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1996, No. 69

**An Act to complete the implementation in the law of  
New Zealand of the United Nations Convention on the  
Law of the Sea**

[26 July 1996

BE IT ENACTED by the Parliament of New Zealand as follows:

**1. Short Title and commencement**—(1) This Act may be cited as the United Nations Convention on the Law of the Sea Act 1996.

(2) This Act shall come into force on the 1st day of August 1996.

## PART I

## PRELIMINARY PROVISIONS

**2. Interpretation**—In this Act, unless the context otherwise requires,—

“Activity” means any activity of exploration for, and exploitation of, the resources of the Area:

“Area” means the sea-bed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction:

“Convention” means the United Nations Convention on the Law of the Sea, done at Montego Bay, Jamaica on the 10th day of December 1982:

“Crown entity” has the same meaning as it has in the Public Finance Act 1989:

“Department” has the same meaning as it has in the Public Finance Act 1989:

“Licence” means a licence granted under section 7 of this Act:

“Minister” means the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this Act:

“Secretary” means the Secretary of Foreign Affairs and Trade:

“State enterprise” has the same meaning as it has in the State-Owned Enterprises Act 1986.

Cf. United Nations Convention on the Law of the Sea, article 1 (1), (3)

**3. Meaning of “State Party”**—(1) In this Act, the term “State Party” means—

- (a) A state; or
- (b) A self-governing associated state of a kind referred to in paragraph (c) or paragraph (d) of article 305, paragraph 1, of the Convention; or
- (c) A territory of a kind described in paragraph (e) of article 305, paragraph 1, of the Convention; or
- (d) An international organization of a kind described in paragraph (f) of article 305, paragraph 1, of the Convention—

in relation to which the Convention is in force.

(2) The Secretary may from time to time certify in writing that—

- (a) A state; or
- (b) A self-governing associated state of a kind referred to in paragraph (c) or paragraph (d) of article 305, paragraph 1, of the Convention; or
- (c) A territory of a kind described in paragraph (e) of article 305, paragraph 1, of the Convention; or

(d) An international organization of a kind described in paragraph (f) of article 305, paragraph 1, of the Convention—

is or was at the time specified in the certificate one in relation to which the Convention is or was in force, and may at any time revoke such a certificate.

(3) Any certificate under subsection (2) of this section shall, in the absence of evidence to the contrary, be conclusive evidence of the matters to which it relates.

(4) Any court or any person acting judicially to which or to whom, in any proceeding, any certificate under subsection (2) of this section is produced shall take judicial notice of the signature on it of the Secretary.

(5) For the purposes of subsection (4) of this section, the terms “court”, “person acting judicially”, and “proceeding” have the same meanings as they have in the Evidence Act 1908.

**4. Act to bind the Crown—**(1) Except as expressly provided in subsection (2) of this section, this Act binds the Crown.

(2) Where it is alleged that a Crown entity or a department has contravened section 8 of this Act,—

(a) The Secretary, or any person directly affected by the act or omission alleged to constitute the contravention, may apply to the High Court for a declaration that the Crown entity or department has contravened that section; and

(b) If satisfied beyond reasonable doubt that the Crown entity or department has contravened that section, the court may make a declaration to that effect.

## PART II

### THE AREA

**5. Purpose—**The purpose of this Part of this Act is to give effect in the law of New Zealand to provisions of Part XI of the Convention.

**6. Persons to have licences to carry out activities in Area—**(1) No—

(a) Crown entity; or

(b) Department; or

(c) State enterprise; or

(d) Body incorporated or constituted under the law of New Zealand—

shall carry out any activity in the Area except in pursuance of a licence.

(2) Subject to subsection (3) of this section, no New Zealand citizen shall carry out any activity in the Area except in pursuance of a licence.

