

ANTA602 – Critical Review**Student name: Aurora Christensen****Student number: 52893150****Topic**

The issue of Antarctic Cruise Ship Tourism has gained much attention over the last twenty years as cruise ship and passenger numbers steadily increase. Cruise ship tourism accounts for 96% of tourism to the Antarctic and is growing at twice the rate of tourism worldwide. Currently the cruise ship industry is managed through The Antarctic Treaty System (ATS), Non Governmental Organisations (NGO) (self regulation), guidelines, various treaties and a series of international laws (Bauer & Dowling 2006).

Antarctica remains a land mass without a governing organisation with the requisite sovereignty and international legal personality, to enable complete enforcement of any rules, regulations and laws that may be developed to cover the region and its current/future needs. Sea borne tourism raises a number of concerns, as numbers grow the likelihood of maritime disasters and environmental impacts increases; and needs to be carefully planned for.

Cruise tourism in the Antarctic is cold climate tourism that takes place without a local population, the usual tourism infrastructure and without the normal governmental involvement that comes hand in hand with the exploitation of a resource. Since the beginning of the modern Antarctic tourism industry in 1969, the number of tourists in Antarctica has grown from a few hundred to more than 30,000 each year (Bauer & Dowling 2006).

Theme of review

The will review the current issues regarding regulation of Antarctic tourism from recent published literature.

The five articles chosen, primarily reference cruise ship tourism, which given the dominance of this form of tourism in the region with 96% of all tourists (Bauer & Dowling 2006), it should be considered representative of the industry and the issues surrounding.

Introduction

Antarctica is very much the last unclaimed wilderness on the planet. Where once countries would have planted a flag claiming the continent for king or country, the current reality is that too many countries have a vested interest in the southern continent for it to be claimed without dispute and / or conflict. But as with other lawless frontiers, Antarctica risks being ruined by the very people who are trying to claim it.

Following the era of discovery, when Scott, Shackleton and others, expanded knowledge of Antarctica, it was recognised in the 1950s that unless a majority of the interested countries came to some agreement, rogue nations would compromise the interests of those nations already present on the ice. To this end the Antarctic Treaty System (ATS) was entered into by 7 countries, including New Zealand. This agreement, based as it was not on any domestic law, was a collection of “gentleman’s agreements” which included in Article IV which essentially is: “*an agreement to disagree on the matter of sovereignty*” in Antarctica. The problem arises though that the member states to the ATS, by not having any right to sovereignty in Antarctica, do not have the mandate to control what happens on the continent and in the surrounding waters. Any measure of control in this area is through agreement not compulsion (Molenaar, 2005).

Since this time, activities on the ice have been governed by the premise that the continent is a place of “*peace and science*”. Exploitation of the continent for financial gain is said, by many, to have been avoided thus far, but it is not known if there has actually been any commercial exploitation, mining etc, on the continent.

Thus into this nirvana of scientific research has come the spectre of commercialisation. Not as most would have thought, through the horrors of mining and fishing, but through tourism. Cruise ship tourism has intensified and diversified.

There are now cruises that take thousands of passengers in per ship. While seemingly innocuous, tourism brings with it a raft of issues which if left unchecked have the potential to be every bit as damaging to the Antarctic environment as other more tangible activities (Molenaar 2005 & Haase, D et al, 2009).

There is differing opinion within the academic community on whether the Antarctic cruise ship industry is working well and meets the needs of not just the cruise ship operators and their clients; but for the greater wellbeing of the continent as a whole, the rest of the world, and is managed sustainably for future generations.

It appears from the literature reviewed that this difference of opinion depends on what discipline the writers come from. As a broad statement it appears that the Tourism/ Science based authors, such as Liggett, et al 2010, and Bauer & Dowling; have strong belief in self regulation, namely the International Association of Antarctic Tour Operators (IAATO) and confidence in the self imposed management of Antarctica through the Antarctic Treaty System (ATS). Although there is acknowledgement that more regulations are required into the future, there is not much discussion about the realities of what laws are working or not working and the validity of these laws within the international community.

