

Is the European Union (EU) on the frontline of global water diplomacy? - Promoting access to clean water as a human right.

Introduction

Access to clean water is of fundamental importance but also a global challenge. How can the EU fulfill its role as a promoter of human rights and sustainable development in water access? This paper will emphasize the importance of water as a human right and what the proactive role of the EU is in this global challenge. It covers how the EU's commitment to promoting fundamental human rights, particularly the right to safe drinking water worldwide, is reflected through its foreign policy and international partnerships. It will also analyze challenges and successes in realizing this right in different contexts and possible ways for the EU to further strengthen its role and leadership in this area.

Background: According to the World Health Organization (WHO) and UNICEF (2023), In 2022, 2.2 billion people still lack access to safely managed drinking water services, and 2 billion people reside in countries grappling with high water stress, illustrating the widespread nature of this crisis. The United Nations (UN) reported in 2019 that 90 percent of natural disasters are weather-related, encompassing floods and droughts, further exacerbating the water crisis. A concerning statistic from UN-Water in 2018 reveals that 80 percent of wastewater flows back into the ecosystem without proper treatment or reuse. Given the complexity of these dynamics, addressing the global water crisis requires a comprehensive strategy. [1]

Water is essential for human survival, so access to safe drinking water should be a fundamental human right. This is because access to clean and safe drinking water is directly linked to many other human rights, such as health, life, food, and an adequate standard of living.

Relevance for the EU: Clean drinking water is essential for the health and well-being of the general population, and water pollution or scarcity can have significant socio-economic costs. The issue's importance is also emphasized by the European citizens' initiative "Right2Water", supported by 1.6 million Europeans. The EU must, of course, respond to this. [2]

However, this is not the only reason why water should be a human right. The EU has a humanitarian responsibility to ensure every individual has access to clean water, as it directly impacts their right to life and dignity. The EU is dedicated to promoting and safeguarding human rights, and providing clean water is crucial to this commitment. Additionally, lack of access to clean water can lead to various health issues, including waterborne diseases. Promoting access to clean water can improve public health and reduce the spread of disease.

The EU aims to be a global leader and is committed to multilateral cooperation. To achieve this, working towards water rights in Europe and globally is essential. The EU's commitment to global solidarity and cooperation is demonstrated by promoting access to clean water at an international level. This also highlights the international collaboration and leadership role. Environmental protection and sustainability are also crucial in this regard. The EU is dedicated to promoting sustainable development

goals. The sustainable use of water resources is essential for reducing environmental impacts and ensuring the long-term availability of clean water.

In the interests of global justice, the most marginalized groups in developing countries, in particular, should benefit from new policy measures on water access. The EU Parliament, therefore, calls on the EU and its Member States to provide further consideration to the issue of water access and sanitation in multilateral negotiations. Water management should prioritize ecological interests in the future, and practices should be subject to an environmental impact or human rights assessment. Access to water also affects children and their education. Reductions in time spent collecting water benefit school attendance, particularly for girls. Enabling young women and girls to aspire to more than just collecting water contributes to women's empowerment. Access to safe water gives children time for school and the opportunity for a better future. [3] [4]

It is advisable to consider a sustainable solution early on to prevent national conflicts arising from the water crisis. The following section explains this in more detail. This is especially important in regions where water is a limited resource. By promoting water diplomacy, the EU can help prevent conflicts and promote peaceful cooperation in using shared water resources.

Current legal framework

Human rights refer to the relationship between a state and its citizens, encompassing all private individuals subject to state order, regardless of nationality. These rights are primarily subject to national law, with international declarations and binding covenants establishing these rights, emerging in the second half of the 20th century after the Second World War.

Recognition within the EU: The European Convention on Human Rights of 1950 (ECHR) is widely regarded as the first successful international treaty in which states have committed themselves to respect the human rights of the people under their rule. This treaty has been instrumental in promoting and protecting human rights across Europe and beyond. (ECHR, 1950)

International recognition: The UN recognized water as a human right on 28.07. 2010 through Resolution 64/292. This paved the way for the EU to adapt its water policies and measures, making access to water and sanitation a human right.

“All peoples, whatever their stage of development and social and economic conditions, have the right to have access to drinking water in quantities and of a quality equal to their basic needs.” (UN Resolution 64/292, 2010)

Worldwide water rights are not universally recognized as fundamental rights but are explicitly guaranteed in the constitutions of a few countries. The constitution of Uganda, since 1995, states that all Ugandans have the right to access education, health services, clean water, shelter, clothing, food, security, and retirement benefits. Similarly, the constitution of South Africa, since 1996, guarantees everyone the right to access sufficient food and water. Other countries with comparable guarantees include Ecuador (1998), Uruguay (2004), Nicaragua (2005), and the Republic of the Congo (2006).

