

# COMMISSION OF THE EUROPEAN COMMUNITIES

COM(79) 364 final

Brussels, 30 august 1979

RECOMMENDATION FOR A COUNCIL DECISION  
AUTHORIZING THE COMMISSION TO NEGOTIATE ON  
BEHALF OF THE COMMUNITY FOR THE ESTABLISHMENT  
OF A NEW INTERNATIONAL CONVENTION ON WHALING

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(submitted to the Council by the Commission)



EXPLANATORY MEMORANDUM

I. Background

1. The International Whaling Commission (IWC) was established under the International Convention for the Regulation of Whaling in 1946. The IWC currently comprises seventeen states, four of which are Member States of the European Economic Community (Denmark, France, the Netherlands, United Kingdom). The object of the IWC is to establish an international system for the regulation of whale fisheries to ensure the conservation and development of whale stocks. To this end the Commission meets annually to review available scientific data and to set catch quotas for whale stocks which are then allocated between whaling members. The Commission also makes rules about the size, sex, etc. of catchable whales.
  
2. In July 1978 a Preparatory meeting on the revision of the International Convention for the Regulation of Whaling was held in Copenhagen, at the invitation of the Government of Denmark, in which a Community delegation participated. It was agreed at that meeting that a Working Group should be set up to prepare a new draft convention on whaling which will be presented to a Second Preparatory meeting to be held at an unspecified date during 1979.
  
3. While the scope and nature of the new Convention have yet to be decided, the Commission believes that the negotiations now being prepared fall within both the fisheries and environment policy competences of the Community, and that the interests of the Community can best be served by elaborating a common approach in this matter, and by Community participation in the negotiations with a view to participating in any ensuing Convention on whaling or the 1946 Convention.

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## II. Community competence

4. The Commission shares the point of view expressed by the Legal Service of the Council concerning the basis for Community jurisdiction in rule-making concerning the exploitation and conservation of whales(1), in which it was held that the Community was exclusively competent for those matters for which common rules had already been established by the Community (such as marketing arrangements), and was potentially competent by virtue of Article 43 of the Treaty for all other matters covered by the Convention of 1946.
  
5. With regard to international agreements, the Community has to date only exercised its powers concerning whaling in the context of its bilateral fisheries relations with Norway, where access for Norwegian vessels to hunt whales within EEC waters has been agreed upon annually in the provisional application of the fisheries agreement negotiated between the parties.
  
6. In view of the close economic and biological links between fisheries and whaling activity, the Commission believes that the same considerations which led the Council to agree in November 1976 that the maintenance or obtaining of fishing rights for Community fishermen outside Community waters should be assured by appropriate Community agreements, and that the Community's contribution to international cooperation for the conservation and management of marine resources should be made as a single coastal state, apply with equal force in relation to whaling. Logic suggests that the exploitation and conservation of biological marine resources should be treated as a whole by the Community in order to ensure that its obligations in different but related fields do not conflict.

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(1) Document S/1268/78 (JUR 12) (AGRI 122) (RELEX 109) of 24.7.78.

7. The question of whether the Community alone or the Community with its Member States should be parties to the new Convention should be examined in the light of not only legal but also political and practical considerations. If the new Convention, like the present one, falls under Article 43 of the Treaty, only the Community can become a party to that new Convention.

It is however possible that the objective of the new Convention will be changed, in the sense that the environmental considerations become dominant, in which case the alternatives of a joint participation of the Community and its Member States versus a sole participation of the Community by recourse to Article 235 of the Treaty would have to be considered.

The Commission believes that a joint participation of the Community and some or all of its Member States would give rise to difficulties in clearly defining the respective roles of the Community and its Member States since most decisions to be taken by the bodies established under the proposed Convention are likely to involve aspects falling under Community competence as well as aspects which under this scheme would fall under Member State competence. A joint participation would therefore risk weakening the action both of the Community and of its Member States in the bodies established by the Convention.

The Commission for this reason believes that the interests of the Community as well as of its Member States would best be served by the sole participation of the Community in the Convention.

8. It should be recalled at this point that the Community has already been active by virtue of its environmental policy in international cooperation for the protection of endangered whale species, such as those listed in the annexes of the Convention on International Trade in Endangered Species of Wild Fauna and Flora of 1973 (the "Washington" Convention). The Council authorized the Commission in 1977 to open negotiations with a view to accession by the Community to this Convention, and a draft directive to ensure the harmonised application of the Convention within the Community is at present under preparation by the services of the Commission. In view of these developments the delegation by Member States of their competence in environmental aspects of whaling would not appear to raise insurmountable difficulties.

