

ANTARCTICA BILL

EXPLANATORY NOTE

THIS Bill makes it clear that the Courts of New Zealand have general jurisdiction to deal with crimes committed in the Ross Dependency.

The Bill will also give effect to Article VIII of the Antarctic Treaty by giving jurisdiction to our Courts to deal with crimes committed in any other part of Antarctica by New Zealand citizens who are observers, exchanged scientists, or members of the staffs of such observers or exchanged scientists, while they are there for the purpose of exercising their functions; and by conferring on nationals of Contracting Parties to the Treaty (other than New Zealand) protection from civil or criminal liability in respect of anything done or omitted by them in any part of Antarctica (including the Ross Dependency) while they are there for the purpose of exercising their functions as observers or exchanged scientists, etc.

Clause 1 relates to the Short Title and commencement of the Bill. *Clauses 4 to 6* of the Bill will be brought into force on a day to be appointed by Proclamation; but the other clauses will come into force on the passing of the Bill.

Clause 2 is the interpretation clause. The definition of "Antarctica" is adapted from Article VI of the Antarctic Treaty, which is set out in the Schedule to the Bill. *Subclause (2)*, which defines the term "ordinarily resident in New Zealand", is identical with clause 4 of the Crimes Bill that is now before the House.

Clause 3: The effect of *subclauses (1) and (2)* of this clause is that, subject to *clause 5*, the Courts of New Zealand will have jurisdiction to deal with crimes committed—

- (a) In the Ross Dependency, by anyone. (This paragraph is intended to replace clause 5 (3) of the Crimes Bill.)
- (b) In any other part of Antarctica that is not within the jurisdiction of any country, by New Zealand citizens or persons ordinarily resident in New Zealand.

Subclause (3) requires the consent of the Attorney-General to prosecutions for crimes committed in the Ross Dependency by persons who are not New Zealanders, or by New Zealanders on foreign ships or aircraft; and for crimes committed in any other part of Antarctica by New Zealanders, unless they are committed on New Zealand ships or aircraft. (This subclause is intended to replace clause 413 (1) (c) of the Crimes Bill.)

Clause 4: The effect of this clause is that the Courts of New Zealand will have jurisdiction to deal with crimes in any part of Antarctica that is within the jurisdiction of any other country, if they are committed by New Zealand citizens while they are in Antarctica for the purpose of exercising their functions as recognised observers or exchanged scientists, or as members of their staffs, under the Antarctic Treaty. This clause will give effect to Article VIII of the Treaty so far as it affects New Zealanders. The effect of *subclause (3)* is to require the consent of the Attorney-General to prosecutions under this clause, except in the case of crimes committed on New Zealand ships or aircraft.

Clause 5 provides that the New Zealand Courts shall not have any civil or criminal jurisdiction in respect of the acts or omissions of nationals of Contracting Parties to the Antarctic Treaty (other than New Zealand) while they are in any part of Antarctica (including the Ross Dependency) for the purpose of exercising their functions as recognised observers or exchanged scientists, or as members of their staffs. This clause will give effect to Article VIII of the Antarctic Treaty so far as it affects nationals of other Contracting Parties. *Subclause (2)* provides that a Contracting Party may waive the immunity of any of its nationals in any particular case.

Clause 6 provides that a certificate issued by the Minister of External Affairs is conclusive evidence of any fact stated in the certificate that is relevant to any question arising in any legal proceedings as to whether or not a person is an observer or exchanged scientist, etc., within the meaning of the Bill, or as to whether or not there has been any waiver of immunity under *clause 5*.

Clause 7: Subclause (1) is intended to give effect to the second part of Article VI of the Treaty, which preserves the rights of any State under international law with regard to the high seas within the area to which the Treaty applies. *Subclause (2)* preserves any other jurisdiction of the New Zealand Courts in relation to things done beyond New Zealand (see, for example, the Offences at Sea Act 1953 and section 4A of the Crimes Act 1908, both of which are intended to be replaced by clause 8 of the present Crimes Bill).

The *Schedule* contains a copy of the Antarctic Treaty.

Right Hon. Mr Nash

ANTARCTICA

ANALYSIS

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2. Interpretation	6. Certificate of Minister of External Affairs to be evidence of certain facts
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A BILL INTITULED

An Act to confer jurisdiction on the Courts of New Zealand to deal with crimes committed in the Ross Dependency and certain other parts of Antarctica, and to restrict the jurisdiction of the Courts in respect of acts or omissions in Antarctica of certain nationals of other countries

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

10 **1. Short Title and commencement**—(1) This Act may be cited as the Antarctica Act 1960.

