

A REVIEW OF PRIVATE SECTOR INFLUENCE ON WATER POLICIES AND PROGRAMMES AT THE UNITED NATIONS

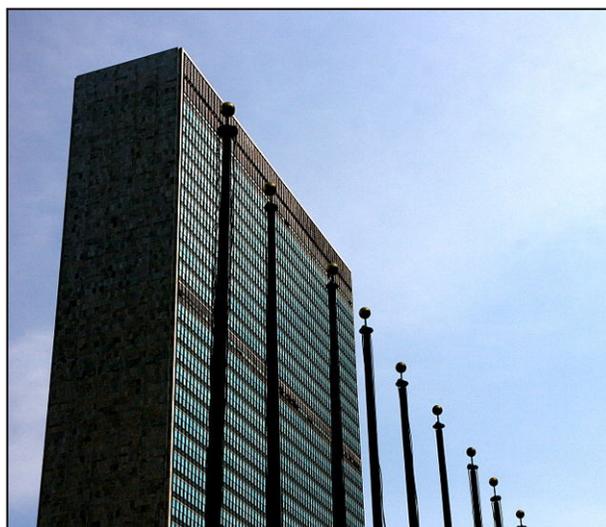


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for



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FOREWORD

For years, many human rights, social justice and environmental groups, as well as grassroots communities around the world fighting for their right to water, have decried the growing influence of big water corporations at the United Nations. For-profit utilities, bottled water companies, water industry associations and companies investing in private water services are all exerting strong influence on the UN agencies and policies that affect billions around the world. Many of us have long expressed concern that this corporate influence has steered the UN to more market-oriented solutions to the global water crisis and have opposed UN agencies being drawn into deeper involvement with the World Water Council, a corporate-serving body that often seems to speak for governments in its policy iterations, but really represents the interests of the private sector.

For me, these concerns were solidified when, in 2008/2009, I served as the Senior Advisor on Water to Father Miguel d'Escoto Brockmann, the 63rd President of the United Nations General Assembly. During that time, I observed closely the deepening influence of the private water sector in many areas of the UN. I also observed the fact that there is no corresponding UN authority representing the interests of governments and people relating to water policy, and no overall responsibility, accountability or vision as to how to address the water issues in the context of sustainable development by the General Assembly. Interestingly, in meetings with most of the major UN agencies responsible for water research and policy, many officials expressed their own concern about the growing corporate culture in defining water policy at the UN, but related the growing influence of the private sector to the lack of funding and interest in their work on the part of governments.

When my term ended, I knew that it was essential to uncover more information on this topic. So we invited Julie Larsen, an environmental and international researcher with extensive international experience, to write a detailed report on the influence of the private water sector at the UN. We are very proud to make this report and Julie's recommendations available to the public so that UN agencies, the General Assembly, member governments, the media and the global water justice movement can assess this influence for themselves and make more informed decisions and strategies when working for change at the UN and elsewhere.

The world is on the verge of a water crisis – both ecological and human – of terrifying proportions. The right policy paths will be based on the right foundations; for our movement, these have been to assert that water is a common heritage, public trust and human right and that no one has the right to appropriate water for private profit while others go without. It is clear that there is no agreement about these foundations at the UN and that it is, in fact, a body struggling with internal differences. While it is true that we are trying to solve the global water crisis against a backdrop of unequal power relations in the world, it is equally true that these power dynamics exist inside the UN itself and that must be recognized and addressed.

No one is opposed to the United Nations working with water corporations to encourage conservation and the search to reduce the world's collective water footprint. The concern is that the relationship between the highest levels of the United Nations and the private water sector legitimizes the growing

influence of these corporations on policy, both at the UN and at the nation-state level, which in turn promotes a private market system for water delivery and access at the expense of the public and the poor.

We hope this report and its detailed information about the role of the private water sector at the UN serves to inform the public in the search for a more just and sustainable water future.

A handwritten signature in black ink, appearing to read "Maude Barlow". The signature is fluid and cursive, with the first name "Maude" and the last name "Barlow" clearly distinguishable.

Maude Barlow
National Chairperson, The Council of Canadians
Former Senior Advisor on Water to the 63rd President of the United Nations
May 2011

EXECUTIVE SUMMARY

This report has been prepared for the Council of Canadians, an organization that advocates fair and progressive policies on trade, energy, water, health care, and other issues of concern to Canadians. The Council also houses the Blue Planet Project, an international movement working to ensure that water remains a public resource. In 2008, Maude Barlow, the Council's National Chairperson, was appointed Senior Advisor on Water to the 63rd President of the United Nations General Assembly. This report was initiated following Ms. Barlow's appointment, from a concern over the degree of fragmentation and corporate influence appearing in the work of the United Nations (UN) to manage the planet's shared water resources.

To surmount the global water crisis, the UN must assure a formal, transparent and democratic space in which governments can advance the best possible sustainable strategies to protect water as a public good. In July 2010, the UN's General Assembly, its highest intergovernmental body, affirmed the human right to water and sanitation.¹ Yet significant challenges remain before the millions of people living without access to safe drinking water and basic sanitation secure this right. For one, the UN must take a more comprehensive approach to water governance and ensure that all of its agencies, programmes, funds and intergovernmental bodies place water justice at the forefront of their policies and operations.

To help identify ways in which the UN can guide sustainable water solutions, this report asks two principal questions: (1) How is the UN system currently addressing the global water crisis? (2) To what degree is the private sector involved in this work? These questions are central to the UN's ability to promote effective water governance that is free from corporate conflicts of interest.

Through a systematic review of the UN system, the report examines the work of three principal UN bodies, namely, the General Assembly, the Economic and Social Council, and the Secretariat, the last of which includes the Secretary-General's special initiatives and the Global Compact's CEO Water Mandate. It also examines the work of some of the UN's agencies and programmes to determine the degree to which corporations are involved in the organization's operational work.

The report highlights several specific instances in which the corporate sector has been engaged in UN meetings, events and processes. This is not to suggest that something is amiss by their presence in designated multi-stakeholder processes, nor is it to discount or overshadow the vibrant and indispensable contributions of the other non-State actors working with the UN. However, there must be a clear distinction between corporate involvement in dialogues and events on the one hand, and policy and governance decisions on the other, and the latter must remain wholly within the democratic authority of UN Member States. While dialogues, forums and other side events are not decision-making bodies of the UN, initiatives that are loosely accountable to the General Assembly can undermine the principle of the equality of all UN Members.

1 See resolution A/RES/64/292, adopted by the UN General Assembly on July 28, 2010, which "Recognizes the right to safe and clean drinking water and sanitation as a human right that is essential for the full enjoyment of life and all human rights."

The review led to the following recommendations:

RECOMMENDATION 1

The UN General Assembly, the organization’s main representative body, must prioritize water governance and be the central decision-making authority for UN policies and programmes in this area. **It is through this body that Member States should thoroughly take stock of the UN system’s work on water issues, with the specific aim of reviewing and delineating the work of the Secretary-General’s Advisory Board on Water and Sanitation (UNSGAB), the Office for Partnerships (UNOP), the Global Compact, and UN-Water, and to ensure, minimally, their conformity with existing guidelines and recommendations put forward by the organization on cooperation with the private sector.**

Likely owing to the rules of procedure that govern the General Assembly as a democratic space for government-only interaction, this study found little evidence of direct corporate involvement in General Assembly proceedings. Far more evidence of corporate influence is seen in the work of ECOSOC and the Secretariat, which report to the General Assembly but also seem to lead initiatives outside the direct purview of the General Assembly (e.g., the UNSGAB, the UN Office for Partnerships, and the Global Compact). This has led to a disjointed array of “independent” initiatives on water issues, each conducted under the banner of the United Nations. For example, the UNSGAB, more than a quarter of whose members have private sector affiliations, describes itself as an “independent body”² and works on a self-created plan that includes activities on financing for water services. The Global Compact’s CEO Water Mandate answers to its own corporate-member Steering Committee and has independent funding mechanisms through the mainly business-financed Foundation for the Global Compact. At the same time, the UN has developed guidelines and recommendations for addressing the conflicts of interest presented by these situations, standards that the General Assembly should see properly administered. This includes the Secretary-General’s own “Guidelines on Cooperation between the United Nations and the Business Sector,” as a starting point (see also recommendation 7 on the need for enforcement and grievance resolution procedures). In 2010, the UN Joint Inspection Unit issued a review of the work of the Global Compact with 16 recommendations that aim to address the Global Compact’s lack of a regulatory and institutional framework, unique funding arrangements, and need for independent performance evaluations.

RECOMMENDATION 2

With the passage of recent resolutions on the human right to safe drinking water and sanitation, **water justice advocates must continue to monitor and engage in the work of the Human Rights Council and to press for appropriate responses to the risks regarding human rights violations associated with private sector water service provision.** Specifically this includes the work of the Council’s Special Procedures on human rights and transnational corporations and on human rights obligations related to access to safe drinking water and sanitation.

There are a number of international resolutions that are justiciable and enforceable confirming the human right to water and sanitation. Most recently this includes Human Rights Council resolution A/HRC/15/L.14, which calls upon States to implement effective regulatory frameworks for all service

² See the UNSGAB’s Mission Statement at <http://www.unsgab.org/about.htm>

providers in line with the human rights obligations of States. However, much work remains to ensure these obligations are codified into law, with appropriate safeguards that prevent the commodification of water and the host of issues that arise from international trade and investment laws that limit the regulatory ability of a State in confronting human rights violations.

RECOMMENDATION 3

The Economic and Social Council (ECOSOC) hosts annual meetings with representatives from the key committees of the Bretton Woods institutions, acting as one official channel of dialogue between the UN and the international financial and trade institutions. **Water justice advocates should press the UN to use this opportunity, and others at its disposal, to review and adjust water-financing modalities for greater coherence with human rights obligations to water, as specified in UN resolutions.**

In her 2010 report to the Human Rights Council, the now Special Rapporteur on human rights obligations related to water and sanitation notes, “democratic decision-making implies that governments must not be pushed into the decision to delegate service provision by donor conditionalities” (A/HRC/15/31, paragraph 35). The report also underscores the need for ongoing work on how international trade and investment law affects private sector participation and potentially limits the regulatory space of a State when human rights violations occur. Paragraph 36 of General Comment 15 notes, “States parties should ensure that their actions as members of international organizations take due account of the right to water. Accordingly, States parties that are members of international financial institutions, notably the International Monetary Fund, the World Bank, and regional development banks, should take steps to ensure that the right to water is taken into account in their lending policies, credit agreements and other international measures.” The UN must make use of every opportunity, including the high-level meetings of ECOSOC, to ensure that international financial institutions do not undermine existing decisions and provisions that safeguard the right to water.

RECOMMENDATION 4

Members of the Commission for Sustainable Development (CSD) of the Economic and Social Council (ECOSOC) bear particular responsibility for upholding democratic water governance at the UN. Past sessions and related work of the Commission have shown evidence of intense corporate involvement. **In light of this, the CSD must adopt specific safeguards that pre-empt potential conflicts of interest in private sector influence on public water policy (see also Recommendation 7).** This is especially important given the Commission’s ongoing preparations for the 2012 UN Conference on Sustainable Development, with its priority themes of the “green economy” and international environmental governance.

Resolution E/2005/29 calls upon the CSD to review the implementation of international water and sanitation decisions at its session in 2012 (p. 19, paragraph 4). The Commission has also been entrusted with overseeing and supporting many of the preparations for the 2012 UN Conference on Sustainable Development, also known as Rio +20. This study found evidence of significant corporate lobbying and influence in past water-themed discussions and proceedings of the CSD, including during processes of the World Summit on Sustainable Development in 2002. The CSD must work to correct

and prevent the presence of corporate conflicts of interest in international water governance. By addressing corporate pressures at Rio +20, governments have a greater opportunity to explore the full range of options that exist for addressing the global water crisis. This includes viable options of private sector participation in the provision of water and sanitation services, often presented under the guise of “greening the economy.”

RECOMMENDATION 5

Having not been substantially revised for several years, the rules and procedures that govern non-governmental accreditation and consultative status within the UN system need to be refined. There is currently no distinction made between organizations interacting with the UN – organizations that are as different as community-based citizen organizations versus large associations of multinational corporations. This fails to take into account differences in influence and resources that various stakeholders bring to UN deliberations. Ignoring such differences undermines the democratic governance of public policy-making. While entities with consultative status are not supposed to act as advocates for profit-generating organizations, there is a lack of oversight by the UN to ensure that they do not.

A lack of consistency about what constitutes civil society pervades the UN system. In some instances, civil society is taken to include the private sector. In other instances, distinctions are made between civil society, corporations, trade unions, professional associations, religious groups, indigenous people, parliamentarians, local authorities and other entities. The rules and procedures that shape both accreditation and subsequent interaction with the UN must recognize the complexity of civil society and account for the bureaucratic, logistical and financial constraints on participation by specific groups. In doing so, it must ensure that access and participation in UN deliberations by various constituencies do not introduce conflicts of interest that undermine the democratic nature of the policy process.

RECOMMENDATION 6

Despite the efforts of UN-Water, the treatment of water issues at the UN continues to be spread across many entities and lack guiding principles and oversight that safeguard democratic water governance. As a result, dedicated and sustained attention to safe water and sanitation is lacking and a rights-based approach to policy and related services is not uniformly applied. **UN-Water should be given continued support for its efforts to bring coherence to water-related policies and programmes at the UN within a rights-based framework. Furthermore, it should strengthen its approach to engaging non-UN partners in its work, in line with the development of safeguards specified in Recommendation 7. More importantly, it should ensure that the UN entities within its network adopt similar safeguards. Such action would be a meaningful contribution to UN-Water’s mandate to assist in the organization of the 2013 International Year of Water Cooperation.**

UN-Water is meant to operate as an inter-agency mechanism, coordinating the work of its 27 UN-system members that include water as a part of their mandate. This should be the focus of its efforts, ensuring coherence through a rights-based approach to water governance, requiring much less emphasis on fostering external partnerships.

RECOMMENDATION 7

The last decade has been characterized by a universal rapprochement between the UN and the business sector, with the UN Global Compact leading the way. This has occurred without any comprehensive evaluation of reputational and other risks to the UN. Such partnerships, especially when they involve shaping the UN's approach to water governance, pose serious conflicts of interest that threaten to undermine efforts to realize the human right to water. **The situation must be rectified by a strong set of system-wide standards and safeguards to prevent and address corporate conflicts of interest, based on the existing "Guidelines on Cooperation between the United Nations and the Business Sector."** This must include a grievance procedure for concerned parties to raise questions about private sector engagements in UN proceedings on water and to ensure appropriate action and receive coordinated responses to the issues raised. The enactment of such standards may well require the UN to establish an arm's length distance from initiatives such as the CEO Water Mandate and to desist from acting as the institutional home for corporate-led efforts.

In a report issued to the General Assembly in September 2009, the Secretariat notes, "Despite the growing number of evaluations, the United Nations is still not in a position to accurately assess the impact and value added of its private sector partnerships" (A/64/337, paragraph 59). This requires immediate attention going forward, in the form of system-wide safeguards and grievance procedures that identify and address corporate influence in the policy processes of the UN. For example, it should be clear that while the private sector may have a role to play in implementing UN policies, their interests should not influence the development of those policies. These guidelines must be applied to all areas of the UN's work on water examined in this report, specifically the UNSGAB, UNOP, the Global Compact, UN-Water and the Commission for Sustainable Development.

1.0 INTRODUCTION

All peoples, whatever their stage of development and their social and economic conditions, have the right to have access to drinking water in quantities and of a quality equal to their basic needs...

Report of the UN Water Conference in Mar del Plata, adopted by the UN General Assembly, 1977

Governments must make certain that adequate supplies of water of good quality are maintained for the entire population of this planet, while preserving the hydrological, biological and chemical functions of the ecosystems, adapting human activities within the capacity limits of nature...

Chapter 18 of Agenda 21, adopted at the Earth Summit, 1992

In order to achieve this [sustainable] future, it is necessary for Governments to take the steps needed to reach a global consensus over and above what is contained in the existing principles and agreements on freshwater resources of the world.

Report of the Secretary-General to the Commission for Sustainable Development in 1997

[We resolve] To stop the unsustainable exploitation of water resources by developing water management strategies at the regional, national and local levels, which promote both equitable access and adequate supplies.

United Nations Millennium Declaration, RES/A/55/2, paragraph 23, adopted in 2000

[Governments agree to] promote priority actions, with the support of all stakeholders, in water management and capacity-building at the national level and, where appropriate, at the regional level...

Plan of Implementation from the World Summit on Sustainable Development, adopted in 2002

Competition for water and shortcomings in managing it to meet the needs of society and the environment call for enhanced societal responses through improved management, better legislation and more effective and transparent allocation mechanisms.

The UN World Water Development Report 3, published in 2009

1.1 BACKGROUND: THE CRITICAL ROLE OF THE UN IN GLOBAL WATER GOVERNANCE

These excerpts, drawn from documents over the past three decades, indicate the UN's long-standing efforts to address and promote the sustainable use of the planet's water resources. It is now universally accepted that the world is facing a global water crisis and that competition for water will intensify in the decades ahead.³ Close to 1 billion people currently live in situations of water stress (defined as less than 1,700 cubic metres per person per year), a number that is projected to increase to more than 3 billion by 2025 (United Nations Development Programme, 2006). There is increasing demand for water for domestic, agricultural and industrial uses. In addition to demand, the Earth's water supplies continue to be polluted, depleted and diverted from their natural flows. Some 1.1 billion people in the developing world currently lack adequate access to clean water and 2.6 billion people lack basic sanitation (ibid.). If governments continue with the status quo, water mismanagement will not only impede future prospects for sustainable development, but also derail existing progress in the area of poverty eradication, health, sanitation and other crucial goals. The need for global leadership that advances the highest forms of governance and cooperation to conserve the Earth's limited water grows ever more urgent.

