

REPUBLIC OF SOUTH AFRICA

ANTARCTIC TREATIES BILL

(As introduced)

(MINISTER OF ENVIRONMENTAL AFFAIRS AND TOURISM)

[B 46-96]

REPUBLIEK VAN SUID-AFRIKA

WETSONTWERP OP ANTARKTIESE VERDRAE

(Soos ingedien)

(MINISTER VAN OMGEWINGSAKE EN TOERISME)

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BILL

To provide for the application of certain treaties relating to Antarctica; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:-

Definitions

1. In this Act, unless the context indicates otherwise-

(i) "Antarctica" means the area to which a particular treaty applies; (i)

(ii) "Contracting Party" means a Contracting Party to any treaty, and "another Contracting Party" means a "Contracting Party" other than the Government of the Republic; (v)

(iii) "Department" means the Department of Environmental Affairs and Tourism; (ii)

(iv) "Director-General" means the Director-General: Environmental Affairs and Tourism; (iii)

(v) "Minister" means the Minister of Environmental Affairs and Tourism; (vi)

(vi) "regulation" means any regulation made under this Act; (vii)

(vii) "this Act" includes the regulations; (iv)

(viii) "treaty" means an international agreement (howsoever described) relating to Antarctica which in terms of this Act and the Constitution forms part of the law of South Africa and which is mentioned in Schedule 1, and includes any annexure to such international agreement. (viii)

Application of Act

2. This Act shall apply in Antarctica to-

(a) a South African citizen;

(b) a person who is not a South African citizen, but who is ordinarily resident in the Republic, except if that person is-

(i) on board any ship, vessel or aircraft that is operating, whether exclusively or not, in support of any expedition organised by the government of another Contracting Party; or

(ii) a citizen of another Contracting Party, while that person is in any part of Antarctica for the purpose of exercising his or her functions, whether as an inspector, observer or other official or exchange scientist contemplated in a treaty;

(c) a citizen of another Contracting Party, if immunity of that person has been waived by that Party;

(d) any person, whether a South African citizen or not, who is a member of or is responsible for organising an expedition which has been organised in the Republic to visit Antarctica, but not an expedition organised by the government of another Contracting Party;

(e) companies, close corporations or other juristic persons registered as such under the laws of the Republic, operating or using any ship, vessel or aircraft registered in the Republic.

Application and publication of treaty

3. (1) Subject to this Act, the treaties mentioned in Schedule 1 shall form part of the law of the Republic.

(2) The Minister shall, as soon as practicable after the promulgation of this Act, cause to be published in the Gazette the texts of the treaties mentioned in Schedule 1.

(3) The Minister may by notice in the Gazette amend Schedule 1 to reflect the number and date of a Gazette in which the treaties were published.

Powers of Minister where Antarctic environment is damaged, endangered or detrimentally affected

4. (1) If any person to whom this Act applies performs any activity or fails to perform any activity in contravention of a treaty as a result of which the Antarctic environment is or may be seriously damaged, endangered or detrimentally affected, the Minister may in writing direct that person, within a period specified in the direction-

(a) to cease that activity; or

(b) to take such steps as the Minister may deem fit with a view to eliminating, reducing or preventing the damage, danger or detrimental effect.

(2) The Minister may in writing direct the person referred to in subsection (1) to perform any activity or function, at the expense of that person, with a view to repairing or rehabilitating any damage caused to the Antarctic environment.

(3) If the person referred to in subsection (2) refuses or fails to comply with the direction of the Minister, the Minister may take the necessary steps in order to repair or rehabilitate the damage, and the Minister may authorise any person to take all steps required for that purpose.

(4) The Minister may recover any expenditure incurred in the performance of any function contemplated in subsection (3) from the person who refused or failed to comply with a direction under subsection (2).

(5) This section also applies, with the necessary changes, to acts relating to animals and plants in Antarctica.

Inspectors, observers and other officials

5. (1) The Minister may-

(a) subject to the Public Service Act, 1994 (Proclamation No. 103 of 1994), designate posts in the Department, the incumbents of which shall be inspectors, observers or other officials contemplated in any treaty;

(b) by notice in the Gazette and with the concurrence of the Minister of Defence designate a particular rank or ranks in the South African Navy, the incumbents of which shall be inspectors, observers or other officials contemplated in any treaty; and

(c) by notice in the Gazette designate any other person as an inspector, observer or other official contemplated in any treaty.

