



February 2008

dfa **Now**

Your voice to be heard



Minister of Foreign Affairs, Dr Nkosazana Dlamini Zuma and former AU Commissioner for Peace and Security, Ambassador Said Djinnit during the AU Summit held recently in Addis Ababa, Ethiopia.

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DEAR COLLEAGUES

IN FEBRUARY the *DFA Now* is a mix of international relations and Departmental personnel information. In relation to international relations we focus on the outcomes of the recent AU Summit that was held in Addis Ababa through the briefing by Deputy Minister Pahad. On the Departmental information we report back on the successful Minister's Dinner held at Vergelegen Wine Estate after the Opening of Parliament. There is also some insight into South Africa's role in the Law of the Sea while Labour Relations provides guidance regarding absconding employees.

We hope you will find this issue informative and don't forget to see if you have been snapped on the back page. As it is the norm please don't forget that we rely on your assistance in meeting the printing deadline. Therefore, in future to ensure that the *DFA Now* is released on time please assist us by meeting the submission deadline for articles. Please forward your letters and articles to the Editor before the deadline.

Happy reading!

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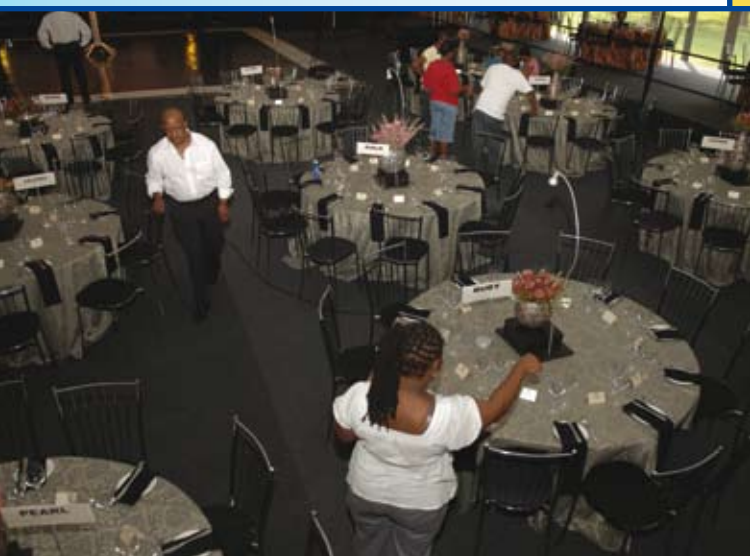
The views expressed in this newsletter do not necessarily reflect those of the DFA or the editors. The deadline for contributions is 27 February 2008. Contributions may be sent to cbe300 or mokhetheap@foreign.gov.za

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In preparation of the Minister's Banquette in honour of the Diplomatic Corps



THE MINISTER OF FOREIGN AFFAIRS HOSTS, once every year, a dinner in honour of the diplomatic community based in South Africa. On the one hand the occasion is meant to give thanks to them for their sterling work within the country, and on the other hand, is to allow them an opportunity to unwind and allow the country to wine and dine them in return for their hard work. This yearly highlight on the social calendar of all diplomats in South Africa was once again held on the stately Vergelegen Wine Estate, in Cape Town.

Themed "Celebrating South Africa in its Diversity" the marquee was decorated in true Mzansi style, with table arrangements from beautiful fynbos and proteas to banners depicting different sectors of South African society and industry flourishing in developing a country to be proud of by all its citizenry.

Minister Nkosazana Dlamini Zuma welcomed all the dignitaries, and set the atmosphere for an evening that was enjoyed by all. The Minister stated that the purpose of this event was mainly for diplomats to interact with each other in a relaxed atmosphere, and that it is one of the few events where speeches came second to enjoyment. The Minister also used the opportunity to thank the diplomatic corps for their contribution in creating a positive image of South Africa in their respective countries and made specific mention of the sponsors, Anglo-American, Brandhouse, KWV, BMW South Africa, and Burgerspark Hotel, whom together with Government made the evening a night to remember.

