

P Vrancken *South Africa and the Law of the Sea* (2011)

Chapter Six Update¹

Page 157, footnote 3

Add the following sentence:

See further T. Scovazzi “Article 303” in A. Proelss (ed) *United Nations Convention on the Law of the Sea – A Commentary* (2017) 1953–1955.

Page 158, footnote 15

The footnote to read as follows:

See M. du Plessis and K Kugler “International Economic Relations” in J. Dugard, M. du Plessis, T. Maluwa & D. Tladi (eds) *Dugard’s International Law* (2018) 632-662.

Page 158, footnote 17

Replace “270” with “270. Adopted: 18 May 1973; EIF: 25 September 1974”.

Page 158, footnote 18

Replace “Available at <www.wcoomd.org/Kyoto_New/Content/body_protocol.html>” with “Adopted: 26 June 1999; EIF: 3 February 2006. Available at <<http://www.ifrc.org/Docs/idrl/I273EN.pdf>>”.

Page 158, footnote 19

Replace “Available at <www.wcoomd.org/files/1.%20Public%20files/PDFandDocuments/Conventions/MAA%20Legal%20Text%20FINAL%20VERSION_publish%20E.PDF>” with “Adopted: 27 June 2003; EIF: not yet. Available at <<http://www.wcoomd.org/-/media/wco/public/global/pdf/about-us/legal-instruments/conventions-and-agreements/johannesburg/internconvmutualadmineng2003.pdf?la=en>>”.

Page 159, line 9

Replace “was done” with “was last done”.

Page 159, line 10

Replace “2008” with “2012”.

Page 159, line 11

Replace “2009” with “2012”.

Page 159, line 21

Replace “time (i)” with “time: (i)”.

Page 159, footnote 22

Add the following:

See further *International Trade Administration Commission v SCAW South Africa (Pty) Ltd* 2012 4 SA 618 CC, 2010 5 BCLR 457 CC 31–40.

¹ The research assistance of Ms Rachael Chasakara, Mr Hashali Hamukuaya and Ms Ntemesha Maseka is gratefully acknowledged.

Page 159, footnote 23

Replace “GN 672 of 2008 [GG 31145 of 20 June 2008]” with “GN R92 of 2012 [GG 35007 of 10 February 2012]”.

Page 159, footnote 24

Replace “GN R206 of 2009 [GG 31926 of 27 February 2009]” with “GN R91 of 2012 [GG 35007 of 10 February 2012]”.

Page 160, line 9

Replace “must (i)” with “must: (i)”.

Page 160, line 25

Replace “where (i)” with “where: (i)”.

Page 160, footnote 30

The footnote to read as follows:

Section 41(1)(a)–(b) and (d)–(h) ITAA.

Page 160, footnote 34

With regard to s. 80(1)(i) CEA, see *Lemthongthai v S* 2015 1 SACR 353 SCA.

Page 161, line 18

Replace “are (i)” with “are: (i)”.

Page 161, footnote 42

J.P. van Niekerk & W.G. Schulze *The South African Law of International Trade: Selected Topics* (2016) 15.

Page 162, footnote 51

Add the following:

See also M.V.E. Dithebe & T.T. Mukhuba “Illegal immigration and the challenge of border control in South Africa” (2018) 15(2) *African Renaissance* 127–147; M.V.E. Dithebe & T.T. Mukhuba “Illegal immigration and weak border control as impediments to development in Africa: A critical analysis of South Africa’s borders” (2018) 7(2) *Journal of Gender, Information and Development in Africa* 139–158.

Page 162, footnote 54

Replace “137” with “137. Adopted: 28 July 1951; EIF: 22 April 1954”.

Page 163, footnote 55

Replace “267” with “267, (1967) 6 ILM 78. Adopted: 31 January 1967; EIF: 4 October 1967”.

Page 163, footnote 56

Replace “45” with “45, (1969) 8 ILM 1288. Adopted: 10 September 1969; EIF: 20 June 1974”.

Page 163, footnote 58

Replace “335” with “335. Adopted: 15 November 2000; EIF: 28 January 2004”.

Page 164, line 13

Insert the following paragraph:

