



WHO TO BLAME
TEN YEARS AFTER RIO ?

THE ROLE OF
THE USA, CANADA, AND
AUSTRALIA
IN UNDERMINING THE
JOHANNESBURG SUMMIT

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Introduction:

As the World Summit on Sustainable Development (WSSD) opens in Johannesburg, the question of who to blame for the lack of implementation of the *Rio agreements*¹, and for the uncertainties surrounding the outcome (or lack thereof) of the Summit itself, continues to be raised.

Whatever the outcome of the Summit, it is apparent that all governments have a collective responsibility. The European Union, for all its positive rhetoric on a number of issues, has thus far proven incapable of driving the negotiations towards a meaningful outcome—a failure of leadership in other words. NGOs have also been disappointed by the Group of 77 plus China which has not acted as a cohesive group, and has often let OPEC take control of its position, especially on issues related to energy and climate change. The UN Secretariat's strong emphasis on voluntary partnership agreements, especially during the first half of 2002, undermined the imperative for a strong plan of implementation (known as a 'Type 1 outcome' in UN jargon – see case study #1 below). There is no doubt, however, that this decade of failure has been catalysed by the regrettable dynamic intentionally perpetuated by the **USA, Canada and Australia** (and sometimes Japan) during the course of environmental negotiations before and since Rio and during the preparatory process for the WSSD.

In the course of the preparations for the WSSD, Greenpeace warned delegates and stakeholders that they should always bear in mind that the JUSCANZ Group of countries², with the US, Canada and Australia leading the pack, continue to play a damaging role during environmental negotiations. The Greenpeace report issued during the Preparatory Committee sessions in New York and Bali, "Who to Blame Ten Years after Rio: the Role of the USA, Canada and Australia in Undermining the Rio Agreements"³ shows that these countries had (and have) no interest in the area of true sustainable development and international environmental policy. The report documents the role these countries have played in dismantling or preventing rules designed to protect future generations, and their interest doing so has been confirmed by the attitude of these three countries—widely known now as ***the Filthy Three***—throughout preparations for the WSSD.

The negative impact of the US, Canada and Australia within the UN Framework Convention on Climate Change, including their role in undermining the Kyoto

¹ The UN Framework Convention on Climate Change (UNFCCC), the Convention on Biological Diversity (CBD), the Convention on Desertification, Agenda 21, the Rio Declaration and the Forest Principles.

² Japan, US, Canada, Australia, and New Zealand.

³ See www.greenpeace.org/earthsummit/docs/blame.pdf

Protocol, is universally recognized (see Case Study 7). Since this report was first published last January, their efforts to sink the Kyoto Protocol have continued.

The US Bush administration continued to campaign against the *principle of common but differentiated responsibility* enshrined in the Rio agreements and the Kyoto Protocol.

The Australian Prime Minister (who often describes himself as George Bush's sheriff in the South Pacific) slapped the United Nations Environment Programme in the face by choosing the celebration of UNEP's 30th anniversary on 5 June 2002 to announce that his country would not ratify Kyoto.

Canadian Prime Minister Jean Chretien, feeling the weight of international condemnation and pressure at home including from a devastating drought, is wavering on confirming Canada's Kyoto commitments. Johannesburg would be a logical place for Chretien to break with Australia and the USA and announce that he will honour the treaty with prompt ratification.

The case studies in our report show that the stance of the *filthy three* in the climate negotiations is not isolated. The action of these three countries against the Kyoto Protocol is part of a broader and deliberate attack against progress on international environmental policy, which has continued throughout the preparatory process for the WSSD.

Yet the fact remains that these three countries individually and collectively—with their great capacity, resources and international position—have tremendous potential to take a leading role in solving global environmental problems; to help move the world along a path to truly sustainable development.

It has been reported that if we continue to consume resources at the current pace, humankind in fifty years will need an additional two planets. But the US, Canada and Australia behave as if they lived on a different planet already, as if they can abandon the sinking ship; a rather irresponsible stance, given that they too will eventually sink with the planetary ship if nothing is done to counteract current trends. It is wrong of the US, Canada and Australia to believe that with their wealth, they will not be hit as hard as others by the environmental crisis. With their resources, they can afford to carefully monitor impending dangers and take more remedial measures than most other countries. But even they must realise that you can stick only a limited number of patches onto the hull of a sinking ship.

The case studies reproduced below show that these countries carry a low- or no-ambition mandate to **weaken virtually any text** that has been proposed for new measures (or for implementing agreed ones); even text that has been deemed necessary by the majority of parties in negotiation. Furthermore, after they had managed to weaken the agreements or measures under consideration, far too

often they did not accept the compromise reached—they continued to undermine it or simply refused to join the consensus. And after having weakened it, sometimes they even refused to ratify the final agreement, a tactic revealed by their stance on the Kyoto Protocol.

In the case of the US it appears that this country will not accept measures in environmental treaty negotiations which go beyond its own existing domestic legislation. In other words, the US will agree to environmental legislation only as long as it does not require changing existing legislation, policy or practice back home. Throughout the WSSD, the US has pursued this position, especially through the promotion of voluntary partnership agreements (so-called *Type 2* outcomes) to avoid new commitments that would bind them to targets and time-tables. This US position is particularly defeating, given that the unsustainable consumption patterns that dominate the US economy are at the heart of the global environmental crisis.

