

## **TPP should be declared null and void for violating international norms**

Posted by Joan Russow

Wednesday, 11 December 2013 08:37 - Last Updated Thursday, 19 November 2015 10:14

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**After examining the actual text, I still think that The TPP should be declared to be null and void, and instead, on the 70th Anniversary of the United Nations , the member states should ratify key international instruments and enact the necessary legislation, into statutes, to ensure compliance. Once this is done then the member states should enter into a "Fair trade" regime based on international law.**

**The TPP. like other trade agreements, while possibly recognizing, if informed, statutory law and international obligations, it will thwart the evolution of important new statutory and international obligations;**

**Even under the TPP there are references to the need to inform other states of existing statutory law and international obligations .**

**Under the TPP is a requirement**

**"to inform the other Partners about Statutory Law. For Canada, statutory law is an Act of the Parliament of Canada or regulation made under an Act of the Parliament of Canada that is enforceable by action of the central level of government."**

**This requirement also applies to the sections on goods including pharmaceuticals .**

**But what happens when a state either is negligent in not referring fully to its statutory law, or a state wishes to pass future statutory or has failed to transfer its obligations into statutory law?**

**Under Chapter 2 there is the following:**

**UNDER CHAPTER 2 OF THE TPP IS THE FOLLOWING :**

"4. Nothing in this Article shall be construed in a manner that would require a Party to grant an export license, or that would prevent a Party from implementing its obligations/commitments under United Nations Security Council Resolutions, as well as multilateral non-proliferation regimes, including: the Wassenaar Arrangement on Export Controls for Conventional Arms and Use Goods and Technologies; the Nuclear Suppliers Group; the Australia Group; the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, done at Paris, January 13, 1993; the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction, done at Washington, London, and Moscow, April 10",

**While this section seems to be very specific;; other obligations are referred to in Chapter 20 on the Environment There is an emphasis on informing parties of obligations under international law;**

"In order to promote the widest measure of law enforcement cooperation and information

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sharing between the Parties to combat the illegal take of, and illegal trade in, wild fauna and flora, the Parties shall endeavour to identify opportunities, consistent with their respective law and in accordance with applicable international agreements, to enhance law enforcement cooperation and information sharing, for example by creating and participating in law enforcement networks;"

**There are references as well to Ozone depletion biodiversity, fisheries etc. and**

**to UN Convention on the Law of the Seas:**

"with respect to Canada: (i) the land territory, air space, internal waters and territorial seas of Canada; (ii) the exclusive economic zone of Canada, as determined by its domestic law, consistent with Part V of the United Nations Convention on the Law of the Sea done at Montego Bay on 10 December 1982 (UNCLOS); and (iii) the continental shelf of Canada, as determined by its domestic law, consistent with Part VI of UNCLOS;"

**The assumption could be made that, in the TPP, it is necessary to inform all parties of existing obligations under existing statutory law and under the multilateral system such as those under the following international instruments :**

### **CANADA HAS RATIFIED THE FOLLOWING LEGALLY BINDING AGREEMENTS**

**1945 Charter of the United Nations**

**1945 International Court of Justice**

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**1948 Universal Declaration of Human Rights (adopted)**

**1951 Convention related to the Status of Refugees**

**1963 International Convention for the Elimination of all Forms of Racism  
1966 International Covenant of Economic, Social and Cultural Rights, and its Optional Protocols**

**1966 International Covenant on Civil and Political Rights and its Protocols**

**1968 Non- Proliferation Treaty**

**1969 Vienna Convention on the Law of Treaties**

**1972 UN Convention for the Protection of Cultural and Natural Heritage**

**1972 Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction**

**1973 Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).**

**1975 Convention on the Elimination of all forms of Discrimination Against Women and its protocol**

**1976 Convention on the Rights of Persons with Disabilities**

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**1982 UN Convention on the Law of the Seas**

**1984 Convention Against Torture**

**1989 Convention on the Rights of the Child**

**1990 Convention on the rights of migrant Workers and their families (NOT RATIFIED)**

**1990 Rome Statute International Criminal Court**

**1992 Convention on Biological Diversity**

**1992 UN Framework convention on climate change**

**1992 Convention to Combat Desertification and Drought (CANADA WITHDREW)**

**1993 Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction**

**1997 Ottawa Anti-Personnel Mine Ban Treaty**

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**1997 The Montreal Protocol on Substances that Deplete the Ozone Layer**

