

# **Whaling and International Environmental Obligations: A Case Study of Whaling Activities in Japan**

**Dr. Mohamad Almohawes**

**Assistance Professor of International Law  
College of law, Al Yamamah University**

## **Abstract:**

Japan's whaling activities are a matter of concern due to their violation of international law and their connection to the environment. This paper sheds light on Japan's history as a whaling nation. Whaling is a part of the Japanese coastal culture. This paper attempts to assess Japan's position on whaling after its withdrawal from the International Whaling Commission in 2019, the organization that regulates whaling activities and prevents commercial whaling. The paper discusses the main conventions and treaties relating to whaling and the protection of endangered species. It concludes that commercial whaling is illegal, and that some countries such as Japan abuse their right to hunt whales for scientific purposes. The paper also highlighted that withdrawing from the IWC Convention does not exempt Japan from its international environmental conservation obligations, including not hunting endangered animals such as whales, whether in international or territorial waters. Given the difficulty of implementing and enforcing international law, community awareness has proven to have a significant impact on reducing the hunting of these animals, including whales, in Japan. This paper proposes an amendment to the ICRW to set a specific number of whales that may be hunted each year for scientific purposes, without conflicting with their protection from extinction. This may contribute to reducing international disputes such as those that occurred between Japan and other countries.

**Keywords:** Whaling, IWC, UNCLOS, Biodiversity, International Law.

## صيد الحيتان والالتزامات البيئية الدولية: دراسة حالة أنشطة صيد الحيتان في اليابان

د. محمد المهوس

أستاذ مساعد في القانون الدولي، كلية القانون، جامعة اليمامة

### ملخص البحث

أنشطة صيد الحيتان التي تُجرى في اليابان هي أحد المواضيع المثيرة للقلق لمخالفتها للقانون الدولي وارتباطها بالبيئة. هذه الورقة العلمية تسلط الضوء على تاريخ اليابان كدولة في ما يتعلق بصيد الحيتان. حيث ان صيد الحيتان هو من ثقافة اليابانيين سكان الساحل. تحاول هذه الورقة تقدير موقف اليابان بشأن صيد الحيتان بعد انسحابها من اللجنة الدولية لصيد الحيتان في عام ٢٠١٩، وهي المنظمة التي تنظم أنشطة صيد الحيتان وتمنع الصيد لأغراض تجارية. تناقش الورقة العلمية الاتفاقيات والمعاهدات الرئيسية المتعلقة بصيد الحيتان والحيوانات المهددة بالانقراض. وتنتهي إلى ان صيد الحيتان لأغراض تجارية هو عمل غير قانوني، وأن بعض الدول مثل اليابان تسيء أستعمال حقها في صيد الحيتان لأغراض علمية. وأيضاً سلطت الورقة العلمية الضوء على ان الانسحاب من الاتفاقية المتعلقة باللجنة الدولية لصيد الحيتان لايعفي اليابان من التزاماتها الدولية بالمحافظة على البيئة ومنها عدم صيد الحيوانات المهددة بالانقراض مثل الحيتان سواء كان ذلك في المياه الدولية او الاقليمية. وأن في ظل صعوبة تطبيق وأنفاذ القانون الدولي، فإن الوعي المجتمعي أثبت ان له اثر كبير في الحد من صيد هذه الحيوانات ومنها الحيتان في اليابان. وتقتح هذه الورقة تعديل في الميثاق الدولي لتنظيم صيد الحيتان ليتم وضع عدد محدد من الحيتان المسموح صيدها في كل عام لأغراض علمية بما لايتعارض مع حمايتها من الانقراض. وهو ماقد يساهم في الحد من الخلافات الدولية مثل التي حصلت بين اليابان ودول اخرى.

**كلمات مفتاحية:** صيد الحيتان، الاتفاقية الدولية لصيد الحيتان، اتفاقية الأمم المتحدة لقانون البحار، التنوع البيولوجي، القانون الدولي.

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Dr. Mohamad Almohawes

مجلة علمية محكمة

المجلة القانونية (مجلة متخصصة في الدراسات والبحوث القانونية)

### 1. Introduction

Japan remains in a small group of nations whose whalers have continued hunting whales. Since 2019 and after Japan's withdrawal from the International Whaling Commission (IWC), an organization focused on protecting whales and imposing restrictions on whaling activities, Japan has switched to more commercial whaling as opposed to scientific whaling. Currently, Japan's commercial whale activities are conducted within her exclusive economic zone (EEZ), though the efforts to conserve whale resources which have put most of the species under the endangered category.<sup>1</sup> For a country such as Japan, whaling is a centuries-old practice – making it both a cultural and an economic activity that can be traced back to the people who lived along its coasts.<sup>2</sup> Japan attempts to legitimate its whaling policy through discourses of culture and sustainability.<sup>3</sup> The state maintains that commercial whaling provides jobs and ensures cultural practices do not die out and has undertaken to manage whaling activities within its EEZ. This shows Japan's position on whaling as a distinct territorial conflict, where lawmakers underline the prerogative to self-govern in deciding how to utilize resources in national waters. But this has not earned Japan any sympathy, rather inversely so, its defenders and other nations have criticized its position with advocates of conservation. For instance, international treaties like the Convention on International Trade in Endangered Species (CITES) as well as other conservation agreements may

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<sup>1</sup> M Bowman, P Davies, and C Redgwell, *Lyster's International Wildlife Law* (Cambridge University Press 2010) 186.

