river use and moved directly to the comprehensive demarcation of rights and the cession of Indian territories, including water rights.\(^5\) Recently scholars have examined extensively the political and economic influence of colonial era administration over water development projects in Africa and Asia. According to some academic specialists, the role of the colonial powers was relatively enlightened in this sphere of activity and included several undertakings to reconstruct ancient irrigation systems.\(^6\) However, this positive account of the colonial mission has been criticised overall, and particularly with respect to water policy in the Middle East and the Nile River Valley.\(^7\)

Water initiatives during the League of Nations period were again mainly concerned with Europe and its colonies. Efforts to deal with water management issues slowed in the period of tension leading up to World War II, and ended altogether in Europe and elsewhere as soon as the conflict started in 1939.\(^8\) Subsequent regional and global changes influenced the codification and development of international water law. Navigational regulations eventually lost their importance and other sectors of water utilisation became the subject of more serious disputes in the international arena. But it remains important to grasp the reasons for the emphasis on navigational uses and freedom of navigation during the colonial era.
Freedom of navigation declined during WW II, as a result of the advent of fascism in Germany and its spread to other parts of Europe. This pattern continued as Europe became the setting of an intense cold war rivalry after 1945. Additionally, many Third World countries, after achieving independence, changed their river regulations to limit the navigational rights of vessels belonging to non-riparian states. The rise of nationalism tended to supersede the prior emphasis on freedom of navigation during the colonial era.\footnote{9}

\textbf{From navigation to allocation: international waters in the post-colonial era}

The effect of two world wars contributed to the end of colonialism, which led directly to the emergence of newly independent states, new diplomatic borders and great artificiality as to the governance of peoples and their environments. In this period the number of international rivers reached 261. These river systems cover about 47\% of the world’s continental land area, which is home to some 40\% of the world’s population. Roughly two billion people live in international river basins.\footnote{10} This period witnessed not only the revival of traditional hydrological and geographical diversities and an unbalanced distribution of natural resources among nations but also an increase in politically and economically antagonistic outlooks. With capitalism on one hand, and communism on the other, new states, many of them former colonies, tried very hard to promote the goals of economic development. Only short-term economic outputs seemed to matter, without taking any serious account of environmental concerns and sustainability. During this period, in the early 1970s, international organisations gave technical, financial and institutional assistance to developing countries, generally without giving adequate considerations of adverse environmental effects or long-term sustainability.

With increasing water scarcity on the one hand, and economic competitiveness on the other, the management of shared resources between two or more sovereign states became one of the most contested issues in international law. States seeking to develop their natural resources rapidly, in order to achieve national economic goals, embarked upon the construction of big development projects. They generally did so without taking adequate account of environmental consequences, or of damage to neighbouring countries. The priorities of this period were primarily oriented towards economic growth. Large water projects such as dams, irrigation canals, and hydroelectric power stations were regarded as offering such developmental payoffs. Unfortunately, the benefits of these uses often come by means that adversely modify historic flow cycles, deplete resources over time, degrade estuarine systems, increased flood damage and produce many other types of environmental harm.

Among shared resources fresh water is particularly valuable as it constitutes a vital source of life, and its purity and availability have always figured prominently in national water policies. At the same time a major concern of newly independent states was to protect their sovereignty and independence and safeguard their liberation after the long ordeal of colonial exploitation. Therefore they were very insistent upon controlling and
developing their own natural resources, and doing this almost to avoid foreign intervention. Such nationalistic attitudes blocked any possibility of joint management over shared resources. What is commonly regarded as successful hydropolitical action includes appropriating water received from neighbouring countries to the extent possible, constructing big water projects in order to overcome water scarcity arising from the demands of a growing population, and massive agricultural reliance on irrigation to achieve self-sufficiency. Given these conditions, as well as uneven distribution of wealth and water resources and political instability among neighbouring states, water has inevitably become a crucial focus of concern in international politics.