(2) The incumbent of any post or rank designated under subsection (1)(a) and (b), as well as any person designated under subsection (1)(c), shall be furnished by the Director-General, or any other officer designated by the Director-General for that purpose, with an identity card prescribed by regulation, and whenever the incumbent or designated person exercises any power or performs any duty in terms of this Act or any

treaty, he or she shall, at the request of any person affected thereby, produce that identity card to that person for inspection.

Regulations

6. (1) The Minister may make regulations with regard to-

(a) the qualifications and functions of persons applying this Act or a treaty, including a person authorised in terms of section 4(3) and the incumbent of a post or rank or any other person designated in terms of section 5(1);

(b) the issuing of permits contemplated in any treaty; and

(c) generally, any matter which may be necessary or expedient to prescribe in order to achieve the objects of this Act or any treaty.

(2) A regulation made under subsection (1), may provide that any person contravening a provision thereof or failing to comply with a provision thereof, shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding five years.

Delegation

7. The Minister may on such conditions as he or she may deem fit, delegate or assign any power or duty conferred upon or assigned to him or her by this Act, excluding the power to make regulations, to any officer or employee of the Department.

Jurisdiction

8. For the purposes of the application of this Act, Antarctica shall be deemed to be situated within the magisterial district of Cape Town.

Offences

9. Any person who contravenes a provision of a treaty mentioned in Column 1 of Schedule 2 shall, subject to the particular treaty, be guilty of an offence and on conviction liable to a fine or to imprisonment for a period not exceeding the period mentioned in Column 2 of that Schedule opposite the number of that provision.

Saving

10. Nothing in this Act shall affect the rights or the exercise of the rights of any country under international law with regard to the high seas within Antarctica.

Application of Act to Prince Edward Islands

11. Where, by virtue of the definition of "Antarctica", a treaty is applicable to the Prince Edward Islands, referred to in section 1 of the Prince Edward Islands Act, 1948 (Act No. 43 of 1948), this Act shall also apply to those islands.

Application of Act in event of conflict with certain other laws

12. In the event of any conflict between the provisions of this Act and those of the Prince Edwards Islands Act, 1948 (Act No. 43 of 1948), the South African Citizens in Antarctica Act, 1962 (Act No. 55 of 1962), the Sea Birds and Seals Protection Act, 1973 (Act No. 46 of 1973), the Sea Fishery Act, 1988 (Act No. 12 of 1988), and the Maritime Zones Act, 1994 (Act No. 15 of 1994), the provisions of this Act shall prevail.

State bound

13. This Act shall bind the State except in so far as criminal liability is concerned.

Short title

14. (1) This Act shall be called the Antarctic Treaties Act, 1996, and shall come into operation on a date fixed by the President by proclamation in the Gazette.

(2) The date contemplated in subsection (1) shall be a date after the publication of the treaties in terms of section 3(2).

SCHEDULE 1

I Antarctic Treaty

II Protocol on Environmental Protection to the Antarctic Treaty

III Convention for the Conservation of Antarctic Seals

IV Convention on the Conservation of Antarctic Marine Living Resources

SCHEDULE 2

Column 1

Column 2

I. Antarctic Treaty

(a) Article I (Use of Antarctica for purposes other than peaceful purposes)

Five years

(b) Article V (Nuclear explosions and disposal of radioactive waste material)

Twenty years

II.

1 Protocol on Environmental Protection to the Antarctic Treaty

(a) Article 3 (Activities damaging the Antarctic environment)

Two years

(b) Article 7 (Mineral resource activities)

Five years

2. Annex II to the Protocol on Environmental Protection to the Antarctic Treaty:
Conservation of Antarctic Fauna and Flora

(a) Article 3 (Taking of or harmful interference with animals or plants)

One year

(b) Article 4 (Introducing foreign animals or plants into Antarctica)

Two years

3. Annex III to the Protocol on Environmental Protection to the Antarctic Treaty: Waste
Disposal and Waste Management

(a) Articles 2 to 6 (Disposal or storage of waste)

One year

(b) Article 7 (Introducing a prohibited product in Antarctica)

