

Indigenous Whaling Tradition in Faroe Islands under International Law

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Abstract

The issue of whaling has been extensively debated on various international occasions since it causes a decline in many of the world's whale population. Presently, Faroe Islands is one of the few regions in Denmark that still adamantly practiced whaling for traditional purposes, even though Denmark itself has prohibited it. This writing aims to analyze the whaling tradition in Faroe Islands from the International Law perspective. Further, to examine whether Denmark has an international obligation to end whaling activities in Faroe Islands. The method that is used in this writing is the normative legal research. The result of this analysis shows that the tradition in Faroe Islands is consistent with International Law, thus Denmark has no international obligation to end the tradition.

Keywords: *Whaling Tradition; Faroe Islands; International Law*

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1. Introduction

1.1. Background

According to the research published by International Whaling Commission (IWC) the populations of several species of whales, such as Minke Whales, Blue Whales, Fin Whales, Gray Whales, Bowhead Whales, Humpback Whales, Right Whales, Bryde's Whales, Pilot Whales, Balin Whales, and Sei Whales, had declined precipitously.¹ The main factor contributing to the decline in whale stock is overexploitation.

Nations have exploited whales for hundreds of years.² Many people in several regions of the world hunted whales for their meat and blubber were able to fulfill their basic survival needs, such as food and lamp oil. Most whale hunters are "indigenous peoples",³ such as the Ainu of Japan, the Inuit of the Arctic regions (Russia, Canada, USA, and Greenland), the Maori of New Zealand, the Basques of the Northwest Spain and Southwest France, the Makah of the Northwestern Coastal region of the USA and Canada, and the Faroese of Denmark.⁴ Indigenous whaling peoples, often living in isolated communities in the high Arctic with no agriculture were seen to have limited opportunities to supplement local food production such as whale meat and blubber, with imported alternatives. Moreover, they have made repeated calls for the protection of their lives, their cultures, their lands, and, ultimately, for the recognition of their right to self-determination.⁵

Faroese lived in the Faroe Islands. The Faroe Islands are part of the Kingdom of Denmark, but are geographically isolated and culturally distinct. They are a self-governing archipelago of eighteen small islands in the North Atlantic Ocean, with a population of just 50,000 people.⁶ The Faroese have control of most of their domestic affairs. Those that are the responsibility of Denmark include military defense, policing and the justice department, currency, and foreign affairs. Since 1000 years ago, the People of Faroe

¹ "Estimates: Whales Populations Estimates, The International Whaling Commission's most recent information on estimated abundance". <https://iwc.int/estimate#table>

² Benjamin van Drimmelen. The International Mismanagement of Whaling." *UCLA Pac. Basin LJ* 10 (1991): 240-259.

³ The term indigenous peoples will be used for similar meaning as aborigines. Indigenous peoples is the term normally used in international context while aborigines is normally used in domestic context.

⁴ Sean Patrick Kerins, "Whaling in the Faroese." (Thesis, Griffith School of Environment, 2008), 6.

⁵ Catherine J. Iorns. "Indigenous Peoples and Self Determination: Challenging State Sovereignty." 24 Case W. Res. J. Int'l L. 199, (1992): 201-202.

⁶ Faroeisland.fo. The Official Gateway to the Faroe Islands. <https://www.faroeislands.fo/people-society/people-of-the-faroe-islands/population/>

Islands have counted on the ocean, and especially pilot whales, for food, blubber, and other biomaterials.⁷

The Faroe Islands pilot whaling tradition known as the “*Grindadráp*” is highly controversial. *Grindadráp* is an annual event that sees the Faroese hunt long-finned pilot whales.⁸ It happens between June to August. It has been occurring since the 9th century when Norse settlers brought with them practices for driving the pilot whales ashore where they slaughtered, hauled up, assessed, flensed, and then divided freely amongst the community to be used as food.⁹ As stated by the North Atlantic Marine Mammal Conservation Organization (NAMMCO) each year the slaughter is estimated to take less than 0.1% of the pilot whales population.¹⁰ Most Faroese consider the *grindadráp* an important part of their culture and history. It has become an example of an important subsistence practice which demands cooperation between villages and survival through cooperation.¹¹

In the 1980s the world at large became aware of the *grindradráp* tradition. A number of animal-rights group and environmental organizations starting to protest and criticize against the practice since 1985 with occasional campaigns occurring since. They claim the hunt as being cruel and unnecessary. These campaigns involved letter writing, sporadic sabotage efforts and attempts to enact an economic boycott of Faroese product. Since the 1980s the Sea Shepherd Conservation Society (SSCS) has become one of a group of organizations protesting against *grindadráp* tradition.¹² SSCS was one of the first animal rights groups to target Faroese whaling. As such, SSCS has periodically campaigned in the Faroe Islands prior to Grindstop 2014, where their actions were broadcast as part of the television series *Whale Wars*.¹³

⁷ Lucas Isacowitz. “Culture or Cruelty: why the Faore Islands still Kills Hundreds of Whales Every Year”. <http://projectearth.us/on-the-faroe-islands-killing-hundreds-of-whales-every-1796848516>

⁸ Phillip Budgen. News. “What is Grindadráp and Why is Whaling in the Faroe Islands so Controversial”. <https://www.lifegate.com/people/news/what-is-grindadráp-why-is-it-controversial>; O’Barry, Helene Hesselager. “HEART of Darkness.” *Earth Island Journal* 27, no. 4 (2013): 18-23.

