



Antarctica Declaration Commentary

June 2026



ANTARCTICA DECLARATION

(draft of 8 June 2026)

COMMENTARY

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1. INTRODUCTION

The Antarctic Alliance (“**the Alliance**”) is global civil society initiative that advocates for the legal recognition of Antarctica (defined as the area South of the Polar Front¹) as an autonomous legal entity (analogous to a State) with certain legal rights.² These include : the right to exist, to continue its regenerative cycles and processes free of human disruptions, and to be represented in human decision-making processes that affect its interests.

In early 2021, a working group of Antarctic scientists, academics and rights of Nature lawyers and activists began meeting on-line and formed an Antarctic Rights, which on 1 December 2025 (Antarctica Day) transformed into the Antarctic Alliance. The Antarctic Rights Working Group developed a draft *Antarctica Declaration* which was published on-line for comment. The original draft Declaration has been amended to take account of comments received and the attached draft of 8 June 2026 is the latest iteration. This document provides a commentary on the text of the latest draft of the Antarctica Declaration (June 2026) to facilitate informed discussion during online and in-person consultations that will be held until the end of September 2026. The Declaration will then be finalized for signing and adoption at an event in Cape Town, South Africa on 1 December 2026.

The draft Declaration recognizes Antarctica as having a legal status similar to that of a sovereign State, defines the rights and freedoms of Antarctica as a whole, and of the various “Antarctic beings” which form part of it, and imposes duties on all peoples, organizations, governments, and multilateral entities to take responsibility for recognising, respecting and upholding those rights and freedoms. The draft Declaration is also intended to serve as a basis for developing a rights-based, planetary governance system that imposes obligations on all nations and institutions to protect Antarctica by upholding the rights of Antarctic beings and of Antarctica as a whole.

Once the Declaration has been proclaimed, the Alliances will establish institutional arrangements to facilitate the implementation of the Declaration. It is envisaged that this will include the establishment of an Antarctic Council (or similar body) to identify what is in the best interests of Antarctica and to articulate this in decision-making processes that may affect Antarctica, and its legal status, rights and freedoms.

¹ The polar front (also known as the Antarctic convergence) separates two hydrological regions (the cold surface waters to the South from the warmer waters to the North) forming a natural boundary that circles the whole Antarctic continent and defines the northern extent of the Southern Ocean and two areas of distinct marine life.

² This natural boundary for “Antarctica” is appropriate for ecological reasons, but this area includes several sub-Antarctic islands, situated between the boundary of the Polar Front and 60 degrees South. Most of these islands are recognised internationally as the sovereign territory of various countries, and consequently a way of resolving the potential for overlapping jurisdictions, will have to be found. (Many countries already recognise mountains, rivers, forests and other aspects of Nature within their territories, as legal subjects with rights.)

2. APPROACH TO DEVELOPING DRAFT DECLARATION

2.1 Antarctica as the starting point

The starting point in formulating the draft Declaration was Antarctica itself, rather than outdated doctrines of discovery and occupation. In other words, the draft Declaration reflects the understanding that any system to govern how humans relate to Antarctica must be designed to take into account, and be aligned with, the realities of Antarctica itself and not simply focus on how States should make decisions about managing human activities within Antarctica. For example, the draft Declaration articulates harmonious coexistence principles which should guide how people relate to Antarctica, which are based on our (incomplete) understanding of the nature of Antarctica and the natural forces that have given rise to and maintain its unique ecosystems.

2.2 Translating an integral worldview into law

The draft Declaration reflects a worldview that differs substantially from the worldviews most prevalent in the world today and that inform the current system of international law. Consequently, some of the terms used in the draft Declaration may be unfamiliar and may initially seem strange or inappropriate in a document of this nature.

The draft Declaration is only fully comprehensible from the perspective (shared by many Indigenous Peoples) that human beings are members of a community created by the interrelationships between many natural entities or beings (referred to in the Declaration as the “Earth Community”), and that a fundamental purpose of legal systems should be to enable human beings to live well by contributing to, rather than degrading, that life-sustaining community.

One of the main challenges in formulating the draft Declaration has been to articulate this integral worldview in language that is comprehensible (albeit unfamiliar) to the existing governance system applicable to Antarctica. This inevitably requires using some words and terms that are usually used only to refer to humans or human institutions in a wider sense to refer to other-than-human beings, which the current legal order regards as objects rather than subject. For example, the current international law regime (and national legal systems) treats the continent of Antarctica as an area without any subjective or animate qualities. On the other hand, the draft Declaration treats it as a subject (i.e. a natural being) whose presence, and perhaps spirit, can be experienced by people, and which is “wild” in the sense of not being subject to human will or control. The draft Declaration reflects an attempt to grapple with our encounter with very different beings, who are nevertheless also members of the Earth community within which humankind evolves and exists, and which is the source of life for us all. The draft Declaration is intended to assist humanity to achieve the aspiration of living harmoniously with Antarctica and Antarctic beings, within the wider context of the Earth community.

2.3 Relationship with ATS

The rights and duties articulated in the draft Declaration are primarily intended to transform how humans relate to Antarctica, rather than replacing the current governance system under the Antarctic Treaty System (“ATS”).³ This process can be understood as analogous to adoption by the United Nations of the (non-binding) Universal Declaration of Human Rights on 10 December 1948. That adoption did not replace laws or governance systems. Instead, it provided a standard or yardstick of universally accepted norms of human behaviour against which existing laws could be measured, and where necessary, guide the amendment or replacement of laws so that the laws reinforce those norms or rights. Despite the many violations of human rights that still occur, the world would be a far worse place without human rights.⁴

It is hoped that the adoption of an Antarctic Declaration will have a similar positive impact on how people perceive and relate to Antarctica (and the more-than-human world in general), and guide law reform at the international, transnational, national and sub-national levels in order to afford higher levels of protection for Antarctica and Antarctic beings.

