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## **WHY JAPAN SUPPORTS WHALING**

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### **1. INTRODUCTION**

Japan is one of the few states in the world that adamantly supports whaling. For decades, Tokyo has steadfastly maintained its right to whale and has aggressively lobbied the International Whaling Commission (IWC) for a resumption of commercial whaling. Japan's pro-whaling stance has invited strong international criticism from both environmental groups and Western governments, many of which view Tokyo as obstructing international efforts to protect whales.

Why has Japan adhered to a pro-whaling policy that has brought the country international condemnation? Its defiant pro-whaling stance is not consistent with its internationally cooperative position on other environmental matters. For the past decade, Tokyo has been a key player in international environmental regimes, such as those to combat ozone depletion and global warming.<sup>1</sup> If Japan is serious about environmental protection and desires to play a role as a 'green contributor,'<sup>2</sup> why hasn't it embraced the anti-whaling norm,<sup>3</sup> thereby joining other states in wildlife protection and assuming a larger role in global environmental leadership?

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<sup>1</sup> Isao Miyaoka, *1980s and Early 1990s: Changing from an Eco-outlaw to a Green Contributor*, 16 NEWSL. INST. SOC. SCI. U. TOKYO, 7-10 (1999).

<sup>2</sup> *Id.* at 7.

<sup>3</sup> Robert L. Friedheim, *Introduction: The IWC as a Contested Regime*, in TOWARD A SUSTAINABLE WHALING REGIME, 1-45 (Robert L. Friedheim ed. 2001). Friedheim

It is natural to assume that such norm non-compliance would be based on materialism, that is an attempt to maximize material self-interest. For example, domestic business groups in Japan often work closely with the state bureaucracy to shape policy in line with their interests.<sup>4</sup> However, in this case, the business-centered explanation fails. The Japanese whaling industry, which employs only a few hundred people and generates at best marginal profits, is too small and weak to influence government policy.<sup>5</sup>

Instead, it is necessary to pay attention to the broader domestic political processes in which international norm (non-)compliance takes place. Scholars have pointed out that two national-level factors seem to condition the effects of international norms on domestic political processes: the domestic legitimacy (or ‘saliency’) of the norm and the structural context in which domestic policy debate takes place.<sup>6</sup> This paper argues that the intersection of these factors explains Japan’s rejection of the anti-whaling norm.

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argues that a universal anti-whaling norm has emerged. Adopting phrases introduced by Finnemore and Sikkink, he contends that the norm has past a ‘tipping point’ and has already ‘cascaded’ throughout the international community. See Margaret Finnemore & Katherine Sikkink, *International Norm Dynamics and Political Change*, 52 INT’L ORG. 887-917 (1998).

<sup>4</sup> For example, see CHALMERS JOHNSON, *MITI AND THE JAPANESE MIRACLE: THE GROWTH OF INDUSTRIAL POLICY, 1925-1975* (1982).

<sup>5</sup> Gary Strieker, *Japan Grapples with Whale Harvesting*, CABLE NEWS NETWORK (CNN), July 24, 2002, <<http://www.cnn.com/2001/TECH/science/07/23/japan.whaling/>> (accessed July 28, 2003).

<sup>6</sup> Andrew P. Cortell and James W. Davis, Jr., *Understanding the Domestic Impact of International Norms: A Research Agenda*, 2 INT’L STUD. REV. 65-87 (2000); Andrew P. Cortell and James W. Davis, Jr., *How Do International Institutions Matter? The Domestic Impact of International Rules and Norms*, 40 INT’L STUD. Q. 451-478 (1996); Jeffrey T. Checkel, *Norms, Institutions and National Identity in Contemporary Europe*, 43 INT’L STUD. Q. 83-114 (1999); Thomas Risse-Kappen, *Ideas Do Not Float Freely: Transnational Coalitions, Domestic Structures and the End of the Cold War*, 48 INT’L ORG. 185-214 (1994).

## 2. JAPAN AND THE INTERNATIONAL WHALING COMMISSION

To understand Japan's rejection of the anti-whaling norm, it is necessary to examine the Japanese whaling policy in the context of an international regime of whale conservation and welfare.<sup>7</sup> The central institution of the regime is the International Whaling Commission (IWC), an organization established by 15 states in 1948 to implement the International Convention for the Regulation of Whaling (ICRW) of 1946.<sup>8</sup> The ICRW was created to halt the overexploitation of certain species of whales that had been pushed to the brink of extinction. The main purpose of the ICRW was "to provide for the proper conservation of whale stocks and thus make possible the *orderly development of whaling industry*."<sup>9</sup> As this statement indicates, the IWC was not originally a whale conservation regime but a whale regulation regime.

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<sup>7</sup> I use the term 'conservation' to refer to the regime because the IWC no longer serves the function of regulating commercial whaling but instead promotes a complete ban on the commercial hunting and killing whales. See Stuart R. Harrop, *From Cartel to Conservation and on to Compassion: Animal Welfare and the International Whaling Commission*, 6 J. INT'L WILDLIFE L. & POL'Y 79-104 (2003); Steinar Andresen, *The International Whaling Commission (IWC): More Failure Than Success?*, in ENVIRONMENTAL REGIME EFFECTIVENESS: CONFRONTING THEORY WITH EVIDENCE 379-403 (Edward L. Miles, *et al.* eds. 2002).

<sup>8</sup> An earlier attempt to regulate whaling resulted in the Convention for the Regulation of Whaling, adopted by the League of Nations in 1931. The convention was designed to stabilize prices for whale oil and spermaceti. However, it had no enforcement powers and failed to curb excessive exploitation of whaling stocks. See Stedman, *The International Whaling Commission and Negotiation for a Global Moratorium on Whaling*, in NINE CAST STUDIES IN INTERNATIONAL ENVIRONMENTAL NEGOTIATION 151-175 (Lawrence E. Susskind *et al.* eds. 1990).

<sup>9</sup> International Whaling Commission (IWC), *International Convention for the Regulation of Whaling, 1946*, <<http://www.iwcoffice.org/Convention.htm>> (accessed September 21, 2002), italics added. According to Andresen, *supra* note 7, the IWC has gone through three stages of development: (1) Phase 1, 1946-early 1960s (no conservation and no orderly development), (2) Phase 2, mid-1960s-late 1970s (beginning of whaling regulation, regime effectiveness on the rise), and (3) Phase 3, late-1970s to the present (politicized era, mixed results).

When Japan joined the IWC in 1951, the country's whaling policy was consistent with those of the majority of IWC members. Most member nations were whaling states concerned about the serious depletion of certain whale stocks. These pro-whaling members were interested in preserving whale resources for commercialization of whale products, but did not support a permanent ban on whaling.

Over the years, however, the focus of the organization has shifted from the sustainable *use* of whales (i.e., the orderly development of the whaling industry), to the *conservation* of whales (i.e., stopping the killing of whales that may otherwise extinct),<sup>10</sup> and further to the *protection of the welfare* of whales (i.e., ending the suffering of whales “irrespective of their conservation status and irrespective of the benefit of such actions to humans”).<sup>11</sup> This shift has been coincided with a substantial change in the composition of the IWC membership. While some member states have switched their position from pro-whaling to anti-whaling, an increasing number of non-whaling and anti-whaling states have joined the IWC since the 1970s.<sup>12</sup> As a result, anti-whaling states have

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<sup>10</sup> PETER J. STOETT, *THE INTERNATIONAL POLITICS OF WHALING* (1997); Friedheim, *supra* note 3; ANNY WONG, *THE ROOTS OF JAPAN'S INTERNATIONAL ENVIRONMENTAL POLICIES* (2001).

<sup>11</sup> Harrop, *supra* note 7, at 81.

