

THE LEGAL ANALYSIS OF DOLPHIN HUNTING AS CULTURAL RIGHTS
IN JAPAN UNDER INTERNATIONAL LAW

THESIS

Presented as the Partial Fulfillment of the Requirements to Obtain a Bachelor's
Degree at the Faculty of Law
Universitas Islam Indonesia
Yogyakarta



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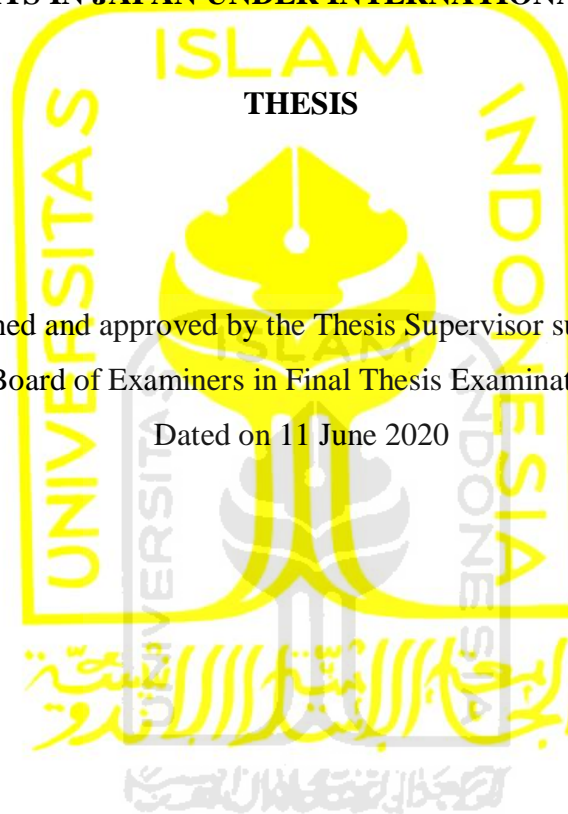
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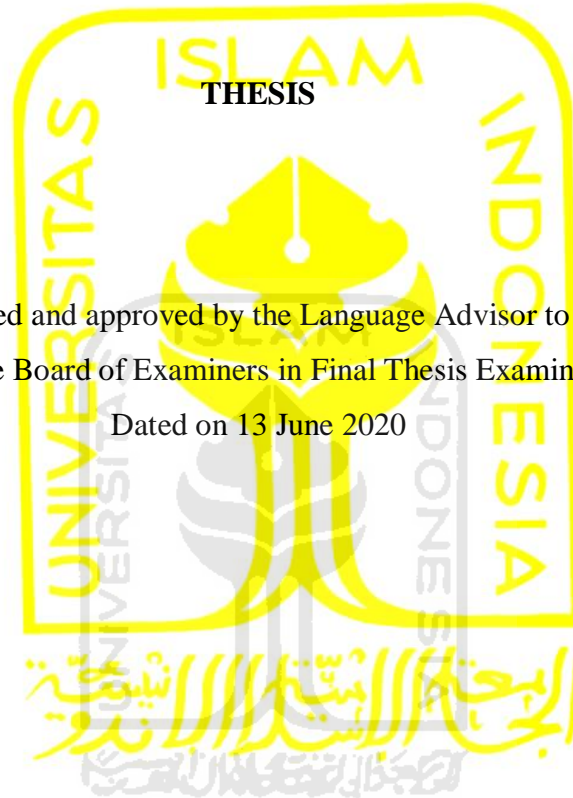
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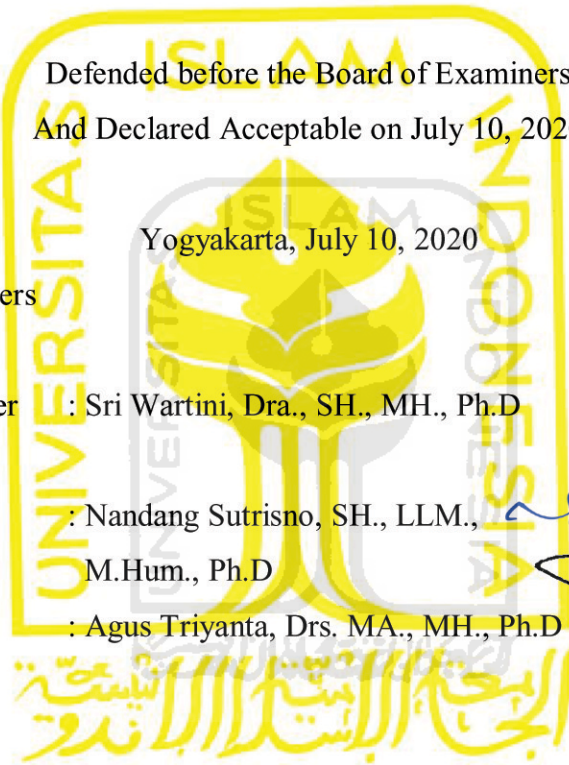
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MOTTO

“I have my own race, it’s me against myself, not against other people.”

DEDICATION

This Thesis is a special dedication for me who puts my whole passion in
International Law.

For my parents, my brothers and the entire family who always support me in
every aspect of life.

For UII, Indonesia and international society.



PREFACE

Alhamdulillah, praise to ALLAH SWT for his blessing and mercy He has given to all of us so that the author can finish this Thesis in a healthy condition. Endless *Shalawat* and *Salam* is always given to our Prophet Muhammad SAW who led us from darkness to the right path and given us Islamic knowledge.

This Thesis is made as the partial fulfilment of the requirement to obtain bachelor's degree at the Faculty of Law Universitas Islam Indonesia, Yogyakarta. The title of this thesis is "THE LEGAL ANALYSIS OF DOLPHIN HUNTING AS CULTURAL RIGHTS IN JAPAN UNDER INTERNATIONAL LAW". The dolphin hunting practice in Japan gains international attention that it alleges contrary to the animal welfare that the methods are categorized into brutal and such practice potentially threatens the dolphin's population.

The peak of international attention towards this practice began since a documentary movie was released in 2009 showing dolphins were annihilated pitilessly. In 2005, international marine mammal scientists, veterinarians and conservation biologist made a statement to end the brutal treatment and dolphin slaughter in Japan. Dolphins are slaughtered using knives and harpoons targeted some body parts of the dolphins. This method was criticized because it took times for the dolphins to actually dead.

Actually, the main concern is not really about the methods, but the hunting itself potentially threatens the population of dolphins if it is not managed sustainably. Japan sees this practice as cultural activity that has been carried out

since long time ago and related to Japanese people's tradition and faith. Japan sets quota for dolphins hunting each year and conducts scientific research regarding the existence of dolphins within its waters.

There are several international agreements that regulate dolphins and how they should be treated either as marine mammals or migratory species. Those international agreements i.e. the Convention of Migratory Species of Wild Animals (CMS), the United Nations Convention on the Law of the Sea (UNCLOS) and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). As the matter of cultural activity, International Covenant on Economic, Social and Cultural Rights (ICESCR) guarantees the right of everyone to take part in cultural life. In this thesis, the author is interested to research further on how dolphin hunting practice in Japan as part of its cultural activity from the point of view of international law, particularly those three Conventions mentioned above and also from principles under international environmental law.

This thesis is originally made by the author using all the references available such books and journal either printed or online, articles, reports from NGO, etc. Hence, the author can assure the accountability of this thesis. The author thank all the parties that supported, engaged and always be patient during the creation of this thesis:

1. **My parents and family**, who always give endless support (physically and emotionally) and pray during the author's study at Faculty of Law Universitas Islam Indonesia.
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This Thesis is still far from perfection, the author made mistakes and there are lot of shortcomings. Thus, criticisms and suggestions are very welcomed so that the author can learn and do better for the next writing. Such positive criticisms and suggestions will also make this Thesis useful for many people and international society.

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ABSTRACT

Dolphin hunting practice in Japan gains international attention from many parties such as Non-Governmental Organization (NGO), animal welfare activists, marine mammals scientists, and conservation biologist. As defense, the government of Japan argued that dolphin hunting practice has always been part of their culture and tradition since ancient times therefore they continue the practice and they also consider scientific research and management of dolphins' population. In relation to that, Japan is also alleged to have breached its international obligation concerning the protection of dolphins as marine mammals or migratory species. This thesis aims to research on how Japan carried out such practice as part of their culture and also whether such practice is in accordance with international law. This thesis used normative legal research by analyzing certain regulations that suitable for the protection of dolphins. As the results of the research, the author found that there were practices of dolphin hunting since ancient times, particularly since Jomon period in Japan. International Covenant on Economic, Social and Cultural Rights (ICESCR) guarantees the right to take part in cultural life, hence, the argument of the government of Japan is logical. Even though Japan has no specific regulation on dolphin' protection, it carries scientific research regarding the sighting of dolphins and sets annual quota for dolphins to be caught. In regards with international law, United Convention on the Law of the Sea (UNCLOS), article 65, obliges Japan to cooperate with International Organization. Yet, the application of this regulation is unclear since UNCLOS does not set coherent parameter. The Convention of Migratory Species of Wild Animals (CMS) provides clear protection towards dolphins as migratory species, however, Japan is not a State Party and also not a Range State within the meaning of the Convention. Obligation under CMS also does not reflect customary international law therefore Japan is not bound by it. Under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), there is no issue at all since Japan, as a State Party still conducted export activities at least until 2018. However, CITES must reconsider how non-detriment findings can be objectively used in order State Parties get permission to trade species concerned. Under the principles of international environmental law, Japan has permanent sovereignty over natural resources yet must not cause damage to other States. The application of the principle not to cause damage is not easy since it requires clear and convincing evidence. Nevertheless, despite the status of principle has not gained customary status, Japan must consider intergenerational equity principle, so that dolphins' populations can be enjoyed by future generations.

Keywords: Dolphin hunting, Cultural Rights, Marine Mammals



CHAPTER I

INTRODUCTION

A. BACKGROUND OF STUDY

God had created this universe perfectly, either in outer space, including the solar system, or on the Earth with all of the substances (living or nonliving). Everything that He had created has its own functions to create a balance natural system, especially for human being. Various types of plant and animal exist to fulfill human being's necessities. Thus, all human beings shall respect their existence and treat them properly as the creation of the one and almighty God.

Unfortunately, in practice, human beings are just greedy and disrespect for plants and especially animals. There are many cases on animal abuse done by human, which, for certain species it threatens animal population.¹ For example, around 100 million ray fish, sharks and dolphins were caught unintentionally by fishermen. In addition, they were so badly injured when they were sent back to the Ocean.² One of the very popular animals which can contact human is dolphin.³ Dolphins are commonly used by human for entertainment such as circus or other related animal shows such as Dolphin Lagoon attraction in Singapore. Besides being the object of circus, they are also being hunted for their meat, leather, oil, fertilizer and

¹ Accessed July 13, 2019. <https://animalsake.com/animal-abuse-statistics>.

² *Ibid.*

³ Farheen Mukri and Luois Ng, ed., *SUFFERING, NOT SMILING: The Truth about Captive Dolphins*. Singapore: Animal Concerns Research and Education Society (ACRES), 8.

animal feed,⁴ even in Solomon Islands, they are being hunted for their teeth as traditional currency, bride price, adornment, and more recently, for cash sale.⁵

In Japan, the practice of dolphins hunting is well known as drive hunting.⁶ It is called drive hunting because the fisherman uses a number of high speed boats to herd the dolphins to a harbour or port.⁷ Thus, drive hunting is simply defined as a method to capture dolphins by making them come to the shore and the dolphins cannot go back to the ocean.⁸ The method is deemed vicious and worthless.⁹ In general, the scope of drive hunting covers whale, dolphins and other cetaceans,¹⁰ however, this writing will focus on dolphins drive hunting.

In recent years, dolphin drive hunts are conducted in Northern of Japan, particularly at Taiji¹¹ in Wakayama Prefecture. This practice gains international attention due to the methods used categorized into brutal¹² and the existence of this mammal under a threat to an extinction because this practice had been conducted for years. The peak of international attention towards this practice is when a documentary movie “The Cove”

⁴ *Ibid.*, 9.

⁵ Oremus M, Leqata J, Baker CS., “Resumption of traditional drive hunting of dolphins in the Solomon Islands in 2013”, *R. Soc. open sci* (2015): 2.

⁶ Clare Perry and Allan Thornton, *Towards Extinction The Exploitation of Small Cetaceans in Japan*, (Environmental Investigation Agency, 2000), 5.

⁷ *Ibid.*, 4; Accessed July 13, 2019. <https://www.dolphinproject.com/campaigns/save-japan-dolphins/frequently-asked-questions/>.

⁸ Accessed October 9, 2019. <https://marineconnection.org/drive-hunts/>.

⁹ *Ibid.*

¹⁰ *Ibid.*

¹¹ Mark J. Palmer, “The Other Dolphin Hunt in Japan,” *International Marine Mammal Project*, January 7, 2019. Accessed July 13, 2019. <http://savedolphins.eii.org/news/entry/the-other-dolphin-hunt-in-japan>.

¹² *Ibid.*

gained an award in Oscar.¹³ This movie showed how dolphins were annihilated pitilessly with knives which resulted the sea turn to red because of its blood.¹⁴

Dolphins were hunted by the locals for 6 months (October-April) and the amount of them reach approximately one until two thousands.¹⁵ The government of Japan sets yearly quotas for the drive hunts, which is more than two thousands dolphins.¹⁶ Besides the drive hunts' quotas becomes pro and cons, the method of the drive hunts gains international attention. In 2005, international society which was represented by international marine mammal scientists, veterinarians and conservation biologists made a statement to end the brutal treatment and dolphin slaughter in Japan.¹⁷ In the past, knives and harpoons are used to kill the dolphins¹⁸ by targeting them into some body parts of the dolphins, and these tools take a little longer to make the dolphins really dead. The recent method is allegedly more human because it does not take long time to make the dolphins dead,

¹³ Justin McCurry, "Taiji dolphin hunt: activists to launch unprecedented legal challenge," *The Guardian*, February 13, 2019. Accessed October 19, 2019. <https://www.theguardian.com/world/2019/feb/13/taiji-dolphin-hunt-activists-to-launch-unprecedented-legal-challenge>.

¹⁴ *Ibid.*

¹⁵ Kjeld Duits, "Japanese Dolphin Drive Hunts; Right or Wrong?," *The Asia-Pacific Journal* 3 (2005): 1.

¹⁶ Andrew Butterworth, Philippa Brakes, Courtney S. Vail, and Diana Reiss, "A Veterinary and Behavioral Analysis of Dolphin Killing Methods Currently Used in the Drive Hunt in Taiji, Japan," *Journal Of Applied Animal Welfare Science* 16, 184–204 (2013): 185.

¹⁷ *Ibid.*, 186.

¹⁸ *Ibid.*, 185; Wakayama Prefecture Official' View on Dolphin Fishery at Taiji. Accessed September 8, 2019. https://www.pref.wakayama.lg.jp/prefg/071500/iruka/documents/dolphin_fishery.html.

it takes only 10 seconds and the tool is being targeted to sever the spinal cord at the junction between the occiput and first cervical vertebra.¹⁹

In terms of legal instrument, Japanese government actually has a regulation towards the fishery activity within its waters, it is Fishery Basic Act Number 89 year 2001. Japanese government recognizes the importance of conservation and management of marine living resources in its waters, it can be found in Article 13 and 14 of the Act. Article 13 (1) provides that State must take necessary and appropriate measures such as management and conservation of fishery resources.²⁰ It further adds the importance of maintain and recovery of fishery resources so that maximum sustainable production will be achieved. Article 14 provides that the State shall, in view of Japan's important status in the global fishery production and consumption of marine products, takes measures such as cooperation with international organizations relevant to the sustainable utilization of fishery resources and other international framework, guidance and supervision of Japan's fishery and others necessary for appropriate conservation and management of fishery resources in the waters other than Exclusive Economic Zone.²¹ Another related instrument, which is Act Number 77 of 1996 concerning Preservation and Control of Marine Living Resources,²² takes important role in the regulation of marine living resources in Japanese water, particularly in Exclusive

¹⁹ Andrew Butterworth, et. al., *Loc. Cit.*, 185.

²⁰ Law No. 89 of 2001 on Basic Fishery, art. 13 sec. (1).

²¹ *Ibid*, art. 14.

²² Law No. 77 of 1996 on Preservation and Control of Marine Living Resources.

Economic Zone (EEZ). This Act also regulates the certification and agreement to catch the marine living resources in accordance with quota set out by the Ministry or governor.²³ Japan also has animal welfare law which was adopted in 1973. The law regulates the protection of animal from killing, cruelty and abandonment and there will be sanctions for those who violates it.

In the case of *United States - Restrictions on Imports of Tuna* before the WTO, United States (US) restricted the imports of tuna from the European Economic Community (EEC) and the Netherlands because the method that was used in catching tuna resulted to the killing of dolphins. The US argued that it has regulation which prohibit the import of any fish caught through the incidental taking of marine mammals.²⁴ The author will not go further into the case, however, that case is an example of how important the effort to protect the marine mammals especially dolphins.

Concerning the targeted species, the most hunted Dolphin species in Japan are Dall's porpoise, Striped dolphin, Pantropical spotted dolphin, Bottlenose dolphin and Risso's dolphin.²⁵ The Convention on the Conservation of Migratory Species of Wild Animals (CMS) categorizes Bottlenose dolphin (*Tursiops truncatus ponticus*) into Appendix I and Striped dolphin (*Stenella coeruleoalba*) also Risso's dolphin (*Grampus*

²³ *Ibid*, arts. 13 and 14.

²⁴ United States - Restrictions on Imports of Tuna, DS29/R WTO Panel, para. 2.5 (1994), https://www.wto.org/dispute/gatt_e/92tuna

²⁵ Sandra Altherr and Nicola Hodgins, "Small Cetaceans, Big Problems: A global review of the impacts of hunting on small whales, dolphins and porpoises," 2018, 31.

griseus) into Appendix II.²⁶ This means that some of species of dolphins are actually protected, especially those which are listed on Appendix I. However, the species mentioned above are not listed in the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) Appendix I.²⁷

The CMS or also acknowledged as Bonn Convention is established under the United Nations Environment Programme (UNEP) which generally serves mechanism for the conservation and sustainable use of migratory species.²⁸ The CMS also becomes the only Convention which regulates the conservation of migratory species therefore it cooperates broadly all over the world with International Organizations and NGOs.²⁹ There are 130 State parties and 38 non-parties to this Convention, and Japan is not a party however.³⁰ There are 16 species of Cetaceans Order listed under Appendix I, these species includes 4 species from the family of *Delphinidae*.³¹ Meanwhile, Appendix II listed 24 species of *Delphinidae* family, in general, there are 44 species from *Cetacean*

²⁶ “Convention on the Conservation of Migratory Species of Wild Animals,” opened for signature until June 22, 1980, Appendix I and II. [“CMS”]

²⁷ “The Convention on International Trade in Endangered Species of Wild Fauna and Flora,” concluded on March 3, 1973, Appendix I. [“CITES”]

²⁸ Official website of Convention on the Conservation of Migratory Species of Wild Animals. Accessed October 15, 2019. <https://www.cms.int/en/legalinstrument/cms>.

²⁹ *Ibid.*

³⁰ *Ibid.*

³¹ CMS, Appendix I.

order.³² This Convention thus becomes the most suitable legal instrument in protecting dolphins or cetaceans in general.³³

The United Convention on the Law of the Sea (UNCLOS) regulates more generally about Highly Migratory Species (HMS), it is provided particularly in Article 64 of the Convention.³⁴ Since Dolphin is categorized as mammals, Article 65 of the UNCLOS specifically regulates about it.³⁵ Article 64(1) article requires that State parties to the Convention must ensure concerning the conservation of HMS by joining appropriate international organizations. Even if there is no such international organization in the region, the state shall establish such organization together with other States. Meanwhile Article 65 of UNCLOS strictly regulated marine mammals and in particular cetaceans, in the same way, which is through international organization.³⁶

International law through CMS and UNCLOS regulate the protection and also the conservation mechanism of dolphins. The practice of dolphin hunting in Japan is indeed controversial since Japan keep doing it even though majority of international society condemn this practice. As the attention of international society focus on Wakayama Prefecture where

³² *Ibid.*

³³ Rachele Adam, "The Japanese Dolphin Hunts: In Quest of International Legal Protection for Small Cetaceans," June 16 2008, 161.

³⁴ "United Nations Convention on the Law of the Sea," opened for signature until December 9, 1984, registration no. 31363, art. 64. ["UNCLOS"]

³⁵ *Ibid.*, art. 65.

³⁶ *Ibid.*

this practice is undertaken, the local government has given official statement concerning the issue.³⁷

According to the local government, dolphin hunting has always been part of their culture and became source of economic activities for local citizens.³⁸ This practice has been established since ancient times due to the geographical difficulties for local in Wakayama Prefecture to utilize natural resources except from oceans.³⁹ Wakayama Prefecture is also located so far away from the center of economic activities which they can only rely on dolphin hunting.⁴⁰ They also added that they knew concerning risk from over exploiting dolphins that might threaten its existence, therefore they hunt based on scientific information and survey so that their existence will not be threatened.⁴¹

Speaking of Japanese culture, dolphin together with whales are regarded as God from another world who visits this world.⁴² Its name is Ebisu, a God who carries enormous catch.⁴³ Furthermore, since long time ago, Ainu People who lived in Hokkaido, regarded all animals as God who comes from Heaven.⁴⁴ Animals have its own spirit, for example killer

³⁷ Wakayama Prefecture Official' View on Dolphin Fishery at Taiji. Accessed October 22, 2019. https://www.pref.wakayama.lg.jp/prefg/071500/iruka/documents/dolphin_fishery.html.

