

Copenhagen: End Game for Green Imperialism

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Ever since Kant, liberal thinkers have dreamed of another kind of citizenship – world citizenship, in which national loyalties would be extinguished in an all-embracing legal order free from the causes of belligerence, . . . in which the warm relations of membership [of a nation-state] would be replaced by a cool adherence to a scheme of abstract duties and rights. Roger Scruton, *The West and the Rest*, 2002, Continuum, London and New York

Less than three years after the fall of the Berlin Wall the Left demonstrated its resilience with an astonishing show of strength. In June 1992, the UN's Earth Summit was held at Rio de Janeiro. It was largest international conference ever; attended by representatives of 172 governments, including 108 Heads of Government or Heads of State. US President George H W Bush, after first resisting the idea, finally gave in under huge pressure from the American Environmentalist movement and attended. Australia was represented by Environment Minister Ros Kelly. 2,400 officially recognised NGO representatives were there and 17,000 attended the parallel NGO forum.

Rio was the brain child of Canadian oil entrepreneur and left-wing international political fixer, Maurice Strong. In writing about Strong, *The New Yorker* commented. "The survival of civilization in something like its present form might depend significantly on the efforts of a single man," *The New York Times* joined in the chorus of adulation, hailing Strong as the "Custodian of the Planet."

It was at Rio that the audacious Green strategy of turning the UN into an instrument of "global governance", run by the Environmentalists of Europe and North America, began to get real traction. The vehicle chosen to provide the motive power for their strategy was the global warming scam, which had taken off in the US under the energetic vice-presidential patronage of Al Gore, and in the UK under the prime-ministerial patronage of Margaret Thatcher, something she later came to regret.

[In her 2002 book *Statecraft: Strategies for a Changing World*, she wrote. . "since no plan to alter climate could be considered on anything but a global scale, it provides a marvellous excuse for worldwide, supranational socialism"]

As a consequence of Rio the UNFCCC (UN Framework Convention on Climate Change) came into effect on 21 March 1994. The UNFCCC was a key pillar of Imperium Viridis and it has generated more jobs, trips, conferences, and rent-seekers than anything previous in world history. It is founded on a scam – the article of faith passionately held by warmists – that by reducing anthropogenic emissions of carbon dioxide – mankind can control the world's climate, and it was this article of faith which was to provide the foundation for the Green's imperial ambitions.

There were two major obstacles for the Greens to overcome if they were going to reshape the world into a post-Westphalian global empire run by the Green NGOs and their allies and sponsors in governments in Europe, the US and Canada. First, the UN itself is a club of sovereign nation-states. The UN Charter was a 1940s restatement of the principles of Westphalian sovereignty, and although the UN bureaucracy chafed at being mere administrators of a club of nation-states, and longed for taxation powers which would make them financially independent of the club membership, none of the world's great powers, least of all the US, were at all interested in the idea of giving the UN financial independence.

[The nation-state and its sovereignty grew out of Western Christendom, and its characteristics were settled by the Treaty of Westphalia, which brought to a conclusion the Thirty Years War of 1618-1648. It is said that between 30% and 40% of the German-speaking peoples of Europe died during this conflict. This Treaty recognised that the Holy Roman Empire was spent; it proclaimed the full territorial sovereignty of the former members of the this Empire; and it resolved the religious issues by recognising the right of private worship, liberty of conscience, and the right of emigration, everywhere in Europe except for the hereditary lands of the House of Hapsburg. The Treaty of Westphalia laid the basis for the global order we have today, and the UN Charter of 1945 is a contemporary version of it.]

A characteristic example of Green complaint concerning the UN Charter was provided by Jessica Tuchman Matthews, a major player in the US Environmentalist Movement and a columnist for the Washington Post.

*Meanwhile, climate change, other environmental trends, and growing economic interdependence are undermining sovereignty in ways we cannot restore. **The United Nations Charter may still condemn outside interference in the domestic affairs of member states, but unequivocally "domestic" concerns are becoming an endangered species.***" (Washington Post, 2 Feb 1991)

So although the UN was not the ideal vehicle for introducing "global governance", Maurice Strong and his colleagues thought they could, in due course, change the UN structure to accommodate their ambitions

A more difficult obstacle for the Green imperialists was the World Trade Organisation (WTO), formerly the GATT Secretariat. The WTO was not connected with the UN, but was even more committed than the UN to principles of Westphalian sovereignty. The significance of the WTO and the principles of the GATT are not widely appreciated, and some explanation is required. Its importance to the Greens was that it was the lion in the path of their desire to use trade sanctions, rather than armed force, as the means whereby they could build their empire.

