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Megha Middha, is working as an Assistant Professor of Law in Mody University of Science and Technology, Lakshargarh, Sikar (Rajasthan). She has an experience in the teaching of almost 3 years. She has completed her graduation in BBA LL.B (H) from Amity University, Rajasthan (Gold Medalist) and did her post-graduation (LL.M in Business Laws) from NLSIU, Bengaluru. Currently, she is enrolled in a Ph.D. course in the Department of Law at Mohanlal Sukhadia University, Udaipur (Rajasthan). She wishes to excel in academics and research and contribute as much as she can to society.

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Assistant professor of Law

Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr. Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8Articles in various reputed Law Journals. Conducted 1Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.



Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC - NET examination and has been awarded ICSSR - Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

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ENFORCEMENT FOR THE PROTECTION OF **WHALES, CONCERNING THE** **INTERNATIONAL CONVENTION FOR THE** **REGULATION OF WHALING.**

AUTHORED BY - MONISH CHERIYADTH PURUSHOTHAM
QUEEN MARY UNIVERSITY OF LONDON

Abstract

Whales have been seen as spiritual creatures and a food source since colonial times. Due to hunting for scientific research, the number of mammal species has been falling in modern times. So, in order to protect these delicate species, international governments developed the "ICRW" treaty in 1946. This treaty was the first international pact to protect marine life to be based on solid science. However, the organization is now perilously near to dissolving due to conflicts amongst the member nations. In this post, I try to look at the political, biological, legal, and cultural aspects of whaling.

In order to better comprehend how the IWC can implement the rules and regulations for the management and conservation of the whale species as well as the sustainable growth of the whaling business. In the beginning, I briefly discuss contemporary whaling, how pre-colonial battles paved the path for whaling, and how the ICRW was established by global governments to preserve whales. The commission that was established in compliance with ICRW regulations for the control of whaling in accordance with the ICRW articles is briefly discussed in the part that follows. We briefly examine the introduction of a moratorium in 1972 to forbid commercial whaling in order to safeguard the whale species population. The IWC also acknowledges the right of tribes whose cultural and dietary requirements necessitate whale hunting; as a result, the IWC outlines aboriginal whaling and the procedures that must be followed by whale hunters. The ICJ rejected Japan's research and supported the protection of whales in a case study where the country had instituted a scientific study program that called for the slaughter of whales in order to better understand their ecology. I wrap off the conversation by briefly outlining how, in my opinion, the IWC can use more advanced methods for

Keywords: Whaling, Anti-Whaling Regulations,

Introduction and The Genesis of Contemporary Whaling and the International Convention for the Regulation of Whaling-1946

In this part, I try to bring a brief introduction about whaling from pre-historic times till the commencement of the IWC International Whaling Commission in 1986. Hunting of whales dates back to the Neolithic age when researchers in Bangudae of Korea unearthed by the Kyungpook National University dating back to 6000 BCE [1] and the oldest known method of catching the whales was by using Dolphin Drive Hunting. During the colonial period, the Americans had an upper hand in whaling around the world, and the British Navy primarily targeted these American whaling ships as a war prize. During the 19th century whale oil was used for lighting up homes and businesses, and lubricating machines during the Industrial Revolution. While on the other side of the world in the Pacific region, whaling was practiced both as aboriginal and also for commercial purposes, though the former was more prominent with the indigenous people[2]. Japan, where whaling is still prominent has a very long history of whaling. The Kojiki which is the oldest history book from the 7th century CE gives a brief history that whale meat was popular among the Japanese and also was consumed by the Japanese Emperor Jimmu. Due to its close proximity to the Arctic waters, Britain was actively hunting whales for whale oil starting from the 16th century all the way till the 21st century and was more active in the Davis Strait, and London became a major exporter of whale products in the 1730s exporting up to 71% of British export. The invention and development of the harpoons brought about a huge development in commercial whaling. During the First World War, the whaling industry played a vital role. It is estimated that about 58,000 whales were killed to provide the British and its allies with the oil required to continue the fighting. Norway even though stated neutral during the war it was the dominant nation that supplied oil to Britain since the Norwegian fleet primarily operated in British-controlled waters denying Germany the raw material which helped the Allies gained a significant upper hand during the war but the Second World War the whaling industry took a huge hit due to the development in petrol and diesel-fueled engine which was more efficient and also the

