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The Role of Non-Governmental Organizations in Promoting and Monitoring the Enforcement of International Law Against Whaling

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Abstract

The international legal framework on anti-whaling, mainly established under the International Whaling Commission and the International Convention for the Regulation of Whaling, has imposed a moratorium on commercial whaling. However, enforcement remains limited due to structural loopholes, notably the "scientific whaling" exception and the objection procedure, which weakens the binding force and level of compliance. In this context, non-governmental organizations (NGOs) have emerged as influential actors, helping to fill enforcement gaps through two principal models of action: policy advocacy and protest, and direct intervention at sea. This article examines this dual role from the perspective of international law, focusing on case studies of Greenpeace and Sea Shepherd Conservation Society operating in the Southern Ocean. Despite facing significant legal controversies, NGO activities have contributed to shaping normative development and strengthening compliance within international environmental governance.

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Introduction

The conservation of whales has long been viewed as a central issue in the development of international environmental law, symbolizing the broader transition from resource exploitation to biodiversity protection and sustainable ocean governance. The adoption of a moratorium on commercial whaling under the framework of the International Whaling Commission (IWC), pursuant to the International Convention for the Regulation of Whaling (ICRW), marks a historic turning point in global efforts to prevent the depletion of whale populations. This regulatory regime reflects the collective will of the international community to restrict commercial hunting and promote conservation-oriented management (Fitzmaurice, 2017) .

Nevertheless, despite its stellar significance, the effectiveness of this regime remains disputed. Structural loopholes embedded within the ICRW framework—most notably the "scientific whaling" exception and the objection procedure allowing member States to opt out of certain amendments—have significantly weakened its binding force. These mechanisms, while legally recognized, have enabled continued whaling activities under formal lawful justifications, thereby raising concerns about regulatory fragmentation and selective compliance. Moreover, the absence of a robust centralized enforcement mechanism has left implementation largely dependent on State consent and political will, exposing inherent limitations in traditional interstate compliance models (Giles, 2022) .

To address enforcement gaps, NGOs have emerged as increasingly influential actors in the anti-whaling movement. Their activities go beyond advocacy and public awareness-raising,

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including independent monitoring, documentation of violations, support for strategic litigation, and, at times, direct intervention at sea. Through these efforts, NGOs not only exert pressure on governments to comply with their international obligations but also shape global public discourse and reinforce conservation norms. This development reflects a broader transformation in international law, in which non-state actors participate more actively in governance processes traditionally dominated by States (Giles, 2022) .

However, the growing prominence of NGOs in enforcement-related activities also raises complex legal questions. Issues concerning legitimacy, accountability, the limits of lawful protest, and the compatibility of direct intervention with principles such as freedom of navigation and non-use of force remain highly debated. created, examining the role of NGOs in promoting and monitoring compliance with international anti-whaling law is essential for understanding both the evolving structure of international legal subjects and the future direction of environmental governance. Such analysis provides a foundation for suggesting a coherent legal framework capable of reconciling marine conservation objectives with the stability and predictability of the international legal order.

Foundational Legal Framework

The International Convention for the Regulation of Whaling (ICRW) of 1946 constitutes an important international legal framework aimed at the conservation of whale stocks and the orderly and sustainable development of the whaling industry. The Convention was signed on December 2, 1946 in Washington, DC, and entered force in 1948 (International Whaling Commission, 1946) . It is the first multilateral international treaty to establish a global legal framework for the management and conservation of whale stocks (Geoffrey Louw, 2008) . The Convention was adopted against the backdrop of a severe global decline in whale populations resulting from large-scale industrial exploitation and the lack of effective regulation during the first half of the twentieth century (Oberthür, 1998) . The Convention does not adopt a model of absolute prohibition; rather, it establishes a regulatory mechanism grounded in a resource-management approach. The Preamble to the Convention identifies the objective of ensuring the "proper conservation" of whale stocks while simultaneously providing for the "orderly development" of the whaling industry. This dual-objective structure reflects an approach that seeks to reconcile economic interests with conservation considerations, characteristic of the pre-modern environmental era, prior to the clear articulation in international law of principles such as sustainable development, the precautionary principle, and ecosystem protection.