The key to understanding the extraordinary success of the GATT and subsequently the WTO is that under its rules, the domestic autonomy of the contracting parties to the GATT (since 1995 the members of the WTO) is protected. Trade sanctions may only be imposed if they are in accordance with the provisions of the agreement to which every party has **freely assented** on accession.

The WTO is therefore a club of nation-states, and any member can resign at any time. But membership is a highly valued thing and both Russia and China went to great lengths to

secure membership in recent years. It is a rules-based club and central to its legal structure is the protection of the national sovereignty of the members.

Under the GATT charter, now the WTO rules, countries remain sovereign in their domestic jurisdiction. They are free to regulate their labor markets, their environmental standards, and economic and commercial life generally. The great economic and military powers cannot (at least lawfully under the WTO rules) propose extraterritorial laws, directed against another member of the WTO, and seek to enforce those laws through coercive trade restrictions.

There are many examples where opinion-makers or legislators in the economically powerful countries have disapproved of regulations, customs, or industrial processes or practices which apply in other countries, and have thought it desirable, through the use of trade restrictions, to bring pressure to bear to bring such things to an end. One of the better known examples was the attempt by the US to coerce its trading partners to adopt particular fishing methods for catching tuna. The US imposed primary trade embargoes on exporters of Mexican tuna unless they applied certain fishing methods and secondary embargoes on countries which imported Mexican tuna for processing and re-export to the US. Two GATT dispute panels advised that the measures contravened the provisions of the GATT. They have become watermarks of judgements which were based on law rather than power, and which favoured the economically weaker plaintiffs. Because the use of trade restrictions was central to Green plans to establish a world-wide Green Empire, Imperium Viridis, the WTO became a major target of Green propaganda, particularly in the US

Jessica Mathews set the tone when she attacked the GATT decision in the tuna-dolphin case.

The task of untangling the intricate links between trade and environmental protection had just begun when a 1991 GATT ruling on a dispute between the US and Mexico over tuna fishing methods threw the scene into chaos. Nations can use trade measures to protect natural resources - for example, air quality - said the GATT judges, but only within their own borders, not beyond. So what happens when the wind blows?

While perhaps a legally valid interpretation of the 45-year-old GATT agreement, the ruling was obviously preposterous. (Washington Post, 14 Oct 1996).

This attack was characteristic of a major campaign directed against the GATT-WTO within the US, which was sustained for a decade or so. The coalition which formed to pursue this campaign comprised the unions (which wanted trade barriers against imports based on 'cheap labour'), the environmentalist movement, which wanted to be able to impose trade bans on products they disapproved of, and the protected industries such as textiles which still enjoyed immunity from the GATT rules but which knew that time was running out for them. So it was a formidable coalition and their efforts came to a climax at the WTO meeting held at Seattle in Nov-Dec 1999.

An army of protestors from all over the world descended on Seattle for that week. Their ambition was to disrupt the meeting, preferably in toto, and they succeeded to the point where for the first two days nothing could be done. After two days, with the use of tear gas and other anti-riot tactics, the Seattle police had restored order sufficiently for the meeting to get under way.

At that time President Bill Clinton flew in on Airforce One with a plea to the meeting to accept trade sanctions for environmental and labour standards reasons.

His plea fell on deaf ears. China was not then a member of the WTO but India took on the leadership of the developing world and made it clear beyond argument that any amendments put forward to change the WTO rules to legitimise such trade sanctions would be defeated by huge majorities.

So that was that. President Clinton returned to Washington rebuffed. The integrity of the WTO legal structure was upheld and the Green threat of trade sanctions against recalcitrant nations who refused to accept the global decarbonisation regime at the heart of the eco-imperialist agenda was shown to be without substance.

