Introduction: Australia and International Law during the Howard Years

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Australia's active engagement with international law has developed slowly. From the time of Federation in 1901 until the commencement of the Second World War, the reality is Australia had minimal involvement in international affairs independent of the Empire relationship. However, bolstered by the leading role played by Australians such as H V Evatt in the formation of the United Nations,[1] and the trade and economic benefits available to Australia in the post-war global trade regime, since 1945 successive Australian governments gradually became more enmeshed into the international system and more interested in international law. A distinctive Australian position on international law was sufficiently well-defined in 1965 that D P O'Connell's edited collection *International Law in Australia* was able to identify Australian state practice in areas ranging from the UN, to the General Agreement on Tariffs and Trade (GATT) and International Labour Organisation (ILO), air law, law of the sea, Antarctica, immunities, immigration and extradition.[2] Just one year later the first volume of the *Australian Year Book of International Law* appeared in 1966; paving the way for an annual insight into distinctive Australian perspectives in international law as reflected not only in academic articles, but also statements of government practice. These developments in recording Australian perspectives on international law have since been supplemented by distinctive studies,[3] textbooks,[4] and additional journals.[5]

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1 T L H McCormack, 'H.V. Evatt at San Francisco: A Lasting Contribution to International Law' (1992) 13 *Aust YBIL* 89.

2 D P O'Connell (ed), *International Law in Australia* (1965); a second edition appeared in 1984: K W Ryan (ed), *International Law in Australia* (1984).

3 B R Opeskin and D R Rothwell (eds), *International Law and Australian Federalism* (1997); H Charlesworth, M Chaim, D Hovell and G Williams, *No Country is an Island: Australia and International Law* (2006).

4 See eg, H Reicher (ed), *Australian International Law: Cases and Materials* (1995); S Blay, R Piotrowicz and M Tsamenyi (eds), *Public International Law: An Australian Perspective* (1997), and (2nd ed, 2005); J-P L Fonteyne, A McNaughton, and J Stellios, *Harris – Cases and Materials on International Law: an Australian supplement* (2003); and D K Anton, P Mathew and W Morgan, *International Law: Cases and Materials* (2005) which is an Australian-focused casebook on international law.

5 *Australian International Law Journal* (1994-); *Melbourne Journal of International Law* (2000-).

During this period Australia developed a distinctive practice in areas such as the law of the sea[6] and Antarctica[7] and under successive governments became a strong supporter of the multilateral international system that had its foundation in not only the UN Charter, but also a wide range of additional multilateral, regional and bilateral treaties. The extent of this engagement with international law, especially with treaties, had reached such heights that in 1995 a Senate Committee published a report titled *Trick or Treaty?*[8] questioning whether Australia's treaty practices were undemocratic and had resulted in treaties having too great an influence upon Australian law. While *Trick or Treaty?* was an important part of the debate about whether Australia was too active a participant in the international legal system, and whether there was a need to reassess the impact international law was having upon Australian municipal law, there was no doubt that by the 1990s Australia had well-developed positions on a range of international law matters and was active in debates over the development of international law. At the same time there were diverse perspectives emerging in the Australian legal and academic community on some of the positions Australia was taking in the practice and interpretation of international law.

In light of these developments, it would seem incontrovertible to argue that there is a distinctive Australian contribution to international law and it is possible to glean an understanding of Australian practice by undertaking a lengthy review of Australian perspectives on various areas of international law over a period of time. Is it possible, however, to undertake a similar review of the practice of an Australian government, and in particular the Coalition government led by John Howard from March 1996 until November 2007 as this Volume of the *Year Book* seeks to do?[9] Any attempt to review the record of the Howard government in its engagement and practice of international law soon after the end of its term creates challenges, especially when the extent of that engagement ranged across diverse areas. How is the assessment undertaken? What are the appropriate criteria? What is good international law practice as opposed to bad or indifferent international law practice? Should governments be strictly held accountable to their implementation and interpretation of international law or should certain allowances be made given the domestic and international political constraints under which they have operated?[10] Is it legitimate to divide the analysis into subject areas? Does this

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6 R D Lumb, *The Law of the Sea and Australian Off-Shore Areas* (2nd ed, 1978).

7 G Triggs, *International Law and Australian Sovereignty in Antarctica* (1986).

8 Senate Legal and Constitutional References Committee, *Trick or Treaty? Commonwealth Power to Make and Implement Treaties* (1995).

