

Discourse and Sovereignty: Interests, Science, and Morality in the Regulation of Whaling

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Many environmentalists have argued that existing norms of state sovereignty promote environmental degradation. International legal norms have traditionally defined international common pool resources as open-access resources, allowing governments to make independent decisions about their use. To avoid having this lead to predictable overuse and the “tragedy of the commons,” governments increasingly have used international treaties to redefine the rights of states in areas of common jurisdictions. States redefine sovereignty through such redefinitions. Given the weakness of international law within an anarchic international system, however, altering the definition of sovereignty need not alter the practice of sovereignty. A question then arises: What factors influence whether de jure redefinitions of sovereignty alter the de facto practices of sovereignty that harm the environment?

The success of efforts to alter sovereign *practice* by redefining sovereign *rights* depends, at least in part, on the form of discourse used to justify the redefinition. Put differently, the type of rhetorical justifications used to support an international legal norm of sovereignty influences the practical legitimacy accorded to that norm. The variation over time in the rhetoric used to justify international regulation of whaling illustrates that a redefinition of sovereignty established through a scientific discourse based in causal arguments alters sovereignty *as practiced* more readily than the same redefinition established through interest-based argument, which in turn alters sovereign practice more readily than such a redefinition established through moral or principled arguments. The whaling case provides a useful laboratory for analyzing these issues because the three discourses are temporally separated.

During different phases in the whaling regime’s history, member states have used scientific, interest-based, and moral arguments to justify a single redefinition of sovereignty. At its inception in 1946, the whaling states negotiated a de jure change to international legal norms of sovereignty: states agreed to determine through collective rather than independent decisionmaking quantity, type, location, timing, and methods in the

taking of whales from the international common pool resource.¹ The International Whaling Commission (IWC) has had mixed success in subsequent efforts to induce corresponding *de facto* changes in sovereignty. Initially, those advocating collective decisionmaking relied almost exclusively on interest-based arguments. This interest-based discourse led states to submit to the new sovereignty norm only when they accepted the existing structure of power and interests, while reverting to independent decisionmaking whenever it suited their short-term interests. During a second phase, scientific arguments regarding the state of whale populations and the likely consequences of maintaining then current levels of whaling gained influence. Such causal-belief-based discourse led states, despite their reluctance, to submit to the new sovereignty norm—restricting their whale hunts, even though neither their short-term interests nor the tragedy of the commons had changed—by creating shared causal beliefs regarding the consequences of overwhaling.

During a third phase, morally based arguments for a complete ban on whaling dominated IWC debates. Initially, the policy recommendations derived from this principled-belief-based discourse coincided with those derived from scientific arguments and appeared to reinforce the commitment to collective decisionmaking.² However, in the current fourth phase, divergence between the policy recommendations of moral and scientific discourses have shown that morally based arguments fail, when operating alone, to induce governments to put agreed legal norms of sovereignty into practice and indeed induce a reactive resistance that has led states to explicitly reject the legitimacy of the norm both by word and by deed. In other environmental issues, the three discourses will tend to be more intertwined. The findings from the whaling case are suggestive but require further research to assess whether they will generalize to other environmental issues.

Norms of Sovereignty

Environmental treaties redefine and reconceptualize sovereignty, even if they do not erode it.³ Norms of sovereignty can be defined as the set of standards governing a state's legitimate rights and authority within its borders, within the borders of other states, and in international areas outside any state's borders.⁴ States use treaty negotiations as one process by which to reconstruct consensual definitions of sovereignty. Nations especially have taken to using international law to redefine what states can legitimately do and not do in the world's "not yet sovereignized" commons—the oceans, the atmosphere, and Antarctica. The question is whether and when these *de jure* norms become *de facto* norms or standards that guide actual behavior.⁵

The Four Phases of Discourse in the IWC⁶

Traditional legal norms of sovereignty hold that states can take ocean resources in international areas outside territorial limits "under a doctrine of freedom of access to them (a freedom which can be limited only with the consent of the participant state)."⁷ In 1946, fifteen nations negotiated the International Convention for the Regulation of Whaling (ICRW) in an effort to avoid repeating the pre-World War II overexploitation of whale stocks that had resulted from such open access. The convention established the IWC to develop an annual "schedule" of restrictions on the quantity, type, and methods of whale catches. By so doing, the ICRW established a new *de jure* norm aimed at altering the then current practice of each nation independently deciding the size and manner of its whale catch. While nominally merely negotiating the rules governing each year's whale catch, IWC states have been engaged in a metaprocess of inducing whaling states to engage in, and accept the outcomes of, these negotiations. This larger enterprise involved an effort to transform a *de jure* norm of sovereignty into a *de facto* practice of states submitting to an ongoing process of collective, rather than independent, decisionmaking.

The IWC has evolved through four different phases. From 1946 until the late 1960s, regulatory limits were established based on the power of competing economic interests in what was essentially a "whalers' club." Nations negotiated collective quotas and made their fleets comply with those quotas only when they believed doing so furthered their short-term economic interests. Scientific arguments exercised little influence in IWC debates, and morally based environmental arguments were absent. A second phase began in the late 1960s, as increasing scientific expertise and consensus on whale population dynamics produced quota recommendations that diverged from those dictated by interest-based bargaining. Nations increasingly accepted these alternative quotas derived from a scientific discourse, reverting to independent decisionmaking with decreasing frequency. The IWC's third phase was initiated as environmental nongovernmental organizations (NGOs) and sympathetic governments introduced a new, morally based discourse. This discourse progressively gained influence and by 1982 produced a moratorium on commercial whaling that had little scientific rationale. Whaling states opposed the moratorium, although they initially avoided violating it. More recently, however, a fourth phase has emerged in which exclusive reliance on arguments grounded in moral beliefs have decreased the whaling states' commitment to the process of collective decisionmaking, with scientific and commercial whaling aimed at circumventing IWC regulations becoming increasingly common.

