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For an effective right to water

What are the interests at stake, challenges and paradigm changes with regard to water? A mediator between people and nature, water is a factor of social organization and an essential component of the history of civilizations. It participates in maintaining the cultural and ethical diversity. The issue of water is complex, multidimensional and intersectoral; water interacts with other natural resources, different environments and communities.

A key to sustainable development, water is also a highly political resource that shapes geopolitics. Established as an economic good and a public property, this resource which is not man-made, is at the centre of international trade.

The raising awareness of the global crisis and of the interests at stake with regard to water leads to refusal of the current negative situation. Despite the efforts of states to supply their people and industries with water:

- one person in four in the world still has no access to drinking water;
- one person in three has no access to sanitation;
- 3 million people, essentially women and children, die every year in the world of water-related diseases;
- bad quality of water affects the viability of ecosystems;
- hundreds of rivers and international aquifers present a risk of conflict related to water sharing;
- In 2050, 9 billion human beings will have to be supplied with drinking water!

Obviously, this situation is loaded with considerable economic, ecological and social consequences which compromise both sustainable development and the achievement of the Millennium Development Goals (2000) and the commitments of the Johannesburg Summit (2002).

The diminishing supply and the increasing and ever more diversified demand entail a change of paradigm for this recurrent issue. This change has political and ethical implications having to do with efficient management – on the usage side – and fair distribution of water resources. It consists in placing water policies on the side of the demand and the human person at the centre of debate. Transborder questions are taken into account, the functions of water reconsidered and its qualitative protection at last envisaged. Consequently, priorities must be established, balances maintained and availability-versus-needs considered, both today and in the long term.

In addition, demand management styles involve more actors than in the framework of centralized technical supply systems. Public and private sectors, NGOs, experts and non-formal sector act in a complementary way and take into consideration local management systems and traditional cultures. We have indeed taken a full measure of how much the cultural dimension facilitates social acceptance!

For a long time considered in many countries as a “gift from the sky”, water has a cost and a price. We witness claims of fair tariffs justified by extreme poverty – a source of denial of human rights and dignity and an obstacle to access to water and sanitation.

Water, however, is an essential factor of poverty reduction and access to citizenship.

Capacity building and information sharing, in particular among the users, become major lines of action.

It remains to be seen if the advocacy of the right to water is an objective shared by the development agents and operators and if it has the same meaning to all!

The right to water: a catalyzing concept?

The right to water emerges as a concept around which changes and reconciliations can crystallize. It is necessary to reconcile economy and ecology over water. But this vital resource calls for other reconciliations. It makes it necessary to remedy different inequalities, to create an international legal and institutional framework followed at the level of states – first guarantors of effective access to water – and establish links between local and global action.

Each of these changes represents an argument in favor of the promotion and proclamation of the right to water; they also enrich and expand the field of application of this right which renders the rights of the human person and sustainable development operational.

The right to safe water would make it possible:

- To ensure water access without discrimination, in a sustainable and enduring manner, and at a cost that is socially and economically acceptable;
- To avoid its becoming a threat to the environment, to aquatic systems, to health, to peace and security;
- To determine responsibility;
- To put in place an effective governance, define its operation modes and relevant links at local, national, and international levels;
- To mobilize necessary resources, coordinate partnerships and organize cooperation and solidarity.

Of course, the right to water is far from being a reality. But the obstacles to its realization are well identified. This right is of great use as it makes it possible:

- to affirm the «economy, ecology and society» trilogy of sustainable development and inter-generational responsibility;
- to anticipate, insofar as it accompanies changes, in order not to be overtaken by developments and to avoid the risks of internal or international conflicts;
- to ensure complementary action by different intervening parties: by the legislative power, which proclaims this right and defines how it should be implemented ; by the judicial power which supervises legal responsibility and action, and thus ensures control; by the executive power which renders this right concrete by progressively reducing the number of people without access, and by protecting this resource both quantitatively and qualitatively; by various development agents; and by experts who develop knowledge, innovation and technologies;
- To secure the participation and synergy of all parties: taken as an economic, cultural and social right, the right to water is a source of synergy among all development agents (public and private sectors, NGOs and research institutions), some of whom may never meet, but pursue the same objectives. At the same time, it remedies isolated sectoral policies and lack of coordination, and reinforces transversality, and holistic and integrated management;

- to integrate the cultural dimension of development and the capacity of educated and informed citizens to participate in changes, including tariff changes;
- to find answers to the questions of subsidiaries, solidarity and cooperation, taking into account the interests of disadvantaged populations, non-discrimination and neighborhood policies;
- To contribute to the realization of other rights: to life, to dignity, to health, to food, to a healthy environment, to development, and to peace.

