



**United Nations Association in Canada**  
**Association canadienne pour les Nations Unies**

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# **A Human Right to Water**

Summary Report  
of a Seminar jointly organized by  
the United Nations Association in Canada  
and the  
Human Security and Human Rights Bureau,  
Department of Foreign Affairs and International Trade

**Ottawa**  
***March 29 & 30, 2007***

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***Note: The opinions and conclusions expressed herein arise from the discussions during the seminar and do not necessarily represent those of the United Nations Association in Canada, or of the Department of Foreign Affairs and International Trade.***

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*Old City Hall, 111 Sussex Drive  
Algonquin Room  
March 29 & 30, 2007*

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The following report summarizes the presentations and exchanges that took place at a Seminar on the Human Right to Water on Thursday March 29 and Friday, March 30, 2007 at Old City Hall in Ottawa, Canada. With the exception of the Chairs' remarks, Chatham House rules have applied.

The seminar was jointly chaired by Adèle Dion, Director General of the Human Security and Human Rights Bureau, Canada Department of Foreign Affairs and International Trade (DFAIT), and Kathryn White, Executive Director of the United Nations Association in Canada (UNA-Canada)

## **Opening Remarks**

Adèle Dion welcomed the participants, explaining that one objective of the seminar was to bring together non-government organizations, aboriginal representatives, academics, and federal, provincial and territorial representatives to exchange expertise on the issue of the right to water, which has been gaining increasing attention on the international and domestic stage. A second objective was to help the federal government inform its policy development in the area. She indicated that the federal government had begun internal consultations to develop a more comprehensive position.

Kathryn White welcomed the participants on behalf of the UNA-Canada. She drew attention to the background paper that had been made available, *Implementing the Human Right to Water in Canada: A Discussion Paper*, by Lynda Collins of the University of Ottawa Faculty of Common Law. She pointed out that the United Nations Development Programme's *Human Development Report (2006)* emphasized the human right to water, encouraging all countries to recognize this right. She noted that UNA-Canada in addition to its professional staff, is a membership based organization with 17 volunteer branches and contacts across Canada which have also expressed the view that the issue deserves attention.

## **The interpretation of the legal basis for a human right to water**

In the opening discussion session it was noted that the legal basis for a human right to water is not explicit in the International Covenant on Economic, Social and Cultural Rights (ICESCR), nor in any other human rights treaty. It was argued, however, that a human right to water is integrally linked to other protected human rights such as the right to an adequate standard of living (including food and housing), the right to life, the right to health, and the right to education. It was suggested that the listing found in Article 11 of the Covenant on the right of everyone to an adequate standard of living, including “adequate food, clothing and housing, and...the continuous improvement of living conditions”, was not meant to be exhaustive.

There are legal debates on whether the right to water is a self-standing right or derived from other existing protected rights. The speaker suggested that, while these may be interesting legal doctrinal questions, the question of whether the right to water is self-standing or derived from other human rights makes little practical difference to the implications of recognising a right to water. The value-added of recognizing the right is that it would create obligations, as well as mechanisms and processes whereby people may enjoy the right. The speaker also argued that, beyond the legal debate, in practical terms it would be difficult to deny that water is essential to life and a basic human need. Without access to safe drinking water, many other human rights, such as the right to life and the right to food, become academic.

The scope of the right to water was defined as the right to safe drinking water - water for human consumption essential to preserve life or health. (See discussion on General Comment 15 below.) This interpretation of the right to water does not extend beyond basic needs (e.g. to other uses), although a more expansive interpretation could potentially be examined from a human rights perspective.

The speaker went on to provide a detailed explanation of the UN Committee on Economic, Social and Cultural Rights’ General Comment 15 on the right to water (GC15) which was adopted in 2002. GC15 was briefly explained as follows:

- GC 15 is the only authoritative articulation of the right to water that exists today, and it is a non-legally binding interpretation. The right to water is an emerging human right that will be clarified and developed by States over time.
- GC 15 provides that “[t]he human right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses.” (p.2) The right to water aims to ensure “an adequate amount of safe water that is necessary to prevent death from dehydration, to reduce the risk of water-related disease and to provide for consumption, cooking, personal and domestic hygienic requirements.” (Ibid.) GC15 is concerned with the water resources required to prevent starvation and disease, as well as water required to meet the core obligations of the rights in the ICESCR.

