Responses to Global Environmental Protection

Role of state and state sovereignty in GEP

State - a government and the people it governs; a country.

The tension between a consistent global approach to environmental protection and national sovereignty is clear. National and economic interests can often be in conflict with environmental protection.

State sovereignty - the authority of an independent state to govern itself (for example, to make and apply laws; impose and collect taxes; make war and peace, and form treaties with foreign states).

Some argue that environmental health is crucial to long-term wellbeing that economic prosperity without it is ephemeral.

The ‘consensual theory’ and doctrine of state sovereignty have undermined a global, holistic response to sustainable development. Every sovereign state has the right to modify or even reject international law even if it’s a signatory to the treaty in question.

Bradley v The Commonwealth (1973) 128 CLR 557
The UNSC passed resolutions condemning Rhodesia, whose white minority party, the Rhodesian Front, had declared independence from Britain and formed a government opposed to majority rule, complete with apartheid policies. Sanctions were imposed and weren’t trade with Rhodesia. In Sydney, the Postmaster-General issued a direction that all communication services with Rhodesia be withdrawn, in particular to the ‘Rhodesia Information Centre’, which purported to be an official body of the Government of Rhodesia. Although Australia didn’t recognise the Rhodesian regime as legitimate, the High Court held that the Postmaster-General direction was ultra vires (beyond executive power), as it was unauthorised by domestic legislation. This case proves that international law and resolutions have no effect in Australia until enacted into domestic legislation.
State sovereignty therefore enables nations to implement international agreements, but also to reject them if they so choose.

The Role of the United Nations in response to GEP

The UN was established in 1945 with international peace and security as its main objective, along with developing international relations, promoting and maintaining human rights. GEP was of little significance in the UN’s early years, but not is one of the most dominant aspects of UN affairs.

Other than the five principal organs and bodies of the UN, there are 15 specialised agencies and related bodies, secretariats of conventions and many programs and funds. Examples include the UN Framework Convention on Climate Change and the UN Convention to Combat Desertification. These programs and funds are subsidiary bodies of the GA and are linked to the UN by agreements, reporting to either ECOSOC and/or GA. Related bodies e.g. International Atomic Energy Agency and World Trade Organisation address particular areas, with their own governing bodies and budgets.

There are some more bodies as well:

Food and Agriculture Organisation (FAO)
- Specialised agency aiming to defeat hunger and achieve sustainable agricultural, forestry and fishing practices.
- Focus areas include using bioenergy and biofuels and examining climate change challenges.

United Nations Development Programme (UNDP)
- Established by GA
- Helps developing countries obtain and use aid effectively
- Also focuses on sustainable development

International Maritime Organisation
- Autonomous specialised agency - works through ECOSOC
- Develops international shipping and safety standards
- Concerned with prevention and control of marine pollution from ships
United Nations Environment Programme (UNEP)

UNEP was established by GA in 1972, following the UN Conference on the Human Environment (Stockholm Conference). It is a ‘programme’ (subsidiary body of GA) and its work, in accordance to its ‘Post-2015’ sustainable development agenda, aims to address the interlinkages between economic, social and environmental dimensions to ensure a sustainable future.

Its work includes
- Assessing global, regional and national environmental conditions and trends
- Developing international and national instruments and guidelines
- Advocating and educating within the UN, IGOs, governments, NGOs, corporations and society on behalf of the environment
- Assisting transfer of knowledge and technology for sustainable development
- Hosting environmental convention secretariats, including CITES, the Biodiversity Convention, and the Convention on the Conservation of Migratory Species of Wild Animals.

Instrument - a document by which some legal objective is achieved; it may be binding (for example, statutes, treaties and deeds) or non-binding (for example, guidelines, declarations and recommendations).

In 1988, the UNEP and the World Meteorological Organisation (another specialised agency of the UN) established the Intergovernmental Panel on Climate Change (IPCC), the primary international source of scientific information about climate change. Since 1992 Rio Conference and new focuses on ESD, the scope of the UNEP’s activities have expanded.

Intergovernmental Panel on Climate Change (IPCC)

The IPCC is open all members states of UN and World Maritime Organisation, participating in the government review stage of the process of preparing reports and assessments, and in sessions where decisions about the work of the panel are made.

The IPCC reviews and addresses the most recent scientific information from around the world relating to the climate change. It doesn’t conduct research itself. Reviews are conducted by scientists all over the world on a voluntary basis. The IPCC doesn’t itself prescribe policy, but provides scientific information to governments for the purpose of formulating policy.

There are some groups, people with low IQs, who believe that climate change is a hoax.
United Nations Educational, Scientific and Cultural Organisation (UNESCO)

UNESCO was founded in 1945, promoting international dialogue and cooperation in the fields of science, communication, education, and culture. While it focuses on Africa and gender equality, it also focuses on promoting sustainable development and biodiversity along with overcoming poverty and preserving cultural heritage.

UNESCO in preserving heritage
UNESCO, along with other IGOs and NGOs aim to preserve human heritage sites through sustainable management programs. Syria is one example; its remarkable history and potential as a major future tourist destination prompted UNESCO, in conjunction with the EU and Syrian Government, to implement a sustainable management plan for its preservation for future generations. However, political and civil unrest that began in 2011, along with ISIS destroying historical features after entering Palmyra in May 2015, have resulted in the suspension of the programme.

Other international responses to GEP

International instruments

International instruments can be classified into two categories; soft law and hard law.

Soft law - international statements, such as declarations, that don’t create legal obligations for states but do create pressure to act in accordance with them.

Hard law - conventions and treaties that under international law create legally binding obligations.

