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Counterproductive Pressure on Japan's Scientific Whaling

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Introduction

On March 13, 1987, one day before Japanese whalers caught the last minke whale in the Antarctic for commercial purposes, Japan decided to begin "scientific" whaling.¹ Scientific whaling is defined as "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" (Article 8.1 of the 1946 International Convention for the Regulation of Whaling (ICRW)). Despite a 1987 resolution of the International Whaling Commission (IWC) to call for postponement of Japan's scientific whaling, the Japanese government started a research program (called JARPA) by hunting 273 minke whales in the 1987-88 season.² Since then, Japan has annually caught 300 or 400 (± 10 percent) minke whales for scientific purposes under the IWC regime.³ In addition, Japan started a new research program (JARPN) on the minke whales in the Western North Pacific in 1994 and since then has annually caught approximately 100 minke whales in the area. In 2000, Japan began an enlarged Western North Pacific program (JARPN II) and caught 50 Bryde's whales and 10 sperm whales as well as 100 minke whales.⁴

In reaction to JARPN II, then American Secretary of Commerce Norman Mineta contributed to *The Washington Post* (August 27, 2000) an article entitled, "Stop Japan's Whale Killing." He concluded "It's time for Japan to allow these magnificent creatures to recover after decades of killing." Soon after the publication, he asked the President to

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consider invoking trade sanctions against Japan. On December 28, President Clinton officially announced that his administration would leave a decision on the issue to its successor. Although this threat was allegedly a political tactic to help “environmentally conscious” candidate Al Gore in the midst of the presidential campaign, Secretary of State Colin Powell in the new Bush administration also expressed concern about Japan's scientific whaling in his first meeting with then Japanese Foreign Minister Yôhei Kôno in January 2001.

The Bush administration has repeatedly emphasized the importance of Japan as an ally in Asia. Yet, the whaling issue is still on the agenda. Why have the United States and Japan kept this issue unresolved since 1972, when the former began campaigning for a whaling moratorium? Why are the Japanese so adamant about whaling? In this article, I would like to make three points. First, the United States is now materially and normatively too constrained to take unilateral action against Japan in this issue area. Second, Japan has defied the American pressure despite weak domestic pressure to protect the whaling industry. Third, Japan has rejected American pressure because of the illegitimacy of the pressure itself in the eyes of Japanese policymakers. Ironically, international pressure has increased the domestic legitimacy of the practice and has prolonged the life of the industry.

The Obsoleteness of Unilateral Sanctions

Japan's acceptance of a commercial whaling moratorium is a textbook case of international power politics. The threat of economic sanctions exercised by the United States was the decisive factor for Japan's decision in 1984 to comply with the moratorium adopted by the IWC in 1982.⁵ The United States threatened to exclude all Japanese fishing boats from its 200-mile Exclusive Economic Zone (EEZ) under the 1979 Packwood-Magnuson (PM) Amendment to the Magnuson Fishery Conservation and Management Act, unless Japan accepted the moratorium. Japan's submission to American pressure was based on the rational calculation that the possible cost of being driven out of the US fishing zone (with a yield worth 130 billion yen and the employment of 12,000 people) was much greater than the prospective benefit of continuing the condemned practice (11 billion yen

and 1,300 people).⁶

This logic, however, cannot work for the scientific whaling case. On January 20, 1988, US Secretary of Commerce Verity warned Minister Watanabe of the Japanese Embassy at Washington D.C. that the United States would invoke the PM Amendment unless Japan quit its research whaling program. This threat was no longer effective. Due to a strong domestic call for limiting access to resources within the US 200-mile zone only to American fishermen, the amount of fishery allocations directed to Japanese fishermen, 1,158,000 tons in 1984, was radically reduced to 104,000 tons in 1987, despite Japan's acceptance of the commercial whaling moratorium in April 1985.⁷ Although some 600 people engaged in the northern sea longline and gill net fishery (50,687 tons worth 12.8 billion yen) were entirely dependent on the US EEZ in 1987,⁸ the 1988 quota set for Japanese fisheries was expected to be zero, irrespective of scientific whaling.⁹ In April 1988, under the PM Amendment, the United States completely phased out fishery allocations for Japanese fishermen within the US zone and consequently lost one coercive means of leverage over Japan.¹⁰

