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Abstract

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Australian Approaches to International Environmental Law during the Howard Years

Gregory Rose*

I. Introduction

This paper provides an overview of major Australian developments in international environmental law during the term of the Howard government. It argues that Australian approaches to the field of international environmental law under the Howard government were primarily characterised by emphasis on sovereign rights, shared global responsibility, market forces and compliance. The emphasis on *sovereign rights* refers to the Howard government's robust assertion of Australian autonomous and effective sovereign control over the use of its claimed natural resources. International law establishes and recognises sovereign states' rights to develop and to manage the natural resources within their respective jurisdictions.¹ The emphasis on *shared global responsibility* refers to the government's approach to participation with other states in the development of international and regional regimes for management of the shared environment or coordination with other countries to combat common environmental problems. The government's approach posed a major challenge to some understandings of the international environmental principle of 'common but differentiated responsibility', which distinguishes between the obligations of developed and developing countries in combating common global environmental problems by imposing heavier responsibilities upon developed countries.² The emphasis on *market forces* meant that the government resisted the development of environmental regimes that would utilise trade-restrictive mechanisms that interfere with the free play of the marketplace, although

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¹ United Nations Declaration on Environment and Development (Rio Declaration), Report of the United Nations Conference on Environment and Development, Annex I, 3-14 June 1992, UN Doc A/CONF.151/26 (Vol I), Principle 2: 'States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental and developmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.'

² Ibid Principle 7: 'States shall cooperate in a spirit of global partnership to conserve, protect and restore the health and integrity of the Earth's ecosystem. In view of the different contributions to global environmental degradation, States have common but differentiated responsibilities. The developed countries acknowledge the responsibility that they bear in the international pursuit of sustainable development in view of the pressures their societies place on the global environment and of the technologies and financial resources they command.'

it supported the design of environmental regimes that would harness market forces.³ Finally, in relation to the emphasis on *compliance*, the Howard government's approach demonstrated a commitment to the implementation and domestic enforcement of Australia's international legal obligations. This is consistent with a contemporary global emphasis in international environmental law that urges stronger domestic implementation, recognising that, although there is a plethora of new international environmental treaties, they typically suffer from poor compliance.⁴

Each of the approaches argued as characterising the Howard government can be contraindicated in some instances. For example, despite the trend toward stronger compliance systems, there are weaknesses in several compliance review processes. Such qualifications do not negate the arguments made here. The emphasis on sovereign rights, shared responsibility, market forces and compliance were dominant, not exclusive or absolute, tendencies in the Howard government's approaches to international law in the field of environment and natural resources.

As a further qualifier, it would be misleading to refer to the 'Howard government approach' as distinct or unique. There is a great deal of continuity between governments and the Howard government's policies continued many of those of the previous Keating government. For example, the Howard government continued the Keating government's approach to climate change negotiations. Thus, the differences are typically of degree and therefore the Howard government's policies are characterised in terms of changes in emphasis, rather than direction.

The Howard government placed more weight on domestic economic and electoral concerns than on perceptions of international environmental citizenship when it assessed Australia's interests in the international politics of the environment. Each treaty action undertaken by the government, that is, the ratification of or accession to a treaty or an amendment, was subject to a newly introduced national impact analysis (NIA) prepared by the Department of Foreign Affairs and Trade and considered in Parliament by the Joint Standing Committee on Treaties (JSCOT), which made recommendations on each proposed action to the executive government to consider.⁵ In the author's opinion, the government's

³ Ibid Principle 12: 'States should cooperate to promote a supportive and open international economic system that would lead to economic growth and sustainable development in all countries, to better address the problems of environmental degradation.'

⁴ See eg, Plan of Implementation of the World Summit on Sustainable Development, Report of the World Summit on Sustainable Development, Annex, 4 September 2002, UN Doc A/CONF.199/20; D Zaelke, D Kaniaru, and E Kruzikova (eds), *Making Law Work: Environmental Compliance & Sustainable Development* (vol 1, 2005).

⁵ The NIA and JSCOT processes were introduced by the Howard government early in its incumbency, fulfilling an electoral promise. See: D Williams, 'Australia's Treaty Making Processes: The Coalitions Reform Proposals' in P Alston and M Chiam (eds), *Treaty-making and Australia: globalization versus sovereignty?* (1995) 185-95; and Joint Standing Committee on Treaties <<http://www.aph.gov.au/house/committee/jsct/index.htm>>.

approaches to international environmental law issues served Australia's national interests well, for the most part, especially in relation to sustainable management of the marine environment and the natural resources in the Western Pacific region. However, it failed to properly appreciate the high national cost of its rejection of the international consensus on climate change.

How well the government served as a global environmental citizen is a more ambiguous assessment and is not attempted here. The notion of the 'objectives of the international community' implies the identification of international actors or agents in terms that set out a consolidated and defined position on a particular political issue that can then be compared with the Australian government's position on that issue. Yet the international community is difficult to identify and legitimate in representative terms (ie who is an authoritative representative of the collective?) and its objectives or interests are usually difficult to define and to legitimate in environmental terms (ie what is the best scientific and socio-economic policy?). In the two instances of treaties that the Howard government negotiated but, in contrast to most states, did not ratify (concerning greenhouse gas emissions reductions and biosafety in the trade in genetically modified organisms), it can be asserted that the government did not meet the consensus standards set for global environmental citizenship. Ultimately, however, the Howard government's impact on the development of international law to protect the environment cannot be simplistically assessed as good or bad overall. It needs finer focus in respect of the various outcomes in each sector of international environmental law.

II. Method

International law in the field of environment and natural resources is comprised principally of rights and obligations established by treaties. Thus, this paper focuses on approaches to Australian environmental treaties in both the treaties negotiation and implementation phases. Treaty rights and obligations are supplemented by the environmental principles established or emerging under customary international law. Those principles guide negotiations for cooperative arrangements, although their precise content and legal status are often not well crystallised. Towards the end of this paper the congruence or divergence of the government's approaches with these international environmental principles is briefly addressed.

Australia is party to 241 treaties classified as directly related to environment and natural resources management.⁶ Obviously, the enquiry conducted here cannot be comprehensive. It focuses on only a few major treaties. It is organised by distinguishing treaties according to environmental sectors. Examination of each sector prevents the use of 'cherry-picked' or biased examples to demonstrate an asserted 'Howard government approach'. This provides a more robust analytical method than selective examples and also facilitates coherent description of innovative policies adopted in each area, while allowing cross-sectoral analysis to draw out the common themes in each of the government's approaches. However,

⁶ Department of Foreign Affairs and Trade, *Australian Treaties Database* <<http://www.dfat.gov.au/treaties/index.html>>.

the division of environmental treaties into sectoral groups is an approximate exercise. Most treaties embrace some matters across sectors or are by nature cross-sectoral.

The author is indebted for information presented here to the annual reports on Australia published in the *Yearbook of International Environmental Law*.⁷ Other sources include journal publications and the federal government department websites.

III. Review and Analysis

The treaty groupings identified for the purposes of this study are: biodiversity conservation, marine environment protection, marine living resources management, atmosphere protection, hazardous materials management, and the general framework of principles for sustainable development.

(a) Biodiversity conservation

In relation to biodiversity conservation, the following section examines the Howard government's approaches to implementation of the Convention on Biological Diversity⁸ (CBD) and its Cartagena Protocol on Biosafety (Biosafety Protocol),⁹ the Convention on International Trade in Endangered Species of Wild Flora and Fauna¹⁰ (CITES), the Convention on Wetlands of International Importance Especially as Waterfowl Habitat¹¹ (Ramsar Convention) and the Convention Concerning the Protection of the World Cultural and Natural Heritage¹² (World Heritage Convention).

(i) Biological diversity

The idea for a major reform of Commonwealth environmental legislation germinated in the latter days of the Keating government. However, the conceptualisation and development of new legislation was the work of Robert Hill, environment minister under the Howard government. The Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act) Chapter 5 sets out obligations for the conservation of biodiversity. It came into force in 2000, signifying a major evolutionary step in Commonwealth implementation of the CBD.

The EPBC Act takes a comprehensive and programmatic approach to biodiversity conservation. It requires the identification, listing and monitoring of Australian biological diversity. Identified threatened species and ecological communities are to be protected, including through the use of recovery plans. Alien species that may threaten Australian biodiversity are to be controlled and

⁷ *Yearbook of International Environmental Law* (1996-2006). Australian reports therein have been variously contributed by Donald R Rothwell, Stephen Bowhuis, Maureen Grant-Thomson, Mark Driver, and officers of the Australian Office of International Law at the Commonwealth Attorney-General's Department.

⁸ (5 June 1992), 170 UNTS 143.

⁹ (29 January 2000), 39 ILM 1027.

¹⁰ (3 March 1973), 993 UNTS 243.

¹¹ (2 February 1971), 996 UNTS 245.

