

Whaling as a Battleground: The EU Regulatory Empire and Denmark/Greenland

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Abstract

At the Environment Council of Luxembourg on June 5th, 2008, the European Union (EU) stated its common position in support of maintaining the moratorium on whaling/protection of whales. The present paper tries to present an overview of political relations between the EU, its member state Denmark and Denmark's dominion Greenland while exploring the 'regulatory empire' concept with regard to whaling activities. In this respect, if we were to define the methodological approach of this paper in a single phrase, we could use the expression: "conceptual redefinition of the physical substance". This approach enables us to theoretically explain the uncertainty that accompanies the act of the subject, and to make visible structural elements that have not been noticed so far.¹

Keywords: protection of whales, pro-whaling, politically neutral, regulatory empire, the EU governance, Denmark-Greenland

要旨

2008年6月5日、EUはルクセンブルクにおいて環境相理事会を開き、EUの共通理念として捕鯨をめぐるEUのスタンスを初めて「反捕鯨」とすることで一致した。本稿は、EUの「反捕鯨」規範が物質構造と規範構造の間主観的相互作用によって形成され、それがEUの政策を規定しているという前提に立ち、捕鯨をめぐるEU、EU加盟国デンマーク、そしてデンマークの自治領グリーンランドの三者を「規制帝国」という新たな概念を援用して説明することを試みるものである。

キーワード：反捕鯨、捕鯨推進、政策的中立、規制帝国、EUガヴァナンス、デンマーク - グリーンランド

¹ Parts of this paper appear in Takahashi (2009a).

Introduction

At the Environment Council of Luxembourg on June 5th, 2008, the European Union (EU) stated its “common position, *fælles EU-holdning*” in support of maintaining the moratorium on whaling (European Union 2008). The “protection of whales” is part of *acquis communautaire* (the generic name for the EU system of law) which new signatories are obliged to adopt. This law prohibits the slaughter and transportation of whales within European community waters (The Council of the EC 1992). In essence, while it clearly presented the standard of protection of whales as the common position held by all member states, the EU also pledged to respect Aboriginal Subsistence Whaling. However, there is one point that should be noted in regard to this common position, and that is the Danish stance on whaling. Denmark does not openly play a role in either the protection of whales or in pro-whaling, indeed, it is the only EU country that maintains a politically neutral standpoint² (however, as will be discussed below, Denmark is the only EU state that demonstrated a pro-whaling stance at the IWC meeting in 2006). This is due to the existence of two dominions of Denmark - Greenland and the Faroe Islands (Takahashi 2009b). Greenland in particular presents a special case as its whaling activities are allocated Aboriginal Subsistence Whaling status under the International Convention for the Regulation of Whaling, clause 13 (see Table 1). This means that Greenland is an exceptional region where whaling is permitted. However, the situation is further complicated by the fact that Greenland withdrew from the EU, or more accurately from the EC, in 1985 which means that this island is an exceptional region where EU common policy does not apply (Takahashi 2008a). For this reason, the position that is generally held over whaling in Denmark is strongly influenced by Greenland’s dual status. In addition and this is the position that this paper takes, Denmark’s politically neutral standpoint concerning whaling reflects the so called “regulatory empire-ness” of the EU.

The purpose of the present paper is to present an overview of political relations between the EU, Denmark and Greenland while exploring the regulatory empire concept with regard to whaling activities. More accurately, we shall discuss the power, influence, possibilities and limits that the position of EU as a regulatory empire carries by focusing on the whaling issue. Why is the concept of regulatory empire invoked in this paper? In general, the controversy over whaling is mostly generated from organizations within the protection of whales block, whose members believe that whales should not be exploited by humankind. This can be traced back to the

² Interview with Ole Samsing, Copenhagen: Ministry of Foreign Affairs of Denmark (Udenrigsministeriet). August 25th and September 4th, 2009.

protectionist activities of countries such as the United States, which created an influential whale-protectionist majority, especially after the 1970s (however, the United States cannot be strictly defined as a whale-protectionist country). Moreover, the actions and ideas of the whale-protectionist block were synchronous with the broader animal rights movement and the Green Movement which emerged after the 1970s. In fact, whale protection became a symbol of the animal rights movement and the Green Movement, thereby becoming increasingly influential. This led to the recommendation of a ten-year moratorium on commercial whaling at the United Nations Conference on the Human Environment in 1972. The adoption in 1973 of the Washington Convention (CITES: Convention on International Trade in Endangered Species of Wild Fauna and Flora) aimed at regulating the trans-border commerce of certain species (whales are clearly referred to in appendices 1-3) (CITES, Grønlands Hjemmestyre Miljøstyrelsen CITES Kontor og Skov- & Naturstyrelsen 2008). In addition, commercial whaling was temporarily banned in 1982 (as outlined in the so called Moratorium) by the International Whaling Commission (IWC).