One year

4. Annex IV to the Protocol on Environmental Protection to the Antarctic Treaty:
Prevention of Marine Pollution

(a) Article 3 (Discharge of oil or oily mixture into the sea)

Five years

(b) Article 4 (Discharge of noxious liquid or chemical substance into the sea)

Five years

(c) Article 5 (Disposal of garbage into the sea)

Two years

(d) Article 6 (Discharge of sewage into the sea)

Two years

5. Annex V to the Protocol on Environmental Protection to the Antarctic Treaty: Area Protection and Management

(a) Article 3 (Entry into Antarctic Specially Protected Area)

One year

(b) Article 8 (Damaging, removing or destroying a historic site or monument)

Two years

III Convention for the Conservation of Antarctic Seals

(a) Article 2 (Capturing or killing of seals)

Two years

IV Convention on the Conservation of Antarctic Marine Living Resources (a)

Article II (Harvesting of marine living resources)

Five years

MEMORANDUM ON THE OBJECTS OF THE ANTARCTIC TREATIES BILL, 1996

1. The Republic of South Africa was one of the twelve original contracting parties to the Antarctic Treaty which was signed on 1 December 1959. The purpose of that Treaty is to ensure the continued use of Antarctica for peaceful purposes, for scientific research and the free exchange of information. Subsequently, the Republic of South Africa has become a party to various other conventions, treaties and agreements pertaining to Antarctica (hereinafter, together with the Antarctic Treaty, jointly referred to as "the treaties").
2. In order to be able to apply and enforce the treaties it is necessary to have enabling legislation. The Republic of South Africa has not as yet adopted the appropriate legislation for that purpose and it has thus become imperative to adopt such legislation to enable the Republic to fulfil its obligations in terms of the treaties.
3. The Bill contains general provisions which can be applied to enforce the provisions

of the treaties. Clause 1 of the Bill contains the definitions. Clause 2 of the Bill proposes that the provisions will be applicable in Antarctica mainly to South African citizens, persons ordinarily resident in the Republic, companies and close corporations registered under South African law and groups which have been organised in the Republic to visit Antarctica. The Act will, with certain exceptions, not generally apply to citizens of other parties to a treaty. The actions of these persons in Antarctica will generally remain the responsibility of their respective governments.

4. Clause 3 of the Bill proposes that the treaties mentioned in Schedule 1 will form part of the law of the Republic. It also seeks to prescribe how the treaties should be published. Clause 4 of the Bill proposes to empower the Minister of Environmental Affairs and Tourism to take certain action in order to put a stop to any activities which may seriously damage, endanger or detrimentally affect the Antarctic environment. That provision will also apply, with the necessary changes, to activities relating to animals and plants in Antarctica. Clause 5 of the Bill purports to empower the said Minister to designate posts in the Department of Environmental Affairs and Tourism and, with the concurrence of the Minister of Defence, ranks in the South African Navy the incumbents of which shall be inspectors, observers or other officials regarding the application of the treaties. It also proposes to provide for the designation of other persons, for example scientists from universities undertaking scientific research in Antarctica, to apply the provisions of a treaty. The duties of the designated persons will be prescribed by regulation.
5. Clause 6 seeks to empower the Minister of Environmental Affairs and Tourism to make regulations regarding the qualifications and functions of the persons applying the provisions of the Act; regulations to enforce the provisions of the treaties; and also regulations providing for penalties should any of the provisions of the regulations be contravened or not complied with.
6. Clause 7 proposes to empower the Minister to delegate certain powers and assign certain duties. Clause 8 of the Bill proposes to determine the jurisdictional area for the purpose of the application of the Act. In terms of the treaties certain actions are prohibited. Clause 9 seeks to prescribe penalties for the offences so created.
7. Clause 10 of the Bill proposes to guarantee the rights and the exercise of rights of any country under international law with regard to the high seas within Antarctica. Clause 11 of the Bill proposes to make the Act applicable in the Prince Edward Islands in the case where a treaty includes those islands, and clause 12 proposes that the Act shall prevail over certain South African legislation in the event of a conflict. Clause 13 proposes to determine that the State be bound by the proposed Act, except with regard to criminal liability.
8. The Department of Foreign Affairs was consulted with regard to the provisions of the Bill.