

European Charter on Water Resources

1. Fresh water resources must be used in keeping with the objectives of sustainable development, with due regard for the needs of present and future generations.

Fresh water constitutes only 2.7% of the Earth's overall water mass, and to a large extent it is in a frozen state in the polar caps and the snow cover of high mountains. Humanity uses more than half of the planet's water reserves: the quantity of water available per capita is now no more than 7 000 m³, as against 17 000 m³ as recently as 1950. At the same time, the world population is growing, and water needs are increasing, not only for domestic use (currently 6% of world consumption), but also for industry (20%) and above all for agriculture (70% to 80%).

Water is not only of vital importance for all forms of life, and thus for the protection of the environment; its availability in sufficient quantity and quality is also a prerequisite for the development of human societies. It is thus at the heart of the concept of sustainable development, which brings together two fundamental aspects of society: the need to protect the environment, and the need to improve people's living conditions. In 1987 this concept was defined as development which meets the needs of present generations without compromising the possibility for future generations of meeting theirs.¹

The International Court of Justice has summed up the situation as follows: "[The] need to reconcile economic development with protection of the environment is aptly expressed in the concept of sustainable development".² The objectives of sustainable development³ include promoting economic growth and improving social conditions, meeting essential needs, notably in terms of water, and conserving and maintaining natural resources.

2. Water must be equitably and reasonably used in the public interest.

To determine what is equitable and reasonable, several factors must be considered: geographic, hydrographic, hydrological, climatic and ecological aspects; the economic and social needs of the populations concerned; the effects of the utilisation of the resource on other users and the need to conserve water, harness water resources and avoid wastage, as well as the cost of measures taken to this end. It is also important to consider alternatives to existing or planned uses. All relevant factors are to be considered before reaching a conclusion, with special regard being given to meeting vital human needs.⁴

3. Water policy and law must protect the aquatic ecosystems and wetlands.

Water is an integral part of the ecosystem. It follows that water's natural function must be conserved, restored and enhanced. Hence the need to ensure flow management that takes into account the natural flow of solid matter and promotes interaction between the river, ground water and alluvial zones in their capacity as natural flood zones. It is also necessary to conserve, restore and improve natural habitats for wild fauna and flora in water, particularly in the sediment and on riverbanks and lake shores, as well as in adjacent areas. The natural movements of fish must be preserved.⁵

4. It is up to everyone to help conserve water resources and use them prudently, in conformity with this charter.

As in the case of the environment generally, responsibility for conserving water resources cannot be regarded as being incumbent on the public authorities alone. The 1968 Charter noted that as a consumer and user of water, each human being is responsible to other users and that to use water thoughtlessly is to misuse the natural heritage.⁶

5. Everyone has the right to a sufficient quantity of water for his or her basic needs.

International human rights instruments recognise the fundamental right of all human beings to be free from hunger and to an adequate standard of living for themselves and their families.⁷ It is quite clear that these two requirements include the right to a minimum quantity of water of satisfactory quality from the point of view of health and hygiene.⁸

Social measures should be put in place to prevent the supply of water to destitute persons from being cut off.

6. Public and private partners must introduce integrated management of surface water, ground water and related water that respects the environment as a whole, takes regional planning into account and is socially equitable and economically rational.

Water management means planning the sustainable development of water resources and providing for the implementation of any plans adopted.⁹ These operations must cover all expanses of fresh water, notably surface water and ground water, and take quantitative and qualitative aspects into account. Their objective must be to promote a dynamic, interactive and multisectoral approach to water management and utilisation based on community needs and priorities.¹⁰ Rational water utilisation schemes for the development of surface and underground water supply sources and other potential sources have to be supported by concurrent water conservation and wastage minimisation measures.¹¹

7. Integrated management must be based on an inventory of water resources and aim to ensure their protection, conservation and, if necessary, rehabilitation. In particular, any new deterioration and exhaustion of these resources must be prevented, the recycling of waste water encouraged and, where appropriate, limitations placed on certain uses.