According to the General Comment, three main criteria must be met (p.12):

- availability of water: it must be sufficient in quantity (GC15 refers to the World Health Organization (WHO) guidelines of 20L per person per day) and continuous;
- quality of water: it must be safe and acceptable;
- accessibility of water, which has four aspects:
  - physical accessibility (it must be within safe physical reach)
  - economic accessibility (it must be affordable)
  - non-discrimination (it must be enjoyed without discrimination and certain at-risk groups must be given “special attention” (p.16)
  - information accessibility (individuals must be able to “seek, receive and impart information concerning water issues” (p.12(c)(iv))

The GC15 sets out the tripartite responsibility to *respect, protect and fulfil* the right to water. A state respects the right by refraining from interfering with enjoyment of the right. It protects the right by preventing third parties from interfering with enjoyment of the right, including the imposition of regulatory measures on third parties to prevent abuse of water resources and the monitoring of their respect of the right to water. A state fulfils the right by putting into place positive measures to ensure enjoyment of the right. The obligation to fulfil falls in two categories: to facilitate and to provide. (For example, in order for water to be affordable, states must “adopt the necessary measures that may include, inter alia: (a) use of a range of appropriate low-cost techniques and technologies; (b) appropriate pricing policies such as free or low-cost water; and (c) income supplements.”(p.27)

It was noted that economic, social and cultural rights are subject to progressive realization, but that States have immediate obligations with respect to the right to water, namely to ensure that individuals are not subject to discrimination in the exercise of the right to water and to take steps that are “deliberate, concrete and targeted toward the full realization of the right to water.” (p.17)

The core obligations as set out in GC15 are as follows:

- non-discrimination
- minimum essential amount of water
- access to water facilities or services that provide sufficient, safe and regular water (that have a sufficient number of water outlets to avoid prohibitive waiting times; and that are at a reasonable distance from the household)
- personal security when physically accessing water
- equitable distribution of facilities and services
- a national water strategy and plan of action
- monitoring
- low-cost targeted programmes to vulnerable and marginalized groups;
- measures to prevent, treat and control diseases linked to water, in particular ensuring access to adequate sanitation.

It was noted that GC 15 contains a list of strategies that may be used to promote sustainability and that the focus on future generations may be difficult to reconcile with human rights, which belong solely to individuals alive today. The GC15 further points out that, in evaluating states’ actions, it is important to distinguish government incapacity from its unwillingness to take action. To this end, it was suggested that appropriate indicators and benchmarks should be

developed. In particular, structural indicators (policies, legislation, structures that indicate commitment), process indicators (what needs to be in place to achieve outcomes) and outcome indicators (traditional indicators such as mortality rates) would be useful for monitoring progress.

There is no simple answer to the question of whether or not there is recognition of the right to water in international law. While many countries recognise the right to water in their constitutions or through legislation, some states have clearly indicated that they do not believe that the right to water is enshrined in human rights law. Most states, however, nuance their position, noting that while they do not entirely agree with GC 15, they do think that there is a human right to water.

The speaker noted that there is likely unanimity among UN human rights expert mechanisms that a human right to water exists and that the issue is gaining profile in international circles. For example, a resolution was recently adopted by the Human Rights Council which mandated the UN Office of the High Commissioner for Human Rights to conduct a detailed study on the scope and content of the relevant human rights obligations related to equitable access to safe drinking water and sanitation under international human rights instruments. Although the study will not explicitly address the human right to water issue, it will address the linkage between access to water and human rights obligations. It will therefore indirectly begin to address the right to water issue (e.g. General Comment 15 will be examined).

The right to water is both an economic and social right but, while recognition of the right to water would create obligations with respect to the process and outcome of its implementation, it would not dictate to States a particular policy choice or economic model. It was explained that, to evaluate whether a state has violated an economic and social right, one looks at whether basic human rights principles, such as access to information, transparency, participation and accountability have been respected in the process of implementing the right. As long as the basic process and outcome requirements are being fulfilled, it would leave open a range of policy options. This would also accommodate States with diverse political systems.

### *Discussion*

During discussions it was suggested that recognizing a human right to water could potentially delegitimize certain processes and outcomes and that States may have to place some limits on businesses through monitoring and evaluation mechanisms. It was also suggested that appropriate regulatory mechanisms should be developed to facilitate monitoring and to ensure accountability in water supply. Remedies would also have to be made available to address violations, and the essential needs of the most vulnerable must be met.

