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GOVERNANCE AND COLLECTIVE LEGITIMATION IN THE NEW WORLD ORDER*

by

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1. Introduction

It is particularly appropriate that the General Assembly of the Association of Attenders and Alumni of the Hague Academy of International Law chose to place the focus of the AAA’s seventieth anniversary conference on new challenges to international legal order. When the Academy was created it was a time of change and new challenges. Arthur Eyffinger writing on the history of the Academy noted the change from the first discussions regarding an Academy before World War I and the establishment of the Academy after that war:

“It was a different world altogether that witnessed the first peace conference which took place after the onslaught. The stage was not The Hague, but Paris; Versailles, Saint-Germain, Trianon and Neuilly … and among the parties were found no Hohenzollerns, no Habsburgers, no Ottoman emperor. A new era had dawned in which Socialists and Bolsheviks had replaced the Tsars and Kaisers. As a matter of fact, the way back had been cut off rigorously — but no one even thought of glimpsing backwards. … Within months new states had been formed on the ruins of others, and a new international order was in the making.”1

The Academy addressed the new issues which followed the end of World War I, and, not long after, the issues which followed the conclusion of World War II. A new era follows the end of the Cold War and again the Academy and the AAA are confronted with identifying and addressing the challenges facing this new world. My address today is offered as a partial step in this effort, an effort that will occupy much of our attention over the coming decade.

I address today the phenomenon of collective legitimation. For the last year and a half I have sought to understand more fully the questions occasionally raised regarding the legitimacy of the Security Council’s recent use of its collective authority.2 I found my research and conversations with colleagues on


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the topic continuously returning to basic questions regarding what it means to speak of an organization’s use of its authority as illegitimate. I also found this inquiry raising basic issues applicable to many international organizations and fundamental to understanding the possible roles of law in world order. “New World Order”, as Professor Abi-Saab made clear in his address today, is an imprecise and elusive phrase. His address explicates the dimensions of this possibly new order. My remarks speak to only one of the three categories he identified, institutions. Specifically, I will offer preliminary observations concerning the process of collective legitimation which takes place in international organizations. In conducting my research on the Security Council, I was lead to consider numerous organizations and incidents of collective legitimation. These range from the League’s legitimation of sanctions against Italy for its aggression against Ethiopia to the quite recent UN actions to legitimate President Aristide’s claim to head the Haitian Government despite his loss of effective control. I will refer to several of these incidents in my discussion of legitimation. For the most part, I can only touch on the details of these incidents during this brief presentation. Towards the end of the presentation, however, a more detailed discussion will be provided of the International Whaling Commission’s capacity for collective legitimation and the implications of that use for the IWC.

2. The process of collective legitimation

I use the phrase “collective legitimation” to describe the capacity of an international organization to take decisions that influence the collective image of (1) the legitimacy of a government, (2) the actions of a government or (3) the ideas of a group. The capacity for collective legitimation is directly related to the perceived legitimacy of the organization involved. “Legitimacy” in turn is referred to here in political and social terms and is best understood as the belief of those governed in the organization. The perception of the “legitimacy” of a process or organization is a difficult quality to describe because the perception is a subjective conclusion, perhaps based on often unarticulated notions about what is fair and just or perhaps more consciously based on a utilitarian assessment of what the organization means for oneself. To the degree that the efforts of an organization tend to benefit all its members, then there would appear to be a

3. An excellent article on the political function of collective legitimation, written almost thirty years ago and deserving of more attention, is Inis Claude, Jr., Collective Legitimization as a Political Function of the United Nations, 20 International Organization 1966, p. 367.

4. In an approach focusing on the social phenomenon of legitimation, “[t]he legitimacy of an order of domination is measured against the belief in its legitimacy on the part of those subject to the domination.” For Ernst Haas in his 1990 book, When Knowledge is Power, legitimacy similarly, but more perhaps calculatingly, “exists when the membership values the organization and generally implements collective decisions because they are seen to serve the member’s values.”
greater chance of widespread recognition of the organization as legitimate. Moreover, the more it is viewed as legitimate, then the greater would appear its capacity for collective legitimation.

