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Protection of Ecological and Cultural Values of Watersheds Under the Convention on Biological Diversity and the International Covenant on Civil and Political Rights [abstract]

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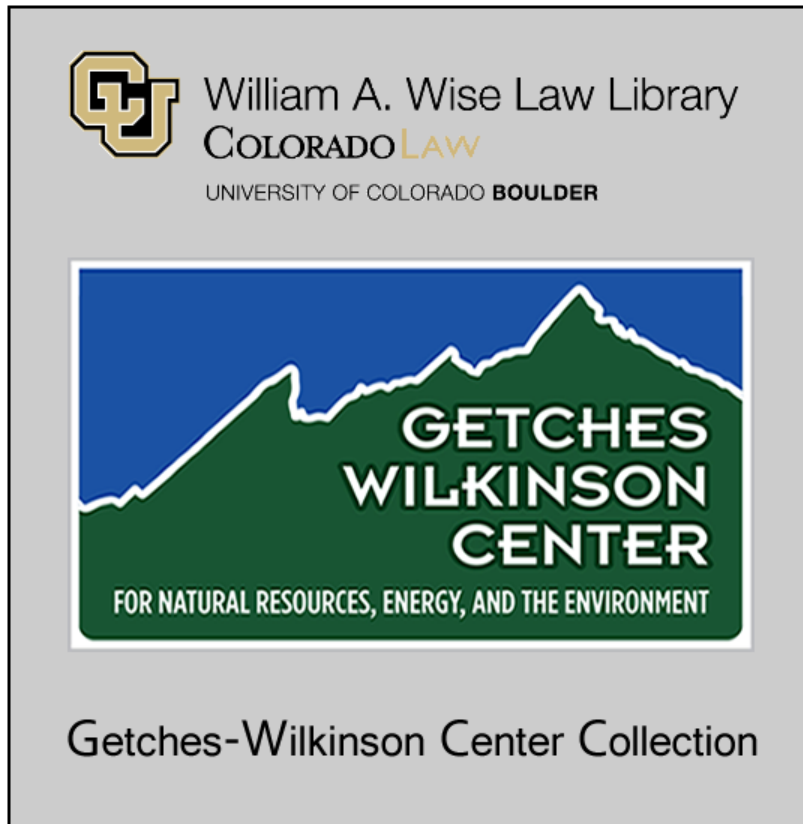
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Protection of Ecological and Cultural Values of Watersheds Under the Convention on Biological Diversity and the International Covenant on Civil and Political Rights

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Morihiro Ichikawa is a visiting researcher at the Natural Resources Law Center at the University of Colorado School of Law, from 1999 to 2001. He has been a lawyer in Japan since 1988, and handled the Pika case and other environmental cases and some Ainu cases. In Japan, he works with Ichikawa and Shimada Law Firm (NY Bldg. 4F Odori Nishi 10 Chuoku, Sapporo, Japan). His article, "Understanding the Fishing Rights of the Ainu of Japan: Lessons Learned from American Indian Law, the Japanese Constitution, and International Law," 12 *Colorado Journal of International Environmental Law and Policy* (2):245-301 is a comparative analysis of American Indian and Ainu fishing rights.

ABSTRACT

In Japan, over 2,500 dams have been constructed since World War II, and now 100 dams are under construction. The purposes of dam construction are said to be water supply, flood control, energy production, and irrigation. However, dams and reservoirs change ecosystems entirely by inundation, and also degrade the environment for aquatic species, especially salmon.

There are not effective Japanese environmental statutes or tools by which the public can stop dam constructions. Although some statutes provide for public participation, they are nominal procedures. So some NGOs try to bring lawsuits against the governments to stop these projects urging that the dam constructions are illegal under international laws. In Japan any treaties or conventions ratified are accepted automatically without any legislation to accept them and these treaties or conventions have supremacy over domestic law, subject only to constitutional limitations. Therefore suits under international laws may be effective in stopping dam constructions. First, I will describe the Convention for the Protection of the World Cultural and National Heritage (WHC) and its construction by the Australia High Court. Second, I will argue availability of this construction to other international laws. Last, I will explore the indigenous Ainu peoples' rights under international law to protect watersheds.

The Commonwealth of Australia enacted a statute against dam construction planned by the State of Tasmania in an area listed as a World Cultural and National Heritage site under the WHC. The High Court upheld Australia and that Art. 4 and 5 of the Convention imposed an obligation on Australia to take appropriate measures for the preservation of the World

Heritage. This construction is available to construe other international laws, and based on this discussion, two international laws may be useful in stopping dam constructions.

The Japanese Government ratified the Convention on Biological Diversity (CBD) in 1993. There is no case in which plaintiffs have urged dam constructions unlawful under the CBD, but there is another case, called the Pika Case, which urged a road construction unlawful under the CBD. When the Hokkaido prefecture government planned a paved road in Daisetsuzan National Park in 1995, plaintiffs asserted that this construction, which would build in wild areas, breached the government obligation “not to destroy biodiversity” under the CBD. It is possible to construe that the CBD imposes on governments the obligation “not to destroy biodiversity.”

The Japanese Government ratified the International Covenant on Civil and Political Rights (ICCPR) in 1979. Article 27 guarantees indigenous people the right to enjoy their indigenous cultures. When the Government constructed a dam in an area where Ainu ceremonial places had been, two Ainu brought a suit. The Sapporo District Court held that the construction impaired the Ainu culture and the Government violated a right to enjoy their indigenous culture under the ICCPR. It is possible further to construe Art. 27 of ICCPR as securing Ainu fishing rights and water rights as a part of their culture. Consequently the Ainu may be able to stop dam construction urging their fishing, and water rights under Art. 27 of ICCPR.