

December 2008

Not Just Another Drop in the Human Rights Bucket: The Legal Significance of a Codified Human Right to Water

Ling-Yee Huang

Follow this and additional works at: <https://scholarship.law.ufl.edu/fjil>

Recommended Citation

Huang, Ling-Yee (2008) "Not Just Another Drop in the Human Rights Bucket: The Legal Significance of a Codified Human Right to Water," *Florida Journal of International Law*. Vol. 20: Iss. 3, Article 4.
Available at: <https://scholarship.law.ufl.edu/fjil/vol20/iss3/4>

This Article is brought to you for free and open access by UF Law Scholarship Repository. It has been accepted for inclusion in Florida Journal of International Law by an authorized editor of UF Law Scholarship Repository. For more information, please contact kaleita@law.ufl.edu.

NOTE

NOT JUST ANOTHER DROP IN THE HUMAN RIGHTS BUCKET: THE LEGAL SIGNIFICANCE OF A CODIFIED HUMAN RIGHT TO WATER

*Ling-Yee Huang**

I.	INTRODUCTION	351
II.	DEFINING A HUMAN RIGHT TO WATER	353
III.	THE INTERSECTION OF HUMAN RIGHTS AND PROTECTION OF THE ENVIRONMENT	356
IV.	AN EVALUATION OF THE LEGAL EFFECTS AND IMPLICATIONS OF A HUMAN RIGHT TO WATER	359
	A. <i>Supervisory Mechanisms</i>	359
	B. <i>A Jus Cogens Norm</i>	362
	C. <i>Other Obstacles and Implications of a Human Right to Water</i>	365
V.	CONCLUDING REMARKS	367

I. INTRODUCTION

Currently amidst the United Nations proclaimed Decade of Water for Life,¹ a vast sector of the world's population still lacks daily access to sources of clean water for personal and domestic use.² Despite the universal necessity of water for basic survival and minimal living conditions, a codified right to water does not presently exist in the international legal sphere. Although the right may be derived from many human rights treaties or non-binding declarations, States have seldom recognized an explicit right to water. Yet as the dialogue on climate

* B.A. Rice University, J.D. University of Florida.

1. UN-WATER, UNITED NATIONS, INTERNATIONAL DECADE FOR ACTION: WATER FOR LIFE 2005-2015, <http://www.un.org/waterforlifedecade/> (last visited Sept. 18, 2008).

2. WATERTREATY.ORG, FACTS ON WATER: ACCESS TO WATER ISN'T A PRIVILEGE, IT'S A RIGHT, <http://www.watertreaty.org/stats.php> (last visited Sept. 18, 2008).

change and other meteorological variations has increased, the movement toward codifying a right to water has simultaneously gained momentum.

However, the question remains: why is it necessary to codify a human right to water? Left to the accretion of State practice³ over time, development of customary international law may compensate for the silence on water rights—an unsatisfactory answer for the billions of people who face water deprivation and poverty as dual obstacles. Projected global populations will increasingly strain water resources, potentially leading to greater conflicts over this precious natural resource. Conflicts have already arisen in parts of the Middle East and sub-Saharan Africa and even include conflicts between humans and native fauna.⁴ In addition to increased water consumption in the agricultural and industrial sectors, consumption will only rise further with the rapid industrialization of developing countries.⁵ Other development issues include mismanagement of water and ecological resources, such as a lack of adequate water institutions, fragmented institutional structures, and short-sighted water policies.⁶

The ecological consequences of water mismanagement are equally detrimental. Draining wetlands decreases water retention and recycling capacity,⁷ and contaminated runoff and pollution of natural waterbodies foreclose human use.⁸ The destruction of ecological habitats contributes

3. For example, the 1997 Constitution of South Africa explicitly and implicitly recognizes a right to water. S. AFR. CONST. 1997, art. 27. Article 27 states that all citizens have the “right to have access to . . . sufficient food and water,” and a right to water is related to the constitutional guarantees of access to housing, healthcare, food, and social security. *Id.*; Water Resources Act 108 of 1997 (WRA) § 3. Under the WRA, citizens are guaranteed the rights of access to a basic water supply, defined as the prescribed minimum water quality and quantity standard for households to support life and maintain personal hygiene. Water Resources Act 108 of 1997 (WRA) § 3. Following the dismantling of apartheid, South Africa had the opportunity to restructure its institutions and legislation to support a constitutional right to water. Erik Bluemel, *The Implications of Formulating a Human Right to Water*, 31 *ECOLOGY L.Q.* 957, 979 (2004). Obstacles to full realization include uneven provision of water services and some economic discrimination, burdening the poor who cannot afford to pay for water services. *Id.* The example of South Africa is atypical of state practice and illustrates both the possibility of a human right to water and the realities of implementation.

4. *Kenyan Monkeys Fight Humans for Water*, BBC NEWS, Mar. 21, 2000, <http://news.bbc.co.uk/1/hi/world/Africa/685381.stm>. See Pacific Institute, *Water Conflict Chronology*, available at <http://www.worldwater.org/chronology.html> (last visited Dec. 3, 2008).

5. John Scanlon et al., *Water as a Human Right?*, ICUN ENVTL. POL’Y & L. PAPER NO. 51, 16 (2004).

6. *Id.* at 17.

7. U.S. Environmental Protection Agency, *Functions and Values of Wetlands*, EPA 843-F-01-002c (Sept. 2001).

8. U.S. Environmental Protection Agency, *Wetlands: Recreation and Aesthetics*, available at <http://www.epa.gov/owow/wetlands/recreation.html> (last visited Dec. 9, 2008).

to the increase of greenhouse gases and further exacerbates projected temperature increases.⁹ Projections indicate a disproportionate increase of volatile weather patterns across the globe.¹⁰ Increased severity of floods, such as those in India, will cause greater contamination of water sources and speed the spread of disease,¹¹ while other areas will experience corresponding drought and desertification.¹²

The legal motivations to codify a right to water are equally compelling. State obligations and duties would be clearly identifiable, as would subsequent violations. Under a right to water, a State could not condone policies that discriminate against individuals based on their economic level or housing status. Yet the current failure to recognize a human right to water also does not provide any legal recourse or access for individuals whose rights are being violated. As a codified right, domestic and international legal institutions provide relief for violations by a State.¹³ Currently, violations of a right to water are linked to other rights in order to provide a remedy. Codifying a right to water would spare this rhetorical gymnastics and hold states accountable for specific violations.

II. DEFINING A HUMAN RIGHT TO WATER

That water is an undisputed necessity for life attests to the need to protect a right to water for all. However, the importance of water in the current global order extends beyond its biological and ecological importance. Access to safe drinking water has transformed into a political, economic, and social issue at all levels. Underlying many of the political tensions in the Middle East are conflicts over water and water use among neighboring countries, such as Jordan, Israel, Syria, and Lebanon that dispute the use of the Jordon River.¹⁴ The health implications are also significant; investments in water quality and sanitation can yield net

9. *Wetland Values and Functions: Climate Change Mitigation*, available at http://www.ramsar.org/info/values_climate_e.htm (last visited Dec. 9, 2008).

10. Intergovernmental Panel on Climate Change, *Climate Change 2007: Synthesis Report* 53 (2007) [hereinafter *Climate Change Synthesis*].

11. Somini Sengupta, *Torrential Rain Reveals Booming Mumbai's Frailties*, N.Y. TIMES, Aug. 3, 2005, at A3.

12. *Climate Change Synthesis*, *supra* note 10.

13. For a detailed discussion of the justiciability of a right to water, see *What Price for the Priceless? Implementing The Justiciability of the Right to Water*, 120 HARV. L. REV. 1067 (2007).

14. Peter Yolles & Peter H. Gleick, *Water, War, and Peace in the Middle East*, 36 ENVIRONMENT 6, 9 (1994).

economic benefits as a result of improved health conditions and reduced health-care costs.¹⁵

Although the primary international human rights texts do not explicitly recognize a human right to water,¹⁶ this right is clearly implied in and derived from the provisions of the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant of Economic, Social, and Cultural Rights (ICESCR).¹⁷ For example, Articles 6 and 7 of the ICCPR guarantee the “inherent right to life” and freedom from “torture or to cruel, inhuman, or degrading treatment,” respectively.¹⁸ Water is essential to the full realization of these Articles, for deprivation of water may amount to deprivation of life or inhumane treatment. Moreover, Articles 21 and 25 of the ICCPR guarantee the right of peaceful assembly and the right to participate in public life, both of which relate to the monitoring, surveillance, and advocacy aspects of water management and a human right to water.¹⁹

In General Comment 15, the U.N. Economic and Social Council (ECOSOC) defines a right to water as the following:

The human right to water entitles everyone to *sufficient, safe, acceptable, physically accessible and affordable* water for personal and domestic uses. An adequate amount of safe water 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.²⁰

15. WORLD HEALTH ORG., *Guidelines for Drinking-water Quality XV* (3d ed. 2004) (emphasis added) [hereinafter WHO GUIDELINES].