9 While this may be a legitimate question to pose in the context of an academic enquiry and review of the actions of a government, this is not an issue that apparently confronted a number of reviews and extensive critiques of aspects of the Howard government's record during its years in office; see eg, D Marr and M Wilkinson, *Dark Victory* (2003); R Garran, *True Believer: John Howard, George Bush and the American Alliance* (2004); R Manne (ed), *The Howard Years* (2004); G Megalogenis, *The Longest Decade* (2006); N Cater, *The Howard Factor: a Decade that Transformed the Nation* (2006); L Weiss, E Thurbon, and J A Matthews, *National Insecurity: the Howard Government's Betrayal of Australia* (2007).

10 It has been argued that 'Australian attitudes to international law are influenced by

mean contributors 'escape' from grappling with the complexities and paradoxes and nuanced political decision-making and all the other elements that go towards constituting any government's approach and informing an analysis of it?

Thinking across disciplinary boundaries in making an assessment of how a small state like Australia carves out its particular relationship with, or attitude to, international law is of continuing interest and not only sustains this *Year Book*, but has also spawned textbooks and monographs on the subject during the past decade.[11] However, these contributions to the literature in themselves raise their own issues as to who should be conducting this analysis. Are those international lawyers who have worked within government the best placed to understand and appreciate truly the goals and objectives of any particular government exposed as they are to the politicians who are responsible for policy articulation and the public interpretation of the law? Or is this a task international legal academics are best qualified for, given the distance they keep from government and their ability to objectively observe and ultimately to comment? While the reality is that it is the academics who have the time at their disposal to undertake these reviews and accordingly are responsible for the overwhelming majority of the contributions to the literature, is not the discipline incomplete without more active practitioner (whether they be government lawyer or in private practice) contribution to the discourse?

These are some of the inevitable questions raised by the accompanying series of articles in this *Australian Year Book of International Law* collection focussing on the practice of the Howard government in international law. One of those arguments has particular strength. That is, it remains too early to be able to give anything approaching a definitive analysis on this topic, especially when most of these contributions were written in mid 2008. It is true such an analysis of the Howard government's practice in international law will most likely need to await the release of relevant cabinet papers and documents, and the passage of time will permit a fuller appreciation of the true ramifications of some of the initiatives the government took towards the reform of international institutions and development of international law whether in multilateral, regional or bilateral settings. However, by the time that analysis can be delivered its value may be diminished as only reflective of legal history and not a contemporary review of some of the challenges Australia has faced in dealing with international law since 1996. Indeed, given the ongoing currency of many of the international legal challenges faced by the Howard government and their resonance during the early years of the Rudd Labor government, the articles published in this volume of the *Year Book* have immediate significance and a capacity to influence contemporary debates.

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factors such as the demands of international political alliances and domestic politics': Charlesworth et al, n 3, 19.

11 See eg, R W Piotrowicz and S Kaye, *Human Rights in International and Australian Law* (2000); M E Crock and B Saul, *Future Seekers: Refugees and the Law in Australia* (2002); H C Charlesworth, *Writing in Rights: Australia and the Protection of Human Rights* (2002); N L Wallace-Bruce, *The Settlement of International Disputes: the Contribution of Australia and New Zealand* (1998).

Acknowledging then the difficulty of the task of assessing the record of the Howard government and international law through a collection of articles published a year after the end of that era, this collection does not pretend to be comprehensive or to reflect upon every single initiative or incident involving Australia and international law during the years of the Howard government. It does, however, seek to touch upon some of the major international law initiatives, actions, and controversies during those years. In some instances there are single identifiable events demanding attention such as the 1999 military intervention in East Timor, the 2001 *Tampa* incident, support for United States military-led interventions in Afghanistan in 2001 and Iraq in 2003, and the negotiation of the Australia-United States Free Trade Agreement. Likewise, it is possible to identify several overarching themes associated with international law under the Howard government such as the government's position towards refugees, climate change, and international terrorism. Ultimately, these articles also reflect a strong assertion of Australian sovereign rights and in some instances a rejection of multilateral frameworks and institutions in favour of regional or bilateral arrangements and relations.

