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Round Table: Conversation on the philosophies of water

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Topic: Water as natural human right

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Water is crucial to development, nature, bio-diversity, environment, food security, agriculture and all life forms. Water has become a human rights issue with ever depleting surface and underground resources of freshwater that have been causing scarcity and reducing access to fresh/potable water. This situation is being further monopolized by commercialization, pricing and privatization of water under trade liberalization process.

“Water should be treated as a social and cultural good, and not primarily as an economic commodity. Water is fundamental for life and health. The human right to water is indispensable for leading a healthy life in human dignity. It is a pre-requisite to the realization of all other human rights.”¹ But this right seems to be at risk due to lack of access to freshwater and commercialization of water resources by newly emerging water industry that is eyeing on the privatization of water for agricultural purposes mostly in developing countries.

“The fact that 1.1 billion people across the world, mostly in the developing countries, lack access to adequate clean water is reason enough for the growing water industry to rejoice. Estimated to be worth US \$ 7 trillion, the global water industry has assured itself of profits at least for the next 25 years, during which time the number of people without access to potable water will move closer to the incredible three billion mark.”²

There are divergent points of view on pricing of water; some say that since water is subsidized in major parts of the world, it is becoming scarce because unless people value something properly in monetary terms, they tend to waste it. Some say a sharper distinction should be made between drinking water and hygiene and water used in agriculture and industry. The others say it is the corporate vested interests of the multinational corporations that are bent on pricing the water as a commodity instead of making it available as valued natural community resource. Islamic societies consider water as a God-given resource. According to Mahabhartar “Rivers are the nerves of god”

¹ The United Nations Committee on Economics, Cultural and Social Rights

² Sharma, Sudhirendar Dr. Paper on “Water” circulated at a World Bank seminar at Chennai, India

These divergent philosophies of water have generated a debate whether this basic need of every life should be taken as commodity to be priced or it should be considered a community resource and a basic human right. Another question in this regard gains importance as to who should control the tap- public authorities or private corporate sector. The 1993 Argentine model, once promoted by the World Bank, is an eye opener for rest of the world now as the Argentine's government is having second thoughts on its decision to sell public water companies to foreign firms. Access to water in Argentine is becoming a major problem for people.

Globalization and philosophies of water

The fundamental concept of "globalization" seems deviating from its assumed role of ensuring free flow of trade, finance and information while liberalizing markets to achieve the goal of economic development as the developed countries continue to limit breathing space for the developing and the least developed countries due to their heavily subsidized water sector. This uneven globalization has been largely expanding the gap between the winners and losers (the rich and the poor).

"Globalization has its winners and its losers. With the expansion of trade and foreign investment, developing countries have seen the gaps among themselves widen.... Poor countries often lose out because the rules of the game are biased against them, particularly those relating to international trade. The Uruguay Round hardly changed the picture"³

Globalization has gradually been curtailing the role of state in developing countries as the imperative to liberalize has led to reduced state involvement in social sectors and the markets, particularly the water market. It has serious implications for states, as market liberalization has made it difficult for governments to subsidize water, sanitation and health services for the poor. Privatization process weakened many states and have increased their vulnerability as they do not have sufficient strength to oppose powerful international corporate groups.

Structural adjustment programmes of the Breton woods institutions and WTO together with globalization have doubled this vulnerability to weaken state influence. The third element has been recently added to this phenomenon when the United States attacked Iraq after selling a theory that weak and soft states being danger to world peace should be overpowered. These world trends demand stronger states to protect people's rights, specially their right of access to the social sector, particularly to water services.

Awareness of human rights: Rights approach reduces vulnerability

With the emergence of worldwide rights movements, awareness of human rights and a widespread rights-based approach to settle disputes and vulnerabilities are creating space across communities and countries. The trend now is to give rights an explicit legislative basis, and to incorporate them into a wide range of agreements and policies including

³ United Nations Development Programme. Human development report 1997, Oxford, New York, Oxford University Press, 1997.82

commercial contracts and labour agreements. A number of major commercial entities and communities are committing themselves to upholding basic human rights by joining the United Nations sponsored initiatives in this regard. The important among them is the access of the people to water.

The concept of rights not only covers individual freedom of expression, voting and trade, but basic needs of human beings including water, food, housing, employment opportunities, a clean environment and increasingly gender and cultural rights, and security. When seen in the rights perspective, it has been observed that the globalization by creating vulnerable communities worldwide is causing loss of livelihoods and environmental degradation and hampering the people's access to safe water.

There is a consensus among the human rights groups that a rights approach could help reduce vulnerability provided legal instruments support the approach. Existing human rights and rights related laws appear to cover many of the components of vulnerability. Everyone has the right to life, liberty and security of person (Article 3, Universal Declaration of Human Rights adopted and proclaimed by the UN General Assembly, 10 December 1948) and water is an essential element of life.

The Convention on the Rights of the Child is more specific. It requires signatory states to "ensure to the maximum extent possible the survival and development of the child." The Convention emphasizes the right of children to the highest attainable standard of health (Article 24.1), and requires states to "pursue full implementation of this right" (Article 24.2). Water is important for survival and development of child as lack of access to water could cause problem for the child.

The International Convention on Economic, Social and Cultural Rights deals mostly with many of the constituents of vulnerability: it protects the right to adequate food and nutrition to which water is an essential element, shelter, clothing, education and health and medical services (Article 11).