It is precisely this reconciliation between conservation and exploitation that gives rise to an inherent tension within the normative structure of the Convention. On the one hand, the ICRW acknowledges the need to protect whale populations; on the other hand, it continues to regard whaling as a lawful economic activity to be regulated rather than entirely prohibited (An, 2013) . This tension became increasingly pronounced as international awareness shifted toward a stronger prioritization of conservation from the 1970s onward (M. Ruffle, 2002) . In that context, non-governmental organizations leveraged this normative gap to promote a transition from an "exploitation-management" model to a "pure conservation" model.

From an institutional perspective, the ICRW establishes the IWC as the central decision-making and coordinating body responsible for the implementation of the Convention. Pursuant to Article V of the Convention, the IWC is vested with the authority to amend the Schedule in order to prescribe detailed technical and regulatory measures, including the establishment of catch

limits, the designation of closed and open seasons and areas, the regulation of whaling methods, the determination of size limits for whales that may be taken, the protection of female whales and calves, and the creation of whale sanctuaries. The Schedule possesses binding legal force equivalent to that of the Convention itself; however, it may be altered by a special majority of not less than three-quarters of the members voting (Wold, 2000) , without requiring the formal re-ratification of the Convention as a whole. This mechanism enhances regulatory flexibility in policy adjustment, while simultaneously creating institutional space for non-governmental organizations to exert influence through the provision of scientific information, policy advocacy, and the monitoring of implementation processes (European Commission, 2017).

In its early years, the IWC operated in a relatively closed manner and was strongly influenced by the interests of whaling states (Duy Long, 2018) . Decision-making during this period prioritized the management of harvest levels rather than ecological conservation. However, when international environmental organizations such as Greenpeace, WWF, and IFAW began participating as observers, the institutional dynamics gradually shifted. Through the submission of independent scientific reports, investigative documentation, and the mobilization of international public opinion, non-governmental organizations contributed to increasing political pressure (Gronewold, 2018) , thereby facilitating the adoption of the 1982 moratorium on commercial whaling and the subsequent establishment of whale sanctuaries.

In terms of its substantive legal content, the ICRW establishes a regulatory regime predicated upon the dual principles of conservation and the "orderly" utilization of whale resources. The Convention confers upon the International Whaling Commission (IWC) the mandate to promote and coordinate scientific research, compile and analyze statistical data, assess population dynamics, and evaluate the ecological impacts of whaling activities. The Schedule further operationalizes this mandate through detailed provisions governing open and closed seasons, permissible methods of capture, designated closed areas, sanctuary zones, and special protective measures. Although the Convention does not explicitly prohibit whaling in absolute terms, its standard architecture has enabled the adoption of a zero catch limit for commercial whaling — a measure formally introduced as an amendment to the Schedule yet substantively tantamount to a comprehensive prohibition (Fitzmaurice, 2017) .

With respect to implementation, Article IX(1) of the ICRW provides that responsibility for enforcement rests with the Contracting Governments, through the regulation and control of the conduct of natural and legal persons subject to their jurisdiction. There is no centralized enforcement mechanism at the international level, resulting in a fragmented system of compliance. Certain States have continued whaling activities by invoking recognized exceptions, such as scientific research or subsistence whaling to meet the traditional livelihood needs of indigenous communities. It is within this context that non-governmental organizations have utilized the legal framework of the ICRW to enhance compliance monitoring, advocate for amendments to the Schedule, and exert normative and public pressure (M. Ruffle, 2002) . Through field reports, advocacy within the International Whaling Commission (IWC), and international media campaigns, they have called upon States to account for their implementation of conservation obligations within the ICRW–IWC framework (WWF, 2004) .

formation, the foundational legal framework of the anti-whaling regime both establishes a formal regulatory basis and embodies inherent gaps and internal concerns. These very characteristics have created space for non-governmental actors to engage more deeply in shaping,

monitoring, and advancing the development of international law on whale conservation, increasingly steering it toward a conservation-oriented approach.

The Two Operational Models of NGOs in the Anti-Whaling Campaign

The development of the anti-whaling movement over the past several decades demonstrates the increasingly prominent role of NGOs in global environmental governance. In the context of an international legal regime on whaling that is constrained by limited enforcement mechanisms and heavily dependent on state consent and good faith compliance, NGOs have assumed proactive roles not only in policy advocacy but also in field-based operations. Practice suggests that two principal models of engagement may be identified: (i) an advocacy-based model grounded in normative transformation and the mobilization of political pressure; and (ii) a direct intervention model aimed at physically disrupting whaling activities at sea. These models reflect divergent approaches to the enforcement of international law and give rise to distinct legal and standard considerations.