Australia as a Good International Citizen

During the early years of the Howard government, Foreign Minister Alexander Downer often asserted that Australia was a 'good international citizen', thereby repeating a similar assertion made during the years of the Hawke/Keating governments especially by Labor Foreign Minister Gareth Evans. The refrain of Australia acting as a 'good international citizen' has also been asserted during the early period of the Rudd government, confirming the principle has some level of bi-partisan support. At face-value this would seem to be an objective of Australian foreign policy that inevitably flows through into how Australia conducts itself under international law. Extending this principle into international law, if Australia is to be a 'good international law citizen' then what is the standard? Would respect for the law be a minimum requirement? Would acceptance of a court or tribunal's ruling be essential? If so, in the international legal setting this would suggest an international rule of law. Crawford has endorsed such a vision, affirming the need for:

> the rule of law as a virtue at the international level, at least to the extent that international law approximates a system of public order between states as legal orders in their own right, or to the extent that it performs tasks of adjudication, assessment or review of domestic decision-making in areas or matters in which international law prescribes compliance with the rule of law.[12]

It is arguable that another element of good international citizenry is engagement with the development of the law, such as through new international conventions.

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12 J Crawford, 'International Law and the Rule of Law' (2003) 24 *Adelaide Law Review* 3, 10; these views were delivered as part of the first 'James Crawford Biennial Lecture in International Law', University of Adelaide, 2003; see also Ivan Shearer's comment on this topic in the second of the Crawford lecture series: I Shearer, 'Australia, the United States and the Rule of Law in International Affairs: Comparisons and Contrasts' (2005) 26 *Adelaide Law Review* 191.

Accordingly, being an active and positive participant at international law-making conferences or contributing to the various international organisations and institutions that consider and assess the development and evolution of international law would be another factor.

One criterion for judging the Howard government and its record with respect to international law is therefore whether it acted as a good international citizen (or international law citizen). At face value, and as the studies following demonstrate, it appears the Howard government's record in this area was mixed. At the time of the Howard government's biggest foreign policy test in 1999 with respect to East Timor, Australia was very careful to work within the international law framework of the UN Charter both in terms of respecting Indonesian sovereignty over that territory and seeking a UN Security Council mandate prior to the Australian-led International Force for East Timor (INTERFET) military intervention to restore law and order.[13] Australia's stocks at the time were so high that the UN Secretary-General Kofi Annan even labelled Australia as a 'model UN member'. A similar assessment could be made of the 2003 Australian-initiated military intervention into the Solomon Islands via the regionally coordinated Regional Assistance Mission to Solomon Islands (RAMSI) operation. While a Security Council mandate was not sought in this instance, great care was taken to secure Pacific Forum endorsement for the operation and a formal invitation from the Solomon Islands government.[14] Downer argued at the time this was the only option open to Australia and partners such as New Zealand to restore security within the Solomon Islands and that while the UN was kept informed of the RAMSI initiative it was most unlikely that this regional trouble-spot was of sufficient interest to the Security Council, distracted as it was at that time by events in Iraq.

Yet while Australia's record in terms of its military interventions in East Timor and the Solomons are credits on the good international citizen scoreboard, the 2003 military intervention in Iraq where Australia joined the United States, United Kingdom and Poland in 'Operation Iraqi Freedom' remains in the view of many international lawyers a debit. Unilateral military interventions without UN authorisation are inconsistent with international law, are contrary to the UN Charter and have the potential to break down the fundamental principles upon which post-1945 international peace and security has been based. Given Australia's insistence in 1999 that it would only lead the INTERFET intervention in East Timor with UN Security Council authorisation, is it possible to reconcile the ultimate position the Howard government took with respect to Iraq? Simpson in

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13 One significant consequence of the Australian support for the INTERFET military operation was the eventual independence of East Timor/Timor Leste, which created considerable legal challenges for Australia as a result of the need to then negotiate new maritime boundary arrangements in the Timor Sea, as discussed by Kaye in this collection at 69.