An inventory of water resources must include an assessment of their quantity and quality, taking into account the requisite present and future uses as well as the impact of foreseeable climate change.¹² Methods for the assessment of the toxicity of hazardous substances and the noxiousness of pollutants which are or might be discharged into water must be devised. Pollution from such substances should be gradually reduced. Environmentally sound technologies, production methods and consumption patterns must be developed and applied.¹³

8. Water policy and law must be based on the principles of prevention, precaution and correction at source as well as the “polluter-pays” principle. To this end, they must use regulatory instruments such as quality objectives, discharge standards, the best available technologies and economic instruments compatible with meeting the population’s basic needs.

These principles have been formulated in international instruments and should be applied to water resources in the following manner.

The principle of prevention means that the emission of pollutants must be prevented, controlled and reduced at source through the application, in particular, of low- and non-waste

technology. The risk of accidental pollution must be minimised and contingency planning developed.¹⁴

The precautionary principle means that even in the absence of scientific certainty, adequate measures must be taken to prevent qualitative or quantitative deterioration of water resources when such deterioration might be serious or irreversible.

Under the “polluter-pays” principle, the cost of pollution prevention, control and reduction measures must be borne by the polluter.

Quality objectives determine the nature and quantity of pollutants acceptable in water. They may depend on the utilisation contemplated for a given aquatic environment. Discharge standards define the maximum quantity of a given pollutant that may be discharged into the aquatic environment.

The best available technology is taken to mean the latest stage of development of processes, facilities or methods of operation which indicate the practical suitability of a particular measure for limiting discharges, emissions and waste.¹⁵

Legal instruments in the strict sense of the term include the impact study procedure, which consists in requiring that, prior to implementation of a plan or project, its environmental impact be studied, and that rules imposing an obligation to obtain authorisation for any activity that has a serious impact on the environment as well as monitoring of authorised discharges be laid down.¹⁶

Economic instruments may include such measures as taxation of pollutants, tax relief on “clean” substances, quality seals certifying a product’s conformity with the environmental protection requirement, the obligation to take out insurance against environmental damage, negotiable authorisation of pollutant emissions and subsidies or loans. The latter must, however, be compatible with the “polluter-pays” principle. All these instruments require a legal framework specifying the standards and objectives to be complied with or attained.

In order to implement environmental protection measures, it is necessary to identify and strengthen or develop, as required, the appropriate institutional, legal and financial mechanisms.¹⁷

9. Underground water resources must be the subject of special protection, and their use for human consumption must take priority.

Ground water is usually connected with surface water and may be affected when watercourses are modified. Its quality is usually such that it should be set aside as far as possible for human consumption. Special measures must therefore be adopted to protect ground water from pollution, whether as a consequence of direct or indirect pollutants.¹⁸ Ground water is particularly vulnerable to diffuse pollution from manuring and deposits of pollutants that seep into it through the soil. Preventive protection measures are needed, especially since the elimination of pollutants that have seeped into the ground water may take years or even decades.

10. Water resources must be regularly monitored and their general state periodically assessed.

Programmes must be devised and implemented to monitor the state of water. They must provide for regular analyses to identify the causes of and parties responsible for pollution.¹⁹ Such programmes must also make it possible to check whether the quality objectives have been attained as regards, in particular, the health of the population concerned and the state of the ecosystems, and whether safety measures to prevent accidents prejudicial to the quality or quantity of water resources are functioning properly.

11. The terms of water concessions must be compatible with this charter. Concessions must be granted for a limited duration and must be subject to periodic review.

It is only fair that, as a counterpart to their rights and entitlements to water, natural and legal persons and institutions, whether in the public sector or the private sector, should contribute to the protection of the water environment and the conservation of water resources.²⁰

To ensure better supervision of compliance with this obligation, it is essential for such rights to be accorded for a limited duration only. Such limitation makes it possible to modify the terms of the agreement granting the right to exploit the water resources so as to take new data into account. At the same time, it encourages beneficiaries to be more careful about honouring their obligations.