The success of these consistent efforts to replace independent with collective decisionmaking varied across the phases, correlating with shifts in the discourse used to justify this new practice of sovereignty. In the next

four sections of this article, I examine these phases through three common questions. Did the IWC produce meaningful collectively determined quotas, i.e., did IWC quotas diverge from what would be predicted from simply aggregating the independent decisions of member states? What discursive rationales were used to convince states to accept IWC quotas and, in so doing, to accept a reduction to the traditional scope of sovereign decisionmaking power? Did state behavior actually conform to these quotas?

The Dominance of Instrumental Discourse

Traditional international norms, treating whale stocks on the high seas as a nonexcludable common pool resource, had created the familiar incentives and classic problems of a tragedy of the commons. By 1946, a whaling industry increasingly feeling the costs of its own overexploitation of whale stocks sought "mutual restraint, mutually agreed upon."⁸ To overcome these problems, the IWC began setting annual global quotas on the number of whales that could be taken. Member states, however, did not give the IWC the power to allocate this global quota among member states. This management approach encouraged overinvestment in whaling equipment as each firm tried "to take as many whales as it could before the season ended," with this overinvestment in turn creating a self-perpetuating dynamic that made it "hard to persuade managers that lower quotas were needed."⁹

Until the late 1960s, IWC quotas diverged little from the catches one might have expected in their absence. The initial quota of 16,000 Blue Whale Units (BWU) was one-third lower than catches just prior to the hiatus in whaling during World War II. But this figure still exceeded then current capacity (due to wartime losses) and did not pose a meaningful economic constraint. Whaling interests did not even argue for a higher figure because they did not expect to catch the full quota.¹⁰ Until 1962, quotas never went below 14,500 BWU, and thereafter they continued to be "too high . . . at the insistence of the whaling countries, reflecting the demands of their whaling companies, despite the obvious decline in the whale stocks."¹¹ Until 1965, the close correspondence between each year's quota and the previous year's catch data suggests that quotas were best estimates of what could be caught economically rather than genuine attempts to overcome collective action problems or to respond to scientific warnings.¹² The declining quotas of this phase appear to have been driven largely by "the fact that the whaling nations were no longer able to fulfill their quotas."¹³ Although whaling states recognized that global quotas encouraged overcapitalization, whaling interests frustrated attempts to negotiate national quotas until "most Antarctic whaling nations no longer found it profitable to continue their operations."¹⁴ In essence, little collective decisionmaking was actually occurring.

When collective decisions were made about quotas, they were founded on arguments about economic power and interests rather than science. For example, despite strong evidence of declining humpback stocks, the IWC's first meeting in 1949 removed the original 1946 schedule's ban on taking humpbacks. By 1950, several member states viewed the 16,000 BWU quota as "too high," but these voices were overridden.¹⁵ Although whaling industry pressure could produce quotas that reflected their economic interests, it could not thereby resolve the underlying collective action problem. IWC membership was dominated by whaling states, and the available scientific advice was both highly uncertain and industry based. Not until 1961 did the IWC seek advice on population dynamics from an expert panel that was independent of the whaling industry. After fifteen years, IWC members finally began reducing quotas, going from 15,000 BWU in 1962 to 3,500 by 1966. However, even these cuts rejected scientific recommendations for imposing deeper cuts and for replacing the BWU with species-specific quotas. Scientific advice was almost "entirely ignored."¹⁶ Economic interests continued to dictate quotas, which remained high "not because governments were unaware of the cetologists' concerns but, rather, because there was no other way to sustain the interwhaling state agreement."¹⁷

Even though the regime posed relatively minor constraints on their sovereignty, states consistently followed the traditional norm of independent decisionmaking whenever following the norm of collective decisionmaking would have contradicted short-term economic interests. Whaling interests regularly threatened, or carried out threats, to ignore collective decisions by opting out of specific rules or withdrawing from the IWC. A 1954 ban on the taking of blue whales in the North Pacific and North Atlantic was rendered meaningless when every nation actually hunting blue whales in those areas opted out from the prohibition. Norway and the Netherlands withdrew from the IWC from 1959 until 1962 to protest proposed quotas they viewed as overly restrictive. Other whaling states remained outside the regime. Panama, Chile, and Peru all found ways of avoiding IWC quotas.

Thus, during this initial phase, states failed to establish catch levels different from those that would have occurred without the IWC, produced decisions through traditional interstate bargaining determined by economic power and interests, and ignored collective decisions whenever it suited their short-term interests. IWC members failed to produce a *de facto* practice corresponding to the *de jure* norm of collective decisionmaking. States recognized that resolving the tragedy of the whaling commons required replacing traditional open-access rules with coordinated and mutual restraint. However, the interest-based discourse of the IWC's first two decades failed to produce policies or behaviors that differed significantly from what would have occurred in the regime's absence. Quotas were set

in response to short-term fears that reducing catch levels would immediately destroy an overcapitalized industry rather than long-term fears that maintaining high catch levels would decimate whale stocks and destroy the industry. Although explicit bargaining within the IWC replaced traditional action-based “tacit bargaining,” power and interests still dictated outcomes.¹⁸ Whaling states regularly withdrew, opted out, or otherwise refused to put a new *de jure* norm of sovereignty into practice, except when forced to by others.