Threats to something as vital as universal access to water has prompted calls for an international instrument to secure and protect water as a basic human right. Successfully averting a water crisis requires a common body of principles and rules for all nations to follow in providing their citizens with access to clean drinking water and sanitation. Several factors oblige the UN system to preserve the right to water and to serve as a democratic forum in which to advance this work:

- **Achieving the Millennium Development Goals requires addressing the global water crisis.**

The entire UN system has aligned itself to support the achievement of the Millennium Development Goals (MDGs), a set of development targets created by the international community to be achieved by 2015. Clean water and sanitation are among the most powerful drivers for human development. Creating conditions in which the poor have a sustainable, safe water supply can help to break the poverty cycle, contribute to overall health and well-being, and improve gender equality when girls and young women are freed from the time-consuming tasks of fetching and queuing for water from distant sources (UN World Water Assessment Programme, 2010). Progress in the MDGs, from reducing extreme poverty to more specifically halving the proportion of people living without access to safe drinking water and basic sanitation, will be determined by how effectively governments manage the current water predicament.

- **Water use is transboundary and cross-sectoral by nature, thus requiring a multilateral response.**

As a resource that flows freely across international borders and whose use in one place affects its use in another, water typifies interconnection. The 2006 Human Development Report notes that much of what is perceived as "national water" is in fact shared. For example, fourteen countries share the Danube, eleven the Nile, and nine the Amazon. Shared water basins, including lakes and groundwater catchments, cover almost half the Earth's land surface (UNDP, 2006). Moreover,

³ See, for example, *United Nations World Water Development Report 3* (2009); "Sin aqua non" in *The Economist* printed edition of 8 April 2009, UNDP's *The Human Development Report: Beyond Scarcity: Power, poverty and the global water crisis* (2006), and The World Bank's *Water Resources Sector Strategy* (2003).

water is important to many sectors, including households, agriculture, industry, recreation and natural ecosystems. Unfortunately, sectoral approaches still dominate water resource management, resulting in fragmented oversight. Managing shared water can be a force for peace or for conflict. The UN must promote multilateral cooperation, regulation, and dispute resolution for water resources that are similar to the agreements contained in the Convention on Biological Diversity or the Convention to Combat Desertification.

- **Beyond physical shortages, the global water crisis requires addressing unequal power relations, widespread poverty, and flawed distribution policies.**

While physical shortages of water are a part of the water crisis, so too is inequitable access. Some researchers assert that the global water crisis is primarily a crisis of governance, and rampant corruption in the water sector affects who gets what water when, where and how (Stålgren, 2006). Service deficiencies often affect the poorest segments of the population. Poor people living in slums often pay 5 to 10 times as much per litre of water as wealthier people in the same city do (UNDP, 2006). A clear lesson to date is that far more attention is owed to equity, including addressing deep-seated inequalities that are particularly detrimental to women and indigenous peoples (Global Water Partnership, 2000). Governments must move beyond “water for all” in principle to truly securing people’s entitlements to accessible and affordable water. In countries with high levels of poverty and large segments of under-served populations, there will be a need for public investment, regardless of whether the water provider is public or private. Benchmarks and targets for equity are required, with associated minimum standards and penalties for non-compliance. Regulation is vital to placing the needs of the poor at the centre of water management policies, and governments must step up to this responsibility.

- **The private sector is increasingly a provider of water and sanitation services worldwide. It is exerting more and more influence in global dialogues on water, often to the exclusion of other, seemingly less powerful voices.**

Currently, the private sector provides water for approximately 10 per cent of the world’s population (Public Services International Research Unit, 2003). The World Bank forecasts that private water provision could more than double by 2015 and be valued at over \$1 trillion in the next decade (UN, 2004). This greater role in water provision and services has been accompanied by a growing corporate presence in international water policy dialogues. There is increasing concern over the role of the private sector, in large part because of industry’s failure to deliver on past assurances for improvements in equitable water provision (Watts, 2003). In the absence of strong regulatory rules on water pricing and investment to protect public interest, there is a risk that corporate abuse will prolong the denial of millions of people their basic right to water. The past negligence of private water concessions signals the need for new options and alternatives to secure water for all (Robbins, 2003; United Nations Development Programme, 2006).

These reasons point to a pivotal role for the UN, backed by the political will of governments, in shaping binding agreements that secure water as a basic human right and govern its use in the midst of water depletion and competition. There is an opportunity to learn from past failures and build upon known successes in order to manage the world’s water crisis.⁴ However, this will require an open

⁴ See for example the recommendations contained in: WHO’s (2010) *UN-water global annual assessment of sanitation*

platform of discussion and debate, one in which the voices of governments and their citizens inform the core values and principles that will guide the management of the world's water. It is incumbent upon the UN to place water at the top of the political agenda, ensuring the democratic auspices under which a comprehensive approach to managing the global water commons can be advanced.

1.2 PURPOSE AND SCOPE OF THE STUDY

The purpose of this report is to systematically examine the parts of the UN system that currently work on water initiatives and to review the extent to which the private sector influences these efforts. Of chief concern is the degree to which the private sector infringes upon the creation of an independent space in which fair and transparent water policies can be enacted. Ultimately the study aims to recommend ways in which the UN can most effectively advance sustainable solutions for just, worldwide access to water.

The scope of the report is limited by two principal questions: (1) How is the UN system currently addressing the global water crisis? (2) To what degree is the private sector involved in this work? These questions are central to international water governance and the UN's ability to ensure that water remains a public good rather than a corporate commodity.

1.3 STRUCTURE OF THE REPORT

The report undertakes a systematic review of the UN's work in relation to water policies and programmes. It begins with the work of three of the UN's principal bodies that are relevant to water, namely, the General Assembly, the Economic and Social Council (ECOSOC), and the Secretariat. The review of the General Assembly includes the work of pertinent main committees and its subsidiary body, the Human Rights Council. For ECOSOC, the report examines the proceedings of the Annual Ministerial Review and Development Cooperation Forum, the Commission on Sustainable Development, as well as some relevant committees. For the Secretariat, the study specifically reviews the Secretary-General's special initiatives, such as the Advisory Board on Water and Sanitation and the UN Office for Partnerships, as well as the UN's Global Compact and its CEO Water Mandate.

The next section of the report turns its attention to the UN's more operational parts, that is, to some of its programmes, funds and agencies whose activities intersect with water resource management. Again, it focuses specifically on where the private sector is working in partnership with the UN to deliver its in-country assistance and national policy support. While technically a part of the Secretariat, UN-Water is examined in this section, owing to its coordination role on water issues among UN entities.

Based on this review, the final section of the report presents its main findings and recommendations for increasing the UN's effectiveness in promoting international governance that would protect water as a public good rather than a corporate commodity.

and drinking-water 2010: targeting resources for better results or Jacobson, M., et al. (2010) *Promoting Transparency, Integrity and Accountability in the Water and Sanitation Sector in Uganda*.

2.0 REVIEW OF THE UN GENERAL ASSEMBLY'S WORK ON WATER

The United Nations is a vast system consisting of six principal organs, 15 specialized agencies, and several more programmes, funds and other bodies (see Appendix A, “The United Nations System”). This section of the report examines the water work of three of the UN’s six principal organs, namely, the General Assembly, the Economic and Social Council, and the Secretariat.⁵

The UN General Assembly (UNGA) is the chief deliberative, policy-making and representative organ of the United Nations. Each of the organization’s 192 Member States has a vote, though the Assembly aims to adopt resolutions by consensus when possible. While the non-binding character of its recommendations can limit the Assembly’s effectiveness, it nevertheless provides a multilateral forum for debate and plays a significant role in setting international standards and codifying law. It convenes high-level segments that mobilize political commitment at the uppermost levels of government. For example, it was the UNGA that adopted the Millennium Declaration by Heads of State in 2000, a set of eight internationally agreed-upon development goals, including a specific commitment on water and sanitation.⁶

The Assembly meets intensively from September to December each year, and thereafter as required. Because the UNGA has more than 150 agenda items for its annual consideration, it divides its work among six main committees. The committees discuss and seek consensus on various topics, then present draft resolutions and decisions to the plenary meetings of the General Assembly for decisive action.

2.1 THE SECOND COMMITTEE (ECONOMIC AND FINANCIAL)

Water as a topic in its own right does not figure in the agenda of the General Assembly and is generally dealt with under the agenda item of sustainable development, which is assigned to the Second Committee. Governments often pass resolutions that propose activities or events to highlight issues and accelerate progress towards fulfilling existing commitments. In its resolution 55/196⁷ of December 20, 2000, the UNGA declared 2003 the International Year of Freshwater. At the end of the year, the Assembly decided in resolution 58/217 to proclaim the International Decade for Action “Water for Life,” commencing on World Water Day on March 22, 2005, in order to continue to promote efforts to fulfil international commitments made on water issues. To put the spotlight

⁵ The work of the other three principal organs, namely, the Trusteeship Council, the Security Council, and the International Court of Justice, are less relevant to this review.

⁶ Under “Goal 7: To ensure environmental sustainability,” Target 7.C is to halve, by 2015, the proportion of people without sustainable access to safe drinking water and basic sanitation. See the official list of targets at <http://mdgs.un.org/>

⁷ Resolutions referred to in this report can be obtained from the UN’s Official Documentation System at <http://documents.un.org/>

on sanitation, the UNGA declared 2008 the International Year of Sanitation in resolution 61/192. In general, the Assembly uses these international designations to encourage Member States and the United Nations system to accelerate action on, in this case, water-related issues.

It is worth examining the resolutions of more recent sessions of the UNGA, as they mark an escalating concern for water issues. The 64th session, which took place from September 2009 to August 2010, held intensive water discussions and negotiations. During this session, the Second Committee examined water issues during a panel discussion on “Enhancing governance on water,” which was held on November 6, 2009.⁸ It also recommended to the General Assembly the adoption of resolution 64/198 on the “Midterm comprehensive review of the implementation of the International Decade for Action ‘Water for Life 2005-2015.’” The resolution welcomed the offer by the Government of Tajikistan to host an international event on the review in June 2010, and invited the Assembly to convene a high-level interactive dialogue to mark World Water Day on March 22.

The session culminated in a significant resolution being passed by the Assembly in July 2010 on the human right to water and sanitation. Resolution 64/292 recognizes “the right to safe and clean drinking water and sanitation as a human right that is essential for the full enjoyment of life and all human rights.” While the resolution is not legally binding, it is a crucial milestone towards integrating the human right to water and sanitation into international law and securing such a right for all people. The text also references the work undertaken by the Human Rights Council and the Independent Expert on the issue of human rights obligations related to safe drinking water and sanitation (see section 2.2 below). However, as a subsidiary body to the Assembly, the Human Rights Council must adhere to the decisions of the General Assembly and build upon their implications. The Human Rights Council may make recommendations to the General Assembly for further consideration the next time the Assembly takes up the issue, generally through its annual report.⁹ Thus resolution 64/292 represents a significant opportunity for water justice advocates to push for full recognition to the right to water and sanitation in international law, particularly as a basic right arising from the International Covenant on Economic, Social and Cultural Rights¹⁰ (see also section 3.4 below).

Other opportunities for ongoing water justice advocacy arose from the General Assembly’s 65th session in late 2010. Acting on the recommendations of its Second Committee, the Assembly adopted 17 resolutions related to topics for sustainable development. This includes resolution 65/154, which establishes 2013 as the “International Year of Water Cooperation” and encourages Member States and United Nations bodies to promote international cooperation in achieving the water-related goals set forth in Agenda 21, the Millennium Declaration, and the Johannesburg Plan of Implementation. Additional resolutions reflect the Second Committee’s discussions on a range of issues that will be taken up at the forthcoming UN Conference on Sustainable Development, to be held in 2012 in Rio de Janeiro.¹¹ The initial two themes for the conference are the “green economy for

8 Information on the panel is available at www.un.org/ga/second/64/water.pdf

9 These modalities are specified in A/RES/60/251, the GA resolution that established the Human Rights Council.

10 The International Covenant on Economic, Social and Cultural Rights (ICESCR) is a multilateral treaty adopted by the United Nations General Assembly on December 16, 1966, and entering into force from January 3, 1976. It has its roots in the same process that led to the Universal Declaration of Human Rights and is monitored by the Committee on Economic, Social and Cultural Rights (CESCR).

11 In resolution 64/236 the General Assembly decided to organize a UN Conference on Sustainable Development in

sustainable development and poverty eradication” and international environmental governance, or the “institutional framework for sustainable development”.¹² Both of these topics are relevant to the issues surrounding the right to water as a common versus a commodified good.

A recent report from the UN Secretary-General notes that the green economy “can be seen as a lens for focusing on and seizing opportunities to advance economic and environmental goals simultaneously” (United Nations, Global Compact, 2010, paragraph 10). It discusses the concept using market-oriented terms, grouping policies into seven “tracks”; namely, green stimulus packages, eco-efficiency, greening markets and public procurement, investments in sustainable infrastructure, restoration and upgrading of natural capital, getting prices right, and ecological tax reform. These policy options deserve careful consideration, as they have the potential to frame the discussion on natural resources in predominantly economic terms rather than the ecologically oriented paradigm shift that is required.¹³ They also risk advancing profit-driven ideologies, under the guise of solutions for sustainable development, and ushering in the same kind of commercial campaigns and corporate-dominated debates that were observed at the last World Summit on Sustainable Development in 2002 (see section 3.2). Furthermore, the discussion on international environmental governance is important to water justice advocates because it offers the chance to improve the UN’s fragmented approach and duplication of efforts on water management, as evidenced by the many bodies covered in this review. Taken together, the forthcoming preparations of the 2012 UN Conference on Sustainable Development and discussions surrounding the 2013 International Year of Water Cooperation should be closely monitored, as they present both risks and opportunities for advancing global water justice.

2.2 THE HUMAN RIGHTS COUNCIL

The UN’s work to advance the critical notion of water as a human right also takes place within a subsidiary body of the General Assembly called the Human Rights Council. Together with the Office of the High Commissioner for Human Rights (OHCHR), which serves as its Secretariat, the Human Rights Council works to set standards, address violations, and publicly monitor commitments in relation to human rights issues. The Council has the authority to mandate “special procedures,” mechanisms it establishes to investigate particular issues and to appeal for action on specific human rights violations. There are currently 30 thematic special procedures in effect, two of which are related directly to the topic of water and the private sector: one on human rights and transnational corporations and other business enterprises; the other on the issue of human rights obligations related to access to safe drinking water and sanitation.

2012, hosted by the government of Brazil, as a twenty-year follow-up to the Earth Summit of 1992.

¹² Initial themes for the conference are identified in the *Report of the Secretary-General on Objective and Themes of the United Nations Conference on Sustainable Development*, A/CONF.216/7 (December 20, 2010).

¹³ See for example the “change in preanalytic vision” (p. 23) described in H. Daly and J. Farley (2004), *Ecological Economics: Principles and Applications* (Washington, D.C.: Island Press); M.C. Wood (2009), Ecological Realism and the Need for a Paradigm Shift, *Environmental Law* 39:1, p. 43; and W.E. Stead and J.G. Stead (1994), Can Humankind Change the Economic Myth? Paradigm Shifts Necessary for Ecologically Sustainable Business, *Journal of Organizational Change Management* 7:4, pp. 15-31.

In 2005 the UN Commission on Human Rights approved the appointment of Mr. John Ruggie of the United States as the Special Representative on the issue of human rights and transnational corporations and other business enterprises. The resolution mandated the Special Representative to identify and clarify standards of corporate responsibility and accountability for transnational corporations and other businesses with regard to human rights. At the end of the term in 2008, the Human Rights Council unanimously “welcomed” the “Protect, Respect and Remedy” Framework proposed by the Special Representative in his final report under the 2005 mandate. This policy framework comprises three core principles: the State duty to protect against human rights abuses by third parties, including business; the corporate responsibility to respect human rights, which means to act with due diligence to avoid infringing on the rights of others; and the need for greater access by victims to effective remedies, judicial and non-judicial. The Human Rights Council renewed the Special Representative’s mandate for a period of three years, until June 2011, during which time he has worked to put the framework into operation.

Under the special procedures on the issue of human rights obligations related to access to safe drinking water and sanitation, in November 2000, the Council took Decision 2/104 to conduct a detailed study on the scope and content of relevant human rights obligations related to equitable access to water and sanitation under human rights instruments. For this study, the OHCHR conducted consultations that gathered more than 40 States’ responses to a prepared questionnaire, as well as written contributions from a range of stakeholders, including the private sector (namely, Aquafed, Suez, Veolia and the World Business Council on Sustainable Development).¹⁴ The report, presented as A/HRC/6/3 to the Council during its sixth session in August 2007, collated a foundational review of the numerous references to access to drinking water and sanitation in international and regional human rights treaties, guidelines, principles, declarations, resolutions and plans of actions. It concluded that “it is now time to consider access to safe drinking water and sanitation as a human right, defined as the right to equal and non-discriminatory access to a sufficient amount of safe drinking water for personal and domestic uses – drinking, personal sanitation, washing of clothes, food preparation and personal and household hygiene – to sustain life and health” (A/HRC/6/3, paragraph 66). The OHCHR report also identified private provision of water and sanitation services as an issue requiring further examination (A/HRC/6/3, paragraph 53). It noted that while the human rights framework does not dictate a particular form of service delivery, human rights obligations nonetheless require States to regulate and monitor private water and sanitation providers. The report also made clear that specific, dedicated and sustained attention to safe drinking water and sanitation is lacking at the international level.

