

To What Extent Do Japan's Post-2014 Whaling Practices Demonstrate Shortcomings in Existing International Legal Frameworks, Thereby Supporting the Case for Criminalizing Biodiversity Destruction Under International Law?

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ABSTRACT

The legal protection of biodiversity is increasingly recognized as a matter of international concern. Nevertheless, the accelerating decline of biodiversity raises significant concerns regarding the effectiveness of existing legal frameworks, exposing structural limitations. This paper argues that the structural failures of the existing international whaling regime, as demonstrated by Japan's post-2014 conduct after the International Court of Justice judgment of 2014 ruling its whaling programs unscientific, provide a compelling legal basis for the criminalization of biodiversity destruction through the incorporation of ecocide as a fifth core crime under the Rome Statute. This argument is anchored in the International Court of Justice's landmark ruling *Whaling in the Antarctic* (Australia v. Japan, New Zealand intervening) [2014] International Court of Justice Reports of Judgments 226, which found Japan's scientific whaling programme inconsistent with the International Convention for the Regulation of Whaling, yet demonstrably failed to produce lasting compliance. Accordingly, this paper contends that institutional failure in biodiversity protection is characterized by weak enforcement mechanisms, limited regulatory scope, and a structural accountability deficit. This is examined through a case study of Japan's state conduct, with particular focus on the International Whaling Commission's institutional capacity to secure meaningful biodiversity protection, revealing specific enforcement deficiencies, regulatory gaps, and a structural accountability deficit that existing frameworks have proven unable to remedy. Collectively, this justifies the proposal for international criminalization of biodiversity destruction as the fifth core crime under the Rome Statute of the International Criminal Court.

KEY WORDS

Biodiversity destruction, Ecocide, International criminal law, Rome Statute, International Criminal Court (ICC), International Court of Justice (ICJ), International Whaling Commission (IWC), Whaling in the Antarctic (Australia v Japan, 2014), Scientific whaling, Environmental governance, State sovereignty, Treaty compliance, Soft law vs hard law, Institutional effectiveness, Marine biodiversity conservation, Legal accountability, Environmental justice, Sustainable Development Goals (SDGs), Convention on Biological Diversity (CBD)

INTRODUCTION

The accelerating loss of biodiversity at the global scale has become not only an environmental crisis but also a growing challenge for international environmental law and governance. This is despite binding and non-binding commitments under various instruments, including the Convention on Biological Diversity (CBD), to protect biodiversity and halt its loss (Carroll et al., 2022); however, these efforts have not curtailed the speed of loss unprecedented in human history. The International Union for Conservation of Nature (IUCN) Red List lists more than 48,600 species at risk of extinction while the gap between legally binding instruments and environmentally reliable outcomes continues to widen (*The IUCN Red List of Threatened Species*, n.d.).

Understanding the ambit of this legal challenge requires first establishing what biodiversity encompasses as both a scientific concept and a subject of international legal obligations. Biodiversity, at its most fundamental, denotes the variety of life on Earth (Vijeta et al., 2021). Furthermore, the Convention on Biological Diversity, 1992, Article 2 defines, “Biodiversity is the variability among living organisms from all sources including, inter alia, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part; this includes diversity within species, between species and of ecosystems” (Secretariat of the Convention on Biological Diversity, n.d.).

The legal protection of biodiversity is increasingly recognized as a matter of international concern and extending beyond the confines of domestic environmental policy. The ecosystem services provided by biodiversity, including climate regulation, food security, and disease prevention (Díaz et al., 2018), underpin obligations now reflected in instruments such as the Kunming-Montreal Global Biodiversity Framework, 2022 (Convention on Biological Diversity [CBD], 2022) and the Sustainable Development Goals (SDGs). State liabilities to the conservation of ecosystem services have been grounded in binding commitments under the Convention on Biological Diversity, particularly Article 8, focusing on the protection of biodiversity and ecosystems (Hughes & Grumbine, 2023). These are further operationalized through the targets of the Kunming-Montreal Global Biodiversity Framework (Hughes & Grumbine, 2023).

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Despite biodiversity's interconnectedness with humans, despite the growing legal and scientific consensus, anthropogenic activities continue to drive biodiversity loss at rates that existing regulatory frameworks have proven unable to arrest. The recent growing interest of researchers in the rapidly declining biodiversity has led to findings that establish hunting practices as one of the primary facilitators of biodiversity destruction (Vijeta et al., 2021). The cost and time-effective nature of specifically harmful hunting practices, such as explosive harpoons and steel-jaw traps, makes them more lucrative for societies to utilize (Hofer et al., 2000). This results in mass hunting of animals, specifically in commercial hunting, reducing their species at a much faster rate than at which they can be regenerated (unsustainable yield) (Maxwell et al., 2016).

Historically and to date, whales have been one of the most hunted species and have been subjected to commercial whaling (Rocha, Clapham, & Ivashchenko, 2014). An estimated 2.9 million large whales were killed by industrial whaling during the 20th century (Rocha, Clapham, & Ivashchenko, 2014). According to data from the International Whaling Commission, so far in the 21st century, thousands of whales have already been hunted (International Whaling Commission, n.d.). Globally, Japan is considered one of the significant whaling nations in recent decades (Sanada et al., 2025). Japan has a long history of whaling, with coastal hunts for food and cultural purposes dating back centuries (Hirata, 2005). By the mid-twentieth century, Japan had become one of the world's leading industrial whaling nations (Rocha et al., 2014).

The management of commercialized whaling under international law is a clear example of the enduring tension that exists between sovereignty, treaty obligations, and the exploitation of biodiversity in marine ecosystems. The post-World War II period saw Japan's commercialized whaling industry grow as a national policy to address food security concerns (Wakamatsu et al., 2022), with General Douglas MacArthur's approval during the Allied occupation (Hirata, 2005). The beginning of commercialized whaling is a product of this period, with whale meat becoming a staple food item in Japan in the 1950s and 1960s (Arch, 2016).

However, this has been increasingly at odds with emerging international legal standards on the conservation of marine biodiversity. The adoption of new techniques by Japan, such as explosive harpoons, intended to maximize yields, is a clear example of the escalating commercialized exploitation of marine biodiversity (Rocha et al., 2014; Wakamatsu et al., 2022). While this has been economically viable (Wakamatsu et al., 2022), it has been a significant contributor to the depletion of whale populations (Rocha et al., 2014), with concerns being raised by the international community on sustainability and conformity with emerging legal standards on conservation (Stephens, 2023; Clapham, 2015).

In this regard, the International Whaling Commission, which was created by the International Convention for the Regulation of Whaling, put in place a worldwide moratorium on commercial whaling in 1982, which was effective as of the 1985/1986 whaling season (International Whaling Commission [IWC], 1946; Clapham, 2015). Even though the Japanese initially objected to the moratorium, which would have allowed them to engage in commercial whaling, they finally withdrew their objection in 1987 under

international pressure, especially from the United States, and therefore became bound by the moratorium (Clapham, 2015; Hirata, 2005).