(3) The Minister may waive the requirement for a New Zealand citizen to carry out any activity in the Area pursuant to a licence where the Minister is satisfied—

(a) That the New Zealand citizen is to carry out, or is carrying out, any activity in the Area on behalf of—

(i) A State Party other than New Zealand; or

(ii) A body that, under the law of a State Party other than New Zealand, is equivalent to a Crown entity, a department, or a State enterprise; or

(iii) A body incorporated or constituted under the law of a State Party other than New Zealand; or

(iv) A national of a State Party other than New Zealand; and

(b) That the activity to be, or being, carried out has been authorised by the relevant State Party in accordance with the Convention.

Cf. 1964, No. 28, s. 5 (1)

**7. Grant of licences**—(1) Subject to subsection (2) of this section, the Minister may from time to time, on application, grant, to any person who pursuant to section 6 of this Act requires a licence to carry out any activity in the Area, a licence authorising the licensee to carry out in the Area any activity specified in the licence.

(2) The Minister shall not grant a licence unless the Minister is satisfied that the granting of the licence is consistent with New Zealand's rights and obligations under Part XI of the Convention.

(3) Subject to subsection (4) of this section, every licence shall be subject to such conditions as the Minister, when granting it, thinks fit to impose in the circumstances of each particular case.

(4) The Minister shall not impose a condition on a licence unless the Minister is satisfied that the condition is consistent with New Zealand's rights and obligations under Part XI of the Convention.

(5) Any number of licences may be granted to the same person.

Cf. 1964, No. 28, s. 5 (2), (3), (5)

**8. Offence to carry out activities without licence—**

(1) Every person who, pursuant to section 6 of this Act, requires a licence to carry out any activity in the Area commits an offence if that person carries out any activity in the Area otherwise than pursuant to a licence and in accordance with the conditions of the licence.

(2) Every person who commits an offence against this section is liable on summary conviction to a fine not exceeding \$200,000.

(3) On convicting any person of an offence against this section, the court may, in addition to imposing a penalty under subsection (2) of this section, order that person to pay an amount not exceeding 3 times the value of any commercial gain resulting from the commission of that offence if the court is satisfied that the offence was committed in the course of producing a commercial gain.

(4) For the purposes of subsection (3) of this section, the value of any gain shall be assessed by the court, and any amount ordered to be paid shall be recoverable in the same manner as a fine.

Cf. 1964, No. 28, s. 5 (7); 1994, No. 104, s. 409

**9. Application of criminal and civil law—**(1) For the purposes of this Act and of every other enactment (whether passed before or after the passing of this Act) and of every rule of law for the time being in force in New Zealand,—

- (a) Every activity carried out in the Area by a person who, pursuant to section 6 of this Act, requires a licence to carry out any activity in the Area shall be deemed to be carried out in New Zealand; and
- (b) Every court in New Zealand that would have jurisdiction (whether civil or criminal) in respect of that activity if it had taken place in New Zealand shall have jurisdiction accordingly; and
- (c) Every power of arrest or of entry or search or seizure or other power that could be exercised under any enactment (whether passed before or after the passing of this Act) or under any rule of law in respect of any such activity or suspected activity if it had been carried out or was suspected to have been

carried out in New Zealand may be exercised in respect of any such activity as if the activity had been carried out in New Zealand.

(2) Nothing in this section shall limit the provisions of any enactment or rule of law relating to the liability of persons in respect of acts done or omitted beyond New Zealand or the jurisdiction of any New Zealand court under any such enactment or rule of law.

(3) Notwithstanding anything in any other enactment, proceedings for the trial and punishment of any person charged with having committed an offence in respect of which the courts of New Zealand have jurisdiction by virtue only of this section shall not be instituted in any court except with the consent of the Attorney-General and on the Attorney-General's certificate that it is expedient that the proceedings should be instituted.

