

COMMENTARY

Aboriginal Subsistence Whaling: A human rights imperative amid regulatory challenges*Nikolas Sellheim & Jessica Lefevre***Introduction**

The historic decision to extend the Aboriginal Subsistence Whaling (ASW) quotas for an additional six years at the 69th meeting of the International Whaling Commission (IWC) was made possible by the IWC's 2018 adoption of amendments to its Schedule. These amendments ended the IWC's previous practice of setting ASW quotas for limited time periods, with the quotas expiring at the end of each period. The longstanding practice of quota expiration forced ASW hunters to periodically reenter the chaotic world of IWC politics, repeatedly being forced - at great financial and emotional expense - to prove their need for whales and whaling and to justify the levels of take required to meet those needs. Post-2018, ASW quotas remain in place unless defined factors, primarily the health of the whale stock, arise that justify a reconsideration of the level of take. The 2024 quota extension, the first implementation of the 2018 Schedule amendments, is undoubtedly a relief for indigenous communities dependent on whaling.¹ For these groups, whaling is not

merely an economic activity, but a cultural cornerstone and a critical source of nutrition, intricately tied to their survival, identity, and autonomy. Yet, despite the apparent stability the new quota extension rules bring, the broader framework of international regulation, particularly as it intersects with indigenous rights, remains problematic. This commentary examines the ASW decision through the lens of indigenous rights, especially the right to food and cultural preservation, and argues that the current IWC framework falls short of addressing these fundamental human rights concerns.

Cultural identity and the right to food

Whaling, for indigenous communities such as the Inuit of Alaska and Greenland, the Yupik of Russia, the Makah of Neah Bay, and the Bequians of St Vincent and the Grenadines, is much more than a method of subsistence. It is a cultural practice that has endured for centuries, in the Arctic for millennia, deeply woven into community

¹ On the origins of this pattern, see Nikolas Sellheim, 'Quotas, Cultures, and Tensions. Recent Schedule Amendments for Aboriginal Subsistence Whaling under the International Convention for the Regulation of Whaling [2018] CDAL 6, 4.

social, spiritual, and political fabric.² These peoples have developed sophisticated social structures and knowledge systems within a worldview that is fluent in the integral relationship of humans to the Earth's ecosystems. Living in a way that sustains the whale populations ensures their own survival while also maintaining an equilibrium with the ecosystems they depend upon. Moreover, the whale hunt is a communal event, involving not only the hunters but also the broader community. Thus, beyond vital nutrition, it serves to reinforce social bonds and to communicate traditional knowledge to future generations through lived experience that animates knowledge within the thought system of the indigenous world view.

From the perspective of nutrition, the right to adequate food is internationally recognised as a fundamental human right, enshrined in various human rights treaties. Indigenous peoples, whose food systems are uniquely tied to their cultural practices, experience this right in a way that is inextricably linked to their cultural identity. However, international regulation has often failed to recognise this dual role of food as both a nutritional and

cultural necessity. The IWC's regulatory framework, rooted in conservation principles designed to control commercial whaling, does not adequately account for the cultural significance of whaling to indigenous peoples.

Many indigenous communities face significant food security challenges due to the impacts of climate change, environmental degradation, and historical injustices, all of which threaten their traditional food sources.³ In the Arctic, for example, climate change is altering marine ecosystems, affecting the migratory patterns and population dynamics of whale species. These changes directly threaten the food security of indigenous peoples, who have limited access to alternative food sources due to their remote locations and economic marginalization.⁴ Despite these challenges, the IWC's approach to ASW remains largely focused on the sustainability of whale populations, often at the expense of

... climate change is altering marine ecosystems, affecting the migratory patterns and population dynamics of whale species.

² Randall R. Reeves, 'The origins and character of 'aboriginal subsistence' whaling: a global review' [2002] 32 Mammal Review 2, 71.

