

4. The TPPA and Indigenous Peoples: Lessons From Latin America

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On 14 November 2009 in Tokyo, President Obama confirmed US support for a Trans-Pacific Partnership Agreement with the goal of shaping a regional agreement with ‘high standards worthy of a 21st century trade agreement’.¹ That same day in Singapore, US Trade Representative Ron Kirk explained the objective behind this initiative:

A high-standard regional trade agreement under the TPP could help bring home to the American people the jobs and economic prosperity that are the promise of trade.²

In the context of President Obama’s announcement, US trade staff met with their counterparts from the Pacific Rim states that were invited to this initiative. Those countries are not only Australia, Brunei, New Zealand, Singapore and Vietnam in the Asia-Pacific area, but also include Chile and Peru in Latin America.

Little or no information on this initiative is available in Latin America. Indigenous peoples of the region, who have strongly opposed free trade agreements with the US and other leading economies that were signed by several states in the region in the last few years, are even less informed of its existence.

Their opposition is rooted in experience. The governments of these states have subscribed to those free trade agreements (FTAs) without consultation with the representative organisations of indigenous peoples, and even less with their free, prior and informed consent, in open violation of domestic and international law. Moreover, FTAs have triggered investment in natural resource extraction in their lands and territories, with devastating implications for many of their communities. Protest against such investments has been repressed and criminalised. The events that occurred in Bagua in the Peruvian

Amazon in 2009, when thirty-four people died, exemplifies this repression. In the clashes, indigenous communities mobilised against legislation that was enacted to make possible the implementation of the US-Peru Trade Promotion Agreement.

This chapter analyses the efforts of the US government in the last two decades to expand its free trade model throughout the Americas, and the strategies used by the US for this purpose. It examines the implications of that model and its implementation for indigenous peoples, and their responses to these strategies. It focuses in particular on the FTAs entered into by the US with Mexico, Chile and Peru.

The final section refers to the debate that will most likely take place in the region, in particular in Peru and Chile, if the US continues its efforts to achieve a TPPA. It focuses on the arguments made by indigenous peoples and by human rights analysts when rejecting the imposition of previous FTAs in violation of obligations arising from international human rights treaties.

The US and Free Trade in the Americas

For the last two decades, the US has promoted free trade throughout the Americas. In 1990 it announced plans to negotiate a free trade agreement with Mexico, an initiative that later evolved into the North American Free Trade Agreement (NAFTA), which included both Mexico and Canada³ as commercial partners. NAFTA was signed in 1992 and came into force on 1 January 1994.

NAFTA's provisions required that all trade barriers should be eliminated within a period of fifteen years. In the first five years, two-thirds of US industrial exports would enter into Mexico without duties. Mexico's tariffs on all other industrial and most agricultural goods were to be eliminated within ten years. NAFTA also incorporated agreements on labour and environment, and foreshadowed cooperation to expand free trade areas in the Americas.

On the same day that NAFTA came into operation, the Zapatista Army of National Liberation, a rebel organisation bringing together indigenous and peasant communities in the south of Mexico, rose up in arms in the state of Chiapas against globalisation and the threat of corporate incursion into their territories. They demanded that the government of Mexico recognise their rights as peoples, including the right to autonomy and self-determination. The Zapatista movement, since then, has become a symbol of indigenous resistance to the expansion of the global economy in Latin America and worldwide.

Later that year (1994), President George H. W. Bush announced the US Enterprise for the Americas Initiative (EAI), which had trade, finance and debt as its main pillars. Its stated aim was to encourage democracy and market-oriented reforms throughout the continent. This idea was pursued by the US at the 1994 Summit of the Americas held in Miami when hemispheric leaders agreed to negotiate within a decade the creation of a Free Trade Area of the

Americas (FTAA). That initiative was formally launched at the Santiago Summit of the Americas in 1998 and was reaffirmed later in the Quebec Summit of 2001. The US economic downturn in the early 2000s, the 9/11 events, policy reforms and, above all, resistance by newly emergent political actors in Latin America in the last decade (Hugo Chavez in Venezuela, Lula da Silva in Brazil, Evo Morales in Bolivia, among others), subsequently watered down US efforts to involve the whole region in the creation of a single free trade zone.

