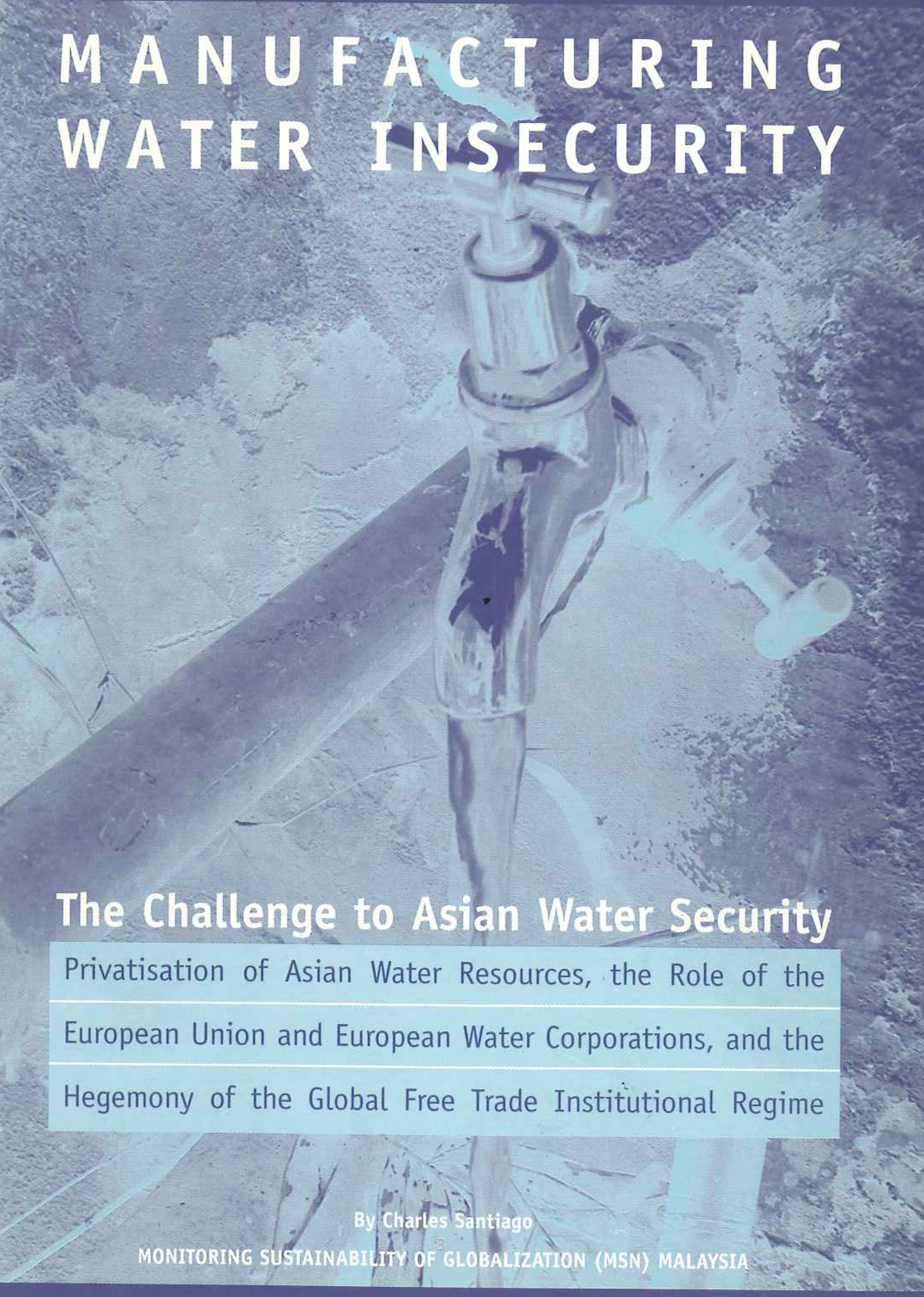

MANUFACTURING WATER INSECURITY

The Challenge to Asian Water Security

Privatisation of Asian Water Resources, the Role of the European Union and European Water Corporations, and the Hegemony of the Global Free Trade Institutional Regime

By Charles Santiago

MONITORING SUSTAINABILITY OF GLOBALIZATION (MSN) MALAYSIA

A SEACON PUBLICATION

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© Charles Santiago, September 2003

Published by
The Southeast Asian Council for Food Security and Fair Trade (SEACON)
24 Jalan SS1/22A
47300 Petaling Jaya
Selangor, Malaysia
Website: *www.seacouncil.org*

Perpustakaan Negara Malaysia Cataloguing-in-Publication Data:
Charles Santiago
MANUFACTURING WATER INSECURITY

ISBN 983-41464-0-X

ISBN 983-41464-0-X

9 789834 146405

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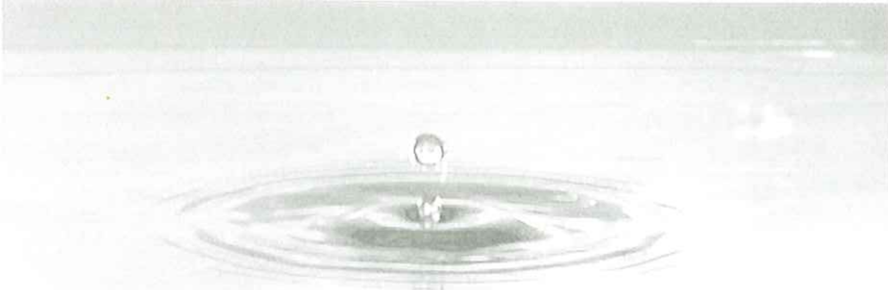
Printed by
SYARIKAT ASAS JAYA
3-2A Jalan 3/11A, Sri Sentosa, 58000 Kuala Lumpur, Malaysia
Tel: (603) 79846382

First Print: September 2003



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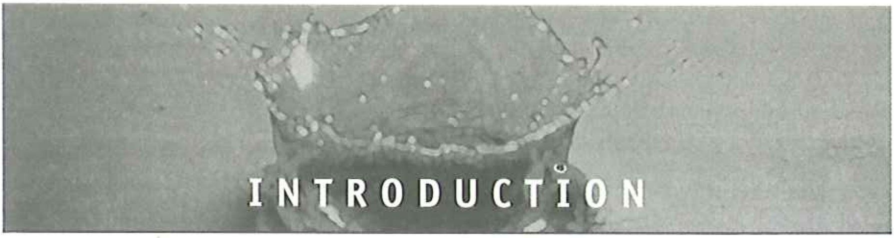

INTRODUCTION

In Asia and indeed in the rest of the developing world, a major transformation is underway in the organization and management of water resources. There is an effort to reorganize water resources - its ownership, management, distribution, and access - through the dictates of the free market and premised solely on the profit motive. Such an effort has the potential of eliminating existing state responsibility in the provisioning of water. This reorganization is being promoted at a time when the developing world is confronted with a water crisis and scarcity predicament and thus has implications for Asian water security, including an equitable access to water for purposes of sustenance and sustainable livelihood.

Public-private partnership, or privatisation, is being put forward as the most efficient method of reorganising scarce water resources in countries. Three assumptions underlie this proposition. First, the role of governments in managing the economy or regulating a particular sector or industry has to be reduced. In this view, the public sector is inefficient, corrupt and its services are loss-bearing; the state has to reduce fiscal expenditure and therefore needs private sector support. The private sector is perceived as a more efficient and cost effective provider of basic services, including water.

Second, the market is the proper locus in which to organize economic activity (given that the state is inefficient). The market is perceived as an efficient allocator of resources among competing users and is able to achieve socially desirable outcomes. The policy response then would be to either hand over the entire responsibility of managing the provisioning of services to the private sector or to increase the level of private sector participation in providing public services. Although both of these approaches are being practiced, it appears that the increased participation of the private sector in providing public services is preferred and dominant.[1]

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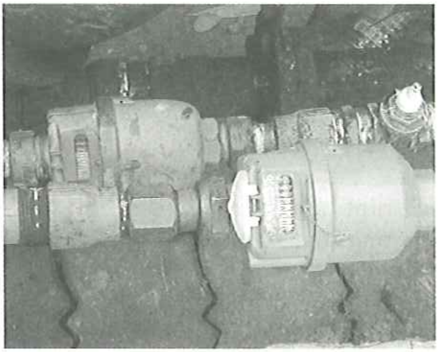
[1] Privatisation is associated with price increase and greater profits for foreign corporations. In Ghana and Bolivia, price increases led to violent demonstrations. Also, companies are burdened with financial risk associated with large infrastructure investments. The alternative strategy would then be to organize water resources provisioning around private-public partnership. In this arrangement, private corporations 'cherry pick' the commercially viable and profitable parts and leave the unprofitable areas to the state; the financial risk burden falls on the state. Also, private-public partnership has been suggested to mean a business approach to organizing resources that involves public ownership and private sector management of resources. Some have suggested that the private-public partnership is the precursor to the complete take-over of the service or the industry in the long run.



Third, it is suggested that an economic valuation of water, i.e., water pricing, will lead to efficiency, equity and sustainability of this resource. In this view, present water resources are highly undervalued and serve as a disincentive to use water efficiently. It is suggested that water pricing, reflecting the true value of water including its opportunity cost, could lead to a decrease in water wastage. Thus water pricing ensures a more efficient and sustainable use of water coupled with a better allocation of water resources among its various uses.

The Bretton Woods Institutions, the European Commission Union, European governments, and the regional development banks, including the World Trade Organization (WTO), promote the notion of private-public partnerships or privatisation, of water resources. These cheerleaders of the free market provide the ideological, financing, legal and enforcement framework for the realization of water as a commodity and the privatisation of water resources. This group believes that the private sector is more efficient and can provide better quality and profitable services. Furthermore, it is argued that only the private sector is able to raise the enormous finance required for water infrastructure investments.[2]

The Water Resources Sector Strategy paper of the World Bank (WB) estimates that providing water and sanitation services for the poor, including protecting the freshwater environment, will involve an investment cost of US$ 180 billion. This cost involves the construction of dams and other capital infrastructure. It is suggested that if demand-side management and community-based approaches were embraced, the cost would be much lower. According to the Water Supply and Sanitation Collaborative Council, water and sanitation for all will be a reality with an expenditure of US$ 9 billion between now and 2025.[3]

The WB and the International Monetary Fund (IMF) are dominated by free market fundamentalists. There is a strongly held view among planners and economists at the IMF that markets are

[2] The World Bank estimates that investments in water infrastructure in developing nations will have to increase from the current level of US$ 75 billion to approximately US$ 180 billion a year.
[3] Patrick McCully, *Avoiding Solutions, Worsening Problems: A Critique of World Bank Water Resources Sector Strategy: Strategic Directions for World Bank Engagement* (Draft), International Rivers Network, 27 May 2002, p 4.

efficient and that the state performs badly; and thus, there is a corresponding confidence in the market and distrust in the state.[4] Through its loan conditionality, the IMF ensures that essential services, including water services, are privatised.

The clear beneficiaries of this reorganization in the provisioning of Asian water resources are water corporations, largely centred in Europe. Their investments are subsidized by development aid; the rules in the General Agreement on Trade in Services (GATS) provide the legal framework for establishing corporate rights and an irreversible liberalization of the water sector, conditions that could potentially allow the European water corporations to dominate the water sector in the developing world. The IMF conditionality, WB and regional development bank loans favour liberalization and private sector participation in the water sector. The Poverty Reduction Strategic Plan (PRSP) forces the developing world to organize the water sector around the free market as a solution to overcome poverty. All these factors clearly bestow a 'formidable market access' condition to European water corporations in their quest for profits and control of water resources of the developing and underdeveloped South.

Asian governments have embraced the 'market-profit' approach as the most efficient method in organizing the provisioning of water resources. These governments are forced to accept such an approach as a result of the IMF, WB and Asian Development Bank (ADB) loan conditionality and dictates of the PRSP. Asian governments have been forced to liberalize and privatise their water system. In some instances, loan conditionality requires countries to tie-up with various water corporations in their privatisation efforts.

There are other motivations behind the 'market-profit' approach of Asian governments. Governments in the region privatise their water resources as part of crony capitalism, i.e., to transfer wealth from the state to national elites or companies close to the ruling elite. Furthermore, there are governments who genuinely embrace the neo-liberal ideology and believe that the market mechanism is the most optimal method to organize water provisioning.

The 'private-public partnership,' or privatisation, of water resources is taking place at a time when other essential services - such as healthcare, electricity and education - necessary for the survival, sustenance and reproduction of the individual and the family are being privatised by nation states. The Bretton Woods Institutions (BWI) are of the opinion that the poor will be best served through the market. Governments suggest that they are

[4] Joseph E. Stiglitz, *Globalisation and Its Discontents*, London, Penguin Books, 2002, p. 196.

unable to absorb the enormous cost including subsidies that provisioning of these resources would require. Collectively, the poor have become more vulnerable as a result.

The notion of privatisation has gone through a process of name change. Popular and violent protests in Cochabamba, Manila, Accra and other parts of the world against price increase, forced water disconnections, poor water distribution and broken promises under privatisation galvanized global opposition to water privatisation. Water corporations and their lobby groups were getting bad publicity and negative media rap. In response to this, efforts were put together to modify the notion of privatisation.

The International Private Water Association (IPWA) in collaboration with the World Business Council for Sustainable Development (WBCSD), both lobby groups of water corporations, engineered a major exercise in name change. Kathy Shandling of the IPWA notes, "We don't use the word 'privatisation' anymore. We use 'public-private partnerships.' Privatisation is a bad word."[5]

There is a fear that the victims of privatisation will be the vulnerable and marginalized groups in society. The indigenous communities, small farmers, women and the urban poor face the brunt of water privatisation. Indigenous communities are displaced from their ancestral lands when dams are built. Moreover, poor access to safe clean water and sanitation has been identified as an important cause of the deteriorating health of indigenous people.[6] Small farmers' yields decrease and their livelihood is threatened as a result of water corporations' indiscriminate mining of groundwater. In Thailand, WB is proposing to force small farmers to pay for the entire cost of the construction of dams as part of full cost recovery. Small farmers' access to water and the livelihood of fishermen are being threatened as a result of the privatisation of rivers in Indonesia and India.

The Asian urban worker and consumer are paying more for privatised drinking water. The urban population of Metro Manila experienced a 300 percent increase in water prices. In Karachi, water tariffs are expected to increase by 300 percent in the fifth year of privatisation. Non-governmental organisations (NGOs) in Nepal fear that privatisation of the Melamchi water supply project at a cost of US$ 644 million would lead to the highest water

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[5] Corporate Europe Observatory, "*Water Justice Info Brief 5,*" quoted in *Anti-Privatisation Wave Sinks Corporate Lobby Group*, March 2003, *www.corporateeurope.org*

[6] Ania Lichtarowicz, "World Failing Indigenous Peoples," 9 Aug. 2003, *http://news.bbc.co.uk/2/hi/in_depth/3137133.stm*. The article highlighted issues raised in a recent jointly published report by the British-based charity Health Unlimited and the London School of Hygiene and Tropical Medicine in commemorating International Day of the World's Indigenous Peoples.

tariff structures in the world, a sure strategy of keeping the poor away from the tap. In Kuala Lumpur, Malaysia, the corporatised distributor of water, PUAS, recently threatened to disconnect water supply to about 500,000 households for not settling water bills. The Provincial Waterworks Authority (PWA) of Thailand is predicting that "privatisation could heighten conflicts as private companies take over from unprofitable state water agencies, and impose higher water fees". The governor of PWA indicates that fights over access to water are intensifying in the country.[7]

In Nepal, women bear the brunt of water scarcity and inaccessibility of water. Here, women and children have to walk one kilometre to obtain water and return in time to get to work. Others continue to depend on contaminated water, leading to dysentery and other health problems. Rural water wells are unfit for drinking, cooking and bathing as a result of pollution. In India, wells for agriculture and domestic consumption have dried up in various poor communities as a result of excessive extraction of water. Water corporations are bottling rural water resources and selling it to richer urban consumers, creating a water inequity situation.

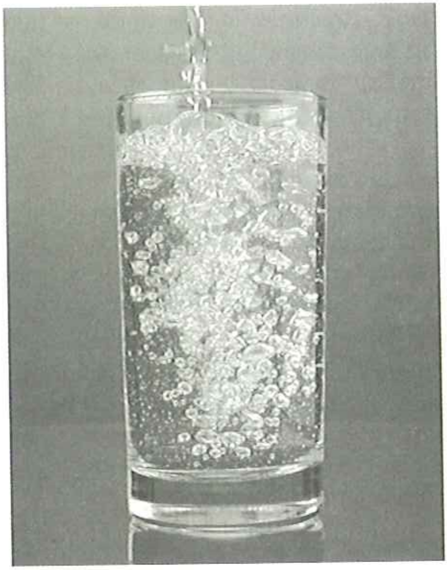
Privatisation of water services and the transformation of water into a commodity are in conflict with several United Nations (UN) covenants and international agreements that view access to water as a fundamental human right. These covenants stipulate state obligations to ensure that all citizens have access to water. Access to safe water, together with improvements in sanitation services, is a critical factor for an effective poverty eradication strategy.

