

The Dawn of the New Whaling

---- Towards the Sustainable Use of Aquatic Living Resources

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Prologue

On 1 July 2019, five small-type whaling vessels left the port of Kushiro and one factory-ship whaling fleet left the port of Shimonoseki. It was the resumption of commercial whaling after the suspension for practically 32 years. In the case of the small-type whaling operating mostly within 50 nautical miles from the coast, two minke whales were immediately caught on that day, and everyone involved was relieved and swelled with hope for the dawn of a new whaling era. In the meantime, the factory-ship whaling fleet consisting of the mother-ship Nisshin Maru and two catcher boats also arrived at the off-shore whaling ground, and on July 4, the memorable first catch of Bryde's whale was reported.

Before resuming commercial whaling, Japan withdrew from the International Convention for the Regulation of Whaling (ICRW) on 30 June 2019. In accordance with the provision of the ICRW, the notice of withdrawal was given on 26 December 2018 to the depositary Government of the United States, and on the same day, the Chief Cabinet Secretary, Mr. Yoshihide Suga delivered a statement concerning the withdrawal of Japan. The reason why Japan chose to withdraw from the ICRW is quite simple and just to achieve a sustainable use of whale resources based on scientific evidence; it is clearly demonstrated in the statement by the Chief Cabinet Secretary as follows:

[extract from the Declaration of the Secretary General of the Cabinet]

Japan decided, towards commercial whaling to be resumed in July 2019 after a 30-year absence since 1988, to withdraw from the International Convention for the Regulation of Whaling (ICRW), in line with Japan's basic policy of promoting sustainable use of aquatic living resources based on scientific evidence.

(The provisional English translation of the entire statement can be found: https://www.kantei.go.jp/jp/tyokan/98_abe/20181226danwa.html)

Dysfunction of the International Whaling Commission

Whaling was suspended for over 30 years (the so-called moratorium on commercial whaling), and the commercial use of large whales under the competence of the International Whaling Commission (IWC), the implementing body of the ICRW, was almost banned regardless of the existence of scientific basis. Only some forms of whaling such as aboriginal subsistence whaling in the high North and elsewhere (USA, Russia, Greenland and Saint Vincent and the Grenadines) as well as commercial whaling by Norway and Iceland under either of the objection or the reservation to the "so-called" commercial whaling moratorium have continued to catch whales "legally". Immediately after the adoption of the "so-called" commercial whaling

moratorium, Japan filed its objection to the provision as having no scientific basis, but lift its objection following some political deals with the United States. Consequently, commercial whaling was suspended after the whaling operation in Antarctica in the 1986/1987 season and small-type coastal whaling in the 1987/88 season (practically in 1987 only).

So, why did it take more than 30 years before resuming commercial whaling? To make a long story short, it is simply because of the dysfunction of the IWC, but to discuss the dysfunction of the IWC and the long-continued cessation of commercial whaling, it is essential to know the "true nature" of the "so-called" moratorium on commercial whaling. First of all, I would like to briefly touch upon how it was adopted. In response to the rise of the environmental protection movement in the 1970s, at the United Nations Conference on the Human Environment in 1972, a "Recommendation on a 10-year moratorium on commercial whaling " was adopted, under the slogan: "Can the global environment be protected when we cannot protect the whale, the largest animal on the planet ?" Although this decision was rejected by the IWC at the time as "having no scientific basis", political propaganda became more prevalent than the scientific basis under the situation where the environmental movement subsequently intensified, and hence in the IWC also, anti-whaling countries ended up consisting the majority. As a result, in 1982, the IWC adopted the "so-called" moratorium on commercial whaling. The adopted provision, the paragraph 10 (e) of the Schedule of the ICRW is presented below.

