

Science, People & Politics

THE WORLD WE HAVE MADE FOR WHALES

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THE WHALES' WORLD

By Helen Gavaghan

ABSTRACT

The world whales live in is not the world they evolved to exist within. Hunted in some cases to the brink of extinction during the 19th and 20th Centuries the stock levels of some, but not all species, are recovering because of international and regional treaties and national laws. But all is not well in the world of whales. Of the legal constructs enveloping their lives, the principal relevant international law regulating their life is not about human and other biological co-existence with whales, nor about working with unfolding knowledge of evolution and genetics to create a common viable biological world. It is a Convention, subscribed to by fewer than half of the Member States of the United Nations, about the sustainable industrial exploitation of whales. Arguably, this Convention is a relic unable to function effectively for whale conservation in the modern era.

ARTICLE II

3. "Whale catcher" means a ship used for the purpose of hunting, taking, towing, holding on to, or scouting for whales;

[Note by editor, a protocol adds helicopters to this list.]

ARTICLE IX

2. "No bonus or other remuneration calculated with relation to the results of their work shall be paid to the gunners and crews of whale catchers in respect of any whales the taking of which is forbidden by this Convention"

The Schedule.

From the logbook template attached to the schedule 2018 as amended by the International Whaling Commission at its 67th meeting in Brazil in September 2018.

Type of first harpoon used: explosive, electric, non-explosive.

Type of killer harpoon used.

**International Convention for the Regulation of Whaling.
2nd December 1946. Washington DC**

The International Convention for the Regulation of Whales (ICRW) entered into force on 10th November 1948. This is a Convention which might be considered a selective pressure in evolutionary terms, one countering the depredation of commercial whaling. Though not all whaling nations are party to the Convention, analysis could show the ICRW is as impactful on the life of whales as are marine debris, oil spills and slicks, microplastics, ship strikes, by-catch, noise, stranding, climate-change driven alterations to ocean currents and physiochemical properties in marine and fresh water environments, entanglement in nets and other human-caused problems. Yet despite its importance the Treaty remains tied to the past, and is not necessarily comprehensive of all whaling activity, as Japan's withdrawal from the Convention this summer makes clear.

No-one knows yet how whales think, nor their decision-making processes, but unless they are biologically hardwired for their own painful death or painful death of others in their social group, it seems unlikely they would oppose reform of the ICRW. Were whales to be capable of exercising voting rights they might even suggest the Convention be repealed.

What does seem clear is that viewed from a human perspective the ICRW is not good news for whales. Yes, it is predicated on the argument that whales are a natural resource with stocks which need protecting. Yes, it has an article empowering an addendum (known as a schedule) which is integral to the Convention. That addendum has been applied to curb whaling by setting permitted catches to zero and providing sanctuaries. Yet unequivocally the ICRW is about proper conservation of whale stock for the orderly development of the whaling industry. That is embedded in the preamble in a manner which a jurist might call a cumulative concept (as opposed to being independent variables). That is why I have selected the two extracts above from the Convention. Not as anti-whaling polemic, but because there is no point seeking to accomplish an aim - such as conservation - which is diametrically at odds with the legal basis which empowers that scientific undertaking.

The ICRW does not say its reason for existence is conservation for humanitarian reasons, or that its intent is that future generations can enjoy watching whales. It does not say whale conservation for the sake of ecology or evolution. It says unambiguously in its preamble,

"Having decided to conclude a convention to provide for the proper conservation of whale stocks and thus make possible the orderly development of the whaling industry;"

Then in Article V, which is the article which has enabled the setting of the whale catch to zero, the Convention says aims expressed in the schedule empowered by Article V shall conform with the objectives and purposes of the Convention and provide for conservation and optimum utilization of whale resources. Though Article V has been applied to create zero-catch policies and non-lethal research into cetaceans, that same article permits countries

to not be bound by zero-catch policies if the country follows the proper procedure. While the ICRW remains as it is, it has one lawfully expressed aim: conserving whale stocks for sustainable processing of their bodies within an industry and thus *ipso facto* doing so for profit. In more recent years several groups, including the UK government, have advocated whale watching as an industry. In that case, every phrase of the ICRW is irrelevant and a new convention governing whale watching rather than whaling is needed. Some of the science - such as description of the environment in which whales live, their population levels and distribution, and mammal behaviour studies, and migratory patterns - are, of course, common to both activities. That is the nature of science. In and of itself it is value neutral. It is how science is applied and the research strategy adopted which is value laden. That inevitably raises the question of the extent to which the aim shapes research strategy.