Hence it can be said that global whaling regulations and policies were created through inter-subjective interaction based on certain values and norms. Furthermore, it can be said that the global standard of whale protection has redefined the concept of actor's profit, or national interest, especially since the 1970s. If, in this respect, we were to define the methodological approach of this paper in a single phrase, we could use the expression: "conceptual redefinition of the physical substance". This approach enables us to theoretically explain the uncertainty that accompanies the act of the subject, and to make visible structural elements that have not been noticed so far. In order to shed light on the elements in the conflict of interest that have been overlooked, we shall discuss in this paper, the aforementioned EU decision to adopt a common position on whale protection made in June 2008, through the prism of EU-Denmark relations. Although just a single case, it is an extremely important one in the sense that it helps bring to light whaling issues that have not been noticed until now. The concept of regulatory empire is especially useful for achieving our goal. Therefore, in this paper, we wish to discuss the key concept of regulatory empire, but before we do so we shall first examine the basis of this concept. That is to say, we will try to establish at what point the regulatory empire concept arose.

Table 1. Present situation of Aboriginal Subsistence Whaling³

COUNTRY Region <i>Ethnic group</i>	Subject	Type of Whale	Numbers alive (presumed)	Quota (per year)⁴	Catch (per year)
USA Alaska <i>Inupiat, Yupik</i>	Indigenous peoples	Bowhead	11,800 (2004)	51	38 (landed)
USA Washington <i>Makah</i>	Indigenous peoples	Gray	20,110 (2007)	4	0
RUSSIA Chukotka Autonomous Okrug <i>Chukchi, Yupik</i>	Indigenous peoples	Gray	20,110 (2007)	120 (140 Max.)	127 (landed)
		Bowhead	11,800 (2004)	5	2 (landed)
DENMARK Greenland <i>Kalaallit</i>	Indigenous peoples	Fin	4,700 (2007)	19	11 (landed)
		Minke (West Greenland)	10,800 (2005)	200	148 (landed)
		Minke (East Greenland)	Unknown	12	1 (landed)
		Bowhead	6,300 (2008)	2	0
SAINT VINCENT & GRENADINES <i>Bequia Islander</i>	Non-Indigenous peoples	Humpback	10,750 (1992)	4	1 (landed)

Definition of terms: regulatory empire

International power relations have been widely redefined during the period following the post-Cold War era. A new international political framework gained footing in the United States

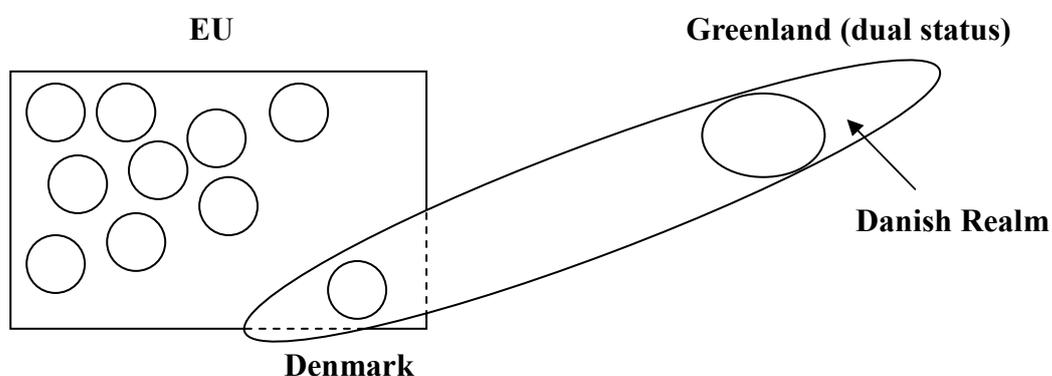
³ Related material offered by Hisashi Hamaguchi (Professor, Sonoda Women's College, Japan), IFERI Joint Seminar, Tsukuba: Inter Faculty Education & Research Initiative (IFERI), University of Tsukuba. January 25th, 2010.