In contrast, Molenaar 2005 & Wright , who are more legally or politically motivated appear to think more along the lines, that it is only luck or a lack of evidence to the contrary, that the region remains largely free of the negative impacts of tourism. These authors are often derisive of other authors, preferring to plan for the expected disaster than wait for it to happen and clean up the mess afterwards. Then there are a growing number of knowledgeable authors who are taking a more moderate approach in their writing such as Hasse et al, 2009, and are of the opinion that a middle road between the looseness of self regulation and strict codified regulation needs to be found as the best answer to the sovereignty issue.

It appears that foremost on all authors mind is the very real understanding that tourism is growing and with that comes the enhanced possibility of negative environmental impacts (Haase, et al 2009, Molenaar, 2005, Baur & Dowling 2006, Liggart et al 2010 and Wright, 2008). Whether through harm to a penguin colony, or a major marine catastrophe with loss of life and non repairable environmental damage, it is understood that at some point in the future it is highly likely that a large scale accident

could happen. This potential is further compounded by the isolation and the severity of the climate, difficulty of navigation and the unique vulnerability of the eco systems found in the region (Molenaar 2005, p 248).

The Antarctic continent surrounds the geographic South Pole and extends to approximately 13.9 million square kilometres; 98% of this is covered in ice and it holds over 90-95 % of the world's fresh water (Bauer & Dowling 2006, p1). It is the highest coldest driest and most remote of the continents. It provides an amazing destination for tourist to enjoy the last unspoilt place. Unlike any other major landmass Antarctica is not owned or controlled by any particular country. Argentina, Australia, Chile, France, New Zealand, Norway and the UK all lay claims to parts of Antarctica (some of them overlapping) however their claims are not universally accepted. South of 60 degrees latitude, the Antarctic is managed under the Antarctic Treaty System. Currently all claims to the region have been frozen through the ATS (Bauer & Dowling 2006, p1 & Molenaar, 2006).

As global tourism increases experienced travellers are seeking new and remote places to visiting crease interest in nature based

The current legal system in Antarctic

In theory the Antarctic is governed through the ATS. The most important aspect of the treaty is Article IV in which all of the original states, who had made a claim of sovereignty over various parts of Antarctica, agreed to disagree over the issue of sovereignty. This prevents the unilateral exercise of jurisdiction over the continent and the adjacent maritime areas, though "Tragedy of the Commons" cannot be ruled out and is recognised by both (Molenaar, E, 2005 and Liggett, D, et al 2010)

Molenaar and Haase both highlight that the states involved in the ATS, who have collectively assumed a mandate and the responsibility for governing the Antarctic, have been perceived to be passive and weak as a collective within the international community. They believe that the decision making and implementation of policy has been too slow in an industry that is changing and diversifying at a fast pace. However Haase et al also notes that some Antarctic Treaty System Consultative Parties have been rigorous in applying the law with their domestic legislation. However, this is not

always the case as these regulations are applied by their ratification into various countries domestic legislation, which leaves much room for different ways of interpreting, translating and applying the legislation in different ways. Each country has different priorities and will give more value to one area that another country may not. Further problems are that many of the regulations are not legally binding; cannot be policed and enforced effectively in the field and do not apply to operators from third party states (Haase et al, 2009, p417).

It is very clear that the topic of regulating Antarctic cruise ship tourism means different things to different authors. Asia Wright's concerns are with a different aspect of cruise ship tourism and highlight an area that not one of the authors in this review has touched on.

Wright highlights the seriousness of legal issues arising from the Antarctic cruise industry and points out that most of the international treaties, regulations and law that are applicable to the sea are *not* applicable to Antarctic waters. This is because the region does not fit the definition of areas governed by such treaties, regulations and law. This is because it does not fall under the jurisdiction of a single Sovereign State. This is also frustrated by sovereignty disputes and the very real fact that many of the worlds States do not recognise sovereignty claims by other states. States that do not recognise Antarctic claims to sovereignty treat the Antarctic waters as part of the high seas. This creates further legal complexities. Molanaar also shares Wrights concerns in this area

Wright further highlights that despite sovereignty claims, much of the southern ocean is beyond any of the claimant states jurisdiction. Included in this are the land and maritime zones beyond the coastal state jurisdiction of Africa, Australia and South America, and claims on the Antarctic continent. This is in addition to the areas adjacent to unclaimed portions of the Antarctic continent. In these areas a cruise ships flag's state has exclusive jurisdiction (Wright 2008, p72-3).