¹ .Joe Roman(2006).Whales.Reaktion Books. P.24

² Jewitt, John Rodgers, 1738-1821 (1987). The Adventures and Sufferings of John R.Jewitt:captive of Maquinna.

whalers and the was taken into the military. Hence the whale number significantly increased after the war. In 1931 the League of Nations held a conference in Geneva to bring about regulation of whaling, the convention even was duly signed in 1930 in London. Those nations who were committed met once again in 1938 and brought an amendment to the act and agreed on certain factors like the whaling season, set the maximum catch rate, and said that each whale ship should have at least one government inspector on board it for inspection^[3]. Though it was an informal agreement between the nations under the title “*International Conference for the Regulation of Whaling*” it was never enforceable since a majority of them did not agree with the regulation because it only imposed a few restrictions on the member nations and some of the major whale hunting nations like Russia and Japan did not agree on its regulation terms. As a result of the failure of the enforcement of the convention, 43,000 whales were caught. After the war ended in 1945 the nations realized the depleting number of whales all around the world and so bring about the conservation of these endangered species 15 nations came together in 1945 to form the International Whaling Commission.^[4] The convention preamble serves as an example of how the drafters of the convention reconciled the demands of industry with those of whale stock protection by relying on the scientific expertise of the Americans. The drafters acknowledged that one of the main goals of the convention would be to prevent economic and nutritional hardship for those who depend on whaling while also achieving an optimal level of whale stocks for regulated sustainable hunting of the mammals and increasing their populations.

The delegates concurred that in order to govern whaling, the talks needed to be divided into two sections. In order to control whaling until a far more complicated convention, the ICRW of 1946, could be agreed upon by the members, the 1945 protocol was adopted. However, during all of The convention itself includes the articles of the convention as well as a schedule that lists the amendments made to the convention by the IWC during its 61st annual conference, which was held in Maderia in June 2009. The treaty specifies a commission and its role in the execution of the whaling law. According to Article III, it is the duty of the governments of the member countries to establish and commission it, and its organization must follow the guidelines set forth in Article III. According to Article III(7), Britain was assigned the particular responsibility of setting up the commission's first meeting, which it did in 1969 in London. The core objectives of the commission, which are to

³ Morgera, E , ‘ Whale Sanctuaries :An Evolving Concepts within the International Whaling Comission. Ocean Development and International Law, 35(4), 319-338Gare

⁴ Smith, ‘*The International Whaling Comission:An Analysis of the Past and Reflection on the Future.*’1984.Vol.16

preserve the whale species, eliminate illegal whaling, and promote scientific study on the animal for better management, are described in Article IV(1), and it is authorized to publish its annual results. In accordance with Article V, the commission may occasionally specify the season, the catch cap, and the degree of protection for each species of whale. Most significantly, however, Article V(1)(c) gives the commission the authority to designate a water region as a sanctuary area. And under Article (1)(f), it can specify the kinds of tools, equipment, and weapons that can be used when hunting, allowing it to limit the use of deadly weapons while hunting. Since it specifies who might be granted a special license to kill whales for scientific research, Article VIII can be regarded as one of the most significant. According to Article VIII(11) and Article IV, it is the responsibility of the individual government to control the special permit and publicize the findings.

The convention was officially ratified on December 2nd, 1946 in Washington, D.C., and the instruments for it were placed with the American government pursuant to Article X(1). Additionally, the American government is tasked with informing all ratifications lodged and adherences received under Article X(3). According to Article XI, any member may withdraw their application from the convention on June 30 after giving notice on January 1 of the same year, and the other members will be informed of their decision.