Some comments pointed out that policy choices with respect to recognition and implementation of a human right to water would not be easy to make. It was argued, for example, that one of the most important core obligations contained in GC 15 was the creation of a national water strategy and plan of action (a process that can be more complex in a federation situation, with shared jurisdictions). It was explained that adherence to a rights-based approach requires the development of laws, policies, procedures and institutions that lead progressively to the realization of the right to water. Questions regarding pricing, investment, service delivery, as well as resource management should be addressed. It was suggested that a robust and integrated approach was necessary, which would take into consideration water supply, as well

environmental values generally. It was also suggested that robust government policy would be essential to implement the right to water.

One commenter was concerned that recognition of the right to water could be incompatible with privatization, because the areas in which water is most needed is in remote rural areas, where multinational companies are not interested in going. Concerns were raised about the implications for Canada to recognize the right to water. Canada has small remote communities where the quality and availability of water is not always kept to the same standards as in other communities. It was offered that Canada has promoted a full price model policy to limit the use of water. There were questions as to whether the recognition of the right to water would entail changing that policy or lead to a more litigious environment.

Looking at the issues of access and pricing, it was argued that human rights raise expectations on a minimum desired outcome. Individuals must not face discrimination in their access to water. That said, the right to water does not dictate that water must be free. Rather, it must be accessible. The right to water would prohibit, for example, arbitrary disconnection of water, but it would not prohibit disconnection where an individual could pay, but chooses to spend their money on other less essential things. It was acknowledged that the question of whether or not a State is allocating sufficient resources to comply with human rights obligations will be the source of endless debate. But if an individual can make an argument that belonging to a particular group results in less enjoyment of safe drinking water, then there would be a high burden of proof on the government to illustrate that it is doing everything that it can to meet obligations.

The water and sanitation problems faced by First Nations was addressed. It was argued that there is a certain unwillingness on the part of Canada to address the needs of First Nations communities that are at risk, and that Canada has not lived up to its obligations to these communities. It was urged that in the discussion on the right to water one must both address Canada's First Nations conditions and include their participation in Canada's policy development.

In this context it was noted that the GC15 contain a provision on indigenous communities' access to water on their land. "Indigenous peoples' access to water resources on their ancestral lands is

protected from encroachment and unlawful pollution. States should provide resources for indigenous peoples to design, deliver and control their access to water" (p.16(d))

## **Practical aspects of the implementation of the human right to water**

### *Global Situation*

The extent of the problem of access to water and its consequences on the health and well-being of the world's population was examined. Some 1.1 billion people do not have available sources of clean drinking water, and 2.6 billion lack basic sanitation, with the poorest and marginalized populations disproportionately affected. The result is a high rate of water related deaths and illnesses, the latter of which prevents individuals from pursuing activities such as gainful employment or schooling. In developing countries the water crisis disproportionately affects women and girls. They are often walking long distances to collect water, both reducing the time

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they can devote to education or employment, and exposing them to an added risk of violence as they travel alone. Furthermore, where schools lack safe sanitation, students' education also suffers.

The gravity of the problem raises the question of why access to water is not more at the forefront of governments' political agendas. One possible explanation was that there are few detailed studies on the cost-benefit analysis of access to water and that governments are less likely to invest if they do not know what the economic returns will be.

It was argued that the problem of a lack of access to water was not necessarily one of scarcity, but one linked to poverty, inequality and failures of governance. It was suggested that one major problem is lack of political will and leadership. Access to water is simply not seen as a political priority and there is little financial investment in the area.

The UN Millennium Development Goal on water and sanitation (MDG7) aims to halve the proportion of those without sustainable access to clean water and basic sanitation by 2015. Under current trends, however, we will miss that goal by 235 million people. Meeting MDG7 would cost \$4 billion a year for 10 years, and it would deliver \$38 billion in additional economic benefits to the developing world. Furthermore, increasing access to water is a prerequisite to achieving many of the other MDGs.

It was argued in the 2006 *Human Development Report* that four issues are essential for MDG7 to be met:

- States should recognise a human right to water—in particular to a secure, accessible and affordable supply of water at no cost to those who are too poor to pay.
- States must draw up national strategies for water and sanitation that integrate these factors in poverty reduction strategies and includes regulatory mechanisms for public and private utilities.
- International aid in this sector must double.
- A global action plan must be developed to make water a priority on the development agenda.