³⁸ *Ibid.*

³⁹ *Ibid.*

⁴⁰ *Ibid.*

⁴¹ *Ibid.*

⁴² Ishikawa Kumiko, "Whaling and Dolphin Hunting Problem As Philosophical and Cultural Issues," February 17, 2014.

⁴³ *Ibid.*

⁴⁴ Tezuka Kaoru and Ben Fitzhugh, "New Evidence for Expansion of Jomon Culture and the Ainu into Kuril Island: from IKIP 2000 Anthropological Research in the Kuril Islands," *Biodiversity and Biogeography of the Kuril Islands and Sakhalin 1*, (2004): 85-95.

whale and dolphin, are having the spirit of the God of offering.⁴⁵ It can be concluded that there is no doubt, according to Japanese people, this practice is deeply related with their long standing culture and faith.

The exercise of culture is regulated under International Convention, particularly in International Covenant on Economic, Social and Cultural Rights (ICESCR).⁴⁶ Article 15 in the Covenant provides that everyone is entitled to the rights of engaging in life's culture and state must do what are necessary to achieve the conservation, development and the diffusion of culture and science.⁴⁷ Japan is a state party to this Covenant, therefore it is the obligation of Japan to fully support the exercise of cultural rights of its citizens.

The rights to take part in cultural, however, is not absolute and thus subject to limitation.⁴⁸ Such limitation, as mentioned in Article 4 of the ICESCR, requires that it must be determined by law, compatible with the rights, and the aim is for the promotion of general welfare in democratic society.⁴⁹ Limitation to exercise cultural life clashes with human rights means that if the cultural life or practice is contrary to the human rights, it is not part of freedom to enjoy cultural life.⁵⁰ So long as the cultural

⁴⁵ *Ibid.*

⁴⁶ "International Covenant on Economic, Social and Cultural Rights," opened for signature December 16, 1966, registration no. 14531, art. 15. ["ICESCR"]

⁴⁷ *Ibid.*, art. 15 secs. (1) and (2).

⁴⁸ Julie Ringelheim, "The Rise of Cultural Rights In International Human Rights Law," Institute for Interdisciplinary Research in Legal Sciences (JUR-I), Centre for Philosophy of Law, CRIDHO Working Paper 2017/3, *Université Catholique de Louvain*, 15.

⁴⁹ ICESCR, art. 4.

⁵⁰ Elsa Stamatopoulou, *Cultural Rights in International Law*, Leiden/Boston: Martinus Nijhoff Publishers, (2007), 1113.

practice does not contrary to the human rights, States oblige to realize the achievement of such rights.

Based on the discussion above, the writer will discuss concerning the legal analysis of dolphin hunting as cultural rights in Japan under international law. There are two research questions arise from such discussion which are (1) how is the dolphin hunting practice in Japan carried out; and (2) is the practice in accordance with international law. The writer will limit the scope of international law to the regulation concerning such practice under UNCLOS, CMS, CITES, principles of international environmental law and also regulation concerning the freedom to exercise cultural rights under the ICESCR.

B. PROBLEM FORMULATION

1. How is the dolphin hunting practice as cultural rights in Japan carried out?
2. Is the practice of dolphin hunting in accordance with international law?

C. PURPOSE OF STUDY

There are two purposes of this study as follow:

1. To examine how the practice of dolphin hunting as cultural rights in Japan be carried out.
2. To analyze whether such practice already compatible with international law.

D. TERM AND DEFINITION

1. Drive hunt.

A method to capture dolphins by making them come to ashore and the dolphins cannot go back to the ocean.⁵¹ The fishermen used the high speed boat to drive the dolphins.⁵²

2. Dolphin.

Any of various small marine toothed whales (family Delphinidae) with the snout more or less elongated into a beak and the neck vertebrae partially fused.⁵³

3. Cultural rights.

Professor A. N'Daw in the discussion provided by UNESCO towards the definition of culture, he defined culture as a form of way of life or collection of beliefs or concepts, which distinguish one people to another.⁵⁴ He further stated in his conclusion that right to culture or cultural rights is the right to self-expansion for everyone towards genuine creative activities either in the field of political, social or economic and whether such fields enable them or not.⁵⁵

E. RESEARCH ORIGINALITY

This research focuses on the dolphin hunting practice that has been carried out by Japan since long time ago. There are several writings discussing the dolphin hunting in Japan and the writer will compare those writings to this research in order to prove its originality.

⁵¹ Official website of Marine Connection. Accessed November 30, 2019. <https://marineconnection.org/drive-hunts/>.

⁵² Clare Perry and Allan Thornton, *Op. Cit.*, 4.

⁵³ Merriam-Webster dictionary. Accessed November 30, 2019. <https://www.merriam-webster.com/dictionary/dolphin>.

⁵⁴ United Nations Educational, Scientific and Cultural Organization, *Cultural Rights as Human Rights* (Paris: UNESCO, 1970), 15.

⁵⁵ *Ibid*, 15-16.

First, there is a research entitled “Small Cetaceans, Big Problems: A Global Review of the impacts of hunting on small whales, dolphins and porpoises” by Sandra Altherr and Nicola Hodgins. This report discusses a very wide scope of hunting of small cetaceans all around the world, it explains about the species that are hunted, the amount and even the method. It also discusses regarding the legal instruments that regulate small cetaceans and some recommendations at the end of the report. The difference between the report with the writer’s research is on the scope and object themselves. The writer focuses on the practice of dolphin hunting in Japan, not all cetaceans in general. The writer will also try to explain the relation of the practice towards the rights to take part in cultural life.

Second, a research from Rachele Adam entitled “The Japanese Dolphin Hunt: In Quest of International Legal Protection for Small Cetaceans”. Adam discussed broadly the regulation on legal status of dolphin under international law. She wrote any legal instruments that are related to the small cetaceans protection, such as UNCLOS, CITES, CBD, CMS, and ICRW. The title is indeed concerns to discuss dolphin hunt, however, in her writings, she also discussed about whales. The difference between the report and the writer’s research is that, the scope and materials. The writer specifically analyzed the regulation of dolphin hunting practice under UNCLOS and CMS and also its relation to the rights of take part in cultural life.

Third, a writing written by Addien Mirza Pratama entitled “*Efektifitas International Whaling Commission (Iwc) Dalam Perburuan Lumba-Lumba ‘Taiji Drive Hunt’ Di Taiji Jepang 2013 – 2017*”. According to the title, Addien examined the role of International Whaling Commission to stop the drive hunt practice in Japan from 2013 until 2017. The result of his result is, there is an ambiguity in IWC regulation impacting its effectiveness to stop the practice. Addien’s object of research is different from the writer’s, which is not to discuss the IWC. Instead, to examine the legality of the Japanese practice in dolphin hunting under international law.

Fourth, a thesis and dissertation from Emily Claire Sipes entitled “*Philosophical-Legal Consideration for Ending Japanese Hunting of Small Cetaceans*”, she discussed about the urgency to stop the dolphin hunting practice in Japan from the perspective of philosophy and legal. She used biocentric and ecocentric approaches, means that cetaceans have their own intrinsic value. It is different from the writer’s research because the focus is on the legal point of view not include philosophical one.

Fifth, a writing from John Richard Caddel entitled “*International Law and the Regulation of Cetaceans: An Analysis of the Role of Global and Regional Instruments and Institutions in the Conservation of Marine Living Resources*”. The writing covers the general protection of cetaceans which include whales and porpoises under several Conventions such as UNCLOS, CMS and CITES. The difference with the writer’s research is

concerning its scope that only focus on dolphin hunting in Japan. The writer will also examine the argument that the dolphin hunting practice is a part of the right to enjoy cultural life.

Sixth, David McNeill wrote a journal entitled “Taiji: Japan’s Dolphin Cull and the Clash of Cultures”, he discussed broadly about the dolphin hunting practice in Japan and some facts related to it without specifically examine based on legal point of view. It is different from the writer’s research, which examine the practice based on legal instruments such as UNCLOS and CMS. The writer will also examine the right to take part in cultural life based on the ICESCR.

The comparison between those writings to the writer’s research can be seen in the following table.

Research Title and Author	Research’s Conclusion	Research’s Difference
Sandra Altherr and Nicola Hodgins, “Small Cetaceans, Big Problems: A Global Review of the impacts of hunting on small whales,	The report from Sandra and Nicola concerns the general point of view regarding the hunting of small cetaceans (not only focus on dolphin) impacted to their population. The report	The difference is that, the writer is more specific on discussing how is the practice is carried out (only in Japan) and whether such practice has already been in

Research Title and Author	Research's Conclusion	Research's Difference
dolphins and porpoises”, 37.17128, November 2018. ⁵⁶	also discussed the cruel method used in the hunting and also regarding the mercury that is contained in cetaceans.	accordance with international law.
Rachelle Adam, “The Japanese Dolphin Hunt: In Quest of International Legal Protection for Small Cetaceans”, Seq 1, 16 June 2008. ⁵⁷	The article from Rachelle Adam broadly discussed about the legal protection in several conventions such as the ICRW, the CMS, the CITES, UNCLOS and the CBD. Rachelle also give some suggestions to each of the Convention	The writer first examined how is the practice be carried out in Japan and second, whether such practice is in accordance with international law. The writer limited the scope of international only to UNCLOS, CMS and the regulation concerning the

⁵⁶ Sandra Altherr and Nicola Hodgins, *Loc. Cit.*

⁵⁷ Rachelle Adam, *Loc. Cit.*

Research Title and Author	Research's Conclusion	Research's Difference
	regarding the regulation of the small cetaceans.	rights to exercise culture under the ICESCR.
<p>Addien Mirza Pratama, <i>"Efektifitas International Whaling Commission (Iwc) Dalam Perburuan Lumba-Lumba 'Taiji Drive Hunt' Di Taiji Jepang 2013 – 2017"</i>, Journal of International Relations, No. 2 Vol. 5, Departemen Hubungan Internasional, Fakultas Ilmu Sosial dan Ilmu Politik</p>	<p>This Journal focuses on the effectivity of International Whaling Commission (IWC) towards the case of dolphin hunting in Japan. The author concluded that the IWC failed to stop the practice of hunting in Japan, and there are found ambiguity in the regulation of IWC, for example concerning the interpretation of "whales".</p>	<p>The writer did not focus on the IWC's effectiveness in regulating the dolphin hunting, instead, focused on the regulations under international law which is limited to the regulation under the UNCLOS, CMS and also regarding the exercise of cultural rights under the ICESCR.</p>

Research Title and Author	Research's Conclusion	Research's Difference
Universitas Diponegoro, 2019, pages 388-394. ⁵⁸		
Emily Claire Sipes, "Philosophical-Legal Consideration for Ending Japanese Hunting of Small Cetaceans", Theses and Dissertations, 2012, paper 1284. ⁵⁹	Emily focused on the urgency to end the hunting of small cetaceans in Japan based on biocentric and ecocentric approaches, that cetaceans have their own intrinsic value.	The writer focus on the how the dolphin practice in Japan and whether such practice is in accordance with international law. The approach that was taken by the writer also different from Emily's, the writer inclined to use the legal approach instead of philosophical approach.

⁵⁸ Addien Mirza Pratama, "Efektifitas International Whaling Commission (Iwc) Dalam Perburuan Lumba-Lumba 'Taiji Drive Hunt' Di Taiji Jepang 2013 – 2017," *Journal of International Relations* 5, no. 2 (2019).

⁵⁹ Emily Claire Sipes, "Philosophical-Legal Consideration for Ending Japanese Hunting of Small Cetaceans," M.A. theses and dissertations, Lehigh University, 2012.

Research Title and Author	Research's Conclusion	Research's Difference
<p>John Richard Caddel, International Law and the Regulation of Cetaceans: An Analysis of the Role of Global and Regional Instruments and Institutions in the Conservation of Marine Living Resources, Dissertation, 2009, UMI Dissertation Publishing.⁶⁰</p>	<p>John Caddel reviewed the legal instruments that are exist concerning the cetaceans in general which include whale, dolphin and porpoise. For example from UNCLOS, CITES, CMS and other non-binding agreements under the CMS.</p>	<p>The writer, however, focused on the practice in Japan and also analyse such practice whether already in accordance with international law or not. The writer also discussed the conflicting argument between Japanese government and international society in a whole regarding the practice that Japanese believe as part of their rights to enjoy cultural life. The object also different, the writer only</p>

⁶⁰ John Richard Caddel, "International Law and the Regulation of Cetaceans: An Analysis of the Role of Global and Regional Instruments and Institutions in the Conservation of Marine Living Resources," Ph.D. dissertation, 2009.

Research Title and Author	Research's Conclusion	Research's Difference
		focused on dolphin, meanwhile John Caddel broadly analyze all types of cetaceans including whales and porpoise.
David McNeill, "Taiji: Japan's Dolphin Cull and the Clash of Cultures", <i>The Asia-Pacific Journal</i> , vol. 5, 1, 2007. ⁶¹	David wrote the report generally on some facts related to dolphin hunting in Japan and the journal also consist of the result of interview with Ric O'barry, a dolphin trainer also an activist.	It is very different from the writer's writing, the writer, besides discussing how the practice be conducted in Japan, the writer also will analyse such practice from legal point of view.

F. LITERATURE REVIEW

In this part, the writer provides some literatures that are related to the research.

1. Japanese Regulation concerning fisheries in its waters.

⁶¹ David McNeill, "Taiji: Japan's Dolphin Cull and the Clash of Cultures," *The Asia-Pacific Journal* 5, no. 1 (2007).

Japan has several regulations concerning the fisheries activities within its waters. The writer limited the amount of Japanese national laws only to Law No. 89 of 2001 on Basic of Fishery, Law No. 77 of 1996 on Preservation and Control of Living Marine Resources and Law No. 105 of 2014 on Welfare and Management of Animals.

a. Law No. 89 of 2001 on Basic of Fishery.

The concern of this Law is to regulate the basic policies in fishery, as stated in Article 1. The purpose is to stabilize and improve the life of the citizens and to develop the national economy through comprehensive and systematic implementation of the policies for fishery by means of establishing basic principles and basic matters for their realization and clarifying the responsibilities of the State and local governments.⁶² The Law also regulates the maintenance of supply marine product,⁶³ basic plan of fisheries,⁶⁴ responsibility of state⁶⁵ and local government⁶⁶ and also annual report.

b. Law No. 77 of 1996 on Preservation and Control of Marine Living Resources.

The purpose of this Law is to preserve and control the marine living resources in Japanese's EEZ, this is also regarded as the

⁶² Law No. 89 of 2001 on Basic Fishery, art. 1.

⁶³ *Ibid*, art. 2.

⁶⁴ *Ibid*, art. 11.

⁶⁵ *Ibid*, art. 4.

⁶⁶ *Ibid*, art. 5.

implementation of the UNCLOS.⁶⁷ Under this Law, the Minister of Agriculture, Forestry and Fisheries shall establish basic plan in order to realize the preservation and control of the marine living resources. The Law also consist of certification for those who would like to gathering or catching the resources.⁶⁸

c. Law No. 105 of 2014 on Welfare and Management of Animals.

The purpose of this Law is to establish animal welfare amongst citizens and to develop respect of life by preventing cruelty to animals, handling animals properly as well as to prevent animals from infringement of the life.⁶⁹ The Law provides sanctions such as imprisonment and fine for anyone who violates it.

2. International Law of the Sea.

International law of the sea is a branch of international law that governs international relations between States regarding maritime matters.⁷⁰ According to R. R. Churchill and A. V. Lowe, there are four sources of international law of the sea,⁷¹ this sources are the same as set out by Article 38 of the International Court of Justice's Statute (ICJ Statute) which are:

a. International conventions.

⁶⁷ Law No. 77 of 1996 on Preservation and Control of Marine Living Resources, art. 1.

⁶⁸ *Ibid*, art. 14.

⁶⁹ Law No. 105 of 2014 on the Amendment of Law No: 105 of 1973 on Welfare and Management of Animals, art. 1.

⁷⁰ R. R. Churchill and A. V. Lowe, *The law of the sea*, (Manchester: Manchester University Press, 1988), 1.

⁷¹ *Ibid*, 4-11.

International conventions that regulate law of the sea can be divided into multilateral treaties and bilateral.⁷² The 1982 UNCLOS is the example of multilateral treaty whereas the bilateral treaties dealing with matters such as access to ports, fishing rights and boundary delimitations.⁷³

b. Customary international law.

Customary international law (CIL) is also the source for international law of the sea which has two elements, *i.e.* state practice and also *opinio juris*.

c. General principles of international law.

The purpose of general principles of international law is to fill the gap that is found under the International Conventions or CIL.⁷⁴ The example of general principles that are commonly applied in the field of international law of the sea are: freedom of high seas and the exclusiveness of flag State jurisdiction over ships on the high seas.⁷⁵

d. Judicial decisions and the writings of publicists.

This source cannot create law, this only as subsidiary to the previous three sources. However, this also important to support the application of the rest of the sources under international law.

⁷² *Ibid*, 5.

⁷³ *Ibid*.

⁷⁴ *Ibid*, 10.

⁷⁵ *Ibid*.

As regard with the author's research, the auhtor used the 1982 UNCLOS as the main basis. The Convention regulates maritime matters among State Parties, particularly in terms of conservation of natural resources.

Dolphins are categorized as mammals, which the Convention regulates them in Article 65. The protection of dolphin under the Convention is established in forms of limitation or prohibition to exploit them. Such limitation and prohibition also can be conducted by international organization, not merely by the coastal States. States parties, however, shall also cooperate with appropriate international organization for the conservation, management and study of dolphin. However, Article 65 does not consist of a comprehensive regulation,⁷⁶ the Article does not mention specifically to what international organization refers. Some are on the view that international organization set out in that Article refers to International Whaling Commission (IWC), some say that the Article refers to international organization in plural.⁷⁷

3. Convention on the Conservation of Migratory Species of Wild Animals.

⁷⁶ Nele Matz-Luck and Johannes Fuchs, *The Oxford Handbokk of the Law of the Sea*, edited by Donald R. Rothwell, et. al., 2015, p. 508. Accessed December 3, 2019. <https://opil.ouplaw.com/view/10.1093/law/9780198715481.001.0001/law-9780198715481-chapter-22?prd=OPIL>.

⁷⁷ Jochen Braig, *Whaling*, in Rudiger Wolfrum (ed), *Max Planck Foundation for International Peace and the Rule of Law*, 2013, para. 41. Accessed December 3, 2019. <https://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e1236?prd=OPIL#law-9780199231690-e1236-div1-8>.

Marine mammals such as dolphins are also categorized as migratory species, therefore, they fall under the scope of CMS. It has been explained that the UNCLOS lacks of comprehensive regulation regarding marine mammals, in the CMS, however, it specifically regulates about the protection of dolphin as migratory species.

Dolphins are listed either in Appendix I or Appendix II of the CMS. Appendix I regulates migratory species which are endangered.⁷⁸ There is one species of dolphin which becomes the most hunted in Japanese practice listed in Appendix I, which is Bottlenose dolphin (*Tursiops truncatus ponticus*). According to the Convention, State Parties must

*“conserve and, where feasible and appropriate, restore those habitats of the species which are of importance in removing the species from danger of extinction”, “prevent, remove, compensate for or minimize, as appropriate, the adverse effects of activities or obstacles that seriously impede or prevent the migration of the species”.*⁷⁹

It further asserts that State Parties must

*“prevent, reduce or control factors that are endangering or are likely to further endanger the species, including strictly controlling the introduction of, or controlling or eliminating, already introduced exotic species”.*⁸⁰

There are exceptions towards such obligation if the catching is for scientific purposes, enhancing the propagation or survival of the affected species, the taking is to accommodate the needs of traditional

⁷⁸ CMS, art. III.

⁷⁹ *Ibid*, art. III sec. (4).

⁸⁰ *Ibid*.

subsistence users of such species and when extraordinary circumstances so require.⁸¹

As for the species of dolphin listed in Appendix II, the Convention requires State Parties to conclude an agreement. This agreement shall be to restore the migratory species concerned to a favourable conservation status or to maintain it in such a status.⁸² Such agreement must consist of at least several conditions such as periodic review of the conservation status, plans of the conservation, exchange of information regarding threat towards the species.⁸³ The examples of agreements under CMS that have been adopted are the 1996 Agreement on the Conservation of Cetaceans of the Black Sea, Mediterranean Sea and Contiguous Atlantic Area (ACCOBAMS), the 1992 Agreement on the Conservation of Small Cetaceans of the Baltic and North Seas (ASCOBANS), and the 1990 Agreement on the Conservation of Seals in the Wadden Sea.⁸⁴

4. Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)

This Convention provides protection for wild fauna and flora through international trade. This Convention classifies fauna and flora into three Appendices, the first classifies species which are threatened

⁸¹ *Ibid*, art. III sec. (5).