The capacity for collective legitimation is used in a range of ways and situations. First, an organization may seek to legitimate or delegitimize a state or government. The UN General Assembly, for example, considers whether a seat should be denied Yugoslavia. The United Nations and the Organization of American States continues to regard President Aristide as the legitimate head of the Government of Haiti despite his loss of effective control. The United Nations and OAS monitor elections in Nicaragua thereby providing legitimation of their outcome. As important as the effort to legitimate or delegitimize, is the decision by an organization to simply acquiesce. Thus the United Nations and OAS have acquiesced, for example, for the most part in the unconstitutional change in government in Peru.

Second, an organization may seek to legitimate or delegitimize the actions of a government. For example, the Security Council sought to delegitimize Iraq’s invasion of Kuwait declaring any claim to territory “null and void”, sought to legitimate the response to that invasion by authorizing states to act in concert with Kuwait, and sought to delegitimize Israel’s expulsion of 419 Palestinians. A recent example of acquiescence might be the relative silence of the Council regarding the US missile attack on the Iraqi state security agency building in Baghdad in response to an alleged Iraqi-sponsored assassination attempt on former President Bush while he visited Kuwait.

Third, an organization may seek to legitimate or delegitimize ideas. For example, the General Assembly through its resolutions simultaneously sought to delegitimize the idea of colonialism and legitimate the “principle” of self determination. Inis Claude in 1966, noting this capacity and range of action, offered two propositions: (1) “the function of legitimization in the international realm has tended in recent years to be increasingly conferred upon international political institutions”; and that (2) “the exercise of this function is, and will continue to be, a highly significant part of the political role of the United Nations”. These propositions seem even stronger today. Indeed, Claude’s idea that international organizations serve as the dominant agent of legitimation can be seen as a defining characteristic of the rhetoric of the New World Order.

But why should Claude’s propositions be stronger today, why is such strength seemingly an inherent part of the order which follows the end of the Cold War? In part, the answer would seem to be that the capacity for legitimation is greater at the end of the Cold War because the end of that conflict has meant an end to the divisions in community implicit and explicit in that war thereby enabling organizations to act or, more modestly, because the end of that war leaves the United States and allies of a similar view with a dominant position in many

organizations with the capability to invoke, as they see appropriate, the collective legitimation capacity of such organizations.

It is a time of change and thus a time when much appears at stake. There are simultaneously trends toward integration and co-operation and toward dissolution and violence. As international community gropes toward complex arrangements of local autonomy bridged by regional and global governance so as to promote economic efficiency, human dignity and sustainable development, the community asks much of the still embryonic state of international organization. The powers of international organization, and hence their capacity to provide bridging functional governance, has been assiduously limited by states. In this climate and state of affairs, the capacity for collective legitimation may be one of the few "powers" that possibly can aid the transitions necessary from sovereignty to governance. Therefore, if the international community is likely to increasingly turn to international organizations and the process of collective legitimation as a minimalist form of governance, then it is critical that an account of this process be given. It is critical because in a world with few tools to promote transnational values, collective legitimation — resting as it does upon the perceived legitimacy of the organization — is a fragile capacity, and that capacity may be used or abused, strengthened or destroyed.

3. Seven propositions

For Inis Claude, "the crucial question is not what principle is acknowledged but who is accepted as the authoritative interpreter of the principle or, to put it in institutional terms, how the process of legitimization works". This view correctly emphasizes that a complete account of collective legitimation would require an examination of the process contextually, that is, an examination of the processes of each particular organization. In this brief presentation, I can offer only some general hypotheses to be considered as we work toward a general account of the process of collective legitimation.

First, legitimation potentially augments the capabilities of an organization

When an international organization is created, its powers are carefully delineated by the contracting states. The capacity for collective legitimation is difficult to contain, however, and for this reason that capacity may increase the formal range of powers possessed by the organization.

For example, in the literature concerning economic sanctions it is almost always noted that the sanctions imposed by the League of Nations against Italy

in response to its aggression against Ethiopia were a failure. Emphasized in literature regarding the League, as the leading example of international organization at the time, is the fact that imposition of sanctions by the League required unanimity and that Italy and Austria voted against the imposition of sanctions. In other words, sanctions, strictly speaking, were not imposed against Italy by the League. Rather the League authorized and then facilitated and co-ordinated the national imposition of sanctions by various member states. The authorization and co-ordination effort in essence legitimated the individual actions of member states, and collective legitimation was a means of circumventing the unanimity rule. Similarly, in the case of the UN General Assembly, an analogous co-ordinating function was provided for national sanctions against South Africa over its apartheid policy, that co-ordination providing a degree of legitimation and that legitimation augmenting the limited powers of the Assembly.