[Paragraph 10 (e) of the Schedule of the ICRW]

Notwithstanding the other provisions of paragraph 10, catch limits for the killing for commercial purposes of whales from all stocks for the 1986 coastal and the 1985/86 pelagic seasons and thereafter shall be zero. This provision will be kept under review, based upon the best scientific advice, and by 1990 at the latest the Commission will undertake a comprehensive assessment of the effects of this decision on whale stocks and consider modification of this provision and the establishment of other catch limits.

The word "moratorium on commercial whaling" is not found here. This paragraph provides two points, i.e. "temporary suspension of commercial whaling" in the first part and "establishment of other catch limits than zero" in the second part. In other words, it shows the process of the resumption of sustainable whaling based on scientific evidence by temporarily suspending whaling and collecting scientific information on whale resources. What is more remarkable is that it directs to establish catch limits other than zero "no later than 1990". Unfortunately, the IWC has fallen into the totally dysfunctional state as a whale resource management organization, and this direction has never been followed.

Since the adoption of this "so-called" moratorium on commercial whaling, the IWC has been in the dysfunctional state. What is the function of the IWC in the first place? This is clear if you look at the Preamble of the ICRW which is the basis for the establishment of the IWC.

【Extract from the Preamble of the ICRW】

The Governments whose duly authorized representatives have subscribed hereto, Recognizing the interest of the nations of the world in safeguarding for future generations, the great natural resources represented by the whale stocks;
(omission of one paragraph)

Recognizing that the whale stocks are susceptible of natural increases if whaling is properly regulated, and that increases in the size of whale stocks will permit increases

in the numbers of whales which may be captured without endangering these natural resources;

(omission of 3 paragraphs)

Having decided to conclude a convention to provide for the proper conservation of whale stocks and thus make possible the orderly development of the whaling industry;
Have agreed as follows:

As provided in the Preamble, it is clear that the objectives of the ICRW are the conservation of whale resources and the orderly development of the whaling industry (i.e. the sustainable use of whale resources), and therefore implementing necessary measures to achieve these two major objectives is the very function that the IWC, the implementing agency of the ICRW, was originally called upon to exercise. However, after the adoption of the "so-called" moratorium on commercial whaling in 1982, the IWC has almost abandoned this function, in particular the sustainable use of whale resources, and metamorphosed into an organization which only cares about the protection of whales. The IWC is supposed to achieve the proper conservation and sustainable use of whales by amending the provisions of the Schedule which is the integral part of the main body of the ICRW. Since 1982, however, except for the revision of the catch limits for aboriginal subsistence whaling mentioned above, no amendment other than the creation of the Southern Ocean Whale Sanctuary has been agreed (this sanctuary was adopted by the numerical power of anti-whaling countries without any scientific justification, thus we can say that it is a provision which does not meet the objectives of the Convention).

As the IWC became dysfunctional in this way, Japan continued to collect scientific information through its scientific whale research including research whaling, and contributed to strengthening the management of whale resources. Japan also actively cooperated for the resumption of sustainable whaling through the "establishment of catch limits other than zero" directed in the provision of the "so-called" moratorium on commercial whaling. Consequently, in 1992, the Scientific Committee of the IWC developed a very conservative and robust procedure for calculating catch limits (i.e. Revised Management Procedure: RMP) which will never cause negative effect on the resources to be harvested even after the harvest continues for 100 years. However, the IWC Commission meeting, which was composed of the majority of anti-whaling countries, rejected the adoption of the RMP, which eventually caused a confusion at the Scientific Committee ending up with the resignation of the then Chair of the Scientific Committee (who was a scientist from the UK that was in the vanguard of the anti-whaling movements) since he got angry against the so anti-scientific decision by the Commission. In response to such resistance from sincere scientists from anti-whaling countries who were still seeking scientific truth, the Commission, which was dominated by a majority of anti-whaling countries although, was forced to recognize the RMP and finally endorsed it in 1994. But, with a certain condition.