Nevertheless, the Japanese resorted to a major provision of the Convention that allowed them to engage in the activities of commercial whaling (Clapham, 2015). The provision, which is contained in Article VIII of the Convention, states that states may issue special permits that allow the killing of whales for the purposes of carrying out scientific research (IWC, 1946; *Whaling in the Antarctic (Australia v. Japan: New Zealand intervening)*, 2014). Therefore, the Japanese resorted to this provision of the Convention by engaging in the implementation of Japan's Whale Research Program under Special Permit in the Antarctic (Clapham, 2015; *Whaling in the Antarctic (Australia v. Japan: New Zealand intervening)*, 2014). The programme, particularly in the Antarctic, was undertaken under the guise of scientific research, although several states objected that it amounted to commercial whaling and was contrary to the object and purpose of the Convention (Clapham, 2015). The legal controversy surrounding this issue led to a case at the International Court of Justice (ICJ), where Australia challenged the legality of Japan's scientific whaling program (Fitzmaurice, 2015). In their 2014 judgment, the International Court of Justice ruled that Japan's program failed to satisfy the requirements of "scientific research" as mandated in Article VIII and ordered Japan to revoke the permits (*Whaling in the Antarctic (Australia v. Japan: New Zealand intervening)*, 2014; Fitzmaurice, 2015). However, Japan has been accused of continuing with the same activities in different forms and structures (Sanada et al., 2025). In December 2018, Japan announced that it would be withdrawing from the International Whaling Commission after it failed to garner support for the resumption of commercial whaling (International Whaling Commission [IWC], 2018). In 2019, Japan formally withdrew from the International Whaling Commission (Sanada et al., 2025). This is a limitation of international law, where the main driver of compliance is voluntary and where a state may choose to withdraw in cases where there is conflict with its interests.

The paper, therefore, evaluates the structural weaknesses of the International Whaling Commission as the primary focus, evidenced by Japan's exploitation of loopholes to commit whaling despite the moratorium. This evaluation will serve to demonstrate the inefficient provision of legal protection to biodiversity by the current legal frameworks. Ultimately, these failings help justify the urgent need for the international criminalization of biodiversity destruction under the Rome Statute of the International Criminal Court.

LITERATURE REVIEW

Institutional Ineffectiveness in Protecting Biodiversity

The question of why international institutions fail or become ineffective in promoting international cooperation on environmental protection has been a subject of debate within legal scholarship. While some attribute this failure to state behaviour, others point to the institution and interpretation of law. In her study on Japan's persistent support for whale hunting, Keiko Hirata suggests that resistance to the anti-whaling norm under the International Whaling Commission framework is largely explained by state interests and domestic political structures (Hirata, 2005). In this sense, non-compliance is not seen as a

failure on the part of international law but rather as a limitation on international law in controlling sovereign state preferences.

On the other hand, Jean d'Aspremont suggests that the weakening power and ineffectiveness of international institutions on environmental protection stem from problems with international adjudication (d'Aspremont, 2016). In this sense, he argues that misconceptions surrounding the interpretation of international law, particularly by international courts such as the International Court of Justice, obscure the distinction between sources of law and their interpretation (d'Aspremont, 2016). Thus, leading to confusion in international law on biodiversity protection (d'Aspremont, 2016).

From a third perspective, Phillip J. Clapham states that the exploitation of loopholes in the structural framework of the treaty is an important dimension that has contributed to the ineffectiveness of the International Whaling Commission as an international institution (Clapham, 2015). According to this argument, states have been able to implement measures that, although technically correct under the framework of the law, have been interpreted as circumventing the substantive intent of the moratorium on commercial whaling.

From the various perspectives, it is clear that the ineffectiveness of international environmental institutions is a function of the interplay between the sovereignty of states, the ambiguity of the law, and the existence of structural loopholes in the framework of the treaty.

All these authors agree that, despite being under the International Whaling Commission moratorium treaty, Japan has always remained pro-whaling, therefore establishing that the International Whaling Commission was, in fact, ineffective (d'Aspremont, 2016; Hirata, 2005; Clapham, 2015). This has been further elaborated and evidenced by Hirata, as she states that Japan never actually went anti-whaling (Hirata, 2005). As it continued whaling under Article 8 of the moratorium (Hirata, 2005) (discussed in detail in the main body), which permits whaling for scientific reasons, and later on, the whales can be commercially sold as well (International Whaling Commission [IWC], 1946, art. VIII). Some supporting statistics have been presented as well in the article regarding the fish catch of Japan (Hirata, 2005):

"In 1989–1994, the program involved the taking of approximately 330 minke whales per year. Then, in the 1995–1996 season, it began to extend into a wider area in the Antarctic to capture an additional 110 minke whales. Since then, Japan has been annually hunting 440 minke whales through JARPA."

"Furthermore, Japan began another whale research program in the North Pacific in 1994. This program, called the Japanese Research Whaling Program in the North Pacific (JARPN), involves the killing of an additional 100 minke whales annually."

"The broadened program, named Japanese Research Whaling Program in the North Pacific II, involves an annual catch of 100 minke whales, 50 Bryde's whales, and 10 sperm whales. The International

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Whaling Commission adopted a specific resolution calling on Japan to refrain from conducting the Japanese Research Whaling Program in the North Pacific II."

However, the authors have some distinguishing theoretical explanations for institutional ineffectiveness in protecting biodiversity. Hirata argues that states' domestic political interests and structures are the main reason leading to institutional ineffectiveness, using Japan as a case study (Hirata, 2005). She states that Japan's whaling industry is not large enough to financially pressure or influence state decisions regarding whaling, nor does it generate much revenue, nor any major contributions to Japan's economy (Hirata, 2005). Therefore, the whaling industry does not have enough power to dominate politics; the real power lies with the Fisheries Agency and the Ministry of Agriculture, Forestry, and Fisheries (MAFF), thus making them the policy makers (Hirata, 2005). They represent Japan at the International Whaling Commission, making claims that whales are abundant, denying their decreasing population, and that their whaling is sustainable and Japan has a legal right to whaling under Article 8 for scientific research (Hirata, 2005). Therefore, showcasing how intrastate political dynamics and centralized bureaucracy can affect state policies at international institutions, leading to inconsistency in treaty compliance. Therefore, resulting in their ineffectiveness. The bureaucrats and ministries have high competition for power amongst themselves. Hirata specifically theorizes that the Ministry of Agriculture, Forestry, and Fisheries does not comply with the conservationist expansion of the International Whaling Commission, as doing so would diminish its power amongst other Ministries (Hirata, 2005). Therefore, reiterating the significance of domestic political interest in shaping the interplay of foreign policies and the treaty ratification of a state.