³ E.g. Kirsten Hastrup and Frida Hastrup (eds), *Waterworlds. Anthropology in fluid environments* (Berghahn 2015).

⁴ Angela R. Szesciorka and Kathleen M. Stafford, 'Sea ice directs changes in bowhead whale phenology through the Bering Strait' [2023] 11 *Movement Ecology* 8, <https://doi.org/10.1186/s40462-023-00374-5>

addressing the food security needs of the communities that depend on them.

The failure to integrate indigenous knowledge

Indigenous peoples possess a wealth of traditional knowledge about their environments, knowledge that has been accumulated over generations and proven to be instrumental in the sustainable management of natural resources. As noted, this knowledge arises and is expressed within the context of an indigenous worldview that perceives the human relationship with Earth's ecosystems in a markedly different manner than the worldview of "modern" or "Western" society.⁵ This indigenous knowledge is frequently marginalized in international regulatory frameworks and the indigenous worldview ignored entirely. The IWC, for instance, relies heavily on Western scientific methods to assess whale populations and determine sustainable catch limits.⁶ While scientific

research is essential to ensuring the sustainability of whale populations when relying upon the "modern" worldview, it disregards the insights and experience of indigenous communities, whose understanding of whale behaviour, migration patterns, and population health is shaped by centuries of direct interaction with these animals. In disregarding this indigenous knowledge and the worldview in which it arises, the IWC and other regulatory bodies deprive themselves of valuable insights. More importantly, they undermine the ongoing viability of the cultures and cultural practices that express the worldview through which indigenous knowledge arises.⁷

At a time when society is seeking answers to the increasingly catastrophic reactions of planetary systems to human impacts, the marginalization of indigenous knowledge is symptomatic of a broader issue within international environmental governance: the failure to fully incorporate indigenous perspectives into decision-

⁵ The phrases "holistic perspective" and "spiritual relationship" are sometimes employed in an effort to convey the experience of the seamless bond tying humans to the other lives and elements of the ecosystem.

⁶ Joji Morishita and Dan Goodman, 'Role and Problems of the Scientific Committee of the International Whaling Commission in terms of Conservation and Sustainable Utilization of Whale Stocks' [2005] 9 *Global Environmental Research* 2, 157.

⁷ "The failure to integrate indigenous knowledge into the IWC's regulatory framework in a way that accesses perspectives offered by the indigenous worldview is both a missed opportunity for better understanding of how human affairs can be managed to reduce ecosystem impacts and a violation of indigenous peoples' right to participate in decisions that affect their lives." United Nations. Report of the World Commission on Environment and Development (WCED): Our Common Future. Transmitted to the General Assembly as an Annex to document A/42/427 - Development and International Cooperation: Environment. 1987.

making processes. Indigenous peoples are often consulted on regulatory matters affecting their livelihoods, but they are rarely given an equal voice in shaping the rules that govern their traditional practices.⁸ Additionally, these consultations are conducted within a Western frame of reference. This unequal power dynamic and exclusion of perspectives offered through the indigenous worldview is particularly evident in the IWC's approach to ASW. While indigenous communities are allowed to participate in IWC meetings, their input is frequently overshadowed by the priorities of more powerful member states, whose interests may not align with those of indigenous peoples.⁹

Thus, the IWC's institutional structure excludes indigenous knowledge from meaningful consideration as part of the IWC's regulatory framework. This is both a missed opportunity for better understanding of how human affairs can be managed to reduce ecosystem impacts and a violation of indigenous peoples' right to participate in decisions that affect their lives. The right to participation is a

cornerstone of international human rights law, particularly in the context of indigenous peoples, who have historically been excluded from decision-making processes. The principle of free, prior, and informed consent (FPIC) requires that indigenous communities be fully informed and allowed to participate in the development of policies that affect their lands, resources, and cultural practices.¹⁰ Yet, in the context of ASW, this principle is often overlooked, with decisions being made by the IWC without the full and equal involvement of the communities most affected. Even though an Aboriginal Subsistence Whaling Sub-Committee exists as part of the IWC structure, this body is merely advisory and does not carry any formal decision-making powers.¹¹

Food security and international regulation

The intersection of food security and international regulation is a complex and often fraught issue, particularly for indigenous communities engaged in traditional practices like whaling. The extension of the ASW quota at IWC69

⁸ Nikolas Sellheim and Otava Ojanperä, 'Indigenous youth and international conservation law: Five case studies' [2021] 31 *RECIEL* 1, 115.

