XIII. International Environmental Law

Hazardous wastes - Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal - Australian accession

On 17 February 1992 the Minister for the Arts, Sport, the Environment, Tourism and Territories, Mrs Ros Kelly, issued a news release which read as follows:

> The Hon. Ros Kelly, Minister for the Arts, Sport, the Environment and Territories, announced today that Australia had joined the Basel Convention. Australia's action brings the Convention into force internationally on 5 May 1992, since it is the 20th country to join.
>
> "The very worrying situation of industrial countries shipping toxic waste to developing countries that didn't have the environmentally sound means to dispose of them is over", Mrs Kelly said. "These toxic waste stockpiles were an environmental time bomb waiting to go off when the containers leaked waste into the soil and local water systems."
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> The Convention bans this type of trade in hazardous wastes. It strictly controls the movement of hazardous wastes and requires the consent of both the exporting and importing country. Hazardous wastes include polychlorinated biphenyls (PCBs) and banned pesticides such as DDT.
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> "But, as far as Australia is concerned, the Convention will not impede the international trade in commonly recycled, commercially valuable materials, such as many scrap metals and used paper", Mrs Kelly explained.
>
> The Convention requires member countries to move toward disposing of their own waste domestically. The high disposal costs of environmentally acceptable disposal means that new, cleaner technologies and industrial processes will be developed to minimise the production of these wastes.
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> The minimisation and management of the hazardous waste stream is one of many strands to the Commonwealth Government's wide ranging National Waste Minimisation and Recycling Strategy which will steer waste management in Australia into the next century.

The following is extracted from an item by Peter Lawrence in the Department of Foreign Affairs and Trade publication *Backgrounder* of 10 April 1992 (Vol 3 No 6, p 16):

> In the last two decades the management of hazardous waste has become an issue of great concern to the international community. It has been estimated that globally 325–375 million tonnes of hazardous waste are generated each year.
>
> In the 1980s, there were a number of serious incidents which resulted from the illegal dumping of hazardous waste in developing countries. Arguably the worst was the dumping of 3,800 tons of hazardous waste in Nigeria. ...

Incidents such as this led to the negotiation of the Basel Convention on the Transboundary Movements of Hazardous Wastes and their Disposal, 1989. Australia was active in the negotiation of this agreement which is the first multilateral treaty imposing legal obligations on States in relation to the transboundary movement of hazardous wastes.

The main elements of the Convention are:

- obligations on Parties to minimise the generation and movement of hazardous waste;
- Parties to the Convention cannot send hazardous wastes to other Convention Parties that ban imports; similarly Convention Parties cannot ship hazardous wastes to non-Parties;
- the so-called principle of "prior informed consent" according to which, before an exporting country can start a shipment on its way, it must have the importing country's written consent. The exporting country must first provide detailed information on the intended export to the importing country to allow it to assess the risk;
- shipments between Convention Parties are not permitted where the importing country does not have the facilities to dispose of the wastes in an environmentally sound manner;
- shipments of hazardous wastes must be packaged, labelled and transported in conformity with generally accepted international rules and standards;
- to ensure that international trade in commonly recycled commercially valuable materials is not impeded, such as scrap metal and used paper, Convention Parties may register with the Convention Secretariat bilateral agreements which conform to the environmental standards set out in the Convention;
- in case of illegal shipments of hazardous wastes, the State of export must accept the return of the waste and ensure its safe disposal;
- the requirement that the domestic disposal of hazardous wastes in the most environmentally friendly manner possible.

At present Australia does not dispose of certain major types of hazardous waste, but exports them. These include polychlorobiphenyls and organochloride pesticides. Australia has both national – the Hazardous Waste (Regulation of Exports and Imports) Act 1989 – and State legislation dealing with the disposal of hazardous wastes.

The Federal Government's proposed National Waste Minimisation and Recycling Strategy will establish a long-term waste minimalisation and management strategy for Australia. The strategy is expected to be finalised by May 1992 and will be administered by the newly created Commonwealth Environment Protection Agency (CEPA), which will oversee both compliance with and the operation of the strategy in co-ordination with the States and Territories. ...

The agenda for the first meeting of parties to the Basel Convention, expected to take place in November, 1992, will include the transfer of technology to deal with waste disposal to developing countries. The high costs

of environmentally acceptable disposal means that new, cleaner technologies and industrial processes are being developed to minimise the production of these wastes.

Australia is well placed to make a contribution in this area as advanced technology in this field already exists and is being currently further developed in this country. These include plasma arc, intended to decontaminate soils, and base catalysed decomposition technologies, directed at liquid waste; which are being developed as environmentally acceptable alternatives to the more traditional high temperature incineration method of disposal of hazardous and intractable waste.

Hazardous wastes - Basel Convention on the Control of Transboundary Wastes and their Disposal - *Maria Laura*

On 18 August 1992 the Minister representing the Minister for the Arts, Sport, Environment and the Territories, Senator Bob Collins, answered a question without notice from Senator Chamarette (Sen Deb 1992, Vol 185, p 22). The question and answer were as follows:

SENATOR CHAMARETTE: I refer the Minister to the shipment of 18 tonnes of toxic waste that left the port of Fremantle on 28 or 29 July 1992 on the ship *Maria Laura*. I ask: first, was a licence issued for the export of this waste? If not, why not? If so, what conditions were placed on the licence? Do these conditions satisfy Australia's obligations under the Basel Convention? Secondly, what is the proposed method of disposal of this waste? When, and to whom, will a certificate of destruction be issued? Thirdly, was the Minister contacted by the Western Australian Government prior to the ship leaving Fremantle? Fourthly, if it is necessary, will the Minister allow the waste to be brought back to Australia? Fifthly, does the Minister intend to take any further action on this matter? Finally, will the Minister permit any further exports of this type?

SENATOR COLLINS: (Q1)(a) Yes. (b) See (a). (c) Conditions relating to type of wastes to be exported; period of export; maximum tonnage; ports of export; method of transport; safe transport by sea; country of import; method of destruction; safe transport by land; facility for destruction; compliance with State and Territory laws; consent by the importing country; provision of advice on each export movement; provision of evidence of destruction; compliance with environmental standards in the country of destruction. (d) I am advised that these conditions, which were applied to the permit holder, were understood to satisfy the requirements of the Basel Convention.

(Q2)(a) High-temperature incineration. (b) Once destruction is carried out, evidence is required to be provided to the Australian Government on destruction.

(Q3) Yes. The WA Government sought export of these wastes.

(Q4) Now that the wastes have left South African waters for France all the indications are that there will be no need to bring them back to Australia.

(Q5) No.

(Q6) The Commonwealth Government is working with State and Territory Governments for destruction facilities for all of Australia's hazardous wastes. It

is not envisaged that there will be further permits granted for export of this type of hazardous waste.

On 9 September 1992 Senator Collins answered a further question without notice from Senator Chamarette on the same topic (Sen Deb 1992, Vol 185, p 604) The question and answer were as follows:

SENATOR CHAMARETTE: My question is directed to the Minister representing the Minister for the Arts, Sport, the Environment and Territories. Firstly, I refer the Minister to the shipment of 18 tonnes of toxic waste that was exported to France on the *Maria Laura* and to a further loading of toxic waste on board a ship in Brisbane two weeks ago. Was the Minister satisfied that the relevant countries had been informed and had given appropriate consent for the waste to pass through their territorial seas prior to the issuing of the permits, in accordance with section 17(1) of the Hazardous Waste (Regulation of Exports and Imports) Act 1990? Does the Minister accept the responsibility for this failure to fulfil the provisions of the Act? Secondly, given that the Independent Panel on Intractable Waste has recommended that no further waste be exported overseas and that BCD Technologies and other companies in Australia are developing environmentally sound and efficient technologies and facilities for the disposal of hazardous waste, is the Minister's decision to allow further exports of toxic wastes, as states in the *West Australian* newspaper on Monday, 7 September, a contravention of article 4, subsection 9a of the Basel Convention?

SENATOR COLLINS: This whole issue has raised a question regarding the interpretation of this convention, which I think will be of significance not only to Australia but to all of the signatories to the convention and those interested in this matter – that is, the interpretation of the expression "transit States". We are currently awaiting advice on that. The Department was of the firm view that all of the actions taken by the Government in this matter met the requirements of the convention. That is as we understood what, I think on any interpretation, is as reasonable a definition of "transit States" as one could expect to get. It was only after the question was asked and an answer provided, that the Department received advice from the Department of Foreign Affairs and Trade that the conditions applied had led in its view to a technical breach of the convention. Definitive advice on this has now been sought from the Solicitor–General by the Department.

It is clear, however, that whatever the strict legal position is, Australia has met the objectives of the convention. There has been no risk to the environment. There was French Government approval to ship the wastes to France. The wastes were packed and transported to the highest standards of safety. The 16–tonne container in which they were shipped meets high environmental standards.

To give some context to this matter, I recall – I rely on my memory in this – that when the question of a high temperature incinerator was being discussed for establishment in the Northern Territory at Tennant Creek, I saw some of the figures about the amounts of wastes generally that are moved around. France has commercial facilities that make money out of disposing of this waste. I saw a figure that indicated that some 700,000 tonnes of waste

generally were imported into France each year from Germany alone. Just to put it into context, this container held 16 tonnes.