However, not all countries have effective mechanisms to enforce the right to water and sanitation at the national level, and some may face challenges such as lack of resources, political will, or public awareness. In these situations, individuals or groups may seek recourse to regional or international human rights bodies, such as the African Commission on Human and Peoples' Rights, the Inter-American Commission on Human Rights, or the UN Committee on Economic, Social, and Cultural Rights. These bodies can receive complaints, issue decisions or recommendations, and monitor states' compliance with their obligations under the relevant human rights treaties.

In general, the enforcement of the human right to water against the state can be achieved through national and international law. At the national level, violations can be addressed if a country's constitution or law explicitly includes water rights. For example, complaints of exclusion from water supply in South Africa have been successfully challenged. The right to water and sanitation is derived from the right to an adequate standard of living, which is recognized in several international human rights treaties, such as the International Covenant on Economic, Social, and Cultural Rights (ICESCR, 1966). Additionally, the Constitutional Court of Botswana has declared the eviction of indigenous people from their traditional water sources to be unconstitutional. However, even if national law does not explicitly recognize water rights, a state party to a covenant can still be held accountable in national courts for violating articles 11 and 12 of the ICESCR, depending on the extent to which international law is binding within national law. Articles 11 and 12 of the ICESCR acknowledge the right to an adequate standard of living, which encompasses the right to sufficient food, clothing, housing, and the right to the highest attainable standard of health. At the international level, however, there is no court to which Covenant violations can be brought. [5]

The Response of the EU to the UN Resolution: The EU's response to the UN Water Resolution has been positive, as it is committed to promoting the human right to safe drinking water and sanitation. Efforts are underway to intensify cooperation with the UN and the international community to combat global water poverty and ensure adequate sanitation for all. The EU has responded to the UN Water Resolution by taking action to promote access to safe drinking water and sanitation as a human right in the external dimension. This means that water policy is primarily governed by international agreements, resolutions, and human rights frameworks, with secondary legislation at national or regional level playing a role in the implementation and enforcement of these policies. The EU has adapted its water policies and actions to promote the right to water and sanitation in cooperation with international partners and organizations to address the global water crisis. The EU emphasizes the importance of access to water in the face of challenges such as the COVID-19 pandemic, natural disasters related to climate change and the deterioration of water quality due to pollution. [6]

The EU has established standards to safeguard water resources, enhance water quality, and guarantee access to clean water for its member states through legislation and initiatives like the Water Framework Directive (WFD) 2000/60/EC and the Drinking Water Regulations. At the international level, the EU is dedicated to promoting sustainable water management and access to clean water globally through its foreign and development policy. This section covers financial support, technical cooperation, and the integration of water issues into trade agreements and partnerships with third countries.

Although the EU is a leader in many areas, there is also criticism regarding the effectiveness and scope of its policies and measures outside its borders, as well as the implementation of its standards within member states of early spring 2023, Europe is facing a significant drought, which has resulted in the depletion of a crucial reservoir that supplies water to millions of Catalans in Spain. Unfortunately, this drought also led to a water dispute and conflicts in France, where several villages could not provide their residents with tap water. More than a quarter of the European Continent was in drought in April 2023. The water stress also leads to severe impacts on crops and vegetation. According to the European Drought Observatory, in June 2023 the Baltic Sea regions, Scandinavia, the UK, Ireland, and Germany, concerns were raised for crop growth due to a more recent meteorological drought. [7]

The global water crisis presents challenges such as water scarcity, pollution, and the effects of climate change. The international community, including the EU, must continue to increase its commitment to address this crisis. This includes responding to the UN Resolution to promote the right to water and sanitation and collaborating with international partners and organizations. What actions has the EU taken in response to this resolution, and how is it working towards addressing the global water crisis?

Citizens' initiative: The first European citizens' initiative, "Water is a human right" or "right2water", was signed by over 1,6 million European citizens, with the majority from Germany (1.38 million). The initiative aims to prevent water from being treated as a commodity. It raises concerns about the potential commercialization of water management, which could result in the common good of drinking water being controlled by corporations. The citizens' initiative proposes a legal provision stating that water should not be treated as a commercial product. [6] [4]

Communication from the Commission of 19.03.2014 on the European Citizens' Initiative: "Water and sanitation are a human right! Water is a public good, not a commodity" (Com 2014/ 0177). On 01.02.2018, the European Commission (EC) presented its legislative proposal to revise the EU Drinking Water Directive (98/83/EC) in response to the successful European citizens' initiative 'Right2Water'. [6]

On 16.12.2020, the recast of the Directives on the quality of water intended for human consumption (Drinking Water Directive (DWD) (EU) 2020/2184), a revision of the previous Drinking Water Directive (98/83/EC), was adopted. The new directive updates the quality standards for drinking water, strengthens consumer information, and promotes access to drinking water for all.