The section below contains analyses of cases that are less known than the well publicised dispute over climate change (Case Study 6 – the Kyoto Protocol). It also contains a new section regarding the use of the *Type 2* outcome concept by the *filthy three* as a means to avoid any new commitments in Johannesburg. All case studies reveal a pattern of negotiating tricks which come into play whenever these countries perceive a threat to their own short term domestic interests.

Case Study # 1 – US, Canada and Australia promote *voluntary partnership initiatives* in order to avoid new commitments in Johannesburg

In the midst of the preparations for the Johannesburg *Earth Summit*, new jargon has emerged from the UN that has been used by several countries, most notably the US and Australia, to avoid the adoption of a strong Plan of Implementation that would bind governments in and after Johannesburg. The new terminology refers to *Type 1 outcomes* to describe the kinds of agreements for which the UN is traditionally known (political agreements and commitments, time-tables and action plans negotiated by governments). And perhaps as a worrisome sign of the times, it now recognises a second category of agreement known as *Type 2 outcomes*. These are voluntary initiatives, partnerships with or within the private sector.

Voluntary private sector partnership initiatives *per se* are not new. They can be a good thing (NGOs are sometimes even involved in them) if they are designed genuinely to reinforce, go beyond, or even anticipate legislation. But relying on voluntary agreements to achieve essential policy objectives holds us hostage to fortune, and in many cases they simply will not deliver the required outcome. Too often they are designed (openly or not) to undermine and/or prevent the development of regulations and/or their implementation. The US, Canada and

Australia have been at the forefront in proposing Type 2 outcomes as a substitute for Type 1 government regulations and measures.

George Bush's alternative plan to Kyoto, presented in February, 2002—which could lead to a 30% rise in greenhouse gas emissions—is a good illustration of how perverse voluntary agreements can be if used to substitute government regulation (see Case Study 7, below).

What is new (and worrying) with the Johannesburg *Type 1/Type 2* terminology, is the fact that private sector partnership has been given an unprecedented emphasis in the Johannesburg negotiations. In fact, it appears that governments are on the verge of abdicating their own responsibilities.

Immediately after the 3rd Session of the Preparatory Committee, the main story on the official WSSD (www.johannesburgsummit.org) website was “*Enthusiasm and Some Concerns Voiced over Partnership Proposals*”. However “*Concern and Some Enthusiasm Voiced over Partnership Proposals*” would have perhaps been a more accurate reflection of what happened and what was said in New York. Indeed, at the end of the following session of the Preparatory Committee, in Bali on 6 June, 2002, another UN press release emphasised that a majority of speakers said that “partnership initiatives should not substitute for government commitments”.⁴

The main cause for concern is that despite the warnings of the NGOs, and the late clarifications of the WSSD Secretariat, *Type 2 outcomes* in fact continue to be promoted by many within governments and of course within the private sector, to avoid the realisation of *Type 1* outcomes.

For example, the US delegation said very clearly at the 3rd Session of the Preparatory Committee that it was opposed to any new political commitment being made in Johannesburg. It is very clear that for the US, *Type 2* is a means to avoid the commitments inherent in *Type 1* agreements, thereby disregarding the mandate of the UN General Assembly for the Johannesburg *Earth Summit*.⁵

The Head of the US delegation at the WSSD Prepcom, Paula Dobriansky, also said at a conference in May in Washington DC that the Bush administration considered partnership agreements as a substitute to “traditional foreign aid”. Her statement implied that the increase in US ODA announced in February 2002 in Monterrey at the UN Conference on Funds for Development would in fact be made available (if the conditionalities set by the US were implemented) only through private sector partnership.

In keeping with their voluntary-agreements-only approach, the US has continuously opposed the inclusion in the WSSD Plan of Implementation of any

⁴ See UN Press Release ENV/DEV/B/17 of 6 June 2002.

⁵ UNGA Resolution A/RES/55/199 of 20 December 2000 requests the governments to adopt action plans and time-frames to accelerate the implementation of Rio Agenda 21.

reference to the Kyoto Protocol on climate change. Reportedly, President Bush has also said that he would not come to Johannesburg unless climate change was removed from the agenda, somewhat in contradiction to his commitment in Gotenburg last year (which he reiterated this year in February) that – though the US would not ratify – it would not stand in the way of other countries wishing to do so. The US knows that their opposition to referencing Kyoto is having a *chilling effect* on countries such as Canada in the midst of a national debate over Kyoto ratification.

During one of the meetings that took place at the 3rd Session of the Preparatory Committee to exchange views on *Type 2 outcomes*, the US delegation announced its intention to further propose “*a partnership initiative on food security*”. When asked in response if the proposal would be coupled with a commitment to ratify instruments important to food security such as the Convention on Biological Diversity (which the US has still not ratified) and the Cartagena Protocol on Biosafety, or with support for a review of the WTO Agreement on Trade-Related Property Rights (TRIPs) which affects food security so negatively, the US delegation made no response. How can we believe, under these circumstances, that the US is acting in good faith then?

Likewise, when the US delegation was asked during Prepcom 4 in Bali if their partnership proposals on food security and agriculture may involve shipping genetically modified organisms to developing countries, the answer was “yes”, despite the disregard of that country for the Convention on Biological Diversity and its Protocol on Biosafety.