From a claim to a right

Many acts, declarations, conventions and constitutions foresee explicitly or implicitly the right to water. In the international legislation relating to the rights of the individual, water is protected as a human right. In the Universal Declaration of Human Rights of 1948 and in the two International Covenants of 1966 concerning economic, social and cultural rights (ICESCR) and civil and political rights (ICCPR) respectively, water is not mentioned explicitly, but it is considered an integral part of other recognized rights, such as the rights to life, to an adequate standard of living, to health, to housing and to food.

The right to water is indiscriminately considered a common heritage of humanity, and as an integral part of the right to development, the right to the environment and the right to peace, which are the cornerstones of those rights that are sometimes called the “rights of the third generation”.

The final document of the Vienna World Conference on Human Rights (25 July 1993) put an end to any hierarchical relationship of the Human Rights by affirming their interdependence, and inviting the international community to treat them “globally in a fair and equal manner, on the same footing, and with the same emphasis” (Article 5 of the Declaration).

Access to water is explicitly protected by the 1979 Convention on the Elimination of All Forms of Discrimination against Women; the 1989 Convention on the Rights of the Child, and by international humanitarian law applicable to armed conflicts. The 1977 Protocols of the Geneva Convention prohibit the use of starving civilians as a method of warfare, as well as attacks against drinking water installations and supplies, and irrigation works.

The Mar del Plata Action Plan (1977) recognizes this right and the Dublin Statement issued by the 1992 International Conference on Water and the Environment acknowledges “the basic right of all human beings to have access to clean water and sanitation at an affordable price.” The Convention on the law of the non-navigational uses of international watercourses, adopted by the United Nations General Assembly on 2 May 1997 (Resolution 51/229), even though not yet in force, has contributed to heightening international awareness in this field. More recently, the 2000 Resolution of the United Nations General Assembly and particularly General Comment No. 15 of the Committee on Economic, Social and Cultural Rights of the Commission on Human Rights (November 2002) have become important. Finally, the Johannesburg Declaration, and the documents of the 3rd World Water Forum (Kyoto, 2003) have extended this right to sanitation.

Other instruments provide a framework for moving towards sustainable development, and entrenching the right to water, such as the Aarhus Convention and the principles proclaimed in the Declaration of the Rio Earth Summit in 1992.

Principles 10 to 19 enunciate participation of all concerned citizens in decision making processes based on prior information sharing (principle 10); adoption of effective environmental legislation (principle 11); the need to develop national and international rules regarding liability and compensation of the victims of environmental damage (principle 14); adoption of precautionary measures to prevent serious or irreversible damage (principle 15); application of the polluter-pays principle (principle 16); precautionary environmental impact

assessment (principle 17); immediate notification and assistance in emergency situations (principle 18); and information to States on activities that may have a significant adverse effect on their environment, as well as consultations among interested States (principle 19).

However, one cannot engage in a debate on sustainable development, the right to water access, and cultural diversity without knowing what is happening in WTO, hence the need to establish bridges between the two processes.

International law enriched by the right to water?

There is a tendency to affirm that any rules or mechanisms on which the right to water and sanitation may be based would suffer from the current weaknesses inherent to international law in this field. Nonetheless, without seeking to be exhaustive, it should be noted that, on the one hand, international law does provide a consensual basis for the right to water and, on the other, the right to water contributes to international law by expanding it to new fields of investigation, in particular through creating inter-disciplinary interaction between hitherto separate domains: those of the human right to water and of sustainable development.

