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Alberta's *Water for Life* and Recent Trends in International Law

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Table of Abbreviations

<i>ALSA</i>	<i>Alberta Land Stewardship Act</i>
AWC	Alberta Water Council
CEDAW	International Convention on the Elimination of All Forms of Discrimination Against Women
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Culture Rights
UDHR	Universal Declaration of Human Rights
UNCESCR	United Nations Committee on Economic, Social and Cultural Rights
VDPA	Vienna Declaration and Programme of Action
WPACs	Watershed Planning and Advisory Councils
WSGs	Watershed Stewardship Groups

1.0. Introduction

In 2003, after a period of extended public consultation, the Government of Alberta introduced its *Water for Life* strategy.¹ The strategy was subsequently updated and refined in 2008 and 2009,² and has been the subject of extensive comment elsewhere.³ While the strategy has received significant attention, this paper addresses one aspect of *Water for Life* that has not been the subject of comment to date — the intersection of *Water for Life* with recent trends in international law.

The first question one might ask in approaching *Water for Life* from the perspective of international law is why one would want to undertake such an exercise. The answer is certainly not that there is a direct relationship between the two. The Government of Alberta did not launch the *Water for Life* initiative (or for that matter other water management initiatives, such as the reform of the *Water Act*) with a view to conforming to some international obligations. Indeed it is likely that the government paid little if any attention to the international instruments reviewed in this paper in deciding how it would move forward in modernizing water resource management in the province — nor is it the purpose of this paper to demonstrate such a direct link. Rather, the authors are interested in the use of international legal developments as a benchmark against which one may judge the degree to which the *Water for Life* strategy is in conformity with recommended modern water management practices, and, in particular, those reflected in the views of the world community generally.

Obviously, however, this benchmark is just one of a number of possibilities as to how one might evaluate the approach taken in the strategy; obviously, too, the principles articulated in the context of international instruments must necessarily be adapted to the particular context in which *Water for Life* is situated. To issue only two important caveats in this respect: first, *Water for Life* reflects the priorities of an economically advanced jurisdiction, whereas much of the attention of international organizations and conferences has been on the typically much more serious challenges facing developing states. Second,

¹ Government of Alberta, *Water for Life – Alberta’s Strategy for Sustainability* (November 2003), online: <http://www.waterforlife.alberta.ca/documents/wfl-strategy_Nov2003.pdf>.

² Government of Alberta, *Water for Life, A Renewal* (November 2008); Government of Alberta, *Water for Life Action Plan* (November 2009). There was also a progress report on the implementation of the strategy in 2005: Government of Alberta, *Report on Implementation Progress of Water for Life* (October 2005). All three documents can be found online on the Government of Alberta’s website for *Water for Life*: <<http://www.waterforlife.alberta.ca/>>.

³ Discussions of the *Water for Life* strategy can be found, for example, in Michael M. Wenig, *Understanding Local Albertans’ Roles in Watershed Planning — Will the Real Blueprint Please Step Forward?*, CIRL Occasional Paper #28 (Calgary: Canadian Institute of Resources Law, 2010), and J. Owen Saunders, *Institutional Relationships and Alberta’s Water for Life Strategy*, CIRL Occasional Paper #32 (Calgary: Canadian Institute of Resources Law, 2010).

much of the international work rests on the assumption of national governments exercising the primary leadership in water management planning, a context which is obviously very different than that which obtains under the Canadian system of federalism, where provinces exercise the leading role in resources management as the primary owners and managers of the public endowment of natural resources. Nevertheless, even accepting these contextual differences, many of the underlying principles and approaches to water resource management that emerge from the work of international conferences and organizations have broad applicability — as indeed will be reflected further on in the paper in the discussion of the commonalities between international instruments and *Water for Life*.

When assessing the consistency of *Water for Life* with the principles that emerge from international legal instruments, not all aspects of international water law are germane. For example, the paper does not refer to the extensive body of international legal commentary and principles that has grown up over the last century with respect to transboundary water governance. This work is indeed relevant to Alberta's transboundary water relations, especially with other jurisdictions in Canada.⁴ However, it is of minimal relevance to *Water for Life* since the strategy largely ignores this aspect of water management beyond noting that existing transboundary commitments will be honoured.⁵

One might similarly be tempted to include in the analysis of *Water for Life* some much more recent international legal thinking on the rights of indigenous people — especially given that Aboriginal rights currently represent a crucial aspect of water management policy in Alberta (for example in the Lower Athabasca), and given also that *Water for Life* recognizes, at least in principle, that a modern water strategy for the province must accommodate the voices and concerns of Aboriginal peoples. The decision not to include this aspect reflects, first, a recognition that the inclusion of a discussion on the implications of *Water for Life* for Aboriginal people is deserving of special treatment and cannot adequately be addressed within this paper, and second, the fact that the issues raised by Aboriginal rights to water are really just a subset of a broader area of inquiry as to Aboriginal resource rights more generally, and should be considered in that context.

In the result, the starting point that this paper takes for its comparative analysis of *Water for Life* and the principles of water management that emerge from recent international legal instruments is the potential human right to water under international law. The primary interest of this paper, however, is not to provide a definitive answer as

⁴ Somewhat ironically, this is less true with respect to international transboundary issues — partly because these largely come within the jurisdiction of the federal government, but also because the Canada-U.S. relationship with respect to shared freshwater resources is largely governed by bilateral treaties rather than customary international law.

⁵ The most important of these are found in the Master Agreement on Apportionment which commits Alberta to passing on half the natural flow of eastward-flowing prairie rivers.

to the existence of such a right — and, indeed, the review of international instruments in this paper will suggest that there is still ambiguity as to the status of such a right. Rather, our interest in how such a right has been articulated in international instruments is more in the substantive water management practices that have been argued to advance such a right. In effect, it is these practices, rather than the more abstract question of whether a “right” exists, that are more germane to our ultimate inquiry: To what extent does *Water for Life* reflect the best practices that have been advocated by the international community in water management? Regardless of whether one ultimately agrees that a “human right to water” has indeed reached the status of customary international law, the underlying practices that have been argued to advance such a right seem to us to remain a valuable set of indicators by which to judge the extent to which the *Water for Life* initiative is consistent with the view taken by the international community of appropriate modern water management policies. Put differently, while the potential human right to water provides a useful pivot for engaging in this broader comparative exercise, it is not itself the ultimate focus of the exercise.

