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The Boundaries of Consent and the Resilience of Norms: An International Law Analysis of Japan's Withdrawal from the International Whaling Regulatory Regime

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Abstract: Japan's 2019 withdrawal from the International Convention for the Regulation of Whaling and its subsequent resumption of commercial whaling are often cited as evidence of the diminishing binding force of international law. This article contends that such a conclusion is unduly reductionist. By examining the structural deficiencies inherent in the consent-based international legal order, particularly the principle of state consent and institutional fragmentation, while simultaneously assessing the continuing influence of international law through judicial interpretation, normative evolution, and the shaping of behavioural expectations, this article reveals the dual character of international environmental law. That dual character consists of its vulnerability when confronted with conflicting national interests and its normative resilience. The article further argues that the effectiveness of international law should not be measured solely by its capacity to compel compliance, but rather by its ability to foster cross-cultural consensus. A genuinely robust international legal order is not one that imposes uniform standards through coercive power, but one that reconciles respect for cultural diversity and divergent national interests with a minimum consensus on core ecological values. Only by combining institutional efficacy with normative legitimacy can international environmental law provide enduring protection for marine biodiversity and respond effectively to future global environmental challenges.

1. Introduction

This article starts from Japan's 2019 withdrawal from *the International Convention for the Regulation of Whaling* (ICRW) to explore the structural tensions in international environmental law between state sovereignty and global ecological protection. This incident appears to undermine the binding force of international law and reveals the fragility of treaty-based mechanisms in the face of conflicting national interests. However, this article argues that it would be overly simplistic to characterize the event merely as a failure of international law. International law continues to exert influence through judicial interpretation, normative development, and the shaping of behavioral expectations, thereby demonstrating notable normative resilience. Accordingly, this article proceeds

by analyzing both the structural deficiencies and the normative resilience of international law, and further reflects on what constitutes a robust international legal order.

2. Consent and Institutional Fragmentation as Structural Weaknesses of International Law

International environmental law plays a crucial role in regulating state behavior and protecting biodiversity. But its inherent requirement of State consent will lead inevitably to a structural limitation. Japan's withdrawal from ICRW and its resumption of commercial whaling is a typical manifestation of this predicament.

Firstly, in the context of Japan's withdrawal, it is evident that the Convention constitutes a binding treaty under international law[1]. However, its basis on state consent fundamentally limits its ability to constrain state behavior. In principle, states have the right to both accede to and withdraw from treaties. Therefore, Japan's exercise is a legitimate exercise of state sovereignty, rather than a violation of international law or an abuse[2]. However, this characteristic makes treaty-based international law especially vulnerable when national interests conflict with global interests. Ironically, while International environmental issues such as biodiversity conservation and climate change involve long-term and transboundary benefits, national decision-making often prioritizes short-term domestic interests. This tension is further deepened by the fact that environmental protection requires sustained, long-term investment, which runs counter to the typically short horizon of domestic political cycles, as seen in the United States' withdrawal from the Paris Agreement. Similarly, in Japan's case[3], despite the government's assertion that the decision was based on long-standing disappointment with the International Whaling Commission's (IWC) failure to fulfill the dual objectives of ICRW, and aimed at preserving traditional dietary culture and fishermen's rights, this withdrawal fundamentally places Japan's particular interpretation of "sustainable use" and domestic political and economic considerations above the protective norms embodied by the IWC, such as the commercial whaling ban. While the freedom to withdraw reflects respect for state sovereignty, it simultaneously weakens the overall effectiveness and sustainability of international environmental law.

