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NOTES FOR UN PANEL ON EMERGING ISSUES

FOR THE UN GENERAL ASSEMBLY CELEBRATION OF THE 60TH ANNIVERSARY OF THE UNIVERSAL DECLARATION OF HUMAN RIGHTS, DECEMBER 10, 2008

RIGHT TO WATER

“Thousands have lived without love; not one without water.”

W. B. Auden, First Things First

It is a great honour to be here with you on this historic occasion and to have been invited to advise President Miguel d’Escoto Brockmann, a man I greatly admire, on this issue of the right to water. The global water crisis is among the most pressing ecological and human threats of our time. It is with a sense of urgency that I urge the nations here today to give priority to extending the human rights established in the historic 1948 Declaration to the right to water.

A fierce resistance to the inequitable distribution of water has grown in every corner of the globe, giving rise to a coordinated and, given the powers it is up against, surprisingly successful and mature global water justice movement. “Water for all” is the rallying cry of local groups fighting for access to clean water and the life, health and dignity that it brings. Many communities have lived under years of abuse, poverty and hunger. Many have already been left without public education and health programs. But somehow, the assault on water has been the great turning-point for millions. Without water there is no life and for many communities around the world, the struggle over the right to their own local water sources has become a politically galvanizing milestone.

Water is a public trust, a common heritage of people and nature, and a fundamental human right. From thousands of local struggles for the basic right to water, galvanized through international resistance to the denial of these rights, these principles have become the great stand-point of the water justice movement and



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are shaping policies around the world's water supplies. This movement has already had a profound effect on global water politics, forcing global institutions to address the inadequacies of their solutions, and has also helped formulate water policy inside dozens of countries. The movement has forced open a debate over who controls water and asserted that no one has the right to appropriate water for personal profit while others go without for lack of funds. The growth of a democratic water justice movement is a critical and positive development that is bringing needed accountability, transparency and public oversight to the water crisis as conflicts over water loom on the horizon.

It Is Time For A United Nations Covenant On the Right To Water

Increasingly, this global water justice movement is demanding a change in international law to settle once and for all the question of who controls water. It must be commonly understood that water is not first and foremost a commercial good, although of course it has an economic dimension, but rather, a human right and a public trust. What is needed now is binding law to codify that states have the obligation to deliver sufficient, safe, accessible and affordable water to their citizens as a public service. While “water for all, everywhere and always” may appear to be self-evident, the fact is that there are many powerful forces, some private, some governmental, that have resisted this notion fiercely. So groups around the world are mobilizing in their communities and countries for constitutional recognition of the right to water within their borders, and at the United Nations for a full treaty that recognizes the right to water internationally.

Behind the call for a binding right to water covenant are questions of principle that must be decided soon as the world's water sources become more depleted and fought over. Is access to water a human right or just a need? Is water a common good like air, or a commodity like Coca-Cola? Who is being given the right or the power to turn the tap on or off – the people, governments, or the invisible hand of the market? Who sets the price for a poor district in Manila or La Paz – the locally elected water board or the CEO of a transnational corporation? The global water crisis cries out for good governance and good governance needs binding, legal bases that rest on universally applicable human rights. A United Nations covenant would set the framework for water as a social and cultural asset and would



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establish the indispensable legal groundwork for a just system of distribution. It would serve as a common, coherent body of rules for all nations and clarify that it is the role of the state to provide clean, affordable water to all of its citizens. Such a covenant would also safeguard already accepted human rights and environmental principles in other treaties and conventions.

A human rights covenant imposes three obligations on states: the Obligation to Respect, whereby the state must refrain from any action or policy that interferes with the enjoyment of the human right; the Obligation to Protect, whereby the state is obliged to prevent third parties from interfering with the enjoyment of the human right; and the Obligation to Fulfil, whereby the state is required to adopt any additional measures directed toward the realization of that right. The Obligation to Protect would oblige governments to adopt measures restraining practices that deny equal access to water, pollute source water or unsustainably extract water resources. There is no human right to water without clean, available fresh water in the first place.

At a practical level, a right to water covenant would give citizens a tool to hold their governments accountable in their domestic courts and the “court of public opinion,” as well as opportunity to seek international redress. Human rights are formulated in terms of individuals, not in terms of rights and obligations of states vis-à-vis other states. Through a rights-based approach, victims of water pollution and people deprived of necessary water for meeting their basic needs are provided with access to remedies. In contrast to other systems of international law, the human rights system affords access to individuals and NGOs.

A right to water covenant would make both state obligations and violations more visible to citizens. Within a year of ratification, states would be expected to put in place a plan of action, with targets, policies, indicators, and timeframes to achieve the realization of this right. As well, states would have to amend domestic law to comply with the new rights. In many cases, this will include constitutional amendments. Some form of monitoring of the new rights would also be established and the needs of marginalized groups, such as women and indigenous peoples, would be particularly addressed.



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A covenant would also include specific principles to ensure civil society involvement to convert it into national law and action plans. This would give citizens an additional constitutional tool in their fight for water. As stated in a 2003 manifesto on the right to water by Friends of the Earth Paraguay, “An inseparable part of the right is control and sovereignty of local communities over their natural heritage and therefore over the management of their sources of water and over the use of the territories producing this water, the watersheds and aquifer recharge areas.” A right to water covenant would also set principles and priorities for water use in a world destroying its water heritage. The covenant we envisage would include language to protect water rights for the earth and other species and would address the urgent need for reclamation of polluted waters and an end to practices destructive of the world’s water sources. As Friends of the Earth Paraguay put it, “The very mention of this supposed conflict, water for human use versus water for nature, reflects a lack of consciousness of the essential fact that the very existence of water depends on the sustainable management and conservation of ecosystems.”