In this setting inter-state and intra-state water conflicts have erupted in many parts of the world, especially in areas that have serious water shortages and political tension, particularly the Middle East. Despite the multiplicity and wide coverage of these conflicts, the Middle East is not the only region where significant water disputes have emerged. In this period international watercourses were one of the most studied and developed areas of international law. Even though some 3700 international water agreements have been concluded, there was still an unbalanced distribution among states and regions. Developed countries have concluded many of these agreements, most of them in water-rich regions. In contrast, developing countries either did not make water agreements at all, or did not effectively implement those agreements that were made, because of their inefficient economic and technical capabilities. According to a United Nations study, 72% of all major international river basins are in developing countries located in Africa, Asia and Latin America, but fewer than 33% of the relevant agreements signed world-wide between 1948 and 1972 covered these rivers. In Africa, for instance, with 12 complex systems of river basins shared by four or more nations, only 34 treaties regulate their use. In contrast, international river management agreements are far more present in developed countries. Europe, as a prime example, has four river basins shared by four or more countries, and no fewer than 175 treaties to regulate them.

In this period international water law tried to address two broad issues: how should uses of water that affect quality and quantity in a transboundary lake or river be allocated between the two or more states belonging to the basin? And what procedural rights and responsibilities pertain to states sharing a basin? In recent years concern over the environment has begun to add another dimension to international water law, namely protecting the environment of transboundary water resources in relation to water use. As a result of this development the two areas of international law—environment and transboundary watercourses—have merged. Although this merger has shaped current international thinking about watercourse principles, it is not yet able to resolve major international river conflicts.

The period of scarcity: convergence and divergence in international law

The global fresh water crisis looms as one of the greatest threats ever to the survival of human life on this planet. Environmental degradation, excessive
use and abuse of water everywhere, construction of massive dams, toxic
dumping, wetland and forest destruction, urban and industrial pollution,
factory farming and climate change have damaged not only the Earth’s
surface water resources badly, but also depleted underground water reserves
far faster than nature can replenish them. Moreover, per capita use of water
is doubling every 20 years, at more than twice the rate of human population
growth. Thanks to the global environmental protection movement of the
1970s on one hand, and emerging global water scarcity and water conflicts on
the other, we all learned that only less than 1% of the planet’s freshwater
resources is readily accessible for direct human use. It is remarkable that this
small amount of fresh water has remained stable over millennia through the
water cycle. However, despite the stability of global water supply, growing
global demand for water has made the international community extremely
nervous about the future. The world has entered a new era, moving from a
condition of water abundance to a ‘period of scarcity’. Currently over a
billion people do not have access to safe drinking water and sanitation is
minimal for half the world’s population. Quite simply, unless we dramatically
change our ways, two-thirds of humanity will be faced with severe freshwater
shortages within the next 25 years.

The world is ready now to search for new methods and to adopt new ways
of thinking to overcome a water scarcity that threatens all peoples in the
world, although with different degrees of immediacy. Considering the current
political and legal situation, a series of questions needs to be answered: given
its philosophical and conceptual background, based on self-interest,
reciprocity and consent, is current international law capable of addressing
the challenge of global water scarcity in the 21st century? Are we
experiencing a new global law based on normative principles which value
environmental protection and human rights principles more than sovereign
states’ interests? In other words, is the world ready to embrace the moral
predicament based on human values?

If we look at the past three decades of the evolution of international law,
we experience a significant accumulation of international activity, including a
developing regulatory framework, and international organisations dealing
with various global issues. Among the positive aspects have been the
emergence of environmental law, human rights law, recognition of women’s
rights and of the rights of indigenous peoples. This legal evolution involves
new developments and convergence in international law, and has brought
new normative principles that are especially important for developing
countries. For instance, transparency and participatory environmental
practices lead to a more democratic, equitable and fair decision-making
process, including respect for human rights, as integral to the development
process. Whether and how these new normative principles will attain a legal
status as customary law is not clear yet, but they are definitely challenging
current state practices.

Since the 1980s, however, besides these normative areas and parallel to the
neoliberal global economy, international law has gained the daunting
new task of regulating international business transactions and trade relations.
By the late 1990s these two sets of legal concerns had been visibly distinguished. International business and trade law, with the help of the international financial institutions, such as the World Trade Organization (WTO) and other Bretton Wood institutions, have created an effective regulatory framework and compliance mechanisms for private sector actors. This tendency follows the neoliberal economic path that tries to resolve all policy issues through the logic of market efficiency and the gains in productive capacity attributable to innovative technology. Meanwhile, normative international law suffered from ineffective compliance and a lack of enforcement mechanisms, relying on consensual ‘soft law’ principles rather than ‘hard law’ mandatory regulations. There are two distinct international regulatory frameworks for dealing with two sets of substantive activity.