Under the 1971 Pelly Amendment to the Fishermen's Protective Act, the United States Secretary of Commerce certified that Japan was diminishing the effectiveness of an international fishery conservation program when it began new research programs in February 1988, December 1995, and September 2000. The President, however, has never invoked the Pelly Amendment to prohibit the importation of fish products into the United States from Japan.¹¹ This is partly because American exporters of fish products could suffer from Japanese retaliation.¹² In 1988, the United States relied on the Japanese fisheries market more than Japan relied on the US market.¹³ Moreover, unilateral trade sanctions for wildlife protection abroad became increasingly invalidated at the General Agreement on Tariffs and Trade (GATT) and the United Nations Convention on Environment and Development (UNCED or the Rio Summit). In September 1991, a GATT dispute-resolution panel found that the American ban on Mexican tuna imports under the Marine Mammal Protection Act was in violation of the GATT agreement. The eroding legitimacy of unilateral economic sanctions was also reflected in the Rio Declaration and Agenda 21

adopted at UNCED in June 1992. For example, Principle 12 of the Rio Declaration provides that “Unilateral actions to deal with environmental challenges outside the jurisdiction of the importing country should be avoided.”¹⁴ In this international climate, it is harder for the United States to implement unilateral economic sanctions against Japan’s scientific whaling.¹⁵

The Irrelevance of Interest Group Politics

There are no strong anti-whaling voices in Japan’s domestic society. Domestic environmental nongovernmental organizations (NGOs) have been “muted in their opposition to whaling, which is perceived in the country as a traditional ritual.”¹⁶ Among international environmental NGOs, Greenpeace is the most visible in Japan in the case of whaling. In 1989, it established its Japanese branch to involve Japanese people in the ecology movement, especially in the anti-whaling movement.¹⁷ Nevertheless, even internationally powerful Greenpeace “lacked leverage with the Japanese government.”¹⁸ In 1993, the number of Greenpeace members in Japan was just 760 while in the United States its members numbered 2.3 million. The NGO has not been well accepted by the Japanese public.

At the same time, however, there is no strong social pressure to protect the whaling industry in Japan, either. The argument that Japan has a national whaling culture¹⁹ has become less persuasive in the 1980s and 1990s. After the early 1960s when the Japanese whaling industry was at the height of its prosperity, whaling became economically less important for the Japanese fishing industry. The number of people directly employed by the whaling industry fell below 1,000 in the latter half of the 1980s. In 1987, 930 people were directly employed in the industry : 533 people in pelagic whaling, 303 in large-type coastal whaling, and 94 in small-type coastal whaling.²⁰ In the same year, the Japanese whaling industry commercially hunted 2,790 whales (317 Bryde’s whales, 188 sperm whales, 2,245 minke whales, and 40 Baird’s beaked whales). In 1988, due to the commercial whaling moratorium, it commercially hunted only 192 whales (57 Baird’s beaked whales, 128 pilot whales, and 7 killer whales) that were not covered by the ICRW.²¹ Accordingly, the annual

yield dropped from 12.93 billion yen to 0.48 billion yen.²²

The Institute of Cetacean Research has conducted Japanese research programs under government supervision since its inception in November 1987. The institute is a non-profit foundation (*zaidan hōjin*) under the jurisdiction of the Ministry of Agriculture, Forestry, and Fisheries (MAFF), and it receives government grants. It entrusts whaling to a company called Kyōdō Senpaku. Judging from the history of Kyōdō Senpaku, the company is the core survivor of the Japanese pelagic whaling industry. In 1976, Nihon Kyōdō Hōgei (the Japan Joint Whaling Company) was established by integrating the whaling sections of three major fisheries companies : Taiyō Gyogyō (currently Maruha), Nihon Suisan, Kyokuyō, and three smaller whaling companies : Hokuyō Hōgei, Nihon Hōgei and Nittō Hōgei. This merger was carried out under the direction of the MAFF Minister to prevent over-competition and potential failure.²³ Partly to avoid the image of commercialism in the research programs, Nihon Kyōdō Hōgei was dissolved and reorganized as Kyōdō Senpaku, a smaller company with 320 employees, one factory ship, and three catch boats.²⁴ The parent companies remained linked to Kyōdō Senpaku by shareholding.²⁵ In the middle of the 1990s, the company had accumulated a debt worth 170 million yen, although it had made a profit from selling whale meat. Parent companies have turned their backs on the company during its time of need, as exemplified by the report that Maruha sold its shares of Kyōdō Senpaku in the late 1990s.²⁶ Although the Japan Whaling Association still exists, it is virtually a public relations section of Kyōdō Senpaku.²⁷ In short, the Japanese government has not been under strong industrial pressure to continue whaling, at least in the 1990s.