¹² [1975] ATS 47.

addressed, including through threat abatement plans. A range of types of protected areas can be declared and, in a novel step, systems for their regulation are specified, especially management plans. In another innovative measure, Part 14 of the Act provides for the adoption of agreements between the government and other persons for the conservation of biodiversity on private or public land or in marine areas. In conformity with the CBD, the Act also provides for the making of regulations to control access to biological resources as forms of material and intellectual property.¹³ These legal reforms were underpinned by major new funding: approximately \$A2.5 billion was made available under the Natural Heritage Trust established by the government.¹⁴

The EPBC Act delivered relatively rigorous management mechanisms to implement the CBD. The Act requires the use of a variety of specifically adapted management plans and gives them a coherent legal basis, moving beyond the previous policy-based strategy.¹⁵ It also reflected the Howard government's conviction that market forces should be harnessed in the sphere of environmental management, as evident in the use of conservation agreements with private landholders. Initial conservationist criticisms of it have generally moderated towards more positively nuanced perspectives.¹⁶

¹³ Environment Protection and Biodiversity Conservation Act 1999 (Cth) s 301. Commonwealth regulations were adopted in 2000 that require that, in order to obtain access, a researcher must come to an agreement with the access provider to share the benefits of the commercial research: Environment Protection and Biodiversity Conservation Regulations 2000 (Cth) pt 8A. See C Lawson, 'Implementing an objective of the Convention on Biological Diversity – Intellectual Property, access to genetic resources and benefit sharing in Australia' (2005) 22 *Environmental and Planning Law Journal* 130.

¹⁴ National Heritage Trust <<http://www.nht.gov.au/index.html>>. The Natural Heritage Trust was created using revenue coming from the partial privatisation of the national telecommunications carrier, Telstra, in an arrangement negotiated with a minority party, the Democrats, to secure the Democrats vote for the privatisation.

¹⁵ Commonwealth of Australia, *National Strategy for the Conservation of Australia's Biological Diversity* (1996).

¹⁶ S Chappell, 'The Environment Protection and Biodiversity Conservation Act 1999 (Cth): One Year Later' (2001) 18 *Environmental and Planning Law Journal* 523; A Nugent, 'A Revolutionary Three Years in Environmental Management? The Implementation of the Environment Protection and Biodiversity Conservation Act' (2003) No 3 *National Environmental Law Review* 30; A McIntosh, 'Why the Environment Protection and Biodiversity Conservation Act's Referral, Assessment and Approval Process is Failing to Meet its Environmental Objectives' (2004) 21 *Environmental and Planning Law Journal* 268; C McGrath, 'Swells in the Stream of Australian Environmental Law: Debate on the EPBC Act' (2006) 23 *Environmental and Planning Law Journal* 165; L Thomas and T Stephens, 'Environment Protection and Biodiversity Conservation Act: New Prospects for Effective Implementation?' (2007) 18 *Public Law Review* 84; J Peel and L Godden, 'The Environment Protection and Biodiversity Conservation Act: Dark Sides of Virtue' (2007) 31 *Melbourne University Law Review* 106.

(ii) Biosafety

Throughout the conduct of negotiations for the Biosafety Protocol, the Howard government sought to protect trade opportunities for Australian agricultural holdings that wished to use living genetically modified organisms (GMOs), particularly for crop plantings.¹⁷ The government therefore formed a negotiating bloc with like-minded agricultural produce exporting countries, called the Miami Group, which sought to avoid the imposition of trade barriers against the importation of GMO-derived agricultural produce by other countries.¹⁸ Ultimately, the Biosafety Protocol, as adopted in 2000, does not apply to produce processed from GMO materials (such as canola oil processed from rape seed), thereby enabling trade in them. However, in relation to living GMOs (such as seeds), it requires an exporting country to seek a permit from the importing country's authorities. It also requires the importing country to base its decision on a robust scientific and economic assessment of the anticipated detrimental impact of the GMOs. Therefore, trade in living GMOs is restricted, although by an agreed procedure.

Ultimately, the government did not ratify the Biosafety Protocol,¹⁹ reflecting its concerns to maintain open trade for Australian commodities exporters. It thereby failed to undertake a share of responsibility to avoid harm to potential importing countries. This could contribute to an erosion of perceptions of Australia's bona fides, particularly in light of domestic steps taken to ensure the safeguarding of the Australian environment and people from biosafety risks.²⁰

(iii) Wildlife trade

In 2002, a newly inserted Part 13A of the EPBC Act commenced operation, replacing the Wildlife Protection (Regulation of Exports and Imports) Act of 1982 that regulated wildlife trade and implemented CITES. Part 13A streamlined permits for commercial operators, enhanced transparency of decision-making and strengthened enforcement powers. The three appendices of the previous Act, that

¹⁷ For the same policy reason, Australia joined as a third party in the complaints brought by Argentina, Canada and the United States against a European Union moratorium on imports of GMO agricultural and food products; see: EC - Approval and Marketing of Biotech Products WT/DS291 <http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds291_e.htm>.

¹⁸ A substantial proportion of farmers represented in the latter countries did not wish to allow importation of GMO crops and produce, because they either use organic farming methods or could not compete with large-scale GMO plantings or cannot afford GMO seeds, and they feared the possible contamination of their crops by GMO seeds in food produce or other imports; see IISD Reporting Services, *Earth Negotiations Bulletin – EXCOP Biosafety Protocol (2000)* <<http://www.iisd.ca/biodiv/excop/index.html>>.

¹⁹ Nor has it been ratified as of the time of writing.

²⁰ The government developed legislation, passed in 2000, to assess and manage the domestic health and environment risks in Australia associated with GMOs: Gene Technology Act 2000 (Cth). Management plans are to be developed and adopted with the support of the Office of the Gene Technology Regulator, an office created to address the relevant environmental, public health and safety risks from GMOs: Office of the Gene Technology Regulator <<http://www.ogtr.gov.au>>.

corresponded to the three CITES appendices, were consolidated into one list for all CITES species.²¹

In accordance with CITES (Art XIV), a party can apply stricter trade control measures than in CITES itself and this is provided for in the EPBC Act.²² In fact, the Commonwealth applies stricter measures to some exotic species, such as African elephants, treating them as if listed on CITES Appendix I, which prohibits commercial trade, although CITES resolutions have demoted certain African populations to Appendix II to allow commercial trade.²³ In addition, the EPBC Act goes beyond the CITES obligations to address not only species listed in CITES, but also all exports of Australian native wildlife and all imports of live exotic species.²⁴ In relation to exports of Australian wildlife, the government consistently sought to delete from the Annex Australian native species that are listed in Annex II of CITES but that are not the subject of international trade.

Part 13A reflects the Howard government's emphasis on market efficiency by simplifying Australian regulation of international trade in endangered species. It also strengthens legal opportunities for domestic enforcement and was welcomed by environmental groups in this regard.²⁵ Yet, the government's unwillingness to countenance importation of some exotic species allowed under CITES reflected non-acceptance of certain classifications mediated under CITES, even where such classifications were introduced to support the conservation of a species, such as for the sustainable use of elephants. This unilateralism might suggest the neglect of shared responsibility for international trade under CITES in favour of domestic electoral concerns.

(iv) Wetlands

Australia hosted the 6th Conference of Parties of the 1971 Ramsar Convention in Brisbane in the second week of the Howard government's incumbency, in March 1996. The Australian initiatives taken in support of wetlands conservation at that time were those of the Keating government.²⁶ However, the Howard

²¹ Environment Protection and Biodiversity Conservation Act 1999 (Cth) s 303CA. For each species included in the list, there is to be a notation describing the specimens belonging to that species that are included in a particular Appendix to CITES, identifying the Appendix and identifying the date on which the provisions of CITES first applied to the specimens: s 303CA(3).

²² Environment Protection and Biodiversity Conservation Act 1999 (Cth) s 303CB.

²³ Consideration of proposals for the transfer of African elephant populations from Appendix I to Appendix II, 9-20 June 1997, CITES Doc Conf. 10.9.

²⁴ The export of native species and import of live specimens are addressed separately in the Environment Protection and Biodiversity Conservation Act 1999 (Cth) ss 303DA-303DJ and ss303EA-303EQ, respectively.

²⁵ TRAFFIC Oceania, 'New Federal Wildlife Bill Sets World's Best Practice Standards' (2001), in C Sharma, 'Enforcement Mechanisms for Endangered Species Protection in Hong Kong: A Legal Perspective' (2003-2004) 5 *Vermont Journal of Environmental Law* 1, 25.

²⁶ The addition of seven Australian sites to the Ramsar list of Wetlands of International Importance, a \$A2 million contribution to the Ramsar Convention's Strategic Plan, resource support for the establishment of an international wetlands training program

government subsequently acted consistently in continuing that support.²⁷ In 2004, the Minister for Environment brought the first civil enforcement action against an Australian land-holder for destruction of listed wetlands. Civil penalties in the sum of \$A450,000 for damage to the Gwydir wetlands were ordered by the Federal Court and upheld on appeal in 2005.²⁸ The implementation actions and, especially, the enforcement litigation, were indicative of the Howard government's emphasis on compliance with international commitments.

(v) World heritage

The Howard government successfully nominated new sites to be listed as Australian world heritage areas under the 1972 United Nations Educational, Scientific and Cultural Organization (UNESCO) World Heritage Convention. These included the first Australian cultural properties to be listed.²⁹

The management of Australian sites so as to maintain the world heritage values for which they were nominated was a more vexed issue. In 1996, in contrast to the Keating government decision not to approve a proposal to build a resort within the Wet Tropics of Queensland World Heritage Area, the Howard government approved a proposal to construct a marina and to dredge an access channel at Port Hinchinbrook, subject to strict conditions. A legal challenge to the approval failed before the Federal Court³⁰ and, on appeal, also before the Full Federal Court.³¹ A comparable issue arose in connection with the world heritage area at Kakadu National Park, where a proposal was approved for a new uranium mine sited on the existing Jabiluka mineral lease, an enclave within the world heritage area. In that case the dispute was internationalised by Australian nationals' representations to the World Heritage Bureau. In 1998, the Bureau sent a mission to Australia to

for Pacific Island countries and a cooperative project with Indonesia and Papua New Guinea.