⁴ Five-year block quota expediently calculated in one year.

but declined as the wars in Iraq and Afghanistan wore on. However, the United States is not only a power from the military and economic perspective, it is also a powerful cultural “empire”, a dimension that must be considered when analyzing the world order. Around the same time, Russia began regaining its reputation as a great power, a trend that was aided by remarkable economic growth in both China and India. Up to now, the commonly accepted empire theory has referred to a different kind of sovereignty, which appeared at the end of the 1990s. The regulatory empire concept points to the fact that the post post-Cold War power setup is that of “competing relations between regulatory empires”, and bases the argument on the term empire which is frequently used when today’s international order is discussed (Suzuki 2008).

The regulatory empire concept focuses on the standard formation ability of the EU, and points to the fact that the EU has emerged as a global governing body (Suzuki 2006, 2009). Kazuto Suzuki from Hokkaido University, Japan argues that the EU is not a “full-fledged empire”, but is “a new type of ‘Empire’ in the context of a globalizing market economy and political interdependence” (Suzuki 2009: 143). The present paper focuses on the whale protection legislation enacted by the EU in June 2008, a standard as the basis of the discussion, and takes a broader view of political relations among the EU, Denmark and Greenland. The EU is compared to Denmark, a member state which takes a different position from the other member states. Of course, it is insufficient for the discussion of the EU as a regulatory empire to be limited to the area of whaling. However, it can be extremely useful to examine the flexibility of the EU in relation to the triangular relationship between the EU, Denmark and Greenland over the whaling situation. This helps explore and determine the legal binding power of the EU in addition to the EU’s role both inside and outside its own region. The whaling issue is at the basis of the regulatory empire, and we can understand the relationship between the EU, Denmark and Greenland by examining it.

Figure 1: Triangular relation



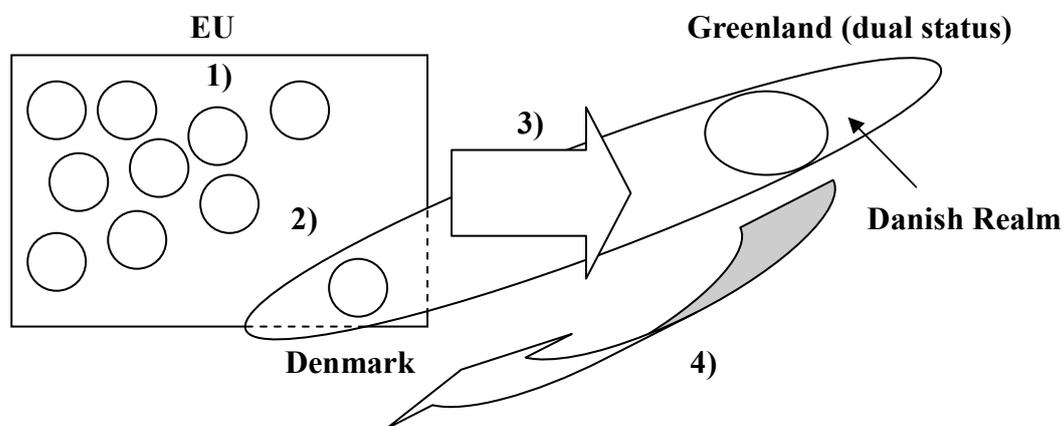
What is, then, a regulatory empire? It is an empire⁵ but different from the so-called 19th century type of empire, which has vanished because Europe, following enormous material destruction and human loss at the hands of military action, has adopted the concept of right to self-determination. Europe has since become a regulatory body which has constructed global market rules that take into account both its past experiences and its convenience. The concept of regulatory empire was presented in 2006 by Kazuto Suzuki in his analysis of “EU empire-ness”. Suzuki states that a regulatory empire is, first of all, an empire that imposes its market regulations on other territories by the sheer size of its economy which creates a “gravity” that attracts goods and investment. That is, he defines the influence of the regulatory empire as something exercised outside of the EU. However, in order to take this argument further, in this paper, the author wishes to point out that the influence of the EU as a regulatory empire is likely to be exercised not only towards outside territories but also within the EU over its own member states. This point will be taken up again later.