How do we locate water issues in relating these two domains of international law? There is no question that international water disputes generally depend on state-to-state negotiation. These disputes are still under the control of traditional international law principles, namely state sovereignty, allocation of water (the widely accepted principle is equitable utilisation), and protection of water resources from pollution and over-use. Among many other soft law principles the newly developed environmental law principles embodied in the UN Convention on Non-Navigational Uses of International Watercourses of 1997 is of greatest significance. Nevertheless, despite the efforts of the UN and transnational NGOs, no adequate remedy for global water crises now exists, nor does the capacity to resolve international river conflicts. Many developed countries have already been managing their international waters through bilateral and regional agreements. Developing states, however, are worried about any sign that such agreements might make it more difficult to develop their water resources to take account of transboundary environmental effects. Further, these states are much concerned about any legal moves that restrict their national sovereignty over natural resources.

Besides the traditional problem of resolving disputes in international water conflicts, the most serious immediate challenge for the international community is the lack of access to safe drinking water, and inadequate sanitation. Various policy makers have presented many solutions. The first approach is to conceptualise access to water as a basic human right in a manner that affirms the democratic world order. Connecting human rights to water issues, namely by way of providing ‘access to water for all’ implies that the implementation of this right is a responsibility of states with respect to their own citizens. An extension of this concept to the international level suggests that water should be considered as the ‘common heritage of humankind’, to borrow an idea proposed originally by the former Maltese Ambassador to the UN, Arvid Pardo. This proposal was viewed as a breakthrough in the 1970s, when Pardo initially developed this idea to distribute the benefits from mining deep seabed mineral resources. This innovative idea was accepted as an international norm by the great majority of states, which became party to the 1982 United Nations Convention on the Law of the Sea, the most comprehensive multilateral treaty arrangement in
all international law. As might be expected, the USA has adopted an overall posture of opposition to the common heritage idea.

The second prominently advanced solution for water management, not surprisingly, comes from the neoliberal economistic view, which has become known as the ‘Washington consensus’. Proponents of economic globalisation, especially multinational corporations, international economic organisations like the WTO, the World Bank and the IMF have been openly supporting the idea of ‘water as a tradeable commodity’. The mainstream conception of commodification considers that only exchange offers value for anything. A non-traded commodity is outside the market and has no value. Furthermore, only private investment acts as an engine of growth, and only private profit-making enterprises can ensure optimal allocation and management of valuable resources. Therefore, public authorities must leave the management of the water sector to private enterprise. At the UN World Summit on Sustainable Development in Johannesburg in 2002 this idea was proudly presented to the world community as a magical formula capable of solving the water problem around the globe, whether in developed or developing countries.17

How does globalisation affect water policy? Water giants and water warriors

In general advocates of economic globalisation argue that neoliberal market economy encourages long-term resource management. The theory contends that, as countries globalise, often by exploiting resources, their increased wealth will enable them to save more patches of nature from the ravages of their exploitation. To manage water as a marketable commodity that is bought and sold, and to privatisate the water-delivery system under the control of corporations, rather than as a public service, supposedly brings economic prosperity, enabling governments in the long run to protect water resources from depletion. In late 1990s, the international financial institutions gave governments an idea about how to deal with emerging water interests and with the financial burdens associated with infrastructural needs. The formula was simple: ‘private sector participation in water supply and sanitation’.

If access to clean water is one of the major problems in the world, one would expect governments and global bureaucracies to advocate conservation. Instead, what is being pushed is the privatisation, commodification and globalisation of the planet’s remaining fresh water, including the sale of exploitation rights to corporations, and allowing the global market to decide who gets to drink and use water. Corporations that deliver services have a strong self-interest in promoting these initiatives as beneficial to the poor. There is an absence of choice for citizens and their elected representatives, especially in developing countries, in deciding democratically how essential services should be delivered. Governments that refuse to play by the new rules of the privatisation game are finding that their vital aid and debt relief packages have been scaled back, even in some instances suspended or terminated altogether. Such governments have little effective freedom to oppose the tide of privatisation.
Moreover, to support their argument, the advocates of privatisation are using the benefits of new technological developments. New satellite technology, for instance, is capable of evaluating the quality and quantity of water resources and of disseminating data over long distances with significantly lower costs than was previously done by local governments. Privatisation advocates argue that previously these public facilities were not economically efficient even if socially accessible to the poor at lower costs. Recognition of this economic reality has led governments, rich and poor, to privatise public facilities and encourage the import of the highest-performance equipment. Privatisation becomes a non-negotiable solution for water infrastructure. While rich countries have the flexibility to implement selectively, shop around and find the most effective solutions for the privatisation of water, poor countries are often virtually pushed by organisations such as the IMF and World Bank to privatise inefficient water facilities through foreign aid and loan packages. The practical result is that privatised water prices take away water from poor neighbourhoods, but they also deprive many government facilities of water because of the latter’s inability to afford such expensive services. The main questions that arise from this are: 1) how to organise society so that basic public services, such as clean water, can be made available to all people regardless of their ability to pay; and 2) how to govern the world so that technological innovations become available to support all sustainable uses of natural resources?