⁸² *Ibid*, art. V sec. (1).

⁸³ *Ibid*, art. V sec. (5).

⁸⁴ Nele Matz-Luck and Johannes Fuchs, *Op. Cit.*, 509.

with extinction,⁸⁵ the second classifies species which are not necessarily threatened with extinction but might become so⁸⁶ and the last one refers to species that safe but subject to national laws to prevent them from overexploitation.⁸⁷

State Parties are obliged to fulfill requirements under the Convention in doing export, import or re-export activities so they will get permission to trade the concerned species. For example, there must be scientific report that the the trade of species will not adverse their survival.⁸⁸ The species must also not be obtained in violation of domestic laws while the shipment of such species must be in good treatment.

5. International Environmental Law.

International environmental law is a branch of international law concerns about environment. The sources for international environmental law is similar to what has been discussed above, stated that the sources for international law are international conventions, customary international law, general principles of law and also judicial decision and writings publicists.

Since the establishment of the Permanent Court of International Justice (PCIJ) until it transformed to the ICJ, there were cases concerning environmental matters. Such cases for example, *Great*

⁸⁵ CITES, art. II sec. (1).

⁸⁶ *Ibid*, art. II sec. (2).

⁸⁷ *Ibid*, art. II sec. (3).

⁸⁸ *Ibid*, art. III secs. (2)(a) and (3)(a).

Britain v. Albania in 1949 (Corfu Channel Case),⁸⁹ the ICJ held that States are under the obligation not to allow the use of their territories to interfere with the rights of other States. Albania failed to notify United Kingdom regarding the existence of mines in Albanian waters. Another case, which also popular case in field of international environmental law, US v. Canada in *Trail Smelters Case*,⁹⁰ this case concerns about cross-border air pollution caused by Canadian corporation which damaged the US environment.

The example of cases mentioned above, represented the general principles under international environmental law, those principles are:

a. Sovereignty and Responsibility.

States are indeed have sovereignty over their natural resources, however, it subject to limitation which is not to cause damage to the environment of other States.⁹¹ This principle is also ruled in *Trail Smelter* case as mentioned above.

b. Good neighborliness and international cooperation.

The principles of good neighborliness concerns about the obligation of States to cooperate in investigating, identifying and avoiding environmental harm.⁹² Meanwhile, the principle of international cooperation covers the obligation of States not to

⁸⁹ *Corfu Channel Case*, International Court of Justice, (1949).

⁹⁰ *Trail Smelter Case*, Vol III pp. 1905-1982 Arbitration Tribunal, (1941). https://legal.un.org/riaa/cases/vol_III/1905-1982.pdf.

⁹¹ Rio Declaration, principle 21.

⁹² Max Valverde Soto, "General Principles of International Environmental Law," *ILSA Journal for International and Comparative Law* 3, no. 193, 197.

carry certain activities in their territory which contrary to other States' rights. This principle is held by the ICJ in *Corfu Channel* and regarded as the application of maxim *sic utere tuo, et alienum non laedas*.

c. Sustainable development.

This principles concerns about the development to meet the needs at the present time without jeopardize the needs of the next generations in the future time.⁹³ This principle covers at least three elements, as follow:

i. Intergenerational equity.

Intergenerational equity means that the present generation must leave an inheritance for the next generations equally, so that either the present or the future generation will have the same wealth without distinction.

ii. Sustainable use of natural resources.

This element has been upheld by several tribunals for example in Bering Sea Fur Seals Fisheries Arbitration and Fisheries Jurisdiction which can be concluded that it is an obligation to cooperate in the conservation and utilization of natural resources, particularly for global common, but not limited to, high sea.⁹⁴

iii. Integration of environment and development.

⁹³ *Ibid*, 206.

⁹⁴ *Ibid*.

This element concerns about the other supporting factor to establish the harmonization of human and environment. Such factor for example economy, it is important to factor to uphold the harmonization of human and environment because strong economy will create the better achievement.

d. Precaution and preventive principle.

Precautionary principle requires States, based on their capabilities, to take action when there are threats or serious irreversible damage.⁹⁵ Meanwhile, preventive principle requires States to prevent damage to occur within its jurisdiction.⁹⁶ This principles can be taken for example by establishing environmental impact assessment,⁹⁷ so that the future damage can be prevented at the early stage.

6. The right to take part in cultural life.

The rights to take part in cultural life can be defined in narrow or broad way. In narrow sense, it means tangible and intangible of human expression and creativity in the fields of art, music, literature, drama and even architecture.⁹⁸ Meanwhile, in broader sense, it simply means

⁹⁵ Rio Declaration, principle 15.

⁹⁶ Max Valverde Soto, *Op. Cit.*, 199.

⁹⁷ *Ibid*, 200.

⁹⁸ Roger O'Keefe, "Cultural Life, Right to Participate in, International Protection", in Rudiger Wolfrum (ed), Max Planck Foundation for International Peace and the Rule of Law, 2011, para. 6. Accessed December 4, 2019. <https://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e770?rskey=bV0JMf&result=4&prd=OPIL>.

a characteristic of worldview and way of life.⁹⁹ The protection of this rights can be found in ICESCR Article 15 which states that all parties to the Covenant shall recognize the right of everyone to take part in cultural life.¹⁰⁰ Article 27 (1) of the Universal Declaration of Human Rights (UDHR) guarantees the same, it states that everyone has the right freely to participate in the cultural life of the community.¹⁰¹ There are also many non-binding instruments that regulate this rights such as Recommendation on Participation by the People at Large in Cultural Life and their Contribution to it (26 November 1976)¹⁰² and Universal Declaration on Cultural Diversity (2 November 2001)¹⁰³ which both of them are adopted by the United Nations Educational, Scientific and Cultural Organization (UNESCO).

Specific to the regulation on the right to take part in cultural life as set out in Article 15 of the ICESCR, there are some elements applicable to the Article based on its general comment. Such elements are:¹⁰⁴

a. Availability.

The element of availability refers to the existence of goods of cultural and services such as museum, park, lakes, including flora

⁹⁹ *Ibid.*

¹⁰⁰ ICESCR, art. 15.

¹⁰¹ "Universal Declaration of Human Rights," December 10, 1948, art. 27(1). ["UDHR"]

¹⁰² Recommendation on Participation by the People at Large in Cultural Life and their Contribution to it (26 November 1976), UNESCO.

¹⁰³ Universal Declaration on Cultural Diversity (2 November 2001), UNESCO.

¹⁰⁴ Marco Odello, The Right to Take Part to Cultural Life: General Comment No. 21 of the United Nations Committee on Economic, Social and Cultural Rights, *Anuario Español de Derecho Internacional*, vol. 27, 2011, p. 503

and fauna which create cultural biodiversity. This element also refers to intangible goods such as language, tradition, beliefs, knowledge and history.

b. Accessibility.

This element concerns about how any individual can enjoy his rights fully and without discrimination. This element relates strongly towards person with disabilities, older person and person living in poverty.

c. Acceptability and adaptability.

This element concerns about regulations or policies that are related to the achievement of the rights to take part in cultural life. Such regulations or policies must be accepted either by individual and group and indeed do not contrary to their rights. The element of adaptability is quite similar to acceptability, however, it covers obligation to do consultation with individual or group of people which will be affected by the regulations or policies.

d. Appropriateness.

This element requires that in exercising human rights, cultural diversities and specificity shall be taken into account which also includes the rights of indigenous people.

The rights to take part in cultural life, however, is not absolute and thus subject to limitation. The ICESCR itself rule that the implementation of Article 15(1) must be in accordance with

fundamental obligation resulted from human rights instruments. Such limitation is important especially when the exercise of rights is considered as negative practice, which contrary to other human rights.¹⁰⁵ Article 4 of the Convention sets out that the limitation to it must reflect the promotion of general welfare and be compatible with the exercise of this rights.¹⁰⁶

In regards with State parties' obligation in the realization of such rights, they must respect, protect and fulfill.¹⁰⁷

a. Obligation to respect.

This obligation refers to the obligation of States not to interfere either directly or indirectly towards the enjoyment of the rights to take part in cultural life. The obligation covers the adoption of specific measures towards individual or community, for example, States must respect free access by minorities of the exercise of their cultural identity and practice as well as the rights of indigenous people to maintain and strengthen their culture and spiritual matters especially related to natural resources or territory that used to be occupied by them.¹⁰⁸

b. Obligation to protect.

¹⁰⁵ United Nations Economic and Social Council, forty-third session, "General comment no. 21: Right of everyone to take part in cultural life (art. 15, para. 1 (a), of the International Covenant on Economic, Social and Cultural Rights)," E/C.12/GC/21, 21 December 2009, paragraph 19, 6. ["General Comment No. 21"]

¹⁰⁶ ICESCR, art. 4.

¹⁰⁷ General Comment No. 21, para. 48, 11.

¹⁰⁸ *Ibid*, para. 49 (d), 12.

This obligation requires that the State parties must prevent third parties to interfere the exercise of such rights. This obligation covers, for example duty to enforce legislation on the prohibition of discrimination or incitement of discrimination based on cultural identity.¹⁰⁹

c. Obligation to fulfill.

This obligation simply requires State parties to adopt any necessary measures to achieve the realization of the rights as set out in Article 15. For example, State must ensure that there are public education and public awareness regarding the rights to take part in cultural life.¹¹⁰

7. The Doctrine of Opposability

The term opposability is derived from French, *opposabilite*, this doctrine concerns about the relationship between international law and national law.¹¹¹ This doctrine is called opposed when the national law that is invoked against certain claim of the claimant is in line with international law.¹¹²

G. RESEARCH METHODOLOGY

1. Type of Research

The writer used Normative Legal Research as the basis to conduct this research. Normative Legal Research is often called as law in book

¹⁰⁹ *Ibid*, para. 50 (d), 13.

¹¹⁰ *Ibid*, para. 53, 14.

¹¹¹ J. G. Starke, *An Introduction to International law*, 8th Ed. (London: Butterworth, 1977), 104.

¹¹² *Ibid*.

because the concept of this type of research is based on what the law says.¹¹³

2. Research Approach

The research approaches used in this writing are based on statutory approach and Conceptual Approach.

a. Statutory approach

The statutory approach uses the statute or some regulations in order to answer the problems that are discussed.¹¹⁴ This approach is used in order to analyze the practice of dolphin hunting in Japan based on some relevant Conventions, whether such practice is already compatible with international law or not.

b. Conceptual approach

This approach uses the combination between the statute or regulation and its application.¹¹⁵ This approach is used in order to examine the regulation on the protection of dolphin under international law and its application by the government of Japan. From that examination, the research question on whether the dolphin hunting practice in Japan will be answered.

3. Object of Research

The object of this research is the practice of dolphin hunting as cultural rights in Japan.

¹¹³ Jonaedi Efendi and Johnny Ibrahim, *Metode Penelitian Hukum Normatif dan Empiris*, 1st Ed. (Depok: Prenadamedia Group, 2016), 124.

¹¹⁴ Johni Ibrahim, *Teori dan Metodologi Penelitian Hukum Normatif*, 3rd Edition, (Bayumedia Publishing, 2007), 300.

¹¹⁵ *Ibid*, 304.

4. Sources of Research Data

The writer used secondary data as the source of research data which is obtained from primary, secondary and tertiary legal materials.

a. Primary legal materials.

The writer refers to Conventions that are related to this research such as the 1982 United Nations Convention on the Law of the Sea, the Convention on the Conservation of Migratory Species of Wildlife Animals, the International Covenant on Economic, Social and Cultural Rights, the 1993 Convention on Biological Diversity (CBD) and also the Japanese Law on Basic Fishery Act Number 89 year 2001 and Act Number 77 year 1996 on Preservation and Control of Marine Living Resources.

b. Secondary legal materials.

As for the secondary legal materials, the writer used textbooks, journals, or any other type of writing and even official websites that are relevant to this research.

c. Tertiary legal materials.

To support the writer's research, dictionaries and encyclopedias are also used in this research.

5. Method of Collecting Material/Data

The methods that is used for this research are literature study and study of documents. The writer used some books, journals, articles and

official website of either the government of Japan or organization that runs the protection of animals.

6. Data Analysis

The data analysis that were used in this research is qualitative data analysis in the form of narration and conclusion-making.

H. Structure of Writing

Chapter I

This chapter consists of the introduction of the research which has the following parts: background of study, problem formulation, research's objective, literature review, research's methodology and also structure of writing.

Chapter II

This chapter contains general overview of the Conventions that support this research such as the UNCLOS, CMS, ICESCR and other related Conventions or practice. This chapter will also discuss the Japanese Law regarding the Basic of Fishery and also Preservation and Control of Marine Living Resources.

Chapter III

This chapter contains the analysis of the dolphin hunting practice in Japan based on the above mentioned Conventions, which are the UNCLOS, CMS, ICESCR, and with Japanese Laws themselves.

Chapter IV

This chapter provides conclusion and recommendations towards the previous research on the practice of dolphin hunting that has been done.



CHAPTER II

LITERATURE REVIEW

A. Dolphins Hunting Practice in the World

Dolphins hunting is not a new issue in international society. This practice has been carried out years ago throughout the globe covering several continents such as Africa, Europe, Latin America and Asia.¹¹⁶ For example Faroe Islands, a self-governing nation under the sovereignty of Kingdom of Denmark, has carried out dolphins hunting since 1584.¹¹⁷ The hunting is also well known as *grindadrap*.¹¹⁸ No official quota set by the government of Faroe Islands, therefore they can hunt dolphins as much as they want.¹¹⁹ Other examples are in Sri Lanka and Peru, in both countries this practice is prohibited, especially in Sri Lanka where all marine mammals are protected.¹²⁰ However, the practice still be carried out. Even in Peru, more than 15,000 dolphins are slaughtered each year.¹²¹ In Solomon Islands, which is located in the western South Pacific, mostly they hunt dolphins to take their teeth used as traditional currency.¹²² They also used dolphins as bride price, adornment and cash sale.¹²³ Commonly,

¹¹⁶ Accessed April 26, 2020. <https://us.whales.org/our-4-goals/stop-whaling/stop-dolphin-hunts/>.

¹¹⁷ Accessed April 26, 2020. <https://us.whales.org/our-4-goals/stop-whaling/stop-dolphin-hunts/small-whale-and-dolphin-hunts-in-the-faroe-islands/>.

¹¹⁸ Accessed April 26, 2020. <https://us.whales.org/our-4-goals/stop-whaling/stop-dolphin-hunts/small-whale-and-dolphin-hunts-in-the-faroe-islands/>.

¹¹⁹ Accessed April 26, 2020. <https://us.whales.org/our-4-goals/stop-whaling/stop-dolphin-hunts/small-whale-and-dolphin-hunts-in-the-faroe-islands/>.

¹²⁰ Accessed April 26, 2020. <https://us.whales.org/our-4-goals/stop-whaling/stop-dolphin-hunts/>.

¹²¹ Accessed April 26, 2020. <https://us.whales.org/our-4-goals/stop-whaling/stop-dolphin-hunts/>.

¹²² Oremus M, Leqata J, Baker CS., *Op. Cit.*, 2.

¹²³ *Ibid.*

the global practice is not only limited to dolphin hunting, but also whales as the target.

Some countries rely on their own national laws on the protection of dolphins or small cetaceans in general. For example Peru, which becomes one of the countries that actively enforces protection of dolphins and other small cetaceans. Peru enacted Ministerial Resolution No. 569-90-PE of 1990 which amended by Resolution No. 321-94-PE of 1994 on the prohibition of capture and trade in small cetaceans or product (meat).¹²⁴ Peru is also a party in CITES, UNCLOS and join the International Whaling Commission (IWC) which adopted the International Convention for the Regulation of Whaling (ICRW) through Ministerial Resolution No. 345-79-PE in 1991.¹²⁵ Other countries such as India, Greece, Croatia and Chile also ban the capture of dolphin, especially for, but not limited to, entertainment purposes.¹²⁶

Even though some countries do prohibit the capture of dolphin through their national laws and also the ban that is not becomes hard law yet, local fishermen still conducted the hunting. For example in Peru, each year, around 15,000 dolphins died in Peruvian waters despite the prohibition of the hunting. However, in 2016, three fishermen were sued

¹²⁴ Koen Van Waerebeek and Julio C. Reyes, "Post-Ban Small Cetacean Takes off Peru: A Review," *Rep. Int. Whal. Commn (Special Issue 15)*, 1994, 504. Accessed April 27, 2020. <http://www.vliz.be/imisdocs/publications/242682.pdf>.

¹²⁵ *Ibid.*

¹²⁶ Accessed April 27, 2020. <https://www.dolphinproject.com/where-are-dolphins-protected/>.

by the Peruvian Public Prosecutor because they killed dolphins.¹²⁷ This shows a better progress to stop those dolphin killing in Peru.

Unlike Peru and some other countries which ban the capture and killing of dolphin, Japan permits such actions. Each year, Japan sets quota for the capture of dolphins in its water which is held around 6 months. A notable practice in Japan is *Taiji* drive hunts. This practice gains international attention for a quite long period due to the practice that categorized into brutal and inhuman. The government of Wakayama Prefecture, where Taiji is located, gave its official statement on the hunting practice. It says that such practice has always been part of tradition of people in Japan and supported by the geographical matter which is far from economic centre therefore ocean is the only sources for their economy.

B. Protection of Dolphin under the UNCLOS

International law of the sea is a branch of international law that governs international relations between States regarding maritime matters.¹²⁸ The development of the international law of the sea started around sixteenth century where independent States realized the importance of international relations especially in regards with maritime matters.¹²⁹ Besides, its development is also influenced by politic, economy, security,

¹²⁷ Accessed April 27, 2020. <https://www.oceancare.org/en/our-work/animal-species-conservation/dolphins/dolphin-hunt-peru/>.

¹²⁸ R. R. Churchill and A. V. Lowe, *Loc. Cit.*

¹²⁹ *Ibid.*

environmental matter and technology.¹³⁰ The work of United Nations on the codification of international law of the sea are divided into three chapters. First, the first chapter (UNCLOS I) was conducted from 1949 until 1956 discussed about the high sea and territorial sea.¹³¹ However, there was no agreed breadth in terms of territorial sea limits and therefore the issue was brought to the next chapter. Second, the second chapter (UNCLOS II) was held in 1960 discussed about the breadth of territorial sea and also fishing limits.¹³² Lastly, in UNCLOS III which was held from 1973 until 1982,¹³³ the work was agreed that 12 nautical miles for territorial sea and 200 nautical miles until the exclusive economic zone started from the baseline.

It has been mentioned above that International Law of the Sea covers all maritime matters, protection of marine living resources particularly marine mammals, are included. Marine living resources broadly refers to any type of living creature including bony fish, shark, crustaceans, invertebrates, turtle and marine mammals.¹³⁴ Under the UNCLOS, State Parties bear two responsibilities on the management and living resources within its EEZ. Firstly, State Parties must provide best scientific evidence ensuring the living resources of the EEZ are not endangered by overexploitation through proper conservation and management

¹³⁰ Tullio Treves, *Historical Development of the Law of the Sea*, The Oxford Handbook of the Law of the Sea, edited by Donald R. Rothwell, Alex G. Oude Elferink, Karen N. Scott, Tim Stephens, Oxford Scholarly Authorities on International Law, 01 March 2015, 1.

¹³¹ *Ibid*, 13.

¹³² *Ibid*, 14.

¹³³ *Ibid*, 16.

¹³⁴ Nele Matz-Luck and Johannes Fuchs, *Op. Cit.*, 493.

measures.¹³⁵ Secondly, State Parties shall promote the objective of full utilization meaning that they must set the allowable catch and its capacity to harvest the living resources within its EEZ.¹³⁶

In regards with specific living resources, Marine mammals under the UNCLOS has their own regulation which is Article 65. This regulation subjects to its long history towards the protection of marine mammals. Since the UNCLOS finally codified in 1982, regulation concerning marine mammals in that Convention is not the first regulation ever existed.¹³⁷ Article 65 of the UNCLOS is a reflection of previous regulations for example International Whaling Convention which was concluded by 1930, Bering Fur Seals Convention between Great Britain and United States as well as inter-company agreement concerning the limitation of quotas for marine mammals exploitation.¹³⁸ Since the words of Article 65 of the UNCLOS refer to “marine mammals” this Article must be interpreted broadly and not specifically refer to certain type of mammals living in ocean. Thus, Article 65 must cover the protection of dolphins since they are categorized as mammals.

Article 65 obliges State parties to cooperate with relevant international organizations regarding marine mammals and specifically for

¹³⁵ UNCLOS, art. 61 sec. (2).

¹³⁶ *Ibid*, arts. 62 sec. (1), 61 sec. (1).

¹³⁷ Patricia W. Birnie, “Marine Mammals: Exploiting the Ambiguities of Article 65 of the Convention on the Law of the Sea and Related Provisions: Practice under the International Convention for the Regulation of Whaling,” *The Law of the Sea: Progress and Prospects*, David Freestone, Richard Barnes and David Ong, p. 262, 2006, available at <https://www.oxfordscholarship.com/view/10.1093/acprof:oso/9780199299614.001.0001/acprof-9780199299614-chapter-14>.