#### *A Human Right to Water Framework:*

If a lack of access to water stems from inequalities in society, disproportionately affecting people living in extreme poverty and marginalized groups, the problem could and should be dealt with within a human rights framework. Such a framework would have the potential of empowering the powerless by enabling them to expand their entitlements through legal and policy channels, shifting accountability standards from one of needs to one of entitlements. This rights-based approach contains the elements of good water governance and programming practice.

It was acknowledged that recognition of the right to water would not lead to an automatic solution of the global water crisis. Important policy questions would have to be addressed regarding the implementation of the right. From a development perspective, inclusive processes require capacity building for all stakeholders and new skills for water practitioners. An effective rights-based framework also requires a functioning judiciary and other aspects of the rule of law and good governance. While not providing an immediate solution, it was considered that approaching the issue through a human rights framework would represent a powerful moral

claim, as well as a source of empowerment and mobilization that could affect political will and lead to change.

The South African case was examined as a model for making economic, social and cultural rights, and specifically the right to water, justiciable. South Africa included the right to adequate food and water in its 1996 Constitution and subsequently passed two laws governing water and its supply. In 1999, it developed a “free basic water” policy to provide a basic minimum of 25 litres per household per day. As a result, water coverage has increased from 60% to 86% of the population since 1994.

### *Discussion*

A question was raised whether other developing countries would be able to follow the South African model, given that they may not have the same capacities. The development and implementation of South Africa’s water policies benefited from strong political will and leadership as well as good institutional capacity to design and implement measures. The clear policy framework resulted in a national plan with well-defined targets. The middle income population also invested substantially in the water sector. It was also able to delegate responsibility to local authorities that adopted community-based approaches, and benefited from NGO participation in the provision of services in smaller communities.

In the context of the discussion, questions were raised whether recognizing a right to water would entail a legal obligation to share water resources with other countries. There was general consensus among participants that such an inter-state obligation did not exist. Under human rights law, the obligation to protect human rights is the responsibility of each State to individuals under its jurisdiction. Other economic, social and cultural rights, such as the right to adequate food, housing, education, etc, had never imposed any inter-state obligation to protect those human rights in other countries, although one could postulate that there was a clear moral obligation to do so (e.g. moral obligation to provide development assistance).

The contribution of donors in providing access to safe drinking water and sanitation was discussed. It was mentioned that donors, in their will to support national priorities, rely heavily on National Poverty Reduction Strategies (NPRS) for programming. The fact that water and sanitation does not appear, in general, as a priority in the first round of NPRS prevented donors from investing more in that sector. The international community has initiated a policy dialogue with national governments to ensure that the real importance of water and sanitation is better reflected in the second generation of the NPRS.

It was asserted that Canada should prioritise the development of a new water strategy, with specific investment targets to guide its future investments in the water and sanitation sector. The plan should encourage developing countries to make water and sanitation a priority in their poverty reduction strategy plans, as well as in national plans.

The point was also made that, while donor dependency did pose problems, many countries do have the capacity to raise funds domestically, but there is not the political will to focus the funds on water and sanitation.

It was suggested that recognition of a right to water would provide populations with an important tool with which they could pressure their governments to prioritise water and sanitation, both in

poverty reduction strategies and national plans, and hold them accountable in the provision of services. It was also pointed out, however, that in some countries, the right to water is already enshrined in law, but the public is uninformed. It may require a concerted effort to educate such populations so they can more effectively use the right as a tool.

Health is often considered a priority in a country's poverty reduction strategy, and improving access to water is a necessary component of health. It was suggested, however, that donors may be less inclined to invest in water and sanitation because they are interested in specific immediate health outcomes, such as reduction of mortality rates linked to a particular disease. On the other hand, water and sanitation requires long-term efforts that may be harder to link to concrete results and targets. It was suggested that this is another area where it would be useful to look at structural and process indicators, as well as traditional outcome indicators.

It was noted that there is currently a campaign to lobby donor countries into making water and sanitation a priority. Information can be found at [www.endwaterpoverty.org](http://www.endwaterpoverty.org)

## **Water management in Canada**

In Canada, with a few exceptions, the provinces and territories have sovereign jurisdiction over water. The federal government is charged with the provision of water on Indian reserves, in national parks, on military bases and in certain places of employment. Canada also has a tradition of public ownership of the treatment, provision and delivery of water.