Advocacy-Based Model – The Case of Greenpeace

From a theoretical perspective, Greenpeace may be considered a "norm entrepreneur"[2] (M. Dawson et al., 2018) in the evolution of international environmental law. The organization has not merely opposed whaling practices, but has actively constructed and disseminated a new normative framework regarding species protection. Whereas under the traditional approach whales were viewed as marine resources subject to rational exploitation, the discourse advanced by Greenpeace repositions whales as emblematic of the marine ecosystem and as entities warranting protection based on their intrinsic value (Moffa, 2012) .

According to Greenpeace's own materials and analytical studies of its activities, the organization has played a significant role in shaping international public opinion on whaling, associating the practice with an image of conduct no longer compatible with contemporary environmental norms (Greenpeace Japan, 2003) . In this capacity, Greenpeace has redefined the issue from one of "resource management" to a priority of conservation, while seeking to alter societal expectations regarding the legitimacy of whaling activities. This transformation of perception generates indirect yet sustained political pressure on retaining and multilateral mechanisms such as the International Whaling Commission.

Strategic Objectives and Methods of Action

Greenpeace's central objective is to influence international public opinion in order to reshape societal perceptions regarding the legality and morality of whaling activities, thereby

[2]In theories concerning the dynamics of international norms, the concept of a "norm entrepreneur" is used to refer to individuals or organizations that actively promote, define, and disseminate new standards of behavior considered as appropriate and legitimate within the international community. From this perspective, Greenpeace may be considered a norm entrepreneur in the development of international environmental law, insofar as it has not only engaged in policy advocacy but also contributed to shaping global awareness of such as ocean protection, opposition to nuclear testing, and responses to climate change, thereby facilitating the emergence and diffusion of new environmental issues at the international level.

increasing the political costs for states that continue to engage in such practices (UK, 2019; Greenpeace Seoul Office, 2023). Through the mobilization of public pressure, the organization seeks to maintain and strengthen the moratorium on commercial whaling, while simultaneously challenging the legitimacy of whaling programs conducted under the guise of scientific research.

To achieve this objective, Greenpeace implements a multi-layered strategy. First, it engages in symbolic actions at sea, where images of activists in small boats approaching whaling vessels are deployed as a communications tool to create a stark moral contrast between the protection of life and exploitation for profit. Second, it conducts boycott campaigns and applies economic pressure against corporations and governments involved in whaling activities. In addition, Greenpeace actively lobbies at meetings of the International Whaling Commission and other international forums, providing information and building coalitions with conservation-oriented states. Finally, investigative reports, research findings, and visual documentation are released as a form of "normative instruments" aimed at demonstrating that focusing on the scientific research exception exceeds the original object and purpose of the treaty and at contesting both the legality and the morality of continued whaling practices.

The "Tokyo Two" case and the social litigation strategy

The "Tokyo Two" case in 2008 constitutes a prominent example demonstrating that Greenpeace has not relied solely on media strategies or policy advocacy, but has also utilized judicial processes as a tool of normative mobilization. Two of the organisation's activists in Japan were arrested and prosecuted after investigation and publicly disclosing allegations of embezzlement of whale meat within the framework of the whaling program conducted under the guise of scientific research (Greenpeace India, 2010; McNeill, 2010) . Formally, this was a domestic criminal case; However, from a political and social perspective, Greenpeace deliberately reframed the incident as an issue of transparency, accountability, and the legitimacy of whaling activities.

From a jurisprudential perspective, this strategy may be understood as a form of "social litigation.". [3]In socio-legal scholarship and studies on legal mobilization, litigation is not viewed solely as a dispute-resolution mechanism, but also as a space for meaning-making and normative contestation. The courtroom thus becomes a public forum in which parties debate not only legality in the narrow sense, but also the purpose and spirit of legal norms.

