Chapter Eleven

Peaceful Protests against Whaling on the High Seas – A Human Rights-Based Approach

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I. Introduction

In 1987 Japan became bound by the Moratorium on Commercial Whaling.¹ Despite the ban, Japan has continued to catch whales annually – it only changed the guise of the catch from commercial to ‘scientific’.² Quotas have risen from 330 at the start of the program to 1415 now, although only about half the quota is currently being taken. As threats to the existence of the world’s remaining whales intensify,³ so does Japan’s insistence to conduct so called ‘research whaling’.⁴ Protests by scientists, lawyers, diplomats, heads of state and civil society have been ignored for decades and the political debate at the International Whaling Commission (‘IWC’), most recently in Agadir in April 2010, appears to have come to a standstill.⁵

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² Based on Article 8 of the International Convention for the Regulation of Whaling (‘ICRW’), under the headings of its government programmes JARPA, JARPA II, JARPN and JARPN II.

³ In addition to whaling, known environmental threats to whales include global warming, pollution, overfishing, ozone depletion, noise such as military sonar and seismic testing, and ship strikes. Industrial fishing threatens the food supply of whales and also puts whales at risk of entanglement in fishing gear. For some whale species such as humpbacks we see an increase in numbers, but most are on the decline.

⁴ Of the other two nations engaged in whaling, Iceland and Norway, both have used the ‘scientific whaling’ exception in the past, but then resumed commercial whaling. The main potential market for whale meat from Iceland and Norway is Japan, but little has been exported from Iceland and none from Norway since the resumption of commercial whaling there. Norway has a small domestic market for minke whale meat taking about 600 tons a year.

⁵ The Proposed Consensus Decision to Improve the Conservation of Whales from the Chair and Vice-Chair of the Commission, IWC Doc. IWC/62/7rev (Apr. 28, 2010; available at <www.iwcoffice.org/_documents/commission/IWC62docs/62-7rev.pdf>, 10 November 2010) failed to reach consensus.
Greenpeace has been campaigning against whaling since 1975, when it confronted whaling fleets on the high seas, its activists in rubber boats placing themselves between the harpoons and the whales, and bringing images of whaling into the living rooms of the public for the first time. Visually less compelling, but just as important, have been Greenpeace’s diplomatic efforts with Governments and at international fora such as the IWC and conferences of the parties to the Convention on the International Trade in Endangered Species of Wild Flora and Fauna (‘CITES’) and the Convention on Biological Diversity (‘CBD’), where it has consultative status. This has contributed to the current situation with only three countries engaged in commercial whaling: Norway, Iceland and Japan.

Japan’s diplomatic efforts have for long been aimed at gaining control over the IWC, where there is increasing evidence of vote-buying through the use of (fisheries) foreign aid and other means. In recent years, Japan has increasingly focused on challenging the right of NGOs like Greenpeace to engage in peaceful protest at sea, branding these activities as ‘eco-piracy’ and ‘eco-terrorism’. It has called for IWC resolutions to condemn such protests, which, by contrast, resulted in a resolution confirming the right to protest, and subsequently at the International Maritime Organisation Japan proposed a ‘Code of Conduct During Demonstrations/Campaigns Against Ships at High Seas’, which led to a similar resolution.

Meanwhile in the Southern Oceans tensions have risen as Japan started to deploy flash-grenades and Long Range Acoustic Devices (‘LRADs’, which aim to disorientate the people they are aimed at) to fend off Sea Shepherd activists.