16. To become an established and recognized human right, a “new” right must have a fundamentally important social value and must be relevant to a range of value systems. Philip Alston, *Conjuring Up New Human Rights: A Proposal for Quality Control*, 78 AM. J. INT’L L. 607, 614-15 (1984). These rights must originate from interpretations of U.N. Charter obligations, customary international laws, or general principles of law. *Id.* at 615. Furthermore, these rights must generate high international consensus and thus not run contrary to state practice. *Id.* Finally, the right must be specific enough to invoke state obligations and to identify violations. *Id.*

17. International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR]; International Covenant on Economic, Social, and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3 [hereinafter ICESCR]. These Covenants represent the legal obligations arising from the non-binding Universal Declaration of Human Rights. Under the ICCPR, states have specific and immediate obligations to effectuate the civil and political rights. However, the ICESCR is based upon the principle of progressive realization, meaning that while states must take action towards realizing the rights in the Covenant, states are not obliged to realize those rights immediately.

18. ICCPR, *supra* note 17, arts. 6 & 7.

19. *Id.* arts. 21 & 25.

20. U.N. Econ. & Soc. Council [ECOSOC], Sub-Comm. on Econ. Soc. & Cultural Rights,

Despite its non-binding and advisory nature, the Comment marks the first independent and progressive recognition of a human right to water.²¹ In issuing the Comment, ECOSOC draws its basis for a right to water from Articles 11 and 12 of the ICESCR and notes the significance of water as the basis for realizing other ICESCR rights, such as the right to adequate food and the right to health.²² ECOSOC also prioritizes water for personal and domestic uses and other resources required to prevent starvation and spread of disease.²³

ECOSOC's definition embraces concepts of sufficiency, the minimum quantity of water for human use. The estimated quantity ranges from 7.5 to 50 liters per person per day (LPD).²⁴ The minimum amount accounts for food incorporation and hydration only, while the higher estimate also accounts for sanitation and hygiene.²⁵ Regardless of the system used, determining an exact LPD may be less important than the act of setting a goal and developing the means to achieve it.²⁶

In addition, the World Health Organization (WHO) has developed guidelines for safe and acceptable water quality and quantity, which often

General Comment No. 15, The Right to Water (Articles 11 and 12 of the International Covenant on Economic, Social, and Cultural Rights), ¶ 2, U.N. Doc E/C.12/2002/11 (Jan. 20, 2003) [hereinafter *General Comment 15*]. Here, the human rights aspect differs from pure water rights which focus on aspects of territorial and property rights with human needs as subsidiary elements.

21. Stephen McCaffrey, *The Human Right to Water Revisited*, in *WATER AND INTERNATIONAL ECONOMIC LAW* 17, 19 (Edith Weiss et al. eds., 2004).

22. *General Comment 15*, *supra* note 20, ¶¶ 6 & 8.

23. *Id.* ¶ 8.

24. WHO GUIDELINES, *supra* note 15, at 90-91; Peter Gleick, *The Human Right to Water*, 1 *WATER POL'Y* 487, 496 (1998).

25. WHO GUIDELINES, *supra* note 15, at 90-91. More specifically, this amount includes 5 liters for drinking, 20 liters for sanitation and hygiene, 15 liters for bathing, and 10 liters for cooking. Gleick, *supra* note 24. An innovative concept is that of virtual water to account for a portion of daily water use. WORLD WATER COUNCIL, *VIRTUAL WATER*, <http://www.worldwatercouncil.org/index.php?id=866> (last visited Sept. 18, 2008). Virtual water measures the amount of water incorporated into food production and deducts that amount from the suggested LDP. *Id.* In many countries and regions, a public policy of importing food from water-rich regions may be more cost efficient and reasonable than building hydration systems for domestic food production. *Id.*

26. Gleick, *supra* note 24, at 496.

depend on proper sanitation infrastructure to prevent contamination.²⁷ Contaminants, ranging from microbes to chemical and radiological elements, manifest both immediate and long-term effects.²⁸ Water must also be acceptable in taste, odor, appearance, and temperature to the local population.²⁹

Physical access includes the proximity of a water source to the household and the physical security of the water source. A proposed minimum physical access is 20 LPD within one kilometer of dwelling.³⁰ However, distance is irrelevant if personal security is threatened en route, whether by conflict or by natural obstacles. A factor related to access is affordability. Water must be available to the vast majority of a population without economic discrimination.³¹

Under a human rights' framework, water must also be properly managed and independently monitored. Indeed some scholars argue that it is not the lack of water that will create water crises in the future, but the mismanagement of water resources.³² Independent surveillance of quality, quantity, accessibility, affordability, and long-term availability are included in the WHO's framework.³³

III. THE INTERSECTION OF HUMAN RIGHTS AND PROTECTION OF THE ENVIRONMENT

Despite the significant overlap between the goals for environmental protection and human rights, a right to water is best served through a

27. WHO GUIDELINES, *supra* note 15, at 1. Under the health-based and quality targets, water is measured by the microbial factors and chemical and radiological components present in water and by the acceptability of water quality for consumers. *Id.* at 23. In countries that lack adequate sanitation infrastructure, water is frequently contaminated by human and animal excreta. *Id.* at 121. Contamination varies by the local population, use of waste water, and selective pressure and recombination of pathogens. *Id.* Even measures of basic sanitation have shown significant improvement in local water quality. *Id.* at 122.

28. *Id.* at 146, 200-01.

29. *Id.* at 210.

30. *Id.* at 91. The WHO considers as having no access those whose water sources require more than 30 minutes travel time because the collected volume will tend to be less than 5 LPD. *Id.* at 91. The quantity of water collected is generally proportional to the distance or time required for collection. *Id.*

31. *Id.* at 92. For example, if water delivery systems in a country are privatized, significant portions of citizens should not be deprived of water for lack of ability to pay.

32. McCaffrey, *supra* note 21, at 27.

33. *See generally* WHO GUIDELINES, *supra* note 15.

human rights' framework.³⁴ An environmental protection of water resources alone ignores State obligations to actively provide and improve water infrastructure, a necessity for those who do not have daily access to adequate and safe water for personal use. While essential, a myopic focus on conservation and protection inadequately addresses accessibility of water, an essential element of a human right to water. The human rights' framework extends protection from both an environmental and an anthropocentric perspective, whereas the provision of water cannot be achieved through an environmental framework alone.

As an absolute entitlement, a human rights' claim resonates more soundly than an environmental claim, subject to regulatory whims.³⁵ Every individual would have the right to invoke such a claim, and thus water resources could not be exploited for profit or personal use if required to satisfy a human right.³⁶ States must also account for long-term provision and access to water, thus governing short-sighted development or unsustainable use. A human rights' approach also permits some measure of evolutive interpretation and application as technology and scientific knowledge increase. This flexibility is important in covering a range of potential violations. Furthermore, as a human right, individuals who are denied access to water have additional forms of judicial remedy at both the national and international level.³⁷ This expanded access to justice serves as a net for legitimate claims that have not otherwise been addressed by other legal means.³⁸ Ultimately a human rights approach to water tightly links national, regional, and international levels of State obligations and accountability where an environmental approach may be diluted by sovereignty or economic considerations.

However, the disadvantages to a human rights approach are notable as well. Grouping a right to water under the human rights' framework may address the problem too simplistically. A right to water does not exist

34. Principle I of the 1972 Stockholm Declaration captures the relationship between human rights and the environment, declaring that "man has the fundamental right to freedom, equality, and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being." U.N. Conference on the Human Environment, Stockholm, Swed., June 5-16, 1972, *Stockholm Declaration of the United Nations Conference on the Human Environment*, ¶ 1, U.N. Doc. A/CONF.48/14 (June 16, 1972). The Declaration embraces a reciprocal duty for current generations to "protect and improve the environment for . . . future generations." *Id.*

35. Michael Anderson, *Human Rights Approaches to Environmental Protection: An Overview*, in HUMAN RIGHTS APPROACHES TO ENVIRONMENTAL PROTECTION 21 (Alan E. Boyle & Michael R. Anderson eds., 1996).

36. *Id.*

37. *Id.* at 22.