⁹ Sean Patrick Kerins, *op.cit.*, 1.

¹⁰ Tim Ecott. “Why we should let Faroe Islanders Hunt Whales”. <http://www.spectator.co.uk/2014/02/why-we-should-let-faroe-islanders-hunt-whales/>

¹¹ Ragnheiður Bogadóttir and Elisabeth Skarðhamar Olsen. “Making Degrowth Locally Meaningful: The Case of the Faroese Grindadráp.” *Journal of Political Ecology* 24, no. 1 (2017): 504-518

¹² E. B. Heinesen. “Cultural Clashes Make Sea Shepherd Campaign Counterproductive”, *The Arctic Journal* 67 (2014); SSCS, About the Campaign, *GrindStop 2014: Defending Dolphins in the Faroe Islands*. <http://www.seashepherd.global/grindstop/about-campaign/about-the-campaign.html>

¹³ Benedict E. Singleton. “Love-iathan, the Meat-Whale and Hidden People: Ordering Faroese Pilot Whaling.” *Journal of Political Ecology* 23, no. 1 (2016): 26-48.

However, according to the Fisheries Minister of Faroe Islands, Hogni Hoydal, the practice by the people of Faroe Islands is a key part of the Faroese tradition of living in a sustainable way off their marine resources.¹⁴ Moreover, a spokesman for the Faroese government, Pall Nolse, stated that whaling is a natural part of Faroese life and it is conducted in accordance with International Law.¹⁵ This statement shows that they will continue such hunting, even if there is a large protest regarding their whaling tradition. Based on those concerns, it is needed to analyze whether the *grindadrap* in Faroe Islands is lawful under the International Law.

1.2. Purpose

This paper addresses two main legal issues: firstly, what is the legal status of *grindadrap* under International Law, and secondly, does Denmark have an international legal obligation to end *grindadrap* in Faroe Islands. This paper aims to analyze how does the existing legal framework of whaling for aboriginal subsistence in International Law.

1.3. Research Method and Article Outline

The research method applied in this paper is normative legal research, using a combination of comparative, statutory, analytical and conceptual approaches. The analysis is focused on primary sources of law contained in international instruments and statutes, as well as secondary sources (the concept of laws provided in journals, books, and the internet).¹⁶ Perspectives in this paper are enriched by statute, comparative, and fact-based approaches concerning whaling in general, as well as aboriginal whaling subsistence in particular.

Section 2.1. of this writing will assess the legal status of indigenous rights in international law, followed by international law regulating whaling in Section 2.2. Finally, Section 2.3. will provide an analysis regarding Denmark's international obligation regarding the *grindadrap* in Faroe Islands.

1.4. Literature Review

Whaling has been carried out by man for thousands of years and records show that the first whaling expeditions were carried out by

¹⁴ phys.org. Ecology. "Pilot whale meal poses health hazard, Faroese warned". <http://phys.org/news/2018-06-whale-meat-poses-health-hazard.html>

¹⁵ phys.org. Ecology. "Up to 50 Pilot Whales killed in Faroese: Activists". <http://phys.org/news/2016-07-whales-faroese-activists.html>

¹⁶ Laire De Marco. "Legal Research Strategy." <http://guides.library.harvard.edu/law/researchstrategy/primarysources>; I Made Pasek Diantha, "Metodologi Penelitian Hukum Normatif dalam Justifikasi Teori Hukum." Jakarta: Prenada Media Group, (2016): 149-151.

Norsemen and polar Eskimos four thousand years ago.¹⁷ Whaling for aboriginal subsistence has been previously studied by scholars. Jeremy Firestone and Jonathan Lilley¹⁸ wrote an article concerning whaling by the Makah Indian Nation. The studies show that whale hunting is Makah Peoples' cultural heritage and state recognize their dependence as indigenous people on marine wildlife. They state that toward recognition of indigenous peoples' self-determination and sovereignty will provide more principled models of how a pluralistic society and the norm of cultural diversity should accommodate indigenous culture, rights, and knowledge.