The new DWD came into force on 12.01.2021 and must be transposed into national law by 12.01.2023. Implementation will take place via a comprehensive amendment to the Drinking Water Ordinance under the leadership of the Federal Ministry of Health in close coordination with the federal states.

Evaluation of the current situation: While this directive, adopted in 2020, is seen as a step in the right direction and has incorporated some of the citizens' initiative's demands, it was only with the recent resolution adopted by the EU Parliament that water has been officially recognized as a human right at the EU level.

The EU's formal recognition of the human right to water is not yet in place. However, the language used in the treaty on the functioning of the EU can be interpreted in different ways. It is worth noting that the EU has responded to the United Nations'

recognition of this right by adjusting its water policy, which is now regulated by secondary law. “While regulated by secondary law, the water right has not been expressly recognized in the treaty on the functioning of the EU.” [8]

The table below summarizes how the WFD and some DWD laws and guidelines regulate water:

Laws and Guidelines	Brief description
EU Water Framework Directive (WFD) (2000/60/EG)	<ul style="list-style-type: none"> • Establishment of environmental objectives for surface waters and groundwater • Sets targets for water quality and river basin management • The plan aims to develop river basin management plans with public involvement to achieve objectives by 2015, with exceptions by 2027 • Cyclical revision of river basin management plans (every 6 years)
Drinking Water Directive (DWD) (EU) 2020/2184	<ul style="list-style-type: none"> • Sets standards for the quality of water for human consumption • Emphasizes the need for safe and clean drinking water • Protect human health by ensuring the quality of water intended for human consumption • Ensure that drinking water quality is controlled through standards based on the latest scientific evidence • Secure efficient and effective monitoring, assessment, and enforcement of drinking water quality • Provide Europeans with adequate, timely, and appropriate information and improve access to water intended for human consumption

The European Union recognizes the importance of access to clean water, especially the right to life, as water is essential for agriculture and obtaining resources to sustain human life and dignity. Providing safe drinking water and sanitation is a fundamental human right in promoting social and environmental justice. Progress in this area could potentially be achieved through a higher prioritization of policies, improved implementation and monitoring of policies, more efficient financing, increased accountability, and public participation. These measures may have a particular impact on the most marginalized groups, especially in developing countries. [6]

Global water crisis and EU foreign policy: The global water crisis is a multifaceted challenge that affects the environment, economy, and human health worldwide. It is primarily characterized by water scarcity, which is intensifying in some regions due to natural disasters such as droughts and climate change. Simultaneously, rising pollution

from industrial effluents, agricultural chemicals, and improper waste disposal is impacting water quality.

The lack of adequate sanitation is a significant aspect of the global water crisis, promoting hygiene problems and spreading disease. This challenge is worsened by the unavailability of clean water for millions of people. Climate change contributes to the water crisis by affecting availability and distribution, leading to extreme weather events such as droughts and floods.

Population growth and urbanization are also increasing pressure on water resources. The demand for water for drinking, agriculture, industry, and energy production is an additional burden. However, these challenges are unevenly distributed, with socio-economic inequalities affecting access to water.

The Impact of the Water Crisis: The water crisis significantly impacts health, education, and economic development. The lack of access to clean water can lead to health problems, impede educational opportunities (especially for girls), and hinder economic growth in affected communities. Climate change and population growth exacerbate the global water crisis. Weather-related natural disasters like droughts and floods can worsen the situation. Furthermore, the increasing global population is straining water resources. The EU is a major global player in tackling the water crisis through its foreign policy and international cooperation. The EU promotes sustainable water management, enhances sanitation, and facilitates global access to clean water through diplomatic initiatives, strategic partnerships, and financial support. This highlights its commitment to international values and a just multilateral order.

Grievances: Water privatization and public protests: In some EU countries, there have been public protests and debates regarding the privatization of water supplies. This has brought attention to the tension between economic interests and water rights.

The EU's regulation of large multinational companies, such as Nestlé, regarding their use and ownership of water resources has raised concerns about sustainability, human rights, and regulation. Some argue that the EU and its member states could have implemented stricter measures and rules to regulate water extraction by these companies and to safeguard access to water as a human right.

