Contestation and norm change in whale and elephant conservation: Non-use or sustainable use?

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Abstract
Elephants and whales took center stage in the environmental movements of the 1980s. As flagship species, they were the poster children of global initiatives: international ivory trading and commercial whaling were banned in the 1980s in the context of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) and the International Whaling Commission (IWC), respectively. While the conservation of both species is contested, we observe a change of existing norms in one case but not in the other: A moratorium on commercial whaling remains in place. Meanwhile, a limited shift to sustainable use regarding ivory was passed in 1997/2000. We ask why norm change occurred in one case but not the other, given their similarities. We argue that the difference can be explained by the perceived legitimacy of the claims of norm challengers using arguments of “affectedness” and the breadth of issues covered by CITES. In contrast, other factors commonly discussed in norms research do not explain this puzzle: the relative power and strategies of norm advocates and challengers, and the degree of legalization. This shows the interplay of discursive aspects and concrete institutional opportunities for norm change, even in the face of otherwise inopportune conditions.

Keywords
CITES, contestation, elephants, IWC, ivory trade, norm change, whales, wildlife conservation, wildlife preservation

Introduction: norm change in flagship species conservation

Whales and elephants took center stage in the environmental and conservation movements of the 1980s and 1990s. As “flagship species,” they were and are the poster children of global initiatives for endangered species and biodiversity: the campaigns to ban the ivory trade and to save the whales. Both mammals are commonly depicted as particularly...
intelligent and self-aware, often living in family-like contexts (D’Amato and Chopra, 1991). Their sheer size has impressed humans for millennia: The blue whale and the African bush elephant are the largest and heaviest animals on earth and on land, respectively. Moreover, elephants and whales hold special significance in many cultures around the world, appearing in religion, mythology, literature, and popular culture.

Both mammals were heavily endangered in the 1970s and 1980s by decades of industrial-scale hunting, with many local populations hunted to extinction. Environmental campaigns were successful in promoting international prohibition norms, establishing “non-use” by banning whaling and international ivory trading (Andreas and Nadelmann, 2008: 46–50; Nadelmann, 1990). Both prohibitions are guided by broader prescriptive norms of environmental conservation, protection, stewardship, and sustainable development (see Couzens, 2013: 21; Thompson, 2004: 64), and deal with restoring species stocks.

In 1986, a moratorium by the International Whaling Commission (IWC) took effect, effectively banning all commercial whaling through a “zero quota.” This moratorium remains in place—although the scientific commission of the IWC has declared some whale stocks large enough for limited whaling. Today, many anti-whaling states take a preservationist view—objecting to the “sustainable use” of whales of any kind (Epstein, 2008). A similar prohibition norm was passed by the member states of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) with regard to the African elephant. In 1989, the species was listed in Appendix I of CITES, banning the international trade in ivory and other elephant products for all signatories. African elephant populations have since taken divergent paths, further decreasing in some regions and recovering in others. After negotiations at Conference of the Parties (CoP) to CITES, populations in several Southern African countries were downlisted to Appendix II in 1997 and 2000. Appendix II bans trade unless it demonstrably does not endanger the species’ survival, requiring permits and close regulation (Gehring and Ruffing, 2008: 129). The downlisting enabled a series of tightly controlled “one-off” sales of ivory stocks to the Japanese and Chinese markets in subsequent years (approved in 1997 and 2002/2004 and conducted in 1999 and 2008; US Fish and Wildlife Service (US FWS), 2013). Although limited, the principle of “non-use” was replaced by sustainable use in this timeframe.

Both prohibitions were and continue to be strongly contested and emotionally charged: Norway, Iceland, and Japan have questioned the commercial whaling moratorium and resumed limited commercial whaling in 1994, 2008, and 2019, respectively. Meanwhile, Southern African states such as Zimbabwe, Botswana, and South Africa contested the prohibition of the ivory trade. While an adaptation of the commercial whaling moratorium has, time and again, failed in the IWC, the complete ban on the ivory trade was changed in a limited fashion. This article focuses not on the compliance with and enforcement of the two prohibitions (in both cases, we observe ongoing instances of the banned practices), but on why the formalized international norms on these practices changed in one case but not the other.

We argue that this puzzle can be explained by the combination of two factors which typically receive less attention in recent International Relations (IR) research on international norm change: the perceived legitimacy of the claims based on a discourse of
“affectedness” and the range of issues in the norm’s international institutional context. Meanwhile, three factors repeatedly discussed in research on norm change and erosion do not explain this puzzle: the relative power and the strategies of (state and non-state) norm advocates and contesting actors, as well as the international norm’s degree of legalization.

The argument combines and shows the relevance and interplay of both discursive aspects and concrete institutional opportunities for norm change, even in the face of otherwise inopportune conditions. By this, the two cases point beyond a focus on agency-based explanations and the role of law—which dominate current research on norm change and decay. Instead, the argument links discursive elements, mostly discussed in poststructuralist research on norm development (Epstein, 2008; Holzscheiter, 2010; Price, 2007), shaping which actors are seen as “legitimate” or “representative” in debates on international norms, with institutional design, widely debated by rationalist institutionalists, which shapes concrete decision-making processes (Haas, 1980; Odell, 2013).