**2007 THE UN DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES**

**2013 Arms Trade Treaty (NOT RATIFIED)**

**Geneva protocols on prohibited weapons**

**Geneva Protocols, including Protocol V, which requires the removal of remnants of warTreaty**

**AND MANY OTHERS**

**But hwat happens if a state fails to enact legislation into statutes and wishes to enact future statutory law?**

**THE PROBLEM IS THAT CANADA SIGNS AND RATIFIES INTERNATIONAL INSTRUMENTS BUT DOES NOT TAKE THE INSTRUMENTS TO PARLIAMENT TO PASS STATUTES TO ENSURE COMPLIANCE**

**CANADA MISLED THE GLOBAL COMMUNITY IN 1982**

**Canada will not normally become a party to an international agreement which requires implementing legislation until the necessary legislation has been enacted. (1982**

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**document circulated by External Affairs "Canadian Reply to Questionnaire on Parliaments and the Treaty-making power")**

**THIS FAILURE TO ENACT LEGISLATION HAS MADE CANADA VULNERABLE IN INTERNATIONAL TRADE AGREEMENTS**

**THE PROBLEM, HOWEVER, WITH THE UNITED STATES IS THAT IT HAS NOT RATIFIED KEY INTERNATIONAL INSTRUMENTS**

**THE UNITED STATES HAS NOT RATIFIED OR ADOPTED THE FOLLOWING LEGALLY BINDING AGREEMENTS**

**1945 Charter of the United Nations**

**1945 International Court of Justice (THE US NO LONGER RESPECTS ITS JURISDICTION OR DECISIONS)**

**1948 Universal Declaration of Human Rights (adopted)**

**1951 Convention related to the Status of Refugees**

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**1963 International Convention for the Elimination of all Forms of racism**

**1966 International Covenant of Economic, Social and Cultural Rights the Optional Protocol (NOT RATIFIED)**

**1966 International Covenant on Civil and Political Rights and its Protocols**

**1968 Non- Proliferation Treaty**

**1969 Vienna Convention on the Law of Treaties (NOT RATIFIED)**

**1972 UN Convention for the Protection of cultural and Natural Heritage**

**1972 Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction**

**1973 Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).**

**1975 Convention on the Elimination of all forms of Discrimination Against Women and its protocol (NOT RATIFIED)**

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**1982 UN Convention on the Law of the Seas**

**1984 Convention Against Torture (BUT HAS REDEFINED WHAT CONSTITUTES TORTURE)**

**1989 Convention on the Rights of the Child (NOT RATIFIED)**

**1990 Convention on the rights of migrant Workers and their families**

**(NOT RATIFIED)**

**1990 Rome Statute International Criminal Court (NOT RATIFIED)**

**1992 Convention on Biological Diversity (NOT RATIFIED)**

**1992 UN Framework convention on climate change**

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### **Use of Chemical Weapons and on Their Destruction**

**1997 Ottawa Anti-Personnel Mine Ban Treaty**  
**1997 The Montreal Protocol on Substances that Deplete the Ozone Layer**

**2007 THE UN DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES (NOT ADOPTED)**

**2013 Arms Trade Treaty (NOT RATIFIED)**

**Geneva protocols on prohibited weapons**

**Geneva Protocols, including Protocol V, which requires the removal of remnants of war**  
**Treaty (NOT ALL OF THEM)**

**AND MANY OTHERS**

**But what happens if a state disregards obligations that bind others?**

## **CHAPTER 28 DISPUTE SETTLEMENT**

**Under this chapter, [ ] is the reference to the impact of other international agreements that have been ratified at the time of signing the agreement**

"Article 28.3: Scope

1. Except as otherwise provided in this Agreement, the dispute settlement provisions of this

Chapter shall apply:

3. An instrument entered into by two or more Parties in connection with the conclusion of

the Agreement:

3. An instrument entered into by two or more Parties in connection with the conclusion of the Agreement:

(a) does not constitute an instrument related to this Agreement within the meaning of Article 31(2)(b) of the Vienna Convention on the Law of Treaties done at Vienna on 23 May 1969\* and shall not affect the rights and obligations under this Agreement of Parties not subject to a particular instrument; and

(b) may be subject to the dispute settlement procedures under this Chapter for any matter

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arising under that instrument if that instrument so provides."