<sup>2</sup> R Liu, C Sun, and D Chen, 'In the Name of Culture and Sustainability: A Discourse-Historical Approach of Japan's Whaling Policy' (2024) *Marine Policy*

<https://www.sciencedirect.com/science/article/abs/pii/S0308597X24004561>

accessed 11 November 2024.

<sup>3</sup> Ibid.

remain applicable on Japan for protecting endangered species which include the various forms of the whale species.<sup>4</sup>

## 2. Research questions and Methodology

This paper evaluates whaling in Japan, whether it is forthcoming with abating, and how are they viewed. The paper focuses on specific case studies as well as offers legal critiques. It draws from both primary and secondary sources. Primary Sources consist of international legal documents and treaties such as the IWC agreements, the CITES and others. Secondary Sources comprise of journal articles, histories, and policies.

## 3. A brief History of Whaling in Japan

Japan has a long history of whale hunting that goes back hundreds of years, from the traditions of the coastal populations that relied on fishing and hunting whales for food. The earliest determinable phase of this history, also known as “small-scale coastal whaling,” has existed through time recording local communities having hunted small numbers of whales in the vicinity of the shore.<sup>5</sup> At first, these techniques were rudimentary and manual, exhibiting community spirit and sustenance. Japan's Edo period saw the whaling traditions and the meat consumption respectably practiced by locals of whaling coasts between 1603 and 1867 but during the years of 1868 to 1912, the meat consumption practice was threatened when Japan as a country began to explore western customs including foods. Japanese as well as other communities

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<sup>4</sup> P Sand, 'Japan's "Research Whaling" in the Antarctic Southern Ocean and the North Pacific Ocean in the Face of the Endangered Species Convention (CITES)' (2008) 17(1) *Wiley Online Library* 56-71 <http://onlinelibrary.wiley.com/doi/10.1111/j.1467-9388.2008.00587.x/abstract> accessed 7 June 2013.

<sup>5</sup> A Endo and M Yamao, 'Policies Governing the Distribution of By-Products from Scientific and Small-Scale Coastal Whaling in Japan' (2007) 31(2) *Marine Policy* 169.

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started to lose the habit of consuming whale meat.<sup>6</sup> This era in its own terms also witnessed changes regarding nutrition and also the dependence on whale meat for survival.

Japan's whaling prehistory relevant to the first half of the 20th century is led by the second stage which is establishment of larger commercial whaling, enhanced by appropriate advance technology. During this stage the whaling industry underwent vast expansion throughout the country. During this period, whale meat became more available across Japan, which helped in its wider circulation and consequently its established lifecycle as a more reliable source of food especially in times of economic hardship and insecurity in terms of food supplies.

Pelagic whaling was resumed around Ogasawara in 1945 as well as expanded into Antarctic waters in 1946 as per the 'Priority Production System' instituted at the end of the Second World War.<sup>7</sup> This renewed activity on whale hunting was intended to fill the gaps of food shortages, especially within the Japan population, as it was a cheap source of protein. To do this, the Japanese government in conjunction with the Bank of Japan based on previous investment assistance set up a broad loan program. During this time, the program helped the fishing companies in Japan to obtain huge government backed loans and thus expand their commercial whaling businesses.<sup>8</sup>

There were, indeed, several reasons why these companies received financial support. First, it was to address a food shortage in the country by ensuring a reliable food supply. Second, it aimed to promote the export of whale oil which was valuable in earning foreign currency during that period.<sup>9</sup> Thirdly, the assistance contributed to the rehabilitation of major fishery resources and

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<sup>6</sup> Ibid.

<sup>7</sup> Ibid.

<sup>8</sup> Ibid.