As the Summit opens in Johannesburg, there are too many unanswered questions regarding *Type 2 outcomes*. For example, who will select them? According to which criteria? How will their implementation be monitored and supervised, and by whom? With so much emphasis on partnership, isn't there a risk that the WSSD will become little more than a global trade fair?

If the United Nations is to become a broker for partnership initiatives, what should the rules of the game be?

And most important of all, how do we know they will deliver the kind of progress so urgently needed in virtually every sector?

If the US got their way, and *Type 2* initiatives were the only outcomes from Johannesburg, this would be a success for those who are actively campaigning in the US against multilateralism and the United Nations.

Case Study # 2 – US, Canada and Australia Undermining the Precautionary Principle at United Nations Environment Programme and Rio

The Precautionary Principle represents a significant and fundamental shift in environmental policy and approach. Its origins are found in the 1980s, in Germany, and internationally in the North Sea Ministers Conferences, which have been followed by its adoption in other regional forums and at the global level. The original description of the Principle took place in the context of pollution and the release of contaminants to the environment. But today virtually all discussions on environmental issues include references to the Precautionary Principle.

The Precautionary Principle frames the obligation to take preventative measures to protect the environment before damage starts to occur. It is invoked when there are reasons to believe that a technology, a product or a practice can have serious and, as is often the case, irreversible environmental effects. In such circumstances, the Precautionary Principle requires that preventative measures be identified and implemented without waiting for full scientific certainty with regard to the extent of damage, because the Earth should not be looked upon as a testing laboratory.

In the context of marine pollution where it was first developed, the Precautionary Principle triggered a change away from the historical and mistaken policy based on the “assimilative capacity approach”. Increasingly, it was becoming evident that the assumption that hazardous substances could be rendered harmless if released and dispersed in the environment was false. Precaution is required based on the inherent hazards of the substance in question, e.g., its toxicity, persistence, or bioaccumulation potential.

The Precautionary Principle was endorsed at the global level for the first time in 1989 by the Governing Council of the United Nations Environment Programme (UNEP). On this occasion, **the US was the only country to oppose the proposal**, which was put forward by Ghana and Italy with support from a number of other delegations. The issue went into a working group wherein the **US, Canada and Australia tried to weaken the resolution**. The resolve of other countries in support of the draft decision was strong, while the US, Canada and Australia were not very knowledgeable about the Principle at that time. The US did achieve some weakening but basically lost the battle, and the Precautionary Principle was adopted. This took place three years before the *Rio Earth Summit*. **But even today the US, Canada and Australia continue to ignore this consensus decision, and fight against the Precautionary Principle in every discussion in an attempt to weaken its impact.**

These countries advocate an interpretation which co-opts and misuses the Precautionary Principle: they say that the Precautionary Principle is part of a ‘risk assessment’ approach to regulating the release of substances to the environment. Risk assessment, however, is a component of the failed assimilative capacity approach. It is in stark contrast to, and incompatible with, the significant policy change and approach resulting from the Precautionary

Principle. Their position can be explained by the fact that the risk assessment approach is favoured by the chemical industry because it ensures the status quo of continuing to release toxic chemicals to the environment. It allows even the most damaging substances to continue to be released if the so-called exposure, especially to humans, is “sufficiently low or acceptable”. But risk assessment fails to take properly into account cumulative effects, the complexity of ecosystems or the unpredictability of chemical impacts.

As a side note, in contrast to these countries, Denmark played a significant role in assisting the adoption of the Precautionary Principle in the 1989 UNEP Governing Council meeting, and indeed has provided the leadership for its adoption in other fora as well. In particular, the implementation of the Precautionary Principle has led to a number of significant measures that are recognised landmarks of environmental policy. These include the prohibition in December 1993, one year after the Rio Earth Summit, on the dumping at sea of industrial wastes and low-level radioactive wastes, as well as their incineration at sea by the Contracting Parties to the London Convention. Pursuant to the Precautionary Principle, the Contracting Parties to the *OSPAR* Convention for the protection of the North-East Atlantic (a regional treaty to which all the countries bordering the North Atlantic except the US and Canada are parties), also undertook in 1998 to phase out the release of all hazardous substances (based on the inherent hazards of toxicity, persistence, bioaccumulation) within one generation, i.e., 25 years.

Unfortunately, the US attempt to undermine environmental policy continued in the framework of the Governing Council of UNEP. At a Special Session meeting in 1990, a follow-up proposal was made with respect to the implementation of the Precautionary Principle in the context of hazardous wastes. The draft decision called for implementation based on alternative cleaner production methods to avoid the generation of hazardous wastes. It also included a provision promoting the use of waste prevention audits, and applicable cleaner production methods, with a *public right-to-know* clause with respect to public access to the audit information. Tanzania, Ghana and other developing countries proposed the draft decision, but **the US was the only country to object**, thereby managing to delete the *public right-to-know* provision that the rest of the international community could accept. Two years before the *Rio Earth Summit*, this was indeed a shocking blow to public environmental rights.

The role of the US in preventing the adoption of the Precautionary Principle during the preparations for the *Rio Earth Summit* is well documented. The US made sure that Principle 15 of the Rio Declaration did not reflect the Precautionary Principle. As a result, Principle 15 refers to the **Precautionary approach**, the terminology favoured by the US, Canada and Australia, who have been prompt ever since the *Earth Summit* to oppose on all occasions reference to precaution as a principle.