Though they have been granted a special permit it's up to the government to oversee and take measures that the permit is not violated and if any infractions occur against the permit provisions its up to the government to curb it as per Article IX(1). As per Article IX(3), the government should prosecute such infractions and report the same with full details to IWC under Article IX(4) detailing the infractions, measures taken in dealing with the infractions, and the penalties imposed.

As mentioned earlier the convention doesn't generically define what a whale is but under its paragraph 1 Schedule I it lists the species of whales with individual protection to the whales and under paragraph 9(a) Schedule III is 'Capture' it mentions the individual whale species, the limitation of the geographical area of capture and Hunting. The whaling regime under the Convention allows for three different forms of whaling: commercial (at the moment there are no "quotas"), indigenous (or "indigenous"), and scientific. The convention classifies all the whale stocks into three basic categories based on the recommendation of the scientific committee and mentions them in paragraph

10 of Schedule III and mentions two important terms namely SMS ISustainableManagementStock which is 10 percent more than the MaximumSustainableYield (MSY) and ProtectionStock (PS)which is 10 percent less than MSY. The convention allows commercial whaling when the numbers are in SMS and not in PS as per paragraph 10(c) of the schedule but still the moratorium would still continue to exist notwithstanding the other provisions of paragraph 10 and all these catch limits would be reviewed by the scientific committee.

Some people believe that it requires some reconsideration because it is more than 70 years old and no resolutions have been brought about to majorly change consideration taking into account the 21st-century parameters like environmental conditions, climate change, technological development of weapons, non-lethal methods of hunting, change in ecological parameters and also the change is cultural aspects. Some argue that the IWC considered the moratorium without consulting the scientific committee, but records show that before adopting the moratorium, the IWC held yearly virtual meetings with the scientific committee after every ten years of the ban on whaling, which was recommended by the 1972 UN conference on the environment. In 1982, the present moratorium was enacted. Although the suggestions for a moratorium did not address solely scientific issues, the IWC's judgment, in this case, was definitely influenced by the absence of scientific agreement on practically all management advice. Some argue that certain members of the scientific were scientists who were involved in the whaling industry. Another disadvantage was that the IWC's member nations might easily reverse their decisions because the moratorium took effect in 1988, two years after it was finalized and by that point, several countries had given themselves special permits to kill whales^[5].

The International Whaling Commission

In 1946, the International Whaling Commission (IWC) was set up under the term of the International Convention for the Regulation of Whaling (ICRW) with the aim of conserving the whale stocks around the whole hence making a sustainable development of the whaling industry.⁶ The IWC is the decision-making body of the ICRW which from time to time reviews the regulations laid down by the convention for the protection of certain species of whales depending upon the prevailing conditions. Hence on December 2nd, 1946 as per the terms of the ICRW Article III the IWC was set

⁵ William Mare 'The problem of Scientific Whaling' accessed 15 March 2023

⁶ International Convention for Regulation of Whaling, 1946

up with its headquarters at Impington a town near Cambridge United Kingdom with the role of periodically reviewing the schedules of the convention and providing proper conservation of the whale stocks all based upon scientific research and findings. Since 1946 the member nations are committed to protecting the species and also formulating regulations for sustainable commercial whaling. From 15 member nations in 1946 to 88 member nations as reported in 2020 the commission is tasked with major responsibilities detailed in Articles IV and V of the convention. The commission along with its member nations or with organizations and agencies that are committed to conserving the species can collaborate with the commission to collect statistical information, trends, and data sets about whales and whaling and formulate modules and methods of increasing the whale stocks around the world. The commission frequently publishes these findings in its scientific journal “The Journal of Cetacean Research and Management”. The committee is mainly raked with protecting the whale species, designations areas as sanctuaries, setting up the method, time, and intensity of whaling of each species, releasing the open and closed calendar seasons, the specifications of the apparatus and gear which can be used and its application and the sustainable development of the species for the commercial usage of whales.

