XIII—INTERNATIONAL ENVIRONMENTAL LAW

Convention on International Trade in Endangered Species of Wild Fauna and Flora—implementing legislation in Australia

On 12 March 1986 the Minister for Arts, Heritage and Environment, Mr Cohen, introduced the Wildlife Protection (Regulation of Exports and Imports) Amendment Bill 1986 into the House of Representatives, and explained the purpose of the Bill: see HR Deb 1986, 1199–1201.

International environmental law—conservation and management measures the result of Australia's international obligations

On 11 April 1986 the Minister for Arts, Heritage and Environment, Mr Cohen, provided the following answer in part to a question on notice in the Senate (Sen Deb 1986, 1626–1627):

> Conservation and management of endangered bird species in Australia are primarily the responsibility of State and Territory Wildlife authorities. The Commonwealth Government has legislative responsibility for the protection of endangered species only in areas under its direct jurisdiction, such as Kakadu and Uluru National Parks and the external territories.
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> Recent action to protect endangered bird species in Australia's external territories include the declaration of two extensions to Christmas Island National park, proclamation of Norfolk Island National Park under the National Parks and Wildlife Conservation Act 1975, the establishment of a monitoring programme for Abbott's Booby on Christmas Island and a captive breeding programme for Green Parrots on Norfolk Island.
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> Australia is a party to the Convention on International Trade in Endangered Species of Wild Fauna and Flora. The Australian National Parks and Wildlife Service administers the Wildlife Protection (Regulation of Exports and Imports) Act 1982 through which Australia's obligations under the Convention are implemented. Under this Act, overseas trade in fauna is closely controlled, or prohibited where species are seriously endangered.

International environmental law—migratory birds agreement with Japan—application to the Cocos (Keeling) Islands—traditional hunting

On 7 May 1986 the Minister for Arts, Heritage and Environment, Mr Cohen, provided the following answer in part to a question on notice in the Senate (Sen Deb 1986, 2565):

> The Japan-Australia Migratory Birds Agreement prohibits the taking of migratory birds or their eggs except in some cases where taking of the birds or eggs may be permitted in accordance with the laws and regulations in force in each country. One of these exceptional cases is to allow the hunting and gathering of specified birds or their eggs by the inhabitants of certain regions who have traditionally carried on such activities for their own food, clothing or cultural purposes, provided that the population of each species is maintained in optimum numbers and that adequate preservation of the species is not prejudiced. There is no requirement in the agreement for a 'properly established management plan' before such traditional hunting can be allowed.

In the case of North Keeling Island, the Government is taking steps to ensure that the long term survival of the species involved is not affected. Following consultations with the Department of Territories, officers of the Australian National Parks and Wildlife Service (ANPWS) visited Cocos (Keeling) Islands in April, July and October 1985 and in February, March and April this year. During the visits, discussions were held with Administration officials, the Cocos Malay community and its leaders on the need for restraint and proper controls when hunting seabirds on North Keeling Island. Current data on the breeding population of the Red-footed Booby, the main species harvested, were obtained along with information on historical harvesting levels. The program is continuing and it is anticipated that an ANPWS conservation officer will be appointed in the new financial year. A Cocos Malay is undergoing training for conservation work.

International environmental law—South Pacific Environment Program (SPREP)—conclusion of Convention—Protocol on nuclear waste dumping

On 27 November 1986 the Minister representing the Minister for Foreign Affairs in the Senate, Senator Gareth Evans, said in answer to a further question concerning the SPREP Convention's Protocol on nuclear waste dumping (Sen Deb 1986, 2876–2877):

The protocol does not deal with the dumping in the region of radioactive wastes or other radioactive matter and does not, therefore, contain any definition of radioactive material. It deals in detail with a wide range of other hazardous substances. The dumping of radioactive wastes and other radioactive matter in the area covered by the SPREP Convention is dealt with in the Convention itself rather than in the protocol because of the political and environmental importance of this type of dumping.

Article 10 of the Convention contains an unqualified prohibition of the dumping of radioactive wastes or other radioactive matter in the Convention area. The approach embodied in Article 10 was supported by Australia as a fully effective way of giving effect to the aim, already expressed by Australia and other South Pacific states in the Rarotonga treaty, of precluding dumping at sea of radioactive wastes and other radioactive matter by anyone anywhere in the South Pacific region. I have just had some further information handed to me from the Department of Arts, Heritage and Environment which also bears upon this question. Under the circumstances, Mr President, I seek leave to incorporate it in *Hansard*, if that is acceptable, rather than burdening the Senate by reading it out. I am not sure how relevant it is.

Leave granted.

