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The Politics of Whaling and the European Union

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The Politics of Whaling and the European Union

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1. Introduction

In the 1970s, environment was adopted as the common agenda of the European Community (EC) and the European Union (EU)¹⁾ and became the optimum policy field for it to “actively pursue cooperation with larger international frameworks” (Wadachi 1995: 108). This is because, environment, which manifests itself by transcending national borders (boundaries), was a “convenient” policy field (Usui 2013) for the EC, which was seeking to play the role of a leader in the global arena. In the EC, awareness concerning environment conservation was actively encouraged in policy making in other areas as well, since the conservation of the environment was listed as one of the objectives of the unification in the 1986 Single European Act. This approach became grounded in the basic principles of the EU’s legal order, beginning with the 1997 Treaty of Amsterdam, when the principle of the integration of the environment in policy making for the purpose of sustainable development (the duty to consider environmental issues in policy making) was explicitly stated in Article 6 of the EC Treaty. While striving to enrich the legal and political framework regarding the planet’s environment across different fields based on the above regulations, EU has at the same time brought to the forefront its desire to exercise leadership in the world environmental politics (Official Journal of the European Union 2013).

However, it should be noted, that when it comes to the medium through which to conduct global environmental action, the EU’s interest tends to be limited. That is, the above EU’s approach towards the environment seems to manifest itself only in conjunction with specific environmental issues that that it holds particularly important (Usui 2013: 103). One of them is whaling, which is the object of the analysis of this entire volume.

In the EU whaling became one of the important foci of debates from the 1970s amid the world-wide rise in interest for green politics, represented by environmental and animal protection. Despite that, for a while the scope of its efforts remained confined to the deliberate disturbance, capture and killing of whales *in EC waters*, with no strategy for external relations in place (European Commission 2007: 2). However, after the European Commission submitted the bill for regulating whaling in December of 2007 and the whale protection norm became the EU’s common position in 2008, the issue of

whaling, that had until then been treated as an internal problem, was transformed into an issue unfolding in the global arena as a result of the consensus between the member states.

This change in the EU policy towards whaling and the influence on areas outside the EU that stems from it have been taken up in reports by several Non-Governmental Organizations (NGOs) (e.g., Wildlife and Countryside Link 2009), and in commentaries on current affairs by researchers (Hurd 2013). However, in them, as the background of the EU's common position, the present state of whaling, such as that is being placed under "state patronage"²⁾ or that it is fading, is introduced, but not enough consideration is given to issues such as the place of this new whaling policy with a global reach within the larger body of EU environmental policies, or with what intentions the EU is exerting its political influence on areas outside of it. The fact that the EU's policy on whaling has been deployed globally implies the intention to, as the collective will of the member states, lead in the field of the formulation, maintenance and implementation of global regulations on whaling. It also suggests the need for us to place the collective political power of the EU within the context of its relationship with international politics, while examining the Union's influence on the existing order and the possible future actions and reactions surrounding it.

The objective of this paper is to, based on the awareness of the above issues, shed light on one portion of the political power of the EU, which aims to reframe the existing order, by taking up whaling, one of the elements giving impetus to the EU's environmental policy, as the study case. First, I shall broadly examine the EU's environmental policy (its Environmental Action Programs: EAPs), and, upon grasping its general approach to the environment, will look back at the process in which its whale protection took concrete shape. Second, I shall look at the EU's ethics and positionality regarding whaling and will also examine with what intentions those are being extended to areas outside of EU borders. Third, I shall ascertain the quality of the EU's political power concerning whaling by contrasting it with aboriginal subsistence whaling, which often tends to develop into a problem that involves the worldview on which whaling is based and not just the questions of benefits received or costs endured by indigenous people as the object (or the receivers) of the influence projected by the EU.

2. EU's EAPs

The EU's stance towards environment has, since the 1970s, been indicated through its EAPs. The first program was created as a reaction to the significant growth in interest in environmental protection following events, such as the 1972 United Nations Conference on the Human Environment, amid attempts to clarify the EU's position towards the environment and to come up with appropriate measures. In the 1980s, the issue of environmental pollution due to the intensification of economic activities in newly developing and other countries was brought into focus. In 1987 the 4th Action Program was announced in which, in synchrony with the concept of "sustainability" (sustainable development and sustainable growth) put forth by the Brundtland Commission the same

year, sustainable environmental management came to be defined as an important element constituting the EC and was sublimated into a concept framing the action program, i.e., the entire EC environmental policy (Nakanishi 2012: 274–292). In the fifth action program, the thinking from the previous programs that placed the emphasis on “alleviating environmental pollution” was radically changed and since then, including the current seventh action program (valid for the period 2014–2020), the orientation in thinking has been that “environmental pollution should be prevented” and that the programs should be implemented beyond the EU borders, in the global arena. The framework for regulating environmental issues has been shaped through a link with EU’s standards. In the EU environmental policy aiming for the highest standards of environmental conservation is advocated, along with the recognition for the diversity among the various actors (Nakanishi 2012: 276). In other words, in the EU, environmental protection has been adopted as a tool for “projecting own style of life onto the global society, shaping the flow of globalization and establishing own global influence” (Usui 2013: ii). Environment, thus, became a high-priority policy field, as a strategic tool for uniting the EU and increasing its influence abroad.