¹³⁸ *Ibid*.

cetaceans. The relevant organizations set out in that Article include UN Special Agencies such as the Food and Agriculture Organization (FAO), United Nations Environment Programme (UNEP) and other commission established by regional convention.¹³⁹

C. Protection of Dolphin under Convention on the Conservation of Migratory Species of Wild Animals.

This Convention is well known as Bonn Convention as the Secretariat which is located in Bonn, Germany. It was also Germany which prepared the Draft of the Convention in 1974 to maintain sustainable development.¹⁴⁰ The objective of the CMS as set out in preamble is the protection and management of migratory species passing through national jurisdiction boundaries. The CMS divides migratory species into two categories, i.e. Appendix I and Appendix II.

There are 117 species and subspecies listed in Appendix I which cover birds, reptiles, terrestrial and marine mammals.¹⁴¹ Meanwhile, Appendix II contains vast majority of cetaceans and fish.¹⁴² In relation to dolphin, it is listed either in Appendix I or Appendix II, even one of the most hunted dolphin, *Tursiops truncatus ponticus* is listed in Appendix I. The CMS differentiates obligations for State Parties in regards with species listed in each Appendix. As for Appendix I, State Parties are

¹³⁹ *Ibid*, 265.

¹⁴⁰ Alexander Proelß, *Migratory Species, International Protection*, Max Planck Foundation for International Peace and the Rule of Law, 2009, para. 9. Accessed February 23, 2020. <https://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e1596?rskey=m6AzTd&result=2&prd=OPIL>.

¹⁴¹ *Ibid*, 11.

¹⁴² *Ibid*.

obliged, first, to conserve and restore those species under the threat of extinction.¹⁴³ Second, to take any measure necessary so that the species can migrate without disturbance.¹⁴⁴ Third, State Parties are also required to monitor factors that endanger or potentially endanger the species.¹⁴⁵ In regards with Appendix II, State Parties are only required to enter into agreements, meaning that an international agreement relating to the conservation of migratory species contained in the CMS. There are instructions in concluding agreement within the meaning of the CMS as follow:

1. The main object of such agreement is to rehabilitate the migratory species to a favourable conservation or at least to maintain such status if it is already favourable.
2. Migratory species concerned should be covered in each agreement and opened to accession by any state within the meaning of Range State under the CMS, whether or not Parties to it.
3. Wherever necessary, the agreement should cover more than one migratory species.
4. The agreement should identify the migratory species and even specifically describe the migration route. Additionally, Parties to the agreement must notify their national authorities in carrying out the agreement, coordinate and take any effort necessary to achieve the purpose of it and provide dispute settlement.

¹⁴³ CMS, art. III sec. (4) (a).

¹⁴⁴ *Ibid*, art. III sec. (4) (b).

¹⁴⁵ *Ibid*, art. III sec. (4) (c)

There are several International Agreements under the meaning of Article IV of the CMS, *i.e.* the 1991 Agreement on the Conservation of Small Cetaceans of the Baltic and North Seas (ASCOBANS) which entered into force in 1994. In 2008, the range area of this Agreement was extended to North East Atlantic and Irish so that the Agreement changed to Agreement on the Conservation of Small Cetaceans of the Baltic, North East Atlantic, Irish and North Seas.¹⁴⁶ Another Agreement is the 1996 Agreement on the Conservation of Cetaceans of the Black Sea, Mediterranean Sea and contiguous Atlantic area (ACCOBAMS) which entered into force in 2001. This Agreement becomes the first Agreement that concerns on cetacean conservation in the sub-regions. Parties to this Agreement for example Albania, Algeria, Croatia, Cyprus, Spain, Portugal and other States. This might be the best example of Agreement under the meaning of Article IV since it strictly regulates the protection and conservation of cetaceans in that sub-regions. State Parties must provide conservation plan in order to achieve and maintain the favourable status of the cetaceans.¹⁴⁷

In Asia Region, there is no Agreement yet concerning the conservation on small cetaceans. Under the CMS, however, there is only Memoranda of Understanding (MOU) on the protection of Marine Turtles namely Memorandum of Understanding on the Conservation and Management of Marine Turtles and their Habitats of the Indian Ocean and

¹⁴⁶ Accessed February 25, 2020. <https://www.cms.int/en/legalinstrument/ascobans>.

¹⁴⁷ Accessed February 25, 2020. <https://www.cms.int/en/legalinstrument/accobams>.

South-East Asia. The absence of Agreement in Asia Region on conservation on cetaceans makes it hard to force country, such as Japan which becomes the object of this thesis, on that matter. That is even harder since Japan itself is not a State Party to the CMS but if an Agreement exists, Japan can be included as a Range State.

D. Protection of Dolphin under The Convention on International Trade in Endangered Species of Wild Fauna and Flora

From the title of this Convention, it is clear that the purpose of this Convention is to protect the endangered plant and animals from being traded. This Convention divides the status of plant and animals into three Appendices. Firstly, Appendix I, this first Appendix concerns on all plant animal species that are threatened with extinction or those which might be afflicted by trade.¹⁴⁸ Secondly, Appendix II, it concerns on species of plant and animal which are not inevitably threatened with extinction but there is a potential becomes so, therefore Appendix II also requires effective control for certain species.¹⁴⁹ Thirdly, Appendix III, this Appendix regulates all species within the jurisdiction of State Parties subject to their national laws which intended to prevent or control the over exploitation and cooperation from other State Parties are required.¹⁵⁰

Although there are three Appendices under this Convention, however, it does not prohibit the trade of such species listed in those Appendices. Instead, the Convention provides strict requirements if State Parties would

¹⁴⁸ CITES, art. II sec. (1).

¹⁴⁹ *Ibid*, art. II sec. (2).

¹⁵⁰ *Ibid*, art. II sec. (3).

like to trade those species. For example, import and export for species listed in Appendix I, the State Parties are required to provide import and export permit. Both import and export, generally, require scientific authority that such import and export will not adverse the survival of the species concerned.¹⁵¹ Specifically, for the purpose of export, the State of export must ensure that such species were obtained in no violation of domestic law, ensure that the species will be shipped, treated properly and import permit has been granted.¹⁵² As for import, the State of import must ensure that the recipient will take care the species properly and such species will not be used for commercial purposes.¹⁵³ The trade for species listed in Appendix II, in general, the requirements are the same, that it requires scientific authority to make sure that the trade will not affect the survival of the species concerned, ensure that the species were obtained in no violation of domestic law and treated properly.¹⁵⁴ In addition, scientific authority must monitor the export permit and the actual export.¹⁵⁵ As for trade of species listed in Appendix III, the export activities requires the same as for Appendix I and II, meanwhile for import, there has to be a report the origin of the species and whether the State of export has a permit.¹⁵⁶

¹⁵¹ *Ibid.*, arts. III sec. (2)(a) and III sec. (3)(a).

¹⁵² *Ibid.*, art. III sec. (2)(b)(c)(d).

¹⁵³ *Ibid.*, art. III sec. (3)(b)(c).

¹⁵⁴ *Ibid.*, art. IV sec. (2).

¹⁵⁵ *Ibid.*, art. IV sec. (3).

¹⁵⁶ *Ibid.*, art. V sec. (3).

Most of cetaceans are grouped in Appendix II even though there are several in Appendix I. As contained in article II (2) of the Convention, species listed in Appendix II are not necessarily threatened with extinction, but they could be if the trade of those species strictly regulated. Therefore, those species that most hunted in Japan *i.e.* Dall's porpoise (*Phocoenoides dalli*), striped dolphin (*Stenella Coeruleoalba*), pantropical spotted dolphin (*Stenella attenuata*), bottlenose dolphin (*Tursiops truncatus*) and risso's dolphin (*Grampus griseus*) are categorized into Appendix II of CITES.¹⁵⁷

Japan is a Party to CITES since 1980.¹⁵⁸ According to CITES trade database, in the period 2013-2017, Japan has exported top 5 species *i.e.* *Tapirus terrestris*, *Callithrix jacchus*, *Panthera leo*, *Macaca fustaca* and of the species of cetaceans, *Tursiops truncatus* or bottlenose dolphins.¹⁵⁹

E. Japanese Law

In this thesis, the writer took Japanese Law No. 89 of 2001 on Basic Fishery, Law No. 77 of 1996 on Preservation and Control of Living Marine Resources and Law No. 105 of 2014 on Welfare and Management of Animals to review how Japan regulates its fisheries in its waters.

1. Law No. 89 of 2001

This regulation has purpose to preserve and reform the national economy of Japan, which impacts the life of its citizens, by implementing comprehensive and systematic basic policies for

¹⁵⁷ Accessed May 31, 2020. <http://dashboards.cites.org/national?id=JP>.

¹⁵⁸ Accessed May 31, 2020. <https://www.cites.org/eng/disc/parties/chronolo.php>.

¹⁵⁹ Accessed May 31, 2020. <http://dashboards.cites.org/national?id=JP>.

fisheries.¹⁶⁰ Comprehensive and systematic basic policies under this Act cover the maintenance of stable supply of marine living resources,¹⁶¹ responsibilities of Japan in general and also local government in particular,¹⁶² appropriate conservation and management of fishery resources in EEZ¹⁶³ and also promotion of international cooperation.¹⁶⁴

Stability of supply of marine resources shall be secured for the interest of the future generation.¹⁶⁵ In order to achieve the stability of supply of marine resources, adequate preservation and management of fishery resources must be upheld in accordance with the implementation of the UNCLOS.¹⁶⁶ Additionally, domestic fishery production also needs to be increased while combining it with import in a proper way.¹⁶⁷ Through these ways, stability of supply of marine resources will be properly achieved.

This Act also grants responsibility of Japan and local government in regards to the implementation of this Act. Japan and the local government must be fully responsible in implementing and formulating the basic principles contained in the Act so that any target will be achieved. Japan shall strive its citizens and augment them better understanding on the basic fisheries providing relevant

¹⁶⁰ Law No. 89 of 2001 on Basic Fishery, art. 1.

¹⁶¹ *Ibid*, art. 2.

¹⁶² *Ibid*, arts. 4, 5.

¹⁶³ *Ibid*, art. 13.

¹⁶⁴ *Ibid*, art. 20.

¹⁶⁵ *Ibid*, art. 2 sec. (1).

¹⁶⁶ *Ibid*, art. 2 sec. (2).

¹⁶⁷ *Ibid*, art. 2 sec. (3).

information.¹⁶⁸ In particular, the local government shall ensure that the formulation and implementation of the basic principles of fisheries suit natural and socioeconomic characteristics of each local government.¹⁶⁹

In regards to the conservation and management of fishery resources in EEZ, this Act does not provide specific measures, rather it only provides any measure that the State thinks necessary to conserve and manage the fishery resources therefore such measures shall be taken.¹⁷⁰ That differs from zone other than EEZ, the Act provides that the State can cooperate with any international organizations and any international framework concerning the conservation and management and whatever measures that necessary based on the guidance and oversight of government of Japan.¹⁷¹

2. Law No. 77 of 1996

This regulation has purpose to preserve and control the living marine resources within Japan's EEZ, Territorial Sea and also Continental Shelf as efforts to implement the UNCLOS through the establishment of plan of preservation and control of living marine resources as well as taking required measures to control fish catching and fishing effort.¹⁷² This Act defines fishing effort as the amount of fishing conducted in catching marine living resources which refers to

¹⁶⁸ *Ibid*, art. 4 sec. (2).

¹⁶⁹ *Ibid*, art. 5.

¹⁷⁰ *Ibid*, art. 13 sec. (1).

¹⁷¹ *Ibid*, art. 14.

¹⁷² Law No. 77 of 1996 Preservation and Control of Living Marine Resources, art. 1.
Accessed 24 March 2020.
http://www.japaneselawtranslation.go.jp/law/detail_main?re=2&vm=02&id=1895.

number of days and other indicators set by Ordinance of Ministry of Agriculture, Forestry and Fisheries. That fishing effort links to fishing control mechanism which cannot exceed the maximum limit of annual quantity of any type of marine living resources or total allowable catch.

Under Japanese Law, as mentioned in the previous Act concerning Basic Fishery, basic plan is an important thing to achieve goals that the government set. This Act regulates that basic plan¹⁷³ is the authority of the Minister of Agriculture, Forestry and Fisheries which covers certain matters such as basic policy, trends and quantities of total allowable catch, methods of gathering or catching the living resources and other important matters related to the preservation and control of living resources. In establishing the basic plan, the Minister of Agriculture, Forestry and Fisheries shall hear the consideration of the Fisheries Policy Council. The Minister also need to consult with governor of each prefecture concerned with the quantity or amount for the allowable catch. In relation to the engagement of governor, this Act also provides the establishment of prefectural plan concerning the same matters which is under the authority of governor to carry out such plan.¹⁷⁴

Under this Act, the Minister of Agriculture, Forestry and Fisheries and governor of each prefecture are collaborating in order to achieve

¹⁷³ *Ibid*, art. 3.

¹⁷⁴ *Ibid*, art. 4.

the basic plan. Both the Minister of Agriculture, Forestry and Fisheries or governor shall take necessary measures, such as restricting the gathering or catching the living marine resources provided in other relevant Acts. Such restrictions specifically applied when the gathering or catching the living marine resources exceed the quantity or fishing effort control set either by the Minister of Agriculture, Forestry and Fisheries or governor. If the gathering or catching has exceeded the quantity or fishing effort control, the Minister of Agriculture, Forestry and Fisheries or governor can suspend the action.

There will be sanctions for those who violate this Act especially those who carrying out the gathering or catching, they will be ordered to anchor their ship used in gathering or catching and may specify the port and the period of anchorage. Besides giving sanction, this Act provides agreement for anyone who carries out gathering or catching on the preservation and control the specified living marine resources. The agreement prescribes matters *i.e.* the area of the sea and methods of gathering or catching the subject of the agreement; the method of preserving and controlling the living marine resources; the valid period of the agreement; measures in case that violation exists and other measures set out by Ordinance of the Ministry of Agriculture, Forestry and Fisheries.

3. Law No. 105 of 2014

This Law has purposes to establish animal welfare amongst citizens and develop respect of life towards animal by preventing cruelty to animals, handling animals properly, as well as prevent animals from infringement on the life, body or property.¹⁷⁵ In achieving such purposes the Law prohibits killing, injuring or inflicting cruelty against animals without proper reasons and they have to be treated in accordance with their habitat and their relation with human beings.¹⁷⁶

Different from two previous Laws on basic fishery and preservation and control of living resources of which Ministry of Agriculture, Forestry and Fishery of Japan (MAFF) has jurisdiction over them, Law on welfare and management of animals falls within the jurisdiction of Ministry of Environment in terms of establishing basic guidelines¹⁷⁷ and cooperate with each prefecture in terms of promotion of plan of welfare management.¹⁷⁸ In making basic guidelines, the Minister of Environment shall consider basic direction of welfare and management of animals' promotion¹⁷⁹ together with its formulation¹⁸⁰ and other important measures.

The Law provides sanction for those who violates it. Anyone who kills or injures against the protected animals shall be punished by

¹⁷⁵ Law No. 105 of 2014 on the Amendment of Law No: 105 of 1973 on Welfare and Management of Animals, art. 1.

¹⁷⁶ *Ibid*, art. 2.

¹⁷⁷ *Ibid*, art. 5 sec. (1).

¹⁷⁸ *Ibid*, art. 6.

¹⁷⁹ *Ibid*, art. 5 sec. (2)(i).

¹⁸⁰ *Ibid*, art. 5 sec. (2)(ii).

imprisonment with work in one year or less or fine not more than one million yen.¹⁸¹ For those who inflict cruelty shall be punished by a fine not more than five hundred thousand yen.¹⁸² The same amount of fine, five hundred thousand yen or less, will also be received by those who abandones the protected animals.¹⁸³ The Law defines the protected animals as Cattle, horses, pigs, sheep, goats, dogs, cats, domestic rabbits, chickens, domestic pigeons, domestic ducks,¹⁸⁴ and animals in the possession of persons such as mammals, birds and reptiles.¹⁸⁵

F. International Environmental Law

International Environmental Law (IEL) has been emerged since a long time ago. One divides the emergence of IEL started from 1900¹⁸⁶ where several international agreements concern environmental issues existed rapidly. Before 1900, there was a paucity on international agreement on environmental matters. At times, there were only international agreements on boundary waters, navigation and fishing rights and States relied on principles *i.e.* the use of shared watercourses, rights to water and national sovereignty over natural resources.¹⁸⁷

Instances of international agreement in the twentieth century, particularly during the period 1900 until 1972, are mostly concerned on

¹⁸¹ *Ibid*, art. 44 sec. (1).

¹⁸² *Ibid*, art. 44 sec. (2).

¹⁸³ *Ibid*, art. 44 sec. (3).

¹⁸⁴ *Ibid*, art. 44 sec. (4)(i).

¹⁸⁵ *Ibid*, art. 44 sec. (4)(ii).

¹⁸⁶ Edith Brown Weiss, "The Contribution of International Environmental Law to International Law: Past Achievements and Future Expectation," *Japanese Yearbook of International Law* 54, (2011): 2.

¹⁸⁷ *Ibid*.

protection and sustainability of living resources *i.e.* London Convention for the Protection of Wild Animals, Birds and Fish in 1900; Convention for the Protection of Birds Useful to Agriculture in 1902; Treaty for the Preservation and Protection of Fur Seals in 1911; London Convention relative to the Preservation of Fauna and Flora in their Natural State in 1933; Washington Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere in 1940; Washington International Convention for the Regulation of Whaling in 1946; Washington International Convention for the North-West Atlantic Fisheries in 1949; Tokyo International Convention for the High Seas Fisheries of the North Pacific Ocean in 1952; African Convention on the Conservation of Nature and Natural Resources in 1968. However, there are also international agreement on pollution and nuclear matters *i.e.* International Convention for the Prevention of Pollution of the Sea by Oil in 1954; Bonn Agreement for Co-operation in Dealing with Pollution of the North Sea by Oil in 1969 and Vienna Convention on Civil Liability for Nuclear Damage in 1963.

The 1972 until before 1992 period was momentous since intergovernmental conference, the United Nations Stockholm Conference on the Human Environment, was held for the first time focused on environmental problems.¹⁸⁸ The concern of States at Stockholm Conference was how economic development and environment protection

¹⁸⁸ *Ibid*, 4.

could work at the same time without distorting each other.¹⁸⁹ This concern later on was remarked as the birth of the sustainable development that was confirmed at the Rio Conference on Environment and Development. The Stockholm Conference emanated the adoption of Stockholm Declaration on the Human Environment and also the establishment of United Nations Environment Programme (UNEP).

In 1992, the United Nations Rio Conference on Environment and Development was held to salute the twentieth anniversary of Stockholm Conference on the Human Environment.¹⁹⁰ This Conference set an eminent message on sustainable development which United Nations General Assembly specifically established the World Commission on Environment and Development (Brundtland Commission) to make report from the Conference.¹⁹¹ Brundtland Commission exemplified sustainable development as the development that meets the needs of the present without compromising the ability of future generations to meet their own needs. The aftermath of the Rio Conference is the formation of essential documents i.e. the Rio Declaration on Environment and Development; the U.N. Framework Convention on Climate Change; the Convention on Biodiversity and Agenda 21.¹⁹²

In relation to cases concerning environmental matters, there were notable cases such as *Corfu Channel Case* and *Trail Smelter Case*. The

¹⁸⁹ *Ibid.*

¹⁹⁰ *Ibid.*, 10.

¹⁹¹ *Ibid.*

¹⁹² *Ibid.*

former was about the failure of Albania to notify the United Kingdom that mines existed in Albanian waters which made navy ships of United Kingdom suffered damages. Meanwhile, the latter was about cross-border air pollution caused by Canadian corporation which damaged the US environment. Those cases contributed to the establishment of general principles of international environmental law as elaborated below:

1. Sovereignty over natural resources and responsibility not to cause harm to other States.

International law exists based on State's sovereignty.¹⁹³ Under international law, each nation is equal and becomes the authority of its territorial limits.¹⁹⁴ Nonetheless, even though sovereignty is regarded as fundamental concept under international law, there is no agreed definition of it so that it tends to be defined varily.¹⁹⁵ The term sovereignty in this thesis refers to sovereignty of states over its natural resources and its responsibility not to cause harm to other states.

Sovereignty over natural resources has emerged since decolonization period around 1950s which represented the importance of the right to self-determination and a fundamental

¹⁹³ Franz Xaver Perrez, "The Relationship Between Permanent Sovereignty and the Obligation Not to Cause Transboundary Environmental Damage," *Environmental Law* 26, no. 4 (1996): 1188. Accessed April 6, 2020. https://www.jstor.org/stable/43267547?read-now=1&seq=2#page_scan_tab_contents.

¹⁹⁴ Royal C. Gardner, "Respecting Sovereignty," *Fordham Environmental Law Journal* 8, no. 1 (1996): 133. Accessed April 6, 2020. https://www.jstor.org/stable/44174287?read-now=1&refreqid=excelsior%3A1e24fb678d26f4c4513204f5a782c4ad&seq=1#page_scan_tab_contents.

¹⁹⁵ Franz Xaver Perrez, *Op. Cit.*, 1189.

element of state's sovereignty.¹⁹⁶ The principle of sovereignty over natural resources has been affirmed in General Assembly Resolution 1803 which dictates that permanent sovereignty over natural resources must be exercised for the sake of national development and the well-being of the people of the State concerned.¹⁹⁷ Therefore, protecting the sovereignty over natural resources means supporting the development of economy of the State concerned. Resolution 1803 possesses the status of customary international law,¹⁹⁸ which can be concluded that the principle of sovereignty over natural resources are bound to all States.