⁹ Endalew L. Enyew, *The Rights of Indigenous Peoples to Marine Space and Marine Resources under International Law* (UiT 2019) 290.

¹⁰ Mathias Åhrén, *Indigenous Peoples' Status in the International Legal System* (OUP 2016).

¹¹ IWC, Aboriginal Subsistence Whaling Sub-Committee <<https://iwc.int/commission/commission-sub-groups/aboriginal-subsistence-whaling-sub-committee>> retrieved 21 October 2024.

provides a temporary reprieve for indigenous whalers, but it does not address the underlying food security challenges these communities face. The failure to adopt a resolution on food security at IWC69 is emblematic of a broader reluctance within the IWC to fully confront the human rights implications of its regulatory decisions.¹²

The right to adequate food, as recognised in international human rights law, encompasses not only the availability of food but also its accessibility and cultural appropriateness. For indigenous communities, whose traditional food systems are underpinned by specific cultural practices, this means that any regulatory framework governing their access to food must take into account the cultural significance of those practices. Whaling is a prime example of a practice that is both nutritionally essential and culturally significant, yet the IWC's regulatory approach treats it primarily as a matter of resource management, rather than a human rights issue.¹³

The IWC's focus on conservation often overlooks the socio-economic realities of indigenous communities. These

communities, particularly those in remote areas, have limited access to alternative sources of food. The imposition of strict regulations on their whaling practices, without considering the broader context of food security, can lead to significant hardships. In some cases, indigenous communities have been forced to rely on expensive, nutritionally inferior, and culturally inappropriate imported foods, contributing to health problems such as obesity and diabetes. The right to food, therefore, must be understood not only in terms of physical sustenance but also in terms of cultural survival.¹⁴

The right to cultural preservation

Cultural rights are an essential component of international human rights law, and they are particularly important for indigenous peoples, whose cultural practices are often under threat from

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¹² See also Sellheim Environmental, The Food Security Resolution and its controversial reception — again, <<https://sellheimenvironmental.org/2024/09/25/the-food-security-resolution-and-its-controversial-reception-again/>> retrieved 21 October 2024.

¹³ Reeves, fn 2.

¹⁴ See also Siri Damman, Wenche Barth Eide and Harriet V. Kuhnlein, 'Indigenous peoples' nutrition transition in a right to food perspective' [2008] *Food Policy* 33, 135.

external forces. The right to cultural preservation, as recognised in treaties such as the International Covenant on Civil and Political Rights (ICCPR),¹⁵ protects the ability of individuals and communities to maintain and develop their cultural identities. For indigenous whaling communities, the practice of whaling is central to their cultural identity, and any interference with this practice can have profound effects on their social cohesion, spirituality, and sense of self.

The IWC's regulation of ASW, however, has historically been framed within the context of commercial whaling management, and as such, it has often failed to take into account the cultural dimensions of indigenous whaling. While the extension of the ASW quota provides a measure of protection for indigenous whaling practices, it does not address the broader issue of cultural preservation. Indigenous communities have long argued that the IWC's regulatory framework is overly focused on conservation at the expense of cultural preservation, and that it fails to recognize the unique cultural significance of whaling.

