

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 prowhaling 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 prowhaling policy that has brought the country international condemnation? Its defiant prowhaling stance is not consistent with its internationally cooperative position on other environmental matters. For example, for the past decade, Tokyo has been a key player in international environmental regimes, such as those to combat ozone depletion and global warming.² If Japan is serious about environmental protection and desires to play a role as a “green contributor,”³ why hasn't it embraced the antiwhaling norm,⁴ thereby joining other states in wildlife protection and assuming a larger role in global environmental leadership?

It is natural to assume that such norm noncompliance would be based on materialism, that it 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.⁵ However, in this case,

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² 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).

³ *Id.* at 7.

⁴ Robert L. Friedheim, *Introduction: The IWC as a Contested Regime*, in *TOWARD A SUSTAINABLE WHALING REGIME*, 3–48 (Robert L. Friedheim, ed., 2001). Friedheim argues that a universal antiwhaling norm has emerged. Adopting phrases introduced by Finnemore and Sikkink, he contends that the norm has passed 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).

⁵ For example, see CHALMERS JOHNSON, *MITI & THE JAPANESE MIRACLE: THE GROWTH OF INDUSTRIAL POLICY, 1925–1975* (1982).

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.⁶

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 “salience”) of the norm and the structural context in which domestic policy debate takes place.⁷ This paper argues that the intersection of these factors explains Japan’s rejection of the antiwhaling norm.

2. JAPAN AND THE INTERNATIONAL WHALING COMMISSION

To understand Japan’s rejection of the antiwhaling norm, it is necessary to examine the Japanese whaling policy in the context of an international regime of whale conservation and welfare.⁸ 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 1946.⁹ 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 the whaling industry*.”¹⁰ As this statement indicates, the IWC was not originally a whale conservation regime but a whale regulation regime.

⁶ 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 on July 28, 2003).

⁷ Andrew P. Cortell & 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 & 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).

⁸ 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 of 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).

⁹ 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 Bruce J. Stedman, *The International Whaling Commission and Negotiation for a Global Moratorium on Whaling*, in NINE CASE STUDIES IN INTERNATIONAL ENVIRONMENTAL NEGOTIATION 151–175 (Lawrence E. Susskind et al. eds., 1990).

¹⁰ International Whaling Commission (IWC), *International Convention for the Regulation of Whaling, 1946*, (<http://www.iwcoffice.org/Convention.htm>) (accessed on September 21, 2002), italics added.

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 prowhaling 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),¹¹ 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").¹² 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 prowhaling to antiwhaling, an increasing number of nonwhaling and antiwhaling states have joined the IWC since the 1970s.¹³ As a result, antiwhaling states have become dominant within the IWC. Whaling states, including Japan, have since faced mounting pressure from these antiwhaling members to abandon whaling completely.

With the increase in antiwhaling 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.¹⁴ The NMP divided whale stocks into three categories, set quotas for each one on the basis of scientific assessments and sustainability, and demanded

According to Andresen, *supra* note 8, 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).

¹¹ Peter J. Stoett, *THE INTERNATIONAL POLITICS OF WHALING* (1997); Friedheim, *supra* note 4; Anny Wong, *THE ROOTS OF JAPAN'S INTERNATIONAL ENVIRONMENTAL POLICIES* (2001).

¹² Harrop, *supra* note 8, at 81.

¹³ David Day, *THE WHALE WAR 97* (1987); 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 drafting the required membership documents for small, poor, nonwhaling states to become members of the IWC, so that antiwhaling 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 4; Steinar Andresen, *The Making and Implementation of Whaling Policies: Does Participation Make a Difference?* in *THE IMPLEMENTATION & EFFECTIVENESS OF INTERNATIONAL ENVIRONMENTAL COMMITMENTS: THEORY & PRACTICE* 431–474 (David G. Victor et al., eds., 1998).