<table>
<thead>
<tr>
<th>International instrument</th>
<th>Year into force</th>
<th>Hard or soft</th>
<th>Aim</th>
<th>Number of parties</th>
</tr>
</thead>
<tbody>
<tr>
<td>Convention on International Trade in Endangered Species of Wild Fauna and Flora</td>
<td>1975</td>
<td>Hard</td>
<td>To ensure international trade in wild animals and plants, and products made as a result, don’t</td>
<td>181</td>
</tr>
<tr>
<td>Convention on Wetlands of International Importance (the Ramsar Convention)</td>
<td>1971</td>
<td>Hard</td>
<td>Provides a framework for national and international bodies to cooperate and initiate action on conservation and sustainable use of wetlands and their resources.</td>
<td>168</td>
</tr>
<tr>
<td>Vienna Convention for the Protection of the Ozone Layer</td>
<td>1988</td>
<td>No legally binding targets.</td>
<td>To protect human health and environment from human activities that alter the ozone layer.</td>
<td>197</td>
</tr>
<tr>
<td>Montreal Protocol on Substances that Deplete the Ozone Layer</td>
<td>1989</td>
<td>Hard</td>
<td>Sets out a mandatory timetable for phasing out of ozone-depleting substances.</td>
<td>197</td>
</tr>
<tr>
<td>Biodiversity Convention</td>
<td>1993</td>
<td>Hard</td>
<td>To conserve biodiversity, and ensure that benefits from genetic resources are shared equitably and fairly.</td>
<td>196</td>
</tr>
<tr>
<td>Agenda 21</td>
<td>1992</td>
<td>Soft</td>
<td>Sets out a plan to balance the capacity of Earth → sustainable population and consumption</td>
<td>178</td>
</tr>
<tr>
<td>Rio Declaration on Environment and Development</td>
<td>1992</td>
<td>Soft</td>
<td>Outlines principles guiding sustainable development: defines responsibilities to safeguard common environment, and rights of people involved in economic development.</td>
<td>178</td>
</tr>
<tr>
<td>UN Framework Convention on Climate</td>
<td>1994</td>
<td>No legally binding targets</td>
<td>To stabilise concentrations of</td>
<td>196</td>
</tr>
<tr>
<td>Change</td>
<td>1997</td>
<td>Hard</td>
<td>First commitment period to reduce greenhouse gas emissions ended in 2012. Doha amendment (2012) saw 37 (aus included) countries commit to binding targets. June 2015, Australia was singled out as a ‘climate change free rider’ by the Africa Progress Panel report in the lead up to the IPPC Paris Climate summit.</td>
<td></td>
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</tr>
<tr>
<td>Kyoto Protocol</td>
<td>2012</td>
<td>Soft</td>
<td>The common vision was to renew commitment to sustainable development, for a future sustainable at economic, social, and environmental levels.</td>
<td></td>
</tr>
</tbody>
</table>

Protocol - an instrument that supplements a treaty, containing specific provisions that the parties have committed to in order to fulfil the terms of the treaty.

For example, the Montreal Protocol is an addition to the Vienna Convention for the Protection of the Ozone Layer (1985). The Cartagena Protocol Biosafety, which came into force in 2002, is a supplement to the Biodiversity Convention. It seems to protect biodiversity from risks posed by technological modifications to organisms, by governing their movement across national borders.

Even international agreements deemed to be ‘hard law’ have relatively weak compliance mechanisms, with CITES and the Montreal Protocol being the main exceptions due to them being successful. It’s important that a treaty or protocol contain enforcement mechanisms but their effectiveness is questionable.
Courts
Ad hoc tribunals and the International Court of Justice

**Trail Smelter Case - United States v Canada (1941)**

The USA and Canada referred a matter to the International Joint Commission (a tribunal that had jurisdiction to consider issues along their border). It involved sulphur dioxide emissions from a zinc and lead smelter located in the town of Trail, British Columbia. The issue was damage being done to fertile farming and logging lands in the Columbia River Valley. The Canadian Government had to pay damages to the state of Washington, and in the 1935 decision the two parties decided to enact a special agreement or ‘convention’ for the settlement of difficulties arising from the smelter operation. A tribunal that determined that Canada had to pay $78000 in compensation US, and that the smelter had to refrain from emitting harmful materials. Significance for transboundary pollution → polluter held accountable with financial repercussions.

This case demonstrates early levels of transnational cooperation and environmental policy. The creation of the International Court of Justice meant that ad hoc tribunals did not have to be established at the advent of any dispute.

State parties to the Statute of the International Court of Justice recognise its jurisdiction as compulsory in relation to any other state. However, its effectiveness is limited as states can refuse to appear before the court, reject decisions, or raise ‘preliminary objections’ to the court’s jurisdiction.

There are several sources of international that the ICJ can apply in its rulings, one of which is ex aequo et bono.

**Ex aequo et bono - ‘according to the right and the good’; on the basis of what is fair and just in the circumstances.**

The UN recognised the importance of global environmental issues in 1993, establishing the Chamber of Environmental Disputes (a discrete section of the ICJ) to provide a forum for settling disputes in this area. However, it has never been used, and in 2006, the UN stopped holding annual elections for the chamber’s membership.
The ICJ’s enforceability is hindered by the consensual nature of the nation states, and additionally, corporations are responsible for a vast number of environmental issues but aren’t within the ICJ’s jurisdiction.

A possible solution, proposed by academics and NGOs is to form an International Environmental Court (similar to ICC’s role) in settling disputes between private and public parties. It could deal with global issues, mediate, arbitrate, and institute investigations while also applying ESD principles and maintaining consistency. It could also be compulsory, but the creation of such an institution is unlikely due to its requirement of global will.