38. *Id.* at 21-22.

solely in the human rights' framework but also overlaps with other categories of rights, such as environmental rights, indigenous peoples' rights, sustainable development rights, or sovereignty rights. Furthermore, any right to water "requires a legal language capable of incorporating highly technical specifications," of evaluating causal relationships, and of protecting ecological interdependencies.³⁹ The flexibility of the human rights rhetoric poses challenges of interpretation, and opposing sides can easily manipulate the often ambiguous language. For example, the language of human rights related to protection of the environment can be employed to protect a certain way of life for some while dispossessing others of their right to use natural resources.⁴⁰ The current tension between the developing countries' right to develop and to exploit their own natural resources and the developed countries' desire to preserve areas of ecological pristine exemplifies the malleability of human rights language.

A human rights' approach may not account for the underlying political economy that dictates many environmental policies. In practice, a State's political economy, rather than human rights obligations, may dictate the extent to which certain rights are realizable or the extent to which environmental destruction occurs. Moreover, expanding litigation of water and environmental issues to human rights venues may displace other forms of arbitration or jurisprudence that are better suited to environmental issues, such as interparty negotiations for trans-boundary issues that impact human rights.

Despite these disadvantages, a human rights approach to a right to water is far more efficient and effective than a pure environmental protection approach. The natural overlap serves to strengthen both claims, while the emphasis on a human rights' approach solidifies state obligations and provides greater individual remedy for violations. The difficulty remains in attempting to find a balance between the goals of human rights and the goals of environmental law: to protect individuals while also striving to preserve the environment for the benefit of present and future generations.⁴¹

39. *Id.* at 22.

40. *Id.* at 23.

41. Dinah Shelton, *Human Rights, Environmental Rights, and the Right to Environment*, 28 STAN. J. INT'L L. 103, 111 (1991-92).

IV. AN EVALUATION OF THE LEGAL EFFECTS AND IMPLICATIONS OF A HUMAN RIGHT TO WATER

This Section explores the legal effects and implications of codifying a human right to water. First, it will examine the supervisory mechanisms in human rights' charters relevant to a human right to water. This Section will then discuss the status of a right to water as a preemptory norm of international law. This Section concludes by discussing obstacles to implementing such a right.

A. Supervisory Mechanisms

A direct benefit of codifying any human right is the corresponding ability to identify state violations. Under a human right to water, States must demonstrate that necessary and feasible steps were taken to fulfill their obligations.⁴² If States are unable to fulfill their obligations under a right to water due to lack of resources, they must nonetheless demonstrate that every available resource was made available to fulfill obligations.⁴³ The Economic and Social Committee has adopted the view that a failure or unwillingness to use the maximum of available resources for the realization of the right to water is a violation of the obligations under ICESCR.⁴⁴ A failure to demonstrate either is a failure to act in good faith according to general principles of international law and thus constitutes a violation of obligations towards the international community.⁴⁵

Access to the human rights' supervisory mechanisms is a primary reason to categorize a right to water as a human right. Internal violations, which characterize most human rights' violations, include both acts of commission and omission.⁴⁶ Individuals whose rights have been violated would have the same access to legal remedy as granted in the main human rights' treaties. As an environmental right, supervision of a right to water is relegated to interparty negotiations, third party mediation or arbitration, or referral to the International Court of Justice.⁴⁷ Instead, a human right to

42. ICCPR, *supra* note 17, art. 2; ICESCR, *supra* note 17, art. 2.

43. ICCPR, *supra* note 17, art. 2; ICESCR, *supra* note 17, art. 2.

44. *General Comment 15*, *supra* note 20, ¶ 41.

45. *Id.* ¶ 40; Vienna Convention on the Law of Treaties art. 26, May 23, 1969, 1155 U.N.T.S.331 [hereinafter VCLOT].

46. *General Comment 15*, *supra* note 20, ¶¶ 42 & 43. For example, the adoption of retrogressive measures that prevent fulfillment of a right to water would constitute an act of commission; the failure to enforce relevant laws pertaining to a right to water would constitute an act of omission. *Id.*

47. See Convention on the Protection and Use of Transboundary Watercourses and Int'l Lakes, art. 22, ¶¶ 1-2, Mar. 17, 1992, 31 I.L.M. 1312 [hereinafter Watercourses Convention];

water implicates all three generations of human rights⁴⁸ and thus allows for state reports, interstate reports, and individual complaints.

As required by many human rights treaties, state reporting consists of regularly submitted reports on the measures taken to give effect to human rights and on the progress made in the enjoyment of such rights.⁴⁹ Respective committees, such as the Human Rights Committee (HRC) or ECOSOC, are empowered to review these reports and make general comments and suggestions.⁵⁰ As a codified right, States would be required to report on the progress made towards effective implementation of a human right to water, including enactment of legislation or identification of obstacles.⁵¹ These reports would be submitted to the Secretary-General of the United Nations.⁵²

While some states may undertake to submit earnest reports, this system of accountability is plagued by a backlog of reports and by superficial State accounts.⁵³ For example, state reports to the Committee on the Elimination of All Forms of Discrimination against Women (CEDAW) refrain from internal criticism and focus on legislative measures and institutional guarantees to prevent discrimination against women.⁵⁴ Little focus has been placed on the actual implementation or impact that enforcement of CEDAW has had on women's lives.⁵⁵ Although such reports may be useful in assessing the overall picture of a state's human

Convention on Biological Diversity, art. 27, June 5, 1992, 1760 U.N.T.S. 79 [hereinafter Biodiversity Convention].

48. The first generation of human rights is civil and political rights, which are realized through freedom from arbitrary governmental interference and by guaranteeing individual participation in civil society. Alan Boyle, *International Human Rights Law, in HUMAN RIGHTS APPROACHES TO ENVIRONMENTAL PROTECTION* 46 (1996). Effectuating these rights seldom incurs great cost and is thus generally considered feasible. The second generation of human rights consists of economic, social, and cultural rights, effectuation of which often depends on the financial resources of a state. *Id.* The third generation of human rights encompasses relatively new rights that may be invoked against or demanded of the state. Shelton, *supra* note 41, at 122. A human right to water spans all three generations of rights, from individual participation in management of water resources and state assistance in providing access to water to the collective impact of denying water.

49. ICCPR, *supra* note 17, art. 40, ¶ 1; ICESCR, *supra* note 17, art. 16, ¶ 2.

50. ICCPR, *supra* note 17, art. 40, ¶ 4; ICESCR, *supra* note 17, art. 16, ¶ 2(a).

51. ICCPR, *supra* note 17, art. 40, ¶ 2.

52. *Id.*; ICESCR, *supra* note 17, art. 16, ¶ 2(a).

53. See Andrew C. Byrnes, *The 'Other' Human Rights Treaty Body: The Work of the Committee on the Elimination of Discrimination Against Women*, 14 YALE J. INT'L L. 1, 13-17, 27 (1989).

54. *Id.* at 14.

55. *Id.*

rights progress, state-interests counter the likelihood that the reports would reveal inadequacies in or deficiencies of implementation.

More effective means of monitoring would thus arise from interstate reports and individual complaints. State Parties to the ICCPR can recognize the competence of the HRC to review reports from other states which allege noncompliance with Covenant obligations.⁵⁶ Unlike the general nature of international law, which creates obligations between and among States, human rights law creates internal domestic obligations that do not tend to affect other states to the extent that interstate reporting is necessary.⁵⁷ While interstate reporting provides another form of accountability, it is likely to be less utilized than the other supervisory mechanisms.⁵⁸ Nonetheless, significant natural disasters or situations of severe water deprivation could cause affected individuals to seek refuge in a neighboring country, giving rise to interstate reporting.

What is most critical, then, about using human rights supervisory mechanisms to enforce a right to water is the system of individual complaints. Denying the right to water entitles victims to judicial remedies at the national and international level and to adequate reparations.⁵⁹ In addition, individual access has been further expanded by allowing complaints submitted on behalf of individuals by specialized agencies and non-governmental organizations. The First Optional Protocol to the ICCPR bolsters the original supervisory mechanisms and was created expressly to further achieve the purposes and the effective implementation of the ICCPR.⁶⁰ The Protocol allows the HRC “to receive and consider communications from individuals” who claim to have had their rights violated.⁶¹ The American Convention on Human Rights also permits submissions on behalf of individuals, as Article 44 states that, “[a]ny person or group of persons, or any nongovernmental entity legally recognized in one or more member states of the Organization, may lodge petitions with the Commission containing denunciations or complaints of violation of this Convention by a State Party.”⁶²

56. ICCPR, *supra* note 17, art. 41.

57. See generally Takele Soboka Bulto, *Beyond the Promises: Resuscitating the State Reporting Procedure Under the African Charter on Human and Peoples’ Rights*, 12 BUFF. HUM. RTS. L. REV. 57 (2006).

