

## **SPP Agreement Violates International norms and Must be Declared Null and Void**

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### **SPP Agreement Violates International norms and Must be Declared Null and Void**

**PEJ news** – Joan Russow, Global Compliance Research Project - The SPP Agreement is resulting in and will further result in increased violation of human rights, including civil and political rights, social, economic and cultural rights, labour rights, women's rights, indigenous rights, rights of migrant workers and their families, of immigrants- in increased destruction of the environment, in increased militarism, and in increased privatization of the commons.

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#### **PRESENTATION NOTES**

For Council of Canadians, Victoria Chapter

Joan Russow

January 15, 2008

For years, Canada, Mexico and the US have failed to translate international rhetoric into action.

They have incurred obligations under treaties, conventions, and covenants, made commitments through UN Conference Action Plans, and created expectations through UN General Assembly resolutions and Declarations.

Canada, Mexico and the US have disregarded international law for years. Canada signs and ratifies most international agreements, and then fails to enact the necessary legislation or to amend existing legislation to ensure compliance.

While the three states have been rogue states vis a vis international over the years, they have reached a new level of "roguery" in negotiating the Security and Prosperity Partnership (SPP) Agreement. .

If one examines principles under International human rights agreements, including key covenants on civil and political rights, and social and economic and cultural rights, International labour organization instruments, conventions and declarations related to women's rights indigenous rights, right of migrant workers, refugees; If one examines principles related to

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preventing the scourge of war; If one examines conventions and protocols related to Biodiversity, to climate change etc.

One will find that all three states are derelict in their duty towards implementing principles arising from international obligations and commitments.

Citizens from Canada, Mexico and the US have a legitimate expectation that these three states will abide by international norms and not enter into agreements that would supersede and undermine these norms.

The Security and Prosperity Partnership Agreement (SPP) violates international norms, derived from international instruments, related to peace, environment, human rights, and social justice

Under Article 53 of the Vienna Convention on the Law of Treaties, Canada and Mexico have incurred the following obligation

### **Article 53**

Treaties conflicting with a peremptory norm of general international law (“jus cogens”). A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law. For the purposes of the present Convention, a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.

The SPP can be shown to be in violation of international peremptory norms

### **PROVISIONS IN THE CONSTITUTIONS FOR LEGALIZING THE SPP**

The SPP agreement among the leaders of Canada, Mexico and the United States was first immortalized, in Texas, on the 23rd of March 2005 in the Waco Declaration.

This Declaration was negotiated by Bush, Fox and Martin,

More recently, in Montebello, Quebec, the SPP was further "enhanced" by Bush – a president hovering at less than 30% support, by Harper- a Prime Minister with minority government acting with delusion of grandeur like a majority, and by Calderon – a President whose election is still under dispute.

The SPP is called an “agreement” most likely because, by designating the SPP as a “Sole executive Agreement”

Bush, under the US Constitution, is able to bypass Congress, and secure a legally binding document. If the SPP were designated as a Treaty it would have to receive, under Article II of the US Constitution 2/3 senate approval to become legally binding

CANADA

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Under the Canadian Constitution, an international instrument, to be legally binding, only requires the approval of the Prime Minister and cabinet.

Thus, under the Constitution, the signing and ratifying of an international instrument can be done, simply by being approved by the Prime Minister and cabinet. Parliamentary approval is not required .

[Although changes in legislation to implement the international instrument would require going to Parliament].

While international instruments in areas of Federal jurisdiction would not require the consent of the provinces, those instruments falling under provincial jurisdiction would require the consent of the provinces.

Canada is in a state of Constitutional crisis. Rarely if ever, have international instruments been ratified, adopted or rejected by a minority government without any support from the opposition parties. Currently, the "new" Conservative government, is a minority government with generally no support from any the opposition parties.

Canada has increasingly become an international pariah because of its being so closely aligned with the United States: through its embracing of US misconstruing of Article 51--self defence-- of the Charter of the UN [invasion of Afghanistan], its abstaining from UN committee resolution banning Depleted Uranium; its contravention of the International Covenant of Civil and Political rights through its passage of the Anti-terrorism act, and more recently its copycat No-fly list, and its reliance on FBI lists to exclude Activists; its violation of the Convention Against Torture in the transference of prisoners; its reversal of a long standing Canadian policy of welcoming draft dodgers and war resisters; its reneging on its obligations under the Framework convention on Climate Change, and its protocol-the Kyoto protocol; Its refusal to adopt the Declaration on the Rights of Indigenous Peoples, Its change in Middle East policy;

### **MEXICO**

In the Mexican Constitution, under Art 133 related to the jurisdiction of the President and Senate international instruments that are in accordance with the constitution are the supreme law of all the Union.

However, under Art. 124- no international agreement if not in accordance with existing legislation including state legislation – will be considered as supreme law of all the Union and thus it will not prevail above local law in case of conflict.

It is claimed by a Mexican Senator, that for the SPP to be binding in Mexico, it has to be passed by Congress. (Personal Communication)

### **PROVISIONS IN THE SPP NEGOTIATED BY SPP LEADERS AND CORPORATE AND INSTITUTIONAL ADVISORS**

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To support the heads of state, numerous infamous corporate/ financial/military/academic institute advisers,

through committees, are struggling with the drafting and crafting of further PRACTICES which UNDERMINE PRINCIPLES RELATED TO international norms. Principles related to protecting and conserving the environment, to guaranteeing human rights, ensuring social justice and preventing war and conflict.

### **GENERAL PROVISIONS**

The SPP Agreement along with its associated committee documents—at least from what can be gleaned from documents that the governments and SPP committees have deigned to make public are full of mandated strategies to undermine generally accepted standards and principles, of juxtaposed contradictions and inconsistencies ,

-of proposed solutions that are worse than the problems they are intended to solve [nuclear energy}

-- of plans for devolution of power from the state to the private sector ;

- of the promotion of reliance on private sector research and standards to spare the public purse; -

- of measures for caring for the welfare of corporations especially means for fostering and promoting CORPORATE COMPETITIVENESS THROUGH THE NORTH AMERICAN COMPETITIVENESS COUNCIL (NACC)

AND CALLS FOR of programs for "corporate resilience"; even a special committee set up "to promote corporate resilience"

- of calls for "the determination of opportunities for public private partnerships":  
Undoubtedly for the privatization of the commons

of calls for "the determination of opportunities for public private partnerships" [undoubtedly over the commons- water, sewage health care..]

### **JUXTAPOSITION OF SPP PROVISIONS WITH PRINCIPLES REFLECTING INTERNATIONAL NORMS**

The inconsistencies between the SPP PROVISIONS and international norms, can be demonstrated when SPP provision are juxtaposed with norms derived from International obligations and commitments.

#### **Norms related to reducing Greenhouse gas emissions, and conserving carbon sinks.**

While most countries have finally acknowledged the urgency of addressing the issue of greenhouse gas emissions, Canada, Mexico and the US, through the SPP are calling for

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increased development of the oil sands.. and for “ the imperative to increase reliable energy supplies for the region's needs and development” and to achieve this, the North American reliability Council (NERC) has been set up with a “mission to improve the reliability and security of the bulk power system; leading to the achievement of the reliability of electricity supply through interconnected grid system as a priority.... “

-of provisions that will “ensure a sustainable energy economy for North America” . [ in other words An unlimited supply, from Canada and Mexico, of fossil fuel and hydro to supply US wants];

Not yet but perhaps soon Bush- the DECIDER will declare, as he did in 2002 in Nigeria, WITH NIGERIAN RESERVES, that the fossil fuel resources of Canada and Mexico are of US “strategic national interest” A foreboding of potential intervention to protect US interests.

Concern about the issue of climate change was raised by scientists as early at 1958 and in the 1988 Changing Atmosphere Conference in Toronto, the concern was intensified among the participants when they acknowledged: that with, Climate change, the global community was engaging in a global experiment whose ultimate consequence could be second only to a global nuclear war. The Earth's atmosphere is being changed at an unprecedented rate ..... resulting from wasteful fossil fuel use ... These changes represent a major threat to international security and are already having harmful consequences over many parts of the globe.... it is imperative to act now." Changing Atmosphere Conference held in Toronto in 1988.

Canada, Mexico and the US have all signed and ratified the 1992 Framework Convention on Climate Change. Canada and US have renounced and reneged on their obligations under the legally binding UN Framework Convention on Climate Change, and are out of sync with International norms expressed in the Convention which they signed.