**Ecuador v Colombia**

This case’s significance is that it was the first time in a generation that the ICJ was requested to resolve a case essentially centred on GEP. Ecuador's biodiversity was at threat by Colombian aerial spraying of illegal coca and poppy plantations, highlighting the role of sovereignty in assisting and impeding GEP. Columbia instituted aerial spraying to eradicate illegal drug plantations (in line with 1988 UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances), and Ecuador claimed that Colombia isolated its obligations under international law by causing ‘damage to human health, property, and environment’. Ecuador instituted proceedings against Columbia in April 2008 and seeked indemnities, but in September 2013 the ICJ announced that the case had been consensually discontinued (settled out of court).
**Cases heard by the ICJ**

Since the establishment of the ICJ in 1945, a range of environmental cases have been heard. These include:

- the nuclear test cases (1974–75) involving Australia and New Zealand against France, which was testing nuclear devices in French Polynesia. The cases (*Nuclear Tests (Australia v France)* [1974] ICJ 4 (20 December 1974) and *Nuclear Tests (New Zealand v France)* [1974] ICJ 3 (20 December 1974)) did not proceed to the merits stage, as the ICJ decided that once France stated that it was ceasing the atmospheric tests of its own accord, the cases no longer had any object. Later, France commenced underground nuclear testing.

- Nauru’s case against Australia for failing to remedy the environmental damage caused by 90 years of phosphate mining (*Certain Phosphate Lands in Nauru (Nauru v Australia)* [1992] ICJ 2 (26 June 1992)). In 1992, a negotiated settlement was reached whereby Australia agreed to pay $107 million in compensation for the extensive damage caused to Nauru prior to its independence.

- the Danube Dam case of 1997 (*Case Concerning the Gabčíkovo-Nagymaros Project (Hungary/Slovakia)* [1997] ICJ 1 (25 September 1997)), which concerned a dispute over water resources between the neighbouring countries of Hungary and Slovakia and allegations of transboundary environmental harm. After Hungary withdrew from the joint venture to build a dam to drive a hydroelectric plant, Slovakia diverted the river to operate the dam on its own. The ICJ found both Hungary’s withdrawal and Slovakia’s diversion of the river unlawful. It held that the 1977 treaty between the countries was flexible enough to take account of new international environmental norms, and that the Slovakian action was unjustifiable in light of shared water resources and equitable use, and invoked the principle of ESD.

- Australia’s 2013 case against Japan, which concerned the *International Convention for the Regulation of Whaling* (ICRW) – specifically the provision of zero catch for commercial whaling. Japan had authorised and implemented the Japanese Whale Research Program under Special Permit in the Antarctic Phase II (JARPA II) in the Southern Ocean, and Australia argued this was in breach of the ICRW. As the *Sydney Morning Herald* on 17 July 2013 noted, ‘And after all of the papers and speeches, the case boils down to one question: is Japan’s Antarctic whaling allowed under the IWC’s scientific permit clause?’ Technically, this means that it is not an environmental or ethical decision—it is purely a legal interpretation of the convention’s terms. In April 2014, the ICJ ruled in favour of Australia and demanded Japan stopped whaling with ‘immediate effect’ in the Antarctic. This was the first attempt by any country to use the ICJ to stop whaling; it voted 12 to four that Japan had indeed breached the whaling convention. Ironically, the Japanese delegation stated after the case that the decision did not apply to its Northern Pacific hunt as it was outside the scope of the proceedings before the court. In December 2015, in defiance of the ICJ ruling, Japan announced that it would kill 33 minke whales in the Southern Oceans as a ‘scientific imperative’ to research the impact of climate change on the whales. The *Economist* described this as ‘Japan is killing to be kind’.
Conferences
During the 1960s it was recognised that a reactionary to GEP was insufficient to address threats to the environment. Under the guidance of the UN, the first international conferences to focus on GEP was organised for Stockholm in 1972. Since then, a mega-conference about GEP has been held every decade.

Stockholm Conference 1972
This conference, which also led to the formation of the UNEP, aimed to consider a common outlook and principles for environmental preservation. It was the first gathering to consider the natural environment, human needs, and economic development holistically.

The Stockholm Declaration was produced, providing the impetus for sustainability becoming the focus of GEP. Declarations have no binding legal effect, but have undeniable moral force and provide practical guidance with regards to state behaviour.

Declaration - a formal statement relating to a particular issue or set of issues, agreed to by a group of states without binding legal force.

Key themes of the Stockholm Declaration include:
- States have a responsibility to manage their environment and are accountable to their neighbours
- All people have a right to an adequate environment
- There is a need for intergenerational equity
- There is a need for international cooperation

The Stockholm Conference produced nothing concrete, but resulted in the formation of the UNEP, which has been moderately successful. Stockholm’s real success was in laying the foundation for all subsequent international environmental law, introducing the concept of ESD and non-binding guidelines open for interpretation.

Nairobi Conference 1982
This was to mark the 10th anniversary of the Stockholm Conference and reaffirm commitment into the Stockholm Declaration and Action Plan. It didn’t generate worldwide interest due to political tensions between US and USSR, along with Kenya’s internal difficulties - thus not considered an official Earth Summit. The Nairobi Declaration urged environmental action.
Rio Conference: the 1992 Earth Summit

Formally called the UN Conference on Environment and Development (UNCED) and was held in Rio de Janeiro. It was hoped to produce several binding agreements, but the perspectives of 180 states of NGOs proved for a difficult arrival at consensuses. Rio produced a framework for domestic and international law aimed at GEP, with five key agreements coming out of it, including the UN Framework Convention on Climate Change, the Rio Declaration, and Agenda 21. The Rio Declaration contains 27 principles for sustainable environmental use. Agenda 21 is a comprehensive voluntary action plan to help all levels of government to work towards sustainable development. It covers resource management, equitability, global resource management, and increasing the input of disadvantaged groups. The main achievement of Agenda 21 is that it placed pressure on states to implement ESD.

Johannesburg 2002

The aim of the 2002 Earth Summit in Johannesburg was to put guidelines and frameworks established in previous conferences into practice. It focused on establishing timelines and enforcement mechanisms, and state sovereignty was the biggest obstacle. The main theme was ‘Building Partnerships for Sustainable Development’.