Following the OHCHR report, the Human Rights Council passed resolution 7/22 in March 2008, in which it appointed an Independent Expert (IE) on the Issue of Human Rights Obligations related to Access to Safe Drinking Water and Sanitation.¹⁵ The present holder of this mandate is Ms. Catarina de Albuquerque, a national of Portugal, whose initial three-year mandate was renewed by the Council as

14 The more than 100 contributions received as input for the High Commissioner’s report include submissions from States, intergovernmental organizations, local governments, human rights institutions, non-governmental organizations, the business sector, and universities, and constitute a rich source of information and views on the right to water. These inputs are available at <http://www2.ohchr.org/english/issues/water/contributions>

15 See Human Rights Council resolution 7/22 at http://ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_7_22.pdf

a Special Rapporteur in March 2011 (A/HRC/16/L4). Her work is guided by the existing international human rights framework, including General Comment 15 on the Right to Water and the work of the Sub-Commission on the Promotion and Protection of Human Rights (see also section 3.4). In a preliminary report to the Council (A/HRC/10/6), the IE indicated that the conclusions of the OHCHR study would provide a basis for identifying the themes requiring further study during her mandate.

In the first year of her mandate, the IE examined the human rights obligations in relation to access to sanitation, which were reported to the Council in A/HRC/12/24 in October 2009, and later adopted by the Committee on Economic, Social and Cultural Rights at its 45th session in November 2010. In 2010, the IE announced a focus on the private sector's participation in the provision of water and sanitation services, a topic that was later changed to "human rights obligations and responsibilities, which apply in cases of non-State service provision of water and sanitation." To support this effort, consultation took place in early 2010. Stakeholders were invited to provide written submissions based on a list of relevant questions suggested by the OHCHR.¹⁶ In particular, the IE welcomed submissions that addressed specific examples of private sector participation, analyzing these from a human rights perspective to show how the participation of the private sector either contributed to or undermined the realization of human rights.

The IE's findings were presented to the Human Rights Council at its 15th session in September 2010 as report A/HRC/15/31. The report makes clear that States are the primary duty-bearers for the right to water, and that they do not abdicate that duty even if a non-State actor has been designated as a primary service provider. It also determines non-State service providers to have specific human rights responsibilities, such that they must address potential or actual negative impacts caused by their activities. However, the report leaves unaddressed several factors related to human rights violations by the private sector. For one, it regards as beyond its scope a consideration of how international trade and investment law affects private sector participation and potentially limits the regulatory space of a State when human rights violations occur. The report also fails to acknowledge the immense wealth and influence accrued by transnational entities over recent decades, leaving many developing countries incapable of regulating reprobate corporations. Today, the largest corporations have assets and annual sales that exceed the gross national products (GNPs) of most of the countries of the world (Robbins, 2003). Moreover, while the report concedes that "democratic decision-making implies that governments must not be pushed into the decision to delegate service provision by donor conditionalities" (A/HRC/15/31, paragraph 35), it does not sufficiently address the provisions favouring private service providers that are attached to loans from the World Bank, regional development banks, and other international financial institutions.

Following the introduction of the IE's report at the Council's 15th session, members adopted resolution A/HRC/15/L.14 affirming that "the human right to safe drinking water and sanitation is derived from the right to an adequate standard of living and inextricably related to the right to the highest attainable standard of physical and mental health, as well as the right to life and human dignity" (paragraph 3). This roots the right to safe drinking water and sanitation in the principles contained in the International Covenant on Economic, Social and Cultural Rights and makes it legally

16 The questions are available at http://www2.ohchr.org/english/issues/water/ixpert/private_sector_participation.htm

binding (see section 3.4). Following the adoption of the resolution, the IE noted, “The right to water and sanitation is a human right, equal to all other human rights, which implies that it is justiciable and enforceable” (Office of the High Commissioner for Human Rights, 2010).

Also significant is the fact that resolution A/HRC/15/L.14 calls upon States to implement effective regulatory frameworks for all service providers in line with the human rights obligations of States and to ensure active, free and meaningful participation by the concerned local communities and relevant stakeholders. Such regulatory frameworks and participation in decision-making processes must be in place at the outset and prior to any delegation of water and sanitation to non-State actors. It will remain essential for advocates of equitable access to water to use the Human Rights Council and its related mechanisms to continue to press for greater clarity and understanding on the risks to human rights associated with private sector water service provision.

2.3 THE SIXTH COMMITTEE (LEGAL) AND THE INTERNATIONAL LAW COMMISSION

The Sixth Committee is the primary forum for the consideration of legal questions in the General Assembly. Its work informs the UN’s response to providing legal frameworks for managing water resources. All of the UN’s Member States are entitled to representation on the Sixth Committee. Like the Second Committee, the Sixth Committee is assigned various agenda items of the General Assembly’s overall programme of work, which includes a review of the work of the International Law Commission (ILC). Established in 1948, the ILC is a subsidiary body of the UNGA whose mandate is the progressive development and codification of international law. The ILC consists of 34 Member States, elected for five-year-terms.

As early as 1970, the General Assembly requested the ILC take up the study of the non-navigational uses of international watercourses with a view to codifying international law surrounding the uses and conservation of waters that cross international boundaries. After numerous working groups, several special rapporteurs, and repeated collections of comments on draft articles, the ILC completed this project in 1994.¹⁷ Based on the ILC’s work, in 1997 the General Assembly adopted the Convention on the Law of Non-Navigational Uses of International Watercourses in resolution 51/229.¹⁸

The Convention consists of a preamble, 37 articles, and an appendix on arbitration that oblige UN Member States to consider the impact of their actions on other States with an interest in a shared water resource. However, at present, the Convention has not entered into force, as only 16 of the required 35 countries have ratified the instrument.¹⁹

Had the Convention on the Law of Non-Navigational Uses of International Watercourses been ratified, each Member State that shares a water resource would be required to provide information to other sharing States about the condition and planned uses for a watercourse. The Convention also permits a State with urgent need to immediately utilize a watercourse, provided it notifies sharing States of both the use and the urgency. In the event that a use is perceived to be harmful, Member States must

17 A summary of this work and related documentation can be accessed at http://untreaty.un.org/ilc/guide/8_3.htm

18 Resolution A/RES/51/229 can be accessed at <http://www.un.org/documents/ga/res/51/ares51-229.htm>

19 The status of multilateral treaties deposited by countries with the UN Secretary-General is available at <http://treaties.un.org/Pages/ParticipationStatus.aspx>

negotiate a mutually acceptable solution, appealing for arbitration as necessary to uninvolved States or international organizations such as the International Court of Justice. It also requires States to take reasonable steps to control damage to waterways caused by pollution or natural threats such as droughts and floods. However, without entry into force, the articles remain merely guiding principles.

Concurrent with its work on the Convention on the Law of Non-Navigational Uses of International Watercourses, the General Assembly, at the recommendation of the ILC, decided in 2000 to include the topic of “Shared natural resources of States” in its long-term programme of work. This initiated the ILC’s work on the topic of transboundary aquifers under the guidance of Special Rapporteur Mr. Chusei Yamada. The Special Rapporteur noted that the problem of shared natural resources had been excluded by the earlier convention on non-navigational water uses and considered that a separate study was warranted due to groundwater’s worldwide importance. The ILC’s work in this area concluded in 2008 with a report to the Sixth Committee that presented a set of 19 draft articles on the law of transboundary aquifers. In resolution 63/124, the General Assembly noted the draft articles and recommended States use them to make appropriate bilateral or regional arrangements for the proper management of their transboundary aquifers.²⁰ However, Member States were divided on what form to give the draft articles. While some countries felt that the articles on aquifers elaborated by the ILC should become treaty obligations, other countries, such as Canada, felt the draft articles should remain a set of model principles.²¹ For the time being, the General Assembly agreed to include, in its provisional agenda of its 66th session in 2011, an item entitled “The law of transboundary aquifers” with a view of further examining the form to be given to the draft articles.

Overall, there is little evidence of corporate influence or engagement in the General Assembly’s work on water issues. This is likely owing to the strict rules of the Assembly, which preserve it as a democratic space for government-only interaction. More evidence of corporate engagement is seen in the work of the ECOSOC and the Secretariat, as described in the following sections.

²⁰ Resolution A/RES/63/124 can be accessed at http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/63/124

²¹ See for example the UN Department of Public Information summary account at <http://www.un.org/News/Press/docs/2008/gal3352.doc.htm>

3.0 A WATER REVIEW OF THE ECONOMIC AND SOCIAL COUNCIL

The Economic and Social Council (ECOSOC) is the UN's principal organ for coordinating the development work of its 15 specialized agencies, functional commissions, and five regional commissions. The Council also receives reports from the UN funds and programmes and is entrusted with the follow-up to the outcomes of the major UN conferences and summits of the 1990s.

The Council's 54 rotating members hold four-week substantive sessions each July, alternating between New York and Geneva. Apart from these substantive sessions, each April ECOSOC hosts an annual meeting with finance ministers heading key committees of the Bretton Woods institutions. This includes the Chairs of the Development Committee of the World Bank, the International Monetary and Financial Committee of the International Monetary Fund, the General Council of the World Trade Organization, and the Trade and Development Board of UNCTAD. These meetings are one of the few "official" channels of dialogue between the UN and the international financial and trade institutions.

3.1 ANNUAL MINISTERIAL REVIEWS AND DEVELOPMENT COOPERATION FORUMS

As part of its work to promote progress in achieving the internationally agreed-on development goals, the Council has held Annual Ministerial Reviews (AMRs) since 2007. The AMRs touch upon water issues insofar as they relate to the UN's overall development agenda. For example, in 2008, the review focused on "Implementing the internationally agreed goals and commitments in regard to sustainable development." This included examining the implementation of commitments contained in Agenda 21 and the Johannesburg Plan of Implementation (JPOI), as well as the water and sanitation targets associated with MDG 7. During the series of national voluntary presentations, several countries discussed their concrete experiences in implementing policies related to achieving sustainable access to safe drinking water.²²

It should be noted that the AMR thematic discussions of the Council often include presentations from experts who have been identified by the Secretariat and vetted by the elected bureau from ECOSOC Member States. In carrying out its mandate, the Council may call on experts from any field, including the business sector, and may consult with academics, private sector representatives, and the more than 2,000 non-governmental organizations registered with the Council.

The biennial high-level Development Cooperation Forum (DCF) is also a relatively new function of a strengthened ECOSOC. The Forum was launched in Geneva in July 2007 and the first biennial Forum took place in New York in July 2008 as part of the high-level segment of the Council. Mandated to enhance the implementation of internationally agreed-upon development goals, the first DCF helped to initiate the Forum as an opportunity for global dialogue and policy review on the effectiveness and coherence of international development cooperation. The DCF also promotes itself as a forum for

²² The experiences of Barbados, Cambodia, Chile, Ethiopia, Ghana, Laos, Luxembourg and Tanzania in implementing safe water policies as presented at the ECOSOC AMR in 2008 are available at <http://webapps01.un.org:80/nvp/frontend.action>

independent analysis, high-level and balanced participation of key actors, and clear representation of multi-stakeholder positions. The second Development Cooperation Forum took place in July 2010 in New York.

To coordinate the objectives and agenda of the DCFs, the Under-Secretary-General of the United Nations Department of Economic and Social Affairs (UNDESA) has established an informal Advisory Group for the Forum. The role of its members, who serve in a private capacity, is to promote the involvement of influential stakeholders, experts, think tanks and networks in different regions in the preparations for the DCF. Of the current 26 members, the majority come from government ministries and UN agencies. Mr. Bjorn Stigson, President of the World Business Council on Sustainable Development, is a member of ECOSOC's DCF advisory group.²³

3.2 THE COMMISSION ON SUSTAINABLE DEVELOPMENT

The Commission on Sustainable Development (CSD) is one of several functional Commissions of ECOSOC and was established by the UNGA in 1992 to ensure effective follow-up of the United Nations Conference on Environment and Development (UNCED). The Commission is responsible for reviewing progress in the implementation of 1992's Agenda 21 and the Rio Declaration on Environment and Development, as well as the Johannesburg Plan of Implementation (JPOI) which was agreed upon at the World Summit on Sustainable Development (WSSD) in 2002. The JPOI reaffirmed the CSD as the high-level forum for advancing sustainable development issues within the UN system.

The CSD meets annually in New York, in two-year cycles that alternate between a Review Year, in which members evaluate progress on an issue to date, and a Policy Year, in which members deliberate on measures to further advance an issue. Each cycle focuses on a cluster of thematic issues that have been pre-identified by Member States for all sessions from 2003 to 2017.²⁴ In 2004/2005, during the Commission's 12th and 13th sessions, water and sanitation were a part of the thematic cluster that was examined.

CSD 12 AND 13 – A FOCUS ON WATER AND SANITATION

Because of their focus on water, the following components of the work of the 12th and 13th sessions of the CSD were reviewed in terms of private sector involvement: the report of the Secretary-General, major group activity, major group discussion papers, interactive dialogue sessions, the chair's summary report, and other CSD activities such as the Partnerships Fair, the Learning Center and related side events.

²³ The list of members of the DCF's Advisory Group is available at <http://www.un.org/en/ecosoc/newfunct/advismem.shtml>

²⁴ The list of thematic clusters from 2003 through to 2017, as well as the rotation between Review and Policy years, is available at http://www.un.org/esa/dsd/csd/csd_index.shtml

REPORT OF THE SECRETARY-GENERAL

In preparation for CSD-12, the Secretary-General circulated his report entitled “Freshwater Management: Progress in meeting the goals, targets and commitments of Agenda 21, the Programme for the Further Implementation of Agenda 21, and the Johannesburg Plan of Implementation.”²⁵ The report focused primarily on the provision of safe drinking water and integrated water resource management as the two main areas of action for freshwater management outlined in Agenda 21 and the JPOI. Given that the 13th session of the Commission occurred soon after the WSSD, the SG’s report tries to address some of the dissension on the role of the private sector at the event. With over 100 CEOs and 700 business delegates from more than 200 corporations attending the Johannesburg summit, the presence of industry was far larger than at the 1992 Earth Summit in Rio de Janeiro (Global Policy Forum, 2002). The feeling among several stakeholders was that corporations had used the WSSD to promote their business interests (ibid.). For example, at the Summit, multinational corporations had launched a report called “Water for the Poor,” which outlined a strategy for accelerating private partnership and investment in water service provision.

The Secretary-General’s report to CSD-12 notes that “some evidence suggests that the poor have benefited: e.g. in three Latin American countries, following private participation, the poorest quintile of the population obtained between 25 per cent and 35 per cent of new connections. Nonetheless, a more general review of the impact of infrastructure privatization on the poor in Latin America concludes that privatization generally failed to take the interests of the poor into account with regard to affordability of service and access to connections” (E/CN.17/2004/4, paragraph 22). Later in the report, in a section on financing, it is noted that “In view of the apprehension about granting a local monopoly of water supply to a private company and, in particular, concerns over the social impact of increases in water charges, governments and consumers in many developing countries have not encouraged participation by multinationals in the provision of water services. The debate in different forums has contributed to a better understanding of the potential role of the private sector, although not to a consensus on all the issues” (ibid., paragraph 64). Generally reports from the Secretary-General are meant to frame various issues for discussion. In this case, the SG’s report underscored the need for ongoing debate at the CSD about the role of the private sector in water provision services.

MAJOR GROUP ACTIVITY AND DISCUSSION PAPERS

The CSD has adopted the approach of integrating input from nine major stakeholder groups that were originally recognized in Agenda 21.²⁶ Representatives from the major groups, one of which is Business and Industry, participate in the CSD’s interactive dialogues, develop coordinated statements through thematic caucuses, lobby for particular initiatives, hold side events, and contribute to partnerships for sustainable development. Participation by non-governmental actors in the CSD is subject to the overall rules of participation of the UN Economic and Social Council. Of the list of 178 non-governmental entities that registered for CSD-12, several were organizations linked to the private sector; these included Global Water Partnerships, the International Centre for Trade and Development, the

²⁵ This report, document E/CN.17/2004/4, is available at http://www.un.org/esa/dsd/csd/csd_csd12.shtml

²⁶ The nine major groups recognized in Agenda 21 include (1) Business and Industry, (2) Children and Youth, (3) Farmers, (4) Indigenous People, (5) Local Authorities, (6) Non-governmental organizations (NGOs), (7) the Scientific and Technology community, (8) Women, and (9) Workers and Trade Unions. See http://www.un.org/esa/dsd/dsd_aofw_mg/mg_about.shtml

International Chamber of Commerce, the International Council of Chemical Associations, WaterAid, the World Business Council for Sustainable Development, the World Chlorine Council, the World Water Forum Secretariat, and the World Water Council.²⁷

In its discussion paper submitted to CSD-12, prepared by the International Chamber of Commerce and the World Business Council for Sustainable Development, the private sector outlined its perspectives on water services, infrastructure and management.²⁸ Much of this is a reiteration of the business positions that were presented at the WSSD. The paper touches on creating an enabling environment and, from a business perspective, the ingredients of a national water policy. It identifies several barriers to water provision: the failure to recognize new technologies (i.e., water treatment, pipe materials, etc.), and poorly trained government employees who are unable to negotiate contracts and establish appropriate guidelines from a position of equality with entrepreneurs of all types. It uses the work of Nestlé Waters, RWE Thames, CropLife International, South Africa's Eskom, and other companies to exemplify the private sector's added value to the arena of water provision and management. On the subject of partnerships, the report notes that "Public versus private is not the issue. The challenge is to maximize efficiency, whatever structure is chosen. New innovative partnerships could include: large multinational corporations and/or large public sector water operators working with smaller local partners; partnerships with local water sellers; fountain or well operators; and vendors of all sorts" (E/CN.17/2004/10/Add.2, paragraph 9).