12. Large-scale consumption of water in agricultural or industrial processes must be carefully assessed and monitored with a view to ensuring better protection of the environment and avoiding unsustainable utilisation.

The rapid increase in water needs makes it necessary to monitor constantly and adjust, as appropriate, the allocation of water resources for different uses. Reference should be made in this connection to the principles of sustainable development and the equitable and reasonable use of water resources, cited above. The holistic management of freshwater as a finite and vulnerable resource, and the integration of sectoral water plans and programmes into national economic and social policy are of paramount importance.²¹

13. At each state level, central, regional and local authorities must adopt and implement water management plans in a spirit of solidarity and co-operation. These plans should be based on the catchment basin.

Integrated water resources management, including land-related aspects, should be carried out at the level of the catchment basin or sub-basin.²² This territorial fragmentation of responsibilities should not, however, be an impediment to an integrated water management policy at the level required.²³ A balance must be struck between a spirit of solidarity and co-operation and the need to base action on the dimensions of ecosystems, which usually coincide with those of catchment basins.

14. Decisions on water must take into account the particular conditions at regional or local level and be implemented by the relevant authorities closest to the areas concerned in keeping with water management plans.

Whereas the utilisation of water resources must be planned within the framework defined in the previous paragraph, the implementation of directives issued and decisions taken must be a matter for the local or regional authorities, which are closer to the users. This means that more account can be taken not only of the physical and ecological peculiarities of the various areas, but also of the human aspects and economic and social conditions that characterise them.

15. States must co-operate, preferably within permanent institutions, to agree on an equitable and reasonable method of managing international watercourses and other shared water resources in conformity with international law and the principles of this Charter.

States that share a catchment basin must conclude bilateral or multilateral agreements specifying the geographic limits of their co-operation on the management of shared water resources. They must take into consideration requests concerning water transfers between catchment basins, and they must work to establish permanent institutions to ensure better co-operation on the management of shared water resources. These institutions can:

- collect, compile and evaluate data in order to identify pollution sources;
- elaborate joint water monitoring programmes;
- draw up inventories and exchange information on pollution sources;
- set emissions limits for waste water;
- devise joint water quality objectives and criteria;
- serve as a consultation forum for the smooth functioning and maintenance of facilities, installations and other structures associated with shared water resources;
- develop action programmes to reduce pollution loads;
- establish warning and alarm procedures.²⁴

16. The public must have access to information on the state of water resources.

The information collected on quantitative and qualitative aspects of water resources, notably on suitability for drinking, must be accessible to the public and published without delay in a form that is readily understandable. Provision must be made for special warning measures to protect public health.

17. The public must be informed in a timely and appropriate manner of water management plans and projects for the utilisation of water resources. It has the right to take an active part in planning and decision-making procedures concerning water.

Access to information and participation by natural and legal persons and their associations, organisations or groups²⁵ in the decision-making process concerning water resources are essential, in particular in order to enhance the quality and the implementation of the decisions, to foster public awareness of issues, to give the public the opportunity to express its concerns and to enable public authorities to take due account of such concerns.²⁶

The authorities must make available to the public as soon as possible information on water resources that is requested of them, including, if the request is made, copies of documents in which such information is actually recorded, without the public needing to advance a particular interest. A request for information on water resources cannot be refused unless it concerns documents in the course of being prepared or if it is contrary to the rights of other persons protected by national legislation. Reasons for refusal must be interpreted restrictively and must be communicated to those concerned.²⁷

The public must also be able to participate in preparing plans and programmes on water resources management at an appropriate stage. The relevant authority may identify the persons invited to participate. Sufficient time-frames must be fixed to allow for effective participation, and the public must be given the opportunity to comment, directly or through representative consultative bodies. The result of public participation shall be taken into account as far as possible.²⁸

18. The persons and bodies concerned must be able to appeal against any decision relating to water resources.

Any natural or legal person wishing to contest any decision, act or omission and in particular any refusal to provide information or allow participation in connection with the management or utilisation of water resources must be able to lodge an administrative or judicial appeal.²⁹

19. Without prejudice to the right to water to meet basic needs, the supply of water shall be subject to payment in order to cover financial costs associated with the production and utilisation of water resources.

