

CHAPTER I

INTRODUCTION

1.1 Background

International law, considered a theme in international relations, is helpful in addressing jurisdictional issues which arise when different states engage in international cases that involve several global actors and factors. International law's primary goal is to encourage further justice, peace, and the common good. One of the many important aspects of international law is the international law of the sea which establishes the framework for maritime activity and is involved with matters that affect the stability of states while providing a set of norms, responsible for the behavior within maritime affairs. It also sets out guidelines for navigation and conservation.

Within the field of international law of the sea, many issues have emerged as a result of inconsistent human actions for instance overfishing, the taking of marine life at rates that make it impossible for species to repopulate. It can cause problems within the chain and can set off a series of events that are harming other marine animals as well as the biological system that makes up the primordial and fragile balance of the sea. As one of the most urgent and heavily talked issues is unsustainable fishing is the issue of whale hunting in Japan. Whaling activities in Japan began as early as the 12th century utilizing hand harpooning with stone spearheads as premature methods of hunting in Taiji.¹ At that time, Norway, another

¹ “History of Whaling|Japan Whaling Association.” n.d. [www.whaling.jp](http://www.whaling.jp/english/history.html).
<https://www.whaling.jp/english/history.html>.

state that hunted down whales regularly, began to develop safer and more modern practices of hunting, but in 1871 and 1876, incidents took out the lives of several whalers, forever changing Japan's perspectives on whaling methods.² In 1906, Japan fully implemented its new systematic and upgraded operation through the creation of a modern whaling outpost in Ayukawa, marking the beginning of comprehensive advanced whaling in Japan. During the post-war era, General Douglas MacArthur, who oversaw the ruling of Japan during a post-Allies settlement, had to deal with a real problem which was the problem of food shortage, so he came to the conclusion that Japan should acquire its nutrients from the sea, coming up with the idea of dispatching a whaling expedition to the Antarctic, bringing a new chapter of scientific whaling in Japan. A decade after the Second World War, whale protein was the least expensive animal type of protein. Whale flesh was the primary source of animal protein for the Japanese up until the middle of the 1960s. Around 154,000 tons of whale meat were hunted and eaten domestically in the 1960s, as reported by the Ministry of Agriculture, Forestry, and Fisheries' Food Balance Sheet. The annual usage for the following ten years, in the 1970s, occasionally topped 200,000 tons of whale meat.³ Expansion of the whaling business began in full force after 1951 when Japan's sovereignty was restored as a result of the signing of a Treaty of Peace with the Allied Powers.⁴

² *Ibid.*

³ "Whale Meat No Longer a Major Protein Source in Japan." 2019. Nippon.com. January 7, 2019. <https://www.nippon.com/en/features/h00361/>.

⁴ Sumi, Kazuo. 1989. *The Whale War between Japan and the United States: Problems and Prospects*. 7th ed. Vol. 17. Denver Journal of International Law and Policy. <https://digitalcommons.du.edu/cgi/viewcontent.cgi?article=1912&context=djilp>.

As times were leading to a more progressive world, so were the international frameworks for whale hunting. The international community was starting to become ‘bothered’ by the lack of control and awareness of whaling activities, sparking a very controversial debate between states that practiced whale hunts, such as Japan, and states that were willing to protect and safeguard such creatures.

An agreement was necessary in order to regulate and set quotas for the number of whales being hunted. For that, the International Convention on the Regulation of Whaling (ICRW) opened for signatures in 1931, and was originally signed by 22 nations. Original members included Argentina, Australia, Brazil, Canada, Chile, Denmark, France, the Netherlands, New Zealand, Norway, Peru, South Africa, the Soviet Union, the United Kingdom, and the United States. The ICRW, which was ratified and officially implemented in Washington, DC, on December 2, 1946, also provides the framework for the establishment of the International Whaling Commission (IWC).⁵ The IWC, ushered by the United States, is a voluntary organization with the goal to ensure that whale stocks are properly safeguarded, allowing the whaling business to flourish in a controlled manner. Japan joined the IWC in 1951 to improve its position in the world community, allowing Japan to properly rebuild during the post-war era together with other states.⁶

⁵ “History and Purpose.” n.d. Iwc.int. <https://iwc.int/commission/history-and-purpose>.