Proposition 1: Interest-based discourse will lead reluctant states to accept new norms of sovereignty only if that discourse coincides with new patterns of power and interests that would force them to accept such norms anyway.

The Dominance of Causal Discourse

From the 1960s through the 1970s, industry catch data increasingly confirmed scientific warnings that whale stocks capable of supporting commercial whaling could only be maintained through lower quotas. No longer could industry “discredit the cetologists’ case for quota reductions on scientific grounds.”¹⁹ Initially, this produced lower quotas but little restraint in behavior. IWC members consistently rejected the scientific committee’s recommendations to abandon the BWU system, although they did adopt scientifically recommended limits on some species and regional stocks. In 1963, IWC members rejected the scientific committee’s recommendation to ban taking blue whales in the Antarctic but adopted a ban on taking humpbacks. A year later, the Antarctic blue whale ban was adopted, although all the countries whaling in that region opted out. Evidence that these species could still be economically harvested and that adopting these bans did not merely codify existing interests comes from the fact, known at the time, that non-IWC states (Chile and Peru) were taking blue and humpback whales and from the recently revealed fact that Soviet whalers were catching large numbers of humpbacks during these years.²⁰

By 1967, however, the IWC set the first quota below scientific recommendations. A New Management Procedure (NMP) basing quotas on scientific estimates of sustainable yields was regularly discussed, eventually adopted in 1974, and implemented in 1978. Thus, between 1960 and 1980, scientific arguments gained power, producing a transition from quotas as mere aggregations of the expected catches of member states to low overall and species-specific quotas—a transition that clearly resulted from collective, interdependent decisionmaking. The influence of causal discourse increased as a scientific consensus developed that whale stocks were declining, as whaling states recognized that economically dictated quotas were failing to reduce overexploitation and as nonwhaling states

increasingly rejected the interest-based discourse of whaling states. Scientific evidence transformed quota debates from revolving around how will whaling states respond to an excessively *low* quota to how will whale stocks respond to an excessively *high* quota. Setting quotas in response to the former required only diplomatic skill. Setting quotas in response to the latter required scientific advice. It also, however, involved a shift from short-term economic reasoning to longer-term ecological reasoning. Adoption of the NMP with its species-specific quotas reflected a new willingness of IWC member states “to give science [and the scientific committee’s recommendations] a much more prominent, though not exclusive, place in the decision-making system.”²¹

By the 1970s, states successfully used scientific arguments to resist economic pressures for higher quotas as well as growing environmental pressures for a blanket moratorium. Surprisingly, whaling states joined other states at the 1972 United Nations Conference on the Human Environment in unanimously recommending a ten-year moratorium on all commercial whaling. In the ten years following that recommendation, moratorium proposals regularly came before the IWC. However, the IWC’s scientific committee consistently rejected such proposals because a moratorium on all whales would “directly conflict with these new [NMP] principles” of using scientific knowledge to manage individual whale stocks.²² The IWC’s second phase of bargaining differed from its first phase. Although whaling states no longer withdrew or opted out when quotas fell below their preferred outcomes, neither did U.S. pressure produce a blanket moratorium. Science provided the focal point for compromises that kept whaling states “at the table” while pushing the moratorium off the IWC agenda until 1979.

IWC members not only adopted meaningful limits but increasingly conformed their behavior to those limits. Collective decisionmaking was slowly becoming a *de facto* norm. Whaling states’ objections to global quotas ceased by the mid-1960s, and objections to species-specific quotas ceased, with one exception, after the late 1960s. By 1974, the IWC was limiting catches of every species of whale without a single protest. Even when member states lodged objections, their behavior increasingly exhibited restraint. Japan, the Netherlands, and Norway caught few blue or humpback whales after objecting to regional bans on these species in the late 1960s. Although the Japanese and Soviets objected to a regional quota of 5,000 minke whales, they together took only 7,700 whales. Japanese whalers caught only two sperm whales before retracting their objection to a 1981 ban in response to U.S. pressure. Large catches by Chile, Peru, and the Soviet Union confirm the true restraint exercised by member states rather than the mere absence of available whales. Indeed, the failure of some states to respect IWC quotas demonstrated the economic viability of, and exacerbated the incentives for, all whaling states to continue whaling,

since restraint was clearly not being reciprocated and species might well go extinct anyway.

During this phase, collective decisions increasingly ran counter to members' short-term economic interests. Although perhaps too late for some species, IWC states had largely achieved, in law and in practice, the "mutual restraint mutually agreed upon" essential to overcoming the tragedy of the commons.²³ The shift arose from an increasing willingness of IWC members to accept causal scientific, rather than self-interested, economic discourse as an appropriate basis for collective decisions. More whaling states became IWC members, and IWC members objected to IWC decisions far less frequently. If the IWC's initial history had been characterized by state positions and actions determined by material interests, with science opportunistically brought to bear to serve those predetermined positions, this second phase was characterized by positions and actions being developed in response to recommendations produced by new scientific paradigms, arguments, models, and data. Quotas and catches increasingly reflected calculations of population sustainability rather than calculations of economic viability. Scientific discourse, which initially had served merely as new justifications for old interest-based positions, soon transformed those positions. By the end of this period, whaling states had come to accept collective decisionmaking as a *de jure* and a *de facto* norm, not in response to political pressures but increasingly in response to ecological ones.