We proceed as follows: First, we present our concepts and definitions and review scholarship on international norms, norm change, and contestation. We then summarize five theoretical explanations for why some norms remain in place while others change. Common explanations include the relative power of (1) norm advocates and (2) challengers as well as (3) the norm’s degree of formal legalization. We offer two further explanations, less commonly studied in this field: (4) claims of “affectedness” by local populations and government representatives and (5) the breadth of issues debated in the respective international institutions. We subsequently recount the bans on ivory trading (within CITES) and commercial whaling (within the IWC), outlining how they have changed and remained in place, respectively. Next, we compare these two cases along the five factors. We find similarities in the first three and argue that the divergent outcomes regarding norm change are mainly driven by differences in the latter two. We conclude by arguing that research on environmental governance is a compelling field which IR norms research has so far hardly studied in greater detail (however, see Epstein, 2012; Nadelmann, 1990)—but which offers both theoretical insights and empirical findings which can improve our understanding of both global environmental politics and international norm change.

**Concepts and research design**

Norm change is a vibrant field of research in IR. While early research studied the emergence and diffusion of international norms (Blondeel et al., 2019; Finnemore and Sikkink, 1998; Nadelmann, 1990), recent research has pointed to the dynamism of international norms over time, once they become anchored in international law and diffuse. Scholars in this field examine how norms are interpreted in different contexts or how their meanings change over time (Krook and True, 2012; Müller and Wunderlich, 2013; Sandholtz, 2017; Wiener, 2014).

*Norms* are “standards of appropriate behavior” (Finnemore and Sikkink, 1998: 891; see also Katzenstein, 1996: 5). They address certain actors, contain a quality of “oughtness,” and lay out behavioral expectations on this basis, resulting in shared social expectations and beliefs of what is “morally right and good” (Jurkovich, 2020: 694–695, 703).
The phenomenon of norm change means that the extant rules—written or unwritten—are modified along the abovementioned dimensions. Changes might address additional actors, demand further actions, or allow, expect, or prohibit different behavior. Norm change is often brought about by arguments and contestation concerning how norms apply to specific cases and as contexts change over time (Sandholtz, 2017: 9–10). Such contestation—“discursively express[ing] disapproval of norms” (Wiener, 2014: 1–6)—is a common and important feature of international politics. Concretely, our study examines whether the extant moral and formal prohibitions remain in place in their respective international institutions, or whether changes to their scope or content are established.1

We observe and measure norm change by tracing discussions and decisions for and against changes to the extant international rules and principles. Examining the two cases, we focus on variation in the outcome (a Y-centered design), searching for explanations of why the two prohibition norms in the realm of conservation and biodiversity changed or not. We follow an exploratory most similar systems approach (Koivu and Hinze, 2017; Seawright and Gerring, 2008: 298, 304), comparing two cases with similar characteristics and a similar level of contestedness in a similar substantive field, which show differences in their outcome: the moratorium on whaling and the ban on ivory trading. The two cases belong to the overall population of norms on the protection of prominent, “charismatic” flagship species (Albert et al., 2018).

The analyses are based on research from environmental studies, political science, and historical literature for both cases, as well as on available reports and proceedings in the respective international organizations, public information on positions by non-governmental organizations and state actors, and media coverage. Background information is also drawn from semi-structured interviews with state delegates, scientists, and members of non-governmental groups at the IWC biannual meeting and Scientific Committee in 2016. Fieldwork on the CITES case was not conducted due to the analyzed episode’s more historical nature (1989 and 1997/2000).

**Theory: when do norms remain firm, and when do they change?**

This section outlines theoretical expectations from IR norms literature regarding conditions conducive to norm change. We briefly outline five explanations for norm change which we then examine in the two case studies. Most research in this field focuses on the agency and strategies of norm advocates and norm challengers, their power (whether hard or soft), as well as on the role of law. We argue, however, that we must pay closer attention to discursive constellations constituting agency and concrete decision-making structures. We therefore further examine the persuasive “affectedness” on part of local communities and national governments, and the breadth of issues in the institutional context in question.

One widespread assumption on norm emergence and norm stability is that it is critically shaped by the social power of transnational advocacy networks (which can include non-state actors, but also states and international organizations) to frame the issue in question and name and shame non-compliant actors (Finnemore and Sikkink, 1998; Keck and Sikkink, 1998). Similarly, the stability of norms, in this understanding, is often
linked to the coercive and institutional power to enforce a norm—using material sanctions and threats against (potential) norm violators, as well as institutional power to set agendas and delegate authority (Andreas and Nadelmann, 2008: 48; Barnett and Duvall, 2005; Sandholtz, 2017: 10–11).

Similarly, a second assumption is that norm change and stability can be explained by the relative power of norm challengers and their contestation strategies (Deitelhoff and Zimmermann, 2020; Panke and Petersohn, 2016; Sandholtz and Stiles, 2009: 15–17). Strong norm challengers, in terms of conventional criteria such as economic and military power, can more easily evade and counter sanctions for norm violation, and other states will jump on the bandwagon more easily once a powerful coalition of critics has emerged.

A third widespread assumption is that the degree of legalization matters for norm stability (Abbott and Snidal, 2000; Kahler, 2000). Thus, the “harder” the law (obligation, precision, and delegation), the less likely it is that the norms will be changed or hollowed out, as they are protected against changes and less open to evolving interpretations.

