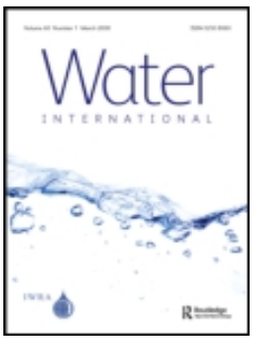

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# A new human rights-based approach to the UN Watercourses Convention

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The UN Secretary-General's Advisory Board on Water and Sanitation calls on governments to ratify and implement the 1997 UN Watercourses Convention (UNWC) in accordance with Target 7C of the Millennium Development Goals concerning the provision of sufficient water to sustain human life. This call makes clear the dynamic interaction between two different legal regimes: human rights and international water law. With a view to enhancing the interaction between these two regimes, this paper proposes a new human rights–based approach to the interpretation of UNWC founded upon a state's positive obligations.

**Keywords:** human rights; international law; right to water; positive obligations

## Introduction

This paper proposes a fresh, human rights–based approach to the interpretation of the 1997 UN Convention on the Law of the Non-navigational Uses of International Watercourses (UN Watercourses Convention, or UNWC) (UNWC, 1997). In so doing, and from a background of general rules and principles of international law, emphasis is placed on a state's positive obligations within two different legal regimes, i.e. human rights law and international water law. A dual focus on these two different legal regimes is possible due to a dynamic interpretation of the UNWC – i.e., a predominantly horizontal state-to-state regime – and its interplay with human rights law, i.e,. a vertical state *vis-á-vis* individual regime.

The need to analyze the relationship between the UNWC and human rights law has recently come to the fore due to an important normative development which has taken place at the global level. On 3 August 2010, the UN General Assembly adopted a resolution on The Human Right to Water and Sanitation by a vote of 122 in favour to none against, with 41 abstentions (UNGA, 2010b). Pursuant to this resolution, the General Assembly "recognizes the right to safe and clean drinking water and sanitation as a human right that is essential for the full enjoyment of life and all human rights" (UNGA, 2010b, para. 1) and "calls upon states and international organizations to provide financial resources, capacity-building and technology transfer, through international assistance and cooperation, in particular to developing countries, in order to scale up efforts to provide safe, clean, accessible and affordable drinking water and sanitation for all" (UNGA, 2010b, para. 2).

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Additionally, in accordance with the UNWC general principles of equitable and reasonable utilization and participation, Article 10(2) provides for special regard to be given to "the requirements of vital human needs" (UNWC, 1997) in the event of any conflict over use of an international watercourse. It could therefore be maintained that the UNWC requires states to refrain from any actions that interfere, directly or indirectly, with another country's enjoyment of its right to water. Article 10(2) is therefore the closest the UNWC comes to an explicit reference to a human right to water, and the protection of sufficient water to sustain vital human needs, including drinking and essential food production.

In light of the connection between Article 10(2) and the recent recognition of the right to water as a human right, this paper argues that the positive obligation on a state is a key element when applying a human rights–based approach to the UNWC. Such an approach is not free from difficulties, however. For example, there is a risk of conflicting and incompatible rule-systems and institutional practices between the human rights regime and international water law, i.e. the fragmentation of international law – although fragmentation also has benefits. As observed by the International Law Commission (ILC) Study Group on Fragmentation, international law "was always relatively fragmented due to the diversity of national legal systems that participated in it" (ILC Report, 2006, para. 16). Fragmentation is the natural background of a regime's dialogue, and reflects the vitality and synergy of international trends, including – as will be argued in this paper – towards the implementation of a new human rights–based approach to the legal governance of international watercourses.

In placing special attention on the key concept of a state's "positive obligations", this paper firstly clarifies what that means and how it supersedes other legal categories of human rights obligations, whilst simultaneously looking at the structural dialogue between human rights and international water law. Secondly, the paper focuses on the special relevance of how a human rights dimension of the UNWC works in harmony with the positive obligations on state parties to ensure vital human needs within and beyond the scope of the second paragraph of Article 10(2).

