

# **Re Harper in China: Whose human rights must not come first, and whose principles must be sacrificed**

Posted by Joan Russow  
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## **Re Harper in China: Whose human rights must not come first, and whose principles must be sacrificed**

Joan Russow –Global Compliance Research 2012

On Friday February 10, 2010, Harper declared to China: “We want trade, but human rights must come first. ...Canada wants to sell you its oil and gas, but won't trade its principles along with it. This is a response to the article in the Calgary Herald <http://www.calgaryherald.com/business/Harper+China+want+trade+human+rights+must+come+first/6137811/story.html#ixzz1mEMofZNz>

But whose rights do not come first and which principles are being sacrificed through the tar sands production and pipe line construction and through other actions by Canada

There are rights ignored and principles sacrificed, both of which could have a bearing on the tar sands and on pipelines, and there are also rights that are being overlooked because of Harpers misplaced priorities. And finally what will be the human rights and principles that should prevent Harper from selling oil to the United States- conditions

NOTE; THE ORIGINAL POST WAS DELETED. WHEN THE SITE TAMPERED WITH

### **A. RIGHTS IGNORED BY HARPER**

#### **1. RIGHTS VIOLATED BY THE TAR SANDS AND PIPELINES**

##### **\*\*a RIGHTS OF INDIGENOUS PEOPLES**

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. (Art. 7.1. Convention Concerning Indigenous and Tribal Peoples in Independent Countries, No. 169, 1990)

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

(ii) Recognition that the lands of indigenous people peoples and their communities should shall 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)

**NOTE:** The tar sand and the pipelines will violate the rights of indigenous peoples under various agreements.

The Rights of indigenous peoples as enshrined in the Declaration of the Rights of Indigenous Peoples. Harper has attempted to minimize the rights in the document when he refers to the Declaration as being only 'Aspirational'

A group of Canadian first nations even proposed to China that the president should question Harper about violation of indigenous rights in Canada <https://www.pej.org/html/modules.php?op=modload&name=News&file=article&sid=9291&mode=thread&order=0&thold=0>

## **\*\*b. RIGHTS OF FUTURE GENERATIONS**

Considering that parts of the cultural or natural heritage are of outstanding interest and

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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).

\*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)

\*Establishment of a New International Economic Order based on equity, sovereign equality, interdependence, common interest and co-operation among all States, irrespective of their economic and social systems which shall correct inequalities and redress existing injustices, make it possible to eliminate the widening gap between the developed and the developing countries and ensure steadily accelerating economic and social development and peace and justice for present and future generation... (Preamble, Declaration on the Establishment of a new international economic order, 1974)

\*The right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations. (Principle 3, Rio Declaration, UNCED, 1992)

\*The Parties should 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)

NOTE; The Enbridge pipe line and tanker traffic will be an area of the cultural and natural heritage of outstanding universal value. The coast and the full area of the Great bear rainforest in should be nominated, in consultation with the first nations, as a world heritage site combining both cultural and natural heritage.

See <https://www.pej.org/html/modules.php?op=modload&name=News&file=article&sid=9247>

**\*\*c. THE RIGHT TO LIFE, LIBERTY AND SECURITY OF THE PERSON**

Under Article 7 of the Charter of rights and freedoms:

Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

NOTE: This right continues to be violated through the production of oil in the tar sands and by the proposal of pipeline and tanker traffic

**\*\*d. RIGHTS OF THE CHILD**

1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.

2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures: (c) To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution; Article 24 Convention on the Rights of the Child

NOTE; The Tar sands is causing environmental pollution, and the Enbridge pipeline and tanker traffic will pose dangers and risks of environmental pollution

**\*\* e HUMAN RIGHT TO WATER**

In 1977, in Mar del Plata an international action plan was developed and member states of the United Nations agreed that "all peoples, whatever their stage of development and their social and economic conditions, have the right to have access to drinking water in quantities and of a quality equal to their basic needs". As a result of this conference, in 1981 the United Nations launched the International Drinking Water Supply and Sanitation Decade. The target of the decade was to provide safe drinking-water and sanitation to underserved urban and rural areas by 1990

UN General Assembly passes historic Human Right to Water and Sanitation resolution

On July 28, 2010, the United Nations General Assembly overwhelmingly agreed to a resolution declaring the human right to "safe and clean drinking water and sanitation." The resolution, presented by the Bolivian government, had 122 countries vote in its favour, while 41 countries – including Canada – abstained (Council of Canadian report)

NOTE; a federal government agency has reported that Without clear limits on water use, oil sands (AKA tar sands)operations could destroy aquatic life in northern Alberta,

In the event of accident in the pipeline, the source of water would be destroyed.

