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## Japan and IWC Membership

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Japan frequently threatens to leave the International Whaling Commission (IWC), and presumably would pursue whaling in the Southern Ocean, either on its own or under the authority of some new international organization. In fact, Japan has neither of these options available to it, despite making regular threats.

Even if Japan leaves the IWC, it will have the United Nations Convention on the Law of the Sea (UNCLOS), to which it belongs, and its other Parties, to answer to. This Convention gives whales a special status.

Firstly, whales, as highly migratory mammals, are permitted to be more strongly protected than fish, in the sense that coastal States and international organizations can prohibit, limit or regulate the exploitation of marine mammals more strictly than provided for in elsewhere in Part V of UNCLOS.

Secondly, if Japan was to go whaling outside the IWC, then it would be doing so in breach of the law of the sea. Article 65 of UNCLOS (1) provides that 'States shall co-operate with a view to the conservation of marine mammals and in the case of cetaceans shall in particular work through the appropriate international organizations for their conservation, management and study'.

This leaves two possibilities to consider:

*1. Japan quits the IWC and unilaterally undertakes whaling in the Southern Ocean Sanctuary.*

This would breach Japan's obligations under Article 65, that 'States shall co-operate with a view to the conservation of marine mammals and in the case of cetaceans shall in particular work through the appropriate international organizations for their conservation, management and study.' The IWC has declared the Southern Ocean a whale sanctuary, as it is entitled to do under Article 65. Unilaterally catching whales in a whale sanctuary is not working through the appropriate international organization, nor is it co-operating with a view to the conservation of marine mammals.

*2. Japan quits the IWC and then sets up its own international body.*

This would be intended to create a dispute as to which organization was the 'appropriate international organization' for managing whale populations. A body set up by Japan is highly unlikely to gain enough international support to become an appropriate intentional organization. It is difficult to see how a new whaling body could replace the IWC as *the* appropriate international organization, especially given the very long and continuing involvement of the IWC with the Southern Ocean, particularly in scientific study of whales. Given that most of the IWC's Southern Hemisphere countries are strongly anti-whaling and most unlikely to join a new body set up by Japan, it also seems unlikely that Japan would have as strong a Southern Hemisphere representation in a new international body as currently exists in the IWC.

If, for some reason, the IWC ceased to function, and CCAMLR (the Convention for the Conservation of Antarctic Marine Living Resources), which does not derogate from the rights and obligations of Contracting Parties under the ICRW, would assume authority, it is most unlikely it would adopt a policy much different from the current policy of the IWC (4).

It is also worth remembering that 'scientific' whalers are allowed to do many profitable things under Special Permits which are forbidden in normal commercial operations. They can avoid zero catch limits and do not have to adhere to RMP catch limits, can catch calves and undersized individuals, use non-explosive harpoons, operate outside seasonal limits and in protected areas and are exempt from the reporting

requirements of the Schedule. All of these privileges, which Japan enjoys in the North Pacific as well as in the Antarctic, would be lost to Japan if Japan left the IWC.

It is also worth recalling that the threat to leave the IWC, and actual departures, have been used before as negotiating tactics. Netherlands, Norway, New Zealand and Sweden have all threatened to leave, or left, the IWC (Iceland left the IWC in 1992 but rejoined 10 years later). Japan gave notice in 1959 that it was withdrawing, effective June 30, 1959, but withdrew the notice on June 29, 1959.

### **UNCLOS and Agenda 21 Articles cited**

#### 1. Article 65. Marine mammals

Nothing in this Part restricts the right of a coastal State or the competence of an international organization, as appropriate, to prohibit, limit or regulate the exploitation of marine mammals more strictly than provided for in this Part. States shall co-operate with a view to the conservation of marine mammals and in the case of cetaceans shall in particular work through the appropriate international organizations for their conservation, management and study.

Article 120 of UNCLOS (2) extends the application of Article 65 to the high seas.

#### 2. Article 120. Marine mammals

Article 65 also applies to the conservation and management of marine mammals in the high seas.

#### 3. Article 64. Highly migratory species

(1) The coastal State and other States whose nationals fish in the region for the highly migratory species listed in Annex I shall co-operate directly or through appropriate international organizations with a view to ensuring conservation and promoting the objective of optimum utilization of such species throughout the region, both within and beyond the exclusive economic zone. In regions for which no appropriate international organization exists, the coastal State and other States whose nationals harvest these species in the region shall co-operate to establish such an organization and participate in its work.

(2) The provisions of paragraph 1 apply in addition to the other provisions of this Part.

4. Moreover, it is apparent from the drafting history of UNCLOS that the drafters, including Japan, considered the IWC the only 'appropriate international organisation' to regulate whaling. No explicit reference was made to the IWC, because it was expected the IWC might be transformed in future into an organization *dedicated to cetacean conservation*, and renamed accordingly. Japan also wanted fisheries organizations separate from the IWC to be able to regulate the processing of whales caught incidentally as bycatch by fishermen. It was certainly not envisioned that whaling, as such, could be regulated by different organizations in competition with one another. It follows that any attempt to set up a rival whaling organization would fall foul of Articles 65 and 120 of UNCLOS.

The authority of UNCLOS was confirmed and extended at Agenda 21, adopted at the UN Conference on Environment and Development in Rio de Janeiro. Agenda 21, Chapter 17

#### 17.61. States recognize:

(a) The responsibility of the International Whaling Commission for the conservation and Management of whale stocks and the regulation of whaling pursuant to the 1946 International Convention for the Regulation of Whaling;

(b) The work of the International Whaling Commission Scientific Committee in carrying out studies of large whales in particular, as well as of other cetaceans.