

The International Whaling Commission cannot duck the human right to adequate food

In September 2024, the International Whaling Commission (IWC) will hold its 69th meeting in Lima, Peru (IWC69). As during previous meetings, controversial issues will be discussed, highlighting once again the deep divides that have grown within this organisation since its 1982 imposition of a moratorium on commercial whaling. While the IWC is to be lauded for its contributions to the recovery of some whale populations, it continues to fail those human communities and cultures for whom whales constitute an important, in some cases essential, source of food. And this is a breach of a fundamental human right, the right to adequate food, which the IWC can no longer ignore.



The proposed Resolution on Food Security

For the fourth time in a row, several developing countries will table a resolution on food security at the upcoming meeting. In 2016, 2018 and 2022 respectively, Guinea, along with Antigua & Barbuda, Ghana and others have proffered resolutions on food security, none of which, however, has ever been adopted. Opponents of the resolutions, including Chile, the European Union, Australia, and New Zealand, argue that food security concerns must not be addressed through whaling, but should be approached through other fora. Moreover, they argue, the only whaling for which the IWC currently grants quotas, Aboriginal Subsistence Whaling (ASW) in Alaska, Greenland, Chukotka and Bequia, already touches those food security issues that are regulated under the IWC. This position begs the question of the hardship borne by ASW hunters forced to face the political chaos of the IWC. It also sidesteps the frank look that is needed for evaluation of the impacts to local, especially artisanal, communities as the IWC's Conservation Committee pursues its provisional and unrestrained agenda.

As preparations are underway for the submission of another resolution on food security at IWC69 in Lima, there clearly is ongoing pressure to promote discussion at the IWC of whales as a nutritional resource. While countries offering the resolution are not currently active in whale harvesting, they are forward looking in their support for the principle of sustainable utilisation, recognising that pressures on food security may one day render the consumption of whales necessary.

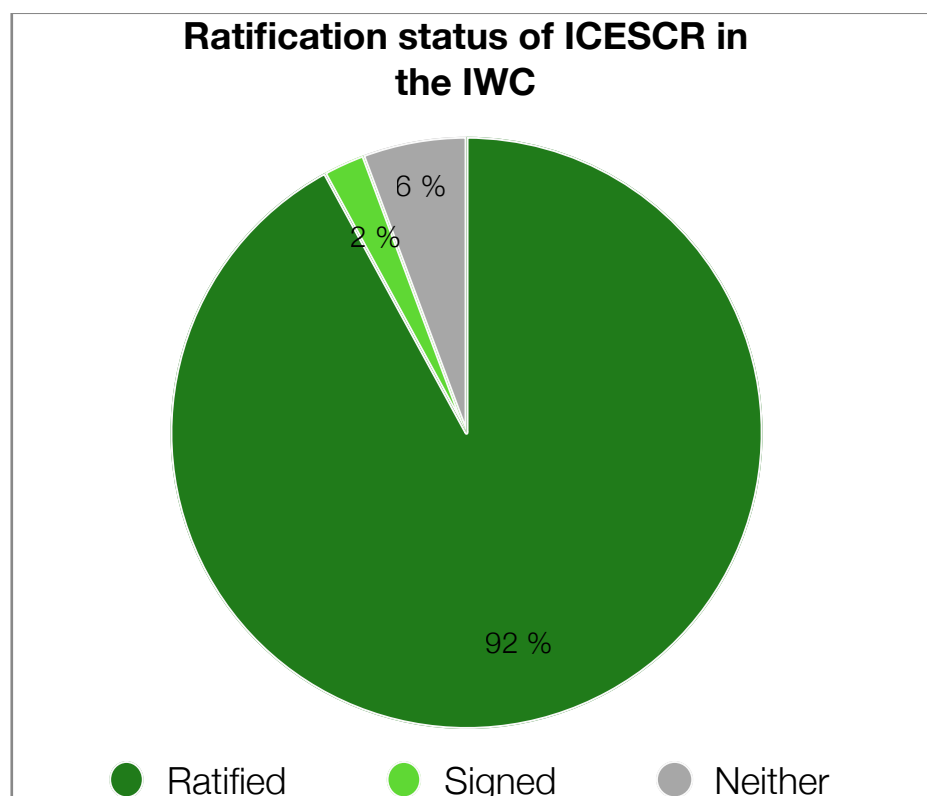
As with its predecessors, the proposed resolution makes extensive reference to the FAO as well as several other international bodies and meetings that have consistently stressed the need for food security, and the goal to eliminate hunger. We argue, this is not enough.