The Business and Industry discussion paper submitted at CSD-12 endorses the concept of integrated water resource management, noting that the availability of water will affect decisions regarding future investments and require businesses to cooperate with other water users within a river basin or catchment area. It also affirms that the costs of water provision, inclusive of capital, operation and maintenance, must be covered by a sustainable water service delivery mechanism. In terms of equitable access by the poor, the report notes that the public, including the poor, have demonstrated a willingness to pay for fresh drinking water. It outlines the business sector's approach to determining appropriate tariffs. "Valuation and pricing should be negotiable between providers and users of water. Individuals must be convinced that the prices they are paying are reasonable and affordable. In this regard, government regulators must have the capacity and ability to protect the public interest as well as to ensure that investors and service providers are fairly compensated for the services they provide" (ibid., paragraph 10). The report also advocates that investors have appropriate risk guarantee schemes for investors for the financing of investments in the water sector. Overall, the discussion paper provides a snapshot of the positions for which the private sector advocates, at the WSSD, during CSD 12 and 13 sessions and possibly beyond.

DIALOGUE SESSIONS

The dialogue sessions at CSD-12 examined several aspects of water management, including integrating water management into national development and poverty reduction strategies, building capacity for the provision of water services, and reducing water demand for conservation. These discussions

²⁷ The list of registered non-governmental entities at the CSD-12 is available at http://www.un.org/esa/dsd/csd/csd_csd12.shtml

²⁸ The discussion papers of all major groups are registered as official documentation to the CSD-12 process and are available at http://www.un.org/esa/dsd/csd/csd_csd12.shtml

were initiated by remarks from lead discussants. In most cases, these experts were from relevant government ministries. For example, the discussion on the theme “Water policies and reforms to make the use and governance of water resources more effective and sustainable” heard remarks from South Africa’s Department of Water Affairs and Forestry, from the Director of Chile’s Empresa de Servicios Sanitarios de la Araucania, and from the Chief Engineer of Water Resources and Hydropower Planning and Design of China’s Ministry of Water Resources.

However, when the Commission held an interactive discussion on the theme “Meeting the financial challenge for water: Incentives to promote reforms and leverage resources,” lead remarks did not come solely from government ministries. Experts included Thierry Chambolle, Advisor from Suez and then-Chairman of the International Chamber of Commerce; Ravi Narayanan, the Director of WaterAid from the United Kingdom; and John Wasielewski, a Director with the United States Agency for International Development (USAID). It is also important to note that during CSD-12’s high-level segment, at which mainly ministers and senior UN officials deliver comments, Michel Camdessus, former Managing Director of the International Monetary Fund, made a statement. Furthermore, when the Chairman opened the discussion on the theme “Releasing the energy of entrepreneurs and partnerships,” introductory remarks were made by Bjørn Stigson, President of the World Business Council for Sustainable Development. At the same meeting, alongside a statement from a senior specialist of the International Labour Organization, Steve Lennon of the International Chamber of Commerce made remarks. Thus Business and Industry were the only major groups to deliver remarks during the CSD-12’s high-level segment. Other major groups gave opening statements on the theme “Role and contributions of major groups” the following morning, at which time Business and Industry representatives spoke again. Overall, this points to a significant presence and interest from industry in the water-themed discussions of the CSD.

CHAIR’S SUMMARY

Because CSD-12 was a review year, the session’s main outcome was a summary report from the Chair that reviewed obstacles and challenges to the achievement of the relevant water targets in order to inform the policy session of the following year (CSD-13). The Chair’s summary makes several references to the divergent views of the role of the private sector in water resource management. In paragraph 60 of his report, the Chair notes, “Some delegations, particularly from developed countries, stressed the importance of public-private partnerships for mobilizing investment finance, technical and managerial expertise. Other delegations, particularly from developing countries, called for caution concerning such partnerships.” It seems that many delegations called for further study and dissemination of information on successes and failures of partnerships, and for a transparent accounting of total resource mobilization and the uses to which funds are put. It was noted that encouraging private investment does not mean privatizing water. There was widespread agreement that it was up to communities to decide to what degree and in what way they want to involve the private sector in the provision of public services. It was acknowledged that, given the complex and difficult process of negotiating effective public-private arrangements, local authorities need capacity-building assistance in this area, among others. The report also notes that the lack of clear international leadership guiding the debate on privatization of water resources management remains a challenge.

OTHER CSD-12 ACTIVITIES: PARTNERSHIPS FAIR, LEARNING CENTER AND SIDE EVENTS

CSD-12 was the first to incorporate a Partnerships Fair in its official activities. Initiated at WSSD, partnerships for sustainable development are voluntary initiatives designed to support the implementation of commitments outlined in the Johannesburg Plan of Implementation and/or Agenda 21. In 2004, the Secretariat launched the CSD Partnerships for Sustainable Development website and database, making it easier to obtain information on partnership-related activities. There are currently 348 partnerships voluntarily reported in the database. Of these, 81 have water as the primary theme of the partnership and 59 have it as a secondary theme.²⁹ A significant majority of the registered partnerships have government, UN and major group involvement. Information disaggregated by specific major groups indicates that 38 per cent of partnerships involve business and industry; however, only two per cent are funded by private sector donors exclusively.

Such information seems to confirm the observation from Member States that funding for partnerships comes mainly from governments, underscoring concerns that WSSD partnerships have not brought fresh resources, and that the initiatives are mainly donor-driven (E/CN.17/2004/16). It also appears that the private sector is not overly engaged in CSD-registered partnerships, limiting their involvement to lobbying efforts at CSD meetings and undertaking smaller, philanthropic and sponsorship-type projects.

The Learning Center and side events are another informal opportunity at CSD sessions to exchange information and explore different views. Of the 18 courses and 90 side events and related activities at CSD-12, only two seemed to have involved the private sector: one side event held by the Global Water Partnership on Integrated Water Management 2005 Plans; another by the World Business Council for Sustainable Development on “Doing Business with the Poor.” Both of these events took place in the Delegates’ Dining area of the UN and were restricted in access through pre-invitations, in contrast to the open access of most other side events.

MOST RECENT CSD ACTIVITY ON WATER ISSUES

Noting the outcomes of the review-oriented CSD-12, mainly the Chair’s summary of discussions and the Secretary-General’s report on options to expedite work on freshwater management, the 13th session of the Commission passed a resolution that outlined further action to achieve the water targets of both Agenda 21 and the JPOI (E/CN.17/2005/12). Significantly, the resolution reaffirmed that governments have the primary role in promoting improved access to safe drinking water (paragraph 2e). The resolution elaborated actions to improve access to water, such as prioritizing water in national development plans and creating water-monitoring systems. It affirmed that governments do not want cost-recovery objectives to become a barrier to access to safe water by poor people and states a willingness to tap local and indigenous knowledge in water project development and implementation. The Commission also decided to devote, in both 2008 and 2012, a segment at the end of its review sessions to monitoring the implementation of decisions taken on water and sanitation issues.

²⁹ The CSD Partnerships for Sustainable Development database is available at <http://webapps01.un.org/dsd/partnerships/public/welcome.do>

The first of these review segments occurred recently, in May 2008 at CSD-16, when the interconnected topics of drought and desertification were also before the Commission. The CSD-16 review of water issues indicates a marked shift in the debate around private-public partnerships. Between CSD-12 in 2004 and the review of water issues at CSD-16 in 2008, new information on the success of public-private partnerships for water had emerged. For one, UNDP's 2006 Human Development Report called for specific attention to the power and politics of the global water crisis. A research project carried out by the United Nations Research Institute for Social Development (UNRISD) in 2006 called "Social Policy, Regulation and Private Sector Involvement in Water Supply" demonstrated the shortcomings of concession-type contracts and showed that regulation in developing countries is faced with major challenges.³⁰ The Secretary-General's CSD-16 report states, "A recent review of private sector participation experiences noted that private sector participation has not achieved the desired results, and examples of failure and difficulty in the private water sector are increasing. Difficulties include reconciling the diverging interests of the public sector, the private sector and water consumers. Moreover, the private sector is said to be using the same sources of funds as the public sector – loans from donors, aid money and tariff revenue from customers" (E/CN.17/2008/11, paragraph 35). The report elaborates examples of non-private partnerships, such as the Water Operators Partnerships, which promote utility-to-utility cooperation, in many cases on a South-South basis, to facilitate appropriate technology transfer, information exchange, and a low-cost way of addressing capacity gaps. The report notes that such partnerships are seen as a viable alternative to private sector participation in the provision of water and sanitation services and should be called upon in the forthcoming water debates of the Commission. It will be important that such assertions are not dismissed through corporate lobbying efforts at future CSD sessions and that these findings are carried forward in the next steps of the UN's approach to water management, especially at Rio +20.

3.3 OTHER ECOSOC BODIES THAT TOUCH ON WATER ISSUES

It is worth briefly noting some of the other subsidiary bodies under ECOSOC that have less of a direct bearing on the UN's deliberations and action on water, but nevertheless play a role.³¹ First, there are the five regional commissions, whose work on water issues are factored in to CSD proceedings via reports and participation in the dialogues.³² Some of the commissions play an important role in advancing water initiatives at the regional level, such as the programmes of UN-Water/Africa, formerly the Interagency Group for Water in Africa or the work of the Economic Commission for Latin America and the Caribbean on water law and indigenous rights.

³⁰ Background documents and reports of UNRISD's project on private sector involvement in water supply are available at [http://www.unrisd.org/unrisd/website/projects.nsf/\(httpProjectsForProgrammeArea-en\)/48863232419AF47BC125706C0045932B?OpenDocument](http://www.unrisd.org/unrisd/website/projects.nsf/(httpProjectsForProgrammeArea-en)/48863232419AF47BC125706C0045932B?OpenDocument)

³¹ A list of ECOSOC's subsidiary bodies is available at <http://www.un.org/en/ecosoc/about/subsidiary.shtml>

³² The five regional commissions are the Economic Commission for Africa (ECA), based in Addis Ababa, Ethiopia; the Economic and Social Commission for Asia and the Pacific (ESCAP) based in Bangkok, Thailand; the Economic Commission for Europe (ECE) in Geneva, Switzerland; the Economic Commission for Latin America and the Caribbean (ECLAC) in Santiago, Chile; and the Economic and Social Commission for Western Asia (ESCWA), based in Beirut, Lebanon. Centralized links to each of their websites can be found at <http://www.un.org/ecosoc/about/subsidiary.shtml>

There is also the United Nations Forum on Forests (UNFF), established by ECOSOC in October 2000, to promote the management, conservation and sustainable development of all types of forests based on the Rio Declaration and Agenda 21. Similar to the CSD, the UNFF incorporates a major group structure of participation. The Forum's work crosses over into water issues to the extent that it looks at preserving water through preventing forest degradation and combating desertification.

ECOSOC also has expert bodies composed of members serving in a personal capacity. In relation to water issues, the UN Permanent Forum on Indigenous Issues (UNPFII) is an advisory body to ECOSOC that serves to advise, integrate and coordinate indigenous issues within the UN system. The Forum affirms that Indigenous Peoples are among the first to face the direct consequences of environmental degradation, including water resources, due to their close relationship with and reliance on the environment.

3.4 THE COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS AND GENERAL COMMENT 15

A similar body of independent experts is ECOSOC's Committee on Economic, Social and Cultural Rights (CESCR), which serves to monitor the implementation of the International Covenant on Economic, Social and Cultural Rights by its States parties. As part of its work, the Committee of 18 independent experts publishes its interpretation of the provisions of the Covenant on thematic issues, known as general comments. Of the 21 general comments issued to date, one of them, General Comment 15, was issued in 2002 and addresses the right to water.³³

General Comment 15 confirms several important aspects of the right to water. It asserts that water should be treated as a social and cultural good, and not primarily as an economic good, and that priority in water allocation must be given to water for personal and domestic uses. In line with other human rights, the General Comment elaborates on three types of obligations of States parties with regard to the right to water: obligations to respect, protect and fulfil. Under the responsibility to protect, States parties must prevent third parties (i.e., individuals, groups, corporations and other entities) from interfering with the right to water. The comment notes that where water services (such as piped water networks, water tankers, access to rivers and wells) are operated or controlled by third parties, States must prevent them from compromising equal, affordable and physical access to sufficient, safe water.

General Comment 15 is important because it establishes a framework around the human right to water and continues to guide the work of the Human Rights Council and other UN bodies working on water-related issues. In December 2008, the General Assembly also adopted an Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, which allows the Committee to receive and consider individual communications.³⁴

³³ The full text of General Comments of the Committee on Economic, Social and Cultural Rights, including number 15, are available at <http://www2.ohchr.org/english/bodies/cescr/comments.htm>

³⁴ The Optional Protocol is available as General Assembly resolution A/RES/63/117 at http://www2.ohchr.org/english/law/docs/A.RES.63.117_en.pdf

3.5 COMMITTEE ON NON-GOVERNMENTAL ORGANIZATIONS

ECOSOC's Committee on Non-Governmental Organizations (NGOs) consists of 19 Member States elected on the basis of geographical representation. Its main task is to approve the applications and requests for reclassification regarding consultative status with the Council. For that reason, its work is related to water issues and corporate involvement insofar as the Committee determines which non-governmental entities are able to attend meetings, submit written documentation, or make oral presentations in UN proceedings. This may include international conferences, as well as ECOSOC's meetings, panels, roundtable discussions, presentations and general debates. The relationship is governed by ECOSOC resolution 1996/31, which outlines the eligibility requirements, rights and obligations of NGOs in consultative status, procedures for the withdrawal or suspension of status, and responsibilities of the UN Secretariat in supporting the consultative relationship.³⁵

The approximately 3,400 organizations that currently have consultative status with ECOSOC are placed in three categories: General, Special and Roster status. General consultative status is reserved for large international NGOs whose area of work covers most of the issues on the agenda of ECOSOC and its subsidiary bodies. These tend to be NGOs that are broadly representative of major segments of society in a large number of countries in various regions of the world. Special consultative status is granted to NGOs that have a special competence in, and are concerned specifically with, a few of the fields covered by ECOSOC. Organizations that do not fit in these categories (i.e., they have a technical focus or formal status with UN specialized agencies) have Roster status and make occasional contributions to the work of the Council or its subsidiary bodies.

Some of the water-oriented or private sector organizations that currently have ECOSOC consultative status include the International Chamber of Commerce (1946), the International Association for Water Law (1971), the World Business Council for Sustainable Development (1998), the African Business Roundtable (2005), WaterAid (2005), the World Water Council (2005), the Centre for Affordable Water and Sanitation Technology (2006), the Rural Africa Water Development Initiative (2008), and Safe Water Africa Community Initiative (2009).³⁶ While consultative status is one vehicle for participation in the work of ECOSOC, it should be noted that often private sector representatives make presentations outside of these arrangements. For example, at a High-Level Interactive Dialogue (HLID) of the 64th session of the General Assembly in New York to mark the observance of World Water Day on March 22, 2010, one of the two non-government presenters was the CEO of Hestiun Environment, a privately held company focused on water technology. Further, Aquafed, the International Federation of Private Water Operators, is seeking consultative status before the NGO committee in the session that will resume in May 2011.³⁷ However, even without consultative status, Aquafed has attended meetings

³⁵ ECOSOC Resolution 1996/31 is available at <http://esango.un.org/paperless/Web?page=static&content=resolution>

³⁶ The complete list of non-governmental organizations in consultative status with the Economic and Social Council as of September 2010 is available at <http://esango.un.org/paperless/reports/E2010INF4.pdf>

³⁷ The list of organizations seeking consultative status at the Committee's forthcoming session in May 2011 is available at http://esango.un.org/paperless/reports/2011_Regular_InfoNote.pdf

and made significant written and verbal contributions to both public and closed events organized by the OHCHR and Special Rapporteurs mandated by the Human Rights Council.³⁸ It has also been a recognized partner of UN-Water for several years.

Having not been re-examined for over a decade, the rules and procedures that govern consultative status are in need of review and revision.³⁹ For instance, the current procedures make no differentiation between the range of various non-governmental entities and their motivations for seeking to influence the UN's policy-making processes. This means that a major, well-resourced entity such as Aquafed, which represents some of the world's largest multinational water corporations, is given open access to influence policy at the UN, at the risk of eclipsing or replacing the voices of smaller, citizen-based, not-for-profit organizations. Furthermore, while the rules governing consultative status or partnership with UN-Water require that an organization be not-for-profit, they do not preclude associations or umbrella organizations whose members are business entities acting with specific for-profit interests. While such entities are not supposed to act as advocates for profit-generating organizations, there is a lack of oversight at the UN to ensure that they do not.