The US government then decided to move forward with its free trade agenda through a different strategy, by negotiating bilateral or sub-regional FTAs with different states. Since then, agreements with Chile (2004), Dominican Republic-Central America (Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua) (CAFTA, 2004), Peru (2006), and Panama and Colombia (both still awaiting Congressional approval) have been reached by the US.⁴

Most of these agreements have common features. The next section focuses on Chile and Peru, the two states in the region that have so far been invited to join the TPPA negotiations.

US-Chile FTA

As a consequence of the transformations introduced in the 1980s under the Pinochet dictatorship, Chile opened its economy to international markets, encouraging foreign investment and exports, both of which depend mainly on natural resource exploitation. Paradoxically, this policy was strengthened and legitimised after 1990 with the return to democracy. It was under the governments of the *Concertación*, the centre-left coalition that ruled the country from the end of the dictatorship until March 2010, that Chile entered into FTAs with the world's largest economies, as well as throughout the region.

Indeed, in the last two decades, Chile has signed FTAs with fifteen states, including Canada, Mexico, the US, Korea, China and Australia. It also signed Economic Association Agreements with the European Union, and the Trans-Pacific Strategic Economic Partnership Agreement (or P-4) with New Zealand, Singapore and Brunei. These FTAs have deepened the liberalisation of the country's economy and attracted foreign capital to Chile largely because of its political stability, favourable legislation, and low environmental and labour standards.⁵

In the US-Chile FTA, which came into operation in January 2004, both states reaffirmed their previous obligations under World Trade Organization (WTO) agreements. In Chapter 3 of the agreement, each party made commitments to treat products of the other in a non-discriminatory manner, providing for the phase-out of non-tariff trade barriers that restrict or distort trade flows. The agreement also eliminated all tariffs on originating goods traded among the parties immediately or phased in over twelve years.

Chapter 10 of the agreement strongly protected investors – namely US investors in Chile – by ensuring they enjoy six basic principles that are common to most FTAs imposed by the US in the region:

- non-discriminatory treatment relative to domestic investors or investors of non-parties;
- freedom from ‘performance requirements’;
- free transfer of funds related to an investment;
- protection from expropriation;
- ‘minimum standard of treatment’ in accordance with customary international law; and
- the ability to hire key managerial and technical personnel without regard to nationality.

This chapter also provided a mechanism for an investor of a party to pursue a claim against the other party on grounds that it has breached an investment right protected by the FTA.

Chapter 17 of the agreement was aimed at the protection of intellectual property, as well as at the enforcement of intellectual property rights. This chapter obliged Chile to ratify or accede to several agreements on this matter. Further provisions were aimed at the protection of trade marks and geographical indications, copyrights and related rights, patents and trade secrets.

The agreement also contained labour provisions in Chapter 18 that were theoretically aimed at reaffirming ILO standards on labour rights. However, it recognised the right of each party to establish its own labour laws. Chapter 19 dealt with environment, including a commitment by both parties to provide for high levels of environmental protection. Last but not least, Chapter 22 set out procedures for dispute resolution between parties over compliance with the FTA, establishing a Free Trade Commission for this purpose. The use of arbitration and alternative dispute mechanisms to settle international commercial disputes among parties was encouraged.⁶

In contrast with first-generation FTAs that dealt mainly with tariff reductions, and with second-generation agreements such as NAFTA that include investment and other commitments, the US–Chile FTA is considered to be a third-generation agreement, which is more ambitious and regulates matters that go beyond trade, such as environment, labour and intellectual property.