(4) A person alleged to have committed an offence in respect of which the courts of New Zealand have jurisdiction by virtue only of this section may be arrested or a warrant for the person's arrest may be issued and executed, and the person may be remanded in custody or on bail, notwithstanding that the consent of the Attorney-General to the institution of proceedings for the offence has not been obtained; but no further or other proceedings shall be taken until that consent has been obtained.

Cf. 1964, No. 28, s. 7 (1), (3), (4)

**10. Liability of principal for acts of agents—**(1) Where an offence is committed against this Act by any person acting as the agent or employee of another person, that other person shall, without prejudice to the liability of the first-mentioned person, be liable under this Act in the same manner and to the same extent as if he, she, or it had personally committed the offence.

(2) Notwithstanding anything in subsection (1) of this section, where any proceedings are brought by virtue of that subsection, it shall be a good defence, in the case of a natural person (including a partner in a firm), if the defendant proves—

(a) That either—

(i) He or she did not know nor could reasonably be expected to have known that the offence was to be or was being committed; or

(ii) He or she took all reasonable steps to prevent the commission of the offence; and

(b) That he or she took all reasonable steps to remedy any effects of the act or omission giving rise to the offence.

(3) Notwithstanding anything in subsection (1) of this section, where any proceedings are brought by virtue of that subsection, it shall be a good defence, in the case of a body corporate, if the defendant proves—

(a) That either—

(i) Neither the directors nor any person involved in the management of the body corporate knew or could reasonably be expected to have known that the offence was to be or was being committed; or

(ii) The body corporate took all reasonable steps to prevent the commission of the offence; and

(b) That the body corporate took all reasonable steps to remedy any effects of the act or omission giving rise to the offence.

(4) Where any body corporate is convicted of an offence against this Act, every director and every person concerned in the management of the body corporate shall be guilty of the like offence if it is proved—

(a) That the act or omission that constituted the offence took place with his or her authority, consent, or permission; and

(b) That he or she knew or could reasonably be expected to have known that the offence was to be or was being committed and failed to take all reasonable steps to prevent or stop it.

Cf. 1994, No. 104, s. 410

**11. Limitation of proceedings**—(1) Subject to subsection (2) of this section, no person shall be charged with an offence against section 8 of this Act unless an information charging that person with that offence is laid within 6 months after the matter arose.

(2) Notwithstanding anything in section 14 of the Summary Proceedings Act 1957, the period of 6 months shall not run while the person charged is beyond the territorial limits of New Zealand.

Cf. 1994, No. 104, s. 411

## PART III

## DECISIONS OF INTERNATIONAL COURTS OR TRIBUNALS

**12. Prompt release of vessels and crews**—(1) The purpose of this section is to give effect in the law of New Zealand to article 292, paragraph 4, of the Convention.

(2) In this section, the term “court or tribunal” means—

- (a) The International Tribunal for the Law of the Sea established in accordance with Annex VI of the Convention; or
- (b) The International Court of Justice established under article 92 of the Charter of the United Nations; or
- (c) An arbitral tribunal constituted in accordance with Annex VII of the Convention; or
- (d) A special arbitral tribunal constituted in accordance with Annex VIII of the Convention for one or more of the categories of disputes specified therein.

(3) This section applies to a decision by a court or tribunal under article 292, paragraph 4, of the Convention that a vessel or crew detained by authorities in New Zealand shall be promptly released.

(4) Notwithstanding any other enactment or any rule of law, a vessel or crew that is the subject of a decision to which this section applies shall be promptly released upon the posting of a bond or other financial security determined by the court or tribunal.

(5) Where there is a set of proceedings before any court in New Zealand, or there is a decision of a court in New Zealand, relating to a vessel or crew that is the subject of a decision to which this section applies, the vessel or crew shall be promptly released if—

- (a) A bond or other financial security determined by the court or tribunal is posted; and
- (b) The parties to the proceedings or the parties bound by the decision, as the case may require, are the same as the parties bound by the decision to which this section applies; and
- (c) There is no other set of proceedings before any court in New Zealand, relating to the vessel or crew, the parties to which are different from the parties bound by the decision to which this section applies; and
- (d) There is no other decision of a court in New Zealand, relating to the vessel or crew, the parties bound by

which are different from the parties bound by the decision to which this section applies.