27 In 1999, for example, it nominated four Ramsar wetlands sites and committed \$A0.8 million to a new National Wetlands Program and to an Asia-Pacific Wetlands Managers Training Program. In 2000, an Asia-Pacific Migratory Bird Strategy 2001-2005, to be coordinated by Wetlands International, was also adopted. In 2001, four new sites were nominated for the Ramsar list and six in 2002, and a further one the next year. In compliance with the resolutions of Ramsar COP 7, an Australian national action plan on wetlands communication, education and awareness was adopted in 2002.

28 *Minister for Environment and Heritage v Greentree* (2004) FCA 1317 and on appeal (2005) FCAFC 128; M Baird, 'The EPBC Act and Ramsar wetlands: an examination of the Greentree decisions' (2004) 3 *National Environmental Law Review* 42.

29 These were: 1997 – Heard Island, McDonald Island, Macquarie Island; 2000 – Blue Mountains; 2003 – Bungle Bungle Range; 2004 – Melbourne's Royal Exhibition Building and Carlton Gardens; 2007 – Sydney Harbour, Opera House and foreshore. Department of the Environment, Water, Heritage and the Arts, *Australian places on the World Heritage List* (2008) <<http://www.environment.gov.au/heritage/places/world/index.html>>.

30 *Friends of Hinchinbrook Society Inc v Minister for Environment* [1997] FCA 55; see R Lyster, 'The Relevance of the Precautionary Principle: *Friends of Hinchinbrook Society Inc v Minister for Environment*' (1997) 14 *Environmental and Planning Law Journal* 390.

31 *Friends of Hinchinbrook Society Inc v Minister for Environment* [1998] FCA 433.

investigate the site and the proposal. It considered that the proposed mine development posed threats to the site's world heritage values and it recommended that the mine be closed. The report, recommendations and the government's response (which rejected the report and recommendations) were considered by the UNESCO World Heritage Committee in 1999, which decided not to list the Park as a world heritage site in danger but was critical of the proposal and of the government's management of it.³²

The controversies over Port Hinchinbrook and Kakadu were succeeded by new measures to prevent further emerging management challenges at the Great Barrier Reef Marine Park and Shark Bay world heritage areas. The Howard government invested substantial resources into improved management of Australian world heritage sites. In 1997, it announced initiatives to better protect their world heritage values by developing management plans, protecting critical habitat and upgrading interpretation and visitor facilities.³³ For many sites there had previously been no management plans. In 1998, a report on Australia's world heritage sites made recommendations for their improved management and, the following year, a new legislative regime was adopted for Australia's world heritage sites.³⁴ These introduced management systems to maintain the values of world heritage sites, enhancing Australian implementation of the World Heritage Convention³⁵ and again reflected the Howard government's emphasis on compliance with international obligations.

(b) Marine environment protection

In relation to protection of the marine environment, the following section examines the Howard government's approach to marine protected areas, waste dumping, and Antarctica. Australian approaches to the regulation of vessel-based sources of pollution under the 1973/78 International Convention for the Prevention of Pollution from Ships³⁶ and related treaties adopted under the auspices of the International Maritime Organisation are not addressed here. The practice of the Howard government in this technically detailed field remained, consistent with previous Australian governments, environmentally proactive and generally demonstrated good compliance.

(i) Marine protected areas

In 1998, the international Year of the Oceans, the government adopted *Australia's Oceans Policy* (AOP).³⁷ The AOP establishes a framework for

³² B Boer and G Wiffen, *Heritage Law in Australia* (2005), 87.

³³ Eg, for Shark Bay a new administrative agreement between the Commonwealth and Western Australian governments was adopted.

³⁴ Environment Protection and Biodiversity Conservation Act 1999 (Cth) pt 3 sub-div A.

³⁵ But see: Boer and Wiffen, above n 32, 76; D Haigh, 'Australian World Heritage, the Constitution and International Law' (2005) 22 *Environmental and Planning Law Journal* 385.

³⁶ (2 November 1973), 1340 UNTS 184, reprinted in (1973) 12 ILM 1319.

³⁷ Senator R Hill, 'World First Plan to Safeguard Our Oceans' (Press Release, 23 December 1998).

integrated ecosystem-based planning and management for Commonwealth waters that aims to promote ecologically sustainable development of marine resources in a way that both encourages industry and protects biological diversity.³⁸ An important facet of the marine conservation objectives of the AOP was the establishment of a National Representative System of Marine Protected Areas. It was to ensure a 'comprehensive, adequate and representative' system of marine protected areas throughout the nation's waters.³⁹ The first of these was the Great Australian Bight Marine Park, proclaimed in 1998, as Australia's (and, at the time, the world's) second-largest marine park (after the Great Barrier Reef Marine Park). In 1999, the Tasmanian Seamounts Marine Reserve and Macquarie Island Marine Park were declared. In July 2007, three years after the adoption of the South East Region Marine Plan, 13 new marine protected areas for that region, comprising the largest temperate water MPA network in the world (all in Commonwealth waters), were declared.⁴⁰ Protection of the Great Barrier Reef Marine Park World Heritage Area was strengthened by a series of amendments to regulations under the Great Barrier Reef Marine Park Act 1975 and to the Act itself, that extended prohibitions on mining in 1999, strengthened measures to prevent shipping accidents in 2002, rezoned the Area so as to increase the percentage under full environmental protection from 4 per cent to 33 per cent in 2004 as well as by a major review of the Act in 2006 to introduce, inter alia, broader management planning.⁴¹ These developments assist Australia in meeting its CBD obligations in the marine sector. They indicate a whole-of-government approach and a concern with compliance.

(ii) Waste dumping at sea

In 1998, the government removed the Australian reservation to amendments on disposal of industrial wastes at sea under the 1972 Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter⁴² (London Convention). The reservation had been made in 1994 by the previous government to allow for a phase-out period, completed in 1998, for the sea dumping of jarosite wastes, a tailing from mining, off the coast of Tasmania. During 1996, a Protocol that extensively revised the London Convention was adopted by the Convention parties. The government ratified the Protocol in 2001 after passing amendments in 1999 to the Environment Protection (Sea Dumping) Act 1981 so as to be able to implement the Protocol.⁴³ The Protocol itself came into force in 2006, the same year that Australia submitted a formal proposal to amend the Protocol by listing carbon dioxide as a waste that may be discharged into the seabed. That amendment came

³⁸ Commonwealth of Australia, *Australia's Ocean Policy* (1998) 2.

³⁹ *Ibid* 45.

⁴⁰ The areas were identified in May 2006 and declared in July 2007, see: Senator I Campbell, 'Australia leads world with new Marine Protected Areas' (Press Release, 5 May 2006); the Hon M Turnbull, 'World's First Temperate Network of Marine Reserves Declared' (Press Release, 5 July 2007).

⁴¹ Great Barrier Reef Marine Park Authority <<http://www.gbrmpa.gov.au>>.

⁴² (13 November 1972) [1985] ATS 16.

⁴³ Department of Environment, *Dumping Wastes at Sea* (2002) <<http://www.environment.gov.au/coasts/pollution/dumping/dumping.html>>.

into force in 2007 to enable the geosequestration of greenhouse gases below the seabed, such by injecting them into cavities left by exhausted natural gas deposits.⁴⁴ Geosequestration is of potentially great significance for Australian offshore oil and gas producers, although its technological and economic viability has not yet been proved. The government's approach in this area was characterised by concern to protect sovereign interests, that is, the exploitation of national hydrocarbon reserves, and to facilitate the use of industry-driven solutions to global warming such as geosequestration

(iii) Antarctica

In 1999, the government announced that it would assert jurisdiction over the continental shelf beyond the Australian exclusive economic zone offshore of the Australian Antarctic Territory (AAT). GeoScience Australia gathered information on the geological extent of the continental shelf around mainland Australia and its territories.⁴⁵ In time to meet the international deadline of 2004, under Annex II of the UN Convention on the Law of the Sea⁴⁶ (UNCLOS), a submission setting out all Australia's extended continental shelf claims was made to the Commission on the Limits of the Continental Shelf, the relevant body established under that Convention. However, Australia requested that the Commission postpone its consideration of the Australian Antarctic continental shelf claim. The apparent reason for the postponement of the AAT-related claim concerned the unresolved Australian maritime boundaries with bordering Antarctic claimant states (France, New Zealand and Norway). The Commission agreed to postpone consideration of the AAT extended continental shelf claim and, in 2008, it approved the other Australian extended continental shelf claims submitted.⁴⁷ The vast majority of countries do not recognise the legitimacy of national claims to territorial sovereignty or appurtenant maritime zones claimed in the Antarctic region. The government's reason for postponement would certainly have been the likelihood of political challenges being made by other non-claimant states against Australia's Antarctic claim. Both Japan and the United States had objected to Australia's unilateral claim to an Antarctic exclusive economic zone in 1994 and more were likely to do so in the multilateral process required for approval of an extended continental shelf. In contrast, France, New Zealand and Norway have since

⁴⁴ International Maritime Organisation, *Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972* (2002) <http://www.imo.org/Conventions/mainframe.asp?topic_id=258&doc_id=681#2006>.