## Human rights: overcoming the classic dichotomy between positive and negative obligations

The legal system of human rights includes a broad spectrum of obligations, binding upon states both "positively" and "negatively". This "positive/negative" classification is derived from the traditional division between the first generation of rights – namely civil and political rights, which confer a prohibitive (or negative) obligation upon states not to interfere with the enjoyment of such rights – as against the second generation of rights (namely economic, social and cultural rights), which confer a positive obligation on states to implement the necessary measures so as to guarantee certain rights. Therefore, the first category of rights will be violated by an action of a state to the contrary, whereas the second is violated by a state's failure to act, e.g. by neglecting to legally protect a right under national legislation. In practice, however, it is difficult to determine state responsibility for a breach of an international obligation, which can then also be theoretically classified as "negative" or "positive". It seems more appropriate to say that the protection of human rights requires that a state's behaviour be directed towards "protecting the individual in a real and practical way", regardless of whether such protection requires "positive" or "negative" actions (*Airey v. Ireland*, 1979, para. 26).

An example of the latter approach can be seen in the preamble to the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 (ECHR, 1950), which – by invoking the 1948 Universal Declaration of Human Rights (Universal Declaration, 1948) – crystallizes the resolution of the signatory governments, the members of the Council of Europe, to adopt the first suitable measures to ensure the *collective* guarantee of certain rights enunciated in the Universal Declaration (Preamble, ECHR, 1950). In addition, Articles 1 and 14 of the ECHR recognize, respectively, the *obligation to respect* and *the duty to protect* the rights and freedoms of every person who is subject to their jurisdiction. To this end, in the first inter-state case, *Ireland v. the United Kingdom* of 1979, the European Court of Human Rights stated that:

> Unlike international treaties of the classic kind, the Convention [ECHR] comprises more than mere reciprocal engagements between Contracting States. It creates, over and above a network of mutual, bilateral undertakings, objective obligations which, in the words of the Preamble, benefit from a "*collective enforcement*". . . . The Convention does not merely oblige the higher authorities of the Contracting States to respect for their own part the rights and freedoms it embodies; as is shown by Article 14 . . . and the English text of Article 1 . . . ("*shall secure*"), the Convention also has the consequence that, in order to secure the enjoyment of those rights and freedoms, *those authorities must prevent or remedy any breach at subordinate levels*. (*Ireland v. the United Kingdom*, 1979, para. 239, emphasis added)

It is no coincidence that Article 1 of the American Convention on Human Rights of 1969 (American Convention, 1969), adopted 19 years after the ECHR, conferred the duties on state parties *to respect* the rights and acknowledged liberties which it had recognized therein, and *to guarantee* the free and full exercise of those rights and liberties to all persons within its jurisdiction. However, in contrast to the ECHR, the American Convention of 1969 prescribed standards, in explicit terms, for the effect of its application on national systems. Article 2 accordingly states that "when the exercise of one of the rights or liberties mentioned in Article 1 is not guaranteed by law or other internal mechanism, each state is obliged to adopt, in accordance with their respective constitutional procedures and the rules of this convention, the measures, legislative or otherwise, required to give effect to the aforementioned rights and liberties" (American Convention, 1969).

As well as addressing the classical dichotomy between negative obligations to respect human rights and the positive obligations of guaranteeing their actual enjoyment, the Inter-American Commission of Human Rights and the Inter-American Court of Human Rights have, from the beginning of their work, identified three different types of state obligations: the obligation to abstain from violations of the rights recognized in the American Convention of 1969; the obligation to prevent violations by the states and by non-state actors; and finally, the obligation to carry out investigations for the ascertainment of facts and the consequent punishment of the perpetrators (state and non-state actors) of human rights violations.[1]

