A. Introduction

The essay on the important but complicated issue of whaling appears to be an appropriate tribute to Professor Wolfrum who has greatly contributed to further development of knowledge on marine biodiversity, indigenous peoples and general problems of international law. The subject-matter of whaling embraces all of these.

The subject-matter of the present essay are complicated questions surrounding the legal system and functioning of the International Whaling Commission (hereinafter the “IWC” or the “Commission”). The problems relating to whales and whaling have proved to be a fertile ground for very strong reactions, frequently emotional. It can be said that no other species generated so much discussion (including violent confrontations between pro-whaling and anti-whaling groups).\(^1\)

The International Whaling Commission is an example of divisive interests of States and, to a certain extent, it is a forum characterised by the lack of spirit of co-operation. In fact, almost all aspects of the functioning of the IWC cause disagreement and criticism. Certain issues such as commercial whaling, indigenous whaling, scientific whaling, and a moratorium on whaling resulted in contentious issues within the Commission, to which as yet, no solution has been found.\(^2\) The author of the present essay will endeavour to analyse these issues.

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\(^1\) There have been numerous incidents of clashes between anti-whalers and Japanese boats. For example in January 2010 according to news agencies “anti-whaling activists accused Japanese whalers of ramming and sinking a high-tech protest boat in the frigid Southern Ocean […], but Japan said that its ship could not avoid the collision”. Available at www.reuters.com/article/idUSTRE60509820100106.

\(^2\) The problems concerning whaling and the protection of whales have been a subject of many excellent publications, in particular the following publications which take a comprehensive approach to these issues: A. Gillespie, Whaling Diplomacy: Defining the Issues in International Environmental Law (2005); G. J. Nagtzaam, The International Whaling Commission and the Elusive Great white Whale of Preservationism, available at http://works.bepress.com/gerry_nagtzaam/2/; id., The Making of International
B. Setting the Scene: Introduction to the 1946 International Convention for the Regulation of Whaling and the Historical Overview

The history of whale hunting is quite daunting. The early twentieth century was marked by the development of the whaling industry and the ensuing destruction of whale stocks around the world.

Such state of affairs was due to the development of technology (steam engines, exploding harpoon guns, use of factory ship) which provided more effective ways of hunting whales. The disastrous state of whale stocks prompted States to conclude the first Convention for the Regulation of Whaling in 1931 in Geneva (hereinafter the “Geneva Convention”). The Geneva Convention was a fairly progressive agreement, which included territorial waters (Article 1); introduced licensing of whaling vessels (Article 8); included special provisions for aboriginal whaling, allowing them to whale but only if traditional methods of whaling were used. However, the Convention was a failure as main players did not become parties to it: the USSR, Japan, and Germany. A contemporary view is that this Convention served the interests of the whaling industry in the first place and not whales as such. In 1937 the International Agreement for the Regulation of Whaling was concluded between Argentina, Irish Free State, New Zealand, South Africa, the United States, and the United Kingdom.

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3 Ruffl (note 2), at 645.

4 Convention for the Regulation of Whaling, 24 September 1931, LNTS Vol. 155 No. 3586, signed by 26 States.

5 Nagtzaam (note 2), at 162 (The Making of International Environmental Treaties).