

Document submitted by the Government of Norway

## THE IWC IN THE 21<sup>ST</sup> CENTURY

*This paper briefly discusses the manner in which the International Whaling Commission functions in the light of modern management tenets and practices.*

*Considering how long it is since it was adopted, the International Convention for the Regulation of Whaling is a remarkable instrument. It is an early attempt to regulate the exploitation of a living resource on a global scale by a multinational body. It is science-based. It introduced the principle of maximum sustainable yield decades before the expression became standard English. It is an instrument well adapted to its purpose. The way it is being applied, however, leaves room for improvement.*

### ***The purpose of the Convention***

In discussing the future of the International Whaling Commission, it is necessary to keep its purpose clearly in mind. The Commission was established as the executive organ of the Convention, and it is therefore the Convention that constitutes the legal basis for the functioning of the IWC.

The objective of the Convention is to protect whale stocks from over-exploitation and to regulate them in a sustainable manner.<sup>1</sup> As further stated in the preamble, the purpose of regulation is to manage whale stocks so that they can be harvested without being endangered.<sup>2</sup>

The same purpose is reflected in the very title of the Convention: the International Convention for the Regulation of Whaling.

This is why the Convention established a system for the regulation of whaling. Under this, the Commission decides which species can be caught, where, when and how, and does so by amending the Schedule.<sup>3</sup> The Commission's decisions must be based on scientific knowledge of the stocks.

Contrary to its stated objectives, however, the IWC no longer manages and regulates whaling. Indeed, it is the professed aim of several States Parties to the Convention to bring all commercial whaling to an end, in other words, to counteract the very purpose of the convention they are parties to.

### ***Developments in ocean governance***

In the last ten years, there have been important developments in ocean governance. Traditionally, the use and management of the oceans and their resources were based on a sectoral and species-by-species approach, but a new paradigm for ocean management is now emerging. There is growing understanding of the need for integrated management and use of marine ecosystems, and states are introducing ecosystem-based approaches to the management of their oceans and the natural resources they offer.

The 2002 World Summit on Sustainable Development (WSSD) acted as an important driving force in this process. Its Joint Plan of Implementation encouraged "the application by 2010 of the ecosystem approach". Similar statements have repeatedly been made in a number of other forums, including the UN General Assembly in its annual oceans and fisheries resolutions.

Essential policy tools for this approach include management plans for different species and recovery plans for depleted species. The distinction between management plans and recovery plans is based on the understanding that different

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<sup>1</sup> 3rd preambular paragraph: "Considering that the history of whaling has seen over-fishing of one area after another and of one species of whale after another to such a degree that it is essential to protect all species of whales from further over-fishing;"

<sup>2</sup> 4th preambular paragraph: "Recognizing that the whale stocks are susceptible of natural increases if whaling is properly regulated, and that increases in the size of whale stocks will permit increases in the number of whales which may be captured without endangering these natural resources;"

<sup>3</sup> Article V 1 of the Convention: "The Commission may amend from time to time the provisions of the Schedule by adopting regulations with respect to the conservation and utilization of whale resources, fixing (a) protected and unprotected species; (b) open and closed seasons; (c) open and closed waters, including the designation of sanctuary areas; (d) size limits for each species; (e) time, methods, and intensity of whaling (including the maximum catch of whales to be taken in any one season); (f) types and specifications of gear and apparatus and appliances which may be used; (g) methods of measurement; and (h) catch returns and other statistical and biological records."

species have different management needs, according to their status and the state of the ecosystems to which they belong.

Such planning tools have been widely introduced in other fisheries, and the time is now ripe to introduce them in the management of whale stocks, in order to ensure a long-term perspective on their management and use.

### ***Strict enforcement***

The enforcement of management measures is based on principles laid down in the Law of the Sea Convention. Essentially, it is the responsibility of the flag state to ensure that its vessels comply with the regulations of any particular fishery on the high seas. In waters under the jurisdiction of a state, authority to enforce compliance lies with that state.

Over the last ten years, important advances have been made in enforcement, in particular in the application of satellite-based vessel monitoring systems (VMS) and the development of electronic surveillance.

Like all Norwegian fishing vessels, Norwegian whaling vessels are subject to continuous surveillance by VMS<sup>4</sup>. In addition, all hunting operations are monitored electronically.

### ***Scientific basis for management***

The Law of the Sea Convention – the global “constitution” for the seas – states that management of the oceans is to be based on the “best scientific evidence available” (Article 61.2). Science is the universal language of knowledge, and can be applied anywhere and at any time. It is of paramount importance to ensure that the management of marine ecosystems and the natural resources they contain is based on the best available scientific knowledge and advice.