The Department interpreted "transit States" to mean those States through which wastes were actually shipped, that is, involving crossing borders and customs barriers, which I do not think is an unreasonable interpretation. Subsequent advice from the Department of Foreign Affairs and Trade was that a broader interpretation should be taken to include countries in whose ports a ship that is transporting the waste was simply to dock, that is, simply to take on fuel. In other words, the sealed contained never actually left the ship or was interfered with or touched; it was simply on board. This other interpretation is that that should also be included in what a transit State is. The department has in the interim been instructed by the Minister to take a very stringent interpretation of these requirements. As I said, we are currently awaiting legal advice as to which one of these interpretations is the correct one.

There seems to be an area of confusion here at the moment. States which may wish to send wastes abroad for safe destruction cannot regulate the behaviour of shipping companies which physically carry wastes around the world. It seems difficult to believe that they can. A very rigid interpretation of the convention would make these kinds of trans-boundary movements almost impossible. Most of these issues can only be resolved – and I am sure they will be resolved – at the first meeting of the conference of the parties under the convention, which will take place in November this year.

United Nations Conference on Environment and Development – Australian position

The following is extracted from an address given on 7 May 1992 by the Minister for Foreign Affairs and Trade, Senator Gareth Evans, to the Australian Mining Industry Council's Annual Minerals Seminar in Canberra:

At the head of the agenda of urgent global environmental issues is climate change. In a number of matters of *degree* – the timing, magnitude and regional patterns of climate change – the scientific jury is still out. But we do know that dramatic changes have occurred in the pattern of gases emitted into the earth's atmosphere. By the time the jury finally returns its verdict, the damage to our planet may be irreversible. So there is every reason for the international community to act now on the basis of that emerging consensus embracing at least that scientific opinion. After all, governments and companies are prepared to commit themselves to programs and expenses on the far less reliable basis of the forecasts of economists!

Australia has been active in the international effort to prepare for presentation to governments at next month's United Nations conference on the Environment and Development – UNCED – a framework Convention on Climate Change. We want a convention that allows practicable, sustainable and cost-effective responses to the threat of greenhouse warming, and one that shares fairly the costs of action.

I want to emphasize strongly that climate change is a global problem that requires global action. We have economic interests of our own, and we are not going to put them at risk by unilateral action. To do so would be simply Quixotic, and would certainly contribute very little to the resolution of the total

problem. So we have constantly said that we will not proceed with the adoption of response measures which have net adverse impacts nationally or on Australia's trade competitiveness in the absence of similar action by major greenhouse gas producing countries.

You will be aware that we have been supporting an agreement based on a target that would stabilise the emission of greenhouse gases by the year 2000 and reduce them by 20 per cent by 2005.

We are all aware that implementation of such a target could have significant implications for Australia, given our dependence on fossil fuels that produce greenhouse gases. Our objectives in the negotiations for a convention have been to move the emphasis away from carbon dioxide – where the impact could fall heavily on Australia – to include *all* greenhouse gases.

We are also working for agreement that subsidies and other price support schemes that encourage higher emissions of greenhouse gases be removed. This is of considerable interest to Australia. There is no reason why the Australian industry, an efficient producer of relatively clean, low–sulphur coal, should be put on the same level as the heavily subsidised industries of other countries.

We have also taken the strong view that the convention should eventually include all countries, not simply the developed and industrialised. Even if developed countries stabilised and reduced their emissions of greenhouse gases, the reductions would soon be made up by the rapid increase in emissions from the industrialising developing countries. At some stage, developing countries will have to participate in global controls on emissions of these gases.

The Interim Negotiating Committee completes its deliberations on the convention tomorrow. The issues I have mentioned and others have made the negotiations for a convention on climate change a difficult and complicated exercise. The exact nature of the agreed convention, even on the central question of targets, is still not finalised even at this late stage. The uncertainty I and my ministerial colleagues have sometimes met in business and industry about the implications is understandable. But I can perhaps give you at least some ground for comfort by saying that UNCED seems likely to find itself considering a rather less far–reaching and more realistic climate change convention than some of the more outspoken critics have predicted.

With regard to other issues being considered for UNCED, the major concern within Australian industry has been that the Biodiversity Convention will contain a provision for global lists, which will have the effect of locking areas away from economic development. The intention of such lists is not to produce a lock–up effect, but simply a mechanism for effective communication and understanding of the nature of the problems country to country. Other forms of review mechanism may serve this purpose just as well, and present indications are that consensus about the list concept is not likely to prove practically attainable.

Finally, there is confusion between the conventions, which will be legally binding, and other documents to be considered by the Rio conference, which will not. UNCED will agree on a Declaration on Environment and Development (formerly the "Earth Charter", but now given a less striking

label, reflecting its increasingly less dramatic content) and an "Agenda 21". The Declaration will set out the principle and goals of sustainable development. "Agenda 21" will contain a program for action to implement those goals, involving trade, aid and related policy. These two documents should not be read like statutes or binding treaties where every word counts. They are there to signpost directions, and should be seen not so much as the architect's fixed plans as the client's general specifications.

Following is the statement made by Ros Kelly, Minister for the Arts, Sport, the Environment and Territories, to the United Nations Conference on Environment and Development (UNCED) on 10 June in Rio de Janerio:

Australia's commitment to addressing and solving global problems is founded on a strong and effective program of local and national policies.

Of course we must play our part, and not ask of others what we do not ask of ourselves.

Australia has a diverse environment. We have tropical and temperate rainforests, huge semi-arid and arid zones, rich agricultural regions. It is a land of contracts and diversity – sun-burnt, rain-drenched, green, blue and brown.

And amidst this diversity, we are one of the most urbanised nations – so the familiar challenges facing the urban world are with us in Australia.

We also share developmental and environmental perspectives with many of our neighbours in the Asia-Pacific region and with many developing countries in other regions. ...

Our policies, efforts – and significant achievements – are outlined in our national report to UNCED.

However, we also recognise that we have come only part of the way, and that much more needs to be done. Many ecosystems remain under threat, and processes can be improved upon.

During the past two years, governments, industry, trade unions and environmental organisations in Australia have worked together towards an ecologically sustainable development (or ESD) strategy for major sectors of the economy. ...

As a federal State, we work together with our State and local governments to achieve environmental objectives.

This year a Commonwealth Environment Protection Agency was established to give leadership in national approaches to the maintenance and improvement of environmental quality.

At the same time we adopted a comprehensive intergovernmental agreement on the environment, to provide a basis for cooperation and information sharing on environmental matters, including national air and water quality standards and cooperation on national conservation and international environmental issues.

Our Aboriginal communities have enabled us to begin to understand and appreciate the value of our land.

At least forty thousand years after the first Australians – the Aborigines – set foot on Australia, we have had to learn to live in harmony with the land, as they did, and not against it. ...

In 1990 we adopted interim planning targets for greenhouse gas emissions. We are seeking to stabilise emissions at 1988 levels by the year 2000 and to reduce them by 20 per cent by the year 2005. However, these are not measures which we will take unilaterally if they are likely to have net adverse economic and trade impacts domestically.

We are developing a national strategy to maintain our great diversity of species and ecosystems. ...

Our Prime Minister, Paul Keating, has firmly asserted that Australia is part of the Asia–Pacific region. We are strengthening our regional links through policy dialogue and cooperation in research and development.

We have established an International Tropical Marine Resource Centre to facilitate the transfer of relevant technology and environmental management expertise to countries in our region and beyond.

Our location and the ferocity of the natural elements have led us to put a high priority on weather and climate research.

We operate one of three world meteorological centres of World Weather Watch, which maintains a comprehensive monitoring of the global atmosphere and a climate change research program. We run two of the global climate models which helped guide the intergovernmental panel on climate change to its conclusions.

Australia gives a commitment that we will help our regional partners to better understand and respond to climate changes. The science of climate is essential to recognising the problems of global warming and attempting to convert them into opportunities.

Working together we can do much to avert the impacts of the natural disasters that afflict our region – the tropical cyclones, floods, droughts and other fluctuations in climate and sea level that may well become more severe as a result of greenhouse warming.

Australia will support the implementation of the Global Ocean Observing System and the Global Climate Observing System in the South–West Pacific and South–East Asia. We will be involving the scientists from our neighbouring countries in our climate and global change research.

Progress in Australia and in our region is vital, but international effort is the real key to solving environment and development issues. Australia has already signed the Climate Change and Biological Diversity Conventions. I urge all countries to ratify these conventions soon.

We regard both conventions as fundamental to genuine and equitable action on these two pressing issues. Neither is an end result in itself, and both require further development and an early start to action.

A a continent with vast areas of arid and semi–arid land, we in Australia understand and appreciate the human and environmental toll caused by desertification. Our role in the growing international focus on this issue will be to make available, where relevant, our expertise in dryland management and agriculture. We support the development of long term and lasting solutions to the pressing problems of desertification in Africa.

Forests are among our most complex and diverse ecosystems and are vital to the economic and social well-being of many people and nations. We support the development of a non-binding statement of forest principles. Australia will also participate in any ongoing negotiations on forests after UNCED.

On the funding issue, I wish to state Australia's willingness to agree to the provisions of additional funds for developing country action on environmental issues of global significance.

We strongly believe that the global environment facility, appropriately restructured to better reflect the views of all its members, is the most appropriate channel for these funds.

Mr Chairman,

UNCED has addressed an ambitious agenda. But that agenda is not by itself complete, we will continue to implement policies which arise from the adoption of the Rio declaration and Agenda 21. Of course, in doing so we will take into account domestic economic circumstances and international priorities for sustainable development.