According to the thematic strategies clearly stated in the 6th Action Program, there are seven priorities for EU’s engagement: protection and conservation of the maritime environment, sustainable use of resources, atmospheric pollution, prevention and recycling of waste, soil, sustainable use of pesticides, and urban environment. These are interrelated with the stated objectives of the EU policy on the environment, such as “preserving, protecting and improving of the quality of the environment” and the “prudent and rational utilization of natural resources” (The Lisbon Treaty on the Functioning of the European Union, Article 191, Clause 1; European Commission 2005: 3), and constitute important elements on which the action program stands.

3. Whaling as an Environmental Problem in the EU

In the EU whales and other cetaceans, which includes dolphins, are seen as an important element constituting the above environmental policies (European Commission 2007a: 2). According to the Clause 1 of the Article 174 of the EC Treaty, one of the objectives of the commission’s environmental policy is to encourage measures on the international level for dealing with regional and global environmental issues, and this implies the *conservation* of species, including whales, on the global level (European Commission 2007a: 2). The efforts for the conservation of whales at the EU level are made in interaction with the following legal actions and strategies. For example, in the Annex IV of the 1992 Habitats Directive all cetaceans were listed (European Commission 1992: 7), and a strict protection regime intended to prevent deliberate disturbance, capture or killing of whales in EC waters was put in place.

- The Habitats Directive, that became the basis for the establishment of the “Natura 2000” network of nature protection areas
- The Convention on International Trade in Endangered Species of Wild Fauna

and Flora (CITES)

- The strategy for the marine environment
- The regulation on the conservation and sustainable exploitation of fisheries resources
- The regulation on the conservation and sustainable exploitation of fisheries resources in the Mediterranean

Furthermore, in the *Acquis Communautaire*, the EU's legal body of common rights and obligations that all member states must follow, a ban on the capture, killing and transportation of cetaceans in EU waters is explicitly written. Thus, if a country wishes to join the EU it is obligated to honor the prohibition of capture, killing and transportation of whales in EU waters. When Iceland, a whaling nation, explored the possibility of joining the EU after the economic bankruptcy it experienced in 2008, one of the points of dispute with the Union that emerged was exactly how adjustments to this stance on whaling could be made. The EU has also created an additional platform for fostering dialogue and joint work regarding whaling in the context of its Economic Partnership Agreement (EPA) with Japan, for which, as the EU's largest bilateral trade agreement, expectations are growing. The EU maintains that by it the system of control over whaling is further strengthened, and that no change has been made in its stance on whaling (European Commission 2018).

The reason why the conservation of whales has been adopted as an important element of the EU environment policy cannot be clearly inferred just by reading official EU documents. Whales and whaling, in comparison with other joint EU policies on agriculture and fisheries, do not possess practical value either in economic, or in terms of food security. The fact that, when it comes to whaling, the practical stakes in the efforts of each country's government to formulate policies are small and that the realistic motives are overall weak further compounds reading the intention behind the EU's choice. It is true that the problem of "severely depleted whale resources" is frequently mentioned in the so called "communications", documents published by the European Commission (see, for example, European Commission 2007b: 2), and that in that sense it is possible to surmise where the EU is coming from when it comes to whale conservation. That is, the presupposition is that since whales are not highly fertile, i.e., their elasticity as a resource is low, once the amount of that resource falls, it becomes extremely difficult to recover it, which is why the EU adopts conservation as a preventive measure. Also, it may well be that the internalization of the awareness regarding the protection of cetaceans brought about by a change in the perception of whales in Western societies, such as the popularization of whale watching and the fall in the practical utility of whales due to the advent of petroleum, presents, in tandem with the interest in green politics that began in the 1970s, an important element affecting the positionality of EU towards whaling. In particular, Europe has a history that stretches to the Middle Ages of excessive capture of great whales not only for the purpose of oil extraction and fertilizer production, but also for meat consumption. Thus, we can also conclude that, looking back at such history some EU countries have, as its actual participants, come to view

whales not as a fishery resource, but as one of the important species that should be conserved, and that such a perspective has further become a shared perception. We can also take the view that European ethical values, or rather the soil that has produced them, have forged an environment in which whales are given the halo of aestheticism (Morita 1994), sacredness (Kawashima 2011) and charisma (Morishita 2017), and, in which no other sea mammals but whales have been made the target of conservation measures.

On the other hand, as for what to place relative emphasis on, I wish to take into consideration the fact that EU's policy intention is to link the conservation of whales to the conservation of the environment as a whole (i.e. to make whaling a *sine qua non* for the mobilization of the environmental conservation policy) (European Commission 2007b: 7). For example, Marc Richir, an expert in charge of the conservation of the biological diversity of marine life, including whales, with the Directorate General for Environment, Unit F3 – Multilateral Environmental Cooperation, which handles environmental issues in the European Commission, has stated that because whales are only one of many species of mammals, the protection of cetaceans is just a "tiny problem", but that, when the link with broader changes in the environment and ecological systems caused by climate change in recent years is taken into account, it becomes necessary to view whale conservation as an important element in promoting environmental conservation.³⁾ From this statement we can see that *the conservation of whales and the conservation of environment are viewed as being within the same plane* and as mutually synonymous. If argumentation is based on this assumption, then the thesis that whaling is averse to environmental conservation comes into being.