The “Moratorium”

During the 1970’s there was the excessive killing of whale species for commercial hunting and as more and more joined the IWC there was a difference in the being grated between two groups within the IWC members. So in June of 1972 backed up by the American government 110 nations adopted a resolution for a 10-year moratorium at the United Nations Conference on the Human Environment held in Stockholm which was finalized in 1973 and came to the conclusion that governments all around the world must make an effort to support and strengthen the IWC’s agenda, research into methods for sustainable development of the whaling industry, but a major of the whaling nations rejected the 1973 proposal including Japan and Russia^[7]. Hence in 1975, an alternative proposal was put up by Australia that detailed a plan for the IWC to set the parameters for sustained commercial whaling. But this proposal was also shot down by the international community. So, in order to investigate the issue of indigenous whaling, the IWC established a working technical committee in 1978 which issued its report in 1982, approved a resolution for the management of the whale hunt,

⁷ U.N. Doc. A/CONF.48/14 and Corr. 1, Recommendation 33 (1972).

and decided to form an ad hoc working group to draught management policies and procedures for indigenous people who consume whales for food. The IWC eventually defined and agreed upon terms like "aboriginal subsistence whaling," "local aboriginal consumption," and "subsistence catch limit" in 1981 as a result of the ad hoc committee's conclusions^[8]. According to Article V(1)(c) the convention bans commercial whaling in the Indian Ocean region whether it is by pelagic or land station operations. It was also agreed that the scientific committee's role would be to make recommendations regarding the whale stock used for indigenous whaling based on biological data patterns and would not take into account cultural, social-economical, or nutritional considerations. The Friends of Earth an American environmental organization brought out a report in 1975 stating that the IWC failed to do its job and that the working regulation of the IWC cannot be able to reverse the trends in the killing of the whales. It also pointed out that the IWC must be completely abolished and it should be the United Nations to come up with a solution to protect and conserve the whales.^[9] As a result, the working committee's contributions and the report it produced in 1979 marked a significant improvement over the subsistence whaling exemption convention of 1931. Another significant result of the conference was the recognition and inclusion of indigenous people in decision-making, which can assist IWC in taking the issue of the people into consideration at the grassroots level. The real issue would be how to implement the aforementioned standards and recommendation.

The 2018 Florianopolis Declaration

Japan, the Soviet Union, and Iceland were some of the major countries who opposed the working terms and regulations of the IWC because for these three countries whaling and whale products played a vital role in their economy and certain times their cultural beliefs also. Hence when the member gather for the IWC 67th annual meeting in Florianopolis, Brazil the member rejected the proposal put forward by Japan to renew the commercial whaling. The member nations concluded and adopted that the work of the IWC is to conserve and protect the whale species and another marine animals in perpetuity, develop methods of conservation that will help the whale population return to its pre-industrial level, avoid unnecessary usage of lethal weapons, encourage the studies using non-lethal research methods to study the mammals, continue the moratorium against commercial whaling,

⁸ Id

⁹ Id.

an important amendment was to the aboriginal subsistence whaling that could benefit the indigenous communities Hence despite the fact that the IWC was established nearly 76 years ago with the primary goal of protecting whales, the IWC and the IRCW are constantly developing new strategies in tandem with technological advancements that can aid the IWC in enforcing whale protection laws and promoting sustainable whale hunting^[10].

Aboriginal Whaling and the International Whaling Commission.

In 1981 the IWC defined aboriginal whaling as *“for local aboriginal consumption carried out by or on behalf of aboriginal, indigenous, or native people who share close links to their families, communities, and cultures due to their long-standing reliance on whaling and whale products”*^[11] and defined the rules for Aboriginal Subsistence Whaling (AWS) in paragraph 13 of the schedule in order to both protect the whale species and also respect the tradition of some tribes when it comes to hunting whales. The IWC allocates the quotas for whale-catching on the basis of the recommendations of the scientific committee every six years and the current catch numbers are as per the 2018 AWC catch limit. The tribes or "aboriginals" whose culture or/and nutrition require whale hunting are primarily concentrated in nations like Denmark, the USA, Russia, and the Caribbean islands^[12]. The fact that whale hunting is done purely to meet cultural and customary necessities, not for financial gain or to maximize the catch, is one of the key reasons the IWC recognizes the AWS since its establishment in 1946. It differs greatly from commercial whaling and is allowed only for members of native tribes or those working on their behalf, hence it is exempt from the 1986 moratorium's restrictions. Though the IWC has granted permission to indigenous people to kill whales to meet their requirements, the IWC nonetheless ensures that there is a healthy population of whales^[13]. One such instance is the Makah group of Native Americans with whom the US government has a treaty allowing them to kill whales^[14]. Paragraph 11(b) of Schedule III would define the catch limit for aboriginal subsistence whaling and all the provisions would be reviewed by