Our efforts to ensure a better world continue in other forums and success in those forums will be essential complements of the Rio outcomes. As had been noted in UNCED, a freer and more equitable global trading system is a vital precondition for movement to a more sustainable global economy. A first and most urgent step is the successful conclusion of the Uruguay Round of trade talks.

There are a number of global problems which must still be addressed, in particular, we must pursue urgently the goals of arms reduction, and especially an early end to all nuclear testing.

Education is critical to successful follow-up to this conference. Education, not just in our schools and universities, but in the community generally. We need to know more about the value of our biological diversity. Without that, conventions, declarations and agendas are just noble words.

United Nations Conference on Environment and Development - Institutions with environmental role

The following is extracted from an item by John Tilemann in the Department of Foreign Affairs and Trade publication *Backgrounder* of 28 February 1992 (Vol 3 No 3):

The United Nations Summit Conference on Environment and Development (UNCED) is just three months away. There are less than three weeks of negotiating time for outcomes to be finalised. This article outlines the framework in which the conference will take place; takes stock of progress to date and suggests some realisable objectives.

UNCED arose from the Brundtland report, the product of the World Commission on Environment and Development. That in turn arose from growing concern in scientific and other non-governmental and governmental quarters that the world was facing a new generation of environmental problems going beyond those considered by the 1972 Stockholm environment conference. ...

The international system is complex and expensive. The United Nations, perhaps the best known element of that system, is a complex web of organisations, some of which have considerable degrees of autonomy. The UN Environment Program which has its headquarters in Kenya, arose from the 1972 Stockholm conference. It has a specific mandate and has developed its own specific expertise. Its future role is the focus of much attention in the UNCED process.

There is a range of global non-UN bodies with an environmental role, including: the World Bank (whose lending policies have been the subject of much debate by both donor and recipient governments); the GATT (which has recently established a working group to examine the links between environment and trade issues); the International Maritime Organisation (which provides the framework for a range of instruments concerning protection of the oceans); the International Union for the Conservation of Nature, and the International Tropical Timber Organisation (a forum of producer and consumer nations which seeks sustainable production arrangements).

There are many regional bodies: the UN Regional Commissions, of which the Economic Commission for Asia and the Pacific serves our region; regional banks, such as the Asian Development Bank, and other regional development and environment organisations, of which the South Pacific Regional Environment Program is one which commands respect well beyond its own sphere of operation.

Finally, there are national governmental and non-governmental bodies addressing national, regional and global aspects of environment and development problems. These include national development assistance agencies such as AIDAB and voluntary funded organisations like those working under ACFOA. They also include a range of government agencies which collect data, and provide information and training of international as well as national significance - CSIRO; Metbureau and the Great Barrier Reef Marine Park Authority to mention a few in Australia.

United Nations Conference on Environment and Development - Instruments adopted

On 8 September 1992 the Minister representing the Minister for Foreign Affairs and Trade, Mr John Kerin, answered a question upon notice from Mr Hollis (HR Deb 1992, Vol 185, p 550). The question and answer were as follows:

(Q) What instruments were adopted at the UN Conference on Environment and Development and which countries supported them?

MR KERIN: The Minister for Foreign Affairs and Trade has provided the following answer to the honourable member's question:

(A) In total three instruments were adopted at UNCED and two Conventions were opened for signature.

All participants at the Conference adopted the Rio Declaration on Environment and Development, the Agenda 21 action plan and the Statement on Forests Principles. These documents do not, of themselves, impose any legal obligations on governments which adopted them. They do, however,

contain political commitments by virtue of their adoption at the Summit. Consequently, there is a high level of expectation that governments will ensure national approaches are consistent with them.

Australia, in expressing support for these documents, made it clear that they would be implemented in accordance with our domestic economic circumstances and our international priorities for sustainable development.

The Rio Declaration is a charter of 27 principles designed to provide guidance in the implementation of sustainable development.

Agenda 21 is an action plan for promoting sustainable development at the national and international level into the twenty-first century. It contains 40 chapters dealing with subjects including financial resources, technology transfer, institutional follow-up in the United Nations, international trade, atmosphere, agriculture, forests, desertification, biological diversity, biotechnology, oceans, freshwater, toxic chemicals, wastes, the integration of environment and development in decision-making, the rolė of certain groups (such as indigenous people, business), legal instruments and mechanisms, health, poverty, consumption and population.

The Statement of Principles on Forests is described by its full title: a non-legally binding authoritative statement of principles for a global consensus on the management, conservation and sustainable development of all types of forests.

The United Nations Framework Convention on Climate Change was adopted by the Intergovernmental Negotiating Committee for a Framework Convention on Climate Change (INC) at the end of its resumed fifth session in May. The Convention was opened for signature at UNCED, and was signed by over 150 countries, including Australia. Other signatories to this Convention included major greenhouse gas emitters such as the United States, Brazil, Canada, the United Kingdom, China, India, Indonesia, the Russian Federation and Japan. The Convention will come into force 90 days after 50 countries have ratified or acceded to it.

The Convention on Biological Diversity was concluded in Nairobi on the 22 May following the 7th session of the Intergovernmental Negotiating Committee (INC). This Convention was also opened for signature in Rio and over 150 countries, including Australia, signed; the United States being the major exception. Signatories include the EEC, Japan, Indonesia, Thailand, the United Kingdom, Kenya, Zimbabwe, Canada, China, and Chile. The Convention will come into force 90 days after 30 countries have ratified or acceded to it.

United Nations Framework Convention on Climate Change - Agreement at UNCED and Australian ratification

On 12 May 1992 the Minister for the Arts, Sport, the Environment and Territories, Mrs Ros Kelly, and the Acting Minister for Foreign Affairs and Trade, Mr Neal Blewett, issued a joint statement which read in part:

> The Minister for the Arts, Sport, the Environment and Territories, Ros Kelly, and the Acting Minister for Foreign Affairs and Trade, Neal Blewett, welcomed the agreement reached in New York on 9 May on the text of a

Framework Convention on Climate Change. This text would be presented to Heads of Government for signature at the UN Conference on Environment and Development to be held next month in Rio de Janeiro.

Agreement on the text had been reached by the 146 countries participating in the Intergovernmental Negotiating Committee. This was a significant achievement following fifteen months of difficult and at times tense negotiations on an issue widely acknowledged to be one of the most complex ever tackled by the international community. ...

Although the text has fallen short of expectations in terms of commitments to set firm targets and timetables to limit greenhouse gas emissions, it contains a clear political signal of the willingness of all countries to take serious action to address the problem of Climate Change. The agreement reached in New York was recognised by all participants as the first step in a process and as the maximum achievable at this stage. It represents a delicate balance premised on the need to engage all countries in a global effort, with the developed countries taking the lead.

Importantly for Australia, the agreed text covers all greenhouse gases not covered by the Montreal Protocol on Ozone, not just carbon dioxide alone. Australia has been pushing for a comprehensive approach in order to maximise flexibility in responding to the greenhouse problem.

The text also recognises the special circumstances of countries highly dependent on the use and exploitation of fossil fuels. This provision is particularly important for Australia and emerged in response to Australia's efforts to ensure that the Convention addressed the issue of the impact of response measures and provided for equitable burden sharing in this respect.

On 31 December 1992 the Acting Minister for Foreign Affairs and Trade, Mr John Kerin, issued a news release which read in part:

The Acting Minister for Foreign Affairs and Trade, John Kerin, and the Minister for the Arts, Sport, the Environment, and Territories, Ros Kelly, announced today that Australia had ratified the United Nations Framework Convention on Climate Change.

Australia lodged its instrument of ratification with the Secretary-General of the United Nations in New York earlier today. Ratification means that Australia is required legally to meet the obligations in the Convention once it enters into force internationally.

The Ministers said that this was an important achievement. As one of the first countries to ratify the Convention, Australia was sending a positive message to the global community on its commitment to act on this major environmental issue.

Mrs Kelly signed the Convention on behalf of Australia at the United Nations Conference on Environment and Development in Rio de Janeiro in June this year. Australian ratification follows a period of analysis and consultation by Commonwealth and State Governments. "Ratification means that Australia is getting on with the job of implementing the Convention", the Ministers said.

"In early December, the Commonwealth and State Governments adopted the first phase of a National Greenhouse Response Strategy and this, along

with various activities relevant to the climate change agenda, will play a major role in meeting our commitments under the Convention."

Fifty ratifications are needed to bring the Convention into force. Nine countries including Australia have now ratified. The Ministers said that they hoped other countries would follow Australia's lead and ratify soon.

Convention on Biological Diversity - Australian signature

On 5 June 1992 the Minister for the Arts, Sport, the Environment and Territories, Mrs Ros Kelly, issued a news release which read as follows:

Ros Kelly, Minister for the Arts, Sport, the Environment and Territories, and Leader of the Australian Delegation to the United Nations Conference on Environment and Development (UNCED) today signed the Convention on Biological Diversity on behalf of Australia.

"The Biodiversity Convention is the most significant development in the field of conservation and sustainable use of living resources in a generation", Mrs Kelly said.

"Australia actively participated in the negotiations over this Convention for nearly four years because we believe that we must take global action to counteract the global loss of plants, animals and habitats.

"While Australia has a number of effective programs in place, and more in prospect, on threatened species and biodiversity, we recognise that if the problem in our megadiverse country is large, that in the rest of the world is much larger.

"But it is not so big that we should give it up as being too hard. We have to start somewhere. The Convention is page one in the world's action plan on biodiversity.