⁶ Ministry of Foreign Affairs of Japan. n.d. “MOFA: MANAGEMENT of CETACEAN RESOURCES - What Is the IWC ?” Wwww.mofa.go.jp. Accessed August 16, 2022. <https://www.mofa.go.jp/policy/economy/fishery/whales/iwc/what.html#:~:text=Japan%20joined%20the%20IWC%20in%201951>.

In 1982, the IWC imposed a whaling moratorium for all member states however, like other Nordic countries, Japan used its veto power to register a legal objection so that it could be free from such a deal.⁷ Japan later withdrew its objection in 1985 in response to American pressure, but from 1987 until 2019 it engaged in "special permit scientific whaling" which is allowed by the IWC's founding convention to allow scientific research but was never meant to be used to assist commercial whaling. Japan noted that Iceland, another notorious state that constantly hunted down whales, similarly 'got away' without much diplomatic trouble.⁸ Since the creation of the moratorium in 1986, Japan had killed 15,613 whales in the Antarctic.⁹

When we talk about the environment and ecosystem there is no doubt that whales aid the management of the food chain by preserving a stable food chain population and ensuring that some animal species do not overcrowd the ocean, as well as the ocean's ecology. For example, a blue whale can eat up to 40 million krill.¹⁰ If whales were not here, other marine species would surely overpopulate the ocean with an unhealthy amount. Whales are essential for healthy oceans because, with seawater, whales disseminate nutrients, and help mitigate the effects of climate change. Whales basically assist in the growth of phytoplankton, which removes

⁷ "Commercial Whaling." n.d. Iwc.int. Accessed August 16, 2022. <https://iwc.int/management-and-conservation/whaling/commercial#:~:text=The%20>.

⁸ Holt, Sydney. 2003. "The Tortuous History of "Scientific" Japanese Whaling." Academic.oup.com. Oxford Academic Bioscience. March 3, 2003. [https://doi.org/10.1641/0006-3568\(2003\)053\[0205:TTHOSJ\]2.0.CO;2](https://doi.org/10.1641/0006-3568(2003)053[0205:TTHOSJ]2.0.CO;2).

⁹ "Commercial Whaling: Unsustainable, Inhumane, Unnecessary." n.d. <https://reports.eia-international.org/keeptheban/>.

¹⁰ Roman, Joe, James A Estes, Lyne Morissette, Craig Smith, Daniel Costa, James McCarthy, JB Nation, Stephen Nicol, Andrew Pershing, and Victor Smetacek. 2014. "Whales as Marine Ecosystem Engineers." *Frontiers in Ecology and the Environment* 12, no. 7 (September): 377–85. <https://doi.org/10.1890/130220>.

carbon from the atmosphere, resulting in a safer and greener breathing habitat for all species.¹¹

Despite the creation of the ICW and ICRW, the level of non-compliance is still present in countries like Japan. Japan's ships have killed roughly 1,500 Sei Whales for so-called “science” in the last sixteen years alone, but then sell whale meat in restaurants, shops, and even online. The majority of Japanese citizens are not interested in purchasing any whale meat, thus a lot of the flesh winds up in cold warehouses and stockpiles every year.¹² Scientific whaling does not have a specific definition, however, it is somewhat defined by Article VIII of the Convention which states: “Any Contracting Government may grant to any of its nationals a special permit authorizing that national to kill, take and treat whales for purposes of scientific research.”¹³ Although stated in the Convention, Japan still managed to find loopholes by taking advantage of the vague definition of “scientific whaling.”

That being said, seeing the non-compliance level regarding the issue, non-state actors play a fundamental role in international relations by strengthening current frameworks. Such actors are players who do not represent the state, yet are important enough to be relevant and act on the international stage.¹⁴ Over the course

¹¹ “Why Are Whales Important? Why Should We Protect Them? | Whales Online.” 2016. Baleines En Direct. March 4, 2016. <https://baleinesendirect.org/en/why-are-whales-important-why-should-we-protect-them/>.

¹² Project, International Marine Mammal, and Mark Palmer. “CITES Rules Japan Whaling Violates International Law.” *International Marine Mammal Project*, 8 Oct. 2018, <https://savedolphins.eii.org/news/cites-rules-japan-whaling-violates-international-law>

¹³ Mangel, Marc. “Whales, Science, and Scientific Whaling in the International Court of Justice.” *Proceedings of the National Academy of Sciences*, vol. 113, no. 51, 31 Oct. 2016, pp. 14523–14527, <https://doi.org/10.1073/pnas.1604988113>. Accessed 30 Aug. 2022.