The EU as a regulatory empire is supported by the following three features. First of all, the strength of gravity of the EU market, that is, the EU’s strong market force in the context of a globalizing market economy. Strength of gravity is illustrated by the economic dependency of the subordinate state to the regulatory empire. When Denmark plans its national economic policy, its main export target is the EU market which has a Gross Domestic Product (GDP) that exceeds that of the United States (about 70% of Denmark’s export is to the EU) (JETRO 2007). The fact that Denmark cannot ignore the standards set by the EU is of great importance to our argument. Also, although it has withdrawn from the EU, it would not be realistic for Greenland to implement its economic policy while disregarding the EU because its economic situation is extremely similar to Denmark (about 97% of Greenland’s export is to the EU) (Grønlands Hjemmestyre 2007). Of course, whether they follow EU norms depends on the Danish government and the Greenland Self-Rule government (since June 21st, 2009 Greenland has a Self-Rule, and not a Home-Rule government). However, the EU comprises 27 member countries, with a population of 500 million people, and is the world’s largest economic market with a GDP of about 11 trillion Euros. Denmark and Greenland recognize the fact that if they do not follow EU standards they are likely to be excluded from this market of 500 million people, and therefore, voluntarily subordinate themselves to the EU. In short, it can be said that regulations governing the economic (and political) activities of Denmark and Greenland owe much to the gravity of the EU market. However, do these two entities come into conflict over the EU whale protection standard because of their economic dependency on the EU market? Certainly, there is no high profile factor that proves an immediate relation between the two.

⁵ In this context, empire means “relationship, sphere of influence and order which are made by an integral power which reigns beyond plural communities, tribes, societies, regions, powers, and states”. Suzuki (2009: 142).

Furthermore, whale protection has legal binding power for Denmark, a member state of the EU, since the decision on whale protection comes from the EU Environment Council. This means that Denmark was directly influenced by the EU at the moment when the protection of whales was made a norm. These points do not necessarily agree with the perception of the EU as a regulatory empire. However, the focus of this paper is on the special relationship between EU, Denmark and Greenland as shown in Figure 2. Namely, though Greenland has withdrawn from the EU it is still a part of the EU member state Denmark, and while it is true that Greenland's dual status makes our argument more difficult, this triangular relationship appears in a new light when the regulatory empire concept is employed.

Fig. 2: EU regulatory empire-ness



- 1) The Environment Council designates whale protection as a “common position”.
- 2) Legal binding power is generated for EU member states.
- 3) EU as a “regulatory empire”, acting as “one block”, exercises whale protection regulation outside its borders and Greenland (which withdrew from the EC in 1985) accepts this EU regulation.
- 4) The EU regulation on whale protection is reflected back on the EU member Denmark because Greenland is a part of the Danish Realm, *Rigsfællesskabet*.

The second feature of a regulatory empire is insistence on “the universality of values and norms” and the argument that the acceptance of these values and norms promotes both national and universal interests (in other words, *EU normative power*, Manners 2001). Universality of values and norms is a concept that transcends arguments over vested interests, such as particular group interests or economic and physical relations between the subordinate state and the regulatory empire, and aims for the “universal good”. As for the policy and the code of good

practice of the EU, they are described as a result of discussions, negotiations, adjustment and compromise between various values, norms and interests and as part of a complex regulation and decision making process of the EU as a whole rather than as a reflection of the intentions of a certain country or profit group, because the EU is an organization composed of 27 members. It is said that the EU, which forms norms through multilateral, non-military means and cooperation, possesses a “culture of consensus”. It is thanks to this that the EU, as a regulatory empire, is able to force its own regulations on various other actors without cooperating with them in the policy decision process. This is how the policy that the EU presents as the common position of 27 member countries is formed and how it becomes possible to create a single block out of several actors⁶.

Thirdly, countries submitting to such regulation, voluntarily accept to come under EU regulation. For instance, set membership criteria (e.g. common EU principles of democracy, fundamental human rights and rule of law) are requested in order to join the EU (*acquis communautaire*). Therefore, a state that wishes to join the EU must follow EU regulations over home-country regulations, and the EU requires strict adherence to this mandate. This is how the regulatory empire (EU) imposes its standard using the gravity of the EU market economy and universality of values and norms.

These three points are the overarching points of discussion in this paper and epitomize the very influence that the EU manifests through presenting discourse on the universality and validity of values that defines the power of the regulatory empire as the member states’ common position, while relying on its economic power as its foundation.

Controversy over whaling: The EU, Denmark, Greenland and the IWC

The first point that we need to discuss is the regulatory aspect of the EU as demonstrated through the whaling issue. The EU as a regulatory body has been drawn into controversy over whaling.