"It is disappointing that not all nations at UNCED have so far indicated they will sign. I urge them to do so, if not in the interest of the living things of the planet, then in their own self interest.

"Biodiversity is shorthand for the interdependence of all living things. We are the dominant species on the planet, but we are dependent for our continued survival on all the others."

Protection of the ozone layer - Montreal Protocol - Amendments - Australian legislation

In the course of a second reading speech on the Ozone Protection Amendment Bill 1992 on 4 March 1992, the Minister for the Arts, Sport, the Environment and Territories, Mrs Ros Kelly, said (HR Deb 1992, Vol 182, p 747):

The purpose of this Bill is to give effect to the 1990 amendments to the Montreal Protocol on Substances that Deplete the Ozone Layer. Australia will then be able to ratify the amendments to the Protocol. The legislation will also strengthen the existing provisions of the Ozone Protection Act 1989 so that the manufacture and import of substances that destroy the protective shield of ozone in the stratosphere can be phased out in accordance with Australia's national strategy for ozone protection, a strategy which is three years ahead of the Protocol in its current form.

The latest scientific research from the United Nations Environment Program, UNEP, and the World Meteorological Organisation has revealed, for the first time ever, significant year round ozone losses in all areas of the world, other than the tropics.

There is now very strong scientific evidence that various chemicals such as chlorofluorocarbons, CFCs, halons, methyl chloroform and carbon tetra-chloride are causing ozone destruction at a far greater rate than occurs through natural processes. Results of NASA experiments, announced recently, confirm the relationship between ozone depletion and these chemicals. ...

Most Australians will be aware that we rely on a small layer of ozone in the stratosphere to filter out harmful ultraviolet radiation. Excessive ultraviolet radiation has the potential to cause major health problems to humans and animals and severely damage crops and natural ecosystems.

Consequently, if the ozone loss is sustained, our lifestyles and the environment around us will be severely affected. ...

Australia is recognised as a world leader in ozone protection. Australia's action in implementing the Protocol has been coordinated by the Australia and New Zealand Environment and Conservation Council, ANZECC, through the strategy for ozone protection, which was released in 1989. The strategy already provides a basis for phasing out the production and import of CFCs completely by the end of 1997 and is now being reviewed by ANZECC in the light of Australia's achievements to date and recent scientific assessments.

Initially, in 1989, there was resistance by some industry sectors to the early phase-out targets. With encouragement from ANZECC - that is, the environment Ministers - Australia, which was a very high per capita user of CFCs, has already reduced CFC consumption to less than 50 per cent of 1986 quantities. Under our present strategies, by the end of 1995 CFC consumption is likely to have been reduced to about 10 per cent of 1986 quantities, which would be mainly for certain essential uses and the servicing of existing equipment. ...

Australia's decision to phase out CFCs in advance of the 1990 protocol requirements has been vindicated by the recent scientific assessments. International pressure is now mounting for the next review of the protocol to bring forward the phase-out dates. Such a development would bring international ozone protection policies closer to the target dates already established in our national strategy.

The provisions of the Bill before the House will enable Australia to meet its international obligations. The Bill provides for:

- controls on chemicals recently identified by the parties to the Montreal Protocol as being ozone depleting, and
- a means by which the Government is able to implement policies which will maintain Australia's prominent position in ozone protection.

Eleven substances - methyl chloroform and ten lesser known CFCs - will be incorporated into the licence and quota provisions of the Ozone Protection Act. Licences will only be granted to companies which manufactured, imported or exported the substances during the year 1989. Quotas will be

granted to the same companies according to their market share in 1989. This will ensure that there are no new entrants into a diminishing market.

The quantity of carbon tetrachloride used in Australia, other than as a feedstock for the manufacture of other chemicals, is so small that a restricted licence system alone is sufficient to meet the policy objectives of controlling supply and providing for essential uses.

The Bill also includes a provision which enables quotas to be reduced in line with Government policy. In the past the Government has had some difficulty in implementing aspects of the national strategy because the Ozone Protection Act was tied to the protocol. The new provision will allow for achievement of the strategy targets, set in close consultation with industry and community groups. ...

Australians consume less than 2 per cent of the world's CFCs. The direct impact on the healing of the ozone layer of Australia's phase-out policies is marginal. In particular there is little advantage in regulating to remove the last "drop" of CFCs from circulation at any cost. However, Australia can make a contribution to ozone protection far in excess of the impact of our reductions of ozone depleting substances.

It is in the world's interest for developed countries such as Australia to lead by example, and in doing so encourage global compliance with international phase-out strategies. This is particularly significant when considering the escalating needs of developing countries for equipment which, at present, is often CFC-based. Australia has an important role to play in demonstrating what can be achieved and in pioneering strategies and programs which will be directly relevant to the enormous task that must be faced by developing countries if they are to meet protocol phase-out targets. ...

This Bill is designed to give effect to the 1990 amendments to the Montreal Protocol. In addition, it will implement the Australia and New Zealand Environment and Conservation Council's national strategy for ozone protection. It is largely a response to initiatives already taken by both governments and industry, and to the expectations of the community. I believe that the Bill will send a message to all Australians and to the international community that this Government considers protection of the ozone layer to be of the very highest priority.

Protection of the ozone layer - Montreal Protocol - Proposal to bring forward phase-out dates - Australian support

On 19 November 1992 the Minister for the Arts, Sport, the Environment and Territories, Mrs Ros Kelly, issued a news release which read as follows:

Australia is strongly supporting an international proposal by the United Nations Environment Program to bring forward phase-out dates for ozone-depleting substances, the Minister for the Arts, Sport, the Environment and Territories, Ros Kelly said today.

Countries that are Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer will meet in Copenhagen next week to bring forward the phase-out dates.

Mrs Kelly said that key changes being proposed at the Copenhagen meeting were essential if the global community was to succeed in reversing the damage that man-made chemicals had caused to the ozone layer.

"We support the proposal to bring forward phase-out dates for manufacture and import of chlorofluorocarbons (CFCs), methyl chloroform and carbon tetrachloride to the end of 1995 and for halons to the end of 1993.

"This proposal demonstrates that the targets Australia set itself in 1989 in the national Strategy on Ozone Protection were realistic and achievable. ..."

Mrs Kelly said that the Government also supports another proposal to freeze the consumption of so-called transitional substances - hydrochlorofluorocarbons (HCFCs) - from 1996, and to reduce consumption from the year 2000 with a final phase-out in 2020. While these transitional substances were from 10 to 50 times less damaging than CFCs, they still depleted the ozone layer and needed to be phased out eventually.

The Government also supports the inclusion in the Montreal Protocol of methylbromide, a common soil and crop fumigant, together with a freeze on its production and consumption at 1992 levels from 1995, and an international study of alternatives.

Protection of Antarctica - Protocol on Environmental Protection to the Antarctic Treaty ("the Madrid Protocol") - Australian legislation

In the course of a second reading speech on the Antarctic (Environment Protection) Legislation Amendment Bill 1992 on 14 October 1992, the Minister for the Arts, Sport, the Environment and Territories, Mrs Ros Kelly, said (HR Deb 1992, Vol 186, p 2149):

This Bill gives effect to Australia's obligations arising from the Protocol on Environmental Protection to the Antarctic Treaty, known as the Madrid Protocol. The Madrid Protocol designates Antarctica as a natural reserve devoted to peace and science, and puts in place a legally binding and comprehensive regime for protection of its environment. The Government has shown leadership in Antarctic environmental matters and already has made significant progress in implementing the requirements of the protocol. This Bill will enable Australia to move forward to ratification of the protocol.

The Madrid Protocol stands amongst the world's most significant environmental agreements. It is unique in setting out to ensure the protection of the environment of an entire continent. It is an outstanding demonstration of countries working together on environmental protection. Australia thus takes great pride in its role in leading its treaty partners to adoption of the protocol in October 1991.

Elsewhere in the world in recent years we have seen attention given to the longstanding problems of pollution, insensitive development, and uncontrolled exploitation of resources. We have learned from our mistakes. In Antarctica we had a continent seemingly immune from the environmental problems, but our view of Antarctica changed as we came to understand what is happening in the atmosphere. It was Antarctica that revealed the depletion of ozone. Antarctica is a continent of enormous scientific potential; a continent that may provide

invaluable information about the health of the environment in the rest of the world. The Government recognised that Antarctica can only do this if we fully protect it.

Antarctica, once far removed from the attention of most of the world, came to prominence in the 1980s. The decade saw dramatic developments in Antarctic environmental policy, reflecting the increased attention given to the environment worldwide. Antarctica's unique environment provides the setting for a unique approach to international relations. For over 30 years the Antarctic Treaty has set aside the differences between countries and provided the framework for unrivalled cooperation between the 40 countries that are party to it. As an original signatory to the treaty, Australia is fully committed to supporting the Antarctic Treaty and encouraging the consensus approach to decisions about Antarctica's future. The Government therefore believes that by strong support for, and effective contribution to, the treaty system we can achieve the best possible measures to protect the Antarctic.

Without doubt, the most significant recent development in the Antarctic Treaty system was the adoption in 1991 of the Madrid Protocol. Adoption of the protocol represented a dramatic change in attitude by the treaty countries to what are acceptable activities in Antarctica. Following six years of negotiation of a regime that would allow the possibility of mining in Antarctica, the treaty parties have agreed to a regime that prohibits mining. The Government's leadership on this issue was instrumental in achieving what is now recognised as one of the world's most outstanding examples of international cooperation in protection of the environment.