Its most notable achievements were:
- Setting a target to reduce proportion of people without access to safe drinking water by half by 2015, and obtaining commitments from US, EU, Asian Development Bank, etc
- Commitments and funding for sustainable energy programs in developing countries
- Increased ratification of environmental agreements including the Kyoto Protocol - Thailand, India, Canada, and Russia announced their intention to ratify or that they had ratified Kyoto.

However, overall the conference was unsuccessful as not all of the commitments were sufficiently firm (e.g. no specific aims were set for one of the key aims: diversification of energy sources).

Rio +20 Earth Summit 2012

This summit was never going to achieve as much as its 1992 predecessor, 20 years later extinction rates remain high, marine and land ecosystems are being destroyed, carbon emissions are increasing and unsustainable use of natural resources continues unabated. The outcomes document provides only a superficial statement about the need for action but lacks any real commitment initiatives, being almost unanimously condemned by NGOs. Additionally, a plan to
protect the high seas was blocked by the US, Nicaragua, Canada, and Russia and there was a more ineffective replacement put in. One promising development from Rio +20 was the push towards the green economy involving a range of public-private partnerships. However, while the promotion of a green economy is commendable, the lack of will by individual nations and even groups like the G20 to take action limits its effectiveness.

Paris 2015

The objective here was to achieve a legally binding and universal agreement on climate change from all nations in the world. The UN Climate Change Conference in December 2015 adopted a historic accord for a new treaty to commence in 2020, aiming to limit global warming to below 2°C with an aspirational target of 1.5°C. It was formally adopted by 195 countries, the first universal climate deal aims to see fossil fuels gradually phased out and the growth of renewable energy. The agreement doesn’t mandate specific measures or targets, but instead instigates a legally binding five-yearly global stocktake combined with a review mechanism to assess each country’s performance. It acknowledges developing countries in having different responsibilities with regards to reducing emissions. While the accord was historic, the real challenge will be to exercise their sovereignty to implement the required domestic changes to reduce emissions while at the same time making energy affordable for their citizens.

Intergovernmental Organisations

The EU developed an Environment section for implementing environmental policies for the 28 states now in the EU, also including an EU Sustainable Development Strategy that took effect in 2006.

The Organisation for Economic Cooperation and Development (OECD) focuses on economic growth, employment, and living standards for member states but still recognises the need for the environment to be recognised. The rise of institutions that focus on economic matters recognising environmental frameworks shows that the world has changed.

Non-government Organisations

NGOs put pressure on governments to take into account environmental considerations, using action and advocacy.

Examples of environmental NGOs are:
- Greenpeace
- World Wide Fund for Nature (WWF)
- Friends of the Earth (FOE)

They research, publicise, and educate about environmental issues and aren’t subject to international law. However some have been recognised by governments, notably in Agenda 21. Some NGOs have observer status at the UN and they are often consulted for their views when international law on the environment is being drafted.

Observer status - in the UNGA, the position of an organisation or other entity that has been granted the right to speak at UNGA meetings, participate in procedural votes, and sponsor and sign resolutions, but not to vote on resolutions and other important matters.

NGOs in Action

1995: Greenpeace occupied the Brent Spar oil rig to stop it from being scuttled and dumped in the sea. Shell then agreed to dismantle the Brent Spar and recycle it on land. The action led to a worldwide ban on this means of disposing of such rigs, after Greenpeace promoted boycotts.

The Wilderness Society and the Australian Conservation Foundation were instrumental in the construction of the greatest dam in Tasmania.

People for the Ethical Treatment of Animals (PETA) often use attention-grabbing promotions to raise awareness of environmental issues involving animals, but also lack normal levels of brain cells.


Case discussed the importance of the precautionary principle as a legal concept. Revolved around Telstra’s decision to instal antennas on roof of a recreation club in order to improve mobile phone reception in the area → local residents feared the antennas would emit electromagnetic energy that would be harmful to their health. Council rejected Telstra’s application and Telstra appealed to the Land and Environment Court. Justice Preston noted that the precautionary principle didn't have a definition established in Law. DEFINITION that was established: principle would apply where there was scientific uncertainty as the the nature and scope of an environmental threat. Court ruled that Telstra had shown that
no substantial risk existed and authorised the construction. Case set important precedents in developed a legal definition of the precautionary principle.

**Foundational Principles of International Environmental Law**
- Primarily treaty based; relative recent addition to international law.
- There are eight such principles that have commanded wide acceptance and have been expressed in environmental treaties;
  1. *The Principle of sovereignty and responsibility:* states possess permanent sovereignty over their natural resources but have a responsibility to ensure that they do not cause transboundary damage.
  2. *The Principle of preventative action:* associated with a duty to avoid or minimise appreciable environmental harm to other states or global commons areas through the implementation of preventative measures.
  5. *The Principle of sustainable development:* an overarching principle requiring states “to reconcile economic development with protection of the environment”
  6. The Polluter-pays Principle: dictating that the costs of pollution should be borne by polluters.
  7. *The Principle of Equity:* both between generations (inter-generational equity) and within the present generation (intra-generational equity) as regard use of natural resources and enjoyment of an environment of a reasonable standard.
  8. *The Principle of common but differentiated responsibility:* another equitable principle playing special responsibility on developed countries in the pursuit of sustainable development.

**Kyoto Protocol**
- Linked to the UNFCCC, the Kyoto Protocol commits its PArties by setting internationally binding emission reduction targets. It was adopted in 1997 and came into force in 2005.
- Currently there are 192 parties. China and India and 98 other developing countries are exempt from the treaty.
- In 2017, China and USA had the largest fossil fuel emissions, however USA pulled out of the protocol in 2001.
In 2011, Canada pulled out of the protocol indicating that their goals are unworkable because the USA and China are the largest emitters, yet aren’t parties to the agreement.