The Scientific Committee of the International Whaling Commission has over the years by and large managed to maintain a high level of integrity in a difficult decision-making environment. Through international cooperation between highly qualified scientists, the Committee has made significant progress in comprehensive assessments of whale stocks, in providing advice on management of whale stocks, and on other scientific issues in this field.

The Scientific Committee is one of the main remaining assets of the Commission, and great care should be taken to maintain its integrity. It is the foundation on which we must build the future of the Commission.

The Scientific Committee should devote its resources primarily to those issues that are most relevant to the management of whale stocks in an ecosystem context. A topic such as the understanding of climate change and its impacts on marine ecosystems is certainly important, but is already being dealt with extensively in a number of international research programmes.

### ***Regulating other uses***

Whales have been used in various ways as natural resources. Historically, they were hunted for the oil produced from whale blubber. Today, the hunting of whales is for meat and other products for human consumption. Compared to modern farming, the hunt is environment-friendly: it uses no fertiliser, energy use is low, and it causes very little pollution.

Other uses of whales include whale watching, and such activities are not incompatible with whaling for food. In Norway, whale watchers and hunters occasionally operate within sight of each other.

### ***Ethics***

The practice of distinguishing between the two categories of “commercial” and “aboriginal subsistence” whaling is not embedded in the Convention. It confers a stamp of disapproval on “commercialism”, i.e. on the normal way in which human beings make a living by producing and selling goods and services.

The question is not whether a whaling operation is a “commercial” or an “aboriginal subsistence” operation. The crucial questions are firstly, whether the operation is conducted in accordance with the objectives of the 1946 International Convention for the Regulation of Whaling and whether it is sustainable, and secondly, whether the hunting and killing are performed according to ethical principles that are generally accepted for the treatment and killing of other large mammals, whether domestic (e.g. cow, pig, horse) or wild (e.g. red deer, moose, camel).

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<sup>4</sup> VMS tracking applies at present to all vessels over 24 meters. This threshold will be lowered to 21 meters as of 1st July 2008.

### *Norway and the IWC*

Norway is a founding member of the IWC. During the negotiations on the 1946 Convention, and in the later development of the Commission, Norway has always emphasised the importance of the provisions of the Convention requiring the Commission to manage the utilisation of whale resources in such a way as to ensure the orderly development of the industry.

There is a major issue of commitment to international cooperation at stake here – we keep to the intent and letter of the agreements that form the basis for international collaboration on ocean governance.

### *The moratorium*

A specific question is that of the moratorium. In 1982, the Commission adopted an amendment to the schedule setting a zero quota for the commercial catch of all whale stocks.<sup>5</sup>

The decision foresees a review of the zero quota, based on scientific advice. A comprehensive assessment was to be carried out by 1990 at the latest, and the Commission was to consider the establishment of other catch limits. This has not been done, although an impressive amount of scientific work has been performed in the meantime, providing ample advice on how to regulate at least some species and stocks.

### *The Commission's proceedings*

According to the Rules of Procedure of the IWC, “the Commission should seek to reach its decisions by consensus.”<sup>6</sup> In practice, this very rarely happens. The polarisation of the organisation is a serious problem, hindering dialogue about the execution of the tasks the Convention requires it to carry out and about its future. The increasing number of resolutions that do not regulate whaling, but make political statements, is a telltale symptom of an organisation heading in the wrong direction.

### *Conclusion*

From a legal perspective, there are very few examples of organisations that have deviated from the mandate given to them by a convention in the way the IWC has done. In order to have a serious and fruitful discussion of the future of the IWC, it is necessary to go back to basics and reach a common understanding of the point of departure.

The 1946 Convention, together with the Schedule, which is flexible and an integral part of the Convention, is still adequate as regards the management of whaling.

It is time for the Commission to accept that an ecosystem-based approach should be taken to the management of whales, and to consider whales as a natural part of ecosystems that can be utilised sustainably, just like all other parts of marine ecosystems.

The Commission's scientific apparatus is already in place. The Scientific Committee must be allowed to function as an unbiased body devoted to the study of whale stocks in an ecosystem perspective.

Work on control and enforcement should be based on the principles applied in other fisheries.

Work on an ethical platform should apply similar standards to whaling and to the hunting and treatment of other large mammals.

*There is no need to change the Convention. The proper point of departure is for the Parties to recognise the obligations they have undertaken by acceding to it.*

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<sup>5</sup> Paragraph 10(e) of the Schedule: “Notwithstanding the other provisions of paragraph 10, catch limits for the killing for commercial purposes of whales from all stocks for the 1986 coastal and the 1985/86 pelagic seasons and thereafter shall be zero. This provision will be kept under review, based upon the best scientific advice, and by 1990 at the latest the Commission will undertake a comprehensive assessment of the effects of this decision on whale stocks and consider modification of this provision and the establishment of other catch limits.”

<sup>6</sup> Rules of Procedure E – decision-making