

**ANTARCTICA DECLARATION**  
**[Draft of 30 November 2023]**

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## ANTARCTICA DECLARATION

### Preamble

We, the peoples of Earth who proclaim and support this Declaration:

understanding that we are all part of the Earth Community, an indivisible, living community of interrelated and interdependent beings;

celebrating the beautiful, wild continent of Antarctica, the surrounding waters of the Southern Ocean and the community of life that inhabit those awe-inspiring lands, ice, waters and skies;

grateful for the magnificent community of inter-related ecological beings that constitute Antarctica and the vital role that Antarctica plays in maintaining the ecological stability and health of the whole Earth Community;

conscious of the grave threats that some human activities pose to Antarctica and of the disruptions that they<sup>1</sup> are already experiencing due to climate change, ocean acidification, commercial fishing and other activities;

recognising that international and national legal systems and institutions do not afford Antarctica adequate protection against those threats and that Antarctica is not represented in decision-making processes that affect them;

believing that safeguarding Antarctica from harm by humans,<sup>2</sup> promoting Antarctica's best interests,<sup>3</sup> and ensuring that humans collaborate for peaceful purposes within Antarctica,<sup>4</sup> are in the best interests of both Antarctica and of humankind;

accepting our collective responsibilities to take urgent,<sup>5</sup> decisive and collaborative actions to prevent humans causing harms they cannot remedy;

inspired by our common aspiration to ensure that Antarctica may flourish now and in the future as an autonomous, self-regulating community, free from claims of ownership and harmful human influences;

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<sup>1</sup> This Declaration uses the pronouns "they" and "them" to refer to Antarctica, because it is a singular entity composed of many beings, and because these terms can be used for both plural and singular subjects, and are gender neutral.

<sup>2</sup> The terms "Humans" is defined in article 1 to mean both people and collectives, institutions and juristic persons established by people, including States, international organisations, and companies.

<sup>3</sup> Determining what is in the best interests of Antarctica as a whole is a challenging task. This is discussed in a footnote to article X(3).

<sup>4</sup> The reservation of Antarctica for peaceful purposes is fundamental to the Antarctic Treaty System.

<sup>5</sup> The need for urgency is recognised in the Preamble to the Convention on the Conservation of Antarctic Marine Living Resources (CCAMLR). "CONSCIOUS of the urgency of ensuring the conservation of Antarctic marine living resources;"

proclaim this Antarctic Declaration with effect from [insert date], and call on all international bodies making decisions relevant to Antarctica to adopt it; and

call upon all peoples, organizations and institutions to promote the universal and effective recognition and observance of the freedoms, rights and duties recognised in this Declaration.

#### **Article I. Definitions**

(1) In this Declaration:

- (a) **“Antarctica”** means the community of inter-dependent Antarctic beings that exists South of the Antarctic Convergence,<sup>6</sup> and includes the continent of Antarctica, the ice, sea, seabed, atmosphere, and native species within this area, and the relationships between them, and unless the context indicates otherwise, “Antarctica” refers also to Antarctic beings;
- (b) **“Antarctic being”** means a natural entity that exist within Antarctica, and:
  - (i) includes land, water, ice, the atmosphere, native species and ecological communities, in all their forms, both collectively and individually; but
  - (ii) does not include any human being or other non-native species, or any structure, vessel, vehicle or other artefact made by people;
- (c) **“Antarctic Treaty System”** means the Antarctic Treaty, the measures in effect under that Treaty, its associated separate international instruments in force,<sup>7</sup> and the measures in effect under those instruments;
- (d) **“Earth Community”** is the unique, indivisible, self-regulating community of interrelated beings that sustains, contains and reproduces all the beings that are part of Earth;
- (e) **“harmonious coexistence”** means living in ways that strengthen the web of life and respect and protect the rights of all beings to do the same; and
- (f) **“Humans”** means human beings and any public or private entity created by human beings in a jurisdiction which regards that entity as a legal subject;<sup>8</sup>
- (g) **“justifiable limitation”** means a limitation on a right or freedom recognised in this Declaration that is consistent with Article VI(2).

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<sup>6</sup> Also known as “the polar front”.

<sup>7</sup> These include the Madrid *Protocol on Environmental Protection to the Antarctic Treaty* and the *Convention for the Conservation of Antarctic Marine Living Resources*.

<sup>8</sup> In this Declaration the term “Humans” includes juristic persons like companies and the state, while natural human persons are referred to as “human beings” or “people”.