At first, 37 industrialised countries committed to reduce GHG emissions to an average of five percent against 1990 levels. During the second commitment period, Partie committed to reduce GHG emissions by at least 18 percent below 1990 levels in the eight-year period from 2013 to 2020.

Overall deemed a failure and replaced by the Paris Agreement.

**Ozone Depletion**

**The ozone layer**
- Ozone is a naturally occurring molecule made up of three oxygen atoms
- About 90% of ozone in the atmosphere is concentrated between 15 km and 30 km above the earth’s surface (stratosphere ozone).
- The O.L is like a sunscreen which covers the planet and protect life on earth by absorbing harmful (UV-B) radiation from the sun.

**Ozone Depletion**
- The hole in the ozone layer was first recognised as a global issue in 1978
- Ozone depleting substances are destroying ozone in the stratosphere and thinning the earth’s ozone layer
- Chlorofluorocarbons, a class of chemical compounds that are able to break the bonds between ozone molecules, were identified as the main culprit
- The only long-term solution to ozone depletion was to phase out the use of ozone depleting substances such as CFCs and HCFCs

**Legal responses for Ozone Depletion**

**Timeline**

**The Vienna Convention for the Protection of the Ozone Layer**
- Agreement was reached in 1985 by 130 states and came into force in 1988.
- The objectives of the Convention were for parties to promote cooperation by observations, research and information exchange on the effects of human activities on the ozone layer and to adopt legislative or administrative measures against activities likely to have adverse effects on the ozone layer.
- The Vienna Convention did not require countries to take concrete actions to control ozone depleting substances.

**Montreal Protocol**
- The accompanying Montreal Protocol came into force in 1989 and set out legally binding reduction targets for states.
- The Protocol is the only UN treaty to be ratified by all 197 UN member states
- A management plan for phasing out CFCs was introduced
- Amendments have been made to further strengthen the Protocol, by adding more chemicals to those covered by the Protocol and setting binding targets for countries to phase out or phase-down covered chemicals including phase down of HFCs in 2019. PG 38
- **The multilateral fund**, created under the Montreal Protocol, provides financial assistance to developing countries to help them achieve their phase out obligations.
- Evaluation: classic example of what can be achieved through global cooperation. Parties to the protocol have phased out 98% of ODS globally compared to 1990 levels.
- Since most of these substances are potent greenhouse gases, the Montreal Protocol is also contributing to protection of the global climate system.

**Ozone depletion: Australia’s response**
- Responsible for less than 1 percent of emissions of ozone depleting substances, however still a strong supporter of the ozone regime.
- Ratification of the Vienna Convention and the Montreal Protocol and domestic implementation through the Ozone PRotection and Synthetic Greenhouse Gas Management Act 1989 (Cth)
- There is also an Ozone PRotection and Synthetic Greenhouse Gas PRogram.
Gloucester Resources Ltd v NSW Planning Minister (2019)

GRL took the Minister to the Land Environmental Court over the matter of building a new coal mine near Gloucester, NSW. Chief Judge Brian Preston ruled the negative impacts of the mine outweighed its economic and other public benefits. "An open-cut coal mine in this part of the Gloucester Valley would be in the wrong place at the wrong time," the judgment said. "Wrong place because an open-cut coal mine in this scenic and cultural landscape, proximate to many people's homes and farms, will cause significant planning, amenity, visual and social impacts." "Wrong time because the [greenhouse gas] emissions of the coal mine and its coal product will increase global total concentrations of [greenhouse gases] at a time when what is now urgently needed, in order to meet generally agreed climate targets, is a rapid and deep decrease in emissions. Some residents were protesting against the mine being built, and greenhouse gases were a key reason cited in the decision.

Paris Agreement
- At COP 21 (UN Climate Change Conference) in Paris, on December 2015, Parties to the UNFCCC, reached a landmark agreement to combat climate change and to accelerate the actions. The agreement came into force in 2016 and commences in 2020 with 195 parties.
- The agreement requires all Parties to make ‘nationally determined contributions’. This includes requirements that all Parties report regularly on their emissions and on their implementation efforts.
- The aim is to keep a global temperature rise this century below 2 degrees Celsius with an aspirational target of 1.5 degrees Celsius.
- There is an agreement to deliver a minimum of $11 billion a year to help poorer countries to cope with the impacts of climate change.

Evaluating the Paris Agreement
- Current evaluations of how countries are performing in the context of their Paris climate goals indicate some nations are already falling short of their commitments.
- Donald Trump had signed an executive order to leave the Paris Accord (not finalised).
- NYT Piece - World Emissions Goals Far off Course

Climate Change: Australia’s Response
- Central legislation for climate change in Australia was the Clean Energy Act 2011 which established the carbon tax to control emissions in the country, with the intention that polluters would pay a certain amount as tax per tonne of carbon that they released into the atmosphere. Each year, selected entities were required to surrender one emissions unit for every tonne of carbon dioxide equivalent (CO₂-e) they produced. However, this was deemed a failure. The Act was repealed in 2014.
- Paris Agreement: Australia has set an ambitious target to reduce emissions by 26-28 percent below 2005 levels by 2030, which builds on 2020 target of reducing emissions by five percent below 2000 levels.

Aichi Biodiversity Targets
Target 17 - have a plan
In Australia through EPBC.

Put this here
Writing Task
Assess the effectiveness of legal responses in protecting the environment, with reference to ozone depletion and climate change.