4. EU's Policy Involvement in the IWC

What the EU took as the starting point for promoting the conservation of whales as an environmental issue was the International Whaling Commission (IWC), which was founded in 1948, based on the International Convention for the Regulation of Whaling (ICRW), or rather, the discontent with its functioning. Although the IWC was recognized as the most potent regime for managing cetaceans, especially when it comes to the protection of whales since the 1970s, the EU was of the opinion that the international work on the conservation and control of whale resources that the IWC was doing was only causing endless debates between pro-whaling and anti-whaling countries, resulting in the weakening of the management of cetaceans (European Commission 2007b: 2). The above-mentioned problem of "severely depleted whale resources", was a conclusion drawn based on the results of "the analysis of the actual situation", which included an evaluation of the IWC by the EU and suggested the future stance the EU would take towards the conservation of cetaceans and whaling. Furthermore, it is worth noting that there are three rights that can be legitimately exercised under the IWC framework to conduct whaling: (1) submitting objections against the moratorium on commercial whaling, (2) scientific whaling and (3) aboriginal subsistence whaling, but that the EU saw this systemic depth as an indication that the IWC did not sufficiently fulfil its role as a strict manager of whales and whaling, and also took the view that because such

exceptions exist, effective management cannot be carried out (European Commission 2007b). Concretely, the cited communication from the European Commission to the European Parliament and Council notes that Iceland and Norway are not bound by the moratorium as they have, respectively, lodged an objection and a reservation in line with the IWC convention, and that Japan, based on Article 8 of the convention that allows for scientific research for the purpose of grasping the ecological environment of whales and ascertaining the amount of whale resources, carries out “scientific programs” and then puts the whale meat acquired through those programs on its national market. In addition, the communication also notes that aboriginal subsistence whaling is still authorized.

Together with the awareness of the above “cluster of problems”, bundled up together as exceptions, the understanding that the EU cannot approach them on its own was widely shared among its member states. Considering that whales are a species that migrates around the world in a complex way, in the eyes of the EU, the already mentioned directive targeting just the EC waters was a limited local regulation that did not provide a sufficient framework for an effective conservation of whales. That meant that in order to thoroughly protect whales it was necessary to adopt a conservation measure on the global level, and to, at the same time, clearly define the main battleground for achieving that goal. The approach the EU took consisted of strengthening its commitment to the IWC as its common position in order to make that organization a more effective management agency, while paying attention to the mutual influence of a number of conventions and agreements regarding the regulation of whaling. The reason why the EU chose the IWC as the main battleground (as the venue for international negotiations), was that, in light of the fact that creating a new management organization that would be accepted by various actors with diverse values would not be easy, it sought to utilize the significant historical and legal legitimacy of the IWC to effectively link its own influence to the strengthening of whale conservation. In other words, the EU intended to improve the efficacy of the IWC, based on the premise that the IWC was the most effective management agency. As already mentioned, the EU’s understanding of reality at that time was that the double duty of managing and conserving whales with which the IWC was tasked had generated two extremely biased camps of pro- and anti-whaling countries and was thus obstructing international cooperation and impeding progress in the conservation of whales. This view was the background of the proposal entitled “Community Action in Relation to Whaling” that the European Commission submitted to the European Parliament and the European Council on 19 December 2007 (European Commission 2007a).

In fact, prior to this, in order to improve the functioning of the IWC as an organization managing the conservation of cetaceans, at the 55th IWC Annual Conference in 2003 the EU backed the founding of the Conservation Committee as a lower-tier organ affiliated with the IWC, and formulated policies for dealing with threats to whale habitats based on the cooperation with the Berlin Initiative and the IWC Scientific Commission.⁴⁾ The role of the committee was to strengthen the coordination with other treaty systems that affect whale protection such as the CITES, and prevent the recurrence of the so called “pirate whaling”, i.e., whaling outside of the IWC framework, and trade in whales

and goods made from them by non-IWC countries, such as the illegal exports of whale meat to Japan that Taiwan and Greece had used to conduct in the past (Burns 2004: 74). In 2016 in the Conservation Committee, under the leadership of the EU countries, a new strategic plan was adopted identifying serious threats to cetaceans (ship strikes, marine debris, bycatch, anthropogenic sounds, chemical pollution and climate change), as well as priority actions to counter them (sustainable whale watching, conservation management planning, designation of whale sanctuaries and protection areas, effective financing and effective data collection and reporting), with the goal of offering an ecosystem service for managing the life and death of cetaceans.