58. *Id.*

59. *General Comment 15*, *supra* note 20, ¶ 55.

60. First Optional Protocol to the International Covenant on Civil and Political Rights, pmbl., Dec. 16, 1966, 999 U.N.T.S. 302 [hereinafter First Optional Protocol].

61. *Id.* art. 1.

62. American Convention on Human Rights, art. 44, Nov. 22, 1969, 1144 U.N.T.S. 144 [hereinafter AMCHR].

Thus, organizations that monitor human rights' abuses would be able to assist individuals who are otherwise unable to submit complaints. If individual violations are not adequately addressed and all domestic remedies have been exhausted, then individuals have access to international legal remedy through existing bodies of review.⁶³ However, under both conventions, submissions of individual complaints are subject to exhaustion of local remedies and unique examination by a single international human rights body.⁶⁴ The added scrutiny of an international forum creates incentives for states to comply with their human rights' obligations.

Unlike the supervisory mechanisms for many environmental law treaties, the human rights' framework offers far-reaching and thorough recourse to address violations of a right to water. Under the current framework, violations can be addressed through regional human rights' bodies as well as the HRC or ECOSOC. As noted earlier, a human right to water implicates all three generations of rights and thus avails itself of multiple forums of adjudication.

B. *A Jus Cogens Norm*

As a human right, the right to water should be considered non-derogable in times of peace and times of armed conflict. To obtain *jus cogens* status, a human right to water must be considered a peremptory norm of general international law.⁶⁵ The elevation to *jus cogens* status is pernicious because all human rights, by their nature, are fundamental to some extent. Rights are based on and interpreted with specific cultural and contextual valuation.⁶⁶ Thus identifying political, social, or economic rights is a far easier task than arranging them in a hierarchy.⁶⁷ Yet the idea of a hierarchy of rights is supported by Common Article 3 of the Geneva Conventions⁶⁸ and Article 4 of the ICCPR.⁶⁹ These rights, elaborated below, are rights that contribute significantly to the foundation of the international community and public order.⁷⁰

63. *Id.* art. 46.

64. *Id.*; First Optional Protocol, *supra* note 60, art. 5(2)(b).

65. That is, a norm accepted and recognized by the international body of states as a whole from which no derogation is permitted. VCLOT, *supra* note 45, art. 53.

66. Theodore Merone, *On Hierarchy of International Human Rights*, 80 AM. J. INT'L L. 1, 4 (1986).

67. *Id.*

68. See Geneva Convention Relative to the Treatment of Prisoners of War, art. 3, Aug. 12, 1949, 6 U.S.T. 3316, 75 U.N.T.S. 135 [hereinafter Common Article 3].

69. ICCPR, *supra* note 17, art. 4.

70. See, e.g., Theo Van Boven, *Distinguishing Criteria of Human Rights*, in INTERNATIONAL

Common Article 3 of the four Geneva Conventions of 1949 states as prohibited acts “at any time and in any place whatsoever” violence to life and person, taking of hostages, outrages upon personal dignity, and retro-activation of law.⁷¹ These provisions are echoed and further expanded upon in Article 4 of the ICCPR, which guarantees, as non-derogable rights, the right to life, freedom from torture, or cruel, inhuman, or degrading treatment or punishment, freedom from slavery in all its forms, and freedom from retro-application of criminal law.⁷²

In defining a human right to water, the most applicable of these non-derogable rights are the right to life and the freedom from outrages upon personal dignity.⁷³ The latter right is controversial with respect to state obligations. The general consensus is that the meaning of this provision is the right to not be arbitrarily deprived of life and thus a negative state obligation to refrain from interference.⁷⁴ This idea is further supported by the negative aspect endorsed by the primary human rights’ treaties.⁷⁵ However, states have an implied positive obligation to take positive measures to protect the right to life. State non-interference may not allow individuals to exercise this right, for example, in cases of severe and prolonged drought. Thus, while the exercise of a right to life requires State non-interference, occasional state intervention may be required as well.

The definition of a human right to water found in General Comment No.15 is premised on a right to life and sustaining life.⁷⁶ An adequate amount of water is necessary to prevent arbitrary deprivation of life by dehydration and water-related diseases, such as cholera or dysentery.⁷⁷ Safe water is also necessary to sustain a right to life by consumption of food and nutrients and maintenance of personal and environmental

HUMAN RIGHTS IN CONTEXT 155 (Henry Steiner & Phillip Alston eds., Oxford Univ. Press 2d ed. 2000) (1996) [hereinafter INTERNATIONAL HUMAN RIGHTS IN CONTEXT]; Meron, *supra* note 66, at 3.

71. Common Article 3, *supra* note 68.

72. ICCPR, *supra* note 17, art. 4 (Other non-derogable rights include the freedom from imprisonment based on inability to fulfill a contractual obligation, a right to universal legal personality, and freedom of thought, conscience, and religion).

73. *Id.*

74. INTERNATIONAL HUMAN RIGHTS IN CONTEXT, *supra* note 70, at 734.

75. *See, e.g.*, ICCPR, *supra* note 17; AMCHR, *supra* note 62; European Convention on Human Rights, Nov. 4, 1950; African Charter on Human and Peoples’ Rights, June 27, 1981, 21 I.L.M. 58.

76. *See* WHO GUIDELINES, *supra* note 15 and accompanying text.

77. U.N. Econ. & Soc. Council [ECOSOC], *Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights*, ¶ 2, U.N. Doc. E/CN.12/2002/11 (Jan. 20, 2003).

hygiene.⁷⁸ These aspects invoke both interpretations of a right to life. In many circumstances, a lack of access to water results in an arbitrary denial of life. The positive obligations of States with respect to a right to life are also invoked to sustain life.⁷⁹ A right to water and a right to life are reciprocally derived. A right to life is also derived from a right to water as it would be impossible for individuals to exercise a right to life without simultaneous access to adequate and safe water.⁸⁰ Thus the two rights serve to strengthen and reinforce each other, and the *jus cogens* status of one implicates the *jus cogens* status of the other.

The second of these rights, freedom from torture, or cruel, inhuman, or degrading treatment or punishment, also applies to a right to water. These acts include intentionally inflicting severe pain or suffering; causing intense physical or mental suffering; or causing severe humiliation.⁸¹ Deprivation of water could constitute, at the very least, cruel and inhuman treatment, if not torture over a prolonged period. Furthermore, freedom from torture is no less derivable from a right to life than a right to water. Thus, a right to water is as crucial to enjoying freedom from torture as it is to enjoying a right to life.

A human right to water merits a distinct legal protection that a *jus cogens* would impart, rendering the right inviolable even during times of armed conflict.⁸² As a peremptory norm of international law, a human right to water would also fall under the jurisdiction of the International Criminal Court as an independent violation, separate from related war crimes.⁸³ The Court's basis in complementarity requires States to prosecute or to extradite alleged criminals, lending a particular form of quasi-universal jurisdiction.⁸⁴ Potential review by the Court strengthens states' incentives to respect, fulfill, and protect a human right to water.

78. *Id.* ¶¶ 2, 6.

79. *Id.* ¶ 17.

80. *Id.* ¶ 3.

81. Rome Statute of the International Criminal Court, July 17, 1998, art. 7(2)(e), U.N. Doc. A/CONF. 183/9.

82. Here, the international humanitarian law principles of humanity, military necessity, proportionality, and discrimination would apply to preclude conflicting parties from targeting water resources vital to the survival of the civilian population. See Antoine Bouvier, *Protection of the Natural Environment in Time of Armed Conflict*, 285 INT'L REV. RED CROSS 567 (1991); Michael N. Schmitt, *Green War: An Assessment of the Environmental Law of International Armed Conflict*, 22 YALE J. INT'L L. 1 (1997).

83. Rome Statute of the International Criminal Court, *supra* note 81, art. 1.

84. Cases that are being investigated or prosecuted by a state with proper jurisdiction are not subject to prosecution by the International Criminal Court, unless the state is "unwilling or unable genuinely" to carry out the investigation or prosecution. *Id.* art. 17, ¶ 3(a).

C. Other Obstacles and Implications of a Human Right to Water

While a complete discussion of obstacles to implementing a right to water is beyond the scope of this Note,⁸⁵ this section will briefly introduce some challenges that impede the full realization of such a right.