Negotiation of the protocol followed the Government's decision in May 1989 that Australia would not sign the Antarctic minerals convention. The Government had concluded that mining could not be undertaken consistent with protection of the environment. Instead, the Government proposed that treaty parties negotiate a regime which would prohibit mining and provide for comprehensive protection of the Antarctic environment.

When the Government announced its decision it was warmly welcomed by the public. However, overseas, Australia's proposals were not received enthusiastically by many of our treaty partners. ...

The prohibition on mining

Given the context in which the protocol was negotiated, its most significant feature is article 7, which prohibits activities relating to mineral resources other than scientific research. This article represents the commitment of the treaty parties to set aside a whole continent from what was potentially one of the most environmentally destructive activities. The Government had, of course, recognised the need to provide legal means to prevent such activities in 1990, prior to conclusion of the protocol, and we had passed legislation prohibiting mining in the Australian Antarctic Territory and prohibiting Australian involvement in mining anywhere in the Antarctic. This legislation, the Antarctic Mining Prohibition Act 1991, will now be incorporated in the Antarctic Treaty (Environment Protection) Act 1980 for the sake of completeness.

The Government is, of course, delighted that the protocol has put in place the mining prohibition that we sought. However, the protocol is much more than a ban on mining, and there are many other significant environmental protection provisions within the protocol and its annexes. These provisions will ensure that activities undertaken in Antarctica are done in the most environmentally responsible way.

Annexes to the Madrid Protocol

Key features of the protocol are that it designates Antarctica as a natural reserve devoted to peace and science; it establishes environmental principles for the conduct of all activities in Antarctica; and subjects all activities to prior assessment of their environmental impacts. Accordingly, the protocol provides for a whole continent to be recognised as a place worthy of protection, and a place where all activities should be approached with consistent environmental standards.

At the time of adoption of the protocol, 4 October 1991, four annexes had been agreed. These provide detailed measures relating to environmental impact assessment; conservation of Antarctic fauna and flora; waste disposal and waste management; and prevention of marine pollution. Subsequently, the treaty parties adopted a fifth annex relating to area protection and management. Most of these provisions will be covered by this Bill, which amends the Antarctic Treaty (Environment Protection) Act in a number of ways to ensure that our protocol obligations are met.

The environmental impact assessment process

A fundamental part of the protocol's mechanisms to ensure that activities take account of environmental values is Annex I. The protocol requires prior assessment of all activities proposed to be conducted in the Antarctic Treaty area to assess likely impacts on the Antarctic environment and dependent and associated ecosystems. ... The Bill puts in place an assessment scheme that relies on three levels of impact assessment according to the extent of likely impacts, and provides for conditions to be imposed on activities so that the actual impacts can be assessed and verified. The Bill provides for regulations to be made relating to detailed aspects of the procedures.

Conservation of Antarctic fauna and flora

Over the years the Antarctic Treaty parties have adopted a number of measures in relation to the protection of fauna and flora. These measures have been put into place in the Antarctic Treaty (Environment Protection) Act. Annex II of the protocol replaces many of the existing measures, strengthening them where necessary. Consequently, as the existing measures have been implemented into Australian law, this Bill proposes to amend that Act by incorporating the additional requirements of the protocol relating to the protection of fauna and flora.

Annex II includes a provision prohibiting the introduction of non-indigenous species into the Antarctic. One aspect of the requirements is the obligation to remove huskies from Antarctica by 1 April 1994. ...

Waste disposal and management

Annex III of the protocol, relating to waste disposal and waste management, will largely be implemented by regulations. However, the more serious matters of introducing non-sterile soil, polychlorinated biphenyls and polystyrene beads and chips have been dealt with in this Bill. These have all been identified as posing particular dangers to the environment and their introduction into Antarctica will be prohibited. As now required by the protocol, Australia continues with its program of cleaning up past waste sites at its stations and much has been achieved to date.

Prevention of marine pollution

Annex IV of the protocol, relating to the prevention of marine pollution, was implemented earlier this year by way of amendment to the Protection of the Sea (Prevention of Pollution from Ships) Act 1983, which falls within the responsibilities of my colleague the Minister for Transport and Communications.

Improved management of protected areas

Annex V of the Madrid Protocol provides significant improvements to the Antarctic protected areas system. In particular, it rationalises the earlier proliferation of categories of protected areas and allows all sites with values worthy of protection to be subject to an agreed management plan. All existing protected areas will be preserved in the new scheme, with no diminution of the level of protection given to them. The previous protected area system had been provided for in the Antarctic Treaty (Environment Protection) Act. This Bill modifies those provisions to put in place the requirements of the annex, while allowing for retention of the old system until Annex V becomes effective. ...

Entry into force

The Bill has a number of provisions relating to commencement to reflect the circumstances that surround the ultimate entry into force of the protocol and its various components, and the need to retain some provisions of the Antarctic Treaty (Environment Protection) Act pending the varying dates of entry into force of these components.

The protocol will enter into force when all the parties required have taken the steps necessary to ensure that its provisions can be made binding on its citizens. This Bill, together with the regulations to be made under it, will enable Australia to ratify the protocol. At this stage, only one signatory to the protocol, Spain, has ratified. While all the necessary parties have signed the protocol there is still some way to go until it will formally enter into force. Our ratification will firmly demonstrate our commitment to the Antarctic Treaty system, and to protecting the Antarctic environment. It will encourage other countries to similarly proceed to ratification so that the protocol can enter into force promptly.

Protection of Antarctica – Regulation of tourism

The following is extracted from an item in the Department of Foreign Affairs and Trade publication *Insight* of 5 October 1992 (Vol 1 No 6, p 5):

Australia will consider the comprehensive regulation of tourism and private non-governmental expeditions in Antarctica at a special meeting of Antarctic Treaty Parties to be held in Venice from 9 to 10 November.

The number of tourists visiting Antarctica has increased by more than 600 per cent since 1985, raising questions about the impact of tourism on the continent's fragile environment.

Antarctica emerged as a tourist destination in the 1950s. Although data on visitor numbers was not available until the mid-1960s, it is estimated that about 37,000 seaborne tourists have visited Antarctica since 1957. Of these, almost half travelled in the past seven years. There has also been a significant increase in private scientific and research expeditions. ...

Problems associated with unregulated tourism largely relate to adverse impacts on the environment including pressure on waste disposal systems, the disturbance of historical sites and bird colonies. The disruption to scientific programs and the questions of safety standards and emergency responses, are also a matter of concern.

During the past decade there have been calls within the treaty system to re-examine arrangements for regulating tourism in Antarctica.

With the negotiation one year ago of the Antarctic Environmental Protection (Madrid) Protocol, parties recognised the need to ensure that the stringent environmental protection regime was effectively applied to all human activity in Antarctica, including tourism and non-governmental activity. ...

With the significant increase in the number of tourists and expeditioners now visiting Antarctica, Australia and the 39 other Treaty Parties have agreed there is a need to examine the adequacy of current arrangements for regulating tourist activity in what has been commonly described as the "world's last great wilderness".

At the 16th meeting of Treaty Parties held in Bonn immediately after the conclusion of the Madrid Protocol, it was agreed that any further regulation of Antarctic tourism should be consistent with the protocol and its annexes.

In examining this question Australia has adopted the following precepts:

- that the provisions of the Protocol apply to all activities in Antarctica, including tourism and private scientific and environmental expeditions;
- that all the relevant treaty measures on tourist activity be examined with a view to developing simple comprehensible and clear guidelines which can be effectively applied to non-governmental operators; and
- that any regime applying to non-governmental activity can differ from regimes which apply to national operations.

The regulation of tourism and non-governmental activity in Antarctica raises a number of jurisdictional issues. Each Treaty Party has direct contact with its own personnel engaged in national programs in Antarctica.

Tourist expeditions, however, are not under a party's direct administrative control and may not be known to the party, even though a party has legal responsibility for them.

Regulations on tourist and private operators, set out in the treaty and its accrued recommendations are difficult to follow and have significant gaps. A

major deficiency in the relevant recommendations is the lack of clear guidelines for tourist operators on the planning and conduct of visits to Antarctica.

While Treaty Parties are responsible for notifying other parties of impending tourist arrivals, the only notification requirement for a tourist operator or private expeditioner is to give 24–hour notice of arrival at a station.

This is inadequate for the new requirement under the protocol that operators provide detailed environmental assessments before starting their expeditions.

While tourism activity in the Australian Antarctic Territory occurs on a smaller scale than elsewhere on the continent, some similar problems have occurred.

Australia's position on regulating tourism in Antarctica has involved close consultation with representatives from the tourist industry and environmental groups.

The Government is expected to announce soon the full details of the position it will take to the Venice meeting.

[**Note:** A map of the Antarctic continent, showing territorial claims of Treaty Parties appears on p 632 of this volume.]

Protection of the marine environment – Prevention of pollution from ships – Amendments to legislation

In the course of a second reading speech on the Transport and Communication Legislation Amendment Bill (No 2) 1992 on 7 May 1992, the Parliamentary Secretary to the Minister for Transport and Communications, Mr Snowdon, said (HR Deb 1992, Vol 183, p 2675):

The Bill contains a number of amendments to Australia's protection of the sea package of legislation. This legislation implements several international conventions which deal specifically with the prevention of pollution from ships. The amendments in the Bill are a consequence of amendments to these conventions adopted recently by the relevant international organisation.

The Protection of the Sea (Powers of Intervention) Act [1981] empowers Australia to intervene on the high seas in respect of any shipping incident resulting in or likely to result in major pollution damage. The amendments to this Act will enable intervention in respect of a wider range of environmentally hazardous chemicals.