14 This being reflected in the 2003 Agreement between Solomon Islands, Australia, New Zealand, Fiji, Papua New Guinea, Samoa and Tonga concerning the operations and status of the police and armed forces and other personnel deployed to the Solomon Islands to assist in the restoration of law and order and security [2003] ATS 17; otherwise known as RAMSI: Regional Assistance Mission in the Solomon Islands.

this collection, and numerous other scholars, have exhaustively considered the legal issues surrounding the 2003 Iraq War. Notwithstanding the legal controversy, and the clear division of opinion existing between Australian government lawyers and Australian academic lawyers over the legitimacy of the Iraq War, Shearer does make a compelling observation by noting that Australia at least sought legal advice on the matter which was publicly released by the Howard government.[15] The Howard government took international law seriously enough to commission the legal advice and put it into the public domain, suggesting the government was well aware of the importance of the legal debate and the need to frame its actions within the framework of international law. These are not the actions of a government prepared to ignore international law completely.

Outside of these examples involving the use of Australian military force, during the term of the Howard government Australia played a leading role in the negotiation of several new multilateral conventions, including the Ottawa Anti-Personnel Landmine Convention[16] and the Convention on the Rights of Persons with Disabilities.[17] Similarly, Australia was a leading supporter of the establishment of the International Criminal Court (ICC) and was actively engaged in the negotiations at Rome leading to the conclusion of the ICC Statute. Senior Howard government Ministers, including Foreign Minister Downer, were strong advocates for the ICC within the government and eventually prevailed over a Coalition party room beginning to question the wisdom of Australian ratification. Likewise, the Howard government was supportive of the establishment of the Human Rights Council in the United Nations. In the trade area, the Howard government continued to accept the umpire's verdict, as was the case with the WTO ruling on Canadian salmon imports into Tasmania. Australia does vigorously argue its case in trade disputes, as is its right, but overall there is a strong sense that Australia accepts and works within the international trade regime and plays an active role in its development. As Waincymer notes in this collection, while the Howard government was a strong promoter of bilateral free trade agreements, especially its support for the Australia-United States Free Trade Agreement,[18] this was broadly consistent with a bipartisan approach to trade agreements that previous governments had adopted.[19] Another consistent area of some controversy throughout the term of the Howard government was the environment and here Australia's record as a good international citizen may be seen as variable. Rose analyses this area through the context of 'sovereign rights, shared global responsibility, market forces and compliance'.[20]

Ultimately, the events discussed in this *Year Book* collection remain only a snapshot of Australia's practices in international affairs and international law

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15 Shearer, above n 12, 197.

16 Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction [1999] ATS 3.

17 Convention on the Rights of Persons with Disabilities [2008] ATS 12; concluded 30 March 2007.

18 Australia-US Free Trade Agreement [2005] ATS 1.

19 See Waincymer, p 165 this volume.

20 See Rose, p 115 this volume.

during the years of the Howard government. They do, however, demonstrate the potential of using good international citizenship as a standard for critically assessing the practices and record of a government.

Australian Sovereignty and International Law

The Howard government was particularly sensitive about the impact upon Australian sovereignty created by the imposition of international legal obligations, a matter flagged by the Coalition's strong endorsement of the *Trick or Treaty?* report in 1995 while still in Opposition. Sensitivity about the impact of international legal obligations upon Australian sovereignty was the principal basis for the debates within the Coalition party room in 2002 as to whether Australia should ratify the Rome Statute and partly explains the nature of the Australian Declaration that eventually accompanied Australia's ratification.[21] A number of the contributions in this collection illustrate this, with the Howard government's position with respect to asylum seekers being perhaps one of the more prominent of these examples and generating not only extensive legal debate within Australia[22] and resulting in significant decisions by the High Court and Federal Court,[23] but also in the international community.[24] Likewise, the sensitivity of the Howard government to criticism levelled at it by United Nations treaty bodies highlighted a concern about international legal institutions and Australian sovereignty.[25]

The scene was set for this theme in the early days of the Howard government in its setting up of the Joint Standing Committee on Treaties (JSCOT) and its reforms of the 'treaty-making' process in Australia. During the early 1990s Alexander Downer when Leader of the Liberal Party and of the Federal Opposition developed a sustained critique over the number of treaties to which Australia had become a party to during the Hawke/Keating Labor governments with little apparent political or public debate. The impact of these treaties upon Australian law also became clearer following the High Court of Australia's decisions on the extent of the 'external affairs' power in the Constitution, and in the *Teoh Case*[26] where notwithstanding the fact that the 1989 Convention on the Rights of the Child[27] had not been directly incorporated into Australian law, the High Court ruled that the act of ratification of the Convention was not without significance creating 'legitimate

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21 Rome Statute of the International Criminal Court [2002] ATS 15.

