

# *Non-Governmental Organization and Its Role in International Water Law—Focusing on Its Participation in Global Water Governance*

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**Abstract:** Water is the source of life, closely related to human production and life, and plays an important role in maintaining the stability of the ecological environment and mediating the climate. The issue of water crisis transcends national boundaries, and the importance of transboundary water cooperation is self-evident. In the field of environmental protection, in addition to state actors, non-state actors such as non-governmental organizations, are also playing an important role. Based on their unique advantages of professionalism and public interest, NGOs play an important supplementary and promotional role in promoting international cooperation and meeting public needs by participating in official meetings as observers and partners, publishing research reports and related papers, and promoting the drafting and signing of international treaties. At the same time, the limitations of NGOs themselves make them face certain difficulties in the process of participating in international governance. Therefore, it is of great significance to study the practice of environmental non-governmental organizations in the field of transboundary freshwater resources to further strengthen transboundary water cooperation and promote its equitable and sustainable management.

## 1. Introduction

Water is the source of life and plays an important role in human production and life, in maintaining the stability of the ecological environment, and in mediating the climate. Freshwater on Earth mainly consists of ice and meltwater from glaciers and snowfields, natural precipitation, surface runoff from lakes, rivers, wetlands, and groundwater, accounting for less than 3% of the total water resources of the Earth. Most of the freshwater mentioned above cannot be utilized by human beings, and river and lake water and groundwater are extremely vulnerable to pollution by human activities. Almost all countries in the world suffer from water shortages of varying degrees due to insufficient freshwater, uneven distribution of water resources in time and space, technological constraints and outdated water extraction facilities, and irrational utilization of water resources by human beings. In addition, climate change has been inextricably linked to the

intensification of the water crisis in recent years. Climate change increases the variability of the water cycle, triggers extreme weather events, reduces the predictability of water availability, affects water quality, and threatens global sustainable development and biodiversity. The importance of transboundary water cooperation among States is underscored by a history of disputes and even armed conflict over the ownership and utilization of transboundary water resources.

The idea of World Water Day was first proposed in Agenda 21 of the United Nations Conference on Environment and Development (UNCED) in Rio de Janeiro in 1992. The United Nations General Assembly then adopted a resolution in December 1992 officially designating March 22nd of each year as World Water Day. Despite the significance of water resources for all countries and many UN agencies and the fact that more than 30 UN organizations had carried out water and sanitation projects, there was no single entity within the UN system dedicated exclusively to water issues. In 2003, UN-Water was established as a "coordinating mechanism" to coordinate the work of United Nations agencies and international organizations on water and sanitation issues to support United Nations Member States in sustainably managing water resources and sanitation. According to its terms of reference, UN-Water aims to promote coherence and coordination of water-related actions under the United Nations framework for the implementation of the 2030 Agenda for Sustainable Development and other relevant policy frameworks, with a focus on all freshwater-related matters, including public health. The terms of reference of UN-Water further state that advancing the implementation of this complex international agenda is a collective responsibility and challenge and therefore requires coordinated and coherent action by all members and partners.<sup>[1]</sup> Currently, UN-Water partners include several environmental non-governmental organizations (NGOs), such as the World Wide Fund for Nature (WWF), the International Union for the Conservation of Nature and Natural Resources (IUCN), The Global Environment Facility (GEF), The Global Water Partnership (GWP), etc. These NGOs, which share the characteristics of being unofficial, international, and public-spirited, participate in the global freshwater governance process by engaging with United Nations agencies with deep concerns and activities in the field of water and sanitation, building relationships with individual partners and members, and cooperating with other members and partners of UN-Water.