2.4 Cooperation and harmonisation

One of the strengths of the ATS is that it promotes cooperation (particularly scientific collaboration) among a range of parties. The Declaration does not envisage reinventing the wheel or abolishing and replacing existing governance measures. Instead, it seeks to provide guidance on how governance arrangements based on an outdated understanding of the role of humans within Nature and outdated doctrines of discovery, occupation and colonization, can be progressively transformed in accordance with contemporary scientific understandings complemented by a good will flowing from deep connection with, and appreciation for, Antarctica.

³ The ATS refers to the governance system comprising the Antarctic Treaty, the measures in effect under that Treaty, its associated separate international instruments in force, and the measures in effect under those instruments. Other instruments forming part of the ATS include:

- the Agreed Measures for the Conservation of Antarctic Fauna and Flora (1964) (entered into force in 1982);
- the Convention for the Conservation of Antarctic Seals (1972);
- the Convention for the Conservation of Antarctic Marine Living Resources (1982); and
- the (Madrid) Protocol on Environmental Protection to the Antarctic Treaty (signed October 4, 1991, and entered into force January 14, 1998). [Note: The Convention on the Regulation of Antarctic Mineral Resource Activities was signed in 1988 but is not in force.]

⁴ The website of the United Nations Peacekeeping website expressed the importance of human rights as follows. “Without human rights, there can be no sustained peace, no stability, no protection from harm. No equality, no democracy, no space to speak up. No online safety, no end to the digital divide, no hope of an internet that puts people over profit.

Without human rights, there would be no way to curb climate change, eradicate poverty, tackle racism, misogyny, homophobia, or xenophobia. No way to protect the wellbeing and safety of children, young people, the elderly, disabled persons, refugees, or minorities. There can be no green and habitable future planet, no sustainable development, possibly no human future at all.” (<https://unmik.unmissions.org/can-you-imagine-world-without-human-rights>)

Antarctic Rights envisages helping establish institutional arrangements to facilitate the general adoption and implementation of the final Declaration and the harmonisation of existing governance systems with that Declaration. This would include harmonisation at the international, transnational and national levels.

3. GUIDING PRINCIPLES

Before drafting the Declaration, the following principles were developed to guide the drafting process.

1. Human governance systems must be guided by Antarctica.
2. Antarctica is an ecological community of inter-related beings.
3. We celebrate and are grateful for the vitally important contribution that Antarctica makes to the whole Earth community.
4. Antarctica is unique and merits special attention.
5. Antarctica is a self-regulating and autonomous being/ entity.
6. Antarctica must be recognised as a legal subject.
7. The dignity of Antarctica must be respected.
8. Antarctica and Antarctic beings have the rights to exist and the freedom to be wild.
9. Decision-making should be in Antarctica's best interest.
10. Antarctica has the right to a voice in human decision making.
11. Human activities within Antarctica and beyond Antarctica that are contrary to the best interests of Antarctica must not be permitted.
12. Humanity has a collective responsibility to respect and uphold the rights of Antarctica.
13. Humans have specific duties in relation to Antarctica.
14. Disputes must be resolved in ways that restore damaged relationships.

4. COMMENTARY ON DRAFT DECLARATION

4.1 Introduction to commentary

The main purposes of the commentary are to explain the thinking which informed the drafting of each clause, and the purpose and implications of each clause, so that the reader is in a better position to understand and comment on the draft Declaration. (References in the commentary to "the Declaration" are references to the draft declaration of 8 June 2026.)

4.2 Preamble

The purpose of the preamble is to provide a context for the Declaration, and an explanation of why the Declaration exists. The preamble celebrates the magnificence of Antarctica and expresses gratitude for the existence of this unique living community. Antarctica is vital to the ecological stability, ordering and functioning of Earth as a whole. For example, they⁵ play a very important role in determining the climate, ocean currents, and winds, and include a vast number of organisms. The continental ice sheets of Antarctica retain vast quantities of water which, if it were to melt, would raise global sea-levels by many metres and inundate cities and fertile farmlands. This means that every person has reason to celebrate and be grateful for its continued existence.

The third and fourth paragraph of the preamble use words such as “beautiful”, “awe-inspiring” and “magnificent” to communicate some of the reactions that an encounter with Antarctica evokes in people, with a view to emphasizing that in essence the Declaration is about how we relate to Antarctica.

In order to explain the rationale for the Declaration, the preamble refers to the threats to Antarctica, the desirability of protecting them, the fact that existing governance systems have not succeeded in protecting them sufficiently⁶ against threats, and the collective responsibility of humanity to take urgent action to safeguard Antarctica from harm caused by humans.

The Declaration is proclaimed with immediate effect, but the preamble also calls upon all international bodies making decisions relevant to Antarctica to adopt it, and on all peoples, organizations and institutions to take responsibility for implementing it.

4.3 Article I. Antarctica

A fundamental question when seeking to define the relationship between humanity and Antarctica is: “Who is Antarctica?” Article I answers this question by describing Antarctica as a community or being that plays a vital role in sustaining life, and has both tangible and intangible aspects. The definition of “Antarctica” in Article X(2) answers this question in more legally precise terms.

Like any community, Antarctica is constituted by the inter-relationships between the members of the community which are themselves beings (i.e. entities that have come into being and have co-evolved within, or been shaped by, this community).

Many people would agree that animals that inhabit Antarctica (e.g. whales, penguins, fish, and seals) are beings who have a right to exist (or to be) and the right to habitat conducive to

⁵ The draft 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.

