Norwegian Trade in Edible Whale Products

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Commissioner for Norway to the IWC

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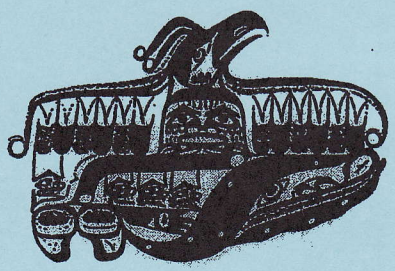

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WORLD COUNCIL OF WHALERS

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Whaling for the Future

Table of Contents

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One of the basic parameters of Norway's whaling policy is the requirement that the whaling industry must be conducted in accordance with the principle of *sustainable use* of renewable natural resources. Not only in a biological or ecological sense, for the whaling industry should furthermore be *economically sustainable,* i.e. viable and contributing to positive value creation. Hence *trade,* including international trade in whale products – similar to the products of other legitimate industries – should be allowed and encouraged.

At least *in principle*, that is. However, in reality – as opposed to in principle – there are certain unfortunate facts that we have had to take into account.

In the International Whaling Commission (IWC) there is a tendency to distinguish between *"commercial"* and so-called *"aboriginal subsistence"* whaling, with the former being condemned as an allegedly sinful activity, whereas the latter category is seen as somewhat more acceptable, with the point of distinction being that no commercialism, i.e. no *trade,* is supposed to be involved. It should be noted that such a distinction does *not* appear in the IWC's basic and constituent rules, viz. the 1946 International Convention for the Regulation of Whaling (ICRW). It is furthermore a distinction which is artificial as well as dangerous. Apparently it is the very concept of *"commercialism"* that is anathema to the proponents of such attitudes. We do not accept this. In our view, such a distinction between commercial and aboriginal subsistence whaling is preposterous and morally wrong. In both cases we deal with human beings legitimately making a living from utilizing natural resources. What counts, is whether we deal with *sustainable harvesting* of nature's surplus or *unsustainable exploitation* of these resources.

Thus, *trade* is a legitimate and indeed necessary component of the sustainable use of whale resources. So, what's the problem?

The problem is that international trade has been disrupted and virtually destroyed for political reasons, as a result of the destructive activities of well-organized and articulate interest-groups: the NGOs. I am talking about the so-called environmentalists or protectionists, animal welfare or "animal rights" fanatics, and the traditional enemies of trade, commerce, profits and free and open markets. I am talking about those people who want to force other people back into a pre-economic mode, to force them to eke out a living with the use of canoes and stone-age equipment, with a maximum of human suffering and discomfort and a minimum of efficiency, in other words – people who are systematically humiliating the human dignity of their fellow men.

Thus, the root cause of the problem is the unholy alliance between the anti-whaling majority of the IWC and the anti-trade forces dominating the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) – also known as the *"1973 Washington Convention"*. As the IWC in 1982 adopted its so-called moratorium on whaling for commercial purposes, the excessive eagerness of the CITES Parties to restrict any international trade in species that were assumed to need some kind of special protection led to the listing of all the "great whales", i.e. the commercially exploited baleen whales on CITES Appendix I, which entails a complete ban on international trade.

The listing of any species by CITES on its Appendix I is a dangerous one-way street. It is a path that takes us down a slippery slope, past the point of no return, literally speaking. It takes a 2/3 majority at a Conference of the Parties (COP) to have a species listed, and likewise a 2/3 majority to have it de-listed or down-listed, for example transferred to Appendix II, which allows for a strictly regulated international trade. Consequently, such de-listing or down-listing very rarely occurs.

When the minke whale was listed on Appendix I, Norway lodged an objection (in 1983). This meant that Norway is not bound by this listing, but is – in terms of CITES practices – obliged to treat the minke whale as if it was listed on Appendix II. Under this regime, Norway is free to conduct international trade in minke whale products with those CITES Parties that have made a corresponding objection (viz. Iceland, Japan and Peru), or with states that are non-Parties to the CITES Convention.

Such trade, or more specifically – Norwegian export of whale products - was discontinued subsequent to Norway's self-imposed temporary halt in its commercial whaling operations, which lasted from 1987 to 1993. For approximately one decade, up until July 2002, Norwegian export of whale products did not take place.

A commonly held belief was that Norway had a general *ban* on export of whale products. Legally speaking, that was not the case, although it could certainly seem to be so. What we *did* have, was a Government Regulation of 9 July 1993, which required an export licence in order to trade whale products overseas. The Regulation did *not* stipulate that applications for such export licences should necessarily be turned down, but that's the way this Regulation was implemented.