38 Aquafed's contributions to UN policy processes are detailed on their website at <http://www.aquafed.org>

39 The resolution on the process of obtaining consultative status is available at http://esango.un.org/paperless/reports/1996_31_E.pdf

4.0 A REVIEW OF THE SECRETARIAT'S WATER WORK

In addition to the General Assembly and ECOSOC, the Secretariat is the third principal organ to influence water policies and programmes at the United Nations. At its head is the Secretary-General, who with a staff of approximately 40,000 international civil servants supports the functioning of the UN system. In principle, the Secretariat exists to conduct the day-to-day work of the organization and to administer the directives, policies and programmes as determined by its Member States. However, in practice, the Executive Office of the Secretary-General (EOSG) has leeway to create and oversee initiatives that advance chosen issues. In the area of water, three Secretariat entities play a significant role: the Secretary-General's Advisory Board on Water and Sanitation (UNSGAB), housed within the Department of Economic and Social Affairs (DESA), the UN Office for Partnerships (UNOP), and the Global Compact, the latter two operating directly under the auspices of the EOSG. These initiatives seem to invite the most intensive forms of cooperation with the private sector and are in danger of undermining the democratic and transparent nature of the UN's work on water issues.

4.1 THE UN SECRETARY-GENERAL'S ADVISORY BOARD ON WATER AND SANITATION

The UN Secretary-General's Advisory Board on Water and Sanitation (UNSGAB) was established in 2004 when then-Secretary-General Kofi Annan observed World Water Day with an announcement of a Board to galvanize global action on water and sanitation issues. The rationale was to generate results by assembling "a wide range of dignitaries, technical experts, and individuals with proven experience in providing inspiration, moving the machinery of government, and working with the media, the private sector and civil society."⁴⁰

The Board acts as an independent body to provide advice to the Secretary-General and input to the global dialogue on water issues. It is meant to influence the highest levels, raise awareness through mass media, and undertake action towards achieving the water and sanitation goals of the MDGs and JPOI.⁴¹ The Board's work is based on the Hashimoto Action Plan (HAP) which was launched in March 2006, at the 4th World Water Forum in Mexico City. The HAP is a document of 11 pages in which the Board identifies six themes; namely, Financing, Water Operators Partnerships, Sanitation, Monitoring, Integrated Water Resources Management, and Water and Disaster. For each of these areas, the HAP identifies "Your Action," meant for key players, and "Our Action," measures for the Board to undertake in working with stakeholders to remove obstacles to achieving the water and sanitation goals.

In terms of its composition, the Board has several prominent representatives from the private sector. Other sector representation includes mainly governments, civil society (e.g., Public Service International, Women's Environment and Development Organization), and academia (e.g., London School of Economics). However, more than a quarter of the 23-person Board has private sector

⁴⁰ The press release announcing the creation of UNSGAB is available at http://www.unsgab.org/docs/PRUNSG_Mar04_en.pdf

⁴¹ The information obtained for this section was retrieved from UNSGAB's website at <http://www.unsgab.org/about.htm>

affiliations. Of these seven individuals, four were members of the panel that authored a controversial report called *"Financing Water for All"* of the World Panel on Financing Water Infrastructure. The seven individuals have a direct relation to the private sector:

- Mr. Michel Camdessus, Honorary Governor of the Banque de France and former Managing Director of the International Monetary Fund. He chaired the World Panel on Financing Water Infrastructure (also known as "The Camdessus Panel").
- Mr. Angel Gurria, a former member of the Camdessus Panel as well as the former President and CEO of Bancomext, Mexico's export-import bank.
- Mr. Mahmoud Abu-Zeid, founder of the World Water Council (which has strong corporate links) and current President of the Arab Water Council.
- Mr. Hideaki Oda, a Councillor to the President, Japan Water Forum, and former Governor of the World Water Council.
- Mr. Gerard Payen, a former Senior Executive Vice-President of Suez, a corporation that is active in private water delivery in developing and developed countries. He is likewise a former member of the Camdessus Panel and currently President of AquaFed, the International Federation of Private Water Operators.
- Mr. Peter Woicke, a former Executive Vice-President of the International Finance Corporation and Managing Director of the World Bank. He was also a member of the Camdessus Panel and a member of the UNSGAB when it was created in 2004.
- Mr. Richard Torkelson, considered a finance specialist in the water and wastewater sector, including state revolving funds (SRF), stand-alone and pooled financings. He has experience with privatization and project finance initiatives in the fields of power, transportation, water and environmental technology. He is also a former Executive Director at J.P. Morgan Securities Inc. and Director at Merrill Lynch & Co.

The Board is organized into working groups along the six priority themes identified in the Hashimoto Action Plan II. In December 2009, the UNSGAB reviewed an external evaluation of its operations (in a closed session) and strategized on its future direction and objectives.⁴² At present, the Board's work is guided by an updated "Hashimoto Action Plan II," an overarching strategic document, and a work plan that amalgamates UNSGAB's operations for each priority area.

A UNSGAB member acts as chair of the various UNSGAB working groups and is responsible for reporting on progress. Mr. Gerard Payen, President of AquaFed, acts as the chair of both the Financing and the Monitoring working groups. In the past, activities of the Financing working group included the release of a joint report with the World Bank, entitled "Local Financing of Water Utilities, Challenges and Opportunities, The Case of Peru," and participating in the launch of the McKinsey report, "Charting Our Water Future: Economic frameworks to inform decision making." The work of the UNSGAB's financing group has been credited with success in popularizing the idea of sustainable

⁴² Minutes of the 13th meeting of UNSGAB held in December 2009 in Amsterdam, the Netherlands, are available at http://www.unsgab.org/history/13th_meeting.htm

cost recovery for water delivery.⁴³ At its most recent meeting in December 2010, UNSGAB members agreed on the importance of crafting key messages for the Rio +20 process and on the need to form a dedicated Rio +20 working group.⁴⁴ This working group will also be chaired by Mr. Gerard Payen, as well as Board member Ms. Olivia Castillo. As a first activity, the working group has been emphasizing that water and the green economy are co-dependent and must be a central theme of the Rio 2012 discussions.⁴⁵

4.2 THE UN OFFICE FOR PARTNERSHIPS

The UN Office for Partnerships (UNOP) describes itself as a gateway for cooperation between the private sector, foundations and the UN, because “using the skills of business, the capital of philanthropy, and the rigor of the marketplace, partnerships can develop and deliver system-changing solutions.”⁴⁶ The office is based at UN Headquarters in New York as part of the Executive Office of the SG.

UNOP oversees three areas. The first is to administer the UN Fund for International Partnerships (UNFIP), established in 1998 to channel the UN Foundation’s resources; it is the public entity responsible for administering Mr. Ted Turner’s \$1 billion contribution to UN causes. Some argue that this \$1 billion donation from the American media mogul ushered in a new era of corporate penetration at the UN, as agencies started developing partnerships with multinational corporations and seeking project funding from corporate philanthropists (Polaris Institute, 2009). For example, in 2006 UNFIP forged a partnership between UNDP and the Coca-Cola Company and provided \$2 million to support community-based water and sanitation reconstruction efforts in tsunami-affected areas of Thailand, Sri Lanka, Indonesia and the Maldives. Additionally, the Coca-Cola Foundation Indonesia provided parallel funding to support a team of professional hydro-geologists to survey and map freshwater supplies in Banda Aceh. The Coca-Cola Company also “loaned” one of its Asia-based managers to the UNDP regional office in Bangkok for one year to support these efforts in the region.⁴⁷

A second area for UNOP is to manage the UN Democracy Fund, established in July 2005 to support democratization projects throughout the world.

The third area is Partnership Advisory Services and Outreach, initiated in 2006, to respond to a growing demand from the UN system, governments and “non-state actors” on how best to develop public-private partnerships. The Office asserts that Member States have expressed strong support for active engagement of non-State actors in promoting the UN’s development agenda. It also notes that

43 See the synthesis report of UNSGAB’s meeting held in May 2009 in Sofia, Bulgaria, available at http://www.unsgab.org/history/12th_meeting.htm

44 The minutes from the 15th meeting of the UN Secretary-General's Advisory Board on Water and Sanitation, held in December 2010, are available at http://www.unsgab.org/history/15th_meeting.htm

45 See for example the event held as an official side event of the 2nd Rio 2012 PrepCom of March 2011 at http://www.unsgab.org/news/docs/110307_onepager.pdf

46 The information obtained for this section was retrieved from the UNOP’s website at <http://www.un.org/partnerships/>

47 Reported in the 2007 Report of the Secretary-General on United Nations Fund for International Partnerships (A/61/189), available at <http://www.un.org/partnerships/YRepNLegalAgr.htm>

the attractiveness of partnering with the UN derives from “its political legitimacy, value-based mission, accumulated and specialized knowledge and experience in the development field, historic relationship with the developing countries, and its global reach and voice” (RES/A/64/91, paragraph 34).

Of concern is the lack of any evidence that UNOP’s partnership services have been rigorously evaluated to determine whether the lending of the UN’s legitimacy, values, and historic relationships measures up to significant advancement of its development agenda. This is in spite of the Secretary-General’s “Guidelines on Cooperation between the United Nations and the Business Sector” (first issued in 2000 and recently revised in 2009) requesting that UN cooperation with the business sector be effective, clear and transparent.⁴⁸ Five reports of the Secretary-General have dealt with cooperation between the UN and the private sector.⁴⁹ In the first report issued on the subject in October 2001, the general message was that cooperation between the UN system and the private sector offered potential, but this was tempered by a variety of strategic and operational challenges. It called for guidelines and due diligence procedures that would provide clarity on definitions, principles and criteria, as well as support for internal capacity-building and better sharing of information. In addition, Member States wanted assurance that the partnerships did not undermine the intergovernmental process and that they served the purposes and goals of the UN system first and foremost. However, in the most recent report issued to the General Assembly in September 2009, the Secretariat notes: “Despite the growing number of evaluations, the United Nations is still not in a position to accurately assess the impact and value added of its private sector partnerships” (A/64/337, paragraph 59). This requires immediate attention going forward.

A UNOP partnership example in the area of water is the Dow Chemical Global Project on Clean Water. The Office provides advice and “partnership services” to Dow Chemical and facilitates discussions with senior officials to engage them in addressing the global water crisis. However, little information on the exact nature of this partnership is readily available. UNOP has co-hosted events at UN Headquarters with Dow Chemical, including the launch of the 2015 Sustainability Goals for Dow and the first Blue Planet Run. The Office notes, “Dow Chemical is committed to the principles of corporate social responsibility and demonstrated how a global company can mobilize its human, technical, scientific and organizational capacities to contribute to solving the world’s most pressing issues, particularly those related to water sustainability and sanitation” (RES/A/64/91, Annex 1, paragraph 13). This may be so, but a comprehensive examination and greater transparency surrounding the dynamics of the project, as well as a comparative analysis of the partnership’s impact on both the UN’s and Dow Chemical’s reputation and public perception, would help to assess the possibility of “bluwashing.”⁵⁰

⁴⁸ The Guidelines on Cooperation between the United Nations and the Business Community reissued by the Secretary-General in November 2009 are available at <http://business.un.org/en/documents/8092>

⁴⁹ See A/56/323, A/58/227, A/60/214, A/62/341, and A/64/337 using <http://documents.un.org/>

⁵⁰ Bluwashing is a critical term used to describe a partnership between the UN and a corporation based on the UN Global Compact, which is without enforcement mechanisms to ensure that the corporation adheres to the Compact’s principles.

4.3 THE GLOBAL COMPACT AND ITS CEO WATER MANDATE

The Global Compact was first announced by UN Secretary-General Kofi Annan in an address to the World Economic Forum in January 1999, and then officially launched at UN Headquarters in July 2000. The Compact is a voluntary initiative whereby corporations commit to aligning their operations and strategies with ten principles in the areas of human rights, labour, environment and anti-corruption. Over the last decade, the Compact has grown significantly to become the “largest global corporate citizenship initiative” with representation from 135 countries through some 5,000 signatories from the business sector and 1,500 signatories from civil society (UN Global Compact Office, 2009, p. 8). In 2008, the Compact welcomed 1,473 business participants, a 30 per cent increase in new corporate signatories compared to the previous year (ibid.).

This growth has occurred against a backdrop of accepted cooperation between the UN and the business sector. The last report of the Secretary-General on the subject (A/64/337, paragraph 5) notes, “There is significant evidence that the United Nations is continuing to strengthen system-wide engagement with the private sector and that the period of experimentation is in a closing stage.” This is despite the earlier acknowledgement that the UN’s work with the private sector has never been independently evaluated or guided by clear and transparent criteria (A/64/337, paragraph 59). In 2009, the SG’s office released new guidelines for cooperation with the private sector and launched www.business.un.org, a website designed to match business interests to UN needs. The Global Compact Office (GCO) is the centrepiece in this effort, as it has garnered a decade worth of rapprochement experience with business, and all UN agencies and programmes are being encouraged to follow suit. To this end, the GCO issues an information bulletin and convenes regular meetings for the now omnipresent “private sector focal points” within the UN system. In April 2010, over 100 UN staff gathered for a Private Sector Focal Points meeting in Geneva. Sessions focused on partnership evaluation, the potential role of Global Compact Local Networks for serving as entry points for the private sector to the UN system, and implementing the new UN-Business Partnership Guidelines. Although it was a meeting of internal focal points, business representatives were present from Coca-Cola, Veolia Environment, and Proctor & Gamble.⁵¹

In addition to this leadership role within the UN system, the GCO is also working to advance its own operations, which remain an influential platform designed to engage mainly corporate executives in applying the Compact’s 10 principles in their business activities. To do so, the Compact aims to offer a “portfolio of engagement opportunities” that it “hopes” companies will utilize (UN Global Compact, 2008). This includes the UN-Private Sector Forum, the first of which was held in 2008, where chief executives, heads of state and top UN officials gather to explore collaboration. There is also a growing system of Global Compact Local Networks, now in over 80 countries, that are self-governed, multi-stakeholder bodies led by business to support companies (both local firms and subsidiaries of foreign corporations) in implementing the Compact. Additionally there are tools and resources posted on the Compact’s website, such as a Partnership Assessment Tool, as well as information to promote initiatives such as the Principles for Responsible Investment⁵² and Principles for Responsible

⁵¹ More information on the focal points is available at <http://business.un.org/en/documents/7962>

⁵² The Principles for Responsible Investment is an investor initiative in partnership with UNEP Finance Initiative and the UN Global Compact. More information is available at <http://www.unpri.org/>

Management Education .⁵³At the highest level, the GCO affirms, “Most importantly, Secretary-General Ban Ki-moon has fully embraced the Global Compact and supported the initiative in meaningful ways, notably as chair of both the Global Compact Board and the Global Compact Leaders Summit” (UN Global Compact, 2008).

Despite the claim that “never before have the objectives of the international community and the business world been so aligned” (UN Global Compact, 2008, p. 2), the Compact has been subject to a well-documented range of criticism since its inception from academics, civil society, and even those within the UN system itself (Knight and Smith, 2008; Utting and Zammit, 2006; Bruno and Karliner, 2000). A primary concern is the absence of monitoring and enforcement provisions that might enable the Global Compact to hold corporations accountable. This creates an opportunity for companies to misuse the Compact as a public relations instrument and to resist any binding international regulation on corporate accountability. A recent evaluation of the Compact by the UN’s Joint Inspection Unit (JIU) concluded that the absence of adequate entry criteria and an effective monitoring system to measure actual implementation of Global Compact’s principles poses serious reputational risks for the UN, which ten years after the Compact’s creation, continue to go unmitigated (JIU, 2010).

In recent years, the Global Compact has incorporated a policy known as Communication on Progress (COP). When a company signs on to the Compact, it is required to produce an annual COP and agree to share this openly via the Global Compact website. Failure to do so has resulted in approximately 850 companies being de-listed from the initiative to date. However, the Global Compact remains a voluntary initiative. On June 11, 2009, an NGO coalition called Baby Milk Action submitted a complaint to the GCO, alleging that the COP posted on the website from Nestlé was misleading and that Nestlé was responsible for egregious violations of the Global Compact Principles (Baby Milk Action, 2009). In response, the GCO stressed that the initiative is voluntary and that it “is not a mediation, dispute resolution, or adjudicative body, nor is it an enforcement agency. Rather, its integrity measures are designed to facilitate communication and dialogue” (ibid.). When Baby Milk Action pointed out that it was already communicating with Nestlé and that Nestlé was refusing to make critical changes, Baby Milk Action asked the GCO to review the evidence submitted by Nestlé, as called for under the Integrity Measures, with a view to de-list Nestlé from the Compact. The GCO argued it was not its role to conduct such a review and commented, “Of course, abuses of the 10 Principles do occur; however we believe that such abuses only indicate that it is important for the company to remain in the Compact and learn from its mistakes” (ibid.).⁵⁴ Moreover, based on a list of 126 companies involved in complaints for violating the OECD Guidelines for Multinational Enterprises in 2008, 22 businesses were found to be UN Global Compact members (Global Compact Critics, 2008). BHP Billiton is a pertinent case in point. On the June 6, 2006, an OECD Guidelines complaint was brought against the company for practices undertaken by Cerrejón Coal, of which BHP Billiton is a third owner. According to the complaint, Cerrejón Coal attempted to depopulate an area of Columbia's La Guajira peninsula by forcibly expelling the remaining population through expropriation. However, BHP Billiton's 2006 Sustainability Report was deemed a notable Communication on Progress by the GCO. The report includes a case study of Cerrejón Coal but mentions nothing about the OECD Guidelines complaint, nor about the content of the accusations. Despite situations such as these, the GCO maintains that

⁵³ More information on the Principles for Responsible Management Education effort is available at <http://www.unprme.org/>

⁵⁴ A full account of the Baby Milk Action complaint is available at <http://info.babymilkaction.org/news/policyblog210510>

the COP process is its most important means for balancing growth with quality engagement (United Nations Global Compact, 2008). The UN's Joint Inspection Unit has concluded, "The voluntary nature of the commitment and the 'learning' premise on which the initiative is based do not provide adequate safeguards for behaviour. Although the introduction of the *Integrity Measures* have brought more credibility to the initiative, the *Communication on Progress* as the reporting and self-evaluation mechanism does not provide adequate and effective monitoring and verification of actual implementation of the principles by participants" (JIU, 2010, p. iv).