Case Study # 3: US, Canada and Australia Oppose Precautionary Principle at World Trade Organisation (WTO)

The role of the US, Canada and Australia opposing the incorporation of the precautionary principle within the framework of the **World Trade Organisation (WTO)** is also well documented.

These three countries have formed an unholy alliance with a number of developing countries to oppose proposals from the European Union to incorporate and use the precautionary principle in trade disputes. The rejection of the precautionary principle by the WTO has been particularly damaging because, unlike the multilateral environmental agreements, the WTO (created in 1994 two years after the *Rio Earth Summit*) has been provided with a legally-binding *dispute settlement mechanism*. Under this system, any trade-restricting measure (for example, a ban on certain goods that can affect human health or the environment, or a labelling scheme for genetically modified food) adopted by a member state of the WTO can be appealed by another member state that may be affected by it and who believes that this measure is arbitrary or unwarranted. The decisions of the WTO dispute settlement body are binding, and can be very costly.

The very fact that, two years after Rio, the WTO had been provided with a legally-binding mechanism of this sort clearly reveals the true priorities of governments (trade first, environment second—if at all). **The US, Canada and Australia were strongly behind the move to provide the WTO with the power to undermine environmental agreements. They (particularly the US) also had a vested interest in promoting the controversial WTO Agreement on Intellectual Property Rights (TRIPs) that undermines key provisions of the Convention on Biological Diversity and severely restricts access to medicines in developing countries.**

The worst fears of the environmental community with regard to the impact of the WTO on the implementation of the precautionary principle were confirmed in several instances:

- In 1996, the **US and Canada filed complaints to the WTO against European Union measures** (enacted since 1981) to keep hormone-tainted beef off the European market. The WTO Appellate Body ruled that the European ban was not sufficiently based on scientific evidence—i.e. it rejected the precautionary principle—and it ordered the European Union to lift the embargo. The European Union remained firm and has refused, but as a result, not only has a penalty fee of US \$124 million per year been imposed on the European Union, but the WTO has allowed the US and Canada to impose 100 percent tariffs on selected European goods.

- In 1999, the **US, Canada and Australia took the lead in threatening developing countries and the European Union with WTO sanctions** if a Biosafety Protocol to the Convention on Biological Diversity was adopted to restrict the use of Genetically Modified Organisms in food and agriculture (see Case Study # 3, below).
- The **US, Canada and Australia continue to threaten to bring the European Union before a WTO dispute settlement panel** for maintaining a moratorium on new genetically modified crops, and for its attempts to implement a mandatory labelling and traceability scheme.
- In 2001, the government of **Sri-Lanka was forced to “suspend” a law** adopted by Parliament to ban genetically modified crops, because of reported threats of WTO sanctions by the US.
- **Canada even filed a complaint against the European Union for having banned asbestos**, a well-know carcinogen used in the construction sector. (In view of the overwhelming body of science linking lung cancer with asbestos, Canada lost this case in 2001, but the fact that Canada pursued it to the very end illustrates how Canada places trade concerns ahead of the protection of human health and the environment).

At the Fourth ministerial conference of the WTO held in Doha, Qatar in November 2001, the **US, Canada and Australia continued to oppose** the demands of the European Union to clarify the relationship of the WTO with multilateral environmental agreements. Though these three countries stayed comfortably hidden behind India, Pakistan and other developing countries opposed to the inclusion of a section on the environment in the Doha Declaration, it is clear that they could have made a big difference if they genuinely wanted to seek such a clarification. The Canadian Trade Minister who was initially proposed by the WTO to chair the negotiations on Trade and the Environment in Doha, was rejected after environmentalists objected to this choice. A watered down version of the European proposal was finally adopted.

Case Study # 4 – US, Canada and Australia’s “Miami Group” attempts to sink Biosafety Protocol

The role of these three countries within the Convention on Biological Diversity (CBD), the second “Rio Treaty”, and its Protocol on Biosafety (regulating the use of genetically modified organisms in food and agriculture) is also well documented.

The **US for a start, has not even ratified the Convention on Biological Diversity** because of selfish fears that the convention could force the US pharmaceutical industry to bring *biopiracy* to a halt and to share instead the benefits arising from genetic resources with developing countries.

It is no secret that (together with Chile, Argentina and Uruguay) the **US, Canada and Australia formed a cartel of grain-exporting countries** – known as the *Miami Group* -- to prevent the adoption of a strong Protocol on Biosafety that would reiterate the right of any country to say *no* to genetically modified organisms in food and agriculture on the basis of the precautionary principle.

One of the most significant phenomena that has arisen since 1992 has been the emergence of genetic engineering in food and agriculture. The take-off of genetically modified food in the 1990s with little or no public scrutiny can be compared with the first steps of the nuclear industry in the 1950s. Yet, after the mid 1990s increasingly loud and numerous voices raised concerns about uncertainties concerning the impact of GMOs on human health, as well as their impact on biodiversity, and on small farming economies.

The *Miami Group* owes its name to a **closed meeting organised by the US** in that city a few weeks before an intergovernmental conference to adopt the Biosafety Protocol was convened in February 1999 by UNEP in Cartagena de Indias, Colombia. Refusing to acknowledge the validity of an international environmental convention to deal with the transboundary movements, transits, handling and use of GMOs, the **US, Canada and Australia led the *Miami Group* in preventing the adoption of the Protocol in Cartagena.**

It was agreed to reconvene the negotiations a few months later, but the *Miami Group* did everything to prevent their resumption before the 3rd Ministerial Conference of the WTO scheduled to take place in November 1999 in Seattle. What the **US, Canada, Australia and the rest of the *Miami Group* had in mind was to secure adoption of a WTO agreement** in Seattle for genetically modified organisms in food and agriculture to be regulated by the WTO (which does not incorporate the Precautionary Principle in its decision-making), thereby removing the need for the Convention on Biological Diversity to bring transboundary movements, transits, handling and use of GMOs under its remit.

