

# Japanese Whalers and Canadian Sealers - Powerless under Discourse and Law?

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## Introduction

It is not a pretty sight, but it is almost certain that we all know the images of blood on the ice after the killing of seals in the commercial seal hunt in Canada. It is equally not a pretty sight to see the capturing and killing of dolphins and pilot whales in the infamous 'cove' of Taiji, Japan, which has gained international attention after the release of the award-winning documentary *The Cove* in 2009. In fact, since the sight of killing cetaceans in Taiji is indeed gruesome, international protesters, who have initiated large-scale campaigns worldwide, have prompted local fishermen to fully shield the killing from the public.

This note explores some preliminary parallels between the abilities of Canadian non-indigenous seal hunters communities and Japanese whalers to participate in the legal processes that affect them. It is the first attempt and

thus merely a snapshot to link the situation between marine mammal hunting communities in Canada and Japan. Empirical data have been collected in Newfoundland in 2013, at the 66th meeting of the International Whaling Commission (IWC) in September 2016 in Portoroz, Slovenia, and in Taiji, Japan, in August and September 2017.

## The setting

The field sites in Canada and Japan are located in geographically different regions. Newfoundland is an island surrounded by the northern Atlantic Ocean in South-Eastern Canada, covered by coniferous forests, with rugged coastlines and Arctic sea ice drifting towards its shore from the Davis Strait. It is this sea ice which harbours large numbers of seal species of which the harp seal (*Pagophilus groenlandicus*) has been hunted by Newfoundlanders from the numerous communities, particularly in the north of the island, for local consumption and international trade since the late 18th century – the so-called 'commercial' seal hunt.<sup>1</sup> The community of Taiji (population around 3,200) is located in Wakayama Prefecture in Eastern Central Japan amidst steep mountains and marked by a temperate, humid climate. The marine areas of the region are part of the migratory routes of

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<sup>1</sup> Nikolas Sellheim, 'Morality, Practice and Economy in a Commercial Sealing Community', *Arctic Anthropology* 52(1) (2015).

numerous cetacean species, which have been hunted for several centuries for local consumption and commerce.<sup>2</sup> Since the IWC has imposed a moratorium on commercial whaling in 1982, Taiji whalers have focused on the hunting and sale of live individuals of different pilot whale and dolphin species (both belonging to the genus *Globicephala*) which are outside the purview of the IWC.

The Canadian seal hunt has come under international opposition since the 1960s due to distribution of graphic accounts of the killing paired with conservation concerns. This has prompted numerous countries to adopt legislation that bans trade in marine mammal and particularly seal products.<sup>3</sup> Awareness of the killing and sale of small cetaceans in Taiji was achieved through the documentary *The Cove* directed by Louie Psihoyos in 2009.<sup>4</sup> As a consequence, international protests took place in the community and have put Japan's whaling practices – also in the Southern Ocean – under significant international pressure. At the core of the opposition

stand animal welfare concerns which have caused local whalers to modernize and adjust their killing methods. However, protests are still ongoing.

### Scope of Legal Recognition

The recognition and inclusion of the indigenous and local population and their knowledge, practices and cultures in managerial processes that affect them is enshrined in the Rio Declaration and its roadmap Agenda 21.<sup>5</sup> Already the earliest treaties limiting the hunting of seals in the Bering Sea from the late 19th century contained clauses which exempted aboriginal communities from any hunting restrictions. These exemptions are justified because of the little impact aboriginal hunting had on the conservation status of seal species.<sup>6</sup>

Generally, the knowledge of indigenous and local communities is to be respected, preserved and maintained in the context of preservation and sustainable use of natural resources as the Convention on Biological Diversity (CBD) stipulates.<sup>7</sup> However, prior as well as after the

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<sup>2</sup> Frank Sowa, *Indigene Völker in der Weltgesellschaft: Die kulturelle Identität der grönländischen Inuit im Spannungsfeld von Natur und Kultur* (Bielefeld: transcript, 2014).