What the anti-whaling countries set down as a condition for the implementation of the RMP was the completion of a comprehensive whale resource management scheme (i.e. Revised Management Scheme: RMS), with a system for monitoring and control of whaling operations. Their reasoning behind was that while recognizing the validity of the calculation procedure for catch limits it was essential for them to have a complete system to secure whaling countries' compliance with calculated catch limits. At first glance, it seemed very reasonable and seemingly honest, but it was contrarily a big trap. The monitoring and control system itself

was concluded relatively early, but after that, a series of other requirements were raised by anti-whaling countries one after another including animal welfare provisions such as shortening the killing time of whales (nothing to do with whale resource management), the DNA analysis and monitoring system of whale products at domestic markets of whaling countries (encroachment to domestic regulations), burden of payment by whaling countries of all costs for international surveillance and control including those for dispatching international observers (all the benefits from whaling are lost). Anti-whaling countries repeatedly took such actions of shifting the goal post whenever getting closer to it (The series of negotiation was called "RMS negotiations").

The RMS negotiations continued for more than 12 years since the adoption of the RMP in 1994. Meanwhile, with the initiative of several anti-whaling countries such as the United States, for a fear of a possible disintegration of the IWC due to worsening of the antagonism, several efforts were made for a compromise solution. However, a number of anti-whaling countries, which claimed that preventing the resumption of whaling was right, continued to resist and hinder efforts for a settlement. Eventually, no conclusion for the solution could have been reached and, finally, in 2011, it was agreed to suspend the RMS negotiations indefinitely. Although the RMS negotiations have been suspended indefinitely, Japan, in accordance with its basic policy of achieving the sustainable use of all aquatic living resources including whales based on scientific evidence, continued to seek a new way of compromise and decided to seek own way to break such stagnated situation by elucidating the underlying reason for the dysfunction of the IWC.

A way forward of the IWC

--- Japan's attempts for coexistence

At the IWC Commission meeting in 2014, Japan made a proposal to set a catch quota of 17 minke whales for its small-type coastal whaling. The catch quota of only 17 animals was calculated with the aforementioned extremely conservative calculation procedure of RMP with the best abundance estimate at that time, but based on the extraordinary hypothesis created by anti-whaling scientists that there are five stocks (breeding groups) of minke whales along the coast of Japan. Furthermore, the proposal was made with relevant domestic management measures such as surveillance, control and a DNA traceability schemes for whale products distributed in the domestic markets. As usual, the anti-whaling countries all objected to this proposal despite that the proposed catch quota was not at all profitable for commercial whaling. The reasons for their opposition were "because we are against whaling", "because the moratorium on commercial whaling must be maintained", "because whales are animals to be protected", and they were not at all scientific (Article V 2(b) of the ICRW stipulates that resource management measures "shall be based on scientific findings".) An anti-whaling country made a seemingly scientific claim that the catch quota requested by Japan had not been made after having completed the whole process of calculation of catch limits. However, she made an unscientific reply to Japan's inquiry whether she could support Japan's proposal when it has finished whole the process, saying that she was in any case opposed to any whaling. After the Commission meeting in 2014, Japan again made the same inquiry in writing on the reason why the anti-whaling countries opposed to Japan's proposal for the allocation of a catch quota, but the answer remained unchanged: "because our country is against the whaling", "because

the moratorium on commercial whaling must be maintained", and "because whales are animals to be protected". In other words, it became clear that anti-whaling countries absolutely do not share the opinion of Japan and other countries that support the sustainable use of whale resources based on scientific evidence. Almost 70 years after the conclusion of the ICRW, contrary to the circumstances of the early days of its creation, it was clarified that there are two groups with fundamentally different views on whales and whaling under an umbrella of the IWC, suggesting that this is the underlying reason for the IWC's dysfunction.