<sup>12</sup> DAVID DAY, *THE WHALE WAR* (1987), at 97; M. J. Peterson, *Whalers, Cetologists, Environmentalists, and the International Management of Whaling*, 46 INT'L ORG. 147-186 (1992). Environmental NGOs reportedly contributed to the expansion of the IWC membership by footing the membership fees and writing the required membership documents for small, poor non-whaling states to become members of the IWC, so that anti-whaling states would grow to outnumber whaling states within the organization. See Leslie Spencer, *The Not So Peaceful World of Greenpeace*, FORBES 174-181, November 11, 1991; Friedheim, *supra* note 3; Steinar Andresen, *The Making and Implementation of Whaling Policies: Does Participation Make a Difference?*, in *THE IMPLEMENTATION AND EFFECTIVENESS OF INTERNATIONAL ENVIRONMENTAL COMMITMENTS: THEORY AND PRACTICE* 431-474 (David G. Victor *et al.* eds. 1998).

became dominant within the IWC. Whaling states, including Japan, have since faced mounting pressure from these anti-whaling members to abandon whaling completely.

With the increase in anti-whaling members, the IWC moved gradually to adopt resolutions to restrict whaling in the 1970s. In 1974, the IWC adopted the New Management Procedures (NMP) as a substitute for a moratorium.<sup>13</sup> The NMP divided whale stocks into three categories, set quotas for each one on the grounds of scientific assessments and sustainability, and demanded that the commercial whaling of depleted stocks be halted until their recovery.<sup>14</sup> Then in 1976, whale species were allocated separate quotas so that depleted ones would be protected. In 1979, the IWC banned pelagic whaling except for with the abundant minke whales in the Antarctic Ocean. In the same year, the IWC established the Indian Ocean as a cetacean sanctuary.<sup>15</sup>

While all of these measures have been implemented against Japan's wishes, the largest blow to the country was the organization's 1982 decision to temporarily halt commercial whaling, that is, to adopt a blanket moratorium ('zero quota') on whale hunting to be implemented in the 1985-1986 season. Japan and other pro-whaling states such as Norway and the Soviet Union immediately lodged objections under Article 5. 3

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<sup>13</sup> The adoption of NMP was spurred by the 1972 UN Conference on the Human Environment in Stockholm, which passed a ten-year moratorium on commercial whaling as a result of intense campaigns by environmental NGOs and the US government. While Japan, Brazil, and South Africa abstained, the other countries attending the conference unanimously voted in favor of the resolution. For more detailed discussion on the Stockholm conference on whaling, see William C. Burns, *The International Whaling Commission in the 1990s: Problems and Prospects*, 6 INT'L WILDLIFE L. OCCASIONAL PAPER SERIES (1994).

<sup>14</sup> These categories are the Protection Stocks (PS, the highest category including right, gray, humpback, blue, fin, and sperm whales), the Initial Management Stocks (IMS), and the Sustained Management Stocks (SMS). Commercial whaling was permitted for only IMS and SMS. *Id.* at 9; Friedheim, *supra* note 3, at 4; Andresen, *supra* note 12.

<sup>15</sup> Stedman, *supra* note 8.

of the ICRW, thereby legally exempting themselves from applying the organization's resolution.<sup>16</sup>

Although Japan intended to defy the IWC decision and continue commercial, it met strong pressure from the United States to adopt the moratorium. The United States, the architect of the moratorium, pressured Japan and other whaling states to accept the moratorium by threatening economic sanctions against them. Under the 1979 Packwood-Magnuson Amendment to the Magnuson Fishery Conservation and Management Act, the United States threatened to end Japan's fishing quota in the US 200-mile Exclusive Economic Zone (EEZ) if Tokyo continued commercial whaling. Since Japan had substantial economic interests in the US EEZ, it reluctantly signed the Murazawa-Baldrige pact in 1987 and dropped its objection to the IWC moratorium in exchange for a *quid pro quo* of being allocated a fishing quota in the US EEZ.<sup>17</sup>

With the 1982 moratorium, the ICW planned to halt commercial whaling from 1986 for a period of five years and conduct a comprehensive assessment of the effects of the moratorium on whaling stocks by 1990. Subsequently, the IWC Scientific Committee carried out the comprehensive assessment and recommended that the IWC adopt the Revised Management Procedure (RMP). However, the broader IWC refused to

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<sup>16</sup> If a member lodges an objection to an IWC decision within a certain period of time, it is not bound by that decision (Article 5.3). IWC, homepage, <<http://www.iwcoffice.org/iwc.htm#Members>> (accessed January 9, 2003). Some pro-whaling member states such as Canada eventually left the IWC in protest over the moratorium. Friedheim, *supra* note 3; Andresen, *supra* note 12.

<sup>17</sup> WONG, *supra* note 10. However, even though Japan adopted the moratorium, the US government froze the Japanese fishing quota in the US EEZ in 1988 for the protection of its own fishing industry. MASAYUKI KOMATSU, with the help of SHIGEKO MISAKI, THE TRUTH BEHIND THE WHALING DISPUTE (unpublished manuscript).

implement RMP that would have eased the ban.<sup>18</sup> Furthermore, the moratorium was supplemented by tighter restrictions on whaling through the IWC's 1994 adoption of the Southern Ocean sanctuary. This sanctuary targeted Japan, which had been trying to resume commercial whaling in the Southern Ocean area.<sup>19</sup>

Despite these IWC measures to end whaling, Japan has never fully adopted the anti-whaling norm. Even though Japan accepted the 1982 moratorium in exchange for the *quid pro quo* fishing arrangement with the United States, Tokyo decided to begin a *scientific whaling* program by invoking the scientific research provision in Article 8 of the ICRW. Article 8 states that

Notwithstanding anything contained in this Convention, any contracting 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 subject to such restrictions as to number and subject to such other conditions as the Contracting Government thinks fit, and the killing, taking, and treating of whales in accordance with the provisions of this Article shall be exempt from the operation of this Convention.<sup>20</sup>

To start its scientific whaling program, Japan first submitted in 1987 scientific research plans to the IWC Scientific Committee, calling for an annual kill of 825 minke

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<sup>18</sup> Even though the IWC accepted and endorsed the RMP as a formula for sustainable, regulated whaling, the organization has never implemented or adopted it into the IWC Schedule. The anti-whaling states have argued that a Revised Management Scheme (RMS) be implemented first before the procedure takes effect. The RMS is supposed to incorporate both scientific aspects of management (i.e., including specific rules for conducting surveys of whale numbers) and non-scientific aspects of inspection and enforcement of commercial whaling and humanness of killing techniques. See Friedheim, *supra* note 3. For a critical analysis of the effectiveness of the RMP, see Burns, *supra* note 13.

<sup>19</sup> The Southern Ocean Sanctuary would terminate commercial whaling in the region of the greatest whale resources. Friedheim, *supra* note 3.

<sup>20</sup> IWC, *supra* note 9. Japan was not alone conducting whaling operations under the name of scientific research. Norway, South Korea, and Iceland also have done scientific whaling. See Burns, *supra* note 13.

whales and 50 sperm whales from the Antarctic for 12 years for scientific purposes.<sup>21</sup> Japan's proposal angered delegates from anti-whaling states at the IWC annual meeting that year, prompting them to adopt a resolution that included a provision that would have precluded any research program that could not be done "without adversely affecting the overall status and trends of the stock in question or the success of the comprehensive assessment of such stock."<sup>22</sup> The IWC then formally recommended that Japan withdraw its scientific research proposal.<sup>23</sup> In response, Japan revised its proposal and announced that it would start research in the Antarctic in the 1987/1988 season by taking a reduced number of minke whales (300 minke whales, no sperm whales). This scientific whaling program (known as the Japanese Antarctic Research Program or JARPA) was designed to last 16 years, which included a 2-year feasibility study followed by a 14-year research program. Despite the IWC's criticism of the Japanese action,<sup>24</sup> Japan carried out and even expanded the JARPA program.

In 1989-1994, the program involved about 330 minke whales per year. Then in the 1995/1996 season, it began to extend into a wider area in the Antarctic and capture and additional 110 minke whales. Since then, Japan has been annually hunting 440 minke whales through JARPA.<sup>25</sup>

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<sup>21</sup> South Korea and Iceland also submitted similar proposals to the Scientific Committee in the same year. See Burns, *supra* note 13.