In relation to the obligation not to cause harm to other States, this principle has been affirmed in *Trail Smelter Case*. The Arbitral Tribunal held that any State is in position not to use or permit the use of its territory which likely to cause injury to another and in case the injury is categorized severe, clear and convincing evidence are required.¹⁹⁹ This case is intermittently cited in other similar cases and even several qualified authors categorized this principle as a rule of international law.

¹⁹⁶ *Ibid*, 1190.

¹⁹⁷ General Assembly, General Assembly Resolution 1803 (XVII) of 14 December 1962, "Permanent Sovereignty Over Natural Resources", 2. Accessed April 6, 2020. <https://www.ohchr.org/Documents/ProfessionalInterest/resources.pdf>.

¹⁹⁸ Franz Xavier Perrez, *Op. Cit.*, 1194.

¹⁹⁹ *Trail Smelter, Op. Cit.*, 1965.

The principle of sovereignty over natural resources and obligation not to cause harm to other States was also contained in Stockholm declaration principle 21. It dictates that:

“States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.”

This principle mentions clearly that even a State can exploit its natural resources however it cannot cause harm to other State from such exploiting activities. Under international environmental law, obligation not to cause harm to other States is sometimes regarded as good neighbourliness principles. This principle represents the very traditional principle *i.e. sic utere tuo, et alienum non laedas* means use your own property so as not to injure that of another. Good neighbourliness can be found in *Corfu Channel Case* where the Court held that the use of territory cannot be contravened to other State's rights.

2. Sustainable development.

This principle, as has been explained slightly above, has emerged unofficially since the 1972 Stockholm Conference yet it was affirmed and adopted in 1992 Rio Conference. This principle aims to meet the needs of the present without compromising the future generation concerning the sustainable development of the environment. In 2002, World Summit on Sustainable Development

was held as the follow up of the 1992 Rio Conference. The 2002 World Summit produced two important documents *i.e.* a political statement from the heads of state reaffirming their commitment to achieve sustainable development and a plan of action addressing specific sectors such as agriculture, fisheries, forestry, mining and energy.²⁰⁰ In order to achieve sustainable development, there are three elements needed to be fulfilled as elaborated below:

a. Intergenerational equity.

This element represents the core of principle of sustainable development that the present generation must leave inheritance for the future generation equally. Therefore, the future generation will retain the same wealth in form of natural resources and good environment from the past generation. All States must cooperate so that this element will be achieved.

b. Sustainable use of natural resources.

This element concerns on technical matter to maintain the natural resources stable. This element obliges States to cooperate each other for the sake of global common to conserve utilize the natural resources properly. The

²⁰⁰ J. William Futrell, "Defining Sustainable Development Law," *Natural Resources & Environment* 19, no. 2 (2004): 9. Accessed April 13, 2020. https://www.jstor.org/stable/40924558?read-now=1&refreqid=excelsior%3A3381003d2a40c2be7015bd1d344bbbbc&seq=4#page_scan_tab_contents.

obligation was upheld in Bering Sea Fur Seals Fisheries Arbitration and Fisheries Jurisdiction.

c. Integration of environment and development.

This element is a supporting element for the relation between environment and human. This element involves many factors such as decision making, policy and also economic growth. Economic growth holds an important role for human welfare meanwhile policy and decision making, particularly concerning comprehensive national sustainable instrument is important for the environment. These two must go in line so that sustainable development will be achieved.

3. Precaution and preventive principle.

These two principles are related one to another and at glance, they seem to be similar, however, they are not. Firstly, precautionary principle, this principle can be seen from Rio declaration Principle 15 which provides that States must act based on their capabilities if there are serious threats or inevitable damages, and even there is no scientific certainty on such damage, States must not delay the cost-effective measures to prevent environmental deterioration.²⁰¹ This principle gains customary international law status as it frequently invoked by States as a norm

²⁰¹ Rio Declaration, Principle 15.

of general international law, those States *i.e.* New Zealand, Hungary, Ecuador, Argentina, Malaysia, Ireland and even Australia.²⁰² ICJ also declared this principle as customary international law in the case of *Pulp Mills*.²⁰³

Secondly, preventive principle, this principle arose from a long standing history. This principle can be tracked in the case of *Trail Smelter*, where the Tribunal held that a State cannot use its territory or permit to use its territory so that it will cause damage to another. The Tribunal decision strictly referred only to serious damage which clear and convincing evidence must exist. Principle 21 of 1972 Stockholm declaration reaffirms this decision. Accordingly, the damage or environmental harm under the preventive principle can be calculated and there exists a high probability of the occurrence of the harm.

As conclusion, the differences between precautionary and preventive principles are, first, precautionary relies on uncertainty meanwhile preventive relies on knowledge that harm could possibly happen. Second, under precautionary principle, refers to the first difference, that risk cannot be calculated due to the uncertainty of harm itself, meanwhile risk under preventive principle can be calculated. Third, precautionary refers to sudden

²⁰² Arie Trouwborst, "Prevention, Precaution, Logic and Law: The Relationship between the Precautionary Principle and the Preventative Principle in International Law and Associated Questions," *Erasmus Law Review* 2, no. 2 (2009): 109.

²⁰³ *Ibid.*

action when threats occur meanwhile preventive concerns more to step in avoiding environmental harm such as the adoption of policies and prior assessment of environmental harm.

G. The Right to Participate in Cultural Life

Participating in cultural life is guaranteed under international law. There are Covenant and some Declarations related either directly or indirectly to the protection of the right to participate in cultural life. Those are ICESCR, UDHR and non-binding instruments such as Recommendation on Participation by the People at Large in Cultural Life and their Contribution to it and Universal Declaration on Cultural Diversity which are adopted by UNESCO.

Defining culture is an important step in understanding the right to participate in cultural life as a whole. It can be defined either in narrow or broad way. In narrow sense, it means tangible and intangible of human expression and creativity in the fields of art, music, literature, drama and even architecture.²⁰⁴ Meanwhile, in broader sense, it simply means a characteristic of worldview and way of life.²⁰⁵ Professor N'Daw defined culture as a form of way of life or collection of beliefs or concepts, which distinguish one people to another.²⁰⁶ He added that right to culture or cultural rights is the right to self-expansion for everyone towards genuine

²⁰⁴ Roger O'Keefe, *Loc. Cit.*

²⁰⁵ *Ibid.*

²⁰⁶ United Nations Educational, Scientific and Cultural Organization, *Cultural Rights as Human Rights* (Paris: UNESCO, 1970), 15.

creative activities either in the field of political, social or economic and whether such fields enable them or not.²⁰⁷

The right to participate in culture life is regulated in article 15 of the ICESCR which provides that all parties to the Covenant shall recognize the right of everyone to take part in cultural life.²⁰⁸ Article 27 paragraph 1 of UDHR also recognize the right to participate in cultural life, it provides that everyone has the right freely to participate in the cultural life of the community.²⁰⁹ Cultural rights are universal, indivisible and interdependent and also indispensable to human rights.²¹⁰ A person himself, in association with others or even in a community can enjoy this rights.²¹¹ Such individual or group can participate, access or contribute to any type of cultural life²¹² as the reflection of that individual or group's culture or identity. In achieving cultural rights, there are several elements need to be fulfilled as elaborated below:²¹³

1. Availability

The element of availability refers to the existence of goods of cultural and services such as museum, park, lakes, including flora and fauna which create cultural biodiversity. This element also refers to intangible goods such as language, tradition, beliefs, knowledge and history.

²⁰⁷ *Ibid*, 15-16.

²⁰⁸ ICESCR, art. 15.

²⁰⁹ UDHR, art. 27 sec. (1).

²¹⁰ General Comment No. 21, 1.

²¹¹ *Ibid*, 3.

²¹² *Ibid*, 4.

²¹³ *Ibid*, 4-5.

2. Accessibility

This element concerns about how any individual can enjoy his rights fully and without discrimination. This element relates strongly towards person with disabilities, older person and person living in poverty.

3. Acceptability and adaptability

This element concerns about regulations or policies that are related to the achievement of the rights to take part in cultural life. Such regulations or policies must be accepted either by individual and group and indeed do not contrary to their rights. The element of adaptability is quite similar to acceptability, however, it covers obligation to do consultation with individual or group of people which will be affected by the regulations or policies.

4. Appropriateness

This element requires that in exercising human rights, cultural diversities and specificity shall be taken into account which also includes the rights of indigenous people.

This cultural rights, however, is not absolute and thus subject to limitation. Such limitation contains in Article 4 of the Covenant which provides that limitations to the rights contained in the Covenant must be determined by law and in accordance with the nature of those rights for the purpose of the welfare of the society in general.²¹⁴ The enjoyment of

²¹⁴ ICESCR, art. 4.

cultural rights is closely related to human rights and all fundamental freedoms. Therefore, State Parties are under obligation to guarantee the enjoyment of cultural rights, in exception, that such cultural rights do not contravene to the enjoyment of human rights guaranteed by international law.²¹⁵ One example of this limitation is concerning negative practices that attributed to customs or traditions, which trespass other human rights.

H. Islamic Perspective

As the most perfect religion exists on Earth, there is nothing that Islam does not regulate. All sources of Islamic law *i.e.* the Quran, the *Sunnah* (practices of Prophet Muhammad), *Ijma'* and *Qiyas*, complement each other regulating all matters from the most essential such as pray until the matters of how we live on Earth such as socializing with other creatures of Allah SWT. Islam even regulates concerning manner to treat animals since they are also part of this Earth's ecosystem and hold important role to human beings. In Islam, animals are sign of the greatness of almighty God Allah SWT. It can be found in the Quran, *Al Jaatsiyah* verse 4 says:

وَفِي خَلْقِكُمْ وَمَا يَبُتُّ مِنْ دَابَّةٍ آيَاتٌ لِقَوْمٍ يُوقِنُونَ

“And in the creation of human being and all animals scattered on Earth, such creations are signs of the greatness of Allah for those who have faith”.²¹⁶ The Quran, *Al Ghaasyiyah* verse 17 says:

أَفَلَا يَنْظُرُونَ إِلَى الْإِبْلِ كَيْفَ خُلِقَتْ

²¹⁵ General Comment No. 21, 5-6.

²¹⁶ The Quran, *Al Jaatsiyah* (45), 4.

“do not they notice on how useful the camels are?”²¹⁷ Another word of Allah in the Quran concerning His greatness that is related to the existence of animals contained in *Al An'aam* verse 38 which dictates:

وَمَا مِنْ دَابَّةٍ فِي الْأَرْضِ وَلَا طَائِرٍ يَطِيرُ بِجَنَاحَيْهِ إِلَّا أُمَمٌ
أَمْثَالُكُمْ ۚ مَا فَرَّطْنَا فِي الْكِتَابِ مِنْ شَيْءٍ ۚ ثُمَّ إِلَىٰ رَبِّهِمْ
يُحْشَرُونَ

“And no animals on Earth and birds flying on their wings, except they are just like you. Nothing that we have disregarded in the holy Quran, and they will return to Allah SWT”.²¹⁸ This verse tells us that all creations of Allah SWT are the same and they all will return to Him at the end of the time. Therefore, we as human beings gifted with intelligence must respect all of His creations.

In regards with hunting regulation, the Quran, in *Al-Ma'idah* verse 4 says:

يَسْأَلُونَكَ مَاذَا أُحِلَّ لَهُمْ ۖ قُلْ أُحِلَّ لَكُمْ الطَّيِّبَاتُ ۚ وَمَا عَلَّمْتُمْ مِنَ
الْجَوَارِحِ مُكَلِّبِينَ تُعَلِّمُونَهُنَّ مِمَّا عَلَّمَكُمُ اللَّهُ ۖ فَكُلُوا مِمَّا أَمْسَكْنَ
عَلَيْكُمْ وَادْكُرُوا اسْمَ اللَّهِ عَلَيْهِ ۖ وَاتَّقُوا اللَّهَ ۚ إِنَّ اللَّهَ سَرِيعُ
الْحِسَابِ

²¹⁷ The Quran, *Al Ghaasyiyah* (88), 17.

²¹⁸ The Quran, *Al An'aam* (6), 38.

“They ask you, [O Muhammad], what has been made lawful for them. Say, "Lawful for you are [all] good foods and [game caught by] what you have trained of hunting animals which you train as Allah has taught you. So eat of what they catch for you, and mention the name of Allah upon it, and fear Allah". Indeed, Allah is swift in account”.²¹⁹

This verse tells us that we can hunt and eat the raven because Allah allows that and we shall fear Him. The method of hunting as mentioned in verse 4 of *Al-Ma'idah* shall be based on intelligence gained from experience and also based on *ilham* that comes from Allah in relation to train and hunt wild animals.

Al-Ma'idah verse 4 does not specify what type of animals can be hunted, it only mentions animals in general. As for the specific animals, which live on the ocean, the Quran in *Al-Ma'idah* verse 96 says:

أَجَلٌ لَكُمْ صَيْدُ الْبَحْرِ وَطَعَامُهُ مَتَاعًا لَكُمْ وَلِلسَّيَّارَةِ ۗ وَحُرْمٌ
عَلَيْكُمْ صَيْدُ الْبَرِّ مَا دُمْتُمْ حُرُمًا ۗ وَاتَّقُوا اللَّهَ الَّذِي إِلَيْهِ
تُحْشَرُونَ

“Lawful to you is game from the sea and its food as provision for you and the travelers, but forbidden to you is game from the land as long as you are in the state of *ihram*. And fear Allah to whom you will be gathered”.²²⁰

This verse specifically tells us that it is *halal* to eat ravin from the ocean and prohibits hunting during *ihram*. During *ihram*, Allah SWT prohibits hunting due to the nature of Makkah and its vicinity is a safe and peaceful

²¹⁹ Accessed April 17, 2020. <https://quran.com/5>.

²²⁰ Accessed April 17, 2020. <https://quran.com/5/96-106>.

city.²²¹ Moreover, during *ihram*, all must focus their intention to pray to Allah SWT.²²² Hunting is also forbidden if the intention of it is just to play along or torture the animals. As reported by Abdullah ibn Umar, Prophet Muhammad SAW says “whoever kills sparrows without their rights, Allah will definitely asks about it on Judgment Day.” Then someone asked, “O Muhammad, what are their rights?” Prophet Muhammad says: “they should butcher it, not cut off its head and throw it aside.”²²³ This *Hadith* explains us that killing animals without necessary reasons is prohibited as every creature of Allah SWT has its own role and function, especially for human beings.

In Islamic law, all animals that *halal* to be consumed, they also *halal* to be hunted. Even though there are certain animals that haram to be consumed, but they can be hunted for other purposes such as for their leather, feather and other body parts.²²⁴ In relation to this thesis, dolphin is an animal that becomes the subject of hunting by Japanese fishermen in Taiji. As an animal lives on the ocean, according to *Al-Ma'idah* verse 96, it is lawful to be hunted and as long as they are being hunted for the true purposes, not to torture them without reason. Japanese fishermen hunt dolphins for many purposes such as for their meat and being consumed by citizens, for captive industry which therefore used for entertainment

²²¹ Abd Rahman, “Binatang Buruan (Al-Asyd) Perspektif Al-Quran: Suatu Kajian Mawdui dalam Q.S. al-Ma'idah,” S.Ag theses, Universitas Islam Negeri Alauddin Makassar, 2018, 40.

²²² *Ibid.*

²²³ *Ibid*, 52; accessed April 18, 2020. <https://abuaminaelias.com/dailyhadithonline/2012/08/29/kills-birds-yawm-al-qiyamah/>.

²²⁴ *Ibid.*

purposes. However, according to several reports, they also hunt dolphin with intention to reduce its population because they compete with other small fishes that needed by fishermen to catch.



CHAPTER III

RESULTS AND DISCUSSION

A. Dolphin Hunting Practice Carrying Out in Japan

Despite being controversial, Japan maintains doing the hunting of dolphin within its territory. Japan insists that the hunting is integrated to their culture hence there are many cultural events within each year related to dolphins.²²⁵ There are many parties opposed the argument that dolphin hunting is Japan's culture or tradition. However, if we look back to the history, whales and dolphin were already used in Jomon period.²²⁶ Evidences that people during Jomon period have used dolphins can be found in Mawaki site in Ishikawa Prefecture and also in the Natagari Cave located in Chiba Prefecture.²²⁷ Mawaki people have conducted dolphins hunting since that era as there are many dolphins skeleton founded in Mawaki site.²²⁸ Skeletons of the species that were founded were pacific white-sided dolphin, bottlenose and risso's dolphins.²²⁹ In the nineteenth

²²⁵ Accessed May 31, 2020.

https://www.pref.wakayama.lg.jp/prefg/071500/iruka/documents/dolphin_fishery.html.

²²⁶ Ishikawa Kumiko, *Loc. Cit.*

²²⁷ Junko Habu, *Subsistence-Settlement Systems and Intersite Variability in the Moroiso Phase of the Early Jomon Period of Japan*, (Michigan: International Monographs in Prehistory, 1959), 18,

https://books.google.co.id/books?id=7TR8DwAAQBAJ&pg=PA18&lpg=PA18&dq=whales+and+dolphins+in+Jomon+period&source=bl&ots=L-GDtq_mYK&sig=ACfU3U3-mW1xvi6Nv3IdSyNSbtyjRtLKgw&hl=id&sa=X&ved=2ahUKEwi7p6Se6fPpAhUQIEsFHXCBLMQ6AEwCnoECAsQAQ#v=onepage&q=whales%20and%20dolphins%20in%20Jomon%20period&f=true

²²⁸ Toshio Kasuya, *Small Cetaceans of Japan: Exploitation and Biology*, (Boca Raton: CRC Press, 2017), page is not showed, https://books.google.co.id/books?id=UrrODgAAQBAJ&pg=PT197&lpg=PT197&dq=whales+and+dolphins+in+Jomon+period&source=bl&ots=w12eQmKi2L&sig=ACfU3U2EYmxBvC8In1_qWZNdQ_Don891oA&hl=id&sa=X&ved=2ahUKEwi7p6Se6fPpAhUQIEsFHXCBLMQ6AEwC3oECAwQAQ#v=onepage&q=whales%20and%20dolphins%20in%20Jomon%20period&f=false

²²⁹ *Ibid.*

century, Mawaki village still conducted dolphins hunting practice and the methods used were still the same from the Jomon period.²³⁰ Another practice, the village of Hirata, located in Fukushima Prefecture, also conducted dolphins hunting in the period of 1732-1901.²³¹ From the foregoing explanation, there are evidences showing that dolphins hunting practice is integrated to Japan even since ancient times. Hence, from the author's point of view, Japan's argument that the recent dolphin hunting is part of its tradition and cultural activities is logical.

Japan is a State that are rich of culture. It recognizes the importance to protect and promote various types of culture and arts such as music, drama, animation and manga.²³² More specifically, Law No. 7 of 2007 for the Protection of Cultural Property on the amendment of Law No. 214 of 1950, regulates on preservation and utilization of cultural property objects in Japan.²³³ Under this Law, cultural properties cover Tangible and Intangible (buildings, pictures, calligraphic work, drama, music and other tangible or intangible products that have historical or artistic value), Folk (manners and custom in relation to religious faiths, occupations, and food), Monuments (sites of castles, monument houses, even animals and plants' habitat that have significant value to Japan), Cultural Landscape and

²³⁰ *Ibid.*

²³¹ *Ibid.*

²³² Agency for Cultural Affairs of Government of Japan. Accessed June 10, 2020. https://www.bunka.go.jp/english/policy/arts_culture/index.html.

²³³ Law No. 7 of 2007 on the amendment of Law No. 214 of 1950 for the Protection of Cultural Property, art. 1. Accessed June 10, 2020.

https://en.unesco.org/sites/default/files/japan_law_protectionproperty_entno.pdf.

Group of Traditional Buildings.²³⁴ Government and local government are under obligation to recognize and preserve those cultural properties which are essential for the development of culture in Japan.²³⁵

The matters of culture and its preservation and promotion fall within the jurisdiction of Agency for Cultural Affairs of Government of Japan²³⁶ as the branch of the Ministry of Education.²³⁷ In relation to Japan's measures in promoting culture, one of them is the promotion of Ainu culture by establishing specific research foundation *i.e.* the Foundation for Research and Promotion of Ainu Culture.²³⁸ It has to be noted that Ainu people are known for their tradition in hunting and fishing. They hunt brown bears, yezo deer and marine mammals such as seals, sea lions and other marine mammals²³⁹ such as dolphins. This shows how Japan puts serious efforts in preserving, utilizing and promoting its cultures.

In relation to international instrument concerning cultural activity, it does regulate the rights of everyone to take part in cultural activities²⁴⁰ which the State has obligation to respect, protect and fulfill.²⁴¹ The concept of cultural life is defined broadly which includes all manifestation

²³⁴ *Ibid*, art. 2.

²³⁵ *Ibid*, art. 3.

²³⁶ Agency for Cultural Affairs of Government of Japan. Accessed June 10, 2020. <https://www.bunka.go.jp/english/about/organization/index.html>.

