Indigenous Whaling, Protection of the Environment, Intergenerational Rights and Environmental Ethics

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1. Introduction

Many excellent essays were published recently analysing the rights of indigenous peoples regarding whaling from the legal perspective.1 The present essay will look at them in the context of environmental ethics and the rights of future generations – i.e., environmental justice and intergenerational equity. However, a short presentation of pertinent legal issues will be submitted. Of course, legal and ethical issues cannot be fully separated as evidenced by many publications on this subject. From the point of view of ethics and philosophy,2 there is a host of important, but not fully explored questions relating to the hunting by indigenous peoples of various species of animals such as polar bears and whaling. This essay’s focus will be on whaling, as generating global discussion and controversies.

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PART ONE

1.1. Whaling – General Legal Issues

The recognition of aboriginal whaling rights is not a new issue. They were already included in first Whaling Convention (Article 3), which itself was of a very limited scope. Article 3 stated that the Convention does not apply to coastal dwelling aborigines, providing that they use canoes, pirogues or other exclusively native craft propelled by oats or sail; they did not carry firearms and importantly that the product was their own use. It may be noted that neither the 1937 International Agreement for the Regulation of Whaling nor the 1938 Protocol Amending this Agreement included such a provision. The current 1946 International Convention for Regulating of Whaling (hereinafter the ‘Whaling Convention’) does not include a provision directly referring to indigenous whaling. However, aboriginal subsistence whaling was the part of the Schedule to this Convention, as the exception to commercial whaling. Such whaling was meant to be conducted under the condition that meat and other whale products are to be used exclusively for the purpose of local consumption by the aboriginal people.

In order to fully appreciate the whaling policy of the main organ of the Whaling Convention, the International Whaling Commission (hereinafter ‘IWC’), it is necessary to observe that its character and functions have undergone a dramatic change in intervening years. As set out be in the Preamble of the Whaling Convention, it was concluded for two equally important purposes: “…proper and effective conservation and development of whale stocks…” and “…to provide for the proper conservation of whale stocks and thus make possible the orderly development of the whaling industry.” The Whaling Convention has eighty-eight States-Parties, the majority of which are not whaling nations. In fact only a very limited number of States-Parties are engaged in any type of whaling: Norway and Iceland (commercial whaling); Japan, Iceland and Norway (scientific whaling); and aboriginal whaling (Denmark-Greenland: fin and minke whales, the Russian Federation-Chukotka indigenous peoples: gray and bowhead whales, St. Vincent and the

5 The 1938 Amendment to the 1937 International Agreement for the Regulation of Whaling, 196 L.N.T.S. 131.