¹⁴ The adoption of NMP was spurred by the 1972 UN Conference on the Human Environment in Stockholm, which passed a 10-year moratorium on commercial whaling as a result of intense campaigns by environmental NGOs and the U.S. government. While Japan, Brazil, and South Africa abstained, the other countries attending the conference voted unanimously 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).

that the commercial whaling of depleted stocks be halted until their recovery could be facilitated.¹⁵ Then in 1976, quotas were established for individual species to reflect the disproportionate impact of whaling operations on certain species. In 1979, the IWC banned pelagic whaling except for the abundant minke whales in the Antarctic Ocean. In the same year, the IWC established the Indian Ocean as a cetacean sanctuary.¹⁶

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 prowhaling states such as Norway and the Soviet Union immediately lodged objections under Article 5.3 of the ICRW, thereby legally exempting themselves from applying the organization's resolution.¹⁷

Although Japan intended to defy the IWC decision and continue commercial whaling operations, 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 them with economic sanctions. 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 U.S. 200-mile Exclusive Economic Zone (EEZ) if Tokyo continued commercial whaling. Because Japan had substantial economic interests in the U.S. 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 U.S. EEZ.¹⁸

Under 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 implement the RMP and lift the

¹⁵ 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 4, at 4; Andresen, *supra* note 13.

¹⁶ Stedman, *supra* note 9.

¹⁷ 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 on January 9, 2003). Some prowhaling member states such as Canada eventually left the IWC in protest over the moratorium. Friedheim, *supra* note 4; Andresen, *supra* note 13.

¹⁸ Wong, *supra* note 11. However, even though Japan adopted the moratorium, the U.S. government froze the Japanese fishing quota in the U.S. EEZ in 1988 in order to protect its own fishing industry. Masayuki Komatsu, with the help of Shigeko Misaki, *THE TRUTH BEHIND THE WHALING DISPUTE* (unpublished manuscript).

moratorium.¹⁹ 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.²⁰

Despite these IWC measures to end whaling, Japan has never fully adopted the antiwhaling 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 provides 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.²¹

To initiate 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 whales and 50 sperm whales from the Antarctic for 12 years for scientific purposes.²² Japan's proposal angered delegates from antiwhaling 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."²³ The IWC then formally recommended that Japan withdraw its scientific research proposal.²⁴ 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

¹⁹ Even though the IWC accepted and endorsed the RMP as a formula for sustainable, regulated whaling, the organization has never incorporated it into the IWC Schedule. The antiwhaling states have argued that a Revised Management Scheme (RMS) should 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 nonscientific aspects of inspection and enforcement of rules for commercial whaling and humaneness of killing techniques. See Friedheim, *supra* note 4. For a critical analysis of the effectiveness of the RMP, See Burns, *supra* note 14.

²⁰ The Southern Ocean Sanctuary would preclude commercial whaling in the region within the greatest whale resources. Friedheim, *supra* note 4.

²¹ IWC, *supra* note 10. Japan was not alone in conducting whaling operations under the name of scientific research. Norway, South Korea, and Iceland also have engaged in scientific whaling. See Burns, *supra* note 14.

²² South Korea and Iceland also submitted similar proposals to the Scientific Committee in the same year. See Burns, *supra* note 14.

²³ 39th Rep. IWC 24 (1987), quoted in Burns, *supra* note 14, at 11.

²⁴ 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).

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 two-year feasibility study followed by a 14-year research program. Despite the IWC's criticism of the Japanese action,²⁵ Japan carried out and even expanded the JARPA program.

In 1989–1994, the program involved the taking of approximately 330 minke whales per year. Then, in the 1995–1996 season, it began to extend into a wider area in the Antarctic to capture an additional 110 minke whales. Since then, Japan has been annually hunting 440 minke whales through JARPA.²⁶

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 (JARNP), involves the killing of an additional 100 minke whales annually.²⁷

In 2000, the scope of JARNP was broadened to include two other species (i.e., Bryde's and sperm whales). The broadened program, named JARNP II, involves an annual catch of 100 minke whales, 50 Bryde's whales, and 10 sperm whales. The IWC adopted a specific resolution calling on Japan to refrain from conducting JARNP II.²⁸ This plan also angered U.S. senators as the Bryde's and sperm whale species are protected under the U.S. Marine Mammal Protection Act. These senators, led by Connecticut Senator Joe Lieberman (D), urged the Clinton administration to take strong action against Japan's proposal.²⁹ JARNP II also prompted U.S. Commerce Secretary Norman Mineta to recommend to President Clinton that trade sanctions be imposed against Japanese fishery products under the Pelly Amendment to the Fishermen's Protective Act of 1967.³⁰ Although the Clinton administration did not in the end impose trade sanctions, it expressed its disapproval of Japan's new program by boycotting a UN environmental conference in Japan.³¹

²⁵ Burns, *supra* note 14.