A fourth, less commonly used proposition concerns indirect, discursive power: Framing strategies in norm creation and diffusion processes have been found to be particularly successful when broadly linked to the vulnerability of local populations (Finnemore and Sikkink, 1998: 907). Yet once a norm has been established, we also observe that the claims of locals most affected by international governance decisions are perceived as particularly legitimate—often more so than claims made by governments or professional NGOs (Sändig et al., 2018), and that claims of this type may change universal prohibition norms. Recent work examines the more general questioning of the “representativeness” of Western NGOs and their claims (Brühl, 2010) and the attribution of strong legitimacy to local ownership and indigenous rights (Lehmann, 2019).

Research on environmental governance in particular can provide insights regarding which types of “affectedness” and vulnerability are considered legitimate in international conservation discourse. Broader discursive changes in environmental governance (see also Hajer, 1997) linking it to development and moving away from “fortress conservation” to a “co-existence” of protected animals and local populations (Bartel et al., 2020) have “activated” a particular image of who is legitimately affected by environmental prohibition norms—communities living in close proximity to, or in, the areas in question in a “development context.”

Fifth and finally, this perceived legitimacy of claims also needs institutional opportunities to be translated into formal norm change. Here, the international institutions in which the norms are negotiated are a crucial arena. In line with neo-institutionalist approaches in IR (Odell, 2013: 4–5), we propose that the breadth of issues in a norm’s concrete institutional context affects norm change. Institutions with narrow mandates and less issues on the table provide their member states with less flexibility in negotiations and less room for compromise. Forums with broad agendas allow for more middle ground between bargaining positions, providing greater opportunities for issue linkage, coalition-building (Haas, 1980: 371–372), and saving face.

Case studies

Before discussing all five factors with regard to both norms, this section recounts the historical development of norms in elephant and whale conservation, which are situated
in broader ecological conservation and preservation norms (Epstein, 2006) and the general principles of sustainable development (see Couzens, 2013: 21; Thompson, 2004: 64). It analyzes the extent to which we observe changes after the two prohibitions were passed. We identify several stages of norm development and generations of norm entrepreneurs (Sunstein, 1996) regarding wildlife conservation in general, and the conservation of whales and the sale of ivory in particular. As we show, the prohibition on ivory trading underwent an at the time significant change in 1997/2000, while the commercial whaling moratorium has remained unchanged.

Norm change: the ban on ivory trading, 1989 and 1997/2000

African peoples have hunted elephants for subsistence for tens of thousands of years. Beyond hides and meat, ivory was used for weapons and (most commonly) ornaments reaching back at least 30,000 years (Walker, 2009: 14–16). Once intercontinental trade was established and expanded, successive generations of external traders exploited the associated indigenous skills, driven by demand in the Mediterranean world, the Middle East, South Asia, China, and Europe (see e.g. Feinberg and Johnson, 1982).

European colonizers, as they entered the African continent from the 1500s onwards, criminalized native use of land and wildlife (Beinart and Hughes, 2007: 16). The prescriptive norms of “conservation” and “preservation” emerged around the turn of the 20th century, stating that indigenous hunting—“poaching”—was a danger to elephants, yet hunting licensed by Europeans on an immense scale was not (Steinhart, 1989, 2006). The colonial origins of conservationism are therefore an important lens for historical and present-day normative conflict over nature and wildlife. After independence, many African leaders and their patronage networks used state institutions to enrich themselves from the ivory trade (Somerville, 2016: 12–14, 99–102). Ivory exports from the continent continued (Milner-Gulland and Beddington, 1997), with elephant populations more than halved between 1979 and 1989 from 1.3 to 0.6 million (Stiles, 2004: 313).

From the 1970s onwards, the international legalization of conservation matters began to take hold. Limiting the ivory trade was seen as a primary means to protect the African elephant, alongside increased funding for national parks. CITES entered into force in 1975, intended to “curb international trade in a few highly visible and highly endangered species,” following a vision of a “shared human heritage” (Thompson, 2004: 58). The prominence of elephants within CITES is immediately visible: The convention’s logo is itself a stylized elephant. The treaty targets international traffic in animals and animal products, and is restricted to trade, therefore not covering on-the-ground conservation policy. Western states, NGOs, and experts dominated CITES, and “African governments and peoples [were] deprived of much agency over the formal, internationalised system of wildlife management and the utilisation of wildlife as a national resource” (Somerville, 2016: 181–182, 199).

The key mechanisms of CITES are its three appendices. Appendix I lists wildlife threatened with extinction if trade continues and effectively acts as a “blacklist” (Reeve, 2006: 881). Appendix II bans trade unless it demonstrably does not endanger the species’ survival, requiring permits and close regulation. Appendix III regulates the trade in domestic species as requested by particular states (Gehring and Ruffing, 2008: 129).
The main fault lines of international conservationist discourse, both scientific and public, concerned elephant population estimates (and thus the severity of the problem; Thompson, 2004: 58–59), the causes of the decline (poaching or general habitat degradation), and the ethics of culling (Somerville, 2016: 182–196). While opinions differed, all sides acknowledged the precipitous decline in elephant populations, leading to the question of how it was to be countered. In 1987, a small group of NGOs and researchers spearheaded a media campaign centering around an appeal to the public against the personal purchase of ivory. Despite the fact that neither African and Western governments nor large conservation organizations had previously advocated a ban on ivory trading, Western public perception rapidly changed (Bonner, 1993: 114). A general ban was swiftly enacted by member states through relisting the African elephant in Appendix I of CITES at the 1989 CoP (Douglas-Hamilton and Douglas-Hamilton, 1992: 302; Somerville, 2016: 193–195). However, the decision included the possibility of future downlisting if stocks proved to be sustainable and controls were in place.