Through the "Tokyo Two" case, Greenpeace shifted the focus of the debate from the specific conduct of the activists to the broader question of transparency and the compatibility of the whaling program conducted under the guise of scientific research with the object and purpose of the Convention. This strategy illustrates how law may be employed as a tool of social mobilization and normative effect, compelling state authorities to account before public opinion even where the litigation outcome is not entirely favorable. At the same time, "social litigation" entails legal risks and may intensify tensions between policy advocacy and the principle of judicial neutrality. Nevertheless, from a global governance perspective, the case exemplifies a form of indirect "norm enforcement," thereby Greenpeace utilizes domestic legal proceedings as a forum to increase accountability measures and to narrow the enforcement gap in the international legal regime against whaling.

[3]"Social litigation" is a recognized term in legal scholarship, commonly used to describe cases in which minor violations are strategically motivated to challenge broader policies, generate precedent, and mobilize public opinion.

Direct Intervention Model – The Case of Sea Shepherd

Founded in 1977, Sea Shepherd Conservation Society is an international non-profit organization dedicated to marine conservation, to end the destruction of ocean ecosystems and the killing of wildlife at sea. The organization emerged from strategic differences within the international environmental movement, when Paul Watson and Robert Hunter departed from Greenpeace to establish Earthforce, which was subsequently renamed Sea Shepherd. This separation reflects a divergence in methods: whereas Greenpeace adhered to principles of non-violence and institutional advocacy, Watson and his associates maintain that the oceans required protection through direct intervention in the field (Sea Shepherd Conservation Society, n.d.) .

Strategic Objectives and Methods of Action

According to its official statements, Sea Shepherd employs "direct action" tactics to investigate, document, and confront activities it considers unfair on the high seas. Within two years of its establishment, the organization launched its first vessel and began engaging directly with whaling ships, thereby shaping its identity as an enforcement-oriented marine conservation force rather than merely a policy advocacy or media-driven organisation (Sea Shepherd Conservation Society, n.d.) .

Sea Shepherd grounds its actions in a theory of "private enforcement," arguing that where states fail to adequately implement the International Whaling Commission's 1982 moratorium on commercial whaling—especially through reliance on the "scientific research" exception—non-state actors may intervene to protect the global marine environment. This approach has been examined by Nagtzaam and Guilfoyle, who observe that Sea Shepherd justifies its activities as a response to perceived "enforcement gaps" within international law (Nagtzaam & Guilfoyle, 2018).

However, the existing law of the sea does not confer enforcement powers upon private actors; countermeasures under the law of state responsibility fall within the exclusive competence of states, not NGOs (Nagtzaam & Guilfoyle, 2018) . This places Sea Shepherd's model within a zone of legal tension between conservation objectives and the principle of the state's monopoly over the use of coercive force.

The Case of Institute of Cetacean Research v. Sea Shepherd Conservation Society and the Limits of "Private Enforcement"

The tension between environmental conservation objectives and the enforcement limits of international law was clearly manifested in the case of Institute of Cetacean Research v. Sea Shepherd Conservation Society, decided by the United States Court of Appeals for the Ninth Circuit in 2013 (*Institute of Cetacean Research v. Sea Shepherd Conservation Society* , 2013) . The case did not directly address the legality of Japan's whaling program conducted under the guise of scientific research, but instead focused on the lawfulness of the direct intervention measures undertaken by Sea Shepherd on the high seas. The alleged actions, such as manoeuvring vessels at dangerous proximity, throwing butyric acid-filled bottles, deploying reinforced metal cables to damage propellers, and other obstructive tactics, violate international maritime safety law and could amount to acts of piracy (*Institute of Cetacean Research v. Sea Shepherd Conservation Society* , 2013) .

A notable aspect of the Court's judgment lies in its interpretation of the concept of "piracy" under the law of nations, with reference to the definitions set out in the 1958 Convention on the High Seas and the 1982 United Nations Convention on the Law of the Sea (Convention on the High

Seas, 1958; United Nations Convention on the Law of the Sea, Opened for Signature 10 December 1982, 1833 UNTS 3 (Entered into Force 16 November 1994), 1982) . The Court emphasized that the element of "private ends" is not confined to motives of financial gain, but includes any acts of violence not authorized by a state (*Institute of Cetacean Research v. Sea Shepherd Conservation Society* , 2013) . Under this interpretation, the fact that Sea Shepherd acts for environmental conservation purposes does not preclude the possibility that its conduct was undertaken for "private ends," since the organization did not act on behalf of any state. At the same time, the Court affirmed that the element of "violence" in the definition of piracy may encompass acts causing damage to property at sea, and is not limited solely to direct acts against persons (*Institute of Cetacean Research v. Sea Shepherd Conservation Society* , 2013) .