²⁶ Masaaki Ishida, *Brief Outline of the Japanese Research Whaling Program in the Antarctic (JARPA)* (2002), (<http://luna.pos.to/whale/gen-jarpa.html>) (accessed on July 23, 2003).

²⁷ William Aron et al., *Scientists versus Whaling: Science, Advocacy, and Errors of Judgment*, 52 *BIOSCIENCE* 1137–1140 (2002).

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

²⁹ Robbins Barstow, *24 U.S. Senators Condemn Japan's Renewed Whaling*, 9 *WHALES ALIVE* 3 (2000), (<http://csiwhalesalive.org/csi00302.html>) (accessed on July 15, 2003).

³⁰ 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 on July 22, 2003); *Mineta Recommends Clinton Penalize Japan over Whaling*, *JAPAN TIMES ONLINE*, Sept. 14, 2000, (<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20000914a1.htm>) (accessed on 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) (accessed on July 15, 2003).

³¹ *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 on July 15, 2003).

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 JARPN II). 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.³²

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.³³ However, the program's critics—including governments,³⁴ nongovernmental organizations (NGOs),³⁵ journalists,³⁶ academics,³⁷ and scientists³⁸—have condemned the program as inhumane and lacking scientific justification. They argue that Japan's scientific whaling programs represent commercial whaling in disguise, as the whales captured in the program are killed and their meat is sold in the open market.³⁹

³² *A Middle Way to Whaling*, JAPAN TIMES ONLINE, May 22, 2002, (<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?ed20020522a1.htm>) (accessed on July 22, 2003).

³³ 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 on July 23, 2003).

³⁴ *Emotions Escalate in U.S., Japan Whaling Debate*, CNN, September 14, 2000, (<http://cnn.com/2000/NATURE/09/14/whales.japan.reut/>) (accessed on June 26, 2002); *UK Warns Japan over Whaling Ban*, BRITISH BROADCASTING CORP. (BBC) NEWS, May 16, 2002, (<http://news.bbc.co.uk/1/hi/english/world/asia-pacific/newsid1990000/1990433.stm>) (accessed on June 26, 2002); Mari Yamaguchi, *Whaling Methods Debated*, THE WASHINGTON POST, June 24, 2002, (<http://washingtonpost.com/wp-dyn/articles/A34035-2002June24.html>) (accessed on June 26, 2002). As retaliation against Japan's scientific whaling program, the Reagan administration indicated that the United States might invoke the Packwood-Magnuson Amendment again to terminate all Japanese fishing rights within the U.S. EEZ. By then, however, Japan's fishing quota in the U.S. waters was minimum, thus the U.S. gesture was only symbolic. While the U.S. 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 14.

³⁵ See, for example, Greenpeace, *Whaling* (2000), (http://whales.greenpeace.org/whaling/jp_scientific.html) (accessed on 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/10E2BD30AECB46FC80256BCF004CCDC6>) (accessed on July 23, 2003).

³⁶ 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 on June 26, 2002).

³⁷ See, for example, Jared Diamond, *A Whale of an Agenda*, LOS ANGELES TIMES, June 23, 2002, at M 1, 6. For an extensive and critical analysis of Japan's scientific research program, See Gillespie, *supra* note 24.

³⁸ 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 on July 22, 2003).

³⁹ After the completion of research, a few thousand tons of whale meat are annually sold to the Japanese central government. Then the government distributes the meat to 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, Sept. 9, 2000, at 42.

Critics also have questioned the objectivity of Japan's research, contending that the programs are designed to gather data to justify the resumption of commercial whaling, rather than to independently analyze data for scientific purposes.⁴⁰

While continuing the scientific whaling program, Japan also has taken more direct action to try to end the IWC moratorium. Japan has repeatedly petitioned the IWC to overturn the moratorium and set up catch quotas for several stocks of minke whales. Japan's request has been rejected by the IWC on the grounds that its 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 3,000 minke whales, but this proposal was rejected.⁴¹

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 on 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.⁴² Japan sees hypocrisy in the fact 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 authorized by the IWC to harvest endangered bowhead whales.⁴³

The IWC has repeatedly rejected the Japanese request for a quota of 50 minke whales on the grounds that Japan's coastal whaling contains a commercial element, and thus the quota would contravene the terms of moratorium.⁴⁴ 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 spearheaded the effort of a bloc of Caribbean states that attempted to derail the request of the United States and Russia to renew aboriginal whaling

⁴⁰ S. J. Mayer, *A Preliminary Review and Evaluation of Scientific Whaling from 1986 to 1996* (unpublished manuscript).