<sup>9</sup> Ibid.

generation of employment. Finally, it was supposed to provide the nation with hope for the future in the post-Second World War period. However, Japan was able to experience strong industrialization growth in the 1960s which led to have alternatives to whale oil.<sup>10</sup> Many people started consumption of chicken and pork. Consequently, the whaling industry fast deteriorated, with consumption of whale meat significantly falling from 400,000 tons in 1973 to 100,000 tons by 1993.<sup>11</sup>

#### **4. Whaling under international law**

Whaling is one of the examples of a conflict at the intersection of environmental conservatism, culture, and international law. This is because of key international agreements such as the International Convention for the Regulation of Whaling (ICRW),<sup>12</sup> which started the IWC in 1946, aiming to strike a balance between whalers and biodiversity. One of the central policies in this international framework is the cessation of all commercial whaling which was put into place in 1986. This is supported by a number of treaties including the CITES, covering the trade of whale products, and the United Nations Convention on the Law of the Sea (UNCLOS), protecting whales from excessive hunting and ensures that they are protected. The following are the main agreements for the protection of whales.

##### **4.1 The International Whaling Commission (IWC)**

The International Whaling Commission (IWC) was formed in 1946,<sup>13</sup> and it is an international organization governing the

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<sup>10</sup> Ibid.

<sup>11</sup> Ibid.

<sup>12</sup> International Convention for the Regulation of Whaling (adopted 2 December 1946, entered into force 10 November 1948) 161 UNTS 72.

<sup>13</sup> International Whaling Commission (IWC).

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practice of hunting whales worldwide.<sup>14</sup> The IWC's main goal is to maintain a balance of whale stocks and thus, promote the sustainable growth of the whaling industry.<sup>15</sup> Commission consists of many member countries including Japan before its withdrawal. Due to technological developments and environmental movements that brought an international focus on the decreasing numbers of whales, a global ban on commercial whaling was first put in place in 1986.<sup>16</sup> While commercial whaling is indeed banned by the IWC, member countries of the ICRW can exploit certain clauses that render some of the IWC's conservation measures non-binding. For example, Article V(3) of the ICRW allows parties to formally object to specific management regulations.<sup>17</sup> The Japanese government exercised this option by lodging an objection to the commercial whaling suspension, thereby avoiding the ban and continuing certain whaling activities under the convention's provisions.<sup>18</sup> However, Japan later withdrew this objection after the United States threatened trade countermeasures.<sup>19</sup> Another significant exception is the "aboriginal subsistence whaling" clause in the ICRW Schedule, which permits certain nations to apply for an annual quota of whales to be hunted for traditional and subsistence purposes.<sup>20</sup>

<sup>14</sup> J Roeschke, 'Eco-Terrorism and Piracy on the High Seas: Japanese Whaling and the Rights of Private Groups to Enforce International Conservation Law in Neutral Waters' (2008) 20(1) *Villanova Environmental Law Journal* 99.

<sup>15</sup> Ibid.

<sup>16</sup> Animal Law, 'Overview of Laws and Regulations Protecting Whales' (2013) <http://www.animallaw.info/articles/ovuswhalelaws.htm> accessed 2 June 2013.

<sup>17</sup> International Convention for the Regulation of Whaling (adopted 2 December 1946, entered into force 10 November 1948) 161 UNTS 72, art V (3).

<sup>18</sup> A Hutchinson, 'Baleen Out the IWC: Is International Litigation an Effective Strategy for Halting the Japanese Scientific Whaling Program?' (2009) 3(2) *Macquarie Journal of International and Comparative Environmental Law* <no URL provided> accessed 4 June 2013.

<sup>19</sup> Ibid.

<sup>20</sup> Ibid.

The third clause, outlined in Article VIII of the ICRW, is the "scientific whaling exception."<sup>21</sup> This provision allowed Japan to initiate its first Whale Research Program under Special Permit in the Antarctic (JARPA) during the 1987-1988 Southern Ocean whaling season.<sup>22</sup> By withdrawing its objection to the IWC moratorium, Japan required authorization through a JARPA permit; without it, Japanese whaling companies would have been unable to resume whaling activities.<sup>23</sup>

However, Article VIII of the ICRW, termed the 'scientific whaling exception', should not be viewed as a means towards the practice of commercial whaling, which is banned by the IWC. Some Japanese whaling companies continued to make use of this exception.<sup>24</sup> Through these practices, Japan contended its activities of whaling when it was a member of the IWC, which was criticized by many countries.

#### 4.2 The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)

Japan is a member to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES),<sup>25</sup> an international agreement established to protect wild animal and plant species involved in international commerce.<sup>26</sup> Entered into force on July 1, 1975, the CITES was established to protect

<sup>21</sup> International Convention for the Regulation of Whaling (adopted 2 December 1946, entered into force 10 November 1948) 161 UNTS 72, art VIII.

<sup>22</sup> D Anton, 'Dispute Concerning Japan's JARPA II Program of "Scientific Whaling" (Australia v Japan)' (2010) 14(20) *American Society of International Law Insights* <https://www.asil.org/insights/volume/14/issue/20/dispute-concerning-japan%E2%80%99s-jarpa-ii-program-%E2%80%9Cscientific-whaling%E2%80%9D> accessed 7 June 2013.