In addition, the Court examines the potential violation of the 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA Convention) and the International Regulations for Preventing Collisions at Sea (COLREGS), holding that even conduct threateningly creating a risk to maritime safety may suffice to constitute a breach (*Institute of Cetacean Research v. Sea Shepherd Conservation Society* , 2013) . On that basis, the Court reversed the decision of the lower court and issued an injunction prohibiting Sea Shepherd from approaching the accusation's vessels within a specified distance.

From a theoretical perspective, the judgment is significant in that it effectively "reframed" the environmental dispute as a matter of maritime order and safety. Rather than assessing Sea Shepherd's conduct through a conservation lens, the Court placed primary emphasis on the principles of navigational safety and the state's monopoly on the use of enforcement powers. As noted in the literature, Sea Shepherd's model of "private enforcement" is premised on the existence of enforcement gaps within international law; However, the dominant law of the sea does not confer enforcement authority upon private actors, and countermeasures under the law of state responsibility remain within the exclusive jurisdiction of states (Nagtzaam & Guilfoyle, 2018) . The Cetacean Research case thus illustrates the structural limits of private enforcement: once intervention escalates to the use of physical coercive measures, the international legal system tends to reclassify such conduct under stringent regimes, including anti-piracy frameworks, regardless of the arguably legitimate conservation objectives pursued.

The Pete Bethune case and the risk of criminalizing direct intervention.

Beyond the litigation in the United States, the case involving Pete Bethune—the captain of the Ady Gil, a vessel operated by Sea Shepherd—clearly illustrates the risk of criminalization faced by individuals participating in the direct-intervention model. In 2010, after the Ady Gil collided with the Japanese patrol vessel Shōnan Maru 2 during a campaign in the Southern Ocean, Bethune boarded the Japanese ship to demand compensation and carry out a protest action. He was subsequently arrested and prosecuted in Japan on charges including trespass, property damage, and obstruction of official duties (AFP, 2010) .

A Japanese court subsequently sentenced Bethune to a two-year suspended prison term and ordered his deportation from Japan (Miley, 2010) . Although the case did not directly raise debates over the definition of "piracy," as in the Institute of Cetacean Research v. Sea Shepherd Conservation Society, it nevertheless demonstrates another legal consequence of "private enforcement": where intervention occurs in a context in which a state asserts jurisdiction, activists may be subject to criminal liability under domestic law.

From a theoretical perspective, the Bethune case highlights the practical limits of the direct-intervention model. Whereas in the litigation in the United States Sea Shepherd faced the risk of reclassification under international anti-piracy law, in the Japanese context the risk materialized in the form of criminal prosecution under domestic law. This demonstrates that "private enforcement" not only collides with international legal norms but also with the criminal jurisdiction of the concerned states.

From a global governance perspective, the Institute of Cetacean Research case in the United States and the Bethune case in Japan complement one another in illustrating the structural constraints of the direct-intervention model: on the one hand, such conduct may be characterized as a violation of maritime order under international law; on the other hand, it may be treated as criminal behavior under national law. These constitute the "legal costs" inherent in Sea Shepherd's strategy of physical confrontation rather than institutional advocacy.

Comparison of the Two NGO Operational Models

The advocacy-based model (Greenpeace) and the direct-intervention model (Sea Shepherd) represent two distinct approaches to addressing the "enforcement gap" in the international legal regime against whaling. This divergence can be analyzed through four principal criteria.

In terms of legality, the advocacy-based model operates primarily within the existing legal framework and through institutional mechanisms such as the IWC (International Whaling Commission, 1946) . By contrast, the direct-intervention model risks conflicting with the law of the sea and domestic criminal law; in the Institute of Cetacean Research v. Sea Shepherd Conservation Society, the Ninth Circuit Court of Appeals held that Sea Shepherd's conduct could constitute piracy under the "law of nations" (*Institute of Cetacean Research v. Sea Shepherd Conservation Society* , 2013) .