The market for water infrastructure, sanitation and pollution prevention in the developing world is huge. Already corporations own or operate water systems across the globe that produce $200 billion in revenue a year. These systems presently serve only about 7% of the world’s population, leaving a potentially vast market as yet untapped. The private sector has become increasingly involved in the implementation of ‘Build, Own, Operate and Transfer’ (BOOT) projects. Gradually, including in the developed countries, water projects have been taken over by transnational corporate giants. Surprisingly, world-wide there are only a few corporations that operate in the water sector. The two French companies Vivendi and Suez are the largest. These two giants capture nearly 40% of the existing water market share, providing water-related services for over 110 million people each. Suez operates in 130 countries on five continents and Vivendi in over 100; their combined annual revenues from water operations are over $70 billion. The German RWE follows these two frontrunners, having acquired the British water giant, Thames, and completed the purchase of American Water Works, the largest US private water utility. Surprisingly, US companies are coming late to the water area following these European corporate ventures. The US companies are familiar names, including Bechtel, Cadiz, and formerly Enron. Their notoriety is partly based on their suspicious activities around the world, as well as on their corporate crimes in the USA and elsewhere. On their websites these companies proudly proclaim that throughout the world they are pumping water, and treating, transporting and controlling the pollution of wastewater with their new efficient technologies. Nevertheless, these companies are not normally willing to
pay any of the social, ecological or financial costs associated with their operations, especially if these costs encroach on profitability. Because of these changing patterns of ownership, however, farmers will lose their land, as well as water, and if deemed necessary by the corporations, their irrigation rights might disappear as a result of the privatisation of energy. Through the accelerated price of water the public will eventually pay the cost of water privatisations. Vast numbers of people have demonstrated in Bolivia, Argentina, Ecuador, Panama, South Africa, India, Turkey, the Philippines, and even in California, against the rising cost of water, exhibiting the growing volatility of the issue.

The fundamental question is this: should water, a substance close to life itself, be treated as a profit-making business? The local protesters, international NGOs, environmentalist, and non-economic globalists all object to the very idea of private enterprise making a profit from water. ‘Water is a resource essential to life, decisions about allocation and distribution should be democratic and based on everyone’s fundamental right to a clean, healthy supply’, says the major environmental NGO, Friends of the Earth. In contrast, the market-driven economistic view argues that, unless water is treated as an increasingly precious commodity and priced to reflect its value—particularly for heavy users like farmers and factories—much of it will be wasted, and the scarcity crisis will worsen.20

One of the strongest arguments in favour of privatisation is the widespread inability of public utilities in the developing world to provide clean water. Many governments literally are not able to spend the money needed to supply water to their people. At this stage the World Bank is trying to solve the problem for the developing countries by supporting private investment in water facilities, increasingly turning its back on allegedly ‘dysfunctional’ public utilities. The first stage starts with an IMF loan designed to promote the country’s economic growth. In compliance with IMF-drafted ‘structural reforms’ for the nation, a country agrees to the sale of ‘all remaining public enterprises’. Second, the World Bank produces a report for the country, generally prepared by local officials, but presented by the Bank’s expensive international experts. In this report the World Bank insists upon ‘no subsidies for water’. A country that receives loan assistance from the World Bank and IMF is often discouraged from heavily subsidising public services that may be controlling inflation and attracting foreign investment. Private companies provide water and sanitation services to the local residents through an agreement between officials of the country and corporations. Meanwhile, the domestic legal order is changed and the parliament passes a law which allows privatisation of the state drinking water system. Companies access the money provided by various international and regional development banks to do their business. They do not even need to invest money up front.