However, on 16 January 2001 the Norwegian Government announced that it would allow the export of minke whale products. This announcement must be understood on the background of three sets of factors, as follows:

1. At three consecutive Conferences of the Parties of CITES (COP-9, COP-10 and COP-11, in 1994, 1997 and 2000 respectively), Norway had tabled proposals for the downlisting of the minke whale from Appendix I to Appendix II. Pending a positive outcome of these endeavours, Norway was willing to exert a high degree of patience, and not avail itself of its right to export that allowed pursuant to its objection to the Appendix I listing. This position had to be reconsidered, however, in light of the unsuccessful and negative experience with trying to get CITES to downlist the minke

whale to Appendix II. What gave special cause for concern in this connection, was the knowledge that a majority in CITES recognized the fact that the minke whale did not meet CITES' own criteria for an Appendix I listing, but they still refused to go along with a downlisting on the grounds that the IWC had not yet lifted its moratorium, and that IWC decisions should take precedence over CITES' own competence in this matter. As it was evident that there was no prospect of the IWC lifting its moratorium in the near or medium-turn future, it was felt that Norway needed to re-assess its assumptions for continuing its self-imposed restrictions on whale product exports.

2. Second, the very legality of the above-mentioned Government Regulation of 9 July 1993 was challenged when a whaler and prospective exporter (Mr. Steinar Bastesen) sued the Government for turning down his application for an export licence, claiming that the Regulation did not have a legal basis in any enabling legislation.
3. Third, a motion had been introduced in the Norwegian Parliament *(The Storting)*, instructing the Government to discontinue the practice of refusing to grant export licences. The motion gained the strong support of all the political parties in the Storting, and would have put the Government in an awkward position unless it took some pre-emptive action.

Under these circumstances, the Government probably felt most comfortable with issuing the kind of announcement which led to a normalization of our export regime. However, export of Norwegian whale products was not resumed immediately.

In the Government's announcement of 16 January 2001 it was noted that Norwegian minke whale products would not be exported until the DNA-based register (which was being established in order to monitor trade and make it possible to distinguish trade in Norwegian minke whale products from trade in whale products from other sources) had been thoroughly tested and considered as operationally effective. Export licences would also be made subject to further specific conditions. Thus, export would only be permitted to countries which grant import licences and which are able to carry out a similar DNA testing of samples of the imported products.

A new Government Regulation on minke whales, to replace the old one of 9 July 1993, was adopted on 29 June 2001, effective as of 15 August 2001. The new Regulation incorporated the above-mentioned requirements, including the following operative paragraphs:

"An export licence issued by the Directorate for Nature management is required for each individual consignment. Such licence will be granted if the conditions specified in Section 3 of these regulations, as well as conditions ensuing from the Convention on International Trade in Endangered Species of Flora and Fauna (CITES), are satisfied.
Export is only permissible to recipient states not bound by the CITES convention to regard minke whales as a species listed in Appendix I of the convention.
Export licences will only be granted to recipient states that have a system for DNA-testing random samples of imported consignments."

Prospective importing countries were notified of the new Regulation, including the stipulation that the would-be importing country would be expected to formally confirm that it had, indeed, a system in place to conduct such DNA tests as required by the Regulation. When the Norwegian authorities on 20 June 2002 did receive such a confirmatory letter from Icelandic authorities, all the formal requirements were met for issuing export licences for the export of minke whale products to Iceland. At the beginning of July, the first consignment of Norwegian minke whale meat was shipped to Iceland. Another shipment of blubber as well as meat has subsequently taken place. Thus as far as our relations with Iceland are concerned, Norway's trade situation for whale products must now be considered to have been normalized.

Questions have been asked as to whether we have experienced any negative international reactions to our resumption of the export of whale products.

The U.S. have expressed their regret concerning the decision of Norway to issue an export permit to allow the export of minke whale products to Iceland, urging Norway to reconsider its decision, and hinting that U.S. authorities might consider the option of using the Pelly Amendment.[1] We have also read in the press that the British Minister of Fisheries was "appalled" at the decision, but no official reaction was launched. Beyond this, international reactions have been negligible, as should also have been expected.

[1] Under domestic U.S. law (i.e. the Pelly Amendment) the Secretaries of Commerce and Interior must determine ("certify to the President") whether foreign nationals are engaged in activities that "diminish the effectiveness of an international fishery conservation program". When such "certification" has been made, the President must, within 60 days, impose trade penalties on the country in question, or explain to the Congress why he has decided not to take such action.