## **Article II. Antarctica**

Antarctica is a magnificent, ancient, indivisible, autonomous and self-regulating community of inter-dependent Antarctic beings that has a unique presence and spirit<sup>9</sup> and plays a vital and indispensable role in maintaining conditions conducive to the flourishing of life on Earth.

## **Article III. Legal status of Antarctica**

- (1) Antarctica is an independent, autonomous entity with a unique international legal status and personality.<sup>10</sup>
- (2) As an entity with legal personality, Antarctica has:
  - (a) the right to independence and to exercise all its legal powers freely and without dictation by States;
  - (b) jurisdiction within its territory, over all Antarctic beings, and over all Humans within its territory; and
  - (c) the right to equality in law with States.
- (3) Antarctica may exercise any power which a State could exercise under international law in order to exercise and protect themselves and their legal status, territory, powers, rights and freedoms.

## **Article IV. Inherent rights and freedoms of Antarctica and Antarctic beings**

- (1) Antarctica, and each Antarctic being, has the following inherent and inalienable rights and freedoms:
  - (a) the right to exist, and to maintain and regenerate themselves and the relationships which create the living communities which sustain them;
  - (b) the right to be respected as a being;<sup>11</sup>
  - (c) the freedom to be wild and the right to continue their regenerative cycles and processes free of human disruption or control and free of contamination, pollution and toxic or radioactive waste;
  - (d) the right to self-expression and self-determination;<sup>12</sup> and
  - (e) the right to protect themselves against actual or threatened violations by Humans of their dignity, rights or freedoms.<sup>13</sup>

<sup>9</sup> Further input will be sought from Indigenous Peoples on the formulation to this aspect of the Declaration.

<sup>10</sup> An entity with international legal personality is capable of possessing international rights and obligations and to take certain types of action on the international level.

<sup>11</sup> This refers to a being's right to be respected for who it is, and is intended to mirror the human right to dignity which is central to the application of human rights.

<sup>12</sup> International law recognizes the rights of peoples to self-determination and this Declaration seeks to extend the principle to beings other than humans.

<sup>13</sup> This is envisaged as analogous to the human right to self-defence.

- (2) Subject to Article VI, each Antarctic being also has the following inherent and inalienable rights and freedom:
- (a) the right to maintain their identity and integrity as a distinct, self-regulating and interrelated being;
  - (b) the right to be part of Antarctica and to relate to other Antarctic beings to contribute to the integrity<sup>14</sup> and ecological functioning of Antarctica; and
  - (c) the right to be free of human disruptions or treatment that may endanger their wellbeing or ability to regenerate themselves.
- (3) Animals native to Antarctica remain Antarctica beings with the same rights and freedoms while they are North of the Antarctic Convergence.<sup>15</sup>

**Article V. Further rights of Antarctica and Antarctic beings<sup>16</sup>**

- (1) In order to facilitate the harmonious coexistence of people and Antarctica, we recognise that:
- (a) Antarctica and each Antarctic being has the additional rights recognised in this Declaration;
  - (b) Antarctica is a unique being that merits recognition as a legal personality with the legal status, rights and powers set out in Article III ; and
  - (c) Humans have the specific duties to Antarctica and Antarctic beings specified in this Declaration.
- (2) Antarctica and each Antarctic being has:
- (a) the right to have their dignity, rights and freedoms be respected, protected and upheld by Humans;
  - (b) the right to be protected by Humans from harm caused by Humans, which includes the elimination of hazards;
  - (c) the right to full and prompt restoration of any harm that occurs as a consequence of Humans violating any of the powers, rights and freedoms recognized in this Declaration;
  - (d) the right to have people investigate, monitor and communicate impacts on them, and to effectively represent their interests in human decision-making that affects them;<sup>17</sup> and

<sup>14</sup> "Integrity" is used here in the sense of "wholeness".

<sup>15</sup> This means that whales, seabirds and other species that regularly leave the geographical area of Antarctica, must still be treated as part of Antarctica and do not lose their rights and freedoms.

<sup>16</sup> The rights articulated in this Article are not expressed as being inherent rights, but as rights which are recognised for the purposes of requiring humans to respect and protect the inherent rights.

<sup>17</sup> This is elaborated up in Article IX below.

- (e) the right to be represented in any legal or administrative proceedings that may affect the recognition, exercise or protection of its legal status, powers, rights or freedoms recognised in this Declaration.<sup>18</sup>
- (3) Nothing in this Declaration restricts the recognition of additional inherent or other rights of Antarctica, or any Antarctic beings.