It should not be forgotten that in the months preceding the UNFCCC's COP III, held in Kyoto in December 1997, the Green imperialists, for whom success at Kyoto was critical to their strategy for "global governance" warned our government of two consequences of refusal to accept the European demands at Kyoto. The first was that Australia would, if it refused to sign and ratify the Protocol, become an international pariah. The second was that trade sanctions would, as the manifestation of international disapproval, be used against us. This latter claim appeared in print scores of times. The Howard Government's handling of this debate was woeful, primarily because Environment Minister Robert Hill had carriage of the debate. Not once did any government minister, let alone the Prime Minister, rebut this charge and a number of people who should have known better, readily accepted the argument that trade sanctions could be used against us if we did not accept the policies proposed by the "international community" (in this case the Europeans acting in concert with the Clinton Administration) at meetings in far away cities such as Kyoto or Buenos Aires.

John Howard's most celebrated defence of Australian sovereignty was his statement concerning refugees who sought to gain entry and residence here by landing on Australian soil and using our legal processes (governed by the UN Convention for the Status of Refugees), to secure their ambitions. He said "we will decide who comes into this country and the manner in which they come". It proved to be a position endorsed by a large majority of Australians. The Left hated it but the ALP knew that if they went with Left, they would be mauled at the polls.

What is inexplicable is that although John Howard maintained that Australia would not ratify the Kyoto Protocol, because "it was not in Australia's interests" he never used the abrogation of sovereignty clauses in the Kyoto Protocol to justify his position. The relevant text, establishing supra-national institutions which would override the sovereignty of those nation-states which had ratified the Protocol, is found in article 3. These supra-national bodies, established under the Kyoto Protocol, would have rights of entry, inspection, and the imposition of financial penalties on those states which had failed to meet their Kyoto obligations.

Article 3, para 4 of the Kyoto Protocol states

The Conference of Parties . . . shall . . . decide upon modalities, rules and guidelines as to how and which additional human-induced activities related to changes in greenhouse gas emissions and removals in agricultural soil and land use change and forestry categories, shall be added to or subtracted from, the assigned amount for Parties included in Annex I, taking into account uncertainties, transparency in reporting, verifiability, the methodological work of the Intergovernmental Panel on climate Change, the advice provided by the Subsidiary Body for Scientific and Technological Advice . . . Such a decision shall apply in the second and subsequent commitment periods.

The key words in this text of UN speak are "The Conference of Parties shall decide." In reality these decisions would have been taken by the international carbon police, headquartered in Bonn, the proposed capital of the Imperium Viridis, under the benign supervision of the Chairman of the UNFCCC.

Because the use of fossil fuels is central to the operation of a modern economy, this clause gave the UNFCCC Carbon Inspectorate vast powers relating to the economic life of those nations which acknowledged their authority.

On 14 October 2009, Christopher Lord Monckton gave a speech in St Paul, Minnesota, where he warned the American people that President Obama would go Copenhagen on 13 Dec 2009, and sign away, for ever, America's sovereignty. The President would do this by signing an International Protocol, the Copenhagen Protocol, that would establish a world government to which the US would be subject. Monckton quoted text from the negotiating document intended to gain approval at Copenhagen. This text was an update of the Kyoto Protocol text cited above

This speech captured a great deal of attention around the world, including Australia. It raised again, as did the Kyoto Protocol, the questions which arise when sovereign nations such as the US or Australia, sign and subsequently ratify international treaties which purport to limit their freedom of action in the future in matters great or small. Of all the nations of the world the US is the nation most jealous of its sovereignty. The American founding fathers were very hostile to the practice then common in Europe where sovereigns could meet in secret and agree to treaties of which their subjects were completely unaware. And so the US constitution provides that the US cannot ratify an international treaty without the advice and consent of the US Senate, and a two thirds majority is required. That is why President Clinton, although an enthusiastic supporter of the Kyoto Protocol, did not even contemplate sending the Kyoto Protocol to the Senate for its consent. In August 1997, four months prior to Kyoto, the US Senate passed a "Sense of the Senate" resolution (the Byrd-Hagel Resolution) which passed by 95 - 0 and which declared that the US Senate would not accept ratification of any treaty requiring decarbonisation, if the developing nations (particularly China) were not also committed to decarbonisation.