In 2016, South Africa voted in favour of the New York Declaration for Refugees and Migrants,^{66A} on the basis of which started a process leading to the adoption in Marrakech of the Global Compact for Safe, Orderly and Regular Migration (GCM) at the end of 2018.^{66B} A

few days later, South Africa voted in favour of the UNGA Resolution endorsing the GCM.^{66C} On behalf of the African Group, the representative of Namibia explained that the Group

warmly welcomed the formal adoption by consensus in Marrakech on 10 December of the global compact for safe, orderly and regular migration, also known as the Marrakech [C]ompact on [M]igration. Its adoption ... was a historic moment for the international community, particularly the migrant community. It is a landmark document that constitutes a road map for preventing the suffering of thousands of migrants, and it will provide the space to develop cooperation strategies that will benefit all. Above all, it is the inspiring product of almost two years of multi-stakeholder consultations and intense intergovernmental negotiations, to which the African Group contributed constructively and in a spirit of compromise. Every delegation had the opportunity to contribute to the formulation of the text by making proposals and sharing and discussing ideas and best practices. On 13 July, we reached a delicate and balanced agreement on the text of the global compact. The African Group had several proposals that it would have liked to see included in the text. However, considering that the compact is a multilateral agreement, we joined the consensus and accepted the text. [The Group is] therefore committed to defending and promoting the text that we all agreed to It is very unfortunate that after all those negotiations, concessions and agreements, the General Assembly is voting ... on the [G]lobal [C]ompact.

The African Group strongly believes in multilateralism. It is the framework that guides our work ... in the United Nations, and we should therefore all stand firm and defend it. The Marrakech [C]ompact is a pure product of multilateralism. Contrary to some of the confusing myths that have arisen around this document, it is not legally binding, nor does it create a new right to migrate. It is a framework for international cooperation that specifically reaffirms the principle of State sovereignty. In that sense, we should all defend the Marrakech [C]ompact and strive to ensure its best possible implementation. We should all protect it from politicization.^{66D}

The GCM, which “is based on a set of cross-cutting and interdependent guiding principles”^{66E} and sets 23 objectives,^{66F} explains that

[r]efugees and migrants are entitled to the same universal human rights and fundamental freedoms, which must be respected, protected and fulfilled at all times. However, migrants and refugees are distinct groups governed by separate legal frameworks. Only refugees are entitled to the specific international protection defined by international refugee law. Th[e] Global Compact refers to migrants and presents a cooperative framework addressing migration in all its dimensions.^{66G}

The GCM also stresses that it

presents a non-legally binding, cooperative framework that builds on the commitments agreed upon by Member States in the New York Declaration for Refugees and Migrants. It fosters international cooperation among all relevant actors on migration, acknowledging that no State can address migration alone, and upholds the sovereignty of States and their obligations under international law.^{66H}

Page 164, lines 15–18

The sentence is to read as follows:

A port of entry is “a place designated as such by the Minister” of Home Affairs.

Page 164, lines 18–21

add: “the Port of Ngqura.” [r.6.01 CER read with par 200.01 Schedule CER].

Page 164, footnote 66A

After footnote 66, insert the following footnote:

See UNGA Resolution A/RES/71/1 [UN Doc. A/RES/ A/RES/71/1 (2016)].

Page 164, footnote 66B

After footnote 66A, insert the following footnote:

See <<https://www.un.org/en/conf/migration/>>.

Page 164, footnote 66C

After footnote 66B, insert the following footnote:

See UNGA Resolution 73/195 [UN Doc. A/RES/73/195 (2018)] and UNGA “Official records of the 60th plenary meeting of the 73rd session” UN Doc. A/73/PV.60 15.

Page 164, footnote 66D

After footnote 66C, insert the following footnote:

See UNGA (n. 66C) 9.

Page 164, footnote 66E

After footnote 66D, insert the following footnote:

See para. 15.

Page 164, footnote 66F

After footnote 66E, insert the following footnote:

See para. 16.

Page 164, footnote 66G

After footnote 66F, insert the following footnote:

Paragraph 4.

Page 164, footnote 66H

After footnote 66G, insert the following footnote:

Paragraph 7.

Page 164, footnote 68

The footnote is to read as follows:

Section 9(1) IA. A person may be exempted from having to enter or depart the Republic at a port of entry “in the prescribed manner by the Minister” of Home Affairs [s. 9(3)(b) IA]. See reg. 6(1) of the Immigration Regulations, 2014 (IR) [made in terms of s. 7 IA and published by GN R413 of 2014 (GG 37679 of 22 May 2014)].

Page 164, footnote 69

The footnote is to read as follows:

Section 1(1) IA. The Minister must comply with s. 9A(1) of the IA, which provides that “[t]he Minister may, in the prescribed manner, designate any place in the Republic, which complies with the prescribed requirements, where all persons have to report before they may enter, sojourn or remain within, or depart from, the Republic”. See also reg. 8(1) IR, which provides that “[t]he designation of any place as a port of entry in terms of section 9A of the Act shall be made by the Minister in writing”, and reg. 8(2) IR, which provides that “[a] designation of any place as a port of entry shall be published in the” GG.

Page 164, footnote 70

The footnote is to read as follows:

Regulation 7(1) read with Schedule B of the Immigration Regulations, 2004 [made by GN R616 of 2005 (GG 27725 of 27 June 2005)]. The Regulations were repealed by reg. 41 IR, but no designation in terms of reg. 8 IR appears to have taken place.