**13. Applicable law**—(1) The purpose of this section is to give effect in the law of New Zealand to article 21, paragraph 2, of Annex III of the Convention.

(2) In this section,—

“Authority” means the International Sea-Bed Authority established by article 156 of the Convention:

“Contractor” means—

(a) New Zealand, if New Zealand has been duly authorised by the Authority to carry out activities in the Area; or

(b) A State Party other than New Zealand, if that State Party has been duly authorised by the Authority to carry out activities in the Area; or

(c) Any of the following entities if the entity is sponsored in accordance with article 153 of the Convention by the relevant State Party and if the entity has been duly authorised by the Authority to carry out activities in the Area:

(i) A Crown entity, a department, or a State enterprise; or

(ii) A body that, under the law of a State Party other than New Zealand, is equivalent to a Crown entity, a department, or a State enterprise; or

(iii) A body incorporated or constituted under the law of New Zealand; or

(iv) A body incorporated or constituted under the law of a State Party other than New Zealand; or

(v) A citizen of New Zealand; or

(vi) A national of a State Party other than New Zealand; or

(d) Any combination of any of the bodies referred to in paragraphs (a) to (c) of this definition that meets the requirements of Part XI and Annex III of the Convention and that has been duly authorised by the Authority to carry out activities in the Area:

“Court or tribunal” means—

(a) The Sea-Bed Disputes Chamber of the International Tribunal for the Law of the Sea

established under article 14 of Annex VI of the Convention; or

(b) A commercial arbitral tribunal to which a dispute has been submitted pursuant to article 188, paragraph 2 (a), of the Convention.

(3) Every final decision rendered by a court or tribunal in respect of a contract between the Authority and a contractor shall be enforceable in New Zealand as if it were a decision of the High Court, and all the provisions of the law of New Zealand shall apply accordingly with any necessary modifications.

**14. Enforcement of decisions of chamber**—(1) The purpose of this section is to give effect in the law of New Zealand to article 39 of Annex VI of the Convention.

(2) In this section, the term “chamber” means the Sea-Bed Disputes Chamber of the International Tribunal for the Law of the Sea established under article 14 of Annex VI of the Convention.

(3) Every decision of the chamber shall be enforceable in New Zealand as if it were a decision of the High Court, and all the provisions of the law of New Zealand shall apply accordingly with any necessary modifications.

#### *Miscellaneous Provisions*

**15. Evidence of decision**—(1) A party seeking to enforce any decision referred to in section 13 (3) or section 14 (3) of this Act shall produce to the court the duly authenticated decision or a duly certified copy thereof.

(2) Where the decision is in a foreign language, the party seeking to enforce it shall also produce a translation of it in the English language certified as a correct translation by an official or sworn translator, or by a diplomatic or consular agent of the country in which it was made, or in such other manner as the court may require.

(3) Any document produced under subsection (1) or subsection (2) of this section shall, in the absence of evidence to the contrary, be conclusive evidence of the document which it purports to be or the matters to which it relates, as the case may be.

Cf. 1982, No. 21, s. 6

**16. Rules of court**—The Governor-General in Council, with the concurrence of the Chief Justice and any 2 or more of the

members of the Rules Committee, of whom at least one shall be a Judge, may, under section 51C of the Judicature Act 1908, from time to time make rules relating to the enforcement of any decision of a kind referred to in section 13 (3) or section 14 (3) of this Act, if the Governor-General, the Chief Justice, and the relevant members of the Rules Committee are satisfied that the rules are consistent with New Zealand's rights and obligations under the Convention.

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This Act is administered in the Ministry of Foreign Affairs and Trade.

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