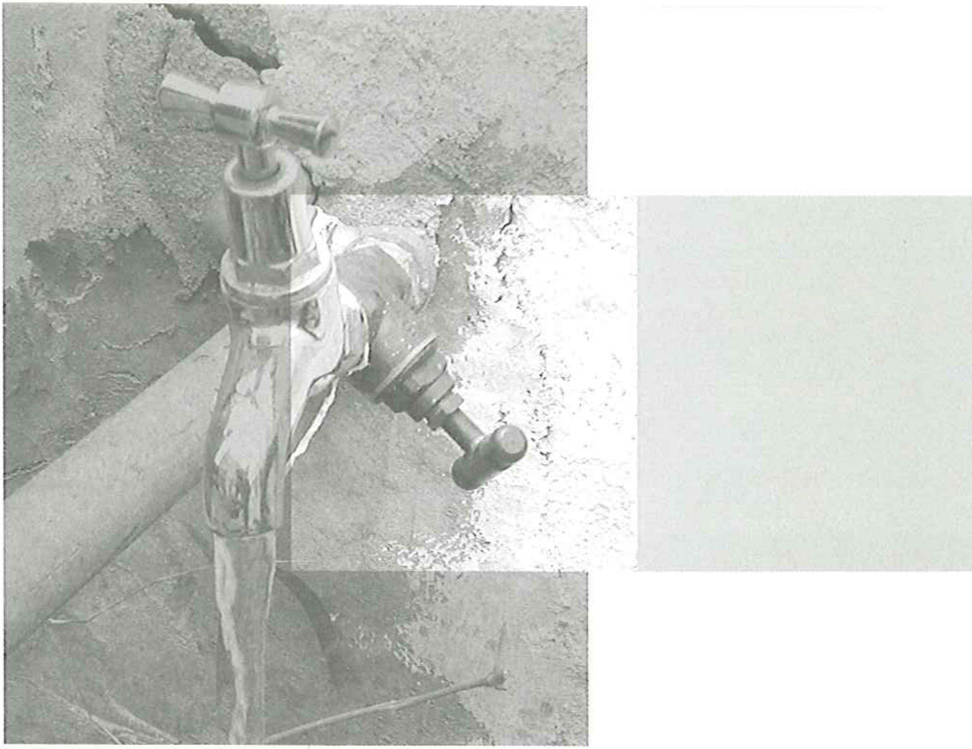
The water crisis is a manifestation of the crisis of development. This is because our socio-economic, political, and development priorities do not place people at the heart of the development process, nor organize resources to meet human needs effectively. Acknowledging that access to water is a human right and promoting the notion of 'water equity for all' could be the basis of a water-secure world and an "effective response to addressing one of the most fundamental failures of 20th century development." [8]

[7] Anchalee Kongrut, "*Water Wars on the Rise: Privatisation Could Heighten Conflicts,*" Bangkok Post, 9 Mar. 2003.

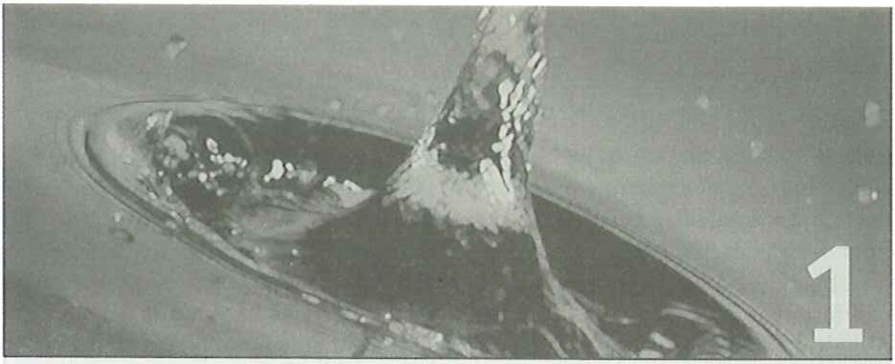
[8] Peter Gleick, "*The Human Rights to Water,*" California, Pacific Institute for Studies in Development, Environment and Security, 23 Apr. 1999.

This article will investigate investments by European multinational corporations in Asia in the context of the new 'edifice of social order'. It is suggested that the new order creates an enabling environment for European multinational corporations to expand their trade and investment activities in Asia. The new social order is an organized effort with an elaborate structure, one with a shared vision and long-term interests. Rooted in free trade economic ideology, coupled with legal, executive and judicial support from the WTO, armed with institutional support and legitimacy from WB and IMF, wedded to compliant and dependent governments, water corporations, the star protagonists of the new social order, are undertaking a massive scheme to transform water from a human right to a commodity, from a common good to private property, and finally, from scarcity of water to a profitable market.





PART ONE
ASIAN WATER INSECURITY: AN ANALYSIS



Water Insecurity

Various scenarios impinging on Asian water security emerges as a result of embracing public-private partnership or privatisation.

First, water scarcity is perceived as a profit opportunity, although water is a source of life, central to human existence and livelihood, and necessary for the reproduction of societies. There is no substitute for water. However, from a business and investment perspective, water as a scarce resource commands a high price and is a source of huge profits, such as those from oil and gold. In the new arrangement, market forces and the profit motive subordinate human and society's fundamental needs and rights.

Second, private control of water resources bestows rights to private companies over who (or which groups in society) would have access to water, and has implications for ownership. In the new arrangement, people's access to water will be a function of affordability, and no longer as a need or right to sustain life and livelihood. Specifically, the business decision to allocate scarce water resources between competing users will be predicated on affordability and profitability. Thus, to exercise control over the distribution of water amounts to controlling people's access to water, their livelihoods and their right to life. Furthermore, corporate control of peoples' access to water is tantamount to giving privatised companies the ownership rights to water resources of nations, which can be used to determine the nature of its use.

A derivative problem emerges. Water resources of nation states can potentially come under the control of private individuals, various companies or foreign corporations. Put differently, the privatisation process embraced by nation states makes possible the transfer and control of vital natural resources of nations, such as water, to the hands of individuals and foreign corporations. Such a possibility is real. GATS makes possible the take-over of water resources in other countries.

Potentially, this could mean that the decisions affecting investments, pricing and distribution of water could come from some corporate boardroom outside the particular country, such as from France or Germany. Essentially, privatisation makes possible the loss of political and economic control over domestic natural resources.

Third, small, poor farmers, workers, and consumers are confronted with a vulnerable situation. In the new arrangement, people, especially the vulnerable groups, have no control over pricing decisions, subsidy, planning, and the equitable distribution of scarce water resources. The market ensures that people are removed from exercising their political power over their economic lives. Society's economic life increasingly becomes regulated by market forces. In this conception, the political control over water resources is handed over to the market and thus forms the fundamental threat to Asian water security, and indeed to the rest of the developing world.

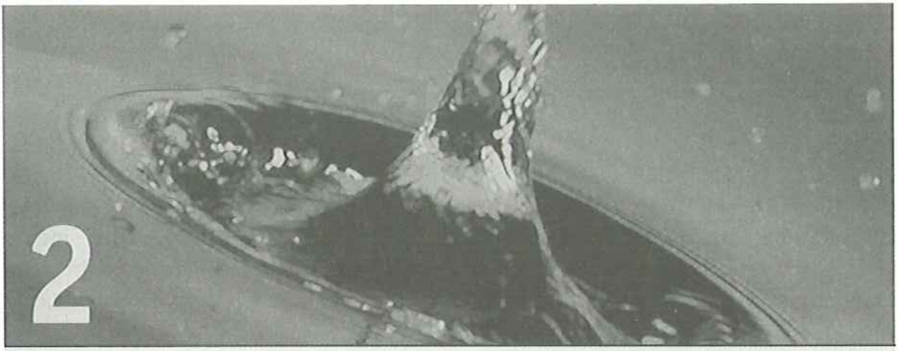
Fourth, the transfer from public to private hands involves the redefinition of existing relationships between people and their government's responsibility vis-à-vis access to water as a human right, constitutional dictate and development goal. The state role was perceived as necessary to reduce the inequities in the access to basic amenities - such as water, healthcare, education, housing and electricity - between the poor and rich. The state viewed the access to basic amenities as an important element in creating an enabling environment for citizens to achieve a better quality of life and human development. In the new arrangement, distribution of water resources is organized as an economic good via the market mechanism and is entrusted to equitably distribute water resources between the poor and rich in order to achieve development goals of people and their nations. Experiences in the developing world show that the water inequity situation has worsened.

Fifth, the new arrangement promises that water scarcity could be resolved through the laws of the free market. This is an absurd claim. The need to create profits and conserve water resources at the same time is a conflicting proposition. Profitability is a function of an increase in demand for water. This would require water corporations to processes and churn out more water for consumption. The rapid growth of the bottled water industry demonstrates the volume of water that is being churned out from groundwater sources. Profitability will promote a greater shareholder value as

well. Conservation of water would entail less consumption and thus less profit. It is an irony that water corporations can make huge profits amidst water scarcity. Simply put, in the reorganization of water resources, the profit motive would undermine conservation practices and worsen existing scarcity of water resources. In this conception, water resources will not be protected nor conserved as a common good of humanity.

Privatisation of water resources endangers the notion of the right to life of people. This is because privatisation of water resources, coupled with the full cost recovery principle, has a tendency to deny people access to water. Without sufficient water, it is neither possible to live nor grow food for the sustenance of society. Denying people access to water amounts to denying people the right to the source of life and the right to life. The threat to Asian water security is apparent when water is no longer in the public domain, conserved and utilized as a common good of humanity and global heritage of all people.

Water is considered as sacred and God's gift to people in Asian cultural, religious, spiritual traditions and practices. Furthermore, in some communities, water resources are perceived as community property to be shared for the sustenance and reproduction of communities. Imposing full cost recovery and transforming water into a commodity and selling it at a profit will not only constitute a violation of these belief systems and notions of property, but more importantly, will fundamentally redefine people's relationship to water resources.



2

Adam Smith, "Edifice of Social Order" and the Water Crisis

In the *Wealth of Nations* (1776), economist cum philosopher Adam Smith put forward an abstract but systematic model - nature, logic, structure and workings - of the capitalist order. He argued that the self-regulating market is both able to discipline self interests of individuals and competition for society's orderly provisioning. Furthermore, he suggested that the invisible hand of the market organizes the pursuit of private gains and maximizes economic welfare of society. In Smith's conception, the notion of an invisible hand "was not the intentional design of any individual but was simply created by the systematic working out of natural laws."[9] Smith's genius lay in his ability to formulate an "edifice of social order,"[10] one in which markets glued society together and which was rooted on a philosophical and ideological basis.

The present day 'edifice of social order' is fundamentally different from Smith's. The present day market place is structured around a free-trade-centred ideology in economic decision-making in conjunction with corporate interests and agenda. Both these notions are integrated and are promoted through a rules-based multilateral trading system established and legally enforced by the WTO. These rules require countries to deregulate and liberalize their investment, trade and finance sectors and dictate a deeper integration into the global market place. As opposed to Smith, the market is governed by a set of rules and regulations established by a supra international institution. Other institutions that act as custodians and actively encourage a free-trade-centred, rules-based corporate-led system include a colourful cast of global institutions, including the BWI (IMF and WB),

[9] E.K. Hunt, *History of Economic Thought: A Critical Perspective*, California, Wadsworth Publishing Co. Inc., 1979, p 38.

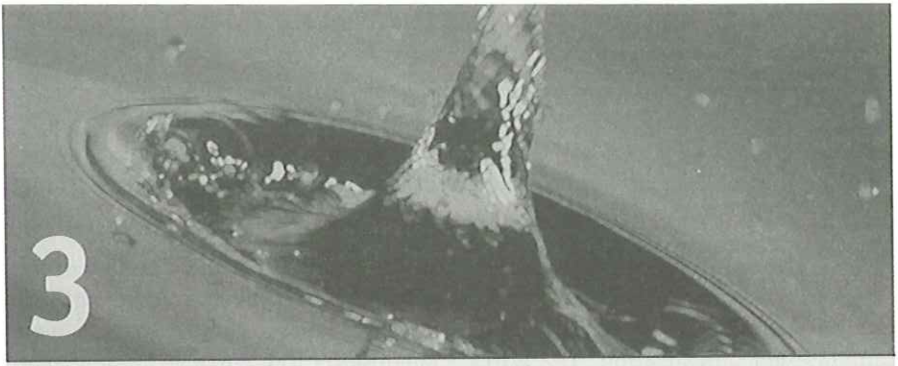
[10] Robert L. Heilbroner, *The Worldly Philosophers: The Lives, Times, and Ideas of the Great Economic Thinkers*, New York, Touchstone Books, Simon & Schuster, 1980, p 70.

interregional banks and powerful industry lobby groups.[11] Thus, unlike Smith's 'invisible hand', present day free-trade capitalism is organized and designed by 'visible' protagonists.

The WTO's intended agenda promotes corporate-led globalisation. The WTO's existing agreements and negotiations, such as GATS and the Agreement on Agriculture, coupled with the proposed new issues, including competition policy and transparency in government procurement and investment issue, are designed to liberalize the various sectors of the developing world in order to benefit big business, stipulate more rights for foreign investors and set the stage for corporate takeover of domestic firms by multinational corporations.

In this new edifice of social order, governments will lose their right to regulate foreign companies and more importantly, their role in development processes will be restricted. The WTO efforts promote a global trade and business environment, one that secures global markets and profits for corporations in rich countries. Unlike Smith, in this order, private gains - profits and markets - are secured through deliberate policymaking, one that favours big business in developed nations.

[11] The incoming WTO Director-General designate, Dr. Supachai Panitchpakdi, plans to introduce a code of conduct for MNCs, but this is facing resistance from developed countries: "To introduce some sort of a code of conduct. Which is something I'm not getting support from countries around the world, particularly some advanced countries, they see it that I'll be trying to intervene too much into the corporate sector's movements. But what I'm trying to suggest is that while we are trying to put up new regimes, new agreements, new rules for countries to abide by, we don't seem to have any rules for the multinationals and transnational corporations to go by." (Keynote speech at the World Development Movement's annual conference *Whose Rules Rule? Trade, Debt and Corporate Power*, held at the Institute of Education in Central London on 8 June 2002).



3 Shape of the Water Crisis: Global and Asian

The relationship between access to water, environment and poverty is particularly critical for the Asian continent, given that it is home to about one billion of the world's poorest people. The poor are the most vulnerable when there is an uneven distribution or lack of access to water, or when water is unclean or in short supply. A lack of access to water is intrinsically linked to poverty and unemployment, displacement of peasants and indigenous populations, insecurity in land tenure, and it reverses gains in public health and literacy. Women bear the brunt of the water crisis, travelling further to get water and depending on polluted water sources for household activities. Poor families are forced to prioritise between water, food and healthcare. The acute nature of the water crisis threatens to further exacerbate existing socio-economic disparities in developing countries.

Shortage of water and environmental degradation – salination, water logging, deterioration of surface and groundwater quality, destruction of soil structure and loss of natural fertility, increases in pest outbreaks and water pollution – coupled with landlessness and farming in low productivity areas makes the income and livelihood of farmers uncertain, further entrenching farmers into poverty. Nepal and parts of China, India and Pakistan have insufficient water resources to sustain domestic, industrial, agricultural and environmental requirements. Sri Lanka and Thailand are high water stress countries. This situation poses serious challenges for food production and security in developing countries and poses balance of payments problems and further exposure to debt.

Decreasing freshwater endowments in Asia, coupled with increases in the population rate and rapid industrialization, intensifies competition for access to water among competing ends, and has the potential to further worsen existing socio-economic wealth disparities in the region. The ADB estimates that "between 1950 and 1995 the per capita availability of water resources dropped by almost 70 percent in South and Central Asia, by about 60 percent in North Asia and by about 55 percent in Southeast Asia. In 2025, water availability per capita in the region will be 15 – 35 percent less than the level in 1950. In fact, South Asia, with one-sixth of the global population, has the lowest level of water resources per capita."[12]

By 2025, half of Asia's projected population of 4.2 billion is expected to live in urban centres and together with industrialization,[13] will exert enormous pressure on the availability of water. The proliferation of golf courses and golf tourism will exacerbate this situation.[14] In Asia, the combination of domestic and industrial water demand is expected to grow at rates of 70 – 345 percent between 1995 and 2025.[15] In this scenario, where demand outstrips supply and coupled with various competing needs, the burden of a water crisis will be unfairly borne by the poor.

GLOBAL

- 1.1 billion people do not have access to clean drinking water (UN Human Development Report 2002). Two-thirds of the world's population will not have enough fresh drinking water by the year 2025 (World Bank, 2002).
- By 2050, 4.2 billion people, estimated to be over 45 percent of the total global population, will be living in countries that cannot meet the daily requirements of 50 litres of water per person to meet basic needs (UN World Population Report 2001).
- Preventable water-related diseases kill 10,000 – 20,000 children every day in the developing world (World Environment News, Reuters News Service, 2002).
- 95 percent of sewage and 70 percent of industrial waste were being dumped untreated into water courses in developing countries (UN World Population Report 2001).

[12] Asian Development Bank, "Future Resource Stress" in *Water for All: The Water Policy of the Asian Development Bank*, 2002, *www.adb.org*

[13] Industrial water use in Asia is expected to increase seven times between 1995 and 2025. It takes about 400,000 litres of water to produce one car. The electronics industry is a water-intensive industry.

[14] The 1990s saw major expansion in golf tourism in Southeast Asia. In 1997, it was estimated that there were 160 golf courses in Thailand, 155 in Malaysia, 90 in Indonesia and 80 in the Philippines. In the 1970s, there were about 45 golf courses in the region. It is suggested that, on the average, golf courses consume about 3,000 cubic meters of water a day, enough to cater for the needs of 15,000 people.