¹⁴ Nevada, Teale, and Phelps Bondaroff. 2013. “DIRECT ENFORCEMENT on the HIGH SEAS: THE STRATEGY of the SEA SHEPHERD CONSERVATION SOCIETY the Degree of Doctor of Philosophy in Politics and International Studies.” <https://www.repository.cam.ac.uk/bitstream/handle/1810/316723/Teale%20Phelps%20Bondaroff>

of time, the IWC has always tried to act as a relevant organization by applying its laws at sea. However, not much progress has been carried out and shown. Because of this, a prominent non-profit organization in fighting whale hunting, called the Sea Shepherd Conservation Society (SSCS) arose. SSCS attempts to fill the silence in the IWC community regarding Japanese whaling and has a very influential role as a non-state actor in the scientific whaling problem. The Sea Shepherd has been one of the most vocal organizations advocating for marine life, like whales. Sea Shepherd, in particular, is known for its anti-whaling expeditions at sea. SSCS uses a range of non-violent tactics to disrupt Japanese whaling operations, including assaulting ships, and throwing smoke grenades onto decks, while using nylon rope to block engines.¹⁵ The organization continues to monitor whalers in the Atlantic through its “Operation Zero Tolerance” and “Operation Relentless” with the aim of intercepting Japanese whalers and blocking whale hunting ships. The SSCS ships dropped six liters of butyric acid onto the Nisshin Maru's flensing deck in 2007. The noxious odor emptied the flensing deck and put an end to the work of slaughtering up whales on a temporary note. Because of that, the SSCS is considered the most active NGO in addressing the whaling issue.¹⁶

In addition, another important non-governmental organization that is going against the so-called “scientific” whaling methods is Greenpeace. In 1975, from

[%20-%20Direct%20Enforcement%20on%20the%20High%20Seas%20-%20Thesis.pdf?sequence=1&isAllowed=y.](#)

¹⁵ Hoek, Andrew. 2010. “Sea Shepherd Conservation Society v. Japanese Whalers, the Showdown: Who Is the Real Villain?” *Hoek Stanford Journal of Animal Law & Policy* / 3. <https://law.stanford.edu/wp-content/uploads/2018/05/hoek.pdf>.

¹⁶ Petschow, Ariane. 2014. “Sea Shepherd - Communicating Operation Relentless.” *Www.academia.edu*, February (February). https://www.academia.edu/6062340/Sea_Shepherd_-_Communicating_Operation_Relentless.

Vancouver's piers, Greenpeace began the first anti-whaling campaign in history. The trip would eventually assist in establishing a global ban on commercial and scientific whaling and serve as the catalyst for the "Save the Whale" movement.¹⁷ Though not as vocal and active as Sea Shepherd, the movement has definitely left a mark within the global community, contributing to spreading awareness and the gravity of the issue.

Though the IWC has provided laws as a backup to support the efforts, in a way, Sea Shepherd also has not successfully been able to protect whales as well, managing to only slow down the process of hunting whales. The SSCS' methods are not sustainable and can only be done sporadically. The ICRW has set several clauses that can be used by Japanese whaling as the basis. For instance, protecting aboriginal whaling and allowing whales to be collected for scientific purposes are both grounds for whaling that are outside of the quotas.¹⁸ However, such special permit is exploited by Japan. The tension between Japan and the ICRW is an ongoing tug-of-war, making the issue a critical subject to be discussed. Whales belong to healthy ecosystems, however, that cannot be achieved if international stability is not reached. The ecosystem is an environment that is exploited heavily by humans, which is why through this research it is crucial to highlight the causes and create possible solutions to the level of compliance towards the ICRW in order to achieve a more sustainable environment. Thus, I plan to conduct the research

¹⁷ Stelios, Sebastian. "“Save the Whales” 35th Anniversary." *Greenpeace USA*, 27 Apr. 2010, www.greenpeace.org/usa/save-the-whales-35th-anniversary/#:~:text=On%20April%2027%2C%201975%2C%20Greenpeace.

