

OTHER INTERNATIONAL DEVELOPMENTS

IWC/53rd Meeting

Endangered Species: The Moratorium

The 53rd Annual Meeting of the International Whaling Commission (IWC) took place in London from 23-27 July 2001. This intergovernmental body, which for over 55 years has been in charge of regulating whale hunting, currently has 40 Member States. In 1982, it decided to adopt an international moratorium on commercial whaling, which came into force in 1986. Yet, the governments of Japan and Norway to date have always been able to secure permits for scientific whaling and it is no secret that the whale meat ends up in shops and restaurants. Insisting that certain stocks of whales have increased to sufficient numbers, they and other pro-whaling nations have recently repeatedly demanded that they be allowed to return to open commercial whaling.

However, the question of whether current whale populations are on the rise or not is far from settled in the scientific community. Conservationists insist that depleted whale populations must be allowed to continue to recover. Thanks to the ban on whaling, none of the species of great whales are in immediate danger of extinction, but the Blue Whale and the Northern Right are still listed as endangered, while the populations of Bowhead, Southern Right, Sei, Fin and Humpback are classified as vulnerable. The anti-whaling coalition, led by New Zealand, Australia, the United Kingdom and the United States, supports this position and seeks to ensure that the ban will remain in place for years to come.

As observers to previous IWC sessions have noted, the coalition of pro-whaling nations is growing and the international moratorium on commercial whaling is closer to being overturned than ever before. Confident that it would be able to muster the required three-quarters majority, the Japanese government even announced earlier this year that it would force a vote to overturn the ban. Anti-whaling forces, in turn, repeatedly accused Japanese government officials of having offered bribes to other IWC members from the developing world. And indeed, a week before the meeting began, an official of the Japanese Fisheries Agency, Maseyuku Komatsu, publicly admitted that it is the practice of his government to buy votes from other IWC members in return for economic aid. He justified this by stating that since Japan is not a military power, it has no other recourse but to make use of diplomatic communication and overseas development aid.¹

In defence of the Japanese position, it must be said that they also have given economic aid to countries that are clearly anti-whaling, such as Brazil and India. Yet, if one takes a closer look at the voting patterns during the course of recent IWC meetings, this strategy seems to be

most successful for Japan: six Caribbean countries who have no major stake in whaling voted along with Japan on almost every motion! Furthermore, other developing countries, such as Panama and Guinea, have rejoined the Commission and now have sided with the pro-whaling camp. If this trend continues, Japan will soon have secured enough support from other IWC members in order to overturn the commercial whaling ban.

In anticipation of this imminent turn of events, another of Japan's comrades-in-arms sought to return to the ranks of the IWC: Iceland, which quit the organisation in 1992 in protest at the international whaling ban. Its reapplication for membership was one of the first items on the agenda of this year's session. Yet, in submitting its bid for membership, Iceland had announced that it does not intend to comply with the moratorium on commercial whaling as stipulated in Paragraph 10 (e) of the *International Convention on the Regulation of Whaling*. This raised the following question: does the Commission have the competence to decide whether Iceland's reservation in joining the organisation is admissible at all? The Commission proceeded to hold a vote on this issue and it was decided by a narrow margin (19 to 18 with one nation abstaining) that the Commission does indeed have the competence to determine the legal status of Iceland. Consequently, a vote was held on a resolution sponsored by the United States and Australia that the Commission does not accept Iceland's reservation. Of the 38 nations with voting rights, 19 voted in favour, 3 abstained and 16 refused to take part, deeming the vote illegal.

After further consultations, IWC Chairman Bo Fernholm (Sweden) ruled that Iceland should assist in the meeting as an observer without voting rights. This decision was challenged, but upheld in a subsequent vote of 18 to 16 with 3 abstentions (one State was absent from the vote). The head of the Icelandic delegation, Stefan Asmundsson, rejected the outcome as illegal and announced that it would ignore the ruling. The Chairman insisted that the move to not reject Iceland's membership outright was a conciliatory gesture. The countries that had voted against Iceland's bid justified their position in that one cannot accept any State as a member which refuses to adhere to the fundamental rules and regulations. This would unravel the foundation of this organisation. A Greenpeace spokesperson was unsettled by the closeness of the vote and once more pointed the finger at Japan for having tried to rig the vote in favour of Iceland.