[15] Asian Development Bank, "Regional Issues and Impacts" in *Water for All: The Water Policy of the Asian Development Bank*, 2002, *www.adb.org*

- World population increased three-fold in the last century, stretching the use of water resources by six-fold, according to the UN.
- Three million people die every year from disease caused by unsafe water (UN Environmental Programme).
- About 2.4 billion people in the developing world lack access to basic sanitation (UN Human Development Report 2002).
- Four billion people are without a sound wastewater disposal system (World Bank, 2002).
- About 3.5 million children die from water-borne diseases every year (World Bank, 2002).
- Groundwater, the unseen source of life for two billion people, is diminishing almost everywhere in the world. Twelve cities of more than 10 million people rely on underground water. About two billion people and as much as 40 percent of agriculture are at least partly reliant on groundwater (UN Environment Programme 2003).

ASIAN

- An estimated 737 million people in rural areas and 93 million in urban areas still have no access to safe drinking water.
- An estimated 1.74 billion people in rural areas and 298 million people in urban areas are denied access to sanitation.
- In 2025, urban cities in Asia will not be sufficiently equipped to provide the estimated 56 percent of the population with access to safe water or sanitation.
- In India, the water consumption among the poor is confined to less than 15 litres per capita per day compared with the better-off who consume up to 300 litres per capita per day.
- In China, 400 of the country's 600 northern cities, which include half the Chinese population, are facing severe water shortages. The Worldwatch Institute predicts that China will be the first country in the world that will have to restructure its economy in response to water scarcity.[16]
- In Manila, the poor pay as much as 10 percent of their household income for poor quality water. In fact, the ADB indicates the Asian urban poor spend a disproportionately large part of their scarce disposable income on water from private sources.
- In Nepal and the Greater Mekong Region, village women and children walk several kilometres over

[16] Cited in Maude Barlow & Tony Clarke, *Blue Gold: The Fight to Stop the Corporate Theft of the World's Water*, New York, The New Press, 2002, p 22-23.

inhospitable terrain to fetch water. In rural Nepal, fetching water for domestic household use occupies up to four hours a day.

- In Pakistan, India and Central Asia, fertile farm land has been turned into waste land as a result of salination, and has driven farmers into poverty.
- In Pakistan, 40 percent of infant mortality is due to water pollution.
- Bangladesh faces serious groundwater arsenic poisoning and is said to be in the midst of what the World Health Organization calls the largest mass poisoning of a population in history. It is estimated that between 1 million and 5 million people are contaminated with arsenic poisoning (New York Times, 14 July 2002).

There is no denying that the public sector needs to undertake major reforms in the management and operations, including monitoring and maintenance of pipes and related infrastructure, in the supply of water. In some countries the prevailing public water management systems provide poor quality, contaminated and unhealthy drinking water to consumers. Also, it is estimated that about 40 to 50 percent of clean drinking water is lost through leaks and theft. Debt repayment and decrease in government public expenditure as a result of IMF and WB dictates led to a drop in the quality of drinking water and cuts in water supply and sanitation services in many developing countries.

Furthermore, state water and sanitation infrastructure development strategy is skewed in favour of the urban rich and disadvantages the rural poor in particular. The Water Supply and Sanitation Collaborative Council (WSSCC) estimates that in the 1980s, 80 percent of water investments were spent in providing services for a small number of affluent urban dwellers.[17] Studies in alternative investment strategies indicate "80 percent of the unserved can be reached for only 30 percent of the costs of providing the highest level of service to all" (Gleick, 1999).[18] The WSSCC has suggested that the cost of serving basic sanitation services to 35,000 rural people is the same as providing 1000 urban residents with a centralized sewage system. In addition, there is an urgent need to improve the scope, quality and extent of water use data in most countries in order to respond effectively to population increase. The failure to distribute the available water resources equitably is rooted in misconceived development priorities and a lack of political will in governments and the international community.

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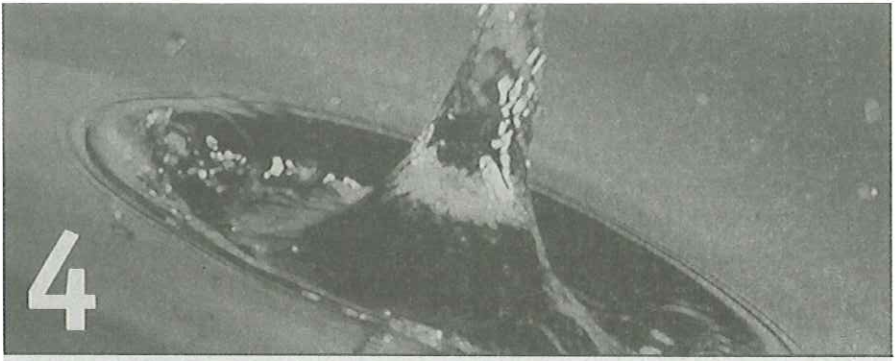
[17] Cited in Peter Gleick, "*The Human Right to Water,*" Pacific Institute for Studies in Development, Environment and Security, 1999, p 10, *www.pacinst.org*

[18] Peter Gleick, "*The Human Right to Water,*" Pacific Institute for Studies in Development, Environment and Security, 1999, p 10, *www.pacinst.org*



Yet Another Commodification: Water as an Economic Good with Uneven Access

Instead of ensuring equitable access to water, protecting existing water resources, promoting conservation, safeguarding the ecosystem and helping vulnerable groups, governments have decided to resolve the water scarcity and crisis through the market mechanism. It is suggested that the market mechanism is an efficient allocator of resources and therefore best positioned to distribute scare water resources to the most productive and rational user. Thus the responsibility for water distribution is handed over to the private sector.

Underlying the privatisation efforts of water services is that water is no longer conceived as a human right or a social good but an economic good, a commodity that can be bought and sold to the highest bidder. The notion of water as an economic good is rooted in the Dublin Principle. The Dublin Principle was an outcome of the 1992 International Dublin Conference on Water and the Environment. The meeting resolved that "water has an economic value in all its competing uses and should be perceived as an economic good". This point is reiterated by the ADB's policy paper on water. The policy suggests "water is largely an economic value in all its competing uses and should be recognized as an economic good and must underlie all efforts for rational water resources management" (ADB, 2002).[19] The Dublin Principle made certain that access to water – the essence of life - was to be organized around the rules of the market.

The management of water resources requires a) the formalization and clarification of property rights for water by the state; b) implementing the full cost pricing or recovery principle to improve the efficiency of services and provide additional resources for reinvestments, and c) that the economic value of water be reflected in

[19] Asian Development Bank, "Water as a Finite and Economic Good," *Water in the 21st Century: Elements of a Water Strategy*, 2002. *www.adb.org*

national policies and strategies by 2005 and mechanisms established by 2015 to facilitate full cost pricing for water services. WB suggests that the full cost recovery or economic pricing and privatisation will expand access to clean water and sanitation.

It appears that the full cost recovery notion is a catch-all phrase required to 'get prices right' and the basis of a market-demand driven approach to the distribution of water resources. The water sector is 'unbundled,' separating the profitable from the loss-making parts; subsidies are explicitly defined and the practice of cross-subsidy reduced with the view of completely phasing out subsidies, in order to offer a profitable and lucrative privatisation package for prospective water investors.[20] WB perceives the removal of subsidies as a top priority and precondition for the private provisioning of water services. Furthermore it is suggested that the full cost pricing helps to promote conservation, reducing waste and mobilizing resources.[21] In short, the underlining message behind the full cost recovery principle is that water should be treated as a commodity and priced to reflect its value; otherwise much of it will be wasted.

The ADB's full cost recovery strategy indicates that "consumers will be expected to meet the full operating and maintenance costs of water facilities and service provision in urban and rural water supply and sanitation schemes ... Likewise, requiring the poor to pay for the true cost of urban and rural water supplies is possible" (ADB, 2002).[22] In practical terms, full cost pricing in the agricultural sector would result in farmers absorbing the entire financial cost of water services. This would involve farmers absorbing costs of operations, maintenance, rehabilitation, capital expenditure and cost of debt servicing as well as the opportunity costs of water.

[20] The Asian Development Bank policy paper on water states: "Subsidies are a controversial issue in the water sector. ADB will support subsidies for water services in the following circumstances: (i) where treated water uses have beneficial external effects in preventing health problems; (ii) where the transaction costs of measuring usage are very high; (iii) where a limited quantity of treated water for the poor is regarded as a basic human need. Taken together, these circumstances may justify a limited lifeline element in tariff policy. Other forms of subsidies, such as cross-subsidization between systems, will be reviewed to ensure that targeting is efficient and transparent. However, in the long run, governments and regulatory agencies will be persuaded to phase out subsidies as economic conditions improve." "Conserving water" in *Water for All: The Water Policy of the Asian Development Bank*, 2002, *www.adb.org*

[21] World Water Commission, cited in Nancy Alexander, "Who Governs Water Resources in Developing Countries? A Critique of the World Bank's Approach to Water Resources Management," *News and Services* Vol. 2, No. 7, Summer 2002, p 14. This is a publication of the Citizens' Network on Essential Services

[22] Asian Development Bank, "Conserving Water," in *Water for All: The Water Policy of the Asian Development Bank*, 2002, *www.adb.org/Documents/Policies/*

A strategy where farmers absorb the entire cost favours big farmers and export-centred agri-business - business and investments operations preferred by WB - marginalizes small farmers. In the Asian context, 60 -70 percent of the Asian farming sector is made of small and poor farmers with ownership of less than 1.5 hectares of land. Increase in the cost of farm production would worsen existing landlessness, debt exposure, poverty and loss in livelihood among small farmers in the region. Furthermore, poor farmers might not be able to pay exorbitant prices for water services at times of poor harvest or low market prices for their produce – making their livelihood vulnerable to water and market prices of their produce.

A market driven approach to the allocation of water services will not lead to an adequate and equal access of water among competing ends as the rhetoric of industry and international financial institutions suggests.

At present, there is an effort by water corporations to introduce pre-paid cards for the consumption of water. Consumers get access to water by inserting the prepaid card into the meter and the balance is adjusted depending on consumption and the remaining credit displayed. Corporations prefer such a system because the pre-paid card system, *inter-alia*, guarantees full cost recovery, quick detection of water theft, substantial administrative cost savings and self-disconnection since the service is terminated once credit is depleted. The pre-paid card system is being practiced in at least ten developing countries, although it has been declared illegal under the U.K. Water Act of 1998 for health reasons. Cutting off water supply or self-disconnection has led to major disease outbreaks such as dysentery, cholera and other water-borne diseases in the developing world.[23]

The British charity Save the Children UK indicates that there are negative effects of opening up to multinational corporations the ownership of public services such as water distribution. The poor, especially the children, will be the most affected. This is because privatisation of water leads to an increase in prices for water and forces the poor to collect water from contaminated sources, exposing children to water-borne diseases. It is reported that more that two million children die from drinking such water.[24]

The distribution and access to water organized around rules of the marketplace and the profit

23 For more information on pre-paid water meters and its human consequences, go to: *www.citizen.org/cmep/Water/cmep_Water/wssd/articles.cfm?ID=8210*

24 Anne Penketh, *Children Will Suffer With Privatisation of Water*, Save the Children UK, 21 Aug. 2002, Report released in conjunction with the Earth Summit in Johannesburg. *www.independent.co.uk/story.jsp?story=326262*

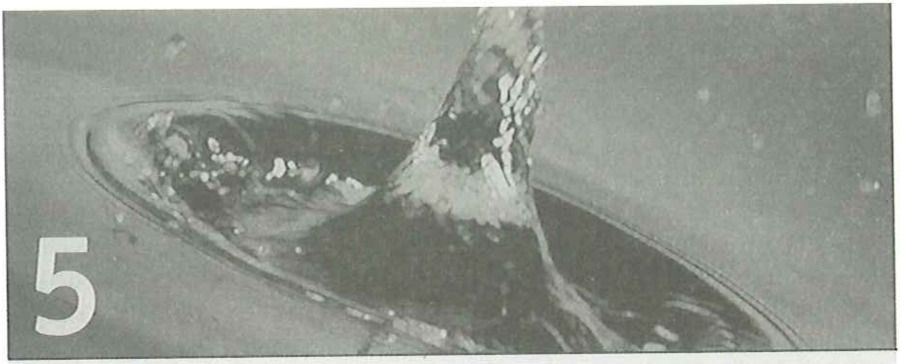
motive[25] ensures that only communities and individuals who can afford to pay for water services will have access to safe drinking water,[26] contrary to the promises of 'efficiency in allocation' proponents. Privatisation has the potential of instituting a 'resources/ water divided' society; one group that can afford to pay for resources, and another group that cannot get access to water resources, a reflection of the larger societal divide between the poor and rich.

As an economic good, water is subject to dictates of the marketplace, governed by international trading regimes and business behaviour. It allows for the takeover of domestic water resources through mergers and acquisitions by transnational corporations. The market system undermines the role of government as a provider of a basic human need and guarantor of basic human rights.[27]

[25] The Malaysian Minister of Public Works, Datuk Seri S. Samy Vellu, who is responsible for water services in the country, indicated that "According to the ADB, governments must open up and privatise the water management sector and allow investors to set up their own charges to ensure investments are profitable." "Driving Headlong Into Privatisation," *The Edge* (Malaysia), 3 June, 2002, p 67.

[26] This privatisation strategy might not be efficient in conserving scarce water resources. The strategy is not to ensure equitable access to water but promote greater consumption of water by those who can pay, the basis for greater profits. The rich will be able to pay for water services and consume more water even if it is for unproductive activities. The phenomenon invariably ensures the poor are disadvantaged.

[27] The private sector views a) the role of government as an impartial administrator of essential rules; b) calls on governments to work together to design the multilateral rules with the private sector; c) less regulatory roles of government. *Dialogue Sessions: Water for Basic Needs, Energy for a Sustainable Future*, 8th Informal Meeting of Environment Ministers, Bergen, Norway, UNED Forum 2000.



5 Adam Smith, 'Visible Hands' and Water as Big Business: The European Connection

Water as a global common good has come under the control of market forces. This is because water promises to be to the most precious commodity of the 21st century, profiting corporations. It is estimated that between 1990 and 2002, water corporations increased their customer base from 51 million to 300 million people, a whopping 588 percent growth in the last twelve years. The global trade in water is currently estimated to be between US$ 400 million and US$ 3 trillion.

The global trade is expected to be a multi-trillion dollar industry in the near future when privatised water systems expand to serve about 17 percent of the world's population by 2015. The *Big Ten* multinational corporations control the water market and related industries. Nine of the 10 largest water corporations in the world are located in Europe[28] and can be divided into three distinct tiers.

The first tier comprises of the two most powerful water multinational corporations in the world: Vivendi Environment and Suez Lyonnaise des Eaux, both based in France. Suez Lyonnaise operates in about 130 countries, supplying water to about 115 million people. Vivendi Environment operates in about 100 countries through 3,371 companies with a 110-million customer base. Both these corporations collectively control approximately 70 percent of the existing world water market and enjoy combined annual revenue of over US$ 70 billion, including over US$ 10 billion in direct water services.

28 They include three French transnationals (Vivendi, Suez Lyonnaise des Eaux and Bouygues), five English-based companies (United Utilities, Thames Water Plc, Severn Trent Plc, Anglian Water Plc and the Kelda group [previously known as Yorkshire Plc.]), and one German utility company (RWE Aktiengesellschaft). Included in the *Big Ten* of water corporations is Enron, the US-based multi-utilities company. With the exception of Seven Trent Plc, the RWE Group and Enron, all the other water corporations have investments in Asia.

In 2001, almost half of Vivendi Environment's US$ 26 billion in revenue came from water and about one quarter of Suez's US$ 38 billion in revenue was generated by its water division, Ondeo. Suez Lyonnaise is now expanding its water investments in Southeast Asia, the Pacific and China. Ondeo invests in various Asian cities, such as Jakarta, Manila, Sanya (China) and Malaysia, among others. Asian sales accounted for about 5 percent of Suez's Euros 42.3 billion revenue in 2001, but the figure rose by almost a third from the previous year.[29]

In Asia, Ondeo provides 23.5 million people with drinking water and 4 million with sewage treatment. Vivendi Environment has been operating in 14 Asian countries including South Korea, China, Japan, Philippines, India and Malaysia for over 20 years. The net sales of Vivendi Environment in the first six months of 2000 increased 41.3 percent to Euros 12.1 billion, compared with Euros 8.5 billion in the first six months of 1999.[30] Vivendi Asian sales doubled last year to US$ 647 million.[31] The second tier grouping involves four global corporations: Bouygues-SAUR, RWE-Thames Water, Bechtel-United Utilities and Enron-Azurix. Bouygues operates in 80 countries through its water subsidiary SAUR. Bouygues is said to be considering "massive expansion" in China. In 1999, Thames Water was acquired by the German electrical company RWE for US$ 9.8 billion. At present, the French domination of the global water trade is challenged by this third global player, RWE-Thames Water.

The third tier category involves four smaller water corporations: Severn Trent, Anglian Water and the Kelda Group. These three British corporations, together with RWE-Thames Water, control the British water market. The fourth corporation in this tier is the American Water Works Company, which acquired the financially beleaguered Azurix, a subsidiary of bankrupt Enron. RWE, through its acquisition of Britain's Thames Water, increased its water revenue by 100 times: from US$ 25 million in 1990 to US$ 2.5 billion in 2002.[32] RWE-Thames Water expects to double its base to 150 million customers as a result of its expansion in the United States.[33]

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[29] Anna Sathiah, & Adam Shamin, "Water Companies Tap Into Rising Asian Demand," Bloomberg News, *International Herald Tribune*, 12 Mar. 2003, p 1.