⁶ The word “sufficiently” is intended to make it clear that we recognised that the ATS system has protected Antarctica but that more protection is required.

their survival, reproduction and general well-being. Some are likely to find it difficult to conceive of a continent, ice shelf or the Southern Ocean as a being. However, these entities are fundamental to this community of life and Antarctic animals would not exist without them. Consequently, Antarctica is described as an “indivisible” community.

Antarctica is described as “autonomous and self-regulating” because it organises and regulates itself and does not require human management to function or flourish. The Declaration seeks to convey that people must have the humility to accept the reality that we do not have the powers or knowledge necessary to regulate or govern Antarctica. Instead, we must recognise that Antarctica and the many entities that are part of Antarctica are not inert objects, but components of an autonomous, self-organising, community of life that we must pay attention to and respect.

4.4 Article II. Legal status of Antarctica

This article seeks to articulate the legal implications of the description of Antarctica in the previous article. It recognizes Antarctica as an entity with a legal status and “legal personality” under international law.⁷ Paragraph (1) describes this legal status and personality as “unique” to convey that it is “*sui generis*”. In other words, it has an international personality “of its own kind” which is unprecedented and unique within international law. This is important to make it clear that, although Antarctica may in many ways be regarded as similar to a State under international law, it is a unique being with its own kind of legal status.⁸

Antarctica is described as independent and autonomous, which means that it is not subject to the sovereign power of nation States. The ATS addresses the thorny issue of competing territorial claims to part of the continent of Antarctica by providing that all claims are suspended, and that nothing done under the ATS will affect those claims. The Declaration seeks to remove the potential for territorial rivalry between States in relation to Antarctica by making it clear that Antarctica is independent and not subject to the sovereignty of any State. (The ATS effectively suspends the rights of claimants to pursue their claims, and so these claims are already more symbolic than meaningful.)

Paragraph (2) sets out the rights of Antarctica that follow from its legal status, which are analogous to the powers of sovereign States under international law. The paragraph records that Antarctica’s rights in this regard include: the rights to independence and to exercise all its legal powers freely and without dictation by States;⁹ the right to exercise jurisdiction over

⁷ 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. The main subjects of international law are states. For centuries the only recognised subjects of international law were states and a few entities that states have historically recognised as similar to states (e.g. the Holy See and the Sovereign Order of Malta). Today various intergovernmental organizations (e.g. the United Nations, the European Union, the International Monetary Fund and the World Trade Organization) are also recognised as subjects of international law.

⁸ In this regard see also paragraph (1)(a) of Article VI Specific Duties of States.

⁹ Article 1 of the Draft Declaration on Rights and Duties of States (1949) reads: “Every State has the right to independence and hence to exercise freely, without dictation by any other State, all its legal powers, including the choice of its own form of government.”

its territory, over all Antarctic beings, and over all people and institutions within its territory;¹⁰ over all Antarctic beings wherever they may be,¹¹ and the right to equality in law with States.¹²

Paragraph (3) describes the powers of Antarctica as including any powers which a State could exercise under international law in order to exercise and protect its legal status, powers, rights and freedoms.

4.5 Article III. Inherent rights and freedoms of Antarctica and Antarctic beings

This article sets out those rights and freedoms of Antarctica as a whole, and of Antarctic beings (as part of that whole). Paragraph (2) enumerates the rights which are regarded as inherent and inalienable (like human rights). They derive their legitimacy from the existence of Antarctica, and the beings in question, not from their recognition by humans.¹³ Similarly humans claim human rights, even if their governments do not recognize those rights.

Paragraph (3) enumerates additional rights of Antarctica and Antarctic beings which arise as a consequence of being recognized in the Declaration rather than from the source of existence.

Each of these rights can all be limited in accordance with *Article IV Limitation on rights and Freedoms* and is subject to the proviso in Article IV(1)(a) which recognizes that given the wide range of Antarctic beings, some of those rights and freedom will not be relevant or applicable to every Antarctic being.

Article III (1)(a) sets out the fundamental right to exist and to maintain their identity and integrity (used here in the sense of “wholeness”).

Article III (1)(b) refers to the right of self-expression and self-determination¹⁴. These are regarded as fundamental aspects of an autonomous being.¹⁵ The reference to self-determination is consistent with the characterization of Antarctica as autonomous and self-regulating.

¹⁰ Article 2 of the Draft Declaration on Rights and Duties of States (1949) reads “Every State has the right to exercise jurisdiction over its territory and over all persons and things therein, subject to the immunities recognized by international law.

¹¹ Article III(2) provides that Antarctica beings retain their rights and freedoms when they are outside the Antarctic Convergence.

¹² Article 5 of the Draft Declaration on Rights and Duties of States (1949) reads: “Every State has the right to equality in law with every other State.”

¹³ Other rights are set out in Article IV but those rights arise from the proclamation of the Declaration rather than from the source of existence.

¹⁴ The references to a right of “self-expression” is analogous to a right to “free speech” and the right of “self-determination” to a right of “self-governance”.

Article 1 in both the International Covenant on Civil and Political Rights (ICCPR)[29] and the International Covenant on Economic, Social and Cultural Rights (ICESCR)[30] reads: “All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.”

¹⁵ For example, keeping wild animals in captivity, which restricts their ability to express themselves and their agency in determining how they live their lives, amounts to diminishing their autonomy.

International law recognizes the rights of peoples to self-determination and this Declaration seeks to extend the principle to beings other than humans.¹⁶

These rights also support the recognition of the rights of Antarctica and Antarctic to be represented in human decision-making that affects them (Article III(3)(d) and Article VII).

Article III (1)(c) refers to the right to maintain the relationships between Antarctic beings that contribute to the integrity and ecological functioning of Antarctica as whole, and sustain life.