Zimbabwe, Zambia, Botswana, Malawi, and South Africa immediately entered reservations to the universal Appendix I listing, Namibia joined in 1990. Norm challengers kept up the pressure, at times employing creative contestation strategies: At the 1992 CoP, to counter the perceived Western meddling, Zimbabwe tabled a proposal to list the North Sea herring in Appendix I (later withdrawn; Walker, 2009: 189).

At the 1997 CITES CoP, Zimbabwe, Botswana, and Namibia were successful in gaining a majority for downlisting their elephant populations to Appendix II. The move had several conditions, such as the withdrawal of reservations, a functioning management mechanism, and an improved international monitoring system. Ivory stocks were subsequently allowed to be sold to Japan in a tightly controlled, one-off fashion. The downlisting decision was supported by major conservation NGOs such as World Wildlife Fund (WWF) and expert organizations such as International Union for Conservation of Nature (IUCN) (Mofson, 2000: 114–115; Thompson, 2004: 62). A first sale of 50 tons of ivory resulted in US$5 million of funding for elephant conservation programs in 1999 (CITES, 2008).

The downlisting of local elephant populations to Appendix II has not stopped the contentious debates (see Gaffney and Evensen, 2019). Current research shows a renewed decline of Southern African elephant populations since 2016. Moreover, at the 2019 CITES CoP, Zambia proposed the downlisting of its populations, while Botswana, Namibia, and Zimbabwe submitted a proposal for the first round of one-off sales since 2008. Both proposals failed with about 75% of voting members voting against (Down to Earth, 2019). However, this article is primarily concerned with the debates surrounding the original ban on the international ivory trade (1989) and the subsequent downlisting of local elephant populations (1997/2000).

No norm change: the moratorium on whaling

Whaling, similarly to elephant hunting, is an activity with a long history, widespread among indigenous and coastal populations around the world. It was first pursued commercially by the Basques in the Early Middle Ages. The rapid industrialization of European and North American whaling, starting in the 19th century, led to major declines
in many whale stocks (Dorsey, 2016; Tønnessen and Johnsen, 1982). As early as the 1930s, the consequences of industrial whaling showed the necessity of international regulation. Agreements from the inter-war years were hardly effective, however. Accordingly, a new convention, the International Convention for the Regulation of Whaling (ICRW), was negotiated and signed in 1946. The ICRW aims to conserve and manage whale stocks for the “orderly development of the whaling industry” but also for “future generations” (preamble, ICRW). These measures were also ineffective in curbing whaling activities, and whale stocks continued to dwindle (on negotiations, see Dorsey, 2016). In 1982, the IWC decided to set all catch limits to zero for up to 5 years to ensure that endangered whale species could recover. At this time, the moratorium was justified as a measure to discuss and implement sustainable catch limits and more efficient monitoring. The moratorium—initially proposed as a temporary measure—entered into force in 1985/86 and has been in place ever since. At its core, the moratorium rules out commercial whaling activities of any kind by member states. It leaves two exemptions for whaling: “aboriginal subsistence whaling” based on IWC-determined quotas and lethal whaling for scientific purposes based on domestically issued permits (“special permit” whaling) remain legal.

This moratorium was highly successful in stopping commercial whaling activities in the 1980s. Several former whalers switched to anti-whaling positions or at least halted commercial whaling (such as Norway, Iceland, South Korea, and the Soviet Union). The ICRW regime allows for opt-out clauses. While Norway has never accepted the moratorium, Iceland—in a legally disputed move—left the IWC in the 1990s and rejoined in 2002 with an opt-out on the moratorium. Norway and Iceland resumed commercial whaling in 1994 and 2008, respectively. Japan for many years used the exemption of domestically issued permits for scientific whaling before withdrawing from the IWC completely and resuming commercial whaling in July 2019.

Disputes over the ban have intensified since the 1990s (Deitelhoff and Zimmermann, 2020). Pro-whaling states, such as Japan, Norway, and Iceland, supported by an increasing number of African and Caribbean states, argued for a sustainable, limited reopening. A coalition of anti-whaling states (including the United States, Australia, New Zealand, and most Latin American and European states) now openly advocated for an unlimited ban. In the polarized atmosphere of the IWC, several unsuccessful attempts for compromise were made (e.g. the so-called “Irish proposal” in the 1990s, the Chair’s proposal in early 2000s, and the “Future of the IWC” process from 2008 to 2010). Up until today, the commercial whaling ban remains in place.