The paper begins with an overview of the *Water for Life* strategy. This overview addresses both the basic principles of the strategy, as well as the institutions that are created in order to implement it. This overview is followed by a discussion of the potential existence of a right to water under international law. This discussion takes the form of a review of a range of international instruments that have been invoked to suggest, either directly or indirectly, the emergence of such a right. Given the sheer number of international instruments that address water management, the discussion of necessity must be selective; however, we believe that this selection is nevertheless representative, given the common themes that emerge from international practice in a number of fora. Again, our primary interest here is not in providing a definitive answer as to the existence of such a right, but rather to suggest the underlying concerns that these instruments reflect with respect to water management practices. The paper then turns to a comparison of the approaches taken in these international instruments with the approach to water management in the *Water for Life* strategy.

2.0. *Water for Life* Strategy: An Overview

As noted above, the *Water for Life* strategy has been the subject of extensive comment in the literature on natural resources policy generally and water management policy more specifically.⁶ This section will therefore provide only a brief overview of the strategy, and readers are referred elsewhere for a more detailed discussion of the strategy and its intersection with other regulatory and planning processes for resource management in the province.

⁶ See *supra* note 3.

The initiation of the *Water for Life* strategy was part of a broader transformation and modernization of Alberta's water management regime and was preceded by major legislative reform, specifically the passage of a new *Water Act*.⁷ While preserving the essence of the province's longstanding system for water allocation,⁸ the Act also incorporated a recognition of the principle of ecosystem management and protection. This approach was similarly adopted as a foundational principle in the *Water for Life* strategy, with the province divided into seven major watersheds for the purposes of water management planning. (It is also significant that these seven major basins subsequently became the basis for planning regions more generally under the province's sweeping *Land-use Framework*⁹ in 2008 and its 2009 legislative implementation through the *Alberta Land Stewardship Act*.¹⁰)

There are several other core principles that emerged from the consultation process leading up to the release of the strategy. Of particular interest to this paper are those relating to the recognition that there are limits to water availability; that citizens and local communities must share responsibility for managing the province's water endowment; that "[h]ealthy aquatic ecosystems are vital to a high quality of life for Albertans"; and that there must be a continuing access to safe and secure drinking water.¹¹

While the *Water for Life* strategy does not supply the detailed nuts and bolts for water basin planning, it does provide a vision for such planning, including both major goals and guiding principles. Building on the public consultation process noted above, the strategy identifies three basic goals for water management in the province; these goals are also phrased in the strategy as three corollary commitments by the government to Albertans:

1. Albertans will be assured their drinking water is safe.
2. Albertans will be assured that the province's aquatic ecosystems are maintained and protected.
3. Albertans will be assured that water is managed effectively to support sustainable economic development.¹²

In pursuit of these three goals/commitments, the strategy sets out a series of what it terms "specific outcomes" for each goal that it envisages in the short- (2004/05 to

⁷ R.S.A. 2000, c. W-3. An overview of the Act can be found in Wenig, *supra* note 3.

⁸ Which is based on a first-in-time, first-in-right approach.

⁹ Government of Alberta, *Land-use Framework* (December 2008).

¹⁰ S.A. 2009, c. A-26.8 (proclaimed in force 1 October 2009).

¹¹ *Water for Life*, *supra* note 1 at 6.

¹² *Ibid.* at 7.

2006/07), medium- (2007/08 to 2009/10) and long-term (2010/11 to 2013/14). The majority of these outcomes are, however, of a general nature (for example, the short-term outcome under goal 1 that “Albertans have full and complete knowledge of drinking water issues”¹³). The most important commitment that is indeed relatively specific is the medium-term outcome that is promised under both goals 2 and 3 of creating watershed management plans as vehicles for establishing water management objectives and priorities.¹⁴

While the goals/outcomes described above are for the most part general in nature, the strategy does provide greater detail as to the specific actions that will be required for implementation of the strategy in the context of what it describes as the three core areas of focus: knowledge and research, partnerships and water conservation.¹⁵ A full description of these actions is beyond the scope of this paper; however, one of the key directions — partnerships — is of specific relevance to the subsequent discussion of international trends.

Partnerships are of particular interest because it is under this heading that the institutional architecture for *Water for Life* is set out. While it is not necessary here to describe in detail all the actions contemplated under this direction, a brief description of the primary institutional relationships underlying the implementation of *Water for Life* is necessary to properly understand the role in water management planning of government *vis-à-vis* citizens and other groups in civil society. *Water for Life* contemplates three different institutional actors (in addition to government of course) as key to the implementation of the strategy.¹⁶ These are first, a Provincial Water Advisory Council (now established as the Alberta Water Council), second, Watershed Planning and Advisory Councils (WPACs), and finally, Watershed Stewardship Groups (WSGs). The three bodies are intended to strike a balance in perspectives between one that is provincial in scope and others that are more reflective of local and regional concerns.

The first of these institutions, the Alberta Water Council, is the body that is intended to provide a provincial perspective on watershed planning. The Council is a multi-stakeholder group that has the mandate of guiding the “overall implementation” of *Water*

¹³ *Ibid.* Similar references to having knowledge and tools are included in the outcomes for the other goals, as well as such broad outcomes as (under goal 2) “Communities are demonstrating leadership in watershed management.” *Ibid.*

¹⁴ *Ibid.* at 7-8. These objectives and priorities then must balance the need for healthy aquatic ecosystems with the need to support sustainable economic development.

¹⁵ For each of the three goals described earlier, then, there is a matrix of actions set out, with short-, medium-, and long-term outcomes on one axis and actions in each of the three key areas of focus on the other.

¹⁶ For a detailed description of the institutional aspects of *Water for Life*, including a discussion of how these institutions interact with other provincial planning processes, see Saunders, *supra* note 3.

for Life, as well as the responsibility of advising the provincial government on water policy more generally.¹⁷ It has its own independent research mandate with respect to emerging issues in water management; it also the mechanism that the government envisages for engaging in continuing consultation with Albertans on water-related issues. The link between the Council and the other two bodies is not a direct supervisory one (so, for example, they do not report directly to the Council); the role of the former in this context is described rather as one of “guidance and mentoring”.¹⁸

The other two institutions provided for in the strategy are both oriented towards local and regional participation. WPACs are the more significant institutions from the perspective of watershed planning. These, again, are multi-stakeholder groups (including representatives of municipal and Aboriginal governments) and are charged not only with taking the lead in watershed planning, but also more generally with acting as regional champions of good water management practices — for example through collaboration with institutions for land-use planning and through the provision of state of the basin reports. As of this writing there are ten WPACS in existence, with another in the process of formation.¹⁹