Article III (1)(d) sets out the freedom to be “wild” and free of pollution, human disruption, control or “human interference that may endanger their rights and freedoms”. This could be expressed as a right but the term “freedom” has been used to emphasis that this is liberty which people and institutions are not entitled to interfere with and if they did so without adequate justification, the interference would be unlawful.¹⁷ This freedom flows from the characterization of Antarctica as autonomous, independent and not subject to dictation by States (article III(1) and (2)(a)). The right to be free of pollution flows as an aspect of the right to be free of human disruption and is consistent with the prohibition on the disposal of radioactive waste in Antarctica under the ATS.

Article III (1)(e) refers to a right to be respected. This refers to a being’s right to be respected for who it is, and gives rise to a corresponding duty of people and institutions to respect the dignity of these beings which is expressed in Article V(1)(a).

This is intended to mirror the human right to dignity which is central to the application of human rights.¹⁸ Recognising “dignity” as something all humans are born with means that all people deserve respect, and so provides a basis for the universality of human rights. Recognising that Antarctica and Antarctic beings have the right to be respected is a way of reinforcing the idea that humans must respect their existence as beings (i.e. not as objects or natural resources which humans act on). It also provides a basis for the recognition that they merit rights.

However, there is on-going debate as to whether or not it is appropriate to apply the term “dignity” - a concept that comes laden with moral and philosophical connotations - to the more-than-human world.

Article III (1)(f) It is arguable whether the right to self-protection against violations of their dignity, rights or freedom is strictly-speaking necessary. This right is envisaged as analogous

¹⁶ For example, the purpose of the UN Charter is: "To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace." (Chapter 1, Article 1, part 2). Article 1 in both the International Covenant on Civil and Political Rights (ICCPR)[29] and the International Covenant on Economic, Social and Cultural Rights (ICESCR)[30] reads: "All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."

¹⁷ The question of justification is addressed in article IV(4)(c), and article VI(1)(e) which places the onus of proving that a limitation is justifiable, on people and institutions.

¹⁸ For example, Article 1 of Universal Declaration of Human Rights states: “All human beings are born free and equal in dignity and rights.” The preamble to the International Covenant on Civil and Political Rights, adopted in 1966, states “...these rights derive from the inherent dignity of the human person.”

to the right of both people and States to self-defense and has been included to provide a legal basis for the taking of protective measures on behalf of Antarctica, in the name of Antarctica.

Article III (2) is to ensure that when animals that are native to Antarctica (such as whales, fish, and sea birds) and other beings such as icebergs, move beyond the territory of Antarctica, they do not lose their status as Antarctic beings or their rights and freedoms.

Article III (3) specifies the rights held by Antarctica and each Antarctic being as a consequence of the adoption of the Declaration. In other words, they express what the signatories to the Declaration acknowledge as rights (even though not inherent) and give rise to corresponding duties on people and institutions. Each of these rights gives rise to corresponding duties on people and institutions, which are set out in the table below.

Rights (Article III(3))	Corresponding duties (Art V and VII)	Additional State duties (Art. VI and VII)
(a) the right to have their dignity, rights and freedoms be respected, protected and upheld by people and institutions;	(a) respect and protect the presence, dignity, beauty and intrinsic value of Antarctica and Antarctic beings (Art V(1)(a)) (c) recognise respect, protect, promote and give effect to the legal status and powers of Antarctica referred to in Article II and the legal rights and freedoms set out in this Declaration; (d) avoid unjustifiably violating or limiting the rights and freedoms recognised in this Declaration;	(a) to recognise and respect the legal status of Antarctica as set out in Article II; (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; (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 institutions 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 act or omission that limits a right or freedom recognised in this Declaration as unlawful, unless, and to the extent that, the person or institution responsible proves that it is a justifiable limitation;
(b) the right to be protected by from harm caused by humans,	(b) take all reasonable measures to coexist harmoniously with Antarctic beings and to enhance and conserve the integrity of	Article V(1)(b) to (f) quoted above.

Rights (Article III(3))	Corresponding duties (Art V and VII)	Additional State duties (Art. VI and VII)
including the elimination of hazards;	Antarctica and its vital ecological cycles, processes and balances; (e) pursue livelihoods, wellbeing and economic interests in ways that do not threaten or harm Antarctica, and take preventative measures to protect Antarctica and Antarctic beings from harm caused by humans or institutions, including measures:	(h) to develop and promote economic, social and other means of enhancing the wellbeing of people through harmonious coexistence.
(c) the right to full and prompt restoration of any harm caused by people or institutions violating any of their rights or freedoms;	V(1)(f) take all measures necessary to mitigate any harm caused by violations and restore affected beings fully and promptly.	VI(1)(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
(d) the right to have people investigate, monitor and communicate impacts on them, and to effectively represent their interests in human decision-making;		(c) to ensure that the integrity, health and functioning of Antarctica and Antarctic beings, and human impacts on them, is closely monitored and that information and research in that regard is shared promptly with other States and relevant institutions, and communicated to the public;
(e) the right to be represented in any legal or administrative proceedings that may affect their legal status, powers, rights or freedoms.	VII (1) People and institutions must take all reasonable measures to ensure that Antarctica and Antarctic beings are represented effectively in decision-making that may affect them, or their legal status, power, 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.	VII (2) In giving effect to paragraph (1), each State must take legislative and other measures to enable Antarctica to be effectively represented, in a manner consistent with its legal status and powers under Article II, in sub-national, national, transnational or international: (a) decision-making that may have a significant impact on Antarctica; and (b) legal or administrative proceedings that may affect the recognition, exercise or protection

Rights (Article III(3))	Corresponding duties (Art V and VII)	Additional State duties (Art. VI and VII)
		of their legal status, powers, rights or freedoms

The first right is to maintain their identity and integrity ((2)(a)); the second is to remain part of Antarctica and contribute to the integrity (used here in the sense of “wholeness”) and ecological functioning of Antarctica as a whole ((2)(b)); and the third is to be free of human disruptions or treatment that may threaten its well-being or ability to regenerate themselves ((2)(c)).