²³⁷ Barbara E. Thornbury, "The Cultural Properties Protection Law and Japan's Folk Performing Arts," *Asian Folklore Studies* 53, 2 (1994): 212. Accessed June 10, 2020. https://www.jstor.org/stable/1178644?read-now=1&refreqid=excelsior%3A67c81111c9bd23dd6763f065959d450a&seq=2#page_scan_tab_contents.

²³⁸ Agency for Cultural Affairs of Government of Japan. Accessed June 10, 2020. https://www.bunka.go.jp/english/policy/cultural_properties/ainu/index.html.

²³⁹ The Foundation for Ainu Culture. Accessed June 10, 2020. https://www.ff-ainu.or.jp/english/files/together_08.pdf.

²⁴⁰ ICESCR, art. 15.

²⁴¹ General Comment No. 21, para. 48.

of human existence such as ways of life and tradition which also related to well-being and economic values of such person or communities.²⁴² According to this definition, Japan's long standing dolphin hunting practice began from Jomon period which can qualify for ways of life and tradition. Furthermore, the recent dolphin hunting practice also aims to support economic of local people and is indispensable.²⁴³ As a State, Japan must protect the realization of its people cultural life related to dolphin hunting practice by non-interference of the practice and take positive action meaning to ensure facilitation and promotion of such practice.²⁴⁴ Issue that may arise is whether the practice will lead to depletion to the dolphins' population or not. In the case of *Apirana Mahuika v New Zealand*,²⁴⁵ the Committee stated that New Zealand is in no violation of article 27 of the ICCPR regarding Maori people's cultural fisheries activity by providing Quota Management System. Similarly, in the present case, Japan provides appropriate measures so that the practice will not threaten dolphins' population.

The hunting itself is carried out carefully by considering the proper management and conservation based on scientific research so that the dolphins will not lead to depletion.²⁴⁶ According to reports published by Ministry of Agriculture, Forestry and Fishery of Japan (MAFF) together

²⁴² *Ibid*, para. 13.

²⁴³ Accessed May 31, 2020.

https://www.pref.wakayama.lg.jp/prefg/071500/iruka/documents/dolphin_fishery.html.

²⁴⁴ General Comment No. 21, para. 6.

²⁴⁵ The Human Rights Committee, "Apirana Mahuika et al. v. New Zealand, Communication No. 547/1993" U.N. Doc. CCPR/C/70/D/547/1993, 2000, paras. 9.8, 10.

²⁴⁶ Accessed May 31, 2020.

https://www.pref.wakayama.lg.jp/prefg/071500/iruka/documents/dolphin_fishery.html.

with National Research Institute of Far Seas Fisheries (NRIFSF) of the Japan Fisheries Research and Education Agency (FRA), Japan routinely conducts the sighting of dolphin species within its waters and provides data for the total dolphin species are that caught, released, and death.²⁴⁷ The reports, at least from 2008 until 2019 are available in the MAFF website.²⁴⁸ Due to difficulties in finding the data on Japan's other ways to conserve and manage the dolphin population, the author of this thesis took that the routine of sighting dolphin species and set annual quota for dolphins as Japan's efforts in maintaining dolphins' population safe. For example quota in 2016/2017 season was 1,820, in 2017/2018 was 2,178 and in 2018/2019 season was 2,047.²⁴⁹

In general, Japan does have animal welfare law which was adopted in 1973 and amended in 2014.²⁵⁰ Under this law, it is prohibited for anyone to kill, injure or inflict cruelty on animals without proper reasons and shall

²⁴⁷ Hideyoshi Yoshida, "Japan Progress Report on Small Cetaceans Research, April 2015 to March 2016, with Statistical Data for the Calendar year 2015," Report, National Research Institute of Far Seas Fisheries, Japan Fisheries Research and Education Agency, 2016, 5. Accessed May 13, 2020. <https://www.jfa.maff.go.jp/j/whale/attach/pdf/research-15.pdf>. (The author took an example from report in 2016).

²⁴⁸ Official website of Ministry of Agriculture, Forestry and Fishery of Japan. Accessed May 31, 2020. <https://www.jfa.maff.go.jp/result.html?cx=015840603635610229114%3Ad5nyfxhqi78&ie=UTF-8&q=dolphin+quota&sa=%E6%A4%9C%E7%B4%A2&siteurl=www.jfa.maff.go.jp%2Findex.html&ref=www.jfa.maff.go.jp%2Fresult.html%3Fcx%3D015840603635610229114%253Ad5nyfxhqi78%26ie%3DUTF-8%26q%3Ddolphin%2Bexport%26sa%3D%25E6%25A4%259C%25E7%25B4%25A2%26siteurl%3Dwww.jfa.maff.go.jp%252Findex.html%26ref%3Dwww.jfa.maff.go.jp%252Fresult.html%253Fcx%253D015840603635610229114%25253Ad5nyfxhqi78%2526ie%253DUTF-8%2526q%253DJapan%252527s%252Bexport%252Bdolphin%2526sa%253D%2525E6%2525A4%25259C%2525E7%2525B4%2525A2%2526siteurl%253Dwww.jfa.maff.go.jp%25252Fj%25252Fgyosei%25252Findex.html%2526ref%253Dwww.jfa.maff.go.jp%25252Fe%25252Findex.html%2526ss%253D5320j1810732j23%26ss%3D2730j668136j14&ss=2553j796177j13#gsc.tab=0&gsc.ref=%E6%B0%B4%E7%94%A3%E5%BA%81&gsc.q=dolphin%20quota&gsc.page=2>

²⁴⁹ Accessed June 2, 2020. <https://www.cetabase.org/taiji/drive-results/>.

²⁵⁰ Accessed June 2, 2020. <https://api.worldanimalprotection.org/country/japan>.

treat animals by considering their natural habits and their relation with human beings.²⁵¹ The law gives penalty for anyone who destroys or injures the protected animals by imprisonment with work for one year or less or fine not more than one million yen.²⁵² For anyone who causes cruelty leading to depletion and who abandons the protected animals will get punishment by fine not more than five hundred thousand yen.²⁵³ The phrase “protected animals” within the meaning of this law refers to cattle, horses, pigs, sheep, goats, dogs, cats, domestic rabbits, chickens, domestic pigeons, domestic ducks,²⁵⁴ and animals in the possession of persons such as mammals, birds and reptiles.²⁵⁵

According to the Law on Welfare and Management of Animals mentioned above, even though dolphins are categorized as mammals which lives in ocean, however they are not in the possession of persons meaning that they are wild animals. Additionally, the law does not cover any type of fish as protected animals. Sarah Lucas, chief executive of Actions for Dolphins, said that dolphins are mistakenly regarded as fish in Japan,²⁵⁶ hence, the Law on Welfare and Management of Animals is not applicable to dolphins. The author took other two Japan’s national laws which are Law No. 89 of 2001 on Basic Fishery and Law No. 77 of 1996

²⁵¹ Law No. 105 of 2014 on the Amendment of Law No: 105 of 1973 on Welfare and Management of Animals, art. 2.

²⁵² *Ibid*, art. 44 sec. (1).

²⁵³ *Ibid*, art. 44 secs. (2) and (3).

²⁵⁴ *Ibid*, art. 44 sec. (4) (i).

²⁵⁵ *Ibid*, art. 44 sec. (4) (ii).

²⁵⁶ Justin McCurry, “Taiji dolphin hunt: activists to launch unprecedented legal challenge,” *The Guardian*, February 13, 2019. Accessed June 2, 2020. <https://www.theguardian.com/world/2019/feb/13/taiji-dolphin-hunt-activists-to-launch-unprecedented-legal-challenge>.

on Preservation and Control of Living Marine Resources to be used for the analysis.

Actually, both Law No. 89 of 2001 on Basic Fishery and Law No. 77 of 1996 on Preservation and Control of Living Marine Resources do not specifically regulate the protection of dolphins. Law No. 89 of 2001 concerns on the urgency to implement basic principles of fishery in order to uphold national economy and well being of the citizens.²⁵⁷ The law regulates fishery in general without defining what species that covered by it, however, according to official website of MAFF, fishery resources is implicitly and broadly defined as wild animal which is not belong to anyone's possession.²⁵⁸ However, even though the law does not specify the species in particular, it provides the importance of conservation and management of fishery resources within Japan's EEZ. The law specifically mentions management of catch as one of necessary measures in conserving and managing fishery resources.²⁵⁹

Meanwhile, Law No. 77 of 1996 seems to be more specific in regulating the preservation and control of marine living resources compare to Law No. 89 of 2001. It provides comprehensive definition of what total allowable catch, fishing efforts, specified marine living resources are.²⁶⁰ The Law has specific marine living resources that are protected which are

²⁵⁷ Law No. 89 of 2001 on Basic Fishery, art. 1.

²⁵⁸ Accessed June 2, 2020. <https://www.jfa.maff.go.jp/j/suisin/index.html>.

²⁵⁹ Law No. 89 of 2001 on Basic Fishery, art. 13 sec. (1).

²⁶⁰ Law No. 77 of 1996 on Preservation and Control of Marine Living Resources, art. 2.

divided into class I and class II,²⁶¹ some of them are tuna, pacific saury, pollock alaska, horse mackerel, Japanese pilchard, Japanese spanish mackerel, squid, crab and blowfish.²⁶² None of specified marine living resources in class I and class II covers marine mammals, particularly dolphins. However, for the species other than specified marine living resources, they may get protection meaning to be preserved and controlled in terms of catching those species.²⁶³ This preservation falls within the jurisdiction of each prefecture if it deems the protection of certain species is necessary.²⁶⁴ In doing the preservation, it falls under prefectural plan and such plan must cover what the species are, the total catching limits and the methods that used in catching those species.²⁶⁵

From the above explanation, it can be concluded that the protection of dolphins is not mentioned whatsoever in those two laws. Especially Law No. 89 of 2001, it only regulates fishery in general and does not even specify what species that are covered under it. Law No. 77 of 1996, however, regulates a little bit specific in regards with what species that it covers even though dolphins, again, are not included. Despite dolphins are not protected within those Laws, Japan provides report annually on how many dolphins that are caught, released and slaughtered together with the alteration of quotas that the government of Japan set each year.

²⁶¹ *Ibid*, art. 2 secs. (6) and (7).

²⁶² Accessed June 2, 2020. <https://www.jfa.maff.go.jp/j/suisin/attach/pdf/index-40.pdf>. Unofficially translated into Indonesian by the author using google translate.

²⁶³ Law No. 77 of 1996 on Preservation and Control of Marine Living Resources, art. 5.

²⁶⁴ *Ibid*, art. 5 sec. (3).

²⁶⁵ *Ibid*, art. 5 secs. (i) (ii) and (iii).

From the thesis author's point of view, Japan should adopt national law that specifically regulates protection of marine mammals *i.e.* dolphins. Even though Japan does make report regarding the hunting of dolphins each year, however, there is no specific regulation on protection of marine mammals. Had Japan adopted national law on the protection of marine mammals, it would have eased international society to monitor the hunting of dolphins categorized as migratory mammals that move from one jurisdiction to another. It will also in line with the spirit of Japan and its obligations as a Party to international agreement such as UNCLOS, CITES and also as a part of international society bound by international custom on environmental matters.

B. The Analysis of Dolphin Hunting Practice in Japan in Accordance with International Law

Within the regime of UNCLOS, the Convention differentiates highly migratory species and marine mammals from marine living resources in general, although highly migratory species and marine mammals could be categorized into marine living resources yet the Convention separates them. The regulations on marine mammals contained in article 65 for the regime of EEZ and in article 120 for the regime of high sea. Meanwhile, highly migratory species is regulated under article 64 of the Convention. Although many marine mammals are categorized as migratory species²⁶⁶ and mostly found within the regime of EEZ,²⁶⁷ however the Convention

²⁶⁶ Nele Matz-Luck and Johannes Fuchs, *Op. Cit.*, 508.

²⁶⁷ Rachele Adam, *Op. Cit.*, 170.

clearly regulates them differently. Therefore, only article 65 of the Convention will be used for analysis under this chapter.

Article 65 of the Convention, in the first sentence, gives coastal States capability to prohibit, limit or regulate the exploitation of marine mammals.²⁶⁸ Yet, the Convention does not specifically mention the standard of such prohibition, limitation or regulation on the exploitation of marine mammals. In the second sentence, the article dictates that State Parties shall cooperate in the conservation of marine mammals and work through the appropriate international organizations.²⁶⁹ However, languages in article 65 open to uncertainties and ambiguities recognized by scholars and even States interpret it contradictorily.²⁷⁰

The uncertainties and ambiguities contained in article 65, for examples, imply no criterias of conservation and management that coastal States or appropriate international organizations must take, the definition of international organizations and how such organizations are categorized appropriate to deal with conservation and management of marine mammals.²⁷¹ The phrase “international organization” gains so much attention from scholars, for instance, Professor Birnie. She argued that article 65 does not clearly specify what international organization or how

²⁶⁸ UNCLOS, art. 65.

²⁶⁹ *Ibid.*

²⁷⁰ Cameron Jefferies, *Marine Mammal Conservation and the Law of the Sea*, (New York: Oxford University Press, 2016), (no page is indicated)
https://books.google.co.id/books?id=j6CkDAAAQBAJ&pg=PT108&lpg=PT108&dq=appropriate+international+organizations+within+the+meaning+of+unclos&source=bl&ots=VYP5R4zMqL&sig=ACfU3U1tVBqZiV53QGVOMPic2EDQJXBweg&hl=id&sa=X&ved=2ahUKEwjE5u6Fk4HpAhW_gUsFHcGGBt4Q6AEwCnoECAcQAQ#v=onepage&q=appropriate%20international%20or%20organizations%20within%20the%20meaning%20of%20unclos&f=false.

²⁷¹ *Ibid.*

many appropriate international organization that States must work through.²⁷² However, according to the commentaries of UNCLOS, it mentions IWC,²⁷³ yet it is mentioned under the commentaries just for general discussion and comparison, means that indeed article 65 does not intend particular organizations.

Despite uncertainties and ambiguities, Cameron Jefferies gives logical interpretation. For example the duty to conserve, even though no international environmental treaties was well defined against “conservation”, he stated that this duty is not a mere forbiddance to over-exploit marine mammals, but it is also not a strict one to prohibit the exploitation at all.²⁷⁴ The phrase “international organizations”, according to him is not limited to IWC, but other organizations such as FAO, UNEP and other regional fisheries organizations can take part in conserving marine mammals.²⁷⁵ Different from Cameron, Professor Chris Wold has a very firm stands that the IWC itself is the only appropriate international organization within the meaning of article 65, even though the phrase in that article is plural “international organizations”.²⁷⁶

²⁷² *Ibid.*

²⁷³ George K. Walker, *Definitions for the Law of the Sea: Terms Not Defined by 1982 Convention*, (Leiden: Martinus Nijhoff Publisher, 2012), 100, https://books.google.co.id/books?id=zN8FBnxT8eEC&pg=PA101&lpg=PA101&dq=appropriate+international+organizations+within+the+meaning+of+unclos&source=bl&ots=Z4U00nVNua&sig=ACfU3U3LXIqVuQDn2JWv6OIEQesizdN9lw&hl=id&sa=X&ved=2ahUKEwjE5u6Fk4HpAhW_gUsFHcGGbt4Q6AEwDXoECAkQAQ#v=onepage&q=appropriate%20international%20organizations%20within%20the%20meaning%20of%20unclos&f=false.

²⁷⁴ Cameron Jefferies, *Op. Cit.* (no page is indicated).

²⁷⁵ *Ibid.*

²⁷⁶ Chris Wold, “Legal Opinion concerning Japan’s Duty to Cooperate with the International Whaling Commission with respect to Any Resumption of Commercial Whaling,” Legal Opinion, Lewis & Clark Law School, 2019, 12. Accessed May 3, 2020. <https://dx.doi.org/10.2139/ssrn.3410248>.

According to the official statement of IWC in its website, IWC recognizes that it does not regulate the hunting of small cetaceans (whales, dolphins and porpoises).²⁷⁷ Even members of IWC are having different point of views regarding the small cetaceans, some in position that IWC has jurisdiction over small cetaceans, some other not.²⁷⁸ IWC only facilitates and funds on the conservation of small cetaceans and encourages States to look for advice from Scientific Committee because it has a role in studying and exhorting small cetaceans.²⁷⁹

In regards with dolphin hunting practice carried out in Japan, despite controversial, it is in author point of view that the practice is legal within the regime of UNCLOS since there is no direct prohibition to hunt contained in the Convention. It only provides that the coastal State has the rights either to prohibit, limit or regulate the exploitation of marine mammals, in this case, dolphins, and to cooperate with international organizations for their conservation, management and study. Japan does not prohibit the dolphin hunting, instead, it limits such hunting. Even though Japan does not have specific regulation on dolphins, however, Japan limits the hunting by setting quota each year and providing report on how many dolphins that were caught, slaughtered and released to the ocean.

²⁷⁷ Official website of International Whaling Commission. Accessed May 6, 2020. <https://iwc.int/smallcetacean>.

²⁷⁸ *Ibid.*

²⁷⁹ *Ibid.*

In regards with duty to cooperate, Japan became the member of IWC for 68 years, from 1951 until 2019.²⁸⁰ The fact that Japan is no longer a member to IWC since 2019, does not mean that Japan is automatically in violation of article 65 since there is still debate on how that article be applied. If a State would like to challenge Japan before the ICJ whether it violates article 65 by withdrawing from IWC, that would be a good parameter for the same issue that might arise in future time.

Another related international instrument is CMS. Different from UNCLOS which protects dolphins and other small cetaceans under article 65 on marine mammals instead of highly migratory species under article 64, CMS categorizes all types of cetacean into migratory species as it focuses on migratory species either terrestrial or marine. CMS sets different obligations for States in protecting migratory species. Firstly, for those species that listed in Appendix I, State Parties are obliged to conserve, restore those species from extinction, prevent or remove or minimize such activities that impede migration and reduce or even control factors that likely endanger those species.²⁸¹ CMS strictly prohibits the taking of animals listed in Appendix I, however, exception exists if such taking for scientific purposes, to enhance the survival of affected species, to support the traditional subsistence users of such species and if there are extraordinary circumstances occur.²⁸² Secondly, for those species that

²⁸⁰ Official website of International Whaling Commission. Accessed May 6, 2020. <https://iwc.int/members>.

²⁸¹ CMS, art. III sec. (4).

²⁸² *Ibid*, art. III sec. (5).

listed in Appendix II, State Parties are obliged to accomplish agreement that would be beneficial for those species and give priority for them.²⁸³

State Parties are clearly prohibited to take those species in Appendix I unless certain requirements have been met, meanwhile, for those species listed in Appendix II, State Parties are obliged to conclude agreements that would be beneficial for the species listed in Appendix II. Those agreements that have been concluded by far concerning cetaceans are the 1991 Agreement on the Conservation of Small Cetaceans of the Baltic and North Seas (ASCOBANS) which entered into force in 1994 and the 1996 Agreement on the Conservation of Cetaceans of the Black Sea, Mediterranean Sea and contiguous Atlantic area (ACCOBAMS) which entered into force in 2001. Other Agreements concern on other species such as bats, gorillas, seals, albatrosses and petrels.

In Japan, the most hunted dolphins' species are striped dolphin, bottlenose and risso's dolphin. For example in the period of April 2015 to March 2016, 123 risso's dolphins, 66 bottlenose dolphin and 428 striped dolphins were caught.²⁸⁴ In the period of April 2017 to March 2018, 145 risso's dolphins, 366 striped dolphins²⁸⁵ and 177 bottlenose dolphins were

²⁸³ *Ibid*, art. IV sec. (3).

²⁸⁴ Hideyoshi Yoshida, "Japan Progress Report on Small Cetaceans Research, April 2015 to March 2016, with Statistical Data for the Calendar year 2015," Report, National Research Institute of Far Seas Fisheries, Japan Fisheries Research and Education Agency, 2016, 5. Accessed May 13, 2020. <https://www.jfa.maff.go.jp/j/whale/attach/pdf/research-15.pdf>.

²⁸⁵ Hideyoshi Yoshida, "Japan Progress Report on Small Cetaceans Research, April 2017 to March 2018, with Statistical Data for the Calendar year 2017," Report, National Research Institute of Far Seas Fisheries, Japan Fisheries Research and Education Agency, 2018, 4. Accessed May 13, 2020. www.jfa.maff.go.jp/j/whale/w_document/attach/pdf/index-17.pdf.

caught.²⁸⁶ Lastly, during the 2018/2019 season, 176 risso's dolphin, 256 striped dolphins and 308 bottlenose dolphins were caught.²⁸⁷

Those three species that were mostly hunted in Japan *i.e.* Bottlenose dolphin (*Tursiops truncatus ponticus*), striped dolphin (*Stenella coeruleoalba*) and risso's dolphin (*Grampus griseus*) are listed in Appendix I and Appendix II of CMS.²⁸⁸ Specifically, bottlenose dolphin is in Appendix I, meanwhile striped and risso's dolphins are in Appendix II. The protection of species under Appendix I and Appendix II is clear as has been explained above, that it is prohibited to catch any species listed in Appendix I. For those species under Appendix II, State Parties are encouraged to conclude agreement for their protection.