The agreement was strongly criticised when it came into operation because of the protection of US commercial interests that it entailed, and Chile’s self-imposed restrictions in its relations with the US superpower that have the effect of considerably limiting the autonomy of Chile’s public policy. As Rodrigo Pizarro, a Chilean environmental economist, affirmed after this agreement was signed:

The Free Trade Agreement with the USA involves profound commitments in public policy, which further reduces the ability of the Chilean authorities to modify the current economic development strategy. Therefore, the decision by the current government to accept new restrictions upon its freedom of action in economic policy and international integration, constitute a bet in favor of the status quo, and a commitment with the neoliberal economic model.⁷

The FTA was also criticised by progressive sectors of Chilean society and social movements, including indigenous peoples, because of the lack of a consultation process or public debate on the real need for such an agreement.

US-Peru TPA

In December 2005 Peru became the first of the three Andean states invited by the US to negotiate a free trade agreement to sign what was called a Trade Promotion Agreement (TPA). This TPA was negotiated and approved during the second administration of the populist President Alan Garcia, notwithstanding opposition by large sectors of society, including unions, small farmers and indigenous peoples. The TPA deals basically with the promotion of investment and trade. It required two-thirds of US farm exports to Peru to become duty-free immediately, and tariffs on most US farm products to be phased out within fifteen years and all tariffs eliminated in seventeen years.

Chapter 10 of the agreement provides for several different measures aimed at promoting and facilitating investment. The TPA establishes strong protections for US investors in Peru by granting them, in almost all circumstances, the right to establish, acquire and operate investments in Peru on equal footing with local investors. It prohibits expropriation and measures 'tantamount to expropriation', with the exception of a 'public purpose' (which carries a right to full compensation), and provides investors with due process protection and the right to receive a fair market value for property in the event of expropriation. The same chapter establishes that disputes should be brought before the International Centre for Settlement of Investment Disputes (ICSID).⁸

Intellectual property is also protected under Chapter 16. The TPA grants extensive protection to patent-holders, requiring the creation of procedures and remedies to prevent the marketing of pharmaceutical products that infringe on patents.

The agreement includes additional provisions on labour and environment that are similar to those considered in the US-Chile FTA. It is interesting to note that the investment chapter (Chapter 10) states that the agreement shall not be construed to prevent a party from adopting measures (including environmental measures) to secure compliance with laws and regulations that are not inconsistent with the agreement, or that are necessary to protect human, animal or plant life, or related to the conservation of endangered

or depleted natural resources. Moreover, it affirms that in the event of an inconsistency between Chapter 10 and other chapters, others (including the chapter on environment) shall prevail.⁹

Pressure by different actors in the US, including Democrats in the Congress, led to a renegotiation of this agreement in 2007 (Protocol of Amendment), and to the inclusion of improved protection on access to medicine, environment and labour rights, thus theoretically allowing Peru to maintain its international human rights obligations on these matters. The TPA finally entered into force on 1 February 2009.

The Implications of US FTAs for Indigenous Peoples in Latin America

Mexico

Mexico has not yet been invited to be a partner in the TPPA. NAFTA, however, has been in effect for a decade and a half, with significant political and economic consequences. So it is important to consider the effects that NAFTA has had in Mexico, with particular reference to indigenous lands and resources.

NAFTA triggered the reform of the Mexican land tenure system that had been structured throughout the twentieth century after the revolution. Laws were passed shortly after the signing of NAFTA that enabled the privatisation of the *ejido*.¹⁰ Due to these reforms, indigenous peoples and *campesinos* who communally owned the *ejidos* have been slowly disenfranchised from their land and water rights at the hands of outsiders, who have acquired these resources for agro-industrial activities. Consequently, small farmers have increasingly been forced to abandon production and to migrate to nearby cities or to emigrate out of the country. Water law reforms have made water a commodity valued as an economic good, which has enormous social implications for impoverished urban residents and small farmers.¹¹

Aside from the privatisation of the *ejido* and of water rights, NAFTA increased Mexico's imports of agricultural products that were traditionally grown by indigenous peoples and rural communities, severely harming rural economies. By 2003 Mexico was importing basic crops that had been traditionally grown by indigenous peoples. More than a fifth of the corn, a third of the wheat, nine-tenths of the rice and soybeans, and a third of the sorghum that was consumed in the country was imported, causing the ruin of millions of farmers.¹²

