

INTERNATIONAL WHALING CONFERENCE.LONDON - JUNE, 1938.PROTOCOL

The Governments of the Union of South Africa, the United States of America, the Argentine Republic, the Commonwealth of Australia, Canada, Eire, Germany, the United Kingdom of Great Britain and Northern Ireland, New Zealand and Norway, desiring to introduce certain amendments into the International Agreement for the Regulation of Whaling, signed in London on the 8th June, 1937 (hereinafter referred to as the Principal Agreement) in accordance with the provisions of Article 31 thereof, have agreed as follows:-

ARTICLE 1.

With reference to the provisions of Articles 5 & 7 of the Principal Agreement it is forbidden to use a factory ship or a whale catcher attached thereto for the purpose of taking or treating humpback whales in any waters south of 40° South Latitude during the period from 1st October, 1938 to 30th September, 1939.

ARTICLE 2.

Notwithstanding the provisions of Article 7 of the Principal Agreement it is forbidden to use a factory ship or a whale catcher attached thereto for the purpose of taking or treating baleen whales in the waters south of 40° South Latitude from 70° West Longitude westwards as far as 160° West Longitude for a period of two years from the 8th day of December, 1938.

ARTICLE 3.

(1) No factory ship which has been used for the purpose of treating baleen whales south of 40° South Latitude shall be used for that purpose elsewhere within a period of twelve months from the end of the open season prescribed in Article 7 of the Principal Agreement.

For the Government of the United Kingdom of Great Britain
and Northern Ireland:

HENRY G. MAURICE
GEO. HOGARTH.

For the Government of Japan:

A. KUSAKI

For the Government of New Zealand:

M. J. JORDAN.

For the Government of Norway:

BIRGER BERGHOFF.

24. With reference to paragraph 9 of the Final Act of the Conference of 1937, it was reported that the Governments of Germany and Norway had acquired the necessary powers to deal with transfers of ships registered in their territories and that the Government of the United States of America already possessed those powers. The Conference expressed the hope that other countries would take steps to acquire similar powers at an early date.

25. In conclusion, the Conference suggested that the question of holding a future Conference should be left to the consideration of the Governments concerned, in the light of developments.

Done in London the 24th day of June, 1938
in a single copy which shall be deposited in the archives of the Government of the United Kingdom of Great Britain and Northern Ireland by whom certified copies shall be communicated to all the signatory Governments.

For the Government of the Union of South Africa.

C.T. de WATER
F.J. du TOIT

For the Government of the United States of America:

HERSCHEL V. JOHNSON
REMINGTON KELLOGG
WILFRID N. DEPLY

For the Government of the Argentine Republic:

MANUEL B. MALBRAN
M. FINCATI

For the Government of the Commonwealth of Australia:

ROBERT G. MENZIES.

For the Government of Canada:

VINCENT MASSEY.

For the Government of Denmark:

P. P. ERICHSEN

For the Government of Eire:

SEAN O'FAOLAIN O'DULCHAONTIGH
J. D. RUSH

For the Government of Germany:

HELMUTH WOLFF
11.

informed that some of these whales had been measured and among them four fetuses were found, the lengths of which were approximately twenty feet, nineteen feet, seventeen feet and one foot respectively. Some of these whales were taken by Nationals of Governments which were signatories to the Principal Agreement. The Conference desires to draw the attention of the Governments concerned to these breaches of the Geneva Convention and the Principal Agreement. From the commercial point of view, little advantage can accrue to any expedition by the taking of the few right whales that still exist, and in the opinion of the Conference, it is deplorable not only that right whales should be killed in spite of the provisions of the Principal Agreement, but that in particular as the statistics prove, breeding right whales should have been killed. The Conference, therefore, expresses the hope that, with a view to the preservation of the remainder of these most interesting mammals, the Governments concerned should sternly enforce the provisions of Article 4 of the Principal Agreement.

23. The Conference took note of a statement by Dr. Mackintosh of the proposals of the Discovery Committee for enlisting the support of whaling enterprises in the continuation and development of whale marking as carried out by the Committee. The Conference also heard a statement from the German Delegation as to the steps which the German Government proposes to take for the marking of whales. The Conference expressed the hope that the Governments and the whaling enterprises concerned will do their best to encourage the development of whale marking, which, in the view of the Conference, is likely to make an important contribution to the knowledge of the movement of whales, which has a very close bearing upon the problem of conservation of whales.

catchers working from land stations may be reduced by five feet in each instance provided that the meat of such whales is to be used for local consumption. It is understood that this provision is to be limited in its application to stations which are genuinely intended to supply the local needs of the country in which the station is situated.

19. It was agreed that Article 7 of the Principal Agreement should be amended so as to allow of the treatment of whales after the end of the open season provided that they were killed before midnight on March 7th. Provision has been made accordingly in the Protocol (Article 5).

20. The Conference considered a statement by the Japanese Delegation with regard to the effect of Article 5 of the Principal Agreement upon land stations in Japan, some of which actually operate for more than six months in any one year, a considerable portion of the catch consisting of sperm whales. In order to meet so far as possible the case of such land stations the Conference agreed to confine the application of Article 5 to baleen whales and an amendment to this effect has been included in the Protocol (Article 6).