Although Hirata positions domestic political interests as one of the major reasons for the ineffectiveness of the International Whaling Commission, Jean d'Aspremont criticizes the international judicial institutions' misconception of the legal frameworks as majorly contributing to the ineffectiveness of the International Whaling Commission. Jean d'Aspremont gives a deep theoretical argument revealing the International Court of Justice's doctrinal confusion during the Japan-Australia whaling case (d'Aspremont, 2016). His journal article analyses the International Court of Justice's judgment in the context of the International Convention for the Regulation of Whaling, Article VIII (scientific permits) and Article 31 of the Vienna Convention on the Law of Treaties (VCLT) (d'Aspremont, 2016). Article 31(3)(a) of the Vienna Convention on the Law of Treaties: subsequent agreement, and Article 31(3)(b): subsequent practice are the main rulings used by the International Court of Justice for this case (d'Aspremont, 2016; *Whaling in the Antarctic (Australia v. Japan: New Zealand intervening)*, 2014). The International Court of Justice blurred the lines between the source of law and the interpretation of law (d'Aspremont, 2016). The International Whaling Commission released resolutions regarding scientific permits to help interpret what counts as scientific research (d'Aspremont, 2016). Japan argued that the resolutions are non-binding, and so did the International Court of Justice's ruling, giving reference to Article 31a and b of the Vienna Convention on the Law of Treaties and classifying the International Whaling Commission resolutions as non-binding and reliant on state consent (d'Aspremont, 2016; *Whaling in the Antarctic (Australia v. Japan: New Zealand intervening)*, 2014). Here, Jean d'Aspremont argues that the court has confused the sources of law (treaties, policies, consent, custom), which require

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state consent to be binding, and the interpretation of law (what the law means), which does not require unanimous consent under a treaty for it to be binding on how the law is to be practiced (d'Aspremont, 2016). However, the court justified its decision by the application of the Vienna Convention on the Law of Treaties' articles mentioned above, which state that any resolution adding to the agreement/treaty must be consented to by the state parties to be binding (d'Aspremont, 2016; *Whaling in the Antarctic (Australia v. Japan: New Zealand intervening)*, 2014). However, the author's main criticism is that Article 31 is not the only interpretive effect that can be implied, as the International Court of Justice has restricted. Moreover, the International Court of Justice ruling contradicts its past case law, e.g., the certain expenses of the United Nations case (1962) and the legal consequences of the construction of a wall case (2004), as these cases implied a different interpretive effect based on majority vote, not a unanimous vote (d'Aspremont, 2016). This is a clear demonstration of doctrinal confusion and inconsistent passing of rulings despite existing past case law on similar issues. Thus, Jean d'Aspremont argues that such inconsistencies in judicial ruling methods are a major reason for restricted and weakened legislative/legal authority of international institutions, as they allow states to undermine their enforcement and accountability authority (d'Aspremont, 2016).

In contrast, Philip J. Clapham presents an opposing view. Instead of criticising judicial institutions or domestic political interests of a state being the major reason of ineffectiveness of environmental protection institutions as the International Whaling Commission, Clapham argues through his journal article "Japan's whaling following the International Court of Justice ruling: Brave New World – Or business as usual?", one of the significant reasons for the ineffectiveness of IWC is the structural loopholes and lack of legal authority (Clapham, 2015). Clapham positions the weaknesses within the institutions as the major factor, being their ineffectiveness and failure. Clapham mainly criticizes Article 8 on special permits for whaling conducted for scientific research purposes. Clapham argues that the International Whaling Commission lacks legal authority, which can be understood as a valid reason for its ineffectiveness, as it does not have an independent judicial third-party body to interpret and enforce rules (Clapham, 2015). Therefore, showcasing an integral gap in institutional accountability and a signal of weak structure, as the delegation is not strong enough, and vague articles such as Article 8 both signal towards the soft-law adaptations in the International Whaling Commission.

To synthesize, all three authors share a common ground regarding the ineffectiveness of the International Whaling Commission; however, they hold opposing views on the reasons for it. Hirata claims that domestic political interests and structure are the major constraints on International Whaling Commission effectiveness. Whereas, Jean d'Aspremont criticizes the international judicial institutions' misconception of the legal frameworks as the major cause of the ineffectiveness of the International Whaling Commission. Philip J. Clapham, in contrast, presents a completely opposing argument, criticizing the structural loopholes and lack of legal authority of the International Whaling Commission.

State Sovereignty & Resistance to Environmental Regulation

A major school of thought in the study of law has recognized the role of state sovereignty as an impediment in the functioning of international environmental law, especially with regard to the effectiveness of treaty-based regulatory systems (Bodansky, 2016). According to this school of thought, the weakness of international law is the result of the consensual nature of international law, which is reflected through treaties, policies, and memberships of intergovernmental organizations (Bodansky, 2016). In this regard, Keiko Hirata has argued that the sovereignty of states is not just an underlying principle, but the underlying rationale for the violation of international environmental law. Especially concerning the effectiveness of the International Whaling Commission (IWC), as sovereignty is protected through the principle of consent at the international level (Hirata 2005; Bodansky, 2016).

Phillip J. Clapham and Jean d'Aspremont, however, indirectly suggest the weakness of soft law-based international environmental law. Through their respective criticisms—Clapham's emphasis on the exploitation of loopholes in the law and d'Aspremont's emphasis on the instability of interpretation—both authors hint at the need to transition from soft-law to more rigid and legally enforceable regimes. This would necessarily involve a reconfiguration of state sovereignty, whereby the state would need to accept a greater level of constraint on its autonomy in order to achieve environmental regulation.

Hirata further substantiates her argument by identifying two distinct, though related, dimensions whereby state sovereignty impacts environmental regulation (Hirata, 2005). These two dimensions are the functional extension of the International Whaling Commission's mandate and cultural relativism (2005). Initially, the International Whaling Commission was created under the auspices of the International Convention for the Regulation of Whaling to regulate the practices of whaling in different regions of the world (IWC, 1946). The word "regulation" is of particular importance in this instance, as although the International Whaling Commission does not prohibit whaling per se, it does aim to ensure that such practices are conducted in a sustainable and controlled fashion (IWC, 1946; Hirata, 2005). This regulation of whaling practices would necessarily have been of minimal concern to a country such as Japan, where whaling practices were of significant cultural and economic importance.

Nevertheless, over time, the role of the International Whaling Commission has changed from regulation to conservation, culminating in the adoption of an all-encompassing moratorium on commercial whaling (Hirata, 2005; International Whaling Commission [IWC], 1982). This has essentially resulted in an increase in tensions with state sovereignty, given that the role of the International Whaling Commission has changed from one of conditional permission to one of near-total prohibition (Hirata, 2005). The moratorium was essentially implemented as a temporary measure with the objective of allowing whales to recover and avoid extinction (IWC, 1982; Clapham, 2015). In addition, the scope of conservation has been extended from whaling activities to other non-whaling activities that affect whales, including climate change, chemical pollution, noise pollution, marine debris, ship strikes, and whale watching (IWC, n.d.; Hirata, 2005). Although these activities are scientifically justified and increasingly being recognized by literature, including *The International Whaling Commission, Beyond Whaling*, there are legal implications of these activities, including concerns of institutional mandate and overreach and the extent to which an international organization may go in implementing these activities (Hirata, 2005; IWC, n.d.).

The expansion of the International Whaling Commission's mandate beyond the regulation of the practice of whaling has been opposed by some countries on the basis that these developments transcend the original mandate of the International Whaling Commission (Hirata, 2005). These objections, therefore, are driven by a mix of economic and political factors, as well as the maintenance of state sovereignty, especially as anchored by the doctrine of cultural relativism (Hirata, 2005).

For instance, the Japanese have consistently opposed the complete prohibition of commercial whaling on the basis that the consumption of whale meat is an integral part of their cultural heritage (Hirata, 2005). From a legal point of view, this opposition is viewed as an attempt by the Japanese state to call into question the validity of international regulatory norms that are deemed incompatible with their cultural values. State actors in Japan have, at some point, viewed the International Whaling Commission's conservation-oriented regulations as an attempt at cultural imperialism by Western states, while the broader population has been quick to point out the discriminatory nature of international regulations, especially concerning the consumption of other forms of game, such as cattle and kangaroo meat (Hirata, 2005). In this context of analysis, the study by Keiko Hirata demonstrates the role of cultural relativism as the doctrinal extension of the concept of state sovereignty as a justificatory principle of selective compliance with international environmental law.