<sup>3</sup> The US, Mexico, Ecuador, Peru, Argentina, Chile, South Africa, Russia, Kazakhstan, Belarus, Australia, New Zealand, Taiwan, and the European Union with 28 Member States have bans on marine mammal/seal products in place.

<sup>4</sup> Sarah Newman, "Taiji's Dirty Little Secret is Out," *Huffington Post*, 29 August 2009, URL: <https://www.huffingtonpost.com/sarah-newman/taijis-dirty-little-secret-247133.html> (accessed 3 December 2017).

<sup>5</sup> The Rio Declaration on Environment and Development, 1992, Principle 22.

<sup>6</sup> An Act to prevent the Extermination of Fur-bearing Animals in Alaska, ch. 114, §7, of 1 July 1870, Section 1.

<sup>7</sup> Convention on Biological Diversity of 5 June 1992 (1760 UNTS 79), article 8 (j).

adoption of the CBD, it has been indigenous – and not local – communities which have been considered in regimes governing the utilization of marine mammals. For instance, the US Marine Mammal Protection Act (MMPA) <sup>8</sup> explicitly exempts native populations from hunting bans in Section 6.B.ii.b.3; The Schedule to the International Convention for the Regulation of Whaling (ICRW)<sup>9</sup> which establishes the moratorium on commercial whaling exempts aboriginal populations from the moratorium provided that they do not engage in the commercialization of whale products; also the EU regime banning trade in seal products <sup>10</sup> in Recital 14 and article 3 exempts Inuit and other indigenous communities from any trade measures when the hunt for seals contributes to their subsistence.

Especially in the latter case, it was at the initiative of Inuit representatives and motivated by the overall legal-political discourse on the rights of indigenous peoples to exploit their traditional resources which prompted the insertion of the ‘Inuit exemption’ into the trade ban. Indeed, also environmental and

animal rights organization appreciate the role of subsistence hunts for indigenous communities and therefore, in principle, do not oppose small-scale utilization of marine mammals.<sup>11</sup>

### **Local Communities and Marine Mammal Hunts – Watersheds**

The case is entirely different for non-indigenous communities that in one way or the other depend on the hunts of marine mammals – an issue which links Newfoundland sealers and Japanese whalers/dolphin hunters. During the adoption process of the EU seal regime, for example, the main representative organizations for commercial sealers – the Canadian Sealers Association (CSA) or the Sealers Association of the Magdalen Islands (ACPIM) – were not present. Commercial sealers, although being most significantly affected by an EU-wide trade ban, were not consulted. Inuit organizations, on the other hand, did see some representation.<sup>12</sup> This is hardly surprising in light of the neglect of recognizing livelihood aspects of commercial seal hunting in the overall discourse on seals and seal hunts. For

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<sup>8</sup> Marine Mammal Protection Act (MMPA) of 21 October 1972 (16 USC Chapter 31).

<sup>9</sup> International Convention for the Regulation of Whaling, 2 December 1946 (161 UNTS 72).

<sup>10</sup> Regulation (EC) No 1007/2009 of the European Parliament and of the Council of 16 September 2009 on Trade in Seal Products (OJ L 286, 31.10.2009, p. 36–39), as amended; and its implementing regulation both in force and replaced.

<sup>11</sup> See for instance “Indigenous Seal Hunts,” *International Fund for Animal Welfare*, URL: <http://www.ifaw.org/united-states/our-work/seals/indigenous-seal-hunts> (accessed 4 December 2017).