#### **Article VI. Limitation on rights and freedoms**

- (1) Antarctica and each Antarctic being:
  - (a) has the rights and freedoms specified in Article IV and Article V to the extent that the right or freedom in question can be applied to a being of that nature; and
  - (b) may not be denied any right or freedom on the basis of culturally-specific human distinctions such as may be made between organic and inorganic beings, species, origin, or use to Humans.
- (2) The rights and freedoms of Antarctica and each Antarctic being are limited by the inherent and inalienable rights of other beings (including human beings) and any conflict between those rights must be resolved in a way that supports the integrity, functioning, and health of Antarctica and the Earth Community.<sup>19</sup>

#### **Article VII. Principles of harmonious coexistence<sup>20</sup>**

- (1) Humans must consider, and where relevant apply, the following principles in order to promote harmonious coexistence with Antarctica and Antarctic beings.
- (2) Human beings and Antarctic beings are kin: we are all inter-related, mutually dependent beings who share an evolutionary history and are members of the Earth Community.
- (3) People must respect Antarctica and each Antarctic beings for who it is, and protect and defend their rights and freedoms instead of seeking to own, manage, exploit, or rule them.
- (4) Humans are responsible for contributing to the health, integrity and functioning of the Earth Community and for avoiding causing harm to it, and consequently:
  - (a) must develop and implement means of coexisting harmoniously with Antarctica and Antarctic beings;

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<sup>18</sup> See Article X.

<sup>19</sup> In order to facilitate the implementation of the Declaration it will be necessary to establish institutional arrangements to determine whether or not a proposed Human activity is a justifiable restriction on rights and freedoms recognised in this Declaration.

<sup>20</sup> It is anticipated that these principles may be amplified to better reflect the cosmologies and perspectives of Indigenous Peoples.

- (b) must prioritise the conservation, protection and restoration of ecological communities, processes and functions that sustain life, above the pursuit of financial or other benefits for Humans at the expense of Antarctica; and
  - (c) must manage human activities and prevent Humans from engaging in activities that unjustifiably limit or violate the rights and freedoms recognised in this Declaration, or are contrary to the best interests of Antarctica.
- (5) If there is doubt as to whether a proposed activity will limit or violate a right or freedom recognised in this Declaration or be contrary to the best interests of Antarctica,<sup>21</sup> a precautionary and preventive approach that prioritises the protection of Antarctica must be applied.<sup>22</sup>
- (6) Governance systems to give effect to this Declaration must be consistent with the inherent nature of Antarctica referred to in Article II and the legal status of Antarctica under Article III.

#### **Article VIII. General duties of Humans<sup>23</sup>**

- (1) Every human being, state, and public or private entity recognised by law, must:
- (a) respect and protect the presence, dignity, beauty and intrinsic value, of Antarctica and Antarctic beings, and including their different modes of self-expression and wildness;
  - (b) recognise and respect the legal status and powers of Antarctica described in Article III;
  - (c) recognise and protect the rights and freedoms of Antarctica and Antarctic beings described in Article IV and Article V;
  - (d) recognize and promote the full implementation and enforcement of the rights and freedoms of Antarctica and Antarctic beings described in this Declaration;
  - (e) avoid violating any of those rights and freedoms, including taking preventive measures:

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<sup>21</sup> Article X(4) seeks to provide some guidance on how to determine what is in the best interests of Antarctica.

<sup>22</sup> This principle is intended to give effect to the principle "*in dubio pro natura*" which is similar to the "precautionary principle" of international environmental law. It means that when in doubt as to whether an activity harmful to the environment should proceed, the doubt should be resolved in favour of protecting the environment.

<sup>23</sup> This article defines the general duties of both individual humans, and human institutions such as States, in relation to Antarctica as a whole, and specific Antarctic beings. The next article defines the additional duties of States in relation to Antarctica.

- (i) to protect and conserve the integrity of Antarctica<sup>24</sup> and its vital ecological cycles, processes and balances, including from harms caused by climate change;
- (ii) to prevent Humans modifying or disrupting the genetic or physical structure of any Antarctic being in a manner that may endanger their integrity, or capacity to contribute to the vitality and functioning of Antarctica;
- (iii) to ensure that Antarctica is not polluted with toxic, radioactive or other biologically harmful substances, or mined;
- (iv) to ensure that Humans do not use any Antarctic being in a potentially harmful way without first assessing the potential consequences for that being, both individually and collectively, and for Antarctica;
- (v) to eliminate economic or other incentives to violate those rights and freedoms;
- (f) take all measures necessary to mitigate any harm caused by their violations of those rights and freedoms and to restore affected beings fully and promptly, including measures to restore the integrity of the vital ecological cycles, processes and balances of Antarctica;
- (g) pursue their own livelihoods, wellbeing and economic and financial interest in ways that do not threaten or harm Antarctica or Antarctic beings.