Indeed, a consensus is emerging around some important principles distinguished in international law by:

- custom: obligation to cooperate and negotiate with the intention of reaching an agreement; prohibition to undertake works that are likely to have damaging and lasting consequences for other States; obligation to prior consultation; equitable use of shared resources including underground water, based on the principle of equal access and the principle of non-discrimination;
- general principles of law: obligation not to abuse one's rights; good neighborliness between States [other principles have emerged such as urgent information, assistance and prior information about projects which render the latter operational]; amicable settlement of conflicts.
- jurisprudence: many orders of the International Court of Justice confirm these orientations (Cases of Lake Lanoux, the Trail Melting Plant fumes, the Corfu Channel and the Gabčíkovo-Nagymaros Project).

For an effective governance and adapted approaches in favor of the right to water

Even though the right to water is recognized on an international level, it remains to be introduced at the state level. Its effectiveness will depend on their will and capacity to assume responsibility in terms of its exercise, control, and sanctions for detected non-observance against persons or entities that are under their jurisdiction, as well as against other States and international bodies if need be.

All partners and/or actors are invited to pursue the objective of establishing effective governance for the right to water which would have the following purposes:

- to enhance transparency, coherence, predictability, responsibility, participation, and mechanisms, techniques and indicators for a better integration of NGOs, the institutionalization of partnerships, and communication;
- to provide adequate mechanisms and funding, and the simplify budgetary procedures;
- to offer a social framework for the using and sharing of water, the social mobilization and acceptance of decisions, decentralization, de-concentration, the reduction of the unilateral nature of the administrative management, and capacity building;
- equity, integrity and ethics;

- sustainability, efficiency and effectiveness.

Any new framework, if it is to provide an operational way of guaranteeing access to water, needs to:

- use '*bottom-up*' approaches and provide for operational, concerted and participatory management based on project logic;
- federate and/or put in place interfaces for funding, solidarity and subsidiary, and reinforce transparency, or even acceptability of investments;
- mobilize all those concerned with development, foster citizenship, and organize and disseminate relevant information;
- have at its disposal a body that would work to accompany the elaboration of international texts and facilitate their introduction at state level to ensure their effectiveness and control, and to establish links between different levels;
- designate places of coordination, mediation and regulation that are legitimate and adequately equipped;
- facilitate recourse possibilities.

An undertaking of this scale calls for concerted action with a view to adopting an international legal and institutional framework that can be understood, accepted, adapted and applied at the level of States.

Bibliography:

International legislation and documents of international conferences

ILC Yearbook, Lake Lanoux Case, 1980, 32nd session, vol II, part 2, p. 113, paras. 33-34 and 35, and p. 116, para. 11 [In French version]. & Collection of ICC Arbitral Awards, XII, pp. 285 and 303 [In French version].

UN, Draft articles on the law of the non-navigational uses of international watercourses, A/46/405, April 1992.

Report of the United Nations Conference on the Environment (Stockholm, 5-16 June 1972), United Nations, New York, A/CONF.48/14/Rev. 1, 1973.

Report of the United Nations Conference on Water, Mar del Plata, 14-25 March 1977. United Nations, New York, 1977.

Follow-up to the Mar Del Plata Action Plan, Minutes of the Meeting, United Nations, Department of Technical Cooperation for Development, International Symposium on Improving Efficiency of Water Resources Management, New York, 5-9 January 1987.

Report of the International Conference on Water and the Environment, Dublin, January 1992.

Report of the United Nations Conference on Environment and Development, Rio de Janeiro, June 1992.

The Johannesburg Declaration, 2002.

Sites

ICJ <http://www.icj-cij.org/cijwww/cdocker/chs/chsframe.htm>

Directive establishing a framework for a community policy in the field of water (in French) <http://www.environnement.gouv.fr/dossiers/eau/textes/010131-directive-eau200060CE.htm>

UNESCO, IHP, PC-CP Programme www.unesco.org/water/wwap/pccp

World Bank - Section of Water <http://www-esd.worldbank.org/water>

World Water Council <http://www.worldwatercouncil.org>

IRC International Water & Sanitation Center <http://www.irc.nl>

Public Service International Research Unit <http://www.psir.u.org>

International Network of Basin Organizations <http://www.oieau.fr/riob>

UNDP-World Bank Water & Sanitation Program <http://www.wsp.org>

Maghreb-Machrek Alliance for Water www.almaeau.org

Green Cross www.greencrossinternationale.net