Australia’s legal responses to protecting the environment, with specific regards to ozone depletion and climate change, has been moderately effective. The hole in the ozone layer was first recognised as a global issue in 1978, as ozone depleting substances were destroying the layer and thinning it in the stratosphere. The only long-term solution to ozone depletion was to
phase out the use of ozone depleting substances such as chlorofluorocarbons and hydrochlorofluorocarbons. The Vienna Convention for the Protection of the Ozone Layer was an international agreement reached in 1985 by 130 states and came into force in 1988. It did not require countries to take concrete actions to control ozone depleting substances, and due to its lack of enforceability, was generally ineffective as a sole mechanism by the international legal system. However, it paved the way for the Montreal Protocol (1989), setting out legally binding reduction targets for states. The Protocol is the only UN treaty to be ratified by all 197 UN member states, including a management plan for phasing out CFCs and subsequently strengthening binding targets for nations since then, such as the inclusion of HFC phase-down schemes in 2019. The multilateral fund, created under the Montreal Protocol, has also been a stellar example of the possibilities of global cooperation, as the financial assistance scheme for phase-out programs have resulted in parties having phased out 98% of ozone-depleting substances globally compared to 1990 levels. The Montreal Protocol concomitantly, through its comprehensive coverage of reducing greenhouse gases, also has served as an effective international legal response to climate change. On a domestic level, the Vienna Convention and Montreal Protocol have been ratified through the Ozone Protection and Synthetic Greenhouse Gas Management Act 1989 (Cth). Australia has served as an ardent proponent and supporter of ozone depletion schemes, and the aforementioned legislation, as well as the Ozone PRotection and Synthetic Greenhouse Gas Program, have served as effective legal responses by ratifying and enforcing legally binding phase-out schemes. The legal responses to ozone depletion, on an international and domestic law, have generally been effective and yielded quantifiable results in repairing the ozone layer.

**Chemical Management - Persistent Organic Pollutants**

Persistent ORganic Pollutants (POPs) are organic chemical substances. They possess physical and chemical properties that remain intact for exceptionally long periods of time, become widely distributed throughout the environment as a result of natural processes involving soil, water and air, accumulate in the fatty tissue of living organisms including humans and are toxic to both humans and wildlife.

**The impact of POPs**
- Human exposure - increased cancer risk, reproductive disorders, alteration of the immune system and increased birth defects
- Biodiversity - abnormalities or decline detected in a number of wildlife species, including certain kinds of fish, birds and mammals.
- People can be exposed to POPs through contaminated foods, exposure routes include drinking contaminated water and direct contact with the chemicals.
- They can originate from pesticides, industrial chemicals, unintentional production, etc.

**The Stockholm Convention on POPs**

Aim: As set out in Article 1, the objective of the Stockholm Convention is to protect human health and the environment from POPs. The Convention entered into force on 17 May 2004.

**Number of Parties: 181**

**Signatories: 152 - USA not a party**

POPs included
- In 2004, 12 POPs were listed in the Convention, including DDT, Dioxins, and Aldrin.
- In 2010, nine additional POPs were added to the Convention. They include Chlordecone and Lindane.

**Outcomes of the effectiveness evaluation of the Stockholm Convention (2017)**
- It was concluded that the Stockholm Convention provides an effective and dynamic framework to regulate POPs, addressing the production, use, import, export, releases, and disposal of these chemicals worldwide.
- However, inadequate implementation is the key issue that has been identified in the evaluation.
- A key challenge in undertaking the evaluation was the limited data available from national reports and national implementation plans, and recommendations have been made to address these and other implementation issues.
- Monitoring results indicate that regulations targeting POPs are succeeding in reducing levels of POPs in humans and the environment. Concentration measured in air and in human populations have declined and continue to decline or remain at low levels due to restrictions on POPs that predated the Stockholm Convention and are now incorporated in it. For the newly listed POPs, concentrations are beginning to show decreases, although in a few instances, increasing and/or stable levels are observed.

**POPs: Domestic Enforcement**
- Article 7 of the Stockholm Convention requires each party to put into practice, a plan setting out how it will implement its obligations under the Convention.
- The Australian Government has developed a National Implementation Plan (NIP), which outlines the actions that Australia has taken to date in reducing the presence of POPs; and will take in the future to meet its obligations under the Convention.
- However, for the 9 new listed POPs, not all of them are completely banned for production/use in Australia.
- **Effectiveness:** successful in banning all POPs listed in 2004 but not in 2010.

<table>
<thead>
<tr>
<th>POP</th>
<th>CAS no.</th>
<th>Description</th>
<th>Production, use and importation restrictions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aldrin</td>
<td>309-08-2</td>
<td>Pesticide</td>
<td>Final registration cancelled 1992 and importation prohibited.</td>
</tr>
<tr>
<td>Dieldrin</td>
<td>60-57-1</td>
<td>Pesticide</td>
<td>Final registration cancelled 1988 and importation prohibited.</td>
</tr>
<tr>
<td>DDT (pp'-DDT)</td>
<td>50-29-3</td>
<td>Pesticide</td>
<td>Final registration cancelled 1987 and importation prohibited.</td>
</tr>
<tr>
<td>Endrin</td>
<td>72-20-8</td>
<td>Pesticide</td>
<td>Final registration cancelled 1987 and importation prohibited.</td>
</tr>
<tr>
<td>Chlordane</td>
<td>57-74-9</td>
<td>Pesticide</td>
<td>Final registration cancelled 1997 and importation prohibited.</td>
</tr>
<tr>
<td>Heptachlor</td>
<td>76-44-8</td>
<td>Pesticide</td>
<td>Final registration cancelled 1997 and importation prohibited.</td>
</tr>
<tr>
<td>Polychlorinated biphenyls</td>
<td>-</td>
<td>Industrial by-product</td>
<td>Importation of PCBs is banned unless explicit permission is granted by the Minister for Customs and Border Protection Service.</td>
</tr>
<tr>
<td>Polychlorinated dibenzo-dioxins and dibenzofurans</td>
<td>-</td>
<td>By-product</td>
<td>No federal emission standards but most states have some regulations. Reporting under National Pollutant Inventory.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Chemical</th>
<th>Effect of listing</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chlordecone</td>
<td>Complete ban on production and use</td>
</tr>
<tr>
<td>Lindane (gamma hexachlorocyclohexane)</td>
<td>Ban on production and use except that countries may apply for a specific exemption for continued use for control of head lice</td>
</tr>
<tr>
<td>Alpha hexachlorocyclohexane (alpha HCH)</td>
<td>Complete ban on production and use</td>
</tr>
<tr>
<td>Chemical</td>
<td>Ban Order Details</td>
</tr>
<tr>
<td>--------------------------</td>
<td>----------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Beta hexachlorocyclohexane (beta HCH)</td>
<td>Complete ban on production and use</td>
</tr>
<tr>
<td>Perfluorooctane sulfonate (PFOS)</td>
<td>Ban on production and use except for specified acceptable purposes and specific exemptions:</td>
</tr>
</tbody>
</table>

