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REVIEW

A Water Scarcity Treaty for the Future

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Abstract

Water scarcity is an increasing global problem, but an international agreement on this issue does not exist. The UN Summit of the Future in September 2024 focuses on achieving existing international goals. The Water Convention and the Watercourses Convention however do not provide sufficient legal basis for mitigating global water scarcity.

Since international trade is an important cause, water footprint experts suggest measures from a geographic, a production and a consumption perspective. Obligations to set maximum water footprint caps on river basin level and to formulate international reference values for water efficiency (geographical and production measures) can be inserted in the existing conventions. A consumption-oriented target does not fit in their scope. A separate Water Scarcity Treaty, introducing a reduction target of the global average water footprint per capita per year, is needed. The next UN Water Conferences, in 2026 and 2028, offer new opportunities for proposals towards such a treaty.

A Water Scarcity Treaty for the Future

Marga Robesin

1 Introduction

‘Actions speak louder than words’. When it comes to sustainability that seems to be the motto of the United Nations for 2024.

At the United Nations Environment Assembly (UNEA-6, 26 February - 1 March 2024 in Nairobi) the overall theme was “*effective, inclusive and sustainable multilateral actions to tackle climate change, biodiversity loss and pollution*” (aka ‘the triple planetary crisis’¹). A more effective multilateral approach of global problems also is the aim of the UN ‘Summit of the Future’ (22-23 September 2024 in New York). The intention is not to re-discuss all that has been agreed upon at the international level in the past decades, including the 2030 Agenda, the Paris Agreement, the Addis Ababa Action Agenda and many other agreements and commitments. This UN Summit is about acceleration of the achievement of the existing international goals and, at the same time, taking concrete steps to respond to emerging challenges and opportunities.

In December 2023, Member States and stakeholders were consulted on the content of a ‘Pact for the Future’.² This Pact will be the action-oriented outcome document of the Summit.³ On 26 January 2024 the ‘Zero Draft’ for the negotiations has been presented. Rightly, the Zero Draft (par. 30) explicitly mentions “*sustainable lifestyles, and sustainable consumption and production*” as a means to achieve a world in which humanity lives in harmony with nature. At this moment, we are exceeding several planetary boundaries.⁴

2 Making international trade more sustainable

International trade is an important cause of this global crisis. At least a decade ago, the negative effects of international trade were already acknowledged, just like the need for European or international action.⁵ Sustainable Development Goal (SDG) 12 focuses on responsible consumption and production, but the achievement of this and other SDGs was off-track at the midterm of the 2030 Agenda for Sustainable Development.⁶ So, the issue is still an actual one. A

new Global Strategy for Sustainable Consumption and Production (2023–2030) has been adopted.⁷

At EU level the proposal for a Corporate Sustainability Due Diligence Directive (CSDDD) was approved by the Legal Affairs Committee on 19 March 2024. This CSDDD not only requires firms to mitigate their own direct negative impact on human rights and the environment, but they also have to prevent, end or mitigate the negative effects caused by their upstream partners working in design, manufacture, transport and supply, and downstream partners, including those dealing with distribution, transport and storage. The plenary vote by the European Parliament will probably take place in April 2024.

Making supply chains more sustainable is a difficult task. International chains often are long and complex. Sustainability agreements between producers, suppliers and retailers are not easily made, monitored and enforced. Moreover, they are sometimes considered to be in violation of European competition law.⁸ Legislation to enhance more sustainable supply chains risks being contrary to rules of the World Trade Organization (WTO).⁹ In a recent report on the dispute between Malaysia and the EU concerning palm oil, the Panel found that Malaysia had not established that the high risk cap and phase-out for indirect land-use change (ILUC) or the low ILUC-risk certification procedure was inconsistent with the obligation in Article XI:1 of the GATT 1994 to not institute or maintain any prohibitions or restrictions on the importation of any product of the territory of another Member, but the EU still has some homework to do.¹⁰

In a recent publication of the Dutch Environmental Law Association (VMR) on the role of law in achieving sustainable supply chains, the authors point out this and other issues, like “*problem shifting*”.¹¹ Regulation that focuses on making a supply chain or a product more sustainable on one particular aspect, may lead to problems on other sustainability aspects.¹² This should be prevented. On the other hand,

¹ UNFCCC (2022).