To take the example of corn, Mexico has gone from being a major corn producer to a corn importer, with imports nearly tripling since NAFTA. Due to this agreement, Mexico has had to open its market to subsidised corn from the US and Canada, and by 2008 Mexico had eliminated quotas on corn imports. This has had a devastating effect on indigenous crop farmers. In addition, whereas indigenous peoples traditionally grew their own seeds, now they have to buy seeds from transnational corporations such as Monsanto that have patented the seeds, generating dependency and increasing costs.¹³

Chile

The implications of the US-Chile FTA should be analysed in the broader context of the liberalisation of Chile's economy in the last two decades, facilitated by FTAs and bilateral investment treaties (BITs) signed with the world's largest economies. Such agreements have resulted in the installation of large development projects that are both extractive and productive. These projects involve national and foreign capital and are situated on indigenous peoples' legal or ancestral lands, where natural resources that Chile exports are predominantly located.¹⁴

The US-Chile FTA has strongly increased US investment in Chile. Such investment, which totalled US\$12.1 billion in 2008, is mainly related to the finance, manufacturing, mining and banking sectors. Although most of this investment has not directly impacted on indigenous lands and resources, Chile's exports to the US have also grown, amounting to US\$8.2 billion in that same year. Of these exports, a large percentage was copper (US\$2.8 billion), fish and seafood (US\$938 million), wood products (US\$658 million) and precious stones (specifically gold) (US\$542 million).¹⁵

Such exports were mainly extracted and/or processed on indigenous lands by Chilean companies or by foreign investors attracted by incentives under the FTA and BITs. Probably the best example is mining, an activity that has grown at high speed in the last decade, not only due to the rising prices of minerals, but also because of Chile's competitiveness through its low labour costs and environmental and taxation standards. According to the Fraser Institute Annual Survey of Mining Companies 2008/2009, Chile is a world leader that has ranked for more than a decade among the top ten states where metal mining is considered to be safe for investors, taking into account factors such as taxation and other mining-related regulations.¹⁶

The largest mining investors in Chile are CODELCO, a Chilean state-owned corporation, followed by Canadian and Anglo-Australian companies. CODELCO is responsible for one-third of Chile's copper exports, largely to the US, and the company's exports from 2006 to 2009 generated US\$26.7 billion in income for the Chilean state. Most of its mining operations are in the territory of the Lickanantai people in the north of the country. The remaining two-thirds of copper exports are from private companies, largely controlled by foreign investors.¹⁷

Canadian as well as Australian mining investments are also promoted by FTAs that Chile has signed with each of these countries. Both operations have strongly impacted on the Aymara and the Diaguita people. One of the Canadian companies involved in mining activities in this area is Barrick Gold, which is responsible for two mining projects (Pascua Lama and El Morro) that were resisted by Diaguita communities because they were located on their traditional lands, involving the appropriation of ancestral waters and posing threats to the environment. Anglo-Australian company Cerro

Colorado, a subsidiary of BHP Billiton, has been involved in the extraction of underground waters in the Pampa Lagunilla, drying up meadows and wetlands of the community of Cancosa.

In the south of Chile, the traditional territory of the Mapuche has been severely affected by the expansion of forestry, the building of hydro dams, and the proliferation of fishing and salmon farms. Almost two million hectares acquired mainly by Chilean companies have been planted with fast-growth exotic species (radiata pine and eucalyptus) for the production of timber and cellulose, which is largely exported to the US and China.¹⁸ Hydro dams that supply the power needed for paper mills and forest operation have been built on Mapuche lands. Salmon farms, which have made Chile the second-largest exporter of farmed salmon worldwide, have been installed along Mapuche river and ocean shores.¹⁹