EU's intentions are not to just simply implement such activities within a multilateral framework, but to encourage the deepening of the involvement of the IWC in the conservation of cetaceans *in a way that accords with EU laws and policies* (European Commission 2017). In that sense, the scope of the term conservation, thus far used nonchalantly, should, perhaps, be understood as encompassing the meaning of "preservation", which is a negation of human interference with animal resources (with nature). In fact, the above quoted Mark Richir, senior expert with the Directorate General for Environment, has explicitly stated that the border line between conservation and preservation is very vague and that he himself has not paid attention to the distinction between the two.⁵⁾

5. Towards the Conservation of Whales

In order to strengthen the regulations for the protection of whales, the EU urged the member states who had not signed the ICRW to do so. In December 2007, out of 77 IWC member countries, 20 were from the EU. The European Commission encouraged the remaining member countries to join the IWC (European Commission 2007b: 3). At the same time the EU asked the member states that are in the IWC and those that were about to join *to oppose whaling* in coordination with other member states and to, parallel with a partial or full enhancement of the moratorium on whaling, for the sake of increasing transparency, resist further expansion of anonymous voting, i.e., secret ballots in IWC personnel affairs, such as in the election of the secretary (European Commission 2007a). If we interpret these initiatives as being in line with the goal of "promoting deeper involvement of the IWC in whale conservation in a way that accords with EU laws and policies" stated in the above mentioned EU communications, then we can come to the understanding that the intention behind the actions of the European Commission was to increase the collective (political) legitimacy of the EU in the IWC, based on specific values. The Commission aimed to have the EU member states present a common position of the EU in the IWC and behave as a united, major player in order to create an effective international regulatory framework for the conservation of whales.

Especially large was the influence of France, United Kingdom, Germany and Luxembourg on the politics within the EU in terms of securing the 91 votes necessary to prevent the passage of proposals under the Qualified Majority Voting system,⁶⁾ which was adopted for voting on proposals regarding whaling⁷⁾ (France, the UK and Germany each

held 29 votes, while Luxembourg had 4, altogether combining for 91). Leaving aside the question of whether his word choice was adequate or not, we can note that Ole Samsing from the Danish Ministry of Foreign Affairs, who served as the representative of the Danish Government in the IWC, criticized the strong objection of these four countries to the demands for a new catch quota for whales coming in late 2000s from Greenland, the autonomous territory within his country, as a manifestation of “cultural imperialism” (EUobserver 2008).

Furthermore, as important developments that shaped the actions of the whaling community in December 2007 by influencing the European Commission and EU legislative bodies, I wish to bring up the initiative and the leadership on the individual level or on the levels below that of the state, by the concerned NGOs, citizens and certain politicians. In general, in order to respond to the criticism regarding “the deficit of democracy”, efforts were made from the 1990s onwards in the EU to achieve a dialogue with NGOs and profit organizations through various documents and venues, such as the drawing up of green papers (consultation papers) and white papers based on them, or the establishment of advisory committees and special councils - all with the goal of actively encouraging their inclusion in the policy making process and promoting the institutionalization of consultations (European Commission 2001; 2002). Effectively using the specialist knowledge and human networks of those organizations, sharing their information and incorporating it into policies served to legitimize the decision-making process within the EU, and was at the same time indispensable in terms of maintaining the (input) legitimacy of the EU governance. With more than 15,000 lobbyists at work in Brussels, more than 2,600 special interest groups (SIGs), venues for exchanging information and knowledge, established, and more than a billion Euros allotted annually for projects by NGOs from the EU budget, the influence of NGOs and profit organizations became impossible to ignore.⁸⁾ Whale conservation and whaling were no exception – the European Commission, which monopolizes the right to introduce new bills, took up this particular field, which bears no practical value for the policy making of the member state governments either in economic or food security terms, as the common EU agenda because it sought to secure the democratic legitimacy of the decision making through the input by such, various actors,⁹⁾ as it was believed that such actors could effectively and efficiently contribute to maintaining and developing the decision making process. For example, an approach to the EU by the international NGO Whale and Dolphin Conservation Society (WDCS), which opposes whaling from the standpoint of animal welfare, directly influenced the Union’s policy making – the organization urged the EU to change the quality of its policy response, and its initiative is an important element for understanding the political dynamics within the EU.¹⁰⁾

6. The Creation of the Common Position

On 5 June 2008 at the Luxembourg meeting of the Environment Council the EU defined a common stance regarding the *protection* of whales for the first time in its history as a unified entity (European Union 2008). In it, seeking the strictest protection for the ocean

ecosystems and future generations became the ultimate goal of the EU environmental policy regarding whales (European Commission 2008: 3; Council of the European Union 2011: 2). However, as is clear from articles 1 and 2 of the EU Treaty (since the implementation of the Lisbon Treaty - from article 2), that stipulate respect for human rights, including the rights of minorities, the 2008 common position did not aim for the establishments of full and uniform regulations regarding whales. It is also worth noting that, as regards the environment and animals, Article 13 of the Treaty on the Functioning of EU advocates respect for religious rites, cultural tradition, local heritage and the legislation or administrative regulations and customs of constituent nations (Nakanishi 2012: 287), and that in the common position itself (insofar as the aspiration for the preservation of the status quo allows it) respect for whaling conducted by indigenous peoples for the purpose of sustenance, i.e., the aboriginal subsistence whaling, is clearly stipulated. The common position was expressed in synchrony with the closing of the 2008 annual IWC conference, as can be seen from the wording of the following statement: "The decision adopted today by the Council will strengthen the European Union's commitment to protect whales in the European Union and internationally. It provides the European Union with a common position on maintaining the moratorium for the IWC meeting in Chile on 23–27 June 2008" (European Union 2008). In other words, this meant that clear guidelines concerning how EU member states should act in the IWC, the actual venue of international negotiations, were laid out. The EU environment commissioner at the time Stavros Dimas stated that "With this decision the EU can now take a strong role in the IWC and use all its political, moral and economic weight to ensure a more effective protection of whales worldwide" (European Union 2008).¹¹⁾