22 Marr and Wilkinson, above n 9; M E Crock, B Saul and A Dastyari, *Future seekers II: refugees and irregular migration in Australia* (2006); F Brennan, *Tampering with asylum: a universal humanitarian problem* (2003); A Edwards, 'Tampering with Refugee protection: The Case of Australia' (2003) 15 *International Journal of Refugee Law* 192.

23 See eg *Al-Kateb v Godwin* [2004] HCA 37; *Minister for Immigration and Multicultural and Indigenous Affairs v Al Masri* [2002] FCAFC 70.

24 T Magner, 'A Less than 'Pacific' Solution for Asylum Seekers in Australia' (2004) 16 *International Journal of Refugee Law* 53.

25 See discussion in J Kinslor, '"Killing off" International Human Rights Law: An exploration of the Australian Government's relationship with United Nations human rights committees' (2002) 8 *Australian Journal of Human Rights* 79.

26 *Minister of State for Immigration and Ethnic Affairs v Teoh* (1995) 183 CLR 273.

27 1989 Convention on the Rights of the Child [1991] ATS 4.

expectations' that administrative decision-makers would at least take into account the provisions of the Convention in making their decisions.[28]

Once in government, and building on some of the recommendations made in the *Trick or Treaty?* report, the Howard government through Downer as Foreign Minister introduced a series of reforms to the treaty-making process designed to remedy the 'democratic deficit' of Australia's past practices in this area.[29] On paper these reforms were far-reaching and resulted in several important changes to governmental practice as to how treaties, once negotiated, would be subject to discussion and debate within the Parliament and the community. The requirement that a 'National Interest Analysis' of the treaty be prepared by the government department most responsible for its adoption and implementation resulted in a clearer appreciation of some of the implications for government of eventual treaty-action being taken. Likewise, the treaty review process undertaken by the newly established JSCOT allowed for much greater transparency in the parliamentary and public debates over the merits of individual treaties under consideration for ratification. Parallel to these reforms was the development of the on-line Australian Treaties Library[30] and implementation of a project to make all of the Australian Treaty Series available electronically.

There can be no denying these were significant reforms to the treaty-implementation process within Australia and certainly allowed for much greater public input into the decision-making process about whether Australia should or should not ultimately become a party to a particular treaty. However, these reforms were not of a constitutional nature and in no way fettered the right of the Executive to engage in treaty-making or ultimately to undertake treaty-action by way of signature or ratification. In this respect, the debates over ratification of the Rome Statute within the Coalition party room notwithstanding, the recommendations made by the JSCOT[31] highlight that ultimately ratification of a treaty by Australia remains a political process over which the Executive exercises considerable control.

Australian Citizens Overseas and International Law

Another way Australia engages with international law is through consular protection and assistance to its citizens overseas and this raised several controversies during the

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28 For a review of the decision and its implications see M Allars, 'One Small Step for Legal Doctrine, One Giant Leap Towards Integrity in Government: Teoh's Case and the Internationalisation of Administrative Law' (1995) 17 *Sydney Law Review* 204-41. The response of both the Keating Labor government and the Howard Coalition government to the *Teoh* decision in itself created challenges for international law within Australia; see W Lacey, 'In the wake of Teoh: finding an appropriate government response' (2001) 29 *Federal Law Review* 219-40.

29 The term 'democratic deficit' gained currency in the debate through its use by Sir Ninian Stephen, former Judge of the High Court of Australia and Governor-General: N Stephen, 'The Expansion of International Law – Sovereignty and External Affairs' (1995) 39 (1-2) *Quadrant* 20.

30 Available at <http://www.austlii.edu.au/au/other/dfat/treaties/>.

31 See Joint Standing Committee on Treaties, Report 45: *The Statute of the International Criminal Court* (May 2002).

term of the Howard government. As Mia Goldsmith of the Australian delegation to the 61st Session of the UN General Assembly noted in a statement to the Sixth Committee of the UN General Assembly concerning Diplomatic Protection in 2006,[32] 'at any one time, approximately one-million Australians out of a total population of 20 million are overseas'. She affirmed 'the Australian Government is committed to providing appropriate consulate assistance to those citizens'. Defining what is appropriate is of course open to debate, and various cases that came to heightened public attention during the Howard years included Van Nguyen in Singapore, Douglas Wood in Baghdad, Schapelle Corby and the 'Bali Nine' in Indonesia, and David Hicks and Mamdouh Habib in Guantánamo Bay. Assistance was also provided to Australians overseas in distress following events such as the 2002 and 2005 Bali bombings, the 2004 Boxing Day tsunami, and the 2007 Israel-Lebanon conflict.