Progress At The United Nations

Water was not included in the 1948 United Nations Universal Declaration of Human Rights because at that time water was not perceived to have a human rights dimension. The fact that water is not now an enforceable human right has allowed decision-making over water policy to shift from the UN and governments toward institutions and organizations that favour the privatization of water services and the commodification of water. It is time to rectify this omission. It is noteworthy that at the 1990 Rio Earth Summit, the key areas of water, climate change, biodiversity and desertification were targeted for action. Since then, all but water have led to United Nations conventions.

The process has begun, with the right to water now recognized in a number of important international UN resolutions and declarations. These include the 2000 General Assembly Resolution on the Right to Development; the 2004 Committee on Human Rights resolution on toxic wastes; and the May 2005 statement by the 116-member Non-Aligned Movement on the right to water for all. Most important is General Comment Number 15, adopted in 2002 by the UN Committee on Economic, Social and Cultural Rights that recognized that the right to water is a



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prerequisite for realizing all other human rights and “indispensable for leading a life in dignity.” General Comment Number 15 is therefore an authoritative interpretation that water is a right and an important milestone on the road to a full binding UN covenant.

However, General Comment Number 15 is an interpretation; to clearly establish the right to water in international law, a binding covenant is needed. In recently appointing Catarina de Albuquerque as an Independent Expert with a mandate to further clarify “the content of human rights obligations in relation to safe drinking water and sanitation,” the Human Rights Council has possibly set itself and the United Nations on a path toward a full, binding covenant on the right to water. It is urgent that the member states get behind this project and support it unreservedly.

This will require gaining the support of governments in the global South, many of whom fear that their citizens could use a covenant against them if they are unable to immediately fulfil their new obligation. They must be assured that the application of a new human rights obligation is understood to be progressive. States without the power to implement the full right are not held accountable for not immediately delivering. What is required is the need to rapidly take minimal steps for implementation that will increase as capacity increases. A rights-based approach to development distinguishes between inability and unwillingness. As agreed at the 1993 UN World Conference on Human Rights, “While development facilitates the enjoyment of all human rights, the lack of development may not be invoked to justify the abridgement of internationally recognized human rights.”

This will also require countering the argument of relatively water-rich countries that hide behind a false fear that they will be forced to share the actual water supplies within their territories. A human rights treaty is between a nation-state and its citizens. Recognition of the right to water in no way affects a country’s sovereign right to manage its own water resources. What will be expected of wealthier governments and their development agencies is adequate aid to help developing countries meet their goals and ensure that their aid, and that of the World Bank, is directed toward non-profit public water services.



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Further, action must be taken to challenge the impact of global trade agreements that counter the notion of water as a human right. Indeed, the most significant developments in international law have not been taking place under the auspices of the United Nations, but rather, under the World Trade Organization and the thousands of bilateral investment treaties between governments that have codified corporate rights into international law. Under these rules, water is regarded as a good and as an investment and as such, is subject to binding disciplines that severely constrain the capacity of governments to establish or maintain policies, laws and practices needed to protect human rights, the environment or other non-commercial societal goals that may impede the private rights entrenched by these trade and investment agreements. The codification of private rights has created an obvious and serious impediment to the realization of the human right to water.

Grassroots Take The Lead

Local groups, communities and countries are not just waiting for the United Nations. Most countries in one form or another have supported the notion of the right to water in various resolutions at the United Nations and can be counted on to do so again. On October 31, 2004, the citizens of Uruguay became the first in the world to vote for the right to water. The groups first had to obtain almost 300,000 signatures on a plebiscite (which they delivered to Parliament as a “human river”), in order to get a referendum placed on the ballot of the national election calling for a constitutional amendment on the right to water, a referendum they handily won. The Uruguayan constitution now asserts that water is a human right and a public service. The European Parliament adopted a resolution acknowledging the right to water in March 2006.

South Africa asserts the right to water in its constitution, a provision the people of several townships were able to use to defeat the use of prepaid water metres in court. Ecuador, Ethiopia and Kenya also have references in their constitutions that describe water as a human right. The French Senate adopted an amendment to its water bill that says that each person has the right to access to clean water but neither country makes reference to delivery. The Netherlands passed a law in 2003 restricting the delivery of drinking water to utilities that are entirely public.



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In August 2006, the Indian Supreme Court ruled that protection of natural lakes and ponds is akin to honouring the right to life – the most fundamental right of all according to the Court. President Evo Morales of Bolivia has called for a “South American convention for human rights and access for all living beings to water” that would reject the market model imposed in trade agreements. At least a dozen countries have reacted positively to this call. Civil society groups are hard at work in many other countries to introduce constitutional amendments similar to that of Uruguay. Ecofondo, a network of 60 groups in Colombia, has gathered over 2 million signatures in a plebiscite toward a constitutional amendment similar to the Uruguayan model. Dozens of groups in Mexico have joined COMDA, the Mexican Coalition for the Right to Water, in a national campaign for a constitutional guarantee to the right to water.

Today as we celebrate this very important milestone, let us use the occasion not only to honour the work that has gone on before us but also to have the courage to take on the new tasks that bear our name. Each generation’s challenges are unique and each must clear a new path toward a renewed understanding of human rights. Surely there can be no greater right than the right not to die of thirst or filthy water when all that might have prevented it is an informed and impassioned world community.

Let us commit here today, in remembrance of all those who fought so hard to create the 1948 Universal Declaration of Human Rights, to a water secure future for all based on the principles of water protection and watershed renewal, equity and justice, and the right of all living things to water for life.

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