Moreover, the meat has become “a minority taste” among Japanese people.²⁸ Until the end of World War II, whale meat was consumed in certain local communities. After the war, consumption spread nation-wide, as an ingredient in school lunches.²⁹ In the first half of the 1960s, some 200,000 tons of whale meat annually came onto the wholesale markets all over Japan. Nevertheless, the annual supply of whale meat was on the decline due to the stricter catch quotas set by the IWC, well before the moratorium went into effect in Japan in 1987. For instance, the annual supply dropped to 24,000 tons in 1979 and 18,000 tons in 1986,

and plunged to a level of 1,000 tons in 1989, which was indeed a tiny portion of the total catch of Japan's fisheries supply in that year : 13,341,000 tons.³⁰ According to a survey of 200 housewives in Tokyo and Osaka, four-fifths of them answered that they would not be worried if whale meat became unavailable.³¹ Although there are distinctive local whaling cultures in Japan, the national whaling culture is on the verge of extinction. According to a public opinion survey sponsored by a US cetacean-protection association and conducted by the Japan Research Center in January 1991, the Japanese public was divided over "Japan's scientific whaling which was against the IWC's recommendations." In the survey, 53 percent of the respondents supported the whaling while 43 percent opposed it.³² Public opinion has not formed strong political pressure for the continuation of scientific whaling.³³ In sum, the government has faced no strong domestic pressure to continue scientific whaling. This fact provides little explanation for the firm stance taken by the Japanese government to ignore the majority view of the IWC against Japan's scientific whaling.

The Illegitimacy of Criticizing Scientific Whaling

In Japan, the Fisheries Law grants jurisdiction over whaling to the Ministry of Agriculture, Forestry, and Fisheries (MAFF). Located within MAFF, the Fisheries Agency is in charge of whaling administration.³⁴ Also influential on whaling policy are politicians who belong to the Diet members' League for Whaling (*Hogeい Giin Renmei*), established in May 1985 by the ruling Liberal Democratic Party (LDP).³⁵ These policymakers have viewed the foreign pressure to end scientific whaling as illegitimate. The three main reasons they see the pressure as illegitimate are : the pressure does not fit with existing legitimate norms and beliefs ; it pretends to reflect world opinion but it does not ; and because they feel a sense of enmity toward their counterparts and NGOs in anti-whaling nations.

Fit with Existing Norms and Beliefs

The Japanese policymakers feel that the pressure to end scientific whaling is illegitimate legally, scientifically, and morally. First, under the International Convention for

the Regulation of Whaling (ICRW), contracting governments can issue permits for scientific whaling to its nationals. Prior to 1982, various governments such as Canada, the United States, the Soviet Union, South Africa, and Japan issued more than 100 permits.³⁶ Japan conducted scientific whaling of several hundred Bryde's whales in the late 1970s.³⁷

Article 8.1 of the ICRW stipulates :

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.

In the ICRW, scientific whaling under Article 8 is clearly distinguished from commercial whaling. Thus, it does not contravene the commercial whaling moratorium that was adopted by the IWC in 1982 and accepted by Japan in 1985, or the Southern Ocean Sanctuary declared by the IWC in 1994 to which Japan lodged an objection with regard to minke whales.³⁸ Moreover, the IWC resolutions under Article 6 of the ICRW calling for the cancellation of Japanese scientific whaling do not legally affect the right of the government to issue permits for scientific whaling, as stipulated under Article 8.³⁹

The Japanese research programs have often been criticized as “commercial whaling in scientific disguise.”⁴⁰ Article 8.2 of the ICRW, however, stipulates that whales taken in research should not be wasted : “Any whale taken under these special permits shall so far as practicable be processed and the proceeds shall be dealt with in accordance with directions issued by the Government by which the permit was granted.” The Japanese government has maintained that it is dealing with the meat from research in accordance with this stipulation, and that the proceeds thus derived, which are far too small to be commercially profitable, are appropriated to research expenses.⁴¹ According to Executive Director Nagasaki Fukuzô of the Institute of Cetacean Research, the research program in

the 1987-88 season cost 1.7 billion yen, which was covered by the sale of meat (1.3 billion yen) as well as government subsidy (350 million yen) and public donations.⁴² In other words, scientific whaling has not been profitable at all. Moreover, two IWC resolutions adopted in 1986 and 1987 introduced eight criteria for evaluating research programs to prevent commercial whaling from being conducted under the guise of scientific studies.⁴³ In short, Japan has seen the campaign against scientific whaling as legally illegitimate.