[30] "Vivendi: Almost 50% Increase in Net Sales for the First Half of 2000," *PSIRU News Service*, University of Greenwich, *www.psiru.org/news/4135.htm*

[31] Anna Sathiah & Adam Shamin, "Water Companies Tap Into Rising Asian Demand," Bloomberg News, *International Herald Tribune*, 12 Mar. 2003, p 1.

[32] International Consortium of Investigative Journalists, "Cholera and the Age of the Water Barons," *The Water Barons: How Few Powerful Companies Are Privatizing Your Water*, Public Integrity Books 2003, p 2. This is a project of the Consortium.

[33] Ibid, p 3. It is estimated that cities in the United States will require between US$ 150 billion and US$ 1 trillion over the next two decades to replace and upgrade its ageing waterworks.

The privatisation of water services in developing countries offers a huge market potential for the *Big Ten*. The UK-based water resources consultant, Water Policy International Ltd., indicates that privatisation of water and sanitation service in Asia will increase from 1 percent in 1997 to 20 percent in 2010. For the same time period, about 24 percent of the water and sanitation services in Europe – excluding France and UK – will be privatised, compared with 5 percent in North America, 4 percent in Latin America, and 3 percent in Africa. By 2010, privatisation activities will expand across the board in all continents: 55 percent in Europe, 15 percent in North America, 60 percent in Latin America, and 33 percent in Africa.[34] The water resources of the developing world, including Asia, are lucrative markets, ripe for take-over by water corporations.

The *Big Ten* use various corporate strategies to organize and expand their control of the global water industry.[35] These corporations' global control and outreach is made possible through joint ventures, strategic alliances, partnerships, one-contract partnerships and acquiring of smaller companies.[36] Underlying the strategy is to acquire market share, access to new technology and geographical outreach, local knowledge, marketing and local connections. Furthermore, water corporations push for the privatisation and ownership of the water infrastructure but more importantly, attempt to control the rights to water access through licenses giving rights to water sources in countries. The *Big Ten* target countries that are undergoing privatisation and deregulation of their water sectors.

There is an intertwined relationship with a common motive between the *Big Ten* and their respective home financial institutions. Water corporations receive funds from banks whose representatives sit on their Board of Directors and who have dominant shareholding positions in water corporations. Suez Lyonnaise

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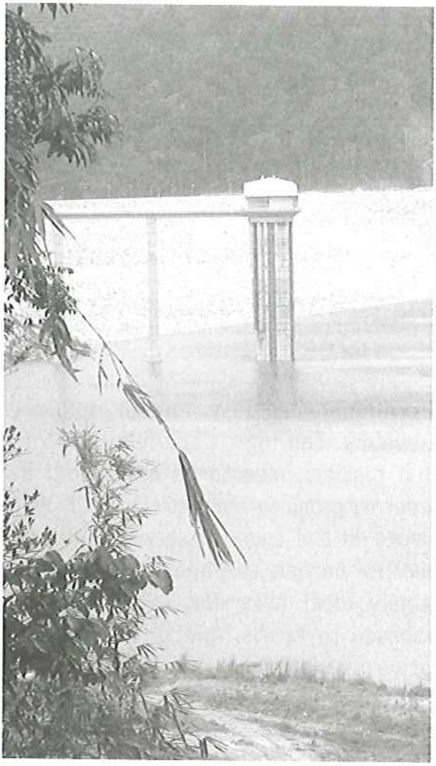
[34] "Driving Headlong Into Privatisation," *The Edge* (Malaysia), 3 June 2002, p 67.

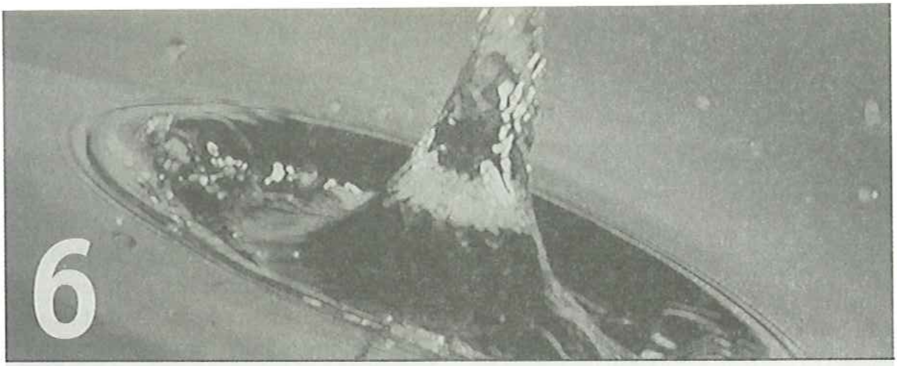
[35] These corporations target four sectors in the water industry: water and wastewater services, water treatment, water-related construction and engineering, and innovative strategies. Other targeted sectors include ownership of dams and waterways, marketing of bottled water, and development in water-bag technologies, which will facilitate the transportation and exportation of large quantities of water in large, sealed fabric bags. The bottled water industry is the fastest growing industry in the world, estimated to be worth US$ 22 billion annually.

[36] This effort involves a) corporations entering into a public-private partnership or private joint ventures with local and regional firms; b) corporations acquiring shares in local or regional firms with the view of gaining control of these firms and turning them into subsidiaries; c) corporations buying out smaller local and regional firms in order to gain local market access or licensing, and acquiring new technology, such as water purification and filtration technology or desalination, through strategic alliances. The Big Ten is known to forge partnerships among themselves or be part of consortiums in bidding for contracts to provide water services.



director Lucien Douroux is the Chief Executive of the Caisse National de Credit Agricole, a leading French financial institution, which is one of the largest shareholders in two of the major French multinational corporations, Suez and Bouygues.[37] With a financial infrastructure in place, it is no wonder that the *Big Ten* has been able to push for privatisation of water resources.

[37] Gil Yaron, "The Final Frontier: A Working Paper on the Big 10 Global Corporations and the Privatisation and Corporatization of the World's Last Public Resource" (Draft), Polaris Institute, 2000. *www.polarisinstitute.org/Economic%20Globalization/finalfrontier.html*



6

Behind the Veil of GATS: The European Union, Corporate Interests and Global Conquest

The trade policy of the European Union (EU) serves the interests of European big business. It is proposing to create a multilateral trade and legal infrastructure that gives rights to corporations and which will discipline nation states.

The EU, through GATS,[38] has embarked on a strategy to remove all barriers to trade in services or entry into the service industry[39] within a country. Specifically, it targets all domestic laws, regulations and policies that may discriminate against foreign services providers. The logic underlying GATS is that barriers have to be eliminated in order to promote competition and efficiency in the trade in services. This is because barriers to trade in services are largely local laws and regulations as opposed to tariffs, quotas and quantitative restrictions in the case of trade in goods.

David Hartridge, WTO's former director of services, described GATS as the "first multilateral agreement to provide

[38] GATS was established in 1995, and is being negotiated in the current round of the WTO negotiations (2000 - 2005). It involves the progressive liberalization of 160 service sectors, which involve both essential and non-essential services. Essential services include water, electricity, education and healthcare; non-essential services involve tourism, legal, construction, retail trade, etc. In the 2001 WTO Ministerial in Doha, a timetable was established to begin the request-offer phase of the GATS negotiations. It was decided that initial requests of member nations will have to be made by 30 June 2002, and offers for specific commitments be decided by 31 March 2003. A final decision will have to be made by the next Ministerial Meeting in 2004 in Cancun, Mexico. GATS contains a 'built-in agenda' to negotiate the agreement every five years. The first round was agreed in January 1995 and the present round started in 2000 and scheduled to conclude in 2005. The EU has made 109 requests, covering a variety of sectors.

[39] A WTO document entitled "Decision on Domestic Regulation" indicates that "In accordance with paragraph 4 of Article VI of the GATS, the Working Party [on Domestic Regulations] shall develop any necessary disciplines to ensure that measures relating to licensing requirements and procedures, technical standards and qualification requirements and procedures *do not constitute unnecessary barriers to trade in services* (emphasis added), WTO Document Symbol S/L/ 70, 28 April 1999, cited in Ellen Gould, "TACD Background Paper on Trade in Services" (Draft), *Transatlantic Consumer Dialogue*, October 2002.

legally enforceable rights to trade in all services" and the "world's first multilateral agreement on investment, since it covers . . . every possible means of supplying a service, including the right to set up a commercial presence in the export market."[40]

According to the EU, GATS "aims to end arbitrary regulatory intervention, and assure predictability of laws, to generate growth in trade and investment."[41] The WTO Secretariat suggests "bindings undertaken in the GATS have the effect of protecting liberalization policies, regardless of their underlying rationale, from slippages and reversals."[42]

The breathtaking scope and corporate rights involving GATS commitments is best described by Robert Ruggerio, the former WTO Director-General. He depicts the GATS as "providing guarantees over a much wider field of regulation and law than the GATT; the right of establishment and the obligation to treat foreign services suppliers fairly and objectively in all relevant areas of domestic regulation extend the reach of the Agreement into areas never before recognized as trade policy."[43] Clearly, GATS is about ensuring a market-centred rules system that will provide market access and stipulate investment rights that are irreversible in order to ensure certainty and predictability in the market place for multinational corporations. Also, embracing GATS commitment sends a clear signal to potential investors of a particular country's seriousness in protecting foreign investor rights.

GATS will strike at the heart of existing economic development strategies of developing countries, where the regulatory framework is a key feature. The regulatory character of economic development involves states using laws, subsidies, quantitative restrictions, and other protectionist mechanisms in order to protect local business from foreign competition, nurture a domestic business class, develop a local industrial base and human resources including regulating the local banking and insurance system in order to effectively compete in the global market place.

Furthermore, regulatory mechanisms are used to ensure that local resources and domestic corporations do not fall

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[40] D. Hartridge, "Opening Markets for Banking Worldwide: The WTO General Agreement on Trade in Services," speech to international banking seminar, London, 8 Jan. 1997, quoted in Sarah Sexton, "Briefing 23 - Trading Health Care Away?: GATS, Public Services and Privatisation," *http://cornerhouse.icaap.org/briefings/23.html*

[41] Ibid. "Opening World Markets for Services: Towards GATS 2000," *http://GATS-info.eu.int/GATS-info/g2000.pl? NEWS=aaa*, accessed 1 Nov. 2000.

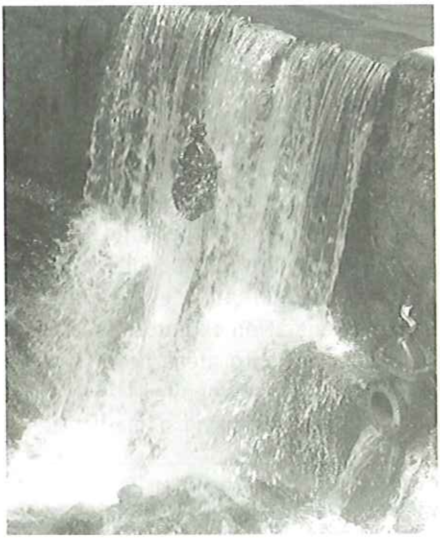
[42] Ellen Gould, "TACD Background Paper on Trade in Services" (Draft), *Transatlantic Consumer Dialogue*, Oct. 2002, p 2.

[43] Cited in Ellen Gould & Clare Joy, "In Whose Service? The Threat Posed By the General Agreement on Trade in Services to Economic Development in the South," *World Development Report*, Dec. 2000, p 4.

in the hands of foreign corporations. These corporations would be regulated to work towards meeting the overall national - social and economic - development goals of developing countries.[44] In addition, governments regulate the provisioning of essential services as part of its poverty eradication policy and its constitutional responsibility to its citizens. There is a fear that the GATS rules will tend to dismantle the important regulatory role of the state and organize the provision of services including essential services around the rules of the global market place.

The purpose of GATS is the progressive liberalization of the service sector. This involves accepting full commitments under Article XVII, National Treatment and Article XVI, Market Access Rule. Developing countries will be pressured to accept these GATS commitments. This is because multinational corporations and their government allies in the US, Japan, Canada, including the EU, would like investments to be guaranteed and an irreversible access to developing countries markets. The GATS is an elaborate multilateral trade rule designed to institutionalise rights and protection to foreign multinational corporations.

Under GATS, the state is obligated to accept full commitments involving national treatment (Article XVII). This involves non-discrimination between local and foreign investors. The principle of national treatment suggests that foreign corporations must be treated at least as favourably as local firms. This means that both foreign and local companies must be afforded the same conditions of competition. It is important to note that this requires more than applying the same rules to both sides: what is required under GATS is that the *same conditions of competition* [emphasis added] have to be provided.[45]



[44] This could include, among others, controlling the repatriation of profits by MNCs, requiring MNCs to undertake joint ventures with local companies for purposes of technology transfer and human resources development, and to limit foreign ownership of land and commercial property.

[45] Ellen Gould, "TACD Background Paper on Trade in Services" (Draft), *Transatlantic Consumer Dialogue*, Oct. 2002, p 5.

The notion of 'same conditions of competition' means that public funding has to be extended to a foreign investor if subsidies are provided to the local investor. The GATS requires that subsidies be provided in a non-discriminatory manner. Under GATS agreement, subsidies are treated as unfair competition or barriers to entry for foreign investors. This could lead to a reduction or elimination of subsidies or public sector funding.[46] Such a development raises a critical question for national economic policy making. Why should a developing country provide subsidies to a much wealthier 'economy' such as a foreign multinational corporation? All this points to the fact that the GATS is not about trade but an effort to remove restrictions or barriers to entry for corporations.

The GATS will allow foreign investors unrestricted entry into various sectors of the service economy. Specifically, embracing GATS Market Access (Article XVI) commitment will entail that countries not impose restrictions on the supply of a service, such as maintaining monopolies or pushing for joint partnerships.[47] The Market Access rule prohibits states from regulating the number of service suppliers in the sector. In fact, all policies that restrict access to markets will violate GATS Market Access rule.[48] In the current negotiations, the European Commission is pushing for market access for European services exporters.[49]

The notion of "public services supplied in the exercise of governmental authority" has become a source of some controversy. This is because GATS rules involve all services "except services supplied in the exercise of governmental authority." Going by this definition, one would think that water, electricity and education would not come under GATS. However, according to Article 1.3 of the GATS rules, "a service supplied in the exercise of governmental authority" means any service that is "supplied neither on a commercial basis, nor in competition with one or more services suppliers". Providing services on a commercial basis means a payment is involved in the rendering of the services with profits earned. However, it is important to note that not all government

[46] "As the WTO Secretariat said, "an obligation to give out subsidies on an equal basis to foreign and domestic suppliers is a powerful inducement to get rid of government subsidies altogether," in Richard Sanders, "GATS: The End of Democracy?" *Australian Financial Review*, 2001, p 5. *www.members.iinet.net.au/~jenks/Sanders.html*

[47] Ibid, p 6.

[48] Tony Warren and Christopher Findlay, "*How Significant are the Barriers? Measuring Impediments to Trade in Services*", paper presented at the Conference on Services 2000: *New Directions in Services Trade Liberalization*, Washington DC, 1-2 June 1999, Cited in Ellen Gould, op. cit., p 6.

[49] Clare Joy, "Europe's Negotiating Proposals: Requesting the Limit," *World Development Movement*, Aug. 2002, p 1.

services earn profits. Thus will it still be considered 'commercial' if there are no profits but involves payment?

The notion of competition would involve two or more service providers offering the target market with comparable services. Typically, in most countries, public hospitals compete with private hospitals, and private schools compete with public schools. Given this reality, services offered by most governments as part of their constitutional responsibility will come under the purview of GATS rules. Going by the legal definition of Article 1.3,[50] it would appear that most 'services in the exercise of governmental authority' would potentially come under GATS rules. In any case, the legal definition is ambiguous. The final judgment as to the definition of what constitutes 'services in the exercise of government authority' will have to be made by the WTO Dispute Settlement Body and not by governments.

A Government of British Columbia discussion paper on the question indicates that "only a small subset of services – those that are provided by completely non-commercial, absolute monopolies – appear to be protected by this exclusion. Put differently, most public services "in the exercise of governmental authority" will be subjected to GATS discipline.[51]

The GATS proposed rules on 'Domestic Regulations' require that national laws and regulations (technical standards, licensing and qualifications) be changed if they are construed as 'more burdensome than necessary' or 'no more trade restrictive than necessary' to business. More burdensome regulations would be perceived as a trade barrier or restrictive. State's licensing policies designed to ensure universal health care such as restricting health care fees for poor patients, requiring health care facilities to operate on a non-profit basis or ensuring universal access by state imposition could potentially violate 'no more trade restrictive then necessary' GATS rules.[52]

It is trade restrictive since it inhibits profit making given intense competition in the market place. It is suggested that the new GATS disciplines (more burdensome than necessary) are not about trade but non-trade related criteria for judging domestic policy.[53]

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[50] Prof. David Huff points out that the exemptions in GATS for "service supplied in the exercise of governmental authority" would be unlikely to protect public health care services from a GATS challenge since so little of health care is provided anywhere in the absence of competition – a requirement to qualify for the exemption," in Ellen Gould, op. cit., p. 13.

[51] Cited in Richard Sanders, "GATS: The End of Democracy?," *Australian Financial Review*, p 4 *www.members.iinet.net.au/~jenks/Sanders.html*

[52] Ellen Gould, op. cit.

[53] Ibid, p 9.

The implications of accepting the GATS commitment could be detrimental for developing nations. The provisioning and access to essential services, such as water, healthcare, education and electricity, will take place through the market. This has implications for the continued universal accessibility of these services for all citizens especially, the vulnerable groups in society. Poverty reduction and wealth distribution strategies might be undermined. Furthermore, it would mean that the role of the government in the affairs of the state – regulatory or management of the economy – would be weakened, and the ability to control foreign investors would be eliminated. Existing state regulations on foreign equity ownership would have to be removed.