Another writer, Sean Patrick Kerins¹⁹ analyze whaling activities in Faroe Islands and demonstrate that the *grindadráp* provides resource users with significant incentives, through the provision of locally produced meat and blubber, so that they continue to commit themselves to conform to its operational rules, to monitor each other's compliance, and continue to replicate the common property resource institution across generational boundaries.

Furthermore, he finds that *grindadráp* is an example of community-based resource management at its best. One where the users themselves are provided with the opportunity and responsibility to manage their own resources; define their needs, goals, and aspirations; and to make decisions affecting their well-being. The Faroese exhibit a high level of capability, responsibility and accountability in the management of their common property resource. The *grindadráp* is evolutionary, participatory and locale-specific and considers the technical, ecological, socioeconomic and environmental issues impinging upon this geographically isolated community.

Ragnheiður Bogadóttir and Elisabeth Skarðhamar Olsen in their article have explored the symbolic and material dimensions of the deep-rooted non-growth oriented practice of *grindadráp* in Faroe Island. They suggest a conceptualization of the *grindadráp* as a "colonial difference" that renders alternative lifeways and degrowth imaginable and contextually meaningful. The ongoing debates among and between Faroese, and between Faroese and protesters of pilot whaling have led Faroese people to reflect upon the relevance and meaning that *grindadráp* has in their life.

¹⁷ William Burns. The Berlin Initiative on Strengthening the Conservation Agenda of the International Whaling Commission: Toward a New Era for Cetaceans." *Rev. Eur. Comp. & Int'l Envtl. L.* 13 (2004): 72-84; Pamela R. Stern. "Historical Dictionary of the Inuit 2nd Ed.," The Scarecrow Press Inc., United Kingdom, (2013): xxiii.

¹⁸ Jeremy Firestone and Jonathan Lilley. "Aboriginal Subsistence Whaling and the Right to Practice And Revitalize Cultural Traditions And Customs." *Journal of International Wildlife Law & Policy* 8, no. 2-3 (2005): 177-219.

¹⁹ Sean Patrick Kerins, *op.cit.*, 237-238.

2. Result and Analysis

2.1. The Faroese are Indigenous Peoples under International Law

The right of person to freely participate in tradition or cultural life has shown in numerous international instruments,²⁰ affirmed in declarations of states,²¹ and has practiced in several states constitutions.²²

According to *Lubicon Lake case*, indigenous people defined as those “who have maintained their traditional economy and way of life and have occupied their traditional territory since time immemorial.”²³ Furthermore, in *Awas Tigni case* “Indigenous peoples are defined as those social and human groups, culturally identified and who maintain a historical continuity with their ancestors...That historical continuity can be seen in their forms of organization, in their own culture, in their self-identification, and in the use of a language the origin of which is pre-Hispanic.”²⁴ *Awas Tigni case* is an Inter-American Court of Human Rights’ 2001 decision concerning the communal property rights of indigenous peoples and state’s obligation to protect those rights. Its decision has helped advance the development of growing importance of human rights instruments to indigenous peoples in their efforts to protect their rights.²⁵ Its decision also holds important lessons for other indigenous communities facing similar battles for the recognition of their land and natural resource rights.

As stated in *Kichwa case*²⁶ and *Rio Negro case*²⁷ indigenous people also have the rights to self-identify themselves as indigenous people.

Several international law instruments, such as Universal Declaration of Human Rights (UDHR), International Covenant on Economic, Social, and Cultural Rights (ICESCR), International Covenant on Civil and Political Rights (ICCPR), Indigenous and Tribal Peoples Convention of 1989 and the

²⁰ Universal Declaration of Human Rights, Art. 27; International Covenant on Economic, Social, and Cultural Rights, Art. 15(1)(a), Art. 17; International Covenant on Civil and Political rights, Art. 27; International Convention on Elimination of All Forms of Racial Discrimination, Art. 5.

²¹ Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, Art. 2(1), Art. 2(2); Declaration of the Principles of International Cultural Co-operation, Art. 4.

²² Constitution of Indonesia 1945, Art. 28C(1); Constitution of China 1982, Art. 22; Constitution of Croatia 1990, Art. 68; Constitution of the Slovak Republic 1992, Art. 42(3); Constitution of South Africa 1996, Art. 30.

²³ *Chief Bernanrd Ominyak and Lubicon Lake Band v. Canada*, Merits, HRC, Communication No. 167/1984, 26 March 1990, para. 7.

²⁴ *Case of the Mayagna (Sumo) Awas Tigni Community v. Nicaragua*, Judgement on merits and reparations, IACtHR, Series C No. 79, 30 August 2001, 23.

²⁵ Leonardo J. Alvarado, 2007, Prospects and Challenges in the Implementation of Indigenous Peoples' Human Rights in International Law: Lessons from the Case of *Awas Tingni v. Nicaragua*." *Ariz. J. Int'l & Comp. L.* 24 (2007): 609-643.