² See also the preparatory process.

³ See A/RES/76/307 and A/77/L.109 at the UN digital library.

⁴ Rockström et al (2023).

⁵ See e.g. the Joint Research Centre report at Di Ponte et al. (2013) and the PBL/Netherlands Environmental Assessment Agency report (2014).

⁶ See the UNEP online resources on SDG 12 and the SDGs Progress Report at United Nations (2023a), p. 8.

⁷ See A/77/607 at the UN digital library.

⁸ European Commission (2023).

⁹ See e.g. the dispute settlement case 593 ‘European Union — Certain measures concerning palm oil and oil palm crop-based biofuels’.

¹⁰ Report of the panel WT/DS600/R.

¹¹ VMR (2024).

¹² An example is EU legislation regarding energy efficiency of lighting products, contributing to mitigating climate change, but unintentionally causing an increase in light pollution, which has a negative effect on biodiversity. See the contribution of Niels Hoek in VMR (2024), p. 171.

regulatory measures aiming at mitigating negative effects regarding one sustainability aspect may also have positive effects on another. Scientists reviewed SDG interlinkages and recommend that decision-making for accelerated SDG progress actively addresses both synergies and trade-offs. According to them SDGs 4, 6 and 17 act as multipliers of synergies, so decision-makers should focus their efforts on them, whilst paying attention to the SDGs that generate trade-offs.¹³

3 The need for a Water Scarcity Treaty

SDG 6 not only addresses drinking water, sanitation and hygiene, but also the quality and sustainability of water resources, which are critical to the survival of people and the planet.¹⁴ At this moment planetary boundaries for freshwater are exceeded. Four billion people have to cope with water scarcity.¹⁵ So, acceleration of achieving SDG 6 is urgent.¹⁶ With regard to several major global problems, international agreements have been concluded, but not on water scarcity. It is remarkable that a treaty on water scarcity was not on the agenda of the UN 2023 Water Conference. The outcome of this conference, the Water Action Agenda (WAA) including e.g. the ‘Freshwater Challenge’, is important, but the commitments in the WAA are not binding. Yet, increasing the sense of urgency and improving governance are necessary to bend the trend.¹⁷

My contribution to the fore-mentioned VMR 2024 publication seeks an answer to the question whether the Water Convention and the Watercourses Convention provide sufficient legal basis for the measures to be taken for mitigation of increasing global water scarcity.¹⁸ Water footprint experts suggest measures from a geographic, a production and a consumption perspective: 1) an obligation to set maximum water footprint caps on river basin level (geographic); 2) the setting of international reference values for water efficiency (production); and 3) reduction of the global average water footprint per capita per year (consumption).¹⁹

After exploring if these chain-oriented measures are required by, or can be taken on the basis of, the international water treaties, I came to the following conclusions.

1) The current water treaties do not require parties to set maximum water footprint caps on river basin level. However, the water-quality objectives and criteria that

are formulated according to the treaties, might function as a cap, under certain conditions for which the EU Water Framework Directive (WFD) can be a source of inspiration, although the failing implementation of the WFD and the recent decision of the European Commission to delay the EU Communication on water resilience are no examples to follow.²⁰

2) With regard to water efficiency, I conclude that the water treaties include provisions on the use of best available technology and on best environmental practices for discharges, but not on water efficiency in terms of water footprint per unit of product. Therefore I recommend that a requirement to set reference values based on product benchmarks for certain products will be inserted in the water treaties.

3) In my opinion, a reduction target of the global average water footprint (e.g. reduction to the level in 2000, 1,385 m³ /year per person) requires regulation in a new specific treaty on water scarcity, because this obligation does not easily fit within the goal and scope of the current water treaties. A Water Scarcity Treaty not only can set a clear consumption-based goal, but may also have positive side-effects such as removing obstacles in EU competition law for agreements between companies that aim at reducing water scarcity.