<sup>22</sup> 39th Rep. IWC 24 (1987), quoted in Burns, *supra* note 13, at 11.

<sup>23</sup> Alexander Gillespie, *Whaling under a Scientific Auspice: The Ethics of Scientific Research Whaling Operations*, 3 J. INT'L WILDLIFE L. & POL'Y, 1-38 (2000).

<sup>24</sup> Burns, *supra* note 13.

<sup>25</sup> Masaaki Ishida, *Brief Outline of the Japanese Research Whaling Program in the Antarctic (JARPA)* (2002), <[http://luna.pos.to/whale/gen\\_jarpa.html](http://luna.pos.to/whale/gen_jarpa.html)> (accessed July 23, 2003).

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.<sup>26</sup>

Then in 2000, JARPN broadened, from minke whales to include two other species (i.e., Bryde's and sperm whales). The broadened program, named JARPN II, involves an annual catch of 100 minke whales, 50 Brydes whales and 10 sperm whales. The IWC adopted a specific resolution calling on Japan to refrain from conducting JARPN II.<sup>27</sup> This plan also angered US senators as the Byrde's and sperm whale species are protected under the US Marine Mammal Protection Act. These senators, led by Connecticut Senator Joe Lieberman (D), urged the Clinton administration to take a strong action against Japan's proposal.<sup>28</sup> JARPN II also prompted US Commerce Secretary Norman Mineta to recommend to President Clinton to consider trade sanctions against Japanese fishery products under the Pelly Amendment to the Fishermen's Protective Act of 1967.<sup>29</sup> Although the Clinton administration did not in the end impose trade sanctions, it

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<sup>26</sup> William Aron *et al.*, *Scientists versus Whaling: Science, Advocacy, and Errors of Judgment*, 52 BIOSCIENCE 1137-1140 (2002).

<sup>27</sup> IWC, *Final Press Release, 2000 Annual Meeting, Adelaide, Australia* (2000), <<http://www.iwcoffice.org/PRESSRELEASE2000.htm>> (accessed July 28, 2003).

<sup>28</sup> Robbins Barstow, *24 U.S. Senators Condemn Japan's Renewed Whaling*, 9 WHALES ALIVE 3 (2000), <<http://csiwhalesalive.org/csi00302.html>> (accessed July 15, 2003).

<sup>29</sup> Norman Mineta, *The Case Against Japan's Whaling Program*, JAPAN TIMES ONLINE, August 26, 2000, <<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?eo20000826a2.htm>> (accessed July 22, 2003); *Mineta Recommends Clinton Penalize Japan over Whaling*, JAPAN TIMES ONLINE, September 14, 2000, <<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20000914a1.htm>> (accessed July 22, 2003); The White House, the Government of the United States, *President Clinton Directs U.S. Actions in Response to Japanese Whaling*, September 13, 2000, <[http://clinton4.nara.gov/WH/new/html/Wed\\_Oct\\_4\\_115616\\_2000.html](http://clinton4.nara.gov/WH/new/html/Wed_Oct_4_115616_2000.html)> (accessed July 15, 2003).

expressed its disapproval of Japan's new program by boycotting a UN environmental conference in Japan.<sup>30</sup>

In 2002, JARPN II was expanded further to include additional catches and species (i.e. 50 each of minke whales from coastal waters and sei whales from offshore). As a result, Japan's scientific whaling programs captured and killed 600 whales that year: 440 Antarctic minke whales through JAPRA, plus 100 North Pacific minke whales, 50 Bryde's whales, 10 sperm whales, 50 sei whales, and 50 minke whales along the Pacific seaboard (through JARPNII). This was double the catch in the initial scientific whaling program (300 Antarctic minke whales in 1988) and the largest kill since the program began.<sup>31</sup>

The Japanese government has argued that the purpose of scientific whaling is to establish a scientific system for the conservation and management of minke, Bryde's, sei, and sperm whales.<sup>32</sup> However, the program's critics—including governments,<sup>33</sup>

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<sup>30</sup> *Japan Slams U.S. for Sanctions Threat over Whales*, CNN, September 5, 2000, <<http://www.cnn.com/2000/NATURE/09/05/japan.whaling.ap/>> (accessed July 15, 2003).

<sup>31</sup> *A Middle Way to Whaling*, JAPAN TIMES ONLINE, May 22, 2002, <<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?ed20020522a1.htm>> (accessed July 22, 2003).

<sup>32</sup> Nihon Horui Kenkyu-jo [The Institute of Cetacean Research, ICR], *2003-nen Kita-Taiseiyo Horui Hokaku Chosa* [Research on the Harvest of the Japan Research Whaling Program in the North Pacific, 2003], May 13, 2003, <<http://www.icrwhale.org/02-A-24.htm>> (accessed July 23, 2003).

<sup>33</sup> *Emotions Escalate in U.S., Japan Whaling Debate*, CNN, September 14, 2000, <<http://cnn.com/2000/NATURE/09/14/whales.japan.reut/>> (accessed June 26, 2002); *UK Warns Japan over Whaling Ban*, BRITISH BROADCASTING CORPORATION (BBC) NEWS, May 16, 2002, <<http://news.bbc.co.uk/hi/english/world/asia-pacific/newsid1990000/1990433.stm>> (accessed June 26, 2002); Mari Yamaguchi, *Whaling Methods Debated*, THE WASHINGTON POST, June 24, 2002, <<http://washingtonpost.com/wp-dyn/articles/A34035-2002June24.html>> (accessed June 26, 2002). As a retaliation against Japan's scientific whaling program, the Reagan administration indicated that the United States might invoke the Packwood-Magnuson

nongovernmental organizations (NGOs),<sup>34</sup> journalists,<sup>35</sup> academics,<sup>36</sup> and scientists<sup>37</sup>—have condemned the program as inhumane and lacking scientific justification. They argue that Japan’s scientific whaling programs represent commercial whaling in disguise, since the whales captured in the program are lethally killed and their whale meat is sold in the open market.<sup>38</sup> Critics have also questioned the objectivity of Japan’s research, contending that the programs are designed to gather data to justify the restart of commercial whaling, rather than to independently analyze data for scientific purposes.<sup>39</sup>

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Amendment again to terminate all Japanese fishing rights within the US EEZ. By then, however, Japan’s fishing quota in the US waters was minimum and the U.S. gesture was only symbolic. While the US administration indicated it would review Japan’s action, it eventually took no action. Dean Wilkinson, *The Use of Domestic Measures to Enforce International Whaling Agreements: A Critical Perspective*, 17 DENV. J. INT’L L. & POL’Y 271-291 (1989); Burns, *supra* note 13.

<sup>34</sup> See, for example, Greenpeace, *Whaling* (2000), <[http://whales.greenpeace.org/whaling/jp\\_scientific.html](http://whales.greenpeace.org/whaling/jp_scientific.html)> (accessed June 26, 2002); Whale and Dolphin Conservation Society, *Japan's Lethal Research Programme: The JARPN II Review* (2002), <<http://www.wdcs.org/dan/publishing.nsf/allweb/10E2BD30AECB46FC80256BCF004CDC6>> (accessed July 23, 2003).

<sup>35</sup> See, for example, Peter McKillop, *Letter from Japan: Whale of a Problem*, TIME MAGAZINE, September 1, 2000, <<http://www.time.com/time/asia/asiabuzz/2000/09/01/>> (accessed June 26, 2002).

<sup>36</sup> See, for example, Jared Diamond, *A Whale of an Agenda*, LOS ANGELS TIMES, June 23, 2002, at M 1, 6. For an extensive and critical analysis of Japan’s scientific research program, see Gillespie, *supra* note 23.