It was also noted that water is very cheap in most of Canada, and is sometimes subsidized, particularly in more rural areas, out of general revenues. The low price leads to a high consumption of water, a fact that accentuates a difference in the sorts of water-related problems experienced by developed and developing countries. In the latter, the question is how to provide water to the poor cheaply. In the former, the question is how to internalize the costs of water provision and prevent over-consumption.

It was explained that in Canada, drinking water is generally very safe, particularly in urban areas. The challenges to ensuring high water quality in more remote areas are more difficult, generally because the water systems run on smaller scales, and therefore do not always have the budgets for the technology required for the highest water quality standards. Such problems, however, could be resolved by consolidating systems or introducing new systems better adapted to smaller scales.

It was noted that water standards increased dramatically after the Walkerton, Ontario, incident, when insufficient investment in both safety precautions and the training of water workers resulted in seven deaths and many more illnesses when a well was contaminated with E. coli. An inquiry into the incident, which included an attempted cover-up by the water systems manager, led to the issuance of recommendations on ensuring safe water delivery to the public. These were taken up in Ontario and noted by the rest of the provinces and territories. The recommendations focused on taking a multiple barrier approach between natural water and the tap, creating quality management and oversight systems, and enshrining roles and responsibilities with regard to water quality and management in laws and/ or regulations.

The question of water quality on Indian reserves was addressed. It was asserted that federal investment over the last decade has vastly improved the situation, and that, while many of the conditions on Indian reserves are “third-world,” water supply is generally not one of them. While some First Nations communities are in need of upgraded water facilities, the needs were no higher than non-First Nations communities in similarly remote areas. A challenge to this analysis asserted that water scarcity was not a problem in First Nations communities, but that access to safe water certainly was.

It was noted that there is a gap in terms of the legal framework that governs water supply on Indian reserves. Provincial water quality regulations do not apply to reserves, and the federal government has not put any in place, possibly because it does not want the responsibility of ensuring their implementation. It was noted, however, that the recent federal budget suggested that action would be taken in this area.

It was argued that recognition of a human right to water would make no difference to water management and supply in Canada. It would likely have no effect on the domestic legal framework, given that the question of whether water legislation should confer private rights on individuals was already discussed and rejected during the Walkerton inquiry. Furthermore, recognition of the right to water would not affect access to Canadians, on the whole, which already enjoy high quality water in large quantities at reasonable prices. It was claimed that what is important for Canadians’ access is not that water be recognised as a human right, but that appropriate programmes and sufficient expenditures continue to be focussed on maintaining water quality. It was also suggested that the advantages to other countries of Canada’s recognition would likely not be more than moral or rhetorical.

### *Discussion*

An alternative view held that the argument that Canada need not recognise an international right to water because its citizens already enjoy the right is unsound. Such an argument implies that Canadians are only free from torture and genocide because Canada has signed international covenants that prohibit them.

A number of participants pointed to the fact that while Canadians may enjoy full access to water now, recognition of the right to water is important to protect their enjoyment in the future. It was also argued that Canada’s practices—its programmes and regulations—are consistent with recognition of a right to water. It was further suggested that the reaction in Canada to the Walkerton incident indicates an implicit recognition of that right. Arguably, Canada should therefore have no problem recognising the right officially.

A concern was raised that recognition of a human right to water might in some sense dilute the importance and effectiveness of human rights. Freedom from torture is clearly an important human right. However, GC15 refers to aesthetic criteria that water must satisfy. Aesthetics do not seem to constitute an appropriate element for a human right, so such talk detracts from the meaningfulness of human rights. It was later explained that the aesthetic criteria—colour, odour and taste—discussed in GC 15, in fact had practical implications. Where water does not appear clean and safe, humans are not likely to use it, and may instead use a different source that appears cleaner, but that is, in fact, unsafe.

It was suggested that the federal government may not be able to live up to obligations created by recognition of the right to water. In particular, GC15 requires that a national strategy be developed. Because water management falls within various jurisdictions, a national strategy would require adherence by all ten provinces and three territories, which may be difficult to obtain.

It was emphasized that before Canada could recognize a right to water, it was imperative that its proponents lay out unambiguously the content of a human right to water and the obligations it places on State parties. It was suggested that Canada may find a model in the United Kingdom's recent recognition of the right to water in which it agreed with some, but not all, of GC15.