However, the issue is not easily resolved by such a choice. In order to recover their investment costs, private companies often charge astronomical amounts to the poorest countries and their poorest people. The example of Bolivia is revealing. An American company Bechtel, and its co-investor,
Abengoa of Spain, raised water rates by an average of more than 50% in the Bolivian town of Cochabamba. This led to a violent conflict in 2000 between the people and the local government, igniting a water war at the domestic level. The first water warrior, Victor Hugo Daza, a 17-year old student, had been shot in the face by the army during protests sparked by an increase in local water rates.

Similar encounters have been reported in many parts of the world. First, people demonstrate against local governments by refusing to pay what appear to them to be surreal prices for water, then the politicians in the local government suddenly realise that privatisation is not such an acceptable alternative for public utilities. Moreover, they also realise that private companies can also be extremely dysfunctional in relation to day-to-day problems, especially since profit is always their most important goal. Governments now are thinking about how to withdraw from sophisticated agreements that have been signed with corporate giants, usually prepared by international corporate lawyers.

The Bechtel versus Bolivia case went before the International Center for the Settlement of Investment Disputes (ICSID), the World Bank’s little known international tribunal that holds all its sessions in secret. Bechtel demanded $50 million dollars from some of the poorest families in the world for a portion of the profits it wasn’t able to earn after a public uprising in April 2000. The World Bank court heard this case behind closed doors, without any public scrutiny or participation. A wide range of groups joined in to demand that the Bank open up the process. Trade union organisations, environmental groups, consumer organisations, research groups and numerous religious institutions all over the world joined in presenting a petition to participate in the ICSID tribunal hearing the case. For four years afterwards Bechtel and Abengoa found their companies and corporate leaders dogged by protest, damaging press, and public demands from five continents that they drop the case. This is the first time that a major corporation has ever dropped a major international trade case as a direct result of global public pressure, and it sets an important precedent for the politics of future trade cases like this.

Civil society versus global market forces

One of the inevitable and positive consequences of globalisation are the intensive communications arising from global networking, which have increased the awareness of common international and global problems, especially environmental problems. In many non-Western societies new patterns of global interaction are also increasing the demand for democracy. This ‘awakening effect’ of global communication has created a significant safety net for local people against those forces bent on environmental destruction. A well known example is in India. During the early 1990s the Sardar Sarovan Dam project on the Narmada River was the first successful initiative of a local protest movement against a major World Bank project. There are many other examples of such resistance to be found
in the newspapers everyday. These local initiatives, generally in developing countries, have been supported, sometimes even initiated, by international NGOs. Environmental NGOs have been working hard to avoid the various negative effects of big dam projects around the world. These campaigns have been highly successful in creating a growing environmental and social consciousness around the world, and even in stopping some large water projects, especially those in the developing world supported by the World Bank. This awakening effect of the global communication network is extremely important, especially for less authoritarian societies. If governments are highly oppressive, it can be almost impossible to mount local resistance.

The recent campaigns on water issues, however, have a different target. While global market forces have been working vigorously to bring water to the world as a commodity, many NGOs have been mobilising citizens groups against the privatisation of water, and to remove water from the global trade list. The World Coalition against Water Privatisation is a global umbrella civil society organisation that developed a campaign to keep water out of the WTO at the Johannesburg Summit. For two years governments have been in the process of negotiating a General Agreement on Trade in Services (GATS) under the auspices of the WTO in Geneva to liberalise international access to services. The EU led the support for a proposal intended to extend the classification of environmental services to include a water provision. While several governments were in favour of trade in services, anti-privatisation groups and environmentalists successfully lobbied against the EU initiative.

Another initiative has taken by the Canadian group, Blue Planet Project, which is opposing bulk water transfers. Canada is one of the most water-rich and environmentally conscious countries in the world. The new and growing water export industry threatens Canada’s rich water resources, especially within the framework of the North American Free Trade Agreement NAFTA. They fear that if Canada starts to sell water in the market to the thirsty Western USA this will become irreversible at a later date. The Blue Planet Project collects scientific evidence to reinforce its opposition to bulk water transfers.