4.6 Article IV. Limitation on rights and freedoms

Article IV (1)(a) recognizes that not every right and freedom recognized in the Declaration may be applicable to every Antarctic being because a particular right or freedom may not be capable of being applied to a specific kind of Antarctic being. Paragraph (1)(b) is intended to balance that by ensuring that such rights and freedoms may not be denied on the basis of classifications or distinctions peculiar to specific human cultures (e.g. organic/ inorganic).

Article IV (2) recognizes that all rights must be limited and states that any conflicts between rights must be resolved in a manner that benefits the whole community (i.e. Antarctica or, where appropriate, the whole Earth Community). This is consistent with the approach taken in the legal systems of many democratic societies which provide for the human rights of particular citizens or classes of citizens to be restricted to the extent necessary to protect the greater good of society as a whole.

Article IV (3) explains how to determine whether or not a restriction is justifiable and incorporates the idea that a restriction must not go further than what is necessary to achieve the objective of the limitation (i.e. the principle of proportionality).

In order to facilitate the implementation of the Declaration, it will be necessary to establish institutional arrangements to determine whether or not a proposed activity that would have the effect of infringing upon / limiting rights and freedoms recognised in this Declaration, qualifies as a “justifiable restriction”. This is likely to involve specifying some of the factors that should be taken into account when determining whether or not a limitation is justifiable.¹⁹ A Court or other institution could then deal with limitations on these rights and

¹⁹ For example: “In determining the extent to which a act or omission that limits a right or freedom recognised in the Declaration is justifiable, all relevant factors must be taken into account, including:
 (a) the need to promote harmonious coexistence with Antarctica and Antarctic beings;
 (b) the importance of sustaining the integrity, functioning, balance and health of Antarctica as an integral part of the Earth Community;
 (c) the nature of the right or freedom;
 (d) the importance of the purpose of the limitation;
 (e) the nature and extent of the limitation; and
 (f) the relationship between the limitation and its purpose, and the extent to which the purpose could have been achieved by less restrictive means.”

freedoms in the same way that a court would decide whether or not a provision in legislation, or some government action, constitutes a justifiable limitation of a human right. For example, in balancing rights, a court would typically give more fundamental rights (such as the right of a species to exist) precedence over less important rights or freedoms (such the human right of predation on Antarctic beings).

4.7 Article V. General human duties of people and institutions

One of the most important aspects of recognizing the rights and freedoms of Antarctica and of Antarctic beings is to create corresponding duties on people and institutions to respect and uphold those rights and freedoms (see table above). This article defines the specific duties of both individual humans, and human institutions, in relation to Antarctica as a whole and specific Antarctic beings. The additional duties specifically applicable to States are set out in the Article VI.

The responsibility to take these measures apply to each person, but they are also the collective and universal responsibilities of humankind and so also apply all public and private entities recognised by law. This means that States and other institutions must regulate the people and entities over which they have jurisdiction, wherever they are in the world, in order to ensure that they uphold these rights. For example, humanity is responsible for restricting human activities that cause global climate change to ensure that they do not cause the destruction of the ice shelves and sea ice which are essential to the survival of many Antarctic beings.

Article V (1)(a) expresses the fundamental duty to respect Antarctica and Antarctic beings for who they are (as opposed to how they may be used). This sub-paragraph seeks to communicate some of the essence of Antarctica and Antarctic beings as subjects (beings) with intrinsic value, who have their own ways of expressing themselves (or being) and are not subject to human control (i.e. are wild). The importance of respecting others for who they are, is self-evident in relation to relationships between human beings, but requires an imaginative leap to fully develop and appreciate in relation to Antarctica and Antarctic beings. One aspect of this, which is also recognized in the Madrid Protocol,²⁰ is an appreciation for and acknowledgement of the intrinsic value and wildness of Antarctica.²¹

²⁰ The Protocol on Environmental Protection to the Antarctic Treaty (Madrid Protocol) means the protocol to the Antarctic Treaty adopted in 1991. The Parties to the Protocol commit to comprehensively protect the environment of the Antarctic Treaty Area (the area south of 60 degrees South latitude) and dependent and associated ecosystems. The Protocol has five specific annexes on: (1) marine pollution, (2) fauna and flora, (3) environmental impact assessments, (4) waste management, (5) protected areas and (6) liability arising from environmental emergencies. The sixth annex was adopted in 2005 but is not yet in force.

²¹ The environmental principle in Article 3(1) of the Madrid Protocol refers to “the intrinsic value of Antarctica, including its wilderness and aesthetic values and its value as an area for the conduct of scientific research”.

4.7.1 Harmonious co-existence

The primary challenge facing humanity in the Anthropocene is to (re)discover how to coexist harmoniously with the other beings with whom we co-evolved and upon whom we depend for life and wellbeing.

Article V (1)(b) addresses the primary duty of humans to take all reasonable measures to coexist harmoniously with Antarctic beings and to conserve Antarctica. “Harmonious coexistence” is a central theme of the Declaration. The term is defined in Article X (2)(d)²² and principles that must be applied in order to promote harmonious coexistence are set out in Article V (2). This also links with the idea that achieving harmonious coexistence will require changing how we live, and restructuring economies (see Article V (1)(e)). The obligation on States “to develop and promote economic, social and other means of enhancing the wellbeing of people through harmonious coexistence” (Article V (1)(h)) and the harmonious coexistence principle to prioritise the conservation of Antarctica over gaining financial or other benefits at Antarctica’s expense (Article V (2)(c)) are also relevant.