**\* Article 31 ¶ 2b of the Vienna Convention on the Law of Treaties 31 2. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes: (a) Any agreement relating to the treaty which was made between all the parties in connexion with the conclusion of the treaty; (b) Any instrument which was made by one or more parties in connexion with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty.**

**Note Brunei, Singapore and the US have not ratified the Vienna Convention on the Law of Treaties**

### **IMPORTANCE OF THE RATIFICATION OF ABOVE AND OTHER INTERNATIONAL AGREEMENTS**

**¶ One of the major criticisms about trade agreements is about the international tribunals. It appears that the TTP ¶ tribunal is modeled ¶ after the WTO tribunal process, and that if the disputing parties have both ratified the same applicable treaty, the parties ¶ might be required to seek resolution under the same shared treaty rather than an external tribunal.¶**

**Under WTO monitoring rules if two states have ratified the same Convention, the conflict has to be resolved under the COMMON AGREEMENT and could not be taken to a WTO tribunal (personal Communication, November 2009, WTO press Conference). For this reason it is extremely important that states sign and ratify international common security agreements,¶ and that they enact THE NECESSARY legislation to ensure compliance. With most international instruments there is a requirement to report on compliance with the instruments, and a provision for citizens, institutions to report on the lack of compliance. ¶**

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**With trade agreements, HOWEVER instead there has been a reliance, not on international law but on the spurious international tribunals**

### **ANOTHER MAJOR CRITICISM ABOUT TRADE AGREEMENTS IS THE VIOLATION OF INTERNATIONAL PEREMPTORY NORMS**

**Most States have not ratified the Vienna Convention on the Law of treaties. Under Article 53 Treaties conflicting with a peremptory norm (jus cogens) could be deemed 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 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.**

**TPP along with other trade and investment agreements has led and will continue to lead to an increased disregard for international peremptory norms derived from obligations under Conventions, treaties and covenants RATIFIED BY ALL STATES OR BY THE MAJORITY OF STATES REPRESENTING ALL GEOGRAPHICAL AREAS AND A RANGE OF LEGAL SYSTEMS.**

**SIMILARLY PEREMPTORY NORMS ARISE FROM commitments from Declarations and Resolutions resulting from consensus, or adopted by most states representing a range of legal systems and geographical regions.**

## **COMPLIANCE - INTERDEPENDENCE BETWEEN “COMMON SECURITY” CONVENTIONS/TREATIES AND TRADE AGREEMENTS**

**Common security was a concept initiated by Olaf Palme, a former president of Sweden, and has been extended to embody the following objectives:**

- **to achieve a state of peace, and disarmament; through reallocation of military expenses**

- **to create a global structure that respects the rule of law and the International Court of Justice;**

- **to enable socially equitable and environmentally sound employment, and ensure the right to development and social justice;**

- **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 safe drinking water and sewage, right to education and right to universally accessible not for profit health care system ,**

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

**To further Common security, the member states of the United Nations have incurred obligations through**

**conventions, treaties and covenants, and made commitments through Conference Action plans, and created expectations through UN General Assembly resolutions, and**

**declarations member states of the United Nations have incurred obligations, made commitments and created expectations**

**The common security agreements should take priority over trade and investment agreements; states should never be penalized for taking measures to discharge obligations under treaties/conventions or acting on commitments under Declarations, Resolutions or Conference Action plans.**

#### **1. DECLARATIONS RECOGNIZING AS COMPULSORY THE JURISDICTION OF THE INTERNATIONAL COURT OF JUSTICE UNDER ARTICLE 36, PARAGRAPH 2, OF THE STATUTE OF THE COURT**

