

[ZERO DRAFT – presented December 01, 2021]

## ANTARCTICA DECLARATION

### Preamble

We, the peoples of Earth:

celebrating the beautiful, wild continent we know as “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 the health of Antarctica and of the disruptions already being experienced due to global warming, ocean acidification, and activities such as commercial fishing;

accepting our collective responsibilities to safeguard Antarctica from harm by humans and that swift, decisive, and far-reaching measures are necessary 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 [colonial]<sup>1</sup> claims of ownership and harmful human influences;

proclaim this Antarctica Declaration, [call on the General Assembly of the United Nation to adopt it,]<sup>2</sup> and call upon all peoples, organizations and institutions to take responsibility for promoting the universal and effective recognition and observance of the rights and duties recognised in this Declaration.

### Article I. Antarctica

This article would define what the community of Antarctica encompasses and define Antarctica as the holder of rights. This would involve communicating how we conceive of Antarctica (i.e. as a living community of inter-dependent beings, both biotic and abiotic, with

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<sup>1</sup> Some commentators believe that it would be better to omit the word "colonial" as it may alienate states that have territorial claims on Antarctica, while others believe it would be beneficial to position the Declaration as an anti-colonial initiative.

<sup>2</sup> Some commentators believe that it would be better to omit references to the United Nations. Many states involved in the Antarctic Treaty System ("ATS") oppose the idea of UN involvement but if this Declaration is intended to prevent activities harmful to Antarctica that occur outside Antarctica (e.g. greenhouse gas emissions) then it must appeal to a wider group of parties than are currently involved in the ATS.

both tangible and intangible dimensions) and defining the geographical area that is covered.<sup>3</sup> For example, it may include text such as the following.

- (1) Antarctica is a unique, indivisible, self-regulating community of interrelated beings that includes the atmosphere, land, ice and seas south of 60-degree South Latitude.
- (2) All entities that exist within, and constitute Antarctica, including the land, water, atmosphere, species and ecological communities, in all their forms, both collectively and individually, are regarded for the purposes of this declaration as "beings" and members of Antarctica. Structures, vessels, vehicles and other objects manufactured or established by humans do not constitute beings or members of Antarctica.
- (3) Animals indigenous to Antarctica remain members of Antarctica when outside that area.

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

This article would define Antarctica as being beyond national jurisdiction (i.e. free of national sovereignty), [free of territorial claims (i.e. the current claims by various nations to own part of the continent would be rejected)] and self-regulating. The intention would be to emphasize Antarctica as being autonomous and not subject to state sovereignty. However commentators differ over whether or not it would be tactically wise to state that Antarctica should be "free of territorial claims" (which would make it difficult for States with claims to support the Declaration) or simply assert Antarctica's autonomy which implies that Antarctica (as a legal person) does not recognise those claims.

It would also define Antarctica as a whole, and its members, as subjects in the eyes of the law that have the capacity to hold rights and exercise freedoms

For example, the UDRME states the following in relation to Mother Earth.

*(5) Mother Earth and all beings are entitled to all the inherent rights recognized in this Declaration without distinction of any kind, such as may be made between organic and inorganic beings, species, origin, use to human beings, or any other status.*

*(6) Just as human beings have human rights, all other beings also have rights which are specific to their species or kind and appropriate for their role and function within the communities within which they exist.*

*(7) The rights of each being are limited by the rights of other beings and any conflict between their rights must be resolved in a way that maintains the integrity, balance and health of Mother Earth.*

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<sup>3</sup>Article VI of the Antarctic Treaty states that: "The provisions of the present treaty shall apply to the area south of 60-degree South Latitude, including all ice shelves, but nothing in the present treaty shall prejudice or in any way affect the rights, or the exercise of the rights, of any State under international law with regard to the high seas within that area."

**Article III. Inherent rights and freedoms of Antarctica and its members**

This article would define the rights and freedoms of Antarctica as well as those of its members.