²⁶ *Kichwa Indigenous People of Sarayaku v. Ecuador*, IACtHR, Series C No. 245, 2012, para. 217.

²⁷ *Caso Masacres de Rio Negro v. Guatemala*, IACtHR, Series C No. 250, 2012, para 52.

United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), acknowledge the indigenous peoples' right.²⁸

The UDHR is an international declaration that recognize the fundamental human rights for all people and nations. In essence, the UDHR guarantees the right to life,²⁹ the right to an adequate standard of living,³⁰ and the right to freely participate in the cultural life of the community.³¹

Furthermore, Article 6 – Article 15 of ICESCR ensure that “everyone” has the right to food, clothing, shelter, and the right to take part in cultural life. The committee on Economic, Social, and Cultural Rights (CESCR), whose interpretation of ICESCR under this court is deemed authoritative,³² has further explained that “everyone” involves individuals acting alone or in a group, such as indigenous peoples.³³ This provision is affirmed in several jurisprudences.³⁴

Article 27 of ICCPR also ruled that “In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.”

Moreover, the scope of cultural rights is rather broad, as specified in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), it involves the rights to cultural customs and traditions,³⁵ as well as the rights to spiritual and religious traditions.³⁶

The people of Faroe Islands' shall be considered as indigenous people as they are living on the lands they inherited from their ancestor which is the Faroe Islands, and practicing their *grindadrap* tradition since thousands

²⁸ United Nations Human Rights Office of the High Commissioner. “*Indigenous Peoples and the United Nations Human Rights System.*” Human Rights Fact Sheet No. 9/Rev.2, Geneva, (2013): 4-9; Peter Manus. “*Sovereignty, Self-Determination, And Environment-Based Cultures: The Emerging Voice Of Indigenous Peoples In International Law.*” Wisconsin International Law Journal Vol. 23, No. 4, (2012): 572-575

²⁹ UDHR, Art. 3.

³⁰ UDHR, Art. 25.

³¹ Rez Gardi. “From Suppression to Secession: Kurds, Human Rights and the Right to Self-Determination in Turkey.” *ILSA J. Int'l & Comp. L.* 24 (2017): 61-108.

³² Legal consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, 2004 ICJ 136, para. 112.

³³ UN Commission on Economic, Social, and Cultural Rights, General Comment No. 21, para. 9, UN Doc. E/C.12/GC/21.

³⁴ *Aloeboetoe and Others v. Suriname*, Reparations, IACtHR, Series C No. 15, 1993, paras. 17, 58; *Plan de Sanchez Massacre v. Guatemala*, Merits, IACtHR, Series C No. 105, 2004, para. 36(4); *Bamaca Velazquez v. Guatemala*, Reparations, IACtHR, Series C No. 91, 2002, para. 82; *Mahuika and Others v. New Zealand*, Views, Human Rights Committee 70th Session, 2000, para. 9.3.

³⁵ UNDRIP, Art. 11(1).

³⁶ UNDRIP, Art. 12.

of years ago.³⁷ Moreover, states parties to ICESCR and UNDRIP should take measures to guarantee that the exercise of the right to take part in cultural life takes due account of the values of cultural life, which may be strongly communal or which can only be expressed and enjoyed as a community by indigenous peoples.

Therefore, since Faroese is indigenous people, the international environmental law recognizes the special situation of indigenous peoples and their dependence on subsistence and cultural marine resources for self-determination. The following section of this writing addresses sources of international law that recognize indigenous peoples' right to food from the marine environment. The three sources of international law that will be analyzed are: (1) international regulation concerning whaling (International Convention for the Regulation of Whaling) (2) international environmental law (namely; the aboriginal subsistence exception in the Convention on Migratory Species); and (3) international convention regarding endangered species (Convention on International Trade in Endangered species of Wild Flora and Fauna).

2.2. Whaling in International Law

2.2.1. Grindadrap under the International Convention for the Regulation of Whaling

In 1982, the IWC established zero catch limits for all whaling, with two exceptions: aboriginal whaling and special permit scientific whaling under Article VIII of the International Convention for the Regulation of Whaling (ICRW).

