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LEVIATHAN: THE PROTECTION OF WHALES AND THE LIMITS OF INTERNATIONAL ENVIRONMENTAL LAW

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Research question: In what ways do efforts to protect whales and other cetaceans help expose the limitations of environmental international law?

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Introduction

International law governing whales and other cetaceans must be set within a context of multifarious human-nature interaction. Whales and other cetaceans have had a long and complex relationship with mankind: we have relied upon them for subsistence needs; exploited them for commercial and strategic gain; incorporated them into notions of identity; granted them religious, artistic and literary significance; researched them; admired them, and protected them. Although it is impossible to understand each of these in isolation, it is this final instance with which this paper is principally concerned. Whales and other cetaceans are essential to – and symbolic of – ecological sustainability; their protection is a global challenge requiring effective and comprehensive collaboration between states. It is thus a means of accessing the ways in which actors in the international system cooperate and conflict on seminal issues. Moreover, these issues must be addressed in unison; Keohane and Nye's understanding that world affairs are characterised by interdependence is valuable here (Keohane and Nye, 2012). Global politics, the environment and the whale are interconnected in this way; international laws governing each of these issue areas are influenced by those of the others. It is thus possible to pose the question:

> In what ways do efforts to protect whales and other cetaceans help expose the limitations of international environmental law?

In this way, the protection of whales via international law is important in two regards: practically and analytically. In real terms, many cetaceans are endangered and swift action is needed across the world in order to save many from extinction. This includes species with histories of commercial exploitation, such as fin and blue whales, as well as smaller species threatened by other anthropogenic activity, such as the vaquita porpoise and Maui's dolphin. International accord is needed for effective conservation of marine life that does not recognise state boundaries, exists outside national jurisdiction and is subject to transnational problems. This paper, however, extends such conservationist philosophy and adopts a preservationist attitude. The distinction between these perspectives has been elucidated by M J Peterson: conservation seeks species survival and ecological balance; preservation dictates a zero-tolerance for the killing of whales (Peterson, 1992). The protection of whales under international law is therefore a crucial recognition of their sentience, sociability and highly intelligent nature.

It is likewise important analytically. A critique of international efforts to protect whales can reveal aspects of the international system that help shape the ways in which states conceive of and govern environmental concerns. Indeed, it has been argued that environmental protection is not often prioritised (Held, 2003: 173): whales and the environment are too often understood as peripheral to more immediate national interests. An examination of protective efforts can thus reveal something of what governs the behaviour of international actors and what limits the efficacy of the laws they establish. Of particular relevance here is liberal institutionalist theory which propounds the agency of international regimes, conventions and accords in changing perceptions of interest by propagating certain norms or principles (Nye, 1988; Keohane, 1984, 1993). The impact of such normative and ideational factors is compounded when the elective and largely unenforceable nature of international law is considered. Also useful to contemplate, however, is logic of consequence and appropriateness behind state actions (March and Olsen, 1998; Krasner, 1999). The notion of malleable interests imbued in institutionalist and constructivist theory helps to dismantle this distinction between material and normative impetus. Collaborative legislation seeking the protection of whales can be understood in this light in that the extent to which institutions, such as the International Whaling Commission, protect whales is dependent upon the extent to which it can shape definitions of interest for its members embroiled in whaling or whale saving. Indeed, Charlotte Epstein has argued that the significance of discourse and identities in the IWC is such that it helps shape policy more than any other factor by changing the cost-benefit analysis for states wishing to construct themselves on a global stage (Epstein, 2008: 252-3). In this way, examination of whaling policy may have implications for international relations at a more general level. Assessment of the impact of policy, however, is coloured by the ideological orientation of the observer. This paper seeks to address the limits of protective efforts from an animal welfare and rights perspective: sentience and capacity for suffering mandates protection (Singer, 1977; Regan, 1983). The real term and analytical value of international efforts to protect whales are thus allied.

The research question above can be addressed by case study analysis of the historical development, current status and existing limitations of cetacean protection under international law, and these elements form the basis of the following chapters. In this way, the design is an 'intensive study of a single unit' (Gerring, 2004: 342) both through and with time. Research into the evolution of international whale-law is as crucial to its understanding as an investigation of the current framework for protection. They cannot be separated. Moreover, a

'holistic' approach will be complemented by 'embedded' cases (Yin, 2009: 50-2). An account of the institutional framework as a whole, comprised of a number of individual international accords and bodies, is better elucidated through occasional focus on its constituent parts. The 1946 International Convention on the Regulation of Whaling (ICRW) forms the primary research focus; also studied are the 1973 Convention on the International Trade in Endangered Species of Wild Fauna and Flora (CITES), the 1979 Convention on the Conservation of Migratory Species of Wild Animals (CMS), the 1992 Convention on Biological Diversity (CBD), the 1982 United Nations Convention on the Law of the Sea (UNCLOS), and the 2014 International Court of Justice ruling on Japanese whaling in the Antarctic (Australia v Japan). Each promise a means with which to assess the limits of international environmental law and can also be judged comparatively in order to demonstrate different features and flaws. The case study method is heavily descriptive, but with implications for international relations more broadly, as discussed above. This conforms to Yin's understanding of the method as a means to apply, test and build theory (Yin, 2009: 47-52). This study thus develops previous work concerned with the protection of whales in international law, but extending analysis into newer areas: P Birnie's seminal assessment of the role of law in protecting marine mammals was published after the introduction of important legislation (Birnie, 1986), but is now outdated. Moreover, although limitations to the framework were exposed and greater cooperation was advocated (Birnie, 1986: 143), conclusions were not set within a broader theoretical scope. This case study, conversely, seeks to draw out such implications.

It is further important to explain the use of the term 'whale' in this paper. Whale is both a biological and a folk taxonomy, pertaining to certain species of cetacean and to all simultaneously. Whale shall often be used in lieu of cetacean, just as is frequently the case in international institutions such as the International Whaling Commission as well as in popular discourses which seem to gloss the distinction. The synecdochal use of the term whale in this paper thus mimics that of international law and wider society.

Chapter One: How have efforts to protect whales and other cetaceans in international law emerged and developed?

Over the course of the 20th century efforts to protect whales under international law have proliferated in number and broadened in scope. Historically a case of unfettered exploitation under the freedom of the high seas, whaling has since been regulated, restricted and

prohibited in response to a burgeoning anti-whaling movement which, fuelled at first by economic concerns, has galvanised with the global crises of ecological sustainability and environmental ethics. Whales have come to be symbolic of the human-nature relationship (Sands, 2003: 590; Dorsey, 2014: 228): as protective legislation has emerged, it has demonstrated deeper flaws in the ways in which nations govern global problems. In this way, understanding the (limited) progress of international whaling law cannot be done in isolation: it offers a means with which to access domestic politics, global diplomacy, transnational movements, ecological context and cultural identities. This chapter seeks to chart the emergence protective efforts from national legislation and bilateral agreements between whaling nations in the early 1900s to the development of a diverse body of international law, both whale-specific and that which is more holistic or ecosystem-orientated. Moreover, it is important to establish that other phenomena are constitutive of this institutional progress: successes of international law may be attributable to non- and inter-governmental organisations; the media; cetologists or other environmental experts, and influential states. The protection of whales in international law has involved a host of global actors and dynamics.

The Beginnings: BC to 1946

Initial efforts to protect whales were gradual and piecemeal, growing out of national and bilateral legislation in the early 1900s (Epstein, 2008). Before these first steps towards regulation, however, whaling had a long and profitable history which is essential to understanding the reluctant progress of related law. Although the precise origins of the practice are uncertain, some scholars have traced it to 15000BC (Stoett, 1997). Traditional whaling, however, is believed to have begun in earnest during the Medieval Period, notably with the Basques in the Bay of Biscay, and was later dominated by Dutch, British, Norwegian, American and Japanese interests (Epstein, 2008: 29-30). Epstein distinguishes this traditional whaling from the era of modern whaling which followed the second Industrial Revolution in several significant ways: voyages became pelagic in nature with the introduction of steam powered factory ships, opening up Antarctic waters; technological advances such as the exploding-grenade harpoon and the stern-slipway made it possible to pursue faster species in rougher waters; and, instead of utilising every part of the whale, oil was the near exclusive concern of the industry (Epstein, 2008: 30-32). That is not to say, however, that traditional whaling was ecologically sustainable or economically ineffective. The Mayflower pilgrims noted that native communities thrived on drift whales, common due

to the abundance of marine life in the North West Atlantic; yet by the mid-1700s settlers had over-abused these coastal waters to such an extent that increasingly distant voyages were needed to Newfoundland and Labrador (Bolster, 2012: 69-71). Thus the transition from traditional to modern whaling served to exacerbate the exploitation of whales, not establish it. Moreover, this was permitted, if not encouraged, by certain international norms that persisted into the late 1900s: Grotian freedom of the high seas was enforced by Great Britain during the 19th century in order to protect trading interests (Keohane and Nye, 2012: 55). With no sovereign control or multilateral regulation, nations were able to compete for high yields with dire consequences for marine populations. Such rapacious industrial activity ensured that, not only were whale products embedded into the fabric of everyday life in whaling states, but they also became a valuable commodity in the international political economy and to strategic defence during the early 20th century (Epstein, 2008: 33-57). Epstein has further emphasised the importance of whaling to national identities, comparing whales in Hawaii to cattle in the Mid-West and arguing for the twin significance of the pioneer and the whaler in American history (Epstein, 2008: 58). Whaling was ubiquitous, profitable and culturally constructive – yet its expansion was not sustainable.

The first legislative action thus came from dominant whaling nations seeking to maintain yields and preserve the industry. The 1929 Norwegian Whaling Act, for example, granted greater regulatory powers to the state which was able to determine set seasons, monitor catch-lengths, and outlaw the hunting of endangered right whales (Epstein, 2008: 75). Perhaps more importantly, it established the International Whaling Statistics which, according to Epstein, remains a 'cornerstone of whale management' (Epstein, 2008: 76), demonstrating the importance of scientific research in informing environmental policy even at these early stages. Two years later Norwegian and British whalers formed the International Whaling Association, a cartel-like agreement aimed at maintaining oil prices which inevitably dissolved when the industry recovered (Epstein, 2008: 78). In this way, initial steps taken towards the protection of whales internationally were, in fact, steps taken towards protecting industrial development with secondary ecological benefits. This corroborates Catherine Redgwell's discussion of environmental law as developing from economic incentives (Redgwell, 2014, 688). This early period of whaling regulations was further characterised by fragmented and ineffective attempts to unite whaling nations under an international regime. The 1930 Geneva Convention on the Regulation of Whaling, for example, involved 22 nations but did not include Japan, the USSR, Germany, Chile and

Argentina whose whaling activity comprised 30% of the total global whaling activity (Epstein, 2008: 77). More comprehensive and inclusive regulation was vital, and demand for it was growing.

