

SMALL STATE WITH A BIG TRADITION: NORWAY CONTINUES WHALING AT THE EXPENSE OF INTEGRATION AND NORDIC COOPERATION

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INTRODUCTION

Harvesting the minke whale has become a symbol of sovereignty and cultural tradition to Norwegians.¹ Throughout whaling history, Norwegians have hunted whales to the point of near-extinction, have made technological discoveries that made whaling more humane, and have promoted sustainable development to help whales recover from the over-exploitation of centuries past.²

Just as the history of whaling is intertwined with Norwegian history, Norwegian history is deeply connected with the histories of Denmark, Finland, Iceland, and especially Sweden.³ Because of their common history, Norwegian whaling could put Sweden in a potentially precarious position. As Norway continues to whale despite international opposition, Sweden must reconcile its anti-whaling policy with its close relationship to Norway. For example, if Sweden publicly supports the Norwegian whaling policy, Sweden could face criticism from the United States and lose its reputation as an environmental model.

Additionally, Norwegian whaling may disrupt the balance and

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1. See generally Brian Trevor Hodges, *The Cracking Façade of the International Whaling Commission as an Institution of International Law: Norwegian Small-Type Whaling and the Aboriginal Subsistence Exemption*, 15 J. ENVTL. L. & LITIG. 295 (2000); Martha Howton, *International Regulation of Commercial Whaling: The Consequences of Norway's Decision to Hunt the Minke Whale*, 18 HASTINGS INT'L & COMP. L. REV. 175 (1994).

2. See generally Ray Gambell, *The International Whaling Commission and the Contemporary Whaling Debate*, in CONSERVATION AND MANAGEMENT OF MARINE MAMMALS 179 (John R. Twiss, Jr. & Randall R. Reeves eds., 1999).

3. Hilary Barnes, *Nordic Togetherness: Let Us Count the Ways*, 86 SCANDINAVIAN REV. 68 (1998), available at 1998 WL 22014855; see Tor Dagne, *The History of Norway*, <http://odin.dep.no/odin/engelsk/norway/history/032005-990454/index-dok000-b-n-a.html> (last visited Jan. 11, 2004) (describing how Denmark relinquished Norway to Sweden after the Napoleonic Wars, and how Norway then united with Sweden until Sweden granted independence in 1905).

cooperation in the Nordic region. The international community, including the United States, has condemned Norway's whaling policy.⁴ This opposition may lead to threats and sanctions against Norway, which could affect the Nordic region as a whole.⁵ If Norway continues to apply sustainable development to its whaling policy and continues to promote environmental protection, the subsequent legitimization of its whaling practice might ease the tension in the Nordic region.

This Note has been separated into five parts. Part I summarizes the history of whaling, details Norwegian contributions to the whaling industry, and outlines the formation and transformation of the International Whaling Commission. Part II discusses the legality of Norwegian whaling, enforcement failures within the International Whaling Commission, and exceptions to international law that legalize Norwegian whaling. Part III illustrates the negative effect of Norwegian whaling on Norway's relationship with the European Union and the potential effect that whaling could have on other Nordic countries. Part IV examines the future of Norwegian whaling and contemplates the possibility of Norway discontinuing its whaling policy. Finally, Part V concludes with a prediction of the effect of Norway's whaling on its foreign policy, focusing particularly on Norway's relationship with Sweden.

I. THE HISTORY OF WHALING AND ESTABLISHMENT OF A REGULATORY REGIME

Boasting a whaling tradition that dates back to 800 A.D., Norway has greatly influenced the whaling industry.⁶ Norway played a significant role in the advent of modern whaling when a Norwegian named Svend Foyn invented the explosive grenade harpoon in 1864.⁷ Prior to this invention, whalers were relegated to hunting slow-moving whales close to the shore.⁸ After the invention, whalers were able to launch explosive grenade harpoons from cannons on ship decks, providing opportunities to catch whales that lived further out in the

4. IFAW: *Commercial Whaling at a Crossroads on Eve of IWC Meeting*, U.S. NEWSWIRE, June 10, 2003, available at 2003 WL 55658870.

5. *Id.*; see Howard Scott Schiffman, *The Protection of Whales in International Law: A Prospective for the Next Century*, 22 BROOK. J. INT'L L. 303, 308 (1996).

6. Nytt fra Norge for the Ministry of Foreign Affairs, *Norwegian Minke Whaling*, <http://odin.dep.no/odin/engelsk/norway/environment/032001-990108/index-dok000-b-n-a.html> (last visited Jan. 11, 2004) [hereinafter Ministry of Foreign Affairs].

7. Gambell, *supra* note 2, at 180.

8. *See id.*

North Atlantic.⁹ The invention of factory ships, which facilitated the immediate processing of whales once they were caught, allowed whalers to venture farther into the ocean in search of flourishing species of whales.¹⁰ Svend Foyn's invention of the explosive grenade harpoon and the advent of factory ships greatly contributed to the depletion of whale stocks in the North Atlantic.¹¹

The Formation of the International Whaling Commission

The over-exploitation of whale species in the North Atlantic ultimately resulted in self-regulation of the whaling industry. During the height of commercial whaling, whales were considered common resources, and nations were disinclined to promote conservation because whaling was a profitable venture.¹² Whalers recognized the over-exploitation of many species of whales; however, instead of halting commercial whaling, the whalers simply sought out new hunting grounds.¹³ Norway realized that whale stocks were low and implemented a moratorium on whaling in Norwegian waters in 1903.¹⁴ While the moratorium protected the whales in waters close to Norway, the ban eventually inspired Norwegian whalers to search for new hunting grounds.¹⁵ In an effort to protect all species of whales, Norway encouraged whaling nations to decrease whaling and implement a licensing system.¹⁶ This proposal eventually led to an attempt by the whaling industry to regulate itself.¹⁷ Norway and Great Britain, accountable for ninety-five percent of the world's catch in the 1930s, entered into an agreement that regulated their respective whaling industries.¹⁸ The Norwegian government subsequently proposed a series of conferences to discuss the regulation of the whaling industry.¹⁹ These conferences inspired the United States, an active participant in the whaling industry, to initiate the International Convention for the

9. See Gambell, *supra* note 2, at 180.; see also Cliff M. Stein, *Whales Swim for Their Lives as Captain Ahab Returns in a Norwegian Uniform: An Analysis of Norway's Decision to Resume Commercial Whaling*, 8 TEMP. INT'L & COMP. L. J. 155, 160 (1994).

10. Gambell, *supra* note 2, at 180.

11. *Id.*

12. PETER J. STOETT, *THE INTERNATIONAL POLITICS OF WHALING* 6-8 (Univ. of British Columbia 1997).

13. Stein, *supra* note 9, at 160.

14. *Id.*

15. *Id.*; see also Schiffman, *supra* note 5, at 308.

16. Schiffman, *supra* note 5, at 310.

17. *Id.*

18. *Id.*

19. *Id.* at 310-11; see also Gambell, *supra* note 2, at 181.

Regulation of Whaling (ICRW) in 1946.²⁰

Pro-whaling nations convened at the ICRW to form limits and regulations that would prevent continued exploitation of whale species. The fifteen participants included the United States, Norway, Japan, and Russia.²¹ These nations worked together to establish the International Whaling Commission (IWC), which “implement[ed] both the economic and environmental goals of the ICRW.”²² The preamble of the ICRW stated that the purpose of the convention was to conserve whale stocks in order for the whaling industry to continue operation.²³ The ICRW produced two documents: the IWC Schedule and the IWC Convention. The Schedule governed the conduct of whalers and set limits on the amount of whales that could be harvested.²⁴ The catch limits created by the Schedule were neither mandatory nor binding under the Convention text.²⁵ Instead, the Convention expected the member nations to codify the text into their own legal systems and enforce the limitations individually.²⁶ While the IWC purported to conserve whale stocks, the Convention did little to prevent whaling nations from over-exploiting whale populations.²⁷

The Transformation of the International Whaling Commission

The failure of the ICRW to protect whale stocks and regulate the whaling industry troubled non-member nations around the world as several species of whales came dangerously close to extinction.²⁸ In an effort to prevent the extinction of these whale species, non-member states began to apply for membership in the ICRW.²⁹ As the ICRW text specifies, nations that agree to adhere to the text of the ICRW will be accepted into the IWC.³⁰ Subsequently, the number of IWC member

20. See Gambell, *supra* note 2, at 181; see also Schiffman, *supra* note 5, at 311.

21. Gambell, *supra* note 2, at 182–83. The original IWC member nations included: Argentina, Australia, Brazil, Chile, Denmark, France, Netherlands, New Zealand, Norway, Peru, Russia, South Africa, the United Kingdom and the United States. *Id.*

22. Stein, *supra* note 9, at 165.

23. International Convention for the Regulation of Whaling, Dec. 2, 1946, 62 Stat. 1716, 161 U.N.T.S. 72, available at <http://www.iwcoffice.org/Convention.htm> (last visited Jan. 11, 2004) [hereinafter ICRW].