The similarities of the ivory trade and whaling cases have been noted by the principal actors in both cases. For example, the reopening of ivory trade was presented as a precedent for the potential resumption of commercial whaling by pro-whaling states. Moreover, Norway, Japan, and the Southern African states vocally supported each other’s causes in CITES and IWC meetings (Couzens, 2013) and launched an unsuccessful “forum shifting” attempt to reopen the trade in whale products via CITES. Nonetheless, while we observe a limited change of the norm’s scope and content in the case of the ivory trade ban, this is not the case for the commercial whaling moratorium. While preservation (i.e. non-usage) remained the dominant underlying principle on whaling, we observe a shift in the direction of conservation (i.e. sustainable use) for the ivory trade.
Testing factors for norm change: ivory trading and whaling

This section compares the two cases along the theoretical explanations presented above. More widespread assumptions regarding norm change do not seem to hold: The relative power and strategies of (1) norm advocates and (2) norm challengers, as well as (3) the degree of legalization do not seem to explain the differences in outcome. However, the cases differ regarding the other two proposed characteristics: (4) persuasive claims of affectedness by local populations and their governments, and (5) the breadth of issues in the institutional context, which jointly, we argue, account for the difference in outcomes.

Norm advocates

Pro-ban coalitions were quite similar in both cases: US environmental legislation on species protection was a major factor (Epstein, 2006), and environmentalist and animal rights NGOs have for decades been influential in shaping Western foreign policy, public perception, and media coverage. While the strong influence of the 1980s and 1990s might have decreased somewhat, NGOs remain highly engaged.

The 1989 Appendix I listing of the African elephant was crucially driven by Western animal rights and conservation NGOs. The African Wildlife Foundation (AWF) was quickly won over after a press conference on the proposed ban garnered broad media attention, donations, and a doubling of membership within 1 year. The WWF took more convincing, but its American national chapter eventually buckled under public pressure and the fear of losing its profile. That same month, the Bush White House banned all ivory imports to the United States, as did the Thatcher government in the United Kingdom and a host of other Anglophone and European countries (Mofson, 2000: 108). Moreover, before the 1989 Appendix I listing, US domestic legislation placed ivory import bans on elephant range and ivory carving states seen to be ineffectively combatting poaching and poorly managing elephant stocks, while rewarding compliant states with conservation funding (US FWS, 1988).

Slogans such as “Dressed to Kill” or “Accessories to Murder” (Bonner, 1993: 117–118; Somerville, 2016: 199) were deployed to rouse public distaste for the so-called “African Chainsaw Massacre” and the “Elephant Holocaust” (Bonner, 1993: 119; Thompson, 2004: 60). As Walker describes, “[t]he sobering policies of sustainable use that both the WWF and AWF had long backed (. . .) seemed to fly in the face of the sentiments that were being stirred up.” Therefore, more nuanced strategies were abandoned and previous support for them was kept under wraps (Walker, 2009: 178–179).

Today, the group of norm advocates primarily argues that the downlisting of elephant populations in some countries is not advisable, as it is difficult to distinguish between legally and illegally traded ivory. Moreover, elephants are migratory and state-specific downlisting may be counterproductive. Elephant populations remain highly threatened in most regions of Africa (CITES Secretariat, 2020; IUCN, 2017) and opening the market might increase the incentives for poaching. Norm advocates are also highly skeptical that the revenue from ivory trade would benefit local populations, while only increasing problems of corruption and income inequality. Some also argue that elephants should not be treated as a resource to be exploited at all, even if this were to be done in a sustainable manner (Wilson-Spath, 2019).
Similarly, in the whaling case, a transnational movement of environmental and animal rights groups, among them British and US animal welfare organizations such as the Universities Federation for Animal Welfare (UFAW), and later the WWF and Greenpeace, took up the issue of whaling in the 1970s. These groups aimed at establishing wildlife preservation and non-use (as opposed to conservation and sustainable use) as the guiding norm of the IWC. Their campaigns to “save the whales,” which were based on the scientific uncertainty around whale stocks, the dangerous influence of commercial interests in the IWC, but also on their intelligence and the cruelty of whale hunting, achieved worldwide success (Epstein, 2008), as “televised footage of activists in rubber boats confronting harpoon-wielding whalers captured the public imagination.”

Their activities led to a domestic policy change of the United States from a whaling nation to a supporter of the whaling ban in the early 1970s. Other whalers, such as Great Britain, Australia, and New Zealand, followed. As whaling was no longer of economic interest to most economies—due to dwindling stocks and technological advances which made whale oil less relevant—the ban was a rather easy issue to support politically. Later on, several South American countries also became strong ban advocates.

Once the moratorium was established, the NGO coalition used international shaming and consumer boycotts to pressure reluctant states into compliance with the ban (including against the use of loopholes such as scientific whaling). Direct action was taken by Greenpeace and Sea Shepherd, including the pursuit of whaling ships and protest activities (Bailey, 2008: 310–312; Sakaguchi, 2013). More recently, television series such as “Whale Wars,” depicting Sea Shepherd’s action against Japanese whalers, have shaped Western opinions on whaling.