As the matter of fact, despite the protection of dolphins are clear under CMS, Japan is not a State Party to it therefore Japan does not have international obligation under CMS since States only bind to Convention they are Parties. Furthermore, Japan is not a Range State within the meaning of CMS for any type of dolphin,²⁸⁹ hence it is not obliged to conclude agreement for those species of dolphins listed in Appendix II.

A question may arise, whether obligation to conserve migratory species listed in Appendix I and conclude agreement for species listed in Appendix II can be categorized as customary international law therefore it

²⁸⁶ *Ibid*, 6.

²⁸⁷ Accessed May 13, 2020. <https://www.cetabase.org/taiji/drive-results/>.

²⁸⁸ Appendices I and II of the Convention on the Conservation of Migratory Species of Wild Animals (CMS), effective on 8 February 2015, 2, 6.

²⁸⁹ Official website for Convention on the Conservation of Migratory Species of Wild Animals. Accessed May 15, 2020. <https://www.cms.int/country/japan>.

will bind all States, particularly Japan, regardless they are not Parties to it. There are two settled requirements in establishing customary international law *i.e.* actual state practice and *opinio juris* of states.²⁹⁰ Those two requirements are cumulative, meaning that customary international law will not be established if one of them is not fulfilled. In the present case, *opinio juris* of states on international obligation to conserve migratory species is lacking. In the case of *North Sea Continental Shelf*,²⁹¹ the Federal Republic of Germany disagreed with Holland and Denmark regarding continental shelf lines over them. The Federal Republic argued that equidistance principle reflects customary international law, however, the Court rejected the Federal Republic's argument. The Court in point of view that during the draft discussion of Geneva Convention on Continental Shelf, equidistance principle was hesitantly proposed and only formed an experimental basis and thus not reflect customary international law.²⁹²

Similar approach can be applied in the present case. Thus, obligation to conserve migratory species cannot be regarded as customary international law due to unsettled status of migratory species whether they are common resources or not. During the draft of the CMS, the Federal Republic of Germany proposed that migratory species as a common resource shared by all states must be conserved and managed by join

²⁹⁰ Malcolm N. Shaw, *International Law*, 6th Ed. (New York: Cambridge University Press, 2008), 74.

²⁹¹ *Ibid.*, 85; *North Sea Continental Shelf*, International Court of Justice Reports, p. 3, 1969.

²⁹² *Ibid.*, 86; *North Sea Continental Shelf*, International Court of Justice Reports, 1969, 32–41.

actions.²⁹³ The third paragraph of the preamble also stated that migratory species is a common resource. However, those suggestions were dropped and as can be seen in the final text of CMS which does not specify migratory species as common resources.²⁹⁴ Such fact supports the lack of *opinio juris* that regards migratory species as common resources which can establish international obligation to conserve migratory species, particularly within the meaning of the CMS.

The next instrument is CITES. Even though CITES categorizes species into endangered with extinction, not necessarily endangered with extinction but might become so and not endangered at all, however, it does not ban such species particularly those which are listed in Appendix I. It only limits trade by providing strict regulation. Most of cetaceans Order, which include dolphins, are listed in Appendix II. According to the Convention, the status of species listed in Appendix II are not necessarily threatened with extinction, but might so if such trade is not strictly limited.²⁹⁵ All species that become the most hunted in Japan *i.e.* bottlenose, risso and striped dolphins are listed in Appendix II, different from CMS which categorizes them into separate Appendices.

Japan as a Party to CITES, still routinely export cetaceans Order, either those which are listed in Appendix I or Appendix II. For example in 2018, Japan exported species of cetaceans from Appendix I *i.e.*

²⁹³ Klemm Cyril De, "Migratory Species in International Law," *Natural Resources Journal* 29, 4 (1989): 952

²⁹⁴ *Ibid.*

²⁹⁵ CITES, art. II sec. (2).

Balaenoptera acutorostrata, *Megaptera novaeangliae* and *Eschrichtius robustus* to United States for either personal or scientific purposes.²⁹⁶ Japan also exported *Tursiops truncatus* (bottlenose dolphin) to China and Russia for the purpose of zoo and breeding, *Stenella coeruleoalba* (striped dolphin) and *Grampus griseus* (risso's dolphin) to China for the purpose of zoo.²⁹⁷

The trade of live dolphins species mentioned above therefore constitute various degree of risk against each species' population. The fact that Japan, according to CITES trade database, still export species of cetaceans either in Appendix I and Appendix II meaning that Japan has fulfilled requirements for exporting such as report from Scientific Authority that the export will not detrimental to the survival of the species, report from Management Authority that the species was caught not in contravention with domestic law and also the shipment of species is prepared properly to minimize injury and damage.²⁹⁸

In her research, Rachele Adam challenged the non-detriment findings submitted by the government of Japan to Secretariat of CITES in regards

²⁹⁶ Accessed June 6, 2020. Official CITES' Trade Database. [https://trade.cites.org/en/cites_trade/download/view_results?filters%5Btime_range_start%5D=2018&filters%5Btime_range_end%5D=2019&filters%5Bexporters_ids%5D%5B%5D=244&filters%5Bimporters_ids%5D%5B%5D=all_imp&filters%5Bsources_ids%5D%5B%5D=all_sou&filters%5Bpurposes_ids%5D%5B%5D=all_pur&filters%5Bterms_ids%5D%5B%5D=all_ter&filters%5Btaxon_concepts_ids%5D%5B%5D=136&filters%5Breset%5D=&filters%5Bselection_taxon%5D=taxonomic_cascade&web_disabled=&filters\[report_type\]=comptab](https://trade.cites.org/en/cites_trade/download/view_results?filters%5Btime_range_start%5D=2018&filters%5Btime_range_end%5D=2019&filters%5Bexporters_ids%5D%5B%5D=244&filters%5Bimporters_ids%5D%5B%5D=all_imp&filters%5Bsources_ids%5D%5B%5D=all_sou&filters%5Bpurposes_ids%5D%5B%5D=all_pur&filters%5Bterms_ids%5D%5B%5D=all_ter&filters%5Btaxon_concepts_ids%5D%5B%5D=136&filters%5Breset%5D=&filters%5Bselection_taxon%5D=taxonomic_cascade&web_disabled=&filters[report_type]=comptab).

²⁹⁷ Accessed June 6, 2020. Official CITES' Trade Database. [https://trade.cites.org/en/cites_trade/download/view_results?filters%5Btime_range_start%5D=2018&filters%5Btime_range_end%5D=2019&filters%5Bexporters_ids%5D%5B%5D=244&filters%5Bimporters_ids%5D%5B%5D=all_imp&filters%5Bsources_ids%5D%5B%5D=all_sou&filters%5Bpurposes_ids%5D%5B%5D=all_pur&filters%5Bterms_ids%5D%5B%5D=all_ter&filters%5Btaxon_concepts_ids%5D%5B%5D=136&filters%5Breset%5D=&filters%5Bselection_taxon%5D=taxonomic_cascade&web_disabled=&filters\[report_type\]=comptab](https://trade.cites.org/en/cites_trade/download/view_results?filters%5Btime_range_start%5D=2018&filters%5Btime_range_end%5D=2019&filters%5Bexporters_ids%5D%5B%5D=244&filters%5Bimporters_ids%5D%5B%5D=all_imp&filters%5Bsources_ids%5D%5B%5D=all_sou&filters%5Bpurposes_ids%5D%5B%5D=all_pur&filters%5Bterms_ids%5D%5B%5D=all_ter&filters%5Btaxon_concepts_ids%5D%5B%5D=136&filters%5Breset%5D=&filters%5Bselection_taxon%5D=taxonomic_cascade&web_disabled=&filters[report_type]=comptab).

²⁹⁸ CITES, art. IV sec. (2).

with trade live dolphins.²⁹⁹ In early 2000, the issue of trade live dolphins arose and public started to question the Secretariat of CITES regarding its view. In 2007 where Secretary-General of CITES made a press release concerning the live trade dolphins, and up to that time, despite international trade on dolphin were still carried out, there was no evidence that such trade was detrimental to the dolphins' population.³⁰⁰ The credibility of non-detriment findings by each State indeed causes question such as whether such non-detriment findings has been carried out objectively. The concept of non-detriment findings is therefore still become consideration.³⁰¹ It is worth to try to question the credibility of non-detriment findings by the government of Japan in order to find out whether the trade of dolphins threatens their survival or not.

The last analysis will be based on principles under international environmental law. The right to sovereignty over natural resources can be defined as the right of all States or peoples to use any kind of natural resources located within their territory (land and maritime spaces).³⁰² The meaning to use any kind of natural resources involves the manner of resource exploitation, conservation and management of natural resources, grant license for the exploitation of natural resources and even regulating

²⁹⁹ Rachele Adam, *Op. Cit.*, 167.

³⁰⁰ Accessed June 6, 2020. Official website for the Convention on International Trade in Endangered Species of Wild Fauna and Flora.
<https://www.cites.org/eng/news/sundry/2007/dolphin.shtml>.

³⁰¹ John Richard Caddel, *Op. Cit.*, 114.

³⁰² Endalew Lijalem Enyew, "Application of the Right to Permanent Sovereignty over Natural Resources for Indigenous Peoples: Assessment of Current Legal Developments," *Arctic Review on Law and Politics* 8, (2017): 222-245. Accessed May 18, 2020.
<http://dx.doi.org/10.23865/arctic.v8.947>.

the third party (foreign country) for such activities.³⁰³ The logic of this principle came from two essential ideas *i.e.* the sovereign equality of states and also prohibition to intervene within domestic jurisdiction.³⁰⁴

However, in exercising its sovereignty over natural resources, States have duty to respect the environmental norms. States are prohibited to cause damage to the others, especially where the damage caused by the exercise of sovereignty over natural resources. That is because environmental degradation can occur in one territory but spread to another territory of another State.³⁰⁵ Prohibition not to cause damage to other States was firstly held in the case of *Trail Smelter* where Canadian corporation caused air pollution to US' territory. The Tribunal ruled that any State is in position not to use or permit the use of its territory which likely to cause injury to another. In the case that injury categorized severe, thus, clear and convincing evidence are required.³⁰⁶

Prohibition not to cause damage to other States affects the sovereignty of State over its natural resources. It can be concluded that neither prohibition not to cause damage nor sovereignty over natural resources are absolute since both are having their own limitation. These two were adopted in principle 21 of Stockholm Declaration and principle 2 of Rio Declaration.

³⁰³ *Ibid.*

³⁰⁴ Jane A. Hofbauer, "The Principle of Permanent Sovereignty over Natural Resources and Its Modern Implications," LL.M. Theses, University of Iceland, 2009, 15.

³⁰⁵ *Ibid.*, 30.

³⁰⁶ *Trail Smelter, Loc., Cit.*

Another principle is intergenerational equity. This principle concerns on the obligation of the present generations to ensure the equitable distribution of responsibilities, especially regarding Earth's resources for the future generations.³⁰⁷ In other words, the people at the present time must leave the Earth's resources in good condition, even better, so that the people in the future can enjoy such resources as well.³⁰⁸ This obligation was also reported by United Nations Secretary General, that the living are sojourners on Earth and temporary caretaker of its resources.³⁰⁹

There are three basis forming intergenerational equity. Firstly, conservation of options, this means that each generation shall maintain the diversity of natural and cultural resources so that the future generations will not suffer in relation to enjoying such natural and cultural resources.³¹⁰ Secondly, conservation of equality, this concerns on the obligation of each generation to maintain the planet in good condition, no worse than which it was received.³¹¹ Thirdly, conservation of access, this means that each generation is entitled to legacy provided by the past generations and shall maintain that for the future generations.³¹²

The basis for principle of intergenerational equity which discusses the relationship between present and future generations can be founded in the

³⁰⁷ Jane A. Hofbauer, *Op. Cit.*, 34.

³⁰⁸ Otto Spijkers, "Intergenerational Equity and Sustainable Development Goals," *Sustainability* 10, (2018): 3.

³⁰⁹ United Nations Secretary General, "Intergenerational Solidarity and the Needs of Future Generations," A/68/322, 15 August 2013, 4.

³¹⁰ Edith Brown Weiss, "Intergenerational Equity: A Legal Framework for Global Environmental Change," in *Environmental change and international law: New challenges and dimensions*, edited by Edith Brown Weiss, (Tokyo: United Nations University Press, 1992), 10.

³¹¹ *Ibid.*

³¹² *Ibid.*

1972 Stockholm Declaration. For example, principle 1 of the Declaration states that man bears responsibility to maintain the environment for the present and future generations and thus has the rights to enjoy it.³¹³ Principle 2 also provides the same, that natural resources must be safeguarded for the future generations.³¹⁴ Principle 3 of the 1992 Rio Declaration also dictates the importance to maintain environment for the present and future generations.³¹⁵

From the foregoing explanation, although Japan has sovereignty over its natural resources, however it is under obligation not to cause damage to other States. In the analysis concerning CMS, it has been pointed out that one of the species of dolphin that becomes the most hunted in Japan is listed in Appendix I, meaning that species is endangered and cannot be hunted whatsoever unless certain requirements have been met. Dolphins are migratory species, therefore they migrate from one jurisdiction to other jurisdictions of States. If dolphins are hunted continuously, especially those particular species that are endangered, therefore it will indirectly affect other States' rights in relation to the possession of dolphins as marine natural resources. However, even though prohibition not to cause damage already gained status of customary international law which can bind Japan, this principle cannot be applied easily and if the damage is severe, there must be clear and convincing evidence.

³¹³ Stockholm Declaration, Principle 1.

³¹⁴ Stockholm Declaration, Principle 2.

³¹⁵ Rio Declaration, Principle 3.

In relation to intergenerational equity principle, it is obligations of all States and humankind to maintain the environment for the present and future generations, including natural resources. Even though the status of this principle is still unclear, whether it possesses customary status or not, but international treaties have often implicitly invoke the importance to maintain the environment for future generations. Even ICJ decisions in *Gabcikovo-Nagymaros* and *Legality of the Threat or Use of Nuclear Weapons* recognized this principle.

As conclusion, dolphin hunting practice in Japan might constitute violation of principles of not to cause damage to other States and also intergenerational equity. However, it needs further study, especially for principle not to cause damage to other States which requires clear and convincing evidence that damages occur to other States. So do for intergenerational equity principle which the status itself is still unclear whether possess customary international law status or not and how this principle properly applied in holding Japan responsibility.

CHAPTER IV

CLOSING

A. Conclusion

1. Dolphin hunting practice in Japan, which takes place around 6 months each year, has always been regarded as cultural life that relates to Japanese people's tradition and faith. That is why even though international community condemns such practice, Japan maintains it as Japan understands very well regarding the protection to cultural activity under international law. The government of Japan permits such hunting by considering scientific research and management of dolphins which will not lead to depletion of their populations. However, in terms of legal instrument, there is no specific law that regulates the protection of dolphins. Law No. 105 of 2014 on the amendment of Law No. 105 of 1973 on Welfare and Management of Animals does not cover the protection of dolphins because the Law refers the protection of mammals only in the possession of human beings, not wild animals. Law No. 89 of 2001 on Basic Fishery and also Law No. 77 of 1996 on Preservation and Control of Marine Living Resources also do not cover the protection of dolphins. The latter covers marine resources such as tuna, pacific saury, pollock alaska, horse mackerel, Japanese pilchard, Japanese spanish mackerel, squid, crab and blowfish.

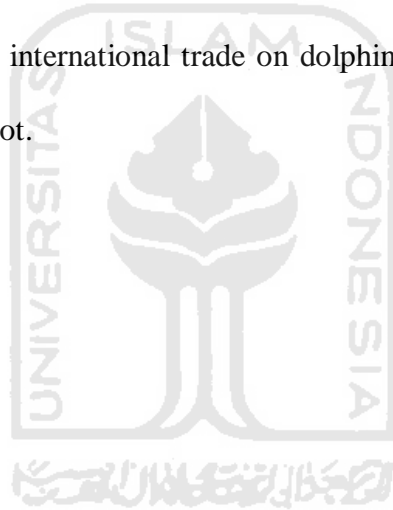
2. There are several international agreements providing the protection of dolphin such as UNCLOS, CMS and CITES. Principles of international environmental law such as sovereignty over natural resources, obligation not to cause damage to other States and intergenerational equity can also be used as approaches to the protection of dolphins in regards with their existence for human beings in general. There are some challenges in the application of those international agreements in regards to the protection of dolphin. Under UNCLOS, there is no direct prohibition to take dolphins but Japan, as a State Party must cooperate with relevant international organizations in conserving dolphins. However, this obligation has weakness in its application since there is no clear parameter of what relevant organization that Japan must cooperate with. Hence, the author concludes that the practice is in accordance with UNCLOS. Under CMS, the prohibition to take dolphins is clear, however, it is the matters of treaty obligation that bind State Parties. Since Japan is not a Party to it and obligation under the Convention is unlikely or not yet gain customary international law status hence no obligation bind Japan to comply. Under CITES, there is no issue at all towards international trade of dolphins since until now Japan still participates actively in export of dolphins which has already got permission from the Secretariat of CITES. However, the credibility of non-detriment findings is worth to be challenged in order to prove whether such

dolphins trade threatens their population or not which will also lead to whether Japan violates CITES by trading those dolphins. Under principles of sovereignty over natural resources, indeed, Japan has power to exploit whatever resources located within its territory. Nevertheless, Japan must also consider the impact of such exploitation to other States which might indirectly cause harm, particularly in relation to the enjoyment of population of dolphins by other States since they are migratory species. Japan must also be aware of the importance of intergenerational equity principle, meaning that those dolphins' species can be enjoyed for the future generations. Applying principle of not to cause damage to other States cannot be easy since it requires clear and convincing evidence whether damage really occurs. Intergenerational equity status is also unclear whether it gains customary status or not therefore it is hard to challenge Japan's responsibility.

B. Suggestion

1. The government of Japan shall adopt specific regulation on the protection of dolphins so that their protection is clear at least within domestic laws. This is important especially Japan has always considered its international obligation such as being under UNCLOS in applying its national laws on basic fishery and preservation and control of marine living resources.

2. Firstly, UNCLOS must provide clear parameter on how cooperation with relevant organization be conducted and what organization is actually the Convention refers to since even International Whaling Commission admits that it has no jurisdiction over small cetaceans. This would help the application of obligation under UNCLOS in regards with protection of dolphins. Secondly, during the Conference of Parties of CITES, it is worthy to propose the objectivity of non-detriment findings by the government of Japan in order to satisfy public whether international trade on dolphins actually threatens their population or not.



REFERENCES

Books

- Birnie Patricia W., "Marine Mammals: Exploiting the Ambiguities of Article 65 of the Convention on the Law of the Sea and Related Provisions: Practice under the International Convention for the Regulation of Whaling," in *The Law of the Sea: Progress and Prospects*, David Freestone, Richard Barnes and David Ong. <https://www.oxfordscholarship.com/view/10.1093/acprof:oso/9780199299614.001.0001/acprof-9780199299614-chapter-14>.
- Braig Jochen, "Whaling", in Rudiger Wolfrum (ed), Max Planck Foundation for International Peace and the Rule of Law, 2013. https://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690_e1236?prd=OPIL#law-9780199231690-e1236-div1-8.
- Churchill, R. R., and Lowe, A. V., *The law of the sea*, Manchester University Press, Manchester, 1988.
- Efendi Jonaedi and Ibrahim Johnny, *Metode Penelitian Hukum Normatif dan Empiris*, 1st Ed. Depok: Prenadamedia Group, 2016.
- Habu Junko, *Subsistence-Settlement Systems and Intersite Variability in the Moroiso Phase of the Early Jomon Period of Japan*. Michigan: International Monographs in Prehistory, 1959. https://books.google.co.id/books?id=7TR8DwAAQBAJ&pg=PA18&lpg=PA18&dq=whales+and+dolphins+in+Jomon+period&source=bl&ots=L-GDtq_mYK&sig=ACfU3U3mW1xvi6Nv3IdSyNSbtyjRtLKgw&hl=id&sa=X&ved=2ahUKEwi7p6Se6fPpAhUQIEsFHxzCBLMQ6AEwCnoECAsQAQ#v=onepage&q=whales%20and%20dolphins%20in%20Jomon%20period&f=true
- Ibrahim Johni, *Teori dan Metodologi Penelitian Hukum Normatif*. 3rd Edition. Bayumedia Publishing, 2007.
- Jefferies Cameron, *Marine Mammal Conservation and the Law of the Sea*. New York: Oxford University Press, 2016. <https://books.google.co.id/books?id=j6CkDAAAQBAJ&pg=PT10>

8&lpg=PT108&dq=appropriate+international+organizations+withi
n+the+meaning+of+unclos&source=bl&ots=VYP5R4zMqL&sig=
ACfU3U1tVBqZiV53QGVOMPic2EDQJXBweg&hl=id&sa=X&
ved=2ahUKEwjE5u6Fk4HpAhW_gUsFHcGGBt4Q6AEwCnoEC
AcQAQ#v=onepage&q=appropriate%20international%20organiza
tions%20within%20the%20meaning%20of%20unclos&f=false.