24. See Gambell, *supra* note 2, at 181.

25. See *id.* at 182.

26. See ICRW, *supra* note 23, art. IX; see also Gambell, *supra* note 2, at 183.

27. Gambell, *supra* note 2, at 183.

28. See *id.* at 184.

29. *Id.*

30. ICRW, *supra* note 23, art. X (4).

nations grew from fifteen in 1946 to forty in 1998.³¹ While the original, pro-whaling members of the IWC originally sought to conserve and maintain whale stocks, new members acted under the influence of the growing environmental movements within their respective countries.³² Most of the new members had “little or no direct” connection to whaling, but were “concerned about the effects” of over-exploiting whales.³³ As an increasing number of anti-whaling nations joined the IWC, the purpose of the IWC shifted from conservation and sustainable use of whales to complete preservation of every species of whale.³⁴

With the majority of the member nations now favoring an anti-whaling policy, the IWC began to implement reductions in catch limits.³⁵ Even nations that had once engaged in commercial whaling supported these drastic reductions.³⁶ To pass any new amendments to the ICRW, including catch reductions, the ICRW text specifies that there must be a three-fourths majority in favor of the proposed amendment.³⁷ If not for the huge influx of anti-whaling nations into the IWC, these reductions in catch limits would not have achieved the requisite majority.³⁸ In 1982, a sufficient number of anti-whaling nations had joined the IWC to tip a three-fourths majority in favor of completely preserving whales.³⁹ The IWC subsequently implemented more than just a reduction in catch limits; the IWC executed a complete moratorium on commercial whaling.⁴⁰

The IWC’s moratorium effectively distorted the purpose and spirit of the ICRW.⁴¹ The original purpose of the ICRW was clear: to conserve whale stocks for future generations of whalers.⁴² Instead of continuing to reduce whale quotas in order to conserve whale stocks, the new anti-whaling majority embraced the idea that the practice of whaling should be terminated completely.⁴³ In fact, the IWC was

31. Gambell, *supra* note 2, at 182–83.

32. Hodges, *supra* note 1, at 301–02.

33. Gambell, *supra* note 2, at 184.

34. *See* Hodges, *supra* note 1, at 304.

35. Gambell, *supra* note 2, at 184.

36. *Id.*

37. ICRW, *supra* note 23, art. III (2).

38. Gambell, *supra* note 2, at 184.

39. Howton, *supra* note 1, at 177–78.

40. *Id.*

41. Jon L. Jacobson, *Whales, the IWC, and the Rule of Law, in TOWARD A SUSTAINABLE WHALING REGIME* 81–82 (Robert L. Friedheim ed., 2001).

42. *Id.*

43. *Id.* at 82.

criticized for misinterpreting its own treaty and for manipulating and politicizing an otherwise valid purpose of whale conservation.⁴⁴ The anti-whaling majority adopted this moratorium with little authority under the ICRW, and then criticized the pro-whaling minority that opposed the moratorium.⁴⁵

The moratorium on whaling marked one of the most significant events in the history of whaling.⁴⁶ The moratorium reduced catch limits to zero, but the actual reduction extended over a three-year period to give whaling nations time to phase out their commercial whaling industries.⁴⁷ Norway and six other countries immediately lodged a formal objection.⁴⁸ In vigorous opposition to the moratorium, both Japan and Norway pledged to continue whaling.⁴⁹ The Commission could do nothing to stop the two countries from continuing their whaling practices since it had no power to enforce the ban on whaling.⁵⁰ The moratorium on commercial whaling marked the end of an era: nations no longer viewed oceans as common property to be exploited, and the act of whale hunting emerged as an immoral and unethical practice.

II. NORWAY'S DECISION TO RESUME WHALING

Although Norway lodged a formal objection to the moratorium, the country voluntarily halted whaling activities pending the research results of the IWC's Scientific Committee.⁵¹ The Committee estimated that roughly 112,000 minke whales inhabited the Northeast Atlantic and 72,000 minke whales inhabited the central Atlantic.⁵² Despite available scientific evidence showing minke whales could withstand limited whaling, the Scientific Committee effectively extended the moratorium

44. See Jacobson, *supra* note 41, at 98.

45. See *id.* at 82.

46. Stein, *supra* note 9, at 167.

47. *Id.* at 168; Adrienne M. Ruffle, *Resurrecting the International Whaling Commission: Suggestions to Strengthen the Conservation Effort*, 27 BROOK. J. INT'L L. 639, 650-651 (2002); International Whaling Commission, *Commercial Whaling Catch Limits*, <http://www.iwcoffice.org/Catches.htm> (last visited Jan. 11, 2004) [hereinafter International Whaling Commission].

48. International Whaling Commission, *supra* note 47.

49. Stein, *supra* note 9, at 168. Japan subsequently withdrew its formal objection to the moratorium in 1985. *Id.* Believing that the formal objection would lead to conflict with the Soviet Union, Japan ceased all commercial whaling in 1988. *Id.*

50. International Whaling Commission, *supra* note 47.

51. Gambell, *supra* note 2, at 190.

52. Ministry of Foreign Affairs, *supra* note 6.

by refusing to reevaluate it based on the available scientific evidence.⁵³ As a result of the extended ban on whaling, Iceland withdrew from the IWC in 1992.⁵⁴ Norway remained a member of the IWC; however, the Scientific Committee's decision ultimately fueled the Norwegian government's decision to resume whaling.⁵⁵ In 1992, Norway argued that if the number of minke whale stocks reported by the IWC's Scientific Committee was accurate, then the minke whale species could withstand limited whaling.⁵⁶ After specifying whaling procedures and implementing a strict permit-based system, Norwegian coastal whalers resumed their whaling tradition in 1993.⁵⁷

Norway's decision to resume whaling enraged the international community.⁵⁸ Within the IWC, the anti-whaling nations condemned Norway's decision to defy the new spirit of the ICRW.⁵⁹ Shortly after Norway made the announcement, fifteen members of the IWC signed a statement encouraging Norway to reconsider its decision to resume whaling.⁶⁰ Furthermore, the international community "threatened. . . economic boycotts, blockage of its [Norway's] bid to join the European Community, and boycotts of the 1994 winter Olympics to be held in Lillehammer."⁶¹ Nevertheless, Norway upheld its decision to resume whaling and maintained that its whaling policy complied with international law.⁶²

Norwegian Whaling: A Violation of International Law?

There are three legitimate foundations upon which Norway may argue that its decision to resume whaling complies with international law. First, the IWC has no enforcement mechanism to legally bind

53. Ministry of Foreign Affairs, *supra* note 6.

54. Gambell, *supra* note 2, at 190.

55. Ministry of Foreign Affairs, *supra* note 6.

56. Judith Berger-Eforo, Note, *Sanctuary for the Whales: Will This Be the Demise of the International Whaling Commission or a Viable Strategy for the Twenty-First Century?*, 8 PACE INT'L L. REV. 439, 465 (1996).

57. Christine Ingebritsen, *Europeanization and Cultural Identity: Two Worlds of Eco-Capitalism*, 73 SCANDINAVIAN STUD. 6376, 6380 (2001), available at 2001 WL 24253102 [hereinafter Ingebritsen, *European and Cultural Identity*]; Stein, *supra* note 9, at 170; Ministry of Foreign Affairs, *supra* note 6.

58. Stein, *supra* note 9, at 156.

59. See Howton, *supra* note 1, at 182.

60. Stein, *supra* note 9, at 170.

61. David D. Caron, *The International Whaling Commission and the North Atlantic Marine Mammal Commission: The Institutional Risk of Coercion in Consensual Structures*, 89 AM. J. INT'L L. 154, 166 (1995).

62. *Id.*; Ingebritsen, *European and Cultural Identity*, *supra* note 57.

Norway to the moratorium.⁶³ Second, Norway's decision to resume whaling has not violated relevant international treaties.⁶⁴ Third, the continuation of Norwegian whaling has not violated customary international law.

The International Whaling Commission Lacks Enforcement Power

When the pro-whaling nations formed the IWC, the parties did not contemplate the necessity for an enforcement mechanism and, therefore, did not include one in the text. Consequently, the IWC cannot penalize Norway for continuing to harvest minke whales in the absence of such a mechanism.⁶⁵ In fact, the IWC has no power to enforce any of its restrictions. Instead of creating an institution of legal enforcement, the whaling nations that formed the IWC created "normative institution" that can only apply pressure to encourage member nations to comply with its regulations.⁶⁶

In an attempt to substitute for the missing enforcement mechanism in the IWC, the United States legislature enacted two amendments that have the potential to punish nations that contravene or violate international conventions.⁶⁷ The Pelly Amendment, enacted in 1971, authorizes the U.S. Secretary of Commerce to advise the President when a nation acts to "diminish the effectiveness" of any international fishery conservation agreement, such as the ICRW.⁶⁸ If a nation continues whaling in violation of the ICRW, the Secretary can certify that nation and impose a trade embargo on the importation of that nation's products.⁶⁹ The Packwood-Magnuson Amendment is narrower in scope than the Pelly Amendment. Enacted in 1979, the Packwood-Magnuson Amendment operates under the same certification process as

63. Ministry of Foreign Affairs, *supra* note 6.

64. *Id.*

65. Dylan A. MacLeod, *International Consequences of Norway's Decision to Allow the Resumption of Limited Commercial Whaling*, 6 INT'L LEGAL PERSP. 131, 132-33 (1994).