Indeed, as such, the analysis by Hirata situates the concept of state sovereignty not merely as the formal concept of international law but as the substantive concept of international law as informed by the role of cultural relativism as an important limitation on the role and universality of international environmental law regimes.

While Hirata positions state sovereignty as a valid justification for state non-compliance with environmental treaties, Clapham and Jean d'Aspremont hold legal institutional authorities like the ICJ, and environmental institutions like the International Whaling Commission, responsible for it due to their soft law features and overly cautious legal rulings to protect state sovereignty. Although not directly said, Clapham's article signals institutions towards regime change in international environmental law from soft law features to hard law features. This may include the establishment of a binding adjudication to strengthen delegation, but a stronger delegation would result in more loss of state sovereignty, narrowing the wording of articles to decrease interpretation flexibility, so states cannot exploit them. The same can be concluded from Jean d'Aspremont's article as well: the establishment of a binding adjudication to make institutions more reliant on hard law than soft law, which may be ineffective and exploited by states like Japan. Therefore both the authors indirectly urging towards the need of incorporating more hard law features into the institutions to ensure effectiveness and implementation as hard law features, as suggested by articles "International Soft law" by Guzman and Meyer (2010), and "Hard and Soft Law in International Governance" by Abbott and Snidal (2000), due to their high compliance mandates lead to more effectiveness in implementation on the binding states.

To synthesize, all three authors share distinct views on state sovereignty as a justification for internal non-compliance with environmental laws and regulations. While Hirata identifies state sovereignty as a

principal explanation for state resistance to environmental treaty obligations, Clapham and d'Aspremont instead emphasize the role of legal and institutional design, arguing that weaknesses in the International Whaling Commission and the International Court of Justice have enabled continued non-compliance through soft-law characteristics and cautious judicial interpretation (Hirata, 2005; Clapham, 2015; d'Aspremont, 2016). They argue that state sovereignty is more of a constraint on international environmental law implementation, exploiting soft law, than just the protection of state sovereignty, as suggested by many scholars, such as "The Implementation Gap in Environmental Law" by Farber, D. A. (2016).

Animal Welfare, Moral Status, and Legal Protection

The moral and legal status of biodiversity, specifically animals, has long been a topic of debate among scholars. Particularly whether their capacity to experience pain and suffering is enough evidence to influence their legal protection (Singer, 2015). Animal Liberation holds the belief that the ability to suffer, not the kind of species, is the criterion required to assess moral consideration (Singer, 2015). This utilitarian perspective thus introduces the concept of "speciesism" to describe the unequal treatment of animals, with the unjustified privilege of human interests over those of non-human species (Singer, 2015). However, scholars like Carl Cohen argue that although humans have some ethical obligations towards animals, animals themselves can not be considered a legal person possessing legal rights in the same sense as humans do as they lack the capacity for moral agency and reciprocal duties humans are obliged with under the law (Cohen, 1986). More recently, environmental legal scholarship has shifted the discussion beyond individual animal welfare towards the protection of ecosystems and biodiversity as collective legal interests (Stone, 1972; Cullinan, 2011). Furthermore, authors including Christopher D. Stone and Cormac Cullinan argue that nature should receive legal protection, not only because of its benefits for humans but because the intrinsic value of ecosystems deserves legal recognition (Stone, 1972; Cullinan, 2011).

Collectively, the literature is reflective of the evolution from debates centered around animal welfare and their moral status towards broader discussions concerning the legal protection of biodiversity and ecological systems, providing an important theoretical foundation for surrounding contemporary proposals such as the criminalisation of ecocide (Higgins et al., 2013; Independent Expert Panel for the Legal Definition of Ecocide, 2021).

RELEVANCE OF THE RESEARCH & GAP IN RESEARCH

Articles in the literature review demonstrate that existing institutions are structurally limited and legally constrained, as state sovereignty remains more important. Many states still resist institutional authority,

demonstrating a political constraint on environmental law implementation (Baldwin et al., 2024). The studies mainly argue that conservation expansion does not necessarily equate to equal enforceable power, as it relies heavily on resolutions and soft law. This is highly relevant to my research as it demonstrates the need for more hard law features. Although Hirata, Clapham and Jean d'Aspremont have provided very insightful information on the origins and history of Japan's whaling activities and the Moratorium, alongside statistical whale catch data as evidence to claims on Japan remaining pro-whaling despite internationally projecting itself as a part of many of International Whaling Commission's policies, the main focus of the studies is Japan's noncompliance to anti whaling, why was Japan able to exploit International Whaling Commission and how it got away in the International Court of Justice. The articles have successfully established, through reasonable justifications, that the International Whaling Commission was unsuccessful in restricting Japan's commercial whaling. However, the article's primary focus was on why Japan would not give up whaling and the exploitation methods it used; it does not give a detailed analysis of the institutions' loopholes that Japan was able to exploit. Especially not discussing why Japan was not made to comply in the first place, forcibly continuing with its scientific whaling programs despite multiple advisories from the International Whaling Commission to retract its scientific programs, as they were classified as invalid and unscientific by the International Whaling Commission. Neither do the articles use their arguments to justify the inclusion of ecocide and the international criminalization of biodiversity destruction. Therefore, my paper aims to fill in this gap and contribute to this field by evaluating the effectiveness, in the context of their articles, structural authority, and jurisdiction power, of established international institutions, including the International Whaling Commission, International Criminal Court, and the International Court of Justice, in protecting biodiversity. Then, using this evaluation to justify the need for international criminalization of biodiversity destruction.

LIMITATIONS OF THE STUDY

This study has some potential limitations. The research methods mainly consist of black letter law analysis and evaluation of the Japan whaling case, in consideration of the International Whaling Commission and the International Court of Justice. Thus, the study is heavily constituted of secondary data and research methods, which is a limitation, as it may be a reason to source biased information in the study. Moreover, as the research framework is designed to support the notion of ecocide as a fifth core crime, it may lead to confirmation bias in the selection and interpretation of sources. This may result in lesser exploration and consideration of alternative complications and factors that constrain international environmental regulation, such as economic disparities and environmental and human rights priorities.

IMPLICATIONS FOR FUTURE RESEARCH

Future research may include more primary data collection, such as interviews of field-specific experts/individuals, in order to prevent source or author/confirmation bias and present information not only based on theoretical data but also evidenced by empirical data.

AREAS FOR FUTURE RESEARCH

This study currently only explores constraints on international environmental law regulation and uses it to justify the need for the international criminalization of biodiversity destruction. However, as it currently doesn't, future research may explore solutions to the inefficiencies and loopholes in the existing legal frameworks, or propose new designs of structural frameworks for international regulation and protection of biodiversity.