Indigenous, and particularly Mapuche, social protest that was triggered by the proliferation of these investment projects without proper consultation and without participation in benefits has been criminalised by the Chilean state. Such criminalisation is evidenced by acts of police brutality against individuals, resulting in many cases of torture, and cruel, inhuman and degrading treatment affecting community members. Three Mapuche activists involved in social protests against the expansion of forest activities in their communities have been killed by police agents in the last decade.²⁰ Those responsible for these acts remain free with impunity. By contrast, hundreds of Mapuche activists have been prosecuted by the state after they were accused of committing ordinary or terrorist crimes listed in the Anti-terrorist Law (No. 18,314). Fifty are currently in prison charged with terrorist crimes.

Chilean anti-terrorism laws have caused concern among a number of UN human rights entities, including the Human Rights Council, the UN Committee Against Torture and the UN Committee on the Elimination of Racial Discrimination. In 2009 this last entity, as well as UN Special Rapporteur on the rights of indigenous peoples, James Anaya, recommended that the Chilean state ensure that investments are not implemented in violation of indigenous rights to land and natural resources.²¹ Moreover, the Committee on the Elimination of Racial Discrimination recommended that such activities should not be implemented without indigenous people's free, prior and informed consent.²²

Peru

Peru probably offers the best example of the adverse effects on indigenous peoples of FTAs signed with the US. In order to enable the implementation of the US-Peru TPA, the Peruvian Congress in 2007 granted the executive branch the use of legislative powers in matters that included trade facilitation, state modernisation, administration of improved justice in trade matters and administrative disputes, promotion of private investment, institutional

strengthening of environmental management, and improvement of competitiveness of farming production. Within less than six months, Alan García's government issued ninety-nine legislative decrees, thirty-eight of which affected indigenous and peasant communities.²³

The legislative decrees (LD) that threatened indigenous peoples' lands and resources with the purpose of implementing the US-Peru FTA included the following:

- LD 1089 *Extraordinary Temporal Regime of Rural Formalisation and Deed of Title* eases the path to expropriation and exploitation of rural property at national level. The decree promotes individual property on the basis of collective impairment, undermining the right to consultation, to land and territory, and the use of natural resources and development.
- LD 1079 *Natural Protected Areas* opens up natural protected areas to forest concessions, mines and oil under the US-Peru TPA by enabling the exploitation of renewable and non-renewable resources in those lands.
- LD 1090 *Forest and Wildlife Law* redefined forest patrimony to exclude from public administration around 45 million hectares of land with foresting capacities – equivalent to 64 per cent of Peruvian forests – and make it available for grants of private property to transnational corporations. This decree was modified by Law 29317, which was aimed at privatising forests and promoting changes of land use in order to promote bio-combustible production. Law 29317 was repealed on 5 June 2009.
- LD 1015 and 1073 *Native and Peasant Communities Law* promotes private investment on indigenous peoples' lands and in rural communities by allowing indigenous peoples to decide on the sale of their property by a vote of 50 per cent plus one, instead of demanding the agreement of the community's general assembly, which requires two-thirds approval.²⁴

The intention behind these legislative decrees was to encourage the new expansion of large private estates – *neolatifundización* – of Amazonian forests lands; by breaking up indigenous communities, their territories could be handed to large investors interested in biofuel production.²⁵

As in the case of the negotiation of the US-Peru TPA, indigenous peoples were never consulted about these decrees. That situation led the ILO Committee of Experts on the Application of Convention 169 to issue an observation to the Peruvian state expressing its concern over the serious failure to consult with indigenous peoples on legislation that may affect them, and on decisions regarding the use of natural resources on their traditional territories.²⁶

There was an immediate indigenous reaction against the implementation of the TPA by means of the legislative decrees. In 2008 the Amazonian indigenous peoples in the Interethnic Association of the Peruvian Amazon (AIDSESP) mobilised behind demands that the decrees affecting them and approved without consultation be rescinded. Such protests were successful in getting

LD 1015 and 1073 (which facilitated sales procedures and individualisation of land ownership) overturned. President Garcia made a commitment to initiate an evaluation of other decrees questioned by AIDSESEP, and formed a Special Multiparty Commission. The Commission's report, issued in December 2008, recommended their repeal. Among the fundamentals of its recommendations were that rules regarding rights and freedoms recognised by the Constitution should be interpreted in accordance with the UN Human Rights Declaration and with international treaties ratified by Peru in this matter; it argued that the decrees did not comply with this obligation. New protests began in April 2009 after the Congress failed to implement the Commission's recommendation to repeal seven additional decrees that affected indigenous peoples' rights.