<sup>23</sup> Ibid.

<sup>24</sup> Sand (n 2) 56-71.

<sup>25</sup> Convention on International Trade in Endangered Species of Wild Fauna and Flora (adopted 3 March 1973, entered into force 1 July 1975) 993 UNTS 243.

<sup>26</sup> P Sands, *Principles of International Environmental Law* (Cambridge University Press 2003) 506.



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endangered species while permitting trade in specified wildlife.<sup>27</sup> Many species listed in Appendix I of the Convention are either threatened with extinction including most great whale.<sup>28</sup>

All whale and dolphin species have been central to the Convention's trade controls under Appendix II.<sup>29</sup> Whales captured under Japan's JARPA programs include species listed as protected under the CITES. Despite this, many products derived from these protected "research whaling" species are available in Japan's fish markets. From 1988 to 2007, the whaling companies hunted more than ten thousand whales, most of these species listed in Appendix I of the CITES,<sup>30</sup> subject to commerce restrictions under Article 3 of the CITES.<sup>31</sup>

The parties of the CITES have, indeed, accepted the IWC for the regulation and conservation of whaling activities.<sup>32</sup> It was also in the year 2005 that Japan began its research activities and a lethal study of one of the endangered species in CITES annex I, which was the humpback whale through the JARPA II program.<sup>33</sup> Hence, the steps pursued by Japan to carry out whaling of humpbacks completely disregard the provisions of CITES.

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<sup>27</sup> Ibid.

<sup>28</sup> M Bowman, P Davies, and C Redgwell (n 1) 186.

<sup>29</sup> Sand (n 2) 56-71.

<sup>30</sup> Ibid.

<sup>31</sup> Convention on International Trade in Endangered Species of Wild Fauna and Flora (adopted 3 March 1973, entered into force 1 July 1975) 993 UNTS 243, art 3.

<sup>32</sup> D Baur and W Irvin, *Endangered Species Act: Law, Policy, and Perspectives* (American Bar Association 2010) 329.

<sup>33</sup> Anton (n 20).

### 4.3 The United Nations Convention on the Law of the Sea (UNCLOS)

Japan is also a member to the UNCLOS, passed in 1982 and was at that time called the most important global legislative done by the United Nations,<sup>34</sup> and it is probably the most in the entire history of the international legal order.<sup>35</sup> Entered into force in 1994, the UNCLOS shapes the principles regarding the activities in the oceans which include but are not limited to navigation, fishing, marine scientific research, and the exploration and exploitation of the deep seabed.<sup>36</sup>

There are specific obligations that are imposed on countries who have signed the UNCLOS .As per Article 238, the position of states regarding marine scientific research is balanced with a number of obligations that they have.<sup>37</sup> To begin with, Article 120 of the UNCLOS contains provisions which according to Tom Ricketts and Michael Potter (2010),<sup>38</sup> affords protection to all marine mammals, thus, it includes all species of whales.<sup>39</sup> Secondly, it is provided in Article 271 of the UNCLOS that compliance with the guidelines of International Whaling Convention (IWC) is mandatory.<sup>40</sup> It means that regardless of Japan's withdrawal from the IWC, it is required to respect its rules.<sup>41</sup> In addition, it is recognized that the obligations imposed by

<sup>34</sup> United Nations Convention on the Law of the Sea (adopted 10 December 1982, entered into force 16 November 1994) 1833 UNTS 3.

<sup>35</sup> J Harrison, *Making the Law of the Sea: A Study in the Development of International Law* (Cambridge University Press 2011) 27.

<sup>36</sup> Ibid.

<sup>37</sup> UN, 'Oceans and Law of the Sea' (2001) [http://www.un.org/depts/los/convention\\_agreements/texts/unclos/UNCLOS-TOC.htm](http://www.un.org/depts/los/convention_agreements/texts/unclos/UNCLOS-TOC.htm) accessed 2 June 2013.

<sup>38</sup> United Nations Convention on the Law of the Sea (adopted 10 December 1982, entered into force 16 November 1994) 1833 UNTS 3, art 120.

<sup>39</sup> T Ricketts and M Potter, *The Cambridge Companion to Frege* (Cambridge University Press 2010) 82–83.

<sup>40</sup> UNCLOS (n 36) art 271.

<sup>41</sup> United Nations (n 35).