Though not signed until 1946, the whaling regulation convention is law from an even earlier era; from a time when the fictitious Ahab of Moby Dick pursued in his madness the fictitious great whale. Sometimes non-fiction is too hard for the human mind to process. The reality in those times was that whales were rendered for corsets, oil - either edible whale oil or oil for fuel - as well as food.

Against that backdrop the ICRW and its predecessor regulations might well have seemed enlightened. The ICRW, for example, seeks to recover whale stock without nutritional hardship to people. The ICRW comprises 11 articles, one of which sets up the International Whaling Commission (IWC), which is headquartered near Cambridge in the UK. In line with the Convention, the IWC has established its own governance procedures. The Convention applies to whaling and factory ships, land stations and helicopters under the jurisdiction of the IWC's Members States. One hopes also a protocol might be added bringing drones under the IWC's control until the nations of the world decide whether whaling remains acceptable. If whaling eventually proves unacceptable to the peoples of the world, the IWC could be freed from the shackles of the Convention which brought it into existence, and the Commission assigned a function other than conserving whales for development of the whaling industry. Consideration could be given to the control of whale stock in some other way if that ever becomes necessary. Perhaps CRISPR-Cas technologies could control population levels, limiting breeding stock, and moulding

ecosystems not for human exploitation but rather for the wellbeing of the ecosystem itself, and all the members of its flora and fauna, and so for human beings also.

RELATIONSHIP TO THE UN

The IWC established by the ICRW is an Intergovernmental Organisation (IGO) compatible with UN bodies, but not within the framework of a specialised agency of the UN. See the United Nations System. Chief Executives Board for Co-ordination located at <http://unsceb.org>. The IWC has the capacity of a body corporate.

ZERO-CATCH POLICY

The UN had 193 Member States in 2011, of which fewer than half were signed up to the IWC. In 1985-1986 the IWC began a zero-catch policy on whaling in pelagic (open sea and ocean) waters. A zero-catch policy came into effect in coastal waters in 1986. This policy is not a ban or moratorium on whaling, as it is often portrayed. The zero-catch policies remain in place today, though certain IWC member countries which objected to the moratorium within the procedural allowances of the ICRW continued commercial whaling, according to the latest IWC official documents up to 2017. More recent official figures were not public on the IWC public-access website at time of going to press.

Members of the IWC give notice of details of their catches. There are three categories of exemption to the zero-catch policy: special permits for scientific research, commercial whaling under objection (to the zero-catch policy) and aboriginal subsistence catches. In 2017* under objection to the zero-catch policy Norway took 432 Minke Whales in the North East Atlantic, while Iceland took 17 Minke's in Icelandic waters. The aboriginal catch that year by Denmark comprised 2 Humpbacks, 8 Fin whales and 143 Minke. Russia took 119 Gray and one Bowhead whale. The US took one unauthorised Gray in Alaska and 57 Bowheads. St Vincent and the Grenadines took one Humpback. Japan issued special permits for 134 Sei and 462 Minke Whales. The Sei were taken in the North West Pacific and the Minke from Japanese waters, Antarctica and North West Pacific.

