

Quotas, Cultures, and Tensions. Recent Schedule Amendments for Aboriginal Subsistence Whaling under the International Convention for the Regulation of Whaling

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1. Introduction

The testimonies by indigenous whalers from Alaska, Greenland, Chukotka and the US Pacific Northwest at the 67th meeting of the International Whaling Commission (IWC) in Florianópolis, Brazil, in September 2018 were truly moving. Makah, Inuit, Eskimos and Chukchi as well as Caribbean Bequaians stood side by side, backed by their respective national governments, asking the Commission to listen to their plights and to renew the quota for some large cetaceans that are subject of the International Whaling Commission. For this quota renewal, which must be decided upon by the Commission by a $\frac{3}{4}$ majority, takes place only every 6 years and 2018 thus marked the year of such renewal.

This contribution examines the process of the recently adopted quota allocation and changes to the management of cetaceans subject to Aboriginal Subsistence Whaling (ASW). Drawing from field notes of the author who attended the meeting as an observer, this paper summarises the discussions on the International Convention for the Regulation of Whaling (ICRW).¹ Particular emphasis is thus placed on the individual understandings of what the ICRW is to achieve and what role indigenous communities play in it.

2. A brief history of the Whaling Convention and Commission

To understand the current whaling regime, it is necessary to briefly sketch the history of the International Whaling Commission (IWC). The IWC is based on Article III of the ICRW, which was concluded by the major whaling nations at that time: Argentina, Australia, Brazil, Canada, Chile, Denmark, France, the Netherlands, New Zealand, Norway, Peru, South Africa, the Soviet Union, the United Kingdom and the United States. The convention came into force on 10 November 1948 and had an original membership of eight of the whaling states. By 2018, this membership has risen to 89 members, the latest of which

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¹ International Convention for the Regulation of Whaling of 2 December 1946 (161 UNTS 72).

is Liberia which has become a full member of the IWC in August 2018.

Originally, the IWC was considered a “whalers’ club,”² primarily concerned with the advancement and further development of the whaling industry, as enshrined in the last preambular paragraph of the ICRW: “Having decided to conclude a convention to provide for the proper conservation of whale stocks and thus make possible the orderly development of the whaling industry.”³ The world’s whale species were thus perceived as a resource that could be exploited on a large scale while being protected for the benefit of the whaling industry. In order to do so, an elementary part of the ICRW is the Schedule which outlines specific provisions and catch limits for specific regions and species. At the time of the ICRW’s conclusion, however, species-based quotas were not applied. Instead, whale hunting was regulated by the so-called blue-whale-unit (BWU), based on the importance of the blue whale for international trade. The BWU thus provided for the ratio one blue whale, two fin whales, two and a half humpback whale, or six sei whales. In other words, the larger the whale, the better for the respective whaler since with less effort more whale tonnage could be produced. This inevitably led to the so-called ‘whaling Olympics’ and a

drastic reduction of stocks of large cetaceans. Only in 1972 it was decided to replace the BWU with species-based quota allocation.⁴

Throughout the 1970s a paradigmatic shift in the perception of ‘the whale’ occurred, prompted by the rise of the environmental movement, the adoption of the Marine Mammal Protection Act (MMPA) in 1972 in the United States and the 1972 UN Conference on the Human Environment (UNCHE). Given the ever-declining populations of large whales, the UNCHE called for a moratorium on commercial whaling, which the IWC agreed upon in 1982, yet starting from the whaling season 1985/86. In other words, more than $\frac{3}{4}$ of the Commission members voted for a Schedule amendment that put in place catch quotas of zero for all whale species under the purview of the Commission. Even though this zero catch quota was to be in place only for a few years, up to the present day it has not been lifted. To the contrary – it has been solidified given that the steep rise of membership since the putting in place of the moratorium caused a shift from whale utilisation to whale preservation within the Commission. After all, the majority of rather recent members are nations opposed to whaling, despite not

² Arne Kalland and Brian Boeran, *Japanese Whaling. End of an Era?* (Routledge 1992), 13.