The right to cultural preservation also includes the right to participate in decisions affecting one's culture. Indigenous peoples have the right to engage in the development of policies that affect their cultural practices, and this participation must be meaningful, not merely symbolic. The IWC, however, has often treated indigenous participation as a formality, rather than as a fundamental right, despite the fact that all IWC members have formally endorsed the UN Declaration on the Rights of Indigenous Peoples (UNDRIP).¹⁶ Indigenous representatives are invited to speak at IWC meetings also as part of national delegations, but their input still lies at the mercy of the IWC's member states.¹⁷ This power imbalance concerning decisions affecting indigenous peoples undermines the legitimacy of the IWC's decisions and threatens the long-term survival of indigenous cultural practices.

Moving towards a human rights-based approach

To ensure the long-term sustainability of ASW and the protection of indigenous rights, the IWC must adopt a more holistic,

¹⁵ International Covenant on Civil and Political Rights, 999 UNTS 171, adopted 16 December 1966, in force 23 March 1973 [ICCPR].

¹⁶ United Nations Declaration on the Rights of Indigenous Peoples, A/RES/61/295, adopted 13 September 2007 [UNDRIP].

¹⁷ Enyew, fn 7, 293.

human rights-based approach to whaling regulation. This approach would require a fundamental shift in the IWC's priorities, from a narrow focus on conservation to a broader recognition of the interdependence between environmental sustainability and human rights. The right to food, the right to cultural preservation, and the right to participation must be central to any future discussions on ASW, and indigenous communities must be given a more meaningful role in shaping the policies that affect their lives.

In our view, a human rights-based approach to ASW would involve several key reforms:¹⁸

1. Strengthening indigenous participation: Indigenous communities must be fully involved in the decision-making processes that govern their whaling practices. This means not only consulting indigenous peoples but also ensuring that their voices are given equal weight in the development of policies and regulations. The principle of free, prior, and informed consent must be respected in all IWC decisions affecting indigenous whaling.

2. Recognizing the cultural dimensions of whaling: The IWC must move beyond its current focus on resource management and recognize the cultural significance of whaling for indigenous communities. This requires a more nuanced approach to regulation, one that takes into account the social, spiritual, and cultural dimensions of whaling, as well as its nutritional value.

3. Addressing food security: The IWC must recognize that whaling is a critical component of food security for indigenous communities, and it must develop policies that ensure continued access to traditional food sources. This includes adopting a more flexible approach to whaling quotas, one that is responsive to the changing environmental and socio-economic conditions faced by indigenous peoples.

4. Integrating indigenous knowledge into conservation: Indigenous knowledge systems must be fully integrated into the IWC's scientific assessments and conservation strategies. Indigenous peoples have developed sustainable practices for managing whale populations over centuries, and their knowledge is a

¹⁸ Enyew presents three ways by which a synergy between the IWC and human rights law could be achieved: first, reference to human rights in the Schedule to the International Convention for the Regulation of Whaling; second, information exchange between human rights bodies and IWC member states pertaining to developments concerning the rights of indigenous peoples and human rights in general; third, participation of indigenous peoples in all activities pertaining to ASW (Enyew, fn 7, 291–292).

valuable resource that can enhance the IWC's conservation efforts.

Conclusion

The six-year extension of the ASW quota at IWC69 represents a procedural victory for indigenous whaling communities, but it does not address the deeper issues of food security, cultural preservation, and indigenous participation. The IWC's regulatory framework, rooted in conservation principles designed for commercial whaling, remains ill-equipped to address the complex human rights issues that surround ASW. To ensure the long-term sustainability of indigenous

whaling, the IWC must adopt a more holistic, human rights-based approach that recognizes the cultural, nutritional, and social significance of whaling for indigenous peoples.

Indigenous whaling is not just a matter of resource management; it is a question of human rights. The IWC must evolve beyond its current regulatory paradigm and embrace a more inclusive, equitable approach to whaling that honors the rights and traditions of indigenous communities. Only then can the IWC fulfil its mandate to protect whale populations while also ensuring the survival of the cultures that depend on them.