⁴¹ Colin Nickerson, *In Japan, Saving Whales Means Losing A Lifestyle*, BOSTON GLOBE June 21, 1991, at 1.

⁴² It should be pointed out that Japan has not completely stopped STCW or commercial whaling. Small coastal whaling firms have continued to hunt 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 accorded quotas and thus regulated by the government. Japan Whaling Association, *Questions and Answers*, (<http://www.whaling.jp/english/qa.html>) (accessed on July 23, 2003).

⁴³ Arne Kalland & Brian Moeran, JAPANESE WHALING: END OF AN ERA? (1992); Japanese Ministry of Agriculture, Forestry, and Fisheries (MAFF), *Japan's Position on Small-Type Coastal Whaling and Aboriginal Subsistence Whaling*, media release, May 24, 2002.

⁴⁴ Friedheim, *supra* note 4, at 135.

quotas for Alaskan Inuit and Russia's indigenous Chukotka people. The effort failed.⁴⁵

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 they needed to end the "double standard" of the antiwhaling IWC members who would not allow Japan to whale.⁴⁶

Masayuki Komatsu, Japan's alternate commissioner to the IWC and a bureaucrat in the Japanese Fisheries Agency, expressed his frustration with the U.S. government, which adamantly opposed Japan's hunt of minke whales under the coastal whaling scheme but promoted the indigenous whaling rights of the Inuit 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.⁴⁷

Komatsu also criticized the New Zealand delegation to the IWC in 2002 for proposing a whale sanctuary in the South Pacific, another move that targeted 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."⁴⁸

At the 2003 IWC annual meeting, Japan's request for a coastal catch of 150 minke whales—triple its previous request—was rebuffed, together with other requests such as setting up a new hunting ground for 150 Bryde's whales

⁴⁵ Prior to that vote, Japan had proposed a compromise to the United States and Russia that would have amended the aboriginal quota and also to allocate 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 on July 21, 2003).

⁴⁶ *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 on July 21, 2003). In October 2002, however, Japan changed its position and supported the renewal of the aboriginal whaling quotas for the Inuit 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 resolution 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 on July 28, 2003).

⁴⁷ MAFF, *Alaskan's Lose Quota Due to United States' Hypocrisy*, media release, May 23, 2002. Komatsu's position 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 on October 13, 2002); Masayuki Komatsu, *What Was Achieved at the Shimonoseki IWC Meeting*, 26 ISANA (2002), (<http://whaling.jp/english/isana/no2601.html>) (accessed on January 16, 2003).

⁴⁸ MAFF, *Lee, McLay—Whaling Mimics for Greenpeace*, media release, May 21, 2002.

in the northwestern Pacific. In addition, the IWC approved a nonbinding 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.⁴⁹

The schism between Japan and the antiwhaling camp at the IWC has widened substantially over the years. At each annual IWC meeting, Japan faces considerable hostility and anger from the antiwhaling camp.⁵⁰ Japan then fires back, threatening its opponents. For example, Minoru Morimoto, Japan's chief delegate to the IWC, 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.⁵¹ He also indicated that Japan might boycott IWC committees, or withdraw from the IWC and form a separate prowhaling commission, claiming that the IWC has been hijacked by the antiwhaling members.⁵²

All these actions beg the question of why Japan continually risks antagonizing its relations with the United States and other antiwhaling 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 this line of thinking, claims that industry strongly influences Japan's whaling policy.⁵³ However, this view is contradicted by the facts; the business sector has only marginal influence over the decision-making process regarding whaling.

⁴⁹ William C.G. Burns, *The Berlin Initiative on Strengthening the Conservation Agenda of the International Whaling Commission: Toward a New Era for Cetaceans*, 13(1) REV. EUR. COMM. & INT'L ENVTL. L. 73–84 (2004); *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 on July 21, 2003).

⁵⁰ Milton M. R. Freeman, *Japanese Community-Based Whaling, International Protest, and the New Environmentalism*, in JAPAN AT THE CROSSROADS: HOT ISSUES FOR THE 21ST CENTURY 12–31 (David Myers & Kotaku Ishido, eds., 1998).

⁵¹ *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 on June 21, 2003).

⁵² *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 on July 21, 2003).

⁵³ Peterson, *supra* note 13.