Of course, we should bear in mind that the conservation of cetaceans (the common position regarding the protection of whales) had been the object of regulation by the EU law on environment, and that the EU had shared the regulations regarding whaling with its member states. Therefore, the member states were not free from the requirements of the EU law when conducting negotiations in the IWC, even though they knew that the EU as a whole was not a participant in the IWC (i.e. not a signatory of the ICRW). The decisions by the Environment Council, one of the EU's ministerial councils and a decision-making organ in which member states are represented, are legally binding for the member states. That is, the decisions made in the council legally bound member states based on the EU law. Thus, we may conclude that from 2008 the EU, while placing the already existing prohibition of killing and transportation of whales at the core of its policy, expanded its range to encompass the conservation of whales worldwide, and thus became a major force that presented that policy as the common position of its 21 states (which is the number of EU states that were members of the IWC in 2008).

What is important is that the conservation of whale resources was used as a tool for implementing environmental conservation as a whole globally, and that, in moving towards that goal, the perception that the EU did not carry enough political weight in the IWC because of a lack of an agreed EU stance formed the starting point for the common position, as well as that the 2007 proposal and the formulation of the common position in 2008 were the work undertaken to overcome that problem. In doing so, the EU sought

to make the IWC its main battleground, which is indicative of its high agenda-setting ability, often mentioned when evaluations of EU's capability are made. By effectively demonstrating on the global level what the problem concerning whale conservation and whaling was, and what needed to be done, and by "letting many countries know the importance of that agenda" (Suzuki 2012: 21), the EU exhibited an ability to exert influence for the solution of pending problems, which brought to the surface its character as an aspiring leader in the world environmental politics. That was also the result of its choice to formulate measures for the conservation of whales by accepting input from its member states, relevant industries and NGOs.

The EU's common position created in such a way carries the propulsive force of a shared norm of 21 countries and gives grounds to EU's actions as an agent, which on a global level, rearranges the existing order, as well as creates, maintains and manages it. At least since 2008, the EU countries participating in the IWC have had the possibility to take consistent political action over a longer period of time and have been given the foundations for proactive work (European Commission 2017). In recent years it has been suggested that, for the purpose of spreading the philosophy regarding the conservation of

Table 1 List of financial contributions to the IWC for FY 2020 (EU member states only) Currency: British Pound

Austria	23,396
Belgium	23,396
Bulgaria	12,067
Croatia	12,067
Cyprus	23,396
Czech Republic	23,396
Denmark	50,102
Estonia	17,436
Finland	23,396
France	62,021
Germany	67,980
Hungary	8,045
Ireland	23,396
Italy	67,980
Lithuania	23,396
Luxembourg	23,396
Netherlands	23,396
Poland	12,067
Portugal	23,396
Romania	8,045
Slovak Republic	23,396
Slovenia	23,396
Spain	23,396
Sweden	23,396
(United Kingdom)*	(73,939)
EU countries combined	645,354 (Including the UK: 719,293)
	Proportion of contribution: 38.955% (Proportion including the UK: 43.418%)
Total	1,656,663

* The UK. left the EU at 11pm on 31 January 2020 after 47 years of membership.

whales, the EU's common position should also be made to function as a medium for taking action and solidarity even beyond the period of the holding of IWC sessions (European Commission 2017). This also implies continuous payment of financial contributions by EU member states to the IWC and is an element for securing EU's collective legitimacy that cannot be overlooked. For example, in we turn attention to the list of financial contributors for the fiscal year 2020 (from January 1st to December 31st), we can see that 24/25 EU countries, which is the current number of EU states enrolled in the IWC, donated a total of 645,354 pounds, which accounts for 38.955% of all financial contributions to the IWC¹²⁾ (Table 1).

7. The Management of the Life and Death of Cetaceans: The Aboriginal Subsistence as an Example

The following three items were recently set as the concrete targets of the EU efforts for the conservation of whales: (1) opposition to the moratorium on commercial whaling, (2) scientific whaling, and (3) the aboriginal subsistence whaling. Among these, especially debated, both within the EU and the IWC, was the issue of what aboriginal subsistence whaling should be like (European Commission 2017).

Aboriginal subsistence whaling means whaling *for purposes of local aboriginal consumption*, carried out by or on behalf of aboriginals, indigenous or native peoples who share strong community, social and cultural ties related to a continuing traditional dependence on whaling and on the use of whales. Local aboriginal consumption means the traditional uses of whale products by local aboriginal, indigenous or native communities in meeting their nutritional, subsistence and cultural requirements. The term includes trade in items which are by-products of subsistence catches.