The ICRW/IWC: Whaling Club to Moratorium 1946-1982

Although it did not meet this demand at first, the 1946 International Commission for the Regulation of Whaling represents a culmination of a number of conferences in the interwar years and a turning point in the historical development of associated law. The ICRW formalised a number of important restrictions on the whaling industry, yet solely in the interest of maintaining it for future generations: the preamble of the text recognises the importance of 'sustainable exploitation' of certain 'whale stocks' but this is to ensure their continued economic and nutritional use-value to humans (ICRW, 1946: Preamble). The Convention extended many if the regulations of the Norwegian Whaling Act and established the International Whaling Commission to which was granted the authority to determine and amend a number of restrictions: protected and unprotected species; catch size and limits; open seasons and waters; types of equipment, and statistical records fell within the remit of the organisation. However, it was not until the introduction of national quotas in the 1960s that any effective change was initiated and whaling largely vanished in the West (Epstein, 2008: 80; 50). The slow, yet important, progress of the IWRC is not surprising considering its foundational principles and its original status as a body of whaling nations.

The shifting of the IWC from a pro to anti-whaling institution must be set within broader social, political and economic contexts; it demonstrates the ways in which international law is shaped by a number of (often competing) international actors and system dynamics. M J Peterson understands the transformation of the IWC as the product of three conflicting and successive influences: the commercial interests of the whaling parties; scientific interests of cetologists seeking ecological equilibrium; and environmentalists for whom no hunting could be tolerated (Peterson, 1992). It is useful to consider each of these interests in turn. Initially, the intensity with which whales were hunted in the early 20th century resulted in a "tragedy of the commons" with the scarcity of stocks such that, as Epstein has noted, whaling became uneconomical for many states (Epstein, 2008: 27). This diminished profitability helps to explain Peterson's claims that whaling industry managers enjoyed primary policy influence only until the mid-1960s (Peterson, 1992: 182). It is further important to note that the main uses of whale products in most Western nations were being

replaced by petroleum, vegetable oils and plastics; the utility of the whale in the international and the household economy was disappearing.

This helped to cultivate a space in which cetologists could prosper, bringing scientific rigour to conservationist policy advice. Although the extent to which epistemic communities brought about these attitudes within the IWC is contested, some influence is clear. Peterson argues that, despite being hampered by internal fractures, a body of epistemic groups imposed parameters on international whaling policy which curbed the authority of both industry representatives as well as environmentalists from the 1940s-1980s (Peterson, 1992: 186). Indeed, the structure of the organisation itself helped (and helps) to facilitate expert authority via the Scientific Committee, established as a key forum for cetological research and advice. These epistemes may project objectivity but, in reality, they frame information in certain issue areas, and are especially dominant if that issue areas is characterised by low popular knowledge and high public saliency (Haas, 1992). In this way, the emergent ecological concerns and budding global awareness of the mid-1900s were fertile ground for epistemic communities which cannot be understood as entirely neutral, but operated in conjunction with the more normative framework of industry representatives and their protectionist opponents. It is thus possible to understand the influence of cetologists in the IWC as a platform for the whaling or the anti-whaling constituents. The 1960s move towards conservation and the more recent moves towards preservation within international law can be seen as a result of the marriage between ethical and scientific reasoning, as a global environmentalist movement gathered strength.

Indeed, it is this final movement that can be credited with the development of the IWC towards a preservationist attitude throughout the 1970s, and the adoption of a moratorium on commercial whaling on 1982. The increasingly insignificant economic function of the whaling industry and the growing body of scientific knowledge advocating ecological sustainability may have laid the foundations for change, but environmentalists themselves were powerful actors, influencing IWC policy via several channels (Tonnessen and Johnsen, 1982; Peterson, 1992; Epstein, 2008; Dorsey, 2013). Firstly, the structure and operational processes of the IWC facilitate involvement – or at least observation – by a number of national officials, international organisations and transnational groups. The ICRW permits any government to join without stipulating any whaling activity or history (ICRW, 1946: Article X), meaning that representatives from a number of anti-whaling nations could help dictate international whaling legislation upon joining. A number of IGOs and NGOs

were also able to participate in IWC meeting at Canberra in 1977, including overtly preservationist groups like Greenpeace and Friends of the Earth, as well as intergovernmental institutions with strong environmentalist sentiments like the United Nations Environmental Programme and International Union for the Conservation of Nature (Tonnessen and Johnsen, 1982: 673; Peterson, 1992: 155). Thus the permeability and transparency of the IWC can be seen to have assisted its development from regulatory club of whaling nations to environmentally motivated body of anti-whalers in the 1970s.

Secondly, this shift must be set within the context of international activism and public opinion changes which helped fuel participation in the IWC. The 1972 United Nations (Stockholm) Conference on the Human Environment is essential here, as both the manifestation of growing ecological concerns and the motivation for more sustainable change. The result was the stimulus for environmentalist ideas and groups to disseminate from their largely Western concentration to other parts of the world (Peterson, 1992: 167). It also became easier for the IWC to adopt stricter regulations without protest as many whaling states were reluctant to object in the face of public, international and institutional pressures disseminated by the Conference (Tonnessen and Johnsen, 1982). A powerful anti-whaling discourse underpinned this, with the plight of whales becoming symbolic of the wider environmental crisis. Shortly after re-joining the IWC in 1976, New Zealand's delegate to the Commission claimed that the whale had come to represent mankind's failure to manage natural resources responsibly (Tonnessen and Johnsen, 1982: 675). Using this example of New Zealand's abrupt return to the IWC with a staunch anti-whaling agenda following an overwhelming letter-writing campaign from domestic and transnational actors, Dorsey elaborates that the nature of whales – huge, intelligent, gentle, emotionally complex – made them natural emblems of ecological activism and natural stimuli for mass public support (Dorsey, 2013: 228-9). It was therefore not simply concerns for the ethics of hunting endangered species, but also the more relatable, victim status of whales that drove changes. That there is no humane way to hunt them further fuels moral outrage at the practice. Thus the shift towards a moratorium was high on the political agenda of an increasing number of states and organisations, fuelled in part by institutional developments themselves, and in part by a burgeoning ecological consciousness with recognition for animal rights and the inherent value of the natural world. Finally, the anti-whaling discourse was further consolidated through its resonance with democratic principles of particular consequence in the Cold War era (Epstein, 2008: 248). Scholars have noted that the development of such norms have

particular agency when they can be 'grafted' onto well-established standards (Price, 1998: 682). The emergence of protectionist principles in the IWC was therefore at least partially constituted by the enthusiasm of a number of states to position themselves as accountable to the demands of the demos in an effort to establish themselves within the bipolar international system. In sum, advocacy of a moratorium was advocacy of green ideals and responsible governance.

As global hegemon seeking to define itself as a democratic ideal, it is not surprising that the United States played a pre-eminent role in the transformation of the IWC from a whaling to an anti-whaling club, encouraging others to follow suit. Epstein, for example, argues that the 1982 moratorium on commercial whaling reflected 'a new moral notion that destroying whale stocks was wrong' which was perpetuated by the social dynamics of state system and belonging (Epstein, 2008: 66-70). The emblematic function of whales thus helped America entrench a notion of global identity to which most Western, and an increasing number on non-Western states wished to belong. The significance of the USA is corroborated by Keohane and Nye's argument that international institutions are able to prosper only when they are 'consistent with the interests of the most powerful states in the system' (Keohane and Nye, 2012: 112). The increasing capacity of the IWC for environmentally conscious policy during this time was made possible because it aligned with America's greater goals. However, while it may have been politically expedient to respond to domestic and transnational activism, it is also possible to posit that the United States played such an important role in the development of the IWC in part due to the internal organisation of its government. As Donald E Abelson has argued, the 'highly fragmented and decentralised political system' with weaker parties and a culture of popular engagement encourages and facilitates the involvement of domestic actors in US policy making (Abelson, 2014: 131). Although Abelson's focus is think-tanks, America's leadership of the IWC can still be seen as fortunate consequence of its more permeable democratic structures which can facilitate the environmental advocacy of NGO groups such as Greenpeace and Friends of the Earth, as well as epistemic communities championing increased conservation. Encouraged by popular demand, the United States was able to enact important changes, such as reduced quotas. It did this by orchestrating an influx on non-whaling states into the IWC, which operates via a majority vote, and using its considerable economic power to impose trade sanctions upon non-compliant parties (Ogley, 1996: 164; Peterson, 1992: 172). The increased protection of whales under the ICRW cannot be divorced from domestic US domestic law.

The 1970s expansion: towards a holistic approach?

While the IWC and its Schedule remains a primary component of international law, the early 1970s mark another significant turning point manifest in the 1972 Conference on the Human Environment which, inter alia, established a number of regulatory bodies and recognised our responsibility as caretakers of the planet (UNEP, 1972: Stockholm Declarations and Principles). Redgwell understands this to be a major advancement of environmental law, marking a shift from economically-motivated and incidentally beneficial legislation towards a sharp rise in treaties which are more integrated, precautionary and overt in their environmental concern (Redgwell, 2014: 688; 691). The wealth of legislation in the early 1970s was thus a harbinger of swift developments in the protection of whales at a more holistic level, addressing threats to whale populations beyond hunting. Important treaties include: the 1972 London (Dumping) Convention and the 1973 MARPOL Convention which attempted to reduce ocean pollution; the 1973 CITES treaty that seeks to impose restrictions on the economic utility of whale products; and the 1979 (Bonn) Convention on the Conservation of Migratory Species which recognises that cooperative efforts between states are needed to protect threatened species across sovereign boundaries. Outside these boundaries, the 1980 Convention on the Conservation of Antarctic Marine Living Resources builds upon the 1959 Antarctic Treaty, indicating a growing awareness of the importance of non-interference in fragile parts of the world through a 'novel ecosystems approach' (Redgwell, 2014: 691),. More recently, the 1992 Convention on Biological Diversity recognises the 'intrinsic value' of nature (CBD, 1992: Preamble), establishing a vital change in the way in which the human-environment relationship is interpreted in international law. This latter development, however, is perhaps more attributable to the 1992 Rio Conference it followed, demonstrating the maintained importance of sustainable development on the international agenda. Thus the protection of cetaceans expanded into new areas, seeking to protect whales via the protection of the ecosystem of which they are an essential part.

In conjunction with the increasing breadth of environmental law, the 1982 United Nations Convention on the Law of the Sea was the culmination of a series of conferences from 1973 helping to erode the longstanding principle of Mare Liberum; although Keohane and Nye attribute this to the 'norms and processes of the United Nations' more broadly (Keohane and Nye, 2012: 126), the comprehensive and inclusive framework of UNCLOS demonstrates a fundamental change in the ways in which the oceans were understood and managed. Further, the treaty has been lauded as an integrated and holistic approach to

responsible government of the seas (Freestone, Barnes and Ong, 2006: 3). To this end, its remit encompasses an impressive range of issue areas from the definition of Exclusive Economic Zones at 200 nautical miles, to the regulation of The Area, to the protection of the marine environment (UNCLOS, 1982: Part V; Part XI; Part XII). It is this final mandate, as well as the norm changing capacity of the institution, that best represents the Convention's usefulness in the protection of whales. Although cetacean-specific stipulations exist and must not be dismissed, they are brief and vague in comparison to those concerned with pollution, fishing and other uses of the ocean. Notably, Articles 65 and 120 grant authority to both coastal states and international organisations to increase measures that 'prohibit, limit and regulate' the exploitation of marine mammals (in EEZs and on the High Seas respectively), and urges international cooperation for the conservation of cetaceans in particular (UNCLOS, 1982: V.65; VII.120). Indeed, whales are granted special treatment in UNLOSC – just as they often are in Western culture. The Law of the Sea Convention is thus a valuable development of efforts to protect whales in terms of its norm changing faculties and its holistic approach.