Essential services are already coming under the control of the private sector as a result of privatisation and structural adjustment policies. New GATS commitment would give corporations further access and could make existing privatisations effectively irreversible.[54] The aggressive EU GATS posturing in the new round is highly strategic. With the regulatory state out of the way, direct control of nation-based corporations could be exercised through GATS disciplines supported by WTO judicial and enforcement powers. GATS should then be perceived as an international legal instrument of neo-colonial control.

The role of government in the development process, and in fact, its ability to govern, could be undermined. Embracing GATS would involve an overhaul of domestic laws and regulations.

In fact, GATS will make possible the development agenda of states to be determined by multinational corporations, a phenomenon that has implications for democratic governance of nation states. There is a real fear that public control over the economy, society, and the environment will be removed.[55] Put differently, multilateral trade rules are being used to determine domestic policy and the state's ability to manage the economy is dismantled in the process.

GATS is a multilateral legally-binding trade agreement. Violations of GATS rules between trading partners could be resolved through the WTO Dispute

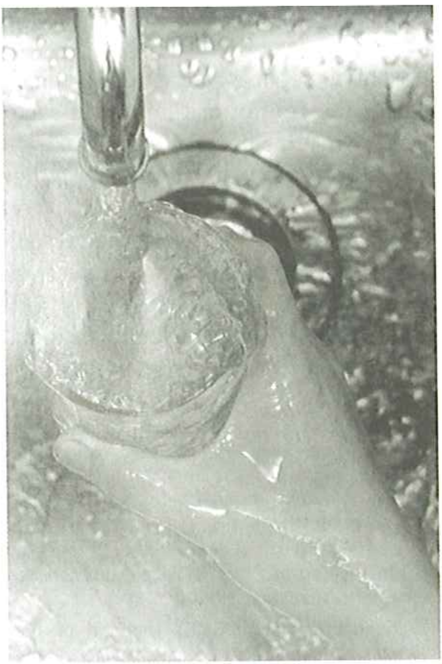
[54] It has been suggested that reversing GATS commitments is technically possible but practically difficult. Governments can "only do so by negotiating 'compensation' for all affected partners – a prohibitively costly undertaking." In fact, the WTO indicates that "because unbinding is difficult [governments] commitments [to a sector] are virtually guaranteed..." This suggests that if there are serious negative social or economic effects, it might be too late to reverse the process. Nancy Alexander & Timothy Kessler, "How GATS Jeopardizes Essential Services," Citizens' Network on Essential Services, *www.servicesforall.org*

[55] Richard Sanders, "GATS: The End of Democracy," *Australian Financial Review*, 2001, p 2. *www.members.iinet.net.au/~jenks/Sanders.html*

Settlement Body (DSB). In fact, the DSB serves as the discipline mechanism within the multilateral trading system. The DSB is empowered to impose fines, restrictions and trade sanctions, require domestic laws to be changed and regulations and to formulate WTO compliant rules. The WTO would administer and enforce global trade rules brought by countries on behalf of their respective corporations. The WTO dispute mechanisms over the years have acquired judicial, legislative and executive powers. Essentially, the WTO would discipline violators of corporate rights (to investments) made legal through GATS. In this sense, corporate rights are legally protected by the WTO.

In this regard, local parliaments and legislature would be potentially reduced to powerless institutions. Elected representative role in charting the future of their nations would essentially be an exercise in futility. In fact, the WTO dispute mechanism would effectively have veto power over parliaments and government policies, administrative actions, regulations and rule. The use of multilateral trade rules in undermining elected legislatures and controlling government policy making constitutes economic colonization of nation states.

Reducing the regulatory power of the state has implications for democracy and development. The GATS commitment might further politically marginalize the poor, a reality strengthened by existing anti-poor economic state policies. Elections, the right to assembly and free speech, and the rights of the opposition are necessary for a democracy but not sufficient for meaningful popular political participation. This is because the poor do not have the same political access and economic power as the rich to dominate the political discourse of the state nor influence the quality or determine the rules in which to undertake the democratic dialogue. Economic disparity undermines the development of a meaningful democracy. GATS rules requiring the weakening of the regulatory state will further reduce the political bargaining position of the poor and ensure the wealthy monopolize democracy.



THE GOVERNMENT-CORPORATE MIX: THE 'VISIBLE HAND' OF THE EU

To understand the complexity underlying GATS requires unravelling of various motivations, interests and forces in play. The European Commission's GATS agenda intends that "GATS is not just something that exists between governments. It is first and foremost an instrument for the benefit of business."[56] Leon Brittan, the former European Commission's Vice-President outlines the EC's GATS work program. He suggested that "the aim [of GATS 2000 negotiations] must be... to conclude an ambitious package of additional liberalization in developing as well as developed countries, in politically difficult as well as in other sectors."[57] In 1998, at the behest of the EU, the European Services Forum[58] (ESF) was established to advise the EU on policies involving trade in services. Specifically, the ESF provided expert "advice [to] EU negotiators on the key barriers and countries on which they should focus" and to ensure "that the EU's policy corresponds to the real export and economic growth interests of our service industries."[59] There is deliberate government-corporate relationship that involves planning and strategizing to acquire new markets. In this relationship, European corporate interests lie at the heart of European trade policy.

In the United States, a similar 'shared vision' relationship exists between the US government and the United States Coalition of Services Industries (USCSI).[60] The relationship identifies the role of the state in promoting business interests. USCSI Chairman Robert Vastine indicates that the relationship is an "extraordinary

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56 European Commission, "Opening World Markets for Services," 1998, *http://gats-info.eu.int/gats-info/g2000.pl?NEWS=bbb*. Cited in Erik Wessilius, *Behind GATS 2000: Corporate Power at Work*, TNI Briefing Series, Transnational Institute, *www.tni.org/issues/wto*

57 "Opening World Markets for Services: Towards GATS 2000," *http://GATS-info.eu.int/GATS-info/g2000.pl? NEWS=aaa*, 1 Nov. 2000. Quoted in Sarah Sexton, op. cit.

58 The ESF aims to "support and encourage the movement to liberalize service sector markets throughout the world and to remove trade and investment barriers for the European services sector." The ESF believes that "foreign investors should have the same access to domestic markets as domestic companies" and that barriers, such as nationality or residency requirements, should not apply to the posting of key personnel. European Services Forum, *www.esf.be/*

59 Ibid.

60 The USCSI is a 67-member lobby organization whose top 12 members combined revenue was about US$ 700 billion in 2000. The USCSI "played an aggressive advocacy role in writing the General Agreement on Trade in Services." The objective of all government regulation, according to USCSI, should simply be to promote fair competition. In 1998, USCSI set up a working group to prepare for the GATS negotiation which "has continued to work with the WTO, the US Trade Representative, Congress, the diplomatic community in Washington, and international organizations, to influence the current services negotiations." Quoted in Sarah Sexton, op. cit.

example of government/industry co-operation that should serve as a benchmark for the rest of the world."[61] The Deputy Secretary of the Department of Commerce, Samuel Bodman, suggests that "the Secretary and I see our role and the mission of the Commerce Department as being the advocate for the American business community."[62]

It was the US services corporations who were largely responsible for getting on board the EU including Canada and Japan to push for GATS liberalization. The USCSI essentially told these wealthy governments that GATS liberalization could lead to greater investments, business opportunities and profits for their respective services corporations and that they should stop protecting their public sectors. This point was echoed in a speech by the EU Trade Commissioner, Pascal Lamy, who suggested, "if we want to improve our own access to foreign markets, then we can't keep our protected areas out of the sunlight. We have to be open about negotiating them all if we are going to have the material for a big deal."[63] There appears to be a fundamental shift in the position of the EC, one moving away from protecting local services to embracing market access in other countries. It is a trade-off that will involve short-term sacrifices but long-term benefits through the availably of larger markets and profits.

In the current round of negotiations, the US, EU, Japan and Canada are pushing for greater market access, reclassifying services to get around countries reluctance to open up services to foreign competition, introduce new across-the-board rules and regulations in which services are supplied and place new constraints on domestic regulation.[64] Placing constraints involves reform of domestic regulation. Specifically, a necessity test is being introduced to access the level of trade restriction of a particular measure such as licensing or technical standards.[65] Also, national laws and

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[61] Robert J. Vastine, "Introductory Remarks," Services 2002 Conference, 5 Feb. 2002, *www.uscsi.org/meetings/services2002/flyer.pdf*. Cited in Erik Wessilius, *Behind GATS 2000: Corporate Power at Work*, TNI Briefing Series, Transnational Institute, www.tni.org/issues/wto

[62] Samuel Bodman, "Remarks," *Services 2002 Conference*, 5 Feb. 2002, *www.usci.org/meetings/services2002/bodman.pdf*. Cited in Erik Wessilius, ibid.

[63] Speech to the US Council for International Business, New York, 8 June 2000, *http://europa.eu.int/comm/trade/speeches_articles/spla23_en.htm*, quoted in Sarah Sexton, op. cit.

[64] Sarah Sexton, op. cit.

[65] Reform of the national regulation requires the 'necessity' test. This test would access the level of trade effectiveness, e.g., of technical specifications or standards. In case of a dispute, the test has to fulfil 'legitimate objective.' The WTO Dispute Body will determine the notion of 'legitimate.' GATS rules want to ensure that technical standards do not serve as barriers to trade. Article VI.4 stipulates that barriers should not be 'more burdensome than necessary.' In case of a dispute, the WTO Dispute Body would have to make a determination of what constitutes 'more burdensome than necessary.' Again, in both these cases, the WTO would directly interfere with the affairs of developing countries.

regulations will have to be changed if it is in line with the notion of 'more burdensome than necessary to business.'

It comes as no surprise that the agenda of the developed countries are identical to the demands of big business in the services sector. Vastine outlines the services industries' GATS concerns: a) countries have specified very few services to be opened up to GATS liberalization; b) the new negotiations must secure commitments to national treatment, market access, and cross border services in as many sectors as possible; c) the new negotiations must propose broad commitments to liberalization in areas such as the *right* to establish a business presence in foreign markets (commercial presence), the *right* to own all or a majority share of that business, and the *right* to be treated as a local business (national treatment).[66]

A similar shared vision exists between the EU and water corporations. The vision was put together in a series of private meetings and consultations between water corporations and the EC. The shared vision involves the EU developing the ideological, legal and financial infrastructure in realizing market access in the water sectors of countries, subsidy for water corporations, political pressure on developing nations to liberalize water services as part of GATS undertaking, reclassification of environmental services in the GATS discipline and adopting a pro-privatisation or private-public partnership as the efficient form of organizing water resources in the interests of European water corporations. The vision is to be packaged and promoted as a sustainable development effort, one that promises a development agenda for the poor.

In fact, it is suggested that the GATS regime that ensures predictability for multinationals can play a critical role in realizing the Millennium Development Goal aims in providing the poor access to clean water by 2015.

The EU and European governments organize support for their water corporations in a variety of ways. The French government was crucial in lobbying for the Suez and Vivendi bid for Buenos Aires privatisation project. In fact the "Embassy of France was hyperactive throughout the concession process... Every week it invited [Argentinean] political leaders to lunch attended by French ministers."[67] In addition, EU development aid is used to subsidise its water corporations. The EU is using the

[66] Robert J. Vastine, statement before the Interagency Trade Policy Staff Committee, 19 May 1999, *www.uscsi.org*, 25 Oct. 2000. Quoted in Sarah Sexton, op. cit.

[67] "Cashing in on Buenos Aires' Privatisation," *The Water Barons: How a Few Powerful Companies Are Privatizing Your Water*, Washington DC, The Center for Public Integrity, 2003, p 46.

current round of the GATS negotiations to force liberalize the water sectors of other countries for the purposes of market expansion of its corporations. The EU and water corporations work together with the WTO to force countries to open their water services to free-market dictates.

The International Consortium of Investigative Journalists (ICIJ) reveals that the EC trade officials work with European water companies RWE-Thames, Suez and Vivendi to demand the removal of trade barriers with the WTO. In fact, the ICIJ reveals the contents of a 2002 letter from an EU trade official thanking EU water corporations for "their contributions towards negotiations to reduce trade barriers in water and wastewater services with a view to opening these markets to European companies."[68]

The European Commission consults water corporations on its problems and concerns in framing its GATS negotiating efforts and strategies. Specifically, the EC attempts to resolve obstacles and problems faced by its water corporations through its GATS efforts, for example in the area of market access.[69] In this way, the EC ensures that barriers to entry in other countries are removed and thus paves the way for European water corporations to expand its market share and profitability in the water sector. Central to the EC's strategy is an effort to ensure that its water corporations concerns and investments rights are permanently protected under GATS discipline, given that its water corporations need to maintain its market leadership in the water sector and GATS undertakings are irreversible.

Thus, the EC uses the GATS discipline as the basis of organizing its commercial relationship with other countries in pursuing its water corporation's interests and investment rights.

At present there is no agreed upon definition of what constitutes Environmental Services[70] at the WTO. It is suggested that the existing definition is rather narrow and does not reflect market reality. In the present

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[68] "Cholera and the Age of the Water Barons," *The Water Barons: How a Few Powerful Companies Are Privatizing Your Water,* International Consortium of Investigative Journalists, The Center for Public Integrity, Washington DC, Public Integrity Books, p 9.

[69] "One of the main objectives of the EU in the new round of negotiations is to achieve real and meaningful market access for European services providers ... Therefore we very much appreciate your input in order to sufficiently focus our negotiating efforts in the area of environmental services." Cited in "WTO and Water: the EU's Crusade for Corporate Expansion," Corporate Europe Observatory, *Water Justice Info Brief*, 3 Mar. 2003.

[70] At present, environmental services involves sewage services; refuse disposable services, sanitation and similar services, cleaning of exhaust gases, noise abatement services, and nature and landscape protection services. These services draw on the 1991 document called the W 120, which refers to a United Nations Central Product Classification.

round, the EC proposed a new classification that includes, *inter-alia*, water for human use and wastewater management, solid waste, and protection of bio-diversity. The proposal marks a significant posturing on the part of the EC in representing the interests of its water corporations. It would bring water distribution services within the GATS rubric. The new classification would open up the drinking water sector to competition, an area that offers enormous business opportunities to European corporations.

The EU, as part of the GATS Requests-Offer process, has requested opening up of various sectors in 109 countries. The EU is seeking to liberalize water distribution services in 72 countries. It is scandalous that the EC is targeting the water distribution sector of some of the world's poorest nations, including 14 of the 41 Least Developed Countries (LDCs).[71] Essentially, the EU is paving the way for its water corporations to acquire greater market access to countries in the South, further deregulation of services already in private hands but publicly regulated and lucrative markets in the developed countries. This would involve countries adopting full market access, national treatment and removing 'more burdensome than necessary' requirements and other GATS rules. Embracing GATS discipline would mean that countries would come under WTO legal and judicial supervision, an issue that has ramifications for autonomous policymaking and democratic governance in these nations. The universal access to water could be challenged under the GATS regulations. Also regulations on 'restrictions on fee-setting' would violate GATS disciplines. Here, the state will no longer be in a position to determine prices or demand socially responsible pricing systems to cater for the needs of the poor.[72]

The EU requests targets countries in which water distribution is organized on an alternative and participatory model of water management. The Municipal Department of Water and Sanitation Services (DMAE) in Porto Alegre, Brazil, practices participatory management systems where the local community is central to the decision making in areas of pricing, planning and management and local governance participatory budgeting processes.

[71] "WTO and Water: the EU's Crusade for Corporate Expansion," ibid.

[72] Ibid.

In fact, Porto Alegre participatory budgeting process is an UN-cited model in local governance. DMAE is a not-for-profit company and is financially independent of the municipal government.

The city of Porto Alegre has successfully improved water coverage to 99.5 percent of its citizens and reduced infant mortality to 13.8 deaths per thousand births compared to a national average of 65. The price of water in the city is one of the lowest in Brazil. Furthermore, the city's non-revenue water has decreased from 50 percent in 1991 to about 34 percent in 2001. DMAE is a good example of a municipality undertaking that is organized around transparency, accountability and public participation, a combination that has achieved efficiency and outstanding performance.[73] The achievements of DMAE are far more impressive compared to the accomplishments of privatised water corporations.

Embracing GATS commitments such as market access rules would effectively prohibit stipulating the legal form of operators. The non-profit nature of cooperatives is a specified legal form and would violate GATS Article XVI.2 (e).[74] GATS disciplines might find the participatory character of DMAE or the not-for-profit water supply system in violation of its rules on the basis of a barrier to market access and discrimination against the foreign water corporation.[75] For the EU and water corporations, GATS serves as an international legal instrument of neo-colonial control, one that is organized to serve the interests of the dominant water corporations.

Imposing GATS discipline in the Brazilian water sector would not make 'development' sense. The DMAE model has been successful in meeting the needs of the people, especially the poor. It is economically viable and in fact, a profitable model worth emulating. The EU's efforts will undermine successful and alternative arrangements in water management.

[73] *Water in Porto Alegre, Brazil: Accountable, Effective, Sustainable and Democratic*, a joint report of PSIRU, University of Greenwich, and staff of DMAE, and jointly published by DMAE and Public Services International, 2003.

[74] Clare Joy & Peter Hardstaff, "Whose Development Agenda: An Analysis of the European Union's GATS Requests of Developing Countries, *World Development Report*, UK, 2003, p 24.

[75] "WTO and Water: the EU's Crusade for Corporate Expansion," op. cit.