She also highlights that when a commercial cruise ship navigate international waters they must register with a country and have that state confer nationality on the ship. While on the high seas the flag state retains exclusive legislative and enforcement jurisdiction. The cruise industry tends to flag its ships with states allowing open registries called '*flags of convenience*' (Wright, 2008,p73). These are usually flagged

in developing third world countries. Non United States (US) flag registries dominate the cruise registry, as US laws are considered to be some of the most restrictive and punitive in the world. This cause's further concern as States that issue a cruise ship with a "*flag of convenience*" often have no further interest in the activities of the operator(s) once the fee for the flag has been paid. It is into this environment of self regulation that all parties must trust the morals and truthfulness of the cruise ship operators when told that there have been no significant incidents or accidents in the southern oceans.

Vessels registered with flags of convenience states account for more than fifty per cent of all tourism vessels visiting Antarctica. Flags of convenience countries are notorious for the lack of interest in enforcing international conventions obligations upon ocean going commercial ships. Critics feel these nations are not only reluctant to discipline major contributors to their economies; but even more alarming, they simply may not have the resources to effectively enforce regulations or even punish polluters (Wright, 2008, p75).

It would seem an appropriate time to ask why should an operator, who is flying a flag of convenience be considered as trustworthy as an operator who has a flag from a country which actively involves itself in matters in the southern oceans and Antarctica?

Molenaar highlights that for legal reasons this situation results in many similarities to the law of the high seas; whose regime relies on the freedom of the high seas; and the primacy of flag State jurisdiction. He believes that regulation of human activities in Antarctica and its surrounding waters is weakened by the absence of undisputed sovereignty over the Antarctic continent (Molenaar, E, 2005).

The issue at the core of all authors concern is the issue of legal liability when there is an accident in Antarctica. The issue of liability in the Antarctic treaty system has been debated for years and has not as yet been comprehensively addressed. Yet again highlighting the inappropriateness of the ATS to respond and regulate these very serious issues, and respond in a timely manner.

Industry self regulation

Industry self regulation has played a very important part in the management of the Antarctic cruise industry to date. Recognizing the potential environmental impacts that such growing numbers of tourism could cause, seven private tour operators joined together in 1991 to form the International Association of Antarctica Tour Operators (IAATO). There are now more than 100 voluntary members of IAATO. It is not clear from the literature reviewed how many non-member operators exist, and given the lack of regulation or willingness by the industry to be regulated, it is unlikely an accurate number could be sourced.

IAATO's aims are to *provide "extensive procedures and guidelines that ensure appropriate, safe and environmentally sound private-sector travel to the Antarctic. regulations and restrictions on numbers of people ashore; staff-to-passenger ratios; site-specific and activity guidelines; wildlife watching; pre- and post-visit activity reporting; passenger, crew and staff briefings; previous Antarctic experience for tour staff; contingency and emergency medical evacuation plans; and more"* (www.iaato.org).

Although IAATO has been apparently successful to date, there is no guarantee it will continue to be so (Molenaar, 2005,p269). Although the added value of IAATO's involvement is presumed inherent, there is acknowledgment and recognition that there are also draw backs. Molenaar highlights that there is a very real lack of transparency within IAATO, which can hinder endeavours in this area, especially as not all members of IAATO disclose their operational manuals. This also holds true for IAATO meetings, which if were made public could explain the internal processes and how guidelines are adopted and reviewed. It could be helpful to know how membership is achieved and the process of compliance for existing members. This could help the wider community feel more confident in IAATO's regulations and enforcement.

Despite the lack of transparency IAATO is considered a success, and is attributed to providing a high degree of organisation in the sector. This is largely because the perceived benefits of membership and peer pressure to perform have kept many operators in check (Haase, et al 2009).