The persistence of the moratorium on commercial whaling³⁸ and Japan's scientific research whaling³⁹ under the International Convention for

³⁷ Catherine Bennett. "Sea of red: the Faroe Islands' controversial whale-killing tradition". FRANCE 24, <https://observers.france24.com/en/20180803-faroe-islands-controversial-whale-killing-grindadrap> accessed on 19 February 2019; Rachael Revesz. "Faroe Islanders' ritual slaughter of pilot whales turns sea blood red." The Independent, <https://www.independent.co.uk/news/world/europe/faroe-islands-slaughter-pilot-whales-sea-blood-red-north-atlantic-iceland-denmark-ritual-tradition-a7798436.html>

³⁸ International Convention for the Regulation of Whaling art. XI(10), The Schedule is an integral part of the ICRW art. I(1). The Schedule was last amended at the 65th Annual Meeting of the IWC in September 2014. At the moment, however, the IWC's website only provides a link to the Schedule as amended in 2012; International Convention for the Regulation of Whaling, Schedule art. III(10)(e), Dec. 2, 1946, 62 Stat. 1716, 161 U.N.T.S. 72; The 2014 amendments can be found in IWC, 2014, *Summary of Main Outcomes, Decisions and Required Actions from the 65th Meeting*, URL: <http://iwc.int/iwc65docs>

³⁹ Between 1987 and 2001, the IWC has condemned Japan's so-called scientific whaling for failing to meet the criteria for scientific whaling and the IWC's Scientific Committee has stated that Japan's scientific whaling does not provide data relevant to any critically important management purpose. See, e.g., IWC, *Resolution on Whaling*

the Regulation of Whaling (ICRW)⁴⁰ have dominated discussion within IWC for about three decades. Further, in March 2014, a decision of the International Court of Justice (ICJ) ruled that Japan's Antarctic whaling was not for purposes of scientific research.⁴¹ However, the recent issue is regarding Aboriginal Subsistence Whaling (ASW).

To understand the current whaling regime, it is necessary to briefly sketch the history of the IWC. The IWC is based on Article III of the ICRW. The convention came into force on 10 November 1948. By 2018, ICRW membership has risen to 89 members.

At first, the ICRW primarily concerned is to “*provide for the proper conservation of whale stocks and thus make possible the orderly development of the whaling industry.*”⁴² In order to achieve these goals, it creates a commission, the IWC,⁴³ with the authority to adopt binding regulations “*with respect to the conservation and utilization of whale resources.*”⁴⁴ The elementary part of the regulation is the Schedule which outlines specific provisions and catches limits for specific regions and species.

Aboriginal Subsistence Whaling (ASW) has been addressed in the ICRW Schedule. As noted above, the Schedule is part of the treaty in every meaningful sense.⁴⁵ When the ICRW was negotiated and came into force, it is notable that the Schedule explicitly provided an exception for aboriginal hunting of gray whales. The Schedule provided that, “*It is forbidden to take or kill gray or right whales, except when the meat and products of such*

Under Special Permit in the North Pacific Ocean, IWC Res. 2000-5 (2000); IWC, *Resolution on Whaling Under Special Permit in the Southern Ocean Sanctuary*, IWC Res. 2000-5 (2000); IWC, *Resolution on Whaling Under Special Permit*, IWC Res. 1998-4 (1998); IWC, *Resolution on Special Permit Catches in the North Pacific by Japan*, IWC Res. 1997-6 (1997); IWC, *Resolution on Special Permit Catches in the Southern Ocean by Japan*, IWC Res. 1997-5 (1997); IWC, *Resolution on Special Permit Catches by Japan*, IWC Res. 1996-7 (1996); IWC, *Resolution on Special Permit Catches by Japan in the Southern Hemisphere*, IWC Res. 1994-10 (1994); IWC, *Resolution on Special Permit Catches by Norway*, IWC Res. 1994-11 (1994); IWC, *Resolution on Special Permit Catches by Japan in the Southern Hemisphere*, IWC Res. 1993-7 (1993); IWC, *Resolution on Special Permit Catches by Japan in the Southern Hemisphere*, IWC Res. 1991- Appendix 2 (1991); IWC, *Resolution on Special Permit Catches by Japan in the Southern Hemisphere*, IWC Res. 1990-2 (1990); IWC, *Resolution on the Proposed Take by Japan of Whales in the Southern Hemisphere Under Special Permit*, IWC Res. 1989-3 (1989); IWC, *Resolution on Japanese Proposal for Special Permits*, IWC Res. 1987-4 (1987); *Petition to Certify Japan Pursuant to 22 U.S.C. § 1978 for Trading in the Meat of Minke, Bryde's, and Sperm Whales from the North Pacific and the Southern Hemisphere* (Nov. 14, 2000), URL: http://law.lclark.edu/clinics/international_environmental_law_project/our_work/w_haling

⁴⁰ ICRW, Art. VIII

⁴¹ *Whaling in the Antarctic (Australia. v. Japan)*, 2014 I.C.J. 148, paras. 35-37.

⁴² Last preamble paragraph of the ICRW.