That is not to say, however, that more specific and localised efforts are without merit. For example, the 1989 (Wellington) Convention for the Prohibition of Fishing with Long Driftnets in the South Pacific was cited at a United Nations General Assembly meeting as a chief influence behind resolutions calling for a moratorium on large-scale driftnet fishing on the high seas (UNGA, 1991: Resolution 46/215). In this way, more universal legislative efforts can be seen to be rooted in regional measures. Conversely, more universal agreements have developed a number of regional regimes: the 1991 Agreement on the Conservation of Small Cetaceans of the Baltic and North Seas (ASCOBANS) and the 1996 Agreement on the Conservation of Cetaceans of the Black Seas, Mediterranean and Contiguous Atlantic Area (ACCOBAMS) developed under the patronage of the Bonn Convention. Other important regional efforts include efforts by intergovernmental organisations, such as the European Community Council's 1981 regulation banning the importation of whale products (EEC, 1981: No. 348/81). While global and holistic legal frameworks are a chief means of protecting whales, more focused and localised legislation to which fewer states are party can offer effective, complementary protection. They are able to seek conservation measures in their respective areas that may not be relevant (or palatable) internationally. Despite considerable progress, however, 'significant gaps remain in maritime environmental protection' with regards to land based pollution, over-fishing and the regulation of the high seas (Redgwell, 2014: 703).

Recent years: stagnation or progress?

Recent developments have sought to address these gaps, yet there remain a number of alarming insufficiencies. Although many states continue to deplete whale populations through hunting, greater threats come from other sources: slower moving bowhead and right whales are frequently struck by merchant and whale-watching vessels; the Pacific Garbage Patch degrades habitat; and naval operations produce sonar bursts which cause disorientation and beachings (Dorsey, 2013: 283). Many of these issues have been incorporated into the remit of the IWC which investigates threats such as standings and entanglements, as well as welfare hazards associated with equipment and methods; this involves comprehensive data collection and the establishment of numerous transnational networks (www.iwc.int). As of yet, however, information is difficult to collate and verify, and response programmes are sporadically distributed. Effective legislation would involve fundamental changes, not only in terms of our interaction with whales directly, but also in terms of the ways in which the oceans are used: efforts to protect whales would have to impose stringent regulations on international shipping, waste disposal, strategic change to national defence activities and recreational use of the sea. With significant economic and practical implications, difficulties in addressing these issues at an international level are profound.

Thus the remit of the IWC is expanding but not comprehensive, and it is possible to anticipate pressure for the development of international whale-law into even newer areas. Recent global interest in the welfare of cetaceans in captivity has led to calls for organisations such as SeaWorld to end live performances of Orcas. Although SeaWorld promotes marine conservation and engages the public interest in wildlife, this is somewhat undermined by abusive training techniques and unnatural confinement (Kalof, 2007: 156-7). This may be outside of the remit of existing international law and any action taken towards the protection of captive whales is likely to be from a national level initially, but the maintained advocacy of environmentalist groups and the pressures of public opinion could lead to institutional change at a supranational level, especially with the changing mandate of the IWC. Indeed, SeaWorld's profits dropped 84% in the second quarter of 2014 (PRNewswire, 2015) – a figure many media outlets have credited the *Blackfish* documentary which exposed animal and employer welfare problems (Neate, 2015). In a neoliberal economy, the SeaWorld case may be an example of the economic imperatives for change that influence policy at a higher level, just as the increasing economic redundancy of whaling endeavours in the mid-century helped constitute more stringent institutional changes. The burgeoning profitability of whale

watching, as opposed to whale hunting and processing, further exemplifies the relationship between economic and legislative change. Both historical and more recent developments in efforts to protect whales are once more dependent on a number of external economic influences.

This economic influence is arguably overshadowed by that of identity. Epstein's compelling discussion of the importance of identities in international relations uses whaling as a means of exposition: the anti-whaling discourse implicitly constructs notions of a heroic global civil society of "us-activists" in opposition to "them-whalers"; thus whaling nations have come to represent an "other" against which the West can promote an environmentally conscious image (Epstein, 2008: 250). It has been widely claimed that opposition to whaling is, in fact, opposition to the ways and customs of other ethnic groups, in particular Japan, and is a performance of cultural imperialism (Yamamoto, 1985; Misaki, 1994; Tanno and Hamazaki, 2000). Indeed, Japanese whaling is perhaps most helpful in exposing the persistent role of identities in efforts to protect whales internationally. Attitudes towards whales over time have helped to establish national identities which, in turn, reinforce whaling policy. For Japan especially, this is rooted in the country's geography and history. While forests were cleared in Medieval Europe for farmland, Japanese paddy farmers sought to conserve water supplies from forested areas meaning that protein had to be located elsewhere, in the sea (Ishi, 1992: 112). The Japanese have also been emotionally conditioned to think of whales as fish, when mammal flesh was often considered taboo and there was no special Biblical or legendary significance of the animal as there is in Western society; this folk taxonomy was actively exploited by American occupation after WWII which encouraged whale meat as a means of providing nourishment during food shortages (Ishi, 1992: 116). Presently, although the whale meat market in Japan fuels its own "Scientific" hunting as well as Icelandic and Norwegian commercial programmes, it is regional, expensive and increasingly unpopular (Ishi, 1992: 117; Rolland, 2014: 502). If market demand is diminishing, other ideational factors must account for maintained advocacy of whaling. It is possible to use the recent International Court of Justice case to explore this. In 2010, pushed by environmental activist groups like SeaShepherd, Australia (with New Zealand's support) brought a case against Japanese whaling in the Antarctic sanctuary; in 2014 it was ruled that such programmes were illegal under international law (ICJ, 2014). This increased obligations for policy change. In response, however, Japan has announced an amended – not abandoned – programme (Rolland, 2014: 502). Japan is also unlikely to drastically change behaviour in

this regards because doing so would result in a 'major loss of face' (Dorsey, 2013: 285). Thus both national and international identities play an important part in the development – or lack thereof – on international efforts to protect whales.

Yet again, internal governance issues are essential. The USA's internal structures helped facilitate its sensitivity to global environmental and animal rights advocacy. Japan's domestic institutions, on the other hand, help ensure that the agency of such movements is diminished: not only do policy makers cultivate nationalism around the issue area, exploiting the existing gap in internal in international norms surrounding whales, but the highly centralised bureaucracy and leadership helps to exclude NGOs and other activist from the decision making process (Hirata, 2004: 196). Moreover, the political and economic influence of Japan is such that it can weather a degree of isolation and even sanctions. The effect of US trade sanctions tapered after 1980, with fishing exports to Japan nearly twice the value of imports from Japan (Peterson, 1992: 180-1). Foreign aid is also useful tool, directly and indirectly. Several smaller nations admitted in 2010 that their behaviour in the IWC was determined by reliance upon Japanese foreign aid and special rewards (Dorsey, 2013: 283; Peterson, 1992). Palau, which has a startling number of reservations on Appendix I CITES listed cetacean species, was an example of such practices, although it has since withdrawn its support for Japanese whaling endeavours (*The Australian*, 2010). Western criticism of this use of foreign aid, however, has fuelled accusations in whaling states of the hypocrisies which serve to undermine the integrity of the anti-whaling stance of countries such as the United States which employed similar economic coercion itself. Overshadowing this however, is the prolific whaling past of many preeminent preservationist states in the IWC whose anti-whaling discourse obscures their chief culpability for severely diminished whale stocks. Further hypocrisies of western states calling for an end to hunting but engaging in other severely damaging activities, such as irresponsible tuna fishing, have also weakened their bargaining position (Dorsey, 2013: 285). In this way, a state's ability to promote a construction of itself as an anti or pro-whaling nations helps to determine international cooperation – or lack thereof – towards the protection of whales.

Finally, it is important to note that the IWC does recognise the role of identity and customs in a certain exception to the moratorium. The continuance of aboriginal "subsistence" whaling is permitted because it is distinguished from whaling for commercial purposes: it is less wasteful, more sustainable and considered to fulfil a "vital need" nutritionally and culturally (www.iwc.int). Scientific Committees work with indigenous

groups to determine quotas and improve the efficiency of hunting equipment, demonstrating that the role of marine biologists and other experts in the IWC is still significant. From the animal rights perspective of a number of activist groups, however, this practice cannot be tolerated: cruelty cannot be justified by culture. The practice of indigenous whaling thus helps demonstrate two key themes in the emergence of international whaling law under the IWC in particular: it points to a normative distinction in the institution between the permissibility of whaling for economic or for cultural reasons, and it is evocative of the fundamental divide in efforts to protect whales between those who object on conservationist or protectionist grounds.

Conclusion

Efforts to protect whales under international law expanded exponentially towards the end of the 20th century. Although rooted in action taken by whaling nations to prolong whale stocks for the good of the industry, burgeoning environmental and animal rights concerns following the 1972 Stockholm conference in particular have helped to establish international anti-whaling norms and rehabilitate whale populations. Several key developments have emerged. Firstly, it is evident that early efforts at international whaling law grew out of the self-imposed national and bilateral restrictions undertaken by Norway and Great Britain in order to enhance whaling profitability, but important movements towards more effective international regulation occurred with the establishment of the IWC in 1946, its increased restrictive powers in the 1960s, and its moratorium on commercial whaling in 1982. Moreover, the expansion of environmental law following the Stockholm Conference in the 1970s is further indicative of the increasingly international scope of efforts to protect whales – even if the impetus for this is driven largely by a few powerful actors. Stockholm is also indicative of a second significant shift in international law from piece-meal and specific towards a more holistic approach: although specific anti-whaling measures are crucial attempts to prevent the frequently exploitative and inherently inhumane treatment of marine mammals, the more pervasive threat from environmental degradation must be confronted, at a global level with a universal scope.

It is further necessary to consider the agency of external influences upon the development of international law. Perhaps most significant here is the flourishing environmental and animal rights activism for which the anti-whaling movement became emblematic. Their influence helped transform existing legal frameworks from regulatory to

protectionist institutions by motivating national governments and cultivating norms: they demonstrate the ways in which transnational movements can effect supranational change; likewise, supranational institutions affect transnational principles and standards. Thus the development of the international whaling framework from regulatory to abolitionist helps to reveal a broader relationship between law, activists and norms.

Thus far, efforts to protect whales under international law can be understood to have progressed from the national towards the international level, from the specific towards the holistic, and from the regulatory towards the protectionist. Finally, however, the persistent role of identity must be considered. The protection of whales in international law is not simply about animal or environmental rights, nor is it simply about economics: it is rooted in human history and is underpinned by the way in which we define ourselves as individuals and as communities. In this way, identities can be understood as increasingly integral to the whaling conflict, as fewer and fewer nations continue to whale in defiance of diminished profitability and international pressure. Such discord is a perennial obstacle to success for the existing international legal framework outlined in the following chapter.

Chapter Two: What international legislation currently governs the protection of whales and other cetaceans?