OBJECTIVES

- Justify the need for international criminalization of biodiversity destruction as the fifth core crime under the Rome Statute.
- Establish that biodiversity shall be granted legal personhood.
- Support the case for the ecocide movement
- To investigate the research question: *'To what extent do Japan's post-2014 whaling practices demonstrate shortcomings in international legal frameworks that support criminalizing biodiversity destruction under international law?'*

METHODOLOGY

This paper uses empirical methods. It provides a critique and evaluation of existing legal frameworks and institutions established to protect biodiversity, like the International Whaling Commission, International Court of Justice and International Criminal Court, with the International Whaling Commission being the major one, as the paper uses Japan as a case study for the argument. Additionally, this paper uses an analysis of articles from legal frameworks like the Rome Statute as well as an inclusion of the United Nations Sustainable Development Goals (UN SDG), using them as evidence to support and justify the need for the criminalization of biodiversity destruction as the fifth core crime under the Rome Statute. The use of doctrinal methods to showcase a connection between the existing laws and destructive activities- how those actions violate rules and if they were humans in place of biodiversity, it would have been considered a major criminal offence. The research methods employed, thus, are primarily secondary as the paper is heavily constituted of black-letter law analysis, also referred to as a doctrinal analysis.

EVALUATION OF THE IWC'S MORATORIUM'S EFFECTIVENESS IN PROTECTING BIODIVERSITY

The International Convention for the Regulation of Whaling (ICRW) and its governing body, the International Whaling Commission (IWC), were created to preserve the population of whales by regulating states' whaling practices. It primarily aimed to reduce the overexploitation of whales and ensure that whaling is conducted sustainably. The moratorium on commercial whaling, established in 1986, was set up to prohibit profit generation from whaling, as it states on the International Whaling Commission website: "In 1982 the International Whaling Commission decided that there should be a pause in commercial whaling on all whale species and populations from the 1985/1986 season onwards. This pause is often referred to as the commercial whaling moratorium, and it remains in place today."

The International Whaling Commission's moratorium treaty has been impactful to a certain extent, credited to some structural strengths. For states utilizing Article 8, which says "Government may grant to any of its nationals a special permit authorizing that national to kill, take and treat whales for purposes of scientific research" (International Convention for the Regulation of Whaling, 1946, art. VIII(1)), the treaty obligates states to report catch data and their research findings under the established programs and permits. This ensures transparency and traceability of states' whaling activities, which provides evidence of progress and possible abuse of the treaty and thus potential legal actions-like International Court of Justice using the reported catch data of Japan's program Japanese Whale Research Program under Special Permit in the Antarctic II when held under judicial review which resulted in the judgment against the legitimacy of Japanese Whale Research Program under Special Permit in the Antarctic II fulfilling scientific purposes and failing to meet the scientific research objectives used by International Court of Justice (*Australia v. Japan: New Zealand intervening*), 2014; Clapham, 2015). Moreover, dozens of countries complying with the moratorium create social and political pressure on states, prompting them to act more consciously and rationally in compliance with the treaty to preserve their international reputation and strengthen their network with other high-income states (Guzman, 2008). This, in turn, also limits the occurrence of abuse of the treaty (Clapham, 2015).

Although there are such strengths to the International Whaling Commission treaty, there are certain loopholes that threaten and limit the impact of the moratorium on commercial whaling. One of the most significant ones is the International Center for Research on Women, and Article 8 does not define the term 'scientific research' (d'Aspremont, 2016). This may lead to states misinterpreting 'scientific' and, in the case of countries like Japan, which run on commercial whaling, may take advantage of this loophole and exploit it to their benefit in the form of programs such as Japanese Whale Research Program under Special Permit in the Antarctic and Japanese Whale Research Program under Special Permit in the Antarctic II (Clapham, 2015; d'Aspremont, 2017). This marks a significant loophole in the Article, as it does not provide any objective standard or mandatory justification for the killing of whales to conduct scientific research. The International Court of Justice also ruled that Japan's catch of fish exceeded the

catch needed to conduct scientific research to a great extent, which was a determining factor in the legitimacy of Japan's claim of scientific research (*Whaling in the Antarctic*, 2014; Clapham, 2015).

Another major loophole is that Article 8 gives states the right to self-authorize permits, as it states, “**Government may grant** to any of its nationals a special permit...” (International Whaling Commission Website) (International Convention for the Regulation of Whaling, 1946, art. VIII(1); Clapham, 2015). States themselves issue permits for their scientific research without any external authority interfering. Any external approval or oversight is absent for the permit. The International Whaling Commission cannot veto or pre-approve the permits for states, and neither do any mandatory peer reviews exist before states begin their lethal whaling (Hayashi, 2016). This makes the effectiveness, legal implementation, and enforcement of the Articles subject to the goodwill of the states instead of enforceable, legally binding, strict rules. This marks an unreliability in the determination of the right usage of Article 8 and whether the moratorium has been effective or not. This demonstrates a structural weakness of its legal framework.

Although the International Whaling Commission does have a Scientific Committee to review the whaling programs under which states conduct scientific research through lethal whaling, the committee serves more as a suggestive body (Telesetsky, 2015). The committee does not possess the power to legally stop or approve programs (Moffa, 2016). Therefore, its suggestive and advisory findings are often ignored and many times dismissed as well in the name of politics rather than science (Sanada et al., 2025). Hence, even if the committee discovers a lack of scientific merit and abuse of the treaty through the programs, it cannot force compliance as it lacks the legal power to do so.

Another significant reason why states can abuse and exploit the treaty is its permissibility towards the commercial selling of whale meat (Endo & Yamao, 2007). This blurs the line between scientific and commercial whaling, as states can generate revenue from scientific programs, as they can claim to hunt whales for scientific research; however, they later sell it commercially, profiting from it, as other local hunters are not permitted to hunt and sell them, hence lower market competition as well (Endo & Yamao, 2007; Morishita, 2006). This incentivizes states to make more programs under which they can conduct commercial whaling, alongside retaining a good international reputation, as there is almost no awareness of the legitimacy of the scientific hunting of whales for research until an investigation is run through (Endo & Yamao, 2007; Clapham, 2015). Japan exploited this same loophole and sold whale meat commercially to a great extent, which is what made its programs a subject of suspicion for the world, and then Australia put into question the validity of the scientific research with the help of the International Court of Justice investigation (Endo & Yamao, 2007; *Whaling in the Antarctic*, 2014). Investigations and judgments are aided by international bodies such as the International Court of Justice, and the International Whaling Commission does not have the right to take states to the court; only countries can do that. In this case, Australia instituted proceedings against Japan before the International Court of Justice, which requires a lot of time, money, and political power (Statute of the International Court of Justice, 1945, art. 34(1); Alter, 2014). That too, the International Court of Justice investigation was slow and required external intervention. Japan continued decades of commercial whaling before the judicial review from the International Court of Justice (*Whaling in the Antarctic*, 2014). The ruling also only

applied to one program, the Japanese Whale Research Program under Special Permit in the Antarctic II, leaving the general framework the same for similar programs exploiting the treaty (*Whaling in the Antarctic*, 2014; Moffa, 2016). Hence, demonstrating the lack of enforcement power of the International Whaling Commission, making it ineffective in ensuring the protection of the whale population.