For the Japanese, the attempt to end scientific whaling is scientifically illegitimate as well. When the IWC adopted the moratorium in 1982 on the grounds that there was “uncertainty” on the status of whale stocks, it also added that the moratorium

will be kept under review, based upon the best scientific advice, and by 1990 at the latest the Commission will undertake a comprehensive assessment of the effects of this decision on whale stocks and consider modification of this provision and the establishment of other catch limits [Schedule 10 (e) of the ICRW].

In 1990, the IWC scientific committee estimated that there were approximately 760,000 minke whales in the Antarctic Ocean with the number increasing, and calculated the catch limits at 4,853.⁴⁴ It seemed plausible to start the commercial whaling of minke whales in that area. Since 1990, however, the IWC has shelved a review of the moratorium. In 1994, the IWC endorsed a Revised Management Procedure (RMP) for resumption of commercial whaling, but suspended the implementation of the RMP until the completion of a more comprehensive Revised Management Scheme (RMS), which includes non-scientific issues such as inspection and enforcement as well.⁴⁵ Whereas pro-whaling nations have perceived this further requirement as a “foot-dragging” strategy,⁴⁶ the continuation of the moratorium has given the Japanese government a motive to maintain scientific whaling to decrease the uncertainty around whale resources. Probably in anticipation of the IWC’s 1994 adoption of the Southern Ocean Sanctuary, moreover, Japan started a new research program in the Western North Pacific.

The epistemic community of cetologists has been divided over Japan’s research programs.⁴⁷ Most notably, some cetologists argue that non-lethal methods such as sighting

research and skin sampling are enough for resource management and that the lethal method taken by scientific whaling is not necessary.⁴⁸ Few scientists, however, deny that the non-lethal method can replace the lethal method entirely. The IWC acknowledges the utility of the lethal method :

Although there has been a great increase in the types of information [that] can be obtained from non-lethal research methods such as biopsy sampling and photo-identification, at present there are certain data that can only be obtained (at least in the short term) using lethal methods. These include, for example, the age of an animal (obtained from earplugs) and the reproductive status and history of females (obtained from ovaries). Such information is important *inter alia* in any consideration of biological parameters (e.g. mortality and reproductive rates) and interpretation of pollutant levels. The question then becomes one of whether the answers one obtains using such data are “essential,” “reliable enough,” or “critical.”⁴⁹

For the Japanese policymakers, it seems illogical that those who stress scientific uncertainty oppose a research program to solve the uncertainty.⁵⁰ They believe that the anti-whaling side prefers to avoid solving the uncertainty because they hope to maintain the moratorium.⁵¹ Thus, the Japanese government has perceived a campaign against scientific whaling as scientifically illegitimate.

The Japanese policymakers have also viewed the anti-scientific whaling pressure as morally illegitimate. For an ethical argument of wildlife protection, it is important to distinguish the principle of preservation from that of conservation. The conservation principle is based on the instrumental value of nature and animals and is defined as sustainable utilization of species and ecosystems along with the maintenance of genetic diversity.⁵² The preservation principle refers to the protection of individual animals as holders of intrinsic or inherent value and rights to life.⁵³ Those who advocate the preservation of particular species such as the whale ethically distinguish them from other species. Many whale preservationists believe that humans should not kill whales even for

scientific purposes, let alone consume the meat of whales because they are “intelligent.”⁵⁴ Nonetheless, the argument that only the intelligent creatures have a right to life sounds like the eugenics of the Nazis. Don’t mentally handicapped people have human rights? Yes, they do. Human rights are accorded to us not because we are intelligent but because we are fellow humans. At this stage, there are no legitimate ethical criteria to distinguish the whale from other animals.

Moreover, the preservationist stance contradicts the conservation principle embedded in international law. The ICRW is “a convention to provide for the proper conservation of whale stocks and thus make possible the orderly development of the whaling industry” (the Preamble).⁵⁵ The United Nations Convention on the Law of the Sea (UNCLOS), adopted in the same year as the commercial whaling moratorium, also stipulates that states “work through the appropriate international organizations for their [cetaceans’] conservation, management, and study” (Article 65). On one hand, this article recognizes “the competence of an international organization, as appropriate, to prohibit, limit or regulate the exploitation of marine mammals more strictly than provided for in this Part.” Thus, although Annex I categorizes cetaceans as highly migratory species as well, whales are exempted from the “optimum utilization” requirement for the species (Article 64).⁵⁶ On the other hand, UNCLOS does not reflect the pure preservation principle, either. Although some people argue that whaling is no longer permissible since the whales are “the common heritage of mankind,” UNCLOS uses the phrase only for the “Area” (“the sea-bed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction”) and its resources (Article 136). In sum, although UNCLOS incorporates a more ecological perspective than the ICRW, it does not go as far as to recognize the preservation principle.