There is no single, integrated framework for the protection of whales: different legislation functions to different ends, and often with different signatories. It is possible to subdivide the body of conventions, treaties and agreements discussed in the previous chapter into three main groupings. Primary measures of protection are cetacean specific. This includes regional institutions, such as ASCOBANS and ACCOBAMS, but is chiefly represented by the ICRW and the expanding remit of the Commission it created. Secondary measures can be understood as broader, ecologically-orientated institutions of which CITES and the Bonn Convention are valuable examples. Such regimes are concerned with the preservation of the natural environment more generally, with important implications for whale species affected by habitat degradation, climate change and international trade. Furthermore, the 1992 Convention on Biological Diversity propounds an ecocentric principle that value of wildlife is inherent, not human-use based. Finally, tertiary measures to protect whales come from international institutions which are not exclusively focused upon environmental concerns, but can be useful tools within the issue area: the United Nations Convention on the Law of the Sea and the ICJ, while not established for the abolition of whaling directly, have sought

greater protection of whales in different ways. The ICRW/IWC, CBD, UNCLOS and the ICJ comprise the existing framework and fulfil diverse yet interdependent roles.

Primary: ICRW/IWC

The 1946 International Convention on the Regulation of Whaling made provisions for the establishment of the International Whaling Commission and an amendable Schedule which dictates policy (ICRW, 1946: Article III/I; Article I/1). While the Schedule is intended to be the legally binding agreements between signatories of the Convention, much of the work towards the protection of whales under the IWC takes place outside this formal legislative text. This section intends to give an overview of the current status of protection for whales via the institution charged with the primary authority over them.

The IWC is representative of 88 Contracting Governments, many of which have little to no whaling history - and no sea borders. Delegates from each member state meet biennially accompanied by experts and advisors from their home country and these meetings also facilitate observatory participation from IGOs, NGOs, media representatives and non-member states (www.iwc.int). In this way, the transparency of the organisation is improved, and external actors are better able to hold delegates accountable to international standards. These meetings also bring together a number of sub-groups within the IWC itself. Perhaps most influential among these is the Scientific Committee: international environmental law gains legitimacy with expertise. Provisions in the Convention for the establishment of a body of experts and advisers with specific authorities (IWRC, 1946: Article III/4) are consolidated by a sustained emphasis on the importance of research, analysis and dissemination of information (ICRW, 1946: Article IV). Strong ties with the International Bureau of Whaling Statistics in Norway are also codified in the Convention (ICRW, 1946: Article IV, para 2; Article VII). The importance of the Scientific Committee has been maintained throughout Schedule amendments which reiterate the scientific basis of policy decisions and the need for continued research into management of whale populations: classification of stocks and their consequent catch limits are determined in accordance with Scientific Committee advice; catch limits for commercial whaling are set at zero but, that this is subject to expert assessment of a Maximum Sustainable Yield, reaffirms that protection of whales under the IWC is dependent upon continuous research (IWC, 2014: Schedule/10). However, although there is institutional recognition of the importance of such advice, the extent to which it is adhered to and the neutrality of its origins may be contested.

The Scientific Committee collaborates with the Conservation Committee on broader environmental issues. The IWC is expanding into cetacean protection more broadly, moving towards protection for species with little to no connection to the whaling industry, even if they are yet to be acknowledged in the Schedule itself. At the 64th meeting in 2012, for example, sonar and seismic activity in beaked whale habitats was reported to be particularly threatening, immediate action was urged on the bycatch of critically endangered vaquitas, and a Conservation Management Plan (CMP) was adopted for right whales in the Chile-Peru stock (IWC, 2013). Such CMPs are a significant recent development towards mitigating anthropogenic threats to whales, but the Conservation Committee also produces information, handbooks and response networks regarding: ship strikes; entanglements; acoustic disturbance; marine debris; climate change; pollution; habitat loss, and irresponsible whale watching activities (www.iwc.int). This is not a legally binding codification of international commitment, but more a practical and advisory function which aims to coordinate governments and NGOs towards more effective protection of whales.

The Aboriginal Subsistence Whaling sub-committee, working closely with the Scientific Committee, is another significant part of the IWC, not least because the type of whaling it helps govern is the only whaling properly overseen by the institution. The Schedule sets forth measures, informed by research into population sustainability, for a limited number of ASW programmes for which three general rules apply: no mothers or calves may be taken under any circumstances; national jurisdictions under which the indigenous people live must legislate in accordance with IWC policy, and meat must be for local consumption only (IWC, 2014: Schedule/13). Beyond this, specific catch limits are given for each peoples and each species stock for the period 2013-2018: Bering-Chukchi-Beaufort Seas whalers, for example, may take 336 bowheads in total, and no more than 67 per year; fin whalers of West Greenland stocks, however, are permitted to take only 19 each year (IWC, 2014: Schedule/13b). Although this quota is scientifically verified, the hunting of endangered species is difficult to justify. The report of the ad hoc Aboriginal Subsistence Whaling Working Group meeting with Native Hunters debates and contextualises such problems (ASWWG, 2014). Representatives of indigenous whaling communities were able to input their concerns regarding the diverse and essential role of the whale to their survival as well as their way of life. Although each speaker stressed the historical and cultural significance of whaling in harmony with nature, each needs statement is distinct. Concerns from the Greenlandic representative, for example, stemmed from perceptions of neocolonial

interference with the birthright of indigenous peoples who can regulate whaling at a more local level (ASWWG, 2014: 3). Whalers in Alaska, falling under the remit of the Bering-Chukchi-Beaufort Seas quotas, emphasised food security issues and associated emotional considerations for 11 villages not connected by roads for whom one bowhead can provide 12-20 tons of food (ASWWG, 2014: 7-8). Chukotan whalers in the Russian Federation are subject to the same quota, as well as that of the Eastern stock of gray Whales in the North Pacific which is shared with the Makah Tribe of Washington State. They stress, more than any other representative, the insufficiencies of the quota and quota system: approximately 10% of gray whales are "stinky" and inedible, thus rendering useless a portion of their catch limit, and population growth means greater demand (ASWWG, 2014: 5). Chukotan and Alaskan representatives also made an important point that depletion of whales in the region was less a consequence of their actions, than that of those responsible for increased oil and shipping activity in the North Pacific, climate change, and the commercial exploitation of whales in the past by the very nations seeking restrictions today (ASWWG, 2014: 5-10). The IWC structure with focused sub-groups thus facilitates participation of the people for whom it determines legal access to food sources.

Moreover, the meeting allowed for a discussion of the often tentative definitions of local as opposed to commercial consumption; indeed, an observer from the Humane Society challenged official to elaborate this distinction (ASWWG, 2014: 17). Whale meat is generally shared between members of the community in accordance with ancient practices, but some ASW product can be sold or traded, occasionally outside the traditional setting. Chukotans, for example, trade whale meat with reindeer herders in the region, exchanging food for skins, but this plays an important role in satisfying subsistence needs between the groups and Russian legislation prohibits whale meat and products outside the area (ASWWG, 2014: 6). More problematic is purchasing of whale meat and baleen souvenirs by visitors to Chukota, and the legality of similar whalebone handicrafts in the USA (ASWWG, 2014: 17-8). Greenlandic whalers test the limits of the subsistence provisions to yet a greater extent: tourists in Greenland purchase meat in restaurants; it is exported to Denmark for consumption by Greenlanders, even though Denmark is a signatory of both the ICRW and CITES; and it is sold in open air markets as whalers defend their right to cover the costs of living (ASWWG, 2014: 3; 18). In this way, the different indigenous groups under IWC jurisdiction must not be seen as homogenous, nor can their whaling be seen as purely subsistence: the quotas set forth

in the Schedule belie the diverse governance issues which emerge in institution meetings and help shape its normative structure.

The practice of indigenous groups brings to light other functions of the IWC: the Working Group on Killing Methods and Welfare Issues (WK-WI) helps assess the relative humaneness of traditional hunting and inform related policy. The Schedule was amended in the 1980s to prohibit the use of the cold grenade harpoon, but for commercial whaling only which was outlawed itself shortly afterwards (IWC, 2014: Schedule/6). Beyond this, the regime is largely advisory on the issue yet has demonstrated a commitment to embedding welfare concerns within the IWC. Welfare and methods vary considerably between groups and between species. For Greenlandic whalers, the use of the penthrite projectile (or exploding grenade harpoon) is funded by the government which contributes 500,000 Danish kroner and distributes the quota, but many smaller communities hunt minkes with rifles; for example, in 2013 the number of minke whales killed instantly was reported at 24% with the average Total Time to Die (TTD) of 10 minutes (WK-WI, 2014: 3). Representatives have, however, expressed a wish to reduce suffering yet noted that instant kills can result in a strike and loss (ASWWG, 2014: 3). Such allegations that humaneness compromises efficiency helps explain limited progress in standardising welfare policy, or introducing it to the Schedule. Another problem raised by ASW groups is the expenses associated with the penthrite harpoon which costs $1000, can only be used once and must be shipped from Norway; for whalers based in Alaska and Washington, the US government has covered these costs contributing to the improved efficiency estimated at 80% landing of struck whales, but this funding is under review (ASWWG, 2014: 7-8). There has been much discussion as to whether these technological advances limit the extent to which such practices can be considered traditional or subsistence orientated, but it would be a welcome improvement for animal welfare: with traditional methods gray whales caught by Chukotans in 2013 took on average thirty-five minutes to die and the single bowhead struck took forty-five minutes (WK-WI, 2014: 3). This is not swift, not painless and certainly not humane.

The work of the scientific, conservation, aboriginal and welfare groups is thus wide-ranging and mutually supportive. They are permeable and transparent. Like the issues they govern, they are overlapping and often politically charged. They have come to manage a human-cetacean interaction more broadly, expanding beyond the ICRW and Schedule through which they have been facilitated. Their work reveals the diversity of international law from formal and (ideally) binding agreements to advisory research bodies and forums for

discussion where governing principles can be negotiated. The IWC does not govern all states, however, and nor does it protect all cetaceans. Thus, while the IWC remains the primary mechanism through which whales are protected internationally, it is by no means a universal solution.

Secondary: CITES; CMS; CBD

The Convention on International Trade in Endangered Species moves towards addressing the protective limits of the IWC by seeking to outlaw the profitability of certain cetaceans (CITES, 1973). The 181 Contracting Governments recognise the beauty, diversity and rarity of wildlife, yet acknowledge its value in terms of the aesthetic, scientific, cultural, recreational and economic use for humans; they express urgency for cooperative action across state boundaries, but reiterate sovereignty over their own resources (CITES, 1973: Preamble). The Convention assigns species to Appendices I, II or III depending on the degree to which they are threatened, and sets forth measures for governing each group: all CITES listed wildlife, even critically endangered species, can be traded in via a number or provisions which also account for introductions from the sea (CITES, 1973: Articles III-V). Foremost among these are the species specific reservations which allow member states to trade in them with impunity (CITES, 1973: Article XXIV). Significantly, however, participants are expected to put in place measures reducing risk of injury, damage to health and cruel treatment, advocating for animal welfare issues at an international level (CITES, 1973: Article III/4). Problematic here, is the self-regulatory nature of participation. Unlike with the IWC, Scientific and Management bodies established by the CITES are state-based; as Phyllis Mofson notes, the Convention has no 'supranational authority' instead relying on 'public exposure and condemnation' by way of national reports (Mofson, 1994: 96). Parties must translate their commitment into domestic regulation, ensuring that mechanisms exist to penalise trade, confiscate contraband, care for any traded species, and publish implementation information (CITES, 1973: Article VIII). The institution also works with other international organisations, such as Interpol and the World Customs Office, and operates a 'help-desk approach' providing technological assistance for signatory states under investigation; its ultimate sanction, however, is to recommend a ban in trade of all CITES listed species with the party in question (Reeve, 1994: 884-7). Compliance with CITES is thus dependent upon domestic regulatory bodies and economic pressures between member states.