(2) Sections 4 to 6 of this Act shall come into force on a date to be appointed for the commencement thereof by the Governor-General by Proclamation.

15 (3) Except as provided in subsection (2) of this section, this Act shall come into force on its passing.

2. Interpretation—(1) In this Act, unless the context otherwise requires,—

“Antarctica” means the area south of sixty degrees south latitude, including all ice shelves in that area:

“Exchanged scientist” means a person exchanged pursuant to subparagraph (b) of paragraph 1 of Article III of the Treaty (which relates to the exchange of scientific personnel between expeditions and stations in Antarctica): 5

“New Zealand aircraft” means any aircraft that is registered or required to be registered in New Zealand under the Civil Aviation Act 1948; and includes any aircraft for the time being used as an aircraft of any of the armed forces of New Zealand: 10

“New Zealand ship” means a ship registered in New Zealand, or recognised by the law of New Zealand as a ship belonging to New Zealand; and includes any ship for the time being used as a ship of any of the armed forces of New Zealand: 15

“Observer” means an observer designated as such under paragraph 1 of Article VII of the Treaty (which relates to the appointment of observers to carry out inspections in Antarctica): 20

“Treaty” means the Antarctic Treaty, signed at Washington on the first day of December, nineteen hundred and fifty-nine, of which a copy is set out in the Schedule to this Act. 25

(2) For the purposes of this Act, a person shall be deemed to be ordinarily resident in New Zealand if—

(a) His home is in New Zealand; or 30

(b) He is residing in New Zealand with the intention of residing therein indefinitely; or

(c) Having resided in New Zealand with the intention of establishing his home therein, or with the intention of residing in New Zealand indefinitely, he is outside New Zealand but has an intention to return to establish his home therein or to reside in New Zealand indefinitely. 35

3. Crimes committed in the Ross Dependency or in certain other parts of Antarctica—(1) This section applies to any act done or omitted— 40

(a) In the Ross Dependency, by any person; or

(b) In any part of Antarctica, other than the Ross Dependency, that is not within the jurisdiction of any country, by any person who is a New Zealand citizen or a person ordinarily resident in New Zealand.

5 (2) Subject to the provisions of this Act, where any person does or omits any act to which this section applies, and that act or omission would, if it occurred in New Zealand, be a crime under any enactment, whether passed before or after the passing of this Act, he commits a crime and is liable to be
10 proceeded against and punished in the same manner in all respects as if the act or omission had occurred in New Zealand; and the Courts of New Zealand shall have jurisdiction accordingly.

(3) Notwithstanding anything in any other enactment,
15 proceedings for the trial and punishment of any person who,—

(a) Not being a New Zealand citizen or a person ordinarily resident in New Zealand, is charged with having committed a crime in the Ross Dependency; or

(b) Being a New Zealand citizen or a person ordinarily
20 resident in New Zealand, is charged with having committed, in the Ross Dependency, a crime on board any ship or aircraft which is not a New Zealand ship or a New Zealand aircraft; or

(c) Being a New Zealand citizen or a person ordinarily
25 resident in New Zealand, is charged with having committed a crime in any other part of Antarctica, otherwise than on board a New Zealand ship or a New Zealand aircraft—

shall not, by virtue only of the provisions of this Act, be instituted in any Court except with the consent of the Attorney-General and on his certificate that it is expedient that the
30 proceedings should be instituted:

Provided that a person so charged may be arrested, or a warrant for his arrest may be issued and executed, and he
35 may be remanded in custody or on bail, notwithstanding that the consent of the Attorney-General to the institution of a prosecution for the crime has not been obtained; but no further or other proceedings shall be taken until that consent has been obtained.

40 **4. Crimes committed by certain New Zealand citizens in other parts of Antarctica—**(1) This section applies to any act done or omitted in any part of Antarctica, other than the Ross Dependency, that is within the jurisdiction of any country by any New Zealand citizen who is an observer or exchanged

scientist or a member of the staff accompanying any observer or exchanged scientist, while he is in that part of Antarctica for the purpose of exercising his functions.

(2) Subject to the provisions of this Act, where any person does or omits any act to which this section applies, and that act or omission would, if it occurred in New Zealand, be a crime under any enactment, whether passed before or after the commencement of this section, he commits a crime and is liable to be proceeded against and punished in the same manner in all respects as if the act or omission had occurred in New Zealand; and the Courts of New Zealand shall have jurisdiction accordingly.