Another loophole of the International Whaling Commission is the lack of sanctions for abuse. There is no prescribed penalty for states that misuse the scientific exemption under Article 8. Even if states clearly violate the treaty through their scientific programs, there are no legal or financial penalties for it (Burns & Gillespie, 2015; International Convention for the Regulation of Whaling, 1946). Therefore, states violating the moratorium, still practicing commercial whaling, does not necessarily make it illegal under international law, making the treaty completely reliant on voluntary compliance (Burns & Gillespie, 2015). This allows states like Japan to fearlessly and legally continue exploiting the treaty with the help of their programs such as Japanese Whale Research Program under Special Permit in the Antarctic and Japanese Whale Research Program under Special Permit in the Antarctic II, as they do not have to face any legal consequences, reflecting the absence of enforcement power of the International Whaling Commission (*Whaling in the Antarctic*, 2014; Telesetsky, 2015). Even if external interference, like Australia in Japan's case, takes the matter to international courts, Japan cannot be prosecuted; it would only receive a judgment which is upon it whether to comply with it or not (United Nations Charter, 1945, art. 94; Alter, 2014). Even in the case of non-compliance, Japan would not be legally violating any ruling (Alter, 2014).

International laws and treaties like the International Whaling Commission's moratorium on whales itself rely heavily on state consent to determine its effectiveness (Bodansky & van Asselt, 2024). States have a choice in whether to comply or not; however, sometimes they are compelled to comply with treaties due to international pressure, like Japan (Hathaway, 2007; Hirata, 2005). Such states that are compelled to ratify the treaty often have conflicting agendas and goals with those of the treaty (Bodansky & van Asselt, 2024). Japan wanted to practice commercial whaling as it was crucial for its economy and became a staple food source, while the International Whaling Commission wanted to ban commercial whaling through its moratorium (Hirata, 2005). In such cases, states are left with three options: delay enforcement, exploit vague language, or exit completely. Japan chose the latter two (Hirata, 2005; *Whaling in the Antarctic*, 2014). It exploited the undefined meaning of scientific research (Clapham, 2015, and then, after the International Court of Justice rulings, it exited the International Whaling Commission completely (Hirata, 2005; Government of Japan, 2018), reflecting that states' sovereign power is a determining factor in the compliance and success of such treaties (Crawford, 2019; Bodansky & van Asselt, 2024). Therefore, signifying the need for states to give up some of their sovereignty to obtain an effective impact from such treaties on biodiversity.

The International Whaling Commission lacks an independent judicial enforcement mechanism, meaning that disputes concerning the abuse of the Convention may only be resolved before the International Court of Justice if a state chooses to institute proceedings against another state (*Whaling in the Antarctic*, 2014; Statute of the International Court of Justice, 1945, art. 34(1)). This is another major loophole because

even if states are abusing the moratorium, the International Whaling Commission does not possess the capability and is not eligible to question or start investigations on the states individually (Statute of the International Court of Justice, 1945, art. 34(1); Moffa, 2016). Although the International Whaling Commission can not independently try states, it doesn't even possess the authority to prosecute and take states to international courts (Statute of the International Court of Justice, 1945, art. 34(1); Moffa, 2016), which highly weakens its authority, suggesting that it does not have any real power, demonstrating it as a practitioner of soft power (the ability to influence another party's actions through the use of diplomacy and negotiation in global politics (Nye, 2004)). Only another state can institute proceedings against a treaty-abusing state before the International Court of Justice (Statute of the International Court of Justice, 1945, art. 34(1)), as enforcement and effectiveness of treaties and covenants are highly dependent on initiated state actions, which are mostly determined by their political interest (Bodansky & van Asselt, 2024; Hathaway, 2007). This weakness was demonstrated in the Japan-Australia case (*Whaling in the Antarctic*, 2014). Australia took Japan to the International Court of Justice, alleging its scientific permit was invalid (*Whaling in the Antarctic*, 2014). The International Court of Justice exercised jurisdiction only after Australia instituted proceedings against Japan (*Whaling in the Antarctic*, 2014); it was not the International Court of Justice that took Japan to the International Court of Justice, but it was Australia, another state member of the International Court of Justice, that took Japan to the court (*Whaling in the Antarctic*, 2014). This failure of soft power to conserve and protect biodiversity through bodies like the International Court of Justice highly justifies the need to resort to the use of hard power (the ability to influence another party's decision through the use of force and coercion in global politics (Nye, 2004)) in the form of international criminalization of biodiversity destruction as the fifth core crime under the Rome Statute (Higgins et al., 2013). The International Criminal Court (ICC) has the authority and power to prosecute, investigate, and punish criminal offences (Rome Statute of the International Criminal Court, 1998).

Furthermore, another major flaw of the International Whaling Commission's moratorium was its absence of catch limits with fixed quotas for countries allowed to whale under the exception of Special Permit whaling (Moffa, 2016; *Whaling in the Antarctic*, 2014). This can be seen as a major loophole, as countries like Japan, which are obligated to the moratorium, can later on resort to abusing the treaty through this (Clapham, 2015). This is because countries such as Japan can determine their own sample sizes for scientific whaling programmes under permits issued by their own governments, without internationally binding catch quotas or prior approval from the International Whaling Commission (Moffa, 2016; *Whaling in the Antarctic*, 2014). This can disrupt whale population levels, and because oversight of scientific whaling programmes is limited to non-binding scientific review, states may continue such programmes despite criticism from the International Whaling Commission's Scientific Committee (Moffa, 2016; Clapham, 2015). As this highly threatens the whale population and their rejuvenation rate, it can dissolve the sole purpose of the moratoriums and the International Whaling Commission's establishment, i.e., "...the Convention states that its purpose is to provide for the proper conservation of whale stocks..." (International Convention for the Regulation of Whaling, 1946, pmbl.; Moffa, 2016). This is a demonstration of major structural weakness in the IWC, and although the International Court of Justice ruled out after thorough investigation that the number of whales caught by Japan was unnecessary, as it

exceeded the actual required catch for the project, clearly exposing a major loophole, there were still no actions or amendments made by the International Whaling Commission to prevent countries from abusing the treaty in the future (Moffa, 2016; *Whaling in the Antarctic*, 2014). This showcases that legal frameworks like the International Whaling Commission are largely normative rather than enforceable. Even after the International Court of Justice's-the largest United Nations judicial body- ruled out the Japanese violation, the International Whaling Commission still failed to translate the legal jurisdiction and clarification made by the International Court of Justice into a legally binding reform (Moffa, 2016; *Whaling in the Antarctic*, 2014). This demonstrates that the International Whaling Commission prioritizes political consensus more than effective enforcement of the treaty, significantly undermining its credibility as a biodiversity conservation body. It also demonstrates how international biodiversity protection law heavily relies on self-restraint from countries to ensure effective enforcement. Lastly, this proves that identifying the problems does not ensure legal enforcement and correction of the problem. Just as the International Whaling Commission has increasingly proceeded to acknowledge and identify the mass whaling (commercial, especially), threatening the whale populations in the Antarctic region specifically, it has failed to make its treaties enforceable to a great extent, sometimes due to abuse of treaties and sometimes due to noncompliance by states (Hirata, 2005; Bodansky & van Asselt, 2024; Moffa, 2016).