But more importantly, embracing GATS will eliminate non-market-based solutions in the area of water distribution.[76] Put differently, once a country accepts GATS disciplines, water resources will have to be organized to make profits and it is irreversible, thus privatisation efforts cannot be reversed. Undermining alternative models of water management will contradict the European Parliament's Committee for Development draft resolution on water management in developing countries. The draft resolution stressed the need for the EU to support "innovative, participatory and democratic systems of public water."[77]

By undermining a highly efficient and effective model of water management and wanting to bring the Brazilian water sector under the GATS discipline exposes EU's own agenda. It aims to ensure as much market access and serves the interests of its water corporations. The EU is invariably doing the bidding for Vivendi, Suez and RWE in the global conquest of water resources and water trade.[78] The EU priority was never poverty reduction or a development agenda for the poor.

In 2003, the EU launched a French government-sponsored EU Water Fund. The Fund, worth Euros 1 billion, aimed at providing financing for safe drinking water and adequate sanitation in 77 African, Caribbean and Pacific (ACP) countries. Most of these countries are poor and are former colonies of the EU member states. Many of the ACP countries are in various stages of planning and implementing private-public partnerships and the EU Water Fund will provide the necessary financial support. The Fund is to be administered by the IMF and World Bank. The ACP countries will be subjected to Bretton Woods Institutions conditionality and lending policies, including de-regulating their water sector, and pushed to accept GATS disciplines.

The EU Water Fund appears to be echoing the 'Camdessus Report,' which called for public funding and

[76] Clare Joy & Peter Hardstaff, op. cit., p 25.

[77] *Update on European Parliament Resolution*, 15 July 2003.

[78] Lawrence Summers, former World Bank economist and Deputy Secretary of Treasury under President Clinton, indicated that "global trade policy should be to 'lock-in' gains and ensure viable investment opportunities for OECD countries." Graham Dunkley, *The Free Trade Adventure: The WTO, the Uruguay Round and Globalism*, London, Zed Books, 2000.

development aid to subsidize private sector investments in water. At the heart of the Report is an initiative to use public money to protect water corporations against risk. The notion of risk is defined as the inability of the poor to pay for increased water rates. Essentially, the Report proposes a franchising model for global water corporations in order to bolster private enterprise.[79] The Report should be appropriately re-titled 'Financing for Water Corporations.'

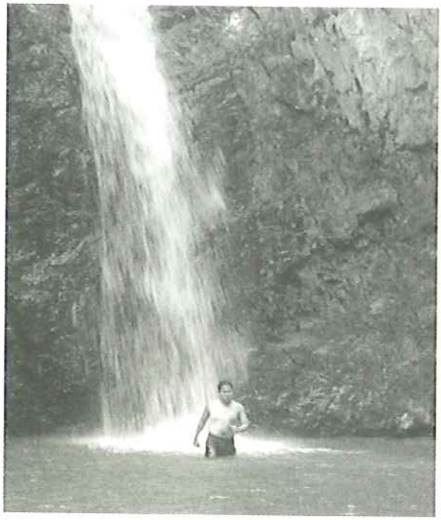
During their annual meeting in Evian, France, the Group of 8 wealthy nations (G8) put forward the Global Water Plan. The Plan stipulates either an independent private sector involvement or in partnership with the state in the water sector. The commitment of these two (EU and G8) most important groupings to public-private partnership is significant. Collectively, they are the largest development aid donors to the underdeveloped and developing world. Furthermore, they provide the ideological and policy 'signal' for multilateral trade and business institutions to follow its respective economic policies and lending arrangements.

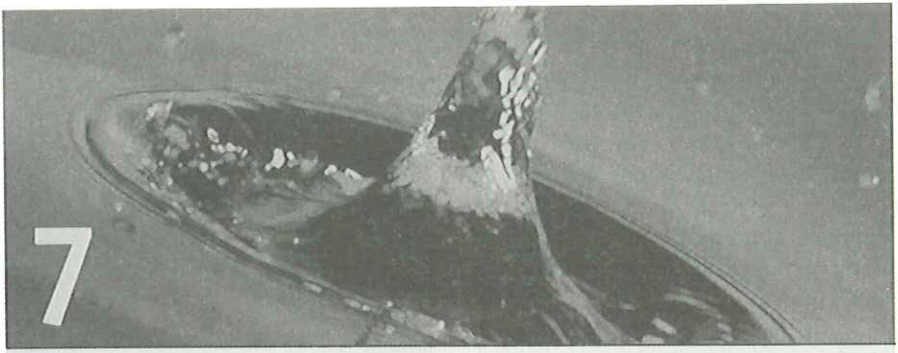
In the view of the neo-liberal multilateral institutions, the EU and G8 pro-free market polices are efficient methods to resolve poverty and realize the MDG. Central to this proposition is the reduction of government regulation and intervention in the marketplace. Thus, privatising water services, health care, education, electricity, and other essential services is perceived as one among many strategies to reduce by half the number of people living in poverty by 2015. But one cannot help but wonder whether there is an agenda for corporate control and profits behind the billions spent on poverty reduction and the compassionate-sounding pro-market policies. In fact, free market-centred globalisation has brought about a race to the bottom and has caused more uncertainty and poverty in the developing world.

It is worth noting that the poor and poverty reduction strategies have become critical to corporate strategies of big business. In the name of 'Development Agenda' or MDG, corporations with the support of their governments seek market access, privatisation of profitable essential services and acquisition of poor countries' resources. In fact, in the pretext of poverty reduction, multilateral trade agreements are institutionalising corporate rights in order to legally secure investments of big business. More importantly, beneath the privatisation exercise is an effort to restructure public services in the interests of private capital.

79 "Groups Will Use Japan Conference to Advocate an Alternate Vision for Resolving Global Water Crisis," The International Network of Citizens Groups Oppose Global Water Privatization Plans at Upcoming World Water Forum, Press Statement, 10 Mar. 2003.

It is time to move away from poverty eradication approaches that have proven to exacerbate poverty and embrace strategies where growth and wealth of nations are equitably shared, as an effective and sustainable solution to resolving poverty. This would require that economic development be organized democratically or democratic economic development be embraced as the cornerstone in which to restructure the economy. Central to the realization of such a process is the political participation of people in ensuring political control over their economic affairs.





7

'Visible Hands': IMF-WB-WTO Nexus and the International Water Lobby

The Bretton Woods Institutions actively advocate commodification and privatisation of water resources for profits. Both IMF and WB push privatisation policies and market-based solutions as a strategy to create jobs, spur economic growth and reduction of poverty in the developing world.

Water privatisation is one of the many conditions that determine the extent of loans under WB's Country Assistance Strategy (CAS), a project undertaken in collaboration with the International Finance Corporation (IFC).[80] In fact, not only does WB nudge developing countries to privatise water resources but more importantly, the Bank loan funds, syndicates loans and invests directly in corporations undertaking business in developing countries.[81] However, private investments in the water sector are subject to governments undertaking reforms in their respective legal, regulatory and institutional structures.

The WB promotes water corporations' expansion and control of water resources in the developing world. The International Consortium of Investigative Journalists (ICIJ) investigation shows that the Bretton Woods Institutions, working together with international financial institutions, makes possible the increasing control of water resources by water corporations in the developing world. The investigation reveals that countries such as South Africa, Argentina, Philippines and Indonesia were advised to privatise their utility sector including water services as part of loan conditionality and organizing

[80] The IFC is the private sector lending arm of the World Bank.

[81] By investing their own money or making loans without state guarantees, the World Bank and the IFC "seek to assure private sector investors – both national and international – that investments in developing nation markets are worthy risk. In this manner, the IFC says it is catalysing much greater private sector investment in frontier areas – developing countries and sectors that might otherwise be overlooked were it not involved."

resources along free-market principles.[82] The ICIJ report reveals that in the case of South Africa, lobbying by water corporations and advice from WB was central to persuading local councils to privatise their water resources. Furthermore, major privatisation of water resources in Buenos Aires, Manila and Jakarta saw WB flexing its financial muscle to force governments of these countries to give long-term water works concessions to major water corporations.

Total WB lending approved in the last 12 years (1990-2002) for water supply and sanitation was US$ 19.3 billion.[83] The ICIJ, a project of the Center for Public Integrity, indicates that 30 percent of the of 275 water supply loans provided by WB between 1990 to 2002 required privatisation, especially in the last five years.[84]

The IMF-WB-WTO nexus serves to create an enabling environment for water corporations, vis-à-vis creating a profitable investment environment in developing countries. The IMF-WB-WTO nexus initiatives are coordinated and realized through a mechanism called the 'Integrated Framework.' Specifically, through this Framework, "GATS... regulatory and legal reforms needed to improve investment climates are proposed as policy advice or imposed on governments through IMF or WB loan conditions." [1] The handmaiden role of the IMF-WB–WTO is designed to minimize investment risks and guarantee profits for water corporations in developing countries.

'Visible Hands' or what is called 'partnership organizations' in WB's lexicon, orchestrate the transfer of the public sector control of water services into private hands. The *Visible Hands* argue that water is an economic good that should be privatised for efficient distribution of water services for profit. The *Visible Hands* are an integrated network of international multilateral agencies, industry and political lobby groups, financial institutions, think-tanks, professional bodies and industry captains represented in global water agencies.[85] The *Visible Hands* forge a formidable political presence, combined with corporate-government relationships through which they acquire considerable capacity to pressure developing countries and influence their own national governments in terms of economic decision-making, legislations and awarding of contracts.

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[82] "Cholera and the Age of the Water Barons," *The Water Barons: How Few Powerful Companies Are Privatizing Your Water*, Public Integrity Books, 2003, p 3.

[83] "Water Supply and Sanitation," *World Bank Brief*, Oct. 2002.

[84] "Cholera and the Age of the Water Barons," *The Water Barons: How Few Powerful Companies Are Privatizing Your Water*, Public Integrity Books, 2003, p 6.

[85] Rene Coulomb, former director of Suez Lyonnaise des Eaux, is the vice- president of the World Water Council and an influential member of the steering committee of the Global Water Partnership. Jerome Monod, chair of Suez's supervisory board, is a member of the World Commission of Water (WCW).

The purpose of *Visible Hands* is to create an enabling environment: an institutional infrastructure at the country level, including embracing of uniform global rules, and political and social legitimacy for water commodification; privatisation of the world's water resources and services for profit; and the notion that water is an economic good. The *Visible Hands* efforts are supported by WB, which dictates reforms in the legal, regulatory and institutional structures of countries.[86] The WB promotes these reforms through its loan conditionality, besides requiring countries to privatise their water resources.[87]

The *Visible Hands* agenda coincides with the demands of water corporations. Speaking at a Multi-Stakeholder Dialogue, on behalf of business and industry, the representative of the water corporation, Alain Mathys, indicated five points to solve the water problem, i.e., scarcity: a) creating an enabling environment; b) a regulatory framework; c) removing water barriers; d) fostering partnerships; and e) valuing water. Mathys said that the issue was not the merits of public versus private provision of water services, but the efficient and inefficient[88] provision of services.

In addition, various international water industry lobby groups promote the privatisation of water resources and influence policy decision making of the international financial institutions and nations. The global water industry lobby includes the Global Water Partnership (GWP), which was established in 1996. The GWP promotes the privatisation of water services and is funded by government aid agencies and international

[86] The legal, regulatory and institutional reforms include: "a) definition and establishment of water rights and licenses; b) legal and regulatory reform granting private sector operators equal treatment as public providers; c) separation of regulatory and operator functions; d) development of an independent and autonomous regulatory function; e) establishment of tariff structures based on full cost recovery and automatic adjustment with the rate of inflation; f) decentralization of rural water services from national to local government control; g) 'unbundling' or separation of profitable and unprofitable sectors of the water service." Sara Grusky, "The IMF, the World Bank and the Global Water Companies: A Shared Agenda," *www.citizen.org/documents/sharedagenda.pdf*, Jan. 2003

[87] Ibid. It has been suggested that of the 40 IMF loans approved in 2000, 12 loan agreements had water privatisation requirements.

[88] Danielle Morley, ed., Multi Stakeholder Dialogue: Equitable Access & Sustainable Supply of Water for the Poor, Stakeholder Forum for Our Common Future and International Conference on Freshwater, Bonn, 2001, p 4.

financial institutions like WB and Ford Foundation. The GWP's Advisory Board includes representatives of WB and Suez Lyonnaise des Eaux.

The World Water Council (WWC) established in 1996 by the UN and WB is a leading water policy think-tank. One of its founding members is Rene Coulomb, a former Suez vice-president. Its members include some of the big corporations in the water industry. They include Aguas de Barcolena, Mitsubishi, and Suez.

The former IMF managing director, Michel Camdessus, heads the panel of distinguished financial experts of the WWC. Influential individuals in strategic positions in international bodies with a penchant for privatisation run the WWC. They include Jerome Monad (former CEO), Enrique Iglesias (President, Inter-American Development Bank) and Mohamed T. El-Ashry (CEO, WB/UN Global Environment Facility). The WWC chairperson is WB Vice President Ismail Sergeldin. The curious collection of powerful individuals in the WWC explains the agenda-setting character of the WWC.

The WWC, a supposedly independent think tank, is committed to supporting pro-market policies and promotes private-public partnership to resolve water woes in the world. The WWC is the organizer of the World Water Forum (WWF), a key water conference that sets the agenda for both the private sector and governments on water issues. The World Water Forum also involves a ministerial meeting, at the end of which a joint ministerial statement is issued. It is an irony that a ministerial meeting takes place in the WWF. What is the legal basis of this Forum, given that the WWC is an independent think tank, an NGO? But clearly this indicates the political influence of the WWC.

The World Commission on Water (WCW) is co-sponsored by WB, the governments of Canada and Netherlands and various UN agencies, with a mandate related to water. It is suggested that the WCW, given its direct links to the GWP and WWC, promotes the privatisation of water.[89]

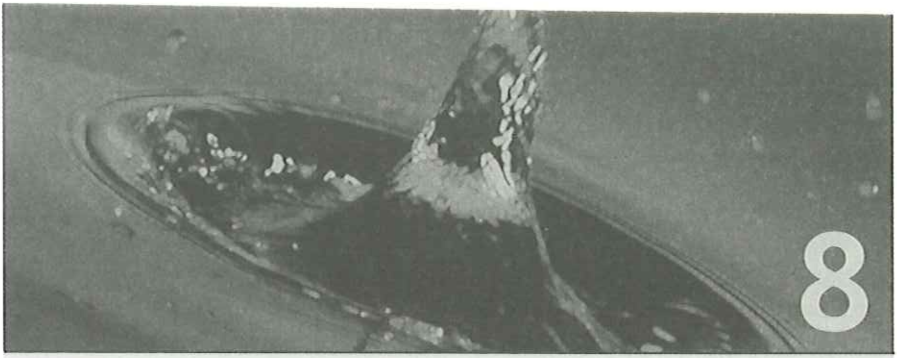
The supposedly neutral international water agencies – GWP and WWC – posit water corporations as partners of development by pushing the rhetoric of environmental sustainability, local participation, gender, poverty reduction and job creation, while promoting water as an economic good and arguing that it should be valued on market principles and that water resources of nations should be privatised.

In March 2000 at the Hague, the WWF "clearly proposed the commercialisation of water through a worldwide private oligopoly," according to Ricardo Petrella, a leading researcher on the privatisation of water. He further suggests that

[89] Gil Yaron, op. cit., p 31-34.

"during the 1990s, an international general staff on water was established around the WWC, in which the private multinational enterprises belonging to this oligopoly are represented... This means that the international committee that studies the global problem of water is at the same time partially controlled by the companies that would eventually profit from the solutions the committee proposes."[90] At the Hague Forum, access to water was defined as a universal need, as opposed to a fundamental human right, in order to provide corporations a commercial basis to their acquisitive behaviour.

[90] Julio Godoy, "French Firms Spearhead Water Privatisation," *Inter Press Service*, 22 Mar. 2002.



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Water MNCs Foray into Asia: Some Further Observations

Various tendencies emerge as water corporations venture into the Asian water services market. First, these corporations provide water services to countries with high water stress and water scarcity amidst an expanding population, such as India, China and Bangladesh. Both China and India with their huge population, rapidly growing cities, and an expanding middle class are favourite investment centres for water corporations. China's urban population is expected to grow by 150 million in the next ten years. The ADB estimates that by 2020, fifty percent of the region's population would live in urban centres. Thus, water corporations view an urban population increase and the desire for better living standards amidst water scarcity as a business opportunity.

Second, a significant number of Asian water investments are funded by the ADB and WB. Countries receiving loans from either of these financial institutions must undertake water sector reforms as a prerequisite for investments. These reforms, as in the case of China, include full cost recovery and the elimination of subsidies. South Korea had to change its laws in order to allow foreign direct investments into the country's water sector. The Philippines and Indonesia were forced to tender long-term water works concessions to the major private companies. In Indonesia, WB is pushing for the parliamentary ratification of Water Resources Sector Adjustment Loan (WATSAL), which is part of the Bank's structural adjustment program. The program involves a loan of US$ 300 million in exchange for pro-market reforms, including public-private partnerships and allowing foreign cooperation to invest in the water sector.

Third, water corporations rival domestic companies for market share, as in the case of the package mineral water industry in India. In fact, these companies rapidly expand their market share and presence rapidly by merging with and acquiring local companies, including technologies and licensing.

Fourth, water corporations enter into agreement with governments in order to win contracts at all costs. Once 'locked in', these companies are in a stronger position to negotiate for better prices when their investments begin to show lower returns as in the case of Mayniland Water Services Inc. in the Philippines. Also, contractual obligations, lack of transparency and corruption in awarding of contracts, government-business relationships and cronyism compromise government ability to intervene in the interest of the people.