<sup>37</sup> For example, Stephen Hesse, *Scientists Petition Japan to Lay Down Harpoons*, JAPAN TIMES ONLINE, May 23, 2002, <<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?fe20020523sh.htm>> (accessed July 22, 2003).

<sup>38</sup> After the completion of research, a few thousands tons of whale meat are annually sold to the Japanese central government. Then the government distributes it to Japanese local governments, which then passes it on to wholesale fish markets. Eventually, the meat ends up in Japanese eateries. *Japan—the Politics of Whaling*, THE ECONOMIST, September 9, 2000, at 42.

<sup>39</sup> S. J. Mayer, *A Preliminary Review and Evaluation of Scientific Whaling from 1986 to 1996* (unpublished manuscript).

While continuing the scientific whaling program, Japan has also taken more direct action to try to end the IWC moratorium. Japan has repeatedly petitioned the commission to overturn the moratorium and set up catch quotas for several stocks of minke whales. Japan's request has been rejected by the commission on the ground that the IWC Scientific Committee had not completed an assessment of whale stocks. For example, in 1991, Japan petitioned to overturn the moratorium and to be allowed to take 3000 minke whales, but in vain.<sup>40</sup>

At the same time, Tokyo has demanded at the IWC that, under the rules of the 1982 moratorium, Japan's four coastal communities be given rights similar to the 'aboriginal subsistence whaling' rights that indigenous communities in the Arctic are accorded. Tokyo maintains that these Japanese coastal communities have traditionally depended upon what is known as small-type coastal whaling (hereafter referred to as coastal whaling) and that they should thus be allowed an annual quota of 50 minke whales—a species that in Japan's view is abundant in stock.<sup>41</sup> Japan sees it as contradictory that while on the one hand the hunting of small-type minke whales in Japanese waters (under the STCW scheme) is prohibited, on the other hand Alaskan Eskimos are allowed by IWC to harvest endangered bowhead whales.<sup>42</sup>

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<sup>40</sup> Colin Nickerson, *In Japan, Saving Whales Means Losing A Lifestyle*, BOSTON GLOBE June 21, 1991, at 1.

<sup>41</sup> It should be pointed out that Japan has not completely stopped STCW nor commercial whaling. Small coastal whaling firms have been hunting whale species not subject to the IWC's ban on commercial whaling (e.g., Baird's beaked, pilot whales, Dall's porpoises). However, these firms are given quotas and thus regulated by the government. Japan Whaling Association, *Questions and Answers*, <<http://www.whaling.jp/english/qa.html>> (accessed July 23, 2003).

<sup>42</sup> ARNE KALLAND & BRIAN MOERAN, JAPANESE WHALING: END OF AN ERA? (1992); Japanese Ministry of Agriculture, Forestry, and Fisheries (MAFF), *Japan's Position on*

The IWC has repeatedly rejected the Japanese request for the quota of 50 minke whales on the grounds that Japan's coastal whaling contains a commercial element and thus violates the moratorium.<sup>43</sup> To protest this decision, Japanese delegates tried a new tactic in 2002. When Japan's request was voted down at the IWC annual meeting, Japan led a bloc of Caribbean states to try to reject the United States and Russia's request to renew aboriginal whaling quotas for Alaskan Inuits and Russia's indigenous Chukotka people. The effort failed.<sup>44</sup>

Japanese delegates to the IWC 2002 meeting pointed out that they had no intention of hurting the indigenous people in the Arctic, but they insisted that they needed to end the 'double standard' of the anti-whaling IWC members who would not allow Japan to whale.<sup>45</sup>

Masayuki Komatsu, Japan's alternate commissioner to the IWC and a bureaucrat in the Japanese Fisheries Agency, expressed his frustration with the US government,

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*Small-Type Coastal Whaling and Aboriginal Subsistence Whaling*, media release, May 24, 2002.

<sup>43</sup> Friedheim, *supra* note 3, at 135.

<sup>44</sup> Prior to that vote, Japan had proposed a compromise to the United States and Russia by amending the aboriginal quota and also to allow Japan a STCW quota of 25 minke whales. However, the IWC voted the amendment down. See *IWC Meeting Ends in a Bitter Divide*, JAPAN TIMES ONLINE, May 25, 2002, <<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20020525a3.htm>> (accessed July 21, 2003).

<sup>45</sup> *Bow to Aboriginals Seen as 'Sunny Day' for Japan*, JAPAN TIMES ONLINE, May 24, 2002, <<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?np20020524a3.htm>> (accessed July 21, 2003). In October 2002, however, Japan changed its position and supported the renewal of the aboriginal whaling quotas for the Inuits and Chukotka for the next five years, on condition that Japan's scientific whaling data be considered at future IWC meetings. As a result, the IWC endorsed the renewal. It is speculated that Japan supported the proposal for the quota renewal because the United States switched its position and supported a Japanese resolution calling for an early conclusion over its request for the quota of 50 minke whales under the STCW scheme. *U.S. Denies Whaling Quid Pro Quo*, JAPAN TIMES ONLINE, October 17, 2002, <<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20021017b4.htm>> (accessed July 28, 2003).

which adamantly opposed Japan's hunt of minke whales under the coastal whaling scheme but promoted the indigenous whaling rights of the Inuits in Alaska at the 2002 IWC meeting:

Japan is tired of asking year after year for 50 minke from an abundant stock for our traditional coastal whalers only to have the United States vote against it; yet we have always supported the Alaskan's taking almost 280 bowhead whales.<sup>46</sup>

Komatsu also criticized the New Zealand delegation to the IWC in 2002 for proposing a whale sanctuary in the South Pacific, another move that targetted Japan. He argued that the New Zealand delegates were "merely repeating worn-out Greenpeace rubbish" and sarcastically questioned whether "it's Greenpeace or the elected representatives who are formulating New Zealand whaling policy."<sup>47</sup>

At the 2003 IWC annual meeting, Japan's request for a coastal catch of 150 minke whales—triple its annual quota—was rebuffed, together with other requests such as setting up a new hunting ground for 150 Bryde's whales in the northwestern Pacific. In addition, the IWC approved a non-binding resolution to ban Japan from conducting its scientific whaling program in the Antarctic Ocean (JARPA). Furthermore, the commission decided to establish a new whale conservation committee. These measures marked another serious setback for Japan.<sup>48</sup>

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<sup>46</sup> MAFF, *Alaskan's Lose Quota Due to United States' Hypocrisy*, media release, May 23, 2002. Komatsu's opinion of the Japanese refusal to the aboriginal quotas is also found in Alex Kirby, *Inuit Demand Whale Catch*, BBC NEWS, October 13, 2002, <<http://news.bbc.co.uk/2/hi/science/nature/2319855.stm>> (accessed October 13, 2002); Masayuki Komatsu, *What Was Achieved at the Shimonoseki IWC Meeting*, 26 ISANA (2002), <<http://whaling.jp/english/isana/no2601.html>> (accessed January 16, 2003).

<sup>47</sup> MAFF, *Lee, McLay—Whaling Mimics for Greenpeace*, media release, May 21, 2002.

<sup>48</sup> *Reaction to Lost Votes: Japan Threatens to Pull Out of the IWC*, THE JAPAN TIMES ONLINE, June 21, 2003, <<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20030621a3.htm>> (accessed July 21, 2003).

The schism between Japan and the anti-whaling camp at the IWC has widened substantially over the years. At each annual IWC meeting, Japan faces considerable hostility and anger from the anti-whaling camp.<sup>49</sup> Japan then fires back, threatening its opponents. For example, Minoru Morimoto, Japan's chief delegate to the ICW, announced during the 2003 IWC meeting that Japan might withhold IWC membership dues. Japan is the largest contributor to the IWC, accounting for 8.6 percent of the commission's operational funds.<sup>50</sup> He also indicated that Japan might boycott IWC committees, withdraw from the IWC, and form a separate pro-whaling commission, claiming that the IWC has been hijacked by the anti-whaling members.<sup>51</sup>

All these actions beg the question of why Japan continually risks antagonizing its relations with the United States and other anti-whaling states at the IWC. Why doesn't Tokyo adjust its whaling policy for the sake of better international relations?

