

Kinder Morgan expansion must not proceed:it would contravene Canada's international obligations

Written by Joan Russow

Tuesday, 25 November 2014 20:43 - Last Updated Saturday, 29 November 2014 09:56



The remedy [of injunction] of course, is an equitable one. "The exercise of the equitable jurisdiction is not to be restricted by the straitjacket of rigid rules but is to be based on broad principles of justice and convenience, equity regarding the substance and not merely the facade or the shadow. It moves with time and circumstances. (Justice J.A. Norris)

injunctions must move with time and circumstances in relation to international law; the judge s

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Currently, submissions are being made to the National Energy Board, and any mention of climate

References to obligation under international law that must be taken into consideration

1.FOSSIL FUEL TRIAD THE OIL SANDS, THE PIPELINES AND THE TANKERS-

It is imperative to examine the TOTAL IMPACT OF facilities, pipelines and tankers, and their impact

After reviewing the terms of reference , I realized that the current terms of

2 APPLICATION OF THE UN FRAMEWORK CONVENTION ON CLIMATE CHANGE

Under Article 2 of the legally binding UN Framework Convention on Climate Change

The Kinder Morgan expansion will further exacerbate the situation.

3. INDIGENOUS RIGHTS

□ **“the United Nations Declaration on Rights of Indigenous Peoples, came out of the recognition of**

Under Article 18:

Indigenous peoples have the right to participate in decision-making in matters which would affect

Article 19:

States shall consult and cooperate in good faith with the indigenous peoples concerned through

Article 26.1 of Declaration on the Rights of Indigenous Peoples states

Indigenous peoples have the right to the lands, territories and resources w

under Article 26.3 is the obligation to

Give legal recognition and protection to these lands, territories and resources. Such recognition

And under Article 31 is obligation to accept that

- 1. Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultura lexpressions, as heritage, traditional knowledge, and traditional cultural expressions.**
-

2. In conjunction with indigenous peoples, States shall take effective measures to recognize and protect the exercise of these rights.□

While Canada finally adopted the Declaration, the government proceeded to undermine it by claim

4. LIVELIHOOD SUBSISTENCE

The right to livelihood was recognized as a human right in Article 25 of the

Under Article 1 of the legally binding International Covenant on Civil and P

“In no case may a people be deprived of its own means of subsistence”.

Alberta First Nations within and around the oil sands have been deprived of

Melina Laboucan Massimo, a Lubicon Cree decried: "before the tar sands,

Undoubtedly, BC First Nations will also be deprived of their livelihood and

5

.HUMAN RIGHT TO WATER

In 2010, the UN General Assembly overwhelmingly agreed to a resolution of

If the Kinder Morgan pipeline expansion proceeds, the right to water cannot

6 HEALTH

Under article 12 of the legally binding International Covenant on Economic

Already reported spills, in the existing Kinder Morgan expansion □ have caused harm to human h

7. □ SEA RESOURCES FISH INCLUDINGIMIGRATORY SPECIES

Under Article 194 5. of the legally binding UN Law of the Sea is the obligation

to prevent, reduce and **control pollution of the marine environment and to take measures necessa**

And under Article 66 1&2, of the Convention is the following obligation:

1. States in whose rivers anadromous stock (such as salmon and surgeon) originate shall have t

In the omnibus bill 38 the Harper government weakened section 35 of the Fisheries Act; Undoubt

8. RIGHTS OF FUTURE GENERATIONS TO CULTURAL AND NATURAL HERITAGE

Under the article 4 of 1972 legally binding UN Convention on the Protection

the duty of ensuring the identification, protection, conservation, preservation and transmission t

Under Article 12, of the Convention on biological Diversity

there is an obligation to conserve and sustainably use biological diversity for the benefit of pre

In the framework Convention on Climate change, there is determination to

9 APLICABILITY OF THE CONVENTION ON BIOLOGICAL DIVERSTY

Under the Convention is the obligation to conserve biodiversity

" *Biological diversity* " means the variability among living organisms from ecosystems

The destruction of Burnaby Mountains is contributing to significant loss of biodiversity.

10 THREATS AND THE PRECAUTIONARY PRINCIPLE

Canada is bound by the precautionary principle

Where there are threats of serious or irreversible damage, lack of full scientific certainty should not

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This principle is also contained in

In the Convention on Biological Biodiversity, the precautionary principle read;

where there is a threat of significant reduction or loss of biological diversity

in the UN Framework Convention on climate change

and in 1995 agreement "relating to the Conservation and management of s

There is sufficient evidence that , in the Burnaby mountain, □ and through t

CONCLUSION

If the Kinder Morgan expansion is permitted to proceed, Canada, in collusion

I raise these issues of international law because from my experience at international UN conferen

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Proceeding with the kinder Morgan pipeline extension would be grossly ne

Everyone is criminally negligent who (a) in doing anything, or (b) in omittin

British Columbia does not need the Burnaby Mountain pipeline extension. □