The codification of a human right to water is imperative because it lends a specific priority to this particular human right.⁸⁶ However, as realized in the ICESCR, the relative level of states' development plays a significant role in their capacity to realize such a right.⁸⁷ For example, the geographic distribution of water resources can incur heavy financial costs if water must be brought to people or if communities must be moved. Although the financial burden is not a justification for failure to realize a right to water, it must be considered as a realistic obstacle. Furthermore, the realization of a right to water can come into conflict with other human rights. If populations must be moved due to unavailability of water resources, a right to water comes into conflict with a right to housing. The right that prevails is difficult to determine and may vary from state to state. Thus a challenge of a human rights' approach is finding a balance between competing rights.⁸⁸

Some scholars also fear that the recent proliferation of rights and the ensuing dialogue may lead to a dilution of rights.⁸⁹ In principle, a human right should adhere to some criteria and thus limit the number of human rights. Perhaps the clarification of a hierarchy of right would also help limit the number of proclaimed human rights, as well as consistent and deliberate state practice. Like many human rights, a right to water is plagued by definitional ambiguities and broad or limited interpretations. Yet the right benefits from the principle of evolutive interpretation which permits flexible interpretation as scientific knowledge or technology improves.

One of the greatest challenges of international environmental law is transposed to human rights law when dealing with the right to water. Environmental law, at the very least, challenges the nature of sovereignty.⁹⁰ State sovereignty includes a jurisdiction over a permanent population within a given territory, a duty of non-intervention in the area

85. See Bluemel, *supra* note 3, at 977-88.

86. *Id.* at 972-73.

87. *Id.*

88. Shelton, *supra* note 41, at 137.

89. Gayle Binion, *Human Rights: A Feminist Perspective*, 17 HUM. RTS. Q. 509, 518 (1995).

90. See Karen T. Lifin, *Sovereignty in World Ecopolitics*, 41 MERSHON INT'L STUD. REV. 167 (1997).

of exclusive jurisdiction of other states, and the dependence of obligations that arise from customary international law.⁹¹ In the context of environmental law, territory refers to the land within given boundaries, internal waters, territorial sea, and the airspace above these regions.⁹² The conflict between environmental law and sovereignty can be stated as such:

Ecological interdependence poses a fundamental problem for international law, and explains why international co-operation and the development of international environmental standards are increasingly indispensable: the challenge for international law in the world of sovereign states is to reconcile the fundamental independence of each state with the inherent and fundamental interdependence of the environment.⁹³

Thus, trans-boundary environmental issues violate territorial exclusivity, illustrated by numerous examples. The construction of upstream dams, to provide electricity to urban centers, significantly disrupts the health of the river further downstream and thus the communities dependent on the river.⁹⁴ The human rights impacts range from decreased food security and deprivation of water resources to massive internal displacement of riverside communities.⁹⁵ Clearly the construction of dams and other upstream water transfer schemes results in trans-boundary human rights impacts that challenge the non-interference aspect of sovereignty.

91. IAN BROWNLIE, *PRINCIPLES OF PUBLIC INTERNATIONAL LAW* 287 (Oxford University Press 6th ed. 2003) (1966).

92. PHILLIP SANDS, *PRINCIPLES OF INTERNATIONAL ENVIRONMENTAL LAW* 13 (Cambridge University Press 2003).

93. *Id.* at 14.

94. Prominent examples include the construction of upstream dams in China which affect the Mekong River Basin, a land area encompassing nearly 800,000 km² of forests, wetlands, and plains. The river, originating in the Tibetan Plateau in China, flows 4,800 kilometers through Vietnam, Myanmar, Thailand, Cambodia, and Laos. The incredible biodiversity in the Basin relies on an annual flood-drought cycle and the sediment load. The lower basin of the river, including all countries except China, is home to 60 million people who comprise 100 different, often marginalized ethnic groups. The vast majority of these communities depend on the river resources: water for daily use as well as agricultural needs and the fish for dietary protein needs. Briefing Paper No. 3, *China's Upper Mekong Dams Endanger Millions Downstream*, INT'L RIVERS NETWORK 1, 1-3 (Oct. 2002).

95. DAMS AND DEVELOPMENT, *THE REPORT OF THE WORLD COMMISSION ON DAMS* 103-05 (Earthscan Publ'ns Ltd. 2000).

Full achievement of human rights entails recognition of a human right to water. However, this recognition also begins a cascade of implications that both support and challenge the full realization of such a right.

V. CONCLUDING REMARKS

A human right to water is a necessary element of the international human rights' regime. Water is essential for life, an indisputable fact. Perhaps it is this universal acceptance that undermines efforts to codify a right to water. Yet the surreptitious effect of water deprivation burdens communities with significant health and social consequences. The gap between acknowledgement of the importance of water and actualization of a right to water remains impassable without recognized State obligations. A human right to water incorporates two primary aspects, accessibility and adequacy. These aspects generate both positive and negative State obligations that are characteristic of first and second generation human rights. While a right to water draws support from many sources of rights, it benefits human needs best through a human rights' approach. A codified, established human right to water provides this relief by outlining specific state obligations and by identifying specific individual entitlements. Furthermore, a human right to water would also require protection from derogation and protection in times of armed conflict where intentional and unintentional human rights' violations occur.

Theoretical discussions of a human right to water ignore many of the obstacles of implementation. International law and particularly human rights, governed by treaties and bold declarations of commitment, are plagued by ineffective implementation and interpretations that undermine the nature and purpose of these same treaties. These problems may extend to a human right to water, where realization of such a right is dependent upon the levels of development and resources of a state. However, these obstacles cannot be seen as limits to the expansion of a human right to water. The recognition and acceptance of a human right to water, towards which the international human rights dialogue is moving, represents the mere beginning to establishing an international order dedicated to respecting, fulfilling, and promoting this right. Without codification, even fragmented steps may be linked to the fulfillment of other human rights, undermining the clear establishment of a human right to water.

Water underlies the foundation of every aspect of human life. Flowing through all cultures and all societies around the world, a human right to

water has clear implications for all three generations of rights. A codified human right to water is as vital to human rights as water is to life itself.

Florida Journal of International Law

Volume 20

SPECIAL EDITION

2008

EDITOR-IN-CHIEF
LAUREN COONEY

Managing Editor
CAREY VILLENEUVE

Articles Editors
LING-YEE HUANG
MOHAMMAD JAZIL

Student Works Editor
ANTHONY RODRIGUEZ

Policy Chair
ANDREW MILLER

Advertising Editor
LINDSAY DUNN

Notes Editor
MIKAYLA BUCCI

Research Editors
HANNAH PURKEY
MARSHA DIXON
CHELSEA LEIGH
SIMMONS
MICHELLE SMITH
ROBERT ANDERSON

General Members & Member Candidates

Steven Adamczyk
Samantha Alves Orender
Nicholas Apfelbaum
Zachary Aster
Nathan D. Bentley
Kelly M. Chase
Michael Chin
Adam Cohen
Kassandra Doyle
Brian Ellison

Sean Estes
Lydia Gazda
Dmitri Goubarkov
Gerrard Grant
Andrew Hoffman
Robert Jamieson
Robert Jimenez
Connie Jones
Jessica Lillesand
Alia Luria
Lori Lustrin

Emily Matheson
Nicole Mouakar
Michael Roark
Elvis Santiago
Mark Schweikert
Maulik Sharma
Meredith Stephens
David Torre
Zachary Warren
Mindy Yergin

FACULTY ADVISOR
BERTA ESPERANZA HERNÁNDEZ-
TRUYOL

STAFF EDITOR
VICTORIA A. REDD

Florida Journal of International Law

The *Florida Journal of International Law* (ISSN 1556-2670) is a student-edited legal journal published by the University of Florida. The Journal is published three times per year. Special editions are ordered separately from subscription. The *Journal* extends its deep appreciation for the generosity of the University of Florida Fredric G. Levin College of Law in supporting and assisting the *Journal* in its publication of this issue.

The *Florida Journal of International Law* would also like to thank

**Center for Governmental Responsibility, University of Florida
Levin College of Law**
for its generous support.

Copies of this special edition are \$20 per book with an additional \$5 for deliveries outside of the U.S.A. Florida residents please add sales tax. Single issues are also available from William S. Hein & Co., 1285 Main Street, Buffalo, NY 14209.

Questions and requests may be sent to:

Florida Journal of International Law
Levin College of Law
University of Florida
218 Bruton-Geer Hall
Gainesville, FL 32611
USA

(352) 273-0906

<http://www.law.ufl.edu/students/organizations/fjil>

Printed by Western Newspaper Publishing Co., 537 East Ohio St., Indianapolis, IN 46204

UNIVERSITY OF FLORIDA LEVIN COLLEGE OF LAW
ADMINISTRATIVE OFFICERS AND FACULTY

DR. J. BERNARD MACHEN
JOE GLOVER
ROBERT H. JERRY, II, B.S., J.D.
STUART R. COHN, B.A., B.A., LL.B.