Before accepting such an analysis, however, we must consider several alternative explanations. America's threats and use of trade sanctions (under the Pelly and Packwood-Magnuson amendments) in the 1980s and 1990s might suggest that economic pressure, not scientific argument, explains increased whaling state compliance with IWC decisions. However, whaling states were accepting and conforming to steeply declining IWC quotas before the United States had passed such legislation. By the first time the United States threatened to sanction states for whaling, Antarctic whaling catches had already declined from 15,000 BWU in 1963 to 1,475 BWU by 1974. Indeed, those initial threats were never carried out, and the United States did not threaten sanctions again until 1978, when it sought to induce Chile, Peru, Korea, and Spain to join the IWC.

If economic incentives for whaling had declined, and especially if scientific evidence clarified the change in (but did not redefine) states' material interests, we might also expect declining whale catches. However, during this period, economic incentives for whaling were increasing, not decreasing. Prices for whale products rose sharply, with sperm whale oil increasing from some \$100 per ton in the mid-1960s to some \$400 by the mid-1970s, and whale meat increasing from \$1,000 per ton in 1972 to \$2,400 by 1976.²⁴ Although no other country appears to have acted on these incentives, recent revelations of Soviet violations confirm the

strength of these incentives. This empirical evidence is bolstered by the logic of the tragedy of the commons, which would predict increased pressure to negotiate higher quotas or violate lower ones as very low and declining whale stocks increased incentives to hunt the last of the whales before they became extinct.

The failure of earlier quotas derived from interest-based bargaining led industry and governments to turn to scientists for solutions. Initially ignored, scientific discourse progressively strengthened a commitment to collective decisionmaking. Objections and withdrawals became less frequent. Although whaling states used scientific uncertainty to justify interest-based disregard for scientific advice, they accepted science as an appropriate discourse. The legitimacy accorded to science as an appropriate arbiter of policy conflict led states to continue negotiating rather than revert to traditional norms of independent decisionmaking. Nor did scientific information merely clarify "payoffs" regarding expected catches. Rather, it altered states' understanding of the structure of the game itself. Earlier interest-based discourse had focused on how to allocate existing stocks of whales, reaffirming concerns regarding how other states would respond to one's own restraint. Outcomes were framed as resulting from short-term strategic interaction among states. Such a framing allowed a state to plausibly believe that other states might exercise restraint, allowing it to reap the benefits of continued harvesting, a strategy most evident in the Soviet Union's clandestine whaling. Scientific discourse, however, refocused attention on the future provision problem of how to ensure adequate future whale stocks.²⁵ Compared to interest-based discourse, scientific discourse provided a more compelling rationale for developing and abiding by collective decisions because it transformed the debate from one about how other states *might* respond to one's own overwhaling to how nature *would* respond.

Proposition 2: Scientific discourse leads states to accept new norms of sovereignty that conflict with their short-term interests when sufficient scientific consensus and acceptance of that scientific consensus leads states to focus their attention on how nature will respond to their actions rather than on how other states will respond.

The Dominance of Principled Discourse

By the late 1970s, the debate over whaling both within and outside the IWC had increasingly taken on ethical and moral overtones. Protecting whales became a cause célèbre all but synonymous with protecting the environment. Activists committed to the rights of whales—activists who had previously relied on scientific rhetoric—increasingly adopted unabashedly

moral arguments. Whales, it was claimed, were so unique that "they should not be killed at all . . . [and] had rights, comparable to human rights, to exist in the oceans without being exploited in any way whatsoever."²⁶ Setting whale quotas was no longer a scientific but an "ethical question and whales should not be killed because it is unethical to kill them."²⁷

Passage of the commercial moratorium in 1982 constituted a rejection of both the independent whaling interests that had driven the first phase and the scientific guidance that had driven the second. Although the debate was often framed in scientific language, support for the moratorium was grounded in moral, not scientific, principles. Even at the time, a *commercial* moratorium on *all* species lacked a sound scientific basis, overprotecting unthreatened species while underprotecting those threatened by even small-scale aboriginal whaling. Although the moratorium as adopted provided for regular scientific reviews and reestablishment of catch limits by 1990, both the IWC's scientific committee and the Food and Agriculture Organization (FAO) criticized the plan as deriving from aesthetic and moral principles with "no scientific justification."²⁸ Since 1982, the moral foundation of the policy has been confirmed, with reevaluation of the moratorium unsusceptible to increasingly compelling scientific evidence that certain whale species would not be threatened by limited commercial harvests.

Despite the simultaneity of the change in IWC discourse and the adoption of the moratorium, it seems unlikely the former caused the latter. Rather, both appear to reflect changes in the composition and interests of the IWC membership driven by factors other than rhetorical persuasion. First, adoption of the moratorium after several previous rejections came about through addition of new members' votes rather than changes in existing members' votes. The United States had induced several whaling states to join the IWC to expand the applicability of its rules. Environmental groups, recognizing that the ICRW did not restrict membership and that a three-quarters majority could pass a moratorium by amending the schedule, convinced many nonwhaling states to join the IWC. The eight nonwhaling and eleven whaling members of 1978 had become twenty-seven nonwhaling and twelve whaling members by 1982.