**Declarations under Article 35, paragraph 2, of the Statute of the Court as implemented by Security Council Resolution 9 (1946) of 15 October 1946 are deposited with the Registrar of the Court. For those declarations, see United Nations, Treaty Series, or the Yearbooks of the Court. States which have made declarations under Article 36, paragraph 2 of the Statute of the International Court of Justice or whose declarations made under Article 36, paragraph 2, of the Statute of the Permanent Court of International Justice are deemed to be acceptances of the compulsory jurisdiction of the International Court of Justice. (See paragraph 5 of Article 36 of the Statute of the International Court of Justice.)**

**State names which appear in brackets are States having made declarations recognizing as compulsory the jurisdiction of the International Court of Justice for specified periods of time and which have been terminated or have since expired. For an explanation thereof, see endnotes at the end of this chapter.)**

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**TPP will undermine the ICJ by taking cases to tribunals thus bypassing cases that should be brought to the ICJ**

## **2. INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (ICCPR) 1966**

**The ICCPR is almost universally ratified and is an important source of international peremptory norms.**

### **PART 1 article 1 of the ICCPR states**

**1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.**

**2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence. [this provision is**



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**relevant in reference to the exploitation and destruction, of First Nations territories**

**3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.**

### **PART II Article 2 states**

**1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status**

**TPP could undermine the optional protocol to International Covenant on Civil and Political Rights; this Optional Protocol, permits individuals, who have exhausted all domestic remedies, to file a complaint to the ICCPR Committee in Geneva.**

### **3 INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS**

**□ NEW YORK, 16 DECEMBER 1966**

**Unlike most states, the US has not ratified the ICCPR**

**Article 7. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:**

**(a) Remuneration which provides all workers, as a minimum, with:**

**(i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;**

**Article 11. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his 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.**

**2. The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed:**

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**TPP will undermine the resolve to enact the necessary legislation to fully comply with this Covenant**

On 28 July 2010, through [Resolution 64/292](#), the United Nations General Assembly explicitly recognized the human right to water and sanitation and acknowledged that clean drinking water and sanitation are essential to the realisation of all human rights. The Resolution calls upon States and international organisations to provide financial resources, help capacity-building and technology transfer to help countries, in particular developing countries, to provide safe, clean, accessible and affordable drinking water and sanitation for all.

In November 2002, the Committee on Economic, Social and Cultural Rights adopted [General Comment No. 15](#) on the right to water. Article I.1 states that "The human right to water is indispensable for leading a life in human dignity. It is a prerequisite for the realization of other human rights". Comment No. 15 also defined the right to water as the right of everyone to sufficient, safe, acceptable and physically accessible and affordable water for personal and domestic uses.

### **Sources:**

- **Resolution A/RES/64/292. United Nations General Assembly, July 2010**
- **General Comment No. 15. The right to water. UN Committee on Economic, Social and Cultural Rights, November 2002**

**TPP will undermine the right to water through exploiting fresh water and by entering into Public Private Partnerships for delivery of water, which impact on local control**

#### **4. FRAMEWORK CONVENTION ON CLIMATE CHANGE (UNFCCC)**

**All states have signed and ratified the UNFCCC and most particularly Canada and the US have been in violation of Article 2 of the Convention:**

**Under Article 2 of the UNFCCC, states incurred the following obligation:  
"stabilization of greenhouse gas concentrations in the atmosphere must be at a level that would prevent dangerous anthropogenic interference with the climate system.**

**The UNFCCC has been universally ratified by all states and is a source of international peremptory norms. Under TPP, if either state undertakes to abide by the Convention.**

**At this moment under the Harper government, Canada has withdrawn from the Kyoto Protocol and has made a commitment of reduction of 17 % from 2006 and the US has made a similarly weak commitment, whereas the EU was, in Copenhagen willing to reduce emissions by 30% below 1990 levels [but because other major fossil fuel emitting States refused to join in, the EU committed to 20% 1990 levels. TPP could cause other states to reduce their commitment to harmonize down with the US and Canada**

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**□ Or if Canada, under a different government, decides to comply with the Convention by closing down production in the tar sands, it appears that under TPP, corporations could take Canada to arbitration.□ Although under WTO monitoring rules □ if two states have ratified the same Convention, the □ conflict has to be resolved under the UNFCCC and could not be taken to a WTO tribunal (personal Communication, November 2009 , WTO press Conference)**