So Christopher Monckton's much publicised warning to the American people was based on a complete misreading of the American constitution and the powers of the US President. Nonetheless it triggered considerable attention to the fine print of the

negotiating text of the Copenhagen Protocol, and would have caused considerable unhappiness within the White House.

The UNFCCC's COP 15, or Copenhagen as it was generally called, was supposed to create a post-Kyoto world of decarbonisation (the Kyoto Protocol expires in 2012). This new world order would be created by means of a binding treaty in which the nation states which now comprise the world's polity were to surrender their sovereignty in all matters involving the use of carbon-based energy. Since civilisation in the West, since the mid-C19, has been based on the increasing use of energy for our domestic, industrial and commercial life, and particularly for the transport of goods and people within states and between them, and since the overwhelming proportion of this energy comes from burning fossil fuels, notably coal, this new world order, which we can describe as the Green Empire or Imperium Viridis, would supplant the nation state as the basis of the world's polity.

Up until COP VI, held at The Hague in November 2000, the global governance implications of Kyoto or any successor treaty of global decarbonisation had been implicit. None of the Green NGOs such as WWF had gone to the heart of the matter and made their ambitions explicit. But on 20 Nov. 2000, President Jacques Chirac of France, just prior to the opening made it clear what was going on. The President said:

“An equitable agreement is one that provides for an independent and impartial compliance mechanism, possessing irrefutable data and able to decide remedial political and financial penalties in case of non-compliance. That would avoid the "free-rider" problem, in which a handful of nations make the initial, and most difficult efforts, only to find themselves exposed to unacceptable competitive distortions. By acting together, by building this unprecedented instrument, the first component of an authentic global governance, we are working for dialogue and peace. We are demonstrating our capacity to assert control over our fate in a spirit of solidarity, to organise our collective sovereignty over this planet, our common heritage.”

This speech should have provided the trigger for the Howard Government to withdraw from the UNFCCC, on the grounds that Australia would have no part in any European attempt to impose “global governance” upon us.

An important issue facing Australia is the degree to which the Executive Council, by making a decision to ratify an international treaty such as the Kyoto Protocol can, in effect create domestic law. There is a major distinction between signing a treaty and ratifying it. Australia signed the Kyoto Protocol soon after the Kyoto conference. But Australia did not ratify it until PM Kevin Rudd, with much fanfare went to Bali in December 2007 and formally tendered the instruments of ratification.

Only four countries -- Australia, Canada, Papua New Guinea and the Maldives -- have so far signed the Copenhagen Accord. The UN has delayed indefinitely the deadline for countries to sign the Accord.

In Australia the issue of treaty making and parliamentary scrutiny of this process became a hot issue in the dying days of the Keating Government, when the Security Treaty with Indonesia, which was negotiated in secret, was ratified by the Executive Council not long before the election of March 1996.

As a consequence, and particularly as a result of furious objections from state governments which were affected by this treaty, but had not been consulted or advised of these developments, the Howard Government established JSCOT, the Joint Standing Committee on Treaties. Members of both houses and government and opposition were appointed to this committee. Treaties are not binding on Australia until JSCOT has reported after it has conducted public consultations. The government of the day, however, has no obligation however to take any notice of JSCOT's views.

Dixon J, in *Chow Hung Hing v The King* (1948) 77 CLR 449 at p 478 stated
But a treaty, at all events one which does not terminate a state of war, has no legal effect upon the rights and duties of the subjects of the Crown and speaking generally no power resides in the Crown to compel them to obey the provisions of a treaty: *Walker v. Baird* (1892) AC 491, at p 497 .

So Dixon's view was that a treaty had no impact on domestic law. Any changes required by a Treaty had to be passed by the Parliament. An important example of such parliamentary action concerned The Basel Convention on the Transboundary Movement of Hazardous Wastes and their Disposal, and it is an important example of a treaty which the Australian Government ratified, and which the Howard Government legislated into domestic law in September 1996, in which essential details were completely unknown when the legislation was passed. Lists of materials which were to be subject to trade bans were specified in domestic law by reference to their place in the Basel Convention, but the items in the cited list were still to be determined by committees established by the Basel Secretariat. Australia thus legislated in September 1996, to ban exports of unknown materials, the identity of which were still to be determined by a committee the membership of which was totally unknown to the parliament, which would meet in Geneva or elsewhere in Europe, and decide what materials were going onto the list, and would thus be subject to an Australian statutory export ban.