¹⁰ The 67th Meeting of the International Whaling Commission (IWC 67).

¹¹ Donovan, 'The International Whaling Commission and the aboriginal/subsistence whaling'.

¹² 'Aboriginal Subsistence Whaling' < <https://awionline.org/content/subsistence-whaling> > accessed April 2nd 2023.

¹³ Id.

¹⁴ John Eligon, 'A Native Tribe Wants to Resume Whaling, Whale Defenders are Divided', (New York, 14 November 2019)

the commission annually with the advice from the scientific committee.

The Whale and Dolphin Conservation is a wildlife conservation society based out of England that is solely dedicated its efforts to the conservation of whales, dolphins, and other cetaceans that has heavily criticized the working of the IWC when it comes to the AWS whaling. It claims that governments and subsistence whaling committees have abused the privileges granted to them over the past few years that allow them to hunt whales. The communities are accused of selling whale meat to tourists and non-native people, a practice that can be referred to as assisted commercial whaling, especially in Greenland where the Aboriginals have been accused of selling the whale meat to restaurants and supermarkets. Although the IWC acknowledges the right of Aboriginal people to hunt whales, it does not establish clear standards for who would be considered an Aboriginal and the AWS quota itself, leaving it up to the individual governments to identify, nominate, and submit them to the IWC and perhaps the biggest concern. Every six years, the IWC would determine the catch limit in accordance with recommendations based on the cultural and anthropological parameters specified by the scientific committee. However, there is no unconditional requirement that these catch limit specifications must be followed, particularly in large water areas. Second, because of the increased aboriginal population and the reduced quota, the people generally rely on other marine animals or import non-local food to meet their nutritional needs. In these situations, the IWC should make note of these substitutions and adjust the quota by either increasing or decreasing based on the current data set, but the IWC failed to do so and still continues to allocate the previous catch limit^[15]. The aboriginal has a long history of whaling and especially subsistence whaling, hence to respect the rights of the aboriginals and also to protect the rights of the tribe to hunt whales beings affected by commercial whaling the IWC defined the rights of the tribe to hunt whales and also enforced the protection of whales to have subsistence whaling.

Case Study: Whaling in the Antarctic: Australia vs Japan

In May 2010, Australia alleged to the International Court of Justice that Japan had violated the International Convention for the Regulation of Whaling (ICRW). It alleged that Japan had violated Article 36, paragraph 2 of the convention stating that Japan has been conducting large-scale killing

¹⁵ ‘ Aboriginal Subsistence Whaling’ <<https://uk.whales.org/our-4-goals/stop-whaling/aboriginal-subsistence-whaling/>>accessed 11 March 2023