<sup>12</sup> Nikolas Sellheim, “Policies and Influence – Tracing and Locating the EU Seal Products Trade Regulation,” *International Community Law Review* 17 (2015).

commercial sealers and the sealing industry the EU ban resulted in a loss of jobs and strains on identity and culture.<sup>13</sup>

While in many aspects different from seal hunters, the situation for whalers in Japan is comparable. Generally, four types of whaling exist in Japan: 1. Scientific whaling in the North Pacific and Southern Ocean; 2. Small-type coastal whaling (STCW) along the coasts of Japan; 3. Aboriginal whaling, though not actively conducted for the time being; and 4. The whale/dolphin drive. For various reasons which will not be explored here and contrary to IWC members and whaling nations Norway and Iceland, Japan is bound by the whaling moratorium.<sup>14</sup> For many years Japan has unsuccessfully lobbied to obtain a quota for STCW, essentially meaning a lifting (or at least softening) of the whaling moratorium. Based on interviews conducted in Taiji, the whaling moratorium caused significant hardships for whalers since many depended on the sale of whale products on the world market. Moreover, since Taiji has seen whaling for centuries, due to their expertise many Taiji whalers were furthermore employed on whaling vessels conducting commercial whaling in the world's seas, particularly in the Southern Ocean. The whaling

moratorium therefore left many whalers unemployed, putting more importance on the utilization of cetaceans outside the purview of the IWC.

Inevitably, over the years of the moratorium, the economic importance of whales and dolphins for Taiji rose. While on the one hand they are killed and consumed locally and regionally, on the other live whales and dolphins are captured and sold to aquariums worldwide. Given the prominence of the Taiji whale/dolphin drive in global discourse, the dissemination of graphic images through the internet by anti-whaling protesters, also the sale of Taiji dolphins to aquariums has become an issue of concern. Following a 2014/15 lawsuit in which an Australian dolphin protection organization sued the Taiji Whaling Museum over the denial of access for 'anti-whalers', in April 2015 the World Association of Zoos and Aquariums (WAZA) requested its member organizations to halt the purchase of Taiji dolphins. One month later, WAZA threatened to expel the Japanese Association of Zoos and Aquariums (JAZA) if they continue the practice of purchasing Taiji dolphins. Consequently, JAZA ordered its members to change their dolphin acquisition policies and refuse dolphins

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<sup>13</sup> Nikolas Sellheim, *Legislating the Blind Spot. The EU Seal Regime and the Newfoundland Seal Hunt*. Doctoral dissertation. (Rovaniemi: Lapland University Press, 2016).

<sup>14</sup> Alexander Gillespie, *Whaling Diplomacy: Defining Issues In International Environmental Law*. (Cheltenham: Edward Elgar, 2005).

from Taiji. In order to still be able to sell and acquire dolphins, the Taiji Whaling Museum withdrew from JAZA in September 2015. Enoshima Aquarium in Fujisawa and Shimonoseki Marine Science Museum Kaikyokan followed suit in April 2017. Despite having had the potential to severely impact Taiji, the WAZA ban did not affect the Taiji dolphin trade since focus shifted towards non-WAZA-members.

### Discourse

What links Canadian commercial sealers and Taiji whalers is that they are non-indigenous communities, they are marine mammal dependent, have come under close scrutiny of the international community, and are subject to legislation and decisions that they have not had an opportunity to negotiate. Wearne laments that discourse-shaping documentaries such as *The Cove* “ignores tradition, heritage and ancestral histories traced back through Japanese and European history.”<sup>15</sup> I would argue that the same applies to the legal and political discourse surrounding marine mammal hunting by sidelining the interests of the non-indigenous local population whose hunting/killing

practices are subject to international criticism.

This is best reflected in discussions for a STCW quota under the IWC which are quickly silenced while repeated calls for the sustainable use of whales – and thus a lifting of the moratorium – do not find majority support. Although the Japanese Small-Type Coastal Whaling Association is present at IWC meetings, an open discussion between whaling proponents and opponents does not take place. The socio-economic relevance of whaling is therefore merely raised in indigenous whaling contexts. Given the economic significance of the sale of dolphins for Taiji, the WAZA decision could have been an avenue for dialogue and discussion on animal welfare, human rights and ethics surrounding animals in captivity. Merely the prefectural government of Wakayama Prefecture raised these points in an open statement.<sup>16</sup> Recently released Japanese documentaries, such as *Behind the Cove* (2015) or *A Whale of A Tale* (2016) similarly aim to paint a nuanced picture of the whale and dolphin drive in Taiji. Legally, however, Taiji fishermen have little weight to argue their case on an international level given that they do not have a strong international lobby. On

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<sup>15</sup> Simon Wearne, “Tourism Development and Whaling—Heritage as Sustainable Future” *Tourism Planning & Development* (July 2017) 92.