Other secondary legislative efforts include the 1979 Convention on Migratory Species and the 1992 Convention on Biological Diversity, but these are not as influential and CITES, nor as applicable to the protection of whales. They do, however, offer different advantages. Like CITES, the Bonn Convention organises all cetacean species based upon level of threat and provides a capacity building function for its members; unlike CITES, it recognises the legacy-value of wild animals for all mankind (CMS, 1979: Preamble). It further focuses upon habitat conservation, and permits the taking of wild migratory animals only under limited, scientific, subsistence or enhancing exceptions (CMS, 1979: Article III). The first three of these caveats echo those of the IWC. The final is not applicable to whale species, but is sometimes used to justify whaling activity. Although some wildlife may have to be culled in order to maintain ecological balance in certain areas, claims that whale predation on fish stocks are without strong scientific basis (WWF, 2005). The CMS thus represent progress in some regards, but not others.

The contribution of the Biodiversity Convention to the protection of whales is similarly divided. It recognises the 'intrinsic' worth of wildlife, at last extending the value of non-human life beyond that of human-use (CBD, 1992: Preamble). Broadly speaking, the CBD is significant in that it urges the contribution of previously marginalised yet crucial actors: indigenous dependence upon and knowledge of certain ecosystems is recognised; women are encouraged to participate in policy making, building on ecofeminist principles; and developing countries are recognised to have specific priorities requiring specific measures and are the recipients of greater research or technological assistance (CBD, 1992: Preamble). This is important with regards to the broader climactic or habitat-based threats to cetaceans which require universal action. It is not so useful in the context of whaling activity in that the overwhelming majority of whale hunters are either from highly developed states or subsistence populations within. Once again, secondary means of protection are components of a non-cohesive whole, with overlapping yet distinct mandates applicable to whales to varying extents.

Tertiary: UNCLOS; ICJ

Finally, the protection of whales under international law is not limited to institutions concerned with cetaceans or even the environment. Deeper mechanisms exist that may govern the human-nature relationship. Chief among these is the United Nations Convention on the Law of the Sea. The previous chapter discussed its normative function and its

extension of international jurisdiction. Although forming a relatively minor component of the Convention, Articles 65 and 120 make provisions for regulation of marine mammal exploitation and impels them to cooperate with appropriate international organisations (UNCLOS, 1982: V.65; VII.120). In this way, the role of the IWC is consolidated. UNCLOS makes further references to living resources, however, reiterating the ecological implications of ungoverned ocean use: it obligates states to translate international conservation principles into national regulations on the use of the high seas for the benefit of dependent human and non-human populations (UNCLOS, 1982: VII.117-9). Thus, although there is little reference to whale species in the Convention text, it can be seen to not only corroborate a number of related international institutions through repeated emphasis of collaboration between state and non-state actors, but also extend conservation efforts beyond those to do with hunting. The seas are not free, but subject to a wealth of interconnected regimes and norms.

Recent action taken under the International Court of Justice demonstrates the possibility for action outside of environmental legal institutions. The ICJ has ruled that Japanese whaling in the Antarctic, or JARPA II, was not for scientific purposes and therefore violated the ICRW Schedule (ICJ, 2014). The court ordered Japan to revoke any licence to kill, take or treat whales pursuant to that particular programme, but did not extend this ban to any further ostensibly scientific whaling in spite of Australia's request for them to do so because it is permissible under Article III of the ICRW. The ICJ ruling could only go as far as existing international legislation would allow. While this case may be seen a small victory for fin, humpback and minke whales in the Southern Ocean Sanctuary, Japan has announced a new Antarctic programme called NEWREP-A which seeks to, inter alia, fulfil an ecosystem-modelling role (Gov. Japan, 2014). Yet this has been criticised by a number of NGOs claiming that it does not address the issues of JARPA I and II and that it appears to be yet another scientific guise for a whale meat harvest, with a quota for 333 Antarctic minke (WWF-Greenpeace-IFAW, 2014). In this way, the ICJ ruling in no means a universal or comprehensive effort to protect whales under international law, but it may set in place an important precedent with which further whaling activity may be challenged and participant states held accountable to the international standards to which they have committed.

Conclusion

In sum, it is possible to understand that current measures to protect whales under international law are diverse yet complementary. Primary, secondary and tertiary efforts have

specific focuses and mechanisms through which to bring about change; they can be located along a spectrum of protective action from a whaling and great whale nucleus, to a more comprehensive ecosystem-orientated framework, to institutions governing relations between states with consequences for the environment and its marine life. Certain features emerge across these current measures: scientific and technological knowledge is an essential part of each convention, organisation or court system; welfare issues are a recurrent feature of efforts to protect whales, moving beyond species survival; cooperation between legal commitments is facilitated and encouraged; and national legislation and domestic politics must embrace the obligations of their international contracts but cannot be forced to do so. Global norms and accountability help to consolidate supranational weaknesses, but perhaps the most significant inferences from current legislation governing the protection of whale species are its institutional – and more fundamental – limitations. The following chapter seeks to delineate these further.

Chapter Three: What are the limitations of existing legislation?

It cannot be doubted that international measures protecting whales have an important role to play in ensuring their survival and welfare; it is also clear that there are a number of limitations to existing legislation, especially from an animal rights or welfare perspective. Some of these have been considered in the last chapter but more can be delineated and expanded upon in a way that illuminates deeper problems. The elective nature of international law and the absence of proper enforcement mechanisms are pivotal issues here. Hobbes used the term leviathan as a metaphor for sovereign authoritative order (Hobbes, 1651): there is no global leviathan to govern leviathans. Indeed, an examination of the protection of whales has significant and wide-ranging implications for international relations: not only is it representative of cooperative efforts between states to address urgent environmental concerns and translate the human-nature relationship into required legislation, but it may also expose something of the ways in which actors behave in a global system. This chapter seeks to explore such issues further and assess the extent to which international law protects – or can protect – whales, wildlife and the natural environment. The plight of specific cetacean can be used to highlight certain limitations of the existing protective framework.

The legally binding Schedule of the IWC covers species of great whale with a history of commercial and indigenous hunting. This includes critically endangered blue and fin whales but does not include other smaller and equally threatened cetaceans. These species are

not covered by the Schedule because they are either hunted by whalers of non-member states or not threatened by whaling at all. Beaked whale populations, for example, are being monitored by the Scientific Committee which has concerns for the effect of anthropogenic sounds in their habitats (IWC, 2013) but no institutional accord is codified for their protection because to do so would involve an unrealistic expansion of the Commission's mandate into regulation of the sonar and seismic activity of member and non-member states throughout its expansive habitat. The IWC may have transformed considerably since its birth in 1946 and expanded its remit into practical whale-saving solutions outside the Convention text, but its founding principles maintain its limited scope. It cannot provide a holistic protection of whales because this was never its intended purpose and because doing so would involve legislating on matters which are entirely outside of its mandate that are often prioritised by states above the plight of marine mammals: shipping, waste-disposal, strategic defence activity, and energy consumption must be addressed internationally for effective protection of whales. The interconnectedness of global affairs, especially in terms of ecological sustainability, is thus a difficult obstacle for effective international environmental law: legislative efforts can address an element of a broader context but not every root cause; the ICRW can prohibit or restrict whaling but not save all the whales from all of their dangers. In this way, the role of CITES and the CMS is complementary, filing gaps of the Commission's efforts, at least in principle.

The IWC is restricted in terms of legislating on species and threat, but it is also limited in terms of its membership. International law is not compulsory: participation and compliance is voluntary. Not all whaling activity is regulated by the IWC because not all nations are members. Canada, for example, withdrew from the IWC in 1982 in opposition to the moratorium on commercial whaling; while it has banned commercial whaling in Canadian waters, it does make provisions for a number of indigenous Arctic groups to take bowheads (Green Party Canada: Manifesto 3.9). Indonesia likewise has indigenous whalers on Lamalera but has never joined the IWC: like other ASW groups these sperm whalers do not engage in large scale activity, but the methods they employ are particularly inhumane, using large spears and the hunter's own body weight to strike the whale, often losing the catch (Brown, 2015). Once again, such whaling may be more sustainable but it does not recognise welfare issues at all. Finally, and perhaps most problematic, are small cetacean drives carried out by a number of nations and absent from IWC legislation. These take place for meat, tradition and even to supply sea-life centres with captive exhibits (uk.whales.org).

Japan and the Faroe Islands demonstrate separate issues here. The Faroese are not subject to the EU-based or international whaling regulations to which Denmark subscribes, therefore the ASWWG and the WK-WI sub-groups of the IWC do not oversee the pilot whale drive. Moreover, these smaller toothed species are overlooked even in nations belonging to the IWC. Japan has recently circulated a request to commence small-type coastal whaling of minke whales, but this has been rejected by other member states as their hunting is regulated in the Schedule (www.iwc.int). Porpoises, dolphins and smaller species of toothed whale killed in Japanese coastal waters, on the other hand, are not IWC controlled. Greenland similarly demonstrates the incomplete nature of the IWC protection: unlike the Faroe Islands, it is part of the Commission by way of its Danish proxy and has ASW regulations for great whales; like Japan, a number of smaller population groups hunt small toothed whales, in this case beluga and narwhal. Thus the IWC does not regulate all whaling because not all whalers are among its members, and it does not protect all cetaceans because powerful whaling nations in 1946 were not competing for their produce of smaller toothed species that yield little oil. The IWC may have shifted from whaling to whale-saving, but its Schedule has not expanded its protection in response. The voluntary nature of membership means that, if the Schedule were to expand in this way, states such as Japan might withdraw.

The Greenland case of beluga and narwhal hunting also reveals another problem with IWC in terms of its agency: it is rivalled by other more regional institutions with different agendas. The Canada-Greenland Joint Commission on Beluga and Narwhal was established in 1991 as a means of setting appropriate catch limits for populations which migrate between these waters (www.nwmb.com). Their decisions are not subject to IWC Scientific Committee scrutiny, or indeed any of its other sub-groups. Similarly, North Atlantic Marine Mammal Commission (NAMMCO) represents Norway, Iceland, Greenland and the Faroe Islands and was formed as a 'counterbalance' to the IWC (Sands, 2003: 596). It is further claimed that this counterbalance was in response to preservationist attitudes states such as New Zealand that helped transform the mandate set forth in the ICRW (Hoel, 1993: 123). These regional accords are not inherently problematic, especially not from a conservationist point of view as they seek to sustain exploitable populations. In terms of animal welfare and rights, however, they help demonstrate a number of flaws within international legal efforts: they reveal that states may refrain from participating in certain institutions if more appealing alternatives exist that better serve their interests.

The establishment of NAMMCO in 1992 also helps to reveal structural and procedural issues within the IWC. By the end of the 20th century the increasing influence of preservationist states with zero tolerance for whaling in the IWC was met with increasing resistance by pro-whaling parties. This is not an entirely new phenomenon, as Peterson has shown in his study of the roles of different factions (Peterson, 1992). It is however, of greater salience in IWC affairs than it has been in the past with scholars attesting to a stalemate of whaling ideologies (Dorsey, 2013: 285). Indeed, the IWC Ambassador from the USA has lambasted the institution as a 'dysfunctional body' and claimed that its effectiveness has been eroded by an impasse since 1990 attributable to internal political pressures on member states (ASIL, 2010: 498). Japan and the USA, for example, must be representative of their demos. That they have both encouraged states to join the IWC in attempts to increase their bargaining might in meetings and secure enough votes also contributes to the deadlock. This vote-buying practice undermines the legitimacy of the institution in itself and makes decisions near impossible: a three-quarter majority is needed to pass any new measures (ICRW, 1946: Atricle III.2). Whaling states are as unlikely to overturn the moratorium as they are to stop whaling (Dorsey, 2013: 285). Thus the internal conflicts of the IWC are compounded by its procedural rules. This has, however, helped sustain largely anti-whaling policy stance within the regime.