## \*\*\*2. PRINCIPLES SACRIFICED FOR THE TAR SANDS AND PIPELINES

### □ A. TRANSBOUNDARY PRINCIPLE

In addition, the continued exploitation of the Tar sand and the transfer of oil over land or by sea could be in violation of the Transboundary principle. The transboundary principle has been

found in different forms in the following international instruments:

(a) 1972 in the UNCHE in Stockholm; Principle 21

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 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.

(b) 1992 Convention on the Law of Seas

"States shall take all measures necessary to ensure that activities under their jurisdiction or control are so conducted as not to cause damage by pollution to other States and their environment, and that pollution arising from incidents or activities under their jurisdiction or control does not spread beyond the areas where they exercise sovereign rights in accordance with this Convention." (Art. 194. 2., Law of the Seas, 1982)

(c) 1992 Rio Declaration

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. (Principle 2 Rio declaration)

To a certain extent it could be argued that Canada shows dereliction of duty in causing through the exploitation of the tar sands, impact on other states because of the massive contribution to Greenhouse gas emissions and from the possible threat of accidents on land through piped through the US or through tanker traffic

**\*\* b. PRECAUTIONARY PRINCIPLE**

*The precautionary principle is a principle of international customary law and as such the law of the member states of the United Nations.*

***i. THE PRECAUTIONARY PRINCIPLE TO -PROTECT THE ENVIRONMENT***

There is sufficient evidence about the potential devastating damage caused by oil spills on land and in water bodies to justify the invoking of the precautionary principle which was adopted by all states including Canada, through the Rio

In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. 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. (Principle 15, Rio Declaration, UNCED, 1992)

***ii PRECAUTIONARY PRINCIPLE -ANTICIPATE, PREVENT AND MINIMIZE THE CAUSES OF CLIMATE CHANGE***

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 cooperatively by interested Parties. (Article 3) Framework Convention on Climate Change, 1992, UNCED)

NOTE: Canada signed (June 1992) and ratified (December, 1992) the Climate Change Convention. In the Climate Change Convention, Canada through signing and ratifying the Framework Convention on Climate Change incurred obligations to reduce Greenhouse gas emissions, to invoke the precautionary principle, to “conserve and enhance sinks” and “to document sinks”.

The production in the tar sands and the pipelines will undermine the precautionary principle

***iii. The PRECAUTIONARY PRINCIPLE TO CONSERVE BIODIVERSITY***

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).

NOTE the precautionary principle and the Convention on Biological Diversity in the Local court system. The Court case was to set aside an injunction and defend citizens who were arrested for protesting the destruction of old growth forests. These citizens were asking little more than for the government to live up to its obligations under the Convention on Biological Diversity. The judge held that all the international law was not judiciable in the regional court. The precautionary principle is increasingly necessary, given the consequences of ozone depletion, climate change, deforestation, acid rain, toxic, hazardous and atomic waste build-up, genetically engineered foods and crops production, breast implants, soil destruction through desertification and chemical dependent agriculture etc. The confluence of grave environmental and health consequences of the current model of overconsumption and reliance on technological fixes has given rise to an increased demand for the invoking and the implementing of the precautionary principle.

-The precautionary principle in the biodiversity Convention must be invoked to prevent further destruction of biodiversity through production in the tar sands, and future destruction of biodiversity through construction of the pipe line and through the passage of the tankers. The Tar sands already have destroyed biodiversity in Alberta, and the pipeline and the tankers will lead to the destruction of biodiversity through BC and along the coast. And if there were a spill the devastation would be even worse than the Exxon Valdes spill.

**c. DISASTER PREVENTION PRINCIPLE**



Disaster prevention, mitigation and preparedness are better than disaster response in achieving the goals and objectives of the Decade. Disaster response alone is not sufficient, as it yields only temporary results at a very high cost. We have followed this limited approach for too long. This has been further demonstrated by the recent focus on response to complex emergencies which, although compelling, should not divert from pursuing a comprehensive approach. Prevention contributes to lasting improvement in safety and is essential to integrated disaster management (3 a Convention on Natural Disaster, 1994).

Canada has often been reluctant to act on advice from scientists or citizens to prevent potential disasters, or has relied on questionable science provided by scientists funded by the fossil fuel industries and disregarded the precautionary principle. Has an often continued practice that is harmful to human health and the environment but have coupled these practices with clean-up technological fixes.

#### **d. TRANSFER OF ACTIVITIES AND SUBSTANCES PRINCIPLE**

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. (Principle 14, Rio Declaration, UNCED, 1992)

NOTE: By transferring dirty oil from the tar sands to other states Canada will be causing severe environmental degradation through increased emissions which could harm human health

#### **e. THE ECOLOGICAL FOOTPRINT PRINCIPLE**

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)

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NOTE: The Tar sands are and the pipelines will increase not reduce the ecological footprint principle