Legitimation also provided a means of augmenting the capabilities of the United Nations during the Gulf War. To explain, we need distinguish between how legislation and legitimation operated in that incident. The Security Council legislated in that it employed its authority in the Charter to place duties on all members of the community regarding their responses to the invasion. For example, Resolution 661 imposing economic sanctions on Iraq placed numerous duties on all states in their dealings with Iraq, duties that were expanded upon in Resolution 670. This use of formal powers at the time was praised as the way the United Nations was intended to work. The legitimation which followed in contrast was controversial. Legitimation did not order individual action, rather it authorized individual action. In other words, legitimation did not say that a state had a duty to do something but rather that the choice to respond in certain specified ways would be regarded as legitimate. For example, in Resolution 665 the Council stated that it:

"Calls upon those member states co-operating with the Government of Kuwait which are deploying maritime forces to the area to use such measures commensurate the specific circumstances as may be necessary under the authority of the Security Council to halt all inward and outward maritime shipping in order to inspect and verify their cargoes and destinations and to ensure strict implementation of the provisions related to such shipping laid down in its Resolution 661 (1990)."

The concern over such authorizations can be seen in the statement of Mr. Penalosa, the representative of Colombia:

"We are under no illusion that when the Council comes to vote on this draft resolution it will be establishing a naval blockade, even though it may not say so, and that — though the Council may not say so either — it is acting pursuant to Article 42 of the Charter. That neither worries nor frightens us, but we wish to be candid: We feel concern about other points of this draft resolution; we share some of the anxieties expressed by the Permanent Representatives of Yemen and Cuba over the fact that in this draft
resolution the Security Council is delegating authority without specifying to whom. Nor do we know where that authority is to be exercised or who receives it. Indeed, whoever does receive it is not accountable to anyone.”

The explanation for the making of such problematic delegations is indicated in the statement of Mr. Razali from Malaysia:

“The link in the resolution between the countries referred to in paragraph 1 and the United Nations is not so satisfactorily spelt out as one would have wished. But one should not be starry-eyed and imagine that, given the present realities, there can be an international force under a blue flag policing and enforcing United Nations injunctions. Given the need of the hour to ensure the complete effectiveness of sanctions, the Security Council must, until that day comes, be content with only the beginning of United Nations control action, although Malaysia and others would have preferred a more assertive and prominent role for the United Nations. However, faced with a choice between protracted debates in search of perfect resolutions and the need for urgent redress to ensure that a country does not disappear from existence before our eyes, Malaysia has had to apply political judgement and support the resolution. Malaysia is determined that our commitment on effective sanctions is matched by our commitment to ensure that the resolution’s implementation is kept within strict and limited perimeters. No license is given for actions beyond that provided for in paragraph 1 of the resolution.”

In other words, it was argued at the time that the Charter intended that UN forces under Article 42 accomplish the objectives sought in Resolution 665. But given the fact that UN forces had not been established under Article 42, legitimation provided the Security Council with a way to augment its formal capabilities. I am reminded of the letter of marque where centuries ago, before there were standing armies or navies, a king might, through such a letter, transform a private force into a force acting on behalf of the state. Over time, these letters fell out of use as centralized forces controlled by the state came into existence. Similarly, we see the United Nations, at least for the time being, needing to authorize the forces of member states to enforce objectives outlined in Security Council resolutions.

Legitimation in all these cases is potentially problematic because the legitimation by the League of sanctions by member states against Italy or the legitimation by the United Nations of the use of force by member states to reverse the Iraqi aggression shifts the locus of control to those acting. This circumstance led others to remark that the United Nations merely provided a fig leaf of legitimacy for those states which particularly sought to reverse the Iraqi aggression.

Second, legitimation can serve as a weak substitute for stronger action

Even if legitimation potentially augments the capabilities of an organization, it also may be used because the member states of the organization are not willing to use the formal, perhaps stronger, powers of the organization. In response to
the ouster of President Aristide of Haiti, the Organization of American States authorized its member states to impose economic sanctions against Haiti. On the one hand, for an organization long hobbled by a historical distrust by many of its members of the motives of the United States, the authorization of sanctions could be viewed as a significant step for the organization. On the other hand, even though I and others prefer the interpretation just given, the authorization, rather than the ordering, of sanctions by member states could be seen as a lesser step evidencing some hesitancy or unwillingness to address the situation.