### **5.□ CONVENTION ON BIOLOGICAL DIVERSITY 1992**

**Unlike most states, the US has not ratified the CBD**

**Convention. Canada has signed but not ratified the Cartagena protocol on the transfer of living modified organisms;**

**In addition, Canada □ has not signed or ratified the Nagoya protocol**

**□ on access to genetic resources and the fair and equitable sharing of benefits arising from their utilization to the convention on biological diversity**

**In Article 8j of CBD**

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**To respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity**

**and**

**in Article 18 4. of the Convention is the obligation:**

**to encourage and develop methods of cooperation for the development and use of technologies, including indigenous and traditional technologies, in pursuance of the objectives of this Convention .**

**. TPP could prevent states from discharging their obligations under this Convention**

**While The Japan and other Asian States have over time in various jurisdictions has taken a strong stand against genetically engineered food and crops, The US along with Canada has been a major promoter of GE food and crops. This technology has violated the precautionary principle in the Convention on Biological Diversity.**

**TPP could result in the increase transfer of GMO or GE products to the ASIA. Canada**

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**has failed to ratify the Biosafety Protocol on the transport of Living modified organisms. And Canada is currently supporting Aquabounty in producing transgenic salmon eggs in Prince Edward Island and then transporting these eggs to Panama. While Transgenic salmon has not yet been approved in the US or Canada, under TPP there could be pressured, corporations and to do so.**

**Because of Canada's position TPP could undermine the resolve to call for a global ban on genetically engineered food and crops**

**<http://www.change.org/en-CA/petitions/the-un-general-assembly-institute-a-global-ban-on-genetically-engineered-food-and-crops>**

### **6. UNITED NATIONS CONVENTION ON THE LAW OF THE SEA (1982)**

**Unlike most states, the US has not ratified the Convention on the Law of the Sea, and the "Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks**

**TPP could undermine the discharging of obligations under this Convention and**

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**Agreement. Particularly now because Canada has gutted key provisions in the Fisheries act.**

### **7. CONVENTION ON THE PREVENTION OF MARINE POLLUTION**

#### **BY DUMPING OF WASTES AND OTHER MATTER**

**The US has not ratified this convention**

**TPP could undermine the discharging of obligations under this**

### **8. THE CONVENTION ON WETLANDS (RAMSAR, IRAN, 1971) -- CALLED THE "RAMSAR CONVENTION"**

**TPP could undermine the discharging of obligations under this Convention**

### **9. INTERNATIONAL LABOUR ORGANIZATION CONVENTIONS**



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### **INTERNATIONAL LABOUR ORGANIZATION CONVENTIONS WILL BE DISREGARDED**

**TPP along with other trade and investment agreements have led and will continue to lead to an increased disregard for international peremptory norms related to the numerous International Labour Organizations Conventions most of which have not been ratified by Canada or the US.**

**In addition, the Labour movement nationally and internationally has advocated the principle of fair and just transition. This principle advances the undertaking that when an industry contributes to harm to human health and to the environment, labour will support the sunseting of the industry if society institutes a fair and just transition for workers and communities affected by this transition. This principle has been violated in the tar sands and the violation will be exacerbated**

### **▯ C098 - RIGHT TO ORGANISE AND COLLECTIVE BARGAINING CONVENTION, 1949**

**Convention concerning the Application of the Principles of the Right to Organise and to Bargain Collectively (Entry into force: 18 Jul 1951) Adoption: Geneva, 32nd ILC session (01 Jul 1949) - Status: Up-to-date instrument (Fundamental Convention).**

#### ***Article 1***

**§ 1. Workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment.**

**§ 2. Such protection shall apply more particularly in respect of acts calculated to--**

**§ (a) make the employment of a worker subject to the condition that he shall not join a union or shall relinquish trade union membership;**

**§ (b) cause the dismissal of or otherwise prejudice a worker by reason of union membership or because of participation in union activities outside working hours or, with the consent of the employer, within working hours.**

**□ The Harper Government□ has not even recognized the right to strike**

**C111 - DISCRIMINATION (EMPLOYMENT AND OCCUPATION) CONVENTION, 1958 (NO. 111)**

**Convention concerning Discrimination in Respect of Employment and Occupation (Entry into force: 15 Jun 1960) Adoption: Geneva, 42nd ILC session (25 Jun 1958) - Status: Up-to-date instrument (Fundamental Convention).**

