XIII INTERNATIONAL ENVIRONMENTAL LAW

International Convention on Climate Change – Australia's objectives

On 7 March 1991 Senator Richardson, the Minister representing the Minister for the Arts, Sport, the Environment, Tourism and Territories, said in the course of an answer to a question without notice (Sen Deb 1991, p 1439):

> In October of last year the Government adopted an interim planning target to stabilise by the year 2000 emissions of greenhouse gases not controlled by the Montreal Protocol on ozone depleting substances, based on 1988 levels, and reduce these emissions by 20 per cent by the year 2005, the most progressive policy, I might say, of any nation in combating the threat of greenhouse climate change.

On 20 June 1991 the Minister for Foreign Affairs and Trade, Senator Gareth Evans, said in the course of an answer to a question without notice (Sen Deb 1991, p 5124):

> Negotiations for the framework convention on climate change, to which Senator Colston refers, which convention would contain appropriate commitments for actions to combat climate change and its adverse effects, began in Washington DC in February this year. The aim is to finalise the treaty for signature at the United Nations Conference on Environment and Development, which is to be held in Brazil in June 1992. ...
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> The Government considers that the negotiations for a climate change convention are one of the highest priorities for international action to address global environmental problems. We put that sort of position on record as early as the Hague conference in March 1989, which I addressed. The Prime Minister also had some things to say in early 1990 to the effect that there is no greater global environmental concern than the greenhouse effect and the depletion of the ozone layer. So we do strongly support this whole exercise.

Protection of the marine environment – pollution by ships – dumping of wastes at sea – International Convention for the Prevention of Pollution from Ships

On 1 June 1990 the Minister for the Arts, Sport, the Environment, Tourism and Territories, Senator Richardson, said in part in answer to a question without notice about an oil slick off the west coast of Victoria (Sen Deb 1990, Vol 139, p 1734):

> Even if there is a positive identification, there remain some difficulties in terms of attempting to do something about it. The nationality of the ship and whether or not that ship's flag state is a party to the International Convention for the Prevention of Pollution from Ships is going to be a problem. Of course, we must also establish whether or not the spill took place in waters of Australian jurisdiction. Any foreign vessel that is caught discharging in territorial waters can face a penalty of up to $250,000 for the owner or $50,000 for the master.

Oil spills are dealt with now under a plan called the National Plan to Combat Pollution of the Sea by Oil.

On 29 May 1991 the Minister for Land Transport, Mr Brown, introduced the Transport Legislation Amendment Bill 1991 into Parliament, and explained the purpose of part of the Bill, which proposed to amend (amongst others) the Protection of the Sea (Prevention of Pollution from Ships) Act 1983, as follows (HR Deb 1991, p 4223):

> The amendments to the Protection of the Sea (Prevention of Pollution from Ships) Act enables Australia to adopt the three recent amendments to the Annex to the International Convention for the Prevention of Pollution from Ships, 1973. These amendments also substantially increase the level of penalties for pollution offences and will allow summonses to be served on the master, owner or agent of a ship when prosecuting such an offence.

Protection of the marine environment – Ashmore Reef National Nature Reserve – Great Barrier Reef Marine Park

For material on action taken by Australia during 1990–91 to protect and preserve the marine environment of the Ashmore Islands and the Great Barrier Reef, see above under **Part V – Territory**, and **Part VI – Law of the Sea**, respectively.