In terms of legitimacy, Greenpeace is considered as a "norm entrepreneur," operating from within the system to reshape prevailing standards (M. Dawson et al., 2018) . By contrast, Sea Shepherd relies on a theory of "private enforcement," arguing that NGOs may intervene where states fail to fully discharge their conservation obligations—an argument that remains controversial in international law (Nagtzaam & Guilfoyle, 2018) .

In terms of practical effectiveness, direct intervention may generate immediate impact on the ground, but entails significant legal risks; By contrast, institutional advocacy produces change more gradually, yet tends to be more sustainable and more readily institutionalized.

These differences are summarized in the table below:

Criterion	**Advocacy-Based Model**	**Direct-Intervention Model**
Legality	Operates within the framework of international law; low legal risk	Risk of violating the law of the sea and domestic criminal law; high legal risk
Legitimacy	Based on non-violence and institutional engagement	Controversial with respect to NGOs' authority to exercise coercive enforcement

Short-Term Effectiveness	Indirect impact; gradually but steadily	Immediate and direct impact
Long-Term Impact	Reinforces conservation norms within multilateral mechanisms	May strengthen the principle of the state's monopoly over coercive force

Impact and Legal Challenges Concerning the Role of NGOs

Contribution of NGOs to the Enforcement of International Law

NGOs are becoming a crucial driving force in bringing "international law to life" in the fight against whaling. In a context where international treaty mechanisms on whaling (especially the ICRW/IWC framework) heavily depend on the goodwill and enforcement capacity of nations, NGOs participate as "compliance activators": they monitor, document, bring information to light, and exert policy pressure to compel competent authorities to act. This role does not equate to coercive power; on the contrary, the greatest contribution of NGOs lies in increasing transparency, increasing the cost of violations (reputation, diplomatic, and economic), and supporting a more effective accountability system (International Whaling Commission, nd; Rosales-Chapula et al., 2026) .

First, NGOs provide independent monitoring capabilities that many states or intergovernmental organizations struggle to maintain consistently on the ground. Through on-site observation, data collection, fleet tracking, and reporting, NGOs help bridge the information gap between international rules and behavior at sea. When information on violations or signs of circumvention is verified and widely disseminated, state agencies are pressured to investigate, take action, or adjust their positions at forums such as the IWC; at the same time, businesses and related supply chains face the risk of boycotts or increased scrutiny. This is a form of "soft enforcement" but often has a direct impact on compliance levels (International Whaling Commission, ed.) .

Secondly, NGOs contribute to the operation of accountability mechanisms through legal and judicial means. A prominent illustration is the International Court of Justice (ICJ) ruling in the case of Whaling in the Antarctic (Australia v. Japan, 2014), where the ICJ concluded that Japan's JARPA II program was inconsistent with its obligations under the ICRW Schedule and ordered Japan to withdraw the license/authorization granted under this program and not to continue granting licenses for JARPA II (International Court of Justice, 2014) . Although NGOs are not the parties to initiate proceedings at the ICJ, practice shows that they can exert a strong influence by providing scientific knowledge, building public opinion, and supporting the formation of dossiers, thereby increasing the likelihood that countries will choose the path of litigation and pursue the enforcement of the ruling.

Third, NGOs participate in supporting state enforcement within the wildlife crime ecosystem. On a broader level (related to the trade, transport, and supply chain of products from protected species), international cooperation mechanisms such as the ICCWC emphasize coordination among organizations and enforcement agencies to enhance investigative and prosecution capabilities, share information, and increase the effectiveness of crime prevention. In such models, NGOs often play a partner role: training, providing technical support, supplying data,

or promoting enforcement priorities, thereby indirectly increasing the nation's "enforcement power" while remaining within the legal framework.

Overall, NGOs have the strongest impact on two links that are chronic weaknesses of international law: a lack of reliable information about violations and a lack of political incentive for states to fully enforce them. Through independent monitoring, evidence provision, advocacy in multilateral forums, and support for accountability through the courts, NGOs help transform anti-whaling norms from "commitments on paper" into real pressure on national behavior and related actors. But for that contribution to be sustainable and legitimate, the effective approach is often to "work alongside the competent authority" rather than "replace the competent authority" (Lohn, 2021) .

Legal Challenges to the Role of NGOs

Although NGOs play an increasingly important role in promoting and monitoring the enforcement of international anti-whaling laws, their legal standing remains limited by the traditional structure of public international law and national law. These challenges can be systematized into three main groups.

a. Barriers to status and the "indirect" role in international proceedings.