The moratorium resulted from new aggregate preferences of this new set of members. Traditional cleavages remained intact, with only the numbers on each side changing. All whaling states considered *any* moratorium as economically undesirable and only Spain voted for the moratorium. Japan, Norway, Peru, and the Soviet Union immediately filed objections to it, demanding that amendments to the schedule "be based on scientific findings."²⁹ Peru removed its objections immediately and Japan did so in 1987. Norway and the Soviet Union maintained their objections, although they stopped commercial whaling in 1987 and 1988, respectively. However,

these changes in position reflected the quite material influence of U.S. threats to reduce fishing rights or imports rather than their acceptance of the moral arguments made in support of the moratorium.

Environmental groups encouraged only those states to join the IWC that they knew were fully committed to the notion that a moratorium was ethically "right" and had no material interest in supporting the continuation of whaling. It was not the moral discourse in the IWC that convinced these states of the morality of "saving the whales." Rather, these states were invited to the table precisely because they already were convinced. Some older nonwhaling members supported the moratorium for the same reason. For some of these states, views regarding the morality of whaling undoubtedly influenced their position, but it was a moral discourse occurring at the domestic level rather than within the IWC. Other nonwhaling members voted for a moratorium because of scientific uncertainty rather than moral certainty. By the late 1970s, cetologists' arguments over population dynamics models and data interpretation "made it difficult to give the unified advice necessary to counter the influence of either the industry-oriented members of the IWC Scientific Committee or the environmentalists."³⁰ Thus, although a shift to a principled-belief-based discourse clearly occurred within the IWC, it does not seem to have been responsible for the shift in votes that led to adoption of the moratorium.

Given that the moratorium reflected neither their economic interests nor scientific reasoning, one might have expected an outright rejection by the world's whaling states of the IWC process and moratorium. Yet all whaling states remained members of the IWC for ten years, and all commercial whaling had halted by 1988. Instead of withdrawing from the IWC or opting out, as had occurred previously, whaling states began channeling their whaling into allowed-for scientific whaling. The number of scientific permits (almost nonexistent before the mid-1970s) proposed to the IWC's scientific committee increased sharply after adoption of the moratorium. Although states issued permits rejected by the scientific committee, takes were limited in number (between 20 and 350 whales per year) and were restricted to minke whale stocks, which most cetologists considered unthreatened.

Evidence suggests that whaling state restraint was driven by material interests and scientific influences rather than moral suasion. The timing of Peruvian, Japanese, Norwegian, and Soviet cutoffs in commercial whaling suggests that they were responses to U.S. economic and diplomatic pressures rather than moral arguments within the IWC. The increased issuance of scientific permits also supports a view that whaling states were following the legal "letter" rather than the moral "spirit" of the moratorium. Indeed, the fact that all whaling states (except Iceland) limited even their scientific whaling to minke whale stocks suggests that their decision-making was driven by scientific and material rather than moral reasoning.

Although moral suasion was not the pathway of the regime's influence, this is not to say the moratorium had no influence. Whaling states clearly limited the number and species of whales they took after passage of the moratorium relative to what they would have done otherwise. And we can reasonably attribute this changed behavior to the moratorium. For example, American sanction threats required certification that the target state was "diminishing the effectiveness" of an international treaty, an unlikely assessment in the absence of the clear standard established by the moratorium. Likewise, whaling states would have had no reason to increase their use of scientific permits in the absence of a commercial moratorium. Thus, during the 1980s, whaling states did not completely reject the collectively adopted moratorium, even though it directly contradicted their interests. Rather, they actively sought ways to continue whaling while remaining within the IWC framework.

Unlike the second phase, the behavioral conformance of this phase seems likely to have stemmed from factors other than the discourse used to support the collective decision. Whaling states rejected the moral arguments raised by environmentalists while complying with the moratorium for three reasons: increasing U.S. economic and political pressure brought to bear to support the moratorium; some remaining "room to maneuver" provided in the interim through scientific permits; and a perhaps inertial "regime-mindedness" of whaling states valuing the long-term benefits of collective IWC decisionmaking based on scientific discourse despite decisions that contradicted short-term interests. Although a principle-belief-based discourse dominated the IWC during the period, it appears to have had little impact on the voting or behavior of states.

The Rejection of Principled Discourse

Since 1990, whaling states have increasingly accepted only those IWC decisions grounded in scientific, rather than moral, discourse. At the time that the IWC adopted the moratorium, scientific uncertainty about whale stocks and population modeling had created a debate that pitted the economic interests of whalers against the moral interests of various environmental groups. By the early 1990s, however, a strong scientific consensus emerged that certain species of whales could be hunted at limited levels without threatening those species. This new consensus has brought into relief the fundamental conflict in the principles of whalers, conservationists, and preservationists. The moratorium had muted this conflict by temporarily halting the practice of whaling without rejecting the principle of treating whales as a resource. A temporary halt could be seen by some as a means of allowing stocks to recover to optimal yields for harvesting, by others as a means of allowing stocks to recover from the brink of extinction, and by yet others as a first step toward the ultimate goal of permanently ending all

whaling. The moratorium's requirement for future scientific review established causal beliefs as the legitimate discourse for future collective decisions even as the moratorium itself overrode then current scientific recommendations for more discriminating, stock-by-stock quotas. The initial moratorium decision constituted a classic example in which "the cultural role of science as a key source of legitimation means that . . . questions of value become reframed as questions of fact."³¹