Due to the conservation measures mandated by the IWC, Japan's whaling industry has been 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.⁵⁴

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 keeping Y's in port and then use Y's boat while keeping X's in port). These firms are subject to the government's annual quotas, and their whaling activities are thus subject to close government monitoring.⁵⁵ Because the types of small, coastal whales captured by these firms are not subject to the ICRW, and because their whaling is on a very small scale, the activities of these firms have not attracted the attention of the international antiwhaling community.

Kyodo Senpaku conducts whaling on a similarly limited scale, although much more controversially as 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.⁵⁶ 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 in which the company is engaged. Today, Kyoto Senpaku has only about a few hundred 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 Kyoto

⁵⁴ 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 on July 24, 2003).

⁵⁵ *Id.*

⁵⁶ 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 effectuated due to the aforementioned IWC regulatory measures and the subsequent contraction of the industry. ZENJIRO TSUCHI, SAIKIN HOGEI HAKUSHO [White Paper on Recent Whaling] 13 (1992).

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.⁵⁷

Kyodo Senpaku collaborates with the Institute of Cetacean Research (ICR), a semigovernmental nonprofit organization (*zaidan hojin*) that conducts research on 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 prowhaling 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 the 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.⁵⁸ Rather, the Institute provides "scientific evidence" to support the Fisheries Agency's and MAFF's claims that certain whale species such as minke whales are abundant and that Japan should thus be allowed to resume commercial whaling.

Of course, the whaling industry hopes that the IWC moratorium will be lifted and that Japan will be able to resume commercial whaling on 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.⁵⁹ According to one journalist, the money generated from 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.⁶⁰ Thus, although business interests do exist, the industry does not have sufficient resources to lobby the government or the economic weight to impose its views. Rather, the industry is dependent on the government, relying on the rules it establishes (e.g., catch quotas for coastal whaling) and contract work for scientific research. The industry thus plays

⁵⁷ See *Japan—The Politics of Whaling*, THE ECONOMIST, Sept. 9, 2000, at 42; WONG *supra* note 11.

⁵⁸ 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 on July 27, 2003).

⁵⁹ *A Middle Way to Whaling*, *supra* note 32.

⁶⁰ 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 on July 23, 2003).

a supportive role, rather than a dominating one, in policy making, providing information to justify Japan's prowhaling 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. Antiwhaling 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 antiwhaling norm; and (2) the domestic political system is dominated by bureaucratic actors, providing little political opening for antiwhaling advocates.

3.2.1 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.⁶¹ In the case of 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 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.⁶² So is the fact that the Japanese are not alone in eating whale meat. (For example, the Inuit and people in the Faroe Islands, Iceland, Norway, and Indonesia also eat whale meat.) In general, Japanese consider whale preparation and eating an integral part of the national cuisine and an expression of cultural identity.⁶³

Second, whales are considered by most Japanese to be 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 to be fish, most Japanese lack any special affinity for whales and disagree with

⁶¹ Cortell & Davis, *supra* note 7.

⁶² 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) (accessed on July 3, 2002); WONG, *supra* note 11.

⁶³ 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 KORO O 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).

Western animal-rights activists who insist on whales' rights.⁶⁴ According to one cross-national survey on public attitudes toward whaling conducted by North American researchers, a wide perception gap exists between people in antiwhaling countries and Japan. The study found, for example, that 64 percent of Australians indicated that it was wrong to 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.⁶⁵

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.⁶⁶ There is a widespread view in Japan that the international criticism of Japan's whaling practice is a form of "Japan bashing" that reflects cultural imperialism. To the Japanese, it is hypocritical that Westerners consider it morally wrong to kill certain mammals such as whales but consider it acceptable to kill others, such as kangaroos (in Australia) and cattle (in the United States).⁶⁷

This view of Japan as a victim of Western cultural imperialism reflects strong nationalistic sentiments among the Japanese.⁶⁸ Many believe that opposition to Japanese whaling is an expression of racism and that white Americans and Europeans do not tolerate the culturally unique cuisines of nonwhite people. Of course, this ignores the fact that other whaling countries—such as Norway and Iceland—also are criticized by antiwhaling 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 drawings, whale bones, and hand harpoons, they claim

⁶⁴ A Japanese delegate to the IWC even declared that minke whales were "cockroaches of the ocean," referring to their purported overpopulation. Peter Hadfield, *With Respect—A Whale of A Problem*, JAPAN TODAY, July 22, 2001, (<http://www.japantoday.com/gidx/comment63.html>) (accessed on July 23, 2003).