There is a human right to adequate food that cannot be ignored

While the initiative to bring focus at the IWC to the critical importance of food security is indeed important, its proponents would be well served in highlighting the role of the right to food and food security within the framework of international human rights law and policy. Most IWC members have the legal duty to respect the right to adequate food, because they have signed on to legally-binding human rights instruments that guarantee the right to adequate food and standards of living. Most prominently in this regard stand the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Rights of the Child (CRC) or the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), all of which require state parties to provide for adequate and nutritious food. Moreover, the right to adequate, nutritious food is a prerequisite to the universally guaranteed right to life. Food security is the policy objective through which states ensure that all citizens have access to sufficient, safe, and nutritious food.

Indeed, the IWC has its own legal personality and not all IWC Members have ratified above-mentioned human rights treaties, which would create legal obligations for States not having ratified these. At the same time, however, States cannot circumvent international human rights obligations by creating an international organisation and assigning it tasks that, if carried out by the states themselves, would breach human rights standards.¹ As a consequence, there are at least two compelling arguments supporting the view the IWC is obligated to consider human rights in its activities. First, the Vienna Convention on the Law of Treaties (VCLT) mandates that the IWC interpret the terms of its founding treaty, the International Convention for the Regulation of Whaling (ICRW), in accordance with ‘any relevant rules of international law applicable in the relations between the parties.’² This includes international human rights law. Second, the right to food and thus the right to be free from hunger can be considered customary international law. Customary international human rights law binds the IWC either directly, due to its international legal personality, or indirectly, as all its member states are bound by such customary rules of international law.

As such, every human right is considered universal, indivisible, interdependent, interconnected, and inalienable. This means that human rights apply to everyone regardless of



their background, all rights are equally important and must be upheld together, and they cannot be taken away or surrendered. Additionally, the fulfilment of one right often depends on the realisation of others, highlighting their interconnected nature. This consequently means that those state parties that have signed on to human rights conventions cannot ignore these human rights in fora where other matters play a role. In other words, human rights inevitably rise to the surface within the International Whaling Commission even though the organisation now promotes the conservation of whales, despite lack of such a mandate in the text of its parent convention.

Some will argue that the IWC is a conservation organisation and bound to its mission to conserve whale stocks as its foremost responsibility.³ This is why the past and future discussions on the establishment of a South Atlantic Whale Sanctuary (SAWS), proposed by a number of Latin American states, does not take into account potential impacts on fishers and associated livelihood implications. After all, any new regulations must be implemented on the ground. If the SAWS is ever established, governments must make sure also small-scale fishing operators are able to implement the new rules whilst maintaining their livelihoods. Indeed, the IWC's mandate to conserve "whale stocks and thus make possible the orderly development of the whaling industry"⁴ does not excuse the organisation from its obligations to human rights. The United Nations has addressed this argument in the 2018 *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*. That report unequivocally states in Framework Principle 16, Commentary 54 that actions taken by States "to prevent, reduce or remedy environmental harm [...] or [...] actions in response to climate change" do not excuse them from compliance with their human rights obligations.⁵

Further, the founding document of the IWC, the ICRW, itself a legally-binding document that all 88 members of the Commission must adhere to, requires the Commission to "take into consideration the interests of the consumers of whale products and the whaling industry"⁶ when changes to the Schedule, the operative part of the Convention, are made. That is, if a country like Guinea decided to actively hunt whales that migrate along its shores, the Schedule must be amended in a way that takes Guinea's interests into account.

Before this ever happens, however, the vast majority of IWC members who have also ratified the ICESCR and other human rights treaties have the duty to respect, protect, and fulfil the rights enshrined therein. This means refraining from actions that obstruct existing access to adequate food, intervening to prevent businesses or individuals from depriving people of sufficient food, and proactively enhancing access to resources and livelihoods.

It might be argued, for example, that it is Guinea's responsibility to ensure that her populace has access to sufficient food (through initiatives that promote food security) and that she therefore fulfils its responsibility to provide adequate food. This, however, would ignore the role of international cooperation in the realisation of the right to food. The ICESCR as well as the Charter of the United Nations both urge state parties to take collective action to ensure the full realisation of the right to adequate food by respecting and protecting this right in other countries, by facilitating food access and by providing aid where this aid is needed. Indeed, a further stipulation in these documents is that the right to adequate food is also paid due attention to in other fora. And this would ultimately also include the IWC.