**Acceptable purposes:** (not time limited)

- Photo-imaging
- Photo-resist and anti-reflective coatings for semi-conductors
- Etching agent for compound semi-conductors and ceramic filters
- Aviation hydraulic fluids
- Metal plating (hard metal plating) only in closed-loop systems
- Certain medical devices (such as ethylene tetrafluoroethylene copolymer (ETFE) layers and radio-opaque ETFE production, in-vitro diagnostic medical devices, and CCD colour filters)
- Fire-fighting foam
- Insect baits for control of leaf-cutting ants from Atta spp. and Acromyrmex spp.

**Specific exemptions:** (5 years initially, renewal possible)

- Photo masks in the semiconductor and liquid crystal display (LCD) industries
- Metal plating (hard metal)
- Metal plating (decorative)
- Electric and electronic parts for some colour printers and colour copy machines
- Insecticides for control of red imported fire ants and termites
<table>
<thead>
<tr>
<th>Chemicals</th>
<th>Regulations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chemically driven oil production</td>
<td></td>
</tr>
<tr>
<td>Carpets</td>
<td></td>
</tr>
<tr>
<td>Leather and apparel</td>
<td></td>
</tr>
<tr>
<td>Textiles and upholstery</td>
<td></td>
</tr>
<tr>
<td>Paper and packaging</td>
<td></td>
</tr>
<tr>
<td>Coatings and coating additives</td>
<td></td>
</tr>
<tr>
<td>Rubber and plastics</td>
<td></td>
</tr>
</tbody>
</table>

**Hexabromobiphenyl (HBB)**

- Complete ban on production and use.

**Commercial pentabromodiphenyl ether (c-penta BDE)**

- Ban on production and use except that recycling of articles containing the chemical may be permitted under a time-limited specific exemption provided it is carried out in an environmentally sound manner and subject to other conditions, as follows:

  1. A party may allow recycling of articles that contain or may contain tetrabromodiphenyl ether and pentabromodiphenyl ether, and the use and final disposal of articles manufactured from recycled materials that contain or may contain tetrabromodiphenyl ether and pentabromodiphenyl ether, provided that:

     (a) The recycling and final disposal is carried out in an environmentally sound manner and does not lead to recovery of tetrabromodiphenyl ether and pentabromodiphenyl ether for the purpose of their reuse;

     (b) The party does not allow this exemption to lead to the export of articles containing levels/concentrations of tetrabromodiphenyl ether and pentabromodiphenyl ether that exceed those permitted to be sold within the territory of the party; and

     (c) The party has notified the Secretariat of its intention to make use of this exemption.

  2. At its sixth ordinary meeting and at every second ordinary meeting thereafter the Conference of the Parties shall evaluate the progress parties
made towards achieving their ultimate objective of elimination of tetrabromodiphenyl ether and pentabromodiphenyl ether contained in articles and review the continued need for this specific exemption. This specific exemption shall in any case expire at the latest in 2030.

<table>
<thead>
<tr>
<th>Commercial octabromodiphenyl ether (c-octa BDE) (the commercial octa contains hexa- and heptabromodiphenyl ethers)</th>
<th>As for pentabromodiphenyl ether above.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pentachlorobenzene</td>
<td>Complete ban on intentional production and use. Measures to reduce or eliminate unintentional production.</td>
</tr>
</tbody>
</table>

**Minamata Disease**


- Mercury is a highly toxic heavy metal which poses a global threat to human health and the environment. It can be released into the air and water. Together with its various compounds, it has a range of severe health impacts, including damages to the central nervous system. Victims may suffer memory loss or language impairment, and the damage to the brain cannot be reversed.
- In 2009, the UNEP agreed that a global treaty that addressed mercury impacts would be a necessary step to reduce the amount of harmful mercury in the environment
- Major highlights of the Minamata Convention include a ban on new mercury mines, the phase-out of existing ones, the phase out and phase down of mercury use in a number of products and processes, control measures on emissions to air and on releases to land and water, and the regulation of the informal sector of artisanal and small-scale gold mining.

**Domestic Enforcement**

- Australia has signed but not ratified the Minamata Convention. Ratification of the Convention would legally bind Australia to the Convention’s obligations which can impact the coal mining industry.
- The electricity sector is a significant source of mercury emissions in nations that rely heavily on coal-fired electricity generation
Coal currently supplied about 75% of Australia’s electricity. 2700kg of mercury were emitted from 105 electricity generators in 2014-15, an increase from the previous year’s emissions of 2600kg. Pg 61.

Non-legal Responses on Chemical Management
IPEN is a global network of public interest NGOs working together for a world in which toxic chemicals are no longer produced or used in ways that harm human health and the environment.

We are comprised of over 500 Participating Organizations in more than 100 countries, primarily in countries with developing and transitional economies. IPENers take action internationally, working on local, regional and global campaigns and policies to:

● Protect women and children from toxic chemicals
● Reduce and eliminate the world’s most harmful chemicals
● Eliminate lead in paint
● Reduce mercury pollution
● Demand that the private sector disclose information about chemicals in their products
● Promote agroecology and toxics-free electronics
● IPEN was founded in 1998 and is registered in Sweden as a non-profit, public interest organization.