⁶⁵ Milton M. R. Freeman & Stephen R. Kellert, PUBLIC ATTITUDES TO WHALES: RESULTS OF A SIX-COUNTRY SURVEY 4 (1992).

⁶⁶ Kalland & Moeran, *supra* note 43.

⁶⁷ See Dyer, *supra* note 60.

⁶⁸ See Kalland, *supra* note 62.

that some Japanese communities began primitive whaling during the Jomon period (10,000–300 B.C.E.). 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.⁶⁹ These scholars usually do not emphasize, however, that the mass consumption of whale meat in Japan 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 prowhaling views through publications. In these accounts, the officials defend Japan's whaling policy on the grounds of cultural relativism. For example, MAFF argues that:

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.⁷⁰

Japanese officials also have 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 I!* [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 meat at home and restaurants. In *Kurjira to Nihonjin* [Whales and the Japanese], Komatsu argues that because whale is traditional Japanese food, it cannot be considered cruel to hunt and eat whale.⁷¹

Nationalistic views are similarly expressed in international fora such as the IWC annual meetings. At the 1989 IWC meeting, for example, Komatsu

⁶⁹ See for example, Seiji Osumi, *KUJIRA TO NIHONJIN* [Whales and the Japanese] (2003); Takahashi, *supra* note 63.

⁷⁰ MAFF, *Share Our Philosophy with You: Japan will Host the 54th International Whaling Commission Annual Meeting in 2002* (2002), (<http://www.jfa.maff.go.jp/whale/assertion/htm>) (accessed on June 26, 2002).

⁷¹ Masayuki Komatsu, *KUJIRA WA TABETEMO I!* [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).

argued that the whaling controversy as a struggle between “meat eaters” (especially the Anglo-Saxons) and “fish eaters” (the Japanese) and that the meat-eating culture was using the IWC to destroy the fish-eating culture.⁷²

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 imposed upon” by Western antiwhaling values.⁷³

In summary, active propagation by prowhaling advocates has helped ensure a large discrepancy between the values associated with the antiwhaling 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 antiwhaling activists have had little success in building a domestic antiwhaling 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 and acid rain). They fear that involvement in the antiwhaling cause would damage their reputation, alienate them from the public, and weaken their efforts to raise funds and increase membership.⁷⁴

The few Japanese NGOs that have attempted to promote antiwhaling 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.⁷⁵ It has mainly adopted the discourse used by Greenpeace International against whaling, without addressing, for example, controversial tactics used by Greenpeace International to halt Japan’s whaling operations through such methods as blockades of Japanese whaling vessels in the Antarctic.⁷⁶

⁷² Stedman, *supra* note 9, at 157–158; Friedheim, *supra* note 3.

⁷³ Yoshito Umezaki, *DOBUTSU HOGO UNDO NO KYOZOO* [The Pseudo-Image of Animal Protectionist Movements] (2001); TSUCHII, *supra* note 56, at 29.

⁷⁴ Wong, *supra* note 11.

⁷⁵ See, for example, Isao Miyaoka, *LEGITIMACY IN INTERNATIONAL SOCIETY: JAPAN’S REACTION TO GLOBAL WILDLIFE PRESERVATION* 80 (2004).

⁷⁶ 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 11, the planning and implementation of the antiwhaling 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.

3.2.2 *Domestic Political Structure*

Japan's adherence to its whaling policies also can be explained in terms of the country's domestic political structure that prevents environmentalists from taking part in 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 antiwhaling norm. This centralized decision-making process largely excludes any participation whatsoever by antiwhaling 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 thus authorized to formulate policy on all whaling matters.⁷⁷

Tokyo's harsh criticism of the IWC, antiwhaling 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 because whaling is a traditional Japanese activity, Japan has the cultural right to conduct whaling operations. Second, they maintain that the moratorium has no scientific basis.⁷⁸ 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 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.⁷⁹ 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 because the Revised Management Procedure has not been implemented by the IWC due to opposition from antiwhaling states, Japan has every right to conduct its own research to demonstrate that there are abundant whale resources that can be harvested.

In addition to these official claims, there is another possible reason that these bureaucrats insist on the continuation of scientific whaling research. Because whaling is under the jurisdiction of the Fisheries Agency and MAFF,

⁷⁷ Miyaoka, *supra* note 75; Wong, *supra* note 11.