As a reaction to this problem, the very first resolution adopted at this IWC session pertained to *Transparency*

within the *International Whaling Commission* (Resolution 2001-1). It notes the *1970 Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance with the United Nations Charter* which stipulates that “no State may use or encourage the use of economic, political, or any other type of measure to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights and to secure from it advantages of any kind.” The Commission therefore “endorses and affirms these principles as applicable to the activities of [IWC] in its implementation of the *International Convention on the Regulation of Whaling*” and “the complete independence of sovereign countries to decide their own policies and freely participate in the IWC (and other international forums) without undue interference or coercion from other sovereign countries.” It, however, remains to be seen whether this resolution will be able to help in reversing the trend that Japan has set in motion...

Turning to Japan's other major ally, Norway had recently lodged a reservation to the CITES Appendix I listing of whales and announced its intention to resume international trade in Minke whales. A *Resolution on Commercial Whaling* (2001-5) was adopted in response to this, which requests the government of Norway to “refrain from issuing export permits” and to reconsider “its less conservative ‘tuning level’ [contrary to the precautionary approach] in the setting of its quotas.” Above all, Norway is called upon to reconsider its objection to Paragraph 10 (e) and to immediately halt all whaling activities under its jurisdiction.

A month before the meeting, the United Kingdom, which ceased all commercial whaling in 1963, had banned Norwegian whale research ships from its territorial waters in protest at Norway's resumption of whale product exports to Japan. Whaling nations decried this unilateral action, claiming that the United Kingdom had put its own considerations above that of the IWC. UK Representatives were disappointed to see that no other anti-whaling nations spoke up in their defence.

In the course of the proceedings, the debate repeatedly centred on one specific species of whale, the Minke whale, whose population, pro-whaling nations argued, has returned to sufficient numbers that it could withstand limited hunting again. A Japanese official even claimed that there are too many of these and that they have become “cockroaches” of the seas. While conservationists insist that this is just a cover and that it is unnecessary to kill whales in order to study them, Japanese whalers, by practicing scientific whaling, already legally kill 500 whales a year, of which 400 are from the Minke population. In *Resolution on Southern Hemisphere Minke Whales and Spe-*

cial Permit Whaling (2001-7), the Japanese government is strongly urged to halt the lethal takes of Minke whales until reliable estimates of the Minke whale population have been issued for this area.

The Japanese delegation further insisted that the mid-size Minke whale, which subsists on a diet of shrimps and small fish, is also eating into vital fish stocks. It quoted estimates according to which whales consume three to five times as many marine living resources than the world's marine fisheries harvest for human consumption. In order to settle this question, the Commission made the study of whales and fish stocks a priority in Resolution 2001-9 on *Interaction between Whales and Fish Stocks*. The Japanese government is also strongly urged in the *Resolution on JARPN II Whaling in North Pacific* (2001-8) to refrain from issuing permits for scientific whaling, since the data on interactions between whales and prey species gathered under the JARPN II programme does not sufficiently justify the killing of whales, and such data can and should be obtained by non-lethal means.

Japan had also announced plans to offer accidental by-catch of whale meat for sale. The IWC responded by passing a resolution on the *Incidental Capture of Cetaceans* (Resolution 2001-4) in order to clarify this issue.² In it, the IWC recommends that “if the whale cannot be released alive ...

- (a) There shall be no commercial exchange of incidentally-captured whales for which no catch-limit has been set by the Commission;
- (b) If an incidentally-captured whale is subject to a catch limit awarded under the RMP, and the sovereign government wishes to permit commercial exchange for that whale, then;
 - (i) ...
 - (ii) The incidental capture must be counted against the overall quota for that species or stock.”

