

**For the Public International Law and Policy Group Web Site
Submitted by Frederick Lorenz, 3 April 2003.**

The 3rd World Water Forum, March 16-23 2003, in Kyoto, Japan, held 351 sessions covering 33 themes. The purpose was to create an action agenda after a number of prior meetings. That included the goals set forth at the Millennium Summit of the United Nations in New York (2000), the International Freshwater Conference in Bonn (2001) and the World Summit on Sustainable Development in Johannesburg (2002). The Ministerial Declaration of the 2nd World Water Forum in The Hague, 2000, identified meeting basic water needs, securing food supply, protecting ecosystems, sharing water resources, managing risks, valuing water and governing water wisely as the key challenges for our direct future.

For more information on the Water Forum: [The 3rd World Water Forum](#)

The current draft of the Ministerial Declaration: http://www.world-water-forum3.com/2003/eng/secretariat/files/Preliminary_SFS.doc

At the Forum, UNESCO and Green Cross International sponsored a water conflict resolution project as part of the World Water Assessment Program. Details can be found at: [PC-CP home: From Potential Conflict to Cooperation Potential](#)

This included:

- 19 papers, reports and think pieces reviewing the legal, technical and diplomatic tools available for the anticipation and the resolution of water conflicts, as well as the lessons learned from historical experiences.
- 9 Case Studies from around the world drawing lessons from both, the root causes of conflicts, and the successful co-operation in water resources management.

With the support of the International Water Academy, Oslo, Norway, Frederick Lorenz of the University of Washington, Seattle USA, completed one of the reports listed above. A summary follows:

“Protection of Water Facilities Under International Law”

Full text can be found at [PC-CP Legal tools : The protection of water facilities during armed conflicts](#)

Water has often been used as a strategic target in war since at least the time of the siege of Tyre in 596 B.C. Even when water facilities are not targeted, they are often among the first casualties of the violence. At the end of the twentieth century, conflicts in Africa, the Balkans, and the Middle East caused tremendous suffering to the civilian populations after disruption of the water supply. This article focuses on the extent to which water facilities are protected under international law. It outlines principles of customary law

and the existing international conventions and protocols in this area, including principles of naval warfare.

At a time of increasing world concern over the quality and availability of water, we face the prospect of disputes, sometimes violent, over limited freshwater resources. International efforts to sustain supplies have focused on management rather than conflict prevention, and international legal regimes have received too little attention. This article focuses on protection of water facilities under international law, defining such facilities in broad terms to include all retention and delivery facilities. These issues become wide-ranging, as urbanization increases the need to import water from further afield, as in the current plan to transfer water to Israel from Turkey. Moreover, the increasing complexity of delivery systems, and their relationship to power supplies, increase their vulnerability to conflict.

International law has evolved as the nature of conflict has changed, but has yet to respond to the increasing phenomenon of intra- rather than interstate conflict, or to the rise of terrorism. Little attention has been given to the implications of possible terrorist attacks on water facilities, especially in view of the development of chemical and biological threats. The article considers current problems and weaknesses in existing law, and includes discussion of a hypothetical terrorist attack on a city water supply in Turkey. It considers the present state of international law, and provides recommendations for legal regimes that will better protect the civilian population and the supply of fresh water.

Summary of conclusions and recommendations:

There is no need for a new treaty or protocol to provide protection for water facilities under international law. However, there should be concerted effort to clarify the existing law, provide coverage for acts of terrorism, disseminate the law, and provide effective enforcement mechanisms.

Recommendations

This report has identified two general areas in which water facilities and water transport systems deserve a greater degree of protection. The first is the protection afforded under international humanitarian law during times of armed conflict, and the second is protection from terrorist attack.

Even without a new treaty or convention that formally establishes new law concerning the protection of water facilities, much can be done to move in that direction. The United Nations General Assembly in resolution 55/196 proclaimed the year 2003 as the International Year of Freshwater. The resolution, adopted on 20 December 2000, was initiated by the Government of Tajikistan and supported by 148 other countries. It encourages Governments, the United Nations system and all other actors to take advantage of the Year to increase awareness of the importance of sustainable freshwater use, management and protection. This will provide a unique opportunity to raise the issue of legal protection to the highest level.

The following actions should be initiated, in cooperation with the International Committee of the Red Cross.