AIDSESEP again mobilised its grass-roots organisations throughout the country. Among these organisations were those of the Awajún and Wampis people in the area of Bagua where the government threatened to reduce the Ichigkat Muja National Park on the border with Ecuador to the benefit of mining in the Condor Mountains, in accordance with the decrees. After several days of road blockade, the government ordered the police to clear the roads, generating clashes that ended with thirty-four identified deaths, including twenty-four police officers and ten people from the indigenous communities; a hundred civilians were injured by firearms.²⁷

The events of Bagua led to several investigations, including that conducted by UN Special Rapporteur James Anaya. In his report issued in August 2009, the Special Rapporteur not only asked the government of Peru to investigate and clarify these events, but also stressed the importance of harmonising the development policies implemented by Peru with the respect for the state's human rights obligations regarding indigenous peoples, in particular ILO Convention No. 169 to which Peru is a party, and the UN Declaration on the Rights of Indigenous Peoples which was approved in 2007 with Peru's support.²⁸

The US-Peru TPA has only been in effect for a year. Its implications for investments on indigenous peoples' lands and resources are still to be assessed.

Conclusions

Indigenous peoples in Latin America have strongly advocated against the FTAs signed in the region to date. This is not surprising, considering that these peoples have not been informed or consulted by states on the negotiations of the agreements, nor considered when defining their contents. This chapter has shown the serious implications of FTAs for land and resource appropriation, environmental destruction and criminalisation of social protests, specifically as they relate to indigenous communities.

The proposed TPPA is not yet a matter of debate in the region, and even less among the indigenous peoples. Notwithstanding the international law obligations of Chile and Peru under Article 6.1.a Convention 169 of the ILO,²⁹ which mandates states to consult with these peoples' representative

organisations whenever considering the adoption of legislative or administrative measures that may affect them directly, indigenous peoples have not yet been informed that conversations on the TPPA have been taking place.

After the traumatic experience of Peru, the governments of both Peru and Chile will probably end up having to implement consultation processes with these peoples if they want to move forward on the TPPA initiative. However, as long as these initiatives continue to propose the inclusion of Latin America into the global economy as a supplier of natural resources located on indigenous lands – as has occurred with the forests of the Amazon basin in Peru or with subsurface resources of the Andes in Chile – the perspectives of indigenous peoples with regard to these agreements is not likely to change.

A recent continental summit of indigenous peoples held in 2009 in Puno, Peru, reaffirmed their opposition to FTAs, which are clearly seen as a form of domination and colonisation:

We reject the Free Trade Agreements with United States, Europe, Canada, China and other countries which have destroyed our economies, as new instruments of subjugation of our Peoples and plunder of Mother Earth. We reject the tactics of the European Union along with the dictators of Peru and Colombia that would destroy the Andean Community in order to impose their Free Trade Agreement.³⁰

Opposition to FTAs and other initiatives aimed at strengthening resource-based investments is grounded not only in political rationales, but increasingly in indigenous worldviews. New paradigms among indigenous movements in Latin America based on the need to respect nature (Mother Earth or *Pachamama*) proclaim that their aspiration is not that of Western societies, which is ‘living better’, but instead is ‘living well’. That perspective has strongly influenced new trends in Latin American constitutionalism, as can be evidenced in the case of the recently approved Constitutions of Ecuador (2008) and Bolivia (2009).³¹

Although opposition to free trade agreements is common to most indigenous peoples worldwide, it is relevant to highlight here that in the context of the Pacific Rim, which is the scenario proposed for the TPPA, there are some exceptions to this rule. Such is the case of the Māori people in Aotearoa, where after a period of resistance to neoliberalism and FTAs in the 1980s and 1990s, some Māori organisations have expressed their support for FTAs in which the New Zealand government has become involved.