The 1992 UN Conference on Environment and Development (UNCED), whose essential concept is sustainable development, did not recognize the preservation of whales. Paragraph 17.46 of Agenda 21 provides that “States commit themselves to the conservation and sustainable use of marine living resources on the high seas.” In the UNCED process, New Zealand, one of the keenest opponents of whaling, proposed that UNCED should call for the perpetuation of the commercial whaling moratorium. New Zealand was, however,

isolated at the international conference, which had the main theme of sustainable development, and thus the proposal was not taken into Agenda 21. Instead, the conference adopted Paragraph 17.47, which is a mere repetition of Article 65 of UNCLOS. The number of “pure preservationist” states that do not approve of commercial whaling under any circumstances is less than ten: most notably, Australia, New Zealand, the United Kingdom, and the United States.⁵⁷ Even in these countries, however, there seems to be no domestic consensus about the preservation of whales.⁵⁸ Some people seem to oppose whaling because they wrongly believe that all whale species are in danger of extinction.⁵⁹ It is not preservation but conservation that has been the norm in the international community, including both developed and developing countries. This is why the Japanese government mainly targets abundant minke whales, not endangered whales such as the 700 blue whales in the Antarctic Ocean.⁶⁰ Special treatment of whales is not accepted by the Japanese government, which traditionally treats the whale as one type of fish.⁶¹ For Japan, in essence, a campaign against scientific whaling is not only legally and scientifically but also morally illegitimate.⁶²

World Opinion?

Anti-whaling governments and NGOs argue that Japan has been ignoring world opinion against scientific whaling. Since 1987, the IWC has annually adopted at least one resolution regarding Japan’s research programs. The first resolution, which came out of the IWC meeting held at Bournemouth on June 26, 1987

RECOMMENDS the Government of Japan to refrain from issuing special permits . . . until such time as the Scientific Committee is able to resolve the serious uncertainties identified in its discussion as to the capability of the research methods proposed to contribute sufficiently reliable results needed for the Comprehensive Assessment or for other critically important research needs [emphasis in original].⁶³

The resolution, however, was not adopted by an overwhelming majority, but by a vote of

16 in favor, 9 against, and 6 abstentions. Since then, the IWC has annually adopted a resolution against Japanese scientific whaling, often taking the expression that the commission “invites the Government of Japan to reconsider” its research program(s). Although these resolutions have addressed the “problems” of specific Japanese research programs, anti-whaling states have also attempted to institutionalize a norm against lethal scientific research in general. In 1990, for instance, the IWC adopted a “Resolution on Redirecting Research towards Non-lethal Methods” by a vote of 23 in favor, none against, and 6 abstentions.⁶⁴

It is difficult, however, to conclude that a campaign against research whaling reflects world opinion.⁶⁵ The IWC is a relatively small, specialized organization, although its geographical scope is global. The number of the member states that have voting rights has been around thirty; approximately sixteen states can form a majority of the IWC.⁶⁶ Therefore, it is safe to conclude that a majority of the IWC does not constitute a majority opinion in international society.

A Sense of Enmity

In the past, anti-whaling movements angered the Japanese government. In the 1978 IWC meeting, radical anti-whaling activists poured red ink over the Japanese representative while screaming “This is whale blood.” The next year, environmentalists burnt a national flag of Japan in front of the meeting site.⁶⁷ In particular, the process of adopting the commercial whaling moratorium deepened Japan’s enmity toward anti-whaling nations and NGOs. First, the moratorium was adopted in contradiction to the prevailing scientific view. In 1972, the IWC scientific committee “agreed that a blanket moratorium on whaling could not be justified scientifically since prudent management required regulation of the stocks individually” and unanimously rejected a United States proposal for a commercial whaling moratorium.⁶⁸ The 1982 introduction of the moratorium by the IWC was not based on the recommendation of the scientific committee, either.⁶⁹ Second, the Japanese believe that political maneuvering by the United States and environmental NGOs played a key role in the IWC’s adoption of the moratorium.⁷⁰ Anti-whaling nations and NGOs needed a

three-fourths majority of IWC members to amend provisions of the Schedule attached to the ICRW (Article 3.2). They recruited new members with ease because joining only requires “a notification in writing to the Government of the United States of America” (Article 10.2 of the ICRW). In 1981, ten nations joined the IWC and five more in 1982. The number of member states jumped from sixteen in 1978 to thirty-nine in 1982.⁷¹ In 1982, consequently, the group in favor of the moratorium attained a three-fourths majority. It was adopted by a vote of 25 in favor, 7 against, and 5 abstentions.⁷² Third, as stated before, although Japan withdrew its objection to the moratorium for protecting Japanese fishing boats in the American zone, the United States excluded them in 1988 after all. Japan accepted the moratorium out of coercion, not legitimacy, and later felt betrayed by the United States, as stated before. The past process of interaction had produced the relationship of enmity between the pro- and the anti-whaling sides.