Similarly, at the international level, Article 2 of the 1966 International Covenant on Civil and Political Rights (UNHRC, 1981) says that each of the states party to the covenant undertake to respect and ensure the rights recognized in the covenant to all individuals who find themselves within its territory and who are subject to its jurisdiction.[2]

Moreover, Article 2 of the International Covenant on Economic, Social and Cultural Rights (ICESCR, 1966) reaffirms that "Each State Party to the present Covenant undertakes to take steps [. . .], with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures". For its part, the Committee on Economic, Social and

Cultural Rights (CESCR) ranks state's obligations into three different categories, i.e. those which *respect, protect or fulfil human rights*.[3]

Making a brief reference to the doctrine and other auxiliary sources, Koch observes that: "although the CESCR has done a tremendous job in explaining the obligations of State Parties, a reading of the General Comments show how difficult it is to fit a certain obligatory measure into the tripartite typology" (2005, p. 98) – i.e. state obligations to respect, protect and fulfil human rights. On the other hand, Pisillo Mazzeschi (2008) divides the obligations of the states in the area of human rights into three different categories: the obligations of *result*; the obligations of *due diligence*; and those of *progressive realization*. The current UN Secretary-General's Special Rapporteur for Business and Human Rights, J. Ruggie, makes reference to another trilogy: *protect*, *respect*, and *remedy* (UNGA, 2010a). Having examined different interpretations, one may conclude, in the words of Shue, that "Typologies are ladders to be climbed and left behind, not monuments to be caressed or polished. . . . Thus, there is no ultimate significance in the form, how many kinds of duties are involved in honoring rights? Three? Four? A dozen? Waldron is closer to the mark in saying 'successive waves of duties'" (1996, p. 160). In accordance with these "successive waves of duties", and beyond the classical dichotomy and different trilogies of human rights obligations, the classic negative obligation of respect for human rights can be re-qualified in general terms as a compulsory positive state action toward the actual observance of human rights, where the effectiveness depends on many variables that are presented by the circumstances of the case law.

## Regime dialogue: the interaction between human rights and water

States enjoy a wide margin of discretion in determining the measures to be taken to ensure the effective respect for human rights under international law. In addition, international law performs, or at least should perform, its function of continuous adaptation to a community in constant evolution, where the catalogue of human rights is an open one (Alston & Cassese, 2003). "New" human rights may be created in addition to established ones through the widening of the instruments that proclaim them or, independent of these, in the development of case law, general comments and notes by relevant bodies that interpret rights in light of "current conditions" (*Airey v. Ireland*, 1979, para. 26). It is therefore possible to conclude that human rights are dynamic. They may be gradually recognized according to the needs of the given historical moment, rather than all being born at once. Furthermore, once born, rights do not necessarily last forever (Bobbio, 1990). A recent example of a "new" right is that of the right to water, declared to be "a human right essential to the full enjoyment of life and of all human rights" by the UN General Assembly in August 2010 (UNGA, 2010b, para. 67).

Amongst the major contributions that were made during the long years of debate on whether the right to water is a human right, the one made by the CESCR holds particular importance. In 2002, in light of the general obligations on states towards the progressive realization of the rights recognized in the ICESCR, the CESCR declared that:

> States Parties have a constant and continuing duty under the Covenant to move as expeditiously and effectively as possible *towards the full realization of the right to water*. Realization of the right *should be feasible and practicable, since all States parties exercise control over a broad range of resources, including water*, technology, financial resources and international assistance, as with all other rights in the Covenant. (UNHCHR, 2003, para. 18, emphasis added)

A few years later, in 2005, a report by Special Rapporteur El Hadji Guissé emphasized that "States should progressively ensure that everyone has access to water and sanitation services and that these services are equitably distributed" (UNECOSOC, 2005, par. 10(1)). He concluded that "States should refrain from interfering with the enjoyment of the right to water and sanitation [also] in other countries and *should prevent individuals and companies under their jurisdiction from taking such action*" (UNECOSOC, 2005, para. 10(1), emphasis added).