66. Hodges, *supra* note 1, at 323.

67. See generally Melinda K. Blatt, *Woe For the Whales: Japan Whaling Association v. American Cetacean Society*, 106 S. Ct. 2860 (1986), 55 U. CIN. L. REV. 1285 (1987); Schiffman, *supra* note 5, at 316; Gambell, *supra* note 2, at 183.

68. Fisherman's Protective Act, 22 U.S.C. § 1978 (1982) [hereinafter Pelly Amendment]; Steve Charnovitz, *Environmental Trade Sanctions and the GATT: An Analysis of the Pelly Amendment on Foreign Environmental Practices*, 9 AM. U. J. INT'L L. & POL'Y 751, 759 (1994); James Brennan & Gene S. Martin, Jr., *Enforcing the International Convention for the Regulation of Whaling: the Pelly and Packwood-Magnuson Amendments*, 17 DENV. J. INT'L L. & POL'Y 293, 294 (1989); Blatt, *supra* note 67, at 1285.

69. Gambell, *supra* note 2, at 183.

the Pelly Amendment. However, under the Packwood-Magnuson Amendment, the U.S. Secretary of Commerce can certify a nation that specifically violates the ICRW.⁷⁰ When the Secretary certifies a nation under the Packwood-Magnuson Amendment, that nation's share of fishing in U.S. waters is drastically reduced.⁷¹

Although Norway has been certified several times, the U.S. has refrained from imposing the sanctions authorized by the Pelly and Packwood-Magnuson Amendments.⁷² In 1992, President Bush found that Norway's plan to resume whaling in violation of the IWC's moratorium warranted the drastic punishments permitted by the Pelly and Packwood-Magnuson Amendments, yet he chose not to impose sanctions.⁷³ One author argues that President Bush refrained from imposing sanctions because he did not want to hurt the trade relationship between Norway and the United States.⁷⁴ When the U.S. Secretary of Commerce certified Norway under the Pelly and Packwood-Magnuson amendments again in 1993, President Clinton reluctantly chose to refrain from imposing sanctions in light of Norway's commitment to protect the environment.⁷⁵ Later that year, Norway further redeemed itself through its involvement in negotiating a peace agreement between Israel and the Palestinian Liberation Organization.⁷⁶ These instances of Norway's certification without the imposition of sanctions demonstrate the ineffectiveness of the amendments as enforcement mechanisms for the IWC.⁷⁷

Even if the U.S. imposed sanctions on Norway as a punishment for

70. Packwood-Magnuson Amendment, 16 U.S.C. § 1821 (1982); Gambell, *supra* note 2, at 183; Brennan & Martin, *supra* note 68, at 294; Blatt, *supra* note 67, at 1285.

71. Packwood-Magnuson Amendment, *supra* note 70; Gambell, *supra* note 2, at 183; Brennan & Martin, *supra* note 68, at 294.

72. See Stein, *supra* note 9, at 173-78.

73. Sarah Suhre, *Misguided Morality: The Repercussions of the International Whaling Commission's Shift from a Policy of Regulation to Preservation*, 12 GEO. INT'L ENVTL. L. REV. 305, 318 (1999).

74. Stein, *supra* note 9, at 175.

75. See *id.* at 176.

76. Stein, *supra* note 9, at 177. In 1993, Norway acted as a channel between the Palestinian Liberation Organization (PLO) and Israel. Helge Blakkisrud, *Norwegian Foreign Policy in the 20th Century*, at <http://odin.dep.no/odin/engelsk/norway/foreign/032001-990092/index-dok000-b-f-a.html> (May 2000) (last visited Jan. 11, 2004). Norwegian efforts in encouraging Israeli and Palestinian leaders to sign the Oslo Accord have been considered a "breakthrough in international conflict management." *Id.*

77. See David S. Lessof, *Jonah Swallows the Whale: An Examination of American and International Failures to Adequately Protect Whales from Impending Extinction*, 11 J. ENVTL. L. & LITIG. 413, 423-24 (1996).

continuing whaling, the U.S. would arguably be acting in contravention of the General Agreement on Tariffs and Trade (GATT) and the United Nations Convention on the Law of the Sea (UNCLOS).⁷⁸ One of the main objectives of GATT is the elimination of trade barriers between nations.⁷⁹ Narrow exceptions to GATT authorize a country to implement restrictions on imports to further the protection of "exhaustible natural resources."⁸⁰ However, GATT does not contain an exception that would allow the United States to utilize a general ban on imports from Norway as retribution for Norway's whaling policy.⁸¹ Unlike GATT, UNCLOS does not regulate trade; UNCLOS does, however, regulate nearly all aspects of the law of the sea and precludes the use of unilateral trade barriers.⁸² Therefore, if the United States imposed the sanctions authorized by the Pelly and Packwood-Magnuson Amendments on Norway, the United States would arguably be in violation of international law.⁸³

Another basis exists that could prevent the imposition of sanctions under the Pelly Amendment and Packwood-Magnuson Amendment. Technically, Norway has not violated the ICRW by continuing to promote whaling. The ICRW contains an "opt-out" clause that allows a nation to object to an IWC regulation.⁸⁴ Once a nation files a formal objection, the IWC cannot make that regulation binding upon the objecting nation.⁸⁵ When the IWC implemented the moratorium on whaling in 1982, Norway immediately objected under the "opt-out"

78. Schiffman, *supra* note 5, at 334.

79. Clay Erik Hawes, *Norwegian Whaling and the Pelly Amendment: A Misguided Attempt at Conservation*, 3 MINN. J. GLOBAL TRADE 97, 118 (1994); General Agreement on Tariffs and Trade, Oct. 30, 1947, 61 Stat. A-11, T.I.A.S. 1700, 55 U.N.T.S. 194 [hereinafter GATT] GATT is directed to the substantial reduction of tariffs and other barriers to trade and to the elimination of discriminatory treatment in international commerce. *Id.*

80. GATT, *supra* note 79, art. XX(g); see Ted L. Dorman, *The GATT Consistency of U.S. Fish Import Embargoes to Stop Driftnet Fishing and Save the Whales, Dolphins, and Turtles*, 24 GEO. WASH. J. INT'L L. & ECON. 477, 512 (1991).

81. Dorman, *supra* note 80.

82. Schiffman, *supra* note 5, at 334.

83. See Richard J. MacLaughlin, *UNCLOS and the Demise of the United States' Use of Trade Sanctions to Protect Dolphins, Sea Turtles, Whales, and Other International Marine Living Resources*, 21 ECOLOGY L.Q. 1, 20 (1994). The United States, however, is not yet a party to UNCLOS. *Id.* While the United States government may not want to implement sanctions for the reasons outlined above, American voters may be able to convince the government otherwise. *Id.* A recent United States poll shows that 80 per cent of voters are opposed to Norway's commercial whaling and would like President Bush to commence action. U.S. Newswire, *New National Poll Shows U.S. Voters Strongly Against Commercial Whaling*, June 17, 2003, available at 2003 WL 55658950.

84. MacLeod, *supra* note 65, at 135.

85. *Id.*

clause of the ICRW.⁸⁶ Norwegian whaling thus complies with the ICRW.⁸⁷ However, the fact that Norwegian whaling does not violate the text of the IWC has not convinced IWC member-states that Norwegian whaling is legal. Armed with only a meager United States-sponsored enforcement mechanism and the chance that the United States may not impose sanctions, the IWC member-states must resort to exerting pressure on Norway to change its whaling policy.

Regulation of Whaling Through International Treaties

While Norway's whaling practice does not violate the ICRW, other international bodies regulate aspects of the whaling industry. UNCLOS and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) regulate various areas relating to whaling; however, Norway has not violated either of these treaties by continuing to hunt whales.⁸⁸ Under UNCLOS, coastal states are permitted to regulate up to 200 nautical miles of Exclusive Economic Zone (EEZ) that extend out from their coastal borders.⁸⁹ Under Article 61 of UNCLOS, a state must set limits, based on scientific evidence, as to the amount of resources that can be exploited within that state's EEZ.⁹⁰ This means that pro-whaling nations like Norway may choose to allow whaling in their EEZs, provided that the nation has set catch limits based on scientific research.⁹¹ Since Norway bases its minke whale catch limits on scientific evidence and sustainable development, Norway's whaling complies with UNCLOS.⁹²

Furthermore, Norway's whaling policy conforms to CITES, which regulates international trade of endangered species. In 1983, the minke whale appeared in CITES Appendix I, which offers the highest amount of protection to endangered species.⁹³ Norway entered an objection to this classification of the minke whale based on scientific evidence and petitioned to change the minke whale's status from an Appendix I to an

86. MacLeod, *supra* note 65, at 135.

87. *Id.* at 138.