With respect to the actual implementation of the key role that is foreseen for the WPACs — watershed planning — the details of how this is to be accomplished are not provided in *Water for Life*. Indeed the very concept of what constitutes a watershed plan is not entirely clear. Some of these details are spelled out in two other documents. The first of these is the 2001 *Framework for Water Management Planning*, which of course pre-dates the launch of *Water for Life*, and is grounded in a requirement imposed by the 1996 *Water Act*.²⁰ The second is the 2008 *Recommendations for a Watershed Management Planning Framework for Alberta*, produced by the Alberta Water Council with a view to advancing the framework for watershed planning beyond the 2001 document. It would be misleading to suggest, however, that either of the documents provides detailed instructions for watershed planning, and the documents have been criticized in this respect for their generality.²¹

The final institution provided for in *Water for Life* — the WSG — is essentially a catch-all descriptor for numerous community-based groups that had evolved prior to the strategy. Their designation as WSGs would seem to be an attempt to provide for some formal recognition of an existing reality. Typically — unlike the Alberta Water Council

¹⁷ *Water for Life*, *supra* note 1 at 15.

¹⁸ *Ibid.* at 16.

¹⁹ It is not the case then that there will be only one WPAC for each of the seven major watersheds in the province; sub-basins may have their own WPACs.

²⁰ *Supra* note 7, s. 7(1).

²¹ See Wenig, *supra* note 3 at 23.

and the WPACs, which were created at the initiative of the government — these groups were formed from the ground up by volunteers with a view to addressing specific issues in their respective local waterbodies. Although the strategy asserts that the WSGs “will continue to play a vital role in water management in the province”,²² there is no clear commitment to encouraging the growth of such groups. Similarly, it is not clear how robust their role will be in practice, especially given the creation of WPACs; the strategy suggests merely that they “will be encouraged to participate at the [WPAC] level, for guidance, technical advice, and mentoring.”²³

In sum, the *Water for Life* strategy (together with its subsequent refinements) sets out a number of general principles to guide water management planning in Alberta, together with the institutions for the implementation of these principles, using the watershed as the basic unit for planning. Although many of the commitments in the strategy are general in nature, the menu of actions promised is an ambitious one if taken seriously. In this respect, one of the disappointing aspects of *Water for Life* is the lack of legal teeth that would signify a serious statement of intent. *Water for Life* comprises a large number of significant policy undertakings, but it is not accompanied by any legislated mandate or timelines by which the government can be held to account. This is particularly significant given the much different approach in the *Land-use Framework* as implemented by the *Alberta Land Stewardship Act (ALSA)*, which has real legal consequences — as reflected, for example, in the fact that the land-use plans generated by that process will trump existing regional and local plans (which will have to be brought into conformity with the *ALSA* plans in the event of a conflict). Since the land-use plans emerging from the *ALSA* process will include planning for water use, it is possible that as a practical matter *Water for Life* could fade in significance as stakeholders focus on the planning process with real legal force.

3.0. A Right to Water in International Law?

This section of the paper investigates whether a human right to water (quantity and/or quality) exists in international law, as reflected in international treaties, declarations and other instruments. To date there have been several express and implied references to a right to water in international law, particularly in binding conventions. There are also “soft law” instruments which contain relevant references. The section begins with a review of the major conventions which some scholars argue incorporate a right to water, expressly or implicitly. We then turn to a discussion of other instruments, which, while not legally binding *per se*, have nevertheless been argued as reflective of state practice, and therefore of potential relevance to the emergence of customary international legal

²² *Water for Life*, *supra* note 1 at 16.

²³ *Ibid.*

norms. Again, as indicated earlier in the paper, we are less interested in a definitive answer as to the existence of a human right to water than in the underlying practices that would actualize such a right.

3.1. International Conventions

3.1.1. *The ICCPR and ICESCR*

The *International Covenant on Civil and Political Rights* (ICCPR)²⁴ and the *International Covenant on Economic, Social, and Cultural Rights* (ICESCR)²⁵ do not contain any express reference to a human right to water of any kind. However, scholars have argued that the right to water is implicitly recognized in these conventions, especially so in the ICESCR.

Traditionally, the affirmation in Article 6 of the ICCPR of the “right to life” has been interpreted to mean that no person shall be deprived of his/her life in a civil and political sense.²⁶ In short, the goal of such a right was initially to provide protection against the arbitrary deprivation of life, liberty and security by the state (e.g. murder, torture or imprisonment without trial).²⁷ According to the United Nations Human Rights Committee, however, the right to life, liberty and security in international law has often been interpreted too narrowly. In its view, this right has a broader meaning and does, for example, include state obligations to protect against threats (including environmental ones) to survival and quality of life.²⁸ Also included in this right are state measures to reduce infant mortality and increase life expectancy, especially through the adoption of measures to eliminate malnutrition and epidemics.²⁹ Scholars argue that one cannot

²⁴ *International Covenant on Civil and Political Rights*, 19 December 1966, 999 U.N.T.S. 171 [ICCPR].

²⁵ *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, 993 U.N.T.S. 3 [ICESCR].

²⁶ See John Scanlon, Angela Cassar & Noémi Nemes, *Water as a Human Right?*, IUCN Environmental Policy and Law Paper No. 51 (2004). Much of the following summary of international instruments is drawn from this comprehensive report. ICCPR, Art. 6(1) provides as follows: Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

²⁷ See I. Scott, “The Inter-American System of Human Rights: An Effective Means of Environmental Protection?” (2002) Va. Env'tl. L.J. 197 at 211 (concluding that the vast majority of cases finding a violation of the right to life are extreme cases of torture, murder, or forced disappearance by state agents). See also, B.G. Ramcharan, “The Concept and Dimensions of the Right to Life” in B.G. Ramcharan, ed., *The Right to Life in International Law* (Dordrecht, Netherlands: Martinus Nijhoff Publishers, 1985).

²⁸ United Nations Human Rights Committee, “General Comment on Article 6 of the Civil and Political Covenant”, adopted at the Sixteenth Session (in 1982), in *Compilation of General Comments and General Recommendations adopted by Human Rights Treaty Bodies*, UN Doc. HRI/GEN/1/Rev.3 (1997).

²⁹ *Ibid.*

disregard this broader understanding of Article 6, as advocated by the Human Rights Committee, in evaluating a potential human right to water.