Of course, with the collapse of the Seattle conference, there was no agreement on anything, including genetic engineering, and UNEP was able to resume the biosafety negotiations eight weeks later, at a meeting held in Montreal at the end of January 2000.

In Montreal, the **US, Canada and Australia again took the lead to try and prevent the adoption of the Biosafety Protocol with all sorts of time-wasting tactics**, including proposals to ruthlessly water down agreed texts. But at the same time many governments were mindful of avoiding another collapse of an intergovernmental negotiation so soon after Seattle.

As a result of tough negotiating by developing countries and the European Union, the Biosafety Protocol was finally concluded at this meeting in Montreal, although **mandatory labelling rules for genetically modified commodities had to be**

sacrificed by the European Union and developing countries in order to reach a final compromise with the *Miami Group*.

The Biosafety Protocol of January 2000 (hailed as the first multilateral environmental agreement of the 21st century) contains provisions that are common sense (including the *right to say no* to GMOs). Yet it took a real battle for common sense to prevail at the international level because of a group led by the US, Canada and Australia. And even today, these three countries have shown no commitment towards applying these rules, let alone any signs of ratification of this Protocol that they were instrumental in watering down.⁶ In fact, it is unlikely that all three countries will accede to the Biosafety Protocol unless – once it has entered into force—the Parties to it decide to prevent the imports of GMOs from non-parties.

Case Study # 5 – US, Canada and Australia Undermining the Basel Convention on the Transboundary Movements of Hazardous Wastes

The Basel Convention provides another example of a very negative role by the JUSCANZ countries led by the US, Canada and Australia, and indeed an **example of their refusal to accept the consensus decisions of the international community**. The regressive positions of these governments in the framework of this Convention continues to be an on-going problem today, and it represents the **biggest obstacle to a real solution** to the hazardous waste crisis.

The Basel Convention is a global treaty with the primary objective of minimising the generation and transboundary movements of hazardous waste, with the aim of their elimination. It was adopted in the 1980s in reaction to the growing problem of industrial countries' industries exporting their hazardous waste to cheaper, polluting, disposal facilities in developing countries. As the cost of waste management increased in industrial countries due to stronger laws aiming at the protection of the environment and human health, hazardous wastes were increasingly being exported to poorer countries to save money, with little or no regard for human health and the environment. Hazardous waste began to flow out of the industrial countries, down the economic gradient, rather than being responsibly addressed through cleaner production methods to minimise and eliminate its generation.

The Convention was negotiated in the 1980s, adopted in 1989, and entered into force in 1992. Currently over 130 countries are Party to the Convention, including all OECD countries **except the United States**. The JUSCANZ

⁶ In the case of the US, that country would need to ratify first the Convention on Biological Diversity because acceding to its Biosafety Protocol.

countries' role during the Convention negotiations, and with respect to the ban adopted by the Parties is shameful.

During the negotiations of the Convention in the 1980s, there were repeated calls from a host of developing countries for a ban on all exports of hazardous waste from rich to poorer countries. But the **JUSCANZ countries rejected this request and fought hard against its inclusion** in the text of the Convention. They prevailed on this issue, as well as on another draft provision which would have prohibited all exports to facilities with lower environmental protection standards.

Many other examples exist where these countries watered down provisions in the draft text. An example was the US insistence on the inclusion of Article 11 which would allow a Party to ship wastes to countries not party to the Basel Convention (in effect circumventing the Convention) as long as the Party had a bilateral or multilateral agreement with another country that was "no less environmentally sound" than the Basel Convention. This Article opened up the issue of compliance for subjective interpretation regarding whether another agreement is indeed no less environmentally sound. It opens the door to potential circumvention or avoidance of Basel Convention provisions. The Basel Convention was adopted without the ban, but with Article 11, and other **weak provisions sponsored by the US, Canada and Australia**.

Ploys used by the US to force a weaker text included the threat that the US (the largest hazardous waste generator) would not become a Party unless they got their way. The **US basically forced the rest of the world to come down to their level** arguing that the Convention would not be meaningful if the US was not a Party to it. Although this negotiating tactic worked insofar that it was the weaker version of the treaty that was adopted in 1989, the **US is still not a Party 13 years after the adoption of a Convention greatly weakened only to suit the US position!**

With the exclusion of a ban on hazardous waste exports to developing countries in the original Convention of 1989, many developing country regions were forced to take self-defence measures and to adopt domestic import bans on hazardous waste. At the regional level, the following bans were adopted:

1. The **Lome IV Agreement** (Article 39), adopted in 1989, prohibited all hazardous waste, including radioactive waste imports (for any reason whether final disposal or recycling) into the ACP (African, Caribbean, Pacific) Group made up of the former European colonies;
2. The **Bamako Convention** (1991) adopted under the auspices of the Organisation of Africa Unity (OAU) prohibited all hazardous, including radioactive, waste imports, for any reason, into Africa;
3. The **Central American Agreement**, adopted at presidential level, prohibited all hazardous waste imports, for any reason, into Central America.