As for states, the United States used direct threats of sanctions, among others against Japan, Iceland, and Norway, to enforce the regime in the 1980s (Catalinac and Chan, 2005: 202–204; Sakaguchi, 2013). Some argue, however, that the United States has mostly stuck to threats, while hardly following through due to the issue’s low political priority (see Catalinac and Chan, 2005: 150; Couzens, 2013: 45–47). The group of anti-whaling advocates argues that it is difficult to estimate whale stocks in the first place, making whaling a major risk for the preservation of many whale species. Some argue that whales should not be killed at all (Greenpeace, 2020; IFAW, 2020) or that, if at all, very high standards of monitoring and sanctioning should be in place to ensure compliance (WWF, 2020).

Overall, transnational advocacy networks framed the issues and pushed for the creation of bans in both cases. These networks, which included numerous North American and European governments, also shamed and pressured states into compliance with the bans. As the pro-ban state coalitions and the involved NGOs and their tactics were similar and these coalitions were rather powerful, we would expect similar outcomes—most likely no change—for both cases.

**Norm challengers**

However, we should expect norm change to occur if the group of norm challengers is particularly powerful in relation to the advocates. Accordingly, a change should to be more likely in the case of the commercial whaling ban, which shows relatively powerful
challengers, than in the case of ivory trading, which shows less powerful challengers. However, and despite quite similar contestation strategies, we observe the opposite.

In the case of the ivory trade ban, the most outspoken opposition to the universal ban came from Southern African countries, among them Botswana, Malawi, Zambia, South Africa, and Zimbabwe, and later Namibia (Mofson, 2000: 109), all either developing countries or countries with considerable portions of their populations living in poverty. While ivory-importing countries such as China and Japan submitted reservations (later withdrawn by China), they were not the main protagonists of the dispute.

The Southern African states argued that, while other African elephant stocks might be in danger, their elephant populations were actually growing (Mofson, 2000: 110), offering that they needed income from the ivory trade to finance domestic conservation. Moreover, local populations needed to see that they actually benefited from elephant conservation—as growing herds regularly lead to human–elephant conflict and damaged local farmers’ livelihoods (see also Hoare, 2012; Thompson, 2004: 59). Therefore, the ban put poor local populations at a disadvantage, challengers argued.

Moreover, the challengers argued that CITES had imperialist features, with Western states and NGOs dictating rules for elephant range states. Animal rights groups involved in bringing about the Appendix I listing—such as International Foundation for Animal Welfare (IFAW) and the Environmental Investigation Agency (EIA)—ultimately saw their heavy-handed advocacy tactics backfire, being accused of holding colonialist views. This helped create support among other African states for the demands of the Southern African norm challengers (Thompson, 2004: 60–65).

While not great powers, the major pro-whaling states in the IWC are industrialized, hold considerable economic power, are well known for their law-abiding politics in other areas, and are commonly acclaimed for their domestic “green politics” (Norway in particular, see Teigen, 2018). Since the 1990s, the norm challengers in the IWC have become more outspoken and more numerous, with many African and Caribbean states joining the contestation, in part as a reaction to the norm advocates’ sanctioning and shaming strategies.

Pro-whaling states argue for the resumption of commercial whaling under the sustainable use principle, submitting that certain stocks of some whale species (e.g. minke whales) have recovered or are less endangered than assumed. Setting sustainable commercial whaling quotas is therefore possible, so the argument goes. For the pro-whaling side, indigenous whaling, which remains allowed, and “traditional” coastal whaling of states such as Japan, Iceland, and Norway have many commonalities (e.g. Kalland, 1998), and a Western critique of whale cuisine and a whaling culture has racist overtones (see also Epstein, 2012; Kalland, 1993). They argue that US and UK “green” policies on whaling are hypocritical, given these states’ otherwise rather low priority of animal rights and environmental protection (Epstein, 2006: 49). African and Caribbean IWC members as well as pro-whaling NGOs argue that the use of whale resources would help food security and reject a “Western universalism” and colonial attitudes regarding animal rights more generally (e.g. IWC, 2012: 60).

One could argue that norm challengers in the case of whaling had less incentives to push for normative change, as the opt-outs and exemptions provided leeway for whaling activities in the first place. However, the pro-whaling states proactively fought for
change. At the same time, similar opportunities to opt out of decisions existed in the case of ivory trade and CITES (see Gehring and Ruffing, 2008) and have not been actively used by the Southern African states.

In sum, contestation strategies for both bans are surprisingly similar. Both combined arguments for sustainable use (healthy species populations, local need) with a criticism of colonial and racist overtones in the campaigns of norm advocates. Both groups of states intensified their positions in response to NGO campaigns by animal rights groups. The relative economic and coercive power of norm challengers was higher in the case of whaling than in the case of ivory trading. However, norm modification and change only occurred in the latter case.

**Degree of legalization**

Moreover, we would expect that the degree of legalization matters—assuming that soft regulations are easier to adapt than hard law is. However, the international regulation of the two issues is similar. The norm against commercial whaling rests within the IWC, the international organization responsible for whaling issues. Signed in 1946, the underlying ICRW explicitly prioritizes sustainable use for the benefit of the whaling industry. The member states have not changed this underlying convention but have set the ICRW schedule (which limits catches) to zero. The moratorium on commercial whaling can therefore not be described as particularly “hard,” but rather as “soft” law (Abbott and Snidal, 2000). Moreover, there are no elaborate monitoring or institutionalized enforcement mechanisms.