## **The United Kingdom Position on the Human Right to Water**

The United Kingdom (UK) recently recognised the right to water. A paper explaining its position was made available at the seminar.

It was explained that the UK considers the right to water to be derived from article 11 of the International Covenant on Social, Economic and Social Rights (ICESCR), which confers a right to “an adequate standard of living ... including adequate food, clothing and housing, and to the continuous improvement of living conditions.” The UK considers that the use of the word “including” indicates that the list of elements of the right to an adequate standard of living is not exhaustive. It further considers that water is an element of that right given that it is necessary for survival.

The UK does not consider the right to water to be self-standing, a right under customary international law, or an element of any other right enunciated in the ICESCR or in the International Covenant on Civil and Political Rights. The UK finds GC 15 to be a useful guide in understanding the right to water but that it does not agree with the comment in its entirety.

The UK's interpretation of the right to water was explained as follows. The UK believes that the right to water entitles everyone to a sufficient amount of reasonably affordable and accessible water necessary for survival ( i.e. drinking, cooking and personal hygiene). However, it does not include a right to water for industry, recreation or transport. The right entails that water must be accessible - that is, reasonably accessible physically and economically—without discrimination. Important considerations include both sustainability in service provision through cost recovery, and accommodation of the basic needs of the poorest. Special attention should be given to those who have traditionally faced difficulties exercising the right.

It was pointed out that, according to the UK, each state must decide what measures are necessary for the fulfilment of its obligations. The right to water does not dictate any particular economic model in its implementation.

The benefits of the relationship between promoting the right to water and international development was discussed. Among these was the fact that the right sets a standard that all States parties must progressively realize; the right lends legitimacy to the demands of those who lack access to water and will help them to hold their governments accountable; the right emphasises affordability as well as sustainability in the delivery of water; and as a right, access to water is supported by the principles of participation, inclusion and accountability, increasing

the chances that the development of water management and provision will include good practices.

The UK intends to support its partner governments to fulfil their obligations under the right to water, possibly within the context of their poverty reduction strategies, and to strengthen the ability of people living in poverty to claim their right to water. The measures the UK envisions include institutional capacity building with an emphasis on accountability, non-discrimination, public participation, and access to water for the poor, as well as awareness-raising among local populations about the right to water, with a focus on helping them make their voices heard.

While the right to water is not enshrined in UK law, the UK considers that it already complies with its obligations through the standards set by its existing domestic legal framework. Mention was also made of the 2000 European Community's Water Framework Directive, which confers additional obligations, such as ensuring public participation in the creation of river basin management plans.

#### *Discussion*

There was discussion about the importance of enshrining the right to water in domestic legislation. In the UK, it was explained, recognition of the right did not create any additional internal recourse mechanisms for individuals. Nor did the European Directive create any new remedies. The view was offered that it is preferable not to create added legislation where the existing legal framework suffices to meet obligations. An alternative view holds that enshrining the right in domestic law protects the right by making it more difficult to reconsider in the light of, for example, changes in the environment or the political atmosphere.

It was explained that the UK comprises three different legal systems and four administrative systems. There is no national water strategy: rather, each legal jurisdiction is responsible for its own water strategy. The European Directive also provides a framework for water that governs certain aspects of European Community laws. Each of the UK's legal systems contains legislation setting out duties to provide wholesome water for domestic purposes and a complex regulatory framework built around multiple bodies to ensure that water companies—which were privatised in 1989—meet the standards.

It was noted that the UK's regulatory scheme was very complex, and that it is unclear whether all countries can be expected to create such frameworks in their implementation of the right to water.

Responding to a question as to why the UK decided to recognise the right to water, it was explained that three non-government organizations (NGO) - *Water Aid*, *Fresh Water Action Network*, and *World Development Movement* - first raised the issue with the UK Department for International Development (DFID) at a 2005 meeting for water and sanitation at the Commission for Sustainable Development in New York. NGO proponents subsequently made the case for recognition of the right to the UK government, which then examined its implications and decided in favour of recognition. It was noted that while NGOs did a lot of advocacy work, there was little reaction on the part of the British public in general to the UK's decision. The importance seemed rather to lie with DFID and its work with developing countries. It was also suggested that the UK's recognition was, in fact, an element of a integrated international development strategy, which aims to focus on water and sanitation in the coming years.