4. Under the **Barcelona Convention** for the protection of the Mediterranean Sea, a Waste Trade Protocol was adopted to prohibit all exports to non-OECD countries, and prohibits all imports into non-EU countries; and
5. The **Waigani Treaty** for the South Pacific region prohibited all imports of hazardous waste into Small Island developing States, from other States.

At the same time these regional self-defence measures were being pursued, the First Conference of Parties to the Basel Convention (COP1) was held six months after the *Rio Earth Summit* in December 1992. On this occasion, the G-77 (all developing countries), and indeed UNEP Executive Director Dr. Tolba, proposed a ban on all hazardous waste exports from OECD to non-OECD countries.⁷

The G-77 made passionate appeals for the adoption of the ban through their designated co-leaders India and Senegal. The Nordic countries, Italy and Switzerland supported the proposal, but the **JUSCANZ countries strongly opposed it**. As a result, a weak compromise interim measure was adopted, and India and Senegal, on behalf of the G-77, announced that they would re-submit the proposal to ban exports of hazardous wastes from rich to poorer countries at the following Conference of Parties in 1994.

At the second COP in 1994, this proposal dominated the discussions again. The ban proposal was again sponsored by the G-77, this time joined by China and subsequently by the European Union. **The US, Canada, and Australia frantically tried to gain support in opposition**. Greenpeace was informed that ploys from the US even included **approaching selected developing countries, e.g., the Philippines with the message that this issue may affect their assistance programmes**.

The obstructionist countries included the US, Canada, Australia, New Zealand, Japan, and S. Korea. But by the end of the meeting, the resolve of the vast majority of Parties was such that the ban was adopted by consensus.

Despite having lost, **the US, Canada and Australia continued** to work against the ban adopted by consensus. Together with New Zealand and S. Korea, **they said the ban decision was not legally binding**, even though this was not the interpretation of the majority of governments. Although Australia had agreed in their closing statement regarding the consensus ban decision that this was the reflection of the will of the international community and that they would accordingly respect it, they subsequently did not.

⁷ The proposal covered the export for final disposal and for recovery/recycling. The problem with recycling hazardous waste (in contrast to non-hazardous waste where recycling has an important role to play) is that it perpetuates, and exacerbates the generation of hazardous waste and associated pollution and damage to human health and the ecosystem. Recycling of hazardous waste continues a dirty, polluting cycle of generation with pollution, recycling with pollution (often in an even more concentrated damaging form), and disposal with pollution. The alternative is to avoid hazardous waste generation through alternative raw material use, products, and technologies, i.e., cleaner production.

Given the lack of fair play demonstrated by the losers, the EU led by Denmark made a proposal for the Third COP held in 1995 to adopt a legally binding amendment to the Convention that would incorporate the ban. US documents leaked to Greenpeace and published in the "New Scientist" revealed that the US strategy in the run up to the Third COP was to **target selected G-77 countries and to break G-77 solidarity**. Australia also embarked on a lobby tour with the objective of breaking the G-77 alliance. Fortunately, the ban amendment was adopted by consensus, although not without a serious struggle against the US, Canada and Australia.

But even after this second defeat, the US, Canada and Australia stated that they considered that the ban could be circumvented and ignored through Article 11 agreements mentioned above.⁸

Reportedly, the US, Canada and Australia have also considered challenging the Basel Convention ban on waste trade in the World Trade Organisation (WTO).

Whilst the **US continues to be a non-party to the Basel Convention, neither Australia nor Canada are showing tangible signs of making progress** towards the ratification (or formal acceptance) of the provision, adopted in 1995, in the Convention that bans hazardous waste exports to developing countries.

Case Study # 6 – US, Canada and Australia Undermining the Negotiations on Persistent Organic Pollutants (POPs)

In 1998, under the auspices of UNEP, the international community began negotiations within an Intergovernmental Negotiations Committee meeting (INC) to draft a treaty to solve the problem of the worst organic pollutants. The existing list contains twelve chemicals (the dirty dozen) including the chlorinated pesticides DDT, chlordane, heptachlor, aldrin, dieldrin, endrin, mirex, toxaphene; as well as hexachlorobenzene, the industrial chemical group PCBs, and the dioxins and furans that are formed as unintended by-products when chlorinated materials combust. This process culminated in May 2001 with the adoption of the Stockholm Convention on POPs.

The JUSCANZ countries' positions in these negotiations again were regressive and concentrated on weakening important provisions proposed by the EU and by developing countries. Their approach was to **ensure that the JUSCANZ countries would not have any real obligations under the treaty, while**

⁸ This is an absurd position given that such an exception to the ban was proposed during the negotiations, and soundly rejected. Indeed, all proposed exceptions to the ban during negotiations were soundly defeated.

developing countries would. Furthermore, if their positions had prevailed, the treaty would have been grossly inadequate to address meaningfully the scope of the problem caused by POPs.