Taking this as a trigger, at the IWC Commission meeting in 2016, Japan proposed to launch a process of "a way forward of the IWC", so that the two groups with completely different views could coexist under an umbrella of the IWC and seek a path that leads the two groups to the two objectives of the ICRW, namely proper conservation and sustainable use of whales, and asked Member states for their comments, suggestions and proposals to find solutions. Through this process of "a way forward of the IWC" led by Japan, however, no constructive contribution was obtained from the anti-whaling countries, and therefore taking into account advices from sustainable use countries, Japan elaborated an IWC reform plan aiming at the "coexistence" of the two groups with fundamentally different views. Japan's proposal was debated at the 67th IWC Commission meeting held in Florianopolis, Brazil in 2018, but was rejected by vote due to the opposition of anti-whaling countries that held a majority.

Here I explain the outline of the IWC reform plan proposed by Japan. It is broadly composed of two pillars: one that modifies the structure of the IWC, and the other that modifies the decision-making mechanism of the IWC. Regarding the former, establishment of a new subordinate committee called "Sustainable Whaling Committee" was proposed. There were already three subordinate committees in the IWC: in addition to the original subordinate committees of the "Finance and Administration Committee" which deliberates on budget and administrative issues and the "Scientific Committee" which provides scientific advices necessary for elaborating resource management measures, the third one of the "Conservation Committee" which only discusses on the protection of whales was established against the opposition of many sustainable use countries. In addition to those existing three committees, Japan's proposal aimed to establish a "Sustainable Whaling Committee" to deliberate on a framework for sustainable whaling. The idea behind it was to strike a balance between protection and sustainable use.

Regarding the latter of Japan's reform plan, an amendment of the existing decision making process was proposed where, if there is a consensus agreement at the Sustainable Whaling Committee and/or the Conservation Committee on their recommendations, the Commission could adopt such recommendations by simple majority. The ICRW stipulates that more than three-quarters of the votes are required to adopt a new conservation and management measure, but one of the basic reasons of the IWC for being unable to take a decision exists in this provision. Thanks to this provision, no extreme proposal against whaling has been adopted, but, the abolishment of the "so-called" moratorium on commercial whaling was not agreed despite a sufficient accumulation of scientific grounds. That's why the IWC dysfunction has been continuing for more than 30 years.

Japan asked for the creation of a regime for the coexistence of the two opposing groups under a sole umbrella of the IWC, by achieving a compromised consensus on its proposal consisting

of the two pillars, that is to say at least by not opposing the proposal even if unable to support it, thus allowing the two groups with the fundamentally different views to adopt whale conservation and management measures of their preference (protection or sustainable use of whales). However, the anti-whaling countries again showed no tolerance, repeating the same arguments such as "because we are against whaling", "because the moratorium on commercial whaling must be maintained " and "whales are animals to be protected ". Japan's proposal was finally put on a vote and voted down.

Contrary to Japan's sincere attempt, the Florianopolis Declaration proposed by the host country, Brazil, was adopted thanks to the numerical superiority of the anti-whaling countries (This proposal is a resolution which needs only a simple majority for adoption.). This Declaration proclaims that the use of lethal research methods is unnecessary, that maintaining the moratorium on commercial whaling is important and that the IWC has evolved for the protection of whales. This Declaration is mirroring an image of the future of the IWC and was a counterproposal to Japan's proposal which pursued an ideal form of the IWC. Unfortunately, Brazil's proposal was the opposite of the Japan's proposal asking for the normalization of the dysfunctional state of IWC and aiming at the coexistence of the two groups with fundamentally different views and thus totally negated another group with different views.

A new step towards a sustainable use of whale resources

The rejection of the Japan's proposal and the adoption of the Florianopolis Declaration showed that the coexistence of the two groups with fundamentally different views within the IWC had become completely impossible. Japan was obliged to express that "Japan will be pressed to undertake a fundamental reassessment of the significance of the IWC for Japan, where every possible options will be scrutinized." As described in the Statement by the Chief Cabinet Secretary, which I quoted at the beginning, the basic policy of Japan is the sustainable use of fishery resources including whales based on the scientific evidence. Therefore, in the aftermath of the IWC Commission meeting in 2018, Japan made a careful reassessment on the significance of the IWC with the participation of relevant national stakeholders and decided to pursue the sustainable use of whales based on the scientific evidence and hence to leave the IWC which have long acted in negligence of the objectives of the Convention and shown no signs of improvement of its dysfunction (Japan was forced to choose this option).