In the Convention:

A legal obligation was incurred"...to protect the climate system for the benefit of present and future generations of humankind, on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities. Accordingly, the developed country Parties should take the lead in combating climate change and the adverse effects thereof. (Article 3 Framework Convention on Climate Change, 1992, UNCED)

Also under the Framework Convention on Climate Change, Canada, Mexico and the US incurred an obligation to "conserve" to enhance and "to document carbon sinks", to reduce Greenhouse gas emissions, and to invoke the precautionary principle which reads that where there is a threat of climate change, the lack of full scientific certainty should not be used as a reason FOR postponing measures to prevent the threat”.

Canadian and the US governments have stood idly by while the fossil fuel industry along with captive scientists and academic institutes LOBBIED to deny Climate change.. often claiming that there was not full scientific certainty of climate change; the states failed to apply the precautionary principle.

The SPP in guaranteeing a reliable source of energy will perpetuate the YEARS OF procrastination about seriously addressing the issue of climate change.

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In the SPP, there are calls for increased development of the oil sands, regardless of the impact on climate change, and regardless of the environmental devastation caused by the Oil Sands development

But wait we have the “oil sands nuclear archangel” the Honourable Gary Lund, Minister of Natural Resources who will be addressing the issue of climate change through his proposal to use “clean” nuclear energy in the development of the oil sands.

Institutional memory is short; Lunn, the has forgotten the directive from the 1991 Canadian parliamentary committee on climate change that a solution to climate change should never be equally bad or worse than the problem it is intended to solve.

And he also has forgotten the commitment made by Canada to promote Environmentally sound alternative energy at the 1992 UN Conference on Environment and Development (UNCED).

Nuclear was not listed as one of the environmentally sound sources of renewable energy

Under Chapter 9 changing Atmosphere of Agenda 21 adopted at UNCED, all member states made the following commitment to:

“new and renewable energy sources are solar, photovoltaic, wind, .. biomass, geothermal, ocean animal and human power as referred to in the reports of the Committee on the Development and Utilization of New and Renewable Sources of Energy, prepared specifically for the Conference.

### **Norms related to preventing overconsumption and reducing the ecological footprint**

The SPP is full

Of measures to increase competitiveness particularly through the North American Competitive Council (NACC) and the Canadian Council of Chief Executives (CCCE), and other Mexican and US counterparts.

There are at least two key forms of “competitiveness”: corporate competitiveness – profit devoid of principles, and “survival competitiveness” . The latter has been demonstrated in Mexico where the dumping of cheap subsidized produce from the US has impacted on compesinos ability to compete in the market place, and has resulted in compesinos abandoning farms moving to the cities, or to the United States.

Increased Competitiveness, however, as advocated by the NACC and CCCE will lead both increased overconsumption and an increased ecological footprint.

Yet: every member state of the UN adopted in 1992, principle 8 of the Rio Declaration which read:

To achieve sustainable development and a higher quality of life for all people, States should

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reduce and eliminate unsustainable patterns of production and consumption and promote appropriate demographic policies. (Principle 8, Rio Declaration, UNCED, 1992)

Every member state of the UN also made a commitment at the 1996 Habitat II Conference to reduce the ecological footprint.

And a commitment, at the Habitat II conference in 1996 to reducing the ecological footprint .

Promoting changes in unsustainable production and consumption patterns, particularly in industrialized countries...settlement structures that are more sustainable, reduce environmental stress , promote the efficient and rational use of natural resources- including water, air, biodiversity, forests, energy sources and land - and meet basic needs thereby providing a healthy living and working environment for all and reducing the ecological footprint of human settlements; (27 b, Habitat II, 1996).

### **Norms related to regulatory measures related to environment**

The SPP is full

-of demands for “measures to enhance and streamline regulatory processes”

Full

-of provisions “for the reduction of redundant testing and certification requirement, and for the assurance of the seamless flow”; and for the “reduction of the number of regulatory quality management systems audit , and of regulatory burden and costs; all resulting in what is described as “Regulatory cooperation leading to a converging of standards” [undoubtedly to the lowest common denominator]

. There is also the “test once” scheme which absolves the need for each country to carry out independent testing if the substances or practices have already been tested in one of the other countries. And numerous proposal for undermining regulations and for increase dependence on corporate private sector self regulations.

In fact:

[one of the most egregious US regulatory processes is that US regulators who “choose to develop their own in-house “ regulations must justify to Congress on an annual basis, the reason for seeking public funds to do so . US regulators are already required by law to look to the private sector to use existing private sector standards before regulating.”]

### **TRANSBOUNDARY IMPACTS**

The provisions in the SPP for “test once” and for reliance on private sector self regulations will have serious transboundary impacts;

The Transboundary principle has two components (i) the transfer to other states of substances and activities that are harmful to the environment and human health, (ii)

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transboundary impacts from activities on a receiving country from the activities on the soil of the emitting country:

The first was enshrined in 1992, at UNCED in Rio, every member state of the UN adopted principle 14 of the Rio Declaration which read

States should shall effectively cooperate to discourage or prevent the relocation and transfer to other States of any activities and substances that cause severe environmental degradation or are found to be harmful to human health. (Principle 14, Rio Declaration, UNCED, 1992).

This principle was a reaffirmation of the principle in the Basel Convention which reads

Recognizing also the increasing desire for the prohibition of transboundary movements of hazardous wastes and their disposal in other States, especially developing countries (Preamble Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, 1992)

NOTE: The Basel Convention was one of three international agreements that take precedence over NAFTA

The second principle was enshrined in principle 2 1992 Rio declaration. "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 and developmental 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 their jurisdiction."

This principle was a reaffirmation of transboundary principle enunciated in the 1991 Convention on Environmental Impact Assessment in a Transboundary Context (Espoo, 1991) - the 'Espoo (EIA) Convention' (viii) "Transboundary impact" means any impact, not exclusively of a global nature, within an area under the jurisdiction of a Party caused by a proposed activity the physical origin of which is situated wholly or in part within the area under the jurisdiction of another Party; Norms related to not relaxing standards to attract industry

The SPP Full

- of calls for privatization and deregulation, and for the "acceptance of equivalent standards, objectives, surveillance and enforcement" ....
- of appeals "to remove "barriers" to trade";

NOTE: even under NAFTA, there were provisions for not relaxing standards to attract industry and for specific environmental measures:

Article 1114: Environmental Measures

1. Nothing in this Chapter shall be construed to prevent a Party from adopting, maintaining or enforcing any measure otherwise consistent with this Chapter that it considers appropriate to



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ensure that investment activity in its territory is undertaken in a manner sensitive to environmental concerns.

2. The Parties recognize that it is inappropriate to encourage investment by relaxing domestic health, safety or environmental measures. ...

Article 104: relation to environmental and conservation agreements

1. in the event of any inconsistency between this agreement and the specific trade obligations set out in:

a) the convention on international trade in endangered species of wild fauna and flora, done at Washington, march 3, 1973, as amended June 22, 1979,

b) the Montreal Protocol on substances that deplete the ozone layer, done at Montréal, September 16, 1987, as amended June 29, 1990,

c) the Basel Convention on the control of transboundary movements of hazardous wastes and their disposal, done at Basel, march 22, 1989, on its entry into force for Canada, Mexico and the united states, or [in force 1992)

d) the agreements set out in annex 104.1,

Such obligations shall prevail to the extent of the inconsistency, provided that where a party has a choice among equally effective and reasonably available means of complying with such obligations, the party chooses the alternative that is the least inconsistent with the other provisions of this agreement.

2. the parties may agree in writing to modify annex 104.1 to include any amendment to an agreement referred to in paragraph 1, and any other environmental or conservation agreement.

Norms related to ensuring that corporations including transnational corporations comply with international law, including international environmental law

The SPP is full of proposals opposing state regulation of corporative activities and calling for deregulation of corporations.

Yet every member state of the UN made a commitment at the 1995 UN Conference on Women to

“Ensure that transnational corporations comply with national laws and codes, social security regulations and international environmental law including international environmental laws” (167 m Advance draft, Platform of Action, UN Conference on Women, May 15)

### **Norms related to the Biosafety Protocol**

The Biosafety Protocol is a protocol of the Convention on Biological Diversity. The Protocol intended to ensure the “safe” transfer of Living Modified Organisms (LMO). States cannot prevent the transfer of Living Modified Organisms ( LMO) s unless an environmental Assessment review is carried out and indicates that these organisms will be harmful to the environment.

Concern has been raised about what is described as “adventitious” material – Adventitious material refers to the residue of LMO in crates. Canada and the US have supported industry in allowing a fairly high threshold of this material in crates.

That is, a state is opposed to LMOs, and if the state order products which do not have LMOs,

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the state could inadvertently receive a residue of LMOs because the shipment might be in a case previously containing LMOs.