1. Creation of the “whale protectionist” EU: the case of the IWC

As previously noted, at the Environment Council of Luxembourg on June 5th, 2008, the EU stated its common position in support of maintaining the moratorium on whaling. Our stance is that most of the controversy over whaling is created by the whale protection block whose

⁶ Related material offered from Ole Samsing, Copenhagen: Ministry of Foreign Affairs of Denmark (Udenrigsministeriet). August 25th, 2009.

members believe that whales should not be exploited by humankind. However, important issues are often clouded when they are mired in controversy and rather than focusing on the scientific data, politics overshadow the issue. This becomes clear when attention is paid to the discourse used by both sides in the whaling debate. For instance, many voices, such as the World Society for the Protection of Animals (WSPA) and Greenpeace, criticize, in the name of animal and environmental protection, the act of hunting for whale meat and whaling in general by saying that “it is barbarous to eat whale meat”. On the other hand, whaling continues to be practiced under the banner of “whaling culture” in pro-whaling areas such as Japan and Norway. However, Atsushi Ishii from Tohoku University, Japan, points out that the protection of whales and the pro-whaling camps both aim at protecting their interests (for instance, the income they receive as contributions from support groups), and that they both need an external enemy to justify their own existence (Ishii 2008). According to his analysis, a symbiotic relationship is formed between the two sides in regard to the whaling issue. That is, the heated debate over whaling no longer has the number of remaining whales and the eco-system issue as its focus but rather the conflict between the two sides itself has become the main preoccupation.

The establishment of whale protection as a standard EU position is in line with the trends of the broader global community and the IWC. The Environment Commissioner of the EU, Stavros Dimas said: “With this decision, the European Union can now take a strong role at the International Whaling Commission and use all its political, moral, and economic weight to ensure a more effective protection of whales worldwide” (EUobserver 2008). The fact that the EU established whale protection as a common position held by all 27 countries clearly shows it acted in collaboration with the IWC, and that all the individual actors aligned themselves with the whale protection discourse promoted by the IWC. The aim of announcing the common position on the whale protection standard on June 5th, 2008 was for this decision to coincide with the IWC-Scientific Committee held between June 1st and June 13th, and to come before the annual meeting of the IWC held from June 23rd to 27th in Santiago, Chile. The EU requested the construction of an effective framework that would help police whaling activities globally. Therefore, based on global regulations to protect whale resources, it established the protection of whales standard in collaboration with the IWC. It is speculated that the EU did so because of its desire to acquire leadership, gain advantage in the field of whaling, and maintain its influence in forming global regulation through this standard. Of course, the whale protection position of the EU cannot be the sole cause of the “tug-of-war” that can be seen in the whaling arena. The shared stance on whale protection in Europe is based on the common perception that whaling is to a certain degree primitive, which is related, as a structural factor, to the vested rights secured by people such as animal-rights and green campaigners, especially after the 1970s. This structurally makes the whale protection group dominant, even if we assume that their view

on whaling is stereotypical. The EU standard related to whaling is very influential outside of the EU because it represents the view of 27 countries that hold a common position at the EU level. However, at the same time, the shared stance of the EU has a similar impact on various actors in the EU region itself. The common standard is manifest at the level of EU-Denmark relations, but has a direct influence on the relationship between Denmark (EU member) and Greenland (Denmark's dominion and a region that withdrew from the EU). Upon establishing the EU as a regulatory empire, the next section aims to clarify the positions of Denmark and Greenland over the whaling issue.

2. The position of Denmark over the whaling issue

The above discussion leads us to consider another important factor, which is the position of Denmark over the whaling issue. Denmark protects whaling in Greenland by its “policy of neutrality”. The IWC annual meeting declaration (Saint Kitts and Nevis Declaration) in 2006 is a noteworthy example (Grønlandsposten 2006, Sermitsiak 2006a, 2006b). At the 58th IWC annual meeting, held in the Federation of Saint Christopher and Nevis in 2006, Denmark voted in favor of the Saint Kitts and Nevis Declaration (which states that there is no need for a commercial whaling moratorium) - the only EU country to do so (IWC 2006). As a result, the declaration was adopted (33 votes in favor, 32 against, and 1 abstention). An IWC decision becomes legally binding only if three quarters of the members return a ‘yes’ vote. Nonetheless, the adoption of a declaration in favor of commercial whaling is an extremely rare practice in the history of the IWC.