⁴⁵ Geoscience Australia, *Law of the Sea* (2008) <http://www.ga.gov.au/oceans/mc_los_More.jsp>. In the summers of 2000 and 2001, bathymetric surveys were conducted and data was processed in 2003 to determine the geological limits of the AAT continental shelf.

⁴⁶ (10 December 1982), 1833 UNTS 397.

⁴⁷ Commonwealth of Australia, *United Nations Convention on the Law of the Sea: Submission to the Commission on the Limits of the Continental Shelf on the Outer Limits of Australia's Continental Shelf Extending Beyond 200 Nautical Miles from the Territorial Sea Baseline – Executive Summary* (2004); Statement by the Chairman of the Commission on the Limits of the Continental Shelf on the progress of work in the Commission, 25 April 2008, UN Doc CLCS/58.

submitted extended continental shelf claims but have not claimed an Antarctic extended continental shelf.

This episode demonstrated the Howard government's emphasis on robust assertion of sovereign rights. It also demonstrated continuity with previous Australian governments. In 1994, the Keating government had declared an exclusive economic zone offshore of the AAT. However, the claim to an AAT extended continental shelf entailed higher financial and political risks, as the continental shelf survey cost \$A32 million and a UN multilateral deliberative process was required for consideration of the claim. Nevertheless, the government decided to make this Australian claim to the extended continental shelf and to manage the associated political risks.

(c) Marine living resources management

Under the rubric of marine living resources, this section considers mainland fisheries, Antarctic fisheries and marine wildlife.

(i) Mainland fisheries

Heightening concerns around the world concerning pressures on unsustainably harvested fish stocks were shared by the Howard government. It was extremely active in relation to a wide range of fisheries management efforts bordering the mainland in the Arafura Sea, Central and Western Pacific, Indian Ocean and Southern Ocean.

The government initiated action in 1999, in partnership with South Africa and Belize, to prevent vessels registered in those countries from continuing to poach Orange Roughy (*Hoplostethus Atlanticis*) off the South Tasman Rise in Australian southern waters, or to harvest fish stocks straddling Australian waters in a high seas area being regulated by both Australia and New Zealand. South Africa cooperated by revoking the licences of its vessels and Belize by deregistering them.⁴⁸ In the Arafura Sea, illegal fishing by mostly Indonesian fishers was also addressed by strengthened law enforcement. Additional resources were allocated to surveillance and interdiction, and facilities built for the detention of illegal fishers and for the destruction of their forfeited vessels. Legislation was amended to enable foreign fishers caught fishing illegally in the territorial sea to be jailed.⁴⁹ The government found legal avenues to detain crews of foreign vessels caught fishing illegally also in the Australian exclusive economic zone, including for default on payment of a fine and for resisting apprehension.⁵⁰ Laws increasing financial penalties for foreign illegal fishing and imposing automatic forfeiture of the vessel, gear and catch from the time of commencement of illegal fishing were imposed.⁵¹ The legality some of these measures under the UNCLOS, which does not permit a coastal state to imprison foreign fishers for fishing illegally in its exclusive

⁴⁸ Orange Roughy was also listed as a 'conservation dependent' species under s 194Q of the Environment Protection and Biodiversity Conservation Act 1999 (Cth).

⁴⁹ Fisheries Management Act 1991 (Cth) s 100B (as amended in 2006).

⁵⁰ W Gullett, *Fisheries Law in Australia* (2008) 312.

⁵¹ *Ibid* 313.

economic zone and requires the release of the vessel upon payment of a 'reasonable bond',⁵² has been questioned.⁵³ Nevertheless, poaching dropped dramatically.⁵⁴

The government ratified the 1993 Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas in 2004. The government also sought to enforce responsible fisheries management through international dispute settlement mechanisms, as demonstrated in the case of southern bluefin tuna (*thunnus maccoyii*). This highly migratory species ranges through Australia's exclusive economic zone and the adjacent high seas.⁵⁵ Under UNCLOS, states are obliged to cooperate in the management of such highly migratory stocks.⁵⁶ To better manage the stock, an agreement between Australia, Japan and New Zealand had been adopted in 1993, that is, the Convention for the Conservation of Southern Bluefin Tuna⁵⁷ (CCSBT). The CCSBT is premised on the Parties agreeing to a total allowable catch for the stock. Unfortunately, Japan assessed the stock biomass as much more abundant than did Australia and New Zealand and the Parties failed to agree on any quota after 1996. In 1998, Japan commenced an extensive 'experimental fishing program' for 1,464 tons. Despite Australia's important trade relationship with Japan, the Howard government took the dispute to arbitration in 2000.⁵⁸ The tribunal decided that it did not have jurisdiction to decide the matter on the merits⁵⁹ and, so, the dispute resolution mechanism did not yield the result desired by the government.

⁵² Above n 46, art 73.

⁵³ Gullett, above n 50, 312; R Baird 'Foreign Fisheries Enforcement: Do Not Pass Go, Proceed Slowly to Jail – Is Australia Playing by the Rules?' (2007) 30 *University of New South Wales Law Journal* 1.

⁵⁴ Department of the Environment, Water, Heritage and the Arts, *Oceans Action Bulletin: 1 June 2007* (2007) <<http://www.environment.gov.au/coasts/publications/oceans-action/june-07.html>>.

⁵⁵ Due to over fishing, the biomass of the stock had fallen to 10 per cent of its 1980 levels by 1996. It is fished primarily by Japanese fishing vessels as it is prized for flavourful sashimi.

⁵⁶ Above n 46, art 64.

⁵⁷ (10 May 1993), 1819 UNTS 359.

⁵⁸ In 1999, Australia and New Zealand applied successfully to the International Tribunal for the Law of the Sea (ITLOS) for an injunction against Japan's 'experimental fishing program': *Southern Bluefin Tuna Cases (New Zealand v Japan; Australia v Japan) (Provisional Measures)* (1999) 38 ILM 1624. This decision was discussed in the agora of the 2000 *Yearbook of International Environmental Law*. A general arbitral tribunal established under Annex VII of the UNCLOS heard the matter for the resolution on the merits in 2000: *Southern Bluefin Tuna Case (Australian and New Zealand v Japan) (Jurisdiction and Admissibility)* (2000) 39 ILM 1359. This decision was discussed in D Bialek, 'Australia & New Zealand v Japan: Southern Bluefin Tuna Case' (2000) 1 *Melbourne Journal of International Law* 153.

⁵⁹ The arbitral panel decided (4:1) that it did not have jurisdiction under UNCLOS because the CCSBT governed the dispute and its dispute resolution procedure required that its Parties continue with their negotiations. Its decision has been controversial: D Colson and P Hoyle, 'Satisfying the Procedural Prerequisites to the Compulsory Dispute Settlement Mechanisms of the 1982 Law of the Sea Convention: Did the Southern Bluefin Tuna Tribunal Get It Right?' (2003) 34 *Ocean Development & International Law* 59; B Kwiatowska, 'The Southern Bluefin Tuna Tribunal Did Get It

In the Central and Western Pacific, the government worked through the Forum Fisheries Agency to ensure the strongest possible conservation and enforcement provisions in the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean,⁶⁰ which was adopted in 2001 and ratified by Australia in 2003.⁶¹ The government supported measures adopted by the Convention's regional fisheries commission in 2006 to enable parties to board and inspect each other's fishing vessels to monitor compliance with regional operational standards.

In mainland fisheries, a strong emphasis on enforcement was apparent in government, most often in the form of committing resources for surveillance of Australian waters, arrest of illegal foreign fishing vessels and their domestic prosecution. No international court action to compel another country to perform its environmental responsibilities was taken after the unfavourable outcome in the *Southern Bluefin Tuna Case*,⁶² which might have signalled that arbitral tribunals cannot be relied upon to confirm what the government considered to be its own environmental rights and others' obligations in the exclusive economic zone. The Howard government's concern to safeguard Australian sovereign rights in the exclusive economic zone thereafter manifested itself in robust unilateral and bilateral enforcement arrangements.

(ii) Antarctic fisheries

The most extraordinary efforts by the government to ensure protection of Australian natural resources by enforcing compliance with fisheries laws took place in sub-Antarctic waters. In 1996, Australia was enabled by the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR)⁶³ to open a new commercial fishery in its sub-Antarctic waters off Heard Island and McDonald Island (HIMI), which fall within a zone largely co-regulated by CCAMLR and Australia.⁶⁴ The Howard government increased its surveillance of sub-Antarctic waters and the Royal Australian Navy seized two foreign vessels fishing illegally in those waters in 1997.⁶⁵ Huge efforts were

Right: A Commentary and Reply to the Article by David A Colson and Dr Peggy Hoyle' 34 *Ocean Development & International Law* 369. The parties did continue to negotiate management and compliance measures and, in 2006, based upon evidence in scientific and technical reports, Japan agreed to halve its catch.

⁶⁰ (5 September 2001) 40(2) ILM 277, [2004] ATS 15.

⁶¹ G Rose, 'Oceania' (2000) 10 *Yearbook of International Environmental Law* 596.

⁶² *Southern Bluefin Tuna Cases (New Zealand v Japan; Australia v Japan) (Provisional Measures)* (1999) 38 ILM 1624; *Southern Bluefin Tuna Case (Australian and New Zealand v Japan) (Jurisdiction and Admissibility)* (2000) 39 ILM 1359.