### **Norms related to Biodiversity**

Above all, all member states affirmed the precautionary principle:

Where there are threats of serious or irreversible damage TO THE ENVIRONMENT {OR TO HEALTH}, THE LACK OF SCIENTIFIC certainty should not be used as a reason for postponing measures, TO PREVENT THE THREAT

THE SPP IS ADVANCING NOT THE PRESERVATION OF diversity of nature BUT THE CONCEPT OF "MEGADIVERSITY" culturally altered diversity

[This notion of Megadiversity was profiled in a picture of Shapiro - the CEO of Monsanto, who was lounging in his chair in front of a book case containing a book called "megadiversity"

### **Norms related to food security**

The SPP

is full of questionable assessments of what constitutes "safer and more reliable food supply", and "enhanced food safety" –

[smoother transition of GE food and crops and Living modified organisms???]; including "adventitious materials" – GE residues in containers used to ship non GE food.

[In Canada at a November 1, 2007 , the Senate committee meeting on Agriculture, a representative from agribusiness was lamenting how the wheat industry has been penalized because of regulations, and stated that more areas were being converted to growing corn. -This was a veiled reference to the fact that genetically engineered wheat has been banned in Canada, but GE corn has not].

It can be expected soon that the Senate will begin to reverse the ban – and even reverse its decision on bovine growth hormone in milk and milk products.

The precautionary principle, if evoked, would have resulted in the banning of all GE food and crops.

The precautionary principle is also in the Convention on Biological Diversity which has been signed and ratified by both Canada and Mexico, and signed but not ratified by the US.

Where there is a threat of significant reduction or loss of biological diversity, lack of full scientific certainty should not be used as a reason for postponing measures to avoid or minimize such a threat (Preamble, Convention on Biological Diversity, UNCED, 1992).

[under article 18 of the Convention on the law of treaties, in the interim between the signing

and the ratification nothing should be done to defeat the purpose of the convention. The purpose of the Convention was to conserve biodiversity [not presumably to create megadiversity]

As of January 1st 2008, the borders of Mexico, have been opened to the dumping of Corn, beans, sugar, and milk products. In the case of corn, Canada as well as the US will probably be dumping genetically engineered corn on the Mexican market. The milk in the US contains Bovine Growth Hormone (RBST) which has been banned in Canada; presumably US milk and milk products will be dumped in Mexico, and possibly Canada if the January 1st provision will supersede the Canadian prohibition. While genetically modified foods and crops have both serious health and environmental issues, there is, in addition, the serious issue of the impact on subsistence competitiveness in Mexico.

### **Norms related to the right to food**

In addition. most states have incurred the following obligation related to the right to food:

In Art 11.1 of the international covenant of social, economic and cultural rights, “ The member States of the United Nations ... recognize [s] the right of everyone to an adequate standard of living. for himself [herself] and his [her] family, including adequate food, clothing and housing and to the continuous improvement of living conditions. the states parties will take [appropriate~] steps to ensure the realization of this right recognizing to this effect the essential importance of international co-operation based on free consent (Art.11.1, International Covenant of Social Economic and Cultural Rights, 1966)

Most UN member states, including Canada and Mexico, have signed and ratified this covenant, The US has signed but not ratified this covenant. [reference to habitat and the housing]

Presumably, the word “adequate” would refer to unadulterated food not food derived from megadiversity.

### **Norms related to export of products banned or restricted in country of origin**

#### THE SPP

Is FULL of calls for deregulation of trade barriers to pharmaceuticals. Perhaps a continuing of the dual prescriptions tactic [one prescription in receiving country and another in the country of origin.

The SPP will result in the de-regulation of pharmaceutical products.

The drug Orobolin is indicative of the practice of dual origin prescriptions: one for the north and one for the south. [this used to be described as third world dumping]. While in Bangladesh, Orobolin was prescribed to increase growth in children, in the US, the prescription was never to be used for children.

This practice has been condemned internationally in the UN General Assembly Resolution 37/137 Protection against products harmful to health and the environment, 1982)

This resolution calls for preventing import of products banned, restricted or not yet approved in country of origin

In this resolution states which adopted the resolution affirmed their awareness of the damage to health and the environment that the continued production and export of products that have been banned and/or permanently withdrawn on grounds of human health and safety from domestic markets is causing in the importing countries (Preamble Resolution 37/137 Protection against products harmful to health and the environment, 1982)

### **Norms related to public health**

The SPP is FULL of allusions to what would constitute programs " to enhance public health"; [Presumably, "enhanced" involve the increased privatization of health care modeled after the US]

As well as for compulsory vaccinations such as that proposed by Merck and Merck is helping in efforts to pass state laws requiring girls as young as 11 or 12 to receive the drug makers new vaccine against the cervical-cancer. ( 2007, Associated Press)

### **Norms related to Corporate take-overs**

The Trudeau government passed legislation aimed at reducing foreign control over the Canadian economy.

- The Canada Development Corporation (1971) was created to encourage Canadian ownership and management in vital sectors of the economy.
- The Foreign Investment Review Agency (1974) was created to screen proposals for foreign takeovers of existing Canadian businesses.

Foreign Investment Review Act

The Foreign Investment Review Act. In December 1973 the Parliament of Canada enacted the Foreign Investment Review Act. According to Section 2(1) of this Act, the Parliament adopted the law "in recognition that the extent to which control of Canadian industry, trade and commerce has become acquired by persons other than Canadians

and the effect thereof on the ability of Canadians to maintain effective control over their economic environment is a matter of national concern" and that it was therefore expedient to ensure that acquisitions of control of a Canadian business or establishments of a new business by persons other than Canadians be reviewed and assessed and only be allowed to proceed if the government had determined that they were, or were likely to be, of "significant benefit to Canada".

(Article 2.2)

US strives to undermine Canada's using the Havana Charter to support the Foreign Investment Review Act

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US took Canada to panel in 1983 over the Foreign Investment Review and Canada used the article 12 of UN 1946 Havana Charter which, in classic US style, the US claimed that the Charter was irrelevant because it was never in force??

Article 12 of the Havana Charter, which reads in part: "The Members recognize that ..., without prejudice to existing international agreements to which Members are parties, a Member has the right... to determine whether and to what extent and upon what terms it will allow future foreign investments, to prescribe and give effect on just terms to requirements as to the ownership of existing and future investments and to prescribe and give effect to other reasonable requirements with respect to existing and future investments".

In the last few years, Canadian mining companies have been taking over Mexican mining cooperatives. This takeover has led to exploitation of Mexican labour, and to devastation of the environment.

The claim by Gutierrez US SECRETARY OF COMMERCE would certainly be challenged.

NAFTA has been a tremendous success in opening up two-way trade with Canada and Mexico. Since it took effect in 1993, U.S. economic growth has been 44 percent, Canadian growth 46 percent, and Mexican growth also 36 percent. Without NAFTA, these countries would never have achieved economic growth on that scale. (May 2005)

Norms related to prevention of the scourge of war, and peaceful resolution of disputes.

The fundamental purpose of the Charter of the United Nations is to prevent the scourge of war.

Also under Chapter VI: pacific settlement of disputes article 33, there are the following provisions

- (2) respecting the jurisdiction of the international court of justice
- (4) saving succeeding generations from the scourge of war and preventing and resolving conflicts not engaging in "preventive aggression
- (5) refraining in its international relation from the threat or use of force against the sovereignty... of any state

Through the SPP, the US is promoting a skewed notion of security – increased militarism, including increased military expenses, establishment of a security perimeter, and the adoption of the notion of justified intervention through Pre-emptive/preventive strikes

Canada and Mexico are becoming increasingly embroiled in the US presumption that the display of militarism equates with true security,

Even though for years, every member state of the United Nations recognized the waste and misuse of resources earmarked for militarism, and that every member state made a commitment in 1992, to reallocate military expenses, the US has increased its "offence" budget to over 750 billion per year, Canada is spending over 10% of funds available for programs on the "offense" budget, Mexico has been coerced into protecting militarily its oil reserves.

In 1976 at Habitat 1, member states of the United Nations affirmed the following in relation to the military budget:

"The waste and misuse of resources in war and armaments should be prevented. All

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countries should make a firm commitment to promote general and complete disarmament under strict and effective international control, in particular in the field of nuclear disarmament. Part of the resources thus released should be utilized so as to achieve a better quality of life for humanity and particularly the peoples of developing countries" (II, 12 Habitat 1).

The SPP is resulting in an increase in the waste and misuse of resources.