In the “Save the Whale” movement, activists employ several strategies. One common strategy is to call the campaign the “Whale War” and to highlight the difference between “us” (whales and whale-lovers) and “them” (whale-killers).⁷³ Japan’s former IWC Commissioner Shima Kazuo notes this identification strategy by environmentalists:

The anti-whaling groups constructed their campaigns like a drama, with high emotional content to wring money from the public. They cast themselves as heroes seeking to protect the fair maiden (whales) from a villain (Japan). Their campaigns were designed to evoke fear (the alleged extinction of the world’s largest animals), love and hate. To Westerners, the Japanese were the perfect villains. All of the stereotypes of Pacific War propaganda were rolled out to depict Japanese as cruel, barbaric, and inhumane.⁷⁴

It seems hypocritical to the Japanese that anti-whaling activists focus on the protection of symbolic animals and turned public attention away from more ecologically important issues such as the mass consumption of energy and natural resources, and that politicians jump on the bandwagon because it is politically beneficial and harmless at home.⁷⁵ Meanwhile, whalers became “ideal scapegoats for environmental disasters and human

cruelty.”⁷⁶ Moreover, as Kalland and Moeran put it, “since few other peoples eat whale meat, this habit also sets the Japanese apart from others” and constitutes a national identity.⁷⁷ The perception that Japan’s whaling culture, especially the consumption of whale meat, is denied by foreigners has promoted race identification and fueled nationalism. Some Japanese officials emphasize the difference between the Japanese and the “Anglo-Saxons” (the Americans, the British, the Australians, and the New Zealanders).⁷⁸ Shima once stated, “The issue of whaling is a confrontation between the meat-eating race and the fish-eating race.”⁷⁹ Japanese policymakers have perceived anti-whaling movements as cultural imperialism, which in turn has provoked a sense of nationalism among them.⁸⁰ It is ironic indeed that the antagonistic “Save the Whales” campaign has enhanced a sense of Japanese national identity and consequently the autonomy of Japan from foreign pressure.

Conclusion

International pressure on Japan to stop its scientific whaling is so illegitimate to the Japanese government that the practice has become a unique case in which a confrontation between the governments of Japan and the United States has persisted for over a decade. What the Japanese government has defended desperately is the principle of the sustainable use of living resources rather than the whaling industry itself. Under the commercial whaling moratorium, scientific whaling will maintain its legitimacy and draw state funding. Even if the moratorium is lifted under a strict regulation system, only a few Japanese companies will be able financially to manage commercial whaling away from the homeland. Thus, anti-whaling countries should recognize the right of sovereign states to conduct not only scientific but also commercial whaling, under the condition that it targets only abundant species on a sustainable basis. It is more productive to exert pressure on Japan to do its best to avoid the extinction of any whale species, for example, by confiscating illegal whale meat, than to antagonize Japan through illegitimate international pressure.