### **3. JAPAN'S WHALING POLICY AND DOMESTIC STRUCTURES**

#### **3. 1. Materialist Explanation**

To answer these questions, one needs to examine the domestic variables affecting norm adoption. A popular domestic-level approach to Japanese diplomacy is a business-centered one. This approach assumes that close state-business relations allow Japanese business interests to prevail in the political decision-making process. Peterson, adopting

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<sup>49</sup> Milton M. R. Freeman, *Japanese Community-Based Whaling, International Protest, and the New Environmentalism*, in *JAPAN AT THE CROSSROADS: HOT ISSUES FOR THE 21<sup>ST</sup> CENTURY* 12-31 (David Myers & Kotaku Ishido eds. 1998).

<sup>50</sup> *Japan May Halt Funds to Whaling Commission*, JAPAN TIMES ONLINE, June 18, 2003, <<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20030618a2.htm>> (accessed June 21, 2003).

<sup>51</sup> *Reaction to Lost Votes: Japan Threatens to Pull out of the IWC*, JAPAN TIMES ONLINE, June 21, 2003, <<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20030621a3.htm>> (accessed July 21, 2003).

this line of thinking, claims that industry strongly influences Japan's whaling policy.<sup>52</sup> However, this view is contradicted by the facts; the business sector has only marginal influence over the decision-making process regarding whaling.

Due to the conservation measures mandated by the IWC, Japan's whaling industry has substantially downscaled. Today, Japan has two types of whaling firms. One type consists of eight small firms, including Toba Hogeï and Miyoshi Hogeï, that are engaged in coastal whaling, hunting the species not subject to the ICRW (i.e., Baird's beaked whale and pilot whale). The other consists of the one firm that is involved in the government's scientific whaling programs: Kyodo Senpaku.<sup>53</sup>

The coastal whaling firms operate on a small scale. Even before the IWC moratorium took effect, these firms altogether had a total of only nine whaling boats in operation. Since the moratorium, which has forbidden the hunting of minke whales (at least outside the scientific whaling program) but allows the hunting of limited numbers of some species of small whales, only five boats have been operating. These firms have paired up and shared boats to avoid running deficits (e.g., Company X and Y make an agreement to use X's boat while resting Y's and then use Y's boat while resting X's). These firms are subject to the government's annual quotas and their whaling activities are thus subject to close government monitoring.<sup>54</sup> Since the types of small, coastal whales captured by these firms are not subject to the ICRW, and since their whaling is on a very

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<sup>52</sup> Peterson, *supra* note 12.

<sup>53</sup> Nihon Kogata Hogeï Kyoukai [Japan Small-Type Whaling Association], *Heisei 15-nendo Kogata Hogeï Gyosha to Sono Shozai-chi* [Small-Type Whaling Businesses and Their Locations, 2003] (2003), <<http://homepage2.nifty.com/jstwa/shozaichi.htm>> (accessed July 24, 2003).

<sup>54</sup> *Id.*

small scale, the activities of these firms has not attracted the attention of the international anti-whaling community.

Kyodo Senpaku conducts whaling on a similarly limited scale, though much more controversially since it travels far from Japan's coastline to capture minke whales (which are protected by the ICRW). Kyodo Senpaku has been hunting whales as a contractor for the government's scientific research programs since the firm's establishment in 1987, the year that marked the end of commercial whaling.<sup>55</sup> Even though it is privately owned, the firm completely relies on government contracts for its operation, as the scientific whaling programs are the only activity the company is engaged in. Today, Kyoto Senpaku has only about a few hundreds employees.

Although Kyoto Senpaku maintains a close working relationship with the government (i.e., the Ministry of Agriculture, Forestry, and Fisheries or MAFF, and the Fisheries Agency, a group under MAFF's jurisdiction), the company's role in decision making is limited. For example, when Kyodo Senpaku requested that a scientific research program of 1200-1500 minke whales be established in the late 1980s, the Fisheries Agency flatly rejected its request and instead decided to adopt a quota of 300, as discussed below.<sup>56</sup>

Kyodo Senpaku collaborates with the Institute of Cetacean Research (ICR), a semi-governmental non-profit organization (*zaidan hojin*) that conducts research on

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<sup>55</sup> Kyodo Senpaku was established after the dissolution of its predecessor, Nihon Kyodo Hogeï. This company was created in 1976 from a merger of three Japanese fishing companies (i.e., Nihon Suisan, Taiyo Gyogho, and Kyokuyo Hogeï). The merger was made due to the aforementioned IWC regulatory measures and the subsequent contraction of the industry. ZENJIRO TSUCHII, SAIKIN HOGEI HAKUSHO [White Paper on Recent Whaling] 13 (1992).

<sup>56</sup> See *Japan—the Politics of Whaling*, THE ECONOMIST, September 9, 2000, at 42; WONG *supra* note 10.

whales caught by the company. The ICR, formerly known as the Whales Research Institute, was founded in 1987 to conduct scientific research on whales, with start-up costs covered by the Fisheries Agency, Kyodo Senpaku, and donations from pro-whaling individuals and groups. Just like Kyodo Senpaku, the ICR was founded in the year that the IWC established the moratorium on whaling. The institute is under strong influence of the Fisheries Agency and MAFF, for whom it conducts its research. The institute receives annual funds from the Fisheries Agency, is headed by a former Fisheries Agency official, and is under the jurisdiction of MAFF.

As a small research center with only about 20 staff members, most of whom are scientists, the ICR does not directly participate in Japan's whaling policy-making.<sup>57</sup> Rather, the institute provides 'scientific evidence' to support the Fisheries Agency's and MAFF's claims that certain whale species such as milke whales are abundant in number and that Japan should thus be allowed to restart commercial whaling.

The whaling industry of course hopes that the IWC moratorium will be lifted and that Japan will be able to resume commercial whaling in a larger scale. However, this hope does not translate into decision making authority or influence. Whaling is a minor industry in Japan today, with only the slightest impact on the Japanese economy: the coastal whaling industry is dwindling; and the scientific whaling programs are not-for-profit as the money generated from the sale of whale meat under the programs is used to cover the cost of the research.<sup>58</sup> According to one journalist, the money generated from

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<sup>57</sup> Nihon Horui Kenkyujo [Institute of Cetacean Research, ICR], *Nihon Horui Kenkyujo no Enkaku to Setsuritsu Mokuteki* [The History of the Institute for Cetacean Research and the Objectives of its Establishment], <<http://www.icrwhale.org/01-A.htm>> (accessed July 27, 2003).

<sup>58</sup> *A Middle Way to Whaling*, *supra* note 31.

whale meat sales through the scientific whaling programs barely matches the funds Tokyo spends to cover the IWC membership fees for some developing countries in an attempt to influence IWC policy.<sup>59</sup> Thus, although business interests do exist, the industry does not have the resources enough to lobby the government or the economic weight to impose its views. Rather, the industry is dependent on the government, relying on the rules set by the government (e.g., catch quotas for coastal whaling) and contract work for scientific research. The industry thus plays a supportive role, rather than a dominating one, in policy making, providing information to justify Japan's pro-whaling stance.

### **3. 2. Domestic Political-Cultural Structure**

Japan's persistence on the whaling issue can only be understood in light of the country's domestic cultural and political structures. Anti-whaling advocates in Japan are hampered by two factors: (1) A great divide between the international norm and domestic cultural values makes it difficult to generate public support for the anti-whaling norm; and (2) the domestic political system is dominated by bureaucratic actors, providing little political opening to anti-whaling advocates.

#### *Domestic Cultural Structure*

The process of international norm diffusion depends on the cultural characteristics of a society and the preexisting values of domestic actors. The process of diffusion is affected by how the international norm resonates with domestic values.<sup>60</sup> In the case of

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<sup>59</sup> Gwynne Dyer, *Why Japan Won't Back Down on Whaling*, JAPAN TIMES ONLINE, July 25, 2001, <<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?eo20010725a1.htm>> (accessed July 23, 2003).

