

UN Rights Human Water

Introduction

This article is a fumbling, desperate attempt to understand the importance of a vote at the United Nations General Assembly in July 2010, from which the British government abstained. I have written it because I have found in the British press almost no discussion of this historic vote and the resolution passed. Before writing this article I had a total lack of knowledge concerning the issues discussed here: water rights, water privatization, international law et cetera. I mention this so that you can evaluate my 'report'. I have tried to understand the subject as best I can and to explain it here as best I can. It is a mess but all that I hope to achieve with it is to generate further awareness of this matter, which is control over life itself.

The event

On Wednesday the 28th of July 2010 the United Nations General Assembly in New York declared clean water and sanitation to be a fundamental human right.(1) Something that seems so straightforward and unquestionable - that each and every human has the right to water - had been until that day not recognised by the world's highest governing body. The right to water was not included in the original Universal Declaration of Human Rights adopted by the United Nations General Assembly on 10 December 1948. Campaigners and activists, in particular those from the South, or the developing nations, have been working for over ten years to rectify this. The resolution was introduced by the Bolivian government.

The Draft Resolution

The draft resolution has three points. The General Assembly: i. "Declares the right to safe and clean drinking water and sanitation as a human right that is essential for the full enjoyment of life and all human rights"; ii. "Calls upon States and international organizations to provide financial resources, capacity-building and technology transfer, through international assistance and cooperation, in particular to developing countries, in order to scale up efforts to provide safe, clean, accessible and affordable drinking water and sanitation for all", and iii. [in brief] supports the work of the independent expert, Catarina de Albuquerque [see below].(2)

The Vote

Of the 192-member assembly 122 states voted in favour of the resolution and none voted against. However, 41 states, including the United Kingdom, abstained from voting. By abstaining the British government can divert accusations that it acted against the proposal. It seems as though abstention is a device used by some member states to express disagreement without declaring it too loudly. It makes clear to interested parties where your allegiances lie. By not voting yes the UK government makes it clear that they do not support the measure and thereby do not agree that clean water and sanitation should be a human right. It is difficult to know the reason for this but assumptions can be made. Other states to abstain from voting include Armenia, Australia, Botswana, Canada, Denmark, Ethiopia, Iceland, Ireland, Israel, Japan, Lithuania, Romania, Trinidad and Tobago, Turkey, the United States, and Zambia. Conversely, Afghanistan, Cambodia, China, France, Germany, Iran, Mexico, Norway, South Africa, Spain, the United Arab Emirates, and Venezuela, amongst others, voted yes.(3) A web-cast of the entire proceedings can be found on the UN web site.

The powers of the United Nations General Assembly

The UN General Assembly does not have powers to enforce the resolutions that it approves. The Security Council is the UN body that decides and defines international law, Conventions and protocols. However, according to Green Cross International, General Assembly resolutions carry "tremendous political weight, enough to provoke harsh negotiations between States, to help advance key issues on the international agenda and to trigger national endorsements."(4) The resolution is 'non-binding', again, in effect - not enforceable. This might seem somewhat ineffectual but it lays the groundwork for a long-term process and provides those wanting to realise the implications of the resolution: "member states, UN specialized agencies, donor governments, aid agencies, affected peoples and communities, as well as the global community"(5) with a legal basis to fight their cause. It broadens solidarity between communities globally, in the developed and the developing world, in the struggle for their basic human rights. In short, it declares international recognition of the importance of the issue at hand.