Notes

- 1 *Nihon keizai shinbun*, 14 March 1987, 30 ; *Nihon keizai shinbun*, 15 March 1987, 31.
- 2 IWC 1988, 29 ; IWC 1989, 1.
- 3 Institute of Cetacean Research 2000. Japan increased the number of catches to 400 in the 1995/1996 season.
- 4 IWC 2000c.
- 5 Under the Japan-US agreement, Japan was allowed to continue pelagic whaling until April 1987 and coastal whaling until March 1988, although the IWC moratorium started in the 1985-86 season for pelagic whaling and in the 1986 season for coastal whaling.
- 6 Nakajima 1994, 20.
- 7 Suisan Nenkan Henshū Iinkai 1992, 84.
- 8 House of Councilors 1987, 14 ; Suisan Nenkan Henshū Iinkai 1993, 293.
- 9 Akao 1993, 160-61 ; *Nihon keizai shinbun*, 23 January 1988, evening edition, 1 ; *The International Herald Tribune*, 8 April 1988.
- 10 Fisheries Agency 1999a, 4.
- 11 Fisheries Agency 1999a, 4-5 ; *Asahi Shinbun*, 15 September 2000, 3 and 9.
- 12 In 1987, Japan's then four major opposition parties (Japan Socialist Party, Clean Government Party, Democratic Socialist Party, and Japan Communist Party) tabled a retaliation bill to restrict imports of fisheries products from nations that regulated the operations of Japanese fishing vessels "inappropriately." House of Representatives 1987, 10 and 16 ; House of Councilors, 1987, 19 ; *Yomiuri shinbun*, 8 September 1987, 7.
- 13 Japan's imports from the United States were valued at approximately 285.3 billion yen, which was much larger than the US imports of fish from Japan : 39.1 billion yen. Suisan Nenkan Henshū Iinkai 1993, 308-9.
- 14 See also Paragraph 2.22 of Agenda 21.
- 15 Author's interview with a Fisheries Agency official, Tokyo, 23 June 1999.
- 16 *The Daily Telegraph*, 22 June 1987.
- 17 *The Japan Times*, 23 December 1987.
- 18 Peterson 1997, 171.
- 19 Kalland and Moeran 1992.
- 20 House of Representatives 1987, 4.
- 21 Suisan Nenkan Henshū Iinkai 1993, 298-99.
- 22 MAFF 1993, 3 and 225.
- 23 House of Representatives 1987, 7.
- 24 *Asahi shinbun*, 20 October 1987, 9 ; *Nihon keizai shinbun*, 18 November 1987, 8.
- 25 Author's interview with two Japan Whaling Association officials, Tokyo, 1 July 1999 and an official of the Ministry of Foreign Affairs (MOFA), Tokyo, 8 July 1999.

26 *AERA*, 16 October 2000, 13 ; author's interview with a Japanese NGO official, Tokyo, 21 June 1999.

27 Author's interview with two Japan Whaling Association officials, Tokyo, 1 July 1999. A trade association for small-type coastal whaling also exists as the Small-Type Whaling Association.

28 *The Independent*, 6 July 1992.

29 Nakajima 1994, 27.

30 *Suisan Nenkan Henshū Iinkai* 1993, 317.

31 *Nihon keizai shinbun*, 28 July 1987, evening edition, 13.

32 *Mainichi shinbun*, 30 May 1991, 3.

33 Author's interview with a Fisheries Agency official, Tokyo, 23 June 1999 and a former Fisheries Agency official, Tokyo, 28 June 1999.

34 The Fisheries Agency is headed by a Director-General who is not a Minister of State but a bureaucrat ranking lower than an Administrative Vice-Minister. The Fisheries Agency is virtually a bureau of MAFF. Within the Fisheries Agency, the Far Seas Fisheries Division of the Oceanic Fisheries Department is in charge of the whaling administration. Management and Coordination Agency 1993, 118-20.

35 As of April 1999, the number of its current members is seventy-five. Author's interview with two Japan Whaling Association officials, Tokyo, 1 July 1999, and with a Fisheries Agency official, Tokyo, 23 June 1999.

36 IWC 2000c.

37 *Far Eastern Economic Review*, 28 May 1987, 39.

38 See the Schedule 10 (e) and 7 (b) of the ICRW.

39 House of Councilors 1987, 5.

40 Stoett 1997, 133.

41 Ministry of Foreign Affairs 1995.

42 Nagasaki 1990, 189.

43 IWC 1987, 11-12 ; IWC 1988, 11-12.

44 IWC 1991, 59 and 62 ; *Mainichi shinbun*, 5 July 1989, 3 ; *The Financial Times*, 5 July 1990.

45 IWC 2000a and 2000b ; Fisheries Agency 1995, 73.

46 Kalland 1994, 168.

47 IWC 1990, 36.

48 IWC 1993, 29 ; *The Guardian*, 24 November 1990 ; *The Daily Telegraph*, 12 April 1991.

49 IWC 2000c. See also Nagasaki 1990.

50 IWC 1988, 14 ; Peterson 1997, 169 ; Shima 1990, 399 ; Nakajima 1994, 22.

51 Anti-whaling scientists initially opposed even sighting surveys as unscientific. Akao 1993, 159 ; Shima 1990, 398 ; Suwa 1996, 226.

52 See IUCN, UNEP, and WWF 1980.

53 For animal rights, see Regan 1983 ; Singer 1990.

54 Kalland 1994, 178 ; Kalland and Moeran 1992, 193. The intelligence of whales has been controversial, however. See, for example, Freeman 1994, 144.

55 Scarff 1980, 246.

56 Hoel 1985, 143-45.

57 Aron, Burke, and Freeman 1999, 24.

58 According to a public opinion survey, 60 percent (Australia), 43 percent (England), and 48 percent (the United States) of the respondents agreed with the preservation of the whales under any circumstances. Freeman and Kellert 1994, 295.