Secondly, the phenomenon of mission drift within the whaling regime further amplifies the structural tension within the consent-based international legal system. The Convention was originally designed to regulate whaling activities through a quota system to ensure the sustainable utilization of whale resources, with its normative foundation built on a balance between utilization and conservation[4]. However, since the late 20th century, with the rise of environmental ethics and the strengthening of protectionist ideologies, IWC gradually shifted from resource management to species protection. Through the establishment of the commercial whaling ban under Schedule paragraph 10[5], this measure evolved from a temporary management tool based on population assessments into a protectionist norm aimed at permanently or indefinitely prohibiting all commercial whaling[6]. As this article argues, this development has fundamentally altered the normative basis of the system. As the operation of the Convention gradually deviated from the original resource management logic, the authority of its rules no longer stems solely from the initial consent of the contracting parties but increasingly depends on institutional evolution and interpretative practices. If the intention of the parties was to establish an institution for discussing such ethical issues, its institutional design would have been fundamentally different. It is on this basis that Iceland justifies its withdrawal from the Convention[3]. This dispute is similarly reflected in the whaling case, where Japan asserts that its scientific whaling program aligns with the Convention's scientific purposes clause, criticizing IWC's decisions as being based on "political and emotional" factors rather than scientific knowledge[2]. Norway also defends its position by citing cultural diversity, arguing that whaling is an essential part of its traditional culture, and views the commercial whaling ban as an

imposition of foreign values on its domestic culture[7]. As scholars have pointed out, in the issue of whaling and scientific research, scientific factors have been both politicized and marginalized, and such an extension may trigger conflicts between differing ethical views[1]. When treaty obligations no longer reflect a shared consensus among contracting states, their legitimacy becomes questionable, thus intensifying the tension between national interests and treaty obligations.

Thirdly, the fragmentation of the international environmental legal system further weakens its overall effectiveness in protecting marine biodiversity. Fragmentation refers to the dispersal of relevant legal norms across multiple relatively independent systems that lack effective coordination[2]. In the field of whale conservation, ICRW, UNCLOS and the CBD all address related issues, but they differ significantly in scope, specificity, normative strength and enforcement. As a specialized regime on whaling, the ICRW provides the most direct and detailed framework. By contrast, UNCLOS only sets out general duties concerning marine mammals in Articles 65 and 120 from the broader perspective of marine resource management. Its wording is vague, and the meaning of "appropriate international organizations" remains unclear, which creates uncertainty over the binding force of these obligations. The CBD adopts an ecosystem-based approach, but its duties are often softened by phrases such as "as far as possible and as appropriate," leaving states considerable discretion. As a result, whale conservation is governed not by a single coherent and compulsory regime, but by several overlapping yet insufficiently coordinated frameworks. In particular, Article 65 of UNCLOS recognizes the special need to protect marine mammals and allows states to adopt stricter measures, but it does not entirely exclude resource use. Instead, it reflects a compromise between conservation and utilization. This ambiguity provides flexibility, but it also weakens the binding effect of international law in concrete disputes and deepens inconsistencies between different treaty regimes.

Following Japan's withdrawal from ICRW, the defects arising from institutional fragmentation have become even more apparent. Japan is no longer directly bound by the commercial whaling ban outlined in the Convention's Schedule. While Japan remains subject to other international legal frameworks such as UNCLOS and the Convention on Biological Diversity (CBD), these regimes do not provide the same specific or actionable standards, thereby creating a regulatory gap in practice[2]. In this context, states may exploit the opportunity to select between different legal systems to circumvent stricter obligations, a phenomenon known as regime shopping. Fragmentation is also evident in the decentralization and weakening of enforcement mechanisms. Different treaties typically establish their own institutional frameworks and monitoring mechanisms, but there is no unified enforcement structure or compulsory dispute resolution process[5]. As a result, the implementation of international environmental law primarily relies on voluntary compliance and political negotiation. While this cooperative design helps promote broad participation, it proves inadequate when faced with treaty withdrawals or selective implementation.[8] Accordingly, Japan's withdrawal from the Whaling Convention and its resumption of commercial whaling should not be viewed as an isolated event but rather as a concrete manifestation of the inherent structural weaknesses within international environmental law.