⁷⁸ Sidney Holt & Nina M. Young, *GUIDE TO REVIEW OF THE MANAGEMENT OF WHALING* (2nd ed. 1991).

⁷⁹ Stedman, *supra* note 9, at 162.

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 ameliorate conflicts with antiwhaling states.

MOFA takes a softer approach to whaling than do the Fisheries Agency and MAFF, but it still defends the prowhaling 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."⁸⁰ MOFA also emphasizes the legality of Japan's action (which, in its view, is in line with the ICRW) and stresses Japanese cooperation with the international community.

MOFA is a junior partner to MAFF and the Fisheries Agency on whaling issues. MOFA neither makes nor implements policy but, rather, is charged with explaining it. The Ministry simply follows MAFF and Fisheries Agency decisions while attempting to soften Japan's position to the outside world.⁸¹

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 and Fisheries Agency officials.⁸² Japan has virtually no legislative advocates for the antiwhaling cause and no legislative supporter of antiwhaling activism.

⁸⁰ 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) (accessed on June 26, 2002).

⁸¹ MOFA's prowhaling 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 prowhaling position on U.S. Japan relations and is least supportive of whaling. See Wong, *supra* note 11.

⁸² At the same time, Japan's two largest parties have prowhaling 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 4; Wong, *supra* note 11. Recently, Japanese politicians participated in a prowhaling 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 on March 15, 2004).

This contrasts with the United States, where legislators have responded to pressure from environmental and animal-rights NGOs to promote the antiwhaling case.⁸³

Likewise, Japanese prime ministers are largely uninvolved in policy making on whaling. Although the prime ministers are usually highly sensitive to international opinion, and thus ambivalent about Japan's whaling policy, their influence on the issue is limited. They can successfully pressure prowhaling 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.⁸⁴

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 antiwhaling cause. The most active ones are 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. The four NGOs are part of 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.⁸⁵

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 antiwhaling 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 and incapable of forming a winning coalition with influential policy makers, domestic NGOs have proved to be ineffectual in influencing Japanese whaling policy.⁸⁶

⁸³ The fact that virtually no politicians publicly oppose whaling, however, does not mean that all are advocates for the prowhaling 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.

⁸⁴ Wong, *supra* note 11.

⁸⁵ Kujira Mondai Renraku Kyogikai [Whale Conservation Coalition of Japan], homepage (2002), (<http://homepage2.nifty.com/kujirahogo/2002>) (accessed on Jan. 3, 2004).

⁸⁶ The limited role of Japanese NGOs in opposing whaling does not, however, reflect a prowhaling 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. Thus, many young people 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 on July 21, 2003).

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 and the Ministry of Economy, Trade, and Industry) competing for budget and power in foreign aid, MOFA has welcomed cooperation with NGOs, as both the ministry and its NGO partners share an interest in increasing humanitarian assistance to the developing world.⁸⁷

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. Antiwhaling NGOs do not have as much wide public support as do development NGOs, and the Fisheries Agency and MAFF have no interest in working with them.

As the decision-making mechanism is highly centralized with overwhelming control by the Fisheries Agency and MAFF, the preferences and interests of the bureaucrats in these agencies prevail. If the antiwhaling 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 antiwhaling norm is explained in terms of its domestic cultural and political structures. Because the norm does not fit well into the domestic value system, antiwhaling 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 antiwhaling advocates marginalized, thus making it extremely difficult for them to influence bureaucratic views or policy.

4. CONCLUSION

This article has sought to demonstrate how and why Japan has defied the international antiwhaling norm. Two major factors—the lack of congruence between the antiwhaling norm and domestic cultural values, and the hegemonic control over decision making on this issue by prowhaling government agencies—have prevented antiwhaling advocates from influencing whaling policy.

These factors help us understand why Japan is unlikely to change its prowhaling stance in the near to medium term, barring any major unforeseen

⁸⁷ Keiko Hirata, *CIVIL SOCIETY IN JAPAN: THE GROWING ROLE OF NGOS IN TOKYO'S AID & DEVELOPMENT POLICY* (2002).

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 it will not radically change its prowhaling position. And if the IWC adopts more resolutions to restrict whaling, Japan may leave the organization. As long as the domestic cultural and political structures described above remain intact, Japan's prowhaling policy will continue.

Advocates of antiwhaling 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 policy makers. 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 prowhaling 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 antiwhaling groups may eventually prevail.