21. The Conference having considered reports to the effect that some difficulty has been experienced in the application of Article 12 of the Principal Agreement, the purpose of which is to limit the period between the killing and the treatment of a whale, it was agreed to remove the uncertainty as to the exact interpretation of the article by re-drafting it on different lines with the same purpose in view. Provision has been made accordingly in the Protocol (Article 8).

22. The Conference learned with concern that during the Antarctic whaling season of 1936/37, and the summer of 1937, no less than 15 right whales had been killed. They were

17. The French Delegation declared that the French Government was ready to accede to the present Agreement subject to the following reservations. First, that the term "land station" employed in the Principal Agreement means a factory on land or a factory placed near the coast on a construction fixed or anchored at the same spot during the whole of the hunting season, and one which cannot be subsequently employed as a factory ship fishing in the deep sea. Secondly, should any regulations be introduced regulating the number of land stations as thus defined, France reserves the right to establish or to maintain three of such stations in her possessions in the Southern hemisphere. In view of the provisions of Article 3 of the Protocol coupled with the statement in paragraph 16 of this Final Act, the first reservation of the French Government appears to be satisfied. Furthermore, there is no provision in the Protocol regulating the number of land stations. The way therefore is clear for the accession of the Government of the French Republic.

18. It was represented to the Conference by the Danish Delegation that in the Faroe Islands whale hunting was prosecuted mainly to provide food in the form of whale meat for the population of the Islands, and that hitherto whaling had been conducted from two land stations in the Faroe Islands without regard to size limits. They intimated that it would be necessary for them, in order to accede to the Principal Agreement, which Denmark was otherwise ready to accept, to make a reservation in respect of size limits so far as they affected these stations. To meet this particular case and other cases of a similar character the Conference agreed to attach a proviso to Article 5 of the Principal Agreement. The Protocol (Article 4) provides that the size limit for blue, fin and sperm whales applicable to whales taken by

16. In the fifth paragraph of the Final Act of the Conference of last year attention was drawn to the risk that the restrictions imposed on pelagic whaling might lead to a development of whaling from land stations, and the Governments were accordingly advised to place themselves in a position to check or regulate such development should it occur. Since the Conference of last year, an unforeseen development has occurred owing to the assumption in certain quarters that, in spite of the provisions of Article 9 of the Principal Agreement, it was legitimate to use a factory ship as a temporary "land station" when it remained within the territorial waters of a State. In the opinion of the Conference as a whole (United States of America Delegation dissenting) the wording of Article 9 of the Principal Agreement prohibits the use of a factory ship for treating whales in the whole of the areas specified, without exception. Briefly, the majority view of the Conference is that a factory ship does not lose its character of being a ship until at least it loses its power of independent movement, and that a factory ship moored in territorial waters is no less a ship than any other ship which drops its anchor or is moored in a port. Although the Conference has no doubt of the correctness of this interpretation of Article 9, it has been thought desirable, in view of the events which have occurred, to embody in the protocol an Article (Article 3) which, while placing beyond doubt the fact that it is not permissible to use a factory ship as a "land station", nevertheless makes a concession in respect of existing enterprises.

14. With regard to method (f) the Conference agreed that the sector of the waters south of 40° South Latitude which lies between 70° West Longitude and 130° West Longitude should be a sanctuary for whales for at least two years and provision has been made accordingly in the Protocol (Article 2). In this sector commercial whaling has not hitherto been prosecuted but the evidence acquired by the Discovery Committee shows that it is frequented by baleen whales, and the Conference agreed that it was highly desirable that the immunity which whales in this area had hitherto enjoyed should be maintained. Little information is available as to the extent to which whales from this area travel into the adjoining areas or vice versa, but there is reason to think that such movement does, to some extent, take place and that therefore the protection provided in this area may have useful results.

15. With regard to method (g), certain doubts having arisen already as to the limits of the Greenland Sea referred to in Article 9 of the Principal Agreement and as to the extent to which the Arctic Ocean is included within the area protected by that Article, it was suggested that the whole of the waters North of 66° North Latitude should be brought under protection, and that to the Atlantic and Indian Oceans and to the closed areas of the Pacific Ocean should be added their respective dependent waters. The Japanese Delegation, however, asked for a concession permitting whaling in the Arctic Ocean north of the Pacific Ocean, between 66° North Latitude, and 72° North Latitude. In view of the satisfactory declaration as to the position of the Japanese Government referred to in paragraph 3, the Conference agreed to exclude these waters from the restriction. Provision to meet these points has accordingly been made in the Protocol (Article 7).

12. Although the Conference was unable to agree to the immediate adoption of methods (b), (c) or (d) there was a strong feeling that these were matters calling for further expert examination by all the Governments concerned, with a view to their consideration at a subsequent Conference.