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### **Article 1 For the purpose of this Convention the term *discrimination* includes--**

**§ (a) any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation;**

**§ (b) such other distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation as may be determined by the Member concerned after consultation with representative employers' and workers' organisations, where such exist, and with other appropriate bodies.**

**. It appears that legislation may not have been enacted in either Canada or the EU to comply with this convention**

### **10 CONVENTION ON THE RIGHTS OF THE CHILD**

**The US has not ratified the CRC**

### **11 CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN**

**The US has not ratified CEDAW Or its Protocols**

## **12 CONVENTION FOR THE PROTECTION OF MIGRANT WORKERS AND THEIR FAMILIES.**

**The trade agreements have led and will increasingly lead to the violation of the rights of migrant workers. The following rights have been proclaimed in the Convention on the Protection of the Rights of Migrant workers and their families are:□**

**Article 25 1. Migrant workers shall enjoy treatment not less favourable than that, which applies to nationals of the State of employment in respect of remuneration and:**

**(a) Other conditions of work, that is to say, overtime, hours of work, weekly rest, holidays with pay, safety, health, termination of the employment relationship and any other conditions of work, which, according to national law and practice, are covered by this term;**

**(b) Other terms of employment, that is to say, minimum age of employment, restriction on home work and any other matters which, according to national law and practice, are considered a term of employment.**

**2. It shall not be lawful to derogate in private contracts of employment from the principle of equality of treatment referred to in paragraph 1 of the present article.**

**3. States Parties shall take all appropriate measures to ensure that migrant workers are not deprived of any rights derived from this principle by reason of any irregularity in their stay or employment. In particular, employers shall not be relieved of any legal or contractual obligations, nor shall their obligations be limited in any manner by reason of any such irregularity.**

**Article 26 1. States Parties recognize the right of migrant workers and members of their families:**

**(a) To take part in meetings and activities of trade unions and of any other associations established in accordance with law, with a view to protecting their economic, social, cultural and other interests, subject only to the rules of the organization concerned;**

**(b) To join freely any trade union and any such association as aforesaid, subject only to the rules of the organization concerned;**

**(c) To seek the aid and assistance of any trade union and of any such association as aforesaid.**

**2. No restrictions may be placed on the exercise of these rights other than those that are prescribed by law and which are necessary in a democratic society in the interests of national security, public order (ordre public) or the protection of the rights and freedoms of others□**

**US along with Canada has □ failed to ratify this Convention**

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### **13. DECLARATION OF THE RIGHTS OF INDIGENOUS PEOPLES**

**TPP will lead to the abandonment of the rights of indigenous peoples. In 1992 every member state of the United Nations made the commitment to do the following:**

**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. ii., Agenda 21)**

**In 2007 Canada was one of four states that did not adopt the Declaration on the Rights of Indigenous Peoples; While Canada finally adopted the Declaration, the Harper government perceives The Declaration to be only aspirational and considers Art. 19 which enshrines "free and informed Consent|" as not necessarily meaning "consent"**

**The Harper government, however, claims that the Declaration is "aspirational". Given that there is almost universal adoption of this Declaration, the provisions have become international peremptory norms, and thus legally binding on states,**

**In addition, TPP will undermine the important norm in the ICCPR, that no people should be deprived of its subsistence. In the case of the tar sands both Canada and US are prepared to violate this norm.**

### **C. KEY INTERNATIONAL PRINCIPLES**

## **1. PRECAUTIONARY PRINCIPLE**

**In 1992, in the UNCED documents there is the full enunciation of the precautionary principle. This principle is present in all the documents in differing forms:**

**In the Rio Declaration it is expressed in the following way**

**Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation." (Rio Declaration, 1992):**

**and in the Framework for a Climate Change Convention it is phrased in a different way:**

**3. The Parties should take precautionary measures to anticipate, prevent or minimize the causes of climate change and mitigate its adverse effects. Where there are threats of serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing such measures, taking into account that policies and measures to deal with climate change should be cost-effective so as to ensure global benefits at the lowest possible cost. To achieve this, such policies and measures should take into account different socio-economic contexts, be comprehensive, cover all relevant sources, sinks and reservoirs of greenhouse gases and adaptation, and comprise all economic sectors. Efforts to address climate change may be carried out co-operatively by interested Parties. (Climate Change Convention, 1992)**