With a president in the United States, believing that his aggressive interventions, euphemistically described as "preemptive/preventive", LIKE A PRE-EMPTIVE STRIKE are under the benediction of "his God the Father", Canada and Mexico have to be vigilant that they are not seduced by or drawn into yet another ill-conceived holy directive, Increasingly Canada has become complicit, in Afghanistan, in the violation of international norms, including engaging in acts that could result in defiance of the Nuremberg Principles:

### **Principle III**

The fact that a person who committed an act which constitutes a crime under international law acted as Head of State or responsible Government official does not relieve him from responsibility under international law.

[BUSH MUST BE TRIED UNDER AN INTERNATIONAL TRIBUNAL SET UP, BY THE UN GENERAL ASSEMBLY UNDER ARTICLE 22 OF THE CHARTER OF THE UN. ]

Through its offensive actions in Afghanistan, Canada has been complicit with the US-dominated NATO in the violation of the Convention against Torture and of the international Covenant of Civil and Political Rights.

Canada by being so closely aligned with the United States has become complicit and will increasingly become complicit through the SPP with the United States.

### **Norms related to respecting the Charter of the United Nations**

Canada was complicit in supporting the US contention that The invasion of Afghanistan was justified under Chapter VII, Article 51- self defence- of the Charter of the United Nations. And may in the future begin to embrace the US policy of Pre-emptive/preventive aggression.

NATO MISSION which had only received conditional support from the UN Security Council- itself a body that violates a fundamental principle, under the Charter, of sovereign equality- conditional on complying with the Charter and international law.

### **Norms related to compliance with the Convention Against Torture**

Canada is complicit in violating the Convention against Torture

Canada has been complicit in discharging its obligation under the Convention Against Torture

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to prevent cruel, inhumane or degrading treatment or punishment (28) Under the Convention, it is stated under Article 2:

no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.

YET

BUSH in 2006, issued an official "signing statement" asserting "that he will view the interrogation limits in the context of his broader powers to protect national security." THUS HE ASSERTED his legal right to order torture, if he deems torture to be in the interests of "national security."

1. For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions. (PART I , Article 1)

Canada was also complicit in the US violation of  
Article 3 General comment on its implementation

1. No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.

Canada has been complicit by sharing information, with "caveats down". with the United States.

Prohibiting the attack on works or installations that could release dangerous substances and activities that could impact on civilians

Canada has also been complicit with the violation of several Geneva Protocols such as the following

Undertaking to not make works or installations releasing dangerous forces [substances and activities] that could impact on civilians Works or installations containing dangerous forces, namely dams, dykes and nuclear electrical generating stations, shall not be made the object of attack, even where these objects are military objectives, if such attack may cause the release of

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dangerous forces and consequent severe losses among the civilian population. Other military objectives located at or in the vicinity of these works or installations shall not be made the object of attack if such attack may cause the release of dangerous forces from the works or installations and consequent severe losses among the civilian population. (Art. LVI.1 Bern [Geneva] Protocol II

### **Norms related to prohibition of different weapon systems**

Canada is complicit in collaborating with US weapon systems

Under the Ottawa Treaty: anti-personnel mines, the signatories incurred the following obligation to

Undertake to work actively towards ratification, if they have not already done so, of the 1981 Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects, particularly the Protocol on Prohibitions or Restrictions on the Use of Mines, Booby Traps and Other Devices (Protocol II), with a view to universal ratification by the year 2000 -1997 [US has not ratified the Protocol].

Canada has sold uranium to the US for years, and under the SPP will probably increase the sale of uranium.

Yet, in 1996, the International Court reaffirmed that the threat or use of nuclear weapons violates international humanitarian law.

While Canada has not yet agreed to install Ballistic Missile Defence system. Under pressure through the SPP Canada will probably succumb. And be in violation of the 1967 Outer Space Treaty which affirmed that space should be used for the benefit of all {mankind} humanity, and that there should be no weapon systems in space.

### **Norms related to multilateralism**

Since the New Conservative government has been in power and the SPP emerging, Canada has increasingly abandoned its embracing of multilateralism.

Canada has been complicit with the US in undermining multilateralism

Bearing in mind that multilateral treaties are an important means of ensuring co-operation among States and an important primary source of international law,

Conscious, therefore, that the process of elaboration of multilateral treaties, directed towards the progressive development of international law and its codification, forms an important part of the work of the United Nations and of the international community in general,

### **Norms related to preventing discrimination on the grounds of political and other**



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### **opinion**

While Chertoff and Rice declare “secure border and open doors”, No-fly lists, and border lists have preventing the right to freedom of movement and have led to discrimination.

The Department of homeland security is conspicuously dominant in all the committees formed within the SPP

SPP Agreement along with its committees is full:

- of recommendations for “replacement of border siting”; [Does this mean more areas within Canada to be declared to be the USA as is the case at the Vancouver airport;} of indiscriminate technological transfer;

- of “compulsory Perimeter Clearance Biometric Registration practices”;

- of measures “to enhance the capacity to combat terrorists through appropriate sharing of watch lists”.

Yet Chetoff and rice call for “open doors”

The well known Peace activist Medea Benjamin was stopped at the Canadian border because the border guards relied on an FBI list.

In disregard of the International Covenant of Civil and Political Rights Under this Covenant

Everyone shall have the right to freedom of association with others,...s (Art. 22.  
1 International Covenant of Civil and Political Rights, 1966)

Also under most international human rights instruments “political and other opinion” is a listed ground for which there shall not be discrimination.

Canada and the US and Mexico have signed and ratified this Covenant.

Yet, Canada has not listed “political and other opinion” as a ground in the Charter of Rights and Freedoms.

### **Norms related to the Human Rights of Women**

The US has failed to ratify the Convention for the Elimination of all Forms of Discrimination Against Women, and its protocol on Violence

While the international community has generally made the commitment to reproductive rights as defined in the Conference action plans from the UN Conference on Women :Equality, Development and Peace, and from the International Conference on Population and Development.

“the prevalence among women of poverty and economic dependence, their experience of violence, negative attitudes towards women and girls, discrimination due to race and other

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forms of discrimination, [the limited power many women have over their sexual and reproductive lives] and lack of influence in decision-making are social realities which have an adverse impact on their health. lack of and inequitable distribution of food for girls and women in the household and inadequate access to safe water and sanitation facilities, and fuel supplies, particularly in rural and poor urban areas, and deficient housing conditions, overburden women and their families and all negatively affect their health. good health is essential to leading a productive and fulfilling life [and the right of all women to control their own fertility is basic to their empowerment] (art. 94, advance draft, platform of action, un conference on women, may 15.

Countries should take full measures to eliminate all forms of exploitation, abuse, harassment and violence against women, adolescents and children. This implies both preventive actions and rehabilitation of victims. Countries should take full measures to shall eliminate all forms of exploitation, abuse, harassment and violence against women, adolescents and children. Countries should pay special attention to protecting the rights and safety of those...in exploitable situations, such as migrant women, women in domestic service and school girls (Action 4.9. International Conference on Population and Development, 1994).

No abortion be promoted as a method of family planning. All Governments and relevant intergovernmental and non-governmental organizations are urged to strengthen their commitment to women's health, to deal with the health impact of unsafe abortion as a major public health concern and to reduce the recourse to abortion through expanded and improved family planning services. Prevention of unwanted pregnancies must always be given the highest priority and all attempts should be made to eliminate the need for abortion. Women who have unwanted pregnancies should have ready access to reliable information and compassionate counseling. Any measures or changes related to abortion within the health system can only be determined at the national or local level according to the national legislative process. In circumstances where abortion is not against the law, such abortion should be safe. In all cases, women should have access to quality services for the management of complications arising from abortion. Post-abortion counseling, education and family-planning services should be offered promptly, which will also help to avoid repeat abortions (8.25, International Conference on Population and Development, 1994)

### **Norms related to protecting the rights of Indigenous peoples**

All member states of the United Nations have adopted chapter 26 of Agenda 21, from United Nations Conference on Environment and Development

In section 3 ii, all states made a commitment to recognize

(ii) that the lands of indigenous people peoples and their communities should be protected from activities that are environmentally unsound or that the indigenous people concerned consider to be socially and culturally [inappropriate~] (26.3.a.ii, Indigenous People[s],, Agenda 21, UNCED, 1992)

Of the three states, only Mexico ratified, ILO Convention Concerning Indigenous and Tribal Peoples in Independent Countries, No. 169, 1990)

Under Art. 7.1. of this Convention, Mexico incurred the following obligation:

“the peoples concerned shall have the right to decide their own priorities for the process of development as it affects their lives, beliefs, institutions and spiritual well-being and the lands they occupy or otherwise use and to exercise control, to the extent possible, over their own economic, social and cultural development. In addition, they shall participate in the formulation, implementation and evaluation of plans and programmes for national and regional development which may affect them directly.