Third World Water Forum: Concerned States should use the Third Water Forum in Kyoto, in March 2003, as a means to clarify and implement applicable provisions of international humanitarian law. This could help extend legal protection to a wide range of water facilities and persons not clearly covered under existing law. The Water Forum should issue a declaration that calls on all belligerents to abstain from attacking water treatment plants and distribution systems for civilian use and the staff engaged in repairing and maintaining them. International law supports such a declaration, and the legal basis should be clearly stated in the document. Special provisions should be included for mobile water delivery systems that will become more common in the years ahead. The challenge of terrorism against water facilities must be addressed, and creative measures developed to protect water infrastructure. The United Nations has a number of projects related to the international response to terrorism, and this would provide an additional means to coordinate efforts.

Develop New Standards for the Protection of Water Facilities: Aspirational documents like the Rio and Stockholm declarations serve an important function in the development of international humanitarian law. Parties who are now unable to accept a particular formulation as law are given the time to make the necessary political changes to accept the law in the future. Perhaps more important, public perception of the law, or what it should be, may be a factor for positive change when public support is necessary for the continuation of conflict. Development of new standards for the protection of water facilities would serve the same purpose. The World Water Forum should adopt such a declaration designed to improve the protection of water facilities and the human population that relies on them.

Limit the Damage of Embargoes: In the Middle East, mobile water delivery systems will likely become a critical factor in the years ahead, and could be subject to the negative effects of embargoes. The Water Forum should draw the attention of the international community to the dire effects for civilians of wide-ranging embargoes imposed for extended periods. It should call on the international community to take these effects into account when formulating new law and policies that cover the delivery of water. Lessons can be learned from the international experience in Iraq, and embargoes should be tailored to avoid a negative impact on water infrastructure and the civilian population.

Develop Guidelines for Military Manuals and Instructions on the Protection of Water Facilities in Times of Armed Conflict: With the support of the ICRC and the UN General Assembly, guidelines for the protection of water facilities should be developed. The objective would be to promote an active interest in, and concern for, the protection of water facilities during times of armed conflict. It should be noted that this type of document would be of use only for organized military forces that make some attempt to comply with international humanitarian law. Terrorist organizations present another set of challenges. A draft set of guidelines is attached; the author welcomes comments on this or any other part of this report.

Support a United Nations General Assembly Resolution: Resolutions of the General Assembly can be an important tool in establishing norms that advance the standards of international humanitarian law. State participants in the Water Forum should seek a resolution that could be a basis for a rule of customary international law. Although the initial resolution would be purely aspirational, this can lead to the development of conventional and customary international law. The Secretary-General's report of 19 August 1994 to the General Assembly referred to the "Guidelines" for Environmental Protection discussed above, and could be used as a model for a resolution concerning the protection of water facilities. It was stated in the following paragraph of Resolution 49/50 (on the UN Decade of International Law) of 9 December 1994 that the General Assembly:

11. Invites all States to disseminate widely the revised guidelines for military manuals and instructions on the protection of the environment in times of armed conflict received from the International Committee of the Red Cross and to give due consideration to the possibility of incorporating them into their military manuals and other instructions addressed to their military personnel.

Support the International Criminal Court: State participants to the Water Forum should work to support the International Criminal Court. Although the court began to function only in July 2002, it will be years before it can operate effectively. Provisions of the ICC Statute should be expanded and clarified to specifically cover attacks on water installations and mobile delivery systems. This will make the existing provisions concerning environmental damage more effective. Potential gaps in coverage should be eliminated, to reflect an ICC statute that clearly includes terrorism, and major attacks on water facilities during peacetime. Large-scale terrorist attacks should be formally designated as crimes against humanity.

Publicize the Nature of the Problem: The Water Forum should specifically mention the duty of all States to make known the existing legal provisions which protect water facilities and staff working in them. As part of the UNESCO World Water Development Report, particular attention should be directed to the protection of water facilities during armed conflict, and from terrorist attack. The subject should be clearly listed as a "critical problem" under the Report. In addition, the International Water Academy, in cooperation with the International Committee of the Red Cross, should undertake a major program to spread knowledge of these provisions and to emphasize the importance of protecting water in time of conflict, and from terrorist attack. Part of this program should include dissemination of the "Guidelines for Military Manuals" mentioned as part of these recommendations. Two organizations need to be mentioned at this time:

The International Water Academy (TIWA) is based in Oslo, Norway and was founded in 1998. Today it has more than 150 members representing the world's five continents. TIWA is a non-profit foundation with the vision to foster the existence of a community of experts with the purpose of aiding in the management and use of water for the benefit of all and prevent conflicts over water management. TIWA has a unique perspective on the

protection of water facilities, and its members can be influential in developing new policies and programs. TIWA should be involved in any program to clarify and implement international law in this field.