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the UNCLOS are of a higher standard than those under the IWC.<sup>42</sup> The UNCLOS has certain provisions that concern whales and other marine mammals. All member states have the duty to cooperate in conserving such species, both on the high seas and within the exclusive economic zones (EEZs) of coastal states.<sup>43</sup> Also, Article 240 of the UNCLOS and those which follow specify that marine scientific investigation is to be conducted in keeping with environmental restrictions.<sup>44</sup>

Japan's so-called "scientific whaling," according to the California-based organization, constitutes a violation of Article 300 of UNCLOS which obligate the performance of the specified acts in good faith and bar abuse of rights.<sup>45</sup> Through these frameworks, Japan is using forceful methods in its scientific research on whales and other vulnerable species that go beyond its rights.<sup>46</sup> This form of abuse constitutes infringement of the general principles of law recognized by the community of nations and also a violation of Article 300 of the UNCLOS making the whaling by Japan illegal.<sup>47</sup>

### 4.4 The Convention on Biological Diversity (CBD)

Japan is also a member to the Convention on Biological Diversity (CBD), entered into force on December 29, 1993.<sup>48</sup> The CBD defined variety of biological resources including but not limited to

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<sup>42</sup> Animal Law (n 12)

<sup>43</sup> Sand (n 2) 56-71.

<sup>44</sup> Ibid.

<sup>45</sup> UNCLOS (n 36) art 300.

<sup>46</sup> A Gillespie, *Whaling Diplomacy: Defining Issues in International Environmental Law* (Edward Elgar Publishing 2005) 122.

<sup>47</sup> R Lagoni, *Legal Aspects of Submarine High Voltage Direct Current (HVDC) Cables* (Transaction Publishers 1998) 24.

<sup>48</sup> Convention on Biological Diversity (adopted 5 June 1992, entered into force 29 December 1993) 1760 UNTS 79.

marine and freshwater ecosystems.<sup>49</sup> This includes diversity within species, between species, and amongst ecosystems.<sup>50</sup> All the parties to the treaty are obliged by Article 3 of the CBD requesting taking necessary actions for protection of biological resources and avoid the harm to the environment.<sup>51</sup>

According to Article 5 of the CBD each Party should, to the greatest extent cooperate with other parties, directly or through competent international organizations, as far as areas outside the limits of national jurisdiction are concerned and on other matters of common interest for the sake of the conservation and sustainable use of biological diversity.<sup>52</sup> According to this provision the cooperation has also become compulsory in regard to the conservation of biodiversity even in places outside the national jurisdiction. Additionally, Article 14 underscores the need to take account of the environmental effects of the undertaking of projects that are potentially troublesome to biodiversity.<sup>53</sup> Therefore, Japan's engaging in activities such as hunting which contributed to a significant drop in the populations of great whales in the world's oceans conflicts with the CBD.<sup>54</sup>

The CBD sets forth several responsibilities on the preservation and sustainable practices of biological diversity within Articles 6-9.<sup>55</sup> For instance, Article 6 requests that national planning for biodiversity conservation be adopted, Article 7 compels the mapping and tracking of biodiversity, whereas Article 8 elaborates on in-situ conservation.<sup>56</sup> Such provisions would apply to the

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<sup>49</sup> E Brans, *Liability for Damage to Public Natural Resources: Standing, Damage and Damage Assessment* (Kluwer Law International 2001) 395.

<sup>50</sup> Ibid.

<sup>51</sup> CBD (n 46) art 3.

<sup>52</sup> Ibid, art 5.

<sup>53</sup> Sand (n 2) 56-71.

<sup>54</sup> J Estes, D DeMaster, D Doak, T Williams, and R Brownell, *Whales, Whaling, and Ocean Ecosystems* (University of California Press 2007) 294.

<sup>55</sup> CBD (n 46) art 6-9.

<sup>56</sup> Convention on Biological Diversity, 'Text of the CBD' <http://www.cbd.int/convention/text/> accessed 5 June 2013.

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Japanese whaling practices in the Antarctic and northwest Pacific which include the extensive hunting of great whales, a prohibited marine species.<sup>57</sup>

As according to Article 5 of the CBD stresses the necessity to cooperate in areas of mutual interest.<sup>58</sup> Japan, however, in view of its scientific whaling operations is reported to have defied the said obligation as it has disregarded the request of the IWC contained in Annual Meeting Resolution 2005-1, to suspend its JARPA II program or alternatively, to adopt non-lethal methods for its so-called “scientific whaling” activities. Furthermore, BEP and BAT are also mandated by a number of international agreements.<sup>59</sup>

The CBD articles 5, 6 and 8 mentioned above assist in understanding the limitations and potential of the rights that the parties are provided under Article VIII of ICRW.<sup>60</sup> The lack of a sufficient impact assessment prior to engaging in the so-called scientific whaling raises concerns with the compliance with the CBD.<sup>61</sup>

### 5. International Response to Japan Whaling

Japanese’s whaling has obtained a lot of criticism from countries and organizations. The 2005 JARPA II whaling has provoked widespread concern from several countries and numerous

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<sup>57</sup> Sand (n 2) 56-71.