That is not to say that the IWC does not make concessions for whalers as, arguably, it must. The internal divisions are reflective of domestic pressures on member states. But this is peculiar when it is considered that the popularity of whale meat is diminishing and the popularity of whale watching is increasing. It is thus possible to attribute sustained advocacy of whaling, in part, to its relationship with national and cultural identities. As discussed in chapter one, whaling or whale-saving identities have shaped international protective efforts. International law in this context is an expression of dynamics within and between states; if these are fractious then so are discussions within the institution. Epstein's understanding of the inclusionary and exclusionary characteristics of the IWC are useful here (Epstein, 2008: 86). Whaling nations are excluded from a normative order advocating for whales. Such tensions embedded in identities arguably encourage a reiteration of whaling stances for face-saving as well as ideational purposes. It has been suggested that the IWC should have a high degree of compliance because this requires little action, simply inaction (Raustiala and Slaughter, 2002: 545), but this does not account for the significant role of whaling identities. Lessons can also be gleaned from practices outside of the IWC by Faroese communities for

whom external pressures and outraged public opinion have only served to reinforce support for pilot whale drives (Fjeldsbo, 2015). Whales have helped define a number of nations and cultures; international law that poses a threat to whaling is consequently a threat to the ways in which certain peoples define themselves at a local and global level. When this is considered in conjunction with the elective nature of international accords, it must be concluded that some functional weaknesses are mandatory. Japan utilises provisions for scientific research (ICRW, 1946: Article VIII .1). Iceland and Norway continue to partake in commercial whaling under allowances for formal objections (ICRW, 1946: Article V.5); if this was not permitted, they may withdraw as Canada did. International environmental law must be weak if it is to be accepted.

Such institutional weaknesses are also evident in the CITES and CMS frameworks in terms of the reservations they permit. Sands states that these were to encourage greater participation and frequent use of reservations on CITES listed species was not expected (Sands, 2003: 512). Moreover, although CITES has the virtue of orientating its protection for cetaceans based upon the degree to which they are threatened rather than their historical exploitation, these reservations facilitate legal taking of many endangered species also excluded by the IWC. Baird's beaked whale, for example, is listed on Appendix I but reserved by Japan (www.cites.org/reservations). This legalises drives and slaughtering of these animals. Even species protected in principle by both the IWC and CITES may be traded. Iceland and Japan, for example, have placed reservations on Appendix I listed fin whales. That Iceland has also formally objected to the IWC ban on commercial whaling further demonstrates that nations may participate in international institutions without following their conservationist measures or preservationist principles. This is in spite of a recent resolution for greater cooperation between CITES and the IWC, which recognised the special need for 'maximum protection' of cetaceans and encouraged mutual participation (CITES, Rev.COP12). Thus, CITES is representative of a crucial part of international environmental law in that it addresses the economic motives behind whaling and governs in accordance with the level of threat rather than the history of commercial exploitation, but this undermined by institutional weaknesses exacerbated by the threat of non-participation. This threat is further demonstrated by instances of non-participation in the Bonn Convention. Anumber of important actors involved in the killing of whales have Non-Party Range State status: Norway, Iceland, Japan, Canada, Indonesia, the Russian Federation and the United States, for example, oversee either indigenous or commercial whaling activity outwith the

remit of the Bonn Convention (www.cms.int). International protection of whales is once more a patchwork of both participants and commitments, with involvement subject to the appeal of institutional limitations and the effect of participation subject to the extent to which these limits are exploited.

CITES is further limited in its scope in that it has no mandate for controlling domestic trade (Reeve, 2006: 887). Cetaceans are not often household effects but the Convention also waives the Appendix provisions for zoo, circus menagerie and exhibition animals (CITES, 1973: Article VII). Problems with keeping whales and other cetaceans in captivity were mentioned in chapter one; SeaWorld is often cited as an example here but many more facilities exist throughout the world, with estimates of over 2000 dolphins, 227 belugas, 56 orcas, 37 porpoises and 17 false killer whales in captivity (www.bornfree.org). These are often traded between exhibits internationally, or imported from aforementioned dolphin drives. A number of countries have prohibited such exhibits, including India which objects to the humaneness of keeping 'non-human persons' in captivity, and the UK where stipulations for facilities are too strict to be enacted (www.bornfree.org). This is a matter upon which states legislate on an individual basis without the auspices of CITES. Proposed legislation, however, could address this limitation: transnational activist groups such as the World Society for Animal Protection and the International Fund for Animal Welfare have been advocating for a Universal Declaration on Animal Welfare (UDAW). This would, inter alia, compel member states to observe animal sentience and take measure to reduce animal suffering within sovereign borders (www.globalanimallaw.org). Existing legislation such as CITES cannot govern protection of whales in captivity in the way that UDAW promises.

Institutional limits of the IWC, CITES and CMS are compounded by issues of enforcement. No supranational policing force exists to ensure Contracting Parties commit to international rules and principles. Implementation procedures set forth by the IWRC are as follows: Contracting Parties must ensure that 'appropriate measures' of enforcement are in place; prosecution of infractions are assigned to the national jurisdiction of the offending party; any offences, as well as catch details, must be transmitted to the Commission (ICRW, 1946: Article IX). The self-regulatory nature of the IWC is easily exploitable by whaling interests. The Schedule requires each factory ship to have at least two inspectors on board for 24 hour supervision, but these are appointed and paid for by the Contracting Government (IWC, 2014: Schedule/21a). Whale-catcher ships may operate without such inspections, and so can Aboriginal Subsistence Whalers. Also problematic here is vague terminology: what

are ‘appropriate’ enforcement and punishment measures? P Sands has commented on the importance of precise language in international environmental law, the absence of which is used to justify non-compliance and ‘permissive interpretations’ (Sands, 2003: 616). Indeed, the concept of legalisation delineated by Abbott et al dictates that precision – as well as obligation and delegation – is a central component determining the degree to which international legislation may be understood as hard law (Abbott et al, 2000). Although the ICRW and associated Schedule sets forth clear catch limits and procedural rules, other linguistic ambiguities may limit its effectiveness in this regard. Moreover, obligation is high in the Schedule but less so in other more advisory functions of the IWC, and delegation is similarly varied across different branches. Using the theory of Abbott et al, the Commission can be seen as more highly legalised in some areas governed by the Schedule text, but less so in others under the remit of sub-committees.

Enforcement issues are likewise challenging for CITES. Proposals for such a committee were rejected at the Kyoto Conference of Parties (Mofson, 1994: 97). Like the CMS and CBD, CITES requires translation into national legislation and enforcement bodies and, as discussed in the previous chapter, mechanisms are in place to sanction lacking or poorly implemented domestic measures. From a preservationist perspective, however, these are weak and misguided: the ultimate punishment under CITES is a recommendation for a ban in trade of all listed species, when such a ban should be in place to begin with. Enforcement flaws can be illustrated with the plight of the vaquita which is inextricable from that of the totoaba fish, both of which are listed on CITES Appendix I and under various national legislation. Vaquita share a very limited range in the Gulf of California with the totoaba whose swim bladders are considered to have health benefits in certain East Asian markets, and gills nets used to poach these fish have resulted in devastating by-catch of the porpoise (Revkin, 2015). Mexico is a member of CITES and has put in place the required measures for reducing the threat by confiscating illegal shipments of the bladder (CITES/UNEP, 2015). It has also used its membership of the international organisation to better tackle an international problem by requesting CITES ensures that China and the USA adopt measures to halt the trafficking of totoaba through their ports (Gov. Mexico, 2015). Domestic measures include fishing gear stipulations and designated areas of protection but cooperative action is needed to address the market demand for totoaba on the other side of the world because continuously developing poaching techniques are proving difficult to combat (CITES/UNEP, 2015). Experts have said that a programme costing $50-60million is also

needed to ban gill netting and compensate fishermen (Society for Conservation Biology, 2015). The case of the vaquita demonstrates a number of enforcement problems with CITES and with environmental law more broadly in that effective protection is expensive, profoundly transnational and tied to private actors, namely the consumers and suppliers of totoaba bladder. It is not enough for CITES to recommend a ban of its entire species list, constituent nations involved at different levels of the trade must take more drastic action. That the vaquita is a small cetacean means that it is also outside of IWC protection, even if it is studied by the Conservation and Scientific Committees that may play an advisory role.

The importance of economic factors in cetacean and environmental protection can be both a problem and an advantage. Consumer boycotting, for example, has had some effect on SeaWorld profits. In terms of international law, the economic might of the United States has helped enforcement issues: historically, the 1970 Endangered Species Act closed the US market for whale oil which accounted for 25% of global demand; the 1973 Pelly amendment facilitated an American embargo on all fish and wildlife products from nations violating IWC demands; and the 1979 Packwood-Magnuson amendment corroborated this by reducing fishing quotas by half for such non-compliant states wishing to fish in the US Exclusive Economic Zone (Peterson, 1992: 172-3). These regulations worked in conjunction with existing international law. More recently, new proposals for cetacean safe seafood under the 1972 Marine Mammal Protection Act offer a means of pressurising fisheries in states that export to the USA; this includes shrimp fisheries in the Gulf of California that, along with totoaba poaching, result in high instances of vaquita by-catch (Platt, 2015). Thus, whilst not ostensibly for the purpose of consolidating international legislation, this domestic stipulation which utilises US market presence could extend and improve the efficacy of CITES which allows for stricter measures to be taken by its signatories under Article XIV. This would not be the first instance of America modifying the behaviour of other states under towards conservationist attitudes CITES: the USA played a pivotal role in discouraging Japan from placing a reservation on Appendix I listed African elephant, also via bilateral trade sanction under the Pelly amendment (Mofson, 1994). The role of US economic influence suggests that institutions are only as powerful as their constituent parts, and reiterates the importance of a hegemon as the nucleus of international law – a quasi-leviathan. It is perhaps possible to infer from this that the absence of the USA from CMS is detrimental to its success.

It is further useful to consider other ways in which international law might change the behaviour of states towards better protection of whales. The agency of such accords has long

been understood as rooted in the construction of identities and the influence of norms over time (Keohane 1984; Chayes and Chayes, 1993; Raustiala and Slaughter, 2002). Notably, Joseph Nye has attested to the 'transformative effect of transnational contacts and coalitions on national attitudes and definitions of interest' (Nye, 1988: 246). The utility of the CBD, UNLOSC and the recent ICJ ruling are particularly appropriate here: unlike the IWC, CITES and the CMS, they do not stipulate protective measures for cetaceans, nor do they function in a way that might change the material cost-benefit calculations by (limited) economic sanctions. The Biodiversity Convention crucially brought about a discursive change in the ways in which the natural world is conceived of internationally by acknowledging its inherent worth. It has, however, been described as toothless but muscular in that its utility lies in its ability to hold states internationally accountable to the norms it embodies, rather than through any specific supranational measures (Yongo, 1997: 327-8). In other words, its normative alignment better serves animal rights ideologies than that of the IWC as a whole, but in terms of practical utility, it is comparatively lacking. Likewise, UNCLOS served to reinforce cooperation between IGOs, thus its function is more underlying than frontline. The ICJ ruling on Antarctic whaling was a landmark case in that it helped set a precedent for scrutiny of so-called scientific lethal research permitted by the IWC and appears to have ended Japanese fin-whaling which is absent from the nation's new plans; the ruling, however, was based entirely upon existing IWC policy. Norms are thus crucial but complementary: legislation that aims to protect whales this way cannot work without more specific regulatory measures. Limitations of certain types of existing law are mitigated, in part, by the benefits of others.