⁶³ 33 UST 3476; 1329 UNTS 48; (1980) 19 ILM 841.

⁶⁴ In that year CCAMLR decided on new conservation measures for highly sought after Patagonian Toothfish (*Dissostichus eleginoides* also known as Chilean Sea Bass) and Australia was therefore able to administer complementary implementing measures in its HIMI waters, licensing vessels to fish there. Consequently, the licensed Australian vessels reported illegal foreign fishing vessels there.

⁶⁵ The *Salvore* (registered in Belize) and the *Aliza Glacial* (registered in Panama): R Baird, 'Coastal State Fisheries Management: A Review of Australian Enforcement Action in the Heard and McDonald Islands Australian Fishing Zone' (2004) 9 *Deakin*

exerted to arrest the *South Tomi* in 2001. That vessel, registered in Togo, was pursued for 14 days across the Indian Ocean, from Australia's sub-Antarctic waters nearly into South African waters.⁶⁶ But that was not maximal effort. In 2003, the *Viarsa I*, a Uruguayan registered vessel, was arrested after a hot pursuit that lasted 21 days and covered 4,000 nautical miles.⁶⁷ Further arrests were made in the following years and, in each case, the master and/or crew were charged with offences and the vessel, catch and gear forfeited to the government under new Australian fisheries law.⁶⁸ These laws pushed the limits of international legal constraints on coastal state enforcement rights imposed under UNCLOS.⁶⁹

The arrests of the *South Tomi* and *Viarsa* were assisted by the South African and United Kingdom governments. Other HIMI fisheries enforcement were also characterised by international cooperative arrangements. Amid information that some of vessels arrested in the 1997/1998 season were operated by Norwegian interests under flags of convenience, the government negotiated successfully with Norway in 1998 for tighter Norwegian regulation of its nationals operating overseas. Australia and France signed in 2003 a Treaty on Cooperation in the Maritime Areas Adjacent to the French Southern and Antarctic Territories, Heard Island and the McDonald Islands.⁷⁰ It facilitates cooperation in scientific research and in surveillance and enforcement in their sub-Antarctic territories. Negotiations were commenced for a formal agreement with South Africa.⁷¹

At the multilateral level, a broader system for stronger fisheries enforcement was advanced by the Howard government's promotion of the catch documentation scheme, eventually adopted by CCAMLR in 1999. The scheme requires that a catch be documented according to its location and fishing methodology before it can be given market access to a CCAMLR state.⁷² In 2004, the government

Law Review 91.

⁶⁶ Ibid.

⁶⁷ Australian Antarctic Division, *Poachers pursued over 7,000 kilometers* (2004) <<http://www.aad.gov.au/default.asp?casid=14710>>.

⁶⁸ In 2002, the *Lena* and the *Volga*, both Russian registered vessels, were arrested, as was the Uruguayan registered *Maya V* in 2004 and the Cambodian *Taruman* in 2005.

⁶⁹ Russia successfully contested the terms of a bond for release of the detained *Volga* (see *Volga Case (Russian Federation v Australia)*, ITLOS Case No 11, 23 December 2002 (2003) 42 ILM 159); W Gullett, 'Developments in Australian Fisheries Law: Setting the Law of the Sea Convention Adrift?' (2004) 21 *Environmental and Planning Law Journal* 169. Subsequently, to avoid contests such as for the *Volga*, new legislation automatically transfers the ownership of a foreign vessel to the Australian government at the time that the vessel commences illegal fishing in Australian waters: Fisheries Management Act 1991 (Cth) s 106A; Gullett, above n 50, 314.

⁷⁰ [2004] ATNIA 8; JSCOT Rep 63; [2005] ATS 6.

⁷¹ A second agreement was adopted in 2007: W Gullett and C Schofield, 'Pushing the limits of the Law of the Sea Convention: Australian and French cooperative surveillance and enforcement in the Southern Ocean' (2007) 22 *International Journal of Marine and Coastal Law* 545.

⁷² This is a significant constraint on illegal fishing because 90 per cent of Patagonian Toothfish is marketed within CCAMLR states. The government also proposed the listing of Patagonian Toothfish in Appendix II of the CITES at COP 12 in 2002. Listing would require that trade in that species be subject to the issue by national

supported CCAMLR's adoption of a centralised, common standard satellite-based vessel monitoring system. It also supported the electronic adaptation of the catch documentation scheme, better use and public dissemination of the Illegal Unregulated and Unreported Vessel List that blacklists known offending vessels, as well as enhanced systems for reporting sightings of potential illegal vessels.⁷³

The high intensity of effort required for effective surveillance and arrest of poaching vessels in HIMI again reflected the Howard government's determination to assert and defend Australian sovereign rights. It also indicated an application of shared responsibility, where other states regulating fisheries operators, vessel registers or contiguous fisheries were approached to share responsibility to curtail poaching. Finally, it also suggested an inconsistency in maintaining the freedom of markets, as the government uncharacteristically supported the use of the measures to constrain trade by means of the Patagonian Toothfish catch documentation scheme.

(iii) Marine wildlife

Throughout its period in office, the Howard government demonstrated that it valued shared responsibility for the management of migratory species. In 1996, 11 species of albatross were listed in Appendices I and II under the Convention for the Conservation of Migratory Species of Wild Animals⁷⁴ (Bonn Convention) following an initiative of the Australian government. Albatross, which migrate through the Southern Ocean region, are being decimated as incidental catch in long-line fishing operations. In 1999, the government also supported the listing of seven species of petrels under the Bonn Convention. That year, it led a further initiative to negotiate a new regional convention under the aegis of the Bonn Convention to conserve albatross, holding a meeting of southern hemisphere range states in Hobart in 2000. The Agreement for the Conservation of Albatrosses and Petrels was adopted in 2001 and entered into force in 2004. Australia served as interim secretariat and, on entry into force, as permanent secretariat.⁷⁵

In relation to sea turtles, the government submitted third party proceedings to the Dispute Settlement Body of the World Trade Organization (WTO) against trade-related environmental measures taken by the United States. A breach of the General Agreement on Tariffs and Trade (GATT) was asserted concerning unilateral restrictions that prevented importation into the United States of shrimp harvested by means that caused high incidental mortality to sea turtles. Australia's third party submission was not motivated by a desire to protect Australian shrimp

authorities of export and import permits. The proposal was not successful but resulted in the subsequent adoption of a recommendation that CITES Parties adopt the CCAMLR catch documentation scheme and that the CITES Secretariat compile information on its adoption by the Parties.

⁷³ R Baird, 'CCAMLR Initiatives to Counter Flag State Non Enforcement in Southern Ocean Fisheries' (2005) 36 *Victoria University of Wellington Law Review* 733.

⁷⁴ (1980) 19 ILM 15; [1991] ATS 32.

⁷⁵ Agreement on the Conservation of Albatrosses and Petrels [2004] ATS 5 <<http://www.acap.aq>>.

exports,⁷⁶ but to protect trade freedoms from unilateral restrictions disguised as environmental protection measures, consistent with the government's positions adopted in the WTO Trade and Environment Committee. The WTO Dispute Settlement Body found that, although the restrictions were bona fide conservation measures, their application was arbitrary.⁷⁷ That the Howard government's third party submission was designed to curtail future environmentally disguised trade restrictions is suggested by the apparently weak Australian direct national interest in the circumstances.

From the outset, the Howard government strongly opposed whaling. In 1996, its first year of office, it established a National Taskforce on Whaling to investigate ways to support a permanent international ban on whaling. The Taskforce reported in 1997 and, in response, the government adopted a policy for international anti-whaling initiatives to be promoted through the International Whaling Commission (IWC).⁷⁸ In furtherance of its policy, the government proposed the establishment of a South Pacific Whale Sanctuary to the IWC in 2000, 2002 and 2003.⁷⁹ The government successfully moved in 2002 for the Conference of Parties to the Bonn Convention to list in Appendix I of the Convention sei, fin and sperm whales (as species that are endangered and must be protected), and to list in Appendix II Brydes, Antarctic minke and pygmy right whales (as species having an unfavourable conservation status).⁸⁰ Nevertheless, despite its robust approach in international fora, the government was not willing to arrest Japanese whaling vessels engaged in whaling in Australia's Antarctic waters, although they were clearly in breach of Australian law.⁸¹ Nor would it initiate legal action against whaling companies under either Australian law (where breach was clear) or under international law (where a breach was much less certain). Instead, action for an

⁷⁶ Shortly thereafter, in 2000, the Howard government signed a Memorandum of Understanding on the Conservation and Management of Sea Turtles and their Habitats (Indian Ocean and South East Asia). The Memorandum establishes a marine turtle conservation and management plan.

⁷⁷ *United States – Import Prohibition of Certain Shrimp and Shrimp Products*, WTO Doc WT/DS58/AB/R (1998) (Report of the Appellate Body).

⁷⁸ Commonwealth of Australia, *A Universal Metaphor: Australia's Opposition to Commercial Whaling* (1997). The policy measures included the adoption of a global whale sanctuary, a 50-year commercial whaling moratorium and a prohibition on scientific whaling.