## **2. Overview of the participation of environmental non-governmental organizations in global freshwater governance**

### **2.1 Status of non-governmental organizations in global freshwater governance**

In traditional international law, the main subjects of international law are States and intergovernmental international organizations. The dominant position of States in global freshwater governance is irrefutable, as they create rights and obligations under international law among themselves through the conclusion of treaties. However, under the current United Nations framework, there is no single entity dedicated to water issues. TO coordinate inter-agency cooperation, UN-water was established in 2003. Under this coordination mechanism, United Nations agencies as members and other entities associated with the United Nations, as well as international organizations, international associations, and other civil society entities active in water governance, work together as partners to complete the work of United Nations agencies and international organizations on water and sanitation issues. In UN-Water, the role of non-governmental organizations is defined as that of "partners", which is primarily a supporting role in the work of UN-Water. Specifically, partners are required to utilize their expertise and networks to assist in the implementation of the work under UN-Water and to advance the international agenda related to freshwater. The UN-Water Partners' Guide mentions that key partners can bring a diversity of views to bear on major issues of common concern to improve the

quality and acceptability of consultation outcomes.

In the framework of regional water governance, non-governmental organizations are likewise not direct participants in transboundary water governance. In the EU region, for example, on October 23, 2000, the European Parliament and the Council adopted Directive 2000/60/EC, which establishes a framework for EU action in the field of water policy, the European Water Framework Directive (WFD), as the EU's foundational legislative document for the protection of water resources. Article 16 Strategies against pollution of water states: "In preparing its proposal, the Commission shall take account of recommendations from the Scientific Committee on Toxicity, Ecotoxicity and the Environment, Member States, the European Parliament, the European Environment Agency, Community research programmes, international organizations to which the Community is a party, European business organizations including those representing small and medium-sized enterprises, European environmental organizations, and of other relevant information which comes to its attention."<sup>[2]</sup> The right to make proposals on specific matters is given to environmental organizations in the form of an express legislative provision. Although not directly involved, non-governmental organizations play an important role in all aspects of global freshwater governance.

## **2.2 Main areas of participation of environmental non-governmental organizations in global freshwater governance**

Global freshwater governance encompasses a wide range of areas, including transboundary water governance, such as transboundary rivers and transboundary lakes, wetland protection, biodiversity conservation, the construction of water supply systems and basic sanitation facilities, and the alleviation of clean water poverty. Environmental NGOs are widely active in these areas, organizing and cooperating with national and international organizations, relying on platforms under the United Nations, platforms of interregional governmental organizations, and their platforms.

In the above areas, transboundary water governance is the most important and most talked about area of global freshwater governance. According to United Nations data for the year 2021, transboundary waters account for 60 percent of the world's total freshwater flow, and the territory of each of the 153 countries lies within at least one of 286 transboundary river and lake basins and 592 transboundary aquifer systems. However, operational arrangements exist for 90 percent or more of the transboundary basin area within the territorial boundaries of only 32 of the above-mentioned States, and only 24 States have all their transboundary basins encompassed in cooperative arrangements.<sup>[3]</sup> Population growth and increasing water scarcity further reinforce the importance of transboundary water governance, where transboundary water cooperation has a bearing on the well-being of tens of millions of people and where poor transboundary water management and even resulting transboundary water conflicts can lead to social unrest and even inter-State conflict.

In the process leading up to and following the entry into force of the Convention on the Law of the Non-navigational Uses of International Watercourses (the UN Watercourses Convention), non-governmental organizations, on the one hand, before the Convention was formally drafted, through the issuance of official reports in cooperation with United Nations agencies or independently, strengthened the recognition by the State and society at large of the customary law in the field of international water law that had already been developed, to enable it to be successfully implemented into the text of the Convention. In Draft articles on the law of the non-navigational uses of international watercourses and commentaries thereto and resolution on transboundary confined groundwater, it is recorded that: "...all available evidence of the general practice of States, accepted as law, in respect of the non-navigational uses of international watercourses—including