Fifth, the investment activities of water companies are in the areas of designing, construction, co-financing, managing and operating water systems, including purification, diversion, desalination and packaging of mineral water, but not in conservation activities. Essentially, water corporations convert existing scarce freshwater resources from a social good to a commercial product. Profitability depends on higher water consumption, rather then water conservation. Contrary to industry claims, privatisation of water services is antithetical to sustainable resource management.[91]

Sixth, water corporations supposedly promoting sustainable resource management contribute to destroying water security in various regions of the world. Vivendi's Onyx, the Indian waste management unit, collects 1000 tons of garbage daily in the city of Chennai, South India, and dumps it around the freshwater wetlands of Pallikarani, considered to be one of the most important freshwater eco-systems in the city area.[92] This reality is "depressing, especially because the same players entrusted with improving the hygiene and sanitation in the city also stand accused of degrading a large and critical freshwater wetland in the city."[93]

Seventh, privatisation of water services requires large scale project financing, which disadvantages local companies. This is because big businesses have the capacity, manpower and financial resources and the networking to develop and secure these projects. The WB appears to favour funding large multi-utility service providers. Corporations such as Vivendi, with diversified businesses in construction, energy, waste management, and water distribution, are better positioned to undertake large projects.

It is suggested that water corporations invest relatively minimal amounts of their own funds, but depend primarily on loans from WB and other international financial institutions for

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[91] Gil Yaron, op. cit., p 3.

[92] Corpwatch India reports that "Tamil Nadu Pollution Control Board served a notice to Onyx for 'dumping indiscriminately on wetlands'... As a multinational company, they should know better than to dump waste in such sensitive areas." Cited in Nityanad Jayaraman, "Trashing Water Is Good Business For Water," *Corpwatch India*, 25 Mar. 2002

[93] Ibid.

repairing, maintenance or expansion of water systems.[94] Essentially, investments by water corporations are subsidized by international financial institutions. Taken together, these factors invariably give big business an in-built advantage by taking over the water resources of developing and less developed nations.

Global water corporation investments in Asia include:

IN CHINA:

- In March 2001, Vivendi secured a US$ 20 million, 20-year contract to operate and renovate a water plant in Tianjin, China. In December the ADB extended a US$ 130 million loan to support the construction of the plant. The ADB loan conditions included a) full cost recovery; b) elimination of subsidies; c) restructuring of sewer and raw water supply firms into commercially viable enterprises.[95]
- In 2002, both Suez and Vivendi signed long-term deals, some for up to 50 years, to manage municipal water systems in China, which faces huge water shortages.
- In March 2002, Ondeo, Suez's water division, was given a 50-year contract worth Euros 600 million to design, finance, and manage water treatment installations and services for the Shanghai Industrial Park's wastes.
- The ADB assisted the Chinese government to help design the full cost pricing or recovery system to be implemented in various parts of the country. ADB invested US$ 1.5 million in designing the full cost pricing or recovery system.[96]
- Vivendi's Generale des Eaux and Marubeni Waterworks Company Limited are involved in bulk water schemes in Chengdu, China, with 'take or pay' contracts that ensure profits by requiring consumption regardless of need. The European Investment Bank loaned US$ 26.5 million and the ADB lent US$ 48 million towards financing the projects.
- The Ministry of Water Resources puts the cost of water and sanitation-related infrastructure at US$ 26 billion by 2005. China is expected to be the world's biggest market for water and sanitation-related investment.
- Suez signed three contracts worth more than Euros 1 billion in China in 2002. In May 2003, the company won a 25-year contract to supply drinking

[94] "Cholera and the Age of the Water Barons," *The Water Barons: How Few Powerful Companies Are Privatizing Your Water*, Public Integrity Books, 2003, p 6.

[95] "ADB funds water investments programme of China's fourth largest city," *PSIRU Database*, University of Greenwich, London.

[96] Ma Michael, "China Urged to Bring In Major Water Reforms," *South China Morning Post*, 6 Apr. 2002.

water to 2.3 million residents in Eastern Qingdao, and contracts to rebuild two Shanghai plants.

IN INDIA:

- New Delhi's water supply is being privatised to Vivendi.
- In 2000, Vivendi secured a US$ 7.2 million drinking water management in the city of Calcutta, according to the Global Water Report.
- In September 2000, Vivendi Water and Northumbrian Water Group (NLI) were offered a contract by the Bangalore Water Supply and Sewerage Board (BWSSB) to manage water services in two pilot projects catering to one million people each. The BWSSB would consider a 30-year contract to both these water corporations if the pilot projects prove successful. The privatisation of water services is part of BWSSB's efforts to privatise the entire water supply in the city under the AUS-AID programme, with the assistance of the Australian government.[97]
- Degremont, a subsidiary of Suez, is undertaking a design-build-and-operate drinking water facility in Sonia Vihar, New Delhi. The contract is worth Euros 50 million. The plant is expected to provide water services to 3 million people in New Delhi.[98] The water for the Suez-Degremont plant in New Delhi will come from the Tehri Dam. Farmers have protested the loss in water for farming.
- Coca-Cola, Pepsi, Nestle and Danone are vying for the Indian packaged mineral water market worth between Rupees 8 - 10 billion. Coke's Kinley entered the market in 1993 and has since secured 30 percent of the market through buyouts and exclusive licensing deals. Kinley is being manufactured in 15 bottling plants across India. Pepsi's Aquafina has control of 11 percent of the market since its launch two years ago.[99]
- Thirty cities in the states of Maharashtra, Karnataka, Andhra Pradesh, Tamil Nadu and Rajasthan are preparing for privatisation of their respective municipal water supply systems.[100]
- Monsanto, a chemical and agricultural corporation, is acquiring water resources and related technology through joint ventures and equity in various companies in India. The company expects to earn

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97 Bhavanshi Ramakrishna, "Water Supply to Go Private in Bangalore, India," *www.timesofindia,com/110401/11mban1.htm*

98 "World Water and Environmental Engineering," Business News, Vol. 24 Issue 1, Jan/Feb 2001. Right to Water Database.

99 Anjali Kamat, "Water Profiteers," *Corpwatch India*, 28 May 2002.

100 Sudhirendar Sharma, "Water Markets Exclude the Poor," The Hindu Business Line, Chennai/New Delhi, 23 Aug. 2002.

revenues of US$ 420 million and a net income of US$ 63 million by 2008 from its water businesses in India and Mexico.

- Vivendi's Onyx, which specializes in waste management, was awarded the contract to manage garbage and street litter in Chennai, a major port city in South India. The company is paid US$ 13,700 a day to collect and dispose of garbage in three key areas in the city. Its sister organization, Vivendi Water, was given the contract to manage the water services in the city.

IN SOUTH KOREA:

- Vivendi Water Korea, a subsidiary of Vivendi Environment, was established in 2000, and acquired the industrial water treatment facilities of Hyundai Petrochemicals for US$ 125 billion, located in the Daesan Industrial Complex, South Chungchong Province.
- In March 2001, Vivendi Water Korea established Vivendi Industrial Development by acquiring industrial water and wastewater treatment facilities at the Hynix complex in Incheon. The contract with Incheon municipality provided for the construction and 20-year operation of two wastewater treatment plants in partnership with Samsung Engineering.
- In March 2001, Vivendi secured a contract with the state of Chilgok for the operation of two existing wastewater treatment plants over a 23-year period, and the design, financing, and construction of a new plant. This project would be in partnership with Hyundai Construction.
- Both the Incheon and Chilgok projects were made possible after the introduction of legislation to attract foreign direct investment in the wastewater sector in South Korea. Revenues from the two contracts are estimated to be over Euros 20 million annually.[101]
- In January 2002, Ondeo signed a build-operate-and-transfer wastewater contract worth Euros 200 million in Yangju, an urban city located outside of Seoul.[102]
- In April 2001, the city of Pusan contracted Ondeo to manage its wastewater management.

THE PHILIPPINES:

- In 1997, WB arranged the privatisation of water services in Manila. The contracts were awarded to Mayniland Water Services Inc. (MWSI) and Manila Water. MWSI is owned by the wealthy Lopez family's Benpres Holdings, and partly owned

[101] "Vivendi Gets Two Wastewater Contracts in South Korea," PSIRU Database, University of Greenwich, London, 1 Mar. 2001.

[102] "Suez – Corporate Profile," *www.polarisinstitute.org/corporatefiles_files*

by Ondeo, a subsidiary of Suez Lyonnaise des Eaux. Manila Water is owned by the Ayala family, and backed by Bechtel.[103]

- In 2001, Ondeo paid 11 French consultants Pesos 168 million, of which 110 million was for consultancy services. These consultants were taxed at a rate of 5 percent as compared to the standard 10 percent.[104]
- Vivendi Water Philippines' 25-year build-operate-transfer (BOT) proposal to develop and operate water systems in Roxas City has been put on hold by the local Region IV Development Council. The Council indicated that Vivendi's proposal was not clear whether the loans of the Metro Roxas Water District would be assumed by the global water corporation.

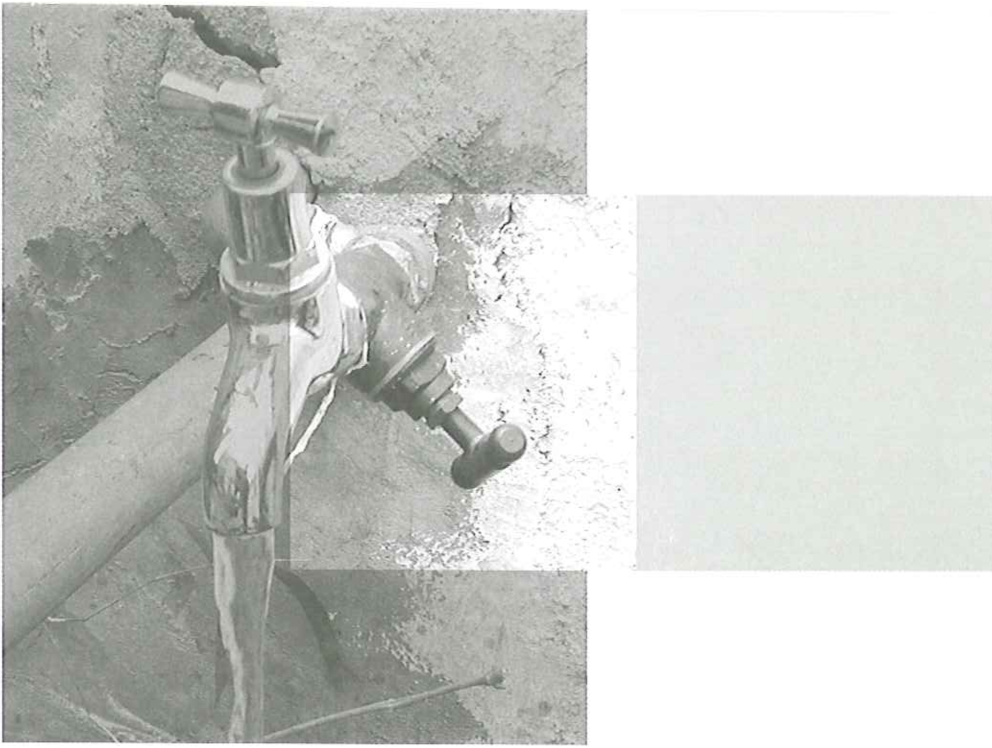
INDONESIA, VIETNAM, MALAYSIA AND BANGLADESH:

- In October 2001, Ondeo won a 25-year contract for servicing and distribution of drinking water in Tangerang, Indonesia.
- In July 2001, Suez Lyonnaise subsidiary, Lyonnaise Vietnam Water Company (LVWC) was given the contract to construct and operate a treatment plant with a daily capacity of 300,000 cubic meters under a 25-year BOT contract in Ho Chi Minh City, Vietnam. At present, one third of households in Ho Chi Minh City depend on private vendors for water. The LVWC is a private company: Suez owns 70 percent; Tractebel of Belgium owns 20 percent and Pilecon Engineering Limited of Malaysia owns 10 percent. The ADB views this project as an encouraging step towards promoting private sector participation in Vietnam.
- In 1998, Vivendi acquired a 26 percent stake for Francs 144 million in Intan Utilities, the concessionaire for the potable water production in the state of Perak, Malaysia. It expects to triple Intan's annual turnover of Francs 90 million by 2008.[105]
- Degremont is involved in building, designing and operating a drinking water facility in Bangladesh.

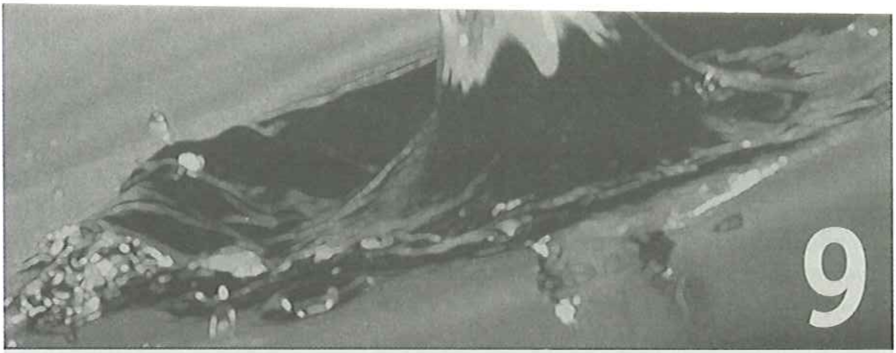
[103] It is suggested that "the 'two companies' approach was to win the bid at all costs, and then deal with the problems of profitability later. The result is a privatisation that has failed to impose market discipline on the companies, and which, ironically, presents striking parallels to the problems of under-performing state corporations under socialist states or petty dictatorships." Jude Esguerra, *The Corporate Muddle of Manila's Water Concessions: How the World's Biggest and Most Successful Privatisation Turned Into a Failure*, Institute for Popular Democracy, Manila, 2001, p 2.

[104] Federico D. Pascual Jr., "5% of Water Bill Goes to French Consultants?," *http://philstar.com*, 2 July 2002.

[105] "Vivendi Sees Equity as Key to Water Growth," *PSIRU Database*, University of Greenwich, London, 12 June 1998.



PART TWO
ASIAN WATER INSECU-
RITY:
SEEKING SOLUTIONS



Water as a Human Right and State Obligation

The support for the human right to water in UN covenants and agreements and international law can be classified into two categories. The first category involves the *implicit* support for access to water as a right prior to the 1970s. The second category stipulates the right to access to water in *explicit* terms, influenced by a series of international environment and water conferences. The Chairman of the European Council of Environmental Law, Alexandre Kiss, states that the right to water is one of the first substantive environmental rights recognized internationally.

Water, as a human right and a basic human need, is stipulated implicitly by international law and by various UN declarations, requiring state obligations and practices. Water as a human right is explicitly enshrined in the Convention of the Rights of the Child (1989)[106] and implicitly, as a precondition in the "component elements of an adequate standard of living" in the 1948 Universal Declaration of Human Rights (UDHR).[107] Article 25 of the UDHR states that "Everyone has the right to a standard of living adequate for the health and well being of himself and of his family, including food, clothing ... housing (UN General Assembly, 1948). Clearly, Article 25 cannot be satisfied without access to water as an implicit right and a component element.[108] This is because an adequate quantity of sufficient quality water is required to maintain human health and well being in order to satisfy Article 25.[109]

106 Article 24 of the Convention of the Rights of the Child requires the State to play an important role in ensuring the child has a right to enjoy the highest attainable standard of health. The State is required to "combat disease and malnutrition ... through, inter alia ... the provision of adequate nutritious foods and clean drinking water." Cited in Peter Gleick, "The Human Right to Water," Pacific Institute for Studies in Development, Environment and Security, 1999, p 8, www.pacinst.org

107 United Nations General Assembly Universal Declaration of Human Rights, Resolution 217, United Nations Doc. A/64, 1948.

108 Peter Gleick, op. cit.

109 A certain amount of water is necessary to avoid death from dehydration and malnutrition; cooking, sanitation, hygienic requirements and other domestic uses.

The access to water as a precondition and a derivative right is vital in meeting the explicit rights to health, food, and an adequate standard of life and development as stipulated in the various UN covenants. In a recent review of major human rights progress over the past 50 years, there is support for the notion of the right to water as implicit in the rights guaranteed by the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR): "There is nothing ill-defined or fuzzy about being deprived of the basic human rights to food and clean water, clothing, housing, medical care and some hope for security in old age. As for legal toughness, the simple fact is that the 138 governments which have ratified the ICESCR have a legal obligation to ensure that their citizens enjoy these rights."[110]

Article 6 of the 1966 International Covenant on Civil and Political Rights states that "Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life". As in the UDHR and ICESCR, there is no mention of access to water as an explicit right but the right to life implies the right to the fundamental conditions to support life, namely access to water resources among others.

Beginning in the mid 1970s, there was a clear and explicit recognition of the right to water as a human right. The 1977 Mar del Plata Water Conference indicated that: "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" (UN, 1977).[111]

In 1986, the UN adopted the Declaration on the Right to Development (DRD) (UN, 1986). Article 8 of the DRD points out that "states should undertake, at the national level, all the necessary measures for the realization of the right to development and shall ensure, inter alia, equality of opportunity for all in their access to basic resources." In interpreting Article 8 of the DRD, the UN includes water as a basic resource when it states that the persistent conditions of underdevelopment in which millions of people are "denied access to such essentials as food, water, clothing, housing and medicine in adequate measure" represents a clear and flagrant "mass violation of human rights" (UN, 1995).[112] It is suggested that States should progressively meet the needs of the people to the extent resources permit, as stipulated by the ICESCR. Implicit in this proposition is that resource limitations should not constraint efforts to the provisioning of water as a right.[113]

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110 Peter Gleick, op. cit.