The reason why aboriginal subsistence whaling became a contentious issue both in the EU and the IWC, in terms of principles, is that since the moratorium on commercial whaling was introduced and the quota for it became zero, aboriginal subsistence whaling became the only whaling for the purpose of consumption (if we exclude the possibility of the removal of the moratorium on commercial whaling through an objection), taking on the character of a non-commercial activity shaped by the need for local consumption. There was no agreement, however, on what "local consumption" as part of "traditional use" based on the "nutritional, subsistence and cultural needs" from the above definition concretely meant, and no clear criteria of what a deviation from that is and what is not. In such circumstances, the EU, which regards whales as non-consumption and non-commercial entities that constitute the environment, in collaboration with the World Society for the Protection of Animals (WSPA) and other NGOs, as well as with the so called "Buenos Aires group", which consists of Central and South American countries, Australia and New Zealand, aspired for the maintenance of the status quo in aboriginal subsistence whaling and took the stance that such whaling could not be an object of demands for the expansion of the catch quota. Nonetheless, the indigenous people, who

actually enjoyed the benefits of this framework, were asking that new quotas to be introduced in accordance with their needs and were at the same time widely distributing products made from whale meat in the EU market, having them sold in supermarkets too. Thus, aboriginal subsistence whaling started attracting close attention in the 1980s occasioned by the problem of the definition of local consumption and the differences in its interpretation. Since the EU took the unified approach to voting in 2008, its member states have directed their policy interest to that issue, deepening the polemic (Takahashi 2014; 2016). For example, the fact that the EU (member states) have, as a rule, opposed Greenland's requests for new quotas since the 60th IWC conference in 2008 from the standpoint that aboriginal subsistence whaling cannot have commercial elements is an illustration of that interest.

Of course, I do not mean to imply that the EU is completely negating aboriginal subsistence whaling and that it is planning to eliminate the framework itself. The 2008 common position of the EU on whaling advocates no opposition to aboriginal subsistence whaling and the grounds for this stance can be found in the respect for religious rites, cultural tradition, local heritage, the legislation and administrative regulations and customs of constituent nations (stated in Article 13 of the Treaty on the Functioning of the EU). If we take into consideration the statements expressing the goals of the EU environmental policy such as the "conservation, protection and improvement of the quality of the environment", or the "prudent and rational use of natural resources", then, rather than thinking that the aim of the EU was to negate the existence of the framework of aboriginal subsistence whaling, we should definitely take the view that a rational implementation of that framework in the context of environmental conservation was its goal. In fact, at the 65th IWC conference (in 2014), the EU advocated the need to adopt a package of measures for further strengthening of the IWC as the organ that manages resources, for the reintegration of aboriginal subsistence whaling into that framework, as well as the future management of aboriginal subsistence whaling (International Whaling Commission 2014: 1–3). As a premise for that, effective conservation of whale stock and a progress in its management based on sciences, such as biology and marine ecology, are emphasized. Thus, it might be said that the EU endeavors to unify the management of cetaceans under the IWC by exercising its influence on "the entire process from the discourse on resources, which is a manifestation of knowledge, up to the political decision" (Akimichi 2002: 32).

The problem that, upon closer inspection, emerges when the EU creates a discourse on the management of cetacean resources, makes political decisions and attempts to thoroughly implement a unified management is that relating to the knowledge that forms the basis of such actions. As a guidance for our discussion, I would like to quote here the voice of Greenland's hunters, who are the beneficiaries of the framework for aboriginal subsistence whaling.¹³⁾ The gist of their argument is that they have been conducting whaling empirically, through constant practice, dialogue with nature and by grasping the structure of whale herds, and that they feel discomfort at the fact that scientists who do not know anything are selfishly calculating catch quotas and evaluating the size of the catch.¹⁴⁾ The world of these hunters, while there are regional differences,

is generally shaped by the traditional knowledge (the Inuit cosmology), which also serves as the representation (or rather, self-representation) of their identity and ethnicity as indigenous people (Stewart 1996), according to which humans are closely linked to their natural environment and are deeply involved in it (Caulfield 1997: 82). The traditional knowledge tends to understand the relationship between humans and the environment as monistic, and regards it in a holistic, intuitive, experiential and spiritual way (Omura 2002). This is incompatible with science, which takes natural environment as an object of study separately from humans. This is because science views the relationship between humans and nature as dualistic, and attempts to understand it in a reductionist, objective, analytical and mechanistic manner (Omura 2002).

The contrast between the traditional knowledge and science, though, is *nothing but a construct* produced while the two are being narrated and circulated. Nonetheless, to understand the social undercurrents it is worth paying attention to the fact that the two are based on different explanatory principles. The differences in the explanatory principles come to the fore in the interpretations regarding the sustainability of resources and when calculations of catch quotas based on them, the setting of time frame and places for hunting, the relationship with animals, the method of capture, the (shortening of) killing time, or (the reduction of) the rate of loss are pursued. *Their distinctive character becomes further visible and problematic in opposition to the other knowledge system.* In fact, when aboriginal subsistence whaling is placed on the table for discussion in the IWC, what is often brought up is the reciprocal relationship between humans and whales and the differences in the perception of whales informed by such different types of knowledge, i.e., the gap between the opportunistic whaling by indigenous peoples and the system consisting of formulating rules for repetitive use and catch quotas calculated in advance based on scientific knowledge (Caulfield 1997; Hamaguchi 2016).