As at previous IWC meetings, the government of Japan once more proposed to allocate 50 Minke whales for small-type coastal whaling to four local communities, which are experiencing economic distress because of the cessation of whaling. It has been a long-standing practice within the IWC to issue permits for aboriginal subsistence whaling, but these communities do not fall into this category. In addition, passing such a motion would mean opening another back door for lifting the whaling ban, as the US representative objected. Instead, an amended form of the proposal, *Japanese Community-Based Whaling* (Resolution 2001-6), was adopted, in which “the widespread recognition in various UN covenants, conventions and other documents, of the importance for communities to continue customary resource use practices on a sus-



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Courtesy: The New York Times

tainable basis" is noted. Thus, the IWC reaffirmed its commitment to alleviate the situation of these four communities, but left the question open of whether and under what conditions these communities will be allowed to resume whaling.

During the course of the session, 13 resolutions were adopted.³ The resolutions not covered in this report so far are, in brief, as follows: in Resolution 2001-2 on *Whale Killing Methods*, the IWC agreed to convene a Workshop on this subject in 2003. Resolutions on the *Western North Pacific Grey Whale* (2001-3) and *Small Cetaceans* (2001-13) followed. In Resolution 2001-12, the Japanese government was urged to halt its takes of *Dall's Porpoise* until a full assessment has been made of their stocks. Support for the *Stockholm Convention on Persistent Organic Pollutants*, which was opened for signature earlier this year,⁴ was expressed in Resolution 2001-10, and the Importance of Habitat Protection and Integrated Coastal Zone Management was stressed in Resolution 2001-11.

Among the initiatives that did not pass the negotiating table were the creation of whale sanctuaries in the South Pacific as proposed by Australia and New Zealand and in the South Atlantic as proposed by Brazil. (Two whale sanctuaries in the Indian Ocean and in the Southern Ocean are already in place.) As during the last session of IWC, it did not achieve the required three-quarters majority, although 20 States voted in favour this time. Among those who voted against these motions were Japan, Norway and the aforementioned six Caribbean States who argued that these whales are already protected by the blanket ban on whaling.

On the other hand, there was also no agreement on long-standing initiatives that could have set the ground for future commercial whaling, and motions to consolidate progress achieved on the Revised Management Scheme (RMS) and to adopt the Revised Management

Procedure (RMP), also did not pass. RMS is a management scheme for whale resources, which incorporates the already adopted risk-averse method for calculating catch quotas, as well as surveillance and monitoring components. However, talks on this subject have effectively come to a standstill since 1997. Although the IWC has approved and endorsed the RMP in principle, there are a few remaining issues that need to be resolved, such as specifications for inspection and observer systems. It was agreed to convene a Group of Experts in order to draft a text for these procedures during the intersessional period.

As the 53rd Meeting ended, the consensus that arose was a lack of progress, which was lamented especially by non-governmental organisations. Since the pro- and anti-whaling factions within the IWC are currently split down the middle, efficient decision-making has been made impossible. The delegation leader of the United Kingdom, Richard Cowan, compared the IWC to a whale that has become "old and toothless." Despite announcements made by Japan, it did not come to a vote on ending the 15-year old moratorium on whaling. However, this may become reality within the next few years if Japan and the other pro-whaling nations continue to secure more political allies.

The next Annual Meeting of the IWC is scheduled to be held in Shimonoseki, Japan in May 2002, and the next round will follow in Germany in 2003. (MAB)

Notes

¹ See *Neue Zürcher Zeitung*, 19 July 2001, p. 48.

² The general question of by-catch is also being addressed in the United Nations General Assembly's Informal Consultative Process on the Oceans and the Law of the Sea (UNICPOLOS), see Elisabeth Mann Borgese, "UNICPOLOS: The Second Session", *Environmental Policy and Law*, Vol. 31 (4-5) 2001, p. 214.

³ All Resolutions of the 53rd Annual Meeting of the IWC are available at <http://ourworld.compuserve.com/homepages/iwcoffice>.

⁴ See *Environmental Policy and Law*, Vol. 31 (4-5), p. 200.