The British statement

In a statement read out at the General Assembly immediately after the vote Britain's representative Nicola Freedman said, "On substance, we do not believe there exists, at present, sufficient legal basis under international law to 'declare' (or 'recognise') either water or sanitation as free-standing human rights. Neither a right to water nor a right to sanitation have been agreed upon in any UN human rights treaty, nor is there evidence that they exist in customary international law. We do believe there is a right to water as an element of the right of everyone to an adequate standard of living. We also believe that inadequate sanitation has a negative impact on the protection of human rights - for example the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

"On procedure, we are disappointed that this resolution cuts across, and pre-empts, the work underway in the Human Rights Council in Geneva on this subject. We supported the resolution which established the Independent Expert on the Issue of Human Rights Obligations Related to Access to Safe Drinking Water and Sanitation, and the resolution on Human Rights and Access to Safe Drinking Water and Sanitation of September last year. In view of the complexities of the issues at stake, the work in Geneva has been

progressing in a careful and consensual manner. It is unfortunate that this initiative has pre-empted the outcome of this work.”(6) It may seem foolish for someone who knows nothing about these matters to stab away at some sort of analysis, considering the “complexities of the issues” but these complexities are contrived by those who do not want the people who are affected by these proceedings to understand what is going on. With that in mind I will make a stab.

Not extant in International Law

The first part of the UK government’s objection is based upon the suggestion that there is no “legal basis under international law” for the draft resolution. Catarina de Albuquerque is the UN Independent Expert on the issue of human rights obligations related to access to safe drinking water and sanitation. Her studies and reports are intended to inform the decisions made by member states. As the British delegate stated, her work is “careful and consensual”. She is an expert.

In a statement released on the 30th of July 2010 Ms. de Albuquerque, contradicting, it seems to me, the suggestion made by the British representative and others, explained that “recognition of the human right to water and sanitation is a positive signal from the international community and shows its commitment to tackle these issues”(7). Ms de Albuquerque underlined that “the fact that the right to water and sanitation was recognized, demonstrates that the General Assembly, instead of creating a new right rather formally acknowledged its existence. Hence the existing human rights framework, in particular the International Covenant on Economic, Social and Cultural Rights, fully applies in this context.”(8)

Additionally, Peter Wittig, the representative of the German government, who spoke before the vote explained that “the right of access to [safe drinking water and adequate sanitation] was recognized in the International Covenant of Economic, Social and Cultural Rights, alongside the right to food and others.”(9)

Prejudges the Work of the Independent Expert

The Meetings Coverage document, published by the UN General Assembly, shows that nine of the member states to abstain from voting raised issue with the resolution’s apparent prejudgement of Ms. de Albuquerque’s forthcoming Human Rights Council report. The United States, Turkey, New Zealand, Australia, Botswana, the United Kingdom, Japan, the Netherlands, and Canada all suggested in one way or another that the resolution “attempted to take a short cut around” Ms. de Albuquerque’s work in Geneva. Britain’s representative complained that the resolution “cuts across and pre-empts” Ms. de Albuquerque’s study. Canada’s representative referred to the text of the proposal as “premature”.

Again, contradicting these objections, in the same statement quoted above, Ms. de Albuquerque recognises the importance of the ‘landmark resolution,’ which ‘reinforces the mandate of the Independent Expert’. Germany’s representative insisted that “the text included important elements of the work going on in the Human Rights Council and of the independent expert on the subject.”(10) I am not sure how strong a case I am making here but I do not want to make something up to reinforce a point. All I can say is that Ms. de Albuquerque welcomed the resolution and in reports published before the vote she expresses the importance of the human right to clean water and sanitation, in more general terms.

Other reasons offered for why Britain abstained

Support for privatisation

Some reports suggested that several of the governments which abstained from voting did so because their domestic and foreign policy supports the privatisation and marketisation of water resources(11) and are therefore concerned about the impact that the resolution could have on existing and proposed schemes. In the Canadian press, where the vote has received moderately greater coverage than in Britain (where there was next to none), unnamed sources indicated that several of those states who chose to abstain from the vote sought the insertion of the term ‘access to’ preceding ‘clean water and sanitation’ in the resolution(12). It is suggested that a human right providing ‘access to’ clean water obliges governments only to make water available at a price, leaving the way clear for continued expansion of private sector water provision. An important part of the victory for campaigners is that the exclusion of ‘access to’ in the wording of the resolution obliges governments to, amongst other things, provide clean water and sanitation to people for whom these resources are too expensive and to people who have lost or are losing their local water supply due to climate change or because they are caught up in conflict. The resolution was introduced by Bolivia where, in 2000, the people organised massive protests against unaffordable water tariffs, the water companies that imposed them and the government that supported the water companies.(13)

