Whaling in Japan: The Political Perspective

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Contextualization

The International Whaling Commission (IWC) is the governing body for the International Convention for the Regulation of Whaling (ICRW), an environmental agreement signed in 1946 (Rolland, 2014). The purpose of the agreement was to “provide for the proper conservation of whale stocks and thus make possible the orderly development of the whaling industry” (International Whaling Commission, 1946, p. 1, para. 8). Unfortunately, Japan has failed to uphold that agreement, as has been ruled by the International Court of Justice (ICJ), due to exploitation of the ICRW.

Past Legislation

The IWC annually revises the ICRW’s Schedule, a document that governs whaling practices of the IWC’s member countries by setting whale catch quotas. Through the Schedule, the IWC enacted a 1985 commercial whaling moratorium by setting the quota for all whale catches to zero (International Whaling Commission, 2018, Classification of Stocks section, para. 10). This moratorium was expected to last a decade, but has continued into the present day due to growing concerns regarding whale conservation.

Japan claims to observe the moratorium, but continues to engage in commercial whaling practices through an exemption in the ICRW (International, 2010). Japan exploits Article VIII(1), which allows countries to issue special permits to whaling companies to conduct whaling for the purpose of scientific research during the moratorium (International Whaling Commission, 1946, Article VIII section, para. 1). Japan utilized this exemption for scientific whaling through their Japanese Whale Research Program under Special Permit in the Antarctic.
(JARPA) (Kedzlie, 2014; The Whaling, 2011). This program, which began in 1988, was expanded into JARPA II in 2005 and included lethal sampling methods (Rolland, 2014). The program also sold whale meat after conducting scientific research. Japan justified this commercialization under the ICRW’s Article VIII(2), which states, “Whales taken under these special permits.... shall be dealt with in accordance with directions issued by the Government by which the permit was granted” (International Whaling Commission, 1946, Article VIII section, para. 2). Thus, whales caught for scientific research may be sold at the discretion of the country’s government. Japan argued that the program must sell whale meat to fund research costs, yet JARPA II published only two peer-reviewed scientific papers before international intervention began (The Whaling, 2011; Kedzlie, 2014).

New Legislation

In 2010, Prime Minister of Australia, Kevin Rudd, brought a case against JARPA II to the ICJ (Kedzlie, 2014). He claimed a breach of good faith by the program by exploitation of the scientific whaling exemption (Rolland, 2014). The ICJ examined JARPA II’s use of lethal methods and the sale of whale meat following scientific research. They found areas of data collection that required lethal sampling methods, but ruled that Japan had not set a reasonable level for lethal sampling (Rolland, 2014). They also concluded that the sale of whale meat to subsidize a research program was legal and “did not invalidate the scientific purpose of a program” (Rolland, 2014, p. 498). The court ruled, based on the program’s disproportionate scale and lack of demonstrated care for whale stocks, that the JARPA II program was not justified under the scientific whaling exemption (The Whaling, 2011). They determined that Japan had abused the exemption and ordered Japan to end the JARPA II program in 2014. Countries that sought to use the exemption in the future would be required to show the IWC that any lethal
sampling methods were necessary (Scott & Oriana, 2014; Kedzlie, 2014). Following the ICJ ruling, Japan ended the JARPA II program, but announced that they would resume whaling under a new program (Kedzlie, 2014). However, this new program may continue to exploit the exemption, as according to Kedzlie (2014), “there is no incentive for Japan to comply and no mechanism to enforce compliance”, referring to the lack of enforcement policies in the ICRW.

ICRW Issues

Japan successfully exploited the scientific whaling exemption due to inherent issues in the ICRW. When the articles for the ICRW were drawn up in 1946, the United States insisted on the change of Article IX, which allowed the IWC to self-enforce the ICRW (Zemantauski, 2012). Now, the article states that the governments of each member country are responsible for the enforcement of the ICRW. The article reads, “Each Contracting Government shall take appropriate measures to ensure the application of the provisions of this Convention and the punishment of infractions against the said provisions” (International Whaling Commission, 1946, Article IX section, para. 1). As the Japanese government is working with whaling companies to issue scientific permits, there is no way for the IWC to prevent whaling in Japan, even if the country does not meet the new requirements to use the scientific whaling exemption (Zemantauski, 2012).

Future Implications

Japan’s circumvention of the moratorium was facilitated by the IWC’s inability to enforce its obligations. The exploitation of the ICRW by Japan has worrying implications for the power of the IWC over its members (Simmonds & Corkeron, 2016). Other pro-whaling countries could ignore the IWC’s decisions without consequence, as Japan did for years before
international intervention. The country’s actions are foreboding for the future of whaling and for international law.
References


