



International Rivers and Lakes

A Newsletter prepared jointly by the Department for Economic and Social Affairs,
United Nations, New York and the Economic Commission for Latin America and
the Caribbean, Santiago, Chile

No.40

December 2003

CONTENTS

I.	The UN/ECE Water Convention: exporting experience in water cooperation to the world.....	1
II.	Virginia wins Potomac water war in Supreme Court.....	2
III.	Water conflicts unlikely according to new study	3
IV.	Privatization of the world's waterways criticized.....	3
V.	Water for five million Americans lost to Mexico?.....	5
VI.	Mexican President blames water debt on predecessors.....	5
VII.	Rio Grande water to be sold to Mexico.....	6
VIII.	Suez may sue Puerto Rico.....	6
IX.	Tribunal chosen to hear dispute over Peruvian preserve.....	7
X.	Transboundary Issues – Iraq requests talks with Syria and Turkey.....	8

The statements and opinions reported in this *Newsletter* do not necessarily reflect the views, opinions, or official positions of the United Nations, and are to be exclusively attributed to authors, organizations and media quoted or summarized in the *Newsletter*.

The editor encourages contributions of news items for an exchange of information with interested readers.

Individual copies of the *Newsletter* are available upon request. Requests should include full name and address of offices and officials wishing to receive copies.

All correspondence should be addressed to:

Director
Division for Sustainable Development
Department of Economic and Social Affairs
United Nations, Room DC2-2220
Two UN Plaza, New York, N.Y. 10017
E-mail: brewster@un.org

I. The UN/ECE Water Convention: exporting experience in water cooperation to the world¹

More than 150 major rivers and 50 large lakes in the countries that are members of the United Nations Economic Commission for Europe (UN/ECE) run through or straddle the border between two or more countries. Managing them and sharing their resources can cause problems and tension between countries. To overcome this, the region has developed and gained considerable experience in transboundary water cooperation.

One of the most important tools UN/ECE has designed for such cooperation is its Convention on the Protection and Use of Transboundary Watercourses and International Lakes.² The UN/ECE Convention, signed in Helsinki in 1992, sets an international legal framework for cooperation on shared water resources (rivers, lakes and groundwater). But so far only UN/ECE member countries could benefit. Now all this could change.

In the third meeting since the Convention's entry into force in 1996, held in Madrid on 26-28 November, the parties decided to open up the possibility of acceding to the Convention to countries not members of UN/ECE. Thirty-five countries, Parties and non-Parties, took part in the meeting. This decision will make it possible for the rest of the world to use the Convention's legal framework to benefit from ECE's experience in transboundary water cooperation. This amendment to the Convention could be particularly important to the countries that border the UN/ECE region.

The Parties also decided to focus the Convention on Eastern Europe, the Caucasus and Central Asia. In these countries of the former Soviet Union, many rivers and lakes that used to be governed by one state are now shared between sovereign States.

II. Virginia wins Potomac water war in Supreme Court³

The US Supreme Court in early December 2003 settled a centuries-old dispute over control of the Potomac River in favour of Virginia, ruling that Maryland has no right to regulate withdrawals of drinking water from the river, *The Washington Post* reported.

By a vote of 7 to 2, the justices ruled that, although an 1877 arbitration decision affirmed Maryland's sovereignty over the entire riverbed, it also preserved Virginia's rights to extend water-intake pipes into the middle of the stream. In recent years Virginia had not forfeited those rights by submitting to some Maryland regulations.

"We conclude that the [1877 decision] gives Virginia sovereign authority, free from regulation by Maryland, to build improvements appurtenant to her shore and to withdraw water from the river, subject to the constraints of federal common law," Chief Justice William H. Rehnquist wrote for the court majority.

¹From ECE/ENV/03, p.24. The UN/ECE water convention: exporting experience in water cooperation to the world. <http://www.unece.org/press/pr2003/03env_p24e.htm> Posted 02 December 2003.