88. Ministry of Foreign Affairs, *Export of Norwegian Whale Products*, at <http://odin.dep.no/ud/engelsk/p2500832/p30003926/index-b-n-a.html> (last visited Jan. 11, 2004) [hereinafter *Export of Norwegian Whale Products*].

89. Schiffman, *supra* note 5, at 327; United Nations Convention on the Law of the Sea, *opened for signature* Dec. 10, 1982, 21 I.L.M. 1261 (entered into force Nov. 16, 1994) [hereinafter UNCLOS].

90. Schiffman, *supra* note 5, at 349; UNCLOS, *supra* note 89, art. 61.

91. Schiffman, *supra* note 5, at 349.

92. *Id.*

93. *Export of Norwegian Whale Products*, *supra* note 88.

Appendix II species.⁹⁴ If CITES moved the minke whale to the Appendix II list, Norway and other whaling nations would be permitted to trade minke whales commercially.⁹⁵

In 1995, CITES changed the criteria it used to determine which Appendix a species of flora or fauna would fall. While the new criteria attempted to eliminate the politicization surrounding several classifications of species, the criteria did not reclassify the minke whale to an Appendix II species.⁹⁶ Despite the unchanged status of the minke whale in CITES, Norway has not violated CITES because the convention contains an “opt-out” clause similar to that in the ICRW text.⁹⁷ Since Norway lodged a formal objection to the trade regulations in CITES that prohibit the international trade of whales, Norway is not legally bound to follow CITES regulations.⁹⁸

In 2001, the Norwegian government lifted a self-imposed ban on the trade of whale products in an effort to engage in the international trade of minke whales.⁹⁹ The Norwegian government began to issue export licenses and authorized limited commercial export of whale products to Japan and Iceland.¹⁰⁰ Along with implementing a licensing program, the Norwegian government has mandated that each country importing whales from Norway institute a genetic databank to ensure that imported whale products do not consist of highly-endangered whale species.¹⁰¹ Coastal whaling communities finally pressured the

94. See Kevin Eldridge, *Whale for Sale?: New Developments in the Convention on International Trade in Endangered Species of Wild Fauna and Flora*, 24 GA. J. INT'L & COMP. L. 549, 551–58 (1995).

95. *Id.* at 550–51.

96. *Id.*

97. PETER H. SAND, TRANSNATIONAL ENVIRONMENTAL LAW 155 (1999); Convention on International Trade in Endangered Species of Wild Fauna and Flora, Mar. 13, 1973, 27 U.S.T. 1087, 993 U.N.T.S. 243.

98. SAND, *supra* note 97, at 155.

99. Fiskeridepartementet (Ministry of Fisheries), *Export of Norwegian Minke Whale Products*, at <http://odin.dep.no/fid/engelsk/008041-070038/index-dok000-b-f-a.html> (Jan. 16, 2001) (last visited Jan. 11, 2004) [hereinafter *Minke Whale Products*]; Walter Gibbs, *Norwegians, Defying Protests, Will Sell Blubber to Japan*, N.Y. TIMES, July 23, 2001, at A6; Agence France-Presse, *Japan Negotiating To Buy Whalemeat From Norway*, July 30, 2002, available at 2002 WL 23569285.

100. *Minke Whale Products*, *supra* note 99; Gibbs, *supra* note 99. Iceland has decided to import minke whale products from Norway until it resumes whaling, which is scheduled for the 2006 season. Anthony Browne, *Whale Trade Back in Business*, TIMES (London), July 29, 2002, at 13; *Whaling Nations Say Foes Have Lost IWC Credibility*, SAIGON TIMES DAILY, Feb. 13, 2003, available at 2003 WL 4469133.

101. Agence France-Presse, *Japan Negotiating to Buy Whalemeat From Norway*, July 30, 2002, available at 2002 WL 23569285; Kristin Kovner et al., *The Battle Isn't Over; Whaling Nations Want to Restart the Hunt*, NEWSWEEK INT'L, July 14, 2003, available at

Norwegian government to permit the exportation of whale products when coastal whalers could no longer afford storage costs for the thousands of pounds of whale blubber that Norwegians refused to eat.¹⁰²

Although the Norwegian government authorized the trade of whale products, the whaling industry has suffered several major setbacks since its recent inception. For example, when Norway announced the intention to trade minke whale blubber to Japan, international airlines boycotted and refused to carry the whale products.¹⁰³ As a result of the boycott, Norwegian whalers scarcely managed to send Japan a few samples of the whale blubber.¹⁰⁴ Norwegians have continued their attempts to ship whale products to Japan. However, recent studies have shown that North Atlantic whale products contain high levels of mercury, prompting Japan to reject recent Norwegian proposals for exporting whale products.¹⁰⁵

Norway's continued attempts to trade minke whale products to both Japan and Iceland appears to be in direct contravention of CITES. However, Norway has not violated CITES because Norway filed a formal objection to the Appendix I minke whale status.¹⁰⁶ Furthermore, Norway has not violated UNCLOS by continuing to allow Norwegian whalers to hunt within Norway's EEZ.¹⁰⁷ Therefore, Norway has not violated relevant international treaties by continuing to hunt and trade minke whales.

Whaling and Customary International Law

While Norwegian whaling may not violate UNCLOS or CITES, many anti-whaling organizations argue that whaling violates customary international law.¹⁰⁸ The International Court of Justice has defined customary international law as consistent state practice out of a sense of

2003 WL 8873651.

102. *Whalers Bring Home Blubber That's No Bacon*, WALL ST. J., June 12, 2000, at B9; Charles Goldsmith, *Norwegian Buyer Is Stuck With Tons of Blubber Nearing Sell-By Date*, WALL ST. J. EUR., July 10, 2002, at A1.

103. *Norwegian Whale Cargo Rebuffed by Airlines*, SEATTLE TIMES, July 18, 2001, at A2; Browne, *supra* note 100.

104. Browne, *supra* note 100.

105. U.S. Newswire, *Norwegian Whale Hunt to Proceed Despite Contamination*, Says *International Fund for Animal Welfare*, Sept. 23, 2003, available at 2003 WL 55662556; Agence France-Presse, *Norway Warns Pregnant Women Against Eating Whale Meat*, May 13, 2003, available at 2003 WL 2801497.

106. Eldridge, *supra* note 94, at 550–51.

107. See Schiffman, *supra* note 5, at 349.

108. *Id.*

“legal obligation.”¹⁰⁹ Arguably, the preservation of whales has risen to the level of customary international law, as evidenced by a majority of nations that have condemned whaling and have acted accordingly by joining the whale-related treaties listed above.¹¹⁰ However, not all nations have consistently supported the preservation of whales.¹¹¹ For instance, the United States has continually condemned whaling through the IWC, yet has allowed limited whaling by aboriginal tribes living in the United States.¹¹² This inconsistency tends to show that whale preservation has not yet become international custom.¹¹³

Norway has fought to keep the preservation of whales from becoming international custom.¹¹⁴ For whale-related treaties that anti-whaling nations have signed to protect whales, Norway has entered objections and reservations to the provisions of each treaty that attempt to regulate the whaling industry.¹¹⁵ Under international law, a nation that persistently objects to a custom will not be bound by that custom.¹¹⁶ Norway's persistent objections to the IWC's moratorium on whaling mean that Norway can legally violate the moratorium.¹¹⁷ Therefore, even if the preservation of whales has become customary international law, Norway's persistent objections exempt Norway from these obligations. Although anti-whaling nations may claim that Norway has not complied with international law, Norway has not violated the ICRW, UNCLOS, CITES, or customary international law. While Norwegian whaling may be legal under international law, the decision to continue whaling may negatively affect Norway's further relations with the rest of Europe and the other Nordic countries.¹¹⁸

109. North Sea Continental Shelf (F.R.G. v. Den.; F.R.G. v. Neth.), 1969 I.C.J. 3, para. 77; MARK W. JANIS, AN INTRODUCTION TO INTERNATIONAL LAW 46 (3d ed. 1999).

110. Schiffman, *supra* note 5, at 324.

111. *Id.* at 329–30.

112. *Id.*

113. *Id.* at 330–31.

114. See Schiffman, *supra* note 5, at 331.

115. See Eldridge, *supra* note 94, at 550–551; Hodges, *supra* note 1, at 303, 315; Schiffman, *supra* note 5, at 318.

116. Schiffman, *supra* note 5, at 331–32.

117. *Id.* at 318.

118. Howton, *supra* note 1, at 182; Valeria Neale Spencer, *Domestic Enforcement of International Law: The International Convention for the Regulation of Whaling*, 2 COLO. J. INT'L ENVTL. L. & POL'Y 109, 113 (1991); Hodges, *supra* note 1, at 299; Schiffman, *supra* note 5, at 331.