[See: Objection: https://iwc.int/table_objection Special permit: https://iwc.int/table_permit Aboriginal subsistence: https://iwc.int/table_aboriginal]

If humanity decides that those arguing the only morally acceptable exploitation of whales is whale watching are correct, then the Convention needs consigning to history. In its place the nations would need to state unequivocally that whaling is wrong in the same sense as war crime is wrong. The IWC would need to become a specialised agency of the United Nation and have all UN countries as members. If the moral status applied to whaling is not the same as that applied to armed conflict, how could an international treaty have application in coastal waters and the exclusive economic zones, as established by the UN Convention on the Law of the Sea?

In the Convention's place a research strategy could explore such things as migratory routes, and the outcome could be, for example, that shipping lanes are mapped in a way that does not lead to collisions between whales and shipping. Animal psychologists could evaluate the impact on animal behaviour of being tracked by boatloads of tourists. People cope with being under constant observation, who knows if all species of whales can? All the perils faced by whales can be tackled by an organisation - existing, or as yet unformed - which does not have as its *raison d'être* the regulation of whaling for development of the whaling industry. Already regional bodies such as the Agreement on Conservation of Cetaceans of the Black Sea, Mediterranean Sea and Contiguous Atlantic Area set the primary aim as being to achieve and maintain a favourable conservation for cetaceans. While the Convention on Conservation of Migratory Species of Wild Animals has as its purpose conservation and management of migrating species. Neither has a schedule specifying how many animals may be killed, and both seek compatibility with fishing rights and the free circulation of vessels.

So if it is true that there is no humane way to kill a whale those nations which insist on commercial whaling or on their aboriginal rights to subsistence whaling, or lethal practises in and for scientific research, and which are members of the United Nations, need to be censored for barbaric actions no matter where the whaling takes place or why.

Japan's case is fascinating and has seen debate about commercial whaling and scientific research into whales argued in great depth all the way to the International Court of Justice (ICJ). Australia submitted that Japan's whaling was commercial and not scientific as asserted by Japan, and thus contrary to the ICRW. In 2014 by majority the ICJ found for Australia.

Four years after the ICJ ruling that Japan's whaling activities in Antarctic waters were clearly commercial and at odds with its obligations as a signatory State to the IWC, Japan withdrew from the ICRW. The Court's judgement would have meant that crews on Japanese whalers could not lawfully be paid while Japan was party to the ICRW. Oddly, though Japan had objected properly to zero catch policies, the country chose to whale under the special permit exemption, and not since 1987 under lawful objection. Other countries have continued whaling under that objection, a fact which seems to have been hidden in plain view while condemnation was heaped on Japan. Withdrawal by Japan from the ICRW is causing the IWC some budgeting problems.

So international law truly does have the potential to impact the evolution of whales, other cetaceans and life in the oceans. International law if accepted and followed could be as powerful and positive a selection pressure as oil spills, plastic, discarded fishing nets, climate change, seabed nuclear explosions and volcanic eruptions. As scientific understanding advances of the nature of the brain of all mammals and animals, from the great apes to whales, and of their genetics, the time arguably has come to review the international and regional intergovernmental laws and conventions impacting their lives and their relationship to humanity within an Earth system which all species evolved within.

Further reading.

Whales have been used to make many products. Tendons have been turned into tennis racquets and whalebones into umbrellas. Whale oil has made margarine and sperm oil burned as lamp oil.

http://discovery.kcpc.usyd.edu.au/9.5.1/9.5.1_whale.html

The University of Sydney, Australia.

BOX. WHALE BIOLOGY

Whales belong to the phylogenetic order of Cetacea. Their fellow cetaceans include dolphins and porpoises. Though cetaceans live now in the oceans and seas, they have not always done so. Ancestors of whales once lived on land, and the closest living relative of a whale is a hippopotamus. Whales evolved more than 50 million years ago. Separately the hippopotamus evolved about 15 million years ago. Some whales are coastal. Some are pelagic. They divide into baleen whales which filter plankton and krill for food and toothed whales which chomp on fish and squid. A blue whale can grow to 100' long. Whales can drink saltwater. They have blowhole on the top of their head. Taste buds have not been found in whales. Their hearing is acute.

Genesis, an imagined illustration by Helen Gavaghan