Page 165, lines 6–9

Replace “in possession of a valid passport⁷⁴ which “is valid for not less than 30 days after the expiry of the intended stay”⁷⁵ and, secondly, if they have been issued with a valid visa,⁷⁶ unless they have been exempted from “the requirement of having to be in possession of a valid visa in order to obtain a visitor’s permit”.⁷⁷ Foreign” with “in possession of a valid passport and a valid visa.⁷⁶ Foreign”.

Page 165, lines 10–11

Replace “crew permit.⁷⁸ Such a permit” with “crew visa.⁷⁸ Such a visa”.

Page 165, lines 11–12

The sentence should read as follows:

South Africa has agreements with other States to the effect that such a visa is not required for the crew members of vessels of those States.⁷⁹

Page 165, footnote 73

Add the following:

The definition of the word “Republic” in s 1(1) IA was deleted in 2014.

Page 165, footnote 74

The footnote must be deleted.

Page 165, footnote 75

The footnote must be deleted.

Page 165, footnote 76

The footnote is to read as follows:

Section 9(4) IA.

Page 165, footnote 77

The footnote must be deleted.

Page 165, footnote 78

The footnote is to read as follows:

- (a) Replace “permit” with “visa”.
- (b) Replace “permits” with “visas”.

Page 166, lines 6–7

Replace “and “for good cause prohibit” with “and “on good cause shown prohibit”.

Page 166, line 12

Replace “position as he or she may direct” with “position” as he or she may direct”.

Page 166, line 21

Replace “[ship];⁸³ and” with “[ship]; and”.

Page 166, footnote 80

Replace “(5)” with “(7)”.

Page 166, footnote 81

Replace “(2)” with “(4)”.

Page 166, footnote 82

Replace “(2)” with “(4)”.

Page 166, footnote 83

Delete the footnote.

Page 167, line 7

Add two lines as follows:

- (iv) any other prescribed matter or event;
- (e) a list of all the children on board of the conveyance indicating which children are unaccompanied⁸⁴

Page 167, footnote 84

The footnote to read as follows:

Section 35(5) IA. See also reg. 34(9)–(10) IR.

Page 167, footnote 85

- (a) Replace “are “(a)” with “are: “(a)”.
- (b) Replace “terrorism, murder” with “terrorism, human smuggling, trafficking in persons, murder” and “fraudulent residence permit, passport or identification document” with “fraudulent visa, passport, permanent residence permit or identification document”.

Page 169, footnote 97

Replace “(4)” with “(6)”.

Page 169, footnote 98

Replace “*Ibid*” with “Section 35(8) IA”.

Page 169, footnote 99

The footnote to read as follows:

L.B. Sohn, J. Noyes, E. Franckx & K. Juras *Cases and Materials on the Law of the Sea* (2014) 427–428; D.-E. Khan “Article 33” in Proelss (n. 3) 267.

Page 169, footnote 100

Replace “Organisation in 1948” with “Organisation (14 UNTS 185; adopted: 22.07.1946; EIF: 07.04.1948) in 1948”.

Page 169, footnote 101

Add the following sentence at the end of the footnote:

The International Health Regulations Bill, 2013, in terms of which the IHRA would be repealed and the 2005 Regulations would be incorporated into South African domestic law in order to apply the International Health Regulations in South Africa, was published for comment in 2013 [GN 1020 of 2013 in GG 36931 of 14 October 2013].

Page 172, line 14

Replace “which South Africa is in the process of ratifying.¹²⁸” with “which South Africa accepted in 2015.”.

Page 172, footnote 126

Replace “231” with “231. Adopted: 14 November 1970; EIF: 24 April 1972”.

Page 172, footnote 127

Replace “(2002) 41 ILM 40” with “2562 UNTS 3, (2002) 41 ILM 40, (2002) 48 LOSB 29. Adopted: 2 November 2001; EIF: 2 January 2009”.

Page 172, footnote 128

Delete the footnote.

Page 173, footnote 132

- (a) Replace “373” with “551”.
- (b) Replace “225” with “225; S. Dromgoole *Underwater Cultural Heritage and International Law* (2013) 24; T. Scovazzi “Article 303” in Proelss (n. 3) 1953–1955”.

Page 174, line 10

Replace “authority,¹⁴¹ (i)” with “authority:¹⁴¹ (i)”.

Page 174, footnote 139

Add the following sentence at the end of the footnote:

See, for instance, the declaration of the wreck of the slave ship *São José*, located 125 m from the high-water mark off Clifton’s Second Beach, as a national heritage site [GG 42037 of 16 November 2018].

Page 174, footnote 139

- (a) Replace “38(7)(a)” with “35(7)(a)”.
- (b) Replace “38(8)(a)” with “35(8)(a)”.

Page 175, footnote 147

Replace “[GG” with “[GN 2150 of 1989 in GG”.