3. Manifestations of International Law's Continuing Influence

However, while Japan's withdrawal may appear to expose the limits of the international law's compulsory force, it would be unduly to conclude that international law has become ineffective in marine biodiversity protection. In fact, even where treaty obligations are weakened or formally terminated, international law continues to influence state conduct through judicial decisions, normative development and the shaping of expectations of behavior, and as scholars have observed, norms may be formal or informal, precise or indeterminate.[9]

First, the Whaling in the Antarctic case shows that international judicial mechanisms can still effectively regulate state conduct. Although the ICJ did not impose a general ban on whaling, it strictly interpreted Article VIII of the ICRW and narrowed the scope of the "scientific whaling" exception. By applying an objective reasonableness standard, the Court examined the scale, methods, sample sizes and scientific output of Japan's JARPA II programme, and found that its design was not reasonably connected to its stated scientific objectives. The judgment therefore turned a flexible treaty exception into a reviewable legal standard and significantly limited Japan's ability to conduct large-scale whaling on the high seas. After the ruling, Japan suspended its high-seas whaling and adjusted its programmes. This shows that international law can influence state behaviour not only through direct prohibition, but also by clarifying legal boundaries. Although the judgment did not end Japanese whaling entirely, it pushed such activities away from the high seas and thereby strengthened the protection of marine biodiversity. Therefore, despite criticism that the Court could have gone further, its interpretative approach still demonstrates the continuing normative influence of international law.[3]

Second, even after withdrawing from the ICRW, Japan remains bound by other international legal frameworks, in particular the set of obligations established under *the United Nations Convention on the Law of the Sea* (UNCLOS). As noted above, Article 65 of UNCLOS requires States to accord special protection to marine mammals and to cooperate through appropriate international organizations.[2] Within this normative framework, Japan's resumption of whaling does not operate entirely free from international legal constraints. Rather, it represents an attempt to justify its conduct within the existing legal discourse. Specifically, Japan characterises its whaling activities as premised on scientific quotas, resource management and sustainable use, emphasising that they are consistent with the principle of rational utilisation of marine resources under UNCLOS rather than in breach of international obligations.[6] This is significant, as it demonstrates that state conduct must be articulated and defended within the normative boundaries set by international law.

Looked at more broadly, this phenomenon not only reflects the enduring influence of treaty obligations but also illustrates the role of "shaming" as a non-coercive normative instrument in international relations. Over time, the international community has increasingly perceived Japan's whaling practices as deviating from established international norms. Against this backdrop, even though the Japanese government links whaling to resource security, cultural tradition and dietary practices, it must still take into account its image as a responsible international member, which has significantly influenced its policy making.[7] It is important to note that the shaming mechanism does not operate unidirectionally. At certain stages, more moderate international pressure has indeed induced Japan to accept the moratorium and reduce its whaling activities; conversely, more confrontational criticism has on occasion been interpreted domestically as an encroachment on sovereignty, provoking a backlash and reinforcing resistance.[8] However, when viewed as a whole, this still reflects the role of the international legal framework in norm-shaping. As previously noted, such norms are not confined to any single form but exert their constraining effects across multiple dimensions.

Therefore, Japan's withdrawal from the ICRW does not mean that international law has lost its influence. Even without strong centralized enforcement, international law continues to shape state behaviour through judicial interpretation, treaty obligations and normative pressure. In this sense, the whaling dispute shows not only the weakness of international law, but also its continuing normative resilience.

4. Redefining a "Strong" International Legal Framework

Building on the foregoing analysis, a deeper assessment of whether Japan's withdrawal from the

ICRW has truly weakened international law and its efficacy in marine biodiversity protection requires a re-examination of what constitutes a "strong" international legal system and the sources of its environmental regulatory capacity. This inquiry facilitates moving beyond surface-level judgments of "legal failure" and reveals the institutional reflections and developmental opportunities that lie behind the crisis.

