A case of fruitful cooperation between Chile and Ukraine National Competent Authorities regarding yacht’s activity in Antarctica

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Information paper submitted by Chile and Ukraine

Summary

Chile and Ukraine would like to share their experience on good cooperation and exchange of information on a case of multiple permit submission for a non-governmental activity in the Antarctic Peninsula.

The activity owner is a captain of a yacht with a double nationality of two States Parties and Chilean residence. The activity was planned to be carried out during season 2020/2021, departing from Puerto Williams, Chile. This activity raised specific difficulties because the applicant attempted to obtain authorization from Chilean authorities and requested authorization from Ukraine National Competent Authority in parallel. This situation involved significant efforts in communication and coordination between both NCA to ensure that the activity complied with the Antarctic Treaty System regulations.

The case

In September 2020, the applicant, a French and Uruguayan national with Chilean residence, contacted the Antarctic Division of the Chilean Ministry of Foreign Affairs to request permission to carry out a private expedition onboard a sailing boat with a non-State Party flag.

The project initially aimed at sailing from Puerto Williams, Chile, and planned to carry out year-round activities in Antarctica from January 2021 to December 2021.

On January 9, 2021, when the Chilean environmental agency was in the process of reviewing the project, the applicant announced he was withdrawing its application.

Subsequently, on January 13, the applicant requested authorization to set sail from Puerto Williams. Chilean Port authorities reviewed the applicant's documentation and verified that Ukraine had authorized its expedition to carry out activities in the Antarctic Treaty Area from January 2021 to January 2022.

During the same period, in Ukraine, the proponent requested authorization from the National Competent Authority of Ukraine, the Ministry of Education and Science of Ukraine. During the reviewing process it was found that the sailing boat was not mentioned as an unreliable vessel by any National Competent Authorities on the ATS forum, the proponent has an extensive Antarctic experience, had visited Ukrainian Vernadsky station many times almost every year, and is very familiar with the area around the Vernadsky station, where he plans to spend a lot of time during his planned activity.

As result, the permission was issued by the Ukrainian Competent Authority in compliance with the Protocol on Environmental Protection to the Antarctic Treaty and the relevant guidelines on contingency planning, insurance and other matters for tourist and non-governmental activities in the Antarctic Treaty Area adopted by the ATCM.

The Chilean Competent Authority reported the situation to Ukraine Competent Authority, initiating early and direct communications. During this process, both competent authorities engaged in enhanced coordination and a constant exchange of information that allowed a complete evaluation of the activity and its impacts.

During this exchange of information, both NCAs found that the proponent of the activity had submitted a double application for the same activity without informing each NCA. Afterward, we receive more information that indicated that the same proponent tried to obtain authorization for this activity from other States Parties.

Chile and Ukraine decided to contact the proponent of the activity to inform and recall him that the multiple permission process is not allowed by the ATS regulation.

Conclusion

Communication and information exchange among Treaty Parties are essential to avoid “forum/permit shopping” and prevent the departure of non-authorized expeditions from their ports.

This case shows that the Electronic Information Exchange System (EIES) does not always provide information on the authorization, so it is only at the time of departure that the Port Authority can verify if a Treaty Party has authorized the expedition.

Furthermore, it is not always clear which competent authority is responsible for authorizing the proposed non-governmental activity when expeditions involve people from different countries, applicants with dual nationality, and vessels sailing under third-country flags.

We would urge the ATCM to encourage Parties to share information about yachts they have authorized through the EIES, sub-forum on National Competent Authorities, bilateral communications, and diplomatic channels in line with Resolution 3 (2004) ) "Tourism and Non-Governmental Activities: Greater Cooperation between the Parties," which recommends consulting with the relevant Parties during the process of authorization of tourism and non-governmental activities to allow effective monitoring of yachting activities in the Antarctic Treaty area.

Furthermore, we would urge the ATCM to further consider the issue of permit shopping and the need to harmonize authorization regulations and procedures between Treaty Parties to ensure that all competent authorities apply the same standards and improve the control of tourism and non-governmental activities in the Antarctic Treaty area.

We appreciate and support the work done in the convened Competent Authorities forum and we encourage states to continue to engage in the discussions to address the challenges posed by the authorization process of non-governmental activities.