
Contents

Acknowledgement	ix
Chapter 1. Introduction	1
1.1. The background situation – water scarcity as a global problem	1
1.2. Causes of the current crisis	3
1.3. Strategies of crisis management	5
1.3.1. The national context of water management	6
1.3.2. The transboundary context of water management	10
1.4. The role of law in problem-solving	11
1.5. The human rights-based approach to freshwater access in international law	12
1.6. Synopsis of the study	14
Chapter 2. The law on international watercourses and its deficits in providing freshwater access	17
2.1. Introduction	17
2.2. Survey of the development of international water law in the 20 th century	18
2.2.1. General overview	18
2.2.2. Non-navigational water use as a legal issue	20
2.2.3. The Water Basin Concept and the Common Management Approach	23
2.2.4. Re-thinking the interrelationship between Equitable Utilisation and No-Harm	26
2.3. Analysis of international water law in regard to fulfilling the basic human need for water	31
2.3.1. The 1997 Convention on the Law of the Non-navigational Uses of International Watercourses	31
2.3.2. Customary water law	43

2.4. Concluding observations on international water law's deficits	50
Chapter 3. Elements of a human rights-based approach to freshwater access	55
3.1. Introduction	55
3.2. Characteristics of a human rights-based approach to freshwater access	56
3.3. Human rights-based approaches vs. policy concepts?	59
3.4. Freshwater access in the context of the debate on rights to development and a clean environment	67
3.4.1. Background to the debate	67
3.4.2. The human right to a clean environment in international law	69
3.4.3. The human right to development in international law	82
3.5. Elaboration of the scope of obligations attached to a human rights-based approach to freshwater access	85
3.5.1. Negative obligations	85
3.5.2. Positive obligations	86
3.5.3. Non-state actors as addressees of human rights?	106
3.6. Universalism, particularism and pluralistic legal systems	111
3.6.1. Universalism vs. particularism of a human rights-based approach to freshwater access	111
3.6.2. The human rights-based approach to freshwater access within systems of legal pluralism	112
3.7. Concluding observations on the characteristics of a human rights-based approach to freshwater access	114
Chapter 4. The human rights-based approach to freshwater access within current international human rights law	119
4.1. Introduction	119
4.2. International law explicitly including individual rights to freshwater access	122
4.3. Deriving individual rights to freshwater access from international human rights treaty law	125
4.3.1. Freshwater access as an element of the right to life according to Article 6 (1) ICCPR	125

4.3.2. Freshwater access as part of the right to be free from torture and from inhuman or degrading treatment according to Article 7 ICCPR	134
4.3.3. Freshwater access as derived from the right to an adequate standard of living according to Article 11 ICESCR	135
4.3.4. Freshwater access as part of the right to health according to Article 12 ICESCR	156
4.3.5. Equal treatment of water users according to Article 26 ICCPR	158
4.3.6. Particular protection of freshwater access of minorities by international human rights treaties	163
4.4. Freshwater access as part of customary international human rights law	179
4.4.1. International custom with regard to a generic human right to water	179
4.4.2. International custom with regard to the specific interest of participation and access to information in water matters	182
4.5. Freshwater access as part of general principles of international law	188
4.6. Extraterritorial obligations of states concerning the basic human need for water	192
4.7. Concluding observations on the international human rights law's contribution to freshwater access	198
Chapter 5. Improving a human rights-based approach to freshwater access	205
5.1. Introduction	205
5.2. The need to connect human rights law with international water law	206
5.3. Establishing new international treaty law	209
5.3.1. Increasing the normative content of a human rights-based approach to freshwater access	209
5.3.2. Establishing individual complaint mechanisms by an Optional Protocol to the ICESCR	212

5.4. Specifying and developing the human rights-based approach to freshwater access by the interpretation of existing law	218
5.4.1. Specification by interpreting existing law	218
5.4.2. General Comment No. 15 of the CESCR as an example for specifying the human rights-based approach to freshwater access	219
5.4.3. The implementation dialogue between supervisory body and state as a means of producing binding interpretations and evolving law	223
5.4.4. Fostering the human rights-based approach to freshwater access by establishing transboundary water management institutions	225
5.5. Soft law and policy instruments strengthening a human rights-based approach to freshwater access	228
5.6. Concluding observations on prospects for the improvement of a human rights-based approach to freshwater access	230
Chapter 6. Conclusions	233
Bibliography	239
Index	255