The dinner also presented the opportunity for the newly appointed Chief of State Protocol to be welcomed and introduced to the diplomatic corps by the Minister. Chief of State Protocol, Ambassador Makhubela used the opportunity to focus the attention of the guests to the new table numbering used by Protocol. Doing away with the tradition of numbering tables numerically, this year it was done by using different names from all the official languages of South Africa, thus symbolising that all guests are important.

Guests were treated to cuisine from all over the rainbow nation, starting with the ceremonial washing of

CELEBRATING SOUTH AFRICA IN ITS DIVERSITY

The Minister's Dinner



hands before entering the venue, to being treated to the finest in South African dishes all served communally to ease the interaction and socialisation amongst guests and create a true South African style of socialising and interacting. The chefs pulled out all the stops and new interpretations was put into old traditional favourites, all to the great appreciation of many a pallet enjoying the feast.

Entertainment for the evening was provided by Mpho and the Uvimba Band and the Umqambothi Cape Town Sings Choir and many guests took to the dance floor culminating in many different dance styles depicting the different cultures of the world dancing together on African vibes. Even those

not so tempted to showcase their strut on the dance floor, could not resist the tapping of shoes or swaying of hips to the enticing rhythms. On their departure, guest were treated to a gift presented to them in remembrance of a wonderful time shared, and from the response by many it was apparent that it was a true South African night to remember!

All the hard work of DFA officials and their helpers paid off to create a true South African event. Planning for this event started in August last year, with Public Diplomacy leading the project together with the kind assistance of other Branches like Protocol and the ever helping hand of the Cape Town based officials.

Deputy Minister Pahad's Media Briefing

Good afternoon, let me start with the very recent developments of concern in the African continent.

CHAD

AS YOU ARE AWARE over the weekend there was serious fighting between government forces and rebels in the capital, Ndjamena which has left many dead and wounded, at least 500. The South African government welcomes the AU Summit's condemnation of the attacks perpetrated by armed groups against the Chadian government and the demand that an immediate end be put to these attacks and the resulting bloodshed. We fully support the view that we will reject any unconstitutional change of regime in Chad and we will not recognise any unconstitutional change of government. As you know South Africa played an important role in ensuring that an emergency session of the Security Council was held and of course are part of the statement that strongly condemns these attacks and all attempts to destabilise by force and recalled its commitment to the sovereignty, unity, territorial integrity and political independence of Chad. We are very concerned about developments in Chad because the fighting in Chad threatens regional peace and security as Chad borders Cameroon, the Central African Republic, Sudan and Niger. And therefore any overspill of the Chad conflict will have wider regional repercussions; therefore we are very keen to bring about an end to the violence in Chad.

SUDAN

THE TWO SIDES HAVE FAILED TO MEET the deadlines for the redeployment of forces. Although the Government of National Unity has been restored, its success will be determined by the successful implementation of the Agreement. In the absence of a demarcated boundary, the two sides continue to dispute each other's presence in certain areas. The redeployment of forces must be completed. Also the formation of joint integrated units of the SAF and the SPLA must be expedited. One of the most seri-



ous challenges ahead continues to be Abyei, a disputed region between north and south. Since the signing of the Comprehensive Peace Agreement, the region has had no administrative governance structure. It is also important that the demarcation of the overall north-south boundary is resolved as soon as possible, because as the on going delays have implication for other matters, such as the census, elections and power- and wealth-sharing arrangements.

DARFUR

THE UN UNDER-SECRETARY-GENERAL for Peacekeeping Operations, Jean-Marie Guéhenno, said in Addis Ababa during the Summit last week that "All the key issues have been resolved. On the composition of the force, we understand the position of the government is that [it will be] predominantly an African force, that is why we expedited the deployment of African units." However, he said they want at the same time to prepare for the deployment of a few non-African units for capacity that might not be available in Africa." Sudan has postponed the signing of legal framework of Darfur hybrid peacekeeping operation and indicated that a date for the