13. With regard to method (e) attention was drawn to a Report recently issued by the Discovery Committee concerning the condition of the stock of humpback whales and to other evidence pointing to a serious decline of that stock, and the Conference appointed a Committee to study this question. The Committee reported that there was ample biological evidence to show that the humpback stock was in very serious danger in all sectors of the southern hemisphere, and recommended that there should be no hunting of this species of whale for at least a year in any waters or at least in the southern hemisphere and North Atlantic and dependent waters. It proved impossible to obtain the general agreement of the Conference to this proposal chiefly because some land stations depend mainly upon humpbacks for their output of oil, and it was contended that the total prohibition, even for one year, of the hunting of humpbacks would have an effect on these land stations disproportionate to that which it would have on pelagic expeditions. The Conference, therefore, while admitting the desirability of a total prohibition, agreed that in the first instance the hunting of humpbacks by means of pelagic expeditions should be prohibited in the waters south of 40° South Latitude. A provision to this effect has consequently been embodied in the Protocol (Article 1). It is hoped that this measure of protection coupled with the immunity which all baleen whales would enjoy in the greater part of the waters north of 40° South Latitude should have useful results and the Conference strongly recommends the Governments represented thereat and other Governments concerned to study this question further with a view to give complete protection to humpback whales for a suitable period after 30th September, 1939.

6. With regard to method (a) in the foregoing paragraph, the Conference agreed, with the exception of the Japanese Delegation who reserved their position for the season 1938-39, that the open season provided for in Article 7 of the Principal Agreement, that is to say, from the 8th day of December to the 7th day of March following, should be maintained. It was felt that few, if any, expeditions would be able to engage profitably in whaling if the open season in the Antarctic were further curtailed; and that a further curtailment of the open season would increase the temptation to evade the provisions of Articles 11 and 12 of the Principal Agreement, which are designed to secure that the fullest possible use shall be made of all whales taken.

9. With regard to method (b) a proposal was put forward that the number of whale catchers attached to any expedition should be limited to seven, but the Conference was unable to reach agreement either upon this proposal or upon any limitation in the number of whale catchers.

10. Although method (c) was advocated by the Whaling Committee of the International Council for the Exploration of the Sea as the most effective restriction of undue exploitation of the whale stock, the Conference did not feel able at the present time to recommend its adoption.

11. The Conference could not agree on the application of method (d). In particular, objection was taken to this method on the ground that its incidence would be unfair in that it would limit the operations of the most efficient factory ships and have little, if any, effect upon the operations of the smaller and less efficient factory ships. The question whether different maxima might be fixed for different expeditions according to their capacity was raised, but it was clear that agreement would not be reached on this basis.

6. The Conference had also before it a Resolution of the Whaling Committee of the International Council for the Exploration of the Sea, which met in Copenhagen on 23rd May, 1938, in the following terms:-

"The Committee, viewing with alarm the evident decline of the stock of Blue Whales, is of opinion that nothing less than a limitation of the total amount of whale oil which may be taken in any whaling season can be effective in preserving the stock of Blue Whales from being reduced to the level at which it can no longer be the object of economic exploitation".

This resolution was adopted by the Council at its concluding Meeting on 28th May, 1938, with a request that it should be brought to the notice of the Members of the present Conference.

7. In the light of the facts set forth in paragraph 5 above, and the terms of the above Resolution of the Whaling Committee of the International Council for the Exploration of the Sea, the Conference considered the following measures of general application which might be expected to limit the destruction of whales:-

- (a) a further reduction of the open season;
- (b) a limitation of the number of catchers which might be used in connection with each expedition;
- (c) an overhead limitation of output during the Antarctic whaling season, by which is meant that a limit of output should be fixed, after which all whaling should cease, though the limit might be reached before the end of the open season;
- (d) the fixing of a maximum oil production which no expedition should exceed in any one Antarctic season;
- (e) special measures of protection for humpback whales;
- (f) the establishment of a sanctuary in waters south of 40° South Latitude;
- (g) the closure of additional areas against pelagic whaling.

acceding to the Principal Agreement and the Protocol as soon as the necessary powers to enforce their provisions have been obtained by legislation. The Government of France is prepared to accede to the Principal Agreement subject to certain reservations affecting land stations, which are dealt with later in this Act. Towards the end of the proceedings of the Conference the Japanese Delegation informed the Conference that their Government was prepared to take the necessary legislative and other measures to enable them to accede to the Principal Agreement and the Protocol after an interval of a year subject to a reservation in respect of the first paragraph of Article 3 of the Protocol. The Japanese Government is also prepared to observe the principles of the present Agreement as nearly as possible in the meantime. There is no information at present available as to the attitude of Portugal and the Government of Newfoundland has reserved its decision.

4. The necessary majority required by Article 21 of the Principal Agreement for the extension of its duration after 30th June, 1938, has been secured.

5. The Conference took note of the fact that, according to the statistics of the catch of the last Antarctic season, the opinion expressed in paragraph 2 of the Final Act of the Conference of 1937, that the Principal Agreement was likely to go far in maintaining the stock of whales, had not been justified by the event, inasmuch as the actual number of whales killed (approximately 44,000) and the number of barrels of oil produced (approximately 3,250,000) were, respectively, some 10,000 and 600,000 in excess of the corresponding figures for the previous season.