The document read as follows –

Article 10 of the convention for the protection and development of the natural resources and environment of the South Pacific Region (the SPREP convention) inter alia prohibits the dumping of radioactive wastes or other matter at sea. Similarly article 7 of the South Pacific Nuclear Free Zone Treaty has the same effect.

Since all matter is to some extent radioactive, it is necessary to make a definition of radioactive waste and other material, the dumping of which is

prohibited. In the development of the SPREP convention a definition of "Non-Radioactive" was agreed, and is incorporated in the text of the convention. This definition proceeds by exempting certain materials (e.g. sewerage sludge and fly ash from power stations), and by subjecting other materials to the test of guidelines developed and promulgated by the International Atomic Energy Agency.

The Australian Government would, as a party to the SPREP convention, accept this definition. However the definition cannot be used conveniently except with respect to the list of exempted materials. That is because the IAEA guidelines (so-called "general principles") are complicated and cannot readily be used to determine whether a particular substance is not "radioactive".

Accordingly in the amendment of the environment protection (sea dumping) Act which is currently before the Senate in order to bring Australia's legislation into line with the Treaty and convention requirements, the Government has adopted a definition which is fully consistent with the Treaty definition but against which any dumping proposal can readily be assessed. The definition in effect defines radioactive material by specifying a threshold level of radioactivity of 35 becquerels per gram which is marginally above the radioactivity of the common element, Potassium and well below the activity of materials conventionally regarded as radio-active waste.

The Australian Government did not press this latter definition in the course of negotiations of the convention for the reason that other negotiating countries were largely agreed upon the definition, originated by the Cook Islands, which is now incorporated in the convention.

International environmental law—UNESCO Convention on World Heritage—Queensland wet tropical rainforests

On 17 April 1986 the Minister for Arts, Heritage and Environment, Mr Cohen, provided the following answer to the respective questions (Sen Deb 1986, 1930–1931):

Senator Sanders asked the Minister representing the Minister for Arts, Heritage and Environment, upon notice, on 11 February 1986:

(1) Have 2 Australian citizens been forced to nominate the Queensland Tropical Rainforests for World Heritage Listing on behalf of the Australian people.

(2) Is the Government prepared to support the people of Australia who wish to preserve this unique rainforest area.

(3) In what ways will the Government support this nomination.

(4) Why has the Government itself not initiated such nomination, in light of the Report commissioned by the Australian Heritage Commission and submitted in June 1984, which concluded that:

> the wet tropics region of north-east Queensland is one of the most significant regional ecosystems in the world. It is of outstanding scientific importance and natural beauty and adequately fulfils all four of the criteria defined by the World Heritage Convention for inclusion in the 'World Heritage List'.

(5) What studies has the Government undertaken to ascertain its legal rights and obligations in this matter.

(6) Do these studies show that the Government is legally obliged to take action to place the Queensland Tropical Rainforests on the World Heritage List.

Senator Ryan—The Minister for Arts, Heritage and Environment has provided the following answer to the honourable senator's question:

(1) Dr Aila Keto, President of the Rainforest Conservation Society of Queensland and Mr Michael Rae, Campaign Director of the Wilderness Society sent a document to the Director-General of UNESCO on 5 December 1985. The document related to possible inclusion of Australia's wet tropical rainforests on the World Heritage List. However, this document did not constitute a nomination for World Heritage listing, as it was not authorised by the Commonwealth Government which is a State Party to the World Heritage Convention. The fact is recognised by both Dr Keto and Mr Rae. The last page of their document says:

> In presenting this nomination, we realise that the World Heritage Committee will not be able to accept the wet tropical rainforests for World Heritage listing as the nomination does not come from a State Party.

This situation has also been confirmed by UNESCO. On 18 December 1985 the Director of UNESCO's Division of Ecological Sciences wrote to Mr C S Harris of the Wilderness Society, noting that:

> this nomination is not receivable for the World Heritage Secretariat since it has not been endorsed and submitted by the Australian Government.

(2) The Government is firmly committed to the preservation of both Australia's cultural and natural heritage, including rainforests. It is considered, however, that these aims can best be achieved through cooperation and consultation with State and Territory Governments rather than through conflict and confrontation. The recently released report on 'Rainforest Conservation in Australia' which was prepared in collaboration between groups holding strong and diverse opinions on a complex environmental issue, exemplifies the value of this approach.

(3) There is no nomination for the Government to support.

(4) Under an agreement reached by the Council of Nature Conservation Ministers (CONCOM), the Commonwealth Government has written to State and Territory Governments inviting them to submit suggestions for places to be examined with a view to possible future nominations to the World Heritage List. Queensland has responded and advised that it does not wish to have any places in Queensland nominated for the World Heritage List. In this connection, the Commonwealth Government has indicated that it will not take unilateral action to nominate areas for World Heritage listing.