With the promotion of the World Trade Organization's agreement and emergence of post September 11, 2001 situation, people in general and Muslims in particular are becoming vulnerable in the West and particularly in the United States. Enforcement of international law is very limited unless the issue is within the ambit of the WTO (World Trade Organization) - and the WTO has yet to be generally seen as promoting a rights approach.

Water as Human Right

Lack of access to clean water and sanitation are widely seen as a violation of human rights and an affront to human dignity. Those in the West who do not consider water as a human right exhibit double standards as their children consume 30-35 times more water than children in the poor countries. Similarly, G-8 countries allocate five percent of their total overseas aid budgets to water projects, which is somewhat less than they spend on ice cream or pet food. The United Nations in the World Summit on Sustainable Development in Johannesburg, South Africa in 2002 and earlier in the Millennium

summit in 2000 has already defined water as a priority field for action to halve the proportion of the people without access to safe water by 2015.

By 2015, nearly 40 percent of the projected world population (three billion people) is likely to live in the countries that would not be in a position to mobilize enough water resources to satisfy food, industry and domestic needs of their citizens. Tens of millions of people would have died from water-borne diseases with an average of 6000 children every day.

Corporatization of water could deprive small subsistence farmers of their right to cultivation and cause displacement of landless farmers, withdrawal of subsidies in the name of trade liberalization. Thus the water pricing regime is massive violation of the fundamental human rights of the people. International Federation of Human Rights League (FIDH) in its report 320/2, November 2001 says Human Rights are only considered in an indirect connection with the facilitation or hindrance of trade liberalization.

Under WTO regime, trade is not required to conform to the notion of human rights rather it opts for the reverse despite the fact that the preamble to the Agreement establishing WTO has duly incorporated the spirit of the Article 55(a) of the UN Declaration of Human Rights.

The first paragraph of the preamble of the WTO document reads: "Relations in the field of trade and economic endeavor should be conducted with a view to raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand."

The Article 55(a) of the UN charter reads: "The United Nations shall promote higher standards of living, full employment and conditions of economic and social progress and development in the economic and social order."

By incorporating the spirit of the Article 55(a) in the document that provided basis for WTO's establishment, the authors duly recognized that WTO rules were subordinated to the principles of the UN charter. But in practice how WTO talks are being conducted is a clear violation of the UN charter rather it makes mockery of the globally acknowledged UN Universal Declaration of Human Rights (UDHR).

Principle of human rights primacy and its pre-eminence over corporate sector regimes

The bases for the international human rights law have been provided in the United Nations Charter along with the Universal Declaration of Human Rights. The UN Charter sets human rights as a founding stone that must be abided by, as the privileged means of reaching the United Nations' fundamental goals.

Article 103 of the Charter urges upon member states to give preference to the obligations under the Charter over other international agreements. Confirming the pre-eminence of this obligation, the Article reads:

“In the event of a conflict between the obligations of the members of the United Nations under the present Charter and their obligations under any other International Agreement, their obligations under the present Charter shall prevail.”

The article described above clearly states that no agreement whatsoever could be framed at international level confronting the UN Charter, which validates and qualifies the Universal Declaration of Human Rights (UDHR), to guarantee human rights and respect for human rights. While interpreting the UDHR, we find a link between the Charter and the UDHR, which necessitates that the international agreements and regimes including the WTO should not violate the basic principle and spirit of the UDHR.

The UDHR is considered to be a guiding principle of International Customary law if not a peremptory norm of the International law. It is a fact that whenever multilateral discussions or talks are held at the United Nations or on other fora on certain international treaties, the UDHR is referred to as a fundamental source. The UDHR also features in the legislative and judicial proceedings of a large number of countries. This proves that the UDHR has become a part of International Customary law. One of the authors of the UDHR says: “Today the bill is binding on all countries, including those which did not approve it in the first place in 1948”.⁴

Certain norms being part of the International Customary law are considered as binding “erga omnes”, which means that all states have a vested legal interest in the protection of such rights. The UDHR’s preamble says any individual or institutional action that failed to uphold basic liberties must be opposed. This very commitment applies to multilateral institutions including Breton Wood institutions and transnational corporations (TNCs), particularly eyeing on the water privatization or its pricing for commercial purposes.

This legal recognition of the primacy principle means that obligations under human rights must systematically prevail on all other obligations. The states must make sure that all their commitments, including economic, trade, agriculture and commerce are compatible with the universal principles of human rights law. If we apply the primacy principle to the world trading system, water being a community resource could not be privatized.

The Article 11 calls for “the right of everyone to an adequate standard of living for himself and his family including adequate food that includes water, clothing and housing, and to the continuous improvement of living conditions.”

Amid monopolistic trends seen at the WTO Ministerial meetings, it has been observed that the North with their view to see human rights as hindrance to trade liberalization did not consider the human rights as an important issue during these talks. Therefore, it has

⁴ John Humphrey, No distant millennium: the International Law of human rights- Paris, Unesco, 1955

become essential that now the South should raise the issue of linking the validity of trade agreement to the observance of human rights and the UDHR norms must serve as a reference. It is proposed that a “human rights clause” should be incorporated in all the WTO agreements to ensure unconditional observance of the International human rights norms set out by the UDHR. Particularly, on the water issue, access should not be linked to water privatization or pricing. One could not buy the wastage of water arguments to levy any charge on this human resource. Wastage could be stopped by regulating this resource with a better management and supply system. The water consumers could be sensitized on water conservation for future.

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