There is also the concern that the Global Compact provides a significant entry point for corporate lobbying at the UN.⁵⁵ Researchers and staff have noted this in various parts of the UN, such as the Food and Agriculture Organization (FAO) and the World Health Organization (WHO), a problem made worse by the widespread acceptance of the power of private companies (Jowit, 2010). Although lobbying is often directed towards national governments, corporate interests are increasingly "embedded" within the UN, as part of its architecture, as well as through close and regular contact between the people involved. The Global Compact's structure seems prone to this. First, its Board is neither elected nor vetted by Member States, but rather appointed and chaired by the UN Secretary-General. Board membership comprises four constituency groups – business, civil society, labour and the United Nations – but 13 of the 20 members are from business.⁵⁶ The Compact Office underscores that the initiative has received the endorsement of the UN General Assembly through its resolutions. However, a review of these resolutions (A/RES/60/215, A/RES/62/211, A/RES/64/223) shows that the support is within an overall context of global partnerships for development and does not specifically endorse the major endeavours undertaken by the Compact. There is a need for independent performance evaluations of the Compact's work, in order to produce an unbiased and comprehensive picture of the Compact's successes and failures, risks and opportunities (JIU, 2010). At present, its Annual Reports are based on findings from participant surveys, often to the exclusion of non-business partners, thereby amounting to a self-assessment exercise.

In terms of resources, the Compact has both a Trust Fund and an unusual, separate Foundation that is registered and governed by its host country's U.S. 501(c)(3) status. The Trust Fund for the Compact is for government donors, which are currently China, Colombia, Denmark, Finland, France, Germany, Italy, Republic of Korea, Norway, Spain, Sweden, Switzerland and the United Kingdom. The Foundation is mainly for private sector contributions and all companies participating in the UN Global Compact are encouraged to make an annual voluntary contribution.⁵⁷ For companies with annual sales/revenues of USD 1 billion or more, which are the majority of donors, the suggested annual contribution is USD 10,000 (UN Global Compact, 2008). Having noted that the Global Compact Office is financed by voluntary contributions from a small group of donor countries and business interests, the UN's Joint Inspection Unit has suggested that the Secretary-General should delineate the Compact's functions based on strategic directions provided by Member States. Of the 16 recommendations put forward

⁵⁵ This concern is reflected by the Global Compact Critics, an informal network of organizations hosted by the Center for Research on Multilateral Corporations. See <http://globalcompactcritics.blogspot.com/>

⁵⁶ Information on the Board is available at http://www.unglobalcompact.org/AboutTheGC/The_Global_Compact_Board.html

⁵⁷ Information on the Foundation for the Global Compact is available at <http://www.globalcompactfoundation.org/>

by the JIU's 2010 report, one is to balance and diversify public and private funding (recommendation 7), while another is to enhance reporting and transparency with regard to total budget, income and expenditure, and staffing of the office (recommendation 8).

THE CEO WATER MANDATE

The Global Compact Office coordinates two CEO-led action platforms related to the environment. The first is "Caring for Climate" and the second is the "CEO Water Mandate." The latter was launched in July 2007 to assist companies in developing a comprehensive approach to water management, covering six key areas: direct operations, supply chain and watershed management, collective action, public policy, community engagement, and transparency. The CEO Water Mandate's website notes that the initiative emerged from a growing consensus that the global water crisis "presents the private sector with a range of risks – and, in some instances, opportunities."⁵⁸

The CEO Water Mandate convenes two working conferences per year to focus on specific aspects of the Mandate. It develops policy guidance, in the form of studies, research papers and surveys, in addition to using existing resources, such as a Transparency Framework. The CEO Water Mandate seeks to provide UN partnership opportunities for its endorsers, as well as offering them the opportunity to join UN events and key intergovernmental policy discussions and deliberations on the topic of water sustainability. In January 2010, the Mandate confirmed that its immediate priorities would be (1) responsible business engagement with water policy, including clarifying the various spheres of engagement, operational dimensions, and entry points; (2) the human rights dimensions of water; and (3) corporate water disclosure.

Many of the same limitations that exist with regard to the Global Compact apply to its CEO Water Mandate. The Mandate aims to be progressive, but it too is limited to voluntary and non-binding agreements. As with the Global Compact, companies are asked to submit Communications of Progress on water issues, but there is no mechanism by which to validate these reports. Many of the endorsing companies of the Mandate do not have specific water policies and less than half have defined goals for water management (Morrison and Schulte, 2009). For such reasons, Greenpeace has awarded the CEO Water Mandate its 2010 Greenwash Award, calling it one of the "growing number of institutions that fabricate social-environmental fig leaves in an attempt to make inveterate corporate players look greener than they are."⁵⁹

The Mandate also has an ambiguous operational structure and lacks transparency in choosing its non-business stakeholders and partners. For example, the Pacific Institute is often referred to as "the operational arm of the Mandate," without any clarification of how it was given this role and what obligation, if any, it has to elicit feedback from other stakeholders when preparing the many research reports that it produces for the Mandate (CEO Water Mandate, 2010, p. 1). The Mandate's constitution states that it shall be governed by a Steering Committee, composed of ten corporate

⁵⁸ See introductory paragraphs at http://www.unglobalcompact.org/Issues/Environment/CEO_Water_Mandate/index.html

⁵⁹ Information on the Public Eye Greenwash Award is available at <http://www.publiceye.ch/en>. In response, the summary of the CEO Water Mandate's Steering Committee Conference Call held in February 2010 notes, "In response to the recent Public Eye Award, the Secretariat developed and posted a thorough response. The note addressed major mischaracterizations and falsehoods about the Mandate."

representatives. There are no non-business representatives, in effect placing governments and civil society organizations on the fringes of the discourse on the role of business in water management policy.

Most recently, the Pacific Institute and the Mandate worked together to spearhead the release of a “Guide to Responsible Business Engagement with Water Policy” (United Nations Global Compact and the Pacific Institute, 2010). The Guide aims to provide “a way for companies to address risk and capture opportunities stemming from external conditions that cannot be achieved through changes in internal management alone” (ibid., p. 12). Essentially, the Guide broadens the role of corporations significantly, moving their influence well beyond responsibility for their own operations and into the sphere of public water policy and management. Although the Guide specifies that corporate engagement in public policy must be grounded in the concepts of equity and accountability, the Mandate’s current track record falters in translating principles into authentic commitment and action. As articulated by one organization, “Rather than establish a clear arm’s length distance between governments and corporations and shine a sustained light onto the interactions between these two polities of power, the Guide is just that – a guide. Without meaningful oversight, the precepts within it are ultimately recommendations, not requirements” (Corporate Accountability International, 2011, p. 5). To a large extent, efforts such as the Guide shift the discourse away from ensuring that access to water is upheld as a fundamental human right by governments and the international community, to legitimizing corporate involvement in the development of global water policy.

At the root of the matter, which is left unaddressed by the Guide and other CEO Water Mandate products, is the fact that corporate involvement in public policy presents a clear conflict of interest. Corporations whose business models depend on controlling access to water or gaining entry to new water service markets cannot uphold the public interest if it conflicts with their *raison d’être* and shareholder obligations. Several CEOs have surmised that investment in a developing country context is notoriously unstable: the poor are not in a position to pay full costs for water and corporations must inevitably concentrate on areas where they can get the best returns or shift the situation in their favour (Robbins, 2003). Thus, placing governments and corporations “under the same roof” and without accountability and oversight measures seriously undermines the UN’s ability to democratically and impartially direct global water policy. This has led to calls for the UN to establish an arm’s length distance from initiatives like the CEO Water Mandate, as well as to enact stronger standards and safeguards throughout the institution as a whole that prevent and address corporate conflicts of interest (Corporate Accountability International, 2011). Given that the CEO Water Mandate is an initiative founded by and for corporations, and that governments have an obligation to regulate these very entities, housing such an initiative internally in the UN is injudicious. Simply put, “The UN should not be the institutional home for initiatives that are conceived of and driven by corporations. As a stand-alone initiative, the CEO Water Mandate would present less of an institutional threat to democratic global water governance” (ibid., p. 5).

Taken together, these three entities – the Secretary-General’s Advisory Board on Water and Sanitation (UNSGAB), the UN Office for Partnerships (UNOP), and the Global Compact and its CEO Water Mandate – invite the most intensive forms of cooperation with the private sector and pose risks to the democratic nature of the UN’s work on water issues. Each is housed within the UN Secretariat and has unique oversight structures that fall largely outside the regular purview of Member States’ review. The initiatives represent the push to “embed” corporate interests within the UN system, as part of its

governance architecture. It is time for Member States to seriously examine and take stock of successes and failures, risks and opportunities that accompany this decision. The internal tensions within the UN system – on the one hand declaring the benefits of corporate cooperation, while on the other noting the inability to fully assess the impact and value added of its private sector partnerships – must be resolved. In order for the UN to remain true to its Charter, stronger standards and safeguards that prevent and address the inherent conflicts of interest posed by corporate cooperation are long overdue.

5.0 A WATER REVIEW OF UN PROGRAMMES, FUNDS AND AGENCIES

Aside from its principal organs, the UN system includes an array of programmes, funds and specialized agencies (see Appendix A), many of which have projects that address global water issues. Programmes and funds (e.g., UNDP, UNICEF, UNEP, UN-HABITAT, WFP) have executive boards drawn from Member States and reporting directly to the UNGA. Specialized agencies (e.g., UNESCO, FAO, the World Bank Group, and the IMF) are autonomous organizations working with the UN, mainly through the coordinating mechanisms of ECOSOC at the operational level, and through the Chief Executives Board for Coordination (CEB) at the Secretariat level.

5.1 UN-WATER

In 2003 the UN High-Level Committee on Programmes established a coordination entity called UN-Water. The structure took on increased significance after 2006, following the release of a report from a high-level panel on system-wide coherence. The report, entitled *Delivering as One*, noted that more than 20 UN agencies were engaged in water work, competing for limited resources, working without a clear collaborative framework, and showing little evidence of overall impact (United Nations, 2006).

UN-Water operates as an inter-agency mechanism, consisting of 27 members from the UN system that include water as a part of their mandate, as well as external partners. Its mandate is to strengthen coordination and coherence among UN entities dealing with issues related to all aspects of fresh water and sanitation. Most of its work is organized through time-bound task forces; such task forces currently exist for indicators, monitoring and reporting; gender; sanitation; transboundary waters; climate change and water; and country-level coordination. Its operational guidelines, revised in February 2010, note, “UN-Water plays a key role in identifying and disseminating UN positions on various water-related issues within global fora and processes” (UN-Water, 2010).

UN-Water also has four specific programmes, each with its own work plan, budget and executing agency. The World Water Assessment Programme (WWAP), hosted and led by UNESCO, gathers data and information from UN-Water members and other stakeholders and produces the triennial World Water Development Report. A second programme is the WHO- and UNICEF-supervised Joint Monitoring Programme on Water Supply and Sanitation (JMP), which is the official UN mechanism to monitor global progress towards the MDGs and WSSD targets for drinking water and sanitation. The remaining two programmes are linked to UN-Water’s responsibility to coordinate action for the International Decade for Action “Water for Life 2005-2015.” The UN-Water Decade Programme on Capacity Development (UNW-DPC) aims to strengthen UN-Water’s capacity development activities and the UN-Water Decade Programme on Advocacy and Communication (UNW-DPAC) uses information generated by UN-Water members to develop communication campaigns illustrating the benefits of sound water management.

In terms of governance, senior programme managers from UN-Water member agencies meet twice a year. An elected chair and a vice-chair, which rotate among UN agencies every two years, represent UN-Water at major events and processes and oversee the implementation of UN-Water's work programme. There is also a Joint Steering Group appointed by the senior programme managers that oversees the development of a biennial work plan and related budget allocations. The current Chair is Mr. Zafar Adeel, Director of the United Nations University's Institute for Water, Environment and Health (UNU-INWEH). UNU-INWEH is a member of UNU's extensive worldwide network and acts as a UN think tank on water, focusing particularly on strengthening water management capacity. The Government of Canada provides its core funding and it is hosted at McMaster University in Hamilton, Ontario. A permanent Secretariat resides in UNDESA in New York and provides UN-Water with administrative, technical and logistical support. The funding sources for UN-Water include the UN-Water Multi-Donor Trust Fund and resources provided through UN-Water members and partners, both in kind and in cash. The Trust Fund, currently managed by FAO, has received support of approximately USD 4 million since its creation in 2007, mainly from Norway, Sweden and the United Kingdom.

There is significant corporate involvement in UN-Water's programmes and activities. While UN-Water members are from the UN system, its partners represent other organizations. The current partner criteria state that any organizations that are "actively involved in water-related activities and that show a willingness to contribute tangibly to the work of UN-Water and are active internationally and/or multinational in structure and membership" may request partner status. Although partner status can only be granted to non-profit organizations, this does not preclude "umbrella or network organizations related to for-profit sectors applying for partnership as long as they themselves are a non-profit organization and do not act as advocates for for-profit organizations." AquaFed, the Global Compact, the Global Water Partnership, International Hydropower Association (IHA), the SG's Advisory Board on Water and Sanitation (UNSGAB), the World Business Council on Sustainable Development (WBCSD), and the World Water Council (WWC) form a third of UN-Water's current partners. This is despite UN-Water's attempt "to seek a balance among partners from various major groups" (UN-Water, 2010).

There are also elements of corporate involvement in some of the work undertaken by the agencies and programmes under the auspices of UN-Water. An obvious example is the private sector influence that pervaded the development of the latest edition of the World Water Development Report (WWDR). The content coordinator for the 3rd WWDR was Mr. William Cosgrove, who is currently President of a private firm called Ecoconsult Inc., as well as a former vice-president of the World Bank and past President of the World Water Council. Not surprisingly, one of the expert groups formed to guide and draft sections of the report included an industry-heavy group on "business, trade, finance and involvement of the private sector."⁶⁰

Much of UN-Water's 2010-2011 biennial work plan is focused on trying to resolve contradictions in the approaches advocated by different UN-Water members in dealing with water-related issues and to reduce duplication of efforts. This is a difficult task, as each agency and programme has its own executive board and operating structure. As such, UN-Water's work plan makes the point that it has no direct authority to resolve issues of gaps, overlaps or duplications between the mandates of members.

⁶⁰ Information on the process of research and drafting of the most recent World Water Development Report is available at <http://www.unesco.org/water/wwap/wwdr/wwdr3/>

Instead, UN-Water tries to highlight the scope for rationalization and play an influencing role to improve delivery in water-related activities. As reviewed below, this means that each UN agency and programme has considerable leeway to engage with the private sector in a wide array of activities and deliverables.

5.2 THE UN DEVELOPMENT PROGRAMME

The UN Development Programme (UNDP) recognizes the importance of water to poverty alleviation as well as human and ecosystem health and therefore includes water governance as one of its focus areas under its environment and energy portfolio of projects. UNDP's Water Governance Programme is currently providing assistance to member countries in three priority areas: Integrated Water Resource Management (IWRM), transboundary waters, and water supply and sanitation. UNDP operates the Water Governance Facility⁶¹ at the Stockholm International Water Institute in cooperation with the Swedish Agency for International Development Cooperation as a mechanism to implement parts of its Water Governance Programme. It also runs Cap-Net, an international network for capacity-building in IWRM.⁶² Through the Global Environment Facility (GEF), it supports the International Waters portfolio, which helps countries to work with their neighbours to modify human activities that place ecological stress on transboundary water systems. The International Waters portfolio of projects which UNDP implements on behalf of the GEF is worth over US\$1.05 billion (\$321 million in GEF grants) and covers over 20 international water bodies in approximately 100 countries.⁶³ Lastly, UNDP operates the waterwiki.net, an interactive web resource that allows users to expand coverage of water issues to a variety of themes and geographical areas. Aside from these centralized water activities, many of UNDP's national-level projects incorporate water issues.