Article V (1)(c) and (d) establish duties to respect the legal status of Antarctica and the rights and freedoms recognised in the Declaration, and to prevent them from being violated or unjustifiable limited.

Article V (1)(e) is intended to ensure that the preventive measures that people and institutions must take to avoid causing harm. The preventive measures that must be taken in accordance with include measures to eliminate economic and other incentives to violate those rights and freedoms (see paragraph V (1)(g)). This is intended to require the elimination of economic incentives that are ecologically perverse, such as State subsidies for harvesting Antarctic marine species.

Article V (2) sets out principles that people and institutions must apply to promote harmonious coexistence. Some are principles which informed the drafting of this Declaration. These principles may be further developed in response to consultations with Indigenous Peoples whose cultures and cosmologies have developed sophisticated means of guiding people to live harmoniously with other beings, within Nature.

Article V (2)(a) establishes the fundamental relationship between people and Antarctic beings as being kin within the Earth Community.

Article V (2)(b) addresses the fundamental question of how people should relate to Antarctica and Antarctic beings (with respect). This principle also emphasizes that people must defend the dignity, rights and freedoms of other beings. This is contrasted with the current situation in which humans seek to own, manage or rule Antarctica. Antarctica organizes and regulates itself and does not require human management in order to function or flourish.

²² ““harmonious coexistence” means humans interacting with other beings in ways that both strengthen the Earth Community, and respect and protect the rights of all beings to fulfil their roles within the Earth Community;”

Article V (2)(c) establishes the individual and collective responsibility of people to contribute to the Earth Community that sustains them, which includes Antarctica. Each person bears this responsibility, but it must be recognized as a collective and universal responsibility of humankind. This means that States and other institutions must regulate the people and entities over which they have jurisdiction, wherever they are in the world, in order to ensure that they uphold these rights. As a consequence, humanity is responsible for stopping the activities that cause global warming and the melting of the Antarctic ice sheets, wherever they occur.

Article V (2)(d) establishes the conservation, protection, and restoration of Antarctica's ecological communities must be take priority over gaining financial or other benefits at Antarctica's expense. This is important to displace the prioritization given to financial benefits and economic benefits by most States and institutions.

Article V (2)(e) requires the application of precautionary and preventive approaches and to give effect to the principle "*in dubio pro natura*". This principle is similar to the "precautionary principle" of international environmental law and 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. Guidance on how to determine what is in the best interests of Antarctica is provided by Article VII (4).

4.8 Article VI. Specific duties of States

This article defines the specific duties that States have in addition to the general duties of people and institutions defined in the preceding paragraph. These duties only apply to States because they have the power to legislate and enforce national legislation, and to enter into treaties. These duties will not be binding on States unless they adopt the Declaration. However, they are included to communicate that many people (represented by the signatories to the Declaration) believe that State's should be bound by these duties. This is intended to be a step towards the adoption by States of a similar declaration and eventually the incorporation of these duties in a legally binding international treaty.

Article V (1) requires States to exercise their powers:

- to recognise and respect the legal status of Antarctica;
- to reform national legal systems: to enable Antarctica and Antarctic beings to be effectively represented in human decision-making; to uphold the rights and freedoms recognised in the Declaration; to impose and enforce legal liability for violation of those rights and freedoms; and to treat any Human act or omission that limits such a right or freedom as unlawful, unless, and to the extent that, the party responsible proves that the limitation is justifiable;

- to control persons under their jurisdiction to ensure that they do not engage in any activity in Antarctica contrary to the principles or purposes of the Declaration²³ and do not violate the rights and freedoms recognised in the Declaration while outside Antarctica; and
- to reform national economic systems in order to eliminate ecologically perverse incentives and promote economic, social and other means of enhancing the wellbeing of people through harmonious coexistence with Antarctica.

One of the implications of these duties is that it would require States to consider how to harmonise the ATS with the Declaration where required.

Article V (2) refers specifically to the power of a State to appoint ambassadors or other representatives to promote harmonious coexistence with Antarctica and the effective implementation of the Declaration. Appointing a person with such responsibilities would be an effective means of developing harmonious coexistence in practice.

4.9 Article VII. Decision-making in relation to Antarctica

Given the impact of humanity on Earth, human decision-making will have an enormous impact on the future of Antarctica. Consequently, changing how decisions that affect Antarctica are made is crucial.

The first step is to ensure that the best interests of Antarctica are articulated and advanced in human decision making that affects Antarctica.

Article VII (2) places a general duty on all people and institutions (which includes corporations) to ensure that Antarctica can be effectively represented, and paragraph (2) imposes additional duties on States in this regard. Given how many human activities have the potential to have a significant impact on Antarctica, it will be important to devise means of ensuring that it is effectively represented in many forums at each level of governance²⁴ and in legal proceedings before national and international courts.

This raises the crucial question of how Antarctica would be represented and by whom. The Antarctic Alliance plans to work with partners to develop modalities for doing so, and to record what they agree in a *Peoples' Convention for Antarctica*, or similar document.

The second step is to guide how decisions are made.

Article VII (3) and (4) seek to promote decision-making that is wise, that advances the best interests of Antarctica and that promotes harmonious coexistence (which would require

²³ Article X of the Antarctic Treaty states:

"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."