Bauer & Dowling put cruise ship tourism into context by explaining that the effects of the tourist industry on the Antarctic can be estimated at 0.52%, with the other 99.48% of human impacts being attributed to scientists and their support staff.

They state that to date, (on page 10), all indications are that tourists and tour operators have complied with industry guidelines and the Antarctic Treaty System recommendations'. They conclude that the negative impacts on the environment, caused by ship based tourism, has been negligible. They do note that there is a possibility of a serious marine accident in the future, however they conclude that Antarctic cruise shipping does not pose an unacceptably high risk to the environment, and they believe that it will continue to be a sustainable activity. There is a glaring hole in their research; they do not offer any comments on regulation and what happens when operators do not comply. It seems there is an inherent belief that if people play by the rules the situation will stay as it is. Further, they do not acknowledge that by the nature of self regulation, unscrupulous operators can avoid detection, and any negative impacts which result from their activities will go un-noted in the short term.

The other four articles reviewed all acknowledge that legislative intervention and development is needed in this fast developing industry, this requires structural institutional and legislative intervention (Liggett et al 2009).

Issues with current research techniques

It has to be noted that within the literature reviewed, there was an alarming bias that needs to be highlighted. The bias noted appears in the Haase, 2009 and Liggett 2010 articles. Much of the information quoted was derived from interviews with industry sources, which have an obvious reason to claim that the current self regulation is working well. An analogy would be a researcher into the safety of smoking publishing a paper based only on information provided by people involved in the tobacco industry. However in this situation it must be said that balanced information from many viewpoints is just not available as there are no other groups involved directly in the day to day activities of a cruise ship operator other than the operators themselves. Given this, it might be suggested that all research in this field should be considered

suspect unless the sources of information are diverse and reputable. A possible way that IAATO and operators could help in reducing concerns over the information it provides, is to have independent observers, similar to the UN observers in areas of political unrest, on board cruise ships who validate the information supplied.

Conclusion

It is apparent that in the field of Antarctic cruise ship tourism, IAATO and self regulation has in the past been effective to some degree. However, while IAATO and self regulation has had its place, it is obvious that there is now an increasing need for transparency in how the industry manages itself and its business. Coupled with this, the Antarctic Treaty System needs to develop systems and processes which allow it to respond in a timely manner to an industry that is changing at a very fast pace.

But it also needs to be recognised that the situation surrounding Antarctic cruise ship tourism is a representative of the legal situation on the ice. This will continue to be complex and needs more attention to help resolve the deadlock that currently exists, giving the ATS greater legitimacy and importance in the international political setting. The solution that is found and how rapidly it is developed will influence every human activity on the Antarctic continent and surrounding oceans into the future. If nothing is done then the sustainability of human involvement in the region may be severely limited.

This review has shown that the components of a robust discussion on Antarctic cruise ship tourism are being raised by various writers. However it is also clear that until these issues can be discussed in a manner free from bias or prejudice, that solutions will not be readily forthcoming.

References

Books

Bauer, T. & Dowling, R.K., 2006, "The Antarctic cruise industry". In R.K. Dowling ed. *Cruise Ship Tourism*. CABI Publishing, Oxon, UK, pp195-205.

Journals

Haase, D, Lamers, M. & Amelung, B. 2009, "Heading into uncharted territory? Exploring the institutional robustness of self-regulation in the Antarctic tourism sector", *Journal of Sustainable Tourism*, vol. 17, no. 4, pp. 411-430.

Liggett, D., McIntosh, A., Thompson, A., Gilbert, N. & Storey, B. 2010, "From frozen continent to tourism hotspot? Five decades of Antarctic tourism development and management, and a glimpse into the future", *Tourism Management*.

Molenaar, Erik Jaap 2005," Sea-Borne Tourism in Antarctica: Avenues for Further Intergovernmental Regulation" *The International Journal of Marine and Coastal Law*, Volume 20, Number 2, 2005 , pp. 247-295(49)

Wright, A.N 2008," Southern Exposure: Managing Sustainable Cruise Ship Tourism in Antarctica", *California Western International Law Journal* Vol,39, p 43-86.

Internet sites

www.iaato.org