

Written by Joan Russow
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by Joan Russow

Global Compliance Research Project

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Tar Sands & Enbridge Pipeline a Violation of Not Only UNFCCC but Also of the World Convention Concerning Cultural & Natural Heritage by Joan Russow – [Global Compliance Research Project](#)

A
fter seeing several excellent films on the proposed route for the tankers through British Columbia, I am convinced that there is an opportunity to use the UN Convention concerning the Protection of Cultural and Natural Heritage.

Under this legally binding convention, and draft a resolution for the 2012 IUCN World Congress to be held in Korea in September.

In both the tarsands development and the proposed Enbridge pipeline, the Harper government has and will have violated legally binding international instruments; Convention concerning the Protection of Cultural and Natural Heritage, the UN Framework Convention on Climate Change and its protocol- the Kyoto Protocol, and the Convention on Biological Diversity.

Canada has obligations under the Convention concerning the Protection of the World

cultural and Natural Heritage, 1972)

HARPER'S CANADA IS NOT ABOVE INTERNATIONAL LAW

Canada has failed to fulfill its obligations to protect the large area along the coast including the area proposed for tanker traffic, as a world heritage site. This proposal, in consultation with the first nations, for a world heritage site should have been done, years ago

Under the Convention are the following obligations to cultural and natural heritage, including an obligation to future generations

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

•.... 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 concerning the Protection of the World cultural and Natural Heritage, 1972)

*Article 4 Convention concerning the Protection of the World cultural and Natural Heritage, 1972).

Each State Party to this Convention recognizes that the duty of ensuring the identification, protection, conservation, presentation and transmission to future generations of the cultural and natural heritage referred to in Articles 1 and 2 and situated on its territory, belongs primarily to that State. It will do all it can to this end, to the utmost of its own resources and, where appropriate, with any international assistance and co-operation, in particular, financial, artistic, scientific and technical, which it may be able to obtain

Condemnation about Canada's failure to abide by the UN Convention concerning cultural and Natural Heritage

In 1994 at the Annual General Meeting of the IUCN, the following resolution passed:
Resolution passed by the IUCN General Assembly meeting at Buenos Aires, Tuesday, January 25, 1994

19.72REV2 North American Coastal Temperate Forests
(retyped with January 25 Amendments from the floor)

RECOGNISING that temperate coniferous forests, and especially rain forests, constitute a very rare type of ecosystem in the world, originally covering less than one-fifth of one percent of the earth's land surface, and that one half of the earth's original forest of this type occurs along the Pacific Coast of North America from northwestern California to southeastern Alaska;

UNDERSTANDING that many endemic and unusual plants and animals occur only in these forests; and that in biomass productivity, the old growth forests (ancient forests) of this biome are unequaled anywhere;

AWARE that more than one half of the Earth's original coastal coniferous forests (ancient forests) have been logged, including more than 40 % of the ancient forests of this type on North America, and that few large unfragmented examples of this type of forest, other than in protected areas, exist outside of British Columbia and Alaska;

MINDFUL of the fact that such ancient forests on Vancouver Island and on the mid-coast of British Columbia are disappearing at a rapid rate as a result of practices that have, to date, not been ecologically sustainable;

ALSO MINDFUL that past management practices have been controversial, while the US government has enacted legislation to ensure sustainable management of all forests, questions continue to arise;

UNDERSTANDING that the Raincoast Conservation Society, the Sierra Club, and the Western Canada Wilderness Committee have proposed a large network of protected areas, including conservation corridors, in areas of such ancient forests on Vancouver Island and the midcoast of British Columbia;

AWARE of the fact that none of the protected areas that Canada maintains in forest areas along the Pacific Coast have been designated as World Heritage sites under the provisions of the World Heritage Convention[s] and that these ancient forests may be of outstanding universal value;

The General Assembly of IUCN — the World Conservation Union, at its 19th Session in Buenos Aires, Argentina, 17-26 January 1994:

1. URGES the Government of Canada and the United States to properly manage the temperate coastal coniferous forests of the Pacific Coast of North America by establishing appropriate protected areas and by adopting ecologically oriented systems of forest management which can be permanently sustained and which protect biodiversity;

2. CALLS UPON the Governments of Canada and British Columbia to substantially expand the amount of land in networks of protected areas, with conservation corridors, on Vancouver Island and the midcoast of British Columbia, taking into consideration the recommendations of environmental groups active in the regions such as the Raincoast Conservation Society, the Sierra Club and the Western Canada Wilderness Committee;

3. URGES the Government of Canada to consider nominating sites or combinations of sites (such as networks), in these forests as World Heritage sites under the World Heritage Convention[s];

4. RECOMMENDS that special efforts be made by these parties and their citizens to restore degraded parts of these forests and to secure the overall integrity of the biome by linking now separate forest stands.