*Third, in considering legitimation, one must consider carefully who is using whom*

Detailed examination of a given process of legitimation often will reveal that the act of “collective” legitimation in fact may be the product of only a non-representative portion of the organization’s membership. For example, developing states can dominate the voting process of the General Assembly of the United Nations. A strategy of this group of states in the decade of the seventies was to adopt Assembly resolutions supportive of what was termed the New International Economic Order. These resolutions were not adopted merely by the Group of 77, but within the context of the General Assembly so as to draw upon the legitimacy of the United Nations. In this sense the domination of process in the General Assembly allowed that group to draw on the legitimacy of the United Nations. At least for some of those dominated in the Assembly decision-making process, the result weakened their perception of the legitimacy of the Assembly and, to a degree, the United Nations generally. Because the success of the “New International Economic Order” (NIEO) depended in large part on the acceptance of the initiative by the minority of states which had opposed it in the Assembly, this effort at legitimation played out as a debate as to the normative influence of General Assembly resolutions. Similarly, in the Gulf War, the argument was raised that the Security Council, dominated by the permanent members, drew upon the legitimacy of the organization in order to add support to their intended actions to reverse Iraq’s aggression.

These examples indicate that we need ask whether the use of the United Nations’s capacity for collective legitimation by a portion of the membership merely adds a fig leaf that enmeshes the actor to the degree that one hand is now occupied holding the leaf or whether something more substantial takes place and what the content of that more substantial element is.

7. See, e.g., Inis Claude, Jr., op. cit. supra n. 3, at p. 379 (with prescience).
Fourth, collective legitimation is often, but not necessarily, employed effectively by the relatively powerful

One might conclude from the Gulf War that collective legitimation is a tool of the powerful. Although often the case, I think the conclusion would be incorrect. First, the example of the Group of 77’s use of the General Assembly suggests that collective legitimation may be invoked by whoever dominates the organizational decision-making process involved. The ultimate failure of the NEIO, however, suggests that the organizational power to gain a decision of collective legitimation without the power outside the organization to make use of the decision of legitimation very often is not enough. Thus two manifestations of power are needed.

Nonetheless, the legitimating act itself sometimes carries a consequence that is not easily reversible and thus itself has a measure of power. Consider, for example, the irreversibility and hence power of the act of collective legitimation implicit in collective acts of recognition. A specific example would be the recognition by the United Nations and the OAS of President Aristide as the legitimate head of the Haitian Government, a recognition not easily withdrawn. It would seem that the power of President Aristide in negotiations regarding a settlement of the Haitian situation, not only with the Haitian military, but also — and perhaps particularly — with the US negotiators and the UN mediator, was greatly enhanced because of his possession of this position of legitimacy.

Fifth, the preceding observations suggest that we need to be realistic about the “power”, and hence wisdom, of collective legitimation

To draw on Willem Hamel’s reference (see supra this Yearbook) yesterday, we must bear in mind that much of legitimation is only a bark. There has been numerous collective acts of legitimation and delegitimation regarding events in Haiti, Bosnia and Angola, but these acts in and of themselves do not bring about change. Rather they may bring about change, perhaps in the incidents described have yielded some change, and perhaps may aid the community in bringing about change. More fundamentally, if acts of collective legitimation do not bring change, in part because there is not the will of states to use diplomacy, sanctions or force to make them real, then we must also ask whether acts of collective legitimation in such situations aid or prolong the crisis involved.

Sixth, deep divisions over the legitimacy of an organization's use of its collective authority not only undermine its ability to legitimate, but ultimately raise institutional consequences.

I have noted that the capacity for collective legitimation of an international organization may not so much represent the collective preference of the membership as the preference of a subgroup which is able to dominate the process by which decisions of collective legitimation are made. If this is the case we might also expect two other consequences: (1) the dominated group might come to question the legitimacy of the organization generally, and (2) the organization membership will be fractured in the value various segments of the membership ascribe to the organization. Indeed, the organization may simply divide up to reflect the communities within it. As Habermas writes, "the concept [of legitimacy] is used above all in situations in which the legitimacy of an order is disputed ...". 9

An instructive example in this regard is the International Whaling Commission (IWC). The IWC was formed in 1946 by the International Convention for the Regulation of Whaling (ICRW) to manage the international whaling industry. 10 The IWC is charged with "set[ting] whale harvests based on scientific considerations". 11 But in recent years, a debate has existed between pro-whaling and anti-whaling states about what the scientific data was saying about the viability of whale stocks. 12 But now, pro-whaling nations — particularly Japan, Norway, and Iceland — are charging that the IWC is ignoring scientific information altogether in setting its policies. The pro-whaling nations have accused the IWC of basing its decisions upon "political and emotional" factors, rather than upon scientific knowledge. 13 Similar sentiments have been expressed by non-whaling nations. 14