signing would be determined later. We hope that this will be signed very soon because it is supposed to define the parameters for the composition, type of equipment and weapons UN-AMID will possess, as well as assign land for use by the mission. Technical delegations from the Sudan, the African Union and the United Nations had negotiated the SOFA in Khartoum last month. Now this delay, we believe, has to be dealt with quite urgently in order to prevent any more delays in this process. The South African Government is also concerned that if we do not move decisively on Darfur, then the broader Comprehensive Peace Agreement in Sudan can also be impacted on. What is quiet clear is that the two sides have failed to meet the deadline for the re-deployment of their forces and that although the government of national unity is restored, its success will be determined by the successful implementation of the agreement. However in the absence of a demarcated boundary, the two sides continue to dispute each other's presence in certain areas. And it is therefore important that the re-deployment of the two sides armed forces must be completed as soon as possible. We also believe that the formation as determined by the Comprehensive Peace Agreement of a joint integrated units of the government army and the SPLA should be expedited. We must quickly get the integrated forces functioning. However one of the most serious challenges ahead continues to be the disputed region between north and south. And as you know since the signing of the Comprehensive Peace Agreement this region has had no administrative government structures. So it is quite clear, we must move decisively on the Darfur issue if we do not want the broader Comprehensive Peace Agreement to have difficulties.

ZIMBABWE

AS YOU ARE AWARE, President Mbeki in an interview with SABC,

reported to the Organ of SADC on Politics, Defence and Security on his mediation efforts in Zimbabwe. The President reported to the organ of SADC that the Zimbabwe negotiators working with the facilitating team have in fact completed negotiations on all substantive matters relating to the Zimbabwe political situation. The President reported that agreement on everything of substance, inter alia the constitution, changing of the laws, creating a climate conducive to free and fair elections, land questions, issues of sanctions have been resolved. He reported that what is outstanding are some procedural matters that have to do with issues around the enactment of the constitution that has already been negotiated and agreed, how and when does it come into force. He further reported that there is a continuing discussion amongst Zimbabwean parties about these outstanding procedural issues. The organ SADC has thus urged the Zimbabwean parties to continue to engage on this matter and to get an agreement on the procedural issues. The organ of SADC has also renewed the mandate of the facilitator to try to ensure that the outstanding procedural issues are resolved. As you are aware it was announced through a Government Gazette that the elections in Zimbabwe would take place on 29 March 2008 and this will be for the harmonised presidential, parliamentary and local elections.

BURUNDI

THE FACILITATOR MINISTER NQAKULA and Special Envoy Ambassador Mamabolo travelled to Dar Es Salaam from the 28th to 31st January 2008. They met with Rwasa the leader of the Palipehutu-FNL to convince him to return to the peace process. After that they travelled to Addis Ababa to meet Presidents Kikwete and Museveni, who are the co-chairs of the regional initiative to renew the mandate of South Africa as the facilitating country in the Burundi peace process, which was granted. This mandate has been renewed for one year, therefore Minister Nqakula will continue as the facilitator. The facilitation is seeking to ensure that representatives of the

Palipehutu-FNL return to the joint verification and monitoring initiative by end of February and that the leadership of the Palipehutu-FNL return to Bujumbura by the end of March. The plan for the first six months is to focus on the implementation and finalisation of the DDR process and the beginning of the security sector reform process. The plan for the second six months is to focus on post-conflict reconstruction assistance with specific identified projects.

AFRICAN UNION

LAST WEEK I BRIEFED YOU ON THE IMPORTANCE of the AU Summit that was held under the banner of the "Industrial Development of Africa." The Summit took important decisions that will make an important impact on Africa's developmental challenges.

Finally on the African Union we gave you a full briefing last week and when you go back to that briefing, what I will say today you can just add to you information. As you know, President Kikwete of Tanzania has been appointed as the new Chair of the AU and he will hold this post for the coming year. The Foreign Minister of Gabon, Jean Ping was elected the new Chairperson and he replaces the present Chairperson of the Commission, Professor Konare. The Secretary General of Comesa, Mr Wencha from Kenya was elected Deputy Chairperson, replacing Mr Mazim Baka from Rwanda. And all the other Commissioners have been elected.

