

Law of the River and Indigenous Water Rights: Reassessing the International Legal Frameworks for Indigenous Rights and Water Justice

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Abstract : Life on Earth cannot thrive or survive without water. Water is intimately tied with community, culture, spirituality, identity, socio-economic progress, security, self-determination, and livelihood. Thus, access to water is a United Nations recognized human right due to its significance in these realms. However, there is often conflict between those who consider water as the spiritual and cultural value and those who consider it an economic value thus being threatened by economic development, corporate exploitation, government regulation, and increased privatization, highlighting the complex relationship between water and culture. The Colorado River basin is home to over 29 federally recognized tribal nations. To these tribes, it holds cultural, economic, and spiritual significance and often extends to deep human-to-non-human connections frequently precluded by the Westphalian regulations and settler laws. Despite the recognition of access to rivers as a fundamental human right by the United Nations, tribal communities and their water rights have been historically disregarded through inter alia, colonization, and dispossession of their resources. Law of the River such as 'Winter's Doctrine', 'Bureau of Reclamation (BOR)' and 'Colorado River Compact' have shaped the water governance among the shareholders. However, tribal communities have been systematically excluded from these key agreements. While the Winter's Doctrine acknowledged that tribes have the right to withdraw water from the rivers that pass through their reservations for self-sufficiency, the establishment of the BOR led to the construction of dams without tribal consultation, denying the 'Winters' regulation and violating these rights. The Colorado River Compact, which granted only 20% of the water to the tribes, diminishes the significance of international legal frameworks that prioritize indigenous self-determination and free pursuit of socio-economic and cultural development. Denial of this basic water right is the denial of the 'recognition' of their sovereignty and self-determination that questions the effectiveness of the international law. This review assesses the international legal frameworks concerning indigenous rights and water justice and aims to pinpoint gaps hindering the effective recognition and protection of Indigenous water rights in Colorado River Basin. This study draws on a combination of historical and qualitative data sets. The historical data encompasses the case settlements provided by the Bureau of Reclamation (BOR) respectively the notable cases of Native American water rights settlements on lower Colorado basin related to Arizona from 1979-2008. This material serves to substantiate the context of promises made to the Indigenous people and establishes connections between existing entities. The qualitative data consists of the observation of recorded meetings of the Central Arizona Project (CAP) to evaluate how the previously made promises are reflected now. The study finds a significant inconsistency in participation in the decision-making process and the lack of representation of Native American tribes in water resource management discussions. It highlights the ongoing challenges faced by the indigenous people to achieve their self-determination goal despite the legal arrangements.

Keywords : colorado river, indigenous rights, law of the river, water governance, water justice

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