11. ICRW, op. cit. supra n. 10, Article V(2)(b).

12. This debate raged especially strong over the validity of lethal research conducted by Japan, Norway, and other countries under the "scientific research" exception of the ICRW. See, e.g., Makiko Shihohara, Scientists Clash Over Whaling, Christian Science Monitor, 27 February 1992, Habitat, at p. 10.


14. For example, Canada withdrew from the IWC after it voted to impose the moratorium, claiming that "The ban was inconsistent with measures that had just been adopted by the IWC that were designed to allow harvests of stocks at safe levels." Patricia Chisholm, Prince of the Tides, Maclean's, 14 June 1993, Wildlife, at p. 50. Although Canada had stopped commercial whaling in 1972, it has been claimed that Canada withdrew from the IWC both to avoid public disfavour for voting with whaling states and because they were worried that the IWC would eventually extend its reach to smaller cetaceans such as narwhals and beluga whales, which Canada currently harvests. Id.
The controversy can be said to begin with the IWC’s adoption of a moratorium on commercial whaling in 1982, a moratorium that Iceland, Japan and Norway, among others, opposed. The moratorium took effect in 1986, and has been extended by the IWC every year since, including this year. In essence, the confrontation I am about to recount stems from the fact the legitimacy of the IWC — and hence its capacity for collective legitimation — rests on its scientific expertise. As the scientific data increasingly support the position, however, that at least some small number of whales can be hunted, continuation of the moratorium is seen by the pro-whaling states and others to actually be a moral statement against the killing of any whale. Because the IWC does not have any particular claim to moral authority, the confrontation over continuation of the moratorium consequently has brought into question the legitimacy, and indeed the continued viability, of the IWC. The history of this recent confrontation is instructive.

In 1991, the IWC accepted the findings of its scientific committee that there are approximately 761,000 minke whales in Antarctic waters, 87,000 in the northeast Atlantic, and 25,000 in the north Pacific. With such a large population, scientific committee members stated that 2,000 minke whales could be harvested per year without endangering the population. Nonetheless, the IWC voted to maintain the blanket moratorium on commercial whaling, noting that formulas for determining quotas were still deficient. In addition, instead of accepting a Japanese/Icelandic formula for determining quotas that many scientists accepted as valid, the scientific committee in 1991 decided to spend a year considering an alternative formula proposal made by the non-whaling countries.

15. Chisholm, op. cit. supra n. 14, at p. 50.
20. Shinohara, op. cit. supra n. 12.
21. Id. Kazumi Sakuramoto, an assistant professor at the Tokyo Fisheries University and one of the developers of the Japanese formula said, “It’s rather ironic. Being scientists themselves … they were no longer able to win their argument merely by repeating that resource management cannot be done. So, they came up with their own version [of a management formula].” Id. (omission in original) (alteration added). Dr. Christopher Clark, who directs the Bioacoustics Research Program at Cornell University and is a member of the IWC scientific committee, stated that “It’s getting harder … to say it [resumption of whaling] is scientifically invalid.” Id. (alteration in original).
Whaling countries approached the 1992 meeting with guarded hope that the ban might be lifted in light of the scientific committee’s considerations. The IWC, on recommendation from the scientific committee, adopted a computerized formula for determining allowable catches of some whale species, but extended the ban once again, citing a need to approve necessary measures such as monitoring and inspection.

Following the 1992 meeting, Iceland officially withdrew from the IWC, as it had threatened to do a year earlier if the Commission refused to lift the ban in 1992. Iceland did not announce any plans to resume whaling, however. Japan berated the IWC for ignoring the findings of its own scientific committee, and also threatened to leave the Commission. Japan decided shortly thereafter to remain in the IWC and abide by the ban. Norway also threatened to leave the IWC, and decided later that it would not. Norway announced, however, that it would resume commercial whaling in 1993, regardless of what the Commission decided.