³ ICRW, Preamble.

⁴ Alexander Gillespie, *Whaling Diplomacy. Defining Issues in International Environmental Law* (Edward Elgar 2005), 4.

necessarily themselves having a history of whaling.

Even though the joining of Caribbean, African and South Pacific Island states – most of whom are nations supporting the sustainable use of whales and thus oppose the moratorium – has increased, the number of states aiming for a lift of the moratorium, the necessary $\frac{3}{4}$ majority, has not yet been reached. This situation, i.e. the attempts of whaling nations⁵ and supporters of sustainable use to have the moratorium lifted *vis-à-vis* so-called ‘like-minded states’ opposing the extractive use of whales, has led many, particularly media commentators, to ascribe the IWC to be in a state of deadlock.⁶ Based on my own observations, however, it strongly depends on who is asked about the state of the IWC: it is first and foremost sustainable use supporters that are unable to lift the moratorium that consider the IWC to be dysfunctional due to the opposing views on whales and whaling. On the other hand, those supporting the moratorium and the non-extractive use of whales consider the Commission perfectly functionable since it is able to uphold the moratorium. Especially the so-called ‘Buenos Aires Group’, consisting of Argentina, Brazil,

Chile, Costa Rica, Ecuador, Panama, Peru and Uruguay,⁷ is a strictly anti-whaling alliance, as we will see below.

3. Aboriginal Subsistence Whaling

Despite a zero catch limit on whales being in place, since the adoption of this moratorium indigenous whaling, ASW, was excluded. The ICRW itself, however, does not hold any provision on ASW. Instead, paragraph 13 of the Schedule establishes “catch limits for aboriginal subsistence whaling to satisfy aboriginal subsistence need for the 1984 whaling season and each whaling season thereafter.”⁸ The IWC has thus recognised four regions in which ASW is conducted: Alaska and Washington State in the USA, Chukotka in Russia, Greenland and Bequia in St Vincent and the Grenadines. This means that communities engaged in whaling are assigned a quota based on the advice of the IWC’s Scientific Committee in 6-year blocks. In order to get this quota, however, the respective national governments are to submit a ‘Needs Statement’, which outlines the subsistence needs of the respective indigenous people and which is decided upon by the Commission. This Needs

⁵ First and foremost Japan, Norway and Iceland.

⁶ E.g. Tom Hirsch ‘Whaling moratorium under review’ *BBC News*, 19 July 2004. URL: <http://news.bbc.co.uk/2/hi/science/nature/3905487.stm> (accessed 21 September 2018); Tetsushi Yamamura ‘Japan seeks IWC reform to resume commercial whaling’ *The Asahi Shimbun*, 6 July 2018. URL: <http://www.asahi.com/ajw/articles/AJ201807060009.html> (accessed 21 September 2018).

⁷ At IWC67, Nicaragua has somewhat diverted from the overall direction of the Buenos Aires Group.

⁸ ICRW, Schedule, para. 13.

Statement was to be submitted before every quota renewal.

Two issues should be considered in this context: (1) ASW is not a matter of course despite ASW existing in the context of the IWC. This is best exemplified by the attempts of the Makah Tribe to obtain a quota for grey whales in the 1990s. However, since they voluntarily gave up whaling in 1915 due to conservation concerns, it was argued that a grey whale quota in 1990s would not be necessary. The struggle lasted for several years and only in 1997 a quota was assigned.⁹ (2) Even though an indigenous people has a history of whaling, this does not mean that its government shows support for its whaling history. A case in point is the long-standing history of interaction with the sea of the Ainu in northern Japan, including the hunt for whales and seals.¹⁰ Although Japan is the most vocal champion of sustainable use and commercial whaling, it has never submitted a Needs Statement on behalf of the Ainu. One reason might be that the situation of the Ainu as an indigenous people in Japan is a tricky one and marked by controversy.¹¹ This notwithstanding, it seems fair to say that

ASW is far from being a normality within the IWC.