²⁴ For example, these could include bodies established under the ATS, the International Panel on Climate Change, the Conference of the Parties to the United Nations Framework Convention on Climate Change, and the United Nations.

applying the principles in Article V (2) such as applying a precautionary and preventive approach that prioritises the protection of Antarctica.²⁵

4.9.1 Wisdom

Article VII (3) requires people and institutions to strive to ensure that decision-making in relation to Antarctica is “wise” and this links with the requirement in Article IX (Implementation) that Antarctica and Antarctic beings must be “represented by people with the necessary understanding, personal qualities, expertise and commitment to the best interests of Antarctica, to do so with integrity and wisdom”. In most democracies, wisdom (or even expertise) is not a requirement for election or appointment to important decision-making positions. It is envisaged that the measures adopted to implement the Declaration would include criteria and procedures to ensure that persons who represent Antarctica have the necessary expertise, insight and wisdom to do so as well as reasonably possible.

4.9.2 Antarctica’s best interests

Article VII (3) requires people and institutions to strive to ensure the decision-making in relation to Antarctica promotes the best interests of Antarctica and Antarctic beings. Determining what is in the best interests of Antarctica is a challenging task that some may regard as impossible. It is anticipated that this requirement will spur further collaboration among those who know Antarctica best in order to identify what is the interest of Antarctica rather than on the basis of the national interests of Contracting Parties to the ATS.

Although it may not be possible for people to ever determine in the abstract what the best interest of Antarctica are, in many cases there will be sufficient information or evidence to enable available choices to be ranked on the basis of which would contribute most to the integrity, functioning and health of the ecosystem in question. Furthermore, since acting in the best interests of Antarctica as an ecological community will also be in the long-term best interests of humanity, it is more important to make choices on this basis (albeit imperfectly) than to choose among competing human interests.

Article VII (4) is intended to provide some guidance to decision-makers on how to determine what is in the best interests of Antarctica. It provides that decision-makers must be sensitive to the fact human beings are not indigenous to Antarctica, and actively seek to hear and understand the ways in which Antarctica and Antarctic beings express themselves. They must also take account of all relevant factors including the best available scientific information (most of which is likely to have been generated under the ATS) and different cultural perspectives (such as traditional wisdom).

²⁵ Note that references to “wise” decision-making is not a reference to the so-called “wise use” approach applied in the USA as a means of increasing the degree of use of Nature.

4.10 Article VIII. Activities within Antarctica

This article deals with the prohibition and restriction of activities within Antarctica.

Article VIII (1) specifies in general terms the essential characteristics for an activity to be acceptable. The requirement for a compelling reason for undertaking the activity within Antarctica is to allow for the prohibition of trivial activities that need not take place in Antarctica.

Article VIII(1)(b) establishes the core requirement is that the activity in question “does not violate any right or freedom recognised in this Declaration” (An activity that limits such a right or freedom in a manner that cannot be justified in accordance with Article IV (3), would constitute a violation.)

4.10.1 Scientific research

One of the successes of the ATS has been its promotion of collaborative research and the protection of Antarctica as an area within which such research can take place.²⁶ However some research being undertaken within the Antarctic Area (e.g. seismic surveys to locate oil and gas deposits) seem motivated by considerations that are contrary to the aims of the ATS and Antarctica's best interests.

Article VIII (2) refers to giving priority to scientific research that improves our understanding of how to coexist harmoniously with Antarctica and within Earth and how to identify what is in the best interest of Antarctica. This is intended to reorient the focus of research to research that benefits Antarctica without limiting freedom of scientific enquiry. Planning, preparing, or undertaking research within Antarctica in order to facilitate the exploitation of Antarctica (e.g. to locate exploitable mineral or oil and gas deposits) would contravene this provision.

4.10.2 Predation on Antarctic beings

Article VIII (3) addresses the question of what level of human predation (if any) should be permissible. Natural predation is normally an important part of maintaining food chains which are vital to the continued existence of ecological communities, and so maintaining predator-prey relationships is consistent with the rights of Nature approach. However, since human beings are not indigenous to Antarctica, these ecological communities evolved

²⁶ Article III of the Antarctic Treaty states: “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.”

Paragraph 3 of Article 3 (Environmental Principles) of the Madrid Protocol states: “Activities shall be planned and conducted in the Antarctic Treaty area so as to accord priority to scientific research and to preserve the value of Antarctica as an area for the conduct of such research, including research essential to understanding the global environment.”

without human predation, and it is debatable whether human predation on Antarctic animals is in the interests of Antarctica and consequently whether all fishing and other forms of predation (e.g. sealing) should be prohibited.

The main purpose of this article is to establish the principle that human predation should not be permitted except to the extent that it amounts to a justifiable limitation on the rights and freedoms of Antarctic beings. That enquiry will involve considering what is in the best interest of Antarctica.

Broadly speaking this article would prohibit human predation on Antarctic beings (including seals, fish, krill and plankton) unless it had been established that the proposed predation meets the following criteria.

- First there must be a compelling reason for the predation.
- Second it must not constitute a violation or unjustified limitation of any right or freedom recognised in the Declaration. In order to determine that, it will be necessary to determine whether the limitations on the rights of the prey animals is justifiable in particular circumstances. As discussed above, it is proposed that the governance arrangements established to implement the Declaration will provide guidance on the factors to be considered in determining whether or not a limitation of the rights of Antarctic beings (e.g. fish and krill) are justifiable in particular circumstances.²⁷
- Third it must be consistent with the harmonious co-existence principles in Article V(2).
- Fourth, it must not be contrary to the best interests of Antarctica (which is a lower test than requiring it to be in the best interests of Antarctica).
- Fifth, the predation must be unlikely to have a significant adverse impact on the populations of those animals or the ecosystems within which they live. Although not stated in the draft Declaration, in practice this would mean that the any predation that is not permissible under the Conference on the Conservation of Antarctic Marine Living Resources (**CCAMLR**)²⁸ or the Convention for the Conservation of Antarctic Seals would not be permissible under the Declaration.²⁹

²⁷ For example, it is anticipated that one of the implications of this paragraph is that even if some harvesting of krill is considered justifiable to provide essential protein for humans, it would not be permissible to harvest krill to feed farmed salmon to meet the tastes of wealthy consumers.