The IWC met in Kyoto, Japan, in May 1993. By this time, Iceland had still not announced any plans to begin whaling, but many expected it was poised to do so. Japan mounted an enormous educational campaign in an effort to have the ban rescinded, including protesters with whale-shaped balloons and a banquet featuring whale-meat cuisine for IWC delegates. Japanese officials charged that anti-whaling countries and environmental organizations had turned whaling into a religion. Referring to the IWC’s continued refusal to accept the scientific committee’s findings that the minke whale was populous enough to sus-

24. Id.
26. Id.
29. Id.
30. Pollack, op. cit. supra n. 23.
31. Bradsher, op. cit. supra n. 25.
32. Pollack, op. cit. supra n. 23.
tain resumed commercial whaling, Kazuo Shima, Japan's commissioner to the IWC and deputy director of Japan's fisheries agency, proclaimed, "We believe science and we believe scientists. We should not permit religious arguments in this field".36 Meanwhile, Foreign Ministry spokesperson Ingvard Havnen reiterated Norway's promise to resume whaling following the 1993 meeting37, and joined Japan in an effort to promote whaling as a cultural issue.38

The Commission, however, not only extended the general moratorium for an additional year, but also refused Japan's request for an "emergency" exception which would allow the taking of 50 minke whales per year in near-shore Japanese waters for the purpose of maintaining traditional cultural practices.39 Norway withdrew a similar proposal after the Japanese request was denied.40 Threatening once again that Japan would have to "re-evaluate its remaining inside the [IWC],"41 Kazuo Shima stated, "I can't help feeling anger and anguish that our request has again been defeated."42 Finally, at its 1993 meeting, the IWC expressed support for the concept of a whale sanctuary in Antarctic waters, though it left the details to be decided at its next meeting.43

The Japanese again pointed out that the IWC was ignoring the recommendations of its own scientific committee, and Ray Gambell, the head of the IWC, agreed, stating, "In all reasonableness, we would have to say that a commercial catch could be taken without endangering [minke] stocks."44

It is at this point where the perceived legitimacy of the organization is so low for a significant element of the membership, that the viability of the organization itself is called into question. Within hours of the end of the 1993 meeting, Norwegian Foreign Minister Johan Jorgen stated that the country would announce commercial whaling quotas and dates for the 1993 season within the week.45 Commenting on the fact that the IWC, which was founded to set standards for

36. Pollack, op. cit. supra n. 23.
37. Linda Kanamine, Japan, Norway Poised to Defy Ban on Whaling, USA Today, 10 May 1993, at p. 5A.
40. Pollack, op. cit. supra n. 36.
41. Id.
42. Rebuffed, op. cit. supra n. 39.
manageable whaling, had become a preservation organization, Bjorn Blokhus, a spokesperson for the Norwegian delegation analogized, “It’s not the club you joined. You joined to play cricket and it’s not cricket anymore, it’s chess.” 46 “The best outcome would be that IWC gets back to its roots and becomes again a responsible management organization, in accordance with its rules.” 47 Japanese commissioner Shima echoed Blokhus’ sentiment, “There must be some benefit for Japan to remain in the Commission. We still have a slight hope it will come back to its original purpose.” 48

Norway announced that it would take 296 minke whales during the 1993 season. 49 Of those, 136 were intended for scientific research, while 160 were to be taken commercially. 50 Norwegian Fisheries Minister Ian Olsen said that the numbers were “based on scientific evidence provided by the scientific committee of the International Whaling Commission” 51 According to Foreign Minister Johan Joergen Holst, “We have also this year chosen a quota somewhat below what the IWC would have set had it followed its own regulations. We do this because we wish to indicate that our goal is regular IWC quotas.” 52 Philip Hammond, the former chairman of the IWC scientific committee, also expressed support for Norway’s plan, stating that the country was within its legal rights. 53 Hammond expressed his belief that “If they have used the procedure [advocated by the scientific committee] it will then be safe, not just for a year or two but we believe for a hundred years.” 54

Because of its decision, Norway was threatened with economic boycotts, 55 blockage of its bid to join the European Community, 56 and boycotts of the 1994

47. IWC Annual Meeting Heightens Tensions Over Commercial Whaling, op. cit. supra n. 16 (quoting Bjorn Blokhus).
48. Id.
52. Norway Plans to Kill 296 Minke Whales This Year, op. cit. supra n. 50.
54. Id.
55. See, e.g., Whaling: Boycott Spurs Fears in Norway, Greenwire, 28 May 1993; EC News in the European Press on Tuesday, Reuter Eur. Community Rep., 22 June 1993 (“Ireland’s Green party has called for the Irish people to boycott products of the Norwegian-owned company Statoil in order to put pressure on Norway to stop whaling ...”).
Winter Olympics to be held in Lillehammer. Nonetheless, stating that it was "on solid ground with respect to the law," Norway took its first whale on 17 June. By 2 July 1993, Norwegian whalers had taken 100 of the 160 whales apportioned for commercial harvest.