(3) The provisions of subsection (3) of section 3 of this Act, so far as they are applicable, shall apply to proceedings for the trial and punishment of any person in respect of any act or omission to which this section applies.

5. Restriction of jurisdiction over certain nationals of other countries—(1) Notwithstanding anything in section 3 of this Act or in any other enactment (whether passed before or after the commencement of this section) or in any rule of law, but subject to subsection (1) of section 7 of this Act, the Courts of New Zealand shall not have any jurisdiction, whether civil or criminal, in respect of any act done or omitted by any person who is a national of any Contracting Party to the Treaty, other than New Zealand, and who is an observer or exchanged scientist or a member of the staff accompanying any observer or exchanged scientist, while he is in any part of Antarctica, including the Ross Dependency, for the purpose of exercising his functions.

(2) In respect of any act or omission to which this section applies, the Contracting Party of which the person who did or omitted the act is a national may waive any immunity of that person under this section; and thereupon, to the extent of the waiver, the Courts of New Zealand shall have such jurisdiction as they would have had if subsection (1) of this section had not been passed.

6. Certificate of Minister of External Affairs to be evidence of certain facts—If in any proceedings there arises any question whether or not any person is or was at any time an observer or exchanged scientist, or a member of the staff accompanying any observer or exchanged scientist, within the meaning of this Act, or whether or not any immunity has been waived under section 5 of this Act, a certificate

issued by the Minister of External Affairs stating any fact relevant to that question shall be conclusive evidence of that fact.

7. Saving of jurisdiction otherwise than under this Act—

5 (1) Nothing in this Act shall limit, affect, or extend the jurisdiction of any New Zealand Court under any enactment or rule of law in respect of acts done or omitted on the high seas within Antarctica.

10 (2) Except as provided in subsection (3) of section 3 of this Act, nothing in that section or in section 4 of this Act shall limit or affect 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.

SCHEDULE

Section 2 (1)

THE ANTARCTIC TREATY

The Governments of Argentina, Australia, Belgium, Chile, the French Republic, Japan, New Zealand, Norway, the Union of South Africa, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, and the United States of America,

Recognising that it is in the interest of all mankind that Antarctica shall continue forever to be used exclusively for peaceful purposes and shall not become the scene or object of international discord;

Acknowledging the substantial contributions to scientific knowledge resulting from international cooperation in scientific investigation in Antarctica;

Convinced that the establishment of a firm foundation for the continuation and development of such cooperation on the basis of freedom of scientific investigation in Antarctica as applied during the International Geophysical Year accords with the interests of science and the progress of all mankind;

Convinced also that a treaty ensuring the use of Antarctica for peaceful purposes only and the continuance of international harmony in Antarctica will further the purposes and principles embodied in the Charter of the United Nations;

Have agreed as follows:

ARTICLE I

1. Antarctica shall be used for peaceful purposes only. There shall be prohibited, *inter alia*, any measures of a military nature, such as the establishment of military bases and fortifications, the carrying out of military maneuvers, as well as the testing of any type of weapons.

2. The present Treaty shall not prevent the use of military personnel or equipment for scientific research or for any other peaceful purpose.

SCHEDULE—*continued*

ARTICLE II

Freedom of scientific investigation in Antarctica and cooperation toward that end, as applied during the International Geophysical Year, shall continue, subject to the provisions of the present Treaty.

ARTICLE III

1. In order to promote international cooperation in scientific investigation in Antarctica, as provided for in Article II of the present Treaty, the Contracting Parties agree that, to the greatest extent feasible and practicable:

- (a) Information regarding plans for scientific programs in Antarctica shall be exchanged to permit maximum economy and efficiency of operations;
- (b) Scientific personnel shall be exchanged in Antarctica between expeditions and stations;
- (c) Scientific observations and results from Antarctica shall be exchanged and made freely available.

2. In implementing this Article, every encouragement shall be given to the establishment of cooperative working relations with those Specialised Agencies of the United Nations and other international organisations having a scientific or technical interest in Antarctica.

ARTICLE IV

1. Nothing contained in the present Treaty shall be interpreted as:

- (a) A renunciation by any Contracting Party of previously asserted rights of or claims to territorial sovereignty in Antarctica;
- (b) A renunciation or diminution by any Contracting Party of any basis of claim to territorial sovereignty in Antarctica which it may have whether as a result of its activities or those of its nationals in Antarctica, or otherwise;
- (c) Prejudicing the position of any Contracting Party as regards its recognition or non-recognition of any other State's right of or claim or basis of claim to territorial sovereignty in Antarctica.