In October, 2013, IPEN adopted its "Minamata Declaration on Toxic Metals." Along with IPEN's "Stockholm Declaration," which was developed in relation to IPEN's work on the Stockholm Convention on POPs, and its "Dubai Declaration for a Toxics-Free Future," which was developed in relation to IPEN's work on the Strategic Approach to International Chemicals Management (SAICM), IPEN's "Minamata Declaration on Toxic Metals" was spurred on by IPEN's further involvement in heavy metals issues, such as the Mercury Treaty and lead in paint. The Declaration was adopted by IPEN's General Assembly in October 2013, and it was presented to Minamata Disease victims and community supporters at the International Minamata Symposium in Minamata, Japan.

Basel Convention - Hazardous Waste Management

Basel Convention - State Sovereignty
The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, usually known as the Basel Convention, is an international treaty that was designed to reduce the movements of hazardous waste between nations, and specifically to prevent transfer of hazardous
waste from developed to less developed countries (LDCs). It does not, however, address the movement of radioactive waste. The Convention is also intended to minimize the amount and toxicity of wastes generated, to ensure their environmentally sound management as closely as possible to the source of generation, and to assist LDCs in environmentally sound management of the hazardous and other wastes they generate. Each party is required to introduce appropriate national or domestic legislation to prevent and punish illegal traffic in hazardous and other wastes. Illegal traffic is criminal.

The Convention was opened for signature on 22 March 1989, and entered into force on 5 May 1992. As of October 2018, 186 states and the European Union are parties to the Convention. Haiti and the United States have signed the Convention but not ratified it.

The United States bucked nearly every nation when it did not sign an agreement to limit plastic waste. The governments of 187 countries agreed to add plastic to the United Nations-supported Basel Convention, which regulates the transfer of certain materials between borders, CNN reported Saturday. The U.S. did not participate in the talks regarding plastic because it is one of just two countries that has not ratified the treaty, according to the TV network.

The Basel Convention sets rules for first-world countries shipping hazardous waste to less wealthy nations. The US and other countries will now not be able to send the plastic waste to developing countries that are part of the Basel Convention.

What is hazardous waste?

The Hazardous Waste (Regulation of Exports and Imports) Act 1989, which covers hazardous waste only, defines hazardous waste as:

- Waste prescribed by the regulations, where the waste has any of the characteristics mentioned in Annex III to the Basel Convention. These characteristics include:
  - Explosive
  - Flammable Liquids/Solids
  - Poisonous
  - Toxic
Ecotoxic
Infectious Substances.

- Wastes that belong to any category contained in Annex I to the Basel Convention, unless they do not possess any of the hazardous characteristics contained in Annex III. Wastes in Annex I include:
  - Clinical wastes;
  - Waste oils/water, hydrocarbons/water mixtures, emulsions;
  - Wastes from the production, formulation and use of resins, latex, plasticizers, glues/adhesives;
  - Wastes resulting from surface treatment of metals and plastics;
  - Residues arising from industrial waste disposal operations; and
  - Wastes which contain certain compounds such as: copper, zinc, cadmium, mercury, lead and asbestos.
- Household waste; or
- Residues arising from the incineration of household waste.

Australia’s Response to the Basel Convention
- Australia signed the Basel Convention in 1992. The Convention is implemented in Australia by the Hazardous Waste (Regulation of Exports and Imports) Act 1989. The aim is to regulate the export, import and transit of hazardous waste to ensure that hazardous waste is dealt with appropriately so that human beings and the environment, both within and outside Australia, are protected from the harmful effects of the waste. The Act requires that a permit be obtained before hazardous waste is exported from Australia or imported into Australia.

Effects of Australia’s federal structure in responding to GEP

State powers
- Australian constitution - power to legislate on environmental issues can be considered a residual power. It is not one of the enumerated powers of the federal parliament.

Residual power - a government power that is not listed in a s51 of the Australian Constitution as a legislative power of the Commonwealth Parliament, and thus belongs to the states.
Enumerated power - a legislative power that is specifically set out as belonging to a particular parliament; in Australia, the enumerated powers of the Commonwealth Parliament are listed in s51 of the Constitution.

- 60s and 70s - NSW passed legislation for GEP (Clean Air Act, Clean Water Act, and Pollution Control Act. These have all since been repealed by the PRotection of the Environment Operations Act 1997 (NSW).
- NSW Land and Environmental Court established in 1979 - superior court with original jurisdiction for many environmental matters.

Federal powers and legislation
- EPBC Act 1999 (Cth) - provides legal framework for the protection and management of the environment nationally.

Relationship between federal and state environmental law
- Three-tiered system has resulted in a degree of fragmentation of environmental authority
- 1992 Intergovernmental Agreement on the Environment - reflected some elements of the Rio Declaration and outlining the jurisdiction of the levels of government more clearly.
- National Environment Protection Council Act 1994 (Cth) - set up National Environment Protection Council to implement the IGAE.
- Bilateral agreements between the Commonwealth and each of the states and territories.

Review 11.9
1. Enumerated powers are powers outlined for the federal government under the Constitution whereas residual powers are exercisable by states.
2. Environmental law in NSW was effectuated by a greater awareness of the environment and subsequent issues in the 1960s and 1970s, heralding new pieces of legislation such as (Clean Air Act, Clean Water Act, and Pollution Control Act. These have all since been repealed by the PRotection of the Environment Operations Act 1997 (NSW).
3. The 1992 Intergovernmental Agreement on the Environment outlines the jurisdiction of the levels of governments to prevent the pre-existing fragmentation. Additionally, the differing jurisdictions mean that each level has to stay within their own.
4. Tasmanian Dam Case significance - Section 51 XXIX of the Constitution with regard to external affairs was enforced, as it was established that the Federal Government had the power to legislate for enforcing environmental treaties over state governments.