Protection of migratory birds and endangered species – international agreements – implementation

On 6 November 1990 Senator Button, the Minister representing the Minister for Small Business and Customs, said in part in answer to a question without notice about allegations of smuggling of birds on United States military aircraft operating out of the joint facilities at Pine Gap (Sen Deb 1990, p 3477):

> First of all, United States military aircraft landing in Australia are subject to Customs, health and quarantine controls. Secondly, Customs officers can and do conduct searches of those aircraft in accordance with the risk assessed, just as they do with any other suspect vessel or aircraft. The searches extend to goods and persons arriving or leaving on these United States military aircraft flights. ...
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> Australia and the United States of America are member parties to the Convention on International Trade in Endangered Species of Wild Flora and Fauna. Under this Convention the trade in parrots is subject to stringent international control. The illegal export of any Australian parrot to the United States constitutes breaches of both the United States Endangered Species Act and the US Lacey Act, as well as being an offence under the Australian Wildlife Protection (Regulation of Exports and Imports) Act 1982.
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> The Australian National Parks and Wildlife Service has, for many years, maintained close liaison with the United States Fish and Wildlife Service on such matters as combating the illegal traffic in fauna. United States military flights have received attention in the course of that liaison but still no suggestion of smuggling has been uncovered. Stringent security controls

over these flights and over the Pine Gap installation provide a strong deterrent against their use as a smuggling conduit.

Note: for a list of wetlands designated by Australia under the Convention on Wetlands of International Importance especially as Waterfowl Habitat, 1971, see the written answer of the Minister for Foreign Affairs and Trade, Senator Gareth Evans, on 11 October 1990 (Sen Deb 1990, p 2793–5).

Protection of Antarctica – Antarctic Minerals Convention – proposals for a World Park and a Wilderness Reserve – possibility of United Nations mandate to administer Antarctica – comprehensive convention for the Protection of the Antarctic environment

On 17 August 1990 the Minister for Foreign Affairs and Trade, Senator Gareth Evans, delivered a speech in Hobart on Australia's Antarctic initiative. Part of his speech was as follows:

> The starting point for our decision, and all our subsequent activity, is the vital need to protect the indisputably fragile Antarctic environment. To do so is vital for science, vital to preserve the richness of the Southern Ocean, vital for the Antarctic's highly specialised wildlife and ecosystem, and vital for the world's environment.
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> Already the existing level of activity in the Antarctic poses worrying environmental threats. But those threats are minor compared to those entailed in mining and oil drilling. However much CRAMRA (which I shall refer to from now on as the "Minerals Convention") professes to take environmental factors into account, the environment would come out the loser should there be mining. The Antarctic environment is so unique, so uniquely fragile, and so irreplaceable that it simply cannot be treated in the same way as any other land mass around the world, where one may well want to argue out, and balance out, the competing claims of mineral exploitation and environmental protection. The only prudent response for this unique Antarctic wilderness is to remove altogether the option of mining which the Minerals Convention left open.
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> To demonstrate as unequivocally as we can Australia's determination to see that mining does not take place in the Antarctic, the Minister for the Environment, Mrs Kelly, and I are today jointly announcing that the Government has decided to legislate this session to ban all mining in the Australian Antarctic Territory, including offshore, on the continental shelf of that Territory. The legislation will extend to Australians and non–Australians alike so far as the Australian Antarctic Territory is concerned; it will also ban mining by Australian nationals anywhere else in the Antarctic region. "Mining" for the purposes of the legislation will include oil drilling, and the related steps of prospecting and exploration.
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> The new legislation will commit Australia in law to the approach we have adopted as policy. It indicates realisation of the high stakes involved and is a concrete embodiment of our determination to preserve the Antarctic

> environment. It is a signal to the international community that our commitment to the approach we have begun will not falter. Australia intends to maintain its leadership in working with France towards an international prohibition on mining. The legislation will illustrate what we expect collective international action to achieve.

On 11 December 1990 the Minister for Foreign Affairs and Trade, Senator Gareth Evans, said in answer in part to a question without notice (Sen Deb 1990, p 5378):

> I am delighted to confirm to the Senate, as has been widely reported in the media over the last two or three days, that at their meeting in Chile, the Antarctic Treaty parties last week all accepted a commitment to negotiate a prohibition on mining activities and a new legal instrument setting out a comprehensive environmental protection regime for the Antarctic. The Treaty parties adopted as a basis of negotiation a text which states that – and I quote:
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> > Any activities relating to mineral resources, other than scientific research, shall be prohibited ...