### III. Community interests

9. Although whaling is of marginal importance as an economic activity within the Community as whole, in Greenland it is of considerable importance. During the last five years, for example, an average of 14 large whales (mainly hump-back and fin whales) and 1,965 smaller whales (mainly white whales and porpoises) have been caught annually by Greenlanders. In view of this essentially local interest, the Community's approach to conservation within a new whaling Convention would be to press for a stronger conservation of whales, particularly in relation to industrial whaling, while ensuring that sufficient safeguards existed for the continuation of the traditional economic activity of coastal communities which are dependent upon whaling for a major part of their livelihood.

10. Apart from the need to reflect the Community's generally conservationist position in the proposed Convention, there is some interest for the Community in ensuring that the proposed Convention will reflect the principles elaborated at the Third United Nations Conference on the Law of the Sea with respect to highly migratory species and marine mammals. The Community should support the idea implicit in the Informal Composite Negotiating Text of UNCLOS that where species such as whales are concerned the need for close international cooperation and a limitation of the normal rights of the coastal state to exploit the living resources occurring within its economic zone is unavoidable.
11. A number of important questions will have to be resolved in the course of negotiations, in particular regarding
- the emphasis to be placed on exploitation or conservation of the resource;
  - the number of species to be covered by the Convention (whales or all cetaceans, such as dolphins and porpoises);
  - the extent of participation in the Convention by states not exploiting whale resources;
  - the regulatory area of the Convention (to include exclusive economic zones, or not).

It is not possible for the Commission to propose a precise Community position on these points at this early stage in negotiation. In the light of what has been said above, however, the objective of the Community would be a Convention which extended conservation to all cetaceans which was open to all interested parties, and which was responsible for regulating the hunting of whales wherever they can be hunted on the basis of available scientific advice.

12. For the reasons set out above, and in view of the imminent reopening of international negotiations on this matter, the Commission recommends that the Council adopt the attached decision authorizing the Commission to negotiate for the establishment of a new international Convention governing the hunting of whales/cetaceans, to which the Community as such would become a Contracting Party.

Recommendation for a  
Council Decision authorizing the Commission  
to negotiate on behalf of the Community for  
the establishment of a new international  
Convention on whaling.

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THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to the Recommendation from the Commission,

Whereas on 3 November 1976 the Council adopted a set of resolutions concerning certain external and internal aspects of the common fisheries policy;

Whereas international negotiations have recently been opened with a view to revising the International Convention for the Regulation of Whaling;

Whereas certain coastal populations within the European Community traditionally engage in the hunting of whales;

Whereas it is to preserve the ecological balance of the seas, and to this end it is appropriate to ensure the conservation of marine mammals;

Whereas the European Economic Community should therefore participate in international cooperation for the conservation and management of these resources,

Whereas it is therefore necessary to establish directives for Community participation in the forthcoming negotiations for the said Convention,

DECIDES:

Sole Article

The Commission is hereby authorized to negotiate on behalf of the Community, in accordance with the directives annexed hereto, for the establishment of a new international convention on whaling.

The Commission shall conduct the negotiations assisted by the representatives of the Member States.

Done at Brussels,

For the Council,  
The President.



A N N E X

1. In these negotiations the Community shall be guided by the principles of the Informal Composite Negotiating Text (revision 1) established at the Third United Nations Conference on the Law of the Sea with respect to highly migratory species (Article 64) and to marine mammals (Article 65).
2. The objective of the Community shall be to extend and to reinforce, by regulatory measures, including a ban on the hunting of endangered species, taken under the proposed Convention, the conservation of all cetacean species at population levels which ensure their stable recruitment, while having due regard for the vital needs of coastal communities particularly dependent upon this activity for a major part of their livelihood.
3. The proposed Convention must contain provisions allowing the European Economic Community to become a Contracting Party to it and to act accordingly within the bodies of the Convention. In order to facilitate the participation of the Community in the said Convention, the Council authorizes the Commission to negotiate on behalf of the Community the provisions of the Convention within the framework of which the Community shall act as a single unity in respect of the territories covered by the EEC Treaty.