treaty provisions, positions taken by States in specific disputes, decisions of international courts and tribunals, statements of law prepared by intergovernmental and non-governmental bodies, the views of learned commentators and decisions of municipal courts in cognate cases."<sup>[4]</sup> Before the entry into force of the Convention, NGOs have worked hard to gain buy-in from other countries through mobilization and advocacy to push for more ratifications of the Convention so that it meets the necessary conditions for its entry into force. In early 2006, the World Wildlife Fund (WWF) launched The UNWC Global Initiative to promote the UN Watercourses Convention and accelerate its ratification process. The initiative mobilizes a range of actors, including governments, international organizations, academics, and others, and works to raise awareness, support, and assist countries interested in ratifying the Convention.<sup>[5]</sup> The Initiative's activities have focused on addressing the obstacles to ratification of the Convention. In January 2009, WWF released a report entitled "Everything you need to know about the UN Watercourses Convention", calling on countries that are not yet parties to the Convention to accede to it as soon as possible, and for all countries to do their utmost to accelerate the process of entry into force of the Convention, as well as by engaging joint river basin organisations to participate in the process and seek guidance and advice from their experts, and empowering regional economic integration organizations that may be involved in accession to the Convention and in its implementation to promote its widespread ratification and effective implementation. On the other hand, after the entry into force of the Convention, non-governmental organizations have continued to be involved in the preparation of documents such as the Guidelines for the Use of the Convention, providing expert advice on the specific application and implementation of the Convention.

### **3. The practice of environmental non-governmental organizations in global freshwater governance**

#### **3.1 Major environmental non-governmental organizations in global freshwater governance**

There are numerous non-governmental organizations concerned with global freshwater governance, and their areas of interest cover transboundary water cooperation, wetland protection, biodiversity conservation, the construction of water supply systems and basic sanitation facilities, and the alleviation of clean water poverty. In terms of the content of their work, environmental NGOs can be divided into those that focus exclusively on freshwater issues and those that focus only on freshwater as a branch of environmental protection. In terms of their scope of activity, they can be divided into international NGOs that work globally, regional NGOs that operate only in a certain region, such as continental Europe, and national NGOs. Among the more active international environmental NGOs specializing in freshwater are the Global Water Partnership (GWP) and the Stockholm International Water Institute (SIWI), while general environmental NGOs include the World Wide Fund for Nature (WWF), the International Union for Conservation of Nature (IUCN), the Global Environment Facility (GEF) and Oxfam (OXFAM).

The Global Water Partnership (GWP) is a non-governmental organization (NGO) dedicated to water issues. According to its official website, GWP currently has more than 3,000 partner organizations in 179 countries, including 69 accredited National Water Partnerships and 13 Regional Water Partnerships, and is open to all organizations involved in water resources management, such as governmental agencies of both developed and developing countries, United Nations agencies, bilateral and multilateral development banks, professional associations, research institutes, NGOs and the private sectors. Its main work lies in organizing and promoting transboundary water cooperation. The Stockholm International Water Institute (SIWI) is committed to changing the way water is understood, valued, and managed globally, organizing World Water Week, the world's leading water conference, and establishing the Stockholm Water Prize, with a

greater emphasis on the export of expertise in general.

WWF and IUCN are comprehensive environmental NGOs that focus on freshwater issues. WWF has launched freshwater conservation projects in more than 50 countries and regions, working to change the way water is managed, mobilizing corporations to take responsibility for shared water resources, persuading financial institutions to invest in sustainable water projects, and cooperating with governments to enact legislation to protect water resources, among other things, to improve the quality of freshwater. IUCN is committed to providing everyone with equitable access to clean water and protecting the freshwater ecosystems on which humanity depends. In its 2021-2014 plan, it is mentioned that the IUCN aims to have freshwater systems supporting and sustaining global biodiversity and human needs by 2030. The IUCN is committed to promoting good water governance, implementing nature-based solutions to climate change, monitoring and conserving freshwater biodiversity, and increasing investment in ecosystems. It helps to ensure equitable and sustainable access to the many services provided by water and freshwater ecosystems by developing knowledge to guide policy and action.<sup>[6]</sup> The scope of its work is broader, covering almost all areas related to freshwater resources.