IWC not constituting fixed catch quotas not only allows states to exploit and exceed the sustainable yield of whales but also allows states to resort to lethal hunting methods such as explosive harpoons (Moffa, 2016; International Whaling Commission, n.d.). This is a major limitation of the treaty as protection of whales does not only mean lowering the catch of every state, but also ensuring that whales are hunted morally and ethically. Lethal hunting methods such as explosive harpoons can cause severe tissue damage, destruction of internal organs, and prolonged suffering before death, raising significant animal welfare concerns (Butterworth et al., 2013; International Whaling Commission, 2023). All animals should be hunted in an ethical way where they receive a minimal amount of pain, and there is no prolonged death, as they are sentient creatures who experience emotions such as pain as vividly as any human does (Birch et al., 2021; World Organisation for Animal Health, 2023). Therefore, they should be granted the same ethical treatment under the law as humans are.

In conclusion, although the moratorium does have many strengths like a scientific committee reviewing and keeping record of whaling activities of states and international, political and social pressure compelling states to comply to the moratorium, there are many loopholes in its legal frameworks such as no clear definition of scientific research, self authorized permits, suggestive model, allowance to commercially sell whale meat, lack of sanctions for abuse and heavy reliance on state consent. These loopholes outweigh the strengths and undermine their contribution to the objective of the treaty, which is the prohibition of profit generation from whaling by banning commercial whaling (International Convention for the Regulation of Whaling, 1946; Bodansky & van Asselt, 2024). These weaknesses of the International Whaling Commission illustrate why there is a need for stronger non-compliant legal frameworks that charge biodiversity destruction not only as a violation of a treaty but as a criminal offence for which states will be penalized at international courts and receive sanctions for abuse of the legally binding treaties and covenants.

THE NEED FOR ECOCIDE AS THE FIFTH CORE CRIME UNDER THE ROME STATUTE

The Hague hosts two major international judicial institutions: the International Court of Justice (ICJ), the principal judicial organ of the United Nations, and the International Criminal Court (ICC), an independent international criminal tribunal established by the Rome Statute (United Nations, n.d.; Rome Statute of the International Criminal Court, 1998). The International Court of Justice functions to resolve conflicts amongst states and issues rulings on them, whereas the International Criminal Court convicts and gives jurisdiction against individuals who have committed war crimes, genocide, or crimes against humanity (United Nations, n.d.; Rome Statute of the International Criminal Court, 1998). The major distinction between the International Criminal Court and the International Court of Justice comes in the legal authority to punish. The International Court of Justice can only render verdicts against states with their consent to appear in court, whereas the International Criminal Court has the legal authority to try individuals and sentence them to up to 30 years or even life imprisonment for very serious criminal offences (Statute of the International Court of Justice, 1945; Rome Statute of the International Criminal Court, 1998).

The International Criminal Court operates and exercises jurisdiction, referring to the Rome Statute (International Criminal Court, 2011). The Rome Statute consists of 4 core international crimes, which are the baselines for all of its other criminal jurisdictions (International Criminal Court, 1998, art. 5). The four core international crimes of the Rome Statute are genocide, war crimes, crimes against humanity, and the crime of aggression (International Criminal Court, 1998, art. 5).

Rome Statute: Article 6 of the Rome Statute is on Genocide (Rome Statute of the International Criminal Court, 1998, art. 6). It states:

“... ‘genocide’ means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

(a) Killing members of the group;

(b) Causing serious bodily or mental harm to members of the group; ...” (Rome Statute)

As this Article states, any serious bodily or mental harm to members of a specific group constitutes genocide. By this definition, the lethal hunting methods, such as explosive harpoons and mass hunting of specific animals, like whales, should be penalised under this Article, including mass commercial whaling, as they are done to benefit one economically (Hirata, 2005; Clapham, 2015), whilst substantially threatening the population of the whales in the Antarctic region. Researchers have observed a rapid decline in the whale population primarily due to commercial whaling, until the International Whaling Commission moratorium (Clapham & Baker, 2009; International Whaling Commission, n.d.). Non-governmental Organizations like Sea Shepherd and activists like Paul Watson proactively worked to stop whaling ships from hunting whales in the Antarctic (Sea Shepherd Global, n.d.; Watson, 2019). The

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International Criminal Court does not penalize states responsible for such actions, as the Rome Statute does not offer any ruling or article regarding such issues (International Criminal Court, 2011, arts. 1, 5; Higgins et al., 2013). A question to raise at this point is whether the International Criminal Court does not deem the offences against biodiversity as criminal offences, giving humans the inherent legal right to their destruction, or does it not consider biodiversity protection as such a big issue to run it in an international legal forum as such itself? Why does the International Criminal Court not include ecocide as the fifth core crime under the Rome Statute?

The Rome Statute, further in relation to crimes against humanity under Article 7, Paragraph 2, defines torture as:

“Torture” means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person” (International Criminal Court [ICC], 1998, art. 7(2)(e))

According to the definition of the Rome Statute on torture, mass commercial whaling using harmful hunting methods, such as explosive harpoons, itself constitutes torture. The Statute only classifies infliction of severe pain or suffering on humans as torture; the same treatment done to animals is legally unprotected under the Rome Statute, a statute that prosecutes individuals for criminal offences. Does this mean that the Rome Statute does not consider animal torture as a criminal offence? Although many countries around the world have legislated animal torture as illegal under their constitutions, there is a lack of domestication, effective enforcement, and protection of the law (Favre, 2017; World Organisation for Animal Health, 2023). Many states' gross domestic product (GDP) runs on mass hunting, like Japan during the moratorium, specifically using harmful hunting methods to maximize profits, therefore resulting in them prioritizing economic growth over biodiversity protection (Hirata, 2005; Clapham, 2015).

Equality and protection apply to all, whether a human, animal, or plant. Justice should not be limited to humans only. A fair and just society is formed upon the basis of justice, fairness, and equality. UN's Sustainable Development Goals (SDGs) promote this too. SDG number 14, “Life Below Water,” states:

“Conserve and sustainably use the oceans, seas and marine resources for sustainable development.” (United Nations, n.d.)

There is no restriction on using the environmental resources available to us; using them unsustainably and causing harm to them is the real problem. SDG number 15, “Life on Land,” states:

“Protect, restore and promote sustainable use of terrestrial ecosystems, sustainably manage forests, combat desertification, and halt and reverse land degradation and halt biodiversity loss,” (United Nations, n.d.)

This specifically discusses the protection of biodiversity and its importance. If biodiversity is a crucial part of overall sustainable development, and many states have not been able to effectively domesticate

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and enforce the protection of biodiversity (United Nations Environment Programme [UNEP], 2019; Bodansky & van Asselt, 2024). The real question to ask at this point is: Are we truly prospering and developing when this is our attitude towards protecting biodiversity? Humans have been working on extremely intricate scientific developments and technological advancements ever since the Industrial Revolution. If humans can achieve success in such a rigorous department of development, then why not the protection of biodiversity, a very simple task to achieve if committed to it? It seems, after all, it's the lack of incentive and interest that is the cause of mass biodiversity destruction and weak legal structures for its protection. The Rome Statute is majorly anthropocentric; it does not address biodiversity protection directly (Higgins et al., 2013). It only protects biodiversity under article 8(2)(b)(iv)-War crimes:

“Intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated;” (International Criminal Court, 2011, art. 8(2)(b)(iv))

The Rome Statute should have explicit inclusion of biodiversity protection; it currently protects biodiversity only under extreme long-term and widespread damage during wartime conditions. This article is greatly limited because of its conditions, like the destruction should be widespread and long-term specifically due to, and during, wartime conditions, therefore making this article applicable only in the context of international armed conflicts. Due to its very high threshold for prosecution, as the environmental damage is required to be “widespread, long-term and severe,” no cases have ever been successfully prosecuted under this particular provision (International Criminal Court, n.d.; Schabas, 2020). Although the ICC has issued arrest warrants against Russian officials in relation to the conflict in Ukraine, none concern prosecutions under Article 8(2)(b)(iv), and no case has yet established judicial precedent for the environmental war crime provision (International Criminal Court, n.d.).