Moreover, even taking a traditional, narrower interpretation, publicists argue that the right to life under Article 6 would nonetheless require protection against arbitrary and intentional denial of access to sufficient water. This is so because without adequate access to water, human life cannot exist. Because water is a fundamental resource required to sustain life, there can be no protection of human life without a corresponding protection of a right to water.³⁰

Similarly, with respect to the ICESCR, it can be argued that the right to water is contained implicitly within Articles 11 (the right to an adequate standard of living) and 12 (the right to “the enjoyment of the highest attainable standard of physical and mental health”).³¹ In a recent comment, the United National Committee on Economic, Social and Cultural Rights, explicitly recognized the existence of a human right to water, stating that: “[t]he human right to water is indispensable for leading a life in human dignity. It is a prerequisite for the realization of other human rights.”³² The Committee set out three factors that are applicable in all circumstances relating to the right to water. The first factor is *availability*, which it interpreted as meaning that the water supply for each person must be sufficient and continuous for personal and domestic uses. The second factor is *quality*. This means that the water required for personal or domestic use must be safe, and therefore free from microorganisms, chemical substances, and radiological hazards that constitute a threat to a person’s health. The third factor is *accessibility*. The Committee noted that this factor has four overlapping dimensions as follows: physical accessibility, economic accessibility, nondiscrimination, and information accessibility.³³

According to the Committee, its comments were made with a view to establishing a right to water in international law, given the lack of explicit recognition in the ICSECR.

³⁰ Scanlon, Cassar & Nemes, *supra* note 26.

³¹ *Ibid.*

³² United Nations Committee on Economic, Social and Cultural Rights (UNCESCR), *General Comment No. 15 (2002): “The Right to Water (arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights)”*, adopted at the Twenty-ninth Session, Geneva, 11-29 November 2002, E/C.12/2002/11. For an excellent review of *General Comment No. 15*, see M.A. Salman & Siobhán McInerney-Lankford, *The Human Right to Water: Legal and Policy Dimensions* (Washington: World Bank Publications, 2004).

³³ See paras. 12(a), 12(b) and 12(c) of *General Comment No. 15, ibid.* With regard to physical accessibility, the Committee stated that water and water facilities and services must be within safe physical reach of all sections of the population. It defined economic accessibility as affordability for all, and nondiscrimination means, for the Committee, accessibility for all, including vulnerable and marginalized sections of the population. According to the Committee, information accessibility includes the “right to seek, receive, and impart information concerning water issues”: para. 12(c)(iv).

In doing so, it based its analysis on three analytic tools: derivation and inference, centrality and necessity, and prior recognition.³⁴

With respect to the first element, the Committee referred to Article 11 of the ISECR and stated that “the use of the word ‘including’ [in the phrase “including adequate food, clothing and housing, and to the continuous improvement of living conditions”] indicates that this catalogue of rights was not intended to be exhaustive.” It noted that “[t]he right to water clearly falls within the category of guarantees essential for securing an adequate standard of living, particularly since water is one of the most fundamental conditions for survival.” The Committee also inferred this right from Article 12 of the ICESCR, wherein state parties recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. It concluded that the right to water is also inextricably related to this right. Lastly, the Committee suggested that the right to water must be seen in conjunction with other rights enshrined in the International Bill of Rights, “foremost amongst them the right to life and dignity.”³⁵

Centrality and necessity of water to other ICESCR rights is another analytical device used by the Committee to ground recognition of a right to water. General Comment No. 15 notes the centrality of water to states parties’ duties under Article 1(2) of the ICESCR. This Article states that a people shall not be “deprived of its means of subsistence” and requires adequate access to water for subsistence farming. The Committee also noted that the right to the highest attainable standard of health provided another source for a right to water, because water is central to environmental hygiene.³⁶ Similarly, the Committee also cited the necessity of water to the right to adequate food, as well as housing.³⁷

Finally, with respect to prior recognition, the Committee based a large part of its argument on the existence of other international legal instruments which recognize the right to water. For example, the Committee cited Article 14(2) of the *International Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)* (1979). The CEDAW provides that states parties shall guarantee women the right to “enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply.” It also cited Article 24(2) of the *Convention on the Rights of the Child* which stipulates that states parties shall combat disease and malnutrition “through the provision of adequate nutritious foods and clean drinking water.”

³⁴ Salman & McInerney-Lankford, *supra* note 32.

³⁵ *General Comment No. 15*, *supra* note 32 at para. 3. See also Salman & McInerney-Lankford, *ibid.* at 56-57.

³⁶ Article 12.1 of the ICESCR, *supra* note 25 states that: “The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.”

³⁷ Salman & McInerney-Lankford, *supra* note 32 at 59.

Moreover, the Committee reaffirmed its previous recognition of the right to water in a previous comment, General Comment No.6, on the economic, social, and cultural rights of older persons.³⁸ As noted by Salman and McInerney-Lankford, the Committee also reiterated the fact that it had consistently addressed the right to water during its consideration of states parties' reports (submitted under the ICESCR) as well as in its other General Comments. These authors also highlight the fact that the Committee noted the importance of sustainable access to water resources for agriculture so as to realize the right to adequate food as elaborated in its General Comment No. 12 (1999).³⁹

Although general comments of United Nations committees, including the UNCESCR, are not binding *per se*, scholars argue that these comments provide a critical mechanism for a normative and contextualized understanding of the provisions of the ICESCR.⁴⁰ It has also been argued that because General Comment No. 15 (which amounts to an interpretive instrument for Articles 11 and 12 of the ICESCR) specifically recognizes the human right to water, states have a continuing duty to progressively take active steps (including the development of policy, strategy and action plans) in order to ensure that everyone has access to safe and secure drinking water and sanitation facilities.⁴¹ In short, scholars point to General Comment No. 15 either as clear evidence of the existence of a right to water in international law, or as evidence that such a right is emerging in international law.⁴²

3.1.2. CEDAW and the Convention on the Rights of the Child

To date, only two human rights treaties refer directly to a right to water, the *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW)⁴³ and the *Convention on the Rights of the Child*⁴⁴ mentioned earlier. Article 14(2)(h) of the CEDAW requires parties to eliminate discrimination against women, particularly in rural areas to ensure that women “enjoy adequate living conditions, particularly in relation to

³⁸ United Nations Committee on Economic, Social and Cultural Rights, General Comment No. 6, *The economic, social and cultural rights of older persons* (13th Sess., 1995), UN Doc. E/C. 12/1995/16/Rev. 1 (1995), cited in *ibid.*

³⁹ Salman & McInerney-Lankford, *supra* note 32 at 63-64.

⁴⁰ See, for example, Scanlon, Cassar & Nemes, *supra* note 26 and Salman & McInerney-Lankford, *supra* note 32.