Two factors may help to explain their perspective on this matter. The first is the fact that the treaty settlements process in which they have been involved for the last two decades, as a consequence of the Crown’s decision to assume its obligation to resolve historical grievances in accordance with the principles of the Treaty of Waitangi, has resulted in the inclusion of Māori organisations, both traditional (iwi and hapū) and modern, into activities

such as fisheries, forestry, and geothermal exploration and exploitation. It is through these activities that Māori, unlike their counterparts in Latin America, have increasingly become involved in international trade and relationships with the corporate world.³²

The second factor that may help to explain their perspective is that the New Zealand government, even if it is for pro-corporate reasons, has been successful in including Māori representatives in trade delegations that attend forums where these kinds of initiatives are being negotiated. This strategy substantially differs from the way indigenous peoples in Latin America have been excluded from such negotiation.³³

Finally, it should be mentioned that challenges to the inclusion of Latin American states in the TPPA may arise not only from indigenous voices, but also from a human rights and social movement that has opposed FTAs due to their habitual infringement of rights protected in human rights treaties. Organisations such as the International Federation of Human Rights, a league to which many human rights organisations in Latin America belong, have made strong statements to states and to the UN forums where these matters are being debated, concerning the risks that investment and trade agreements can pose to the ability of states to comply with their human rights obligations. The International Federation has argued that such agreements should be assessed with regard to the pre-existing human rights obligations of all parties involved in them and, consequently, that FTAs should be amended or rejected if they are not in conformity with these obligations.³⁴

At the regional level, a similar statement was issued by a group of human rights NGOs that attended the regional consultation of the Representative of the Secretary General of the UN for Human Rights, Transnational Corporations and other Business Enterprises, John Gerard Ruggie, in Argentina in May 2009. Among other issues, these NGOs stated the need to elaborate proposals for the revision of the validity of trade agreements that do not comply with international human rights norms, and the need to ensure that arbitration tribunals on matters of trade and investment that operate under ICSID or the UNCITRAL (United Nations Commission on International Trade Law) rules are subject to international human rights norms.³⁵

The prospects for the TPPA in Latin America are still uncertain. After the recent experience of the implementation of the US-Peru Trade Promotion Agreement, it is unlikely that the TPPA will be implemented without strong challenges, in particular those to be put forward by indigenous peoples and human rights movements.