⁴³ ICRW, Art. III(1)

⁴⁴ *Ibid.*, Art. V(1)

⁴⁵ *Ibid.*, Art. I.1

*whales are to be used exclusively for local consumption by the aborigines.*⁴⁶ From its inception, the ICRW recognized the important role that whale products play in the nutritional and cultural life of some native peoples.⁴⁷

Over the next several decades, subsequent requests for aboriginal subsistence whaling of other whale species or stocks were handled in a similar fashion.⁴⁸

Nonetheless, since its creation, the ICRW's mandate has undoubtedly shifted from regulations of whaling fishery to a moratorium, or a complete ban, on commercial whaling.⁴⁹ The ICRW implemented the moratorium through the IWC. In the early 1980s, the IWC created a special ad hoc workgroup to provide it with guidance on how to handle proposals for aboriginal subsistence whaling. The workgroup reached agreement on the following three definitions, which are relevant to the question of the status of Faroese whaling:⁵⁰

- a. "Aboriginal subsistence whaling" means "whaling, for purposes of local aboriginal consumption, carried out by or on behalf of aboriginal, indigenous or native peoples who share strong community, familial, social and cultural ties related to a continuing traditional dependence on whaling and on the use of whales."
- b. "Local aboriginal consumption" means "the traditional uses of whale products by local aboriginal, indigenous or native communities in meeting their nutritional, subsistence and cultural requirements. The term includes trade in items which are by-products of subsistence catches."
- c. "Subsistence catches" are "catches of whales by aboriginal subsistence whaling operations."

The efforts of the workgroup ultimately led the IWC to adopt a resolution in 1983 on aboriginal subsistence whaling and to establish a more formal Aboriginal Subsistence Whaling Subcommittee. In the resolution, the IWC stated that it "recognizes the importance and desirability of accommodating, consistent with effective conservation of whale stocks,

⁴⁶ *Ibid.*, Schedule, para 2.

⁴⁷ IWC, "Bowhead Whale, Qeqertarsuaq, Greenland." <http://iwc.int/aboriginal> (noting the two major objectives of IWC regulation of ASW is to maintain healthy populations of whale and to allow aboriginal groups to maintain cultural practices of whaling).

⁴⁸ Alexander Gillespie. "Aboriginal Subsistence Whaling: A Critique of the Inter-Relationship between International Law and the International Whaling Commission." *Colo. J. Int'l Envtl. L. & Pol'y* 12 (2001): 80.

⁴⁹ Monder Khoury. "Whaling in Circles: The Makahs, the International Whaling Commission, and Aboriginal Subsistence Whaling." *Hastings LJ* 67 (2015): 293-322.

⁵⁰ IWC. "Aboriginal/Subsistence Whaling (with Special Reference to the Alaska and Greenland Fisheries)." 1983): 83.

the needs of aboriginal people who are dependent upon whales for nutritional, subsistence and cultural purposes.”⁵¹

In conclusion, the international community has recognized the special relationship between aboriginal peoples and marine mammals for at least 90 years, with increasing attention over time dedicated to ensuring that the needs of aboriginal peoples and the conservation and proper management of whale stocks are ensured and accommodated.

2.2.2. Grindadrap Tradition under the Convention on Migratory Species (CMS)

2.2.2.1. The Government of Denmark and Faroe Islands have Acknowledged the Importance of Yak Conservation

CMS obligates states to acknowledge the importance of migratory species being conserved⁵² and avoid any migratory species becoming endangered.⁵³ Such provision was acknowledged in *Pulp Mills case*⁵⁴ and *Blufin Tuna case*.⁵⁵

On 19th June 1993, the *grindamannafelagio* or the Faroese Pilot Whalers Association was officially founded.⁵⁶ Representatives from all authorized whaling bays were present and gave their unanimous support to the creation of the association. The association would formalize the exchange of information between whaling districts. The aims of the new organization, are:⁵⁷

- (1) To maintain and enhance pilot whaling in order to ensure a sustainable catch of pilot whales according to need;
- (2) To co-operate internationally with other organizations with similar objectives;
- (3) To inform about pilot whales and pilot whaling nationally and internationally; and
- (4) To support scientific projects about pilot whales and their living conditions.

Therefore, the establishment of the Faroese Pilot Whalers Association proven that Denmark and Faroe Islands acknowledge the importance of pilot whale conservation.

⁵¹ Office of the Commission. “*Report of the Thirty-Fifth Meeting of the International Commission on Whaling 38.*” (1983): app. III

⁵² CMS, Art. 2(1)

⁵³ *Ibid*, Art. 2(2)

⁵⁴ *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgment, ICJ Rep. 2010, para. 262.

⁵⁵ *Southern Bluefin Tuna (New Zealand v. Japan; Australia v. Japan)*, Order, ITLOS Rep. 1999, para 48.

⁵⁶ Sean Patrick Kerins, *op.cit*, 223.

⁵⁷ *Ibid*.