⁴¹ *Ibid.*

⁴² *Ibid.*

⁴³ Adopted 18 December 1979, entered into force 3 September 1981, GA Res. 34/180, 34 UN GAOR, Supp. (No. 46), UN Doc. A/34/46, at 193 (1979), reprinted in 19 ILM 33 (1980).

⁴⁴ Adopted and opened for signature, ratification and accession by General Assembly Resolution 44/25 of 20 November 1989, entry into force 2 September 1990.

housing, sanitation, electricity and water supply, transport and communications.” As commentators have noted, the express recognition of water in this Article was viewed as a testament to the uneven burden traditionally imposed upon women in developing countries who collect water over long distances. It represents an attempt to redress this burden.⁴⁵

The *Convention on the Rights of the Child* recognizes a child’s right to enjoy the highest attainable standard of health in order to “combat disease and malnutrition, including within the framework of primary health care, through, *inter alia*, the application of readily available technology and through the provision of adequate nutritious food and clean drinking-water, taking into consideration the dangers and risks of environmental pollution.”⁴⁶ According to Scanlon, Cassar and Nemes, in contrast to the CEDAW, the pressing water issue for children is related more to health, hence the emphasis on water quality in this provision.⁴⁷

3.1.3. Geneva Conventions and Protocols

Finally, commentators note that the Geneva Conventions and their Additional Protocols explicitly recognize a right to water, although such a right focuses on drinking water only. A right to drinking water is found in Geneva Conventions III⁴⁸ and IV⁴⁹ and in Additional Protocols I and II.⁵⁰ Of course these provisions are focused on specific circumstances involving armed conflict; nevertheless, they serve to emphasize the point that access to water should be considered a fundamental right at all times.

⁴⁵ See Scanlon, Cassar & Nemes, *supra* note 26.

⁴⁶ *Convention on the Rights of the Child*, *supra* note 44 (Art. 24(2)(c)).

⁴⁷ Scanlon, Cassar & Nemes, *supra* note 26 at 6.

⁴⁸ *Geneva Convention III relative to the Treatment of Prisoners of War 1949*, 12 August 1949, 75 U.N.T.S. 135.

⁴⁹ *Geneva Convention IV relative to the Protection of Civilian Persons 1949*, 12 August 1949, 75 U.N.T.S. 972.

⁵⁰ *Protocol I Additional to the Geneva Convention of August 12, 1949, and Relating to the Protection of Victims of International Armed Conflicts, June 8 1977*, 1123 U.N.T.S. 3; *Protocol II Additional to the 1949 Geneva Conventions, and Relating to the Protection of Victims of Noninternational Armed Conflicts, June 1977*, U.N.T.S. 609, 614. The specific provisions are found in: Arts. 20, 26, 29 and 46, Geneva Convention III (1949); Arts. 85, 89 and 127, Geneva Convention IV (1949); Arts. 54 and 55, Additional Protocol I (1977); Arts. 5 and 14, Additional Protocol II (1977).

3.2. Soft Law Documents Incorporating a Right to Water⁵¹

Scholars have noted that the right to water is more often expressed within non-legally binding resolutions and declarations than in binding international treaties.⁵² Within the context of resolutions and declarations, there is general acceptance that fundamental human rights, such as rights to life, health, and well being, are dependent upon a guarantee of access to a sufficient quality and quantity of water.⁵³ International water conferences and forums have, however, vacillated between declaring water to be a basic human need on the one hand, and a human right on the other.⁵⁴ It has been noted that while the term “need” implies some sense of charity and represents the recipients as passive beneficiaries, the term “right” conveys a sense of legal entitlement which should, in turn, result in a corresponding legal duty.⁵⁵

Linking the human right to water to environmental law or environmental rights (such as a human right to a clean or healthy environment) is another approach often used in these instruments. The basis of this approach can be traced back to the Stockholm Declaration of 1972.⁵⁶ An overview of some of the relevant soft law instruments is set out below.

3.2.1. Universal Declaration of Human Rights (UDHR)⁵⁷

Article 25 of the UDHR proclaims that “everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services”. Scholars argue that the term “including” in this provision indicates that the matters listed were not meant to be all-inclusive. Rather, they serve as indicia of certain factors which are essential for an adequate standard of living, one of which is drinking water.⁵⁸ This argument is based on

⁵¹ Soft law has been defined as denoting “that the instrument or [treaty] provision is not of itself ‘law’, but its importance within the general framework of international legal development is such that particular attention needs to be paid to it ... The propositions of ‘soft law’ are important and influential, but do not in themselves constitute legal norms.” Malcolm N. Shaw, *International Law*, 6th ed. (Cambridge: Cambridge University Press, 2008) at 117-118.

⁵² See, for example, Scanlon, Cassar & Nemes, *supra* note 26.

⁵³ *Ibid.*

⁵⁴ *Ibid.* and Salman & McInerney-Lankford, *supra* note 32.

⁵⁵ *Ibid.*

⁵⁶ Salman & McInerney-Lankford, *supra* note 32.

⁵⁷ UNGA Res. 217(III), UN GAOR, 3d Sess., Supp. No. 13 at 71 (1948).

⁵⁸ See, for example, Scanlon, Cassar & Nemes, *supra* note 26, where the authors conduct an extensive review of the scholarly literature on the topic.

the obvious rationale that it is not possible to satisfy the standards set out in the UDHR without the provision of water of sufficient quantity and quality to maintain human health and wellbeing.⁵⁹ Although the UDHR is a soft law document rather than a treaty, it has come to be accepted as representing norms of customary international law binding generally on nations.

3.2.2. Stockholm Declaration

The Stockholm Declaration emerged from the 1972 United Nations Conference on the Human Environment⁶⁰ and is generally considered one of the most important instruments in the development of modern international environmental law. Among other things, the Declaration recognizes the fundamental right to “an environment of a quality that permits a life of dignity and wellbeing.”⁶¹ Some scholars argue that a human right to water can be derived from this principle. The underlying proposition is that there exists some form of individual right to a clean or healthy environment which necessarily includes a right to water.⁶²

3.2.3. Vienna Declaration and Programme of Action

There are several international documents, including the Vienna Declaration and Programme of Action (VDPA), which state that the “right to development” is a “universal and inalienable right and an integral part of fundamental human rights”.⁶³ Article 8(1) of the VDPA provides that “states should undertake, at the national level, all the necessary measures for the realization of the right to development and shall ensure, *inter alia*, equality of opportunity for all in their access to basic resources ...”. In interpreting this Article, the U.N. General Assembly has clarified and reaffirmed in Resolution 54/175 that “the right to food and clean water are fundamental human rights

⁵⁹ *Ibid.*

⁶⁰ Declaration of the United Nations Conference on the Human Environment (Stockholm Declaration), 16 June 1972, online: <<http://www.unep.org/Documents.Multilingual/Default.asp?documentid=97&articleid=1503>>.