<sup>16</sup> “Wakayama Prefecture's position on the World Association of Zoos and Aquariums' (WAZA) announcement to suspend the membership of the Japanese Association of Zoos and Aquariums (JAZA) due to the Dolphin Drive Fishing in Taiji,” *Wakayama Prefecture*. URL: <http://www.pref.wakayama.lg.jp/prefg/071500/iruka/documents/gazaenglidhtsuiki.pdf> (accessed 4 December 2017).

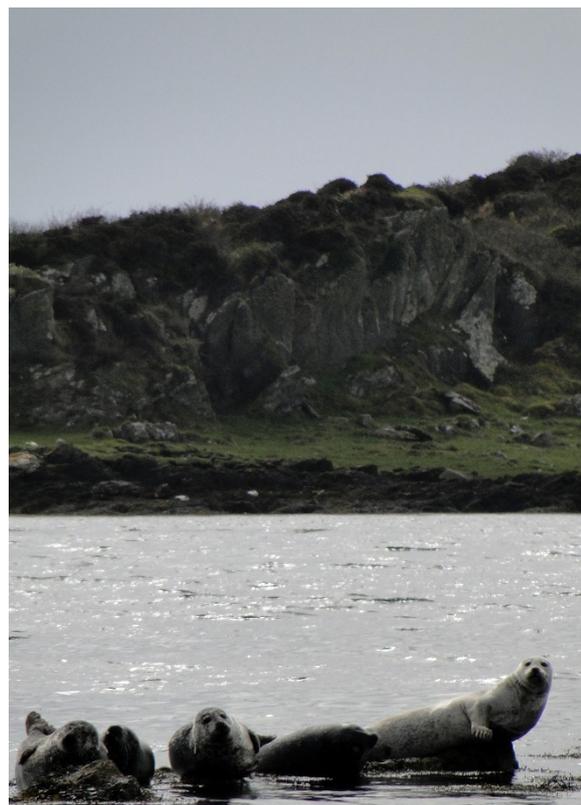
site, environmental groups demonstrating in Taiji are kept at bay by a seasonally manned police station directly next to the killing site. On the international stage, the Japanese government also defends the hunt for small cetaceans, for example at the IWC. Taiji itself, however, does not have the ability to invoke its rights.

As regards the seal hunt and in light of the absence of a regulatory body of global sealing, sealing communities and bodies – both indigenous and non-indigenous – have unsuccessfully attempted to overturn the EU trade ban through the European Court of Justice.<sup>17</sup> Even though the sealing industry has two representative bodies, in light of lack of resources these are little present on the international stage and act primarily within Canada. However, also in the sealing context, both in Canada and abroad several documentaries were recently released – *Ishavsblod – De siste selfangerne* (2016), *Angry Inuk* (2017) or *The Politics of Food – Canada’s Controversial Seal Hunt* (2017) – which also aim to paint a balanced picture on the hunt by inserting the notion of culture, livelihood and socio-economic relevance.

### A Few Final Words

This note has shown that there is rather little, if any, recognition of marine

mammal-hunting local communities in international legal regimes that affect them. Non-indigenous whale and seal hunters do not have a lobby strong enough to influence the international discourse on marine mammal hunting that would foster a discussion on their livelihoods. Inevitably, even though countries are party to the CBD they do not implement community recognition, arguably because of the normative influence of international groups on policy-makers to halt marine mammal hunts.



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<sup>17</sup> Dorothee Cambou, “The impact of the ban on seal products on the rights of indigenous peoples: A European issue.” *The Yearbook of Polar Law* 5 (2013).