INTERNATIONAL WHALING CONFERENCE. ICW/1938/41A

LONDON - JUNE, 1938.

FINAL ACT OF THE CONFERENCE.

1. In accordance with the Recommendation contained in paragraph 11 of the Final Act signed in London on 8th June, 1937, a further Conference met in London on 14th June, 1938, and subsequent days to consider modifications or extensions of the existing Agreement hereinafter referred to as the Principal Agreement.

2. The following Governments sent Delegates to the Conference:-

Union of South Africa, United States of America, Argentine, Australia, Canada, Denmark, Eire, France, Germany, United Kingdom of Great Britain and Northern Ireland, Japan, New Zealand and Norway. An observer also attended on behalf of the Portuguese Government, and the interests of Newfoundland were watched by the United Kingdom Delegation.

3. The Principal Agreement has been ratified by the Governments of Eire, Germany, Norway, United Kingdom of Great Britain and Northern Ireland and United States of America, whilst Canada and Mexico have since acceded to it. With regard to the remaining signatory Governments, New Zealand has actually ratified the Principal Agreement.

The Argentine Republic is enforcing the Principal Agreement by Executive Decree, and formal ratification is only a matter of time. The Conference understands that ratification of the Principal Agreement by the Governments of the Commonwealth of Australia and of the Union of South Africa has been delayed only by constitutional difficulties. The Conference is confident that these Governments will take steps at the earliest possible moment to remove these difficulties and to ratify. The Government of Denmark has notified its intention of

Object of this provision is to prevent irregular practices by American factory ships in territorial waters off West coast of Australia and accordingly can see no objection to clause. Further provision is proposed for creating a sanctuary in the Antarctic South of 40 degrees South latitude from 70 degrees of West longitude westwards as far as 160 degrees of West longitude for a period of two years from beginning of December 1938. Assurance has been given that so far no whaling operations have actually taken place in this sector owing to known scarcity of whales there and only object is to prevent such operations being extended into those waters during the next two years. Other provisions merely clarification dubious points in main agreement. Japan represented at Conference and effort being made to make it possible for her to accede to Agreement and substantial hope that something tangible in this direction will be achieved. Under all circumstances feel Union's interests reasonably protected and recommend signature on behalf of Union. Conference desires unanimity with a view to influencing Japan. Final draft new protocol ready for signature to-morrow morning and I propose to sign unless I hear from you to the contrary.

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COPY OF TELEGRAM TO SECRETARY FOR COMMERCE AND INDUSTRIES:
PRETORIA:

FROM TE WATER: LONDON:

DESPATCHED: 22nd June, 1938.

MOST IMMEDIATE.

1088 Reference your telegram 16th June 445 Whaling Conference decided to leave open season intact and because of practical difficulties not to impose restrictions in regard to number of catchers or limitation of oil production. In view of danger of total extinction of humpbacks Conference decided that as a first step towards protection this valuable species notwithstanding the provisions of Article 5 of the 1937 Agreement it will be forbidden to take or treat any humpback whales in any waters South of 40 degrees South latitude during the period from 1st October 1938 to 30th September 1939. In view of fact that provision does not affect the operations of our land stations but merely places Union factory ships on par with those of all other nations consider this reasonable compromise and advise your authorisation to accept such provision. No other proposals for supplementary Protocol materially affect position of Union's local industry except perhaps provision that no factory ship which has been used for the purpose of treating baleen whales South of 40 degrees South latitude shall be used for that purpose elsewhere within a period of twelve months from the end of the Antarctic season and only such factory ships as have operated during the year 1937 within the territorial waters of any signatory Government shall be so operated and that any such ships shall be treated as land stations remaining moored in territorial waters in one position during the season and being operated for not more than six continuous months in any period of twelve months.

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Object...

mothers killed in Cape waters, and they were all three the larger sizes.

This is a direct contravention of the Geneva Convention of 1931, ratified by the Union of South Africa, and confirmed by the Agreement of 1937. It is trusted that the seriousness of this action will be appreciated by the Government Department concerned, as well as by our Whaling interests.

Finally, I desire to place on record my appreciation of Mr. du Toit's services, who, at my request, represented me at the Conference, which initially my absence at Geneva made it impossible for me to attend. By means of the minutes of the Conference and Mr. du Toit's daily reports to me I was enabled to follow its course closely. Mr. du Toit's proposal, strongly supported by other Delegates, that it might become necessary for Signatory Governments to consider an embargo on all Japanese products containing whale oil, did more to convince that Government of the error of its ways than argument; and led directly to one of the most material results of the Conference.

For payment HIGH COMMISSIONER.

FJduT/CTteW/PG.

applies also to the proposal that there should be a limitation of the number of catchers attached to each factory ship. It was suggested that there should be a fixed maximum number of seven per factory ship, independent of the number previously attached to it. But this was considered by some representatives as placing a premium on inefficiency and obsolescence as against progressiveness displayed in the latest vessels. The matter was therefore also referred back for further study.