Resolution proposed by Michael McCloskey, Sierra Club USA, in collaboration with Joan Russow (B.C. Canada) member of the IUCN Commission on Education and Communication.

Canada used a the failure to include a reference to the first nations in the resolution to justify Canada's support of the Resolution.

The IUCN is responsible for proposing World heritage sites; the IUCN has two houses – one NGO and the other with government representation. This resolution passed with only the Canadian government opposing it. The reason the Canadian government representatives gave was that there was no reference to first nations. This was a ploy because when they were part of the discussion about the resolution they could have quite rightly proposed a clear reference to the first nations. A reference that all would have supported.

• OPPORTUNITY FOR THE 2012 WORLD IUCN CONGRESS IN SEPTEMBER 2012 IN Korea

The 1994 IUCN Resolution, can be worked on with the cooperation of the First Nations to prepare a resolution for the IUCN. A resolution that would bring together the first nations and environmental interests.

- BC has obligation under thr **Caracas Declaration**

This declaration was endorsed by the government of British Columbia, and in it is an obligation to not have isolated areas of protection surrounded by inappropriate development. Undoubtedly, the pipeline and tanker traffic would be inappropriate

Canada has Obligations to abide by the UN Framework Convention on Climate Change

From Copenhagen to Cancun- to Durban; the developed states, especially Canada have disregarded the warnings from the scientists, particularly the ones from the World Meteorological Organization. At COP 15, COP16, and COP17 they reported that the extreme climate related events have considerably increased and that the global situation is far more urgent than had been expressed in in the 2007 Intergovernmental Panel on Climate Change

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(IPCC) report

Canada, particularly under Harper has been seen as the most obstructive state during the COP deliberations. .

Canada's inaction on climate change

The time for Canada's procrastination about climate change has long since passed; the world is in a state of emergency and further inaction is grossly or even criminally negligent. Canada's continued development. And production in the tar sands must end.

As far back as 1958, scientists began to acknowledge the potential threat of climate change. The threat was consistently ignored.

In 1988, however, scientists, politicians and members of Non-Governmental Organizations (NGOs) met at the Changing Atmosphere Conference in Toronto to address the issue of climate change and warned that:

"Humanity is conducting an unintended, uncontrolled, globally pervasive experiment whose ultimate consequence could be second only to a global nuclear war. The earth's atmosphere is being changed at an unprecedented rate by pollutants resulting from wasteful fossil fuel use ... These changes represent a major threat to international security and are already having harmful consequences over many parts of the globe.... it is imperative to act now."

In the Conference Statement from the 1988 Conference, the participants - scientists, government representatives, and industry and NGO organizations - called for: "The stabilizing of the atmospheric concentrations of CO₂ is an imperative goal. Energy research and development budgets must be massively directed to energy options which would eliminate or greatly reduce CO₂ emissions and to studies undertaken to further refine the target reductions." It should be noted that this warning was issued when the parts per million were at a level at about 350ppm which was not deemed to be safe.

In 1995, Canada came out with an inadequate plan that caved in to industry plan The following was circulated at the launching of the plan

Canada's 1994 National Action Program on climate Change"

(NAPCC) (NAPCC): DOCUMENT OF COMPROMISE AND INACTION A MAJOR STEP BACKWARDS: “THE PRELIMINARY DRAFT OF REPORT ON OPTIONS”

- Joan Russow Chair International caucus, BCEN

-Canada signed (June 1992) and ratified (December, 1992) the Climate Change Convention

As we near the 50th Anniversary of the United Nations (October 24, 1995), Canada demonstrates its lack of resolve to seriously address global problems. It has been over two years since Canada signed the Climate Change Convention (June 1992) at the Earth Summit.

Although Canada presumably is not bound by a Convention until the Convention comes into force. the Convention came into force only in March, 1994, Canada has been, in fact, bound since the signing of the Convention in June 1992, to not do anything in the interim between the signing of the Convention and the coming into force of the Convention “to defeat the purpose of the Convention” (Article 18, Convention of Law of Treaties).