WILLIAM H. PAGE, B.A., J.D., LL.M.

MICHAEL K. FRIEL, B.A., J.D., LL.M.

RACHEL E. INMAN, B.S., J.D.
CHRISTINE A. KLEIN, B.A., J.D., LL.M.

M. KATHLEEN PRICE, B.A., M.S., J.D.

JOHN F. PLUMMER, B.A., M.B.A., J.D.
LINDA CALVERT HANSON, B.A., J.D.

J. MICHAEL PATRICK, B.S.E., M.S.E., SPEC. ED.
KELLY FROHLICH, B.A., M.S.
DENNIS A. CALFEE, B.B.A., J.D., LL.M.
JONATHAN R. COHEN, A.B., A.M., J.D., PH.D.

CHARLES W. COLLIER, B.A., M.A., M.PHIL., PH.D., J.D.

JEFFREY DAVIS, B.S., J.D., LL.M.
GEORGE L. DAWSON, A.B., J.D.
PATRICIA E. DILLEY, B.A., M.A., J.D., LL.M.
NANCY E. DOWD, B.A., M.A., J.D.

MARK A. FENSTER, B.A., M.A., PH.D., J.D.
ALYSON CRAIG FLOURNOY, B.A., J.D.

JEFFREY L. HARRISON, B.S., M.B.A., PH.D., J.D.
BERTA HERNÁNDEZ-TRUYOL, A.B., J.D., LL.M.

DAVID M. HUDSON, B.S., J.D., LL.M., LL.M.

THOMAS R. HURST, A.B., J.D.
JEROLD H. ISRAEL, B.B.A., LL.B.

MICHELLE S. JACOBS, A.B., J.D.
ELIZABETH T. LEAR, B.A., J.D.
LYRISSA BARNETT LIDSKY, B.A., J.D.
JOSEPH W. LITTLE, B.S. M.E., M.S.M.E., J.D.
LAWRENCE LOKKEN, B.A., J.D.

PAUL MAGNARELLA, B.S., PH.D., J.D.

PEDRO A. MALAVET, B.B.A., J.D., LL.M.
AMY R. MASHBURN, B.A., J.D.
DIANE H. MAZUR, B.A., M.S., J.D.
PAUL R. MCDANIEL, B.A., LL.B.
MARTIN J. MCMAHON, JR., B.A., J.D., LL.M.
C. DOUGLAS MILLER, B.S., J.D., LL.M.
JON L. MILLS, B.A., J.D.

ROBERT C.L. MOFFAT, B.A., M.A., LL.B., LL.M.

WINSTON P. NAGAN, B.A., B.A., M.A., LL.M., M.C.L., J.S.D.

LARS NOAH, B.A., J.D.
KENNETH B. NUNN, A.B., J.D.
MICHAEL A. OBERST, B.S.B.A., J.D.
WILLIAM H. PAGE, B.A., J.D., LL.M.

JUAN F. PEREA, B.A., J.D.

DON C. PETERS, B.A., J.D.

LEONARD L. RISKIN, B.S., J.D., LL.M.
DAVID M. RICHARDSON, B.S., LL.B., LL.M.
SHARON E. RUSH, B.A., J.D.

KATHERYN RUSSELL-BROWN, B.A., J.D., PH.D.

MICHAEL L. SEIGEL, A.B., J.D.

PRESIDENT OF THE UNIVERSITY
PROVOST & SR. VICE PRESIDENT OF THE UNIVERSITY
DEAN & LEVIN, MABIE, AND LEVIN PROFESSOR OF LAW
ASSOCIATE DEAN FOR INTERNATIONAL STUDIES;
GERALD A. SOHN RESEARCH SCHOLAR; DIRECTOR OF INTERNATIONAL AND
COMPARATIVE LAW CERTIFICATE PROGRAM & PROFESSOR OF LAW
SR. ASSOCIATE DEAN FOR ACADEMIC AFFAIRS,
MARSHALL M. CRISER EMINENT SCHOLAR IN
ELECTRONIC COMMUNICATIONS AND ADMINISTRATIVE LAW
& PROFESSOR OF LAW
ASSOCIATE DEAN; DIRECTOR, GRADUATE TAX PROGRAM
& PROFESSOR OF LAW
ASSOCIATE DEAN FOR STUDENTS
& PROFESSOR OF LAW
ASSOCIATE DEAN FOR FACULTY DEVELOPMENT
& PROFESSOR OF LAW
ASSOCIATE DEAN FOR LIBRARY AND TECHNOLOGY
& CLARENCE J. TESELLE PROFESSOR OF LAW
ASSISTANT DEAN FOR ADMINISTRATIVE AFFAIRS
ASSISTANT DEAN FOR CAREER SERVICES
& DIRECTOR OF PRO BONO AND PUBLIC SERVICES PROGRAMS
ASSISTANT DEAN FOR ADMISSIONS
SENIOR DIRECTOR, DEVELOPMENT AND ALUMNI AFFAIRS
ALUMNI RESEARCH SCHOLAR & PROFESSOR OF LAW
ASSOCIATE DIRECTOR, INSTITUTE FOR DISPUTE RESOLUTION
& PROFESSOR OF LAW
PROFESSOR OF LAW
& AFFILIATE PROFESSOR OF PHILOSOPHY
GERALD A. SOHN RESEARCH SCHOLAR & PROFESSOR OF LAW
PROFESSOR OF LAW
PROFESSOR OF LAW
PROFESSOR OF LAW
CHESTERFIELD SMITH PROFESSOR OF LAW
& CO-DIRECTOR, CENTER ON CHILDREN AND FAMILIES
UF RESEARCH FOUNDATION PROFESSOR OF LAW
DIRECTOR, ENVIRONMENTAL AND LAND USE LAW PROGRAM
& UF RESEARCH FOUNDATION PROFESSOR OF LAW
STEPHEN C. O'CONNELL CHAIR & PROFESSOR OF LAW
ASSOCIATE DIRECTOR, CENTER ON CHILDREN AND FAMILIES
& LEVIN, MABIE AND LEVIN PROFESSOR OF LAW
DIRECTOR OF LL.M. IN COMPARATIVE LAW PROGRAM
& PROFESSOR OF LAW
SAM T. DELL RESEARCH SCHOLAR & PROFESSOR OF LAW
ED ROOD EMINENT SCHOLAR IN TRIAL ADVOCACY AND PROCEDURE
& PROFESSOR OF LAW
PROFESSOR OF LAW
PROFESSOR OF LAW
PROFESSOR OF LAW
ALUMNI RESEARCH SCHOLAR & PROFESSOR OF LAW
HUGH F. CULVERHOUSE EMINENT SCHOLAR IN TAXATION
& PROFESSOR OF LAW
PROFESSOR OF CRIMINOLOGY AND LAW;
PROFESSOR OF ANTHROPOLOGY & AFFILIATE PROFESSOR OF LAW
PROFESSOR OF LAW
PROFESSOR OF LAW
PROFESSOR OF LAW
JAMES J. FREELAND EMINENT SCHOLAR IN TAXATION & PROFESSOR OF LAW
CLARENCE J. TESELLE PROFESSOR OF LAW
PROFESSOR OF LAW
DIRECTOR, CENTER FOR GOVERNMENTAL RESPONSIBILITY;
DEAN EMERITUS & PROFESSOR OF LAW
PROFESSOR OF LAW
& AFFILIATE PROFESSOR OF PHILOSOPHY
SAMUEL T. DELL RESEARCH SCHOLAR;
AFFILIATE PROFESSOR OF ANTHROPOLOGY;
DIRECTOR, INSTITUTE OF HUMAN RIGHTS AND PEACE & PROFESSOR OF LAW
PROFESSOR OF LAW
ASSOCIATE DIRECTOR, CENTER ON CHILDREN AND FAMILIES & PROFESSOR OF LAW
PROFESSOR OF LAW
MARSHALL M. CRISER EMINENT SCHOLAR
IN ELECTRONIC COMMUNICATIONS AND ADMINISTRATIVE LAW
& PROFESSOR OF LAW
CONE, WAGNER, NUGENT, JOHNSON, HAZOURI AND ROTH
PROFESSOR OF LAW
DIRECTOR, INSTITUTE FOR DISPUTE RESOLUTION;
DIRECTOR, VIRGIL HAWKINS CIVIL CLINIC; TRUSTEE RESEARCH FELLOW;
ASSOCIATE DIRECTOR, CENTER ON CHILDREN AND FAMILIES
& PROFESSOR OF LAW
CHESTERFIELD SMITH PROFESSOR OF LAW
PROFESSOR OF LAW
ASSOCIATE DIRECTOR, CENTER ON CHILDREN AND FAMILIES
& IRVING CYPEN PROFESSOR OF LAW
DIRECTOR, CENTER FOR THE STUDY OF RACE AND RACE RELATIONS
& PROFESSOR OF LAW
PROFESSOR OF LAW

STEVEN J. WILLIS, B.S., J.D., LL.M.