In international public law, NGOs do not have the standing to independently initiate proceedings before international judicial bodies. Article 34(1) of the Statute of the International Court of Justice clearly states that only states can be parties in litigation before the ICJ. Therefore, it follows that NGOs and individuals do not have the right to file a lawsuit under the compulsory jurisdictional mechanism of the Court, but can only exert influence indirectly through lobbying and supporting a state to initiate a lawsuit (T. Petersson, 2022) .

Similarly, Article 20 of the Statute of the International Tribunal for the Law of the Sea states that the Tribunal is “open to States,” and only open to other parties in specific cases as clearly defined or by agreement of the parties (Statute of the International Tribunal for the Law of the Sea, 1982) . Therefore, in principle, the ITLOS mechanism also maintains a state-centric structure; NGOs do not have universal standing to initiate proceedings in disputes such as whaling.

A prime example is the process leading to the lawsuit between Australia and Japan concerning the "scientific whaling" program in the Southern Ocean. International NGOs, including IFAW, played a crucial role in maintaining policy advocacy and providing legal expert support to push Australia to sue Japan before the ICJ. This demonstrates that NGOs can significantly influence the implementation of international treaties, but only through state mediation. The legal status barrier thus both limits NGOs' access to international justice and reinforces the centrality of the state in the international legal order.

b. Challenges in using domestic legal proceedings to "externalize" international disputes

Another approach for NGOs is to utilize domestic legal mechanisms to enforce international obligations, particularly within the framework of environmental law and public interest litigation. The case of Humane Society International (HSI) v. Kyodo Senpaku Kaisha in the Australian Federal Court is a prime example. The court accepted that NGOs can initiate public interest litigation under national environmental law. However, the case simultaneously revealed three important legal issues (Rosales-Chapula et al., 2026) .

(1) The issue of jurisdiction over foreign defendants operating outside the territory. (2) The feasibility and enforceability of the judgment, when practical enforcement may be seriously hampered. (3) The extent to which national courts should consider external consequences and political sensitivities when resolving disputes with international elements.

The first instance court had previously expressed concerns that the dispute could place the court at the center of international disagreements and be difficult to enforce in practice. However, the appellate court stressed that when procedural conditions are met, the element of "diplomatic sensitivity" is generally not a basis for refusing to hear the case. This approach shows that domestic legal proceedings can become an important tool for "externalizing" international disputes, but remains limited by issues of jurisdiction and enforcement (Rosales-Chapula et al., 2026) .

c. The risk of "criminalization" when shifting to direct intervention at sea.

When NGOs shift from advocacy and information dissemination to direct intervention at sea, such as ramming ships, throwing odor-causing agents, obstructing the movement of or boarding the vessel of the objected party without permission, the legal nature of the act tends to be restructured. Within the framework of modern maritime law, which prioritizes maritime safety and maintaining order at sea, physical confrontational acts are more likely to be viewed as violations of safety obligations, rather than as a form of political expression or environmental protest (T. Petersson, 2022) .

The process of "criminalization" typically occurs when the interference increases the risk of collision or property damage. In such cases, the obstructed party or the country involved can utilize international and domestic legal tools, including requesting injunctions, arrests, or criminal prosecution. Consequently, the focus of the dispute shifts from the question of the legality of whaling to the question of the legality of the NGO's activities themselves.

A notable legal risk is the possibility that direct, confrontational interventions could be placed within the legal framework of piracy or violence at sea under the broad interpretation of UNCLOS. In the definition of piracy, the element of "private purpose" is not necessarily limited to financial gain; acting not in the name of or authorized by a state may be sufficient to satisfy this condition. In that context, interventions aimed at environmental conservation could still be classified as private violence at sea, thereby providing a basis for the application of stronger coercive measures under international and national law (T. Petersson, 2022) .

Because current international law does not grant non-state actors the authority to enforce international law at sea, the self-proclaimed role of "enforcing international law on behalf of the international community" by NGOs lacks a solid legal basis. The gap between conservation goals and legitimate enforcement authority becomes an easily exploitable point in legal disputes. When actions are placed within the framework of maritime security rather than ecological conservation, NGOs risk being perceived as disruptors of maritime order, rather than agents promoting the enforcement of international environmental law (T. Petersson, 2022) .