4. THE TPPA AND INDIGENOUS PEOPLES: LESSONS FROM LATIN AMERICA

- 1 <http://www.ustr.gov/about-us/press-office/factsheets/2009/december/tpp-statements-and-actions-date>, accessed 14 April 2010.
- 2 Ibid.
- 3 The first FTA signed by the US in the Americas was the Canada-US Free Trade Agreement in 1988.
- 4 These last two have been signed, but the US Congress must enact legislation to approve and implement these agreements in order for them to come into effect. See <http://www.ustr.gov/trade-agreements/free-trade-agreements>, accessed 15 April 2010.
- 5 <http://rc.direcon.cl/pagina/1897>, accessed 20 April 2010.
- 6 <http://www.ustr.gov/trade-agreements/free-trade-agreements/chile-fta>, accessed 15 April 2010.
- 7 Rodrigo Pizarro, *The Free Trade Agreement Between the USA and Chile: An Instrument of Commercial Interests*, 2006, p. 2, http://www.networkideas.org/working/oct2006/02_2006.pdf, accessed 30 March 2010.
- 8 Arbitration procedures of the ICSID between private investors and states are known for conceding a higher level of protection to investors and for being reluctant to apply international human rights law.
- 9 http://www.ustr.gov/sites/default/files/uploads/factsheets/2007/asset_upload_file585_13067.pdf, accessed 15 April 2010.
- 10 The *ejidos* are a consequence of the agrarian reform process undertaken after the Mexican Revolution (1910–20). From 1930 to 1990, approximately 28,000 communally owned *ejidos* were created serving as both employment and residence for 3 million rural Mexicans, most of whom were indigenous peoples.
- 11 Margaret Wilder, 'Water, Power and Social Transformation: Neoliberal Reforms in Mexico', *Vertigo hors-série*, 1, September 2005, <http://www.vertigo.revues.org/1925?file=1>, accessed 10 April 2010.
- 12 Alberto Arroyo Picard, 'Impacts of the North America Free Trade Agreement in Mexico: Lessons for the Free Trade Area of the Americas Negotiations', Mexican Action Network on Free Trade, 2003, <http://quest.quixote.org/sites/quest.quixote.org/files/pdfs/albertoarroyo.pdf>, accessed 28 March 2010.
- 13 Suzanne York, 'Genetic Pollution of Mayan Corn', in *Paradigm Wars. Indigenous Resistance to Globalization*, eds Jerry Mander and Victoria Tauli-Copuz, University of California Press, 2006, pp. 145–8.
- 14 Subsoil resources are largely located in the North of Chile in the territory of the Andean peoples (Aymara, Lickanantai, Quechua, Coya and Diaguita). Water and forest resources are located in the south of the country, in the territory of the Mapuche people.
- 15 Office of the United States Trade Representative, U.S.–Chile Trade Facts, <http://www.ustr.gov/countries-regions/americas/chile>, accessed 10 April 2010.
- 16 Fraser Institute, 'Annual Survey of Mining Companies 2008/2009', <http://www.fraserinstitute.org/>, accessed 30 March 2010.
- 17 Manuel Riesco, 'El alza de impuestos de Piñera', 20 April 2010, *El Mostrador*, <http://www.elmostrador.cl/opinion/2010/04/19/el-alza-de-impuestos-de-pinera>, accessed 21 April 2010.
- 18 Most of the investment in forestry in Chile has been made by two large national holdings, Arauco (COPEC) and CMPC. The first of the two companies had a joint venture initially (1987–2000) with Carter Holt Harvey, a New Zealand company, and later with International Paper (2000–4), a US company that later bought Carter Holt Harvey.
- 19 IWGIA, *Mundo Indígena 2009*, IWGIA, Copenhagen, 2009, <http://www.iwgia.org>, accessed 15 March 2010.
- 20 Observatorio Ciudadano, comp., *Los Derechos Humanos en Chile: La Evaluación de la Sociedad Civil, los Pueblos Indígenas y las Naciones Unidas*, Observatorio de Derechos de los Pueblos Indígenas, 2009.
- 21 Naciones Unidas, *Observaciones sobre la Situación de los pueblos Indígenas de la Amazonía y los sucesos del 5 de Junio y días posteriores en las provincias de Bagua y Utcubamba, Perú*, Informe del Relator Especial sobre la situación de los derechos humanos y las libertades fundamentales de los indígenas, Sr. James Anaya, /HRC/12/34/Add.8, 18 de agosto de 2009. See http://unsr.jamesanaya.org/PDFs/Peru_special.pdf, accessed 25 March 2010.
- 22 'Committee on Elimination of Racial Discrimination Considers Report of Chile', Press statement, 14 August 2009, available on [http://www.unog.ch/unog/website/news-media.nsf/\(httpNewsByYear.en\)/8CFEA19E9226F030C1257612002F72E5](http://www.unog.ch/unog/website/news-media.nsf/(httpNewsByYear.en)/8CFEA19E9226F030C1257612002F72E5).
- 23 Such legislative powers were granted by Law No. 29157 of 18 December 2007. This law was aimed at 'facilitating the execution of the Trade Promotion Agreement Peru–United States and its Amendment Protocol, and in order to support economic competitiveness for its use'.

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