² The Convention has been ratified by: Albania, Austria, Azerbaijan, Belarus, Belgium, Bulgaria, Croatia, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Italy, Kazakhstan, Latvia, Liechtenstein, Lithuania, Luxembourg, the Netherlands, Norway, Poland, Portugal, the Republic of Moldova, Romania, the Russian Federation, Slovakia, Slovenia, Spain, Sweden, Switzerland, Ukraine and the European Community.

³ From: Water Tech Online <<http://www.watertechonline.com/>>, Legal Briefs 10 December 2003.

Officials of both states had cast the case as a modern fight over the pace of suburban development. Maryland officials argued that they needed to regulate Virginia's water use to ensure an environmentally sustainable level of growth on both sides of the river. Virginia officials argued that no other state should have a veto over its residents' use of their land, the article said.

The ruling may pave the way for higher withdrawals from the Potomac by the Fairfax County Water Authority (FCWA), whose installation of a new water intake in the middle of the river prompted resistance by Maryland and then a lawsuit by Virginia, heard by the Supreme Court, the paper reported.

III. Water conflicts unlikely according to new study⁴

Doomsday scenarios concerning water wars are unlikely to be acted out, new research suggests, as countries that compete for limited water resources are much more likely to negotiate than fight.

This is the conclusion of a study by Anders Jagerskog, of Linköping University, Sweden. The study is based on the processes of negotiation and decision-making surrounding water in one of the world's most conflict ridden areas – the Middle East. This area has the greatest shortage of water in the world relative to population.

The Jordan River is a vital resource for Israel, Palestine and Jordan, and all three are dependent on each other when it comes to administration of this water. Mr Jagerskog's study tries to explain how and why they have managed to collaborate on water issues even in the middle of heated conflict.

"It is striking how the parties continue to cooperate on the management of water," Mr Jagerskog said. The main reason for cooperation was mutual dependence on such a scarce resource.

"In this region a lot of the aquifers flow from Palestinian areas into Israel, making Israel dependent on Palestinians not polluting or drawing too much groundwater. Likewise, there is an aquifer south of Tel Aviv which flows from Israel to Palestine, so therefore, the dependence is the other way around," according to Jagerskog.

He stressed that in areas of strong demand for scarce water resources, water is not likely to be the issue of conflict per se, but a strong tool for negotiations and as a means of exerting pressure on other parties.

"Obviously negotiations often lead to disagreement, and water agreements are far from fair in all cases. But my point is that these conflicts do not lead to war," he said.

IV. Privatization of World's Waterways Criticized⁵

Prior to the Third World Water Forum that was held in Kyoto (Japan) in March 2003, the People's National Water Forum was held for two days in India. The Rashtriya Jal Biradari, the

⁴ Posted by David Hopkins on www.edie.net on 21 November 2003. Copyright Faversham House Group Ltd 2003. Reprinted with permission.

⁵ From: Right to Water, Posted 19 November 2003 (www.iatp.org). Full story at http://www.citizen.org/print_article.cfm?ID=9282.

National Network of Water Conservation movement, and the Jal Swaraj Abhiyan, the National Water Liberation-Water Rights Movement, co-organized a two-day gathering of water experts and activists to address urgent water issues, including privatization and river linking in India.

The People's Forum was organized at the end of phase one of the national Jal Yatra launched by Rajendra Singh, Magasasay Award winner for 2001, which has already covered Gujarat, Madhya Pradesh, Chattisgarh, Orissa and Uttaranchal and will be going through the rest of India to create awareness on water conservation and water privatization. Reports of water in each region were presented. The People's Forum was attended more than 100 key activists and experts belonging to about 40 groups, institutions, organizations and movements from different parts of India.

Dr. Vandana Shiva opened the meeting with an overview of the positive initiatives being undertaken by people through water harvesting, such as a project in Rajasthan, which involves promotion of prudent water use for organic farming. She identified as the two major threats to water resources and peoples' water rights water privatization and a proposal to link India's rivers.