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### **And in The Convention on Biological Diversity**

**In the Convention on Biological Biodiversity, the precautionary principle reads;**

**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**

### **THE HARPER GOVERNMENT HAS MISCONSTRUED THE PRECAUTIONARY PRINCIPLE**

**In 2012 I filed a petition, about Canada's failure to implement the precautionary principle, with the Commissioner on the Environment. This petition received responses from the Department of National Resources, Fisheries, and Environment etc. After reviewing the responses, I was shocked to realize that Canada's interpretation of the Precautionary principle was out of sync with the international interpretation.**

**It appears that the Departments have perceived this principle which has been deemed**

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**a legally binding peremptory norm as being only a voluntary principle.**

**The Harper government has not only perceived the principle as being voluntary but also misconstrued the principle**

**In the response from the Department of Natural resources is the following interpretation of the precautionary principle:**

**“ The precautionary principle recognizes that the absence of full scientific certainty shall not be used as a reason for postponing decisions where there is a risk of serious irreversible harm**

**I.e. you do not have to wait until there is scientific certainty [that there will be no harm] in order to decide to proceed.**

**Rather than the international interpretation; Where there is a threat of irreversible harm, loss of biodiversity/ climate change, the lack of scientific certainty- the threat will occur -, should not be used as a reason to prevent the threat.**



## **2. ▯ TRANSBOUNDARY PRINCIPLE NON TRANSFERENCE OF HARM PRINCIPLE**

**TPP will increasingly result in the violation of the transboundary principle**

**This transboundary principle▯ arises when a▯ country 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.▯**

**"Principle 2: 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 national jurisdiction.▯**

**The non-transference of harm principle was adopted in the Rio Declaration**

**Principle 14 States should 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."▯**

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**Eventually, the transboundary principle will extend to vessels registered in different countries. TPP will increase the transport of substances that could be harmful to human health and the environment**

### **D CONCLUSION**

#### **1 INTERNATIONAL ENVIRONMENTAL NORMS VIOLATED THROUGH INCREASED DEREGULATION**

**The US along with Canada have shown disdain for the rule on international law, and have used trade agreements to bypass their discharging of international legally binding obligation or their fulfilling international commitments**

**TPP will increasingly lead to deregulation through corporate voluntary compliance, and through disregard for years of international environmental norms. Institutional government memory is short: governments at all levels are renegeing on their commitments to ensure that corporations including transnational corporations comply with national codes and international law, including international environmental law (Habitat II, 1996). In addition, every state made a commitment to reduce the ecological footprint; these trade agreements do and will increase the ecological footprint (Habitat II, 1996) The Habitat II Agenda was adopted by all states and is an important source of peremptory norms.**

**2 TPP SHOULD BE DECLARED NULL AND VOID AND THE CHARTERS OF CORPORATIONS INCLUDING TRANSNATIONAL CORPORATIONS MUST BE REVOKED.**

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**These agreements do and will lead to increased violations of international peremptory norms. Anti- trade activists must finally use international law related to human rights including civil and political rights, social, cultural and economic rights, labour rights, rights of indigenous peoples, rights of migrant workers, children's rights, rights to a safe environment etc.**

**These trade agreements and Public Private Partnerships among Nations should be declared null and void for violating international peremptory norms, the Charters or the licences of the corporations that have violated international peremptory norms must be revoked, and a fair and just transition program must be instituted for workers and communities impacted by revocation of corporate charters and licence.**

### **3 INSTITUTIONAL COLLUSION BETWEEN GOVERNMENTS AND CORPORATIONS**

**We are now living in the wake of negligence from years of institutional collusion among governments, financial institutions, corporations, academic establishments and the military--- a disregard for the public trust: the violation of human rights, including civil and political rights and labour rights, the denial of social justice, the degradation of the environment, and the escalation of war and conflict.**