Although the British and Norwegian owners had expressed themselves in favour of such a limitation, we received the following telegram from Mr. J.T. Hewitt, Joint Managing Director of Irvin & Johnson (South Africa) Ltd.: "Understand Whaling Conference elected Committee discuss limitation whale catchers for coming season. Tafelberg's catchers mostly low powered compared high powered new catchers attached new expeditions. Please get South African delegate protect South African interests, especially in view our not whaling Saldanha Bay this year and get special consideration for Tafelberg to take catchers as previous season viz. ten including spare."

As there was no prospect of any immediate agreement, the matter was not referred to you for a decision.

In conclusion, special attention must be drawn to Article 22 of the Final Act expressing in mild language the disgust of the Conference on the disclosure in the Official Whaling Statistics that during the Antarctic Whaling Season of 1936/37 and the summer of 1937 no less than 15 right whales had been killed.

It was unfortunate that Union interests were responsible for the killing of eight of that number, and that three of the four foetuses found were taken from mothers

When the viewpoint was put forward that the preferable alternative was to raise the size limit, it was pointed out by the experts that this would only mean that more females would be killed, as in this species of whale the female was larger than the male. The American Delegation was further of the opinion that any such prohibition did not promise an effective solution of the general problem. They thought that in the Antarctic the protection of the humpbacks would result, in an increased kill of blue and finback whales. Ultimately, therefore, the compromise was arrived at to protect the stock of humpbacks in the Antarctic for one year and to recommend the Governments to study the question of protection of this species further with a view to giving them complete protection for a suitable period after the expiration of this one year.

Apart from the article of the Protocol establishing a sanctuary for two years in a sector of the Antarctic Ocean, as well as the absolute protection of all whales against pelagic whaling in the Arctic Ocean, the other Articles of the Protocol are mainly directed to simplifying the Administration of the Agreement of last year.

In regard to the all important question of the limitation of oil production, either per expedition or for countries as a whole, which appears to be the only effective way of dealing with the problem, this proved a complicated and involved subject, which few of the representatives present were prepared to face. As the Conference considered that it had no powers to appoint a technical Committee to continue after the Conference had adjourned, the best that could be achieved was to keep the question open by referring it back to Governments for further technical study. This applies

another three years, and even then she would require all sorts of concessions.

Although it required various immediate minor concessions and amendments of the existing Agreement, it was a matter of very great satisfaction to the other Governments that the Government of Japan consented to sign the Final Act of the Conference. Her representative did this subject to the reservation that the Japanese Government was prepared to take the necessary legislative and other measures to enable them to accede to the Agreement of last year and the present Protocol after an interval of one year, and that she would in the meantime observe the principles of the Agreement of last year, as nearly as circumstances permit. This fact alone was generally felt to be a justification for the holding of the Conference.

Special provision has been made to forbid for one year the taking and treating of humpback whales by means of pelagic expedition in Antarctic waters. The Conference had before it strong evidence showing that there was serious danger of excessive depletion of the stock of this species and it considered seriously the proposal to give absolute protection to humpback whales in all waters for a period of one year.

Acting on our instructions we opposed any such drastic step at the present juncture, on the grounds that it would certainly affect our land stations. We argued, supported by the American Delegation, that the statistics proved that not only was the major catch taken in the Antarctic but that in that region they were taking two females to one male, and in that way directly depleting breeding stock. Whilst, therefore, the absolute protection of humpback whaling would result in the total cessation of whaling at some land stations South of the Equator, it would have little effect on the operations of Antarctic expeditions.

When

300 catchers. There is, therefore, the alarming prospect that the production of whale oil during the next season based upon a 3 months season, will be in the neighbourhood of 3,500,000 barrels, or a rise of a further 250,000 to 300,000 barrels on the already disastrously high production of last season.

It was generally felt that no material ground had been gained in the conservation of the stock of whales by the signing of the Protocol, and that it was of paramount importance that all participating Governments should realise that no result could be achieved unless they were one and all prepared to allow practical measures to be taken, even though the economy of whaling expeditions may be effected thereby.

It is to be hoped, therefore, that the Union will give close thought to these considerations so as to be in a position to fulfil her obligations undertaken as far back as 1931, under the Geneva Convention, and thus to give effective protection to this valuable wasting asset. Up to now our position has been an invidious one, in that even during the last season our whaling interests were definitely guilty of gross contraventions of not only the letter but also of the spirit of the provisions of both the Geneva Convention and of the 1937 Agreement.

The one outstanding and definite achievement of the present Conference was that at long last it has been found possible to get Japan firmly committed to accession to these International Whaling Agreements. This required intensive negotiation, as Japan commenced by saying that in view of the lack of experience and because of the youth of her industry, she could not consider falling into line with the other older nations until after the expiry of at least

another

have been forwarded by ordinary mail direct to the Department of Commerce and Industries, as well as a third set direct to the Director of Fisheries at Cape Town.