If Denmark had opposed or abstained from the declaration, then the declaration might have been voted down. Denmark cast the deciding vote. From this it is clear that Denmark took into consideration the importance of Greenland's geopolitical position (Takahashi 2007, 2010) and the valuable natural resources it possesses (crude oil, natural gas, minerals, etc.) (Takahashi 2008b). In terms of the legal system, however, the vote was in accordance with the principle of voting “on behalf of overseas territories” specified in the Maastricht Treaty “Declaration 25, *Erklæring 25*” (Maastricht-traktaten). Based on the existence of Declaration 25, in an interview concerning the whaling issue conducted by the author of this paper, Mikaela Engell, a high-ranking official in the Ministry of Foreign Affairs of Denmark, stated: “What is required of Denmark is to manage the affairs of a sovereign state that holds two dominions in a balanced way”.⁷ Denmark, thus, took into consideration the standpoint of the Greenland Home-Rule government in its position at the IWC annual meetings of 2008 (Grønlands Naturinstitut 2008)

⁷ Interview with Mikaela Engell, Copenhagen: Ministry of Foreign Affairs of Denmark (Udenrigsministeriet). June 25th, 2008.

and 2009 (IWC 2009a, 2009b, 2009c). It proposed the introduction of a whaling quota (which was set at 10 per year for humpback whales based on the advice of the IWC-Scientific Committee) (IWC 2008) for Greenland within the Aboriginal Subsistence Whaling framework, while maintaining neutrality. We may say that Denmark's stance in this case is consistent with its previous actions.

On the other hand, however, Denmark exhibits constant agreement with the EU position on whale protection. It is opposed to commercial whaling in Japan and Norway which makes its true position clear. It is safe to say that Denmark's position on whaling in Greenland is contradictory to its position on whaling in Japan and Norway. Therefore, other EU member states tend to criticize Denmark by saying that it maintains a contradictory position (Sermitsiak 2008a). Consequently, Denmark stands at the centre of the whaling issue in the EU, and is actually becoming increasingly isolated by allowing whaling in Greenland (Politiken 2008, Grønlandsposten 2008).

3. Greenland's stance on whaling

What needs to be investigated next is the position of Greenland on whaling.⁸ What is Greenland's position toward the EU "whale protectionist policy"? Here, it is useful to analyze Greenland's society and the relationship between whaling and Greenland's policy.

Whaling in Greenland is often described as a part of its "culture and tradition" (Ugarte 2007). Whaling has been an important aspect of the Thule Inuit people's culture since about A.D. 900. Whale meat was a very important nutrient because it provided proteins, iron, fatty acids, etc. Whale bones and blubber were also considered valuable commodities. Moreover, the act of whaling occupied an important position in the cultural preferences of the Inuit/Kalaallit in Greenland.⁹ Therefore, it is often emphasized that whaling is a key aspect of the culture and tradition in Greenland, and Aboriginal Subsistence Whaling is defined as a cultural pursuit that is important for Greenland's cultural, social, economic, religious and eating habits. This interpretation has been discussed extensively, and has significantly influenced the argument about whaling in Europe. Therefore, the designation of Greenland's whaling as Aboriginal Subsistence Whaling seems to have prompted the EU to adopt a softer position on the local whaling culture. As a result, pro-whaling groups that are now working from within the Greenland Self-Rule government and the Greenland Fishery and Hunting Society (KNAPK) now insist that Greenland should secede from the IWC which is dominated by whale

⁸ For the context see Caulfield (1997).

⁹ Interview with Fernando Ugarte, Nuuk: Greenland Institute of Natural Resources (Grønlands Naturinstitut). June 20th, 2008.

protectionist countries and regions. Also, in these organizations (e.g. pro-whaling groups within the Greenland Self-Rule government and KNAPK) there is a movement towards limiting their activities solely to the regional institution NAMMCO (the North Atlantic Marine Mammal Commission), which engages in the protection and control of marine mammals and marine products in the North Atlantic (Sermitsiak 2008b, 2008c).

However, it can be said that Greenland's benefit from whaling as allowed under Aboriginal Subsistence Whaling is not small, but instead rather significant. In addition, Greenland enjoys the benefits of the EU and the IWC construct. In this respect, however, Greenland cannot be part of the standard policy formation process. To conclude, it is difficult for Greenland to refuse Aboriginal Subsistence Whaling, but at the same time it cannot take independent action either, since that would enhance the possibility of the abolishment of the special whaling framework it enjoys, which would be a kind of political suicide.