This possible side-effect may need some explanation. According to the European Commission “*agreements that aim solely to ensure compliance with sufficiently precise requirements or prohibitions in legally binding international treaties, agreements or conventions, whether or not they have been implemented in national law (for example, compliance with fundamental social rights or prohibitions on the use of child labour, the logging of certain types of tropical wood or the use of certain pollutants) and which are not fully implemented or enforced by a signatory State, fall outside the scope of Article 101*”, the cartel prohibition in the Treaty on the Functioning of the European Union (TFEU).²¹

If a sustainability agreement does fall within the scope of Article 101 TFEU, the European Commission at this moment allows collective benefits to be taken into account in the weighing of the positive and negative effects of the restrictive agreement, provided that parties to such an agreement demonstrate that the consumers in the relevant market substantially overlap with the beneficiaries of the agreement or form part of them.²² In other words, an agreement between companies that e.g. causes consumers to pay more for a less water intensively produced t-shirt, may be in breach of Article 101 TFEU, because the beneficiaries

¹³ Bennich et al. (2023).

¹⁴ See the UNEP [online resources on SDG 6](#).

¹⁵ See e.g. Mekonnen & Hoekstra (2016) and Wang et al. (2024).

¹⁶ United Nations (2023b).

¹⁷ Ligtvoet W. et al. (2023), p. 27.

¹⁸ VMR (2024), p. 60.

¹⁹ Hoekstra (2020), p. 156; Hogeboom et al. (2020).

²⁰ See [Open letter calls on the European Commission to launch a nature-based EU Water Resilience Initiative](#).

²¹ European Commission (2023), p. 148, par. 528.

²² European Commission (2023), p. 160, par. 585.

of the more sustainable production are not the same as those consumers. A clear reduction target in a Water Scarcity Treaty may contribute to the acknowledgement that all consumers are beneficiaries of (global) water scarcity reduction, so there is no need to investigate consumers' willingness to pay a higher price for the more sustainable product.

4 The Future

Back to the international level: one of the outcomes of UNEP-6 is a resolution on strengthening water policies.²³ The Summit of the Future focuses on the achievement of existing targets in treaties and SDGs. That certainly is necessary, but in my view the UN should at the same time consider the setting of a new binding target on water scarcity, because solving this increasing threat to people and nature will also help to achieve current goals. Hopefully, the next Water Conferences, in 2026 and 2028, offer new opportunities for proposals towards a Water Scarcity Treaty.²⁴

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²³ UNEP/EA.6/L.16. In this resolution UNEP is requested to present to UNEA-7 “a set of strategic priorities for how freshwater will connect across and accelerate the implementation of UNEP’s 2026–2029 Medium-Term Strategy, and for how it engages with the UN system-wide strategy on water and sanitation”.

²⁴ See A/77/L.106 at the [UN digital library](#). Follow-up to the United Nations Conference on the Midterm Comprehensive Review of the Implementation of the Objectives of the International Decade for Action, ‘Water for Sustainable Development’, 2018–2028.



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In many countries lawyers are working on aspects of environmental law, often as part of environmental initiatives and organisations or as legislators. However, they generally have limited contact with other lawyers abroad, in spite of the fact that such contact and communication is vital for the successful and effective implementation of environmental law.

Therefore, a group of lawyers from various countries decided to initiate the Environmental Law Network International (elni) in 1990 to promote international communication and cooperation worldwide. elni is a registered non-profit association under German Law.

elni coordinates a number of different activities in order to facilitate the communication and connections of those interested in environmental law around the world.

elni Review

The elni Review is an English language law review. It publishes articles on environmental law, focussing on European and international environmental law as well as recent developments in the EU Member States. elni encourages its members to submit articles to the elni Review (info@elni.org) in order to support and further the exchange and sharing of experiences with other members.

The first issue of the elni Review was published in 2001. It replaced the elni Newsletter, which was released in 1995 for the first time.

The elni Review is published by Öko-Institut, TH Bingen and sofia.

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