- **Peace and Security:** Mr Ramtane Lamamra (Algeria)
- **Political Affairs:** Mrs Julia Joiner (Gambia)
- **Infrastructure and Energy:** Mrs Elham Mahmood Ahmed Ibrhaim (Egypt)
- **Social Affairs:** Adv. Bience Gawanas (Namibia)
- **Human Resources Science and Technology:** Mr Jean Pierre Ezin (Benin)
- **Trade and Industry:** Mrs Elizabeth Tankeu (Cameroon)
- **Economic Affairs:** Dr Maxwell Mkwezalamba (Malawi)

Rural Economy: portfolio reserved for East Africa and elections deferred to most probably in April 2008 and to

coincide with the Extra-Ordinary Session of Council of Ministers to be held in Tanzania.

This is important because now we have put to rest any debates about the election of the senior people because now they have to get on with ensuring that the decisions taken at Summit and other meetings will now be implemented with the vigour it has to. We reported last week on the whole debate on the union government and the audit of the African Union. It has now been decided that an Extra-Ordinary Session of the Executive Council will be held in April 2008, in Tanzania to look at the report of the experts on the audit of the AU. We did brief you last week on the importance of this audit and I do hope you look at it because it has a lot of implications on how the future of the AU progresses. On the Committee of Ten that had to deal with the African government leading to the United States of Africa, the Ministerial Committee of 10 reported to the Summit and the Summit has now decided that the Ministerial Committee of 10 will be replaced by a Heads of State Committee and joined by the outgoing and the newly elected Chairperson of the AU Commission. It is now the Heads of State who will take this process further, look at all the elements relating to the formation of the African Government and will report back to the Summit in July. So the next few months are going to be important because the Heads of State will have to look at all elements relating to the creation of the African Government because it is quite clear that the July Summit has to take some decision on this matter. We believe enough work was done through the Ministerial Committee and other initiatives in the past and now the Heads of State have just to pull this together and get the final decision on the way forward. As I reported last week, the theme of the conference was "The Industrialisation of Africa" and once again it is quiet clear that the Summit had a very fruitful discussion on the whole issue of the industrialisation of Africa and the need for Africa to take certain steps to ensure that this does become a reality.

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The full decisions of the Summit are:

- Endorse the Action Plan of the 1st Extraordinary Session of AU Conference of Ministers of Industry (CAMI) on the industrial development of Africa and;
- Reaffirm our strong commitment to the principles of good governance, rule of law, accountability, sound macro-economic management, which are necessary for the accelerated development of our countries.

Commit ourselves to:

- Accelerate the pace of Africa's industrial development especially the conversion of natural resources to higher value-added products;
- Adopt policies and programmes for natural resource processing and greater value addition in Africa;
- Enhance public-private sector partnership, particularly in the areas of heavy infrastructure development;
- Increase investment in Science and Technology, Human Capital Development, with emphasis on technical training to enhance Africa's industrial productivity and competitiveness;
- Pool resources and share knowledge and know-how in the area of industrial technology, planning and production management;
- Establish and strengthen the legal and institutional frameworks for the promotion of African industrial enterprises at national, regional, continental and international levels;
- Strengthen African Industrial Research and Development Institutions and Agencies to develop innovative approaches and programmes for the accelerated industrial of Africa;
- Encourage Africans in the Diaspora to increase their contribution to the industrial development of Africa;
- Speed up the establishment of the African Investment Bank and the promotion of African regional and continental capital markets;
- Achieve the harmonization business laws;
- Take necessary measures at the national level to implement the Action Plan;
- Reaffirm our strong commitment to the principles of good governance, rule of law, accountability, sound macro-economic management, which are necessary for the accelerated development of our countries;
- Call upon our development partners to adopt policies and measures to encourage their companies to increase investment in local processing within Africa of the continent's natural resources.