of the whales and masking it under the JAPRA II scheme. Australia alleged that Japan had been violating the ICRW and other international agreements including the Convention on International Trade in Endangered Species (CITES) for protecting and preserving marine animals and the surrounding environment. It requested the ICJ to put an end to Japan's research program, revoke the special permit and license which permitted the alleged activities and stop any further research under the JARPA II program or any such related research program until the program could be scrutinized and make sure the program is brought under the obligations of all the international law. In 2013, New Zealand also intervened with a registry filing stating that as a signatory party of the ICRW under Article 63 paragraph 2, it had a direct interest and obligation in the proceedings, which might affect the ICRW rules and regulations. Japan pushed back the allegations stating that it had always conducted scientific research in line with the obligations of the treaty and Article VIII of the convention. It also argued the species of whale it was hunting for scientific research was not included in the endangered species of conservation. Japan put forward 541 publications that were in terms of the scientific goals management defined by IWC and another 297 publications which were not related to IWC but related to whale ecology and conservation. But when in analysis the court found that the scientific output presented was no more superior to those data sets presented by whaling nations which don't use lethal methods to capture the mammal like Canada, USA Sweden etc. The convention in order to treat these mammals who have been hurt due to hunting using lethal weapons according to paragraph 19(a) Schedule IV forbids the factoryships or landstations to treat whales, clearly marked to identify the order of catch, the contracting government would define the stations to treat these whales and no whale should remain in the sea for a time period of thirty-three hours from the time of kill. The amount of whale corpus papers produced by whaling and non-whaling nations did not differ much, they also noted. The non-whaling nations published 82 papers on average, with one-third of those related to the IWC's gold standard scientific research—peer-reviewed publications—while the whaling nations published 59 on average while citation rates of whaling nations' publications were four times higher than those of non-whaling nations. The researchers argued that there may be some bias against the research publications of whaling nations^[16].

¹⁶ Larry Pynn, 'What's the True Scientific Value of Scientific Whaling?' < <https://hakaimagazine.com/news/whats-true-scientific-value-scientific-whaling/#:~:text=Lethal%20scientific%20whaling%20allows%20an,calculate%20environmentally%20sustainable%20hunting%20levels.> > accessed 16 April 2023.

The ICJ delivered its decision on March 31st, 2014, rejecting Japan's claims and revoking its licenses and permits to kill or take whales pertaining to the JARPA II program, which was in breach of some provisions of the convention, specifically the bans on factory ships and commercial whaling in the Southern Ocean Sanctuary. With respect to Article VIII, the court ruled that even though the JARPA II could be coined as a “scientific research” program but the research team and Japan government failed to produce convincing evidence before the court. After this incident, the IWC advised that the IWC scientific committee can evaluate any upcoming petitions under Article VIII. Even though Japan ultimately lost the case and had its special license to hunt and kill whales revoked, the ICJ was unable to resolve the fundamental cultural dispute between those who support hunting whales and those who oppose hunting restrictions as an element of a wildlife management strategy. Insofar as there is no other international law that forbids the killing of whales, the Court reiterated that the aims and framework of the ICRW are oriented towards the protection of whale stocks as well as oversight of the whaling industry, and it is up to both parties to the ICRW, acting in conjunction, to figure out when and how whales can be killed.

Conclusion

The responsible management and conservation of whale species as well as the expansion of the whaling business on a sustainable basis are the ICRW's main objectives, which are mentioned expressly in the preamble. The convention, like any other international pact for the conservation of animals, never really achieved its initial objectives, but it always had the twin objective of simultaneously protecting the whale species and expanding the company. The opposing ideologies among the participating countries are one of the reasons the convention on the properly regulated restart of whale stocks has so far failed. This may still be the case notwithstanding the interim moratorium's adoption and the IWC's subsequent ban on commercial whaling in 1982, but there is still a sizable amount of whaling occurring that is not under its direct control. Even though there is conflict among the member countries over things like what constitutes aboriginal whaling, how the scientific committee operates, and the restart of commercial whaling for scientific research, the IWC is still divided and is still home to some members who support the convention's goals. However, there will always be conflict between whaling and non-whaling countries because whaling countries support whaling through the sustainable exploitation of marine resources, while non-whaling countries enjoy strong support from NGOs and the general public because they believe that whaling

is an immoral activity that should eventually be outlawed. The most crucial point that has to be addressed is whether the ICRW should be regarded as an international agreement, whether it should be redesigned to better address concerns of the present 21st century, or if it should be completely abandoned given that it was formed some 70 years ago following World War II. I believe that the ICRW, which was negotiated about 70 years ago, needs to be restructured in light of various contemporary factors, including technological advancement, climate change, depletion of natural resources, sustainable resource management, and enacting significant changes to the convention to ensure the protection of this vulnerable sea life.

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