¹⁸ Fitzmaurice, Malgosia. n.d. "INTERNATIONAL CONVENTION for the REGULATION of WHALING." https://legal.un.org/avl/pdf/ha/icrw/icrw_e.pdf.

entitled **“Analyzing the International Convention for the Regulation of Whaling (ICRW): Case Study on Japan’s Non-Compliance (2006–2019).”**

1.2 Research Question

The ICRW has been recognized around the world for its efforts in the fight against the so-claimed “Japanese Scientific Whaling.” The following thesis will dig deeper into the ICRW and its products and efforts. Seeing the challenge of monitoring international waters, international law is one of the most influential factors within the international relations sphere. International law sets up regulations that clearly states norms of behavior and conduct on navigation, fishing, and other maritime issues, allowing the maritime environment to be properly governed. Though the ICRW is a prominent actor in the whaling issue, the ICRW still faces challenges when it comes to law enforcement and effectiveness. In fact, the issue has sparked controversial debates with several arguments. With this, I would propose the following research questions to be broken down extensively throughout this thesis:

1. What are the push factors of Japan’s non-compliance with the International Convention for the Regulation of Whaling?
2. What necessary measures can be taken to strengthen the International Convention for the Regulation of Whaling?

1.3 Research Objective

This thesis is aimed to reveal the discrepancies in international law that have been circulating around this controversial issue. International law is much needed in order to govern the global environmental community, however, it is frequently showing that it is not working in regard to the protection of whales. Therefore, the first question will attempt to achieve the preservation of whales by analyzing the factors involved in the non-compliance to the ICRW from Japan's side. Secondly, it will attempt to create a solution for the preservation of whales through potential measures that could be taken to strengthen the ICRW itself. Common ground is a requirement if whales have the necessity to be preserved for the sake of all parties that include the ICRW and Japan. The relationship is considered a tug of war between countries that highly value such historical practice and international organizations like the IWC, which is why it is fundamental to determine a solution to such dilemma while also taking into consideration international cooperation and laws.

1.4 Research Significance

I believe this issue is an important problem that needs more attention on the international stage. Whales belong to the crucial biodiversity system which creates a healthy environment, and if such creatures are endangered, we can say that the planet is at risk as well. When one factor in the eco-marine system outbalances another, it will surely create imbalances and deficiencies within the oceans. It is also crucial to highlight, expose, and acknowledge the practice that ruins whales' population. Awareness of such an issue is needed to gain a better understanding of

the current situation as well as of the improvement in the protection of marine life like whales. I believe that through this research, IR scholars would better understand the significance of international law, norms, and compliance in critical maritime issues. Governments would be able to gain a deeper understanding and guide on future policy-making decisions when it comes to sustainability while also comprehending environmental problems on the maintenance of whales in the ecosystem. That being said, a level of transparency could be brought back, and the real truth can be exposed so that the people are aware of the urgency of the management of whales. If whale hunting practices continue at the current levels, the number of whales present in the oceans could decrease even to the level of extinction. With that in mind, if the IWC fails to act against such hunting methods, whaling cannot be controlled. There has been so much debate up to this day regarding this issue, making it a more urgent problem. As also mentioned previously, whales constitute a fundamental role in the preservation of a healthy sea habitat which also affects the climate by absorbing CO₂. I expect readers to be mindful as human beings and to care for our oceans in any way possible, as they have long been exploited for human interests.

1.5 Structure of Writing

The first chapter of this thesis overall introduces the topic of research, its relevancy, and urgency while also highlighting its goal and instilling some important key points that are linked with the following chapter.

The second chapter of this thesis has two sections which are Literature Review and Theory and Concepts. The Literature Review will be used as the foundation for answering the question regarding Japan's factors for non-compliance to the ICRW. Theory and Concepts will also explain the framework that will be used as a basis for analyzing facts for this research.

The third chapter will focus on Methodology, which is the method used to conduct the research. This will include the research approach, the research method, data collection technique, and data analysis technique to compile information for this thesis.

The fourth chapter is the major focus of this research. It proposes the data collected while crafting arguments in accordance with theory and concepts to address and answer the research questions of this thesis.

The fifth chapter is conclusion and recommendation where the thesis offers a summary of the research and provides suggestions regarding the future of the research in question.