Kasuya Toshio, *Small Cetaceans of Japan: Exploitation and Biology*.
Boca Raton: CRC Press, 2017.
https://books.google.co.id/books?id=UrrODgAAQBAJ&lpg=PT197&lpg=PT197&dq=whales+and+dolphins+in+Jomon+period&source=bl&ots=w12eQmKi2L&sig=ACfU3U2EYmxBvC8In1_qWZNdQ_Don891oA&hl=id&sa=X&ved=2ahUKEwi7p6Se6fPpAhUQIEsFHXCBLMQ6AEwC3oECAwQAQ#v=onepage&q=whales%20and%20dolphins%20in%20Jomon%20period&f=false

Matz-Luck Nele and Fuchs Johannes, *The Oxford Handbokk of the Law of the Sea*, edited by Donald R. Rothwell, et. al., (2015).
<https://opil.ouplaw.com/view/10.1093/law/9780198715481.001.0001/law-9780198715481-chapter-22?prd=OPIL>.

O'Keefe Roger, "Cultural Life, Right to Participate in, International Protection", in Rudiger Wolfrum (ed), Max Planck Foundation for International Peace and the Rule of Law, 2011.
<https://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e770?rskey=bV0JMf&result=4&prd=OPIL>.

Perry Clare and Thornton Allan, *Towards Extinction The Explotation of Small Cetaceans in Japan*, Environmental Investigation Agency, Emmerson Press, 2000.

Shaw, Malcolm N., *International Law*. 6th Ed. New York: Cambridge University Press, 2008.

Stamatopoulou Elsa, *Cultural Rights in International Law*, Leiden/Boston: Martinus Nijhoff Publishers, 2007.

Starke, J. G., *An Introduction to International law*, 8th Ed. London: Butterworth, 1977.

Treves, Tullio, “Historical Development of the Law of the Sea”, in *The Oxford Handbook of the Law of the Sea*, edited by Donald R. Rothwell, Alex G. Oude Elferink, Karen N. Scott, Tim Stephens. Oxford Scholarly Authorities on International Law, 01 March 2015.

Walker, George K., *Definitions for the Law of the Sea: Terms Not Defined by 1982 Convention*. Leiden: Martinus Nijhoff Publisher, 2012.
https://books.google.co.id/books?id=zN8FBnxT8eEC&pg=PA101&lpg=PA101&dq=appropriate+international+organizations+within+the+meaning+of+unclos&source=bl&ots=Z4U00nVNua&sig=ACfU3U3LXIqVuQDn2JWv6OIEQesizdN9lw&hl=id&sa=X&ved=2ahUKEwjE5u6Fk4HpAhW_gUsFHcGGBt4Q6AEwDXoECAkQAQ#v=onepage&q=appropriate%20international%20organizations%20within%20the%20meaning%20of%20unclos&f=false.

Weiss, Edith Brown, “Intergenerational Equity: A Legal Framework for Global Environmental Change.” in *Environmental change and international law: New challenges and dimensions*, edited by Edith Brown Weiss. Tokyo: United Nations University Press, 1992.

Academic Journal

Adam, Rachelle, “The Japanese Dolphin Hunts: In Quest of International Legal Protection for Small Cetaceans”, (2008).

Altherr Sandra and Hodgins Nicola, “Small Cetaceans, Big Problems: A global review of the impacts of hunting on small whales, dolphins and porpoises”, (2018).

Butterworth Andrew, et. al. ”A Veterinary and Behavioral Analysis of Dolphin Killing Methods Currently Used in the “Drive Hunt” in Taiji, Japan”, *JOURNAL OF APPLIED ANIMAL WELFARE SCIENCE*, 16:184–204, (2013).

De, Klemm Cyril. "Migratory Species in International Law." *Natural Resources Journal* 29, 4 (1989).

Duits Kjeld, "Japanese Dolphin Drive Hunts; Right or Wrong?" *The Asia-Pacific Journal*, 3 (2005).

Enyew, Endalew Lijalem. "Application of the Right to Permanent Sovereignty over Natural Resources for Indigenous Peoples: Assessment of Current Legal Developments." *Arctic Review on Law and Politics* 8, (2017).
<http://dx.doi.org/10.23865/arctic.v8.947>.

Futrell, J. William. "Defining Sustainable Development Law." *Natural Resources & Environment* 19, 2 (2004).
https://www.jstor.org/stable/40924558?read-now=1&refreqid=excelsior%3A3381003d2a40c2be7015bd1d344b5bbc&seq=4#page_scan_tab_contents.

Gardner, Royal C. "Respecting Sovereignty." *Fordham Environmental Law Journal* 8, 1 (1996).
https://www.jstor.org/stable/44174287?read-now=1&refreqid=excelsior%3A1e24fb678d26f4c4513204f5a782c4ad&seq=1#page_scan_tab_contents.

Karou Tezuka and Fitzhugh Ben, "New Evidence for Expansion of Jomon Culture and the Ainu into Kuril Island", IKIP 2000 Anthropological Research in the Kuril Islands, Biodiversity and Biogeography of the Kuril Islands and Sakhalin, 2004, 1, 85-95.

M. Oremus, J. Leqata , Baker CS., "Resumption of traditional drive hunting of dolphins in the Solomon Islands in 2013." *R. Soc. open sci* 2 (2015).

McNeill David, "Taiji: Japan's Dolphin Cull and the Clash of Cultures." *The Asia-Pacific Journal* 5, 1 (2007).

Odello Marco, "The Right to Take Part to Cultural Life: General Comment No. 21 of the United Nations Committee on Economic, Social and

Cultural Rights”, *Anuario Español de Derecho Internacional* 27, (2011).

Perrez, Franz Xaver. “The Relationship Between Permanent Sovereignty and the Obligation Not to Cause Transboundary Environmental Damage.” *Environmental Law* 26, 4 (1996). https://www.jstor.org/stable/43267547?read-now=1&seq=2#page_scan_tab_contents.

Pratama, Addien Mirza, “Efektifitas International Whaling Commission (Iwc) Dalam Perburuan Lumba-Lumba ‘Taiji Drive Hunt’ Di Taiji Jepang 2013 – 2017.” *Journal of International Relations* 5, 2 (2019).

Soto, Max Valverde, “General Principles of International Environmental Law.” *ILSA Journal for International and Comparative Law* 3, 193 (1996).

Spijkers, Otto. “Intergenerational Equity and Sustainable Development Goals.” *Sustainability* 10, (2018).

Thornbury, Barbara E. “The Cultural Properties Protection Law and Japan’s Folk Performing Arts.” *Asian Folklore Studies* 53, 2 (1994). https://www.jstor.org/stable/1178644?read-now=1&refreqid=excelsior%3A67c81111c9bd23dd6763f065959d450a&seq=2#page_scan_tab_contents.

Trouwborst, Arie. “Prevention, Precaution, Logic and Law: The Relationship between the Precautionary Principle and the Preventative Principle in International Law and Associated Questions.” *Erasmus Law Review* 2, 2 (2009).

Waerebeek Koen Van and Reyes Julio C. “Post-Ban Small Cetacean Takes off Peru: A Review.” *Rep. Int. Whal. Commn (Special Issue 15)*, (1994). <http://www.vliz.be/imisdocs/publications/242682.pdf>.

Weiss, Edith Brown. "The Contribution of International Environmental Law to International Law: Past Achievements and Future Expectation." *Japanese Yearbook of International Law* 54, (2011).

Domestic Legislation

Law No. 89 of 2001 on Basic Fishery.

Law No. 77 of 1996 on Preservation and Control of Marine Living Resources.

Law No. 105 of 2014 on the Amendment of Law No: 105 of 1973 on Welfare and Management of Animals.

International Conventions/Declarations

"Convention on the Conservation of Migratory Species of Wild Animals." Opened for signature until June 22, 1980.

"Declaration of the United Nations Conference on the Human Environment." Stockholm, June 16, 1972.

"International Covenant on Economic, Social and Cultural Rights." Opened for signature December 16, 1966, registration no. 14531.

"The Convention on International Trade in Endangered Species of Wild Fauna and Flora." Opened for signature April 30, 1973 at Washington and December 31, 1974 at Berne, registration no. 14537.

"The Rio Declaration on Environment and Development." June 14, 1992.

"United Nations Convention on the Law of the Sea." Opened for signature until December 9, 1984, registration no. 31363.

"Universal Declaration of Human Rights." December 10, 1948.

“Universal Declaration on Cultural Diversity.” November 2, 2001.

International Court Decisions

North Sea Continental Shelf Case. International Court of Justice p. 3. (1969). <https://www.icj-cij.org/files/case-related/52/052-19690220-JUD-01-00-EN.pdf>.

The Corfu Channel Case. International Court of Justice p. 244. (1949). <https://www.icj-cij.org/files/case-related/1/001-19490409-JUD-01-00-EN.pdf>.

Trail Smelter Case, Arbitration Tribunal pp. 1905-1982, (1941). https://legal.un.org/riaa/cases/vol_III/1905-1982.pdf.

United States - Restrictions on Imports of Tuna. DS29/R WTO Panel. (1994). https://www.wto.org/dispu_e/gatt_e/92tuna.

Documents of International Organizations

General Assembly, General Assembly Resolution 1803 (XVII), “Permanent Sovereignty Over Natural Resources” 14 December 1962. <https://www.ohchr.org/Documents/ProfessionalInterest/resources.pdf>.

The Human Rights Committee, “Apirana Mahuika et al. v. New Zealand, Communication No. 547/1993” U.N. Doc. CCPR/C/70/D/547/1993, 2000.

United Nations Educational, Scientific and Cultural Organization, *Cultural Rights as Human Rights* (Paris: UNESCO, 1970).

United Nations Educational, Scientific and Cultural Organization, Recommendation on Participation by the People at Large in Cultural Life and their Contribution to it (26 November 1976).

United Nations Economic and Social Council, forty-third session, “General comment no. 21: Right of everyone to take part in cultural life (art. 15, para. 1 (a), of the International Covenant on Economic, Social and Cultural Rights),” E/C.12/GC/21, 21 December 2009.

United Nations Secretary General, “Intergenerational Solidarity and the Needs of Future Generations,” A/68/322, 15 August 2013.

Media Release

Agency for Cultural Affairs of Government of Japan. Accessed June 10, 2020.

https://www.bunka.go.jp/english/policy/arts_culture/index.html.

Agency for Cultural Affairs of Government of Japan. Accessed June 10, 2020.

https://www.bunka.go.jp/english/policy/cultural_properties/ainu/index.html.

Animal Protection Index. Accessed June 2, 2020.

<https://api.worldanimalprotection.org/country/japan>.

Animal Sake. Accessed July 13, 2019. <https://animalsake.com/animal-abuse-statistics>.

Ceta Base website. Accessed June 2, 2020.

<https://www.cetabase.org/taiji/drive-results/>.

CITES Trade Data Base. Accessed June 6, 2020.

https://trade.cites.org/en/cites_trade/download/view_results?filters%5Btime_range_start%5D=2018&filters%5Btime_range_end%5D=2019&filters%5Bexporters_ids%5D%5B%5D=244&filters%5Bi

mporters_ids%5D%5B%5D=all_imp&filters%5Bsources_ids%5D%5B%5D=all_sou&filters%5Bpurposes_ids%5D%5B%5D=all_pur&filters%5Bterms_ids%5D%5B%5D=all_ter&filters%5Btaxon_concepts_ids%5D%5B%5D=136&filters%5Breset%5D=&filters%5Bselection_taxon%5D=taxonomic_cascade&web_disabled=&filters[report_type]=comptab.

CITES Trade Data Dashboards. Accessed May 31, 2020. <http://dashboards.cites.org/national?id=JP>.

Dailiy Hadith Online. Accessed April 18, 2020. <https://abuaminaelias.com/dailyhadithonline/2012/08/29/kills-birds-yawm-al-qiyamah/>.

McCurry Justin, "Taiji dolphin hunt: activists to launch unprecedented legal challenge." *The Guardian*, February 13, 2019. Accessed June 2, 2020. <https://www.theguardian.com/world/2019/feb/13/taiji-dolphin-hunt-activists-to-launch-unprecedented-legal-challenge>.

Merriam-Webster dictionary. Accessed November 30, 2019. <https://www.merriam-webster.com/dictionary/dolphin>.

Ocean Care Website. Accessed April 27, 2020. <https://www.oceancare.org/en/our-work/animal-species-conservation/dolphins/dolphin-hunt-peru/>.

Official website of Convention on the Conservation of Migratory Species of Wild Animals. Accessed February 25, 2020. <https://www.cms.int/en/legalinstrument/accobams>.

Official website of Convention on the Conservation of Migratory Species of Wild Animals. Accessed February 25, 2020. <https://www.cms.int/en/legalinstrument/ascobans>.

Official website of Convention on the Conservation of Migratory Species of Wild Animals. Accessed October 15, 2019. <https://www.cms.int/en/legalinstrument/cms>.

Official website of International Whaling Commission. Accessed May 6, 2020. <https://iwc.int/smallcetacean>.

Official website of Marine Connection. Accessed November 30, 2019. <https://marineconnection.org/drive-hunts/>.

Official website of Ministry of Agriculture, Forestry and Fishery of Japan. Accessed May 31, 2020. <https://www.jfa.maff.go.jp/result.html?cx=015840603635610229114%3Ad5nyfxhiq78&ie=UTF-8&q=dolphin+quota&sa=%E6%A4%9C%E7%B4%A2&siteurl=www.jfa.maff.go.jp%2Findex.html&ref=www.jfa.maff.go.jp%2Fresult.html%3Fcx%3D015840603635610229114%253Ad5nyfxhiq78%26ie%3DUTF-8%26q%3Ddolphin%2Bexport%26sa%3D%25E6%25A4%259C%25E7%25B4%25A2%26siteurl%3Dwww.jfa.maff.go.jp%252Findex.html%26ref%3Dwww.jfa.maff.go.jp%252Fresult.html%253Fcx%253D015840603635610229114%25253Ad5nyfxhiq78%2526ie%253DUTF-8%2526q%253DJapan%252527s%252Bexport%252Bdolphin%2526sa%253D%2525E6%2525A4%25259C%2525E7%2525B4%2525A2%2526siteurl%253Dwww.jfa.maff.go.jp%25252Fj%25252Fgyosei%25252Findex.html%2526ref%253Dwww.jfa.maff.go.jp%25252Fj%25252Fgyosei%25252Findex.html%2526ss%253D5320j1810732j23%26ss%3D2730j668136j14&ss=2553j796177j13#gsc.tab=0&gsc.ref=%E6%B0%B4%E7%94%A3%E5%BA%81&gsc.q=dolphin%20quota&gsc.page=2>

Official website of Ministry of Agriculture, Forestry and Fishery of Japan. Accessed June 2, 2020. <https://www.jfa.maff.go.jp/j/suisin/index.html>.

Official website of Ministry of Agriculture, Forestry and Fishery of Japan. Accessed June 2, 2020. <https://www.jfa.maff.go.jp/j/suisin/attach/pdf/index-40.pdf>.

Official website of The Convention on International Trade in Endangered Species of Wild Fauna and Flora. Accessed May 31, 2020. <https://www.cites.org/eng/disc/parties/chronolo.php>.

Official website for the Convention on International Trade in Endangered Species of Wild Fauna and Flora. Accessed June 6, 2020. <https://www.cites.org/eng/news/sundry/2007/dolphin.shtml>.

The Foundation for Ainu Culture. Accessed June 10, 2020. https://www.ff-ainu.or.jp/english/files/together_08.pdf.

Quran online. Accessed April 17, 2020. <https://quran.com/5>.

Quran online. Accessed April 17, 2020. <https://quran.com/5/96-106>.

Ric O' Barry's Dolphin Project (A Non-profit Organization). <https://www.dolphinproject.com/campaigns/save-japan-dolphins/frequently-asked-questions/>.

Ric O' Barry's Dolphin Project (A Non-profit Organization). Accessed April 27, 2020. <https://www.dolphinproject.com/where-are-dolphins-protected/>.

Wakayama Prefecture Official' View on Dolphin Fishery at Taiji. https://www.pref.wakayama.lg.jp/prefg/071500/iruka/documents/dolphin_fishery.html.

Whale and Dolphin Conservation's Website. Accessed April 26, 2020. <https://us.whales.org/our-4-goals/stop-whaling/stop-dolphin-hunts/>.

Whale and Dolphin Conservation's Website. Accessed April 26, 2020. <https://us.whales.org/our-4-goals/stop-whaling/stop-dolphin-hunts/small-whale-and-dolphin-hunts-in-the-faroe-islands/>.

Miscellaneous

- Caddel, John Richard, *International Law and the Regulation of Cetaceans: An Analysis of the Role of Global and Regional Instruments and Institutions in the Conservation of Marine Living Resources*, Dissertation, 2009, UMI Dissertation Publishing.
- Hofbauer, Jane A. "The Principle of Permanent Sovereignty over Natural Resources and Its Modern Implications." LL.M. Theses, University of Iceland, 2009.
- Kumiko Ishikawa, *Whaling and Dolphin Hunting Problem As Philosophical and Cultural Issues*, February 17, 2014.
- Mukri Farheen and Ng Luois, ed., *SUFFERING, NOT SMILING: The Truth about Captive Dolphins*, Animal Concerns Research and Education Society.
- Proelß, Alexander. *Migratory Species, International Protection*. Max Planck Foundation for International Peace and the Rule of Law, 2009, para. 9. Accessed February 23, 2020. <https://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e1596?rskey=m6AzTd&result=2&prd=OPIL>.
- Rahman, Abd. "Binatang Buruan (Al-Asyd) Perspektif Al-Quran: Suatu Kajian Mawdui dalam Q.S. al-Ma'idah." S.Ag theses, Universitas Islam Negeri Alauddin Makassar, 2018.
- Ringelheim Julie, *The Rise Of Cultural Rights In International Human Rights Law*, Institute for Interdisciplinary Research in Legal Sciences (JUR-I), Centre for Philosophy of Law, CRIDHO Working Paper 2017/3, Universite Catholique de Louvain.
- Sipes, Emily Claire, *Philosophical-Legal Consideration for Ending Japanese Hunting of Small Cetaceans*, Theses and Dissertations, 2012, paper 1284.
- Wold, Chris. "Legal Opinion concerning Japan's Duty to Cooperate with the International Whaling Commission with respect to Any Resumption of Commercial Whaling." *Legal Opinion*, Lewis &

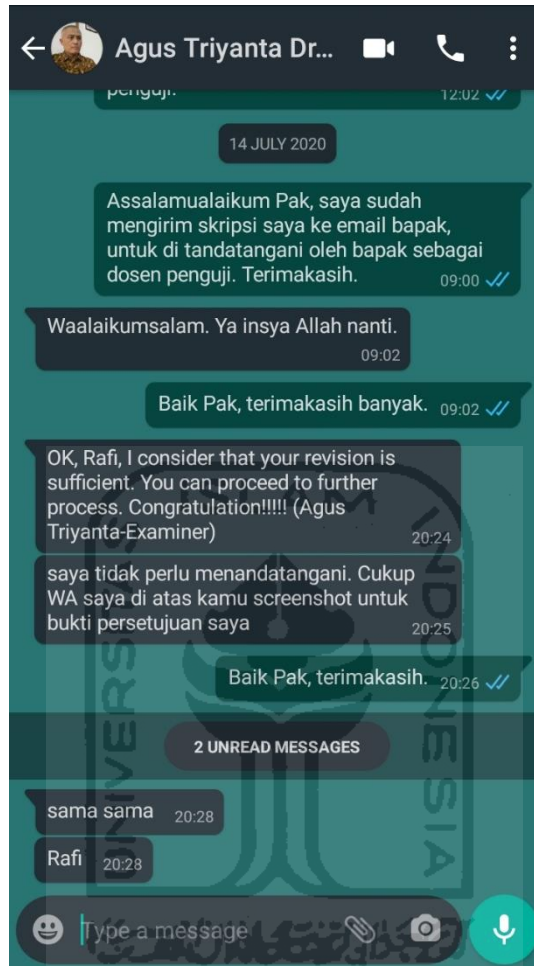
Clark Law School, 2019. Accessed May 3, 2020.
<https://dx.doi.org/10.2139/ssrn.3410248>.

Yoshida, Hideyoshi. “Japan Progress Report on Small Cetaceans Research, April 2015 to March 2016, with Statistical Data for the Calendar year 2015.” Report, National Research Institute of Far Seas Fisheries, Japan Fisheries Research and Education Agency, 2016. Accessed May 13, 2020.
<https://www.jfa.maff.go.jp/j/whale/attach/pdf/research-15.pdf>.

Yoshida, Hideyoshi. “Japan Progress Report on Small Cetaceans Research, April 2017 to March 2018, with Statistical Data for the Calendar year 2017.” Report, National Research Institute of Far Seas Fisheries, Japan Fisheries Research and Education Agency, 2018. Accessed May 13, 2020.
www.jfa.maff.go.jp/j/whale/w_document/attach/pdf/index-17.pdf.



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THE LEGAL ANALYSIS OF DOLPHIN HUNTING AS CULTURAL RIGHTS IN JAPAN UNDER INTERNATIONAL LAW

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THE LEGAL ANALYSIS OF DOLPHIN HUNTING AS CULTURAL RIGHTS
IN JAPAN UNDER INTERNATIONAL ¹LAW

THESIS

Presented as the Partial Fulfillment of the Requirements to Obtain a Bachelor's
Degree at the Faculty of Law
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Yogyakarta



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