2. No acts or activities taking place while the present Treaty is in force shall constitute a basis for asserting, supporting or denying a claim to territorial sovereignty in Antarctica or create any rights of sovereignty in Antarctica. No new claim, or enlargement of an existing claim, to territorial sovereignty in Antarctica shall be asserted while the present Treaty is in force.

ARTICLE V

1. Any nuclear explosions in Antarctica and the disposal there of radioactive waste material shall be prohibited.

2. In the event of the conclusion of international agreements concerning the use of nuclear energy, including nuclear explosions and the disposal of radioactive waste material, to which all of the Contracting Parties whose representatives are entitled to participate in the meetings provided for under Article IX are parties, the rules established under such agreements shall apply in Antarctica.

SCHEDULE—*continued*

ARTICLE VI

The provisions of the present Treaty shall apply to the area south of 60° South Latitude, including all ice shelves, but nothing in the present Treaty shall prejudice or in any way affect the rights, or the exercise of the rights, of any State under international law with regard to the high seas within that area.

ARTICLE VII

1. In order to promote the objectives and ensure the observance of the provisions of the present Treaty, each Contracting Party whose representatives are entitled to participate in the meetings referred to in Article IX of the Treaty shall have the right to designate observers to carry out any inspection provided for by the present Article. Observers shall be nationals of the Contracting Parties which designate them. The names of observers shall be communicated to every other Contracting Party having the right to designate observers, and like notice shall be given of the termination of their appointment.

2. Each observer designated in accordance with the provisions of paragraph 1 of this Article shall have complete freedom of access at any time to any or all areas of Antarctica.

3. All areas of Antarctica, including all stations, installations and equipment within those areas, and all ships and aircraft at points of discharging or embarking cargoes or personnel in Antarctica, shall be open at all times to inspection by any observers designated in accordance with paragraph 1 of this Article.

4. Aerial observation may be carried out at any time over any or all areas of Antarctica by any of the Contracting Parties having the right to designate observers.

5. Each Contracting Party shall, at the time when the present Treaty enters into force for it, inform the other Contracting Parties, and thereafter shall give them notice in advance, of

- (a) All expeditions to and within Antarctica, on the part of its ships or nationals, and all expeditions to Antarctica organised in or proceeding from its territory;
- (b) All stations in Antarctica occupied by its nationals; and
- (c) Any military personnel or equipment intended to be introduced by it into Antarctica subject to the conditions prescribed in paragraph 2 of Article I of the present Treaty.

ARTICLE VIII

1. In order to facilitate the exercise of their functions under the present Treaty, and without prejudice to the respective positions of the Contracting Parties relating to jurisdiction over all other persons in Antarctica, observers designated under paragraph 1 of Article VII and scientific personnel exchanged under subparagraph 1 (b) of Article III of the Treaty, and members of the staffs accompanying any such persons, shall be subject only to the jurisdiction of the Contracting Party of which they are nationals in respect of all acts or omissions occurring while they are in Antarctica for the purpose of exercising their functions.

SCHEDULE—*continued*

2. Without prejudice to the provisions of paragraph 1 of this Article, and pending the adoption of measures in pursuance of subparagraph 1 (e) of Article IX, the Contracting Parties concerned in any case of dispute with regard to the exercise of jurisdiction in Antarctica shall immediately consult together with a view to reaching a mutually acceptable solution.

ARTICLE IX

1. Representatives of the Contracting Parties named in the preamble to the present Treaty shall meet at the City of Canberra within two months after the date of entry into force of the Treaty, and thereafter at suitable intervals and places, for the purpose of exchanging information, consulting together on matters of common interest pertaining to Antarctica, and formulating and considering, and recommending to their Governments, measures in furtherance of the principles and objectives of the Treaty, including measures regarding:

- (a) Use of Antarctica for peaceful purposes only;
- (b) Facilitation of scientific research in Antarctica;
- (c) Facilitation of international scientific cooperation in Antarctica;
- (d) Facilitation of the exercise of the rights of inspection provided for in Article VII of the Treaty;
- (e) Questions relating to the exercise of jurisdiction in Antarctica;
- (f) Preservation and conservation of living resources in Antarctica.

2. Each Contracting Party which has become a party to the present Treaty by accession under Article XIII shall be entitled to appoint representatives to participate in the meetings referred to in paragraph 1 of the present Article, during such time as that Contracting Party demonstrates its interest in Antarctica by conducting substantial scientific research activity there, such as the establishment of a scientific station or the dispatch of a scientific expedition.