Privatisation of water is not only happening in developing countries. The USA is also subject to the same threat. Most major water structures in the USA are still in the public domain. The two water giants, Suez and Vivendi, have tried to take over the New Orleans water system. If they had succeeded this would have become the largest public works privatisation ever to occur in the USA. Over the past few years the USA-based Public Citizens has worked closely with local groups to keep the privatisation process in the public eye, and to build a greater awareness of the privatisation issue in the community. Community groups have succeeded in changing the city charter in many places to require all privatisation contracts of this magnitude to be approved in a public vote. As a result, the privatisation process has been significantly slowed. This is a success story of citizen action against global market forces. Every day, the failure of privatisation becomes more imminent.
This gives us hope that such democratic institutions as the rule of law, access to information, the right to participate in decision-making processes, and freedom of speech can serve as major tools against the penetration of market forces into public services. Water is a unique resource that has no elasticity as an economic good. No substitute, no alternative. The failure of water management and water services is too costly for any government to bear on its own. Such failure would produce disasters from environmental to public health to food insecurity. Managing the water supply by relying on predatory economic principles in a free market global economy is too implausible to succeed.

Besides the international initiatives of civil society, it is also necessary to give credit to the UN agencies, and to the organisation’s global conferences which started in the early 1990s. These UN meetings dealt with critical global social issues such as environment and development, women’s rights, population, human rights, employment and poverty, and were very successful in establishing an international network of civil societies, especially linking developed and developing countries. This network has become an influential voice. It is a new presence in international life, and changes the atmosphere. Traditional state-oriented forums have lost some of their influence to more democratic platforms of debate and advocacy.

In recent years new developments are taking shape in relations between corporate business and the UN in the area of environmental protection, labour rights and human rights. The UN Secretary General has regularly addressed global economic forums on these issues. He has encouraged corporate business executives to adopt global social standards on a voluntary basis, without any regulatory structure, under the name of the ‘global compact’. This is part of Kofi Annan’s effort to establish a partnership between corporate business and international organisations in the era of global economy. This can be interpreted not only as an effort to overcome the financial troubles of the UN, but also as a means of acknowledging the growing presence of corporate business around the world, most importantly in the developing world, and its great influence in relation to state authorities. At the UN summit in Johannesburg in 2002 this initiative became an indelible reality for the future. In relation to water, the formula of ‘Public Private Partnership’ became the buzzword with respect to legitimising water privatisation. In 2003, during the World Water Forum in Kyoto hosted by the World Water Council, this private think-tank promoted the belief that improved water delivery is only possible with private sector involvement. Water companies had successfully infiltrated the UN and other global mechanisms on water politics.

Against this initiative in March 2006 at the ‘International Forum on the Defence of Water’ held in Mexico City, an NGO coalition, ‘Friends of Public Partnership’, promoted ‘public to public initiatives’.25 According to the coalition’s study, the policy of private sector involvement has been a serious distraction from the real solution to the global water crisis. Despite rhetoric and promises, almost all finance for water delivery continues to come from public sources. Moreover, there is no systematic, intrinsic advantage to
private sector operation in terms of efficiency. Since 2005 Suez and other multinationals have been forced to withdraw from concessions in cities in Bolivia, Argentina, Tanzania and elsewhere after failing to deliver promised improvements. Against this background is a growing awareness that public water operators, responsible for over 90% of water supply world-wide, deserve support. Improvement and expansion of public water delivery should be considered key to the delivering the Millennium Development Goals. Particularly in Latin America new public sector models are under development in cities where large parts of the population lack access to clean water and adequate sanitation. A defining feature is that these are partnerships in which there is no for-profit private sector involvement. This is a significant shift from what was happening in international forums on water issues a few years ago, when public water received virtually no mention.

Conclusion
Conflict and co-operation are both common and expressive of a rhetoric in traditional hydropolitics that maintains ambiguity with respect to the rights and duties of countries that share water resources. The same rhetoric can be used to determine the relationship between two trends with regard to new challenges that are arising from water scarcity at the global level: a democratic, transparent, human rights-oriented policy from below, which is primarily espoused by civil society; and an efficient, scientific, market-oriented policy from above, that is, primarily, the work of leading economic actors. The ability of these two levels of interest to co-operate, to the extent achieved, would induce a more constructive set of ideas about how to shape and implement future global water policy.