Water has not only an ecological but also an economic value. In addition to water as such, infrastructure for its extraction, conveyance, distribution and purification generates costs which may vary from one place or community to another, but which cannot be ignored. Water, costing nothing, might be used wastefully, which is particularly dangerous in situations in which water resources are becoming relatively scarce. On the other hand, water is also a commodity with a social value, one that is necessary for meeting the basic needs of every human being.

To finance the supply and purification of water, it is essential to implement the “polluter-pays” principle. To this end, appropriate charges must be set (proportional or progressive rates, rates for low-income categories or supply of a minimum quantity of water on preferential terms), depending on the use. Charges will depend on the expected evolution of water resources, the investment required and social considerations. The “user-pays” principle, pursuant to which the price of water available for given uses – and thus of adequate quality – must be borne by the user, must be taken into account, subject to basic needs being met.

Note¹ See Principles 3 and 4 of the Rio de Janeiro Declaration on Environment and Development, June 1992.

Note² International Court of Justice, decision of 25 September 1997 (Gabcikovo-Nagymaros Project), paragraph 140.

Note³ Brundtland Report, Our Common Future, 1987.

Note⁴ New York Convention on the Law of the Non-navigational Uses of International Watercourses, 1997, Articles 6 and 10.

Note⁵ Bern Convention of 19 September 1979, on the Conservation of European Wildlife and Natural Habitats, Article 3, paragraph 1.

Note⁶ European Water Charter, Principle X.

Note ⁷ Article 25, Universal Declaration of Human Rights, 10 December 1948; Article 11, International Covenant on Economic, Social and Cultural Rights, 16 December 1966.

Note ⁸ Article 5, paragraphs. k and l, London Protocol on Water and Health, 17 June 1999.

Note ⁹ Helsinki Convention, 1992, Article 2, and New York Convention, 1997, Article 24.

Note ¹⁰ Agenda 21, paragraph 18.9.

Note ¹¹ Agenda 21, paragraph 18.3.

Note ¹² Agenda 21, paragraph 18.5.

Note ¹³ Helsinki Convention, 1992, Article 3.

Note ¹⁴ Helsinki Convention, 1992, Article 3.

Note ¹⁵ Helsinki Convention, 1992, Annex I.

Note ¹⁶ Helsinki Convention, 1992, Article 3.

Note ¹⁷ Agenda 21, paragraph 18.9.

Note ¹⁸ See EEC Directive 80/68/EEC of 17 December 1979 on the protection of ground water against pollution caused by certain dangerous substances.

Note ¹⁹ Bern Convention on the Protection of the Rhine, 1999, Article 5, para. 3.

Note ²⁰ London Protocol, 1999, Article 5, paragraph m.

Note ²¹ Agenda 21, paragraph 18.6.

Note ²² Agenda 21, paragraph 18.9.

Note ²³ Agenda 21, paragraph 18.6.

Note ²⁴ Helsinki Convention, 1992, Article 9, paragraph g; New York Convention, 1997, Article 28.

Note ²⁵ Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, 1998, Article 2, paragraph 4.

Note ²⁶ London Protocol, 1999, Article 5, paragraph i.

Note ²⁷ Aarhus Convention, 1998, Article 4, paragraphs 3 and 4.

Note ²⁸ Aarhus Convention, 1998, Articles 7 and 8.

Note ²⁹ Aarhus Convention, 1998, Article 9.