Given the build up in the environment of POPs and the associated devastating damage, in particular to the unborn foetus and developing child, **the approach proposed the US, Canada and Australia was a recipe for global disaster.** The treaty negotiations represented an historic opportunity to reverse the destructive course, and history shows who was responsible for their success, and who was not. The irresponsible positions of these countries included:

1. **No “aim of elimination”** for the unintended POPs, dioxins and furans (contrary to the demand from developing countries and the EU);
2. The US proposed **general exemptions for all POPs**, which would exclude from the scope of the treaty, among others, all stockpiles of POPs existing when the treaty would enter into force;⁹
3. Until very late in the negotiations, the **US refused to acknowledge or accept language addressing chlorinated materials as the real source of unintended POPs** (dioxins and furans) created when chlorinated materials combust;
4. **No reference to the Precautionary Principle** as the basis for decision-making within the treaty;
5. **No new mechanisms nor sources of money to assist developing countries** with their obligations and implementation. (Here again, the US, Canada and Australia wanted a draft only for their own interests, rather than the welfare of the global community).

As the negotiations were reaching their final phase, the US approach was getting worse. A US lobby memo leaked to Greenpeace revealed the delegation’s abuse of the facts, and use of **misinformation to try and convince the EU countries to form an alliance to negotiate against the developing countries.**

A few months after taking office, as he became known as *the Toxic Texan* for his attacks on the Kyoto Protocol on Climate Change, George W. Bush announced that the US administration would sign the Stockholm Convention on POPs, which was opened for signature in May 2001. Greenpeace welcomed the fact that Canada became the first OECD country to ratify the POPs Convention shortly after it was opened for signature. It will be interesting to see if the US, Australia and the rest of the JUSCANZ countries continue to act as a bloc, and ratify the POPs Convention before the Johannesburg Summit. It would signal that, perhaps, these countries are willing to join and support the rest of the international community on measures to protect the environment.

⁹ This had the potential to promote the release of POPs since an incentive would exist for producers to create stockpiles pending entry into force of the Convention.

Case Study # 7 – US, Canada and Australia Undermining the Negotiations on the Kyoto Protocol

The role of the **United States, Australia and Canada** in undermining global efforts to protect the climate is so well known that it almost does not bear repeating; and although they have led the charge, they were and are not alone. They have been joined at times by Japan, New Zealand, and of course the OPEC countries. But Japan and New Zealand have now agreed to ratify and be bound by the Kyoto Protocol, and **Saudi Arabia's role as the US stalking horse** within the climate negotiations has been weakened, primarily because of **George W. Bush's announcement that the US was pulling out of Kyoto altogether.**

Back at the **Earth Summit in Rio in 1992**, when the final touches were being put on the UN Framework Convention on Climate Change, the **US vigorously opposed the inclusion of targets and timetables** in the Climate Treaty. 'The American way of life is not up for negotiation', said George H.W. Bush at the time, referring to the need to preserve Americans' right to cheap, subsidised gasoline and the right to waste energy in all its forms at a furious rate, **rivalled in the industrialised world only by Canada and Australia.**

After it was recognised that the 'voluntary' measures agreed at Rio were insufficient, **the 1995 Berlin Climate Summit** set the course towards the mandatory targets in the Kyoto Protocol. The proposals on the table at the beginning of the Berlin meeting called for 20% reductions in greenhouse gas emissions levels on 1990 levels by 2005. **A concerted effort led by the US, Canada and Australia, the top three per-capita global greenhouse gas emitters, resulted in a watered-down agreement**, to the point that although it was agreed that there should be specific targets and timeframes, they would be negotiated at a later date. So, **first dilute the standards as much as you can, then stall for time.**

In the 30 months or so between the adoption of the Berlin mandate and the agreement of the **Kyoto Protocol in Japan in December 1997, the US, Canada and Australia, led efforts to:**

- **Reduce the original goals** in Berlin of a 20% reduction on 1990 greenhouse gas emissions by 2005, to the aggregate 5.2% reduction for the period of 2008-2012 which was finally agreed in the Kyoto Protocol;
- **Introduce the concept of 'sinks'** into the negotiations, whereby these three countries in particular would receive credit for the carbon dioxide absorbed by forests and farmlands in their national territories. This would enable countries to avoid making efficiency improvements and postpone the inevitable shift away from carbon intensive fuels towards renewable energy. The battle over the scientific credibility of 'counting' sinks towards climate protection rages on,

but the emerging science is telling us that sinks will, at best, buy us some time; **and they'll come back to haunt us later in a warming world.**

- **Fight attempts to give the Russian Federation a realistic target.** Instead, they argued for targets based on Russian emissions prior to the collapse of the Soviet-era economy, thereby ensuring that Russia would have large quantities of so called '**hot air**' – the difference between Russian emissions today, and the much larger 1990 emissions prior to the economic collapse. This 'hot air' will be available on the international market for trading, i.e., countries can 'buy' them instead of reducing emissions at home. Ironically, flooding the market with these credits may mean that the international price of carbon is so cheap, that the trading system may not work as effectively as it otherwise might; and the US, which would be the primary market for these cheap credits, is no longer in the game.

This is by no means an exhaustive list.