<sup>58</sup> Convention on Biological Diversity (n 45P)

<sup>59</sup> J Shadian and M Tennberg, 'Legacies and Change in Polar Sciences: Historical, Legal and Political Reflections on the International Polar Year' (Book review) (2009) *Northern Review* 138.

<sup>60</sup> C Shine and C Klemm, *Conservation on the High Seas: Harmonizing International Regimes for the Sustainable Use of Living Resources* (IUCN 1999) 27–39.

<sup>61</sup> S Borg, *Conservation on the High Seas: Harmonizing International Regimes for the Sustainable Use of Living Resources* (Edward Elgar Publishing 2012) 190.

environmental groups, including Greenpeace and the World Wide Fund for Nature (WWF), claiming Japan's activities were scientifically unjustified and posed an ecological risk to endangered species.<sup>62</sup>

In May 2010, Australia filed a case against Japan in the International Court of Justice (ICJ) stating that Japan's actions were not only in violation of the whaling moratorium but also lacked an acceptable scientific justification.<sup>63</sup> Australia wanted Japan to stop any whaling in the Southern Ocean. Japan was accused Japan of using the JARPA II theory southerly embraced as a cover for promoting their whaling which was a clear disregard of the ICRW obligations and their duty to protect marine mammals as Japan was a member to it.<sup>64</sup> In March 2014 the ICJ ruled in a favor of Australia, determining that Japan's JARPA II was not fulfilling scientific needs and instructing Japan to stop whaling activities.<sup>65</sup> The decision also stated that such allowances should be well defined, narrowly constructed, and scrutinized both critically and legally so as to conform to the purposes of global conservancy.<sup>66</sup>

A new program called NewREP-A has been launched by Japan in December 2015 and was a new version of Japan's whaling program, reducing the number of whales that would be killed, but maintains its lethal research under the same concept.<sup>67</sup> Japan explained that the NewREP-A was consistent with the demands of

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<sup>62</sup> World Wide Fund for Nature, 'World Court Ruling Reaffirms Protection of Southern Ocean Whales' (31 March 2014) [https://wwf.panda.org/wwf\\_news/?218836%2FWorld-court-ruling-reaffirms-protection-of-Southern-Ocean-whales](https://wwf.panda.org/wwf_news/?218836%2FWorld-court-ruling-reaffirms-protection-of-Southern-Ocean-whales) accessed 9 November 2024.

<sup>63</sup> Y Tanaka, *The International Law of the Sea* (Cambridge University Press 2012) 232.

<sup>64</sup> A Roach and R Smith, *Excessive Maritime Claims* (3rd edn, Brill 2012) 533.

<sup>65</sup> WCG Burns, 'Reflections on the ICJ's Judgment in Whaling in the Antarctic' (2015) 45(3) *Environmental Policy and Law* 239–250.

<sup>66</sup> Ibid.

<sup>67</sup> Institute of Cetacean Research, 'Outline of the New Scientific Whale Research Program in the Antarctic Ocean (NEWREP-A)' <https://www.icrwhale.org/NEWREP-AgaiyouEng.html> accessed 9 November 2024.

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the ICJ.<sup>68</sup> However, strong international reaction and pressure was placed on Japan as the program was viewed as just another attempt of Japan continuing with its past practices.<sup>69</sup>

Due to international pressure on Japan and the request to comply with its obligations under the IWC, Japan withdrew from the IWC in December 2018. Then, it resumed the commercial hunt for whales within its jurisdiction, since it was not in agreement with the IWC which seemed to prioritize the protection of whales rather than their sustainable use.<sup>70</sup> This choice was met with heavy criticism internationally.

The United States reiterated their disappointment and indicated that this move compromises worldwide conservation efforts.<sup>71</sup> Furthermore, the EU voiced its discontent with Japan's action and called upon the authorities to return to the IWC prohibiting the practice of commercial whaling.<sup>72</sup> Furthermore, after Japan's announcement in July 2019 to resume commercial whaling activities, Australia together with New Zealand, and other countries, issued a statement in which they expressed dissatisfaction with what Japan has done and called on the country to regain its position in the IWC.<sup>73</sup> This statement addressed the

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<sup>68</sup> Institute of Cetacean Research, 'Response to the ICJ Judgment: NEWREP-A's Consistency with the ICJ Guidelines' (2015) <https://www.icrwhale.org/pdf/SC66bSP05.pdf> accessed 9 November 2024.

<sup>69</sup> Australian Government Department of Foreign Affairs and Trade, 'Joint Statement Calling for Japan to End Lethal Research Whaling in the Southern Ocean' (2016) <https://www.dfat.gov.au/news/media/Pages/joint-statement-calling-for-japan-to-end-lethal-research-whaling-in-the-southern-ocean> accessed 9 November 2024.