With Norway having broken the IWC's commercial ban amidst worldwide threat, the question is what the future holds for pro-whaling nations and the IWC itself. Norway may be able to call its return to whaling a success, though it may be called a failure when the final tally is taken. Norwegian whalers encountered almost no resistance from environmental groups. Egon Klepsch, the President of the European Parliament, stated that the problem with Norwegian whaling had been exaggerated and was not expected to interfere with Norway's EC membership. However, the United States is considering imposing sanctions against Norway. Early estimates projected that Norway could lose over $40 million in exports and spend at least $1.6 million on public relations in 1993, though the allowed catch of 296 whales may only bring in $7.35 million. Norwegian officials have already received hundreds of letters proposing boycotts of the 1994 Olympics because of the whaling policy. However, Norway has not yet given any indication that it intends to end its practice of whaling.

Iceland recently announced that it will follow Norway's lead, and resume commercial whaling during the 1994 season. Iceland is watching closely to see if the United States will impose sanctions against Norway.

Most importantly, this fracture in the membership's support of the IWC has led to the creation of an alternative organization. In particular, Norway intends to devote the rest of 1993 to the strengthening of the North Atlantic Marine

58. Conservationists Demand Actions Against Norway for Whale Kill, Gannett News Service, 18 June 1993 (quoting Norwegian Minister of Affairs Per Kristian Pedersen).
61. Id.
63. Iceland to Follow Norway in Resuming Whaling Next Year, Japan Econ. Newswire, 2 July 1993. As of 2 July 1993, the United States has not yet imposed sanctions against Norway. Numerous American environmental organizations and members of Congress have demanded that the Clinton administration impose sanctions against Norway. See, e.g., Conservationists Demand Actions Against Norway for Whale Kill, op. cit. supra n. 58.
65. Id.
66. Iceland to Follow Norway in Resuming Whaling Next Year, op. cit. supra n. 63.
67. Id.
Mammal Control Organization (NAMMCO), which it formed to take over control of commercial whaling from the IWC. On 2 July 1993, NAMMCO announced that it would begin surveys of minke and other small whales in the North Atlantic in 1994 or 1995. The scientific committee of NAMMCO includes representatives from Norway, Iceland, Japan, Canada, and Russia.

Seventh and last, it is important to note that the process of enmeshment and power of legitimation reaches beyond our normal ideas of consent as the basis of international law.

Implicit in collective legitimation is the capacity to influence images of legitimacy despite the absence of the consent of those most affected by the legitimation decision. Again the recent turmoil in the IWC provides a vivid example. Under a consensual vision of international law, an answer for those disenchanted with the IWC would be that they should, as Norway and Iceland ultimately have done, withdraw from the organization and, if they believe it appropriate, set up a competing organization more suited to their needs. The curious part is the decision of Japan to stay in the IWC and to not resume whaling beyond that allowed under the scientific research provision of the ICRW. The reason Japan stays in the IWC is so that it might fight against the creation of a whale sanctuary. “We’ve got to think about ways of preventing the creation of the sanctuary”, said Farm Minister Masami Tanabu. In other words, although Japan, if no longer a member of the IWC, would not be bound by the establishment of an IWC sanctuary, they apparently believe that the establishment of such a sanctuary will further delegitimize the hunting of whales. Hence they must stay to oppose acts of collective legitimation whose impact do not require the consent of those targeted.

4. Conclusion

Collective legitimation is a subtle and occasionally significant aspect of international organization and governance. It may be misused and, unfortunately, it may be the organization and the international community that pays the price of such misuse. We will ask much of international organization over the coming decades, it is a challenge that will test their credibility greatly. It will be relatively easy

68. Id.
70. Id.
72. Id. “What we have to do now is try to rally support to our side within the IWC to oppose [the sanctuary].” Id. (alteration in original).
to employ collective legitimate when there is a strong consensus, but often that won’t be the case. Members will have different preferences as to what the organization should do. The issue thus will become whether we can construct institutions which we regard as legitimate despite different preferences and norms.