The ICRC is an impartial and independent organization whose mission includes the protection of water resources under international humanitarian law. The ICRC produces a number of valuable publications, such as *Forum: War and Water*, cited earlier in this report. The ICRC Water and Habitat Unit should be directly involved in the coordination of efforts related to the protection of water facilities.

In conclusion, a new international treaty designed to protect water facilities is unnecessary. By taking the action recommended in this report, existing international legal obligations and State practice can be clarified and strengthened. This will promote an active interest in, and concern for, the protection of water facilities by the armed forces of all States. Declarations of new standards and promulgation of guidelines, though not legally binding, could achieve many of the same objectives. By placing increased emphasis on the international law of terrorism, we can hope to increase the prospects that those who attack water facilities will be brought to justice, and further acts of terrorism will be deterred. Finally, support for the International Criminal Court will improve the climate of accountability and enforcement of international law. These actions will contribute to a more stable and prosperous world, where citizens will have safe and reliable water supplies.

End of Report.

The following article, and in particular the last two paragraphs, give a good summary of the outcome of the Third Water Forum.

Environmental News Service Article: Water Forum Failed to Ensure Water for Peace

GENEVA, Switzerland, April 1, 2003 (ENS) - Green Cross International, a non-governmental, non-profit organization founded by former Soviet President Mikhail Gorbachev, has expressed its disappointment at the final outcome of the Ministerial Conference held in parallel to the 3rd World Water Forum in Japan late last month.

"The Ministerial Declaration agreed to in Kyoto on the 23rd March is a weak document, with few identifiable new commitments or proposed mechanisms for translating already stated goals into action," the organization says.

Participants at the 3rd World Water Forum were instructed to provide the Ministerial Conference with clear recommendations. During the Forum, the major regional and thematic sessions identified dozens of recommendations for action, commitment, policy change and financing - but the Ministerial Declaration failed to take these recommendations into account.

Other environmental organizations were also critical of the Ministerial Declaration. The IUCN-World Conservation Union says the ministers produced a "watered down" document and called for direct input from the thematic sessions into the declaration.

WWF, the conservation organization, condemned governments at the World Water Forum for their failure to commit to a sustainable approach to ensure adequate water supply and sanitation.

"The public has been badly served by their governments at this forum, who have adopted a ministerial declaration that is a backward step from previous commitments," said Jamie Pittock, director of WWF's Living Waters Programme. "We have to ask how credible a forum like this is when governments do not draw on the 12,000 water specialists gathered together to identify common sense solutions to water problems, but instead continue to promote massive infrastructure as the sole solution to the world's water crisis."

One omission in particular will affect millions of people, fisheries, wildlife and water sources, WWF warns. This was the failure by governments to commit to review dam development projects.

The most frustrating omission for Green Cross was their set of recommendations on the theme of water for peace, particularly since the 3rd World Water Forum was held from March 16 through the 23, the week when the U.S. led war on Iraq began on March 20.

Green Cross International and UNESCO shared the task of coordinating the theme of water for peace, based on years of work and research in the field of water conflict prevention and resolution.

At the Forum, experts on the subject of transboundary waters, and representatives from government, the private sector and civil society with practical experience in managing shared water resources and associated conflicts held two days of discussions and presented what Green Cross calls a "concise and realistic set of recommendations" to the ministers.

But the ministers did not mention the peaceful sharing of the world's water resources, or protection of water sources and infrastructure during times of war in their Declaration, only a very vague commitment to "encourage states to promote such cooperation" in transboundary basins.

Mikhail Gorbachev, president of Green Cross International, presented the water for peace recommendations to the Forum. They include:

- Immediate ratification of the UN Convention on the Non-Navigational Uses of International Watercourses by all states, as a first step towards the negotiation of a Global Water Convention.
- Funding mechanisms to support activities related to internationally shared water bodies.

- International support for the creation of a Water Cooperation Facility, to work with basin authorities, governments and other stakeholders to resolve intractable water disputes.
- Measures to ensure respect for the right of stakeholders to take decisions regarding water resources in transboundary basins.
- Community responsibility for and ownership of cooperation processes, backed by international solidarity and commitment to an alternative form of development which respects cultural diversity and environmental sustainability.

None of these recommendations are included in the Ministerial Declaration.

Despite the events in Iraq during the week, the strongest recommendation of the water for peace theme, and others at the Forum, to take immediate action to protect water infrastructure during times of armed conflict and from terrorist attack, was also overlooked.

Days later, the International Committee of the Red Cross and the United Nations declared a humanitarian crisis as people in Basra and other towns in Iraq face the disruption of their drinking water supplies as a result of the war.

End of article and report.

The author of “Protection of Water Facilities under International Law” can be reached:
lorenz@u.washington.edu