Rather than Canada’s taking a lead in addressing the problem of climate change, it has caved into the forest, fossil fuel and nuclear industries”. Canada’s National Action Program on climate Change” (NAPCC) carefully ignores the impact of current forest practices such as clear-cut logging on carbon sinks. Even though, under the Climate Change Convention, Canada is bound to “conserve and enhance sinks”. Since June of 1992, numerous sinks including forests and bogs have been destroyed even before they have been properly documented. (another provision of the Climate Change Convention).

The NAPCC document fails to seriously call for the phasing out of the use of fossil fuels, and the conversion of the infrastructures that support the use of fossil fuels. “Although there is a call in the document for renewable energy, there appears to be little resolve to create a situation, with high mandatory standards and regulations that would attract serious conversion to renewable energy. Most of the document appears to rely on “voluntary initiatives”. Voluntary initiatives from the fossil fuel sector will not be sufficient to drive industry to embrace the principle of renewable energy.

THERE IS A NEED FOR MANDATORY INTERNATIONAL NORMATIVE PERFORMANCE

BASED STANDARDS TO DRIVE INDUSTRY TOWARDS BEST (BEST ENVIRONMENTALLY SOUND AND SOCIALLY EQUITABLE TRADITIONS) PRACTICES.

“The NAPCC document also under the euphemism of “Electricity and Heat Cogeneration Opportunities” p18, keeps the door open for the nuclear energy to prey on the public concern for climate change and thus supports the continuation of the form of energy production with the most far reaching ecological and social consequences”. “Until Canada is willing to summon up the political will to ensure that principle drives industry, industry will continually alter and compromise principle and resolve”, and until Canada is willing to fulfill its international obligations through enacting the necessary legislation, little substantial change will occur.

In 1988, At the Changing Atmosphere Conference in 1988, the participants including representatives from government, academia, NGO and industry expressed their concern about Climate Change in the Conference statement:

“Humanity is conducting an unintended, uncontrolled, globally pervasive experiment whose ultimate consequence could be second only to a global nuclear war. the Earth’s atmosphere is being changed at an unprecedented rate by pollutants resulting from human activities, inefficient and wasteful fossil fuel use ... These changes represent a major threat to international security and are already having harmful consequences over many parts of the globe.... it is imperative to act now.

the Conference called for immediate action by governments, the United Nations...

to Reduce CO2 emissions by approximately 20% of 1988 levels by the year 2005 as an initial global goal. Clearly the industrialized nations have a responsibility to lead the way both through their national energy policies and their bilateral multilateral assistance arrangement.

1994 The perception has changed from climate change being “a threat” in 1988 to its being only a “potential threat” in 1994 in Canada’s National Action Plan on Climate change. The National Action Program on Climate Change presents 5 compromising, ineffective options.

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WHAT IS NEEDED IS A SIXTH OPTION
1994
principles;
precautionary principle

OPTION 6 : THE MISSING OPTION
Adherence to three key
The

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 (Climate Change Convention, 1992)

Reverse onus principle (proposed by Minister of Environment, Shelia Copps, 1994)

The proponent of an intervention in the ecosystem shall have to demonstrate safety, rather than the opponent having to demonstrate harm

Future problem avoidance principle:

The addressing of one environmental problem should not itself be an action that could cause irreversible harm (Standing Committee on Environment “ Out of Balance; The Risks of Irreversible Climate Change, 1991)

Actions

1.. Preserve and enhance sinks (forests and bogs), [as required in the Climate Change Convention] , in particular preserve large areas of original growth and conservation corridors, and report in detail on the health of the sinks (i.e. depletion from fire which has increased 5.2 million hectares lost this year)

2. Ban all forest practices such as clear cut logging and broadcast burn that reduce carbon sinks on crown and private lands

3. Encourage afforestation and restoration of damaged forest ecosystems such as on Not Sufficiently restocked land (3.03 Million Hectare -1977 to 4.37 (1991)

4. . Phase out the use of fossil fuels and nuclear energy (as recommended in the Nobel Laureate Declaration prepared for UNCED).