Only a few months before the resolution of the UN General Assembly, the Human Rights Council (HRC) published a note that firstly defined the right to water and secondly discussed its meaning at both an individual and collective level, including in relation to vulnerable groups such as indigenous peoples. Finally, the note set out the contents of state obligations with respect to the right, ending with an overview of the content and the meaning of responsibility – at the national, regional and international levels – and the monitoring mechanisms necessary for its verification. In closing, the note reiterated the obligation incumbent upon states to

> ensure everyone's access to a sufficient amount of safe drinking water for personal and domestic uses, defined as water for drinking, personal sanitation, washing of clothes, food preparation, and personal and household hygiene. These obligations also require States to progressively *ensure access* to adequate sanitation, as a fundamental element for human dignity and privacy, but also *to protect* the quality of drinking-water supplies and resources. (UNHCR, 2010, p. 3, emphasis added)

It is noteworthy that the HRC, in this case, mentionded the trilogy set out by the CESCR regarding the responsibility to *respect, protect and fulfil human rights* as opposed to Special Representative J. Ruggie's trilogy, to *protect, respect and remedy*, even though the latter was used in the UNGA's *Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework* (2010a).

While the word *fulfil* denotes an *a priori* obligation on a state to take action to prevent a violation, the word *remedy* denotes an *a posteriori* obligation on a state to repair a breach which has already occurred. Therefore, the obligations to *fulfil* and *remedy* need positive actions by the state, notwithstanding the fact that they have two different, yet complementary, purposes. This subsequently confirms the difficulty of constructing legal categories, often used to compartmentalize the obligations of states into standard negative or positive categorizations. On the contrary, it reaffirms the importance of reaching the ultimate goal, namely the protection of human rights in a real and actual manner, rather than in a theoretical or illusory way (Carrillo Salcedo, 2004).

Apart from theoretical categorizations of human rights obligations, the final goal of realizing the "new" right to water can therefore be achieved by means of positive actions. The conduct of parties to the UNWC might be regulated in a way that secures the protection of watercourses, which in turn guarantees adequate quality of drinking-water supplies and resources for persons under their respective jurisdictions.

As pointed out previously, the resolution of 3 August 2010 adopted by the UN General Assembly recognizes, on a universal level, the importance of an equitable availability of safe, clean drinking water and hygienic sanitation as an integral part of the realization of all human rights. It also underlines the responsibility of all states in the promotion and protection of human rights that are universal, indivisible, interdependent and interconnected and must be processed as a whole in a fair manner and addressed to all on the same level and with the same commitment (UNGA, 2010b).

**The human right to water and the UNWC**

Pursuant to the Millennium Development Goals (MDGs), the international community has committed, *inter alia*, both to halve the number of people without access to safe drinking water and to halve the number of people without access to basic hygienic sanitation by 2015 (MDGs, 2012; Lenton, Wright, & Lewis, 2005). To support achieving these goals, the UN Secretary-General's Advisory Board on Water and Sanitation (UNSGAB) has called on governments to ratify and implement the 1997 UNWC (Loures, Rieu-Clarke, & Vercambre, 2009, p. 16). The UNSGAB clearly identifies the dynamic interaction between two different international *lex specialis* (law governing a specific subject matter) regimes: human rights and international water law.

As early as 1982, Krasner (1983, p. 1) defined regimes as "a set of implicit or explicit principles, norms, and decision-making procedures around which actors' expectations converge in a given area of international relations". The study of international regimes and their interactions is herein addressed in an effort to understand the means and conditions under which states cooperate with one other (Keohane & Nye, 1977). In this sense, the international regimes can be considered communication vehicles for an open international system facilitating, *inter alia*, a "water dialogue". This dialogue takes place mainly through the interplay between the *lex specialis* regimes themselves.[4] The majority of different *lex specialis* regimes within the unified international legal system can engender, through communication and interaction, the natural development of international water law towards effective protection of the human right to water (Conforti, 2007, pp. 5–18; Simma, 1985, pp. 111–136; Simma & Pulkowski, 2006, pp. 483–529).