These two different conceptualisations of water policy are also illustrative of how various global issues can be defined, theorised and interpreted in our time of economic globalisation. If globalisation is the inevitable future of the world, we must ask how this phenomenon can be shaped to ensure that socially, economically and politically powerless groups will be benefited by current trends and empowered to establish a just and humane global order. Flexible implementation at the local level, taking account of the social, economic and geographical conditions of each particular case is a necessary first step to achieving a satisfactory global water policy. The attractiveness of this idea arises, in part, from its capacity to embrace the social, economic and cultural diversity of people on the one hand, and geographical, environmental and climatic variations of water resources on the other. This flexibility allows us to identify the diverse needs of each region in relation to water availability and to consider the economic ability of communities to offer different solutions. For instance, in some settings, especially in the developed world, one of the major water consumers, agro-businesses, should be subjected to a neoliberal private sector solution, paying for water as a commodity. In contrast, the water needs of small farmers and the adequacy of the drinking water supply for the developing world should be treated as a public good accessible for all. Social justice should work to reduce existing
inequality, which would help manage scarce and vital resources of water in a more equitable manner.

In March 2006 the world’s major water companies, environmentalists, academics, local authorities, global bodies, international banks and unions, and farmers met to discuss the world’s water problems. They did so in Mexico City—a city where over 20 million people live, built on an ancient lake that has been drained, whose underground aquifers are now collapsing. The UN has declared that water quality is declining in most regions; by 2030 some two billion people will live in illegal squatter settlements and slums without access to water. At this rate of progress, ‘access to clean water cannot be guaranteed until beyond 2050 in Africa, 2025 in Asia and 2040 in Latin America and the Caribbean’.26

Who to blame for the failure? Large institutions, states and international companies that have the money, or access to it, but have failed to target the poor. A report by the UK charity WaterAid, to mark World Water Day on 21 March, shows that 61% of the EU’s international aid earmarked for water and sanitation goes to comparatively wealthy countries.27 Global water companies are also blamed. New analysis by the UN shows that water privatisation has gone into reverse, with private sector investment in water services declining, and that many companies have begun withdrawing in poor countries because of high political and financial risks. It is now almost impossible to work in Latin America or Africa, and water companies are concentrating on China, India and Eastern Europe.

Meanwhile, research by the World Bank and others demonstrates that the public sector is not always incapable of providing clean water. It still provides water for 90% of the world. The public sector is in many countries reforming itself, gaining confidence and learning how to raise the money and stand up to international pressure. Cities such as Recife in Brazil and Bogota in Colombia have persuaded the World Bank to make loans for public service expansion, something inconceivable 10 years ago. Others, including Lagos in Nigeria, are working with private companies, but on their own terms. The political mood is swinging back to the public sector, and at some point international donors, banks and governments will recognise that clean water is a human right.

Notes
3 Freedom of navigation on the Congo River, for example, was agreed upon at the Congress of Berlin in 1885.
8 The only main exception occurred in 1931 in relation to China. The Yangtze River flooded catastrophically, killing some 140,000 people in one of the worst river disasters of modern history. A combination of political, economic and humanitarian considerations in Europe led the League to send large-scale help to China in the form of disease control and food and, more importantly, assistance in the establishment of water conservancy programme. This undertaking was the most substantial League attempt to respond to a challenge that was related to the management of water resources.
10 Among 261 international river basins, 148 are shared by two countries, 30 by three, nine by four, and 13 by five or more countries.
11 The Nile Rivers Basin, Jordan River Basin, Euphrates and Tigris Rivers Basins are the major sites of water conflict among riparian countries.
12 In a comprehensive study on this issue, a table of international agreements containing substantive provisions concerning pollution of international watercourses in this period indicates that 81 of the 88 treaties are among European and North American countries. JG Lammers, Pollution on International Watercourses, Boston: Kluwer Law International, 1984.
16 For detailed information on the UN Convention see Elver, Peaceful Uses of International Rivers, pp. 161–222.
17 www.johannesburgsummit.org.
21 ICSID, created in 1966, is a mechanism of the World Bank that provides conciliation and arbitration in disputes between countries and investors who are World Bank members.
24 Nevertheless, the borderless world of telecommunications technology is seen as a threat by some governments. China, for instance, has attempted to develop an internet system that controls domestic access and monitors incoming material. Most experts believe that such a system of regulation cannot work, as access to information is in the end impossible to control.
27 Ibid.