This was a gross dereliction of constitutional duty. One of the most important activities of a sovereign state is engaging in political activity with other sovereign states. The analogy which assists in understanding this activity is that of a citizen who engages in commercial activity with other citizens and accepts contractual obligations in pursuit of his commercial interests. The difference between the sovereign state and the private citizen is that the sovereign state is acting on behalf of all the citizens. The private citizen has only his own interest to consider. Very few citizens would commit themselves to contracts in which their obligations were open-ended, undefined, or subject to the whims of outside parties. But this is precisely what the Australian Government did when it gave domestic legislative authority to the Basel Convention.

The situation then is that in Australia domestic law, enacted by the parliament, is required to impose any obligations on Australians which are specified in a treaty which has been ratified with the authority of the Executive Council.

But of course if the treaty imposes trade sanctions on those nations which will not accept the obligations of the treaty, then the domestic debate about the treaty will take a very different direction. The Greens have been diligent in promoting the view that carbon tariffs are allowed under WTO rules. The Waxman-Markey Bill, the heart of which is a cap-n-trade emissions trading scheme, was narrowly passed by the US House of Representatives. In order to get the bill through the House a clause mandating carbon tariffs against those countries (eg China) which did not have carbon taxes was inserted. This clause led to very strong protests from both India and China., and President Obama made a statement suggesting that such tariffs would not be imposed.

Because the economic implications of WTO jurisprudence concerning the interpretation of the WTO rules are so great, a body of commentary on the rulings of the WTO's Appellate Body, built up by some of the best lawyers money can buy, particularly in the US, is available for those concerned with such matters for scrutiny.

Alan Oxley, formerly Chairman of the GATT, and now an international trade consultant, summarises this jurisprudence

Mainstream WTO people know carbon tariffs would be challenged in the WTO and the conventional legal view is that they would go down. The most comprehensive assessment is by Gary Hufbauer at the Petersen Institute in DC who considers the risk so great that formal action would be required in the WTO to exempt climate related trade protections from WTO disciplines.

The Greens and climate activists all know this. It has become a Green advocacy orthodoxy to continue to assert that the WTO would permit such trade restrictions.

Trade restrictions are at the very heart of the concerns which India and China have concerning the attempts to impose an Imperium Viridis which would derail their rapid progress towards modernity. So their strategy was to negotiate a document at Copenhagen which would protect their rights under the WTO to be free from trade barriers imposed on the grounds of "climate protection"

The meeting which symbolised the new balance of power in the world took place took place in Copenhagen on the afternoon of Friday 18th December. President Obama had attended a meeting of Heads of Government that morning, including PM Rudd, where all the usual banalities of the global warming scam were recited ad nauseam. China was represented at this meeting by a low level official and President Obama's demands to meet with Chinese Prime Minister Wen Jiabao, had been politely rebuffed.

Learning that PM Wen was closeted with his counterparts from India, Brazil and South Africa, President Obama broke into their meeting room and was politely

offered a seat at the corner of the table. There he agreed to the Copenhagen Accord, the essence of which was

- 1. No compulsory limits on carbon emissions.**
- 2. No emissions reductions at all unless the West paid for them.**
- 3. No international monitoring of any emissions reductions not paid for by the West.**
- 4. No use of "global warming" as an excuse to impose protectionist trade restrictions on countries that did not cut their carbon emissions.**

It was the last point that was the important point. French President Sarkozy's attempts to get some sort of legitimacy for this strategy was decisively rebuffed.

So just as the international ambitions of the socialist enterprise faded after the initial success of the Russian communists, and the failure of imitations elsewhere in Europe subsequently, and the new slogan became "socialism in one country", so the Green movement is giving up on the Imperium Viridis and talking about the possibilities of environmentalism in one country. As events in Australia, the US and Canada have made clear, there is now no prospect of those countries going for unilateral decarbonisation.

It has been end-game for the Green Empire.