Indeed, it has to be noted that Article 1(1) of the UNWC includes, within its scope, not only "uses of international watercourses" but also uses "of their waters" (Tanzi & Arcari, 2001, p. 101), and there are no provisions which exclude their use for basic human needs and poverty reduction. On the contrary, the widespread ratification and implementation of the 1997 UNWC is a *conditio sine qua non* (precondition) for effectively securing water, given that there are 263 international watercourses in the world, in which almost 145 countries (and 40% of the world's population) may claim an interest (UN-Water, 2008). Therefore, positive obligations within the context of international cooperation generally require states – particularly states party to the UNWC – to promote the integrated management of international watercourses, including the social consideration and human development elements, as well as to refrain from actions that interfere, directly or indirectly, with the enjoyment of the right to water in other countries.

In accordance with the UNWC's general principles of equitable and reasonable utilization and participation (Arts. 5 and 6, UNWC, 1997), Article 10(2) of the UNWC provides for special regard to be given to "the requirements of vital human needs" (UNWC, 1997) in the event of a conflict in uses of an international watercourse. This provision makes the connection with water and human rights explicit. Although it is true that, from a theoretical point of view, the UNWC does not explicitly recognize a (human) right to water, it does concurrently support the practical application of such a right with respect to water access and sanitation. With this in mind, the following section deals with the human rights approach to the UNWC.

**Positive obligations for ensuring vital human needs within the UNWC**

There have been many discussions about the drafting of the "general principles" of the UNWC, whereby Articles 5 (Equitable and Reasonable Utilization and Participation), 6

(Relevant Factors and Circumstances to Equitable and Reasonable Utilization), and 10 (Relationship between the Different Kinds of Uses) have acquired special relevance in relation to the human rights dimension of the UNWC (Tanzi & Arcari, 2001, pp. 136–140). This relevance can best be appreciated in light of the need to address vital human needs through the use of watercourses (and their waters) "with a view to attaining optimal and sustainable utilization thereof and benefits therefrom, taking into account the interests of the watercourses States concerned, consistent with adequate protection of the watercourses" (Art. 5(1), UNWC, 1997).

It must be specified in fact that Article 5 includes not only the right of a state to utilize the watercourses but also the duty to cooperate in the protection and development thereof (Art. 5(2), UNWC, 1997). Further, the right to utilize and the (positive) duty to cooperate finds greater definition in Article 6, which provides a list of the factors which are relevant to equitable utilization. It is clear from the *travaux preparatoires* (preparatory work) of the ILC that the rationale behind Article 6 is to create guidelines for implementing the principle of equitable and reasonable utilization and participation (ILC, 1994; Tanzi & Arcari, 2001; Arcari, 1996, 1997). In fact, these factors can be defined in general terms and be of a flexible nature so as to be adaptable to the conditions that a case presents. Also, there is no hierarchy between them; and the list of factors is considered open, given that "the wide diversity of international watercourses and of *the human needs they serve* makes it impossible to compile an exhaustive list of factors that may be relevant in individual cases. Some of the factors listed may be relevant in a particular case while others may not be, and still other factors may be relevant which are not contained in the list" (ILC, 1994, p. 232, emphasis added).