Whaling states became increasingly convinced that the moratorium was firmly grounded in moral discourse and that future IWC policy would be unresponsive to scientific discourse and new scientific advice. The first test of this conviction came with the 1990 evaluation of the moratorium.³² By then, many cetologists contended that minke whale stocks could sustain limited commercial harvests. Yet the IWC rejected Norway's proposal to recommence commercial whaling within scientifically prescribed limits. By 1991, scientific committee estimates confirmed the strength of minke stocks. In 1992, the IWC adopted a Revised Management Procedure (RMP) capable of more accurately identifying quotas, thereby making it "possible to authorize a catch that year."³³ IWC members reiterated their support for the RMP in 1993, and the IWC's secretary-general stated that "in all reasonableness, we would have to say that a commercial catch could be taken without endangering [minke] stocks."³⁴ Despite this growing scientific consensus that restricted takes would not threaten certain whale species, the IWC has nevertheless extended the moratorium in every year since 1990. The IWC has also refused to authorize Japanese and Norwegian coastal whaling and, in 1994, adopted a whale "sanctuary" that outlawed both scientific and commercial whaling in Antarctic seas.

The new scientific consensus removed the previously plausible argument that continuing a blanket moratorium was warranted by scientific uncertainty. Unlike during the IWC's second phase in the 1960s, different positions have come to reflect competing principles, not competing views of the scientific "facts." Many environmental groups now explicitly reject the scientific discourse they had previously embraced: "Even if humanity thinks that it has an ironclad 'scientific' banner under which to kill the whales, is that enough? Is the paradigm under . . . which it is okay to take the maximum number of a particular species according to a complicated calculation of 'sustainability,' defensible?"³⁵ In contrast, whaling states demand a reversion to scientific decision principles, explicitly rejecting other discourses as forms of religious or cultural imperialism.³⁶ Notably, where antiwhaling forces have used moral arguments as the basis for a permanent moratorium, prowhaling forces have used countervailing moral arguments (such as an appeal to "cultural rights") to create a space in which they would accept policies dictated by scientific advice.

Despite intense conflict between these positions, the IWC has been able to promulgate collective whaling policies. However, in most cases,

e.g., in the Antarctic sanctuary provision, these collective policies override the desires of whaling states and explicitly require that scientific advice be ignored, applying “irrespective of the conservation status” of whale stocks.³⁷ Indeed, Philip Hammond resigned as chair of the scientific committee because of the consistent rejection of the committee’s advice. Thus, these collective policies continue to be an artifact of the IWC’s new membership and three-quarters majority voting rule rather than of the success of moral discourse at altering the views of whaling states. Comparing the third and fourth phase of the IWC suggests that scientific discourse and uncertainty provided the foundation for many to support a moratorium, so long as it was temporary. In contrast, the effectively permanent ban being constructed during the fourth phase could be grounded only in a moral discourse that rejected the underlying principles of scientific discourse.

If the overarching *de jure* norm of collective decisionmaking remains intact, the actual practice of whaling states, i.e., the *de facto* norm, has begun to erode. The whaling states’ reluctant willingness to conform to IWC dictates during the 1980s began to unravel after 1990. Iceland withdrew from the IWC in 1992. Japan and Norway have threatened to do so. Norway resumed commercial whaling one day after the 1992 extension of the moratorium. Notably, even in doing so, Norway’s actions did not reflect naked economic self-interest but affirmed its commitment to scientific discourse by restricting the hunt to minke whales, using the IWC’s own RMP to set the catch limit and gaining Hammond’s scientific approval before proceeding. Frustrated by the “feeling that a number of the IWC members over several years had not been negotiating in good faith,” Norway, Iceland, Greenland, and the Faroe Islands established the North Atlantic Marine Mammal Commission (NAMMCO) with catch quotas to be set using the IWC’s RMP.³⁸ Japan is considering establishing a Pacific Ocean counterpart. Even subsistence Inuit whalers “view NAMMCO as a desirable complement, perhaps alternative, to the IWC.”³⁹ Replacing a global regime with regional ones reaffirms these states’ commitment to a sovereignty norm of collective decisionmaking, albeit more limited, while rejecting that such decisions should reflect moral principles. Although only Norway has recommenced whaling so far, the elements that held whaling states in check during the 1980s appear to be weakening.

During the 1970s, states had become convinced that collective scientific decisionmaking could facilitate their individual interests better than independent economic decisionmaking: science identified the behaviors necessary, and collective action provided the means to accomplish them. Those lessons led whaling states to remain committed to collective decisionmaking during the 1980s even as the scientific basis for such decisions began to erode. The conflict between the moratorium and these states’ short-term interests did not reproduce the earlier pattern of withdrawals and opting out because of quite material pressures brought to bear by the

United States and because the IWC remained nominally committed to a scientific discourse. Over time, that discourse offered these states the promise that collective decisionmaking might still trump independent decisionmaking as a means of achieving their interests. By the 1990s, however, the notion that scientific evidence would lead to collective decisions in line with these states’ interests had become untenable. Recent experience suggests that whaling states remain committed to a collective decisionmaking process based in scientific discourse that may require redefining interests within a longer time frame but not one based in a moral discourse that flatly rejects those interests.