(5) to (6) The Government believes that its policy and actions in relation to this matter are in conformity with its rights and obligations under the World Heritage Convention.

International environmental law—whaling—International Convention for the Regulation of Whaling—Moratorium of whaling—Philippines' whaling

On 17 April 1986 the Minister for Arts, Heritage and Environment, Mr Cohen, provided the following answer to a question on notice in the Senate (Sen Deb 1986, 1929–1930):

> On 26 September 1985 the previous Government of the Philippines presented a statement to the Secretary of the International Whaling Commission outlining why the Philippines consider it 'appropriate to continue its whaling of the western stock of Bryde's Whale until 1988'. At its 34th Annual Meeting in 1982, the International Whaling Commission (IWC) agreed to a moratorium on commercial whaling to commence in the 1985/86 pelagic and 1986 coastal seasons. The Philippines attended that meeting and did not subsequently lodge an objection to the moratorium decision. Under the terms of the International Convention for the Regulation of Whaling (ICRW), the Philippines is therefore bound to abide by the amendment to the Schedule which set the zero catch limits of the moratorium.
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> Australia has expressed, through diplomatic channels, serious concern to the Government of the Philippines with regard to its intention to carry out commercial whaling operations during the moratorium. Australia has also expressed its dismay that the Philippines, not having lodged an objection to the moratorium, intends to whale in breach of the ICRW. Australia reiterated its concern to the Philippines Government most recently on 12 March 1986. In stating its opposition to all forms of whaling, Australia has asked that the Philippines Government take no further action to resume commercial whaling pending consideration of the matter at this year's Annual Meeting of the IWC. Australia will remain in consultation with the Philippines on this important issue.
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> The Bryde's whale, *Balaenoptera edeni*, which the Philippines intends to take, is listed on appendix I of the Convention on Trade in Endangered Species of Wild Fauna and Flora (CITES). However, the provisions of CITES which might apply to trade in whale products between the Philippines and Japan are complex, particularly as Japan has lodged reservations to the listing of cetaceans in CITES appendices. Australia is seeking further advice on the application of CITES to such trade.
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> (4) Australia will endeavour to dissuade the Governments of Japan and the Philippines from authorising trade in whale products between the two countries.

International environmental law—transboundary pollution—nuclear accidents—Vienna Conventions on co-operation

On 25 September 1986 the Acting Minister for Foreign Affairs, Senator Gareth Evans, said in answer to a question (Sen Deb 1986, 840–841):

> I am pleased to be able to tell Senator Tate that Australia will, along with a number of other countries, tomorrow sign two major new international nuclear safety conventions in Vienna during a special International Atomic Energy Agency conference. One of the conventions provides for early

notification of a nuclear accident with potential transboundary effects, and the other provides for emergency assistance in the event of a nuclear accident or radiological emergency. Australia played a very major role in launching the negotiation of these conventions as a matter of priority following the Chernobyl nuclear reactor accident which demonstrated manifest gaps in current international arrangements for nuclear safety. I mention, in parentheses, that the final report of the working group of the Australian Atomic Energy Commission was tabled in the Senate yesterday. This report sets out a detailed description of the causes of the accident and its implications as they are now perceived to be. In a Press release back in May, the Minister for Foreign Affairs, Mr Hayden, had identified the main gaps thrown up by the Chernobyl accident as the absence of an effective early warning system and multilateral emergency assistance arrangements, and urged the negotiation of international conventions.

Under the notification convention a state is obliged to notify other states which may be adversely affected and the IAEA of a nuclear accident involving its military and civil facilities and activities, except nuclear weapons. In relation to nuclear weapons, Australia welcomes the statements that were made last night at the special conference in Vienna by all five nuclear weapons states that they would also notify, within the framework of the convention, any nuclear weapon accident which has or which might have significant radiological effects on another state. As a party to the notification convention, Australia will promptly be provided with detailed information about major nuclear accidents, particularly those that could directly affect Australia. This will enable Australian authorities to cope more effectively with the effects of a nuclear accident involving Australia or Australians overseas.

The other convention, the assistance convention, provides a framework for the provision of prompt assistance by states and the IAEA to a country which requests assistance following a nuclear accident or radiological emergency. Under this convention Australia will be able to seek assistance within an internationally agreed framework in the event of some nuclear accident or radiological emergency affecting Australia. The convention also provides an internationally agreed framework for the provision of assistance should Australia wish to assist another country in similar circumstances. It scarcely needs to be said that the Australian Government welcomes the conventions as a practical and timely response to the Chernobyl accident, but the overriding objective must remain the prevention of nuclear accidents.