In order to overcome the gap between the two kinds of knowledge, active efforts to relativize the relationship of binary opposition between the traditional knowledge and science and to encourage their collaboration and coexistence have been made in the Canadian territory of Nunavut (Omura 2009) and in policy making in Greenland. However, these often do not exceed the realm of form and appearance, with the opinions of hunters that are based on traditional knowledge being practically ignored and the environmental management conducted based on unilateral decisions by scientists (Omura 2002: 163). If we look for such examples in the EU context, the prohibition of trade in products made from seals, which are closely intertwined with the livelihood of indigenous peoples, gives us food for thought. Through that ban on trade in seal products, the EU sought to diminish the overall global demand by completely shutting out seal products from its market. The departure point for the realization of this measure was the judgement that indigenous peoples' techniques for capturing seals were brutal, that is, a negative view of *their knowledge and skills that form the basis of the act of capturing*.¹⁵⁾ This negative perception of the method of catching was not limited only to the problem of techniques for capturing animals but led to the questioning of the reciprocal worldview of indigenous peoples that rests on the connection between capture, processing, consumption and disposal (Honda 2014). And that is an issue that can potentially evolve

into the questioning of the very way of life of indigenous peoples, which is why it has often been referred to by the term “cultural erosion” (Arnaquq-Baril 2016).

The problem of cultural erosion occurring when a certain type of knowledge is linked with politics requires a whole new paper, for which an opportunity may present itself in the future. For now, in closing this paper, we need to point out, as the essence extrapolated from the case of the prohibition of seal products, that the aim of EU’s wielding of influence abroad is the reframing of the existing order, and that that means not only the formation, maintenance and implementation of certain rules, but also carries with it the potential of regulating the very way of life of indigenous peoples. This has to do with the fact that in the EU living resources such as whales and seals are regarded as the prerequisite for the policy of environmental conservation (the orientation toward the unification of the environmental policy), and function as entities that are not for consumption. The thinking that sees whales and seals as objects of consumption that sustains life is based on a completely different principle of existence. In other words, whales in the EU are treated as separate from their relationship with humans and function as objects that are managed, while whales in Greenland and Canada are subject-like beings that have a close relationship with the existence of humans. I am not talking essentialism here. I have merely sketched out what kind of roles whales have played (or are playing) in the human society, and by extension, in the entirety of the natural environment that encompasses it. However, it is also true that the differences in these two vectors have shaped, whether directly or indirectly, one of the premises of the discussions regarding the whales/whaling at international negotiation venues since the second half of the 20th century, when whales, because they are living beings that migrate in the world seas in a complex manner, became the object of management through international cooperation (Takahashi 2018). Therein lie naive but fundamental questions of what is conservation, preservation, protection and improvement of the environment, how can they be implemented, what does it mean to use resources in a sustainable and rational way, or what should be the standards for raising the efficiency of use. The EU’s common position on protecting whales we examined in this paper was a guide for solving and reshaping that situation.

8. Concluding Remarks

In this paper, by taking whaling (whale protection) as one of the elements constituting EU’s environmental policy as a study case, I have endeavored to shed light on a portion of the influence (or political power) the EU exerts in foreign relations. By formulating a common stance on the protection of cetaceans in 2008, the EU gained the ability to take consistent long-term policy action. While reforming the IWC into a staunch whale protection organ in agreement with EU’s own laws and policy, the EU strove for a thorough management of the life and death of cetaceans based on science and exercised certain influence on the standardization of the whaling politics. Such strivings are not expressed in a blatant way because the respect for the customs of countries and peoples is explicitly written into EU political principles and shapes the tolerance for aboriginal

subsistence whaling. Empirically tracing such subtleties of the EU policy on whales and whaling, while considering the multi-faceted constituent principles of the EU's common position, I believe, enables us to not only appraise the actual influence wielded by the EU in the foreign diplomacy ring, but also to elucidate various elements of the global political dynamics regarding whaling.

Of course, the collective legitimacy of the EU that serves to sustain that influence is closely connected to the other side of the same coin - the instability that follows attempts to make all member states project influence as one huge block, as could, for example, be seen from the disconcert among EU member states regarding the conservation of the bluefin tuna in the Mediterranean and the Atlantic at the conference on the CITES held in Doha in March 2010. Furthermore, the exit from the EU of the United Kingdom, which has been driving the Union's shift towards the conservation of whales, needless to say, may have a significant impact, not only on the overall external influence of the EU, but also on the thrust of the EU whaling diplomacy, a constituent of the overall environmental policy of the EU, which includes the conservation of species. The EU, although comprising such instability, has been showing strong interest in the environmental issue of whaling as a means for raising the quality of the environment of the entire planet, and has started projecting its values onto the process of the standardization of the politics of whaling.