<sup>60</sup> Cortell & Davis, *supra* note 6.

Japan's whaling, the divide between the international norm and domestic values is substantial. Many Japanese perceive the whaling controversy largely as a cultural matter.

Japanese attitudes toward whales and whaling are based on three underlying perspectives. The first is the belief that the Japanese as a whole have been eating whale for thousands of years. Many Japanese believe that they have a distinct and unique whale-eating culture (*gyoshoku bunka*). The fact that the eating of whale only became commonplace in Japan after World War II (due to the necessity to feed the impoverished population) is largely ignored.<sup>61</sup> So is the fact that the Japanese are not alone in eating whale meat. (For example, the Inuit and people in the Farole Islands, Iceland, Norway, and Indonesia also eat whale meat.) In general, Japanese consider whale preparation and eating a national cuisine and an expression of cultural identity.<sup>62</sup>

Second, whales are usually considered a type of fish, rather than a mammal. This view is reflected and reinforced in Japan's 1500-year-old writing system, in which the symbol for whale (pronounced *kujira*) includes within it a component that means fish (*uo-hen*). Considering whales as fish, most Japanese lack any special love of whales and disagree with Western animal rights activists who insists on whales' rights.<sup>63</sup> According

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<sup>61</sup> Prior to that, the hunting and eating of whales was largely confined to small coastal communities. See Arne Kalland, *The Anti-Whaling Campaigns and Japanese Responses* (1998), <[http://luna.pos.to/whale/icr\\_camp\\_kalland.html](http://luna.pos.to/whale/icr_camp_kalland.html)> (accessed July 3, 2002); WONG, *supra* note 10.

<sup>62</sup> Shima Kazuo, *Japan and Whaling*, 16 NEWSL. INST. SOC. SCI. U. TOKYO 3-6 (1999); JUN'ICHI TAKAHASHI, *KUJIRA NO NIHON BUNKA-SHI—HOGEI-BUNKA NO KORORO TADORU: NIHON-BUNKA NO KOKORO, SONO UCHI TO SOTO* [The Japanese Cultural History of Whales—Tracing the Path of the Whaling Culture: The Heart of the Japanese Culture, Its Inside and Outside] (1992).

<sup>63</sup> A Japanese delegate to the IWC even said that minke whales were 'cockroaches of the ocean,' referring to their supposed overpopulation. Peter Hadfield, *With Respect—A Whale of A Problem*, JAPAN TODAY, July 22, 2001, <<http://www.japantoday.com/gidx/comment63.html>> (accessed July 23, 2003).

to one cross-national survey on public attitudes toward whaling conducted by North American researchers, a wide perception gap exists between people in anti-whaling countries and Japan. The study found, for example, that 64 percent of Australians agreed that they could not imagine anyone would kill anything as intelligent as whales, whereas only 25 percent of Japanese respondents agreed with that statement. Similarly, only 21 percent of the Australian respondents believed that there was nothing wrong with whaling if it was properly regulated, while fully 64 percent of the Japanese who were surveyed agreed with the statement.<sup>64</sup>

Third, the Japanese public resents what it perceives as Western interference in its own indigenous behavior. Many Japanese believe that they are unfairly criticized for eating whale meat and that they have the right to maintain their own set of cultural practices regarding the hunting and eating of whales as long as whales are not over-harvested.<sup>65</sup> There is a widespread view in Japan that the international criticism of Japan's whaling practice is a form of Japan-bashing based on cultural imperialism. To the Japanese, it is hypocritical that Westerners consider it morally wrong to kill certain mammals such as whales but that they consider it acceptable to kill others such as kangaroos (in Australia) and baby cattle (in the United States).<sup>66</sup>

This view of Japan as a victim of Western cultural imperialism reflects strong nationalistic sentiments among the Japanese.<sup>67</sup> Many believe that opposition to Japanese whaling is an expression of racism and that white Americans and Europeans do not

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<sup>64</sup> MILTON M. R. FREEMAN & STEPHEN R. KELLERT, PUBLIC ATTITUDES TO WHALES: RESULTS OF A SIX-COUNTRY SURVEY (1992), at 4.

<sup>65</sup> KALLAND & MOERAN, *supra* note 42.

<sup>66</sup> See Dyer, *supra* note 59.

<sup>67</sup> See Kalland, *supra* note 61.

tolerate the culturally unique cuisines of non-white people. Of course, this ignores the facts that other whaling countries such as Norway and Iceland are also criticized by anti-whaling groups. Nevertheless, this perspective fuels the sentiment that Japan should not yield to the demands of supposedly imperialist Westerners.

These aforementioned views are actively promoted by those considered to be whaling experts in Japan, including scholars, government officials, and journalists. For example, Japanese scholars often present anthropological accounts of Japan's whaling practice, arguing that *gyoshoku bunka* has been a significant part of Japanese culture. They point out that Japan's *gyoshoku bunka* dates back to prehistoric times. Based on the discovery in ancient burial mounds of whaling drawing, whale bones, and hand harpoons, they claim that some Japanese communities began primitive whaling during the Jomon period (10,000-300 B.C.). These scholars claim that with the introduction of large nets in the end of the seventeenth century, Japanese commercial whaling began in a village called Taiji and spread to southern Japan in the eighteenth century and then to northern Japan in the following century. This led to a collective *gyoshoku bunka*, so the argument goes, with whalers sharing the whale meat with other villagers.<sup>68</sup> These scholars usually do not emphasize, however, that the Japanese mass consumption of whale meat started only after World War II.

Likewise, Japanese officials, especially those in the Whaling Division of the Fisheries Agency and the Ministry of Agriculture, Forestry, and Fisheries (MAFF) assert their pro-whaling views through publications. In these accounts, the officials defend Japan's whaling policy via cultural relativism. For example, MAFF argues that:

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<sup>68</sup> See for example, SEIJI OSUMI, *KUJIRA TO NIHONJIN [Whales and the Japanese]* (2003); Takahashi, *supra* note 62.

The consumption of whale meat is not an outdated cultural practice and . . . eating beef is not the world standard. . . . For many cultures in other parts of the world, the consumption of beef, or pork, is unacceptable. Clearly, the acceptance of other cultures' dietary practices and the promotion of cultural diversity is as important as saving endangered species and the promotion of biological diversity. If the consumption of whale meat does not endanger whale species, those who find the practice unacceptable for themselves should not try to impose their view on others.<sup>69</sup>

Japanese officials also published books to advocate the right to eat whale meat.

Two such books were written by the aforementioned Masayuki Komatsu, a commissioner to the IWC and a lead bureaucrat in the Fisheries Agency. In *Kujira wa Tabetemo Ii!* [It is Alright to Eat Whale!], he emphasizes how egoistic it is for Anglo Saxons to label whaling a barbaric act while they themselves kill livestock and eat and waste substantial amounts of animal meats at home and restaurants. In *Kurjira to Nihonjin* [Whales and the Japanese], Komatsu argues that since whale is traditional Japanese food, it cannot be considered cruel to hunt and eat whale.<sup>70</sup>

Nationalistic views are similarly expressed at international fora such as the IWC annual meetings. At the 1989 IWC meeting, for example, Komatsu argued that the whaling controversy as a struggle between 'meat eaters' (especially the Anglo-Saxons)

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<sup>69</sup> MAFF, *Share Our Philosophy with You: Japan will Host the 54<sup>th</sup> International Whaling Commission Annual Meeting in 2002* (2002),

<<http://www.jfa.maff.go.jp/whale/assertion/htm>> (accessed June 26, 2002).