MICHAEL ALLAN WOLF, B.A., J.D., A.M., PH.D.

BARBARA BENNETT WOODHOUSE, B.S., J.D.

DANAYA C. WRIGHT, B.A., M.A., J.D., PH.D.

MARY JANE ANGELO, B.S., M.S., J.D.

YARIV BRAUNER, J.S.D., LL.M., LL.B.

ELIZABETH DALE, B.A., PH.D., J.D.

ELIZABETH ROWE, B.A., M.A., J.D.

MICHAEL SIEBECKER, B.A., J.D., LL.M., M.PHIL., PH.D.

LEE-FORD TRITT, B.A., J.D., LL.M.

CHARLENE D. LUKE, B.A., J.D.

DAWN JOURDAN, B.S., J.D./M.U.P., PH.D.

SHANI M. KING, B.A., J.D.

D. DANIEL SOKOL, A.B., MSt, J.D., LL.M.

MARSHALL M. CRISER, B.S.B.A., J.D.

JEFFREY E. LEWIS, B.A., J.D.

RICHARD A. MATASAR, B.A., J.D.

FRANK T. READ, B.S., J.D.

FLETCHER N. BALDWIN, JR., A.B., J.D., LL.M., LL.M.

GERTRUDE BLOCK, B.A., M.A.T.

DEXTER DELONY, B.S., LL.B., LL.M.

ALISON ECKLES GERENCSE, B.A., M.A., LL.B.

MANDELL GLICKSBERG, B.A., LL.B., LL.M.

MICHAEL GORDON, B.S., M.A., LL.B.

RICHARD H. HIEERS, B.A., M.A., PH.D., J.D.

E.L. ROY HUNT, B.A., J.D., LL.M.

JEROLD H. ISRAEL, B.B.A., LL.B.

JULIAN C. JUERGENSMAYER, A.B., J.D.

JOSEPH W. LITTLE, B.S., M.E., M.S.M.E., J.D.

FRANCIS T. MCCOY, A.B., M.A., J.D.

ELIZABETH McCULLOCH, B.G.S., J.D.

ROBERT B. MOBERLY, B.S., J.D.

JAMES C. NICHOLAS, B.B.A., M.A., PH.D.

RICHARD N. PEARSON, B.B.A., LL.B., LL.M.

JAMES R. PIERCE, B.A., J.D.

WALTER PROBERT, B.S., J.D.

DAVID M. RICHARDSON, B.S., LL.B., LL.M.

DAVID T. SMITH, B.A., J.D.

GRACE (BETTY) W. TAYLOR, A.B., M.A., J.D.

MARY POE TWITCHELL, B.A., M.A., J.D., LL.M.

W. SCOTT VAN ALSTYNE, JR., B.A., M.A., J.D., S.J.D.

WALTER O. WEYRAUCH, DR. JUR., LL.B., LL.M., J.S.D.

WINTON E. WILLIAMS, B.B.A., LL.B., LL.M.

CLAUDIA WRIGHT, B.A., J.D.

ASSOCIATE DIRECTOR, CENTER ON CHILDREN AND FAMILIES
& PROFESSOR OF LAW

RICHARD E. NELSON CHAIR IN LOCAL GOVERNMENT LAW
& PROFESSOR OF LAW

DAVID H. LEVIN CHAIR IN FAMILY LAW; PROFESSOR OF LAW;
DIRECTOR, CENTER ON CHILDREN AND FAMILIES

AND FAMILY LAW CERTIFICATE PROGRAM; & CO-DIRECTOR,
INSTITUTE FOR CHILD AND ADOLESCENT RESEARCH AND EVALUATION

UF RESEARCH FOUNDATION PROFESSOR OF LAW
ASSOCIATE PROFESSOR OF LAW

ASSOCIATE PROFESSOR OF HISTORY, ASSOCIATE HISTORY DEPARTMENT CHAIR
& AFFILIATE ASSOCIATE PROFESSOR OF LAW

ASSOCIATE PROFESSOR OF LAW
ASSOCIATE PROFESSOR OF LAW

DIRECTOR, ESTATE & ELDER LAW PLANNING;
DIRECTOR, ESTATES & TRUSTS PRACTICE CERTIFICATE PROGRAM;

ASSOCIATE DIRECTOR, CENTER ON CHILDREN & FAMILIES
& ASSOCIATE PROFESSOR OF LAW

ASSISTANT PROFESSOR OF LAW
ASSISTANT PROFESSOR, URBAN & REGIONAL PLANNING

ASSOCIATE DIRECTOR, CENTER ON CHILDREN AND FAMILIES
& ASSISTANT PROFESSOR OF LAW

ASSISTANT PROFESSOR OF LAW
UNIVERSITY OF FLORIDA PRESIDENT EMERITUS

& PROFESSOR OF LAW EMERITUS
DEAN EMERITUS & PROFESSOR OF LAW EMERITUS

DEAN EMERITUS
& LEVIN, MABIE AND LEVIN PROFESSOR OF LAW EMERITUS

DEAN EMERITUS & PROFESSOR OF LAW EMERITUS
CHESTERFIELD SMITH PROFESSOR OF LAW EMERITUS;

DIRECTOR, UF CENTER FOR INTERNATIONAL FINANCIAL CRIMES STUDIES
& HONORARY FELLOW, SOCIETY FOR ADVANCED LEGAL STUDIES, UNIV. OF LONDON

LECTURER EMERITUS
PROFESSOR OF LAW EMERITUS

SENIOR LEGAL SKILLS PROFESSOR RETIRED
PROFESSOR OF LAW EMERITUS

JOHN H. & MARY LOU DASBURG PROFESSOR OF LAW RETIRED
PROFESSOR OF RELIGION EMERITUS

& AFFILIATE PROFESSOR OF LAW EMERITUS
DISTINGUISHED SERVICE PROFESSOR OF LAW EMERITUS

ED ROOD EMINENT SCHOLAR IN TRIAL ADVOCACY AND PROCEDURE
& PROFESSOR OF LAW EMERITUS

PROFESSOR OF LAW EMERITUS
ALUMNI RESEARCH SCHOLAR & PROFESSOR OF LAW RETIRED

PROFESSOR OF LAW EMERITUS
LECTURER EMERITUS

PROFESSOR OF LAW EMERITUS
AFFILIATE PROFESSOR OF LAW;

AFFILIATE PROFESSOR OF LAW EMERITUS
& PROFESSOR OF URBAN AND REGIONAL PLANNING EMERITUS

PROFESSOR OF LAW EMERITUS
PROFESSOR OF LAW EMERITUS

PROFESSOR OF LAW EMERITUS
PROFESSOR OF LAW RETIRED

PROFESSOR OF LAW EMERITUS
DIRECTOR EMERITUS, LEGAL INFORMATION CENTER

& CLARENCE J. TESSELLE PROFESSOR OF LAW EMERITUS
PROFESSOR OF LAW EMERITUS

PROFESSOR OF LAW EMERITUS
STEPHEN C. O'CONNELL CHAIR

& DISTINGUISHED PROFESSOR OF LAW EMERITUS
PROFESSOR OF LAW EMERITUS

SR. LEGAL SKILLS PROFESSOR EMERITUS

CLINICAL PROGRAMS

IRIS A. BURKE, B.A., J.D.

ROBIN K. DAVIS, B.A., J.D.

GEORGE R. "BOB" DEKLE, B.A., J.D.

JEFFREY T. GRATER, B.A., J.D.

MONIQUE HAUGHTON-WORRELL, B.A., J.D.

DON C. PETERS, B.A., J.D.

MESHON RAWLS, B.A., J.D.