On 7 May 1991 the Prime Minister, Mr Hawke, said in the course of an answer to a question without notice concerning negotiations in Madrid for an agreement to protect the Antarctic environment (HR Deb 1991, pp 3068–9):

> At the outset I want to say that the draft agreement was, in our judgement, a magnificent breakthrough. It was a fitting culmination to the campaign that was begun by Australia, in cooperation from the outset with the Government of France.
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> The draft agreement includes extremely tight provisions prohibiting mining and mineral resource exploration. It means that, even if a review conference is called after the initial 50-year period, any amendment to the prohibition would need the agreement of all current consultative parties such as Australia. I should also mention one very important aspect of this issue which has tended to be overlooked; not only did we get a prohibition and an effective veto by all the consultative parties, but we also made great progress in establishing a comprehensive environmental protection regime and the designation of the Antarctic as a natural reserve devoted to peace and science. There will be measures to ensure compliance with the environmental agreement.

On 4 July 1991 the Prime Minister, Mr Hawke, issued a news release which read in part:

> International agreement has now been reached to prohibit mining in Antarctica. The last differences over the text of the Environment Protocol to the Antarctic Treaty have been resolved and the Protocol can now be signed in the near future.
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> The final step has been agreement by the United States – announced by President Bush this morning – to a compromise proposal on the outstanding

issue of the circumstances under which a party could withdraw from the Protocol. I welcome the United States' decision and the agreement which it has now made possible.

The Protocol is the result of an initiative launched by Australia and France in mid–1989 to have the Antarctic Minerals Convention set aside in favour of a new agreement prohibiting mining in Antarctica and providing for more comprehensive environmental protection for that region.

On 4 October 1991 the Minister for Foreign Affairs and Trade, Senator Gareth Evans, and the Minister for the Arts, Sport, the Environment, Tourism and Territories, Mrs Kelly, issued a news release which read in part:

Australia would be one of the first nations to sign an international agreement declaring the Antarctic a nature reserve and banning mining, the Minister for Foreign Affairs and Trade, Senator Gareth Evans, and the Minister for Arts, Sport, the Environment, Tourism and Territories, Mrs Ros Kelly, said today.

The Ministers said Australia would sign today the Protocol on Environmental Protection to the Antarctic Treaty at a ceremony in Madrid.

They said the Protocol would establish Antarctica as a nature reserve devoted to peace and science where mining was prohibited.

"The protocol follows an initiative taken by Australia in the middle of 1989 and will provide greater protection for the vulnerable Antarctic environment."

On the same day the Minister for Foreign Affairs and Trade, Senator Gareth Evans, said in Canberra in the course of the opening for signature the Environmental Protocol to the Antarctic Treaty:

A third important lesson from the past two years of negotiation has been the importance of the Antarctic Treaty system and the fact that it has been flexible enough to accommodate improvements and additions when necessary. The achievements of the Antarctic Treaty system are formidable: for thirty years it has protected the environment of Antarctica, kept the continent free of political and strategic conflict and preserved it as an area of scientific enquiry.

In a world searching for forms of cooperation to accommodate radical political and economic changes, the Antarctic Treaty system serves as a useful example of international cooperation and goodwill.

The Treaty system is no more immune than any other international institution or agreement from the need to keep up with the pace of international change. Until recently, the Treaty Parties had addressed environmental issues in a very piecemeal way. The important point here, though, is that the framework of the Treaty system – which already included a number of measures for the protection of the flora and fauna of Antarctica – was able to accommodate the more comprehensive Protocol adopted yesterday. And the Treaty's outstanding record in terms of adherence to its

provisions make it likely that environmental protection through the Treaty will work.

There is no reason why the ban on mining should not be as lasting as the other prohibitions in the Antarctic Treaty, provided it continues to attract the same degree of international consensus. The Protocol on environmental protection provides for a review conference after fifty years, but there is no compulsion to hold one. And if a review conference is held, the requirements for amending the Protocol are so stringent that it would be very difficult to have the ban on mining lifted.