<sup>70</sup> MASAYUKI KOMATSU, *KUJIRA WA TABETEMO II!* [It is All Right to Eat Whale!] (2000); Masayuki Komatsu, *KUJIRA TO NIHONJIN: TABETE KOSO KYOZON DEKIRU NINGEN TO UMI NO KANKEI* [Whales and the Japanese: Human-Whale Relationship—Only When Humans Eat Whales, the Human-Whale Coexistence is Possible] (2002). See also another Fisheries Agency official's book, JOJI MORISHITA, *NAZE KUJIRA WA ZASHO SURU NO KA: 'HAN-HOGEI' NO HIGEKI* [Why Whales Get Stranded: The Tragedy of 'Anti-Whaling'] (2002).

and ‘fish eaters’ (the Japanese) and that the meat-eating culture was using the ICW to destroy the fish-eating culture.<sup>71</sup>

Japanese journalists have joined the chorus with their own books on the issue. Yoshito Umezaki, a freelance journalist formerly with the prestigious Jiji Press, published a book attacking ‘environmental imperialists’ for victimizing the Japanese people. Similarly, Zenjiro Tsuchii of Asahi Newspaper (a large and well-respected left-of-center newspaper) wrote a book defending Japan from being “unreasonably opposed upon” by Western anti-whaling values.<sup>72</sup>

In summary, active propagation by pro-whaling advocates has helped ensure a large discrepancy between the values associated with the anti-whaling norm and the cultural values of the Japanese public. Most Japanese continue to believe that Japan as a whole has had a distinct whale-eating culture for thousands of years, that whales are fish and thus not deserving of special treatment; and that Japanese have the right to hunt and eat whale as long as stocks are maintained at a sustainable level.

Due to these public perceptions, Japanese anti-whaling activists have had little success in building a domestic anti-whaling movement. Many Japanese environmental NGOs have avoided the whaling issue altogether and have focused instead on issues that evoke less controversy in Japan (e.g., deforestation, acid rain). They fear that involvement in the anti-whaling cause would damage their reputation, alienate them from the public, and weaken their efforts to raise funds and increase membership.<sup>73</sup>

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<sup>71</sup> Stedman, *supra* note 8, at 157-158; Friedheim, *supra* note 3.

<sup>72</sup> YOSHITO UMEZAKI, DOBUTSU HOGO UNDO NO KYOZOO [The Pseudo-Image of Animal Protectionist Movements] (2001); TSUCHII, *supra* note 55, at 29.

<sup>73</sup> WONG, *supra* note 10.

The few Japanese NGOs that have attempted to promote anti-whaling campaigns have for the most part failed to gain public support. For example, Greenpeace Japan has actively taken on the whaling issue, but with little to show for its efforts.<sup>74</sup> It has mainly adopted the discourse used by its Greenpeace headquarters against whaling, without addressing, for example, controversial tactics used by Greenpeace International to halt Japan's whaling practice through such methods as blockades of Japanese whaling vessels in the Antarctic.<sup>75</sup>

### *Domestic Political Structure*

Japan's adherence to its whaling policies can also be explained in terms of the country's domestic political structure that prevents environmentalists from taking part in the decision-making processes. The political structure over whaling policy is highly centralized with strong bureaucratic leadership, thus creating obstacles to the promotion and diffusion of the anti-whaling norm. This centralized decision-making process largely excludes any participation whatsoever by anti-whaling groups, such as environmentalist NGOs.

In Japan, whaling is considered a fishery activity, and the Fisheries Agency, under the supervision of MAFF, has all whaling activities under its jurisdiction. The agency is authorized to formulate policy on all whaling matters.<sup>76</sup>

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<sup>74</sup> See, for example, ISAO MIYAOKA, *LEGITIMACY IN INTERNATIONAL SOCIETY: JAPAN'S REACTION TO GLOBAL WILDLIFE PRESERVATION* 80 (2004).

<sup>75</sup> For the Japanese government's reaction to Greenpeace's blockade of Japanese whaling vessels, see, for example, Fisheries Agency, *Greenpeace Antarctic Campaign a Failure*, media release, January 16, 2002. According to WONG, *supra* note 10, the planning and implementation of the anti-whaling campaigns of Greenpeace Japan were controlled by the international Greenpeace headquarters and were not carried out in ways that addressed the particular cultural sensitivities of the Japanese people.

<sup>76</sup> MIYAOKA, *supra* note 74; WONG, *supra* note 10.

Tokyo's harsh criticism of the IWC, anti-whaling states, and transnational NGOs stems from the views of the Fisheries Agency and MAFF. These bureaucratic branches represent the Japanese government at the IWC. At the IWC annual meeting, they have repeatedly and aggressively argued that the sustainable use of whales (i.e., commercial whaling) should be allowed because there is no ecological reason to abandon whaling.

The bureaucrats from the Fisheries Agency and MAFF have provided four arguments why Japan should conduct scientific whaling. First, they claim that since whaling is a traditional Japanese activity, Japan has the cultural right to whaling. Second, they maintain that the moratorium has no scientific basis.<sup>77</sup> They argue instead that some species of whales are abundant and are actually destroying the marine ecosystem by depleting fish stocks and thus that it is necessary to eliminate reduce their numbers. Third, they assert that under Article 8 of the ICRW, Japan has the legal right to conduct whaling for purposes of scientific research and to process and use whales after research, without regulation by the IWC.<sup>78</sup> Fourth, they regard the 1982 moratorium as a temporary measure that was supposed to last only until 1990, when the IWC was scheduled to consider scientific research in determining whether commercial whaling could be resumed in a sustainable way. These officials claim that since the Revised Management Procedure has not been implemented by the IWC due of opposition from anti-whaling states, Japan has every right to conduct its own research to demonstrate that there are abundant whale resources that can be harvested.

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<sup>77</sup> SIDNEY HOLT & NINA M. YOUNG, GUIDE TO REVIEW OF THE MANAGEMENT OF WHALING (2<sup>nd</sup> ed. 1991).

<sup>78</sup> Stedman, *supra* note 8, at 162.

In addition to these official claims, there is another possible reason that these bureaucrats insist on the continuation of scientific whaling research. Since whaling is under the jurisdiction of the Fisheries Agency and MAFF, the end of whaling could mean a decline in these agencies' political power. Given intense interministerial rivalries in Japan, it is not likely that these bureaucratic actors would voluntarily concede one of their areas of jurisdiction. Instead, these officials may want to eventually resume commercial whaling to further strengthen their position in domestic bureaucratic politics.

Whaling involves another bureaucratic actor that takes a minor role: the Ministry of Foreign Affairs (MOFA). This ministry serves as the government's liaison with the outside world. MOFA's main role in whaling is to respond to foreign criticisms of Japan's scientific whaling programs and to ease conflicts with anti-whaling states.

MOFA takes a softer approach to whaling than do the Fisheries Agency and MAFF, but it still defends the pro-whaling position in the international arena. For example, MOFA has criticized some NGOs and the media as "spreading misinformation on this [whaling] issue to the public to provoke an emotional reaction against our [Japanese whaling] activities which could make dialogue difficult."<sup>79</sup> MOFA also emphasizes the legality of Japan's action (which, in its view, is in line with the ICRW) and stresses that Japan acts in harmony with the international community.

MOFA is a junior partner to MAFF and the Fisheries Agency on whaling issues. MOFA is involved neither making nor implementing policy, but rather explaining it. The

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<sup>79</sup> Japanese Ministry of Foreign Affairs (MOFA), *The Position of the Japanese Government on Research Whaling* (2000), <[http://www.mofa.go.jp/policy/q\\_a/faq6.html](http://www.mofa.go.jp/policy/q_a/faq6.html)> (accessed June 26, 2002).