Finally, it is important to assess the foundations upon which much international law is so often based. Scientific advice plays a formative role in determining policy, but it comes from a range of sources and is frequently contested by participating states. For example, Japanese scientists claim that lethal whaling is necessary and that ecosystem modelling by reducing minke populations is a legitimate conservation effort and the Japanese Institute of Cetacean Research has long claimed that whales must be culled in order to prevent overexploitation of fish stocks (Gov. Japan, 2014). This a widely discredited assessment made all the more absurd when set within a context of rampant consumption of the same resource by humans. Indeed, IWC research reveals a 30% decline in Southern Hemisphere minke whales since the moratorium (IWC, 2013). Science in the context of whaling is thus coloured by political and ideological orientation. From such an animal rights stance, however, the usefulness of scientific advice in terms of the ICRW Schedule is somewhat

restricted: it matters not what degree of exploitation whale populations can sustain, but that their highly sentient and social nature is respected by the instigation of a complete ban. Scientists play an important role in helping to verify animal cognitive and emotional intelligence, as well as in broader environmental concerns that threaten species, but it is secondary with regards to whaling. Thus, the basis of international whaling law, from this point of view, is subjective, exploitable and flawed.

International law governing the protection of whale species is subject to a number of limitations, constituent, institutional and systemic based. Chief among these is the largely elective nature of participation in and compliance with transnational accords. The reliance upon national legislative efforts and the lack of supranational enforcement exacerbates this. A paradox of effective law also emerges: institutions must be accepted in order to be effective, but weak in order to be accepted. Moreover, a distinction must be drawn between compliance and effect, especially from a preservationist interpretation. This is because certain regulations, such as catch limits for endangered species, may be adhered to by Contracting Parties, yet that does not mean the institution is ensuring sufficient protection. Effectiveness must be assessed in relation to the ideological orientation of the observer. In this way, the existing framework does not have a satisfactory mandate for protection: it is representative of a patchwork of participants, species and issue areas. The political will and national identity of member states is another limiting factor, with international agreements often more evocative of international discords. For some, environmental sustainability and mankind's role of caretaker for the planet is manifest in the plight of whales; for others whale welfare and ecological degradation are secondary to national, cultural and personal interest. In sum, it can be claimed that international law has been essential, but has reached its limit. It has fulfilled conservationist objectives with regards to a number of species. But it cannot make a further significant contribution to animal welfare and rights.

Conclusion

The protection of whales under international law can reveal something of the ways in which the human-nature relationship is negotiated in a global context. Whales and other cetaceans are fundamentally transnational and inextricable from environmental concerns. Effective protection must go beyond regulating, or even prohibiting, whaling in order to address the threat from ecological crises: climate change, pollution, overfishing and irresponsible uses of the oceans promise dire consequences for marine mammals today, just as competitive

exploitation did in the early to mid-1900s. Although many populations of great whale hunted to near extinction in the past recovered to a degree, the challenge of international collaboration on these deeper environmental problems is considerable. This is not least because economic and political factors are at play overwhelming conservationist and preservationist efforts just as they did when the first tentative attempts at cooperative action on whales were emerging. Whale products were embedded into the fabric of everyday life, international economy and diplomatic relations between states, just as the causes of climactic and ecological degradation are today. Threats to whales may have shifted from the value of their own oil to that from fossil fuels, but the outlook for cetaceans and the environment under international law remains bleak. As explored above, international law lacks both the institutional might and the impetus from constituents necessary for swift and comprehensive change. This is evident with regards to the conservation of at risk cetacean populations, such as blue whales, fin whales, vaquitas and Maui dolphins, but it is clearer yet from an ecocentric protectionist point of view. When international law challenges national or cultural identities it is met with greater defiance: the IWC and CITES can impose weak regulatory regimes on participating states, bolstered through scientific advice, but they are largely impotent in terms of recognising animal rights and protecting animal welfare. It is thus possible to posit a fundamental limit to international environmental law: it may move towards more responsible caretaking of the environment, but it cannot satisfy protectionist critique of the ways in which whales and other cetaceans are treated worldwide. The Universal Declaration of Animal Welfare is yet to be realised.

Further assessment of these limits can help elucidate theories of international relations. Of sustained importance throughout the development of international efforts to protect whales is the notion of identity. Whaling continues to be such a contentious issue in part because it is constitutive of the ways in which individuals, cultures and nations have constructed themselves in relation to others. This is such that ideational definitions of the whale have underpinned purportedly objective scientific research, consolidating constructivist ontologies. Whale hunting and whale saving identities are intensified when confronted, but that is not so say that they are wholly static. Dramatic changes have occurred in the behaviour of certain states: New Zealand, the United States and Palau, for example, have shifted from staunchly pro-whaling to varying degrees of opposition. Dramatic changes have also taken place within institutions such as the IWC itself. External factors, such as ecological crisis and economic incentives, are crucially important here; institutional ones

also. More than any other institution discussed, the International Whaling Commission has played an essential role in both facilitating and accelerating shifting attitudes towards whales: it has been a means with which transnational activist groups may play a greater role in supranational governance; a means of holding states accountable to the burgeoning protectionist principles it has come to embody, at least in part; and a means for powerful actors, such as the USA, to legitimise action taken against non-compliant members towards better protection for cetaceans. It has thus changed behaviour over time by changing the ways in which states perceive their interest, reaffirming that the distinction between cost-benefit and more normative motive is blurred. Recent assessment of the stagnation and deadlock within the IWC, however, exposes the limits of this utility: institutions may bring members closer to a negotiated middle-ground, but such compromise can never satisfy each extreme especially where dynamics of identity are concerned. Institutional weakness and persistent non-compliance is the norm for international law governing the protection is whales.

It follows that the supranational legal system must be understood as an essential, yet incomplete, framework for issues of ethical sustainability. It is useful here to draw upon the work of James Tully for whom international law is an illegitimate means of addressing contemporary ecological problems because it serves capitalist property interests above all others and belies true global citizenship (Tully, 2014). As discussed above, protective efforts regarding whales are often undone by converse commercial incentives facilitated by the IWC and inadequately handled by CITES. Compare such weak environmental law to much more highly legalised trade agreements, such as Trade Related Aspects of International Property Rights under the Worlds Trade Organisation (Abbott et al, 2000: 404), and Tully's account of inherently flawed global legislation is corroborated. It is thus possible to suggest that in order to effect satisfactory changes, it is important for actors to participate in international affairs outwith law. Transnational activism is arguably of equal – if not greater – agency in terms of the protection of cetaceans and their environment: organisations such as Greenpeace and SeaShepherd do vital work. Supranational and state-led change must thus be complemented by action at a grassroots level better able to embrace Tully's principles of ethical stewardship (Tully, 2014). The limits of international environmental law necessitate more, not less, transnational action.

Bibliography

Abbott, K. W., R. O. Keohane, A. Moravcsik, AM Slaughter and D. Snidal (2000) 'The Concept of Legalization' *International Organization,* vol. 54 no. 3 pp. 401-419

Abelson, Donald E. 2014. 'Old world, new world: the evolution and influence of foreign affairs think-tanks' *International Affairs* 90(1), pp.125-142

Aboriginal Subsistence Whalers Working Group (ASWWG) of the International Whaling Commission (2014) 'The report of the ad hoc Aboriginal Subsistence Whaling Working Group meeting with Native Hunters' (www.iwc.int) [accessed 04.07.2015]

American Society for International Law (2010) 'International Whaling Commission Fails to Reach an Agreement on Commercial Whaling: US sees Commission as increasingly ineffective' *American Journal of International Law*, 100(3) pp.198-500

Birnie, P (1986) 'The Role of Law in Protecting Marine Mammals' *Ambio,* 15(3) pp.137-43

Bolster, W Jeffrey (2012) *The Mortal Sea: Fishing in the Atlantic in the Age of Sail*, London: Harvard University Press

Brown, Taylor Kate (2015) 'Hunting whales with rowing boats and spears' *BBC News Magazine*, 26th April (http://www.bbc.co.uk/news/magazine-32429447) [accessed 06.07.2015]

Chayes, A. and A. H. Chayes (1993) 'On Compliance' *International Organization*, vol.47 no. 2 pp. 175-205

CITES/UNEP (2015) 'Notification to the Parties No. 2015/050 Concerning Mexico' (https://cites.org/sites/default/files/notif/E-Notif-2015-050_0.pdf) [accessed 01.09.2015]

Dorsey, Kurkpatrick (2013) *Whales and Nations: Environmental Diplomacy on the High Seas*, Seattle: University of Washington Press

Epstein, Charlotte (2008) *The Power of Words in International Relations: Birth of an Anti-Whaling Discourse*, London: MIT Press

Fjeldsbø, T (2015) 'Equal but Opposite' *The Arctic Journal*, 10th June (http://arcticjournal.com/culture/1653/equal-opposite) [accessed 16.06.2015]

Freestone, David, Richard Barnes and David Ong (2006; 2010) 'Introduction' in David Freestone, Richard Barnes and David Ong (ed.) *The Law of the Sea: Progress and Prospects*, Oxford Scholarship Online, pp.1-27

Gerring, J. (2004) ‘What is a Case Study and What Is It Good for?’ *American Political Science Review*, 98(2) pp.341-354

Government of Japan (2014) ‘Proposed research plan for new scientific whale research programme in the Antarctic Ocean (NEWREP-A)’ (http://www.jfa.maff.go.jp/j/whale/pdf/newrep--a.pdf) [accessed 01.09.2015]

Government of Mexico (2015) ‘Totoaba (totoaba macdonaldi) and vaquita porpoise (phocoena sinus): two endangered species endemic to Mexico’ (http://www.biodiversidad.gob.mx/especies/pdf/EspeciesPrioritarias/Animales/totoaba_vaquitam_en.pdf) [accessed 01.09.2015]

Green Party of Canada, *Manifesto* (http://www.greenparty.ca/en/policy/vision-green/environment/whale-hunting) [accessed. 01.08.2015]

Haas, Peter M (1992) 'Introduction: Epistemic Communities and International Policy Coordination' *International Organization,* 46(1) 1-35

Held, D. (2003) ‘The changing structure of international law: sovereignty transformed?’ in Held, D. and McGrew, A. (ed.) *The Global Transformations Reader: an Introduction to the Globalization Debate*, Cambridge: Polity Press pp. 162-176

Hirata, Keiko (2004) ‘Beached Whales: Examining Japan’s Rejection of International Norms’ *Social Science Japan Journal*, 7(2) 177-197

Hobbes, Thomas (1651; 2013) *Leviathan* (https://www.gutenberg.org/files/3207/3207-h/3207-h.htm#link2H_4_0113) [accessed 01.07.2015]