Policy Implications

The analysis in the preceding sections shows that the enforcement gaps in the anti-whaling regime do not stem from a lack of standards, but from limitations in the enforcement mechanisms of international law. Given that the principle of state centering still governs the jurisdictional and enforcement system, the redesign of the role of NGOs needs to be placed within the existing legal framework rather than beyond it.

For IWC: strengthening the legal basis for NGO participation

Legally, the IWC is granted the authority to regulate its internal procedures under the ICRW. Therefore, standardizing the observer status of NGOs can be fully achieved through procedural rules without amending the Convention.

Establishing transparent criteria for recognition, scope of expression, access to documents, and compliance obligations is not only of governance significance but also strengthens the rule of law in IWC operations. When the role of NGOs is clearly institutionalized, the legitimacy of collective decisions will be enhanced and the risk of disputes over procedural validity will be reduced.

For the State: fulfilling conservation obligations in good faith and effectively implementing them through domestic legislation.

In accordance with the principle that treaties must be respected and implemented in good faith, every ICRW member state has an obligation to ensure that its commitments not only exist on paper but are also effectively implemented in practice. The 1982 Commercial Hunting Ban, as a decision adopted under the Convention's mechanism, thus creates a binding obligation for member states within the scope of their commitments. In this context, the domestication of conservation obligations, the establishment of jurisdictional mechanisms, and the assurance of domestic enforcement are not merely domestic policy choices, but methods for fulfilling international obligations. The lack of effective enforcement mechanisms at the national level may raise questions about the extent to which treaties are implemented in good faith under international law.

However, domestic cases also reveal the limitations of this mechanism when there is a lack of cross-border cooperation or when the enforcement of judgments faces practical obstacles. Therefore, countries need to combine domestic law with international enforcement cooperation mechanisms, instead of relying entirely on unilateral judicial measures.

For NGOs: ensuring compatibility between actions and the international legal framework.

Current maritime law, particularly UNCLOS, does not grant private entities the power to enforce maritime law. The principle of state monopoly on the use of coercive measures is the foundation of the legal order at sea. Therefore, when NGOs choose to intervene directly, they risk conflict with this legal structure.

From a policy perspective, a more appropriate strategy is to leverage legal mechanisms such as providing evidence, participating in multilateral proceedings, and utilizing public interest litigation within the limits of the law. This approach ensures long-term effectiveness while maintaining legitimacy and avoiding the risk of being "reclassified" under the framework of maritime safety violations.

Conclusion

The legal debate surrounding anti-whaling highlights a a structural tension within contemporary international environmental law: standards are increasingly moving toward stricter conservation, but enforcement mechanisms remain largely dependent on the goodwill and capacity of individual states. It is in this gap between commitment and implementation that non-governmental organizations (NGOs) emerge as crucial actors in global governance.

The article argued that the role of NGOs in this field cannot be simply understood as a technical complement to multilateral mechanisms. In fact, they are involved in restructuring the legal discourse on whaling: from an exploitation-based management model to a conservation-prioritizing model; from economic logic to ethical and ecological norms. However, the extent and manner of NGO involvement produce different legal consequences.

The normative model of action strengthens the legitimacy of the multilateral system by increasing transparency and accountability. Meanwhile, the direct intervention model poses a direct challenge to the traditional structure of international law, which grants state power the exclusive right to enforce regulations. When conservation actions are carried out through physical confrontation at sea, disputes risk shifting from the issue of whale protection to the legitimacy of the NGO's actions themselves. This exposes the limitations of "private enforcement" within a legal order still based on the principle of state centering.

From a systemic perspective, the core issue is not whether NGOs should participate in enforcement, but rather how to position their role within the existing legal framework. International environmental law today operates within a decentralized enforcement structure, where monitoring, transparency, and normative pressure play increasingly important roles alongside traditional coercion. Within this structure, NGOs can become essential supporting forces, but only if their participation is institutionalized and placed within clear legal limits.

The fight against whaling is therefore not just a story about biological conservation, but also a test of the adaptability of international law to the increasing role of non-state actors. Balancing practical effectiveness, legitimacy, and the rule of law will determine whether a model of cooperation between the state and civil society can become a sustainable model for global environmental governance in the future.

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