III. THE EFFECT OF NORWAY'S WHALING ON NORWEGIAN FOREIGN POLICY

Despite the fact that Norwegian whaling complies with international law, Norway will confront continued opposition to its whaling industry. Norwegians have shown no signs of relinquishing their whaling policy because, along with fishing and the protection of the environment, whaling is part of the Norwegian culture and identity.¹¹⁹ This culture and identity has played a large role in Norwegian foreign policy, especially with regard to the E.U.¹²⁰ Norwegian foreign policy vacillates between an "outward-looking tendency and a more introverted isolationist impulse."¹²¹ Norwegians desire the benefits of integrating with Europe, but are skeptical of joining any organization that would force Norway to become bound by international agreements.¹²² For example, while Norway depends on trade with the E.U., Norwegians have proven that they value their culture and identity more than they value integration into a tariff-free economy.¹²³ Norway has negotiated integration with the E.U. several times; however, Norwegians have ultimately rejected integration each time fearing that Norwegian identity would be replaced with a neutral, undistinguishable identity.¹²⁴

Norwegian Isolationism

Despite common policies and identities, Norway's path to integration diverged from that of Sweden, Denmark, and Finland. One reason for this divergence is the fact that Norway did not regain independence until 1905, after nearly 600 years of union with Sweden and Denmark.¹²⁵ When Norway finally became independent, the country was ill-prepared to handle the security issues that evolved over the course of the next century.

Norway's experience in World War II forced the government to look to foreign powers for security protection. During World War II,

119. Ministry of Foreign Affairs, *supra* note 5; Alexander Gillespie, *The Ethical Question in the Whaling Debate*, 9 GEO. INT'L ENVTL L. REV. 355, 374 (1997).

120. Nytt fra Norge for the Ministry of Foreign Affairs, *Globalization and Norwegian Identity*, available at <http://odin.dep.no/odin/engelsk/norway/history/032005-990471/index-dok000-b-n-a.html> (last visited Jan. 11, 2004).

121. Blakkisrud, *supra* note 76.

122. *Id.*

123. See Ministry of Foreign Affairs, *supra* note 6.

124. See Blakkisrud, *supra* note 76.

125. *Id.*

Nazi occupation threatened Norwegian culture and values.¹²⁶ Norway's attempt to remain neutral like Sweden failed miserably.¹²⁷ The threats on Norwegian security forced the country to seek protection from the North Atlantic Treaty Organization (NATO).¹²⁸ Norway relied on the involvement of the U.S. in NATO, especially since the U.S. had emerged as the new superpower after World War II.¹²⁹ However, Norway did not accept NATO protection unconditionally. Just as Norway entered objections and reservations to the conventions regulating whaling to protect its sovereignty, Norway also entered several reservations upon joining NATO.¹³⁰

Unwilling to relinquish more sovereignty than necessary, Norway conditioned its participation in NATO.¹³¹ Norway refused to permit access to Norwegian bases unless Norway was under attack and declined to allow NATO to deploy any nuclear weapons from Norwegian soil.¹³² The threats to Norwegian security during World War II and the Cold War, coupled with the fear that the country would become more marginalized, encouraged Norway to seek cooperation with the rest of Europe.¹³³

As Norway recovered from World War II and the Cold War, security became less of an issue, and Norway focused more on European trade. Norway remained reluctant to marginalize its sovereignty and identity; however, the nation became heavily reliant on trade with the rest of Europe and subsequently joined several European economic organizations to take advantage of the tariff-free market in Europe. For example, Norway entered into the European Free Trade Association (EFTA) in 1961.¹³⁴ When the E.U. established its internal market in 1992, the members of EFTA and the E.U. negotiated the establishment of the European Economic Area (EEA).¹³⁵ Norway also became dedicated to several regional organizations, including the

126. Lawrence Watters, *Indigenous Peoples and the Environment: Convergence from a Nordic Perspective*, 20 UCLA J. ENV'T'L L. & POL'Y, 237, 253 (2001/2002).

127. Pertti Pesonen et al., *The Three Nations of Northern Europe*, in TO JOIN OR NOT TO JOIN: THREE NORDIC REFERENDUMS ON MEMBERSHIP IN THE EUROPEAN UNION 46 (Anders Todal Jenssen et al. eds., 1998) [hereinafter *Three Nations of Northern Europe*].

128. Blakkisrud, *supra* note 76.

129. *Id.*

130. *Id.*

131. *Id.*

132. *Id.*

133. Clive Archer, *Norway: The One that Got Away*, in THE 1995 ENLARGEMENT OF THE EUROPEAN UNION 147 (John Redmon ed., 1997).

134. Blakkisrud, *supra* note 76.

135. *Id.*

Barents Cooperation, the Baltic Sea Council, and the Arctic Council.¹³⁶ These organizations helped to maintain security and promote trade throughout the region.¹³⁷

Although Norway has remained active in the EEA and regional organizations, Norwegians have refused to give up sovereignty and identity by completely integrating into the E.U. Norway has a complicated history of accepting and rejecting European integration.¹³⁸ The Norwegian government first sought membership in the European Community in the 1960s.¹³⁹ However, when the government held a referendum in 1972, Norwegians voted against membership.¹⁴⁰ The vote reflected the divide between the small, coastal villages in Norway that fought to maintain their cultural traditions and the large cities that sought to increase free trade with the rest of Europe.¹⁴¹ The ability of Norway to make sovereign decisions became a focal point for the anti-European campaign.¹⁴² Norwegians feared that a remote entity like the European Community would try to govern Norway in a manner that was inconsistent with Norwegian ideals and traditions.¹⁴³

Norway negotiated membership into the E.U. for a second time in the early 1990s. At the time, joining the E.U. seemed like the next logical step for Norway after having taken advantage of the internal market through the EEA.¹⁴⁴ Plus, Norway had been operating at a disadvantage within the EEA; Norway could participate in the early stages of policy development but could not participate in the final decision and had to implement that final decision into Norwegian law.¹⁴⁵ Norway also felt pressured by its Nordic neighbors to join the E.U. Denmark acceded into the E.U. in 1972, and Sweden and Finland began negotiating their membership in the early 1990s.¹⁴⁶

136. Blakkisrud, *supra* note 76; Ingeborg Grimsmo, *Norway's Environmental Policies in an International Perspective*, available at <http://odin.dep.no/odin/engelsk/norway/environment/032091-991564/index-dok000-b-f-a.html> (last visited Jan. 11, 2004).

137. Blakkisrud, *supra* note 76.

138. See Pertti Pesonen et al., *To Join or Not to Join*, in *TO JOIN OR NOT TO JOIN: THREE NORDIC REFERENDUMS ON MEMBERSHIP IN THE EUROPEAN UNION* (Anders Todal Jenssen et al. eds., 1998) [hereinafter *To Join or Not to Join*].

139. *Id.* at 20.

140. *Id.*

141. Archer, *supra* note 133, at 148.

142. *Id.* at 155.

143. *Id.*

144. Blakkisrud, *supra* note 76.

145. Ingebritsen, *European & Cultural Identity*, *supra* note 57.

146. Pacsal Fontaine, *Europe in Ten Points*, available at

Although membership seemed inevitable, Norway rejected European integration in 1994 due to several obstacles that Norwegians could not overcome. These obstacles involved the regulation of fishing and oil. If Norway had accepted European integration, the country would have lost the right to regulate fishing in Norwegian waters.¹⁴⁷ For example, the E.U. would have regulated Norwegian coastal waters and opened these waters for exploitation by other E.U. members.¹⁴⁸ The fisheries policy of the E.U. had a reputation for allowing over-exploitation of marine resources.¹⁴⁹ Also, Norwegian oil production that created wealth for Norwegians would have been collectivized by the E.U. Thus, Norwegian oil would have become a commodity available to all E.U. members.¹⁵⁰ In fact, Norwegians felt so strongly about maintaining their sovereignty over oil that when a document surfaced during the E.U. campaign revealing the fact that Norwegian oil would become a community resource, the pro-E.U. campaign knew it had lost the referendum.¹⁵¹ In sum, the E.U. challenged Norway's sovereignty over oil and fishing regulation, and Norway's traditional management of these natural resources.¹⁵²

Like the regulation of oil and fish, European integration would have also impinged upon Norway's sovereign right to harvest whales. Norway's decision to resume whaling in 1993 posed a significant problem for the E.U. because the E.U. was an anti-whaling organization.¹⁵³ However, the E.U. offered the following compromise to facilitate negotiations: Norway would be allowed to continue hunting minke whales for two years, after which time the policy would be reviewed.¹⁵⁴ The compromise satisfied neither the Norwegians nor the anti-whaling nations within the E.U.¹⁵⁵ Despite negotiations with the E.U., the 1994 referendum rejecting European integration demonstrated that the Norwegian people clearly did not want to relinquish Norway's sovereignty or ability to regulate fishing, oil production, and whaling.¹⁵⁶

http://europa.eu.int/comm/publications/booklets/eu_glance/12/txt_en.htm#1 (last visited Jan. 11, 2004).