The concept of 'adequate' in the right to adequate food goes beyond mere sustenance, demanding a holistic approach to ensure every individual's well-being. According to General Comment 12 of the Committee on Economic, Social, and Cultural Rights (CESCR), 'adequate' food must be sufficient, safe, nutritious, and culturally appropriate.⁷ This means that food should not only meet the caloric needs necessary for an active and healthy life but also be free from harmful substances and provide essential nutrients to prevent malnutrition. Moreover, it must respect cultural dietary practices, acknowledging that food is intertwined with identity and tradition. Therefore, adequacy is a comprehensive standard that protects individuals from hunger and promotes overall health, dignity, and cultural integrity. This robust definition underscores that true food security and the fully implemented right to food encompass quality, safety, and cultural relevance, making it an

indispensable component of human rights. No human rights instrument stipulates that whaling cultures are to be treated differently in this context. There is consequently no reason to do so.

What if the IWC keeps on ignoring the right to adequate food?

If the IWC continues to ignore the right to adequate food, it risks failing to meet its legal obligations under international human rights treaties, such as the ICESCR. This deliberate oversight could lead to persistent food insecurity in member states, especially those advocating for the recognition of whales as a potential food source. Ignoring these obligations not only undermines the credibility of the IWC but also compromises the well-being of individuals who rely on sufficient, safe, and culturally appropriate food. Additionally, it could exacerbate tensions within the IWC, as member states advocating for food security through whaling may feel their concerns are not being adequately addressed. Ultimately, this could lead to a breach of international cooperation principles that emphasise collective action to ensure the right to adequate food is respected and protected globally.

The legitimacy of the IWC as an international organisation hinges on its ability to balance its mandate with the diverse interests of its member states — an ability that has not surfaced prominently since the adoption of the moratorium. In fact, the deadlock the organisation has reached is a dark example of how international organisations should *not* work.⁸ Notwithstanding, the IWC operates under the legally binding framework of the ICRW, which provides a clear mandate and set of principles for its operations. This legal basis reinforces its authority and obligations, including considerations for the interests of consumers and the whaling industry. The IWC has demonstrated adaptability by evolving its focus from merely regulating whaling to encompassing broader marine conservation goals. This is best demonstrated by the fact that the IWC is becoming increasingly aware of its human and indigenous rights obligations as the human and indigenous rights survey relating to ASW demonstrates. This evolution reflects its responsiveness to changing global priorities and environmental concerns — an evolution that also potential whaling countries must be able to benefit from.

Sidelining or ignoring the right to food can erode trust and support among member states advocating for the inclusion of food security considerations even further. The perception that the IWC is biased towards conservationist agendas can alienate member states that rely on marine resources for food security and economic development. Ensuring a balanced approach that respects both conservation and sustainable use is crucial for maintaining its legitimacy. It is therefore imperative that each IWC member state recognise and implement its obligations under those human rights treaties it has ratified. Otherwise, an opportunistic interpretation and application of fundamental human rights is an undesirable consequence, rendering the entire concept of human rights obsolete.

Author affiliations, in alphabetical order:

Peter Bridgewater: Centre for Heritage and Museum Studies, the Australian National University, Australia; IWC Chair 1994–1997.

Endalew L. Enyew: Researcher, UiT—the Arctic University of Norway, Norway.

Eugene Lapointe: President, IWMC World Conservation Trust, Switzerland; Secretary-General of CITES 1982–1990.

Jessica Lefevre: Attorney-at-Law, United States.

Carlos Mazal: Consultant, Uruguay.

Mia Schulz: Student, Germany.

Nikolas Sellheim: Director, Sellheim Environmental, Germany.

Notes

¹ Halberstam, D. & E. Stein. (2009). The United Nations, the European Union, and the King of Sweden: Economic Sanctions and Individual Rights in a Plural World Order. *Common Market Law Review* 46(1), 13–72, p. 21.

² VCLT, Art. 31.3(c).

³ For example Greenpeace, International Whaling Commission <<https://www.greenpeace.org/usa/oceans/save-the-whales/international-whaling-commission/>>

⁴ ICRW, Preamble.

⁵ United Nations (2018). Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, A/HRC/37/59, 20.

⁶ ICRW, Art. V.2 (d).

⁷ CESCR (1999). General Comment No. 12: The Right to Adequate Food (Art. 11), E/C.12/1999/5.

⁸ Bridgewater, P., R.E. Kim, R. Blasiak & N. Sellheim (2024). Dismantle ‘zombie’ wildlife protection conventions once their work is done. *Nature* 632, 500–502.