⁷⁹ Each time, the proposal failed to pass with a three-quarters majority vote. Support for the sanctuary gradually increased from just Pacific Island countries to a simple majority of the IWC. Interesting from a treaty law perspective was the government's argument against Iceland's accession to the IWC, on the grounds that Iceland's reservation against the commercial whaling moratorium was incompatible with the object and purpose of the IWC's constitutional treaty, the International Convention for the Regulation of Whaling (2 December 1946), 161 UNTS 72. That argument was supported by a majority vote in 2001 but failed in 2002, when the IWC voted for Iceland's accession. In 2003, Australia also co-sponsored a resolution to the effect that Iceland's scientific whaling program was an abuse of the scientific whaling provisions of the International Convention.

⁸⁰ Under Australian legislation in 1998, fin, sei and sperm whales were previously listed as endangered species, thereby prohibiting international trade in them.

⁸¹ Environment Protection and Biodiversity Conservation Act 1999 (Cth) s 225.

injunction against Japanese whalers was taken by a non-governmental organisation in the Australian Federal Court. The Attorney-General, in a 2005 *amicus curiae* brief requested by the bench, invited the Court to exercise its discretion not to proceed on grounds of harm to Australia's international relations.⁸²

The Howard government's anti-whaling policy was consistent with the previous Fraser, Hawke and Keating governments' opposition to commercial whaling.⁸³ The symbolic cause of whale protection is popular and has negligible economic cost, making it an attractive soapbox issue. However, the government's apparently emotional and morally principled stance appears inconsistent with its rational and managerial approach to other international environmental issues. When it came to a test that would possibly result in a Japanese international legal challenge to Australian sovereign rights to regulate whaling in the AAT exclusive economic zone (and harm the delicate balance of Antarctic Treaty cooperative relations), the government was unwilling to risk its claim to sovereign rights.⁸⁴ Thus, protection of Australian sovereign rights was the government's paramount consideration.

(d) Atmosphere protection

The international legal aspects of atmosphere protection revolve around the 1987 Montreal Protocol on Substances that Deplete the Ozone Layer⁸⁵ (Montreal Protocol) and the 1992 UN Framework Convention on Climate Change⁸⁶ (UNFCCC) and its 1997 Kyoto Protocol.⁸⁷

(i) Ozone layer

Australia has a direct national interest in reversing stratospheric ozone depletion in the southern hemisphere's high latitudes due to the resultant ultraviolet radiation exposure that harms Australian life. The government accepted the 1997 Montreal Amendments to the Montreal Protocol in 1998 and a Methyl Bromide Strategy was put in place to phase-out methyl bromide use in Australia's horticultural industries within the Montreal Protocol's 2005 deadline. In 2000, the

⁸² *Humane Society International Inc (HSI) v Kyodo Senpaku Kaisha Ltd (KSK)*. The Federal Court declined HSI's application to serve process under the Environment Protection and Biodiversity Conservation Act 1999 (Cth) s 475 on KSK outside the jurisdiction ([2005] FCA 664) but, on appeal, the Full Federal Court allowed the application ([2006] FCAFC 116). The Japanese government refused to accept service of process through the diplomatic channel, denying Australian jurisdiction over Antarctic waters. The Federal Court then gave orders for substituted service on KSK ([2007] FCA 124) and, when the defendant did not respond to the served application, followed with a default judgment to grant the injunction prohibiting whaling ([2008] FCA 3).

⁸³ The Fraser government illegalised Australian whaling under the Whale Protection Act 1980 (Cth).

⁸⁴ R Davis, 'Enforcing Australian Law in Antarctica: The HSI Litigation' (2007) 8 *Melbourne Journal of International Law* 143.

⁸⁵ (16 September 1987), 1522 UNTS 29.

⁸⁶ 1771 UNTS 107; S Treaty Doc No 102-38; UN Doc A/AC.237/18 (Part II)/Add.1; (1992) 31 ILM 849; [2008] ATS 2.

⁸⁷ UN Doc FCCC/CP/1997/7/Add.1 (10 December 1997); (1998) 37 ILM 22.

Australian Halon Management Strategy was instituted to provide a framework for management of Australia's halon stocks to 2030 and the ultimate elimination of their use. The National Halon Bank is designed to help reduce halon stocks throughout the Asia-Pacific through collection and storage and to supply it for essential uses in Australia and overseas. The 1999 Beijing Amendments to the Montreal Protocol regulating bromochloromethane were accepted in 2005. Australia's implementation of the Montreal Protocol has long been conscientious, under the Howard and previous governments, due to the perception that the global regime can and does work and has a high, direct national benefit. It contrasts strongly with the Howard government's approach to multilateral cooperation to combat climate change.

(ii) Climate change

The Howard government maintained the negotiation position of the Keating government when it took over participation in multilateral negotiations for a protocol to the UNFCCC in 1996. It indicated its opposition to global warming mitigation measures in the form of legally binding targets for greenhouse gas emissions (GHG) reductions. Although such targets were ultimately adopted when the negotiations concluded in 1997, Robert Hill, then Minister for Environment, negotiated into the morning of the last night to secure economically favourable outcomes for Australia.⁸⁸ These outcomes included agreement on no gross GHG emission reduction target for Australia and the recognition of land use and forestry changes as mitigation measures. Thus, the Kyoto Protocol allows Australia to increase its GHG emissions by 8 per cent above the 1990 'baseline level' during the 2008-2012 'commitment period'⁸⁹ and counts reductions in the rate of land clearing (ie removal of native forest) and increases in afforestation towards emission reductions.⁹⁰

In 1999, JSCOT inconclusively considered ratification of the Kyoto Protocol pending resolution of outstanding negotiation issues and, in 2000, the Minister indicated that these issues included substantial accounting for carbon sinks, refinement of market-based approaches to minimise the cost of GHG abatement such as credits for emissions trading and for investment in low emissions technology in developing countries (ie the 'Clean Development Mechanism'), and measures to engage developing countries in emissions reduction commitments. Despite negotiation progress on some of these issues, in 2002, he announced that Australia would not ratify the Protocol, although it would honour the target under the Protocol, by containing Australia's GHG emissions growth to 8 per cent.

That year, the Howard government began to explore international cooperative initiatives outside the Protocol to mitigate GHGs. A bilateral Climate Action

⁸⁸ C Hamilton, *Running from the Storm – The Development of Climate Change Policy in Australia* (2001) 88.

⁸⁹ Above n 87, Annex 1.

⁹⁰ *Ibid* art 3.7; I Fry, 'Twists and Turns in the Jungle: Exploring the Evolution of Land Use, Land Use Change and Forestry Decisions with the Kyoto Protocol' (2002) 11 *Review of European Community and International Environmental Law* 159.

Partnership was entered into with the United States, focusing initially on technological cooperation to innovate in the area of clean coal, geosequestration and alternative options for remote area energy supply. In 2003, Australia formalised bilateral cooperative arrangements with China, New Zealand and the European Union. In 2006 a bilateral partnership was initiated with Japan and South Africa.⁹¹

At the multilateral level, the Howard government pursued its climate change agenda outside the Kyoto Protocol principally through the Asia Pacific Partnership on Clean Development and Climate (APP), established in 2006, and through Asia-Pacific Economic Cooperation (APEC). Members of the APP are Australia, Canada, China, India, Japan, Korea and the United States, comprising both public- and private-sector participants.⁹² At the APEC annual Leaders Summit, held in Sydney in 2007, the Sydney Declaration on Climate Change was adopted. The twenty-one APEC leaders, including developing countries such as Indonesia and Malaysia, stated the general objective of reducing GHGs, after the Kyoto Protocol expires in 2012, by utilising methods such as energy efficiency, low emissions technologies and by arresting deforestation.⁹³ The government also committed \$A200 million to a Global Initiative on Forests and Climate to prevent deforestation in developing countries, including in the Kalimantan forests in Indonesia.

Several measures to contain Australian GHG emissions growth, particularly from industrial sources, were undertaken. Most were premised on domestic private-sector voluntary steps to be stimulated by financial incentives provided by

⁹¹ The partnership with the United States extends to over 20 projects, including synthetic greenhouse gases and energy efficiency. A Joint Declaration on Bilateral Cooperation on Climate Change was signed with China, seeking to explore a broad range of climate change responses. A partnership was entered into with New Zealand, much of it addressing collaboration in regional scientific studies and support for Pacific Island countries but also addressing common energy efficiency standards. Broad-ranging cooperation was specified under the Review of the Joint Declaration on Relations with the European Union. Department of Climate Change, *Australia's International climate change partnerships* (2007) <<http://www.climatechange.gov.au/international/partnerships/index.html>>.

⁹² They formed eight task forces and corresponding action plans for projects partly supported by public funding including \$A100 million. However, the AP6 initiative has been critiqued as inadequate and as undermining the Kyoto Protocol: P Christoff and R Eckersley, 'Kyoto and the Asia Pacific Partnership on Clean Development and Climate' in T Bonyhady and P Christoff (eds), *Climate Change in Australia* (2007) ch 3; P Lawrence, 'The Asia Pacific Partnership on Clean Development and Climate (AP6): a distraction to the Kyoto process or a viable alternative?' (2007) *University of New South Wales Faculty of Law Research Series*, Working Paper 72 <<http://law.bepress.com/unswwps/flrps/art72>>.