147. Archer, *supra* note 133, at 153.

148. *Id.*

149. Ingebritsen, *European & Cultural Identity*, *supra* note 57.

150. Archer, *supra* note 133, at 153.

151. *Id.*

152. Ingebritsen, *European & Cultural Identity*, *supra* note 57.

153. STANLEY P. JOHNSON & GUY CORCELLE, *THE ENVIRONMENTAL POLICY OF THE EUROPEAN COMMUNITIES* 11 (2d ed. 1995); STOETT, *supra* note 12, at 90.

154. Caron, *supra* note 61, at 167.

155. *Id.*

156. *To Join or Not to Join*, *supra* note 138.

Just as Norway rejected E.U. membership, Sweden and Finland, both approved accession into the E.U.¹⁵⁷ One explanation for the diverging integration policies could be that Sweden and Finland faced a certain urgency to join as their respective economies headed toward recessions and increased unemployment.¹⁵⁸ The Norwegian economy, on the other hand, flourished from the production of oil off the Norwegian coast and did not face the same high unemployment as Sweden and Finland.¹⁵⁹ Therefore, Norway could risk non-membership to protect the nation's sovereignty and cultural traditions.

Even though Norway rejected membership, the Norwegian government understood that Norway could no longer operate without cooperation with the E.U. For example, Norway continues to rely on bilateral trade agreements with the E.U. today.¹⁶⁰ However, by refusing membership in the E.U., Norway now relies on cooperation with the E.U. but does not have a voice to affect policies within the organization. Norwegian influence on policies within the E.U. is limited to Norway's contact and communication with other member states.¹⁶¹

Despite Norway's continued cooperation with the E.U., Norway still practices isolationism to protect the right to whale and preserve Norwegian coastal waters from over-exploitation.¹⁶² Norwegians continue to believe that they made the right decision by rejecting E.U. membership, especially because the nation continues to prosper without the help of the E.U.¹⁶³ Unaffected by this isolationism, Norway continues to hold sacrosanct its sovereignty and right of self-determination.¹⁶⁴

157. *To Join or Not to Join*, *supra* note 138, at 20.

158. G. Porter Elliott, *Neutrality, the Acquis Communautaire and the European Union's Search for a Common Foreign and Security Policy under Title IV of the Maastricht Treaty: The Accession of Austria, Finland, and Sweden*, 25 GA. J. INT'L & COMP. L. 601, 624 (1996); *To Join or Not to Join*, *supra* note 138; Matthew H. Wexley, Note, *The Impact of Sweden's Accession into the European Union on its Social and Labor Policies*, 4 CARDOZO J. INT'L & COMP. L. 189, 190 (1996); Lars Svasand, *The Re-Emergence of the EU Issue in Norwegian Politics*, 74 SCANDINAVIAN STUD. 329 (2002), available at 2002 WL 23105681.

159. Svasand, *supra* note 158.

160. Blakkisrud, *supra* note 76.

161. *Id.*

162. Stephen D. Moore, *No Surprise? Norway Weighs Assets in Economy, Defense Against EU Benefits*, WALL ST. J. EUR., Nov. 28, 1994, at 1.

163. Archer, *supra* note 133, at 153.

164. Hodges, *supra* note 1, at 317.

Norway and Sweden: A History of Cooperation

Although Norway may be isolated from the rest of Europe, Norway's relationship with Sweden will prevent Norway from complete isolation. Based on a shared history and similar approaches to culture and the environment, the two countries benefit from an enviable level of cooperation.¹⁶⁵ Because of this deep-rooted cooperation, Norwegian whaling could have a negative impact on Sweden. For example, despite their small size, both Sweden and Norway are model environmental nations.¹⁶⁶ Sweden maintains a reputation as an environmental powerhouse and continues to be influential on a global scale.¹⁶⁷ Although Norway also has a reputation for stringent environmental policies, its credibility as an environmentally conscious nation is undermined by its whaling policy.¹⁶⁸ Similarly, Sweden's environmental reputation and status as a model nation will be negatively affected if Sweden supports Norwegian whaling. However, if Sweden adamantly opposes Norwegian whaling, the cooperation between the two countries could dissolve.

Norway: A Model State Gone Bad?

Despite the small physical size of their respective countries, both Norway and Sweden have influenced environmental policies far beyond Scandinavia.¹⁶⁹ Understanding that environmental problems ignore state boundaries, Norway and Sweden have contributed their "limited power and resources" to the resolution of both national and global environmental problems.¹⁷⁰ Through their contributions, Norway and Sweden have been elevated to the status of environmental model nations.¹⁷¹ One example of a contribution by Norway and Sweden to a

165. Ola Tunander, *Nordic Cooperation*, <http://odin.dep.no/odin/engelsk/norway/foreign/032005-990418/index-dok000-b-f-a.html> (last updated Feb. 4, 1999) (last visited Jan. 11, 2004).

166. See generally Grimsmo, *supra* note 132; Detlef Jahn, *The Social Paradigms of Environmental Performance: The Nordic Countries in an International Perspective*, in THE NORDIC ENVIRONMENTS: COMPARING POLITICAL, ADMINISTRATIVE, AND POLICY ASPECTS 111 (Marko Joas et al. eds., 1999).

167. Jahn, *supra* note 166.

168. *Id.*; see generally Grimsmo, *supra* note 136.

169. See generally Anna Kronsell, *Can Small States Influence EU Norms? Insights from Sweden's Participation in the Field of Environmental Politics*, 74 SCANDINAVIAN STUD. 287 (2002), available at 2002 WL 23105679; Christine Ingebritsen, *The Scandinavian Way and its Legacy in Europe*, 74 SCANDINAVIAN STUD. 255 (2002), available at 2002 WL 23105677 [hereinafter Ingebritsen, *The Scandinavian Way*].

170. See Kronsell, *supra* note 169.

171. See generally Grimsmo, *supra* note 136.

global environmental policy involved the formation of a joint fund to aid environmental projects in Asia.¹⁷² In addition, the Swedish Parliament has tried to set an example by adopting idealistic environmental goals that should be resolved within one generation.¹⁷³ These goals involve cooperation on the public, private, and non-profit level, as well as objectives such as improving air and water quality, and ensuring that marine life in bodies of water flourish.¹⁷⁴ Sweden further proved its influence at the international level when Swedish policy makers initiated and hosted the first United Nations conference on the environment.¹⁷⁵

Norway has similarly been influential as a global environmental model.¹⁷⁶ Norway's source of power in the environmental field began with Prime Minister Gro Harlem Brundtland, who made 'sustainable development' "a buzzword in international development."¹⁷⁷ The norm of sustainable development—using natural resources while preserving enough for future generations to enjoy—has nearly been internalized by Norway.¹⁷⁸ Sustainable development encourages environmental policies to "anticipate, prevent, and attack the causes of environmental degradation."¹⁷⁹ Norway has tried to show that a policy of sustainable development can be applied to whaling.¹⁸⁰ Even Norwegian environmental groups support Norwegian whaling, as Norway has ensured that its whaling policy is consistent with the idea of sustainable development.¹⁸¹ Norway hopes that anti-whaling nations will soon

172. BBC Monitoring Europe, *Sweden and Norway Establish Asian Environment Fund*, July 24, 2003, available at 2003 WL 60045084.

173. Svenska Miljönätet, *Sveriges Miljömål*, <http://www.miljomal.nu/english/english.php> (last updated Nov. 21, 2003) (last visited Jan. 11, 2004).

174. *Id.*

175. Kronsell, *supra* note 169; Duncan Loefflerink and Mikael Skou Andersen, *Greening the EU: National Positions in the Run-up to the Amsterdam Treaty*, 7 ENVTL. POL. 66, 74 (1998). In 1972, Sweden hosted the United Nations Conference on the Human Environment. *Id.* At the conference, Swedish policy makers presented their research on acid rain, hoping to spark international cooperation on an issue that continued to plague Sweden despite Sweden's attempts to combat acid rain internally. *Id.*

176. Grimsno, *supra* note 136.

177. Ingebritsen, *The Scandinavian Way*, *supra* note 169.

178. *Id.*

179. Bergen Ministerial Declaration on Sustainable Development in the ECE Region, U.N. Doc. A/CONF.151/PC/10 (1990).

180. See Alf Håkon Hoel, *Norwegian Management of Living Marine Resources*, at <http://odin.dep.no/odin/engelsk/norway/environment/032091-120004/index-dok000-b-n-a.html> (Dec. 2000) (last visited Jan. 11, 2004); Caron, *supra* note 61, at 159–60.

181. Barrack Otieno, *Whales, Elephants Divide Endangered Species Delegates*, ENVTL. NEWS SERVICE, Apr. 14, 2000, available at <http://forests.org/archive/africa/wheldive.htm>.

realize the validity of sustainable development as a method for conserving whales.¹⁸²

Thus, both Sweden and Norway have evolved into model countries as a result of their global environmental contribution.¹⁸³ Nevertheless, Norway could undermine its status as a model country by continuing to hunt minke whales contrary to international sentiment. Likewise, Norwegian whaling may harm Sweden's reputation as an environmental model if Sweden supports Norway's whaling policy.