The keynote address was given by Mr. Oscar Olivera of the Coalition for the Defense of Water and Life (La Coordinadora) in Cochabamba, Bolivia which fought against water privatization and drove out the private contractor Bechtel. The trade union group is now represented on the water committee to undertake water planning and water management for the city. Olivera inspired the Indian movements with the success of the group in Bolivia, which demonstrated that water privatization is not inevitable. Mr. Olivera noted that water belongs to the Earth and all people, defending water as a common good and the ultimate democratic challenge of our times. He also explained that a global citizens' movement is emerging against water privatization.

Representatives of the movement of displaced people from villages around Tehri Dam, and farmers (Dehat Morcha) presented their case that the Tehri Dam had destroyed the Bhagirathi, a most sacred river, and the entire fabric of society in Bhagirathi Valley. At the same time as the women of the villages around the dam site were denied water, the government had agreed that 635 million litres of Ganga water could be sold to consumers in Delhi by the French multinational company Suez Degremont through the Sonia Vihar plant. From Tehri through Haridwar and Western Uttar Pradesh, a people's movement was growing against the privatization of Ganga River water. It was demonstrated that Delhi water needs could be met through Delhi water supply, if the current culture and policy of pollution and waste were replaced by a culture and corresponding policy of conservation and cleaning.

Case studies of privatization of river waters and of water 'theft' by bottled water companies were also presented. These cases showed that the companies were drawing huge quantities of water without paying for it. Participants made a commitment to spread a movement against growing dependency on bottled water.

Participants condemned the government's commitment to water privatization in its new water policy. They also condemned the use of NGOs and local governments (panchayats) to set up water users associations and pani panchayats, which undermine community rights and collective management of water. Mr. Anil Choudhury of PEACE in the opening session said that community rights were being assaulted by using the language of 'community'. The case of the privatization of the Orissa Lift Irrigation under the garb of Pani Panchayat was an example of this problem. Representatives from Punjab shared the news of the new campaign against privatization called Tuti Bachaoo Morcha (Save our Public Taps movement). The commitment was made to spread these movements to other areas where Swajal and Swajal Dhara are becoming indirect means to privatization.

The mega scheme to link 'water surplus' and 'water deficit' rivers was also considered as a scheme for privatization, since the huge investment required (US\$ 200 billion) would have to be raised through loans and foreign direct investment (FDI). Serious doubts were raised about the project's viability and its scientific basis. The movements for water rights made a commitment to assess and evaluate the project, provide alternatives and create resistance, if wasteful river diversion schemes were implemented without people's consent, popular support and adequate environmental impact assessment.

Prof. Amaswamy Iyer, Former Secretary, Ministry of Water Resources, gave an overview of the inadequacy of the scientific analysis that has gone into this mega river linking project that has been imposed on the country without having gone through the mandatory planning process.

Participants from Orissa showed that the Mahanadi, which is being treated as a 'surplus' river has no water. The very categories of 'water surplus' and 'water deficit' rivers, on which river linking is based, are therefore in doubt. The Jal Yatra movement will be undertaking on-the-ground assessments of the real state of India's rivers so that the people of India are not dependent on false and unreliable data.

Participants also issued a Declaration of their common principles and common commitment to keep water as a common good.

V. Water for five million Americans lost to Mexico? ⁶

The *Arizona Republic* reported that one of Mexico's top water officials bristled at suggestions made on 11 December 2003 that his country was taking advantage of unused water flowing down the Colorado River. The water, as much as 1 million acre-feet over the past five years, arrives with too little warning and is often of poor quality, said Arturo Herrera Solis, Commissioner of the Mexican Section of the International Boundary and Water Commission.

The water flowing into Mexico has taken on added importance, as a five-year drought continues to reduce storage in Lake Mead, which supplies water for Arizona, Nevada and California. It was the subject of an animated discussion at the annual Colorado River Water Users Association, which was meeting in mid-December in Las Vegas, the paper said.

Much of the lost water, enough to serve 5 million residential customers, was intended for use along the lower Colorado, but was lost when users asked for more than they needed or canceled orders, the article stated.