The Protection of the Sea (Prevention of Pollution from Ships) Act [1983] implements the International Convention for the Prevention of Pollution from Ships, known as MARPOL. This is the principal convention in controlling pollution from ships, currently applying to over 90 per cent of world shipping tonnage. The Bill proposes two major amendments to this Act.

The first will give effect to Australia's obligations under annex IV of the Protocol on Environment Protection to the Antarctic Treaty relating to the disposal of untreated sewage, oil, chemicals and garbage in the Antarctic area. This annex was drafted with a view to imposing MARPOL–like obligations on those countries not a party to the MARPOL convention. Consequently, for

Australia there are few additional measures to be implemented. It is therefore efficient and sensible to include the proposed amendments in the MARPOL legislation, rather than legislation administered by the Department of the Arts, Sport, the Environment and Territories which will implement the remainder of the Antarctic protocol.

The other significant amendment is the introduction of a requirement for ships to have on board an oil pollution emergency plan, which is the result of a recent amendment to the MARPOL convention. This is one of several changes to international pollution regulations as a result of the lessons learned from the *Exxon Valdez* oil spill in 1989. The emergency plan will consist of four basic elements:

- an outline of procedures for reporting incidents;
- a list of authorities or persons to be contacted in the event of an incident;
- a detailed description of the steps to be taken immediately by persons on board to reduce or control discharge of oil following an incident; and
- a procedure for coordinating response efforts with national and local authorities.

Ships visiting Australian ports will be required to have an emergency plan available for inspection by Australian Maritime Safety Authority surveyors as part of the normal port control process, and sanctions are provided for failure to comply with these requirements.

In the course of a second reading speech on the Transport and Communication Legislation Amendment Bill (No 3) 1992 on 17 December 1992, the Parliamentary Secretary to the Minister for Employment, Education and Training, Mr Snowdon, said (HR Deb 1992, Vol 187, p 4204):

The amendments to the Protection of the Sea (Prevention of Pollution from Ships) Act [1983] will significantly reduce the amount of oil discharged into the sea during the normal operations of ships. The amendments are a direct result of changes to the international convention for the prevention of pollution from ships, known as MARPOL 73–78. This convention has been accepted by 70 countries representing some 90 per cent of world shipping tonnage. It is expected that the amendments included in the Bill will enter into force globally on 6 July 1993.

The amendments have two main objectives. Firstly, the present standard for the discharge in near-coastal zones and special areas of oily wastes and residues from machinery spaces is to apply to all sea areas. The oil content in permitted discharges is not to exceed 15 parts per million. Secondly, the amendments will improve the standard for the instantaneous rate of discharge of oil or oily mixtures from cargo tanks of oil tankers outside special areas by reducing the permitted rate of discharge from 60 to 30 litres per nautical mile. For existing ships, the new requirements will be phased in over a period of five years.

The impact of these amendments on the shipping industry will be negligible. More than 86 per cent of all ships are already fitted with the

required 15 parts per million filtering equipment and the manufacture of 100 parts per million equipment has been almost entirely discontinued.

It is clear that the will, technology and equipment now exist within the international shipping community to take this step towards the fundamental goal of MARPOL 73–78 which is the complete elimination of intentional pollution of the marine environment. The present discharge standards were formulated more than 20 years ago when the subject was new, concern for the environment was not as acute as it is today, and the technology was not available to achieve such low discharge levels.

Protection of the marine environment – Prevention of pollution from ships – London Dumping Convention – Dumping of jarosite waste

On 14 October 1992 the Minister representing the Minister for the Arts, Sport the Environment and Territories, Senator Bob Collins, answered a question upon notice (Sen Deb 1992, Vol 186, p 1870). The question and answer were, in part, as follows:

(Q1) Is the Minister aware of Resolution 43(13) of the London Dumping Convention which requires the cessation of the ocean dumping of toxic industrial waste by 31 December 1995?

(Q2) Does the Convention apply to the Pasminco–EZ smelter at Risdon, meaning that by 31 December 1995 the dumping of jarosite waste at sea must cease?

(Q3) Have assurances been sought from the company that this deadline will be met; if so, what commitments have been made; if not, why not?

SENATOR COLLINS: The Minister for the Arts, Sport, the Environment and Territories has provided the following answer to the honourable senator's question:

(A1) Yes.

(A2) The dumping at sea of jarosite waste falls within the terms of resolution 43(13) of the London Dumping Convention. The resolution is not binding under international law, but as Australia supported it, there is a moral obligation upon Australia to abide by it.

(A3) Pasminco is already on notice with respect to the 1995 deadline for the disposal of industrial wastes at sea. Clearly, however, there will be a range of issues which the Government and the company will need to address to meet this deadline. The only current alternative, landfill of jarosite, presents its own set of environmental problems and the Government sees no benefit merely by transferring the problem from the sea to the land. Consequently, the Government with the cooperation of Pasminco, is seeking a long term solution that minimises overall environmental impact. It is a condition of the sea dumping permit that Pasminco investigate alternative technologies with a view to phasing out the sea dumping of jarosite. It is worth noting, however, that monitoring of the dumping operation has not, in fact been able to ascertain any adverse effects on the marine environment.

Protection of the marine environment - Torres Strait Treaty

On 2 April 1992 the Minister representing the Minister for the Arts, Sport, the Environment and Territories, Senator Bob Collins, answered a question without notice from Senator Reynolds (Sen Deb 1992, Vol 151, p 1556). The question and answer were as follows:

> (Q) Is the Minister aware that the International Water Tribunal has found that the Ok Tedi copper mine has an unsatisfactory system of waste disposal and that Torres Strait Islanders and their environment are being exposed to the dangers of heavy metal contamination from the mine? What steps have been taken by the Australian Government to monitor the environmental impact of Ok Tedi mining?
>
> (A) The Minister has been informed that the International Water Tribunal that sits in Amsterdam consists of an international board of volunteers constituted to hear complaints concerning serious problems with rivers, lakes and estuaries. The Minister has been further informed that this organisation has no international legal standing.
>
> On 18 February 1991 the Tribunal considered a case put to it by the WAU Ecology Institute, a non-government organisation in Papua New Guinea, concerning pollution of the Fly River by an Ok Tedi Mining Ltd open-cut copper and gold mine. The Minister is aware that the Tribunal found against OTML, which was invited to present its position in the case but did not respond and did not attend the hearing.
>
> At the Torres Strait Environmental Management Committee meeting of 27 August and 28 August 1991, PNG informed Australia that the compliance law for dissolved copper at one sampling station in the middle of the Fly River was being exceeded. The PNG Government subsequently raised the compliance level following consultations with OTML. Australia is seeking further information on the ecological implications of the higher than expected levels of dissolved copper, especially the effects on migrating species of fish which may be shared in Australian waters and the Fly River and whether these higher levels will reach the Torres Strait.
>
> The Government takes very seriously its responsibilities for the Torres Strait and has raised the issue of copper sediment levels with the Government of Papua New Guinea on several occasions, most recently at the Australia-Papua New Guinea Ministerial Forum on 6 February and 7 February 1992. The Australian Government, in close consultation with the Papua New Guinea Government, is funding a four-year environmental study of the Torres Strait. The study is collecting data to determine the background level of trace metals and sediments. ... The study includes species of commercial and subsistence importance and will assist in determining whether there is evidence of contamination of these resources from mining operations. The preliminary findings of this base line study are due in the middle of this year. This information will enable us to improve our understanding of the impact of mining operations on the Torres Strait marine environment.

On 7 May 1992 the Minster for Foreign Affairs and Trade, Senator Gareth Evans, tabled the Government's response to the report of the Joint Committee on Foreign Affairs, Defence and Trade on Australia's relations with Papua

New Guinea (Sen Deb 1992, Vol 152, p 2421). The Government's response to the Report included the following statement:

> The Government is conscious of Australia's and Papua New Guinea's obligations under the Torres Strait Treaty to take preventative and control measures necessary to protect and preserve the marine environment in, and in the vicinity of, the Torres Strait Protected Zone. The Government endorses the Committee's views on the need to monitor the impact of mining operations on the environment and agrees that safeguard requirements for the prevention of environmental damage should be clearly stipulated in mining agreements. In 1989, the Government commenced a four-year environmental study to identify existing environmental conditions in the Torres Strait, and examine the possible effects of mining activity in the Fly River catchment area on the Torres Strait marine environment. The study, which is called the Torres Strait Baseline Study, is managed by the Great Barrier Reef Marine Park Authority. Preliminary results of the study are expected by the middle of 1992.

Protection of the environment - International Atomic Energy Agency Standing Committee on Liability for Nuclear Damage - Australian involvement

On 2 June 1992 the Minister for Foreign Affairs and Trade, Senator Gareth Evans, answered a question upon notice from Senator Chamarette (Sen Deb 1992, Vol 153, p 3338). The question and answer were, in part, as follows:

> (Q) Did Australian Government representatives attend a meeting in April 1992 of the Standing Committee on Nuclear Issues of the International Atomic Energy Agency in Vienna; if so, did these representatives support moves to tighten the liability regime which covers the nuclear industry?
>
> SENATOR EVANS: The answer to the honourable senator's question is as follows:
>
> (A) Australian representatives attended a meeting of the International Atomic Energy Agency's Standing Committee on Liability for Nuclear Damage from 30 March to 3 April 1992.
>
> As at the earlier meetings of the Standing Committee, they firmly supported the development of an improved regime covering international nuclear liability arrangements.