There are several areas of corporate involvement in UNDP's water-related programmes, at both the organizational and the field levels. One of the larger partnerships, between UNDP and The Coca-Cola Company (TCCC), is called "Every Drop Matters." It is designed as a regional partnership initiative between UNDP's Regional Bureau for Europe and the CIS (RBEC) and Eurasia and Middle East Division of TCCC (Coca-Cola EMED).⁶⁴ It claims to work at increasing access to safe drinking water, facilitating the use of environmentally sound industrial technologies, and promoting responsible water management through awareness-raising activities. However, the basis for Coca-Cola's involvement is explained as follows: "water is fundamental to Coca-Cola's business; aside from being the largest ingredient in the company's product, packaged drinking water is itself a fast-growing product category."⁶⁵

61 More information on UNDP's Water Governance Facility is available at <http://www.watergovernance.org/>

62 More information on UNDP's Cap-Net, or capacity-building efforts in IWRM, is available at <http://www.cap-net.org/home>

63 More information on UNDP-GEF's International Waters portfolio is available at <http://www.undp.org/gef/portfolio/iw.html>

64 The Every Drop Counts project website is <http://www.everydropmatters.com/>

65 As described on the business.un.org website (accessed on June 23, 2010) at <http://business.un.org/en/documents/7932>

UNDP and Coca-Cola have also worked together to rehabilitate water and sanitation systems in tsunami-affected countries. For example, TCCC loaned one of its Asia-based managers to the UNDP Regional Centre in Bangkok on a one-year assignment in 2005, where “he played an instrumental role in managing the partnership activities across the region and building long-term relationships with the UNDP on water sustainability.”⁶⁶ In Nepal, UNDP has established a Public-Private Partnerships for Urban Environment that focuses on projects related to water supply and sanitation infrastructure by creating partnerships between the public and private sector companies. The project started its operation in March 2002, with a second commenced in January 2010 until December 2012. In 2001, SUEZ and UN Volunteers (a UNDP-coordinated entity) signed a Memorandum of Understanding by which SUEZ agreed to provide volunteer employees to UNV for three years, mainly to perform consulting and expert appraisal missions. Again, such examples blur the line between UN and corporate responsibilities and truly embed the private sector within the UN system, providing unique access to information and decision-making. In 2004 the SUEZ-UNV agreement was renewed, and joint development projects continued until 2007.⁶⁷ Cadbury announced in 2008 the establishment of the Cadbury Cocoa Partnership UNDP to secure the livelihoods of cocoa-growing farmers in Ghana, India, Indonesia and the Caribbean. Part of the USD 2 million that Cadbury is investing initially (with funding levels rising to USD 10 million by 2010) is supposed to be directed towards community-led development, which includes creating wells for clean water. There is no readily available evidence that these partnerships have been assessed in terms of results achieved – either intended or unintended.

5.3 THE UN ENVIRONMENT PROGRAMME

The UN Environment Programme (UNEP) has a water policy and strategy that guides its work on freshwater issues until 2012 and that is monitored by its Governing Council.⁶⁸ It focuses on undertaking water resource assessments in various developing countries, implementing projects that assist countries in developing integrated water resource management plans, creating awareness of alternative technologies, and assisting in water resource management policies, laws and regulations. The Bali Strategic Plan for Technology Support and Capacity-Building particularly guides UNEP’s work as it relates to coordinated action and cooperation with all relevant partners at the national and regional levels. Most recently, after internal UNEP consultations, a decision was taken in 2008 to launch a comprehensive South-South Cooperation programme in the field of water with the support and participation of selected countries of the South.⁶⁹ Although it is noted that the programme will attempt to seek private sector support, to date it seems to have attracted support more from donor countries and the regional development banks (UNEP, 2008).

66 See Coca-Cola’s description of the project at http://www.thecoca-colacompany.com/ourcompany/wn20060818_tsunami.html

67 More information on the Suez-UNV partnership is available at http://www.unglobalcompact.org/issues/partnerships/case_stories_and_examples/Suez.html

68 UNEP’s Water Policy and Strategy is available at http://www.unep.org/Themes/freshwater/Documents/Water_Policy_Strategy.pdf

69 UNEP’s Capacity Building Programme for Mainstreaming Environmental Aspects in National Water Policy and Strategy through the South-South Cooperation Framework is available at http://www.unep.org/Themes/freshwater/PDF/capacity_building_programmeDec2009.pdf

In the area of financing, UNEP has created the UNEP Finance Initiative (UNEP FI)⁷⁰ which works closely with 200 major banks to promote linkages between sustainability and financial performance. Within the water sector, it is working with financial institutions to increase the channelling of funds into the achievement of the MDG Drinking Water and Sanitation Target. UNEP FI is also introducing water considerations into risk/opportunity assessment processes in the context of both water-exposed businesses “downstream” and private households. It aims to strengthen the business case for action and provide the financial sector with information and analysis tools for adequate identification, assessment and management of water-related risks and opportunities. In 2008, its “changing finance” activities included promoting the idea that water should be further considered in financial due diligence and stock-picking exercises.

5.4 UN-HABITAT

The main aim of UN-HABITAT’s Water and Sanitation Programme is to contribute to the achievement of the internationally agreed-upon goals related to water and sanitation, but with a particular focus on human settlements and the urban poor. UN-HABITAT’s Water and Sanitation work is funded by a Water and Sanitation Trust Fund, to which Canada, the Netherlands and Norway are major contributors. Its regional efforts aim to improve delivery of water and sanitation through two programmes, Water for African Cities and Water for Asian Cities. It is working on replicable model-setting initiatives, namely, the Lake Victoria Region Water and Sanitation and Mekong Regional Water and Sanitation initiatives.⁷¹

UN-HABITAT has cooperated with the private sector to launch the Access to Basic Services for All Initiative in 2002. The initiative seeks to develop standards for building fair public-private partnerships that improve the delivery of basic services. While a full analysis of public-private partnerships (PPPs) is beyond the scope of this report, it can be said that there is mixed evidence regarding their ability to deliver basic water and sanitation services to the world’s poorest (Carter and Danert, 2003). The impetus for the initiative came from Veolia Environment, the French utilities management company. Veolia contacted the United Nations Institute for Training and Research (UNITAR) about the possibility of becoming involved in a project promoting the effective use of partnerships in local public services provision. UNITAR and UN-HABITAT drew up two documents that identified three priorities for basic services provision: (1) to conduct sustainable pro-poor policies, (2) to develop multi-stakeholder partnerships, and (3) to allocate a central role to local authorities in basic services provision. The documents propose the development of a declaration of principles for access to basic services; sets of guidelines that identify the roles, responsibilities and rights of individual stakeholders; and regulations that further develop the general guidelines on a sector-specific basis. In April 2005, the Governing Council of UN-HABITAT adopted a resolution backing the Access to Basic Services for All principles and guidelines. Not surprisingly, the resolution was introduced by the governments of France and South Africa (Witte and Reinicke, 2005). Most recently, the contract has been renewed for a period of three years (2009-2011) to continue the work of capacity-building of local authorities through International Training Centers. In 2008, the Executive Director of UN-HABITAT also signed an agreement with Coca-Cola India announcing that they will collaborate to improve community access to water and

70 Information on the water-specific aspects of the UNEP FI is available at http://www.unepfi.org/work_streams/water/index.html

71 UN-HABITAT’s Water and Sanitation Programme is detailed at <http://www.unhabitat.org/categories.asp?catid=270>

sanitation in India and Nepal. The project aims to set up demonstration projects to increase water supply through rainwater harvesting and other techniques for storing and conserving water in Madhya Pradesh. As in many UN corporate partnerships, Coca-Cola India's role in the project is unclear.

5.5 UNICEF

UNICEF approaches its work on water through the lens of children's right to an adequate standard of living and health. They focus on the areas referred to in the acronym WASH, that is, Water, Sanitation and Hygiene, and are active in promoting WASH projects that are aligned with the achievement of the water and sanitation MDGs in over 90 countries. UNICEF is also currently the Secretariat for the Global Framework for Action on Sanitation and Water Supply (GF4A), a political initiative launched by governments of the Netherlands and the U.K. in September 2008 during the high-level meeting on the MDGs. UNICEF hosted the first strategic discussions of the GF4A in Washington, D.C., in April 2010 to coincide with the World Bank's Spring Meetings.⁷²

UNICEF's Web page on Corporate Partnerships features the statement "UNICEF strongly believes in the power of partnerships and collaborative efforts and has rich history of working with the corporate sector."⁷³ In the area of water, UNICEF partners regularly with the Veolia Environment Foundation on humanitarian and development actions. Veolia Foundation has created Veoliaforce, a 12-year volunteer network of specialized employees in the fields of water, wastewater, waste management, and energy. After many years of collaboration, the partnership between UNICEF and Veolia Environment Foundation was formalized in 2008 as a "Standby Agreement." Volunteers from the Foundation mobilize in the event of a humanitarian crisis, which is a valid contribution and likely to be richly rewarding for the employees involved. However, conflicts of interest arise because part of the agreement notes that Veolia Environment will offer their expertise to UNICEF in determining relief responses. In early 2009, a team from Veolia Foundation conducted an assessment of the urban water system and waste management in four cities affected by cholera in Zimbabwe. In 2008, Veolia Foundation provided UNICEF and its local partners with expertise in solid waste management after the Sichuan earthquake in China and following the damage caused by a cyclone in the Philippines in 2009. Again, there is little transparency in terms of the nature of the guidance received, final outcomes, and averting of potential conflicts of interest where Veolia Environment stood to profit from its recommended courses of action.

In 2005, UNICEF undertook a partnership with bottled water supplier Volvic in Germany through a very public "1 litre for 10 litres" fundraising campaign. For every litre of water sold, Volvic agreed to contribute monetarily to supply 10 litres of fresh water for the Amhara district in Ethiopia. The project has since expanded to other developed country consumer markets, with beneficiaries of clean water projects being extended to Niger and Mali. A flash website has been built by Volvic to market the initiative (<http://www.drink1give10.com>). It confirms that from its bottled water sales in the U.S. and Canada in 2008 and 2009, Volvic donated \$500,000 to support UNICEF programmes. It should be noted that Danone Waters division's sales, to which the Volvic brand contributes, amounted to

72 A list of FAQs on the GF4A is available at http://www.who.int/water_sanitation_health/GF4A_FAQ_21July09.pdf

73 Retrieved June 23, 2010, from http://www.unicef.org/corporate_partners/index.html

approximately USD 3.7 billion in 2008 alone.⁷⁴ Thus the marketing value of being visibly linked to UNICEF in France, Japan, Canada and the U.S., as important consumer markets for Danone bottled products, may well have exceeded the value of its \$500,000 contribution to UNICEF.

In 2007, UNICEF's Executive Board requested an overview of existing partnerships. In response, UNICEF prepared a mapping document describing its current partnership engagements and the modalities of cooperation. In it, UNICEF describes partnerships and collaborative relationships with business actors as "non-commercial interactions making an identifiable and lasting contribution towards improving the lives of children and protecting their rights" (UNICEF, 2009, p. 10). The current UNICEF data management system does not provide an accurate count of the total number of collaborations and partnerships with companies at any given time. However, a total of 628 different companies worldwide maintain active partnerships and contacts with UNICEF. Collaboration with companies is based on a written agreement such as a cooperation agreement or MOU. In the case of large multinational companies, UNICEF concludes a master agreement at the global level that is supplemented by regional or country-based agreements. A Coordination Committee oversees UNICEF partnerships and collaborative relationships with the corporate sector and approves the use of the UNICEF name and logo. Perhaps most importantly, the report notes that no standard modalities currently exist for types of engagement with business partners other than resource mobilization, of the kind UNICEF undertakes with Veolia and Volvic (UNICEF, 2009, p. 11).

5.6 UNESCO

UNESCO has several water-related programmes.⁷⁵ The International Hydrological Programme (IHP) is UNESCO's international scientific cooperative programme in water research, water resources management, and education and capacity-building in this area. It includes the UNESCO-IHE Institute for Water Education, which carries out research in the fields of water, environment and infrastructure, and offers a postgraduate diploma course in hydraulic engineering to practising professionals from developing countries. The Institute is based in Delft, the Netherlands, and is owned by all UNESCO member states. UNESCO oversees the World Water Assessment Program and its primary product, the World Water Development Report. UNESCO also serves as lead agency for the UN Decade on Education for Sustainable Development (2005-2014).

In April 2008, UNESCO signed a partnership agreement between Danone Waters Deutschland and the German Commission for UNESCO aimed at supporting biosphere reserves in Germany. Biosphere reserves are sites recognized under UNESCO's Man and the Biosphere Programme that foster the integration of people and nature for sustainable development. Through the partnership, Danone Waters Deutschland will provide financial support to selected projects to safeguard the quality of water and water bodies (lakes, rivers and groundwater) in Germany's 13 biosphere reserves. It will also increase the visibility of biosphere reserves through an association with the launching of the new "Volvic Landfrucht" water brand.⁷⁶

74 As reported on Danone's corporate website, retrieved on June 24, 2010, at <http://www.danone.com/en/brands/business/beverages.html>

75 A good overview of UNESCO's water programmes is available at <http://www.unesco.org/water/>

76 The UNESCO – Danone Waters Deutschland partnership is described at http://www.enebuilder.net/focalpoint/e_

Going back even further in time, in 1998 the Director-General of UNESCO, the Director-General of the Compagnie Générale des Eaux (VIVENDI), and the President of the Pôle Eau du Groupe Générale des Eaux signed an agreement to cooperate in strengthening the scope of the regional activities of UNESCO's International Hydrological Programme. In particular, it established long-term cooperation between UNESCO and Vivendi on the Regional Humid Tropic Hydrology and Water Resources Centre for Southeast Asia and the Pacific, located in Kuala Lumpur, Malaysia. Again, there is no evidence of an evaluation of the long-term impacts of this partnership.

5.7 THE WORLD BANK

The World Bank is the largest external financier in the water sector. It manages a portfolio of USD 20 billion in water-related projects which are under implementation in more than a hundred countries, and strong growth in lending is projected (The World Bank, 2004). The Bank undertakes projects in a number of areas, including water management, supply and sanitation, irrigation and drainage, and after a decade of declining lending, has resumed support of hydropower projects in Africa and Asia.⁷⁷

In 2010, the Independent Evaluation Group (IEG) within the World Bank released its report *Water and Development: An Evaluation of World Bank Support, 1997-2007*.⁷⁸ It noted that although the number of countries that borrow for water projects has varied from year to year, lending for water increased by over 50 per cent during the period. Furthermore, IWRM practice has gained some traction within the Bank, but has made only limited progress in most "client countries." The report notes some additional findings that will require the Bank to re-evaluate its approach to water sector development. For example, the evaluation determined that the Bank and the borrowing countries have not yet sufficiently tackled several tough but vital issues, among them broadening access to sanitation, fighting pollution, restoring degraded aquatic environments, monitoring and data collection, and cost recovery. Overall, environmental restoration has been underemphasized in the Bank's water portfolio, possibly "because its immediate and long-term financial importance is unclear" (The World Bank, 2010, p. 80).

It is important to note that the World Bank Group, which includes entities such as the Finance Corporation (IFC) and Multilateral Investment Guarantee Agency, is a major proponent of private sector participation in water management. The Bank has previously observed that "efficiency in water management must be improved through the greater use of pricing and through greater reliance on decentralization, user participation, privatization and financial autonomy to enhance accountability and improve performance incentives" (The World Bank, 1993, p. 40). One of the findings in the Bank's recent evaluation is that although public providers deliver water services in most countries, private sector participation "has made some progress" (The World Bank, 2010, p. 80). The Bank posits that international private firms have been successful in providing water services in urban areas and that they have contributed significant investments to infrastructure and managed to increase the efficiency of water utilities' operations. Nevertheless, private financing flows for water supply and sanitation in

article001174565.cfm?x=b11,0,w

77 A searchable database of World Bank water projects is available at <http://go.worldbank.org/688Q10R100>

78 A summary of the findings and recommendations from the evaluation is available at <http://go.worldbank.org/P4SSUIR1D0>

developing countries have declined in recent years. The Bank believes that what often limits successful private sector involvement in water projects is a well-functioning regulatory system that allows private operators to receive sufficient revenues from user fees and government transfers to cover the costs of operations and maintenance (The World Bank, 2004). Otherwise stated, “companies face a difficulty in matching locally acceptable prices with cost recovery. Establishing full cost recovery has been central to the privatization process, as it consolidates, legitimates, and extends the ability of the utility to extract tariffs, making investment more attractive to the private sector” (Robbins, 2003, p. 1078). Simply put, a fundamental problem faced by companies and the World Bank is that the poor are not profitable, because they cannot afford to pay for a connection, or to consume enough water to cover operating costs (ibid.).

The IFC currently holds a portfolio of over half a billion in investments worldwide in water, wastewater, and other privatized public services projects. Most recently, it lent USD 33 million to Thames Water Chile to finance the expansion of the sewerage network and the construction and commissioning of wastewater treatment infrastructure. The company will provide water and sanitation services to 30 localities in Chile under a 30-year concession contract. The IFC has provided two corporate loans of \$60 million equivalent combined to Manila Water Company. IFC has also made a \$15 million equivalent equity investment in the company. The shareholders are Ayala Corporation, United Utilities, BPI Capital and Mitsubishi Corporation. Mitsubishi will use the funds for improvements in its concession area and payment of concession fees to Metropolitan Waterworks and Sewerage System, the conceding authority.⁷⁹ Many more such projects can be found in the Private Participation in Infrastructure (PPI) Project Database which has data on more than 4,300 infrastructure projects in 137 low- and middle-income countries.⁸⁰ Along similar efforts, the Bank oversees the Public-Private Infrastructure Advisory Facility (PPIAF) which was created in 1999 with assistance from the governments of Japan and the United Kingdom. The PPIAF acts as a catalyst to increase private sector participation in emerging markets and now includes bilateral and multilateral development agencies which direct its funding.⁸¹

It is difficult to determine the channels through which the World Bank’s pro-private sector outlook affects the UN’s water agenda, as well as exactly to what degree. As a member of the UN system, at an operational level the World Bank is a member of UN-Water. Many World Bank officials, past and present, find their way onto key advisory boards and committees that are instrumental in developing the UN’s water framework (e.g., Mr. Peter Woicke, a former Executive Vice-President of the IFC, is on the UNSGAB; Mr. William Cosgrove, former Bank vice-president, was the content coordinator for the UN’s 3rd WWDR). Ultimately, the same governments and international aid agencies interface with the Bank and the rest of the UN system. Moreover, the large-scale projects that are tied to significant foreign investment shape the context of the countries in which many of the UN’s agencies and programmes operate. Paragraph 36 of General Comment 15 notes, “States parties should ensure that their actions as members of international organizations take due account of the right to water. Accordingly, States parties that are members of international financial institutions, notably the

79 Information on these two recent IFC contracts is based on the IFC water Web page (accessed June 27, 2010) at <http://www.ifc.org/ifcext/infrastructure.nsf/Content/WaterGas>

80 The Private Participation in Infrastructure (PPI) Project Database is accessible at <http://ppi.worldbank.org/>

81 More information on PPIAF is available at <http://www.ppiaf.org>

International Monetary Fund, the World Bank, and regional development banks, should take steps to ensure that the right to water is taken into account in their lending policies, credit agreements and other international measures.”⁸²

⁸² The full text of General Comments of the Committee on Economic, Social and Cultural Rights, including number 15, are available at <http://www2.ohchr.org/english/bodies/cescr/comments.htm>

6.0 MAIN FINDINGS AND RECOMMENDATIONS

The issue of water governance – that is, how decisions are made regarding the use of a resource shared by all – belongs in the public sphere. The United Nations has agreed that States have the primary responsibility for ensuring the right to water by all.⁸³ That said, numerous players are likely to be involved, including not only the private sector but also international cooperation and donor organizations, multilateral lending agencies, academic and research institutions, local governments, and non-governmental and community-based organizations. Success in achieving international water and sanitation goals depends on using the strengths of all of these stakeholders. This can happen when “asymmetries in power, influence, knowledge, and money” are acknowledged and addressed through public governance that safeguards against conflicts of interest (Carter and Danert, 2003). In effective models of governance, the level of participation of actors outside of government must be matched with appropriate amounts of influence and authority (de Loë, 2009). The issue is not that the private sector does not have a role to play, but rather that it should not have a disproportionate influence over public water policy, as there are obvious conflicts of interest. To surmount the global water crisis, the UN must assure a formal, transparent and democratic space in which governments can advance sustainable strategies that protect water as a public good. Ignoring the structural imbalances that are inherent in multi-stakeholder systems will serve no one, least of all the millions of people who continue to live in poverty because of inadequate access to water and sanitation services.