It should be stressed that, as can be deduced from the above, international watercourses serve a widely diverse range of human needs, due to factors listed respectively in paragraphs 1(b) and (c), namely "the social and economic needs of the watercourse States concerned" and "the population dependent on the watercourse in each watercourse" (ILC, 1994, pp. 232–233). In the first place, the factor that makes reference to "the social and economic needs of the watercourse States concerned" raises the question of human rights in direct relation to the wording of Article 10(2) of the UNWC. In fact, the latter, in reference to the relationship between different kinds of uses, explicitly recognizes that in instances of conflict between uses of an international watercourse special regard must be given to "the requirements of vital human needs" (Art. 29, UNWC, 1997).[5] The expression "vital human needs" was the subject of several proposals for amendment during the *travaux preparatoires*, such as the one made by Netherlands that proposed to replace it with the alternative expression "drinking water and domestic use of water" (UNWC Proposals by the Netherlands, 1997). After several discussions, it was decided to retain the expression "vital human needs" whilst specifying that it included the need for "sufficient water to sustain human life, including both drinking water and water required for the production of food in order to prevent starvation" (ILC Report, 1994, p. 257; UNWC Report, 1997). It should be pointed out that in the UNWC the direct relationship between social and economic needs and vital needs is located within a context of conflict between uses, whereas the requirements of vital needs and their interpretation may be considered as "an accentuated form of the factor contained in Article 6, paragraph 1(b), which refers to the 'social and economic needs of the watercourse States concerned'" (UNWC Proposals by Finland, 1997).

Secondly, the factor which referred to "the population dependent on the watercourse in each watercourse" (Art. 6(1)(c), UNWC, 1997) found an obvious connection between the question of the uses of water from watercourses related to the new human right to water

and the people within the same jurisdiction. Some proposals attempted, without success, to make even more explicit reference to human rights. Very notable was India's written proposal to add the words "including the vital needs for drinking water and domestic water for food requirements" (UNWC Proposals by India, 1997) at the end of paragraph 1(c) of Article 6 (UNWC, 1997).

Despite the fact that vital human needs do not fit into the logic of the UNWC, which is that of the classic international instrument adopted by states for states rather than for individuals (Carrillo Salcedo, 2002, 2004), it ought not to be forgotten that the issue should be analyzed in the light of other international documents that open the possibility, albeit in an indirect way, of applying a human-based approach to watercourses. Suffice it to say that paragraph 8 of the preamble to the UNWC recalls the principles and the recommendations adopted at the UN's Conference on Environment and Development in Rio de Janeiro, Brazil, in 1992, within the Report of the UN Conference on Environment and Development: Rio Declaration on Environment and Development (Rio Declaration, 1992) and Agenda 21 of the Report of the UN Conference on Environment and Development (Agenda 21, 1992). In this sense, Principle 1 of the Rio Declaration affirms that "human beings are at the centre of concerns for sustainable development" (1992). Hence, the factors relative to social and economic needs (Art. 6(b), UNWC, 1997) are intrinsically linked through the concept of sustainable development, with the general human rights dimension of the UNWC beyond the scope of its application in cases of conflict between uses of waters of international watercourses.

In turn, the factor related to the population dependent on a watercourse (Art. 6(1)(c), UNWC, 1997) also assumes greater prominence, given that Chapter 18 of Agenda 21 (1992) generally states that:

> Water is needed in all aspects of life. The general objective is to make certain that adequate supplies of water of good quality are maintained for the *entire population* of this planet, while preserving the hydrological, biological and chemical functions of ecosystems, adapting human activities within the capacity limits of nature and combating vectors of water-related diseases. (Para. 2, emphasis added)

From this perspective, it should be kept in mind that Article 21(2) of the UNWC (1997) expressly proscribes "the pollution of an international watercourse that may cause significant harm to other watercourse States or to their environment, *including harm to human health or safety*" (emphasis added). Therefore, the protection of an international watercourse must be such as not to allow the endangerment of safe and sufficient water supplies essential to vital human needs.

## Conclusion

A new human rights–based approach to the UNWC allows for the avoidance of the limiting horizontal (state to state) relationship that traditionally governs the UNWC. It moves the UNWC towards a dimension which includes the impact of that logic on state parties and the individuals under their jurisdiction, i.e. a vertical (state to individual) relationship. According to the human rights regime and independently from the aforementioned trilogy set out by the CESCR, to "respect, protect and fulfil human rights" (UNHCHR, 1990), or, by Special Representative Ruggie, "protect, respect and remedy" (UNGA, 2010a), the state has a positive obligation to respect and protect the human right to water, which is essential for the full enjoyment of life and all other human rights.