⁶¹ Principle 1 states that: “Man [*sic*] has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well being, and he [*sic*] bears a solemn responsibility to protect and improve the environment.”

⁶² Scanlon, Cassar & Nemes, *supra* note 26 and Salman & McInerney-Lankford, *supra* note 32. For a summary of the literature on a right to a clean or healthy environment, see Nickie Vlavianos, *Health, Human Rights and Resources Development: Current and Emerging Law*, Human Rights Paper No. 1 (Calgary: Canadian Institute of Resources Law, 2003).

⁶³ Article I(10) of the Vienna Declaration and Program of Action, GA/CONF. 157/23, adopted by the World Conference on Human Rights on 25 June 1993.

and their promotion constitutes a moral imperative both for national governments and the international community.”⁶⁴

3.2.4. Mar del Plata Action Plan

This Plan is an international instrument specific to water management and arises out of the United Nations Water Conference held in Mar del Plata in 1977. It recognizes access to drinking water as a “right”, declaring that all people have the right to drinking water in quantities and of a quality equal to their basic needs.⁶⁵

3.2.5. Dublin Statement

The International Conference on Water and the Environment, held in Dublin in January 1992, was a preparatory meeting for the United Nations Conference on Environment and Development, held in Rio de Janeiro in June 1992. Principle 4 of the Dublin Statement on Water and Sustainable Development, which emerged from the Conference, explicitly reaffirmed the human right to water in the following terms: “... it is vital to recognize first the basic human right of all human beings to have access to clean water and sanitation at an affordable price.”⁶⁶

3.2.6. Agenda 21

Chapter 18 of Agenda 21⁶⁷ of the Rio conference noted above suggests that a right to water entails three elements: (i) access, (ii) quality and (iii) quantity. The right includes not only a “general objective ... to make certain that adequate supplies of water of good quality are maintained for the entire population of this planet”, but also to provide that “all peoples, whatever their stage of development and their social and economic conditions, have the right to have access to drinking water in quantity and of a quality equal to their basic human needs.”

⁶⁴ A/RES/54/175 of 17 December 1999 (83rd Plenary Meeting), para. 12. See also Scanlon, Cassar & Nemes, *supra* note 26.

⁶⁵ Preamble, United Nations (1977) Report of the United Nations Water Conference, Mar de Plata, 14-25 March 1977, No. E77 II A12, United Nations Publications, New York.

⁶⁶ *The Dublin Statement on Water and Sustainable Development*, adopted 31 January 1992, International Conference on Water and the Environment, online: <<http://www.un-documents.net/h2o-dub.htm>>.

⁶⁷ United Nations Conference on Environment and Development (Rio de Janeiro, 3-14 June 1992), *Agenda 21, The United Nations Programme of Action from Rio*, Chapter 18, Protection of the Quality & Supply of Freshwater Resources: Application of Integrated Approaches to the Development, Management & Use of Water Resources, online: <http://www.un.org/esa/dsd/agenda21/res_agenda21_18.shtml>.

3.2.7. General Assembly Resolution on the Human Right to Water and Sanitation

In July 2010, the United Nations General Assembly adopted a resolution on the human right to water and sanitation.⁶⁸ The resolution recalls a series of resolutions and documents reflecting the longstanding interest of the United Nations in water-related issues generally, and the human right to water in particular. The resolution “*Recognizes* 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”.⁶⁹ More telling than this recognition, though, is the lack of consensus on the resolution, which characterizes much of the U.N. work in this respect. The resolution passed 122 to 0, but, significantly, with 41 abstentions. Some of these (such as that of the United States) were strongly influenced by the fact that the United Nations Human Rights Council was actively seized of this issue under the so-called “Geneva process”, utilizing a special independent expert in this respect.⁷⁰ The representative of the United Kingdom went further, however, in explaining its abstention:

the United Kingdom does not believe that there exists at present sufficient legal basis under international law to either declare or recognize water or sanitation as free-standing human rights. Neither a right to water nor a right to sanitation has been agreed upon in any United Nations human rights treaty, nor is there evidence that they exist in customary international law.⁷¹

Canada, which similarly abstained in the voting, on the one hand recognized “that there are important human rights related to access to safe drinking water as a component of existing rights” but on the other, was:

of the view that a general right to safe and clean drinking water and sanitation is not explicitly codified under international human rights law, and there is currently no international consensus among States regarding the basis, scope and content of a possible right to water. It is premature to declare such a human right in the absence of a clear international consensus, and the lack of international consensus is exemplified by the fact that a vote was called on this resolution.⁷²

In the result, it is far from clear that the work of the United Nations has yet produced any consensus on the existence of a distinct human right to water, or even a consensus on what the scope of such a right might amount to.

⁶⁸ A/RES/64/292 of 28 July 2010 (108th Plenary Meeting).

⁶⁹ *Ibid.*, para. 1.

⁷⁰ UNGA, 64th Sess., 108th Plenary Meeting, 28 July 2010, *Official Records*, A/64/PV.108 at 7-8.

⁷¹ *Ibid.* at 12

⁷² *Ibid.* at 17.

3.3. Conclusion

In summary, a range of binding and non-binding international instruments have suggested at a minimum that it would be *desirable* for customary international law to recognize a human right to water — particularly with respect to such basic needs as drinking water and hygiene. Less certain is whether such a right has yet achieved the necessary consensus to be considered as legally binding on states; on this point scholarly opinion is still divided.

As noted at the beginning of this paper, however, the theoretical question of the existence of such a right is of less interest for our purposes than is the question of how such a right — or, in the event it has not yet crystallized, how such a recommended practice — would be actualized. The documents that have been reviewed above are also useful in answering this question, and in providing the basis for a comparative analysis with the approach taken in the *Water for Life* strategy — an inquiry to which we turn in the following section.

4.0. *Water for Life* and International Law

The *Water for Life* strategy makes no reference to any of the international development documents described in the previous section nor to international practice more generally. In particular, the language used in the strategy does not speak in terms of a “human right” to water as it has arguably evolved in international law. While a “right” to water is indeed referred to as one of the basic principles underlying the strategy, that right is based on property interests — as reflected in the reiteration that the province is committed to preservation of the “first-in-time, first-in-right” principle with respect to the issuance and administration of water allocations.⁷³ Nevertheless there are many points in *Water for Life* where the approach to water management resonates with statements put forward in the context of the international documents described earlier. The discussion below suggests three particular areas where this is true.