## Transboundary Water Issues

It was emphasized that international water sharing is not an obligation created by the right to water. It was thought, however, that the Boundary Waters Treaty Act and the International Joint Commission could be used as *best practice* examples for other countries that must engage in transboundary water cooperation in order to provide safe drinking water for their citizens.

In a brief historical overview it was explained that the Boundary Waters Treaty was signed in 1909 between the United States (US) and Great Britain, acting on behalf of Canada, after issue-by-issue discussions proved to be unworkable. The treaty outlines principles and guidelines for management of the boundary and transboundary waters between the US and Canada. It was noted that provinces also have water-sharing agreements, but these are more cooperative than binding.

The treaty also established the International Joint Commission (IJC), whose mandate is to prevent and resolve disputes between Canada and the United States. The four roles of the IJC were laid out as follows:

- Quasi-judicial: The IJC rules on applications for new uses, obstructions, diversions, etc. in either country that would affect the level of water flow in the other country. Its decisions are final and binding, and it may impose conditions on the operation of the project.
- Investigative/ advisory: The IJC examines and reports on facts and circumstances of transboundary water issues referred to it by either government. Its conclusions in such cases, however, are not binding, and the governments are free to negotiate solutions. In practice, cases have only been referred to the IJC when both governments have agreed to the reference.
- Administrative: The IJC oversees apportionments of boundary and transboundary resources that it orders or that are provided for in the Treaty or in other agreements.
- Arbitral: The IJC has never been called upon to practice this function.

Looking at how the IJC functions, it was noted that it is composed of six Commissioners. Each government appoints three Commissioners, who are bound to perform their duties with political independence, and who are conferred judicial immunity in both countries. The IJC's performance has led it to be viewed as an objective and impartial arbiter. In the more than 100 cases it has examined since its inception, it has succeeded in achieving a high level of consensus and has avoided national partisanship, and has thus proven to be an effective instrument in binational water management.

It was argued that one reason for the high level of consensus in the IJC is its practice of joint fact-finding. When examining an issue, the IJC establishes an advisory board composed mainly of members of different levels of government, but also private sector actors. Country representation is balanced, as is geography upstream and downstream and other relevant

interests. It was emphasized that the IJC seeks to include First Nations members on these boards. The participants are to act in their personal and professional capacities, rather than as representatives of their employers. Like the IJC, the boards work on the basis of consensus.

It was the establishment of these boards that facilitates consensus among the communities that will be affected by IJC decisions, as do other IJC practices such as holding public hearings and facilitating local government participation in the consideration of transboundary water issues. It was noted that the IJC puts a particular emphasis on public participation during the early stages of their inquiries, as well as before a final decision is taken.

Climate change and population growth were cited as key challenges for future transboundary water relations. As supply decreases and demand increases, competition grows for the resources and, as a result, the potential for conflict will intensify. Consequently, it was argued, it is imperative to solidify the institutional architecture of the IJC and its cooperative practices, and to ensure that it may continue to keep a close, expert and non-adversarial watch over existing and potential transboundary water issues before they become disputes.

#### *Discussion*

There was discussion about the continued willingness on the part of Canada and the US to use the IJC to its full potential. There are increasing multi-lateral agreements on water management involving states and provinces or territories and the case of Devil's Lake was raised, where the US government refused to refer an issue to the IJC. It was countered, however, that the IJC process could co-exist with such multi-lateral agreements, and that the IJC had, in some cases, recommended such agreements. Furthermore it was noted that the IJC plays a role in the implementation of the agreement on Devil's Lake that was eventually reached, so it was not excluded completely from the process. The question was raised concerning the compatibility of the IJC and environment assessment requirements. It was argued that in cases where an environmental assessment of a project was required by law, it may not be appropriate to refer the case to the IJC. It was also suggested that reference to the IJC, after such an environmental assessment, may add little value.

The question was raised as to whether the right to water should be considered to be different in upstream and downstream populations or jurisdictions. In response it was deemed to be more desirable to find shared water management principles that override upstream or downstream interests.

It was noted that the Canadian implementing legislation of the treaty was recently amended to prohibit bulk removal, of any kind out of basins in Canada, with some exceptions such as for humanitarian or fire fighting needs. Provinces and territories have implemented similar policies.