### **3.2 Main ways for environmental non-governmental organizations to participate in global freshwater governance**

At the stage of international legislation, environmental non-governmental organizations can influence the formation of international soft law and the signing of international treaties. Firstly, in important official meetings, NGOs often participate as observers or partners, make speeches, take part in panel discussions and interactive debates, listen to the claims and demands of stakeholder countries, and express their professional opinions on major issues. For example, at the 27th UN-Water Conference, NGOs such as the Global Environment Facility (GEF), the World Conservation Union (IUCN), the Stockholm International Water Institute (SIWI), the Global Water Partnership (GWP), and the World Wide Fund for Nature (WWF) participated in the Conference as experts on transboundary water issues, together with the United Nations Economic and Social Affairs (UNDESA), UNESCO and others. NGOs such as GWP, WWF, UNDESA, UNESCO, etc. participated and worked as expert groups on transboundary water issues. Secondly, NGOs promote conventions that have not yet been adopted or entered into force, contribute to the formation of relevant rules, and participate in the drafting and codification of conventions or treaties through the production of official reports in cooperation with United Nations agencies or through the production of independent reports. In the case of the Convention on Cooperation for the Protection and Sustainable Use of the Danube River (DRPC), NGOs such as GWP, WWF, and others have actively participated as observers in all the meetings of the Expert Groups and Working Groups of the International Commission for the Protection of the Danube River (ICPDR) and in the plenary sessions of the Standing Working Groups to push for the formulation and implementation of the relevant rules. Although these NGOs do not have the right to vote in the meetings, they have access to information, including all technical meeting documents, have the right to participate in technical discussions, represent a wide range of stakeholders in the Danube River Basin, and play an important role in the process of achieving long-term sustainable management.

In the implementation phase of the conventions and treaties, NGOs are actively cooperating with intergovernmental organizations, local governments, and other environmental organizations, and are actively involved in monitoring the implementation of rules, investing in natural infrastructure, providing professional information, and promoting public education. For example, in December 2018, the China Committee of the Global Water Partnership (GWP) jointly organized a seminar on the theme of "Challenges and Countermeasures Facing the Mekong Countries" and a capacity

training activity in Dali, Yunnan Province, to share the experiences of the basin countries to further strengthen the countries' ability to enhance cooperation and improve the use of water resources.

### **3.3 Specific case of participation of environmental non-governmental organizations in global freshwater governance - the #ProtectWater movement**

In 2018, the European Commission launched a 'fitness check' of the European Water Framework Directive (WFD), which was seen by some industry groups and Member States as an opportunity to undermine the effectiveness of the WFD. WWF, together with four environmental and fisheries organizations, formed the NGO coalition 'Living Rivers Europe', which together with other NGOs launched the ProtectWater campaign to defend the WFD during the fitness check to ensure that it is fully implemented and enforced. From 2018 to 2020, the ProtectWater campaign inspired more than 375,000 citizens to call on the European Commission to keep the WFD in its current state, making this legislation one of the most significant legislative campaigns in terms of public participation in EU history. Finally, on June 22, 2020, the EU Commissioner for Environment, Oceans and Fisheries, Virginijus Sinkevičius, announced that the WFD would not be revised and confirmed the need to implement and enforce the Directive without changing it.<sup>[7]</sup> WWF's two-year campaign, in collaboration with other NGOs, ultimately forced the European Commission to drop the possibility of revising the WFD. According to WWF, Living Rivers Europe will continue to work towards better implementation and enforcement of the WFD, maintain its high standards of water and ecosystem protection, and continue to monitor legislation introduced in the EU.

## **4. Evaluation of the effectiveness of the participation of environmental non-governmental organizations in global freshwater governance**

### **4.1 Advantages of participation of environmental non-governmental organizations in global freshwater governance**

Compared with national and intergovernmental organizations, the special feature of environmental NGOs is their unofficial nature, and their flexible position, which allows them to act as a link of communication between different subjects to express their expertise and opinions at large international water-related conferences, to participate in the drafting of global environmental conventions and to promote their entry into force and implementation. In addition, they can lobby a government or a regional coalition to actively become a party to global environmental conventions and to enact water-related laws adapted to their national conditions, using the relevant international rules as the standard, to facilitate the implementation and enforcement of the conventions and treaties in their own countries.