From these documents the action taken by the Union's representatives should be clear. In brief it amounted once more to the safeguarding of the position of our land stations, so that any sacrifices expected from them should not be disproportionate to insufficient limitations placed on Antarctic pelagic interests.

From a biological and conservation of whales point of view the results of the Conference must once more be admitted to be disappointing. Whilst practically all the principal whaling countries represented generally indicated a desire to reach an effective solution of the problem, the commercial aspects in fact outweighed all other considerations. The Conference actually opened with the depressing statement that the 1937 Agreement had failed in accomplishing its objective of reducing the number of whales killed.

The total oil production in the Antarctic season 1937/38 was shown to be 3,248,850 barrels of whale oil, produced by 31 floating factories with a total number of 244 catchers. The 44,000 whales killed were some 10,000 more than the number killed during any previous season and the number of barrels of oil produced were 600,000 in excess of the corresponding figures for the previous season.

Moreover it was common knowledge that unless some definite restrictive measures were adopted there would be operating at least four additional factory ships with a minimum of 28 catchers, with the result that the total number of catchers operating next season would number at least 272, with every likelihood of this number exceeding

19/88.

4th July, 1938.

The Secretary for External Affairs,

P R E T O R I A.

International Whaling Conference - 1938.

With reference to your minute P.M. 107/5 of the 29th March last, I have to report that the Conference met in London on the 14th June, and continued its deliberations until June 24th, when a supplementary Protocol to the main Agreement of 1937 was duly signed by such countries as had signed the original Agreement, and a Final Act comprising the salient features of the discussions and certain recommendations to the Government concerned regarding the conservation of whales was signed by all the countries represented at the Conference.

Advance copies of both this supplementary Protocol and of the Final Act are attached for your information. Similar copies have already been despatched direct to the Department of Commerce and Industries.

For purposes of confirmation attached also is copy of a cable, which was despatched to the Department of Commerce and Industries on completion of the two draft documents. To this a reply was received from that Department that it could see no objection to the signing of the supplementary Agreement.

Two complete sets of the Minutes of the Conference as well as of all papers circulated during the Conference

have

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This is a direct contravention of the Geneva Convention of 1931, ratified by the Union of South Africa, and confirmed by the Agreement of 1937. It is trusted that the seriousness of this action will be appreciated by the Government Department concerned, as well as by our Whaling interests.

Finally, I desire to place on record my appreciation of Mr. du Toit's services, who, at my request, represented me at the Conference, which initially my absence at Geneva made it impossible for me to attend. By means of the minutes of the Conference and Mr. du Toit's daily reports to me I was enabled to follow its course closely. Mr. du Toit's proposal, strongly supported by other Delegates, that it might become necessary for Signatory Governments to consider an embargo on all Japanese products containing whale oil, did more to convince that Government of the error of its ways than argument; and led directly to one of the most material results of the Conference.

C. P. Kilwani

HIGH COMMISSIONER.

applies also to the proposal that there should be a limitation of the number of catchers attached to each factory ship. It was suggested that there should be a fixed maximum number of seven per factory ship, independent of the number previously attached to it. But this was considered by some representatives as placing a premium on inefficiency and obsolescence as against progressiveness displayed in the latest vessels. The matter was therefore also referred back for further study.

Although the British and Norwegian owners had expressed themselves in favour of such a limitation, we received the following telegram from Mr. J.T. Hewitt, Joint Managing Director of Irvin & Johnson (South Africa) Ltd.: "Understand Whaling Conference elected Committee discuss limitation whale catchers for coming season. Tafelberg's catchers mostly low powered compared high powered new catchers attached new expeditions. Please get South African delegate protect South African interests, especially in view our not whaling Saldanha Bay this year and get special consideration for Tafelberg to take catchers as previous season viz. ten including spare."

As there was no prospect of any immediate agreement, the matter was not referred to you for a decision.

In conclusion, special attention must be drawn to Article 22 of the Final Act expressing in mild language the disgust of the Conference on the disclosure in the Official Whaling Statistics that during the Antarctic Whaling Season of 1936/37 and the summer of 1937 no less than 15 right whales had been killed.

It was unfortunate that Union interests were responsible for the killing of eight of that number, and that three of the four foetuses found were taken from mothers

When the viewpoint was put forward that the preferable alternative was to raise the size limit, it was pointed out by the experts that this would only mean that more females would be killed, as in this species of whale the female was larger than the male. The American Delegation was further of the opinion that any such prohibition did not promise an effective solution of the general problem. They thought that in the Antarctic the protection of the humpbacks would result, in an increased kill of blue and finback whales. Ultimately, therefore, the compromise was arrived at to protect the stock of humpbacks in the Antarctic for one year and to recommend the Governments to study the question of protection of this species further with a view to giving them complete protection for a suitable period after the expiration of this one year.

Apart from the article of the Protocol establishing a sanctuary for two years in a sector of the Antarctic Ocean, as well as the absolute protection of all whales against pelagic whaling in the Arctic Ocean, the other Articles of the Protocol are mainly directed to simplifying the Administration of the Agreement of last year.