I do not know enough about Britain’s privatised water services and to really say anything sensible would involve more research than I have the time to conduct. All I can say is that it seems obvious to me that the UK government has the interests of these private companies in mind when it makes a decision like the one it made on the 28th of July. Whether it suggests something about the future of water provision in Britain or something more specific, such as the prospects for British owned water companies operating in developing nations, is perhaps something we will discover as the implications of the resolution unfold.

"the supply of fully functional toilets around the world"

A report from the 28th of June in a Canadian newspaper offers this: “Britain is additionally concerned about what the Bolivians mean when they talk about a right to ‘sanitation’, which some say implies funding the supply of fully functional toilets around the world.”(14) No further explanation is given. It appears that in the corridors of the UN General Assembly building in New York much is revealed to those prepared to ask the right questions. But not so much is relayed to the people concerned with what is actually happening in their lives. I asked the Foreign Commonwealth Office if it is true that the British government is now responsible for supplying toilets and

washing facilities in the third world? They responded with a slight re-wording of Nicola Freedman's statement quoted above: "The UK takes this issue extremely seriously. We place a very high priority on providing the poorest people in the world with clean water and sanitation as part of achieving the MDGs [Millennium Development Goals]. Since March 2008 our bilateral programmes have delivered safe water to 2.7 million people in Africa and 3.1 million in South Asia and have helped 1.8 million people in Africa and 25.5 million people in South Asia gain access to basic sanitation." Emily Summers, FCO(15)

So Britain has already built fully functioning toilets for 27.3 million people around the world, or at least 'helped' them to 'gain access' to 'basic' toilets and washing facilities (2.6 billion people are living without adequate sanitation). An extremely serious issue such as this requires extremely coiled and abusive language; abusive to our intelligence. Point 2 of the resolution is clear, it "calls upon States and international organizations to provide financial resources, capacity-building and technology transfer, through international assistance and cooperation, in particular to developing countries, in order to scale up efforts to provide safe, clean, accessible and affordable drinking water and sanitation for all."(16) It seems perfectly reasonable to me that the United Kingdom should be doing everything in its power to assist developing countries to improve their sanitation facilities. But then it is one o'clock in the morning.

Abuse of the complexities of International Law by state authorities

Throughout my research for this article I have been struck by the means employed by state authorities, the institutions that mediate between the press and the UN, in their abuse of the complexities of international law. In our day to day lives, regardless of how much time we have available, it is difficult to fully understand the workings and goings on of an international governing body such as the United Nations. However I believe that the UN is designed to serve us all down to the individual level. This might seem laughably naïve but the only place that I have found the information needed to understand this issue has been the UN web site - where the homepage somewhat pathetically proclaims "It's your world!"

Sadly, the statements made by government representatives are laden with opportunities for misinterpretation. Perhaps the contradictions are intentional and reflect the efforts of governments to present international law as full of Byzantine formalities when in reality, if treated honestly, these resolutions are quite straightforward. They seem to be designed for the people whose lives will be affected by them.

Media response / responsibility

The second layer of mediation serves us no better. Whether committed in an effort to shield us from the truth they fear we cannot understand or to uphold their status as interlocutor between power and the rest of us, the mass media does little to mitigate the confusion created by governments when they get together to decide if we are allowed to drink water or not. When the resolution has been mentioned in the press it is dealt with as though it is an occurrence in some abstract dimension that we need have no concern of. You are left with the feeling that something important happened yesterday but you will have to wait five or six years before you notice any difference.