For example, the Declaration could recognise that the Antarctica and all beings which belong to that community, have rights similar to those recognised in the UDRME including:

- the right to life and to exist;
- the right to be respected;
- the right to self-determination (analogous to that recognised for nation states);
- the right/ freedom to continue their vital cycles and processes free from human disruptions;
- the right to integral health;
- the right to be free from contamination, pollution and toxic or radioactive waste;
- the right to not have its physical or genetic structures modified or disrupted in a manner that threatens its integrity or vital and healthy functioning;
- the right to full and prompt restoration the violation of the rights recognized in this Declaration caused by human activities;
- the right to be represented in international and national courts in legal proceedings that may affect the recognition and protection of the rights recognised in this Declaration.

As with the UDRME, this declaration could recognise that:

- each being has the right to a place and to play its role in enabling Antarctica to function harmoniously;
- organisms have the right to wellbeing and to live free from torture or cruel treatment by human beings.

**Article IV. Territorial claims**

This article would deal with rejecting the validity of the existing rights of, or claims to, territorial sovereignty in Antarctica by various nations and call upon them to renounce their claims. Some commentators have expressed the view that we should not include this article because it is sufficient to define Antarctica as being autonomous and not subject to state sovereignty, and explicitly rejecting territorial claims would make it difficult for States with claims to support the Declaration.

**Article V. Human relationships with Antarctica**

This article would define the principles that must be observed by humans and human institutions (including States) when relating to Antarctica and its members. It is anticipated

that these would be informed by, inter alia, the cosmologies of Indigenous Peoples such as Māori peoples who have a long history of interaction with Antarctica.

These principles may include, for example, principles regarding respecting other beings, relationality, reciprocity (for every taking there must be a giving), making decisions on the basis of what will best promote the long-term integrity and health of Antarctica, and taking responsibility for human actions.

It could also provide for States to appoint ambassadors (or the equivalent) to promote good relationships between their peoples and Antarctica (as States do with other Sovereign States)

This article should also deal with how humans should treat member of Antarctica (e.g. whales) when they are outside the Antarctic Area.

#### **Article VI. Human duties to Antarctica**

This article would define the specific duties of both individual humans, and human institutions such as States, in relation to Antarctica as a whole, and specific members of it.

For example, States should also take individual and collective responsibility for ensuring that their citizens comply with this Declaration while within the Antarctic area.

The Antarctic Treaty states:

##### *Article X*

*Each of the Contracting Parties undertakes to exert appropriate efforts, consistent with the Charter of the United Nations, to the end that no one engages in any activity in Antarctica contrary to the principles or purposes of the present treaty.*

#### **Article VII. Permissible human activities**

This article would define what human activities or impacts would be permissible within the Antarctic area (e.g. scientific exploration, and fishing) and under what conditions. Consideration should also be given to dealing with human activities that occur outside the Antarctic Area but that have impacts on Antarctica.

Challenges include how to draft this to encompass activities that do not exist today that might be developed in the future. One option might be to focus on the effects of current/future activities that would be acceptable/unacceptable for example it may be permissible to undertake activities that do not change substantially Antarctic environment and ecosystems, or only have a short-term impact

Commentators have suggested that the following types of activities would not be consistent with the rights of Antarctica: illegal, unregulated and unreported (IUU) fishing, overfishing and expanding krill fisheries, displacing life from an ice free area, making quarries or mining the ground, or drilling that is not for science, and generally the effects mining, whaling, large scale infrastructure construction and other activities that impact significantly environments and ecosystems and their natural processes for the longer term.

If this article becomes too long it may need to be subdivided into several articles.

It would also define impermissible activities. For example the Antarctic Treaty states:

*Article I*

*1. Antarctica shall be used for peaceful purposes only. There shall be prohibited, inter alia, any measures of a military nature, such as the establishment of military bases and fortifications, the carrying out of military maneuvers, as well as the testing of any type of weapons.*

*2. The present treaty shall not prevent the use of military personnel or equipment for scientific research or for any other peaceful purposes.*

*Article III*

*1. To promote international cooperation in scientific investigation in Antarctica, as provided for in Article II of the present treaty, the Contracting Parties agree that, to the greatest extent feasible and practicable:*

*(a) information regarding plans for scientific programs in Antarctica shall be exchanged to permit maximum economy and efficiency of operations;*