This is not to argue that moral principles cannot shape behavior. Certainly if whaling states internalized a commitment to the moral principles being urged by antiwhaling forces, they would adopt new norms of sovereignty in practice. The deep-seated transformation of values inherent in the logic of moral discourse simply may take longer to effect behavior than other forms of discourse.⁴⁰ But it also may be more difficult, and without such internalization “transforming state practices has come about [only] as a result of linking principled ideas to material goals.”⁴¹ Unfortunately, moral argument supported by such material linkages, as exemplified in U.S. sanction threats, becomes quite difficult to distinguish from the traditional discourse of interest-based power politics. Indeed, moral discourse may prove even less successful than interest-based discourse because it evokes a reactive resistance, as evident in the strengthened commitment to whaling as an assertion of cultural pride and sovereignty even as the economic benefits of whaling appear to be in decline.

Proposition 3: Moral discourse that fails to convince states to accept the new principled beliefs of that discourse will lead those states to reactively reject new norms of sovereignty unless more direct, material incentives force their acceptance.

Conclusion

Negotiations on security and trade seek to resolve conflicts primarily involving political-economic interests. Negotiations on social issues—such as human rights, labor, or trade in women and children—seek to resolve conflicts primarily involving normative values in which one side views certain behaviors as inherently illegitimate. Negotiations on environmental problems seek to resolve conflicts among and within political-economic interests, normative values, and scientific knowledge, presenting a more complex interplay of these pressures for international policy change. Resolving global environmental problems often requires states to redefine norms of sovereignty about when states must make and abide by collective, rather

than independent, decisions regarding their behavior. States have already established many treaties and regimes that entail such de jure redefinitions of sovereignty. The whaling case suggests that the corresponding de facto redefinitions of sovereignty, i.e., conformance to collective regime decisions even when incentives for independent decisionmaking exist, are more likely when arguments rely on scientific discourse rather than either power and interests or moral discourse.

A single case cannot be conclusive. Yet the analysis here suggests that different forms of discourse can influence the outcomes we observe in international regimes. Put simply, interest-based discourse within a regime appears to produce outcomes that differ little from those one might expect in any event; science-based or causal-belief-based discourse appears capable of reframing the problem in ways that alter states' perceived interests and hence their behavior; and moral or principled-belief-based discourse appears to induce a reactive resistance of new norms, at least among those that do not internalize the new principled beliefs. Does this experience generalize to other issue areas? Certainly many international environmental regimes, from climate change to wetlands preservation to species protection, exhibit the coexistence of—and tension among—moral, scientific, and interest-based discourses. Different discourses are likely to dominate a regime at different times, although there is no reason to believe their sequence follows that exhibited by the whaling regime. Scientific discourse and evidence have been argued as playing important roles in overcoming interest-based resistance to cleaning up the Mediterranean Sea and protecting the stratospheric ozone layer.⁴² Current climate change negotiations clearly involve all three discourses, none yet having become dominant. Strongly moral discourses disconnected from material interests and science sometimes do appear to create a backlash, as evident in Malaysia's vocal rejection of the deforestation convention at the UN Conference on Environment and Development. Further research can help determine whether shifts in the dominant discourse help explain variation in the willingness of states to follow regime rules and accept in practice legal redefinitions of sovereignty.

If the emergence of world civic governance, pressure from environmental NGOs, and other processes create the deep-seated changes to values and behavior necessary to stem the tide of anthropogenic environmental damage, then de jure changes in international legal norms of sovereignty can come after the more important de facto ones that benefit the environment have occurred.⁴³ Unfortunately, those processes are likely to take considerable time to come to fruition. In the meantime, the task is to determine how best to induce states to abide by the many collective decisionmaking processes already established. The history of whaling suggests that, at least in the short term, environmental regimes that foster scientific discourse can contribute more to the legitimacy and practical application of collective decisionmaking norms than those that do not. ☉

Notes

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1. IWC, *Text of the International Convention for the Regulation of Whaling, 1946 and Its Protocol* (Cambridge, England: International Whaling Commission, 1956), article 5.

2. The distinction used here between interest-based, causal-belief-based, and principled-belief-based discourse builds on the work of Judith Goldstein and Robert O. Keohane, eds., *Ideas and Foreign Policy: Beliefs, Institutions, and Political Change* (Ithaca, N.Y.: Cornell University Press, 1993); Kathryn Sikkink, "Human Rights, Principled Issue-Networks, and Sovereignty in Latin America," *International Organization* 47, no. 3 (summer 1993): 411–441.

3. Ken Conca, "Rethinking the Ecology-Sovereignty Debate," *Millennium* 23, no. 3 (January 1994): 1–11.

4. Karen T. Litfin, "Sovereignty Moves: An Introduction" (manuscript, 1996).

5. Stacy D. VanDeveer, "States, Seas, and Regimes: Who's Sovereign Now," paper presented at the annual meeting of the International Studies Association, Chicago, 1995, p. 2.

6. The following policy history draws extensively on J. N. Tønnessen and A. O. Johnsen, *The History of Modern Whaling*, trans. R. I. Christophersen (Berkeley: University of California Press, 1982); Patricia Birnie, *International Regulation of Whaling: From Conservation of Whaling to Conservation of Whales and Regulation of Whale-Watching*, 2 vols. (New York: Oceana Publications, 1985); M. J. Peterson, "Whalers, Cetologists, Environmentalists and the International Management of Whaling," *International Organization* 46, no. 1 (winter 1992): 147–186; David D. Caron, "The International Whaling Commission and the North Atlantic Marine Mammal Commission: The Institutional Risks of Coercion in Consensual Structures," *American Journal of International Law* 89, no. 1 (January 1995): 154–174.