It is difficult to know what the actual implications of the resolution are. It will be years before the multitude of interpretations and uses become fully apparent. But the almost total lack of coverage by the British press delays the process even further. Following extensive searches of both printed newspapers and their websites, using the internet and Newsbank Infoweb, I could only find four articles which mention the vote. In the following newspapers, in print and online, this historic event was not announced: The Daily Express, The Daily Mail, The Mail on Sunday, The Daily Star, The Financial Times, The Guardian, The Observer, The Herald, The Mirror, News of the World, The Sun, The Telegraph, The Sunday Telegraph, The Times, and The Sunday Times.

Two articles announcing the resolution appeared on The Independent web site(17)(18). One article appeared in the Metro(19). The Morning Star had one article(20). No analysis was offered. A week prior to the vote The Guardian web site featured commentary by Maude Barlow, Canada's leading water rights activist, calling for UK support for the resolution(21), however The Guardian did not follow up on the story after the vote, online or in print.

Without discussion, facilitated by the media, knowledge of and understanding about the issue is unlikely to become widespread and so the potential benefits of the resolution cannot be realised. According to a 2009 report by the UK Consumer Council for Water(22), in 2006-2007 14.6 per cent of the UK population was in 'water poverty'. People who spend 3% or more of their 'annual disposable [net] income' on water bills are regarded as in water poverty. Alongside those in the developing world for whom getting enough water to stay alive is a daily hardship there are approximately 8.5 million people in Britain for whom the cost of water is too high.

Arguments against the resolution

Forces Nationalisation

One of the arguments against the resolution is that it seemingly forces governments to control the supply and distribution of water, i.e. nationalisation. Critics say that privately operated control of supply and distribution, i.e. privatisation, is more efficient and fair. From the market-led point of view the "corruption, cronyism, mismanagement and waste"(23) of state-controlled water systems proves the error in the way of the UN resolution.

Though not entirely related to the broader issue at hand, the following example serves to explain my own understanding of this argument. OFWAT, the UK Water Services Regulation Authority, who seek to further market influence in British water and sewerage services, explained in a recent report that "A market is a place where buyers meet sellers and where trade takes place. In a market, buyers reveal how much they are prepared to pay for a product, which will reflect the value they place on it."(24) But with a resource such as water that is a requirement for our existence the amount that we are prepared to pay for it is exponential. We will pay anything to have it because without it we will die. OFWAT believe that by introducing more competition into the British water market they will reduce

tariffs but no matter how many companies you have trying to sell you water they all know that you have no choice. Somewhat surprisingly, in the same report, OFWAT also point out that:

“Water and sewerage services in England and Wales are not provided in competitive markets. Most people receive their water services from one of 22 licensed regional monopoly companies and their sewerage services from one of 10 companies. [...] Only very large business customers are able to choose their supplier. Because competition is limited, there is a risk that these companies will not deliver the services their customers want. They may also charge higher prices to increase their profits. This is why they need to be regulated. And it is why OFWAT was created when the water and sewerage sectors were privatised in 1989.”(25)

In a few sentences OFWAT's report undermines their own argument for market-led water services. The private water corporations must be regulated, by the state, because they might not supply water at a fair price. This is a well understood problem within any private industry. The corruption, cronyism, mismanagement and waste of state-controlled water systems is an equally dangerous feature of privately-controlled water systems.

Water Sovereignty

Another argument against the resolution is to do with water sovereignty. Melissa Lantsman, press secretary for Canadian Foreign Affairs explained, “We continue to assert that international human rights obligations in no way limit our sovereign right to manage our own resources.”(26) I cannot find a specific response to this argument, beyond people simply disagreeing. And I cannot think how Britain is affected by this but it seems worth mentioning. As far as I understand it, the resolution is clear about how member states ought to conduct themselves concerning human rights: “The General Assembly ... [reaffirms] the responsibility of States for the promotion and protection of all human rights, which are universal, indivisible, interdependent and interrelated, and must be treated globally, in a fair and equal manner, on the same footing and with the same emphasis”(27).