On September 13, 2008, only four countries failed to adopt the Declaration on the Rights of Indigenous peoples. Canada and the US were two of the four.

The SPP with its emphasis on economic not subsistence competitiveness will undoubtedly have an increased impact on indigenous lands and territories.

### **Norms related to the Protection of Migrant workers**

Of the Three states only Mexico has signed and ratified the Convention on the Protection of the rights of all Migrant Workers and members of their Families.

Under the Convention, Mexico has incurred the following obligations:

Convinced that the rights of migrant workers and members of their families have not been sufficiently recognized everywhere and therefore require appropriate international protection (Preamble. International Convention on the protection of the Rights of all Migrant workers and members of their families)

Recognizing also the progress made by certain States on a regional or bilateral basis towards the protection of the rights of migrant workers and members of their families, as well as the importance and usefulness of bilateral and multilateral agreements in this field (Preamble, International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families)

Under the Convention, Parties to the convention undertake, in accordance with the international instruments concerning human rights, to respect and to ensure to all migrant workers and members of their families within their territory or subject to their jurisdiction the rights provided for in the present Convention without distinction of any kind such as sex, race, colour, language, religion or conviction, political or other opinion, national, ethnic or social origin, nationality, age, economic position, property, marital status, birth or other status (Art. 7. International Convention on the protection of the Rights of all Migrant Workers and Members of their Families)

With the SPP Agreement and the increased emphasis on Border Security and Barriers within a Security Perimeter, Migrant workers will be at an increased disadvantage, and will fear more than ever to speak out against oppressive conditions. Note recently, the Law in Arizona; this law

has resulted in sending undocumented workers back to Mexico

### **Norms Related to Refugees**

During the Vietnam War Canada was a sanctuary for US Draft Dodgers, Now With the New Conservative government, US War resisters have not been able to obtain Refugee status

Under the Convention on Refugees the following was agreed to:

Except where this Convention contains more favourable provisions, a Contracting State shall accord to refugees the same treatment as is accorded to [citizens] generally. (Article 7, 1., Convention Relating to the Status of Refugees, 1951).

In respect of the protection of industrial property, such as inventions, designs or models, trade marks, trade names, and of rights in literary, artistic and scientific works, a refugee shall be accorded in the country in which he has his habitual residence the same protection as is accorded to nationals of that country. In the territory of any other Contracting State, he shall be accorded the same protection as is accorded in the territory to nationals of the country in which he has his habitual residence (Art. 14, Convention Relating to the Status of Refugees, 1951).

The Contracting States shall accord to refugees the same treatment as is accorded to nationals with respect to elementary education (Art. 22. 1. Convention Relating to the Status of Refugees, 1951).

The Contracting States shall accord to refugees treatment as favourable as possible,... with respect to education other than elementary education and, in particular, as regards access to studies, the recognition of foreign school certificates, diplomas and degrees, the remission of fees and charges and the award of scholarships (Article 22. 2, Convention Relating to the Status of Refugees, 1951).

The Contracting States shall accord to refugees lawfully staying in their territory the same treatment with respect to public relief and assistance as is accorded to their nationals (Article 23, Convention Relating to the Status of Refugees, 1951).

### **Norms Related to Immigrants**

[... many women face particular barriers because of such factors as their race, age, language, ethnicity, culture, religion [sexual orientation] or disability, or because they are indigenous people. Many women face barriers related to their family status particularly as single parents, to their socio-economic status, including their living conditions in rural or isolated areas and in impoverished areas in rural and urban environments, or to their status as immigrants. Particular barriers also exist for refugee, migrant and displaced women, as well as those who are affected by environmental disasters and displaced women as well as for those who are affected by environmental disasters, serious and infectious diseases, additions and various forms of violence against women]

(Art.48 Advance draft, Platform of Action, UN Conference on Women, May 15)

### Norms related to the rights of the Child

In the Convention on the Rights of the following obligation was incurred. "[The US has not ratified the Convention on the Rights of the Child, both Mexico and Canada have].

States parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, tribe, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.(Art. 2, Convention on the Rights of the Child, 1989)

States parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, tribe, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.(Art. 2, Convention on the Rights of the Child, 1989)

Recalling that, in the Universal Declaration of Human Rights, the United Nations has proclaimed that childhood is entitled to special care and assistance (Preamble, Convention on the Rights of the Child, 1989)

In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration (Art. 3. 1. Convention on the Rights of the Child, 1989)

[CHECK] STATE ACTIVITY: (US et AL) the US objected to the article in the Convention that stated that children under 18 could not bear arms; also insisted on reference to the time when life began this was changed to accommodate the US. The US has not ratified the Convention.

The child shall have the right to freedom of expression (Convention on the Rights of the Child reaffirmed Art. 13.1 same as one in International Covenant of Civil and Political Rights, 1966)

To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breast-feeding, hygiene and environmental sanitation and the prevention of accidents (Art. 24. 1. e Convention on the Rights of the Child, 1989)

States Parties recognize that a child with a mental or physical disability] mentally or physically disabled child should enjoy a full and decent life in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community (Art. 23., Convention on the Rights of the Child, 1989).

States parties recognize the right of the disabled child a child with a disability to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and

which is appropriate to the child's condition and the circumstances of the parents or others caring for the child. (Art. 2., Convention on the Rights of the Child, 1989)

Recognizing the special needs of a child with a disability disabled child, assistance extended in accordance with paragraph 2 of the present article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or other caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development. (Art. 3., Convention on the Rights of the Child, 1989)

States Parties shall promote, in the spirit of international cooperation, the exchange of appropriate information in the field of preventative health care and of medical, psychological and functional treatment of disabled children with disabilities, including dissemination of and access to information concerning methods of rehabilitation, education and vocational services, with the aim of enabling States Parties to improve their capabilities and skills and to widen their experiences in these areas. in this regard, particular account shall be taken of the needs of developing countries. (Art. 4. Convention on the Rights of the Child, 1989)

### **Norms related to International Labour Conventions**

#### INTERNATIONAL LABOUR ORGANIZATIONS AGREEMENTS

##### 1. ILO PEREMPTORY NORMS RATIFIED BY GREATER THAN 100 STATES

C 144 Tripartite Consultation ILO Labour standards 1947 (135) Mexico (R)

C81 Labour Inspection Convention 1947 (135) NONE

C138 Minimum Age Convention 1973 (148) NONE

C105 Abolition of Forced Labour Convention (1957 (167) All

C 87 Freedom of Association and Protection of the Right to Organize (1948) (147) Canada (R) and Mexico (R)

C100 Equal remuneration Convention (1951 (165) Canada (R) and Mexico (R)

C98 right to Organize and collective Bargaining 1949 (156) NONE

C829 Forced Labour Convention 1930 (171) Mexico (R)

C120 Hygiene (Commerce and Office) Convention (1964) (150) Canada (R) and Mexico (R)

C 115 Radiation Protection (1960 (147) Mexico (R)

##### 2. LESS THAN 100 RATIFICATIONS

###### 1a RATIFIED BY CANADA. MEXICO AND UNITED STATES

C 80 final Articles Revision (56) ALL

C160 Labour Statistics 1985 (46) ALL

##### 3. GREATER THAN 50 STATES HAVE SIGNED THE CONVENTION

C89 Night Work (women) Revised 1948 (65) Canada (R)

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C50 Night Work of Young Persons (Industry) 1948 (50) Mexico (R)  
C116 Final Articles Revision Convention (1961) (76) Mexico (R)  
C131 Minimum age fixing Convention (1970) (50) Mexico (R)  
C 172 Human Resources Development Convention (1975) (64) Mexico (R)  
C 159 Vocational rehabilitation and Employment (Disabled Persons) 1983 (78) (Mexico (R)  
C 94 Labour Clauses (Public Contracts) 1949 (60) NONE (R)  
C42 Workers Compensations (Occupational Diseases) Rev 1934 (53) Mexico (R)  
C52 Holidays with Pay Convention 1936 (54) Mexico (R)  
C 97 Migration for Employment (1949) (45) NONE

### CANADA ONLY

C 162 Asbestos Convention 1986 (29) Canada (R)