59 Freeman and Kellert 1994, 298.

60 Akao 1993, 165.

61 *The Japan Times*, 31 October 1986.

62 Komatsu 2000, 155-61 ; author's interview with a Fisheries Agency official, Tokyo, 23 June 1999 and a MOFA official, Tokyo, 8 July 1999. Komatsu Masayuki is a Fisheries Agency official who has been engaged in the whaling issue since 1991.

63 IWC 1988, 29.

64 IWC 1991, 15 and 49. The IWC adopted a similar resolution in 1999. Fisheries Agency 1999b.

65 Komatsu 2000, 63-72 ; author's interview with a Fisheries Agency official, Tokyo, 23 June 1999.

66 The number of the member nations in 1987 was just 41 among some 160 nations in the world, and only 32 nations attended the IWC annual meeting held in June 1987. Moreover, the number of its members dropped to 36 in 1991, and only 30 nations attended the IWC meeting in that year. *Yomiuri shinbun*, 30 June 1987, 9 ; *The Independent*, 1 June 1991.

67 Komatsu 1986, 94 ; House of Representatives 1987, 24.

68 IWC 1972, 5-6.

69 IWC 1982, 21 and 47.

70 NGOs allegedly brought some small, non-whaling developing nations into the IWC by paying their membership fees, in order to get the majority necessary for the moratorium. *The Independent*, 2 July 1990.

71 Doi 1992, 28.

72 IWC 1982, 21. The result was also less critical than those of Iceland's research program (adopted by a vote of 16 in favor, 6 against, and 9 abstentions) and of the Republic of Korea's (19, 3, 9). IWC 1988, 14.

73 See, for instance, Day 1992. Author's interview with a Japanese NGO official, Tokyo, 21 June 1999.

74 Shima 1999, 4-5.

75 Suwa 1996, 237.

76 Kalland 1994, 165.

77 Kalland and Moeran 1992, 194.

78 See, for example, Komatsu 2000, 185, 206, and 213 ; *The Economist*, 6 February 1988, 88.

79 *Asahi shinbun*, 21 June 1992, 3.

80 House of Representatives 1987, 11 and 14 ; Stoett 1997, 113 ; *The Times*, 22 December 1987. A former journalist argued that the government consciously uses foreign pressure to provoke a nationalistic sentiment. Author's interview with a former Journalist, Tokyo, 28 June 1999.

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Counterproductive Pressure on Japan's Scientific Whaling

Abstract

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Since 1987, when Japan was forced to end its commercial whaling, the country has conducted "scientific" whaling, despite criticisms from the United States and many other developed countries. Given the fact that Japan has often responded to pressures from the United States, it is puzzling that Japan has been resistant to the United States' demand to end Japan's whaling and that it has continued whaling under the name of scientific research.

In this article, I would like to make three points. First, the United States is now materially and normatively too constrained to take unilateral action against Japan's scientific whaling. The United States cannot force Japan to stop the practice, partly because it lost a major coercive means of leverage over Japan when it excluded all Japanese fishing boats from the American Exclusive Economic Zone (EEZ). Moreover, an international norm against unilateral actions to deal with environmental challenges outside the jurisdiction of the importing country has been growing since the early 1990s, evidenced at a dispute-resolution panel of the General Agreement on Tariffs and Trade (GATT) and the United Nations Conference on Environment and Development (UNCED).

Second, Japan has defied the American pressure despite weak domestic pressure in favor of protecting the whaling industry. The industry is too small to pressure the government to continue scientific whaling, and most Japanese consumers are indifferent to this political issue. Thus, interest group politics does not provide a sufficient explanation for Japan's exceptional resistance to the American pressure.

Third, the key to understanding Japan's persistence is the illegitimacy of the U.S. demand in the eyes of Japanese policymakers. First, the demand does not fit with existing legal norms, scientific beliefs, or moral principles. Second, it pretends to reflect world

opinion but in actuality does not. Third, Japanese policymakers feel a sense of enmity toward their counterparts and environmentalists in anti-whaling countries. Ironically, international pressure has increased the domestic legitimacy of the practice and has prolonged the life of the industry.

One policy implication of this argument is that anti-whaling countries should recognize the right of sovereign states to conduct not only scientific but also commercial whaling, under the condition that it targets only abundant species on a sustainable basis. It is more productive to exert pressure on Japan to do its best to avoid the extinction of any whale species, for example, by confiscating illegal whale meat.