EU as regulatory empire

We have discussed the three actors' position over whaling. This discussion further leads us to consider what issues influence the whaling problem.

1. EU influence as regulatory empire

Today's EU is composed of 27 countries which is why there are many conflicts of opinion. However, "compromise"¹⁰ is needed to achieve consensus between the 27 countries in order to further improve the validity of EU political claims, maintain its influence and become a leader in the global market. Therefore, what is required is that EU standards do not reflect an individual state's interests, and that a common, universal profit be achieved. Furthermore, the universality of values and norms needs to be relatively emphasized in comparison with the "one actor - one block" standard. As a result, so to speak, the EU will be able to expand its influence as a regulatory empire. This is clearly demonstrated in the whale protection issue. That is, the EU standard has created a dilemma in the Danish context concerning the whaling of Greenland because the whale protection standard that the EU currently holds represents the views of both the IWC and the wider global community. This position is consistent with the idea of universality of values and norms. The discourse and actions of the EU regarding whale protection are seen by some as an aspect of the regulatory empire. From this viewpoint, the EU imposes its own values and norms as standards of what universal values, norms, and ideas should be.

¹⁰ It is necessary to deepen the discussion on this in future research. One of the important points discussed will be the Qualified Majority Voting System (QMV-system).

2. Ambiguity of Regulation

It should be noted that the EU as a regulatory empire only has indirect influence over the whaling of Greenland. In this respect, we believe, the regulatory empire concept is useful because it makes clear the predominant influence achieved by the EU regulatory empire. In a word, the EU has adopted a contradictory standard by taking the whale protection stance as a common position on the one hand, and by respecting Aboriginal Subsistence Whaling on the other. This respect originates from the nature of the EU's regulatory empire-ness.

As already mentioned, Europe has adopted the concept of the right to self-determination. In such circumstances, the EU becomes a regulatory body that imposes its standards on "the other" but at the same time respects the right to self-determination of individual member states. An example of this is the rejection of the request for a 10 humpback-whale catch quota under the Aboriginal Subsistence Whaling framework during voting at the IWC annual meetings of 2008 and 2009, when EU member states, with the exception of Denmark, voted against this quota as one block, although it was proposed by Denmark/Greenland within the legally accepted Aboriginal Subsistence Whaling framework.

Table 2. Votes on GL. Humpback Quota at the IWC 2008 meeting¹¹

	Yes	No	Abstention
EU	1	19	0
Other	28	17	2
Total	29	36	2

So, what does EU respect for self-determination mean? In the context we have examined, EU regulatory empire-ness clearly exists. Namely, the EU was able to exercise its influence as a regulatory empire even though the legal regulation concerning whaling could not be enforced over Greenland due to its status as a region that withdrew from the EU. Therefore, in a sense, EU empire-ness seems moderate or even invisible. However, even if it is moderate or invisible, EU empire-ness cannot be ignored. For this reason, the author believes the issue of Greenland's whaling is an appropriate case for determining the influence of the EU as a regulatory empire.

¹¹ Poll results offered by Ole Samsing, Copenhagen: Ministry of Foreign Affairs of Denmark (Udenrigsministeriet). September 4th, 2009.

3. Problematic aspects

However, there are at least two problematic aspects to the EU approach to whaling. The first is the attitude of universality. For instance, the rigidity of the discussion is an important aspect of the whaling issue. Denmark is alone in deviating from the universal position. In this case, “universal profit” is not a “result of compromise”. That is, the principle of having common European values and norms is neglected. Moreover, the definition of universal values and norms in this case is not easy. For instance, it is barbarous to catch and kill whales as judged by a certain specific standard of value and norm (or vested right). Ole Samsing from The Ministry of Foreign Affairs of Denmark, who served as the Danish government’s representative at the IWC and EU, describes the creation of the protection of whales standard as a form of cultural imperialism by the EU (EUobserver 2008), which clearly indicates that the effect of EU empire-ness is not necessarily demonstrated in each individual case. Nonetheless, the EU still exhibits a certain regulatory empire-like effectiveness by demanding individual countries voluntarily submit themselves to its decisions.