The next Assembly of the AU will be held end of June and beginning of July 2008 in Egypt and we believe that by that time a lot of work would have been done on the three issues: the audit; the AU government and indeed the EPAs with the European Union and jointly with that the industrialisation of Africa. President Mbeki commented that while appreciating the Programme of Action of Industrialisation of Africa, the urgent task that needs the attention of Ministers of Industry, the AU Commission, Private sector and other role-players was to develop short, medium and long-term plans, costed and with clear time lines. Africa was aware of its challenges and what needs to be done, but the challenge was more the realisation of the implementation plan.

The decisions of the Summit will enhance Africa's efforts to meet our Millennium Development Goals.

Some notes on South A

INTRODUCTION

THE 1982 UNITED NATIONS LAW of the Sea Convention (hereinafter 'UNCLOS' or the 'Convention') is regarded as the framework within which all activities in the oceans are to be regulated. This description of the Convention flows from the fact that the Convention is a comprehensive agreement which aims to codify the law of the sea and covers a wide range of issues. The Convention, for example, covers issues ranging from maritime zones, the protection of the environment, maritime safety, seabed mining, and marine research, amongst several other issues. The possibilities for a State Party's engagement these areas are, therefore, practically limitless.

In the year in review, South Africa has indeed been involved in variety of issues including, bilateral and multilateral. On the bilateral front, in the context of Illegal, Unreported and Unregulated Fishing, South Africa has been engaged in discussions with several countries on the possibility of co-operation. Within the framework of the Convention there are various multilateral forums for discussing law of the sea issues. These include the United Nations Informal Consultative Process on Oceans and the Law of the Sea (hereinafter 'UNICPOLOS'), the Meeting of States Parties to the UNCLOS (hereinafter 'MSP') and the Ad-hoc Informal Working Group on the Sustainable Use of Biodiversity in Marine Areas beyond National Jurisdiction (hereinafter the 'Ad-hoc working group'). South Africa has been actively involved in all of these. A further important aspect of South Africa's involvement in law of the sea issues is the process begun by South Africa for an extended continental shelf under article 76 of the Convention.

This short contribution is aimed at providing an overview of the involvement of South Africa in these issues. The contribution does not attempt any deep analytical engagement with the topic. Rather, the author, through South Africa's involvement in the law of the sea, attempts to introduce readers to this very dynamic area of the international law. For the purposes of the paper I focus on two main issues, although there are many more, of South Africa's participation in the law of the sea. I begin by considering South Africa's participation in the multilateral processes established within the framework of the Convention, namely, UNICPOLOS, the Ad-hoc working group and the MSP. Secondly, I consider South Africa's efforts towards preparation for a submission for an extended continental shelf.

MULTILATERAL FORUMS

There are three main forums currently active within the UNCLOS framework, namely UNICPOLOS, the

Africa's participation in the Law of the Sea: 2006-2007

By: Dire Tladi, Principal State Law Adviser (IL) Note:
The Footnotes to this piece was omitted to ease reading and layout.



ad hoc working group and the MSP. I do not include here forums under specific UNCLOS institutions such as the Law of the Sea Tribunal (ITLOS) and the International Seabed Authority. What makes all three forums interesting for consideration is, first, the critical issues under consideration in the forums and secondly, the dynamics within the forums as well as the dynamic between the forums. Particularly interesting is the dynamics between the MSP and UNICPOLOS.

Most modern treaties have a built in process for developing the regime, referred to as Conference of the Parties. These Conferences of the Parties discuss substantive as well as procedural issues and can even adopt amendments to treaties. UNCLOS, however, does not make provision for the development of the regime through a conference of the parties. The primary responsibility for the development of the regime thus falls upon the UN General Assembly (which of course includes states that are not party to the Convention). The Convention does make provision for a meeting of states parties but for the most part it is understood that these meetings are meant to discuss procedural and financial

issues and not substantive issues on the law of the sea. However, states have used the opportunity to discuss the Secretary-General's report under article 319(2)(a) of the Convention to discuss issues of substantive nature in the Convention. Nevertheless, the MSP is principally dedicated to procedural issues. Contentious issues that have been discussed in the Meeting of States include the workload of the UN Commission on the Limits of the Continental Shelf (CLCS) as well as the question of equitable geographical representation in the bodies established under the Convention.

