

Indigenous peoples and animal welfare in the WTO dispute over the EU ban on seal products



Picture: "Seal hunter" by Eook Manomie (1979)

<https://www.inuitartzone.com/collections/vintage-inuit-art/products/seal-hunter-by-eook-manomie>

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Summary

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Section 1

Introduction

1. Introduction: The indigenous peoples of the Arctic (Inuit, Yupik, Aleut, Sami...)



Sources: Arctic Human Development Report, 2004 and Norwegian Polar Institute (W.K. Dallmann)

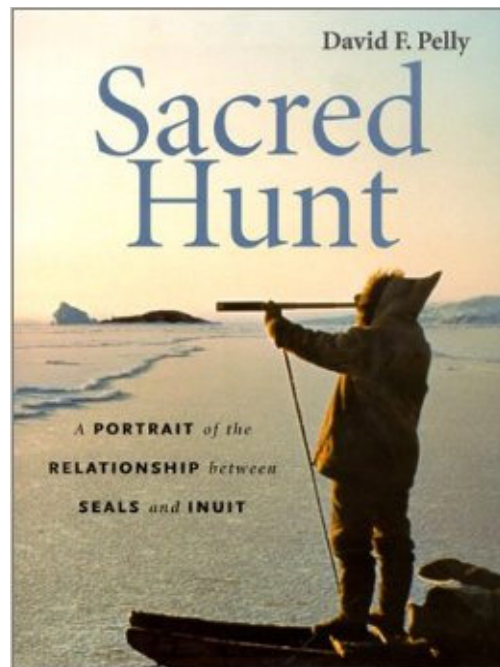


1. Introduction: The rights of indigenous peoples

- ILO Convention No. 169 on Indigenous and Tribal peoples in Independent Countries
 - Adopted in Geneva on 27 June 1989
 - Entered into force on September 5, 1991
 - It has been ratified by few States: currently for 23, mainly from Latin America. Only by three EU countries: Denmark (1996), Netherlands (1998), Spain (2007), and Luxembourg (2018)
- United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)
 - Proclaimed by the General Assembly resolution 61/295 of 13 September 2007
 - This Declaration, as such, is devoid of binding legal force, but some international bodies, such as the Inter-American Court of Human Rights, consider that it codifies, at least in part, customary international rules

1. Introduction: Arctic indigenous peoples and seal hunting

- The indigenous peoples of the Arctic have been dedicated, since ancient times, to the hunting of seals, which constitutes one of their main means of subsistence and it is part of their culture and identity, which must be protected according to the aforementioned UNDRIP



1. Introduction: Seal hunting

- Seals are marine mammal animals from which various products are obtained: skins, meat, fat, oil...
- There are many different species of seals:
 - Some of them, such as the Mediterranean Monk seal, are listed under Appendices I or II of the Convention on International Trade of Endangered Species (CITES)
 - But, according to the International Union for Conservation of Nature (IUCN), most Arctic seal species (such as the harp seal, grey seal, or ringed seal...) are not considered "threatened" species. For instance:



- <https://www.iucnredlist.org/>





1. Introduction: Seal hunting

- Seal hunting is especially important in:
 - Canada (where it is practiced by indigenous peoples and, on a larger scale, by other hunters)
 - Greenland (territory under Danish sovereignty, but not part of the EU, and whose scarce population is mostly formed by Inuit)
- Hunting seals (or other pinnipeds) is also relevant in some regions far from the Arctic, as Namibia
- In Russia, Norway and some EU Member States (Finland, Sweden and the United Kingdom) seals have also been hunted, but in relatively small quantities

1. Introduction: Seal hunting



- The seals, being generally wild animals and not bred in captivity, are “hunted”. The most common hunting instruments include hakapiks, sticks and firearms
- The methods for the hunting of seals are conditioned by their physical characteristics and their peculiar habitat in the Arctic and subarctic regions. They can be:
 - Crueler methods (for example, seals hunted with nets, killed by drowning, or hunts with a large number of wounded and lost specimens)
 - Or more compassionate methods (proceeding, in three successive stages: to stun, to check the unconsciousness, and to bleed each animal)
- In principle, hunting methods practiced by indigenous peoples of the Arctic tend to be “comparable” to the methods employed by other hunters



Section 2

The “initial regime” (from 2009/2010) of the EU on trade in seal products



2. The “initial regime” of the EU

- In the EU countries there is a growing concern for “animal welfare”
 - Trying, in particular, to reduce the suffering of animals when they are slaughtered in slaughterhouses or hunted
 - There is a special awareness of European public opinion for seal hunting
- The EU adopted Regulation 1007/2009 of the European Parliament and of the Council of 16 September 2009 on trade in seal products
 - And successive Commission Regulation 737/2010 of 10 August 2010, which established detailed rules for its implementation
- This “initial regime” established a general prohibition of the importation and marketing of seal products in the EU
 - The motivation focused on the “animal welfare” of seals, arguing that, although in theory it would be possible to prescribe a non-cruel method to hunt seals, in practice the conditions in which seal hunting tends to take place (with factors such as cold, ice, wind, low visibility, or waves) would make impossible to apply a compassionate method in an effective and systematic way

2. The “initial regime” of the EU

- This “initial regime” included some exceptions to this general prohibition, authorizing the importation and marketing of seal products in certain cases:
 - Here I focus in the Indigenous Communities Exception (IC exception), which allowed the marketing in the EU of seal products from traditional hunting carried out by Inuit or other IC and contributing to their subsistence
 - The logic of this IC exception is to make a ponderation of values between, on the one hand, the protection of the animal welfare of seals and, on the other hand, the protection of the subsistence and traditions of Inuit and other IC