The Howard government reasserted its opposition to the death penalty throughout its term in office and had some success with its position. Downer noted in September 2006, '[w]e oppose capital punishment and we always support applications for clemency for Australians.' While in 2005 the Howard government's representations to Singapore in the Van Nguyen case failed, it did succeed with clemency pleas for two Australians on death row in Vietnam. The government however drew the line when it came to the death penalty for non-Australians, and had no difficulty in welcoming the decision of the Iraqi Special Tribunal that Saddam Hussein should hang, or endorsing the position of the Indonesian government with respect to the death penalty for the Bali bombers.

David Hicks' detention at Guantánamo Bay between 2002 and 2007, and his guilty plea and subsequent conviction by the United States Military Commission became a significant issue for the Howard government with respect to its treatment of Australian's detained by foreign governments. Hicks was one of the original group of detainees first brought to Guantánamo in January 2002 and was subsequently charged under the first Presidential Military Commission process. Those charges included counts of conspiracy to commit various terrorist acts, attempted murder by an underprivileged belligerent, and aiding the enemy. However, once the Supreme Court's *Hamdan* ruling came down in June 2006,[33] the original charges were dropped and replaced with lesser counts of material support for a terrorist organisation and for a terrorist act. The Australian government, long under pressure domestically to push for Hicks' speedy trial or immediate release from United States custody, began to express its impatience with the delays in the Military Commission process. A result of these urgings lead to Hicks being amongst the first three Guantánamo detainees charged under the Military Commissions Act 2006 (US) and was the first to plea guilty. Against the backdrop of assertions that the Military Commissions were both unconstitutional and contrary to the Geneva Conventions, following the Hicks plea bargain of March 2007 there was a sense of considerable unease that what resulted was a political compromise achieving a win-win for all concerned.

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32 See 'Australian Practice in International Law 2006' this volume p 419-20.
33 *Hamdan v Rumsfeld* (2006) 548 US 557.

David Hicks sought to review the Australian government's consular activity in the Federal Court as discussed by Carne in his contribution.[34] The Hicks case in particular raised an important issue as to whether Australian citizens overseas have a right to receive consular and diplomatic assistance, or whether Australian governments can deal with requests for assistance on a case-by-case basis. The Howard government's approach to this mirrored comments presented by Australian representative Mia Goldsmith to the 61st Session of the UN General Assembly when in reference to the International Law Commission's Draft Articles on Diplomatic Protection it was noted: 'Australia endorses the Commission's view, expressed in draft Article 2, that the exercise of diplomatic protection is a right, rather than a duty of a State.'[35]

Concluding Remarks

The Australian 'international law project' remains a work in progress and here Australia is no different to any other country actively engaging in international law and its institutions. As various Commonwealth governments come and go there are bound to be different interpretations taken of international law, and varying emphasis given to the multitude of international organisations now having responsibility for the development, monitoring, and resolution of matters relating to international law.[36] These differences in approaches are also inevitably governed by events at times well beyond the control of Australians and their government, and the 2001 terrorist attacks upon the United States are cases in point for the Howard government. Nevertheless, while Australia will in many instances have a limited capacity to shape global events; it does have a capacity to determine the extent to which its responses are shaped by its acceptance and adherence to international law. This collection of essays should contribute to fruitful discussions and reflections about Australia's approach to international law, especially during the years of the Howard government. It will assist in determining whether the following view is indeed the case:

> While both major political parties can claim some important successes, neither has yet come to grips with the policy challenges posed by globalisation and the ongoing development of international law. Instead, Australia's engagement with international law is so often driven by political expediency rather than by principled action taken with regard to the long-term implications for the national interest.[37]

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34 *Hicks v Ruddock* [2007] FCA 299.

35 Above n 32.

36 An excellent historical study on one aspect of this engagement can be found in S Scott, 'The Participation of the Australian Government in International Debate on the Composition and Voting Procedure of the Security Council, 1945-2005' (2007) 26 *Aust YBIL* 119.

37 Charlesworth, et al, above n 3, 2.