The second problematic aspect is the relation between the standardization of the whale protection discourse and the influence of the regulatory empire. An important feature of the EU as a regulatory empire is that it tends to regulate values, norms and ideas that possess universality. However, in the sense that its whale protection clearly shows collaboration with the IWC (where the whale protection camp represents the majority), the EU gives the impression that it is protecting certain, specific privileges. This could lead to a weakening of the influence of the EU as a regulatory empire. This tendency is especially visible in the whaling issue which inherently contains confrontation over various vested rights. As a result, the canonization of the whale protection discourse in the EU literally imposes (irrespective of the problem whether this is direct or indirect) EU-specific standards of value and norm on other regions.

4. Implications of the whaling issue

The EU possesses influence as a regulatory empire, but its limitations are also clear in the controversy over the whaling issue. This is important because it renews the flexibility aspect of the EU. What stance does the EU take against those actors who do not necessarily agree with its position? Of course, flexibility of the EU is not the only way to tackle the whaling issue. The problem of flexibility, or lack thereof, in the EU has been linked to the problem of political validity of the EU in the future. Therefore, problems of flexibility prompt a larger question to be asked about the EU’s integration process. What are the implications of this on the whaling issue? In the present post-cold war era, the interests or national interests of each actor and the

EU standards of common value and norm are especially likely to be at odds. In addition, the “rational” choice that each actor makes does not function within the single decision-making framework of the EU any longer. In this respect, protection of whales as a common position in June 2008 itself called for a re-examination of the EU’s concept of flexibility and a re-examination of the EU’s ability to have a single decision-making framework in the future. In addition, the EU will have to maintain its own validity and its own influence, because the framework of the governance of the EU is linked to the problem of political validity of EU member states. However, the EU continues to demonstrate that its market force is its standard. That is to say, the EU respects self-determination, uses discourses of universal values and norms and lets subordinate states take action to comply with EU rules and regulations because the acceptance of these rules and regulations would promote national and universal interests. This sort of universal values and norms make it difficult for subordinate states to reject or avoid them. This factor represents the specific characteristics and actual conditions of the present EU. Consequently, the EU member state Denmark is strengthened in terms of its legal influence in the region. At the same time, Denmark is influenced by the EU as a regulatory empire through the existence of Greenland over the whaling issue (more specifically, EU regulation is reflected back to the EU member state Denmark because Greenland is a part of the Danish Realm). Greenland has shown its distrust of the EU as a regulatory body (this distrust is embodied in Greenland’s status – it withdrew from the EU). However, it can be said that, despite its independent status, Greenland is placed in a situation where it experiences the predominant influence of the EU as a regulatory empire.

Concluding remarks

This paper attempted to take a general view of the political relations between the EU, Denmark and Greenland, while also analyzing the regulatory empire concept in relation to whaling. Seeing the triangular relation over the whaling issue from the regulatory empire concept, how can we understand the significance of the stance of these three actors? From this point we can observe the element of asymmetric diversity of influence between the EU, Denmark and Greenland. Moreover, this relationship indicates that whales are cleverly used as a card in a wider political process. On one hand there are culture, tradition, or life preferences that are closely related to whales, and on the other, whales provide an opportunity for putting forward the concept of universal values and norms. The whaling issue is outlined here in terms of these two axes, or a combination of the two axes. Furthermore, the whaling issue contains an asymmetric diversity of influence and complex antagonism. This detracts from the essence of whaling which has been transformed into a fight over an unbridgeable political gulf.

Thus, how might the EU resolve the issue of member states who adopt conflicting positions? This question has been linked to the flexibility of the 'EU governance' and we explain it with the following logic. That is, the EU admits diversity from the legal system standpoint and therefore allows Aboriginal Subsistence Whaling. However, all EU member states (other than Denmark), acting as a single block, threw in the blackball at the IWC annual meetings of 2008 and 2009, thereby rejecting a proposal put forward by the EU member Denmark. This voting behavior by EU member states can be seen as an example of the regulatory empire's influence at work. Furthermore, not only Denmark, but also Greenland, still voluntarily submit to EU regulations because both Denmark and Greenland strongly depend on the EU economic market and therefore cannot disregard EU standards and regulations. EU economic gravity is further supported by its insistence on universality of values and norms. Due to the existence of these factors, the EU is stable and capable of reducing risks to a minimum. However, it should be noted that this reality calls for a re-examination of the flexibility of the EU, as the framework of governance of the EU is linked to the problem of political validity of the EU in the future.

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