7. Birnie, *International Regulation of Whaling*, vol. 2, p. 77ff.

8. Garrett Hardin, "The Tragedy of the Commons," *Science* 162, no. 3859 (13 December 1968): 1243–1248. For an excellent explication of the problems facing common pool resources, see Elinor Ostrom, *Governing the Commons: The Evolution of Institutions for Collective Action* (Cambridge: Cambridge University Press, 1990).

9. Peterson, "Whalers, Cetologists, Environmentalists," pp. 159, 161; Steinar Andresen, "The Effectiveness of the International Whaling Commission," *Arctic* 46, no. 2 (June 1993): 110.

10. Tønnessen and Johnsen, *History of Modern Whaling*, pp. 157, 491–492, 506, 514.

11. Ray Gambell, "International Management of Whales and Whaling: An Historical Review of the Regulation of Commercial and Aboriginal Subsistence Whaling," *Arctic* 46, no. 2 (June 1993): 99.

12. See the chart of quotas and catches in Peterson, "Whalers, Cetologists, Environmentalists," p. 165.

13. Andresen, "Effectiveness of the International Whaling Commission," p. 112.

14. *Ibid.*

15. Birnie, *International Regulation of Whaling*, p. 214.
16. Tønnessen and Johnsen, *History of Modern Whaling*, p. 619.
17. Peterson, "Whalers, Cetologists, Environmentalists," p. 161.
18. George W. Downs and David M. Rocke, *Tacit Bargaining, Arms Races, and Arms Control* (Ann Arbor: University of Michigan Press, 1990).
19. Peterson, "Whalers, Cetologists, Environmentalists," pp. 161–164; Steinar Andresen, "Science and Politics in the International Management of Whales," *Marine Policy* 13, no. 2 (April 1989): 105.
20. Birnie, *International Regulation of Whaling*, p. 350; Alexey V. Yablokov, "Validity of Whaling Data," *Nature* 367, no. 6459 (13 January 1994): 108; Caron, "Institutional Risks of Coercion," p. 171.
21. Andresen, "Effectiveness of the International Whaling Commission," p. 110.
22. Birnie, *International Regulation of Whaling*, pp. 422, 434.
23. Hardin, "Tragedy of the Commons."
24. Tønnessen and Johnsen, *History of Modern Whaling*, pp. 685, 753.
25. See Ostrom, *Governing the Commons*, pp. 46–50.
26. Birnie, *International Regulation of Whaling*, p. 638; see Anthony D'Amato and Sudhir K. Chopra, "Whales: Their Emerging Right to Life," *American Journal of International Law* 85, no. 1 (January 1991): 21–62.
27. Patricia Forkan, vice-president for program and communications of the Humane Society of the United States, quoted in Peterson, "Whalers, Cetologists, Environmentalists," p. 170; Andresen, "Effectiveness of the International Whaling Commission," p. 113.
28. Birnie, *International Regulation of Whaling*, p. 616.
29. *Ibid.*
30. Peterson, "Whalers, Cetologists, Environmentalists," p. 170.
31. Litfin, "Sovereignty Moves," p. 4.
32. For discussions of recent dynamics within the IWC, especially including Norway and Japan's responses to them, see Robert L. Friedheim, "Moderation in the Pursuit of Justice: Explaining Japan's Failure in the International Whaling Negotiations," paper presented at the Kyoto Conference on Japanese Studies, Kyoto, 1994; Dylan A. MacLeod, "International Consequences of Norway's Decision to Allow the Resumption of Limited Commercial Whaling," *International Legal Perspectives* 6, no. 1 (spring 1994): 131–158; Caron, "Institutional Risks of Coercion."
33. Caron, "Institutional Risks of Coercion," p. 160.
34. Ray Gambell, quoted in *ibid.*, p. 162.
35. Greenpeace, "A New Era for the IWC," *Greenpeace Magazine* 16, no. 6 (October–December 1991): 5.
36. See Caron, "Institutional Risks of Coercion," p. 162; Peter J. Stoett, "International Politics and the Protection of Great Whales," *Environmental Politics* 2, no. 2 (summer 1993): 298.
37. IWC Resolution, cited in Caron, "Institutional Risks of Coercion," p. 170.
38. Alf Håkon Hoel, "Regionalization of International Whale Management: The Case of the North Atlantic Marine Mammals Commission," *Arctic* 46, no. 2 (June 1993): 116–123.
39. Caron, "Institutional Risks of Coercion," p. 165.
40. Slow but visible progress in human rights regimes may mitigate the pessimism suggested here: over extended periods of time, moral discourse may play some part in the process by which states are persuaded to alter and internalize new ways of defining their interests.
41. Sikkink, "Human Rights, Principled Issue-Networks," p. 437.
42. Peter M. Haas, *Saving the Mediterranean: The Politics of International Environmental Cooperation* (New York: Columbia University Press, 1990).
43. Paul Wapner, "Environmental Activism and World Civic Politics," *World Politics* 47, no. 3 (April 1995): 311–340; Thomas Princen, Matthias Finger, and Jack Mann, "Nongovernmental Organizations in World Environmental Politics," *International Environmental Affairs* 7, no. 1 (winter 1995): 42–58.