In the more than three years AFTER Kyoto was adopted, **the US, Canada and Australia fought to weaken the Protocol even further.** They opposed putting caps on allowable sinks credits; they pushed for crazy definitions of sinks that further widened the 'loopholes' in the treaty (**the Australians at one stage wanted to classify anything taller than a meter as a tree, and the US wanted to include 'below ground detritus' in their national accounting**); Canada pushed for **nuclear power** to be counted within the Treaty system as '**clean energy**'; and they fought to put sinks into the Clean Development Mechanism. When the negotiations finally broke down in The Hague in November of 2000, **nobody could decide who was the worst culprit, the US, Canada or Australia.**

Then in **March of 2001 George W. Bush** delivered the coup-de-grace on the American strategy. **Having brought everyone else down to the lowest common denominator, he walked away from the table.** This was done shortly after US Secretary of State Colin Powell had gotten agreement from COP6 Chair Jan Pronk to delay the resumed COP-6 negotiations by three months so the new US administration could decide on its policy – **the usual delaying tactics.**

After a major diplomatic effort on the part of the Europeans and some developing countries, the climate talks resumed in **Bonn, Germany in July of 2001**, shortly after **the EU had extracted a promise from President Bush not to stand in the way of other countries desire to protect the climate.**

In Bonn, the focus was on getting Japan to ratify the Protocol. Both Canada and Australia continued to try and weaken any eventual agreement, **and Australia pronounced Kyoto 'dead' on a number of occasions.** They tried to re-open issues which had been settled for years, sought to pry the various loopholes in the Protocol as wide open as possible, and generally played a 'wrecking' role at any opportunity. But the focus of the meeting was on coming to an agreement

with Japan, and at the end of the ministerial session there was an agreement on the table supported by more than 180 countries.

Following the Bonn Agreement, the Canadian Prime Minister declared that this agreement opened the way for Canada to ratify the Kyoto Protocol in 2002.

However, when **COP7** opened in **Marrakech**, Morocco in late October 2001, **Canada and Australia continued their 'wrecking' tactics**, with Australian Prime Minister Howard announcing in the midst of an election campaign that Australia 'would not ratify without the US', thereby breaking his own rules for proper government in 'caretaker' mode. Canada, after arguing so strenuously for many years in favour of 'sinks', all of a sudden found it problematic and expensive to report on them. So, now, Canada wanted credit for sinks, but they didn't want to tell anyone where they were!

In **August of 2002**, the situation is as follows: Canada has not definitely announced that it will ratify the Kyoto protocol. The Prime Minister has stated his desire to secure even further credits for export of "cleaner" energy to the US – weakening the deal further. **Some Cabinet ministers have made confusing comments over Canada's ratification intentions**, while the overwhelming majority of the population is in favour of committing to the deal. The current **Australian government has said that it will not ratify without the US, despite 80% public support for ratification**. The Australian Prime Minister gave a *cold shower* to delegates at the Bali WSSD Prepcom on 5 June when he announced a few hours before UNEP's 30th Anniversary celebration that he had decided that his country would stay out of Kyoto. Since the **Bush** administration unveiled in February 2002 its '**Clear Skies**' **Climate plan which will result in an increase of AT LEAST 28%** on its 1990 greenhouse gas emissions by 2010, it continued to campaign aggressively against the Kyoto Protocol, within the WSSD Preparatory Committee, the G8 and elsewhere. For a detailed analysis of the Bush climate plan see:

<http://www.greenpeace.org/~climate/climatecountdown/documents/bushclimate.pdf>

Meanwhile, the European Union and Japan have ratified the Kyoto Protocol at the beginning of June, 2002, and it is hoped that New Zealand will soon do so. The Russian cabinet is well on track to ratify by the end of 2002. Other countries have recently ratified, including the Czech Republic, South Africa and Brazil. **The United States and Australia are quite clearly well outside the international community, and Canada is dithering over which side of the fence it will eventually choose.**

Other Elements for Case Studies:

In addition to the above six case studies **many other examples exist** of the negative role of the JUSCANZ group and in particular the US, Canada and Australia.

These include the following:

- **Opposition to the elimination of Ozone Depleting Substances:** When for the tenth anniversary of the Montreal Protocol in 1997 the European Union proposed to the Parties to accelerate the phase out of HCFCs from the year 2030 to the year 2015, the US again was a primary obstacle opposing the proposal.
- **Undermining the PIC Convention:** The Rotterdam Convention addressing the international trade in banned and restricted chemicals and prior informed consent (PIC) was significantly weakened and pushed down to the lowest common denominator by the negotiating positions of the JUSCANZ countries.
- **Attempts to prevent progress on the global ocean dumping regime:** In the context of dumping wastes at sea, it is a fact that the US, Canada and Australia proved to be the primary obstacles to ending the practice, which is now banned pursuant to amendments (adopted in 1993) to the annexes of the London Convention, 1972. In the preceding years, the US, Australia, Japan, and especially Canada tried to stop the will of the international community calling for a phase out on the dumping of industrial wastes at sea. In 1993, fortunately, the determination of the vast majority of the London Convention Parties was too strong for the US, Canada, Japan, and Australia. In that year the Parties adopted a phase out on industrial waste dumping at sea, a prohibition on waste incineration at sea, and a prohibition on dumping low-level radioactive waste at sea. The US and Canada did not oppose the radioactive waste dumping ban at the 1993 meeting, but they had opposed this proposal previously during the decade-long controversy that led up to it.¹⁰ It should also be noted that Australia was the only country in the world to maintain for several years a reservation on the phase out of industrial waste dumping at sea. The Australian reservation permitted a mining company to continue dumping industrial waste at sea beyond the phase out date.

¹⁰ It proved difficult even for then Vice-President Al Gore to pull out support from the US administration in favour of the proposal to ban radioactive waste dumping at sea. It was only a few days before the proposal came to a vote that the US announced that they would not oppose it.