4. The Proposed Schedule Amendment

With this in mind let us now turn to the 67th meeting of the IWC, which was the venue when new ASW quotas were to be decided, based on the 6-year blocks underlying the quota allocation. However, the four states in which ASW is conducted – Denmark (on behalf of Greenland), the Russian Federation, St Vincent and the Grenadines, and the United States – submitted a proposal for Schedule amendments which went beyond quota allocation, but which contained more far-reaching elements the most important of which were (1) updated carry-over provisions; (2) a one-time extension of 7 years until 2025; and (3) limited automatic renewal of the quota including safeguards to protect whale stocks.¹²

4.1. Updated Carry-Over Provisions

Concerning the first point, it is particularly Section 13(b), which sets catch limits for ASW, which is of relevance. Previously, each ASW hunt was allocated a specific quota for a

⁹ See Emily Brand, 'The Struggle to Exercise a Treaty Right: An Analysis of the Makah Tribe's Path to Whale' *Environ: Environmental Law & Policy* 32, 287–319.

¹⁰ E.g. Carl Etter. *Ainu Folklore: Traditions and Cultures of the Vanishing Aborigines of Japan* (Westchester: Willcox & Follett, 1949), 164–173.

¹¹ Hiroshi Maruyama. Japan's post-war Ainu policy. Why the Japanese Government has not recognised Ainu indigenous rights? *Polar Record*, 49(2): 204–207.

¹² IWC, Proposal for a Schedule Amendment on Aboriginal Subsistence Whaling, IWC/67/01, later IWC/67/01 Rev 1., p. 1.

specific species. If the quota was not reached, a certain number of strikes were possible to carry forward into subsequent years. For instance, in the case of the ASW quota for bowhead whales in the Bering-Chukchi-Beaufort Seas, the Schedule read:

For the years 2013, 2014, 2015, 2016, 2017 and 2018 the number of bowhead whales landed shall not exceed 336. For each of these years the number of bowhead whales struck shall not exceed 67, except that any unused portion of a strike quota from any year (including 15 unused strikes from the 2008–2012 quota) shall be carried forward and added to the strike quotas of any subsequent years, provided that no more than 15 strikes shall be added to the strike quota for any one year.¹³

The proposed amendment went significantly further and provided for the carry-over of a maximum of 50% of the annual strike limit. The United States, on behalf of the proponents, explained that in light of the drastically changing environmental conditions in the Arctic and the associated increasingly difficult hunting conditions, an updated carry-over formula would address the issue of *when* whales are caught and not *how many*. This would, according to the

proponents, serve both the whalers and the whales since the former would no longer have the pressing need to meet their quota, possibly endangering themselves in difficult environmental conditions; and further, it would benefit the whales, and thus conservation, since the struck-and-loss rate would be notably reduced.

4.2. One-time Extension of 7 Years until 2025

In light of the political challenges surrounding the renewal of the ASW quota, the proponents suggested a Schedule amendment, which extends the period for a quota renewal until 2025, and thus creates a buffer year in which quota allocations and possible changes to the time period can be discussed, paired with the expiration of ASW quotas. In this particularly case, therefore, Section 13 (b) of the Schedule would see catch limits for the years 2019–2025 until new quotas would be decided.

4.3. Automatic Renewal

This proposition constituted the most controversial element of the Schedule amendment and would mean that the Schedule would automatically be amended at the end of each block period to include catch quotas for six (or ultimately seven) years for all ASW

¹³ ICRW, Schedule, Section 13 (b) (1) (i).

countries. In other words, the proposed Schedule amendment would no longer be based on a $\frac{3}{4}$ majority of the Commission members, but would occur without affirmative action by the Commission. The proponents justified this step by noting that there is always the fear of quota renewals being voted down by the Commission, i.e. the Schedule amendments which include the quota renewals not reaching the $\frac{3}{4}$ majority. They furthermore argued that this automatic renewal would contribute to trust-building and transparency as well as benefiting the Commission to allocate time and resources to other matters. To this end, the proponents suggested the insertion of a sixth and seventh paragraph into Section 13 (a) of the Schedule, which were to read:

(6) Commencing in 2026, and provided the appropriate Strike Limit Algorithm has been developed by then, catch limits (including any carry forward provisions) for each stock identified in sub-paragraph 13(b) shall be extended every six years, provided: (a) the Scientific Committee advises in 2024, and every six years thereafter, that such limits will not harm that stock; and (b) the Commission does not receive a request for a change in the relevant catch limits based on need.