Under a treaty with Mexico, the United States has agreed to deliver 1.5 million acre-feet from the Colorado River each year. Because Mexico sits at the end of the river, it also gets any water not taken by the seven US states that also draw from it.

VI. Mexican president blames water debt on predecessors ⁷

AUSTIN, TX — Texas Governor Rick Perry and Mexican President Vicente Fox pledged on 6 November 2003 to work toward solving their differences over Mexico's water debt to the US, the Associated Press said in an article reported by [SFGate.com](http://www.sfgate.com).

⁶ From WaterTechonline, Market Updates, 12 December 2003< <http://www.watertechonline.com/news>>

⁷ From WaterTech.Online, Regulatory Matters, 07November 2003< <http://www.watertechonline.com/news>>

Their remarks came as Fox spent a day meeting with Texas government and business leaders on the last leg of a three-day trip through the Southwest.

Texas officials had been wanting to talk to Fox about the 1.3 million acre feet of water Mexico owes under a 1944 water-sharing treaty. Fox told the AP that his nation has been fulfilling its obligations under the treaty since he took office in 2000.

Perry acknowledged that Fox's administration was keeping up with yearly commitments, but said in the article that Texas is concerned about the water debt that Mexico has accumulated over the past decade.

Fox emphasized in a *Star-Telegram* article that it was his administration that began complying with the treaty and that previous ones had racked up the deficit. He also said officials from his government, the US government and the state of Texas would meet in late 2003 to set a schedule of talks in 2004 "to see how we can solve these problems."

VII. Rio Grande water to be sold to Mexico⁸

ALBUQUERQUE, NM — Lion's Gate Water, a Canadian company operating in New Mexico, announced that it has offered to sell up to 392,000 acre-feet of water to the Mexican Government, and the city of Juarez, the company announced in a news release. In June 2003, Lion's Gate Water applied for all of the un-appropriated water that evaporates from the surface of Elephant Butte, Caballo and Cochiti reservoirs in New Mexico. "This water is wasted and, under the water law of the American West, this kind of waste is illegal," Dr. William Turner, of Lion's Gate Water said in the press release.

In 1979, the US Court of Appeals prohibited the city of Albuquerque from storing San Juan-Chama transmountain project water in Elephant Butte reservoir because the extreme waste of water in a desert environment could not be tolerated.

The applications filed by Lion's Gate are intended to commercialize the water produced and diverted under the permits.

VIII. Suez may sue Puerto Rico⁹

Water-related conflicts used to be within the realm of domestic courts for national differences, whereas special *ad hoc* tribunals were convened for international differences. However, as a result of globalization, new forums are emerging. Thus, arbitration procedures, originally devised for commercial matters, are used whenever a foreign investor is involved. Two such cases demonstrate this emerging procedure and the problems it raises. The first deals with water companies arguing about public utilities services. The second (item IX of this newsletter below) deals with a private firm (Lucchetti), arguing against the enforcement of environmental preservation of a marshland preserve in Chile (La Villa).

In the first case, the international firm (Ondeo/Suez) is negotiating with the Puerto Rican government over cancellation of a contract. Suez received a \$4 billion, 10-year contract with

⁸ From Watertechnonline, Market Updates, 3 October 2003 <<http://www.watertechnonline.com/news>>

⁹ From: Right to Water (right water@iatp.org) Posted: 13 December 2003 by sgrusky@citizen.org.

Puerto Rico in 2002, but the latter wants to terminate the contract. In early December 2003 Suez/Ondeo was demanding \$93 million from the government of Puerto Rico before they would terminate the contract. They claim this is a reimbursement that they are owed for the investment they have made. The government of Puerto Rico says that the Puerto Rican people should not have to pay for the errors of Ondeo.

If Suez finally sues, the claim may be lodged at the arbitration court of the World Bank. This type of court provides special forums to foreign investors. Thus, Puerto Rico may join ranks with the highly visible claims against Argentina. One of the main problems of such a process is that arbitration courts are not bound by precedent. As a result, there are no guarantees that public interest issues will be dealt with according to precedents set up by international law. Additional problems are that proceedings in the arbitration court are secret and there are no appeals. A growing number of American and Canadian authorities have expressed concerns that this type of procedure may not be suited to public interest issues. More importantly, it has been argued that democracy may be at stake.