I should make the point that before any question arises as to what happens in fifty years time, there is still some work to be done now in implementing the basic ban. To provide truly comprehensive protection in practice as well as theory we need to move forward on several fronts. First, the Treaty partners must ensure the early entry into force of the Protocol. In the meantime, the Treaty partners must be encouraged to apply provisionally the rules and procedures of the Protocol to the greatest extent possible. The Treaty partners can also maintain the momentum by the early provisional establishment of the Committee for Environmental Protection envisaged by the Protocol. Finally, since the rules of the Protocol bind only the parties to it, we must all work to promote the international acceptance of its objectives and purposes.

Protection of the Antarctic environment – Australian inspection team visits Chinese base

On 7 February 1991 the Minister for Foreign Affairs and Trade, Senator Gareth Evans, issued a news release which read in part:

The Minister for Foreign Affairs and Trade, Senator Gareth Evans and the Minister for the Arts, Sport, the Environment, Tourism and Territories, Mrs Ros Kelly, announced today that Australia had conducted an inspection of a Chinese base in Antarctica in accordance with the provisions of the Antarctic Treaty. In recent years Australia has also inspected French and Soviet bases.

The inspection team comprised officers of the Antarctic Division and of the Department of Foreign Affairs and Trade. The team will prepare a report which will be distributed to all Antarctic Treaty parties.

Under the terms of the Antarctic Treaty, each Consultative Party has the right to designate "observers" to carry out inspections of other parties' activities with complete freedom of access to all areas of Antarctica, including all stations and installations there.

Senator Evans said the inspections were an "important verification mechanism designed to promote the objectives of the Antarctic Treaty and to ensure the observance of its obligations, including the Treaty's disarmament provisions and prohibitions of military activities, nuclear explosions and disposal of nuclear waste".

"The inspection reports are useful for making Treaty parties more aware of each other's operational and scientific activities and environmental management."

Protection of the marine environment – Persian Gulf – oil spill

On 12 February 1991 the Minister for the Arts, Sport, the Environment, Tourism and Territories, Mrs Kelly, said in the course of an answer to a question without notice (HR Deb 1991, p 319):

> Iraq's action is a deliberate act of environmental vandalism, is clearly against customary international law and has been condemned by the Prime Minister and other Ministers. I point out for the information of the House that the oil spill is equivalent to about 11 million barrels of oil. From the northernmost point it extends 300 kilometres in length and it comprises six separate oil slicks of varying sizes.
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> Australia is party to the Organisation for Economic Cooperation and Development Environment Ministers' statement of 30 January this year, which condemned the release of oil and confirmed the readiness of OECD countries to assist states in the region in combating the oil spill. The Australian Maritime Safety Authority has offered to provide the Government of Saudi Arabia with booms, skimmers and beach cleaning units for use in the Gulf.

World Heritage List – International Convention for the Protection of the World Cultural and Natural Heritage – requirements for de–listing areas of world heritage status

On 17 October 1991 the Attorney–General provided the following written answer to a question on notice (Sen Deb 1991, p 2353):

> The process of listing properties on the World Heritage List is a matter of international law which does not of itself require domestic legislation. For the same reason a domestic law, such as a Commonwealth Act or regulation, could not operate to remove an area from the World Heritage List.
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> The World Heritage List is established under Article 11 of the Convention for the Protection of the World Cultural and Natural Heritage. Australia is a party to that Convention. Although the Convention itself does not provide for removal of a property from the World Heritage List, the Operational Guidelines issued under the Convention do. Under those guidelines there are two circumstances which may give rise to removal. The first is where the property has deteriorated to the extent that it has lost those characteristics which led to its inclusion on the World Heritage List. The second is where the property was under threat at the time of its nomination to the List and the necessary corrective measures to remove the threat have not been taken within the time allowed. A removal can only take place if approved by a majority of two thirds of the World Heritage Committee.