(7) The provisions for each stock identified in sub-paragraph 13(b) shall be reviewed by the Commission in light of the advice of the Scientific Committee.¹⁴

The role of the Scientific Committee in the context of automatic renewal is crucial. The proponents thus saw the role of the Scientific Committee as overseeing the automatic renewal based *inter alia* on unchanging catch limits, the unchanged conservation status of the whale stocks and the requirement of ASW countries following a timeline for review and providing all relevant documentation and information as they have done previously. Conversely, if these conditions were not met, an automatic renewal would not occur. To this end, the proposal remarks:

The continued requirement for Scientific Committee advice that the status quo catch limits will not harm the hunt is an important safeguard. If, for example, there were a catastrophic decline in abundance, or any other basis for concern by the Scientific Committee such that it was unable to advise on the sustainability of the hunt, then the renewal would not automatically occur. Alternatively, if there were a request in the catch limits based on a

¹⁴ IWC, Proposal for a Schedule Amendment, p. 2.

change in need, then the automatic renewal would also not occur.¹⁵

5. Discussion and Vote

As could be expected, the discussions surrounding the Proposal were emotional and somewhat heated.¹⁶ Indigenous representatives from the national delegations of the United States, Russia and Denmark as well as the Commissioner of St Vincent & the Grenadines in moving speeches outlined the necessity for the quota renewal as well as for the other proposed Schedule amendments. Important in this aspect is that they did not ask the IWC for an increase in quota, but rather for an increase in flexibility¹⁷ while the automatic renewal as well as the carry-over provisions provide for good management practices of indigenous peoples, which should be based on treaties, conventions and rights.¹⁸ Yet, also the role of the scientific community was highlighted in the testimony by a representative of the Makah, who thanked the Scientific Committee for the review of the Makah hunt.¹⁹ The Commissioner of St Vincent & the Grenadines noted that it is somewhat obsolete to justify the taking of four

whales (1) since the same presentation has been made for the last 18 years and (2) the methods of the hunt since the 19th century have essentially remained the same. He furthermore noted that the right for indigenous peoples to hunt whales is not a handout, but it is their right.²⁰

The ensuing discussion brought to the fore long-standing issues that have caused the disruption in the Commission. On the one hand, Commission members did not want to challenge the right of indigenous peoples to harvest whales. To this end, most states, including anti-whaling states such as New Zealand, Australia or India, supported the proposal. India, supported by Gabon, however, whilst supporting the proposal, urged the Commission to help indigenous peoples to develop alternative livelihoods which would move away from an extractive to a non-extractive use of whales. In how far this was to be achieved in resource-scarce communities in Alaska or Greenland was not elaborated upon, however.²¹

On the other hand, the commercialisation of whale products and thus the hunt for commercial

¹⁵ Ibid., p. 10.

¹⁶ Recordings of the discussions can be found on the YouTube channel of the International Whaling Commission: https://www.youtube.com/channel/UCLtg7GtpJ_eTaJuPqRyOOhQ.

¹⁷ Alaskan representative, field notes, 11 September 2018.

¹⁸ Greenlandic representative, field notes, 11 September 2018.

¹⁹ Makah representative, field notes, 11 September 2018.

²⁰ St Vincent and the Grenadines, field notes, 11 September 2018.