It is important that countries request that public interest cases, related to either water or their services, be adjudicated on the basis of relevant national principles and general principles of law. Otherwise the sustainable governance of water and its services may be at risk. The criteria devised by USA courts and regulators, when dealing with water conservation, environment and public utilities services may be of interest in future efforts.¹⁰

IX. Tribunal chosen to hear dispute over Peruvian Preserve¹¹

A tribunal has been selected to hear a claim brought by a Chilean investor against Peru at the International Centre for Settlement of Investment Disputes (ICSID). The dispute arises under the Chile-Peru bilateral investment treaty and was registered earlier this year, when a Chilean private company Lucchetti was ordered to dismantle a Peruvian factory which had been built adjacent to an environmental preserve, is a marshland area.

Lucchetti has alleged that it is the victim of discriminatory treatment, arguing that other foreign investors have not suffered the same fate at the hands of Peruvian authorities (See "Peru closes Chilean factory in environmental reserve; triggers investment dispute", INVEST-SD News Bulletin, 24 January 2003).

The tribunal convened to examine Lucchetti's claim is to be presided over by Judge Thomas Buergenthal, a current member of the International Court of Justice and former President of the Inter-American Court of Human Rights, and by Jan Paulsson and Bernardo Cremades, both arbitration lawyers in private practice.

¹⁰ Echeverria, John D. The Real Contract on America, *The Environmental Forum*, p.28, The Environmental Law Institute, Washington DC, Georgetown University July/August 2003; International Institute for Sustainable Development (IISD)-WWF, *Private Rights, Public Problems: A guide to NAFTA's controversial chapter on investor's rights*, Manitoba, Canada, 2001, p. viii.; Tollefson, Chris, NAFTA's Chapter 11, The Case for Reform, in *Choices: Canada's Options in North America*, IRPP, 9(2) March 2003:55; Bradley, Curtis A., *International Delegations, The Structural Constitution, and Non-Self Execution*, *Stanford Law Review*, May 2003, (55 *Stan. L. Rev.* 1557, 1573, 1575); Echeverria, John D., Loewen, *Mondev and Review of US Judicial Rulings by International Arbitration Panels*, Georgetown Environmental Law and Policy Institute, July 2003, p. 10.

¹¹ From Luke Eric Peterson, INVEST-SD News Bulletin, 26 Sept 2003<<http://www.iisd.org/investment/invest-sd/>>

The ICSID tribunal's work could be short-lived. Earlier in 2003, the Peruvian government had responded to Lucchetti's arbitration claim, by mounting its own state-to-state claim under the Chile-Peru bilateral investment treaty.

At the time, sources indicated that any ICSID tribunal convened to hear Lucchetti's claim might consider postponing such proceedings, in deference to the state-to-state dispute between Chile and Peru. (See "Peru launches unprecedented state to state arbitration in dispute with Chile", INVEST-SD News Bulletin, 28 March 2003).

Failure to do so, could lead to separate tribunals handing down divergent or conflicting arbitral awards related to the same issues.

X. Transboundary Issues – Iraq requests talks with Syria and Turkey¹²

Iraq says its share of water from the Tigris and Euphrates is not enough and it wants to hold talks with Turkey and Syria, who also use water from those rivers. "We are intending to hold talks with our neighbours very soon to reach an agreement that divides water among the three of us in a just manner," says newly appointed Minister of Water Resources Abdul Latif Rasheed. Rasheed also said he had asked the U.S.-backed Governing Council for US\$ 1 billion (EUR 0.87 billion) to carry out water resources projects in Iraq for 2004. Among those projects are efforts to restore marshes in southern Iraq that Saddam Hussein's government drained in the 1990s.

¹² From: ENN, 16 September 2003, http://www.enn.com/news/2003-09-16/s_8435.asp