This systematic review of the United Nations system has revealed some of the institutional flaws that currently exist in the UN’s efforts to engage with the private sector while maintaining autonomous policies and operations that support sustainable water governance. In keeping with the study’s principal concern regarding the degree to which the private sector impinges upon the creation of fair and transparent water policies, the following main findings and recommendations stem from the review.

RECOMMENDATION 1

The UN General Assembly, the organization’s main representative body, must prioritize water governance and be the central decision-making authority for UN policies and programmes in this area. **It is through this body that Member States should thoroughly take stock of the UN system’s work on water issues, with the specific aim of reviewing and delineating the work of the Secretary-General’s Advisory Board on Water and Sanitation (UNSGAB), the Office for Partnerships (UNOP), the Global Compact, and UN-Water, and to ensure, minimally, their conformity with existing guidelines and recommendations put forward by the organization on cooperation with the private sector.**

Likely owing to the rules of procedure that govern the General Assembly as a democratic space for government-only interaction, this study found little evidence of direct corporate involvement in General Assembly proceedings. Far more evidence of corporate influence is seen in the work of ECOSOC and the Secretariat, which report to the General Assembly but also seem to lead initiatives

83 Most recently, this has been affirmed in resolutions E/C.12/2002/11, A/RES/64/292, A/HRC/15/L.14.

outside the direct purview of the GA (such as the UNSGAB, UNOP, and the Global Compact). This has led to a disjointed array of “independent” initiatives on water issues, each conducted under the banner of the United Nations. For example, the UNSGAB, more than a quarter of whose members have private sector affiliations, describes itself as an “independent body”⁸⁴ and works on a self-created plan that includes activities in financing for water services. The Global Compact’s CEO Water Mandate answers to its own corporate-member Steering Committee and has independent funding mechanisms through the mainly corporate-financed Foundation for the Global Compact. At the same time, the UN has developed guidelines and recommendations for addressing the numerous conflicts of interest presented by these situations, which the General Assembly should see properly administered. This includes the Secretary-General’s own “Guidelines on Cooperation between the United Nations and the Business Sector,” which offer a starting point (see also recommendation 7 on the need for enforcement and grievance resolution procedures). In 2010, the UN Joint Inspection Unit issued a review of the work of the Global Compact with 16 recommendations that aim to address the Global Compact’s lack of a regulatory and institutional framework, unique funding arrangements, and need for independent performance evaluations. One of the recommendations is to regroup the Global Compact Office and UNOP under one umbrella and clearly delineate their respective responsibilities, jurisdiction, monitoring tools and reporting requirements.

Within the current global dialogues on water governance, there are real opportunities to learn from past failures and to build upon known successes in order to realize the human right to water. However, this is contingent upon an open and transparent platform of discussion and debate, in which governments can develop water policies in the absence of specialized interests and narrow stakeholder points of view. While the Assembly’s resolutions are non-binding in nature, it nevertheless can play a significant role in setting international standards and principles. This was most recently seen with the adoption of resolution 64/292, which represents a significant opportunity for the full recognition of the right to water and sanitation, arising primarily from the International Covenant on Economic, Social and Cultural Rights.

RECOMMENDATION 2

With the passage of recent resolutions on the human right to safe drinking water and sanitation, **water justice advocates must continue to monitor and engage in the work of the Human Rights Council and to press for appropriate responses to the risks regarding human rights violations associated with private sector water service provision.** Specifically this includes the work of the Council’s Special Procedures on human rights and transnational corporations and on human rights obligations related to access to safe drinking water and sanitation.

There are a number of international resolutions that are justiciable and enforceable confirming the human right to water and sanitation. Most recently this includes Human Rights Council resolution A/HRC/15/L.14, which calls upon States to implement effective regulatory frameworks for all service providers in line with the human rights obligations of States. However, much work remains to ensure these obligations are codified into law, with appropriate safeguards that prevent the commodification of water and the host of issues that arise from international trade and investment laws that limit the regulatory space of a State in confronting human rights violations.

84 See the UNSGAB’s Mission Statement at <http://www.unsgab.org/about.htm>

RECOMMENDATION 3

The Economic and Social Council (ECOSOC) hosts annual meetings with representatives from the key committees of the Bretton Woods institutions, acting as one official channel of dialogue between the UN and the international financial and trade institutions. **Water justice advocates should press the UN to use this opportunity, and others at its disposal, to review and adjust water-financing modalities for greater coherence with human rights obligations to water, as specified in UN resolutions.**

In her 2010 report to the Human Rights Council, the now Special Rapporteur on human rights obligations related to water and sanitation notes, “democratic decision-making implies that governments must not be pushed into the decision to delegate service provision by donor conditionalities” (A/HRC/15/31, paragraph 35). The report also underscores the need for ongoing work on how international trade and investment law affects private sector participation and potentially limits the regulatory space of a State when human rights violations occur. Paragraph 36 of General Comment 15 notes, “States parties should ensure that their actions as members of international organizations take due account of the right to water. Accordingly, States parties that are members of international financial institutions, notably the International Monetary Fund, the World Bank, and regional development banks, should take steps to ensure that the right to water is taken into account in their lending policies, credit agreements and other international measures.” The UN must make use of every opportunity, including the high-level meetings of ECOSOC, to ensure that international financial institutions do not undermine existing decisions and provisions that safeguard the right to water.

RECOMMENDATION 4

Members of the Commission for Sustainable Development (CSD) of the Economic and Social Council (ECOSOC) bear particular responsibility for upholding democratic water governance at the UN. Past sessions and related work of the Commission have shown evidence of intense corporate involvement. **In light of this, the CSD must adopt specific safeguards that pre-empt potential conflicts of interest in private sector influence on public water policy (see also Recommendation 7).** This is especially important given the Commission’s ongoing preparations for the 2012 UN Conference on Sustainable Development, with its priority themes of the “green economy” and international environmental governance.

Resolution E/2005/29 calls upon the Commission on Sustainable Development (CSD) to review the implementation of international water and sanitation decisions at its session in 2012 (p. 19, paragraph 4). The Commission has also been entrusted with overseeing and supporting many of the preparations for the 2012 UN Conference on Sustainable Development, also known as Rio +20. This study found evidence of significant corporate lobbying and influence in past water-themed discussions and proceedings of the CSD, including during processes of the World Summit on Sustainable Development in 2002. The CSD must work to correct and prevent the presence of corporate conflicts of interest in international water governance. By addressing corporate pressures at Rio +20, governments have a greater opportunity to explore the full range of options that exist for addressing the global water crisis. This includes viable options to private sector participation in the provision of water and sanitation services, often presented under the guise of “greening the economy.”

RECOMMENDATION 5

Having not been substantially revised for several years, the rules and procedures that govern non-governmental accreditation and consultative status within the UN system need to be refined. There is currently no distinction made between organizations interacting with the UN that are as different as community-based citizen organizations and large associations of multinational corporations. This fails to take into account differences in influence and resources that various stakeholders bring to UN deliberations. Ignoring such differences undermines the democratic governance of public policy-making. While entities with consultative status are not supposed to act as advocates for profit-generating organizations, there is a lack of oversight by the UN to ensure that they indeed do not.

There is a lack of consistency about what constitutes civil society throughout the UN system. In some instances, civil society is taken to include the private sector. In other instances, distinctions are made between civil society, corporations, trade unions, professional associations, religious groups, indigenous people, parliamentarians, local authorities and other entities. The rules and procedures that shape both accreditation and subsequent interaction with the UN must recognize the complexity of civil society and account for the bureaucratic, logistical and financial constraints on participation by specific groups. In doing so, it must ensure that access and participation in UN deliberations by various constituencies do not introduce conflicts of interest that undermine the democratic nature of the policy process.

RECOMMENDATION 6

Despite the efforts of UN-Water, the treatment of water issues at the UN continues to be spread across many entities, without guiding principles and oversight that would safeguard democratic water governance. As a result, dedicated and sustained attention to safe water and sanitation is lacking and a rights-based approach to policy and related services is not uniformly applied. **UN-Water should be given continued support for its efforts to bring coherence to water-related policies and programmes at the UN within a rights-based framework. Furthermore, it should strengthen its approach to engaging non-UN partners in its work, in line with the development of safeguards specified in recommendation 7. More importantly, it should ensure that the UN entities within its network adopt similar safeguards. Such action would be a meaningful contribution to UN-Water's mandate to assist in the organization of the 2013 International Year of Water Cooperation.**

UN-Water is meant to operate as an inter-agency mechanism, coordinating the work of its 27 UN-system members that include water as a part of their mandate. This should be the focus of its efforts, ensuring coherence through a rights-based approach to water governance, which requires much less emphasis on fostering external partnerships. The current partner criteria state that any organizations that are “actively involved in water-related activities and that show a willingness to contribute tangibly to the work of UN-Water and are active internationally and/or multinational in structure and membership” may request partner status. Although partner status can only be granted to non-profit organizations, this does not preclude “umbrella or network organizations related to for-profit sectors applying for partnership as long as they themselves are a non-profit organization and do not act as advocates for for-profit organizations.” AquaFed, the Global Compact, the Global Water Partnership,

International Hydropower Association, the SG's Advisory Board on Water and Sanitation, the World Business Council on Sustainable Development, and the World Water Council form a third of UN-Water's current partners. This is despite UN-Water's attempt "to seek a balance among partners from various major groups" (UN-Water, 2010).

RECOMMENDATION 7

The last decade has been characterized by a universal rapprochement between the UN and the business sector, with the UN Global Compact leading the way. This has occurred without any comprehensive evaluation of reputational and other risks to the UN. Such partnerships, especially when they involve shaping the UN's approach to water governance, pose serious conflicts of interest that threaten to undermine efforts to realize the human right to water. **The situation must be rectified by a strong set of system-wide standards and safeguards to prevent and address corporate conflicts of interest, based on the existing "Guidelines on Cooperation between the United Nations and the Business Sector."** This must include a grievance procedure that allows concerned parties to raise questions about private sector engagements in UN proceedings on water and ensuring appropriate action and coordinated responses to the issues raised. The enactment of such standards may well require the UN to establish an arm's length distance from initiatives such as the CEO Water Mandate and to desist from acting as the institutional home for corporate-led efforts.

In a report issued to the General Assembly in September 2009, the Secretariat notes, "Despite the growing number of evaluations, the United Nations is still not in a position to accurately assess the impact and value added of its private sector partnerships" (A/64/337, paragraph 59). This requires immediate attention going forward, in the form of system-wide safeguards and grievance procedures that identify and address corporate influence in the policy processes of the UN. For example, it should be clear that while the private sector may have a role to play in implementing UN policies, their interests should not influence the development of those policies. These guidelines must be applied to all areas of the UN's work on water examined in this report, specifically the UNSGAB, UNOP, the Global Compact, UN-Water and the Commission for Sustainable Development.

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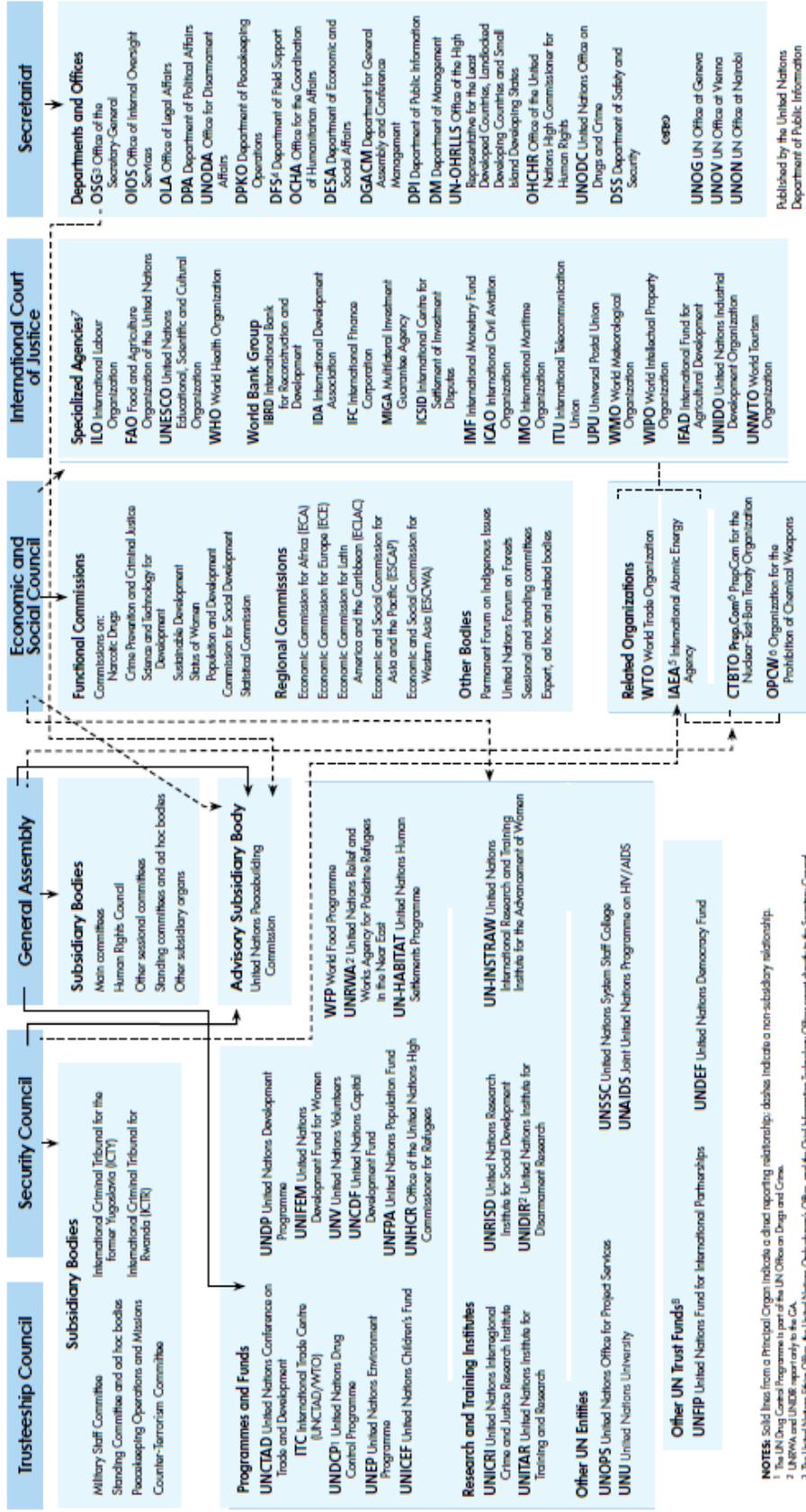
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APPENDIX A: THE UNITED NATIONS SYSTEM

The United Nations System

Principal Organs



NOTES: Solid lines from a principal organ indicate a direct reporting relationship; dashed lines indicate a non-subordinate relationship.

- The UN Disarmament Commission (UNDC) is an advisory body to the UN Secretary-General.
- UNRWA and UNICEF are not part of the UN system.
- The United Nations Institute for Disarmament Research (UNIDIR) is an advisory body to the UN Secretary-General.
- In an exceptional arrangement, the Under-Secretary-General for Field Support reports directly to the Under-Secretary-General for Peacekeeping Operations.
- IAEA reports to the Security Council and the General Assembly (GA).
- The CTBTO Prep Com and OPCW report to the GA.
- Specialized agencies are autonomous organizations working with the UN and each other through the coordinating machinery of the ECOSOC at the intergovernmental level, and through the Chief Executive Board for coordination (CEB) at the inter-organizational level.
- UNEP is an autonomous trust fund operating under the leadership of the United Nations Deputy Secretary-General. UNEP's advisory board recommends funding proposals for approval by the Secretary-General.



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