On 17 June 1992 the Minister for Foreign Affairs and Trade, Senator Gareth Evans, answered a question without notice from Senator Zakharov (Sen Deb 1992, Vol 153, p 3803). The question and answer were as follows:

> SENATOR ZAKHAROV: My question is addressed to the Minister for Foreign Affairs and Trade. Is the Minister aware of concerns that Australia may cease to play an active part in the negotiations to tighten the international nuclear liability regime as funding may be withdrawn? Are these concerns justified?
>
> SENATOR GARETH EVANS: I have seen concerns expressed to that effect by Greenpeace in a widely circulated letter, among other places. They are quite unfounded. Australia will continue to participate in meetings of the International Atomic Energy Agency Standing Committee on Nuclear Liability

in Vienna as we have in the five meetings that have been held since the establishment of that Committee in 1990.

In the past, we have generally been represented by officers with specific legal expertise drawn variously from Canberra and/or Australian missions at Geneva and Vienna. Such specialised participation will be maintained for future meetings as often as possible but decisions on our delegations to particular meetings will, as always with multilateral meetings of this type, depend on the availability of appropriate staff, competing priorities and other circumstances at the time. There is absolutely nothing new in that respect.

Australia does place importance on the work of this Committee. In conjunction with a number of other countries, we have taken a firm position supporting the introduction of an improved regime covering international nuclear liability arrangements. We hope that Committee's work will lead to a comprehensive nuclear liability regime embodying those arrangements. We will continue to pursue our objectives in the Committee including, importantly, to commit States hosting nuclear facilities to ensuring that adequate compensation is available to victims of damage arising from those facilities.

Protection of the environment - Liability for nuclear damage - *Akatsuki Maru*

On 9 December 1992 the Minister for Foreign Affairs and Trade, Senator Gareth Evans, answered a question without notice from Senator Bell (Sen Deb 1992, Vol 157, p 4534). The question and answer were, in part, as follows:

In regard to the costs of responding to any emergency, the Japanese Government has said that any nuclear liability arising from the plutonium cargo is insured by the Power Reactor and Nuclear Fuel Development Corporation of Japan - PNC - which is a government owned organisation which, according to Japanese law, takes responsibility for nuclear liability. If that nuclear liability was not fully covered by PNC's insurance, the Japanese Government has made clear it would assist PNC financially, so there would be no limit to the nuclear liability. As regards non-nuclear liability, I understand the *Akatsuki Maru* and its escort ship are insured in accordance with usual maritime insurance provisions.

As to the final question, the Government has conducted an intensive examination of all aspects of the planned shipments to ensure that any implications for Australia could be fully considered. The Government has satisfied itself that the physical protection and safety arrangements for the shipment meet, or indeed exceed, international standards for the transport of plutonium.

World Heritage List - International Convention for the Protection of the World Cultural and National Heritage - Australian areas listed

The following is extracted from an item in the Department of Foreign Affairs and Trade publication *Backgrounder* of 31 January 1992 (Vol 3 No 1, p 6):

In August 1974, Australia become one of the first signatories to the UNESCO World Heritage Convention which commits signatories and member countries

to identifying, protecting, conserving, presenting and passing on to future generations all World Heritage properties.

Areas in Australia on the World Heritage List are: Kakadu National Park, the Great Barrier Reef, Willandra Lakes Region of New South Wales, Tasmanian Wilderness Parks, Lord Howe Island Group, Australian East Coast Temperate and Sub-Tropical Rainforest Parks, Uluru (Ayers Rock-Mount Olga) National Park and Wet Tropics of Queensland.

There are more than 500 national parks in Australia and about 3000 other nature conservation reserves, both terrestrial and marine. All are protected areas under either Commonwealth, State or Territory legislation. There also is a Register of the National Estate which lists 8225 places in Australia assessed as having significance for their natural or cultural values, whether they are legally protected areas or not. Australia also has a National Wilderness Inventory of areas which may be classified as possessing ecological and aesthetic characteristics of naturalness and remoteness.

On 10 July 1992 the Minister for the Arts, Sport, the Environment and Territories, Mrs Ros Kelly, issued a news release which read in part:

Ros Kelly, Minister for the Arts, Sport, the Environment and Territories today said she was overjoyed that the World Heritage Bureau at its meeting in Paris yesterday had recommended world heritage listing for Kakadu and Fraser Island.

"The nominations have passed their toughest hurdle, and I am confident that the World Heritage Committee at its meeting later in the year will accept this recommendation. Then we will have the highest level of environmental protection and management for two of the most extraordinary places in the world", Mrs Kelly said.

International Union for Conservation of Nature - 18th Session of General Assembly - Recommendations - Australian action

On 29 April 1992 the Minister for the Arts, Sport, the Environment and Territories, Mrs Ros Kelly, answered a question upon notice from Mr Hollis (HR Deb 1992, Vol 183, p 1494). The question and answer were as follows:

(Q) What action has been taken on the recommendations adopted at the 18th Session of the General Assembly of the International Union for the Conservation of Nature - The World Conservation Union (Perth, 28 November-5 December 1990) on (a) Australian resource security legislation; (b) mining in national parks and nature reserves, especially in Australia; (c) Kakadu National Park; (d) the Kimberley Region; (e) conservation of Arid Zone Wetlands, especially in the Lake Eyre Basin; (f) wilderness and forest conservation in Tasmania; (g) Fraser Island; (h) mineral, including oil exploration in or adjacent to marine parks and World Heritage areas in Australia; (i) prohibition of oil tankers inshore of the Coral Sea/Great Barrier Reef World Heritage area; and (j) sub-Antarctic islands of Australia?

MRS KELLY: The answer to the honourable member's question is as follows:

(A) As the honourable member is aware, in many cases the recommendations are comprised of a number of parts which deal with specific issues and in some cases specific areas which are not reflected in the question. For this reason copies of the relevant recommendations have been provided to the honourable member and additional copies are available from the House of Representatives Table office. However, in terms of the broad question asked, and having regard to the recommendations made, action on those recommendations adopted at the 18th Session of the General Assembly of the International Union for the Conservation of Nature – The World Conservation Union (Perth, 28 November–5 December 1990), which were directed to the Commonwealth Government, is as follows:

(a) The Government's resource security legislation, the Forests Conservation and Development Bill, was defeated in the Senate on 5 May 1992.

(b) Although the Commonwealth Government opposes mining in national parks, and such activities are banned in Commonwealth national parks, the matter is generally one for State Governments.

(c) 1. The Kakadu Conservation Zone of Stage III has been incorporated into Kakadu National Park.

2. Jabiluka and Koongarra Project Areas have not been incorporated into Kakadu National Park. Mining in the Koongarra Project Area is not permitted under the Government's uranium mining policy.

3. Kakadu National Park, including Stage III, has been re–nonimated to the World Heritage List and was recently recommended for listing by the World Heritage Bureau.

4. The Government continues to honour its obligations to protect Kakadu National Park under the relevant international nature conservation conventions.

(d) 1. The conservation of the Kimberley Region is essentially a matter for the Western Australian Government.

2. A National Wilderness Inventory study by the Australian Heritage Commission of northern Western Australia has begun with the cooperation of the Western Australian Government.

(e) la. Investigations into the vulnerability of the Lake Eyre wetlands is essentially a matter for the State and Territory Governments concerned.

lb. The South Australian Government has advised that over 11.4 million hectares of the Lake Eyre Basin have been protected in national parks, reserves and as wetlands of international importance under the RAMSAR convention.

lc. The Commonwealth and relevant State Governments are considering the possible nomination of the Lake Eyre Region to the World Heritage List as part of the Indicative List process.

2. The protection of wetlands in arid areas is being considered by the Commonwealth Government as part of its overall nature conservation strategy.

(f) The Commonwealth Government has not nominated any additional Tasmanian World Heritage areas, nor placed areas on Australia's Indicative List since the IUCN General Assembly.

(g) Logging ceased on Fraser Island in December 1991. The World Heritage nomination of Fraser Island was submitted to the World Heritage Committee in September 1991. The World Heritage Bureau has recently recommended that Fraser Island be inscribed on the World Heritage List.

(h) la. My Department, the Australian National Parks and Wildlife Service and the Great Barrier Reef Marine Park Authority have established a co-operative program with relevant State and Territory agencies to develop a national representative system of marine protected areas around Australia.

lb. The Government has neither reviewed nor deferred its offshore oil exploration program as proposed in the recommendation. There is communication between my Department and the Department of Primary Industry and Energy prior to every stage of the offshore release program and areas known to be environmentally sensitive are referred to the Minister for Resources for a decision on whether to release and conditions of release.

lc. The Government has given a commitment that any proposals for petroleum exploration in the vicinity of World Heritage properties will be the subject of the strictest scientific and environmental analysis.

Management plans for Commonwealth marine parks and reserves do not allow petroleum exploration. However, petroleum exploration and development is allowed in areas which are adjacent to Commonwealth and State marine parks and reserves subject to Commonwealth environment protection legislation such as the Environment Protection (Impact of Proposals) Act 1974 and the Australian Heritage Commission Act 1975.

The Petroleum (Submerged Lands) Act 1967 includes stringent requirements to ensure companies carry out all activities using appropriate equipment and procedures to prevent blowouts or any other escape of petroleum. In addition, special environment protection conditions may be required for exploration or production in sensitive areas.