In regard to the all important question of the limitation of oil production, either per expedition or for countries as a whole, which appears to be the only effective way of dealing with the problem, this proved a complicated and involved subject, which few of the representatives present were prepared to face. As the Conference considered that it had no powers to appoint a technical Committee to continue after the Conference had adjourned, the best that could be achieved was to keep the question open by referring it back to Governments for further technical study. This applies

another three years, and even then she would require all sorts of concessions.

Although it required various immediate minor concessions and amendments of the existing Agreement, it was a matter of very great satisfaction to the other Governments that the Government of Japan consented to sign the Final Act of the Conference. Her representative did this subject to the reservation that the Japanese Government was prepared to take the necessary legislative and other measures to enable them to accede to the Agreement of last year and the present Protocol after an interval of one year, and that she would in the meantime observe the principles of the Agreement of last year, as nearly as circumstances permit. This fact alone was generally felt to be a justification for the holding of the Conference.

Special provision has been made to forbid for one year the taking and treating of humpback whales by means of pelagic expedition in Antarctic waters. The Conference had before it strong evidence showing that there was serious danger of excessive depletion of the stock of this species and it considered seriously the proposal to give absolute protection to humpback whales in all waters for a period of one year.

Acting on our instructions we opposed any such drastic step at the present juncture, on the grounds that it would certainly affect our land stations. We argued, supported by the American Delegation, that the statistics proved that not only was the major catch taken in the Antarctic but that in that region they were taking two females to one male, and in that way directly depleting breeding stock. Whilst, therefore, the absolute protection of humpback whaling would result in the total cessation of whaling at some land stations South of the Equator, it would have little effect on the operations of Antarctic expeditions.

When

300 catchers. There is, therefore, the alarming prospect that the production of whale oil during the next season based upon a 3 months season, will be in the neighbourhood of 3,500,000 barrels, or a rise of a further 250,000 to 300,000 barrels on the already disastrously high production of last season.

It was generally felt that no material ground had been gained in the conservation of the stock of whales by the signing of the Protocol, and that it was of paramount importance that all participating Governments should realise that no result could be achieved unless they were one and all prepared to allow practical measures to be taken, even though the economy of whaling expeditions may be effected thereby.

It is to be hoped, therefore, that the Union will give close thought to these considerations so as to be in a position to fulfil her obligations undertaken as far back as 1931, under the Geneva Convention, and thus to give effective protection to this valuable wasting asset. Up to now our position has been an invidious one, in that even during the last season our whaling interests were definitely guilty of gross contraventions of not only the letter but also of the spirit of the provisions of both the Geneva Convention and of the 1937 Agreement.

The one outstanding and definite achievement of the present Conference was that at long last it has been found possible to get Japan firmly committed to accession to these International Whaling Agreements. This required intensive negotiation, as Japan commenced by saying that in view of the lack of experience and because of the youth of her industry, she could not consider falling into line with the other older nations until after the expiry of at least another

have been forwarded by ordinary mail direct to the Department of Commerce and Industries, as well as a third set direct to the Director of Fisheries at Cape Town.

From these documents the action taken by the Union's representatives should be clear. In brief it amounted once more to the safeguarding of the position of our land stations, so that any sacrifices expected from them should not be disproportionate to insufficient limitations placed on Antarctic pelagic interests.

From a biological and conservation of whales point of view the results of the Conference must once more be admitted to be disappointing. Whilst practically all the principal whaling countries represented generally indicated a desire to reach an effective solution of the problem, the commercial aspects in fact outweighed all other considerations. The Conference actually opened with the depressing statement that the 1937 Agreement had failed in accomplishing its objective of reducing the number of whales killed.

The total oil production in the Antarctic season 1937/38 was shown to be 3,248,850 barrels of whale oil, produced by 31 floating factories with a total number of 244 catchers. The 44,000 whales killed were some 10,000 more than the number killed during any previous season and the number of barrels of oil produced were 600,000 in excess of the corresponding figures for the previous season.

Moreover it was common knowledge that unless some definite restrictive measures were adopted there would be operating at least four additional factory ships with a minimum of 28 catchers, with the result that the total number of catchers operating next season would number at least 272, with every likelihood of this number exceeding

PH 107/5
(102)



Telephone: WHITEHALL 4488.
Telegraphic Address:—
"OPPOSITELY, LESQUARE, LONDON."

UNION OF SOUTH AFRICA.

SOUTH AFRICA HOUSE,
TRAFALGAR SQUARE,
LONDON, W. C. 2.

19/88.

4th July, 1938.

The Secretary for External Affairs,
P R E T O R I A.



International Whaling Conference - 1938.

With reference to your minute P.M. 107/5 of the 29th March last, I have to report that the Conference met in London on the 14th June, and continued its deliberations until June 24th, when a supplementary Protocol to the main Agreement of 1937 was duly signed by such countries as had signed the original Agreement, and a Final Act comprising the salient features of the discussions and certain recommendations to the Government concerned regarding the conservation of whales was signed by all the countries represented at the Conference.