#### **Article IX. Specific duties of States**

- (1) Each State, in addition to its duties under Article VIII, must take legislative and other measures to transform relevant domestic, transnational and international law and practice.<sup>25</sup>
  - (a) to recognise and respect the legal status of Antarctica as set out in Article III;
  - (b) to establish and apply effective norms and laws for the defence, protection and conservation of the rights and freedoms of Antarctica and Antarctic beings;
  - (c) to enable Antarctica and Antarctic beings to be effectively represented in human decision-making that may affect Antarctica in accordance with Article X, and consistent with Antarctica's legal status and powers under Article III;

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<sup>24</sup> Protecting the integrity of Antarctica would involve taking action to prevent climate change destroying ice sheets and shelves.

<sup>25</sup> These duties only apply to State because they have the power to legislate and enter into treaties. One of the implications of this duty is that it would require States to consider how to transform the ATS to accord with the Declaration.



- (d) to ensure that that no one engages in any activity in Antarctica contrary to the principles or purposes of this Declaration;
  - (e) to ensure that its citizens and juristic persons incorporated within, or controlled from, its territory, do not violate the rights and freedoms recognised in this Declaration while outside Antarctica;
  - (f) to treat any Human act or omission that limits a right or freedom recognised in this Declaration as unlawful, unless, and to the extent that, the person or legal entity responsible proves that it is a justifiable limitation;
  - (g) to impose and enforce legal liability for violation of the rights and freedoms recognised in this Declaration, including by enabling its citizens to take legal action to uphold those rights and freedoms; and
  - (h) to develop and promote economic, social and other means of enhancing the wellbeing of people through harmonious coexistence with Antarctica.
- (2) Each State may appoint ambassadors or other representatives to promote harmonious coexistence with and within Antarctica, and the effective implementation of this Declaration.

#### **Article X. Decision-making in relation to Antarctica**

- (1) Humans must ensure that Antarctica is represented effectively in human decision-making that affects them, their legal status, rights or freedoms.
- (2) Each State must take legislative and other measures to enable Antarctica to be effectively represented in sub-national, national, transnational or international:
  - (a) decision-making that may have a significant impact on Antarctica;<sup>26</sup>
  - (b) legal or administrative proceedings that may affect the recognition, exercise or protection of their legal status, powers, rights or freedoms recognised in this Declaration.
- (3) Humans must strive to ensure that decision-making in relation to Antarctica is wise and promotes harmonious co-existence and the best interests of Antarctica.
- (4) In determining what is in the best interests of Antarctica or of an Antarctic being, decision-makers must:

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<sup>26</sup> In order to give effect to the requirement to make decisions in the best interests of Antarctica it is important to address how people can articulate the interests of Antarctica and Antarctic beings so that they can “participate” in /be represented in human decision-making that may affect Antarctica. This could include participation in the ATS and its bodies, the IPCC, and the United Nations and should include the right to participate in legal proceedings before national and international courts.

- (a) be sensitive to the fact human beings are not indigenous to Antarctica, and actively seek to understand the ways in which Antarctica and Antarctic beings express themselves; and
- (b) take all other relevant information into account, including the best available scientific information and different cultural perspectives.

**Article XI. Human<sup>27</sup> activities within Antarctica**

- (1) Humans may only undertake an activity within Antarctica if there is a compelling reason for undertaking that activity within Antarctica and it:
  - (a) is for peaceful purposes;
  - (b) does not violate any right or freedom recognised in this Declaration;
  - (c) is consistent with the principles in Article VII; and
  - (d) is not contrary to the best interests of Antarctica.
- (2) Human activities that may be acceptable provided that they meet the criteria specified in paragraph (1) include, but are not limited to:
  - (a) scientific research and activities that preserve the value of Antarctica as a subject of research;
  - (b) conservation and related activities;
  - (c) low impact tourism;
  - (d) fishing which complies with Article XII;
  - (e) activities that have been reliably shown to have either a beneficial effect, or a negligible adverse effect, on Antarctica and Antarctic beings.
- (3) In planning and conducting activities within Antarctica, Humans must:
  - (a) apply the principles in Article VII in order to promote harmonious coexistence;
  - (b) accord priority to scientific research that improves our understanding of how to coexist harmoniously with Antarctica and within Earth and of how to identify what is in the best interest of Antarctica;<sup>28</sup> and
  - (c) take account of prior experience, including experience gained in planning and conducting activities under the Antarctic Treaty System.
- (4) Humans shall not plan, prepare for, or undertake within Antarctica:<sup>29</sup>

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<sup>27</sup> As a consequence of how “Humans” are defined, this article also applies to the activities of states and companies.