⁹³ Asia-Pacific Economic Cooperation, *Energy Working Group* (2008) <http://www.apec.org/apec/apec_groups/som_committee_on_economic_working_groups/energy.html>. Previously, the only international cooperation with an ASEAN member country was a pilot program for 'Activities Implemented Jointly' under the UNFCCC between Australia and Indonesia in 1996.

the government.⁹⁴ To coordinate GHG emissions accounting and to manage the programs, a National Greenhouse Office was established in 1997 as an agency under the aegis of both the environment and of the agriculture and forests departments. Drawing a variety of measures together, a National Greenhouse Strategy was adopted in 1998. However, emissions mitigation measures remained based in policy rather than legislative instruments.⁹⁵ Their voluntary nature and inadequate public funding ensured that they were of little effect. The first obligatory measure was introduced in 2000, when the government legislated that, by 2010, wholesale distributors of electricity must obtain at least a modest 2 per cent of their energy from renewable sources, such as wind, solar, geothermal or tidal energy.⁹⁶ In 2003, further legislation was enacted on synthetic gases replacing substances that deplete the ozone layer,⁹⁷ many of which have severe global warming effects. The major watershed was the National Greenhouse and Energy Reporting Act 2007, designed to establish a single, national system for reporting greenhouse gas emissions, abatement actions and energy consumption and production by corporations to underpin the proposed Australian Emissions Trading Scheme. In 2006, the government predicted that it would exceed its Kyoto target by 1 per cent.⁹⁸

The Howard government's decision not to ratify the Kyoto Protocol was the most unpopular environmental action of its incumbency, at both domestic and international levels. It denied itself international appreciation and positioning at the Kyoto implementation negotiation table. It also denied Australian businesses a full

⁹⁴ Eg, the Greenhouse Challenge program was introduced in 1996 to engage Australian companies. Over 100 companies signed voluntary target agreements with the government over the following year. Other programs included: 1997 – Safeguarding the Future: Australia's Response to Climate Change, Cities for Climate Protection, Bush for Greenhouse, and 1999 – Greenhouse Gas Abatement Program. See R Sullivan, 'Greenhouse Challenge Plus: A new departure or more of the same?' (2006) 23 *Environmental and Planning Law Journal* 60; D Jones, 'The Kyoto Protocol, Carbon Sinks and Integrated Environmental Regulation: an Australian Perspective' (2002) 19 *Environmental and Planning Law Journal* 110.

⁹⁵ In 2000, the government issued a discussion paper proposing a legislative amendment that would require a national environmental impact assessment process for any development proposals that would emit GHG emissions beyond the amount of 0.5 million tonnes in a year (approximately 10% of Australia's average annual GHG emissions increases from fossil fuel sources). The proposal was not adopted. Similarly, a Bill to implement the UNFCCC, proposed by the Greens (Convention on Climate Change (Implementation) Bill), obtained no traction in the Senate Committee on Environment, Communications, Information Technology and the Arts in 1999.

⁹⁶ This requirement, known as the Mandatory Renewable Energy Target (MRET), was widely criticised as too unambitious. It is supervised by the Office of the Renewable Energy Regulator (established in 2001): <<http://www.orer.gov.au>>.

⁹⁷ Ozone Protection and Synthetic Greenhouse Gas Management Amendment Regulations 2004 (Cth), under the Ozone Protection and Synthetic Greenhouse Gas Management Act 1989 (Cth). It creates national standards for licensing to control activities involving synthetic greenhouse gases.

⁹⁸ T M Power, 'Issues and Opportunities for Australia under the Kyoto Protocol' (2003) 20 *Environmental and Planning Law Journal* 459; Australian Greenhouse Office, *Tracking to the Kyoto Target 2006* (2006).

opportunity to participate early in emerging carbon markets. That drastic decision not to ratify might be taken as proof that the government was in thrall to Australian domestic mining industry opposition to the Protocol, although that seems unlikely given the fact of Australian implementation of the Protocol.⁹⁹ Another interpretation is that the government made a diplomatic assessment that it would be more influential in persuading developing countries to undertake greenhouse gas emissions mitigation commitments during negotiation of a new Protocol after the Kyoto commitment period expires in 2012 if it maintained the credible threat of principled non-participation by developed countries in the absence of developing country commitments. The latter interpretation was one of the government's stated positions and is consonant with its emphasis on shared global responsibility, as developing countries have no commitment to mitigate GHG emissions under the Kyoto Protocol.¹⁰⁰ Nevertheless, there were good diplomatic arguments to the contrary of that position, not least that ratification was inevitable if Australia was to participate in the Kyoto Protocol carbon markets.¹⁰¹

(e) Hazardous materials

International coordination and cooperation in the management of hazardous wastes and chemicals are primarily regulated under the 1989 Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal¹⁰² (Basel Convention), the 2001 Stockholm Convention on Persistent Organic Pollutants¹⁰³ (POPs Convention) and the 1998 Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade¹⁰⁴ (PIC Convention). Further treaties, not addressed here, govern other aspects of hazardous materials management, such as those concerning radioactive, pharmaceutical and alimentary substances.

(i) Hazardous waste

The Howard government maintained its opposition to a blanket ban on the export of hazardous waste to developing countries, consistent with policy of the Keating government. Throughout its term, it declined to ratify the amendment to the Basel Convention that would make a ban legally binding. However, in a

⁹⁹ R Lyster, 'Common but Differentiated?: Australia's Response to Global Climate Change' (2004) 26 *Georgetown International Environmental Law Review* 561.

¹⁰⁰ The principle of common but differentiated responsibility as manifest in environmental treaty provisions provides developing countries with definite but delayed or reduced implementation responsibility and provides financial and technical assistance to them to promote their implementation efforts. The Montreal Protocol, for example, entails common but differentiated developing country responsibilities to phase out substances that deplete the ozone layer. For a detailed discussion of the principle, see: L Rajamani, *Differential Treatment in International Environmental Law* (2006).

¹⁰¹ Cogent arguments for ratification, including carbon market positioning, are set out in G Pearce *High and Dry* (2007) 356 ff.

¹⁰² 1673 UNTS 126; (1989) 28 ILM 657; [1992] ATS 7.

¹⁰³ (2001) 40 ILM 531; [2004] ATS 23.

¹⁰⁴ (1998) 38 ILM 1; [2004] ATS 22.

regional compromise in 1998, Australia supported the negotiation of and then ratified the Waigani Convention, a South Pacific regional treaty that bans the export from outside the region of hazardous wastes to Pacific Forum countries, other than to Australia and New Zealand. It allows the export of waste by Pacific Forum countries but requires that shipments be conducted in a safe and environmentally sound manner.¹⁰⁵ The government also declined to ratify the Basel Convention's liability protocol.¹⁰⁶ Regulations under the Hazardous Waste (Regulation of Exports and Imports) Act 1989, which implements the Basel Convention, were amended in 1999 to accommodate the Waigani Convention and amended again in 2003 to accommodate hazardous waste imports into Australia from East Timor. Due to the difficulty in identifying the characteristics of hazardous wastes while they are in transit, the government accepted newly negotiated annexes for the Basel Convention and adopted implementing regulations for them in 1998, making it simpler to identify hazardous wastes for the purposes of the regulating transboundary movements.¹⁰⁷ Further regulatory simplifications were adopted in 2004, to implement a binding decision of the Organisation for Economic Cooperation and Development (OECD) that harmonised arrangements among its members with the new annexes of the Basel Convention.¹⁰⁸

Although the Howard government met its treaty commitments, it declined to ratify the Basel Convention ban which, in its consideration, obstructed recycling of hazardous waste. Further, its record of approvals for export of hazardous waste indicated shallow implementation of the Basel Convention's waste minimisation and local disposal obligations. The government characteristically preferred to allow market forces to operate.¹⁰⁹

¹⁰⁵ Convention to Ban the Importation into Forum Island Countries of Hazardous and Radioactive Wastes and to Control the Transboundary Movements and Management of Hazardous Wastes within the South Pacific Region (16 September 1995), 2161 UNTS 93. Amendments to the Hazardous Waste (Regulation of Exports and Imports) Regulations 1996 (Cth) were adopted in 1999.

¹⁰⁶ The Basel Protocol on Liability and Compensation for Damage Resulting from Transboundary Movements of Hazardous Wastes and their Disposal (10 December 1999) <<http://www.basel.int/meetings/cop/cop5/docs/prot-e.pdf>>, is not widely ratified and has not yet entered into force.

¹⁰⁷ Annexes VIII and IX to the Basel Convention provide additional classification categories for hazardous waste streams, above n 102.

¹⁰⁸ *Revision of Decision C(92)39/FINAL on the Control of Transboundary Movements of Wastes Destined for Recovery Operations*, OECD Doc C(2001)107 (2001) (Decision of the Council). The decision addressed transboundary movements for the purpose of the recycling of hazardous wastes. Australia is a member of the OECD.

¹⁰⁹ Yet, in 1999, the government declined to allow market forces to operate when it prohibited the importation into Australia of radioactive waste for disposal: Customs Amendment (Anti-Radioactive Waste Storage Dump) Act 2000 (Cth).