### 4. LESS THAN 50 STATES ONLY RATIFIED BY MEXICO

C101 Holiday with Pay (Agriculture Convention 1952 (46) Mexico (R)  
C 107 Indigenous and Tribal Populations 1957 (27) Mexico (R)  
C 30 Hours of Work (Commerce) and Offices 1930 (30) Mexico (R)  
C62 Safety Provisions buildings 1937 (30) Mexico (R)  
C19 Protection of workers Claims insolvency 1992 (19) Mexico (R)  
C140 Paid Education leave 1974 (33) Mexico (R)  
C141 rural workers Organization 1975 (33) Mexico (R)  
C 153 Hours of work ( rest periods (road Transport 1979 (8) Mexico (R)  
C 155 Occupational Safety and Health Convention 1985 (25) Mexico (R)  
C 167 Safety Health in Construction 1988 (20) Mexico (R)  
C 169 Indigenous and Tribal Peoples Convention 1989 (18) Mexico (R)  
C 170 Chemicals Convention 1990 (15) Mexico (R)  
C 172 Working Conventions (Hotels and restaurants Convention 1981 (14) Mexico (R)

### 5. LESS THAN 50 STATES AND NONE OF SPP STATES

C47 Forty hour Week Convention 1935 (14) NONE  
P 81 Protocol of 1995 Labour Inspection Convention (1947) (10) NONE  
C84 right of Association non Metro Territories 1947 (4) NONE  
C 85 Labour inspection 1947 (5) NONE  
C 103 Maternity Protection convention Revised 1952 (40) NONE  
C129 Labour Inspection (Agriculture) 1969 (43) NONE  
C30 Medical Care and Sickness Benefits 1969 (15) NONE  
C 132 Holiday with Pay Revised 1979 (34) NONE  
C148 Working Environment (Air Pollution, Noise, vibration convention 1977 (43) NONE  
C149 Nursing Personnel Convention (1977) (37) NONE  
C 151 Labour Relations (1978) (44) NONE  
C 154 Collective Bargaining 1981 (38) NONE  
C 155 Protocol of 2002 to the Occupational Health Convention 1981 NONE (40)  
C 157 Maintenance of Social Security and Rights Convention (1982) (3)NONE  
C158 Termination of employment Convention 1982 (34) NONE

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C 174 Prevention of Major Industrial Accidents 1993 (11) NONE

C 175 part time Convention 1994 (11) NONE

C176 Safety and Health in Mines Convention 1995 (2) NONE

C 183 Maternity Protection Convention 2000 (13) NONE

C 184 Safety and Health in Agriculture Convention (2001) NONE

C 187 Promotion Framework for Occupation Safety and Health Convention 2006 NONE

### OPPOSITION TO SPP MUST BE RELATED TO THE VIOLATION BY SPP AGREEMENT OF INTERNATIONAL NORMS

Opposition to the Security and Prosperity Partnership has been generally motivated by Nationalism in all three countries, along with a deep concern about the loss of sovereignty, and about the bypassing of the democratic process in each one of the states.

Nationalism in Canada and Mexico has generally been reflected in the loss of Canadian and Mexican ability to resist the undermining of regulations, whereas “nationalism” in the United States has generally been reflected in concern about more stringent regulation being imposed from outside.

Activists in each country must become more aware of what the industry in their country OF ORIGIN is doing in the other two countries,

For example, primarily US industry has been involved in destructive practices in both Mexico and Canada for years, but also Canada has been involved in destructive practices in Mexico, and probably in the US as well. These practices are being increased under the SPP Agreement.

For example Canadian silver mines violate norms related to world heritage sites.

Under international law, all three states have incurred an obligation to protect world heritage sites which includes not creating an island of protection i.e. surrounding a heritage site with inappropriate development.

(21) Under the Convention for the Protection of Cultural and Natural Heritage the following obligation was incurred.

Preserving natural heritage for future generations

i Considering that parts of the cultural or natural heritage are of outstanding interest and therefore need to be preserved as part of the world heritage of mankind [humankind] as a whole (Convention for the Protection of the World cultural and Natural Heritage, preamble, 1972).

ii Considering that in view of the magnitude and gravity of the new dangers threatening them, it is incumbent on the international community as a whole to participate in the protection of the cultural and natural heritage of outstanding universal value.. (Preamble, Convention for the Protection of the World cultural and Natural Heritage, 1972)

[Canadian and US owned hotels are destroying centos in Mayan coast;

CANADA AND US GE CORN PENETRATING MEXICAN INDIGENOUS CORN



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As of January 2008, the US is flooding the Mexican market with GE corn [perhaps Canada will be as well] ; beans, sugar and milk products

YET

(74) Indigenous and tribal peoples shall enjoy the full measure of human rights and fundamental freedoms without hindrance or discrimination. The provisions of the Convention shall be applied without discrimination to male and female members of these peoples. (Art. 3 Convention Concerning Indigenous and Tribal Peoples in Independent Countries No. 169, 1990)

\*US is buying farms in Mexico, exploiting farm workers and exporting produce north. Perhaps Canada will be too

- 
- As a result of NAFTA, Elides - indigenous and small farm holdings have become industrialized farms
- Exploitation of Mexican Labour in the Maquiladoras

### SWEEPING INTERNATIONAL NORMS UNDER THE CARPET

There are a number of systemic constraints for preventing the implementation of international norms.

- (i) Institutional memory is short; either intentionally or unintentionally.
- (ii) There is not a mandatory provision for states to recognize the jurisdiction of the International Court of Justice, and if they recognize the jurisdiction, there is not a mandatory requirement to abide by the decisions
- (iii) The general public and the media equate the UN with the UN Security Council, and ignore UNGA the decisions, which usually tip the balance in favour of peace, human rights, social justice and the environment
- (iv) Except in some cases of human rights including indigenous rights, Lawyers rarely use international law
- (v) judges in provincial courts have claimed that international law is not judiciable in their courts
- (vi) In Canada the Ministry of justice whose responsibility it is to advise parliament on the necessary legislation necessary to ensure compliance with international obligations and commitments
- (vii) Activists including Anti-globalization activists ignore international law.

### INTERNATIONAL NORMS AS AN INSTRUMENT OF CHANGE

### OPPOSITION BASED ON INTERNATIONAL PEREMPTORY NORMS

The SPP Agreement should be declared null and void because it HAS BEEN VIOLATING

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international peremptory norms.

A solution for preventing further negotiation of the SPP will lie neither in having the SPP brought to Canadian parliament for a vote WITHOUT THE CALL TO DECLARE IT NULL AND VOID, nor in carrying out an across Canada referendum because if it can be shown that the SPP violates international norms, then the issue should not be decided by majority vote. [ WE MUST BE CAREFUL WHAT WE ASK FOR]

These campaigns are flawed because the SPP agreement is not one that should be decided by majority vote, but one that must be opposed because its measures and provisions contravene international peremptory norms.

Appeals, however, could be made to the Supreme Court of Canada to give direction to Parliament to end all further negotiations because the SPP violates international peremptory norms and should be declared null and void.

### PEREMPTORY NORMS

Security and Prosperity Partnership Agreement should be declared Null and void because it violates international peremptory norms or what has been called in legalese “[I] us cogens”

Principles of international law so fundamental that no nation may ignore them or attempt to contract out of them through treaties. For example, genocide and participating in a slave trade are thought to be jus cogens.

Etymology: New Latin, literally, constraining law

: a principle of international law that is based on values taken to be fundamental to the international community and that cannot be set aside (as by treaty)

Under the Vienna Convention on the law of treaties, a treaty, agreement convention etc is null and void if it contravenes a peremptory norm.

Under Article 53 of the Convention on the Law of Treaties – Treaties conflicting with a peremptory norm of general international law (jus cogens) are null and void

"A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law. for the purposes of the present convention, a preemptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character."

Although the Security and Prosperity Partnership is described as an "agreement" and not a treaty, " the "agreement" would have to fulfill the same requirements related to peremptory norms.

To be designated as a “Peremptory norm” the norm must be accepted and recognized as a

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peremptory norm by the internationally community of states as a whole. Peremptory norms can be extracted from years of international instruments agreed to by a broad group of states, from widely divergent geographical areas, functioning under a range of legal systems,

### CRITERIA

1. Must have broad support

2. Adoption by all states by consensus # conference action plans

4. Substantial concurrence of states belonging to all principle 3 Does not imply that such rules would be imposable on states that rejected them

However, an opposition of an individual state or of a very small number of states doe not affect the emergence of a peremptory norm as such (Chairman of drafting commitment.

legal systems

# covenants and treaties such as International Convention of Civil and Political Rights ICCPR, ICESCR, convention for the elimination of all forms of racial discrimination, international convention on the elimination of all forms of discrimination against women. Convention on natural and cultural heritage, etc. refugees

It is generally recognized that in order to acquire the quality of jus cogens. A norm must first pass the normative test for rules of general international law. It is also established that, secondly such a norm must be accepted and recognized as a peremptory norm by the internationally community of states as a whole.

