



**environmental affairs**

Department:  
Environmental Affairs  
REPUBLIC OF SOUTH AFRICA

# **Portfolio Committee on Water and Environmental Affairs**

## **Annex V1 to the Protocol on Environmental Protection to the Antarctic Treaty : Liability Arising from Environmental Emergencies**

Date: Tuesday, 08 October 2013

Time: 09:30 – 11:00

Venue: Good Hope Chamber, Parliament, Cape Town



# PORTFOLIO COMMITTEE OF WATER AND ENVIRONMENTAL AFFAIRS BRIEFING NOTES

## 1. SUBJECT

Annex VI to the Protocol on Environmental Protection to the Antarctic Treaty:  
Liability Arising from Environmental Emergencies.

## 2. PURPOSE

- 2.1 To request the Portfolio Committee to recommend that Parliament approves ratification of Annex VI to the Protocol on Environmental Protection to the Antarctic Treaty: (Liability Arising from Environmental Emergencies).

## 3. SUMMARY

- 3.1 South Africa was party to the agreement reached at the 28th Antarctic Treaty Consultative Meeting (ATCM), to adopt the text of Annex VI to the Protocol on Environmental Protection to the Antarctic Treaty: Liability Arising from Environmental Emergencies.
- 3.2 Annex VI creates a framework for Parties to require organisations/entities (government and non-government) that plan activities in the Antarctic Treaty area to develop and implement contingency plans to reduce the risk of environmental emergencies and to respond to environmental incidents when they occur. In addition, if an entity does not respond to a particular environmental emergency, Parties are encouraged to take action and create a mechanism to recover the costs of response action either from the operator or a fund which will be established.

- 3.3 There will be an annual review by the Antarctic Treaty Consultative Meeting of the progress towards ratification. It is important that Cabinet approve the Annex, as it will only come into force once all parties have ratified it. Accordingly, to formalize South Africa's acceptance thereof, Parliamentary ratification is required in terms of section 231(2) of The Constitution.
- 3.4 Since the Annex is a result of a negotiated agreement it is not as comprehensive as would have been preferred as it excludes the bulk of commercial traffic in the area.
- 3.5 This Annex has been presented to the ICTS Cluster Committee as well the Cabinet Committee.

#### **4. STRATEGIC FOCUS OF THE MEMORANDUM**

- 4.1 South Africa has strong interests in preserving the pristine and sensitive Antarctic environment, its resources and also to limit the impact of manmade environmental emergencies for future generations and for the betterment of mankind. The key focus of the Annex on environmental emergencies arising in the Antarctic Areas is primarily for South Africa to ensure compliance of its operators and secondly, enabling the South African government to claim expenses arising from clean-ups of operations launched from other countries. Without a system of compensation in place, the South African government would have to take such actions without any certainty that its expenses would be reimbursed by the responsible Parties.

#### **5. DISCUSSION**

- 5.1 South Africa is one of the twelve original signatories to the Antarctic Treaty which was signed in Washington on 1 December 1959. The Antarctic Treaty System (ATS) applies to the area south of 60°S. The ATS consists of four treaties, namely the Antarctic Treaty (as indicated above), the 1972 Antarctic Seals Convention, the Convention on the Conservation of Antarctic Marine Living

- 5.5 Annex VI will be applicable to environmental emergencies in the Antarctic Treaty area relating to scientific research programmes, tourism and all other governmental and non-governmental activities in the area. Unfortunately, the Parties could not agree to include the non-fishing activities of fishing vessels in the area, which make up the bulk of commercial traffic and activities in the area and is therefore less comprehensive than what would have been preferred.
- 5.6 In essence, the Annex obliges each Party to require its operators, which are defined in the Annex as including governmental or non-governmental entities that organize activities to be carried out in the Antarctic Treaty area, to undertake preventative measures to reduce the risk of environmental emergencies (Article 3). The operators are also required to establish contingency plans (Article 4) to respond to accidents with a potential adverse impact on the area. Parties are also obliged to require operators to take prompt and effective response actions to environmental emergencies arising from the activities of an operator. In circumstances where the operator fails to take such actions, State Parties or other Parties subject to certain conditions, can take action (Article 5). Any operator that fails to respond to environmental emergencies caused by its own actions shall be liable to pay the costs of response actions taken by Parties on its behalf (Article 6).
- 5.7 The Annex also provides for Parties that took response measures on behalf of the operator that failed to take the necessary action, to institute a court action against such non-state operator and in the case of a State operator, resolve the issue via the ATCM. Parties are also obliged to ensure that there is a mechanism under their domestic law for the repayment of the money and to ensure that its courts will have jurisdiction to entertain such actions (Article 7). The Annex makes provision for limited exemptions from liability (Article 8) and places limits on the maximum amount for which an operator may be liable (Article 9). Non-state operators shall also be required to maintain adequate insurance to cover

Resources (CCAMLR) and the 1988 Antarctic Mineral Resources Convention. In addition, there is a 1991 protocol to the Antarctic Treaty on Environmental Protection (Madrid Protocol).