Nestlé, a multinational corporation, has acquired water rights from state water authorities worldwide to extract and sell purified bottled water under its 'Nestlé Pure Life' brand. The company's 'Nestlé Waters' division operates in 34 countries, including areas with water scarcity, such as Southern Africa, Pakistan, and Ethiopia. Some have expressed concerns that Nestlé's activities may have an impact on water availability in these regions. In South Africa, where a severe drought has caused a water crisis, Nestlé operates eleven sites. It is important to acknowledge the complexity of the situation and the need for collaboration among all stakeholders to ensure access to safe and sustainable water sources for all. Nestlé sells its 'Pure Life' water in plastic bottles for one euro, while asserting the sustainability of its water sourcing and rejecting claims of water privatization. According to the company's website, it has received an award from the aid organization Oxfam, which confirms its dedication to responsible water management. In 2018, Nestlé's water products generated sales of 7.878 billion Swiss francs (approximately 6.9 billion euros), which accounts for more than one-twelfth of the total sales that rose by 2 % to 91.4 billion Swiss francs in the same year.

The increase in Nestlé Waters' sales was mainly due to higher selling prices. As per the press release, Nestlé increased prices by 2.7 % in 2018. [9]

The debate surrounding the EU's responsibility to regulate large multinational corporations like Nestlé, specifically regarding water resources, is a complex issue that raises significant concerns about sustainability, human rights, and regulation. However, it is essential to note that the EU and its member states have implemented measures and regulations to oversee water extraction by these corporations and safeguard access to water as a fundamental human right. While some critics argue that these measures should be stricter, it is essential to acknowledge the efforts made by the EU to address this issue.

Challenges: One of the biggest challenges is balancing promoting economic activities and ensuring sustainability without harming the environment or human rights. While strict regulations may be necessary to protect the environment, they should be implemented in a way that does not harm the competitiveness of European companies. To achieve a balanced approach, environmental protection, and economic competitiveness must be considered. The EU recognizes the importance of respecting the limits of its legal authority, especially when it comes to activities beyond its borders.

When regulating companies such as Nestlé and their use of water resources, the EU needs to consider its legal scope. It is crucial to consider the actual situation and seek diplomatic resolutions. Diplomatic solutions that consider the situation's reality must be found. Developing appropriate regulations and measures acceptable to all stakeholders can be challenging. As discussed, finding mutually agreeable rules and measures can be a difficult task. While such measures can improve the availability of well-treated water, limiting access to clean drinking water is also risky.

Possible solution: In the water sector, investors present opportunities and challenges. A confident and diplomatic solution to address this is to establish a maximum profit threshold. Any profits exceeding this threshold should be invested in expanding infrastructure. Furthermore, any price reductions should be passed on to customers to ensure fair distribution of benefits. This approach can create a mutually beneficial situation for all parties involved. It is crucial to balance protecting customers from monopolistic exploitation and ensuring that investors can make a reasonable profit to continue providing water in remote regions. While exercising caution about state-owned circumstances, avoiding exclusively paying out earnings to senior executives is essential. It is crucial for the EU to regularly review and adjust its legislation to ensure the protection and sustainable use of water resources while also aligning with the human right to water. This approach will help to foster a cooperative atmosphere and showcase the EU's competence and expertise in this area.

An alternative response to growing concerns about water privatization and multinational corporations, particularly in vulnerable regions such as Africa, is to strengthen the role of government institutions and regulatory bodies. This approach aims to ensure transparency, accountability, and effective regulation of water resources. To promote compliance, it is essential to establish regulatory bodies with strong enforcement capabilities. This approach ensures that regulations are not only in place but are also rigorously implemented. Additionally, it is crucial to address corruption risks within regulatory bodies. Anti-corruption measures, such as regular audits, whistleblower protection, and severe penalties for corrupt practices, should be implemented to maintain the integrity of the regulatory system. Collaboration with

independent organizations and civil society can be a valuable tool to ensure integrity in the regulatory process. This proposal emphasizes the crucial role of the rule of law in governing water resources, promoting sustainable practices, and mitigating corruption risks. It aims to address the specific challenges faced by African countries and their legal systems with confidence and determination.

Implementation and regulations: The EU could introduce specific guidelines or limits on groundwater abstraction by companies to prevent over-exploitation and environmental damage. To avoid groundwater scarcity (in addition to the existing DWD and WFD).