As can be easily understood, the professionalism of environmental NGOs is another important advantage of participating in global freshwater governance. In terms of personnel composition, NGO staff working on freshwater are mostly experts from different disciplines in related fields and can provide professional opinions on the lexical and syntactic design of rules, the structure of management committees, and the planning and implementation of specific water projects from different perspectives, such as science, law, and policy. This quality also allows NGOs to participate in panel discussions and interactive debates as expert groups at international water conferences. Plenty of NGOs also regularly publish, either alone or jointly, publications related to water issues, such as recent progress reports on water projects, thematic reports, guides to the use of international water conventions or treaties, or explanations of their provisions, which provide a wealth of high-quality material for governments and relevant organizations to apply the treaties and for the public to understand freshwater issues.

Once again, the nonprofit nature of environmental non-governmental organizations determines that their position is purer than that of other countries. Since they are not involved or are less involved in their own interests, the incentives of all activities of NGOs are the deep concern about water shortage and increasing water pollution, etc. As non-interested parties, they can propose more specific, workable proposals completely based on objective considerations. It is also this characteristic that makes it easier for NGOs to effectively export their viewpoints when carrying out public education and publicity measures, and condense the power of enterprises and individuals, which in fact influences and plays a role in global freshwater governance.

#### **4.2 Challenges of participation of environmental non-governmental organizations in global freshwater governance**

There are limitations on the legal status of NGOs under international environmental law. NGOs are eligible to obtain consultative status on economic and social issues within the framework of the United Nations Economic and Social Council (ECOSOC). As mentioned above, they influence the legislative activities of states by mobilizing the domestic and regional public, influence the position of states on a convention or treaty by lobbying governments, influence the practice and shaping of their rules of international law through unofficial interpretations of texts, or influence the formation of new rules of international law through their participation in international water conferences. However, it remains controversial whether NGOs enjoy a formal legal personality as subjects of international law. They cannot become the party of treaties or make decisions in their name in the same way as states.

There is a lack of self-regulation of environmental NGOs. Most NGOs operate based on their own statutes and, despite their public interest nature, are not directly accountable to the public. At the national regulatory level, NGOs are only scrutinized by their country of registration for the legality of their organization and mode of operation. Whether the funds raised by NGOs are used practically and how their programs are run is more dependent on the initiative of NGOs to disclose. From a legal perspective, NGOs are not obliged to be strictly regulated on the above matters. However, from the perspective of social responsibility, many activities of NGOs represent the public will to a certain extent, and there is a lack of appropriate standards and suitable evaluation bodies to assess whether their actions are truly beneficial to the public interest.

There are limitations on the locus standi of NGOs for environmental litigation. *Amicus curiae* has been introduced in international law in many areas, and the relevant practice is relatively abundant. However, in the field of global freshwater and even in the field of international environmental law, the litigation status of environmental NGOs relies more on the granting of domestic law. Article 9(3) of the Aarhus Convention states, each Party shall ensure that, where they meet the criteria, if any, laid down in its national law, members of the public have access to administrative or judicial procedures to challenge acts and omissions by private persons and public authorities which contravene provisions of its national law relating to the environment. Due to the vagueness of this provision, the recognition of the presumptive status of environmental NGOs under this paragraph would have to rely on a judicial interpretation of this provision. Thus, even though NGOs have been involved in the implementation and monitoring of international environmental law, there is still no clear legal provision regulating their legal status.

#### **5. Conclusions**

The participation of NGOs in global freshwater governance as an emerging force in international environmental law is a process that explores both the rules of international water law and the further involvement of non-governmental organizations in the international rule of law. The issue of the

water crisis transcends national boundaries. Based on their unique advantages of independence, professionalism, and public welfare, NGOs play a complementary and promotional role in global water governance such as transboundary rivers and lakes, wetland protection, biodiversity conservation, construction of water supply systems and basic sanitation facilities, and alleviation of poverty in clean water by participating in official meetings as observers or partners, publishing research reports and relevant papers, and promoting the drafting and signing of international treaties. However, in the process of participating in global freshwater governance, NGOs also face many difficulties, such as the restriction of their subject status and the lack of appropriate litigation status. The international community should fully recognize the unique advantages of non-governmental organizations in global environmental governance and give them a higher legal status and provide more opportunities for them to contribute to global freshwater governance. Furthermore, there is legal vacuum on regulations governing the behavior of NGOs under international legal regime, which still is an ongoing issue.

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