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GLAWCAL COMMENT #107

THE RIGHT TO WATER AND THE OBLIGATIONS FOR THE PEOPLE'S REPUBLIC OF CHINA

Based on

Roberto Soprano: "China and the Recognition and Protection of the Human Right to Water"

gLAWcal
Global Law Initiatives for Sustainable Development

A gLAWcal comment on Roberto Soprano's *"China and the Recognition and Protection of the Human Right to Water"* in Paolo Davide Farah and Elena Cima (Eds.) China's Influence on Non-Trade Concerns in International Economic Law

According to the General Comment No. 15: The Right to Water (Arts. 11 and 12 of the Covenant): "The right to water, like any human right, imposes three types of obligations on States parties: obligations to respect, obligations to protect and obligations to fulfill." Regarding the first obligation, it requires that "States parties refrain from interfering directly or indirectly with the enjoyment of the right to water." The second obligation which revolves around the protection of the right to water requires "States parties to prevent third parties from interfering in any way with the enjoyment of the right to water." Finally, the last obligation can be divided into three obligations. As such, states are obliged for instance in accordance with this obligation to facilitate the access to water by taking "positive measures to assist individuals and communities to enjoy the right". Moreover, states also under this obligation must "fulfill (provide) the right when individuals or a group are unable, for reasons beyond their control, to realize that right themselves by the means at their disposal."
As such, one can see how the 2010 United Nations resolution concerning the acknowledgment of the right to water and sanitation was essential in providing these obligations with the necessary legal authority to be implemented at the national level and allowing thus the different countries to be held accountable on the basis of their failure to fulfill these obligations and as a consequence, their failure to provide their citizens with the ability to exercise this right to its fullest extent. Indeed, as stated by the 2010 Human Rights Council Resolution A/HRC/RES/15/9: "the rights to water and sanitation are part of existing international law and these rights are legally binding upon States." As such, states are responsible under international law and must respect this obligation as stated in the UN resolution.

In the chapter "China and the Recognition and Protection of the Human Right to Water", the author Roberto Soprano examined this matter while focusing on whether the People's Republic of China has managed to fulfill its obligation under the right to water. As such, the author analyzed several case studies in different Chinese provinces where it was revealed that these obligations have been violated by the Chinese government. Hence, it was revealed when it comes to the obligation to respect for instance that the Chinese government is currently building huge dams in the framework of water projects that are costing a huge amount of money with the objective of diverting water from rural areas to the big cities that are witnessing water shortage. Such strategy has affected the citizens living in the places where the water has been taken from. It is worth mentioning in this context that China does not recognize the right to water at the constitutional level. The Chinese Constitution establishes that the State shall ensure the rational use of natural resources and prohibits any organization or individual from damaging natural resources by whatever means.

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The gLAWcal comments are insight and short analytical pieces written by the gLAWcal team. The gLAWcal comments are based on, and inspired by, the books and chapters published within one of the gLAWcal book series published by Routledge Publishing (New York/London).

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