The Government will not countenance any drilling that would endanger sensitive marine environments and has ruled out any drilling within the Great Barrier Reef Marine Park.

The former Prime Minister and the Minister for Resources have stated that the Great Barrier Reef Marine Park Authority would be asked for a full assessment of any proposal for oil exploration adjacent to the Great Barrier Reef before any such exploration could be contemplated. Any proposals for exploration near the Park would trigger the provisions of the Environment Protection (Impact of Proposals) Act 1974.

(i) 2. Legislation came into force on 1 October 1991.

4. The Commonwealth Government has not taken any action on this recommendation.

(j) 2. The Government nominated Macquarie Island to the World Heritage List in September 1991 on the basis of its geological values.

5. Macquarie Island was nominated to the World Heritage List on the basis of its geological values and activities in the marine areas are not expected to have any effect on the values.

Protection of endangered species - Elephants

On 4 March 1992 the Minister representing the Minister for the Arts, Sport, the Environment and Territories, Senator Bob Collins, answered a question without notice from Senator Zakharov (Sen Deb 1992, Vol 151, p 685). The question and answer were as follows:

(Q) Can the Minister inform the Senate of Australia's position regarding protection of endangered animals, in light of the article in last Sunday's Melbourne *Age* which said that the Bush Administration in the United States was sympathetic to a relaxation of protection and to open international trading in elephant products, which is being discussed this week in Japan at the meeting of the UN Convention on International Trade in Endangered Species of Wild Fauna and Flora, which is normally known as CITES?

(A) This is an extremely important issue for a species that is well and truly endangered at this time. In 1989, Australia placed the African elephant on schedule 1 of the Wildlife Protection (Regulation of Imports and Exports) Act 1982 prior to the species being listed on appendix 1, effectively prohibiting the import of ivory, except for antique ivory, into Australia.

Several southern African countries have submitted proposals to transfer their elephant populations to appendix 2. Such proposals are controversial and potentially divisive and are being examined by a panel of experts that have been established for this purpose.

Australia actively supported the 1989 listing of the African elephant on appendix 1. The Government remains firmly opposed to the resumption of trade in ivory or other elephant products. The Minister has directed the Australian delegation to maintain Australia's firm opposition to down-listing of the African elephant. Regardless of the outcome of the meeting, Australia will maintain its right, under article 14 of the convention, to adopt stricter measures and to retain our own import ban on elephant ivory.

Environmental cooperation - Memoranda of understanding with Germany and Singapore

On 10 June 1992 the Minister for the Arts, Sport, the Environment and Territories, Mrs Ros Kelly, issued a news release which read in part:

Australian Minister for the Arts, Sport, the Environment and Territories, Ros Kelly, met with her German counterpart, Dr Klaus Toepfer, at the Rio Earth Summit today to sign a Memorandum of Understanding on environment cooperation.

"Our strong links with Germany on environment issues developed during the two years of preparations for the Rio Summit. I want these links to develop into commercial ventures as well as firming up our political alliance on international environment matters. Two such issues would be global warming and protection of Antarctica", Mrs Kelly said.

"Dr Toepfer visited Australia early this year and we had useful talks on climate change, biodiversity and global forest issues. We also began discussing commercial co-operation in clean technology."

On 7 October 1992 the Minister for the Arts, Sport, the Environment and Territories, Mrs Ros Kelly, issued a news release which read in part:

Dr Ahmad Mattar, Singapore Minister for Environment, and Mrs Ros Kelly, Australian Minister for the Arts, Sport, the Environment and Territories today signed a Memorandum of Understanding on Co-operation in Environmental Protection and Management. Dr Mattar is currently on a four day visit to Australia to discuss opportunities for environmental co-operation.

Under the MOU the Australian and Singapore Governments have agreed to work together towards solutions for international, regional and domestic environmental problems consistent with the principles of ecologically sustainable development. The two Governments have agreed to consult with each other on a wide range of environmental issues and to collaborate in environmental technology. Specific provision is included to foster the relationship between Australian and Singaporean environmental management companies in the private sector.

Environmental management and tourism - Antartica

Following are excerpts taken from the report of the House of Representatives Legal and Constitutional Affairs Committee entitled *Australian Law in Antarctica*, which was tabled in Parliament (PP No 252/1992) on 5 November 1992 (see HR Deb 1992, Vol 186, p 2676).

4. SPECIFIC INADEQUACIES OF AUSTRALIAN LAWS IN THE AUSTRALIAN ANTARCTIC TERRITORY

4.1 The inadequacy of the current situation regarding the application and enforcement of Australian law in the Australian Antarctic Territory is exemplified in the areas of environmental management and tourism. ...

4.5 It is clear from evidence to the Committee that the existing legal regime is inadequate for the regulation of tourism in the Territory, and that Australia does not have the necessary infrastructure to deal with unauthorised people entering the Territory.

4.6 As described previously only a designated group of foreign nationals are exempt from Australian jurisdiction in the Australian Antarctic Territory. The Antarctic Treaty neither states nor implies that Australian jurisdiction does not extend to tourists or private visitors in the Territory.

4.7 The impact of tourism in Antarctica was reported upon in 1989 by the House of Representatives Standing Committee on Environment, Recreation and the Arts.[1] ...

4.8 The Committee supports the broad conclusions of the "Tourism in Antarctica" report that:

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1 House of Representatives Standing Committee on Environment, Recreation and the Arts (ERA Committee), *Tourism in Antarctica*, 1989.

- Australian legislation is applicable to foreign nationals in the Territory;
- the development of measures to regulate tourist activities is urgently needed; and
- the Australian Government should take the initiative in discussions at Antarctic Treaty Consultative Meetings to support the development of a tourism convention for Antarctica.

4.9 This matter of the impact of tourism in Antarctica, particularly on the environment, has also been under discussion for some time by the Antarctic Treaty Consultative Parties.

4.10 Following the Australian Government's announcement in 1989 of its decision not to sign the Convention on the Regulation of Antarctic Mineral Resource Activities, Australia together with France sought the negotiation of a comprehensive environmental protection convention designating Antarctica as a "Nature Reserve – Land of Science" and which would include a prohibition on mining in Antarctica. This initiative was one of a number of proposals considered at a Special Consultative Meeting of Antarctic Treaty Consultative Parties in Chile in November 1990. Following further negotiations, on 4 October 1991 the parties agreed to a protocol providing for comprehensive protection of the Antarctic environment.

4.11 The Protocol on Environment Protection to the Antarctic Treaty designates Antarctica as a natural reserve and establishes a legally binding regime for environmental management and protection. There are five annexes to the Protocol concerning:

- requirement for environmental impact assessments;
- conservation of Antarctic fauna and flora;
- waste disposal and waste management;
- prevention of marine pollution; and
- area protection and management.

4.12 Acting on its concern to ensure that the presence of tourists and other visitors in Antarctica be regulated so as to limit adverse impacts on the environment, the 11th Antarctic Treaty Special Consultative Meeting recommended that Consultative Parties meet to discuss proposals for a further annexe to the Protocol to cover tourism.

4.13 An alternative to the proposed annexe would be for each Consultative Party to develop and issue guidelines advising tourist operators of their responsibilities in Antarctica. In the Committee's view an internationally agreed annexe to the Protocol is likely to be more successful in regulating tourism than nationally based administrative guidelines that do not have a legal basis.

4.14 The Committee is concerned that the environmental impact of tourism be limited, and is of the view that such a set of guidelines would be inadequate. The Committee considers that it is preferable that a comprehensive annexe on tourism be added to the Protocol on Environment Protection to the Antarctic Treaty, in order that all aspects of tourism, including safety issues, be provided for.

RECOMMENDATION 9

The Committee recommends that Australia actively support the negotiation of a further annexe to the Protocol on Environment Protection to the Antarctic Treaty to cover tourism.

[The report then discussed the potential for conflict between the Antarctic Division's "roles as manager of the [Australian Antarctic] research program and as enforcer of environmental protection standards over those activities".]

RECOMMENDATION 10

The Committee recommends that the Australian Antarctic Territory be declared a nature reserve under the *National Parks and Wildlife Conservation Act* 1975.

Conclusion

5.33 The Committee's priority concern regarding the legal regime of the Heard Island and McDonald Islands Territory is to arrive at simplified legal arrangements for the administration of the Territory, and in doing so providing for its effective environmental protection.

5.34 To this end, the Committee is of the view that the Territory should be incorporated into Tasmania as a nature reserve.

RECOMMENDATION 11[1]

The Committee recommends that discussions be held between the Commonwealth and the Tasmanian Governments regarding the possible incorporation of the Heard Island and McDonald Islands within the State of Tasmania, subject to:

- the Territory being declared a nature reserve under the Tasmanian *National Parks and Wildlife Act* 1970;
- the adjacent waters of the Territory being declared a marine reserve under the Tasmanian *National Parks and Wildlife Act*; and
- the plan of management required under the Tasmanian *National Parks and Wildlife Act* specify the banning of mining in the nature reserve.

RECOMMENDATION 12[2]

The Committee recommends that the Australian Government vigorously pursue the application for World Heritage listing for Heard Island.

RECOMMENDATION 13

The Committee recommends that the Antarctic Division, as a matter of urgency, complete the plan of management for Heard Island required under Section 8 of the Environment Protection and Management Ordinance.

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1 A dissenting report by four Committee members opposed recommendations 11 and 12.

2 Ibid.

Appendix I

THE ANTARCTIC CONTINENT, SHOWING TERRITORIAL CLAIMS OF TREATY PARTIES