*(b) scientific personnel shall be exchanged in Antarctica between expeditions and stations;*

*(c) scientific observations and results from Antarctica shall be exchanged and made freely available.*

*2. In implementing this Article, every encouragement shall be given to the establishment of cooperative working relations with those Specialized Agencies of the United Nations and other international organizations having a scientific or technical interest in Antarctica.*

*Article V*

*1. Any nuclear explosions in Antarctica and the disposal there of radioactive waste material shall be prohibited.*

**Article VIII. Decision-making in relation to Antarctic**

This article would require the establishment of appropriate institutional arrangements to ensure that this Declaration is implemented properly, that different interests and perspective (e.g. of Indigenous Peoples and of individuals have developed a deep relationship with Antarctica) are represented in decision-making structures, and the decision-making takes account of the principles in Article V. One commentator made the point that it would be better to allow for all Indigenous voices to be heard whether they have been to Antarctica, or dreamt of Antarctica in the past, because privileging to those who once visited Antarctica would be following the same "we got there first" logic of the State claimants.

These institutions could established by means of treaties. For example, the Antarctic Treaty states:

*Article IX*

*1. Representatives of the Contracting Parties named in the preamble to the present treaty shall meet at the City of Canberra within two months after the date of entry into*

*force of the treaty, and thereafter at suitable intervals and places, for the purpose of exchanging information, consulting together on matters of common interest pertaining to Antarctica, and formulating and considering, and recommending to their Governments, measures in furtherance of the principles and objectives of the treaty, including measures regarding:*

- (a) use of Antarctica for peaceful purposes only;*
- (b) facilitation of scientific research in Antarctica;*
- (c) facilitation of international scientific cooperation in Antarctica;*
- (d) facilitation of the exercise of the rights of inspection provided for in Article VII of the treaty;*
- (e) questions relating to the exercise of jurisdiction in Antarctica;*
- (f) preservation and conservation of living resources in Antarctica.*

Consideration should be given to whether it would be better to shore up the existing Antarctic Treaty System but challenge it to adopt a more eco-centric perspective, or establish a parallel system.

#### **Article IX. Representation of Antarctica in human decision-making**

This article would address how the Antarctica and its members could “participate” in /be represented in human decision-making that may affect it. This could include participation in the ATS, and the United Nations and should include the right to participate in legal proceedings before national and international courts.

An important consideration for further discussion is how the human representatives for Antarctica would be selected, appointed or recognised.

#### **Article X. Measures to implement Declaration**

This article would specify the measures that humans and States must take to ensure that the Declaration is give effect to. This could include amending existing treaties to accord with this Declaration, making provision for Antarctica to be represented in national courts, and promoting actions that inform people about this Community and strengthen their relationships with it.

#### **Article XI. Dispute resolution**

This article would deal the resolution of disputes arising from the Declaration or regarding the Antarctica, and could include establishing international tribunals to hear disputes concerning this Declaration, and a duty to apply a restorative justice approach to the resolution of disputes,..

For example the Antarctic Treaty provides as follows:

##### *Article XI*

- 1. If any dispute arises between two or more of the Contracting Parties concerning the interpretation or application of the present treaty, those Contracting Parties shall*

*consult among themselves with a view to having the dispute resolved by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement or other peaceful means of their own choice.*

*2. Any dispute of this character not so resolved shall, with the consent, in each case, of all parties to the dispute, be referred to the International Court of Justice for settlement; but failure to reach agreement on reference to the International Court shall not absolve parties to the dispute from the responsibility of continuing to seek to resolve it by any of the various peaceful means referred to in paragraph 1 of this Article.*

**Article XII. Relationship between Declaration and existing treaties**

This article would provide that in the case of any conflict between the provisions of this Declaration and any other treaty concerning the Antarctic, the provisions of this Declaration must prevail.

**Article XIII. Definitions**

This article would contain any definitions of terms that may be necessary. Some examples of what might be included are set out below:

"Antarctic Area" encompasses territories south of the 60° South parallel.

It may also be important to define humans as an exotic (and potentially invasive) species in Antarctica.