(ii) Hazardous chemicals

A National Strategy for the Management of Scheduled Waste,¹¹⁰ dealing with a range of wastes regulated by the Basel Convention, and more particularised waste management plans for them, were already in place in 2004, when Australia became a party to the POPs Convention. As several hazardous wastes are also persistent organic pollutants, there is overlap between the two conventions' obligations and their implementation. Further subject matter overlap occurs with the PIC Convention, which was ratified also in 2004. The National Industrial Chemicals Notification and Assessment Scheme (NICNAS),¹¹¹ together with the National Registration Scheme for Agricultural and Veterinary Chemicals (NRS)¹¹² managed by the Australian Pesticides and Veterinary Medicines Authority (APVMA),¹¹³ both extant at the time of ratification, are used to implement PIC Convention obligations. However, as required under the POPs Convention, the government published a POPs National Implementation Plan in 2006. The Howard government was not enthusiastic in negotiating the new trade restrictive measures employed in the hazardous chemicals treaties and utilised mostly existing regulations for their implementation. It is likely that this infrastructure will need to be reviewed for its international compliance.

(f) Sustainable development framework

In drafting the EPBC Act, the Howard government entrenched the *fin de siecle* paradigms of sustainable development. The Act's extensive objectives include ecologically sustainable development,¹¹⁴ which is defined in terms familiar from the 1992 UN Summit Conference on Environment and Development.¹¹⁵ Other objectives include protection of the environment, conservation of biodiversity, and cooperative management with the community, land-holders and indigenous peoples. The precautionary principle is separately defined in terms similar to those in the Rio Declaration¹¹⁶ and is specified as an obligatory consideration in certain ministerial decision-making.¹¹⁷ Public participation is provided for in the forms of community consultation, input into assessment and approval of development

¹¹⁰ Department of the Environment, Water, Heritage and the Arts, *Stockholm Convention on Persistent Organic Pollutants (POPs)* (2007) <<http://www.environment.gov.au/settlements/chemicals/pop.html>>.

¹¹¹ Department of Health and Aging, *About NICNAS* (2008) <http://www.nicnas.gov.au/About_NICNAS.asp>.

¹¹² Department of Agriculture, Fisheries and Forestry, *Agricultural and Veterinary Chemicals* (2008) <<http://www.daff.gov.au/agriculture-food/regulation-safety/ag-vet-chemicals>>.

¹¹³ Australian Pesticides and Veterinary Medicines Authority <<http://www.apvma.gov.au/index.asp>>.

¹¹⁴ Environment Protection and Biodiversity Conservation Act 1999 (Cth) s 3.

¹¹⁵ Environment Protection and Biodiversity Conservation Act 1999 (Cth) s 3A; Rio Declaration above n 1.

¹¹⁶ Rio Declaration above n 1, Principle 15: 'Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.'

¹¹⁷ Environment Protection and Biodiversity Conservation Act 1999 (Cth) s 391; EPBC Act s 391.

actions, the monitoring of agreements and the preparation of management plans, recovery plans and threat abatement plans. In relation to the general international requirement of conduct of environmental impact assessments,¹¹⁸ the Act provides that the Commonwealth shall assess the potential impacts of development proposals on matters of national environmental significance.¹¹⁹ Strategic assessments are also provided for.¹²⁰

The implementation of aspects of specified environmental treaties is also achieved through the EPBC Act. For example, matters of national environmental significance that may trigger the conduct of environmental impact assessments are defined in terms that implement some Commonwealth obligations under treaties including the CBD, CITES, Ramsar Convention, Bonn Convention, migratory birds conventions, UNCLOS and World Heritage Convention.¹²¹ Similarly, categories of management arrangements for protected areas are identified in terms that implement conservation treaties, such as concerning world heritage and wetlands.¹²² In relation to implementation and enforcement more generally, the Act strengthened Commonwealth powers to enforce compliance. For example, compliance can be monitored and audited.¹²³ More generally, an annual report is to be made on the operation of the Act¹²⁴ and, every five years, a national State of the Environment Report produced.¹²⁵

The introduction into Parliament and passage of the EPBC Act revolutionised the relationship of international environmental law with Commonwealth environmental law and administration.¹²⁶ First, it advanced Australian implementation of the emergent international norms of sustainable development. Second, it improved Australian systems for implementation of several environmental treaties. Both were consonant with the government's emphasis on compliance. Despite the permissive formulation of some environmental treaty obligations, such that they serve as 'soft law' that articulate environmental aspirations and function as policy education, the government's emphasis upon compliance suggested a positivist approach to international environmental law obligations.

¹¹⁸ Rio Declaration, above n 1, Principle 17: 'Environmental impact assessment, as a national instrument, shall be undertaken for proposed activities that are likely to have a significant adverse impact on the environment and are subject to a decision of a competent national authority.'

¹¹⁹ Environment Protection and Biodiversity Conservation Act 1999 (Cth) pt 3; EPBC Act pt 3.

¹²⁰ Environment Protection and Biodiversity Conservation Act 1999 (Cth) s 146; Gullett, above n 50, 142-47.

¹²¹ Environment Protection and Biodiversity Conservation Act 1999 (Cth) pt 3.

¹²² Environment Protection and Biodiversity Conservation Act 1999 (Cth) pt 15.

¹²³ Environment Protection and Biodiversity Conservation Act 1999 (Cth) pt 17.

¹²⁴ Environment Protection and Biodiversity Conservation Act 1999 (Cth) s 516.

¹²⁵ Environment Protection and Biodiversity Conservation Act 1999 (Cth) s 516A.

¹²⁶ See discussion above n 16.

IV. Conclusion

At the outset, this paper proposed that the Howard government's approaches to the field of international environmental law were primarily characterised by emphasis on sovereign rights, shared global responsibility, market forces and compliance. The review and analysis of the government's practice across environmental and natural resources sectors indicates that these emphases were uneven. There is persuasive evidence for strong emphases on sovereign rights and on compliance but less evidence for commitment to shared global responsibility and the play of market forces.

The emphasis on *sovereign rights* was apparent in some tough international policy and enforcement action, such as in the Antarctic extended continental shelf claim, where a policy to assert sovereign rights was acted upon even though sovereignty was at its most tenuous. Defence of sovereign rights was also clear in the government's muscular new laws on illegal foreign fishing and its extraordinary fisheries enforcement efforts, especially in the sub-Antarctic. At times, its fishing enforcement action was undertaken despite tension with international legal constraints on pursuit and detention of foreign fishing vessels and crew. This assertiveness of sovereign rights and the national interest impact assessment of proposed treaty actions reflected the government's predominantly realist perspective on international relations. Securing sovereign rights over Australia's maritime frontiers and their marine resources, particularly to ensure their sustainable management, was a major priority of the Howard government.

Indicators for the characteristic of internationally *shared global responsibility* for environmental management are evident but less clear. The government ratified many environmental treaties and amendments during its term that created global obligations for Australia, including for the conservation of albatross and petrels and for fisheries in the southern ocean. In relation to climate change, it demonstrated steadfastness in its demands for comparable shared responsibility for developing countries, even when it would have been diplomatically easier to ratify the Kyoto Protocol that it was already implementing. However, in relation to Australia's shared responsibility for the control of trade in genetically modified organisms, the government failed to ratify the Biosafety Protocol, which would commit Australia to export-control obligations complementary to impact assessment obligations for importing countries.

The evidence for emphasis on the play of *market forces* is ambivalent. On the one hand, it was indicated by the government's support for international private-sector initiatives, including geosequestration to combat climate change and simplification of the laws for trade in endangered species, as well as by its opposition to the Basel Convention ban. Within the WTO Dispute Settlement Body, it also fought against certain unilateral trade restrictive measures adopted for environmental purposes. On the other hand, the government failed to adopt measures to promote Australian participation in emerging carbon markets, even outside the framework of the Kyoto Protocol, and was willing to agree to multilateral controls on trade in hazardous chemicals and even to promote multilateral trade measures to conserve Patagonian Toothfish. Further, it adopted

unilateral Australian trade restrictive measures against trade in African elephant imports. An explanation of the marked inconsistencies might lie in a chronological analysis of policy shifts. In the mid-1990s, when the Howard government came to office, integration of trade policy with international environmental policy was in progress as a result of the 1989 merger of the Department of Foreign Affairs with the Department of Trade. That integration was initially characterised by a new bureaucratic opposition to trade restrictive environmental measures but that opposition moderated over time. However, closer analysis would be necessary to evaluate this explanation.

Concerning domestic *compliance*, the Howard government's commitment is certain. Its introduction of new Parliamentary processes contributed to transparency and accountability of the executive in its conduct of international law-making, in particular so as to ensure that it could meet its obligations. The reformulation of the Commonwealth framework for fundamental sustainable development laws included strengthened domestic enforcement and improved management systems. This was complemented by enhanced specific implementation of international obligations concerning biodiversity, wetlands and world heritage, supported by generous funding measures. Extending implementation to sea, marine parks became a prominent feature among Australian national parks. In addition, the government took international legal action to compel Japanese compliance in the *Southern Bluefin Tuna Case*, apparently expecting to be confirmed in a legally binding outcome. The government's diligent concern with compliance suggested a positivist approach to the rule of international law. Nevertheless, compliance was a concern subordinated to effective protection of sovereign rights, as indicated by the questionable legality of some Australian practices in fisheries enforcement.

Overall, there are no agreed criteria to evaluate the relative domestic and international 'success' of the Howard government's approaches to international law in the field of environment. On the negative side of the ledger, the first environmental act of the incoming Rudd government was to ratify the Kyoto Protocol, signifying that the costs to Australia of the Howard government standing outside the international consensus were considered too high. On the positive side, the rule of international law in the field of environment was reinforced by a strengthened Australian domestic compliance infrastructure and the sub-Antarctic and Western Pacific region benefited from the formulation of new Australian-driven international environmental norms.