As many of the challenges faced by global companies are transboundary, the EU could use its role in international fora to promote global standards and agreements that strengthen the protection of water resources. The European Union additionally could also encourage companies to adopt sustainable practices in using water resources, including water-saving and recycling technologies.

The debate around companies such as Nestlé and the use of water resources shows the complexity of developing appropriate rules and policies. The EU must continue to review and adapt its legislation to ensure that the protection and sustainable use of water resources align with the human right to water.

On 5.10.2022, the EU Parliament adopted a resolution reaffirming the right to safe drinking water and sanitation as a human right. However, many EU member states, including Austria, abstained from voting on this provision. The citizens' initiative "right2water" has played a crucial role in pushing for concrete EU legislative acts, particularly the Drinking Water Directive, which establishes quality standards for drinking water and promotes access to clean water. [4]

Conclusion: The European Union plays a crucial role in global water diplomacy and advocates for access to clean water as a basic human right. This paper highlights the complex nature of the global water crisis, which requires a combination of legal frameworks, international cooperation, and proactive policies. Despite positive steps and adjustments made to water policies following the UN Resolution, the formal implementation of water as a fundamental human right is still pending. The recent conflicts in Europe related to drought highlight the urgency of effective water management, both within member states and beyond. While the EU's efforts to regulate water extraction by corporations and safeguard water access as a human right are acknowledged, there is still room for improvement. The citizens' initiative 'right2water' has played a significant role in shaping EU legislative acts, particularly the Drinking Water Directive. The EU should continue to refine its legislation, foster global cooperation, and align policies with the human right to water. This requires constant adaptation, periodic reviews, and an unwavering commitment to a sustainable water future that transcends borders, ensuring access to clean water for all. The EU is well-positioned to lead global water diplomacy and advocate for a cause that is vital to the well-being and dignity of every individual. Although the formal recognition of water as a human right is still pending, we must continue our journey towards a water-secure world.

Bibliography

- [1] UNITED NATIONS: *Water | United Nations*. URL <https://www.un.org/en/global-issues/water>. – Aktualisierungsdatum: 2024-03-08 – Überprüfungsdatum 2024-03-08
- [2] EUROPEAN COMMISSION: *Saubereres Trinkwasser für alle Europäer: Fragen und Antworten*. 01.02.2018. URL https://ec.europa.eu/commission/presscorner/detail/de/MEMO_18_430
- [3] WATER.ORG: *Why Clean Water is Essential | Water.org*. URL <https://water.org/about-us/why-water/>. – Aktualisierungsdatum: 2024-03-06 – Überprüfungsdatum 2024-03-07
- [4] AKEUROPA: *Zugang zu Wasser als Menschenrecht*. URL <https://www.akeuropa.eu/de/zugang-zu-wasser-als-menschenrecht>. – Aktualisierungsdatum: 2024-03-03 – Überprüfungsdatum 2024-03-07
- [5] MBAZIRA, Christopher: Land Grabbing, Extraterritorial Obligations and the Failure of Justice in Uganda: The Mubende Case. In: LILIAN, Chenwi; TAKELE SOBOKA, Bulto (Hrsg.): *Extraterritorial human rights obligations from an African perspective* : Intersentia, uuuu-uuuu, S. 231–254
- [6] PUBLICATIONS OFFICE OF THE EUROPEAN UNION: *Access to water as a human right - the external dimension : European Parliament resolution of 5 October 2022 on access to water as a human right - the external dimension (2022)*, Volume 66. URL <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C:2023:132:FULL>
- [7] TORETI, A. ; BAVERA, D. ; ACOSTA NAVARRO, J. ; P, Barbosa ; JAGER, A. de ; FIORAVANTI, G. ; HRASST ESSENFELDER, A. ; MAETENS, W. ; MASANTE, D. ; MAGNI, D. ; ARIAS MUÑOZ, C. ; DI CIOLLO, C. ; MAZZESCHI, M. ; ROSSI, L. ; SALAMON, P. ; AVANZI, F. ; FERRARIS, L. ; GABELLANI, S. ; GRIMALDI, S. ; ISABELLON, M. ; JONAS, T. ; MCCORMICK, N.: *Drought in Europe : June 2023 : GDO analytical report*. Luxembourg : Publications Office of the European Union, 2023 (EUR 31607)
- [8] BENÖHR, I.: *The Right to Water and Sustainable Consumption in EU Law*. In: *Journal of Consumer Policy* 46 (2023), Nr. 1, S. 53–77
- [9] HANDELSBLATT: *Nestlé-Kritik & Wasser-Skandal: Was ist so schlimm an Nestlé?* In: *Handelsblatt* (2019-10-05)