2. The “initial regime” of the EU

- The original IC exception required that:
 - Seal hunting should be carried out by Inuit or other IC with a tradition of seal hunting
 - Products obtained from seal hunting should be used, consumed or transformed, at least in part, in the IC themselves
 - Seal hunting should contribute to the subsistence of the IC
 - At the time of its marketing, the seal products should be accompanied by a certificate issued by a body recognized by the EU
- The original IC exception did not allude to the method of hunting being more or less compassionate



Section 3

Reactions against the
“initial regime”

3. Reactions against the “initial regime”

- Indigenous peoples of the Arctic were generally very critical of this “initial regime” of the EU
- They considered that the IC exception was insufficient
- In addition, they also criticized the general prohibition, considering that it was promoted by animalist lobbies with emotional propaganda campaigns, stigmatizing, with cultural biases, seal hunting
- See, for example, statements by Inuit leaders of the Inuit Tapiriit Kanatami (ITK), such as its President Terry Audla (photo) from June 2012 to September 2015: www.itk.ca





3. Reactions against the “initial regime”

- At the World Trade Organization (WTO):
 - November 2009: Canada and Norway presented claims against the EU
 - Claimants alleged that the “initial regime” of the EU was inconsistent with WTO law, particularly with basic principles of the General Agreement on Tariffs and Trade (GATT) of 1994
 - The EU tried to defend its “initial regime”, mainly:
 - Invoking that it would be justified under the exception referred to in paragraph (a) of Article XX of the GATT, which relates to:
 - Measures “necessary to protect public morals”, on the grounds that animal welfare is a part of the public morality of the EU



3. Reactions against the “initial regime”

- November 2013: Panel report
- May 2014: Appellate Body report considered that:
 - The general prohibition on the marketing of seal products could be provisionally justified under paragraph (a) of Article XX of the GATT, as a measure “necessary to protect public morals”
 - But the “initial regime” of the EU did not meet the requirements of the *chapeau* (heading) of Article XX, because some exceptions included in this “initial regime” incurred in arbitrary or unjustifiable discriminations



3. Reactions against the “initial regime”

- In short, the Appellate Body concluded that:
 - A “general prohibition” would be fully compatible with the WTO law
 - The IC exception (although, in theory, could be justified on the specific international protection of the rights of indigenous peoples)
 - Incurred, according to its initial design and application, in arbitrary discriminations between different IC
 - Because their tenor was very vague (for example, what was consumption or transformation, “at least in part”, in the IC) and...
 - The Greenland Inuit had been able to benefit greatly from the IC exception
 - While the Inuit of Canada (or other IC) had it much more difficult, because they tend to distribute a large part of their seal products through other non-indigenous Canadian operators



Section 4

The “revised regime” (since October 2015) of the EU on trade in seal products: a definitive solution to this dispute?



4. The “revised regime” of the EU

- Once identified, by the Appellate Body, various incompatibilities of the EU’s “initial regime” with the WTO law
- The EU had to introduce changes in its “initial regime”, within a reasonable period of compliance which ended on 18 October 2015
- The EU has introduced, finally, some changes in its regime on trade in seal products:
 - The EU maintains the general prohibition
 - The EU maintains the IC exception, but it adjusts its contents to the requirements of the Appellate Body report



4. The “revised regime” of the EU

- This “revised regime” has been established by the adoption of two new Regulations:
 - Regulation (EU) 2015/1775 of the European Parliament and of the Council of 6 October 2015 and Commission implementing Regulation (UE) 2015/1850 of 13 October 2015
 - The new wording of the IC exception:
 - Eliminates the old condition that the products were consumed or transformed, “at least in part”, by the IC, which was harmful for Canadian IC
 - Adds the new condition that “the hunt is conducted in a manner which has due regard to animal welfare, taking into consideration the way of life of the community and the subsistence purpose of the hunt”
 - Maintains the requirement that seal products should be accompanied by a certificate issued by a body recognized by the EU

4. The “revised regime” of the EU

- The EU, pursuant these new Regulations, has already recognized as authorities entitled for issuing certificates based on the current IC exception to:
 - With two Commission decisions of 26 October 2015, to:
 - The Greenland Department of Fisheries, Hunting and Agriculture
 - The Department of Environment of the Government of Nunavut – Canada
 - With a Commission decision of 14 February 2017, to:
 - The Government of the Northwest Territories of Canada





4. The “revised regime” of the EU

- Does the “revised regime” mean a definitive solution of this dispute?
 - Canada and Norway have assumed that, under the WTO law, the general prohibition of seal products can be justified as a necessary measure to protect the EU’s public morals on animal welfare
 - The Inuit and other IC have also been conformed with this “revised regime”, which tends to preserve their interests as a whole
 - The “revised regime” eliminates the initial discriminations between IC from Greenland and from Canada (or other countries) and all of them can have now effective access to the EU market under the new conditions of the IC exception



4. The “revised regime” of the EU

- Most animalists have also assumed that the general prohibition on the marketing of seal products in the EU includes an exception, duly limited, for seal hunts made by Inuit or other IC
- In any case, the animalists underline that the application of the new “revised regime” should be carefully monitored in order to control the conditions of the current IC exception



Thank you very much!