- 5.2 The Madrid Protocol to the Antarctic Treaty was signed at the 11th Special Antarctic Treaty Consultative Meeting (ATCM) in 1991 and has been ratified by South Africa. Its objective is the comprehensive protection of the Antarctic environment and dependent/associated ecosystems. Article 15 currently obliges Parties, including South Africa to provide for prompt response to environmental emergencies which occur in the performance of scientific, tourist and government and non-governmental activities.
- 5.3 There are five Annexes to the Madrid Protocol all of which are in direct keeping with its spirit and are concerned with Environmental Impact Assessment, Conservation of Antarctic Fauna and Flora, Waste Disposal and Waste Management, Prevention of Marine Pollution at Sea, and Area Protection and Management. The Protocol itself established provisions for compliance, inspection, emergency response action and to consider the complex question of liability for environmental damage.
- 5.4 After 12 years of intense negotiations, a Liability Annex (Annex VI) to the Protocol was adopted at the 28th ATCM (in 2005). Although the text is a reflection of a negotiated compromise, it still represents a historic step in establishing a liability regime to be applied in the Antarctic Treaty area. The adoption of Annex VI is also significant as it is the first new instrument adopted under the Antarctic Treaty System since 1991. Annex VI was developed on the basis of Articles 15 and 16 of the Protocol, which obliged Parties to provide for prompt and effective response action to environmental emergencies and is in line with the objective of the comprehensive protection of the Antarctic environment, to develop rules and procedures relating to liability for damage arising from activities taking place in the Antarctic Treaty area.

their limited liability in terms of the Annex for activities to be carried out in the Antarctic Treaty area (Article11). The Annex establishes a fund to which parties can apply in certain circumstances for reimbursement of costs incurred for taking response action (Article12).

- 5.8 At present the implementation of all the conventions which make up the ATS and which South Africa has ratified, is regulated by the Antarctic Treaties Act, 1996 (Act No. 60 of 1996).

## **6. IMPLEMENTATION PLAN**

- 6.1 Once approval of Parliament has been obtained the Antarctic Treaties Act, 1996 (Act No. 60 of 1996) will be amended, the Regulations to the Act drafted and a permitting system devised and implemented.

## **7. ORGANISATIONAL AND PERSONNEL IMPLICATIONS**

- 7.1 With the exception of the Antarctic Mineral Resources Convention, South Africa has implemented all the international instruments in the ATS including the Madrid Protocol, by means of the Antarctic Treaties Act, 1996 (Act 60 of 1996) (the Act). The Act incorporates the texts of all the treaties and provides for their enforcement against South African citizens, companies and juristic persons. It empowers the Minister of Environmental Affairs to issue directions if the Antarctic environment is damaged or endangered, to appoint inspectors and to make regulations. Certain offences and penalties are prescribed in Schedule 1 to the Act, for contravention of certain Treaty provisions. Should Annex VI be approved by Parliament the Antarctic Treaties Act will have to be amended to incorporate the text of Annex VI and to provide for any penalties in Schedule 1 to the Act for contravention of specific provisions of Annex VI. Specific compliance measures and other structures to effectively implement Annex VI can be prescribed by regulations in terms of the Act.
- 7.2 The Department's current legislation such as the National Environmental Management Act, 1998 (Act 107 of 1998) creates a framework which will assist with the implementation of Annex VI. This includes environmental management

inspectors who would receive additional training with respect to Annex VI and existing provisions relating to notification and emergency response. In addition the Department would be able to manage the implementation of Annex VI together with the other Antarctic treaties currently managed by the Department. No additional personnel or structures would therefore be required.

## **8. FINANCIAL IMPLICATIONS**

- 8.1 Some funding will be required for the review of existing Oil Spill Contingency Plans to include the measures to be taken in terms of Annex VI, containment exercises and equipment upgrades (conversion to double hull fuel tanks etc.). No specific additional allocations are required as this will be implemented gradually using existing and projected funding allocations.

## **9. COMMUNICATION IMPLICATIONS**

- 9.1 A press release will be required to announce Parliament's decision. In addition all stakeholders including state and non-state operators and tourist and insurance industries need to be informed, as they will be required to comply with the various provision of Annex VI.

## **10. CONSTITUTIONAL IMPLICATIONS**

- 10.1 None.

## **11. IMPLICATIONS FOR VULNERABLE GROUPS**

- 11.1 None

## **12. SECURITY IMPLICATIONS**

- 12.1 None

## **13. DEPARTMENTS AND OTHER PARTIES CONSULTED, RESPONSES AND COMMENTS**

- 13.1 Department of International Relations and Cooperation (ex-Foreign Affairs) for



compliance with international law (See Annexure 'C')

Department of Justice for compliance with domestic law (See Annexure 'D')

Department of Transport and the South African Maritime Safety Authority (SAMSA).

Department of Science and Technology

Department of Minerals and Energy

#### **14. RECOMMENDATIONS**

- 10.1 It is recommended that the Portfolio Committee recommend to Parliament to approve the ratification of the Liability Annex (Annex VI) to the Protocol on Environmental Protection to the Antarctic Treaty by Parliament.

#### **15. OFFICIAL RESPONSIBLE FOR THE MEMORANDUM**

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