

Antarctica and South African Law

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It may come as a surprise to some that there is a connection between an uninhabited continent several thousand kilometres from our shores and South African law. Nevertheless there is such a connection. The South African Citizens in Antarctica Act, 55 of 1962, for example, provides that the laws from time to time in force in the Republic shall apply to any South African citizen while he is in Antarctica. Moreover, recently concluded negotiations concerning the mineral resources of Antarctica may pave the way for further South African legislation in respect of Antarctica.

Balancing contending interests in Antarctica

In 1959 political and strategic considerations motivated twelve states (among them South Africa) to resolve the growing tensions over an entire continent of disputed claims to territory by concluding the Antarctic Treaty. One of the primary objectives of the Treaty is to preserve the positions of the parties regarding claims to territorial sovereignty in Antarctica and the recognition or non-recognition of those claims. The Treaty and other component instruments of the Antarctic Treaty System have succeeded admirably in balancing the contending political and strategic interests while at the same time preserving the fragile Antarctic environment. As a result of then existing economic, technological and political considerations, the Antarctic Treaty omitted any reference to mineral resources. In the 1970's, however, it became clear that a comprehensive minerals regime was required to prevent an unregulated scramble which could destabilise the whole Treaty System.

Convention on mineral resources

During June 1988 the Antarctic Treaty Consultative Parties (now 20 in number - including South Africa) concluded a series of twelve negotiating sessions and adopted the CONVENTION ON THE REGULATION OF ANTARCTIC MINERAL RESOURCE ACTIVITIES.

The Convention is not a detailed mining code, but provides a framework for the regulation of mineral activities in Antarctica. Four institutions will be involved in the decision-making process to implement the complicated operational and stringent environmental requirements of the Convention. Governments will now consider the Convention with a view to its ratification. A decision by South Africa to become a party to the Convention will have, *inter alia*, the following international and municipal legal implications:

- South Africa will be required to take appropriate measures to ensure compliance with the Convention by South African operators who engage in mineral activities in Antarctica. The provisions of the Convention are of course part of international law, and enabling legislation will be required to ensure compliance with this obligation.
- South Africa will also have to un-

dertake to make recourse available in our courts for the adjudication of liability claims against South African operators who engage in prospecting in Antarctica. Furthermore, the main institution of the Convention, the Commission, will have to be accorded legal capacity to appear as a party in our courts in order to enable it, for example, to pursue claims against South African operators for certain categories of damage, including "damage to the Antarctic environment".

- An obligation will also rest upon South Africa to accept a compulsory dispute settlement procedure should a dispute arise between it and another party concerning the interpretation or application of the Convention. In this respect the Convention provides that a party may choose either or both the International Court of Justice and an Arbitral Tribunal as the forum for the settlement of such disputes. Having regard to South Africa's known reservations *vis à vis* the International Court of Justice, it would come as no surprise were South Africa to choose the Arbitral Tribunal.

Challenge to legal profession

Membership of the Convention would in the near or distant future, depending on the progress of mining technology, financial resources and the spirit of enterprise of would-be South African operators in Antarctica, present our legal profession and courts with legal rules which encompass some perhaps unfamiliar concepts and which are influenced by a variety of political and strategic considerations. ■