SENIOR LEGAL SKILLS PROFESSOR & ASSOCIATE DIRECTOR,
CENTER ON CHILDREN AND FAMILIES

LEGAL SKILLS PROFESSOR & ASSISTANT PROGRAM DIRECTOR,
INSTITUTE FOR DISPUTE RESOLUTION

LEGAL SKILLS PROFESSOR & DIRECTOR, CRIMINAL LAW CLINIC—PROSECUTION
SENIOR LEGAL SKILLS PROFESSOR

& ASSOCIATE DIRECTOR, CENTER ON CHILDREN AND FAMILIES
LEGAL SKILLS PROFESSOR;

SUPERVISING ATTORNEY, CHILD WELFARE CLINIC
& ASSOCIATE DIRECTOR, CENTER ON CHILDREN AND FAMILIES

DIRECTOR, INSTITUTE FOR DISPUTE RESOLUTION
& DIRECTOR, VIRGIL HAWKINS CIVIL CLINIC*

DIRECTOR, GATOR TEAMCHILD PROGRAM
& DIRECTOR, CENTER ON CHILDREN AND FAMILIES

*All Position Titles Previously Listed

Huang: Not Just Another Drop in the Human Rights Bucket: The Legal Signi

PEGGY F. SCHRIEBER, B.A., J.D.

JENNIFER ZEDALIS, B.A., J.D.

LEGAL SKILLS PROFESSOR
& ASSOCIATE DIRECTOR, CENTER ON CHILDREN AND FAMILIES
SENIOR LEGAL SKILLS PROFESSOR; DIRECTOR, TRIAL PRACTICE PROGRAM
& COORDINATOR, GERALD T. BENNETT PROSECUTOR/PUBLIC DEFENDER TRIAL TRAINING PROGRAM

LEGAL RESEARCH AND WRITING

HENRY T. WIDNYK, B.A., J.D., LL.M.

MARY ADKINS, B.S., J.D.
JOSEPH S. JACKSON, A.B., J.D.
LEANNE J. PFLAUM, B.S., J.D.
TERESA J. RAMBO, B.A., J.D.
BETSY L. RUFF, B.A., J.D.
PATRICIA A. THOMSON, B.A., J.D.
DIANE TOMLINSON, B.S., B.A., J.D.

DIRECTOR, LEGAL RESEARCH AND WRITING AND APPELLATE ADVOCACY
& SENIOR LEGAL SKILLS PROFESSOR
LEGAL SKILLS PROFESSOR
LEGAL SKILLS PROFESSOR
SENIOR LEGAL SKILLS PROFESSOR
SENIOR LEGAL SKILLS PROFESSOR
SENIOR LEGAL SKILLS PROFESSOR
SENIOR LEGAL SKILLS PROFESSOR

LEGAL DRAFTING

ANNE RUTLEDGE, B.S., M.Ed., M.C.R.P., J.D.
LESLIE KNIGHT, B.S., J.D.
DEBORAH CUPPLES, B.A., M.A., J.D.
GAYLIN SOPONIS, A.B., J.D.
MARGARET TEMPLE-SMITH, B.A., J.D.

DIRECTOR, LEGAL DRAFTING & SENIOR LEGAL SKILLS PROFESSOR
ASSISTANT LEGAL SKILLS PROFESSOR
LEGAL SKILLS PROFESSOR
LEGAL SKILLS PROFESSOR
SENIOR LEGAL SKILLS PROFESSOR

LEGAL INFORMATION CENTER

M. KATHLEEN PRICE, B.A., M.S., J.D.
MARK A. ROBINSON, B.A., M.A.
MARK A. BERGERON, B.S.E.E.
MARGARET (JEAN) BOSTWICK, B.S., M.L.S.
ARTHUR R. DONNELLY, B.S.Ed., M.L.S., Ed.D.
EDWARD HART, B.A., M.A., M.S., M.S., J.D.
ROBERT J. MUNRO, A.B., M.A., J.D., M.L.S., Ph.D.
JESSICA DE PERIO WITTMAN, B.A., M.L.S., J.D.
ELIZABETH OUTLER, B.A., M.L.S., J.D.
SUSY POTTER, B.A., M.L.S.
CHRISTOPHER VALLANDINGHAM, B.A., J.D.

ASSOCIATE DEAN FOR LIBRARY & TECHNOLOGY*
DIRECTOR, INFORMATION TECHNOLOGY
ASSISTANT IN COMPUTER INSTRUCTION AND OPERATION
ASSOCIATE UNIVERSITY LIBRARIAN
ASSOCIATE DIRECTOR & ASSOCIATE UNIVERSITY LIBRARIAN
ASSISTANT UNIVERSITY LIBRARIAN
UNIVERSITY LIBRARIAN
REFERENCE LIBRARIAN
REFERENCE LIBRARIAN
ASSOCIATE UNIVERSITY LIBRARIAN
ASSOCIATE UNIVERSITY LIBRARIAN

CENTER FOR GOVERNMENTAL RESPONSIBILITY

JON L. MILLS, B.A., J.D.
THOMAS T. ANKERSEN, B.A., M.A., J.D.

JOAN D. FLOCKS, B.S., M.A., J.D.

EWA GMURZYNSKA, J.D., M.B.A., LL.M.
RICHARD HAMANN, B.A., J.D.
CLIFFORD A. JONES, B.A., M.Phil., J.D., Ph.D.
JOANN KLEIN, B.S., M.S.
TIMOTHY E. MCLENDON, A.B., J.D.

STEPHEN J. POWELL, B.A., J.D.

JEFF WADE, B.A., M.Ed., J.D.

DIRECTOR*
DIRECTOR, CONSERVATION CLINIC;
DIRECTOR, COSTA RICA LAW PROGRAM, & LEGAL SKILLS PROFESSOR
DIRECTOR, SOCIAL POLICY DIVISION
& ASSOC. DIRECTOR, CENTER FOR CHILDREN & FAMILIES
DIRECTOR, CENTER FOR AMERICAN LAW STUDIES AT WARSAW UNIVERSITY
RESEARCH ASSOCIATE
ASSOCIATE IN LAW RESEARCH & LECTURER
DIRECTOR, DEVELOPMENT
STAFF ATTORNEY
& ASSISTANT IN LAW RESEARCH
DIRECTOR, INTERNATIONAL TRADE LAW PROGRAM
& AFFILIATE LECTURER, DEPARTMENT OF FOOD AND RESOURCE ECONOMICS
DIRECTOR, ENVIRONMENTAL STUDIES

CENTER FOR THE STUDY OF RACE & RACE RELATIONS

KATHERYN RUSSELL-BROWN, B.A., J.D., Ph.D.
MELISSA BAMBA, B.A., M.A.

DIRECTOR*
ASSISTANT DIRECTOR

CENTER ON CHILDREN & FAMILIES

BARBARA BENNETT WOODHOUSE, B.S., J.D.
NANCY E. DOWD, B.A., M.A., J.D.
IRIS A. BURKE, B.A., J.D.
JOAN D. FLOCKS, B.S., MA., J.D.
JEFFREY T. GRATER, B.A., J.D.
MONIQUE HAUGHTON-WORRELL, B.A., J.D.
BERTA ESPERANZA HERNÁNDEZ-TRUYOL, A.B., J.D., LL.M.
SHANI M. KING, B.A., J.D.
KENNETH B. NUNN, A.B., J.D.
DON C. PETERS, B.A., J.D.
MESHON RAWLS, B.A., J.D.
SHARON E. RUSH, B.A., J.D.
PEGGY F. SCHRIEBER, B.A., J.D.
LEE-FORD TRITT, B.A., J.D., LL.M.
STEVEN J. WILLIS, B.S., J.D., LL.M.

DIRECTOR*
Co-DIRECTOR*
ASSOCIATE DIRECTOR*
ASSOCIATE DIRECTOR*
ASSOCIATE DIRECTOR*
ASSOCIATE DIRECTOR*
ASSOCIATE DIRECTOR*
ASSOCIATE DIRECTOR*
ASSOCIATE DIRECTOR*
ASSOCIATE DIRECTOR*
ASSOCIATE DIRECTOR*
ASSOCIATE DIRECTOR*
ASSOCIATE DIRECTOR*
ASSOCIATE DIRECTOR*
ASSOCIATE DIRECTOR*

*All Position Titles Previously Listed

STATEMENT OF PURPOSE

The *Florida Journal of International Law* is a legal journal devoted to discussion of timely legal issues relating to international, comparative, and foreign law. Its subscribers include practitioners, jurists, and legal scholars from around the world. The *Journal* publishes three times a year and is one of four co-curricular journals produced at the University of Florida Levin College of Law. On occasion, the *Journal* will also have Special Editions that can be purchased in addition to its subscription.

The *Journal* selects its editorial board and staff from the top ten percent of students at the University of Florida Levin College of Law and from winners of the open writing competition held once per year.

The *Journal* enables students to earn academic credit while honing their legal research and writing skills, focusing on international law. Recent articles published or accepted for publication have treated subjects as varied as international commercial and trade law, intellectual property law, human rights law, terrorism, national security law, war crimes tribunals, international environmental law, and maritime law.