2.2.2.2. The Whaling Tradition in Faroe Islands is Considered as an Exception

CMS objective is to conserve habitat and protect migratory species threatened with extinction.⁵⁸ Article 3(5)(a) and 3(5)(c) of the convention governs that exceptions may be made upon the prohibition of the taking of the endangered migratory species, on the grounds that the taking is for scientific purposes,⁵⁹ or the taking is to accommodate the needs of traditional subsistence users of such species.⁶⁰

As submitted *supra*, Faroese as indigenous peoples still need the whales to maintain their traditional subsistence. The *Grindadrap* is a tradition, not a ritual. A tradition is a cultural element passed through generations,⁶¹ on the other hand, a ritual is a procedure or collection of processes relating to a rite or ceremony.⁶² In the case at hand, there is no ceremony or rite attached to the hunts, because for the past 1000 years the sole purpose of *grindadrap* has always been to provide the local community with food. The mountainous islands and harsh conditions of the Faroe Island are largely unfit for agriculture, therefore pilot whales were instrumental to Faroese survival. It is also important to note that whale meat does still represent about a quarter of the meat consumption in the Faroes, and as such remains economically significant.⁶³

Moreover, Denmark as a state party to this convention has authorized the Faroese to practice their tradition for decades. Thus, the hunting of the whale in Faroe Islands is justifiable.

2.2.3. Grindadrap under the Convention on International Trade in Endangered Species of Wild Flora and Fauna

Up to present, there are 183 state parties to the Convention on International Trade in Endangered Species of Wild Flora and Fauna (CITES).⁶⁴ The aim of the agreement is to control or prohibit trade in species

⁵⁸ Malcolm D. Evans, *loc.cit.*

⁵⁹ Philip J. J. Drost. "Multilateral Environmental Agreements: States of Affairs and Developments." Eleven International Publishing, (2008): 405-406.

⁶⁰ United Nations Environment Programmed (UNEP). *Handbook of environmental Law*, (1997): 166.

⁶¹ Nwoye Charles Egbo. "Traditions and Customs in Community Development: The Case of Nkanu West and Nkanu East Local Government Areas of Enugu State, Nigeria", *Journal of Education and Practice* Vol.7 No.18, (2016): 120-121.

⁶² Meg Jerrad, "Understanding The Faroe Islands Grindadrap", <https://www.mappingmegan.com/understanding-faroe-islands-grindadrap/>

⁶³ Megan Jerrard. "Whale hunting in the Faroe Islands has received a bad reputation. But here's what social media is getting wrong", <https://matadornetwork.com/life/whale-hunting-faroe-islands-received-bad-reputation-heres-social-media-getting-wrong/>

⁶⁴ CITES, List of Contracting Parties. <https://cites.org/eng/disc/parties/chronolo.php>

or their products where those species are in danger of extinction.⁶⁵ CITES is legally binding instrument that needs to be adopted into the domestic legislation of the state parties, and further, to be implemented.⁶⁶ The pilot whale is listed in Appendix II, meaning that international trade in the products derived from them is very limited.⁶⁷

The Faroe Islands is part of the Kingdom of Denmark, but for whaling issue (and many more) the indigenous Faroese are autonomous from the government of Denmark.⁶⁸ Even though they issue the permit for whale hunting, while Denmark itself does not, there is no evidence of any commercialization of whale by the people of Faroe Islands. The pilot whale meat harvested during the *grindadrap* is mainly distributed for free to the Faroese community and does not enter into market.⁶⁹ Therefore, it is proven that *grindadrap* tradition is lawful under CITES.

2.3. Legal Obligation of Denmark in Respect of the Whaling Activities in Faroe Islands

Article 1(2) of International Covenant on Civil and Political Rights (ICCPR), Article 1(2) of ICESCR, Article 3 of Convention on Biological Diversity (CBD), and Preamble of Nagoya Protocol recognize that states shall have sovereign rights to exploit their own resources. This rule was acknowledged in *North Sea case*⁷⁰ and *Volga case*.⁷¹

Furthermore, the concept of a state's sovereignty over its natural resources is rooted in the old principle of territorial sovereignty, that the right of peoples and nations to permanent sovereignty over their natural resources and wealth must be exercised in the interest of their national development, and of the well-being of the people of the state.⁷²

The consequence, of the existence of sovereign rights over wild animals is that States have exclusive jurisdiction *ratione loci* over them in all areas under their jurisdiction and no jurisdiction outside their national jurisdictional limits, of sovereignty over natural resources is considered a universal principle of international law,⁷³ and has been elevated to the

⁶⁵ Malcolm D. Evans. "International Law 2nd Edition." Oxford University Press, United States, (2006): 680.

⁶⁶ *Ibid*, p. 681.