4.1. Access to Drinking Water

The most obvious area of commonality between the international instruments surveyed and the *Water for Life* strategy is with respect to drinking water. As noted in the earlier discussion of the strategy, a commitment to a safe, secure supply of drinking water is the first of its three fundamental goals. This commitment can be seen as mirroring the right to water as elaborated on, *inter alia*, by the UNCESCR in the context of its interpretation of the ICESCR. As discussed above, the right is analyzed in terms of three proposed criteria

⁷³ *Water for Life*, *supra* note 1 at 6.

— availability, quality and accessibility,⁷⁴ all of which are inherent in the commitment as it is phrased in *Water for Life*.

The commonalities between how the *Water for Life* strategy views its commitment with respect to access to drinking water and the international right to water as articulated by the UNCESCR become more emphatic when one looks into the explanation of the three above-noted criteria proposed by the UNCESCR and compares them to the similar elaboration of the *Water for Life* commitment. The former suggests, for example, that the criterion of accessibility should be understood to include accessibility by individuals to information relating to water issues that concern them. Similarly, in *Water for Life*, of the five specific outcomes identified with respect to the goal of a safe, secure supply of drinking water, three are concerned with information accessibility. These include the medium-term outcomes of ensuring that “Albertans have full and complete knowledge of drinking water issues ... [and that] Albertans have real-time access to information about drinking water quality in their community” and the long-term outcome whereby Albertans will have “knowledge, tools and motivation to implement actions that will maintain or improve the province’s water resources.”⁷⁵

4.2. Competing Uses for Water

While the articulation of a possible human right to water in international law typically begins with a discussion that is framed in terms of drinking water, it does not end there. The international instruments discussed in the previous section also contemplate a broader right, one that is similarly consonant with the other two goals set out in *Water for Life*: healthy aquatic ecosystems and water supplies for a sustainable economy. These two goals are suggestive of the need to provide a balancing between environmental and economic priorities — recognizing of course that environmental and economic goals need not be mutually exclusive (particularly if the analysis of economic needs includes all the associated externalities). This tension between recognizing the fundamental role of water in preserving and promoting environmental health and its role in sustaining a viable economy are reflected also in some of the international documents discussed earlier.

As has been noted, the link between a possible human right to water and a similar human right to a clean or healthy environment has been suggested by a number of scholars. As discussed, the right to a healthy environment can be said to find its roots in the Stockholm Declaration, specifically in its reference to “an environment of a quality

⁷⁴ Although the Committee’s discussion of the right to water is not restricted entirely to the use of water for drinking, the access to drinking water is clearly fundamental to its analysis. Thus its reference to the provision relating to “clean drinking water” in the *Convention on the Rights of the Child* as additional support for a human right to water.

⁷⁵ *Water for Life*, *supra* note 1 at 7.

that permits a life of dignity and wellbeing”⁷⁶ and the corresponding obligation on states to protect and improve the environment.⁷⁷

While the right to a healthy environment is often presented as not only consistent with but supportive of a human right to water, a closer analysis of the various international documents reveals the same underlying tensions between environment and economic development that one finds in the three basic goals enunciated in *Water for Life*, although the tendency is to bury these tensions in ambiguous language. One document that does recognize the tension, although it ultimately does not resolve it, is the Stockholm Declaration itself. Despite the above-noted recognition of a right to environmental quality (from which it may be possible to argue for a similar right to water), the Declaration at the same time recognizes the need for — and even the desirability of — economic development. Thus, while the Declaration speaks of the need to take strong action against a number of environmental threats, it also asserts in Principle 11 that:

The environmental policies of all States should enhance and not adversely affect the present or future development potential of developing countries, nor should they hamper the attainment of better living conditions for all ...

The Declaration is similarly ambivalent about the clash between the rights of individuals to a healthy environment and the sovereignty of states in the often-cited Principle 21:

States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.⁷⁸

This ambivalence between recognizing both environmental rights on the one hand and the potentially conflicting need for economic development on the other has specific relevance for water resources. Thus, while it has been noted that a human right to access to drinking water can be derived from Chapter 18 of Agenda 21,⁷⁹ that chapter also recognizes explicitly that water is subject to other competing needs, including those related to economic development:

⁷⁶ Stockholm Declaration, Principle 1, *supra* note 61.

⁷⁷ *Ibid.*

⁷⁸ The Declaration effectively resolves the potential conflict between environmental protection and development in the case of poorer countries by asserting that in these countries lack of development is a primary cause of environmental harm: Principle 4, which notes that conversely in developed nations “environmental problems are generally related to industrialization and technological development.”

⁷⁹ *Supra* note 67.

The multisectoral nature of water resources development in the context of socio-economic development must be recognized, as well as the multi-interest utilization of water resources for water supply and sanitation, agriculture, industry, urban development, hydropower generation, inland fisheries, transportation, recreation, low and flat lands management and other activities.⁸⁰

This leads us directly to the obvious question: in light of these competing uses for water, what is the mechanism that will allow for the appropriate balancing between different societal needs? As discussed below, this is also an area where *Water for Life* and the views of the international community are in broad agreement.

4.3. Planning as an Instrument for Water Management

While not all international instruments address directly the means for reconciling the imperatives of environmental protection and economic development, whether generally or with specific reference to water, those that do emphasize the need above all for planning. The need for planning to achieve this balancing between environmental and development objectives was recognized in a number of principles in the Stockholm Declaration, albeit the enunciation of these principles is at a very general level and is not directed at water resources specifically. For example, the basic recognition of the problem and the solution is found in Principle 14:

Rational planning constitutes an essential tool for reconciling any conflict between the needs of development and the need to protect and improve the environment.

Other principles in the Declaration briefly elaborate on this need for planning — for example in the emphasis on integrated planning in Principle 13;⁸¹ however, these principles are similarly very general in their drafting.

Agenda 21, emerging from the Rio conference, presents a much more ambitious description of the type of planning necessary to successfully balance environmental and developmental objectives, both generally and with specific reference to water management. The integration of environment and development generally is the subject of Chapter 8,⁸² which describes in detail an extensive range of actions that should be taken to this end. Of more interest for this paper, however, are the proposals in Chapter 18, which are directed at freshwater management specifically. While parts of the chapter are of greater relevance to developing countries — not surprisingly, since it is these countries that often experience the stresses on water resources most acutely — significant parts also resonate with the approach to water management that is set out in *Water for Life*.