<sup>70</sup> Ministry of Foreign Affairs of Japan, 'Japan's Withdrawal from the International Whaling Commission' (2018).

<sup>71</sup> US Department of State, 'Statement on Japan's Decision to Withdraw from the International Whaling Commission' (2019).

<sup>72</sup> European Commission, 'EU Statement on Whaling' (2019).

<sup>73</sup> Ministry of Foreign Affairs and Trade of New Zealand, 'Joint Statement Condemning Japan's Decision to Resume Commercial Whaling' (2019).

issue of global whaling and emphasised the importance of protecting the marine ecosystem.<sup>7</sup>

## 6. Environmental justifications for limiting whale hunting

The hunting of whales shall be limited not only for legal reasons but also environmental. Whales are vital for the balance of the marine ecosystem. This is because they are not only fundamental to life in the oceans but are also essential for life on earth. Whales apply a profound influence on the marine environment in a very distinct way. Their nutrient recycling activities nourish primary production by spreading over the ocean surface nutrients required for the growth of phytoplankton, the primary producers in the aquatic food chains.<sup>74</sup> According to Roman and McCarthy, whales improve the productivity of oceans through the excretion of nitrogen-rich fecal plumes, that enhance the growth of phytoplankton. In the Gulf of Maine, this nitrogen input is more than that coming from rivers, hence whales are critical to the ecosystem.<sup>75</sup> In addition, whaling activity during the previous centuries decimated the whales' population, which in turn affected the ocean comprehensively, thus the necessity to protect them.<sup>76</sup>

Natural death processes like sinking contribute to the ocean floor processes, essentially carbon storage and helps in reducing climate change as carbon sequestration. Furthermore, their remains provide a lot of nutrients to deep-sea creatures boosting rich biodiversity in the lower parts of the oceans which means that whales sustain a variety of ecosystems in return.<sup>77</sup> According to Smith and Baco,

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<sup>74</sup> Joe Roman and James J McCarthy, 'The Whale Pump: Marine Mammals Enhance Primary Productivity in a Coastal Basin' (2010) 5(10) *PLOS ONE* e13255 <https://doi.org/10.1371/journal.pone.0013255> accessed 6 November 2024.

<sup>75</sup> Ibid.

<sup>76</sup> Ibid.

<sup>77</sup> Craig R Smith and Amy R Baco, 'Ecology of Whale Falls at the Deep-Sea Floor' (2003) 41 *Oceanography and Marine Biology: An Annual Review* 311–354.



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مجلة علمية محكمة

المجلة القانونية (مجلة متخصصة في الدراسات والبحوث القانونية)

the remains of whales at the bottom of the sea create habitats conducive for communities of different ecological phases: scavenger and enrichment opportunist. These stages support various organisms at the deep sea, where whale falls work as bridges dislodging organisms and enhancing species evolution.<sup>78</sup> The research emphasizes the importance of marine mammal carcasses for biodiversity and the functioning of the deep-sea ecosystems.<sup>79</sup>

The preservation of whale populations is not only the focus of a distinct species but also concerns the systems, complex and interconnected which support terms of life in oceans. Lavery and other scholars overturn the notion that there is a competition between whales and fisheries.<sup>80</sup> They explain how blue whales increase marine productivity by the discharge of iron-rich feces that is beneficial in the growth of phytoplankton in the relatively nutrient-deprived Southern Ocean waters.<sup>81</sup> This reproduction promotes the growth of krill, algae and other life forms, thereby enhancing the entire food web. Therefore, the whales enhance the productivity of the ecosystem and bolster the fisheries instead of competing with them.<sup>82</sup>

### 7. Enforcement Challenges in Limiting Whaling Activities

Although there are already strong legal and environmental measures for the protection of whales such as international treaties and conventions, as well as, global conservation efforts, control of

<sup>78</sup> Ibid.

<sup>79</sup> Ibid.

<sup>80</sup> Trish J Lavery and others, 'Whales Sustain Fisheries: Blue Whales Stimulate Primary Production in the Southern Ocean' (2014) 30(3) *Marine Mammal Science* 888–904 <https://doi.org/10.1111/mms.12108> accessed 6 November 2024.

<sup>81</sup> Ibid.

<sup>82</sup> Ibid.

whaling activities has continued to be a major problem. There are several challenges impeding the enforcement of international law such as that IWC with other treaties protecting whales. Mainly, due to no compulsory enforcement and overlapping jurisdictions. To clarify, the IWC has no power to sanction any state breaching the agreement, the moratorium on commercial whaling. Therefore, the member state may take advantage of the provisions of the ICRW, such as Article 8 which allows undertaking of “scientific research”, or simply withdrew from the agreement, as the case for Japan in 2019. Moreover, the IWC also does not enforce any punishment which also makes it impossible to monitor the member states and regulate their whaling activities.