111-113 Ibid.

The State has an important obligation to ensure access to water as a right of its people, especially the poor and vulnerable groups. The Supreme Court of India stated "there is a duty on the State to provide clean drinking water to its citizens."[114] Perceived from a legal standpoint and a human rights framework, legal scholars have suggested that the State has the "due diligence obligations to safeguard these rights", the right to sufficient water to sustain life as a matter of priority.[115] States by acknowledging these rights have an obligation to translate these rights into specific national and international legal obligations and action plans. By "emphasizing the human right of access to drinking water does more then emphasize its importance. It grounds the priority on the bedrock of social and economic rights, it emphasizes the obligation of state parties to ensure access, and it identifies the obligation of states to provide support internationally as well as nationally."[116] In framing the access to water as a right, the state's priorities and obligations are to meet the basic need of its people over investment decisions.

In November 2002, the UN Committee on Economic, Cultural and Social Rights (UNCECSR) took an unprecedented step in declaring that access to water is a fundamental human right and member states have a legal obligation to progressively realize the right to water. Furthermore, the provisioning of "adequate drinking water should be interpreted in a manner consistent with human dignity, and not in a narrow way, by mere reference to volumetric quantities and technologies, or by viewing water primarily as an economic good."[117] The views expressed by UNCECSR are in direct conflict vis-à-vis the discussions underway at the WTO that dictate market-oriented liberalization of water resources.

[114] "The Right to Water: An Enforceable Right or a Political Aspiration?," Report: *Le Droit á L'eau, www.oieau.fr/academie, www.oieau.fr/academie/gege/DoitAlEau.htm*

[115] Cited in Peter Gleick, op. cit., p 3.

[116] Ibid.

[117] The Right to Water (Articles 11 & 12, International Covenant on Economic, Social and Cultural Rights), General Comment No 15 (2002), Committee on Economic, Social and Cultural Rights, United Nations Economic and Social Council, Twenty-ninth Session, Geneva, Nov. 2002, pp 2, 11-29.

In its General Comment[118] No. 15, the UNCECSR unambiguously stipulated that access to water is a fundamental human right, a right that is a prerequisite to the realization of all other human rights.[119] This stipulation suggests that access to water, like health, is an essential element for achieving other human rights, especially the rights to adequate food and nutrition, social security, housing and education. The General Comment makes access to water a legally binding responsibility for which the state is held accountable.

The UNCECSR, comprising 18 experts acting in independent capacities although nominated by member countries, requires the 145 countries that have ratified the ICESCR to adopt national strategies and plans of action which will allow them to "move expeditiously and effectively towards the full realization of the right to drinking water."[120] This means that countries have a legal obligation to respect, protect and fulfil and promote peoples' rights to safe drinking water without discrimination and equitably between men and women.[121] In policy terms, this requires states to define clear objectives, set targets and time frame, formulate adequate policies, and allocate sufficient funds towards the progressive realization of the right to water.

The General Comment indicates that the right to water involves both freedoms and entitlements. The notion of human rights to water entitles people to "sufficient, affordable, physically accessible, safe and acceptable water for personal and domestic uses."[122] The notion of "freedom involves the right to maintain access to existing water supplies necessary for the right to water; and the right to be free from interference, such as the right to be free from arbitrary disconnections or contamination of water supplies."[123]

In legal terms, governments and corporations would violate the international human rights laws if they restrict or disconnect water supply from homes, exclude poor communities from water infrastructure systems, provide favourable budgetary allocation for wealthier neighbourhoods at the

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[118] A General Comment is an interpretation of the provisions of the International Covenant on Economic, Social and Cultural Rights (ICESCR). As indicated, the word 'water' is not expressly indicated in the ICESCR. But the Committee's interpretation of Article 11 (Right to Food) and 12 (Right to Health) clearly makes water an implicit right.

[119] The Right to Water (Articles 11 & 12, International Covenant on Economic, Social and Cultural Rights), General Comment No 15 (2002), Committee on Economic, Social and Cultural Rights, United Nations Economic and Social Council, Twenty-ninth Session, Geneva, Nov. 2002, pp 1, 11-29.

[120] Ibid, p 3.

[121] Ibid, pp 4-5.

[122] Ibid, p 2.

[123] Kanaga Raja, "United Nations: Access to Water Enshrined as a Human Right," *South-North Development Monitor (SUNS)*, #5245, Geneva, 29 Nov. 2002.

expense of poor communities or tamper with water meters as a punishment for non-payment of water bills. In fact, the act of disconnecting or restricting access to water will be deemed illegal from an international human rights law perspective. Furthermore, the failure to effectively regulate and control water service providers would constitute a violation of international human rights laws. It might be necessary for governments to amend their respective domestic legislations to be in harmony with international human rights laws.

The UN General Comment provides an avenue for civil society to hold governments accountable for their conduct in realizing their water obligations. In fact, the General Comment outlines various strategies that could be embraced by civil society in realization of the right to water. This includes the need to monitor, ensure public participation, evaluate government performance and make certain that government polices and strategies are established with corresponding financial allocation to ensure that there is an equitable access to water for all.

A key contribution of civil society could be to focus attention on the realization of water to poor and vulnerable communities. This is because there is a policy and resources bias towards the wealthy. In an important sense, civil society's role in pursuing the General Comment with respective governments could make a difference at the country level. There is increasing scope to translate the notion of the right to water, including its freedoms and entitlements, into national legislation and policy implementation.

The UN General Comment states that individuals and groups whose right to water has been violated have effective access to legal and administrative remedies. Consistent with General Comment No 9 (para. 4) and Principle 10 of the Rio Declaration on Environment and Development (1992), the Comment indicates that "all victims of violations for the right to drinking water should be entitled to adequate reparation including restitution, compensation, satisfaction or guarantees of non-repetition."[124] It is suggested that human rights commissions, national ombudsmen and other similar institutions should be permitted to address violations of the right.

In a recent study commissioned by the UN Sub-Commission on the Promotion and Protection of Human Rights,[125] the UN Special Rapporteur on water, El Jadji Guiss, indicated that the notion of the right to water recognizes that water is

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124 The Right to Water (Articles 11 & 12, International Covenant on Economic, Social and Cultural Rights), General Comment No 15 (2002), Committee on Economic, Social and Cultural Rights, United Nations Economic and Social Council, Twenty-ninth Session, Geneva, Nov. 2002, pp 9, 11-29.

125 The Sub-Commission serves as an advisory body to the United Nations Commission on Human Rights and comprises independent experts nominated by governments.

an economic good of great value; however, it would be dangerous to subject water to the laws of the market. This is because water is not a mere commodity like other consumer goods. The study expressing the views of the European Council on Environmental Law indicates that "water is above all a social good, that is, a resource that forms part of the common heritage of humanity." Thus "water should be subject to regulation and supervision by the public authorities... Access to water must not be subject to market forces dominated by the profit motive."[126]

The study is highly critical of privatisation. The UN study reveals that privatisation is causing undue suffering and poverty among people; and that water has become a commodity that is "sold to the highest bidder," and is subject "to the laws of corruption."[127] Specifically, the study outlines the experience of Senegal, where a French water corporation has obtained agreements for the privatisation of water resources, and pays "insignificant royalties to the state and sells the water required for people's basic needs at an exorbitant price,"[128] Furthermore, after privatisation there is less water available and the quality of water has deteriorated. In other parts of Africa, water has become extremely expensive and the system of "management by exclusion" has led to severe and endemic poverty, the report outlines.[129]

Water is perceived as a gift of God to Her/His people. This notion is rooted in the belief systems of various religions, traditions, cultures and customary rights and is perceived as a common heritage for all people. In Samoa, water is perceived as a gift of God and therefore its provisioning should be free. In India, water is understood to be "life itself, on which our land, our food, our livelihood, our tradition and culture depends. As "the lifeline of society," water is a "sacred common heritage... to be worshiped, preserved and shared collectively, sustainably used and equitably distributed in our culture."[130] A divine gift of God cannot be considered in the same category as other commodities. In various cultural beliefs and traditions, water cannot be refused to those who need it and should be made available to vulnerable groups. In short, water as a gift of God cannot be transformed into an economic good with a profit motive, but needs to be shared for the betterment of people.

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[126] Kanaga Raja, op. cit.

[127] Ibid.

[128] Gustavo Capdevila, "United Nations: Water Should Not Be Subject to Market Rules, Says Report," Water Observatory, *www.waterobservatory.org/News/news.cfm?News_ID=428*, 5 Nov. 2002

[129] The Right to Water (Articles 11 & 12, International Covenant on Economic, Social and Cultural Rights), General Comment No 15 (2002), Committee on Economic, Social and Cultural Rights, United Nations Economic and Social Council, Twenty-ninth Session, Geneva, Nov. 2002, pp 9, 11-29.

[130] Cited in Maude Barlow & Tony Clarke, *Blue Gold: The Fight to Stop the Corporate Theft of the World's Water*, New York, The New Press, 2002, p 87.

Fights, protests and public outcries against privatisation of water and sanitation services are erupting in many countries in Asia and other countries in the developing world. Farmers, indigenous communities and the urban poor facing the brunt of the water crisis are in the forefront of these protests. In Kerala, India, local communities are striking against Coca-Cola's indiscriminate mining of groundwater, which contributes to the drying up many wells and contaminating others. In the Philippines, a WB-funded dam project on the Chico River was stopped as a result of an uprising by indigenous people in 1981. In Malaysia, the Federation of Malaysian Consumer Associations led a consumer boycott of payment of sanitation bills in 1997. The Malaysian government indicated that, as a result, 60 percent of the consumers did not pay these bills.

In Thailand there is an ongoing struggle on issues related to the Pak Mun Dam, which was built with the support of WB. Some 25,000 fishermen lost their livelihood as a result of the construction of the dam. The villagers are demanding the removal of the dam, the restoration of the river it blocked and the recovery of fisheries.[131] In March 1999, in order to press further with their demands, the villagers set up a "protest village" near the dam.

In Indonesia, on 6 Aug. 2003, hundreds of farmers, workers and water activists protested in front of parliament against WB's proposed Water Resources Draft Law (WATSAL), which favours water privatisation. In the Philippines, civil society groups and party-list representatives have filed a petition before a Quezon City court to open to the public the arbitration hearings that would settle the termination case dispute between Mayniland Water Services Inc. and the Metropolitan Waterworks and Sewerage System. A major anti-dam movement has developed in India. In Pakistan, violent protests have erupted over water shortages in Sindh. On June 10, 2001, police violently suppressed water protestors in Sukkur, Pakistan, leading to the death of two protestors and injury of about 40 others. Pickets and various forms of protest are being organized in the region. It appears that the fight for access to water, the source of life, water equity and water security, will be the defining battle of the 21st century.

131 Ibid, p 201.

CONCLUSION

A frightening yet formidable infrastructure is being put together to reorganize the distribution, management, ownership and access to water resources. At the heart of this exercise is the principle that water resources will be organized around the dictates of the market and the profit motive.

The reorganization involves transforming water from a human right and communal property into a profitable commodity; its management and distribution is to be organized around private-public partnerships; the access to water will be based on affordability and no longer premised on need; and the control and ownership of water resources will be moved out of the public sector into private hands.

Water insecurity unfolds when water resources are organized around market dictates, undemocratic and unequal multilateral rules and the profit motive. It has implications for the individual as much as for the state. Peoples' fundamental water needs and rights will be compromised and subordinated to the profit motive. Private-public partnerships or privatisation will serve as the vehicle to transfer the control of water resources to foreign water corporations and individuals. The state is no longer viewed as the constitutional custodian in ensuring access to water for all. Democratic control of water resources is lost when private-public partnership efforts are embraced. Organizing water resources for profit will undermine conservation of water. Imposing full cost recovery will deny people, especially the poor, access to water. Multilateral rules will impose further liberalization of water resources. A new relationship will have to be forged.

The Asian water insecurity is being engineered by a complex of *Visible Hands*. The IMF, WB and regional development banks are forcing nations to accept private-public partnerships or privatise their water resources. These multilateral custodians of the free market provide funds to water corporations; in effect, providing subsidies for rich corporations. The WTO's GATS disciplines further contribute to the irreversible liberalization of the water sector in developing nations. The EU and the water lobby are pushing for greater liberalization of the water sector on behalf of water corporations. Clearly, the transformation is being organized by *Visible Hands* with a shared vision. In fact, these Visible Hands are doing the bidding for the water corporations.

Transforming water from a human right to a profitable commodity violates various UN covenants. The UNCECSR has clearly stated that access to water is a fundamental human right and countries have a legal responsibility to progressively realize the right to water. In fact, the UN makes access to water a legally binding obligation that the state must be made accountable to. According to the UN, disconnecting water supply, excluding poor communities from water infrastructure and restricting water access to those who are unable to pay would be a violation of international human rights laws.

It is an irony how the free market mantra has triumphed and permeated through economic policy making, political thinking and has become the dominant ideology of this period, especially considering how unsuccessful the application of free market policies has actually been. Free market stated goals and solutions have dramatically increased poverty, increased inequality and have brought about environmental degradation.

Despite its remarkable failure, the free market discipline is being extended to organize the privatisation of essential services, such as access to water resources. The free market approach cannot be used to realize the UN Millennium Development Goals and other poverty reduction strategies.

ABOUT THE AUTHOR

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Currently his areas of interest and research include ASEAN Free Trade Area (AFTA); Asia-Europe trade and security issues; the General Agreement on Trade in Services and its impact on developing nations; water privatisation; and developing a Citizens Bill of Rights vis-à-vis social safety protection. Internationally, he has served as Expert Consultant for the European Commission, Brussels, been a Visiting Lecturer at Waldorf College, Iowa, USA, and worked as a Consultant at Economic Consulting Services in New York. Charles is an economist, trained at the New School for Social Research, New York.

ABOUT MSN

Monitoring Sustainability of Globalization (MSN) is a research-based activist and advocacy non-governmental organisation. The group is based in Kuala Lumpur, Malaysia, and works on issues surrounding globalisation, sustainable development and labour. Its activities are largely shaped by an increasing need among ordinary people, trade union members, policy makers, civil society and religious leaders to make sense of, understand and respond to globalisation, particularly its adverse impact in the local social, economic and political context. The organisation is committed to the notion that economic development should be organised democratically and people should exert political control over their economic lives.

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ABOUT THIS MONOGRAPH

A draft version of this paper was presented at Asia-Europe Peoples' Forum (AEPF) in Copenhagen in November, 2002. The paper has benefited enormously from comments and insights at various meetings and seminars, and from friends. Initial funding for the project came from the Transnational Institute (TNI) based in the Netherlands.

ABOUT SEACON

The Southeast Asian Council for Food Security and Fair Trade (SEACON) was created in 1996 to provide a coordinated approach to food security, agriculture and trade issues. In each of our member countries, we support people-centred national-based food security councils that enable government, private sector and civil society representatives to meet and dialogue on agriculture and trade issues. The establishment of the national food council is to ensure that the analyses and positions taken at the regional level would have the secure backing from the grassroots. Our role is thus to:

- *Monitor and keep in check the adverse effects of free trade;*
- *Monitor the development of relevant economic and social domestic policies in the region;*
- *Offer alternative agro-trade strategies based on the principle of fair trade and food security;*
- *Improve and lobby for policies related to food, agriculture and trade at regional and international levels.*

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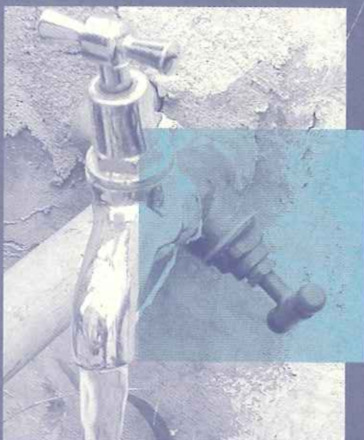
MANUFACTURING WATER INSECURITY



Water insecurity unfolds when water resources are organized around market dictates, undemocratic and unequal multilateral rules and the profit motive. It has implications for the individual as much as for the state. Peoples' fundamental water needs and rights will be compromised and subordinated to the profit motive. Private-public partnerships or privatisation will serve as the vehicle to transfer the control of water resources to foreign water corporations and individuals. The state is no longer viewed as the constitutional custodian in ensuring access to water for all. Democratic control of water resources is lost when private-public partnership efforts are embraced. Organizing water resources for profit will undermine conservation of water. Imposing full cost recovery will deny people, especially the poor, access to water. Multilateral rules will impose further liberalization of water resources. A new relationship will have to be forged.

It is an irony how the free market mantra has triumphed and permeated through economic policy making, political thinking and has become the dominant ideology of this period, especially considering how unsuccessful the application of free market policies has actually been. Free market stated goals and solutions have dramatically increased poverty, increased inequality and have brought about environmental degradation. Despite its remarkable failure, the free market discipline is being extended to organize the privatisation of essential services, such as access to water resources. The free market approach cannot be used to realize the UN Millennium Development Goals and other poverty reduction strategies.

MONITORING SUSTAINABILITY OF GLOBALISATION

MONITORING SUSTAINABILITY OF GLOBALIZATION (MSN) MALAYSIA

S.E.A COUNCIL FOR FOOD SECURITY AND FAIR TRADE

THE SOUTHEAST ASIAN COUNCIL FOR FOOD SECURITY AND FAIR TRADE (SEACON)

ISBN 983-41464-0-X

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