5. Establish and enforce a national dedicated program for energy conservation and efficiency (recommended, at least, since 1975 in Knelman's "Energy Conservation" published by the Science Council of Canada, Background Study 44)
6. No replacement of one technology with one that is equally or potentially more harmful (no replacement of fossil fuel technology with nuclear,)

7. Establish extensive networks of alternative ecologically safe and sound means of transportation (Agenda 21), and cease the construction of all new highways (The goal of zero vehicle emissions and electrically powered vehicles shall not justify the increased use of nuclear power)

8. Synthesize the existing scientific information. No new studies are required to demonstrate that it is necessary to reduce anthropogenic emissions. "Inaction is negligence" (Digby McLaren, Past President of the Royal Society , Global Change Conference, 1991)

9. Adaptive measures shall not be used as a justification for not acting to preserve existing sinks and to prevent anthropogenic sources of greenhouse gases.

- 10 , Prohibit the proposals to seek far off Southern carbon sinks to justify maintaining northern consumptive patterns. (Costa Rica Scheme — Ontario Hydro buying forests in Costa Rica to offset Ontario Hydro's CO2 emissions

- 11 Avoid carbon emissions trading because this practice legitimizes continued currently harmful emission practices

12. Transfer all energy-directed funding into renewable energies that are ecologically safe and

sound

13. Transfer a significant proportion of the \$13 [now 10.6] billion military budget to assist in implementing the above measures and in job conversion _ (JoanRussow_Chair of the International Affairs Caucus_ (BCEN British Columbia Environmental Network)

Negligence under International and national law

In view of this important and accurate statement made at this major international conference, the developed world cannot claim that it had never been warned.

At that time Canada was leading the way on Climate change, but subsequently has been remiss in fulfilling its obligations. Canada as a signatory to the UNFCCC and, through the continued exploitation in the tar sands, is in violation of article 2 of the UNFCCC which reads:

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.

In 1992, this obligation clearly affirmed the urgency of addressing climate change;

TAR SANDS The tar sands contribution to greenhouse gas emissions has been decried not just by representatives of the NGO community but by most developing states and by many developed states. Canada, under the Harper government has become a rogue state and an international pariah. Not only is Canada perceived to be grossly negligent under international law in its disregard for obligations under the UNFCCC but also it could be perceived to be negligent under its own statutory law. If Canada continues with the construction of the Enbridge pipe line and with the transfer of oil from the tar sands in tankers along the coast Canada could be deemed to be negligent, grossly negligent or even criminally negligence

Under Canadian law: Environmental negligence suits focus on compensation for loss caused by unreasonable conduct that damages legally protected interests. Unreasonable conduct means doing something that a prudent or reasonable person would not do, or failing to do something that a reasonable person would do. The plaintiff must establish certain key elements of the tort— cause in fact and proximate cause, damages, legal duty, and breach of the standard of care. Note that fault may be found even in the case of unintended harm if it stems from unreasonable conduct.

The Criminal Code (Section 219) is even clearer that lack of intent to harm is no defence if damage results from conscious acts performed in careless disregard for others: “Everyone is criminally negligent who (a) in doing

anything, or (b) in omitting to do anything that it is his duty to do, shows wanton or reckless disregard for the lives or safety of other persons" (where 'duty' means a duty imposed by law). Significantly, Section 222(5) (b) states that "a person commits homicide when, directly or indirectly, by any means, he causes the death of a human being, by being negligent (emphasis added) (Cited by Bill Rees in "is Canada criminally negligent")

Ignoring International Principles

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 Declaration , and which became an obligation under the UNFCCC,

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

Will Harper's Canada be condemned at Rio

From June 20 to 22, 2012 in Rio, there will be the twentieth anniversary of United Nations Conference on Environment and Development (UNCED), where many of these principles were adopted by the international community. An additional principle which was considered to be the very core of the Conference was the principle of intergenerational equity or the rights of future generations.

CORPORATE MISPRESENTATION IN THE TAR SANDS

In one Industry site they make the following claims Our vision for oil sands development leads to a future for Alberta that:

Honours the rights of First Nations and Metis

Provides a high quality of life

Ensures a healthy environment

Maximizes value-added in Alberta

Builds healthy communities

Sees Alberta benefit from the oil economy and lead in the post-oil economy

Sees Alberta as a world leader in education, technology and a skilled workforce

Provides high quality infrastructure and services for all Albertans

Demonstrates leadership through world class governance (agreed to by the committee of the consultation process)

In Rio, in June 2012, will the Harper government receive again the colossal fossil award for not just obstructionism but also for criminal negligence and for disregarding the rights of future generations. Hopefully these excellent films on the proposed Enbridge pipeline and dangerous tanker route will be shown to the international community in Rio and the government and corporate rhetoric of benevolence will be exposed