The situation is similar for the ban on ivory trading and the African elephant’s Appendix I listing. Species’ Appendix I and II listings are the decision of the states parties to CITES, not hard law immediately contained in the convention itself. Enforcement mechanisms are also not particularly strong for CITES, though monitoring is well established. The similar lack of legal “teeth” should once again lead us to expect similar outcomes for the commercial whaling and ivory trade bans.9

**Demonstrating legitimacy by emphasizing local affectedness**

We argue that the two cases differ, however, in the extent to which norm challengers could successfully make the case for their own local affectedness, entailing indirect discursive power and legitimacy rather than direct coercive power. The primary norm challengers in both cases—government delegations in international negotiations—pursued legitimacy for their claims through a discourse of affectedness. Ultimately, the Southern African governments created more resonance by arguing for their local populations’ affectedness by the ivory trade ban than the pro-whaling states did.10

The terrestrial nature of elephants places them on sovereign territory, giving states and local populations a convincing claim to being involved in policy-making. The Southern African states strongly argued for the need to ease the negative effects of the ban on their local populations and thereby support poverty reduction and development. The crucial arguments were developmental, advocating for the indigenization of “biodiversity conservation and its associated tourist economies” and avoiding to “protect
universal species at the expense of local people” (Thompson, 2004: 56). In the 1980s and early 1990s, “[s]omehow the idea that national sovereignty gives Africans the right to be in charge of their own wildlife [...] got lost in all the grand talk of saving the continent’s wildlife heritage (especially elephants) for future generations” (Walker, 2009: 188). However, by the mid-1990s, “there was a growing appreciation that management techniques for elephant populations needed to involve some element of sustainable use” (Somerville, 2016: 209). The profits of the one-off ivory sales approved alongside the 1997 downlisting were to be directed to conservation and community management programs (CITES, 2008; Thompson, 2004: 62). According to Thompson (2004), this campaign’s success

reflected intense efforts by African conservationists and other stakeholders not just to intensify, but also to indigenize biodiversity conservation and its associated tourist economies in line with African regional and local perceptions about development, land use, wildlife, and local people. (p. 56)

Local populations would benefit from ivory profits, the argument went, avoiding human–elephant conflict, supporting conservation programs, increasing tourism income, and making the fight against poaching more successful. Today, these arguments remain prominent through community-based natural resource management approaches (Abensperg-Traun et al., 2011). In sum, stressing affectedness and framing the complete ban as an impediment to development was a more successful argument than those of cultural heritage or colonialism.

As aquatic mammals, whales dwell in the oceans—often in international waters—with little contact to humans. Economically advanced countries such as Norway, Iceland, and Japan were hard-pressed to make convincing arguments that their citizens depended upon whaling activities. Still, in the 1990s and 2000s, efforts were made to organize “affected” voices and to channel them into the IWC. For example, Japanese fishery organizations started to participate not only as NGO observers but also as members of the Japanese delegations. Attempts at stressing the similarities of indigenous and other whalers were made by organizing a joint World Council of Whalers.

Cultural, social, and economic arguments were offered regularly to defend the traditions of coastal whaling in Japan and Norway. Culturally, the countries pointed out similarities between themselves and indigenous whaling operations which remained legal under the IWC. While these traditions were acknowledged (IWC, 1992), they never resonated enough to bring about a limited reopening. Japan and Norway attempted to demonstrate that some whale species competed with humans for scarce fish resources. Minke whales in particular were depicted as “rats of the sea,” “taking fish from fishermen” and from endangered whale species (comments made by Norway’s fisheries and foreign ministers; see MacKenzie, 1993). Economically, Norway, Iceland, and Japan could not convince other IWC members that their local populations were in fact negatively affected by the commercial whaling ban—beyond the immediate economic effects on their small whaling industries—and their arguments of “affectedness” were regularly questioned.

In contrast, arguments of affectedness achieved a limited exemption from the moratorium for indigenous groups from the 1980s onwards. In some cases, “aboriginal subsistence
“whaling” was approved by the IWC to meet the socio-economic and cultural needs of indigenous populations, and anti-whalers have generally not questioned this exemption (Bailey, 2008: 302–303).11 Southern African countries’ claims, linked to a discourse of development, gained higher legitimacy internationally. Pro-whaling states attempted a similar strategy of affectedness, but were more hard-pressed to demonstrate any large-scale affectedness of their broader populations, also considering the relative economic strength of most whaling countries.

**Breadth of issues in the international institutional context**

A second major difference between the two cases lies in the range of issues covered by the IWC and CITES. This shapes concrete decision-making processes in the international organizations, although formal decision-making rules are quite similar.12 We argue that, due to its broader mandate, CITES allows for greater compromise, issue linkage, and shifting coalitions than the narrower IWC does. While the IWC—an old organization by IO standards (1946)—exclusively deals with the issue of whaling, CITES (1973/1975) is a far broader treaty covering conservation by regulating the international trade in endangered species.

The IWC remains a highly politicized one-issue body, making IWC deliberations a zero-sum game: Coalitions are clearly cut into the anti- and pro-whaling blocs. Side payments, issue linkage (Haas, 1980), and other package deals based on multiple issues cannot be used to create compromise, as whales are “the only game in town.” Anti-whaling states therefore have no incentive to consider sustainable use arguments, and pro-whaling states do not consider strict preservation reasoning in this institutional setting. Accordingly, all attempts at compromise solutions in the 1990s and 2000s failed.