Nordic Cooperation or Nordic Tension?

In addition to undermining environmental achievements, Norway's unilateral decision to resume whaling may cause tension in the Nordic region as a whole. The Nordic countries—Norway, Sweden, Iceland, Denmark and Finland—“have more in common than most neighboring countries.”¹⁸⁴ Through the creation of two regional ministries and a treaty, the region has sought to solidify the strong bond that exists between them.¹⁸⁵ The Nordic countries all share an interest in maintaining stability within the region and acting in concert with their international foreign policies.¹⁸⁶ Over the years, these countries formed economic partnerships to compete and prosper internationally and taken similar stands on disarmament, development aid and human rights.¹⁸⁷

In 1952, the Nordic countries strengthened their cooperation by forming the Nordic Council.¹⁸⁸ The Nordic Council works to promote

(last visited Jan. 11, 2004). A member of a prominent Norwegian environmental group commented: “As long as [Norway] can harvest the surplus without reducing the stocks significantly, we think whaling is a good thing.” Otieno, *supra* note 181.

182. Jennifer Bailey and Brad McKay, *Are Japanese Attitudes Toward Whaling American-Bashing? A Response to Tanno and Hamazaki*, ASIAN AFFAIRS: AN AMERICAN REVIEW, Oct. 1, 2002, available at 2002 WL 15349858.

183. Most recently, Norway has become a model nation for other oil producing nations. Bob Davis, *Oslo Offers Iraq a Key Lesson in Revival; Once Tethered to Oil's Cycle of Boom and Bust, Norway Revamped and Recovered*, WALL ST. J. EUR., June 30, 2003, at A1. Norway is unique as an oil producer because the government has segregated the oil business from the Norwegian economy and has clearly stated that the people own the oil, as opposed to one private entity claiming ownership rights. *Id.* Economists would like to recreate in Iraq the Norwegian idea that profits should be shared with every citizen. *Id.* A senior analyst stated: “If oil revenues have to be shared with everyone, you can't take the money, leave everyone poor, and spend it on nuclear weapons.” *Id.*

184. *Three Nations of Northern Europe*, *supra* note 127, at 37.

185. *Id.* at 47.

186. *See id.*

187. Ingebritsen, *The Scandinavian Way*, *supra* note 169; *Three Nations of Northern Europe*, *supra* note 127, at 47.

188. *Three Nations of Northern Europe*, *supra* note 127, at 47.

inter-parliamentary cooperation and ensure cooperation in the legislation of the Nordic countries.¹⁸⁹ In 1962, the Nordic countries created and signed the Treaty of Cooperation.¹⁹⁰ Under the Treaty, the Nordic countries “endeavor to maintain and further develop cooperation between. . .cultural, social and economic fields as well as in regard to. . .the protection of the environment.”¹⁹¹ Several articles of the Treaty suggest that when issues of international commercial policy or economic policy are present, the Nordic countries should consult one another.¹⁹² With the Nordic Council and the Treaty of Cooperation, the amount of cooperation among Nordic countries remains unparalleled.¹⁹³

The close relationship shared by the Nordic countries implies that the decisions of one country may positively or negatively impact the other Nordic countries. For this reason, Nordic Ministers should consult one another before making a decision that will impact the other Nordic states.¹⁹⁴ Norway’s unilateral decision to continue its whaling practices, though receiving some support from Iceland, could strain the relationship between Norway and the other Nordic countries.

Norway’s nearest Nordic neighbors, Iceland and Sweden, each have treated the whaling issue differently. Iceland, a pro-whaling nation, did not follow Norway’s lead in formally objecting to the IWC’s moratorium and discontinued whaling under pressure from anti-whaling countries within the IWC.¹⁹⁵ After learning that the IWC had no intention of revoking the moratorium, Iceland withdrew from the IWC in 1992 and helped create the North Atlantic Marine Mammal Commission (NAMMCO) with Norway and Denmark.¹⁹⁶ These countries formed NAMMCO due to dissatisfaction with the IWC’s zero-catch limits and ineffective decision-making.¹⁹⁷ However, Norway did not contribute to the legitimacy of NAMMCO as a replacement for

189. Nordic Council and Council of Ministers, *History of the Nordic Region* (May, 8, 2001), at http://www.norden.org/web/1-1/fakta/uk/1-1-4-nordens_hist.asp?lang=6. (last visited Jan. 11, 2004).

190. DAVID DEGUISTINO, *A READER IN EUROPEAN INTEGRATION* 140 (London: Longman 1996).

191. *Id.*

192. *Id.*

193. See Barnes, *supra* note 3.

194. Tunander, *supra* note 165.

195. Sean D. Murphy, *Blocking of Iceland’s Effort to Join Whaling Convention*, 96 AM. J. INT’L L. 712 (2002).

196. Caron, *supra* note 61, at 163. Denmark helped create NAMMCO at the behest of Greenland and the Faroe Islands, which have interests in whaling but cannot enter into international treaties because they are under the sovereign rule of Denmark. *Id.*

197. *Id.*; see also Howton, *supra* note 1, at 181.

the IWC as Iceland had hoped. Therefore, Iceland reapplied for membership in the IWC in 2001.¹⁹⁸ Once Iceland was readmitted into the IWC, the country announced that its plans to resume commercial whaling. However, when the international community, especially the United States, expressed extreme opposition to this decision, Iceland elected to operate under a scientific exception of the ICRW and hunt only 38 whales per year.¹⁹⁹ Britain and 23 other anti-whaling nations criticized Iceland for inexcusably violating the spirit of the ICRW.²⁰⁰ Because of Iceland's small size, the country has had to be careful not to solicit retaliation and embargoes that could damage Iceland's economy.²⁰¹ For this reason, Iceland may resent the fact that Norway has nonchalantly disregarded international sentiment.

While Iceland has decidedly pro-whaling views, Sweden is caught between the E.U.'s anti-whaling members and its cooperation with Iceland and Norway. A majority of Swedish citizens are opposed to whaling and, within the IWC, Sweden is considered a "pro-conservation nation."²⁰² In 1995, Sweden announced an anti-whaling policy when the Swedish Prime Minister sent a message to Norwegian Prime Minister Gro Harlem Brundtland indicating that Sweden planned to take a stronger position against Norway's whaling policy.²⁰³ However,

198. *Island Fick Hjälp Med Valjakt*, DAGENS NYHETER, Oct. 15, 2002, available at <http://www.dn.se/Dnet/road/Classic/article/0/jsp/print.jsp?&a-66731> (last visited Jan. 11, 2004) [hereinafter *Island Fick Hjälp Med Valjakt*].

199. Steve Connor, *US Threatens Trade War as Iceland Resumes Whaling*, Aug. 20, 2003, at <http://lists.envirolink.org/pipermail/ar-news/Week-of-Mon-20030818/005168.html> (last visited Jan. 11, 2004). Iceland lowered its proposed catch limits from 250 to 38 following intense opposition from anti-whaling nations within the IWC. Steingrímur Sigurgeirsson, *Iceland Starts Whale Hunt Amid Protests*, A.P. Online, Aug. 17, 2003, available at 2003 WL 61744954. The Icelandic Ministry of Fisheries claims that the 38-whale quota is a "minimalist approach" and shows that the nation is willing to "compromise on whaling issues." Amanda Hodge, *Iceland Ready to Resume Whaling*, THE AUSTRALIAN, Aug. 8, 2003, available at 2003 WL 61767168.

200. Colin Woodard, *Iceland's Whale Hunting Makes Waves with Critics; Last Week 23 Countries Protested Iceland's Resumption of Whaling for 'Scientific Purposes,'* CHRISTIAN SCI. MONITOR, Sept. 19, 2003, available at 2003 WL 5255597; see also *Cod Logic*, THE GUARDIAN, Aug. 22, 2003, available at 2003 WL 56711779. The United States threatened to initiate a trade war with Iceland after Icelandic whalers broke the 17 year moratorium to catch their first Minke whale in August, 2003. Connor, *supra* note 199.

201. See *Iceland Kills First Whale Stirring International Outrage*, U.S. NEWSWIRE, Aug. 18, 2003, available at 2003 WL 55661280; *U.S. Trade Sanctions over Whaling Resumption*, WMRC DAILY ANALYSIS, Aug. 7, 2003, available at 2003 WL 60321521.

202. Ingebritsen, *Europeanization and Cultural Identity*, *supra* note 57; Johanna Matanich, *A Treaty Comes of Age for the Ancient Ones: Implications of the Law of the Sea for the Regulation of Whaling*, 8 INT'L LEGAL PERSPECTIVE 37, 47 (1996).

203. *Norwegian PM Concerned Over Swedish Hardline on Whaling*, AGENCE FRANCE-PRESSE, May 27, 1995, available at 1995 WL 7808482.

