

By Joan Russow

Global Compliance Research Project

CETA will increasingly lead to violations of international peremptory norms. Anti- trade activists must 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, and right to a safe environment. .etc. to counteract these trade agreements.

A. SOURCE OF INTERNATIONAL PEREMPTORY NORMS

Both Canada and EU have 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.

CETA along with other trade and investment agreements have led and will continue to lead to an increased disregard for international peremptory norms derived from obligations under Conventions, treaties and covenants as well as 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 "COMON 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.

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.

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.)

CETA 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 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

CETA 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

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:

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

Written by Joan Russow

Sunday, 07 June 2015 20:16 - Last Updated Sunday, 07 June 2015 21:01

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

CETA 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)

Canada and the EU states have signed and ratified the UNFCCC and both 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 CETA, 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 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. CETA could cause the EU to reduce its commitment to harmonize down with the US and Canada

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 CETA, 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

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

Canada and the EU have ratified the Convention on Biological Diversity

In Article 8j of the Convention on Biological Diversity is the following obligation:

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.

While Canada and the EU have ratified the convention on biological Diversity. CETA could prevent both states from discharging their obligations under this Convention

While The EU over time in various jurisdictions has taken a strong stand against genetically engineered food and crops, Canada has been a major promoter of GE food and crops. This technology has violated the precautionary principle in the Convention on Biological Diversity.

CETA could result in the increase transfer of GMO or GE products to the EU. Canada has failed to ratify the Protocol on the transport of Living modified organisms. And Canada is currently supporting Aquabounty in producing transgenic salmon 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 CETA there could be pressure to do so.

Because of Canada's position CETA 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)

While both Canada and EU have signed and ratified the Convention on the law of the Seas, 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

CETA could undermine the discharging of obligations under this Convention and 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

Both Canada and EU have ratified this convention

CETA could undermine the discharging of obligations under this

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

Both Canada and EU have ratified this convention

CETA could undermine the discharging of obligations under this

9 INTERNATIONAL LABOUR ORGANIZATION CONVENTIONS

INTERNATIONAL LABOUR ORGANIZATION CONVENTIONS WILL BE DISREGARDED

CETA 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 and EU. Canada has ratified very few of the ILO Conventions, ,

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).

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 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□

Canada has failed to ratify this Convention

11 DECLARATION OF THE RIGHTS OF INDIGENOUS PEOPLES

CETA 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, CETA 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 EU 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)

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 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

CETA 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."

Eventually, the transboundary principle will extend to vessels registered in different countries. CETA 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

CETA 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 CETA SHOULD BE DECLARED NULL AND VOID AND THE CHARTERS OF CORPORATIONS INCLUDING TRANSNATIONAL CORPORATIONS MUST BE REVOKED.

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.

FURTHER COMMENT

Wait until the EU finds out more about the Harper government's failure to respect the rights of indigenous peoples, the Harper government's weak commitments to reduce greenhouse gas emissions; the Harper Governments disrespect for labour rights-including the right to strike; the Harper government's promotion of genetically engineered food and crops, and test sites for transgenic salmon; the Harper government's gutting of environmental standards etc. . the EU will not be interested in entering into CETA

G7Summit 2015; CETA must be declared null and void for violating international peremptory norms

Written by Joan Russow

Sunday, 07 June 2015 20:16 - Last Updated Sunday, 07 June 2015 21:01