There was discussion over whether the humanitarian exception to the prohibition on bulk water removal indicated an implicit recognition of a right to water. On the one hand, it was suggested that the assumption behind the humanitarian exception was that where individuals face a threat to their survival, the law should not prevent the deployment of help, which may support a rights-based interpretation. On the other hand, it was argued the humanitarian exception did not create a right to make future demands on resources. It was noted that exceptions are made on a case-by-case basis, and argued that they should be seen as a response to a moral imperative rather than recognition of a legal one.

## **Final Remarks**

Adèle Dion wrapped up the sessions by expressing the view that the objectives of the seminar had not only been met, but had been exceeded. It had certainly met its main objective to bring together all the key stakeholders for an information exchange on the right to water issue. She noted that the federal government would continue to examine the issue through internal consultations with the view to developing a clear policy position on the issue. She underlined that the federal government would also continue to work with the Provincial and Territorial governments in order to inform the federal government's position.

Kathryn White reminded participants that the issue for Canada was not its domestic water policies, but its good international standing. The key reason to recognise the right is that 1.1 billion people live without access to water. She gave her commitment that the UN Association in Canada will continue to engage Canadians on the matter and do what it could to further the dialogue.

Both co-chairs reminded the participants that the purpose of the sessions was not necessarily to reach an agreement, but to attempt to unpack the key issues of the right to water so that progress could be made on a topical subject that is gaining attention, both nationally and internationally.

***A number of recurring themes and challenges emerged out of the discussions which would benefit from immediate attention through further research and dialogue:***

### ***Recurring Themes***

- One of the main recommendations was for Canada to look at the question of the human right to water within the context of a broader international development assistance strategy to encourage greater investments to reach the UN Millennium Development Goal on Water and Sanitation (MDG7).
- The content of the human right to water, as defined and interpreted by international experts, has a narrow scope. It is limited to an obligation to provide access to safe drinking water to meet basic human needs. In this context, it is set out as a socio-economic issue, dedicated to address the needs of people living in extreme poverty and in marginalized groups. The General Comment 15 is clearly targeting the developing, not developed world, in addressing the global water crisis through a human rights framework.
- The scope of the human right to water does not entail any inter-state obligations to provide water resources to other countries in need. While it may be possible to recognize a human right to water by focussing on water related development assistance (similar to what the UK and the Netherlands are already doing) there is no legal obligation for developed countries to provide water to developing countries. Development assistance is a moral, not a legal obligation. There have never been problems with invoking development assistance obligations on any other economic, social and cultural rights (e.g. right to food).

- Recurring themes on potential benefits to recognizing a human right to water, include: increasing/mobilizing political will to address/target the global water crisis; increasing accountability for people living in extreme poverty and for marginalized groups; and providing a framework for citizens to participate in decisions affecting their access to safe drinking water.

***Challenges:***

- Although the issue is gaining momentum on the international stage, there is no treaty/declaration/convention being negotiated from which to draw an analysis. It is difficult to assess the domestic impact of a theoretical human right that has not yet been recognized or defined by States.
- One of the questions is whether the Canadian government waits for the international community of States to negotiate the interpretation of the right to water, or whether it begins to set out its own interpretation in order to define clear boundaries. It is inevitable that States will discuss this issue in more detail in the near future and the current Canadian position opposing an acceptance of human right to water is becoming increasingly isolated. Do we have enough concerns to remain as isolated as we are?
- Although there were recurring arguments during the seminar that Canada is already in compliance with a human right to water that is defined in limited terms, there are still many valid questions regarding the domestic legal impact of recognizing a human right that is limited in scope. There needs to be a clear articulation of what the specific obligations would be in order for Canada to comply with an obligation to provide access to safe drinking water for its population to meet basic human needs.
  - \* Would Canada simply be obliged to report every four years to the UN Committee on Economic, Social and Cultural Rights on the steps it is taking, progressively, to fulfil the right to access to safe drinking water? This is precisely what is expected from Canada in fulfilling its other economic, social and cultural rights.
  - \* Would recognizing a limited definition still have a negative impact on sensitive water-related issues in Canada?
  - \* Would it put the spotlight on the difficulties Canada faces with respect to its Aboriginal population? Remote communities that lack access to water? Lower income and marginalized groups?
  - \* Would it cause any changes to our policies, programmes, or existing legislation?