Ministry simply follows MAFF and Fisheries Agency decisions while attempting to soften Japan's position to the outside world.<sup>80</sup>

Unlike the United States, where some legislators are involved in whaling issues, most Japanese members of parliament are uninvolved in the decision-making processes related to whaling, leaving authority in the hands of MAFF/Fisheries Agency officials.<sup>81</sup> Japan has virtually no legislative advocates for the anti-whaling cause and no legislative supporter of anti-whaling activism. This contrasts with the United States, where legislators have complied with pressure from environmental and animal rights NGOs to promote the anti-whaling case.<sup>82</sup>

Likewise, Japanese prime ministers are largely uninvolved in policy-making on whaling. Although the prime ministers are usually highly sensitive to international

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<sup>80</sup> MOFA's pro-whaling stance and its attempt to ease conflicts with other states reflect the ministry's divided internal politics. Its Fisheries Division of the Economic Affairs Bureau enthusiastically promotes the MAFF/Fisheries Agency's whaling policies, while the North America Bureau is highly sensitive to the adverse impacts of Japan's pro-whaling position on US-Japan relations and is least supportive of whaling. See WONG, *supra* note 10.

<sup>81</sup> At the same time, Japan's two largest parties have pro-whaling parliamentary groups: the Liberal Democratic Party (LDP) Parliamentary League in Support of Whaling (*Hogei Giin Renmei*, headed by Shunichi Suzuki), and the Democratic Party's Parliamentary Council to Address Whaling Issues (*Hogei Taisaku giin Kyogikai*, headed by Shiro Hino). Yet, like many other parliamentary 'leagues' or 'councils' in Japan, these groups have not been involved in policy making. Also, smaller parties (i.e., Komei Party, Communist Party) have some whaling advocates but these legislators have virtually no influence in policy making. See Friedheim, *supra* note 3; WONG, *supra* note 10. Recently, Japanese politicians participated in a pro-whaling rally prior to the 2003 IWC annual meeting. See Whale Portal Site, *IWC Shimonoseki de Hogei Saikai o Mezasu Zenkoku Soo Kekki Shuukai* [National Rally to Push for the Resumption of Whaling at the IWC Shimonoseki Meeting], <<http://www.e-kujira.or.jp/topic/sokekki/0509.html>> (accessed March 15, 2004).

<sup>82</sup> The fact that virtually no politicians publicly oppose whaling, however, does not mean that all are advocates for the pro-whaling cause. It is possible that some are uninterested in whaling issues altogether or, due to cultural and social norms in Japan, are afraid to speak out publicly against whaling.

opinion and thus ambivalent about Japan's whaling policy, their influence on the issue is limited. They can successfully pressure pro-whaling bureaucrats in the Fisheries Agency and MAFF to moderate their stance on some occasion but not on others. For example, Prime Minister Yasuhiro Nakasone, who was concerned with the deteriorating trade relations with the United States, succeeded in persuading the bureaucrats to accept the 1982 moratorium. However, when he opposed Japan's scientific whaling program a few years later, his opposition was overridden by the bureaucrats.<sup>83</sup>

The bureaucracy-centered decision-making system has allowed virtually no room for citizens' groups to affect Japan's whaling policy. There are only a handful of Japanese NGOs advocating the anti-whaling cause. The most active ones are the four members (the Dolphin and Whale Action Network, the International Fund for Animal Welfare, Greenpeace Japan, and the Japan Whale Conservation Network of the Whale Conservation Coalition of Japan, a network established in 2001 to mobilize the public against whaling in advance of the 2002 IWC annual meeting in Japan. These NGOs have organized, jointly and separately, small rallies, issued protest letters to Japanese representatives at the IWC, and promoted public education through newsletters, Internet sites, symposia, and meetings.<sup>84</sup>

However, they have not had any serious impact on policy making on whaling as they have not succeeded in gaining public support (due to the mismatch between the anti-whaling norm and domestic value system, as discussed above) and have failed to gain access to the policy-making processes. Lacking access to the decision making structure

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<sup>83</sup> WONG, *supra* note 10.

<sup>84</sup> Kujira Mondai Renraku Kyogikai [Whale Conservation Coalition of Japan], homepage (2002), <<http://homepage2.nifty.com/kujirahogo/2002>> (accessed January 3, 2004).

and incapable of forming a winning coalition with influential policy makers, domestic NGOs have proved to be ineffectual in influencing Japanese whaling policy.<sup>85</sup>

In other fields, such as humanitarian aid and development, Japanese NGOs have had some important success in collaborating with the bureaucracy, particularly with MOFA. NGO-MOFA cooperation has been made possible not only because of strong public support for NGOs involved in aid and development issues, but also because of intense competition between ministries, rather than monopoly control by one or two agencies, in shaping Japan's official development aid policy. With multiple ministries (e.g., the Ministry of Finance, the Ministry of Economy, Trade, and Industry) competing for budget and power in foreign aid, MOFA has welcomed cooperation with NGOs, since both the ministry and its NGO partners share an interest in increasing humanitarian assistance to the developing world.<sup>86</sup>

In the field of whaling, however, this type of close relations does not exist between NGOs and the bureaucracy. There is no bureaucratic competition in the area, nor is there any common ground between NGOs and the particular bureaucratic agencies involved. Anti-whaling NGOs do not have as wide public support as development NGOs do, and the Fisheries Agency and MAFF have no interest in working with them.

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<sup>85</sup> The limited role of Japanese NGOs in opposing whaling does not, however, reflect a pro-whaling stance among their activist base. Today's Japanese youth have grown up not eating much whale meat, reflecting the fact that Japan's consumption of whale meat has dwindled since the 1970s and thus the issue of whaling is foreign to many young people. They are detached from the issue, neither having strong emotional attachment to the custom of eating whale meat, nor feeling strongly about the rights of the whales. *40% of Japanese Indifferent to Whaling Issue, Survey Finds*, JAPAN TIMES ONLINE, September 21, 2000, <<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20000921a5.htm>> (accessed July 21, 2003).

<sup>86</sup> KEIKO HIRATA, *CIVIL SOCIETY IN JAPAN: THE GROWING ROLE OF NGOS IN TOKYO'S AID AND DEVELOPMENT POLICY* (2002).

As the decision-making mechanism is highly centralized with overwhelming control by the Fisheries Agency and MAFF, the preference and interests of the bureaucrats in these agencies prevail. If the anti-whaling norm is to be empowered domestically, these bureaucrats will either have to embrace the new norm or have power over this issue stripped away from them.

In short, Japan's refusal to adopt the anti-whaling norm is explained in terms of its domestic cultural and political structures. Since the norm does not fit well into the domestic value system, anti-whaling advocates have not been able to create a social movement that is strong enough to force the ministry's hand. Also, the political structure keeps these anti-whaling advocates marginalized, thus making it extremely difficult for them to influence bureaucratic views or policy.

#### **4. CONCLUSION**

This paper has demonstrated how and why Japan has defied the international anti-whaling norm. Two major factors—the lack of congruence between the anti-whaling norm and domestic cultural values, and the hegemonistic control over decision-making on this issue by pro-whaling government agencies—have prevented anti-whaling advocates from influencing whaling policy.

These factors help us understand why Japan is unlikely to change its pro-whaling stance in the near-to-medium term, barring any major unforeseen event. Tokyo intends to continue scientific whaling as long as the IWC moratorium is in effect and to keep challenging the moratorium with the goal of resuming commercial whaling. If international pressure intensifies, Japan may make minor concessions, but will still not radically change its pro-whaling position. And if the IWC adopts more resolutions to

restrict whaling, Japan may exit the organization. As long as the domestic cultural and political structures described above remain intact, Japan's pro-whaling policy will continue.

Advocates of anti-whaling policies will need to keep this context in mind. Militant action against the Japanese government, through the physical blockage of whaling vessels or shaming campaigns, may backfire, strengthening the nationalist sentiments of the Japanese public and policymakers. More effective approaches will rely on the leadership of Japanese groups that can directly address the cultural issues involved and seek allies among politicians—especially those not involved in pro-whaling parliamentary groups—to challenge the bureaucracy-led decision-making system. In summary, the battle to end Japanese support for whaling will be long-term, but by sensitively addressing the aforementioned myths of whaling prevalent among the Japanese people, and patiently persuading legislators of the value of whale conservation and protection, Japanese and international anti-whaling groups may eventually prevail.