In relation to this decision by Japan, reactions of foreign countries to both the announcement of the withdrawal from the ICRW on 26 December 2018 and the resumption of commercial whaling on 1 July 2019 were calm and relatively moderate. Fortunately, we did not see any hysterical accusations against Japan nor any radical manifestation such as burning Japan's national flag. In particular, it is noteworthy that the United States made no official statement against Japan, despite the fact that the United States had succeeded in getting rid of Japan's commercial whaling by exerting strong pressure on Japan which had been continuing commercial whaling with an objection to the "so-called" moratorium on commercial whaling. This phenomenon of no official statement by the United States seems to faithfully reflect the current international opinion. This is again evidence of the sincere efforts by Japan which has been cooperating to normalize the IWC for many years, and shows that there exists some understanding even in anti-whaling countries that the IWC is in a dysfunctional state where the coexistence of the two fundamentally different views is impossible.

Through those process, Japan has resumed sustainable whaling based on scientific evidence since 1 July 2019. Catch quotas for the resumed whaling are set in line with the Revised Management Procedure (RMP) developed by the IWC Scientific Committee thereby guarantee that the whale stocks targeted will not have negative effects. Also, Japan will not conduct whaling operations in the Antarctic Ocean and, for the time being, limit its whaling operations within its territorial waters and Exclusive Economic Zone. Furthermore, even after the resumption of its commercial whaling, Japan will continue to collect scientific information necessary for proper manage of whale resources and, in this regard, continue its scientific program with non-lethal researches including sighting surveys, which Japan has so far carried out in the western North Pacific and the Antarctic Ocean. In addition, we will conduct additional research surveys in the western North Pacific.

Regarding Japan's future involvement in the IWC, as it has been already announced at various occasion including in the aforementioned Statement by the Chief Cabinet Secretary, Japan will continue to participate in various IWC meetings as an observer and cooperate more than before in order to restore the function of the IWC. In particular, Japan will participate in the IWC Scientific Committee as actively as before and continue to provide scientific information obtained through its scientific researches and to voluntarily provide information on its whaling activities. In addition, Japan intends to continue the joint research program with the IWC (the Pacific Ocean Whale Environmental Research Program: POWER), which have been highly valued. Japan's expression of the continuation of its cooperation and contributions to the IWC Scientific Committee was greatly appreciated and welcomed at the IWC Scientific Committee held in May 2019 in Nairobi, Kenya.

Epilogue

It was regrettable that some Japanese mass media had pessimistically taken Japan's announcement on its withdrawal from the ICRW and its resumption of commercial whaling and thereby criticized it as being against international commitments and cooperation even comparing it to the withdrawal of Japan from the League of Nations in 1933. As I explained here, only in summary although, Japan cooperated for many years to restore the function of the IWC which had fallen dysfunctional for long time and worked hard to establish a regime where the two groups with fundamentally different views could coexist under the umbrella of the IWC so that they could cooperate to achieve the two objectives of the ICRW: the conservation and sustainable use of whales. On the contrary, the anti-whaling countries did never fulfill the international commitment under the ICRW, i.e. "to suspend commercial whaling in order to undertake a comprehensive assessment based upon the best scientific advice and establish other catch limit than zero by 1990 at the latest". Finally to conclude, I would like to repeat once again that it was the anti-whaling countries that totally rejected the way forward to the coexistence of the two groups with totally different views and maintained the non-cooperative position by deliberately ignoring one of the two main objectives of the ICRW.