Other international treaties such as CITES, UNCLOS and CBD, in addition, have enforcement gaps when it comes to protection of whales. While these treaties provide obligations for sustainable development and management of marine resources, very few are effective in punishing offenders. For example, CITES prohibits trade around the world, against the countries included in the list of whale products. However, there two main issues.<sup>83</sup> One is that enforcement goes back to individual countries. Two it cannot prohibits the trade of whales meat inside the country, like the case of Japan, as the international community has little power to do so. Likewise, while UNCLOS highlights the protection of marine biodiversity, it lacks consequences for countries embarking in excessive or illegal whaling activities.

International law is not very efficient when it comes to providing forced measures or consequences for violators. The lack of central power, which is needed to guarantee compliance with international norms, makes such expectations somewhat optimistic. For instance, CITES can impose trade penalties on non-compliant countries, but such measures are rarely taken due to lack of

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<sup>83</sup> United Nations Office on Drugs and Crime, 'CITES and the International Trade in Endangered Species' (2024) <https://www.unodc.org/e4j/en/wildlife-crime/module-2/key-issues/cites-and-the-international-trade-in-endangered-species.html> accessed 9 November 2024.

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political motivation. Unlike UNCLOS, which allows for enforcement through international litigation requiring a large amount of political and financial resources, the CBD does not have any enforcement mechanisms and is based on the good will of the parties to reach the biodiversity targets. Illegal whaling is indicative of the discoordination between objectives and action, underscoring the necessity of advancing international participation within its framework.

However, regardless of lack of enforcement of international agreements to protect whales, in the last 60 years whale meat consumption in Japan has seen decrease from its highest point of 233,000 tons in 1962 to roughly 2,000 tons a year.<sup>84</sup> After the World War II, whale meat was consumed widely as a post-war food shortage solution but today other meat sources such as beef or chicken became much more inexpensive. Indeed, organizations such as 'Greenpeace' and 'WDC' have noted the environmental and ethical issues encompassing the act of whaling which has had an impact to a particular part of urban areas as well some environmentally responsible consumers.<sup>85</sup> In addition, the older age people and people from whaling regions would more likely support whaling, whereas educated women and men would be more opposed.<sup>86</sup> In contrast, some studies shows that the attitudes of Japanese young people in the age group of 15 to 26 showed that

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<sup>84</sup> 'Whale Meat Vending Machines Push Sales in Japan' (VOA News, 24 January 2023) <https://www.voanews.com/a/whale-meat-vending-machines-push-sales-in-japan/6938047.html> accessed 9 November 2024.

<sup>85</sup> Greenpeace, '10 Reasons to Not Kill Whales' (Greenpeace International, 21 February 2017) <https://www.greenpeace.org/international/story/18358/10-reasons-to-not-kill-whales/> accessed 9 November 2024.

<sup>86</sup> M Wakamatsu, H Nakamura, and S Managi, 'The Value of Whaling and Its Spatial Heterogeneity in Japan' (2022) *Marine Policy* <https://kyushu-u.elsevierpure.com/en/publications/the-value-of-whaling-and-its-spatial-heterogeneity-in-japan> accessed 11 November 2024.

the majority of youth support whaling for two main reasons, a cultural practice and to support the state's whaling activities.<sup>87</sup>

## 8. Conclusion

To conclude, Japan's whaling activities have developed from cultural activities to a commercial industrialist exploitative activity. However, Japan has faced increasing international censure for its actions on the basis of law and environment. Whales have earned specific and stringent protections through international legal instruments such as the IWC, CITES, UNCLOS and the CBD due to their crucial role in the ecosystem and the impact of whaling on other parts of the ocean environment. In addition, there has been a consolidation of opinions regarding the need to limit whaling, mainly to conserve a certain level of biodiversity and to recognize the functional attributes of whales, enabling them to be significant players in marine ecosystems due to nutrient cycling and in carbon sinks and promoting life in the oceans. Japan's withdrawal from the IWC and insistence on killing whales within its jurisdiction did not obtain acceptance around the world. Japan's stance illustrates the conflict that exists between national culture and conservation goals. Legal and environmental factors still threaten very much any future whaling activity in Japan and calls for a more conciliatory context that is sensitive to culture and the environment.

This paper proposes an amendment to the ICRW to set a specific number of whales that may be hunted each year for scientific purposes, without conflicting with their protection from extinction. This may contribute to reducing international disputes such as those that occurred between Japan and other countries. Japan claimed that its hunting was for scientific purposes, and this was questioned by other countries.

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<sup>87</sup> Julia Bowett and Pete Hay, 'Whaling and Its Controversies: Examining the Attitudes of Japan's Youth' (2007) *Science of the Total Environment* <https://www.sciencedirect.com/science/article/abs/pii/S0048969719321175> accessed 11 November 2024.

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