It would not be acceptable to say ‘We assert that international human rights obligations in no way limit our sovereign right to torture our own citizens.’ That might seem a rather crass interpretation of the statement but in a different context such as that of a resource war like the Israeli-Palestinian conflict, water sovereignty becomes less concerned with an unwillingness to share water with a neighbouring state and more to do with diverting rivers so that they no longer flow into enemy territory. And it is, I assume, with conflicts such as this that the General Assembly is concerned.

Incidentally, this statement appears in the Meetings Coverage document: “The Observer for Palestine welcomed the adoption and affirmed the right of access to clean water and sanitation as universal human rights that should be enjoyed by all people, including those living under occupation. [...] Israel’s ongoing violations of the Palestinian people’s access to water hampered their enjoyment of other rights, he said, noting that, among other grievances, Palestinians were only allowed access to 10 per cent of their own water. He called on Israel to comply with its international obligation to ensure access to water, as well as its other international obligations.”(28)

Incidentally, First Nations communities living under occupation in Canada released a statement celebrating the resolution. The statement explained that “as of June 2010, 114 First Nations communities across the country were under Drinking Water Advisories and 49 First Nations water systems were classified as “high risk”. Some of these communities have been under a Drinking Water Advisory for 10 years or longer.”(29) They expressed disappointment in the Canadian government’s decision to abstain from the vote but said that the declaration was welcome and long overdue. The Assembly of First Nations called on the Canadian government to “respect the resolution and engage in real action with First Nations to make sure efforts and resources are in place to honour the right to safe drinking water and sanitation.”(30)

Pablo Solón's statement

Pablo Solón, Bolivia’s Permanent Representative to the United Nations said in a speech before the vote, “At the global level, approximately one out of every eight people do not have drinking water. In just one day, more than 200 million hours of the time used by women is spent collecting and transporting water for their homes. The lack of sanitation is even worse, because it affects 2.6 billion people, which represents 40 percent of the global population. According to the report of the World Health Organization and of UNICEF of 2009, which is titled “Diarrhoea: Why Children Are [Still] Dying and What We Can Do,” every day 24,000 children die in developing countries due to causes that can be prevented, such as diarrhoea, which is caused by contaminated water. This means that a child dies every three-and-a-half seconds.

One,
two,
three .

As they say in my village, the time is now.”(31)

Conclusion

In the coming decades it is likely that the majority of the world’s population will continue to suffer the effects of water poverty due to the higher cost of a diminishing resource. The implications of the General Assembly vote on the human right to clean water and sanitation may not yet be apparent but that is, I believe, the purpose of the resolution, to pre-empt and foresee our developing understanding and awareness of our human rights.

It is easy to be cynical about the contrivances of international law but I think it is important to remember that an event like this resolution should be seen as a historical moment. It may seem as though saying today that clean water and sanitation are a human right means nothing to any of us without the enforcement of that right under international law, and, today, this is true. But in a few years, and

slowly over the next few decades, the impact of the resolution will be felt all over the world. Again, some might say, we cannot wait that long, and this is also true, we cannot and something must be done today but that must be part of a much larger, wider process conducted at an international level to ensure equality between all peoples of the world. Since 1948 the UN Declaration of Human Rights has done much to make the world better for billions of people, though its aims have still not been fully realised.

It is half past two.

By Adam Burton
4th of November 2010

Endnotes:

1. In Historic Vote, UN Declares Water a Fundamental Human Right - Democracy Now! - 29th July 2010
http://www.democracynow.org/2010/7/29/in_historic_vote_un_declares_access
2. United Nations General Assembly, Sixty-fourth session, Agenda item 48 - 26th July 2010
http://www.unesco.org/water/wwap/news/archives/UNDecWaterHR_EN.pdf
3. General Assembly Adopts Resolution Recognizing Access to Clean Water, Sanitation - 28 July 2010
<http://www.un.org/News/Press/docs/2010/ga10967.doc.htm>
4. Historic recognition of Human Right to Safe Drinking Water & Sanitation at UN by Green Cross International - 28th July 2010
<http://www.gci.ch/zh/communication/news/news-of-green-cross-international/33-news/659-historic-recognition-of-human-right-to-safe-drinking-water-a-sanitation-at-un>
5. Join the Global Week of Action for the Human Right to Water and Sanitation by Anil Naidoo - no date given
<http://www.blueplanetproject.net/RightToWater/7days-points.html>
6. Statement of the UK government at the UN General Assembly meeting. Received via email from Nicola Freedman, Foreign Commonwealth Office, received 6th August 2010
7. UN expert welcomes recognition as a human right of access to safe and clean drinking water and sanitation - 30th July 2010
<http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=10240&LangID=E>
8. Ibidem
9. General Assembly Adopts Resolution Recognizing Access to Clean Water, Sanitation
10. Ibidem
11. Water as Human Right Threatens to Split World Body by Thalif Deen - 5th August 2010
<http://ipsnews.net/news.asp?idnews=52173>
12. Canada's water supply not threatened by UN water rights vote: Activist by Bradley Bouzane - 28th July 2010
http://www.canada.com/health/declares+water+sanitation+human_rights/3332789/story.html
13. Wikipedia - 2000 Cochabamba protests
http://en.wikipedia.org/wiki/2000_Cochabamba_protests
14. UN water-as-human-right bid puts onus on rich countries by Steven Edwards - 27th June 2010
<http://www.canada.com/business/water+human+right+puts+onus+rich+countries/3208835/story.html>
15. Email from Emily Summers, Foreign Commonwealth Office, received 3rd September 2010
16. United Nations General Assembly, Sixty-fourth session, Agenda item 48
17. UN declares access to clean water a human right by AFP - 29th July 2010
<http://www.independent.co.uk/life-style/health-and-families/un-declares-access-to-clean-water-a-human-right-2038509.html>
18. Access to clean water is 'human right', says UN by Edith Lederer - 30th July 2010
<http://www.independent.co.uk/news/world/politics/access-to-clean-water-is-human-right-says-u-2039083.html>
19. Clean water voted a basic human right by UN by Joel Taylor - 29th July 2010
<http://www.metro.co.uk/news/836588-clean-water-voted-a-basic-human-right-by-un>
20. UN: Clean water is 'a basic right' - Morning Star - 29th July 2010
<http://www.morningstaronline.co.uk/index.php/news/content/view/full/93431>
21. Access to clean water is most violated human right by Maude Barlow - 21st July 2010
<http://www.guardian.co.uk/commentisfree/cif-green/2010/jul/21/access-clean-water-human-right>

22. Water Affordability in England and Wales, A report prepared for CCWater by Dr. Carolyn Snell and Professor Jonathan Bradshaw - Revised 26th March 2009
http://www.ccwater.org.uk/upload/doc/CC_Water_final_report_1_Apr_2009_FINAL.doc
23. Counterpoint: Water is the wrong right by Jacob Mchangama - no date given (possibly 5th August 2010)
<http://www.theglobeandmail.com/news/opinions/counterpoint-water-is-the-wrong-right/article1661785/>
24. The UK Water Services Regulation Authority, OFWAT, report - 'Beyond limits. How should prices for monopoly water and sewerage services be controlled?' - 2010
http://www.ofwat.gov.uk/publications/focusreports/prs_inf_pricelimits.pdf
25. Ibidem
26. Canada's water supply not threatened by UN water rights vote: Activist by Bradley Bouzane
27. United Nations General Assembly, Sixty-fourth session, Agenda item 48
28. General Assembly Adopts Resolution Recognizing Access to Clean Water, Sanitation
29. First Nations call for action on water as a human right -
<http://www.turtleisland.org/discussion/viewtopic.php?p=11780#p11780>
30. Ibidem
31. In Historic Vote, UN Declares Water a Fundamental Human Right - Democracy Now!