<sup>28</sup> This sub-paragraph is intended to reorient the focus of research to research that benefits Antarctica while not limiting freedom of scientific enquiry.

<sup>29</sup> The ATS already prohibit the activities listed in paragraphs (a) to (d).

- (a) any measures of a military nature, such as the establishment of military bases and fortifications, the carrying out of military manoeuvres, or the testing of any type of weapons;
- (b) the detonation of nuclear explosions;
- (c) the storage or disposal of radioactive waste;
- (d) any activity relating to the extraction or use of Antarctic minerals, other than scientific research;
- (e) research for the purposes of facilitating the exploitation of Antarctica in contravention of this Declaration;
- (f) any other activities that have been reliably shown to be contrary to the best interests of Antarctica.

**Article XII. Predation on Antarctic beings**

- (1) Fishing and other forms of human predation on Antarctic beings may only be permitted to the extent that such activities:
  - (a) are consistent with the principles in Article VII, and Article XI; and
  - (b) are unlikely to have a significant adverse impact on the populations of those animals or the ecosystems within which they live.
- (2) If there is reason to believe that an activity that has been permitted under paragraph (1) has had, or is likely to have, impacts on Antarctic beings that disqualify it from being permitted under this Article, it must be modified, suspended or cancelled to ensure compliance with this Article.

**Article XIII. Human activities outside Antarctica**

- (1) In planning and conducting activities outside Antarctica that may have a significant adverse impact on Antarctica or Antarctic beings, Humans must:
  - (a) consider and uphold the rights and freedoms recognised in this Declaration; and
  - (b) apply the principles in Article VII.
- (2) Activities that may have an adverse impact on Antarctica, include, but are not limited to, activities that exacerbate climate change.<sup>30</sup>

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<sup>30</sup> As a consequence of paragraph (2), all activities that emit greenhouse gasses are regarded as likely to have an adverse impact on Antarctica but paragraph (1) only applies if that adverse impact may potentially be significant.

#### **Article XIV. Relationship with other legal obligations**

- (1) This Declaration does not deny the existence or validity of any right, freedom, duty or power that is recognised or conferred by international customary law, treaty, transnational, national or subnational law, common law, or customary law, to the extent that it is consistent with this Declaration.<sup>31</sup>
- (2) Any provision of international customary law, a treaty, transnational, national or subnational law, common law or customary law, that is inconsistent with:
  - (a) an inherent right or freedom recognised in Article IV, is invalid and of no force or effect;<sup>32</sup>
  - (b) a right recognised in Article V, must be repealed or amended to eliminate any such inconsistency as soon as reasonably possible.

#### **Article XV. Implementation**

The peoples of Earth who proclaim and support this Declaration must collaborate to ensure its effective implementation, including by establishing institutions and processes to ensure that:

- (a) when decisions or actions that affect Antarctica or specific Antarctic beings are to be taken, planned or undertaken, the best interests of Antarctica and the affected Antarctic beings are identified and communicated as accurately as reasonably possible; and
- (b) Antarctica and Antarctic beings are represented by people with the necessary understanding, personal qualities, expertise and commitment to the best interests of Antarctica, do so with integrity and wisdom.<sup>33</sup>

#### **Article XVI. Interpretation**

When a court, tribunal or forum interprets this Declaration or any treaty, international instrument, regional, national, or sub-national law (including common and customary law) or measure that affects Antarctica, it must recognise and give effect to the legal status, rights and freedoms of Antarctica and Antarctic beings, apply the principles of harmonious co-existence in Article VII and promote the spirit, purpose and objects of this Declaration.

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<sup>31</sup> This article makes it clear that the Declaration is not intended to simply replace the legal instruments that establish the ATS.

<sup>32</sup> This follows from the fact that the pre-existing, intrinsic and inalienable rights, which are recognised in this Declaration, were not created by humans, preceded human laws, and cannot be altered by humans. If the laws of Nature take precedence, it must follow that human laws that are in conflict with the laws of Nature are inherently and automatically, invalid.

<sup>33</sup> It is envisaged that an Antarctic Alliance of people and organisations that support the Declaration will initiate processes, as appropriate, institutions to articulate what they believe to be in Antarctica's best interests in relation to particular issues, and to appoint human representatives to advance those interests in various human institutions.