²¹ India, field notes, 12 September 2018.

purposes was, once again, discussed. Subject to debate was, in this context, the clause on automatic renewal of the quotas which some states saw as contributing to conservation issues while theoretically opening the door for commercial whaling. Concerning the former, only after the proponents had submitted a slightly revised proposal in which the role of the Scientific Committee was strengthened and thus a safeguard for conservation was provided, for example Grenada supported the proposal in its entirety. Concerning the latter, the fear was – based on my own reading of the comments made – rooted in the setting of a precedent of whales being handled as a commodity without the Commission serving as a regulator. Especially Colombia made this case and highlighted that it is the provision on automatic renewal which would prevent it from supporting the proposal. Indeed, also other members of the Buenos Aires Group expressed their opposition to the proposal due to their traditionally anti-whaling stance (Uruguay) or due to insufficient application of the precautionary principle (Costa Rica).²² This stance was particularly supported by some NGOs whose interventions

reflected unease particularly concerning the automatic renewal, none of which, however, opposed aboriginal subsistence whaling as such. This notwithstanding, it became clear throughout the discussions that scientific findings were to serve as the basis for the consideration of automatic renewal. Especially Iceland made the case that the arguments made were based on science and not on needs, irrespective of the divisions within the IWC.²³

A third narrative was inserted into the discussion by Guinea, which was later on picked up by several other states, including Korea, which has always followed its own line of argumentation within the IWC: food security.²⁴ While the issue itself has been on the agenda at least since 1995 in the wake of the Sustainable Fisheries for Food Security hosted by Japan in 1994, which was supported by the FAO,²⁵ since the early 2000s the issue had entered the normative debates on the role of the IWC and has been brought up on numerous occasions. Especially at IWC65 in 2014 food security rose to the surface with the submission of a draft Resolution on Food Security by Ghana, Côte d'Ivoire, Mali, Republic of Guinea and Benin, which,

²² Uruguay and Costa Rica, field notes, 11 September 2018.

²³ Iceland, field notes, 12 September 2018; While the term 'science' appears clear-cut, also Iceland would be subject to criticism later on in the meeting due to their strike limit algorithm tuning level which was more conservative than that of other states. For the role of science within the IWC, see Heazle, Michael. *Scientific Uncertainty and the Politics of Whaling* (Seattle: University of Washington Press, 2006).

²⁴ Guinea and Korea, field notes, 11 September 2018.

²⁵ IWC. Forty-Fifth Report of the International Whaling Commission (Cambridge: IWC Secretariat, 1995), p. 55.

however, did not reach consensus.²⁶ Be this as it may, also in the context of ASW food security played once again a role. Particularly a Chukchi whaling captain highlighted the importance of whales as a food source: “If we are left with no whales, my people will just [go] extinct.”²⁷

While the overall sense was that the proposal would find strong support, a consensus could not be reached. The

final outcome reached the necessary $\frac{3}{4}$ majority for the Schedule amendments, however: Yes: 58; no: 7; abstain: 5.²⁸ Apart from Gabon, which abstained, all states voting ‘no’ or abstained were Latin American states, as Table 1 shows. It is noteworthy that Nicaragua, which has traditionally belonged to the Buenos Aires Group, voted, contrary to the other members, ‘yes’ to the proposal.²⁹

Voting right suspended
 Not present

Yes	No	Abs	Yes	No	Abs	Yes	No	Abs	Yes	No	Abs
Antigua & Barbuda	X		Ecuador		X	Liberia	X		St Kitts & Nevis	X	
Argentina		X	Eritrea			Lithuania			St Lucia	X	
Australia	X		Estonia			Luxembourg	X		St Vincent	X	
Austria	X		Finland	X		Mali			San Marino		
Belgium	X		France	X		Marshall Islands	X		Sao Tome & Principe	X	
Belize			Gabon		X	Mauritania	X		Senegal		
Benin	X		Gambia			Mexico		X	Slovak Republic	X	
Brazil		X	Germany	X		Monaco	X		Slovenia	X	
Bulgaria	X		Ghana			Mongolia	X		Solomon Islands	X	
Cambodia	X		Grenada	X		Morocco	X		South Africa	X	
Cameroon			Guinea-Bissau			Nauru	X		Spain	X	
Chile		X	Guinea	X		Netherlands	X		Suriname	X	
China			Hungary			New Zealand	X		Sweden	X	
Colombia		X	Iceland	X		Nicaragua	X		Switzerland	X	
Congo			India	X		Norway	X		Tanzania	X	
Costa Rica		X	Ireland	X		Oman			Togo		
Côte D'Ivoire	X		Israel	X		Palau			Tuvalu	X	
Croatia	X		Italy	X		Panama		X	UK	X	
Cyprus	X		Japan	X		Peru		X	USA	X	
Czech Republic	X		Kenya	X		Poland	X		Uruguay		X
Denmark	X		Kiribati	X		Portugal	X				
Dominica			Korea	X		Romania					
Dominican Republic		X	Laos	X		Russian Federation	X				