Meanwhile, decisions on numerous species are up for debate at CITES CoPs. While elephants and other charismatic megafauna are routinely at the top of the agenda (Challender et al., 2019), deliberations cover many different species’ listings. This all-encompassing design, which is also reflected in the convention’s high membership, could imply that convention defection is less likely, as defectors risk becoming pariahs on the issue of species protection, and cannot voice their opinions on future decisions that might concern other flora and fauna relevant to themselves. Particular interest coalitions differ depending on species, making it more difficult to keep up a strict pro-preservation (i.e. non-use) argument for one species but not for another. The diversity of issues up for debate makes CITES members more likely to follow a sustainable use (conservation) paradigm if the necessary scientific backing exists (see also Gehring and Ruffing, 2008).

Coverage of CITES debates in the 1990s indeed shows that the broader scope of the convention and debates on numerous species allowed for some issue linkage. Given CITES’ broad mandate, states may find themselves on different ends of the conservation–preservation debate for different species of flora and fauna. Past CoPs have not only seen debates on elephants, but also on bluefin tuna, rhinoceroses, tropical timber, and most recently on giraffes and sharks, to name only a few examples (Collins, 2019). Therefore, weighing arguments on numerous species ultimately made an uncompromising preservation position on elephants less tenable for norm advocates.
Conclusion: local affectedness and institutional opportunities

In sum, the field of wildlife protection has compelling findings in store for IR norms research more generally. While we observe slight norm change in the African elephant’s partial downlisting at CITES in 1997/2000, the commercial whaling moratorium has remained firmly in place at the IWC since 1986, although major factors affecting norm change discussed in IR norms research are similar for the two cases.

We argue that the difference in outcomes can be explained by taking into account the interplay of two factors which are less commonly discussed in research on norm change, which mostly deals with the hard and soft power of different actor groups and their strategies, as well as with the role of law and institutionalization: By tapping into a discourse on development, the Southern African countries were far more successful in framing their populations as “affected” by the international ban than the pro-whaling states were. Moreover, the one-issue institutional setting of the IWC has prevented compromise on norm change in the case of the commercial whaling ban, while the multi-issue forum of CITES facilitated a limited compromise on norm change in 1997/2000. In contrast, the relative power of the coalitions of norm advocates and norm challengers lead us to expect similar outcomes, as do the norms’ configurations as “soft” rather than “hard” law.

This two-part explanation stresses how broad discursive shifts (which have been more widely studied in poststructural research on norms and research on environmental governance) and concrete institutional design can block or open up paths for formal norm change. By this, we push constructivist research on international norm dynamics to take into account discursive meta-constellations (Epstein, 2008; Escobar, 1984; Hajer, 1997; Holzscheiter, 2010) which make claims of certain groups more or less legitimate in the international context and constitute agency in contestatory discourses. We link this to concrete decision-making processes, showing how norm dynamics are also shaped by institutional contexts.

In addition, we show that IR research on international norms, most commonly focused on the policy fields of human rights and security (Peez, forthcoming), can both refine and widen its insights by drawing theoretical insights and empirical cases from environmental governance. While this case study comparison does not give us immediate, widely generalizable insights, it suggests that the trend toward single-issue regimes in the field of environmental governance might impede accommodation and compromise.

Authors’ note

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Notes
1. This differs from a focus on norm replacement or weakening, see Deitelhoff and Zimmermann (2019); Rosert and Schirmbeck (2007).
2. See paragraph 10e of International Whaling Commission (IWC) schedule and International Convention for the Regulation of Whaling (ICRW), article VIII.
3. An unlimited ban failed to gain the three-quarters majority, see the debates in the IWC (1982: 21).
4. Aboriginal subsistence whaling was created as a new category to safeguard ongoing whaling activities for indigenous populations in 1982. In contrast, the permission of special permit whaling is part of the ICRW, see IWC schedule, paragraph 13.
5. International trade of whale meat is formally covered by Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). However, CITES has so far followed IWC policy on whaling issues. Japan, Iceland, and Norway have reservations on several CITES Appendix listings regarding whales.
6. In both cases, “norm advocates” are the actors in favor of complete prohibition, while “norm challengers” are those contesting complete bans.
7. BBC News (2000).
8. On the Norwegian debate, see Bailey (2009).
9. Another potential explanation, offered specifically for CITES, argues that listing procedures since 1994 have been strongly guided by reasoned scientific, as opposed to power-based strategic, arguing (Gehring and Ruffing, 2008). However, both CITES and the IWC have similarly well-equipped scientific committees.
10. We do not claim that in either case, populations were more affected or that particular locally affected groups were better organized or involved—only that the Southern African states’ strategies were ultimately more successful.
11. They do, however, question subsistence whaling practices they deem “commercialized,” inauthentic, or not indigenous, such as whale meat being sold in supermarkets in Greenland or being used as animal feed in Chukotka, Russia. Chukotka whaling and whaling in Greenland were debated in the IWC in the 1990s and 2010s, respectively.
12. The IWC today has 88 members, CITES has 183. The IWC requires a three-quarters majority to change its Schedule, while CITES requires a two-thirds majority for changes to Appendices I and II.

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