In relation to this, United Nations Sustainable Development Goal number 16, “Peace, justice and strong institutions,” states: “Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels.” (United Nations, n.d.) This proves how substantially significant the establishment of ‘inclusive’ institutions is for the provision of ‘justice for all’, which means that the animals get justice too in order to ensure meaningful, sustainable development.

Furthermore, the ICJ advisory Opinion 2025 reflects the legal obligations regarding biodiversity and environmental protection, as well as the need for their legal enforcement (International Court of Justice, 2025). It establishes that environmental law and biodiversity destruction violate human rights; it is therefore a direct violation of international law as well (International Court of Justice, 2025). For decades, countries globally have signed treaties like the Paris Agreement, the Convention on Biological Diversity, and the United Nations Framework Convention on Climate Change (UNFCCC), promising to protect the environment; specifically, through reducing emissions and protecting biodiversity, conserving nature, and preventing environmental destruction (United Nations, 1992a; United Nations, 1992b; United Nations,

2015). However, one of the core problems faced was countries breaking these promises. Many countries, despite signing the agreement, continued to burn fossil fuels, destroy forests, pollute the oceans, reduce biodiversity, and exceed emission targets (United Nations Environment Programme, 2024; Intergovernmental Panel on Climate Change, 2023). Despite this, there were almost no legal consequences for these states. If another country suffered because of climate change caused by a different country, there were no clear legal consequences (Voigt, 2021; Bodansky, Brunnée, & Rajamani, 2017). Small island nations like Vanuatu began facing rising sea levels, disappearing coastlines, saltwater entering freshwater, destruction of fisheries, and stronger cyclones (Intergovernmental Panel on Climate Change, 2022; United Nations, 2023). These not only affected the biodiversity of the ecosystems being affected but the human rights of the nearby populations as well (Intergovernmental Panel on Climate Change, 2022; International Court of Justice, 2025). Vanuatu took the initiative to question whether countries are legally obliged to protect human rights and, if environmental destruction in the form of climate change threatens human rights, then shouldn't states have legal obligations to prevent climate change and similar biodiversity-destructive activities (United Nations, 2023; International Court of Justice, 2025)? After years of persuading other countries, eventually, when the UN General Assembly adopted resolution 77/276, nearly every country voted in favour of requesting an advisory opinion (United Nations, 2023). The General Assembly, after this, officially requested an advisory opinion from the ICJ (United Nations, 2023; International Court of Justice, 2025). The court established that environmental protection is not merely a policy; instead, it is a legal obligation (International Court of Justice, 2025). Before this, environmental law was viewed as a separate, independent issue (International Court of Justice, 2025). However, the court changed this view. Climate obligations arise from multiple areas of international law. This includes climate treaties, such as the UNFCCC and the Paris Agreement; human rights law, as biodiversity and environmental destruction threaten life, health, food, water and housing, therefore states' human rights obligations become dependent on environmental law obligations as well; Customary international law, states already have a general duty not to cause significant environmental harm to other states which the court strongly reaffirmed; and the law of the sea, states also have internal obligations to protect the marine environment (International Court of Justice, 2025). Through this, the court established state responsibility and legal obligation upon them for environmental protection (International Court of Justice, 2025). However, there is still a lack of any criminal consequence in case of violations of this legal obligation (Independent Expert Panel for the Legal Definition of Ecocide, 2021). Hence a major gap in international law. Ecocide is proposed to fill that gap, as becoming the fifth core crime under the Rome Statute would result in criminal consequences. As environmental destruction is no longer just an issue of animal welfare and morality, it is an issue violating/ threatening human rights as well; it further justifies the need for ecocide as the fifth core crime under the Rome Statute.

The inclusion of ecocide in the Rome Statute, to ensure biodiversity and human rights protection, is highly important, mainly due to its possession of prosecution authority (Independent Expert Panel for the Legal Definition of Ecocide, 2021; International Court of Justice, 2025). The International Court of Justice can pass legally binding judgments to settle disputes between states, however, enforcement is all reliant on state compliance as the ICJ does not have an independent enforcement mechanism (United Nations, 1945, art. 94). Just like the Australia-Japan case, it also does not have the power to initiate

proceedings on its own, as only another state/states need to be involved and bring the other party to court (International Court of Justice, 1945, arts. 34–36; International Court of Justice, 2014). Therefore, these shortcomings in current international legal structures demonstrate the need for a stronger body to recognise ecocide as a criminal offence, i.e., the ICC in the Rome Statute. Rome Statute, unlike the ICJ and the IWC, has actual prosecuting power; it can run investigations and pass arrest warrants for criminal offenders worldwide (Independent Expert Panel for the Legal Definition of Ecocide, 2021; Rome Statute, 1998). However, numerous political analysts argue that although the ICC has prosecution power on paper, it is not highly effective in enforcement (Schabas, 2020; Bosco, 2014). This has been particularly evident after the ICC arrest warrants for the Israeli Prime Minister Benjamin Netanyahu and Russian President Vladimir Putin, as they have been travelling across states without any state responsibility/ implementation of the warrant (Bosco, 2014; Schabas, 2020; International Criminal Court, 2023, 2024). Reflecting upon these facts, one may argue that criminalising biodiversity destruction as the fifth core crime under the Rome Statute won't make significant progress in the ecocide case (Bosco, 2014; Schabas, 2020). Although there is ineffective enforcement of ICC prosecutions, the ICC still presents an international criminal sentencing framework that influences the criminal sentences of various state constitutions as well as providing an environmental criminal sentencing framework (Schabas, 2020; Independent Expert Panel for the Legal Definition of Ecocide, 2021). Furthermore, ICC prosecutions, although not highly effective in enforcement, can actually lead to severe reputational damage in the international community (Bosco, 2014; Schabas, 2020). This may lead to consequences dealt by the state, corporation, or organisation the individual is representing, just like Russia has faced several trade sanctions due to international highlighting of the criminal offences in Ukraine after a formal ICC investigation (Bosco, 2014; Schabas, 2020).

CONCLUSION

In conclusion, the study demonstrates through specific International Whaling Commission loopholes that it is structurally weak as it lacks authority. Whereas the International Court of Justice is too dependent on state consent and state initiation to convict or prosecute states. The International Criminal Court, however, despite having prosecutorial power, does not incorporate biodiversity destruction as a crime. The protection of biodiversity is supported by Sustainable Development Goals as well, whose violation justifies its criminalization as well. Therefore, biodiversity destruction should be criminalized as the fifth core crime under the Rome Statute of the International Criminal Court, because biodiversity deserves equal legal protection and criminalizing it creates deterrence towards committing those actions, especially at a state level.

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