Peremptory norms can be drawn from Conventions, Covenants and Treaties which have been signed and ratified and are in force; from Conference Action plans which have been adopted by Consensus, or from UN General Assembly Resolutions and Declaration adopted at the UNGA.

**IT SHOULD BE NOTED THAT THE UNITED STATES IS NOT A STAUNCH SUPPORTER OF PEREMPTORY NORMS**

[During the negotiation of the Vienna Convention on the Law of Treaties, the United States pointed out that the recognition of a peremptory character of a norm would require as a minimum , the absence of Dissent by an important element of the international community - ie presumably the United States]

**IT SHOULD BE NOTED AS WELL THAT CANADA AND MEXICO HAVE SIGNED AND RATIFIED THE CONVENTION ON THE LAW OF TREATIES; THE US HAS NOT RATIFIED THE CONVENTION**

For over 60 years, through the UN system, member states of the UN have incurred obligations through treaties, conventions and covenants, made commitments through UN Conference Action plans, and created expectations through UNGA declarations and resolutions related to furthering international law and common security. True security- is not "collective

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security" or "human security" which has been extended to "humanitarian intervention" and used along with the "responsibility to protect" notion to justify military intervention in other states.

True security is "common security" not as defined in the SPP but in documents prepared by Olaf Palme, and which entrench peremptory norms.

Under the Convention, Parties to the convention undertake, in accordance with the international instruments concerning human rights, to respect and to ensure to all migrant workers and members of their families within their territory or subject to their jurisdiction the rights provided for in the present Convention without distinction of any kind such as sex, race, colour, language, religion or conviction, political or other opinion, national, ethnic or social origin, nationality, age, economic position, property, marital status, birth or other status (Art. 7. International Convention on the protection of the Rights of all Migrant Workers and Members of their Families)

\*to promote and fully guarantee respect for human rights including labour rights, civil and political rights, social and cultural rights-  
right to food, right to housing, right to universally accessible, not for profit health care system , right to education and social justice;

\* to enable socially equitable and environmentally sound employment, and ensure the right to development [as per Convention]; and to institute a fair and just transition program for communities affected  
by the transition, and for workers displaced by the transition

\* to achieve a state of peace, social justice and disarmament; through reallocation of military expenses;

\* to create a global structure that respects the rule of law ; and

\* to ensure the preservation and protection of the environment, respect the inherent worth of nature beyond human purpose, reduce the ecological footprint and move away from the current model of overconsumptive development.

The time has long since passed for the translation of rhetoric into action.

The international rhetoric is there, the hypocrisy is tangible and endemic. We must use international law as an instrument of change.

### ACTIONS

The SPP must be cancelled, and the SPP be declared null and void and its subsidiary the North American Competitive Council (NACC) must be abandoned and in its place established North American Compliance Court (NACC) for citizens to take evidence of state and corporate non compliance with peremptory norms, and to provide a remedy among other of revoking charters and licences of transnational corporations.

### PETITION TO THE HOUSE OF COMMONS IN PARLIAMENT ASSEMBLED

WHEREAS under Article 53 of the Law of Treaties, a treaty/agreement is null and void if the Treaty/Agreement violates international peremptory norms:

A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law. For the purpose of the present convention, a peremptory norm of general international law is a norm accepted and recognized by the international community of states as a whole. From which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.

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WHEREAS Many of the provisions in the SPP Agreement violate peremptory norms related to true security which entails the following objectives;

- \*to promote and fully guarantee respect for human rights including labour rights, civil and political rights, social and cultural rights- right to food, right to housing, right to universally accessible, not for profit health care system , right to education and social justice;

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  - \* to create a global structure that respects the rule of law ; and

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We the undersigned citizens draw the attention of the House to the following

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In the 1920s the United States successfully sued Cominco for polluting the Columbia River in the United States. A precedent was set that Cominco was held legally responsible for polluting the Columbia River on the US side, and was required to compensate Washington state.

As a result of that case an international principle was established that countries could be held responsible for the activities, on their territory, that have serious environmental consequences on the environment of an adjacent Country. A version of this principle was included in the Convention on the law of the Seas, and in the Rio Declaration which was adopted by all member states of the United Nations at the 1992 UN Convention on Environment and Development.

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A series of law suits could be launched related to the US violation of the Transboundary Principle, the precautionary principle and the prevention-of-transfer-to-other-states-of-substances-and-activities-that-could-be-harmful-to-the- environment-and-human-health principle.

### ROGUE STATES: FAILURE TO COMPLY

The SPP is and will be further resulting in increased violation of human rights, including civil and political rights, labour rights, women's rights, in increased destruction of the environment, in increased militarism, and in privatization of the commons.

Canada, Mexico and the US have disregarded international law for years. Canada signs and ratifies most international agreements, and then fails to enact the necessary legislation or to amend existing legislation to ensure compliance.

If one examines principles under International human rights agreements, including key covenants on civil and political rights, and social and economic and cultural rights, International labour organization instruments, conventions and declarations related to indigenous rights, right of migrant workers, rights refugees; If one examines principles related to preventing the scourge of war; If one examines conventions and protocols related to Biodiversity, to climate change etc.

One will find that all three states are derelict in their duty towards implement principles arising from international obligations and commitments. Citizens of Canada, Mexico and the United States have a legitimate expectation that these three states will abide by international peremptory norms.

The US signs few agreements and ratifies almost no agreements, Mexico signs and ratifies more than the US, more sometimes but sometimes less than Canada, and is equally guilty of failing to enact or amend the legislation to ensure compliance. While the three states have been

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rogue states vis a vis international law over the years, they have reached a new level of "roguery" recently in negotiating the SPP Agreement.

It is time for compliance, implementation and enforcement of these obligations and commitments.

Canada has increasingly become an international pariah because of its being so closely aligned with the United States: through its embracing of US misconstruing of Article 51--self defence-- of the

Charter of the UN [invasion of Afghanistan], its abstaining from UN committee resolution banning Depleted Uranium; its contravention of the International Covenant of Civil and Political rights through its passage of the Anti-terrorism act, and more recently its copycat No-fly list, and its reliance on FBI lists to exclude Activists; its violation of the Convention Against Torture in the transference of prisoners; its reversal of a long standing Canadian policy of welcoming draft dodgers and war resisters; its renegeing on its obligations under the Framework convention on Climate Change, and its protocol-the Kyoto protocol; Its refusal to adopt the Declaration on the Rights of Indigenous Peoples, Its change in Middle East policy;

In 2002, I prepared a pack of cards to answer the key US question posed after whatever occurred on September 11, 2001: Why do they hate us. Out of the pack of cards emerged what I referred to as the Common Security Index almost 200 peremptory principles derived from international instruments. In 2005, I had the opportunity of addressing the Senate on my objections to the Anti-terrorism act, and presented the Senate with what I described as the "Common Security Index". The purpose of the Common Security Index was to jar the Canadian government's shortness of institutional memory- the sheer oblivion demonstrated to previous precedents.

To give an idea of some of the peremptory norms I will now go through the 120 page Common Security index until my time is up.