The recognition of this new human right requires a state party to the UNWC to conduct itself in such a way that vital human needs are taken care of during any application of UNWC. The positive obligation derived from the human rights regime (to "fulfil") requires obligatory *a priori* action by the state to prevent a violation from occurring, even in a case of application of the UNWC and hence not only in cases of conflict between uses from Article 10(2). At the same time, the state is obliged to "remedy" (Art. 10(2), UNWC, 1997) *a posteriori* any breach which has already occurred.

In conclusion, in light of the recent developments concerning the recognition of the right to water as a human right, states now have a positive obligation (due diligence) to ensure vital human needs when implementing the UNWC. Additionally, open dialogue between two autonomous but interdependent regimes, namely that of human rights and that of international water law, is creating a dialectic of developing interactions which replaces the fragmented international law with a cohesive legal domain where the positive obligations on any state provide for a common ground between parties. States not yet party to the UNWC should therefore be urged to ratify it in order to help achieve the MDGs by 2015 and in support of a new human rights–based approach to the UNWC.

## Notes

1. See, *inter alia*, *IACHR Guatemala Case* (1981) and *Velásquez Rodríguez v. Honduras* (1988). Indeed, paragraph 167 affirms that "the obligation to ensure the free and full exercise of human rights is not fulfilled by the existence of a legal system designed to make it possible to comply with this obligation – *it also requires the government to conduct itself* so as to effectively ensure the free and full exercise of human rights" (emphasis added).
2. The Committee on Civil and Political Rights affirms that Article 2 "recognizes, in particular, the implementation does not depend solely on constitutional or legislative enactments, which in themselves are often not *per se* sufficient. The Committee considers it necessary to draw the attention of States Parties to the fact that *the obligation under the Covenant is not confined to the respect of human rights, but that States parties have also undertaken to ensure the enjoyment of these rights to all individuals under their jurisdiction*. This aspect calls for specific activities by the States parties to enable individuals to enjoy their rights. This is obvious in a number of articles . . . , but in principle this undertaking relates to all rights set forth in the Covenant" (UNHRC, 1981, emphasis added).
3. The rationale behind the tripartite human rights obligations may be found in CESCR General Comment No. 3 (UNHCHR, 1990). Specifically, the CESCR affirms that Article 2, paragraph 1, "describes the nature of the general legal obligations undertaken by States parties to the Covenant. Those obligations include both what may be termed (following the work of the International Law Commission) obligations of conduct and obligations of result. While great emphasis has sometimes been placed on the difference between the formulations used in this provision and that contained in the equivalent article 2 of the International Covenant on Civil and Political Rights, it is not always recognized that there are also significant similarities. *In particular, while the Covenant provides for progressive realization and acknowledges the constraints due to the limits of available resources, it also imposes various obligations which are of immediate effect*. . . . *Thus while the full realization of the relevant rights may be achieved progressively, steps towards that goal must be taken within a reasonably short time after the Covenant's entry into force for the States concerned*. Such steps should be deliberate, concrete and targeted as clearly as possible towards meeting the obligations recognized in the Covenant" (UNHCHR, 1990, emphasis added).
4. M. Koskenniemi, chairman of the ILC Study Group on Fragmentation, considered a regime as a "union of rules laying down particular rights, duties and powers and rules having to do with the administration of such rules, including in particular rules for reacting to breaches. When such a regime seeks precedence in regard to the general law, we have a 'self-contained regime', a special case of *lex specialis*" (ILC Study, 2004). See further ILC Report (2006).
5. See Article 29 of the UNWC, which addresses the basic principle of humanitarian law in times of armed conflict: "International watercourses and related installations, facilities and other works

shall enjoy the protection accorded by the principles and rules of international law applicable in international and non-international armed conflict and shall not be used in violation of those principles and rules" (UNWC, 1997).

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