First, this article observes that normative conflict is a normal condition of international law. In the context of the death penalty, for example, certain Western states have sought to promote global abolition through international human rights mechanisms, yet such efforts are often perceived by other states as interference with their criminal justice sovereignty. Similarly, in the field of LGBTQ+ rights, the universal human rights standards advocated by Western states are frequently criticized as cultural imperialism, thereby undermining their receptivity in different societies. In the area of women's rights, issues such as polygamy likewise reflect the tensions between international norms and religious and cultural traditions. In climate change governance, developing countries have long perceived that emission reduction obligations mirror asymmetrical historical responsibilities and power structures. These examples demonstrate that international law is not entirely neutral but is, to some degree, embedded within particular value systems and power relations.[7]

This article further critiques a tendency that is relatively common in international practice, namely, equating "strong international law" with the power advantages of certain states and instrumentalizing international law as a means of exerting pressure on others.[8] This tendency is particularly pronounced in the whaling dispute. The opposition of some Western states to Japanese whaling is partly rooted in a highly emotive, anthropomorphic perception of cetaceans, ascribing to them a moral status approaching that of humans and thereby intensifying moral condemnation of whaling. At the same time, such a stance inevitably exhibits a degree of ethnocentrism, treating specific cultural values as universal standards by which to judge and negate the traditions of other states.[4] Building on such normative judgments, states often translate them into concrete policy instruments. The United States, for instance, has exerted pressure on Japan through trade restrictions, linking environmental protection objectives with trade mechanisms to induce changes in Japanese whaling policy.[5]Although such measures may produce results in the short term, they also deepen the entanglement of international law with power politics and erode its neutrality as a universal normative system. For Japan, measures of this kind may be perceived as interference with its cultural traditions and resource sovereignty, thereby weakening its identification with relevant norms and even reinforcing domestic cultural defence narratives.[8]

Against this backdrop, the crucial question is how to enhance the effectiveness of international law within the existing framework. This article submits that a response should be developed along two dimensions, the technical dimension and the normative dimension. From a technical perspective, institutional optimization should target three structural limitations of international environmental law. First, with respect to the freedom of states to withdraw from treaties, binding force should be strengthened by raising the costs of withdrawal, for example, by reinforcing long-term cooperative mechanisms and by introducing more systematic incentive and constraint mechanisms that link environmental obligations with trade preferences, development assistance and similar measures.[3] Second, to address "mission creep", it is necessary to enhance procedural justice, promote transparency and inclusiveness, prevent the evolution of norms from being dominated by a minority of states, and maintain the institutional separation between scientific assessment and policy-making.[4] Third, in response to legal fragmentation, efforts should be directed towards promoting consistency in normative interpretation and institutional coordination.[2] Institutional and technical adjustments alone, however, are insufficient. The limitation of international law resides not in a shortage of norms but in their degree of acceptance and legitimacy. The strength of international environmental law derives not from coercive enforcement but from its capacity to construct cross-

cultural consensus. Put differently, a genuinely "strong" international legal system should, while respecting diversity, foster a minimum consensus on core ecological values.[9]

5. Conclusion

Japan's withdrawal from the ICRW should not be understood simply as evidence that international law has failed. Rather, it exposes the structural limitations inherent in a consent-based international legal order, particularly where long-term global environmental interests conflict with domestic political, economic and cultural priorities. As demonstrated throughout this article, treaty withdrawal, institutional mission drift and legal fragmentation all weaken the effectiveness of international environmental governance by reducing coherence and limiting the capacity of legal regimes to constrain state behaviour. At the same time, the whaling dispute illustrates that international law continues to shape state conduct beyond formal treaty obligations. Judicial interpretation, overlapping treaty commitments, normative expectations and reputational pressures remain capable of influencing state behaviour even in the absence of centralized enforcement. Accordingly, the effectiveness of international law should not be assessed solely by whether it can compel compliance, but also by its continuing ability to define legal boundaries, structure political discourse and shape the expectations of the international community.

The article therefore argues that the future development of international environmental law requires both institutional and normative reform. Institutionally, greater coherence between legal regimes, more transparent decision-making processes and stronger mechanisms to discourage opportunistic treaty withdrawal would enhance the stability of environmental governance. Normatively, however, lasting effectiveness ultimately depends upon the legitimacy of international legal norms. A genuinely strong international legal order is not one that simply imposes uniform standards through coercion, but one that is capable of fostering broad international consensus while respecting cultural diversity and differing national interests. Only by combining institutional effectiveness with normative legitimacy can international environmental law provide durable protection for marine biodiversity and respond effectively to future global environmental challenges.

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