⁶⁷ CITES, Appendix I, II, III

⁶⁸ Ian Hurd, <https://blogs.lse.ac.uk/europpblog/2013/02/18/whaling-europe-eu-norway-iceland-greenland-faroe-islands0cites-international-whaling-commission>

⁶⁹ Margherita. "Faroe Islands Grindadrap – Understanding Faroese Perspective". <https://www.thecrowdedplanet.com/faroe-islands-grindadrap-faroese-perspective/>

⁷⁰ *North Sea Continental Shelf (Federal Republic of Germany v. Denmark; Federal Republic of Germany v. Netherlands)*, ICJ Rep. 1969, para 19.

⁷¹ *Volga (Russian Federation v. Australia)*, Judgment, ITLOS Rep. 2002, paras. 76, 79.

⁷² Max Valverde Soto. "General Principles of International Environmental Law." *ILSA J. Int'l & Comp. L.* 3 (1996): 193-209.

⁷³ Klemm C. De. "Migratory Species in International Law." 29 *Nat. Resources J.* 935, (1989): 936.

status of *jus cogens*. As a result, animals that migrate from one jurisdiction to another are subject, in succession, to the sovereign rights and jurisdiction of all the States along their migration route.⁷⁴

Moreover, Denmark is a signatory to several international conventions such as ICCPR, which recognizes in Article 27 the right of minority groups to the protection of “all those characteristics that are necessary for the preservation of their cultural identity.” Article 27 stipulates that “in those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.”

The UN Human Rights Committee, formed under the ICCPR, has confirmed that for indigenous groups, such as the Awas Tingni, traditional land possession is an aspect of the enjoyment of its culture protected by Article 27 of the ICCPR, “culture manifests itself in many forms, including a particular way of life associated with the use of land resources, especially in the case of indigenous peoples. That right may include such traditional activities as fishing or hunting and the right to live in reserves protected by law.”

Denmark has also undertaken responsibilities under the International Convention on the Elimination of All Forms of Racial Discrimination. This Convention focuses on the right to equality and, in particular, it obliges states parties to eliminate any form of racial discrimination. As has already been observed, the principle of non-discrimination has particular significance when it concerns indigenous peoples and the maintenance of their traditional or customary forms of land possession. As a result, within its mandate of safeguarding the fulfillment of the aforementioned Convention, the UN Committee on the Elimination of Racial Discrimination “calls upon the states parties to recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories, and resources and where they have been deprived of their lands...or used without their free and informed consent, to take steps to return those lands and territories.”

Article 25 and Article 26(2) of UNDRIP also ruled that indigenous people have the right to own, use, develop and control the lands, territories, waters, coastal seas, and resources that they possess to uphold their responsibilities to future generations.

Faroe Islands as a part of the Kingdom of Denmark is the providing party of the pilot whales, noting that pilot whale is a migratory species, and the hunting is conducted within the territory of Faroe Islands. Providing

⁷⁴ Klemm C. De, *loc.cit.*

party is a state or other parties of origin that acquired and supplied the concerned resources.⁷⁵ Thus, shows that Faroe Islands have sovereign rights to exploit pilot whale which is Faroe Islands' resources.

Therefore, Denmark has no legal obligation to end whaling tradition by the People of Faroe Islands as the Faroese are indigenous people who have practiced such tradition for decades in its territory. Additionally, Denmark has a legal obligation to ensure the right of the Faroese to their culture and traditional subsistence are enjoyed.

3. Conclusion and Recommendation

3.1. Conclusion

The *grindadrap* tradition in Faroe Islands is lawful according to UNDRIP, ICCPR, and ICESCR, because as an indigenous peoples, Faroese have a right to practice their tradition and cultural life. Furthermore, the tradition is lawful under the CITES because there is no prove regarding the international trade of the whale meat/products, and does not contravene the CMS and ICRW because the whaling activities is considered as exception, which is to accommodate the needs of traditional subsistence. Moreover, Denmark has no obligation to end whaling activities in Faroe Islands because as the providing party of the pilot whale, Faroe Islands enjoy the sovereign rights to use and develop the pilot whale as their resources including the whaling in their territory.

3.2. Recommendation

It is recommended for the government of Denmark and Faroe Islands to establish authorization procedures, commitments to environmental standards, ways to access information, the use of penalties, and the need to carry out environmental impact assessments. It is also proposed for the relevant agencies in Denmark to actively monitor and control the number of whales hunted in *grindadrap* tradition to prevent over whaling of the pilot whale.

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⁷⁵ Evanson Chege Kamau, Bevis Fedder, and Gerd Winter. "The Nagoya Protocol on Access to genetic Resources and Benefit Sharing: What is New and What are the Implications for Provider and User Countries and the Scientific Community?" *Environment and Development Journal*, (2010): 250.

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