²⁸ CCAMLR was adopted at the Conference on the Conservation of Antarctic Marine Living Resources which met at Canberra, Australia, 7–20 May 1980. The Convention established a Commission that meets annually to, among other matters, adopt conservation measures and other decisions which apply to harvesting activities within the Convention Area.

²⁹ Article II(3) of CCAMLR states: “3. *Any harvesting and associated activities in the area to which this Convention applies shall be conducted in accordance with the provisions of this Convention and with the following principles of conservation:*

(a) *prevention of decrease in the size of any harvested population to levels below those which ensure its stable recruitment. For this purpose its size should not be allowed to fall below a level close to that which ensures the greatest net annual increment;*

Article VIII (4) is intended to address the situation where an activity that has been authorized is discovered to be harmful (i.e. it should not have been authorized).

4.11 Article IX Implementation

This article imposes a duty on those who proclaim and support the Declaration to collaborate to ensure its effective implementation, including by establishing appropriate institutions and processes. It is envisaged that an Antarctic Alliance will lead the development of a Peoples' Convention for Antarctica which will establish the necessary processes and institutions (e.g. an Antarctic Council) 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.

Any such institutions and processes must be consistent with Antarctica's inherent nature (i.e. aligned with Nature) and legal status.

Article IX (a) is intended to ensure that people "listen" carefully to Antarctica and are guided by that information. This principle is intended to guide both the development of new institutions and processes and the transformation of existing legal systems that govern how humans relate to Antarctica. For example, the ATS has been influenced by national claims of sovereignty over part of Antarctica based on colonial doctrines of discovery and occupation. New governance arrangements should be designed to take into account, and be aligned with, our understanding of the nature of Antarctica and the natural forces that have given rise to, and maintain, its unique ecosystems. In other words, systems for governing how people relate to Antarctica must take account of the characteristics of Antarctica and the importance of not constraining it from playing its ecological roles within the Earth community.

4.12 Article X Interpretation

Article X (1) establishes the general principle that the Declaration must be interpreted in a manner that promotes its spirit and purpose and is consistent with the harmonious co-existence principles.

4.12.1 Antarctica and Antarctic beings

The most important definitions are of Antarctica and of the Antarctic beings of which it is composed.

(b) maintenance of the ecological relationships between harvested, dependent and related populations of Antarctic marine living resources and the restoration of depleted populations to the levels defined in subparagraph (a) above; and

(c) prevention of changes or minimisation of the risk of changes in the marine ecosystem which are not potentially reversible over two or three decades, taking into account the state of available knowledge of the direct and indirect impact of harvesting, the effect of the introduction of alien species, the effects of associated activities on the marine ecosystem and of the effects of environmental changes, with the aim of making possible the sustained conservation of Antarctic marine living resources."

“Antarctic being” is defined as a natural entity that exists within Antarctica, including both organic elements (e.g. indigenous species) and non-organic elements (e.g. land, water, ice and the atmosphere), in all forms, both collective (e.g. ecosystems) and individual (e.g. a particular seal). In other words, the term may be used to refer to specific organisms, icebergs or mountains as well as to collectives such as ecosystems. The definition specifically excludes any human being (on the basis that no people are indigenous to Antarctica) and any object made by people. It is necessary to distinguish between Antarctica as a whole and beings which form part of Antarctica, since the Declaration recognizes both as rights holders.

Both “Antarctica” and “Antarctic being” are defined to include only species that are indigenous. Some commentators have suggested that the word “indigenous” should be deleted so that non-indigenous species (e.g. the reindeer introduced to South Georgia) can be considered part of Antarctica. Another perspective is that if a distinction is not made between indigenous and non-indigenous species, the latter will enjoy full rights which will make it difficult to control invasive alien species.

Antarctica is defined to include the seabed, and as a consequence mining the seabed of the Southern Ocean would be prohibited.

Antarctica is defined as the community comprised of Antarctic beings which exists South of the Antarctic Convergence.³⁰ This means that the geographic extent of Antarctica is defined by a natural boundary rather than by a political boundary. However, Article III (2) provides that Antarctica beings (e.g. certain whales, birds, fish and icebergs) remain Antarctica beings with the same rights and freedoms while they are North of the Antarctic Convergence.

4.12.2 People and institutions

A distinction is made between people or human beings on the one hand and juristic person (referred to as “institutions”). Since human beings as natural entities who are part of the Earth Community, the Declaration treats them as being primarily responsible for caring for Antarctica. However, it also refers to institutions to ensure that duties are also imposed on juristic persons. This is necessary because so much ecological harm is caused by humans acting through States, companies and other juristic persons.

Article X (3) has been included to make it clear that the rights recognized in this Declaration are not intended to be exhaustive and that the door remains open for additional rights to be recognized in future.

Article X (4) provides that if there is a conflict between an inherent right or freedom recognised in Article III, and a provision of international customary law, a treaty, transnational, national or subnational law, common law or customary law, the inherent right or freedom must prevail. This follows from the fact that the pre-existing, intrinsic and

³⁰ Also known as “the polar front”. CCAMLR states in Article I(4) that: “*The Antarctic Convergence shall be deemed to be a line joining the following points along parallels of latitude and meridians of longitude: 50°S, 0°; 50°S, 30°E; 45°S, 30°E; 45°S, 80°E; 55°S, 80°E; 55°S, 150°E; 60°S, 150°E; 60°S, 50°W; 50°S, 50°W; 50°S, 0°.*”

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.