3. Reports from the observers referred to in Article VII of the present Treaty shall be transmitted to the representatives of the Contracting Parties participating in the meetings referred to in paragraph 1 of the present Article.

4. The measures referred to in paragraph 1 of this Article shall become effective when approved by all the Contracting Parties whose representatives were entitled to participate in the meetings held to consider those measures.

5. Any or all of the rights established in the present Treaty may be exercised as from the date of entry into force of the Treaty whether or not any measures facilitating the exercise of such rights have been proposed, considered or approved as provided in this Article.

ARTICLE X

Each of the Contracting Parties undertakes to exert appropriate efforts, consistent with the Charter of the United Nations, to the end that no one engages in any activity in Antarctica contrary to the principles or purposes of the present Treaty.

SCHEDULE—*continued*

ARTICLE XI

1. If any dispute arises between two or more of the Contracting Parties concerning the interpretation or application of the present Treaty, those Contracting Parties shall consult among themselves with a view to having the dispute resolved by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement or other peaceful means of their own choice.

2. Any dispute of this character not so resolved shall, with the consent, in each case, of all parties to the dispute, be referred to the International Court of Justice for settlement; but failure to reach agreement on reference to the International Court shall not absolve parties to the dispute from the responsibility of continuing to seek to resolve it by any of the various peaceful means referred to in paragraph 1 of this Article.

ARTICLE XII

1. (a) The present Treaty may be modified or amended at any time by unanimous agreement of the Contracting Parties whose representatives are entitled to participate in the meetings provided for under Article IX. Any such modification or amendment shall enter into force when the depositary Government has received notice from all such Contracting Parties that they have ratified it.

(b) Such modification or amendment shall thereafter enter into force as to any other Contracting Party when notice of ratification by it has been received by the depositary Government. Any such Contracting Party from which no notice of ratification is received within a period of two years from the date of entry into force of the modification or amendment in accordance with the provisions of subparagraph 1 (a) of this Article shall be deemed to have withdrawn from the present Treaty on the date of the expiration of such period.

2. (a) If after the expiration of thirty years from the date of entry into force of the present Treaty, any of the Contracting Parties whose representatives are entitled to participate in the meetings provided for under Article IX so requests by a communication addressed to the depositary Government, a Conference of all the Contracting Parties shall be held as soon as practicable to review the operation of the Treaty.

(b) Any modification or amendment to the present Treaty which is approved at such a Conference by a majority of the Contracting Parties there represented, including a majority of those whose representatives are entitled to participate in the meetings provided for under Article IX, shall be communicated by the depositary Government to all the Contracting Parties immediately after the termination of the Conference and shall enter into force in accordance with the provisions of paragraph 1 of the present Article.

(c) If any such modification or amendment has not entered into force in accordance with the provisions of subparagraph 1 (a) of this Article within a period of two years after the date of its communication to all the Contracting Parties, any Contracting Party may at any time after the expiration of that period give notice to the depositary Government of its withdrawal from the present Treaty; and such withdrawal shall take effect two years after the receipt of the notice by the depositary Government.

SCHEDULE—*continued*

ARTICLE XIII

1. The present Treaty shall be subject to ratification by the signatory States. It shall be open for accession by any State which is a Member of the United Nations, or by any other State which may be invited to accede to the Treaty with the consent of all the Contracting Parties whose representatives are entitled to participate in the meetings provided for under Article IX of the Treaty.

2. Ratification of or accession to the present Treaty shall be effected by each State in accordance with its constitutional processes.

3. Instruments of ratification and instruments of accession shall be deposited with the Government of the United States of America, hereby designated as the depositary government.

4. The depositary Government shall inform all signatory and acceding States of the date of each deposit of an instrument of ratification or accession, and the date of entry into force of the Treaty and of any modification or amendment thereto.

5. Upon the deposit of instruments of ratification by all the signatory States, the present Treaty shall enter into force for those States and for States which have deposited instruments of accession. Thereafter the Treaty shall enter into force for any acceding State upon the deposit of its instrument of accession.

6. The present Treaty shall be registered by the depositary Government pursuant to Article 102 of the Charter of the United Nations.

ARTICLE XIV

The present Treaty, done in the English, French, Russian, and Spanish languages, each version being equally authentic, shall be deposited in the archives of the Government of the United States of America, which shall transmit duly certified copies thereof to the Governments of the signatory and acceding States.

In witness whereof, the undersigned Plenipotentiaries, duly authorised, have signed the present Treaty.

Done at Washington this first day of December, one thousand nine hundred and fifty-nine.

[Here follow the signatures.]