Table 1: Voting results of the ASW Proposal.

²⁶ IWC. Report of the 65th Meeting of the International Whaling Commission and Associated Meetings and Workshops (Cambridge: IWC Secretariat, 2014), p. 1.

²⁷ Chukchi representative, field notes, 11 September 2018.

²⁸ Some countries had their voting rights suspended either due to unclear credentials or failure to pay their participation fee. Others were not present at the meeting.

²⁹ In fact, Nicaragua clearly diverged from the course of the Buenos Aires Group in the meeting. Most importantly, Nicaragua voted ‘yes’ to Japan’s Way Forward Proposal, which *inter alia* would have seen an allocation of a small quota for non-aboriginal hunts, meaning an effective lifting of the moratorium on commercial whaling. It furthermore abstained from the vote on Brazil’s Florianópolis Declaration (see Section 6 below).

6. The ICRW in 2018

The rather overwhelming majority for the new ASW quotas and associated changes in the Schedule caused the meeting to enter a state of optimism. After all, many of the arguments that were put forth were indeed based on science and hardly any state requested a new Needs Statement from the ASW countries. The relief that swept through the indigenous organisations that were present and that were requesting a quota was significant and the happiness over

the support from the IWC members caused many to enter a state of rejoice. Apart from some members of the Buenos Aires Group, nobody fundamentally questioned the right and needs of aboriginal communities to hunt whales. Particularly the Alaskan Eskimo Whaling Commission, whose members gave moving testimonies, received the result extremely positively, as Image 1 demonstrates.



Image 1: Relieved members of the Alaskan Eskimo Whaling Commission in front of the table showing the ASW vote. Courtesy of Nikolas Sellheim (2018).

Also for states supporting the principle of sustainable use – in their view the true objective of the convention – the outcome of the ASW vote was encouraging, particularly in light of the impending agenda items dealing with the future direction of the IWC. In this context, two contrasting proposals were going to be presented: one resolution by Brazil and others – the Florianópolis Declaration – which would locate the IWC in a more preservationist context; and one presented by Japan – the Way Forward Proposal – which would enable a co-existence between conservation and sustainable utilisation of whales. Moreover, the optimism that had grasped the Commission also resulted in working group work on yet another Resolution on Food Security, which, this time, was presented by Antigua & Barbuda, Cambodia, Ghana and Guinea. It seemed that for the first time since the adoption of the moratorium in 1982, the IWC would have indeed found a way to bridge the gap that has marked its operative capacities.

The sense of optimism was only short-lived, however. Because directly after the ASW vote, discussions on the future direction of the IWC quickly eradicated any hopes for bridging any gaps and the different interpretations of the ICRW³⁰ once again clashed. On the one hand, those favouring the proposal by Brazil

saw the IWC as having moved beyond the utilisation of whales and having evolved into an organisation for the protection of whales. Thus, their interpretation of the convention focuses on the conservation elements therein, paired with the resolutions that were adopted fostering conservation and the resulting actions taken by the Commission bodies. On the other hand, sustainable use states, and first and foremost Japan, consider the IWC under the pretext of conservation *and* (or even *for*) sustainable use of whales. They thus stick to a formalistic, textual interpretation of the convention and in particular the last preambular paragraph, which is “to provide for the proper conservation of whale stocks *and thus make possible* the orderly development of the whaling industry.”³¹ The clash of interpretation and the gap that is characteristic for the current state of the International Whaling Commission is reflected in the voting outcomes of both proposals, as Table 2 shows:

³⁰ On the interpretation of treaties and the ICRW, see Malgosia Fitzmaurice, “The Whaling Convention and Thorny Issues of Interpretation,” in *Whaling in the Antarctic. Significance and Implications of the ICJ Judgement*, edited by Fitzmaurice, Malgosia and Dai Tamada (Leiden: Brill Nijhoff, 2016), p. 53–138.