Under the Convention, coastal states parties are entitled to the default continental shelf of 200 nautical from the baseline from which territorial sea is measured. However, any coastal may make a submission to a body established under the Convention, the CLCS, for an ex-

tended continental shelf. The coastal states are to make their submissions within ten years of becoming party to the Convention or in 2009, whichever is later. The members of the Commission are nominated onto the Commission by states parties to the Convention.

Developing countries, in particular led by Pakistan (as chair of G-77 and China), South Africa, Brazil and Argentina, argued that genetic resources are subject to the common heritage of mankind principle which is reflected in Chapter XI and Chapter XIII of the Convention.

The Convention stipulates that the costs for the attendance of Commission sessions by members of the Commission are to be borne by the member state which nominated the member. Given the significant increase in submissions leading up to 2009 as well as the expected deluge of submissions in 2009, Commission members have to spend more time in New York than initially anticipated which, in turn, has meant significantly in-

creased expenses for member states. The Commission has called on states to request the General Assembly to

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contribute financially towards the costs of attendance of the sessions of the Commission. Member states, including South Africa, have suggested that different solutions to the problems identified by the Commission should be found. South Africa has, for example, called for increase funding into a Trust Fund established Commissioners from developing countries in order to assist Commissioners. Further, South Africa has noted that the member states should ensure that they will be able to defray the costs of the Commissioners they nominate prior to making nominations. In any event, it has been pointed out by several other states, that the provision that the states are to defray the costs of attendance of sessions of the Commission is a binding provision of the Convention and cannot be changed by the MSP or even the General Assembly. The discussions on the possible solutions to the problem are still under discussion and are sure to feature prominently in the next MSP.

Another contentious, and perhaps divisive, issue considered at the seventeenth meeting MSP was the question

of equitable geographic representation. The Convention requires, as a matter of principle, that membership of the bodies established under it be governed, inter alia, by the equitable geographic representation. It was in this context that at the seventeenth MSP the Africa Group and the Asia Group put forward a joint proposal for the reconsideration of allocation of seats on the CLCS and ITLOS. Under the current scheme the Africa Group has 5 seats, the Asia Group has 5 seats, Western Europe and Others Group (WEOG) has 4 while Latin American (GRULAC) has 3 seats on both bodies. The argument by the Africa and Asia groups was that, given the increased number of ratifications and accessions from states in Africa and Asia, proportionally Africa and Asia are entitled to an extra seat while Western Europe is entitled to one less seat. In other words, under this argument, equitable geographical representation was to be determined on the basis of proportionality. The effect would then be that the extra seat would rotate between the two groups. As was to be expected, Western Europe opposed

the proposal. Their argument was, in the main, that equity was not the same as proportionality. The problem with the WEOG position was the inability to provide an alternative standard for equity. As a compromise, it was agreed that the issue should be the subject of discussions before the next meeting with a view to a decision at the start of the 2008 meeting.

In light of the fact that the MSP does not, as a matter of practice, consider substantive issues, the General Assembly established the Informal Consultative Process on Oceans and the Law of the Sea in terms of General Assembly Resolution 54/33. It is in this forum that substantive issues relating to the law of the sea are discussed. The eighth UNICPOLOS was held under the theme "marine genetic resources". One aspect of this topic proved particularly contentious and that was the legal regime applicable to genetic resources in areas beyond national jurisdiction, particularly on the seabed (although some states did not make the distinction between the seabed and water column above



showing that the natural prolongation of the land mass meets certain criteria, known as formulae lines. The formulae lines are determined by connecting “fixed points at which the thickness of the sedimentary rocks” is no less than one percent of the distance from such point “to the foot of the continental slope” or a line connecting points which are not more than 60 nautical miles from the foot of slope, whichever is most seaward. In addition to the formulae lines, the claim must be landward of the outer-envelope of the constraint line. The effect of the constraint line is that the continental shelf may not exceed either three hundred and fifty nautical miles from the baseline or a hundred nautical miles from the 2,500 metre isobath mark.