Hoel, Alf H (1993) ‘Regionalisation of International Whale Management: the case of the North Atlantic Marine Mammal Commission’ *Arctic*, 46(2) pp.116-123

International Whaling Commission (2013) ‘Report of the 64th Annual Meeting of the IWC’ (www.iwc.int) [accessed 04.07.2015]

Ishi, Hiroyuki (1992) ‘Basic Environmental Attitudes in East and West: why do the Japanese eat whales?’ *RSA Journal*, 140(5425) 108-118

Kalof, Linda (2007) *Looking at Animals in Human History*, London: Reaktion Books

Keohane, Robert O (1984) *After Hegemony: Cooperation and Discord in the World Political Economy*, Princeton: Princeton University Press

Keohane, Robert O (1993) 'Institutional theory and the realist challenge after the cold war' in David A Baldwin (ed.) *Neorealism and Neoliberalism: the Contemporary Debate*, New York: Colombia University Press, pp.269-300

Keohane, Robert O and Joseph S Nye (2012) *Power and Interdependence*, 4th ed., New York: Longman

Krasner, S. (1999) *Sovereignty: Organized Hypocrisy*, e-book: Princeton University Press

March, J.G. and JP Olsen (1998) 'The Institutional Dynamics of International Political Organisations' *International Organization*, vol. 52 no. 4 pp. 943-69

Mofson, Phillys (1994) 'Protecting Wildlife from Trade: Japan's Involvement in the Convention on International Trade in Endangered Species' *Journal of Environment Development*, 3(1) pp.91-107

Misaki, S (1994) 'Whaling Controversy if the Name of the Game' in Institute of Cetacean Research (ed.) *Public Perceptions of Whaling*, Tokyo: ICR, pp.12-39

Neate, Rupert (2015) 'SeaWorld sees profits plunge 84% as customers desert controversial park' *The Guardian*, 6th August (http://www.theguardian.com/us-news/2015/aug/06/seaworld-profits-plunge-customers) [accessed 07.08.2015]

Nye, Joseph S (1988) 'Neorealism and neoliberalism' *Wold Politics*, 40(2) pp.235-51

Ogley, Roderich (1996) 'Between the Devil and the Law of the Sea: the generation of global environmental norms' in John Vogler and Mark F Imber (eds) *The Environment of International Relations*, London: Routledge, pp.155-170

Peterson, M J (1992) 'Whalers, cetologists, environmentalists, and the international management of whaling' *International Organization*, 46(1) pp.147-186

Platt, John (2015) 'U.S. to World: You'd Better Protect Whales and Dolphins If You Want Us to Eat Your Seafood' Take Part, 12th August (http://www.takepart.com/article/2015/08/12/new-way-protect-whales-and-dolphins-seafood?) [accessed 14.08.2015]

Price, Richard (1998) 'Reversing the Gun Sights: Transnational Civil Society Targets Land Mines,' *International Organization*, 52(3) 613-44

PRNewswire (2015) *SeaWorld Entertainment, Inc. Reports Second Quarter 2015 Results* (http://www.prnewswire.com/news-releases/seaworld-entertainment-inc-reports-second-quarter-2015-results-300124561.html) [accessed 07.08.2015]

Raustiala, K. and AM Slaughter (2002) 'International Law, International Relations and Compliance' in Carlsnaes, W., Risse-Kappen, T. and Simmons, B. A. (ed.) *Handbook of International Relations*, e-book: Sage Publications Ltd. pp. 538-558

Redgewell, Catherine (2014) 'International Environmental Law' in Malcolm D Evans (ed.) *International Law*, 4th ed., Oxford: Oxford University Press, pp.688-726

Reeve, Rosalind (2006) 'Wildlife Trade, Sanctions and Compliance: Lessons from the CITES Regime' *International Affairs*, 82(5) pp.881-97

Regan, Tom (1983) *The Case for Animal Rights*, Berkeley: University of California Press

Rolland, Sonia E (2014) 'Whaling in the Antarctic (Australia v Japan: New Zealand Intervening)' The *American Journal of International Law*, 108 (3) 496-502

Revkin, Andrew (2015) 'Black Markets in China Still Driving World's Tiniest Porpoise to Extinction' *New York Times*, 24th August (http://mobile.nytimes.com/blogs/dotearth/2015/08/24/black-markets-in-china-still-driving-worlds-tiniest-porpoise-to-extinction/?referrer#more-55622) [accessed 25.08.2015]

Sands, Philippe (2003) *Principles of International Environmental Law*, 2nd ed., Cambridge: Cambridge University Press

Singer, Peter (1977) *Animal Liberation*, New York: Avon Books

Society for Conservation Biology (2015) 'A New Hope for the Vaquita' *SCB* (http://conbio.org/groups/sections/marine/save-the-vaquita) [accessed 20.08.2015]

Stoett, Peter J (1997) *The International Politics of Whaling*, Vancouver: UBC Press

Tanno, Dai and Toshihidi Hamazaki (2000) 'Is American Opposition to Whaling Anti-Japanese' *Asian Affairs*, 27(8) pp.81-92

The Australian (2014) 'Palau to end support for Japanese whaling, backs quota plan' 14th June (http://www.theaustralian.com.au/news/world/palau-to-end-support-of-japanese-whaling-backs-quota-plan/story-e6frg6so-1225879557616) [accessed 04.07.2015]

Tonnessen, Johan Nicolay and Arne Odd Johnsen (1982) *The History of Modern Whaling*, Berkeley: University of California Press

Tully, James (2014) *On Global Citizenship: James Tully in Dialogue*, London: Bloomsbury

Working Group on Killing Methods and Welfare Issues (WK-WI) of the International Whaling Commission (2014) 'Report of the WK-WI at the 25th Annual Meeting of the IWC' (www.iwc.int) [accessed 04.07.2015]

World Wildlife Fund (2005) 'Japanese Scientific Whaling: Irresponsible Science, Irresponsible Whaling' *WWF*, 1st June (http://wwf.panda.org/what_we_do/endangered_species/cetaceans/cetaceans/iwc/resources/?13793/Japanese-Scientific-Whaling-Irresponsible-Science-Irresponsible-Whaling) [accessed 01.09.2-15]

WWF-Greenpeace-IFAW (2014) 'Japan's "New" Proposal foR Continued Whaling in the Antarctic Ocean' 15th December (http://www.ifaw.org/sites/default/files/2015-Greenpeace-IFAW-WWF-JARPA-III-Briefing.pdf) [accessed 01.09.2015]

Yamamoto, Shichihei (1985) 'Preservation of our traditional whaling' in Japanese Whaling Association (ed.) *The Whale – Culture*, Tokyo: JWA, pp. 12-13

Yin, R K (2009) *Case Study Research: Design and Methods*, London: SAGE Publications Ltd

Yongo, Thomas (1997) 'Five years after the Earth Summit: Implementation and Effectiveness of the Convention on Biological Diversity' *Proceedings of the Annual Meeting of the American Society of International Law*, 91 pp.321-8

Websites

Born Free Foundation, 'Captive Whales and Dolphins – Global' (http://www.bornfree.org.uk/campaigns/zoo-check/captive-whales-dolphins/global) [accessed 01.09.2015]

Global Animal Law, 'Database Legislation: Universal Declaration of Animal Welfare' (https://www.globalanimallaw.org/database/universal.html) [accessed 01.09.2015]

International Whaling Commission (www.iwc.int) [accessed 04.09.2015]

Whale and Dolphin Conservation Society, 'Dolphin Drive Hunts' (http://uk.whales.org/issues/dolphin-drive-hunts) [accessed 01.09.2015]

International Legal Materials

Conventions/agreements

Agreement Establishing the North Atlantic Marine Mammals Organisation (NAMMCO) 1992 (www.nammco.no) [accessed 20.06.2015]

Agreement on the Conservation of Cetaceans of the Baltic Sea, Mediterranean Sea and Contiguous Atlantic Area (ACCOBAMS) 1996 (www.accobams.org) [accessed 20.06.2015]

Agreement on the Conservation of Small Cetaceans of the Baltic and North Seas (ASCOBANS) 1992 (www.ascobans.org) [accessed 20.06.2015]

Antarctic Treaty 1959 (http://www.ats.aq/documents/ats/treaty_original.pdf) [accessed 12.06.2015]

Convention (Bonn) on the Conservation of Migratory Species of Wild Animals (CMS) 1979 (http://www.cms.int/en/convention-text) [accessed 14.07.2015]

Convention on the Conservation of Antarctic Marine Living Resources 1980 (https://www.ccamlr.org/en) [accessed 17.06.2015]

Convention on the Conservation of Biological Diversity (CBD) 1992 (https://www.cbd.int/doc/legal/cbd-en.pdf) [accessed 13.07.2015]

Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) 1973 (https://www.cites.org/sites/default/files/eng/disc/CITES-Convention-EN.pdf) [accessed 11.08.2015]

Convention (Wellington) for the Prohibition of Fishing with Long Driftnets in the South Pacific 1989 (http://www.jus.uio.no/english/services/library/treaties/08/8-02/large-driftnets.xml) [accessed 11.06.2015]

International Convention for the Regulation of Whaling (ICRW) 1946 (https://archive.iwc.int/pages/view.php?ref=3607&k=) [accessed 06.06.2015]

International Convention for the Regulation of Whaling Schedule as amended by the Commission at the 65th Annual Meeting 2014 (www.iwc.int) [accessed 05.07.2015]

London (Dumping) Convention 1972 (http://www.imo.org/en/OurWork/Environment/LCLP/Documents/LC1972.pdf) [accessed 12.06.2015]

MARPOL 1973 (https://www.imo.org/en/About/Conventions/ListOfConventions/Pages/International-Convention-for-the-Prevention-of-Pollution-from-Ships-(MARPOL).aspx) [accessed 12.06.2015]

United Nations Convention on the Law of the Sea (UNCLOS) 1982 (http://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf) [accessed 12.07.2015]

Cases

International Court of Justice (Australia v Japan, New Zealand Intervening) 2010-14 (http://www.icj-cij.org/docket/files/148/18136.pdf) [accessed 20.07.2015]

Other

Canada-Greenland Joint Commission on Beluga and Narwhal 1991, *Nunavut Wildlife Management Board* http://www.nwmb.com/en/2-uncategorised/83-canada-greenland-joint-commission-on-beluga-and-narwhal [accessed 01.09.2015]

CITES Reservations (www.cites.org/reservations) [accessed 23.07.2015]

CITES Rev.COP12, 'Conservation of cetaceans, trade in cetacean specimens and realationship with the IWC' *Conference 11.4* (https://cites.org/sites/default/files/eng/res/all/11/E11-04R12.pdf) [accessed 01.09.2015]

CMS Party and Non-Party States (http://www.cms.int/en/parties-range-states) [accessed 23.07.2015]

European Council Regulation (EEC) No 348/81 'on common rules for imports of whales or other cetacean products' 1981 (http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=URISERV:l28038)

UNEP (Stockholm) Conference on the Human Environment 1972 (http://www.unep.org/Documents.Multilingual/Default.asp?documentid=97&articleid=1503) [accessed 29.06.2015]

UN General Assembly resolutions on drift net fishing: 46/215 1991 (http://www.un.org/documents/ga/res/46/a46r215) [accessed 16.07.2015]