



ASEAN-Turkey ASLI (Annual Serial Landmark International) Conference on Quality of Life 2014, ABRA International Conference on Quality of Life, AQoL2014, 26-28 December 2014, Istanbul, Turkey

Antarctic Tourism: The responsibilities and liabilities of tour operators and state parties

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Abstract

History recorded that environmental emergencies had occurred several times; as a result, of Antarctic tourism. The rules of the Antarctic Treaty System, apart from the Liability Annex, set out some reasonable rules. Using the qualitative method, this paper argues that the Liability Annex, which is yet to be enforced, is far from perfect in preserving the environment of Antarctic. Therefore, this paper recommends guidelines to be formed where possible approaches can be adopted in the guidelines in relation to the issue of responsibilities of tour operators and state parties to facilitate environment concerns in favoring Antarctic tourism.

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Peer-review under responsibility of AMER (Association of Malaysian Environment-Behaviour Researchers) and cE-Bs (Centre for Environment-Behaviour Studies, Faculty of Architecture, Planning & Surveying, Universiti Teknologi MARA, Malaysia).

Keywords: Antarctic Tourism; tour operators; state parties; guidelines

1. Introduction

Antarctic tourism began in the 1950s. The first tourist aircraft to visit Antarctic left Punta Arenas on 23 December 1956 and overflew the South Shetland Islands and the northern half of the Peninsular. A suggestion for an

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Antarctic cruise had been made as early as 1910 although it was not until 1966 that regular tourist cruises were established. There has been a substantial increase in the number of Antarctic tourists, particularly in the 1990s; tourist numbers more than doubled between the 1990-1 and 1995-6 seasons. (Scott 2001) It is difficult to assess how extreme would be the necessary measures as the current lack of knowledge about the impact Antarctic visitors do have on the environment. It would also be extremely difficult to ban Antarctic tourism. To date, the current applicable rules on Antarctic tourism, is unsystematic, incomplete and of an unclear legal nature. Visit to the Non-sovereign State Antarctic does not consist of a bordered territory occupied by a permanently settled population under an effective civilized government. Therefore, Antarctic tourism is a visit to a non-sovereign state, where there is no permanent population. The inhabitants of Antarctic are scientists and tour operators, mostly from states other than the claimants, who visit only for a limited duration. As a legal condition, Antarctic is neither sovereign nor semi-sovereign nor quasi-sovereign. It remains an international commons region, administered by those states that have joined various lawful appendages of Antarctic Treaty System. (Joyner 1992) Steps to ensure this include the adequate incorporation of the relevant provisions of the Protocol into the domestic legal order of the Contracting Parties, as well as an adequate application and enforcement of this 'domestic Antarctic law.' Since Antarctic is not the subject of undisputed state sovereignty, the legal protection of the Antarctic environment depends on the collective efforts of the 29 Contracting Parties to the Protocol. Each state must take measures to ensure that activities in the Antarctic - initiated by persons under its jurisdiction - are carried out in accordance with the provisions of the Protocol. (Bastmeijer 2003-2004).

2. Overview of tourism-related international provisions

Although Antarctic Treaty does not specifically provide for tourism, Art. VII(5)(a) compels the parties to give advance notice to the other contracting parties, of all expeditions to and within Antarctic involving their ships or nationals, as well as all expeditions to Antarctic organized in, or proceeding from their territory. In view of the fact that the Antarctic Treaty operates intrinsically on the assumption that activities are permissible unless prohibited, tourism intrinsically comes under the ambit of the AT so long it does not contravene the purposes of the AT. (Vrancken 2003). However, since the Antarctic Treaty does not specifically regulate tourism, the current applicable rules on Antarctic tourism can be described as unsystematic, incomplete and of an unclear legal nature. First, the regulation of Antarctic tourism has never been approached systematically by the parties and a disperse regulation, scattered in a number of recommendations, was not the most appropriate solution the Antarctic Treaty System could have offered to regulate Antarctic tourism. In addition, the wording of the recommendations addressing tourism is often vague and inadequate. (Perez-Salom 2001) Besides, Antarctic Treaty does not provide for enforcement powers for violation of tourism provisions since it follows the normal pattern of the international treaty that is based on acceptance and voluntary implementation instead of exertion of enforcement powers. (Warbrick 1991) The Protocol on Environmental Protection to the Antarctic Treaty which was signed in Madrid on October 4, 1991 and entered into force in 1998, though has 6 annexes finds substantial practical difficulties to begin managing Antarctic tourism in a way commensurate with the 'comprehensive' level of environmental protection provided for in the Protocol. One basic challenge for any attempt to devise a legal instrument on the subject is that of how to define tourism in a way that distinguishes between tourist activities and other non-governmental activities in Antarctic. (Scott 2001) Art 3(2)(c) of the Protocol provides: Activities in the Antarctic Treaty area shall be planned and conducted on the basis of information sufficient to allow prior assessments of, and informed judgments about their possible impacts on the Antarctic environment and dependent and associated ecosystems and on the value of Antarctic for the conduct of scientific research. The problem of environmental impact assessment (EIA) is that it was developed for scientific activities and associated logistics at a few discrete sites, where environmental reference states can be established and impacts monitored by the operators themselves unlike the fast-moving, transient and multiplicity of sites involved in tourism activities. Given the fact that the Protocol focused on scientific use of Antarctic, the highest level of scrutiny; the Critical Environmental Assessment (CEE) has never been made for tourism activities. Normally, the Initial Environmental Assessment (IEE) is sufficient for tourism activities. (Bastmeijer and Roura 2004) Besides, EIA also does not EIA process does not count for all aspects of tourist activities. For example, the EIA structure had primarily evolved to deal with national scientific programs. EIA obligations were largely predicated on isolated, fixed-point, long term, science and support activities at a few sites, where there was a reasonable likelihood of

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