The South African project team is comprised of representatives from various Government departments and agencies with scientific and technical skills as well as legal knowledge. The South African potential claim comprises four areas, three of which are situated around the mainland. Around the mainland, there is one area on the west coast, another area is on the eastern side on the Mozambique ridge, while another area is located off the Cape coast. The fourth potential claim area is situated around the Prince Edward and Marion Islands (Del Cano rise). Three of the potential claims will require cooperation with South African neighbours. On the east, cooperation with Mozambique will be required while the western claim will require cooperation with Namibia. For the claim around Prince Edward islands, South Africa will need to cooperate with France which also has islands around the area.

CONCLUDING REMARKS

South Africa has been actively involved in the law of the sea issues for some time. South Africa continues to be involved in the multilateral meetings at which international policy on oceans and the law of the sea are discussed. The continental shelf has attained an important policy position for South Africa.

the seabed). Developing countries, in particular led by Pakistan (as chair of G-77 and China), South Africa, Brazil and Argentina, argued that genetic resources are subject to the common heritage of mankind principle which is reflected in Chapter XI and Chapter XIII of the Convention. The implication, in crude terms, of this position is that any activity on the deep seabed in areas beyond national jurisdiction must be subject to benefit sharing in order to benefit all mankind, regardless of who carries out the activity. Developed countries on the other hand, particularly the EU, the US, Canada, Japan, Iceland and Australia, argued that activities relating to marine genetic resources on the deep seabed beyond areas of national jurisdiction are to be governed by the freedom of the high seas which is reflected in Chapter VII. The implication of this approach is that the benefits arising from the exploitation and use of these resources are to be enjoyed only by those that (are able to) exploit them. The disagreement stems from the fact that the Convention does not expressly deal with

marine genetic resources and the approach is consequently dependent on legal interpretation. The debate was so divisive that, for only the second time in the history of the UNICPOLOS, the parties failed to reach agreement on agreed consensual elements to be transmitted to the General Assembly. The issue is sure to be fiercely debated at the Ad-hoc working group meeting to be held in April 2008 which will focus on biodiversity in marine areas beyond national jurisdiction.

SOUTH AFRICA'S EXTENDED CONTINENTAL SHELF PROJECT

In terms of article 76 of the Convention, all coastal states are entitled to default of continental shelf of 200 nautical miles. However, the Convention makes it possible for states to claim an extended continental shelf where submerged natural prolongation of the land mass extends beyond the default limit of 200 nautical miles. In terms of the Convention any coastal state wishing to claim a continental shelf must make a submission to the CLCS

ÁFRICA DO SUL: FUTEBOL E PAIXÃO

(South Africa: Football and Passion)

Carnival in Bahia and Olodum – Brazil

SALVADOR WAS BRAZIL'S FIRST CENTRE OF GOVERNMENT (1549-1763), and remains its musical capital. For centuries, Bahia was home to the Portuguese sugar industry and slave trade. As a result, Salvador is the largest centre of African culture in the Americas. Bahian drumming – percussion ensembles with literally hundreds of drummers called “blocos Afros” who take to the streets of carnival – began as a movement launched a half century ago by the group “Filhos de Ghandi” (Sons of Ghandi). Today, there are countless Afro-blocks that have taken on a new mission as part of the “negritude” movement to re-establish black pride. Olodum is one of these groups. The Olodum was founded 28 years ago with the purpose of re-establishing the sense of black pride and developing African culture in Bahia. Like Rio, the city of Salvador is famous for its carnival, although Salvador is Brazil's street carnival, which caters for everyone. Bahia's carnival is perhaps the world's largest public festivity. It attracts crowds of three million who dance through the night in Salvador's his-

toric colonial streets. Founded in April 1979 as a non-profit association, Olodum develops cultural and educational activities through the House of Olodum and School of Olodum. Its principles were inspired by the general concepts of the African National Congress (ANC) of South Africa related to the values of the struggle against racism, and for equality and freedom. A further purpose of its establishment was to develop small businesses in Pelourinho, Salvador. Olodum is actively involved in the promotion and implementation of social and cultural projects, such as the promotion of music through festivals, seminars on Afro-Brazilian culture and society, etc.; activities that have contributed greatly to enriching Bahian civil society. Olodum's themes for carnival have always been related to African culture. Over the years, Olodum has successfully honoured several countries: Angola, Egypt, Ethiopia, Guinea-Bissau, Madagascar, Morocco, Tunisia, and Tanzania. For Carnival 2008, Olodum has chosen to honour South Africa as its carnival theme.