³¹ ICRW, Preamble; own emphasis.

	Yes	No	Abs	N/P
Brazil Proposal (preservation)	40	27	4	
Japan Proposal (conservation & sustainable use)	27	41	2	1

Table 2: Voting results for the Brazil’s Florianópolis Declaration and Japan’s Way Forward Proposal

The vote on Florianópolis Declaration was perceived by sustainable use state as a manifestation of the division that runs through the IWC. In a powerful intervention, the Commissioner of Antigua & Barbuda noted that the proponents, given their lack of willingness to negotiate this matter further “send this organisation into the abyss where the whales go when they die. [...] No other organisation, would have gone to a vote on a matter that is so divisive.”³² As a result, Antigua & Barbuda suspended all work on their Resolution on Food Security and withdrew its proposal, further indicating its future unwillingness to

financially contribute to the IWC and to participate in votes. Notably, none of the sustainable use states, not even Japan, withdrew from the organisation. Concerning the latter, it must be noted, however, that both the State Minister of Agriculture, Forestry and Fisheries, Masaaki Taniai, and Parliamentary Vice-Ministers for Foreign Affairs, Mitsunari Okamoto, gave opening statements in the meeting, indicating a unified position of the Japanese government on the matter of whaling.³³ In the coming months, Japan is to “reassess” its position within the IWC as a result of the vote.³⁴

³² Antigua & Barbuda, field notes, 13 September 2018.

³³ The presence is noteworthy since the relationship between the Ministry of Agriculture, Fisheries and Forestry and the Ministry of Foreign Affairs is strenuous as to Japan’s position in the IWC (see Ed Couzens. *Whales and Elephants in International Conservation Law. A Comparative Study* (Abingdon: Routledge, 2014).

³⁴ Japan, field notes, 13 September 2018.

7. Conclusion

The 67th meeting of the International Whaling Commission was marked by hope and disappointment, particularly on the side of those states favouring the sustainable use of whales. While the Schedule amendments concerning Aboriginal Subsistence Whaling were adopted by a large majority, and the rights and needs of aboriginal whalers were substantiated within the Commission, this did not reflect into a normative change amongst Commission members. Concerning ASW, scientific certainty and an overall science- rather than a needs-based approach were taken that enabled Commission members to positively vote on the amendments to the Schedule. Contrasted with the outcomes of the votes on both Brazil's and Japan's proposals, this approach did not reflect into the voting behaviour of member states, however. To the contrary, the outcomes appear to have fortified the stances of the Commission members on whether or not non-indigenous extractive use of whales can be pursued. The rather clear result is that 41 of 70 members that voted on Brazil's and Japan's proposals favoured the solidification of the IWC as a whale preservation organisation in which only aboriginal people can hunt whales. One delegate remarked that this is merely political correctness and is not based on any sensible approach to whaling.³⁵

³⁵ Anonymous delegate, field notes, 13 September 2018.

³⁶ Iceland, field notes 11 September 2018.

Indeed, Iceland's Commissioner noted that "Iceland does not categorise people into different groups of people. For us what matters is not some needs statement, but simply whether the catch limits, of stocks that are of sufficient abundance, [are] for the catches to be sustainable."³⁶

In light of the Schedule amendments, the IWC has moved towards a more respectful treatment of aboriginal whaling communities and it does not appear to be unrealistic to see the quota block be extended to seven years in the future. Concerning the overall direction of the Commission, it will all hinge on Japan's "reassessment" of its position within the IWC. For if Japan decides to leave the organisation, its future is uncertain.

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