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Notes

- 1) The term "EU" is used for the period after the implementation of the Maastricht Treaty in November 1993.
- 2) Hurd (2013) is of the opinion that today, when the whaling industry has declined and the market for whale products has all but disappeared, whaling in Europe is dependent on various kinds of government subsidies, such as those for shipping. He, therefore, argues that whether whaling will continue to exist depends on the willingness of European countries to continue providing such funding at a loss.
- 3) Interview on 24 October 2017 at the DG Environment in Brussels, Belgium.
- 4) The countries supporting this were: Australia, Austria, Brazil, Finland, France, Germany,

Ireland, Italy, Kenya, Mexico, Monaco, the Netherlands, New Zealand, Portugal, San Marino, Spain, Sweden, the UK and the USA.

- 5) Interview on 24 October 2017 at the DG Environment in Brussels, Belgium.
- 6) Decisions regarding whaling, which falls under the jurisdiction of the Environment Council, were made through the Qualified Majority Voting procedure, whereby the 27 states that were members of the EU in 2007 would use a certain number of votes proportionally allotted to them in accordance with the size of their population. The minimum number of votes that can block a decision, called “blocking minority”, was also set, and thus, the minimum of 91 votes was all that was required to prevent a bill or a measure from being adopted.
- 7) Interviews on 25 August and 4 September 2009 at the Danish Ministry of Foreign Affairs in Copenhagen, Denmark.
- 8) Global Policy Forum. *NGOs and the EU*. <https://www.globalpolicy.org/component/content/article/177/31567.html> (accessed May 22, 2020)
- 9) Interview on 24 October 2017 at the DG Environment in Brussels, Belgium. Personal correspondence with Prof. Joji Morishita from the Tokyo University of Marine Science and Technology on 11 and 13 May 2018.
- 10) Whale and Dolphin Conservation. *Internal pressure on EU to take more action over Japanese whale slaughter*. 29.03.2016. <http://uk.whales.org/news/2016/03/internal-pressure-on-eu-to-take-more-action-over-japanese-whale-slaughter> (accessed May 22, 2020)
- 11) However, Denmark, which possesses the whaling territories of Greenland and Faroe Islands, is the only exception to this. Denmark, in accordance with the provisions of Declaration 25 of the Annex, is the only EU member state that has a neutral stance towards the policy on whaling. That was a consequence of its considerations for the whaling conducted in Greenland and Faroe Islands. Nonetheless, it is worth noting that (different shades of) this neutral stance depends on political personalities in charge of Arctic, Greenland and Nordic cooperation in the Danish Ministry of Foreign Affairs, which is the organ representing the territories. For example, Ole Samsing, who was IWC Commissioner in 2008, called EU’s commitment to the protection of cetaceans at the IWC “cultural imperialism” and had a negative attitude towards the creation of a unified policy on whaling in external relations (Interviews on 25 August and 4 September 2009). On the other hand, Gitte Hundahl, Commissioner in 2015, was expressing sympathy for scientifically-based sustainability goals that the EU was supporting (Interview on 25 September 2015).
- 12) International Whaling Commission. *Financial Contributions Calculations for the Financial Year 1st January – 31st December 2020*. It is worth noting that the IWC is burdened with the problem of unpaid financial contributions of ICRW signatories (IWC member states), among whom are also some EU countries. For example, the deadline for the 2018 contributions was 30 June 2019, but as of 30 September of that year, 39 signatories, including five EU countries (Bulgaria, Luxembourg, the Netherlands, Portugal and the Slovak Republic) were in arrears. The rights of these countries to vote at the IWC meeting were suspended pending the payment of their dues (International Whaling Commission 2019).
- 13) The author has conducted the following interviews with retired and active whale hunters in Greenland in 2016: on July, the 5th in Kitsissuarsuit with Jakob Angubesen, former fulltime hunter; on July the 6th in Kitsissuarsuit with Jens Jeremiasen, fulltime hunter; on the 21st of

July in Qaanaaq with Mads-Ole Kristiansen, fulltime hunter; on the 28th of the same month, also in Qaanaaq, with Uusarqaq Qujaukitsoq, former member of parliament and former fulltime hunter; and on July, the 31st with fulltime hunter Hiroshi Oshima at Siorapaluk.

- 14) The formula for deciding the catch quota under the framework of aboriginal subsistence whaling in the IWC is such that indigenous people first submit a statement of their needs to the IWC, which is then scientifically verified by its Scientific Committee from the viewpoint of sustainability. Therefore, strictly speaking, that is not a process in which catch quotas based on scientific calculations are distributed to indigenous peoples. However, attention should be paid to the fact that this is a system which involves receiving an assessment by the IWC Scientific Committee. For example, even if, scientifically, a catch quota of 100 whales is regarded as possible, if the indigenous people require only 50 whales, then the quota is set to 50, but in case the indigenous people need 50 whales of a certain species, but the upper limit of a scientifically calculated sustainable catch quota is lower than the number they require, then the quota is set to that lower number. Furthermore, at the 67th IWC meeting (in 2018) it was decided that, as different from the previous arrangement under which a catch quota revision approved by the Scientific Committee would necessarily be subjected to a voting in the Commission, in the future the framework for aboriginal subsistence whaling would be automatically extended if accepted by the Scientific Committee without a vote in the Commission (International Whaling Commission 2018).
- 15) However, there are also opinions that the activation of the measure for banning the trade in seal products by the EU was not a judgement based on scientific knowledge, but the result of a judgement based on impressions and emotions (Sekine 2012: 133–134).

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