Labour Relations

Absconding employees: what you need to know

IT SOMETIMES HAPPENS THAT THE DEPARTMENT is faced with the problem of an employee who simply disappears without any form of notification to the supervisor or manager. What do you do when an employee simply fails to come to work and remains absent for some time? Should a dispute arise after an employee absconds, the employer must be reasonably certain, or be able to put forward evidence, that proves that the employee had no intention of returning to work. Should the employee subsequently return to work, he is entitled to, and must be given an opportunity to present his side of the matter and explain the reasons for his disappearance. Public servants are appointed in terms of the Public Service Act of 1994, as amended (the Act). Section 17 (1) of the Act

regulates the discharge of the officers from the public service. In terms of S17 (5) (a) (i) of the Act, an officer, who absents himself or herself from his or her official duties without permission of his or her head of department, office or institution for a period exceeding one calendar month, shall be deemed to have been discharged from the public service on account of misconduct with effect from the date immediately following his or her last day of attendance at his or her place of duty. Section 17 (5)(b) states that if the official that is discharged in terms of section 17(5)(a)(i) comes back to place of employment, the executing authority may – on good cause shown – reinstate such official in a similar or any other position other than the one she previously occupied prior to discharge.

THE RATIONALE FOR SECTION 17 (5) (A)(I)

One reason why the Legislature could have enacted this provision was to protect the employer against the practice of paying an official whose whereabouts, the employer does not know. It should be kept in mind that, an employee has a legal duty to notify the employer of the reasons why he did not report for duty. This is borne out by the fact that the employment relationship is one of a contractual nature in which the employee offers his services in return for payment. The fact that the employee does not report for duty could, depending on the facts of the case, amount to a breach of that contractual arrangement. Whenever an employer finds that an employee has gone missing without notification, the employer must:-



- Firstly he or she must attempt to contact the employee, either by letter, telephone, sms or;
- Try to establish the employee's whereabouts by attempting to contact members of the employee's family.

It is very important to keep proof of these attempts. Also, it is in the Department's best interests to ensure that there is an accurate and up-to-date contact details of each employee. Then, in the event of a dispute, the Department can show that he has done everything reasonable to try to contact the employee. Following the expiry of 30 days since the employee last reported for duty, a letter terminating the employee's services in terms of section 17 (5)(a)(i) should be sent to the last known address of the employee. The letter must be signed by the Deputy-Director General of the Branch. In the letter, the employee should also be advised of the provi-

sions of section 17(5) (b)

IS THE DEPARTMENT OBLIGED TO REINSTATE THE EMPLOYEE?

If and when the missing employee suddenly reappears and asks for his job back, the Department must:-

- Give the employee an opportunity to state his case, and the reasons why he had disappeared.
- After considering the submissions, the employer must make a decision whether or not the employee can be redeployed in the business.

Requests for reinstatement must be considered by the Minister.

IMPLICATIONS OF S 17 (5) (B)

Section 17 (5) (b) states that if the official that is discharged in terms of section 17(1)(a) comes back to the place of employment, the executing authority may – on good cause shown

– reinstate such official in a similar or any other position other than the one she previously occupied prior to discharge. The use of the word "may" simply means that the Employer has discretion either to reinstate or not to reinstate the official. The official can be reinstated to a similar position or another position.

"AUDI ALTERAM PARTEM" RULE

This is a Latin phrase which directly translates as "give the other party a chance to be heard". This principle is captured in the provision of S17 (5) (b). In instances wherein the employee resurfaces after the expiry of 30 calendar days, the manager / supervisor will draw his or her attention to the provision of Section 17(5) and must give the employee the letter implementing Section 17(5).

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Where were you...?