⁸⁰ *Ibid.*, para. 18.3.

⁸¹ See also Principles 12 and 15 with respect to planning.

⁸² Agenda 21, Chapter 8, Integrating Environment & Development in Decision-Making.

Chapter 18 of Agenda 21 proposes seven programme areas for improving freshwater management. For each programme, it sets out a context (which it refers to as a “Basis for Action”), followed by programme objectives, programme activities to implement these objectives, and, finally the means of implementation for these activities — in sum, a structure not unlike that in *Water for Life*. More importantly, many of the approaches described in Chapter 18 resonate strongly with themes found in *Water for Life*. A full comparative analysis of Chapter 18 and *Water for Life* is beyond the scope of this paper; however some of the more striking commonalities can be described briefly.

The first point of convergence between Agenda 21 and *Water for Life* is the emphasis in both documents on integrated planning as a fundamental tool for water resources management, with planning to be carried out at the basin and/or sub-basin level. Where there is some arguable divergence between the two documents in this respect is in the scope of the planning exercise. While *Water for Life* is focused on water management exclusively, Agenda 21 suggests that integrated water resources management must integrate both land use and water use.⁸³ In effect this approach has subsequently been recognized in the adoption of Alberta’s *Land-use Framework* and its legislative implementation in *ALSA*. (Despite this latter development, however, it is still not clear how *Water for Life* will be integrated into the *ALSA* process; this is particularly relevant given, as noted earlier, the superior legal enforcement mechanisms available through *ALSA* as compared to *Water for Life*.⁸⁴)

Not only do Agenda 21 and *Water for Life* agree on the significance of planning as a necessary and basic tool for accomplishing other goals (such as the assurance of access to drinking water), they also place a similar emphasis on *who* should be engaged in the planning. Under Agenda 21 the design and implementation of the projects and programmes that will fall under the integrated planning process should be “based on an approach of *full public participation*, including that of women, youth, *indigenous people* and *local communities* in water management policy-making and decision-making”.⁸⁵ In effect, this articulation of who should be involved in planning has two aspects. The first aspect is the strong support in Agenda 21 for active involvement by the public in water management planning, and particularly the involvement of specially affected groups (who are often also groups that are historically marginalized — such as indigenous peoples). The second aspect is the principle of delegation of the responsibility for water resources management generally to the “lowest appropriate level”.⁸⁶ This decentralization is balanced in the case of planning, however, by the recognition of a need for an overall planning framework to be provided by the “national” (for which we can substitute

⁸³ Para. 18.9.

⁸⁴ On this point, see generally, Saunders, *supra* note 3.

⁸⁵ Agenda 21 at para. 18.9(c) [emphasis added].

⁸⁶ *Ibid.* at para. 18.12(o)(ii).

provincial⁸⁷) level — so that the regional level can then harmonize regional priorities with overall provincial priorities.⁸⁸

This two-fold emphasis on first, utilizing public participation, and in particular the participation of local communities and specially affected groups (especially indigenous people), and second, balancing regional and provincial interests, is echoed directly in *Water for Life*. As to the former, *Water for Life* repeatedly stresses the need for partnerships as a fundamental component of the planning process. The primary partnership institutions in *Water for Life* for engagement of the public in watershed planning are the multi-stakeholder Watershed Planning and Advisory Councils (WPACs), which are mandated to take the lead in watershed planning (although Watershed Stewardship Groups are also grassroots organizations with an obvious commitment to public participation, they do not have the same formal responsibilities for watershed planning as the WPACs).

Similarly, with respect to the balancing of local and national/provincial interests, *Water for Life* also provides for the creation of a body that is charged with providing a broader provincial perspective — the Alberta Water Council (AWC). Given that WPACs do not report directly to the AWC (but “will benefit from [its] guidance and mentoring”⁸⁹) the institutional architecture in *Water for Life* is less centralized than the approach to planning suggested by Agenda 21. In fact, however, with the subsequent passage of *ALSA* in 2009, the land-use planning model now in effect in Alberta (which includes planning for water resources) is much closer in spirit to the Agenda 21 approach.

4.4. Conclusion

The introduction of the *Water for Life* strategy by the Government of Alberta was touted as an important step in the modernization of the province’s water resource management regime, following on the legislative reforms introduced by the new *Water Act*. The strategy reflects the province’s own approach to natural resources management and does

⁸⁷ Agenda 21 is drafted primarily in terms of actions to be taken by a single national government, and as such does not address the nuances that may be introduced by a federal system, such as Canada’s. Given that in Canada provinces have the primary responsibility for water resources management, it is appropriate to replace references to the national government with the provincial government for most purposes — and certainly for the purposes of this paper. It should be remembered, however, that the federal government also exercises certain important constitutional powers that bear on water resources management — for example, powers relating to fisheries and navigation. While these distinctions have important practical implications, they do not detract from the fundamental point being addressed here as to the need for both local participation and an overall perspective that reflects broader interests (whether they are provincial or national).

⁸⁸ See Agenda 21, para. 18.12(o).

⁸⁹ *Water for Life*, *supra* note 1 at 16.

not make any explicit reference to influences from other jurisdictions, nor indeed is it likely that there was any direct input in this respect. Nevertheless, to the extent that *Water for Life* reflects current policy ideas on water management that transcend jurisdictional boundaries, one would expect to see in the strategy certain themes that have achieved more general acceptance. One way to test the degree to which *Water for Life* indeed embodies such themes is to compare it to the views of the international community in this respect, as reflected in a range of international instruments that have been used to support the case for a human right to water. While the arguments for and against the existence of such a right are in themselves interesting, the focus on the “right” to water in this paper is primarily in the context of how such a right would be actualized under these instruments. It is the suggestions for actualization in the instruments that provide the benchmarks for evaluating the degree to which *Water for Life* reflects broader themes in water resource management.

The above discussion yields three important themes common to the international documents surveyed and the *Water for Life* strategy. Briefly summarized, the first of these is that access to a safe and secure supply of drinking water is accorded primacy in the hierarchy of water uses. In *Water for Life* this is reflected in the identification of this use as the first goal of water management under the strategy; in the international instruments surveyed, it is reflected in the primacy given to drinking water — potentially as a right, but at a minimum as a fundamental need. The second theme is the tension between the use of water for environmental needs and its use as a factor in economic development. The third theme is the need for robust planning of water resources — one that must take place in a broader context of resource use management more generally.

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