SLIDE: LABOUR CONVENTIONS

ENSHRINING EQUAL PAY FOR WORK OF EQUAL VALUE

INTERNATIONAL OBLIGATION:

Affirming labour rights, protesting against the undermining of labour rights. The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work; (Article 11.1 d. Convention on the Elimination of All Forms of Discrimination Against Women)

Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests (Art. 22. 1 International Covenant of Civil and Political Rights, 1966)

INTERNATIONAL LABOUR ORGANIZATIONS AGREEMENTS

1. ILO PEREMPTORY NORMS RATIFIED BY GREATER THAN 100 STATES

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C 144 Tripartite Consultation ILO Labour standards 1947 (135) Mexico (R)

C81 Labour Inspection Convention 1947 (135) NONE

C138 Minimum Age Convention 1973 (148) NONE

C105 Abolition of Forced Labour Convention (1957 (167) All

C 87 Freedom of Association and Protection of the Right to Organize (1948) (147) Canada (R) and Mexico (R)

C100 Equal remuneration Convention (1951 (165) Canada (R) and Mexico (R)

C98 right to Organize and collective Bargaining 1949 (156) NONE

C829 Forced Labour Convention 1930 (171) Mexico (R)

C120 Hygiene (Commerce and Office) Convention (1964) (150) Canada (R) and Mexico (R)

C 115 Radiation Protection (1960 (147) Mexico (R)

### 2. LESS THAN 100 RATIFICATIONS

#### 1a RATIFIED BY CANADA. MEXICO AND UNITED STATES

C 80 final Articles Revision (56) ALL

C160 Labour Statistics 1985 (46) ALL

### 3. GREATER THAN 50 STATES HAVE SIGNED THE CONVENTION

C89 Night Work (women) Revised 1948 (65) Canada (R)

C50 Night Work of Young Persons (Industry) 1948 (50) Mexico (R)

C116 Final Articles Revision Convention (1961) (76) Mexico (R)

C131 Minimum age fixing Convention (1970) (50) Mexico (R)

C 172 Human Resources Development Convention (1975) (64) Mexico (R)

C 159 Vocational rehabilitation and Employment (Disabled Persons) 1983 (78) (Mexico (R)

C 94 Labour Clauses (Public Contracts) 1949 (60) NONE (R)

C42 Workers Compensations (Occupational Diseases) Rev 1934 (53) Mexico (R)

C52 Holidays with Pay Convention 1936 (54) Mexico (R)

C 97 Migration for Employment (1949) (45) NONE

### CANADA ONLY

C 162 Asbestos Convention 1986 (29) Canada (R)

### 4. LESS THAN 50 STATES ONLY RATIFIED BY MEXICO

C101 Holiday with Pay (Agriculture Convention 1952 (46) Mexico (R)

C 107 Indigenous and Tribal Populations 1957 (27) Mexico (R)

C 30 Hours of Work (Commerce) and Offices 1930 (30) Mexico (R)

C62 Safety Provisions buildings 1937 (30) Mexico (R)

C19 Protection of workers Claims insolvency 1992 (19) Mexico (R)

C140 Paid Education leave 1974 (33) Mexico (R)

C141 rural workers Organization 1975 (33) Mexico (R)

C 153 Hours of work ( rest periods (road Transport 1979 (8) Mexico (R)

C 155 Occupational Safety and Health Convention 1985 (25) Mexico (R)



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- C 167 Safety Health in Construction 1988 (20) Mexico (R)
- C 169 Indigenous and Tribal Peoples Convention 1989 (18) Mexico (R)
- C 170 Chemicals Convention 1990 (15) Mexico (R)
- C 172 Working Conventions (Hotels and restaurants Convention 1981 (14) Mexico (R)

### 5. LESS THAN 50 STATES AND NONE OF SPP STATES

- C47 Forty hour Week Convention 1935 (14) NONE
  - P 81 Protocol of 1995 Labour Inspection Convention (1947) (10) NONE
  - C84 right of Association non Metro Territories 1947 (4) NONE
  - C 85 Labour inspection 1947 (5) NONE
  - C 103 Maternity Protection convention Revised 1952 (40) NONE
  - C129 Labour Inspection (Agriculture) 1969 (43) NONE
  - C30 Medical Care and Sickness Benefits 1969 (15) NONE
  - C 132 Holiday with Pay Revised 1979 (34) NONE
  - C148 Working Environment (Air Pollution, Noise, vibration convention 1977 (43) NONE
  - C149 Nursing Personnel Convention (1977) (37) NONE
  - C 151 Labour Relations (1978) (44) NONE
  - C 154 Collective Bargaining 1981 (38) NONE
  - C 155 Protocol of 2002 to the Occupational Health Convention 1981 NONE (40)
  - C 157 Maintenance of Social Security and Rights Convention (1982) (3)NONE
  - C158 Termination of employment Convention 1982 (34) NONE
  - C 174 Prevention of Major Industrial Accidents 1993 (11) NONE
  - C 175 part time Convention 1994 (11) NONE
  - C176 Safety and Health in Mines Convention 1995 (2) NONE
  - C 183 Maternity Protection Convention 2000 (13) NONE
  - C 184 Safety and Health in Agriculture Convention (2001) NONE
  - C 187 Promotion Framework for Occupation Safety and Health Convention 2006 NONE
- google translation
- El TLCAN debe ser derogado y junto con el SPP declarado nulo - PEJnews - Joan Russow

Ayer en la ciudad de Mexico, hubo una manifestación en frente del Monumento a la Revolución. Los productores de leche de establecer un estable frente al Monumento. Para mañana, los campesinos y los miembros de la Unión de todo Mexico se descendente en la ciudad de Mexico una "megamarcha" contra el TLC. El Gobierno del Canadá debe ser presionado para que derogue el TLC, y para declarar la Asociación para la Seguridad y la Prosperity nula y sin efecto. Se adjunta una Petición al Parlamento.

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PETICIÓN [Google translation]

### A LA CASA DE COMMONS EN PARLAMENTO ASSEMBLED

CONSIDERANDO que en virtud del artículo 53 del Derecho de los Tratados, un tratado o acuerdo es nulo y sin efecto si el Tratado / Acuerdo internacional viola las normas imperativas:

Es nulo todo tratado que, en el momento de su celebración, esté en oposición con una norma imperativa de derecho internacional general. A los efectos de la presente Convención, una norma imperativa de derecho internacional general es una norma aceptada y reconocida por la comunidad internacional de Estados en su conjunto. Desde que no admite excepción y que sólo puede ser modificada por una norma ulterior de derecho internacional general que tenga el mismo carácter.

CONSIDERANDO En general se reconoce que, a fin de adquirir la calidad de jus cogens. Una norma debe primero pasar la prueba normativo para las normas de derecho internacional general. También se estableció que, en segundo lugar, esa norma debe ser aceptada y reconocida como una norma imperativa de la comunidad internacional de Estados en su conjunto, y debe cumplir con las siguientes condiciones: (i). Debe tener un amplio apoyo, (ii). Adopción por consenso por todos los estados: conferencia de los planes de acción; (iii) una importante concurrencia de los estados pertenecientes a principio todos los sistemas jurídicos, por ejemplo. Pactos y tratados como el Pacto Internacional de Derechos Civiles y Políticos (PIDCP), el Pacto Internacional de Derechos Económicos, Sociales y Culturales (ICSECR), la Convención para la Eliminación de todas las Formas de Discriminación Racial, la Convención Internacional sobre la Eliminación de todas las Formas De la Discriminación contra la Mujer. Convención sobre el Patrimonio Natural y Cultural. Convención sobre los Refugiados, la Declaración de los Derechos de los Pueblos Indígenas, los convenios de la OIT, la Convención Marco sobre el Cambio Climático, incluido el Protocolo de Kyoto, el Convenio sobre la Diversidad Biológica;

Considerando que muchas de las disposiciones de la TLC y TIGAN Acuerdo de violar las normas imperativas relacionadas con la verdadera seguridad que implica los siguientes objetivos;

- \* Promover y garantizar plenamente el respeto de los derechos humanos, incluidos los derechos laborales, los derechos civiles y políticos, sociales y culturales, derecho a la alimentación, derecho a la vivienda, derecho a la disposición de todos, sin ánimo de lucro sistema de atención de salud, derecho a la educación y la justicia social ;

- \* Para que socialmente equitativo y ecológicamente racional de empleo, y garantizar el derecho al desarrollo [según la Convención], y de instaurar un justo y equitativo programa de transición para que las comunidades afectadas

De la transición, y para los trabajadores desplazados por la transición

- \* Para lograr un estado de paz, la justicia social y el desarme, a través de la reasignación de los gastos militares;

- \* Para crear una estructura global que respete el imperio de la ley, y

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\* Para garantizar la preservación y protección del medio ambiente,  
Respetar el valor inherente de la naturaleza humana más allá del propósito, reducir la huella ecológica y abandonar el actual modelo de desarrollo overconsumptive.

Nosotros, los abajo firmantes ciudadanos señalar a la atención de la Cámara sobre los siguientes

Que dado que el TLCAN y el SPP violan las normas internacionales de las normas imperativas, el TLCAN y el SPP debe ser declarado nulo y sin valor y, por consiguiente, todas las medidas, el TLC debe ser derogado, y la posterior negociación en el marco del SPP deben terminar, y de todas las medidas Adoptadas en el marco de la ASPAN debe invertirse.

NOMBRE (PRINT) DIRECCIÓN FIRMA

PETITION TO THE HOUSE OF COMMONS IN PARLIAMENT ASSEMBLED WHEREAS  
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**SPP Agreement Violates International norms and Must be Declared Null and Void**

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NAME (PRINT) ADDRESS (STREET/CITY) SIGNATURE

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Please send copy to Joan Russow, 1230 St. Patrick St. Victoria, B.C. V8S4Y4

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