Sweden's whaling policy seemed questionable when Sweden accidentally cast the deciding vote in favor of readmitting Iceland into the IWC in 2001.²⁰⁴ Though the Swedish chairman argued he was confused by the voting process and did not mean to vote for Iceland, at least one environmental group questioned that explanation.²⁰⁵ Sweden's explanation is further weakened by the fact that barely five months earlier, Iceland publicly criticized Sweden's lack of support during Iceland's first attempt to rejoin the IWC.²⁰⁶ While Sweden may not have acted intentionally, this incident supports the notion that Sweden continues to balance the interests of its pro-whaling Nordic neighbors with the interests of the anti-whaling members of the E.U. and the IWC.²⁰⁷

Thus, Norway's decision to continue whaling will cause tension both between Norway and Sweden and between Norway and the Nordic region as a whole. However, because of the long tradition of cooperation, the Nordic region will remain quiet and will neither confront Norway nor publicly denounce Norway's whaling practice.²⁰⁸ Since Norway purports to carry out its whaling activities in accordance with sustainable development, the other Nordic countries should understand that Norway's whaling policy is not meant to over-exploit minke whales.²⁰⁹ This tension will continue to exist as long as Norway defies legitimate institutions such as the IWC and the E.U.

IV. THE FUTURE OF NORWEGIAN WHALING

While Norway's decision to continue whaling has enraged the international community, the Norwegian government argues that whaling is necessary to maintain the cultural identity of the small Norwegian whaling communities and is not meant to over-exploit minke whales.²¹⁰ Many Norwegians feel that the small, coastal communities that have thrived on this tradition would cease to exist if

204. *Island Fick Hjälp Med Valjakt*, *supra* note 198.

205. Sea Shepherd Conservation Society, *Sea Shepherd Comments on Whaling Issue*, at <http://www.seashepherd.org> (last visited Jan. 11, 2004) [hereinafter Sea Shepherd Conservation Society].

206. See BBC Monitoring, *Iceland Threatens Consequences for Lack of Swedish Support in IWC*, DAGENS NYHETER, May 23, 2002, available at 2002 WL 21781670.

207. Sea Shepherd Conservation Society, *supra* note 205.

208. See Grimsmo, *supra* note 136.

209. See *id.*

210. Joel R. Paul, *Cultural Resistance to Global Governance*, 22 MICH. J. INT'L L. 1, 62-63 (2000).

Norway discontinued its current whaling policy.²¹¹ Norway based its decision to resume whaling on evidence released by the IWC's Scientific Committee, showing that the minke whale population could sustain limited whaling.²¹² This scientific evidence, however, will not ameliorate the tension in the Nordic region, especially between Norway and Sweden, who must balance anti- and pro-whaling interests in order to appease both their Nordic and European neighbors. Despite the tension in the region, Norway will continue to harvest whales as long as whaling remains a part of Norwegian culture and identity, and represents the right of self-determination.²¹³

While Norwegians refuse to renounce whaling as the source of their national pride and culture, Norway has engaged in the promotion of sustainable development as a means of conservation to help legitimize its whaling practices.²¹⁴ A new form of eco-tourism, called "Whale Safari," teaches the public about sustainable development as it relates to Norwegian whaling.²¹⁵ A popular tourist attraction in Western Norway, Whale Safari gives participants the opportunity to tour a whaling vessel.²¹⁶ After the boat tour, participants are encouraged to try whale meat at the local restaurants and buy t-shirts that display pictures of Viking whalers and slogans such as "intelligent food for intelligent people."²¹⁷ While anti-whaling governments and non-governmental organizations tend to politicize whaling, Whale Safari presents an alternative view of whaling and hopes to offer insight into Norway's sustainable use of whales.²¹⁸ Advocates of whale preservation, including the IWC, suggest the use of whale-watching to replace the whale-hunting industry.²¹⁹ Although whale-watching produces more

211. Paul, *supra* note 210, at 62.

212. See Lessoff, *supra* note 77, at 441.

213. J. Baird Callicott, *Whaling in Sand County: A Dialectical Hunt for Land Ethical Answers to Questions about the Morality of Norwegian Minke Whale Catching*, 8 COLO. J. INT'L ENVTL. L. & POL'Y 1, 2 (1997). "All people have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social, and cultural development." Hodges, *supra* note 1, at 317; Christine Ingebritsen, *The Politics of Whaling in Norway and Iceland*, 85 SCANDINAVIAN REV. 9, 14 (1997) [hereinafter Ingebritsen, *Politics of Whaling*].

214. See Ingebritsen, *Politics of Whaling*, *supra* note 213, at 14.

215. *Id.*

216. *Id.*; Hvalsafari [Whalesafari], at <http://www.whalesafari.no/download/HvalsafariENG.pdf> (last visited Jan. 11, 2004) [hereinafter *Whalesafari*].

217. Ingebritsen, *Politics of Whaling*, *supra* note 213.

218. *Id.*; *Whalesafari*, *supra* note 216.

219. International Whaling Commission, *Whalewatching*, <http://www.iwcoffice.org/Catches.htm> (last visited Jan. 11, 2004).

money than harvesting whales, Norway will not replace whaling, a symbol of its sovereignty and identity, with whale-watching.²²⁰

Norway must now focus on a bigger issue: whether or not it will join the E.U. Recently, Norwegian Prime Minister Kjell Magne Bondevik announced that Norway will likely hold another vote on E.U. membership by the year 2010.²²¹ If Norway accepts membership, the nation would acquire greater decision-making power and could assist Sweden in exerting pressure on the E.U. to adopt more extensive environmental policies.²²² However, Norway would be required to reconsider its whaling policy. E.U. member nations have not changed their views on whaling since Norway's last attempt to join the E.U. in 1994.²²³ The majority of E.U. members continue to express disapproval of whaling and agree that the environment should be regulated collectively.²²⁴ Unless Norway can successfully bargain with the E.U. to retain the Norwegian whaling tradition, Norway may face similar outcomes as those of its 1972 and 1994 referendums.

V. CONCLUSION

Norway continues to prove that it will withstand threats and criticism in order to maintain Norwegian cultural identity and sovereignty. The resumption of Norway's whaling practices undermines the credibility of the IWC as a regulatory regime; however, Norway's whaling does not undermine the purpose of the ICRW, which is to regulate whaling and preserve whales for future generations of whalers. Furthermore, Norwegian minke whaling does not violate international law or custom, and is consistent with international treaties. Under international law, Norway can continue whaling, but must do so at the expense of a better relationship with Europe and the Nordic region. Norway has remained isolated from the rest of Europe, which negatively affects the Nordic members of the E.U. If Norway became a member, the Nordic region could vote together and play a larger role in

220. James Brooke, *Watching for Whales Is Outpacing Hunting Them*, SEATTLE TIMES, Aug. 19, 2001, at A2.

221. *Norge Röstar om EU före 2010*, DAGENS NYHETER, Dec. 13, 2002, available at <http://www.dn.se> (last visited Jan. 11, 2004).

222. See Wexley, *supra* note 158, at 229.

223. Ingebritsen, *Europeanization and Cultural Identity*, *supra* note 56. In fact, when Portugal entered into negotiations with the European Union, the country had to forgo harvesting whales. *Id.* Norway would suffer from the same fate if it chose to join the European Union. *Id.*

224. *Id.*

European affairs.²²⁵

Arguably, Norway would be better off by abstaining from whaling until the IWC is convinced that the minke whale population can sustain whaling. However, it is unlikely that the IWC will ever reach that conclusion. At the most recent annual meeting of the IWC, member nations not only reaffirmed their commitment to uphold the moratorium, but a majority voted in favor of creating a Conservation Committee to make recommendations to the IWC in furtherance of whale preservation.²²⁶ Notably, at the conclusion of the IWC meeting, the Swedish chairman of the IWC, Bo Fernholm, criticized the IWC for implementing a Conservation Committee rather than working toward a “balance between conservation and management.”²²⁷

If Norway continues to whale under this balance as Sweden suggests and regulates the whaling industry based on the idea of sustainable development, Norway will eventually prove to the world that its whaling practices are not meant to over-exploit whales. For a territorially small nation, Norway has exhibited admirable strength in standing up to international opposition. Where other countries have relinquished traditions to integrate into Europe, Norway has fought hard to maintain its cultural identity. However, as long as Norway continues to regulate whaling consistent with the idea of sustainable development and continues to pursue stringent environmental policies, Norway should continue its whaling tradition. Eventually, the international community will realize minke whales are thriving despite Norway's whaling policy. This will legitimize Norwegian whaling, thereby easing the tension in the Nordic region.

225. Wexley, *supra* note 158, at 229.

226. International Whaling Commission, Final Press Release, (2003), www.iwcoffice.org/FinalPressRelease2003.htm. (last visited Jan. 11, 2004).

227. Geir Moulson, *Global Whaling Commission Votes to Strengthen Commitment to Conservation*, THE CANADIAN PRESS, June 16, 2003, available at 2003 WL 57077604.