Advance copies of both this supplementary Protocol and of the Final Act are attached for your information. Similar copies have already been despatched direct to the Department of Commerce and Industries.

For purposes of confirmation attached also is copy of a cable, which was despatched to the Department of Commerce and Industries on completion of the two draft documents. To this a reply was received from that Department that it could see no objection to the signing of the supplementary Agreement.

Two complete sets of the Minutes of the Conference as well as of all papers circulated during the Conference have

*Offhand van brief... H. W. M.
vir informasie
afhandeling
Datum 12/7/38*

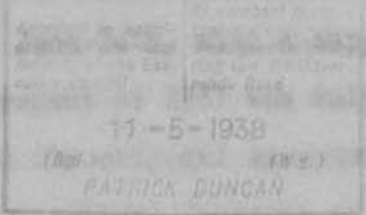
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In London, being appointed, as First and Second Delegates respectively, to represent the Union Government at the said Conference, and to sign, ad referendum, on behalf of the Union Government any agreement which may be concluded.

MINISTERS also recommend that it may please His Excellency to authorize the Minister of External Affairs to take the necessary steps in connection with such appointment.

INTERNATIONAL TRADING BILLS © PIROW

With reference to your letter P.M. 107/5 of the 25th instant last, I have to report that the Conference met on London on the 25th June and continued its deliberations until July 2nd, when a Supplementary Protocol to the main agreement was signed by each country in attendance. (See also P.M. 107/5.) The main agreement and the Supplementary Protocol are the work of the Conference and are being distributed to all members of the Conference by the Secretary-General. A copy of each has been forwarded to the Department of External Affairs.



The Supplementary Protocol also is a copy of which has been forwarded to the Department of External Affairs in connection with the main agreement. A copy of this Supplementary Protocol has been received from that Department and it will be sent to the signatories to the Supplementary Protocol.

PAW.

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P.M. 107/5 (24)

Good order Dated	Approved in Executive Council
Minute No. 1126	
23-5-1938	
D. SPIES	
Chief Clerk of Diet	Clark of the Executive Council

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is invited, being with the said Delegation
 respectively, to represent the Union Government at the
 said Conference, and to sign **PRETORIA:** on behalf
 of the Union Government on 21 (1938) may be
 concluded.

MINISTERS also recommend that it may please
MINUTE NO. to authorize the Minister of External
 Affairs to take the necessary steps in connection
 with such appointment.

MINISTERS have the honour to inform His
 Excellency the Governor-General that the Union
 Government have received an invitation from His
 Majesty's Government in the United Kingdom to be
 represented at an International Conference to be
 convened in London, in the week beginning on June
 13th, 1938, in order to study the results of the past
 whaling season and to consider the question of modifi-
 cation or extension of the existing International
 Agreement for the Regulation of Whaling concluded
 in London on June 8th, 1937, and signed on behalf of
 the Union Government.

MINISTERS deem it desirable that the invitation
 be accepted and have the honour to recommend that His
 Excellency may be pleased to approve of Mr. C.T. de
 Water, High Commissioner for the Union of South
 Africa in London, and Mr. F.J. du Toit, Secretary to
 the High Commissioner for the Union of South Africa
 in

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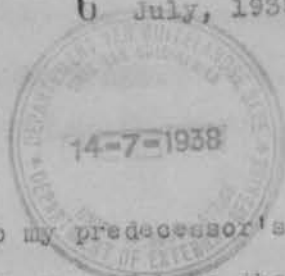
PM 107/25 (on)

UNION OF SOUTH AFRICA

NO. 77

Downing Street,

6 July, 1938.



Sir,

With reference to my predecessor's telegram circular A No. 2 of the 10th May, I have the honour to state that the accession of His Majesty's Government in Canada to the International Agreement for the Regulation of Whaling, signed in London on the 8th June, 1937, has been notified and took effect on the 14th June, 1938, and that the instrument of ratification of the Agreement by His Majesty's Government in New Zealand was deposited with His Majesty's Government in the United Kingdom on the 24th June, 1938, and took effect on the same date.

2. This despatch is being sent to the Commonwealth of Australia No. 235 the Union of South Africa No. 77 Eire No. 88 and Newfoundland No. 311

I have the honour to be,

Sir,

Your most obedient,

humble servant,

Gestuur aan *Handes & Kuyper*

omring
vir informasie
afhandeling

Datum *19/7/38* Paraaf *[Signature]*

Stanley

Bine

THE MINISTER OF EXTERNAL AFFAIRS,
UNION OF SOUTH AFRICA.

Telegramadres "NYWERCOM."
Telegraphic Address



P.M. 107/5 (over)

Adresseer alle briewe aan die Sekretaris.
All communications to be addressed to the Secretary.

Verwys in 24-8-1938
In reply please quote 404/60

No. H.N.
No. C.I.

DEPARTMENT OF EXTERNAL AFFAIRS

UNIE VAN SUID-AFRIKA.—UNION OF SOUTH AFRICA

DEPARTEMENT VAN HANDEL EN NYWERHEID,
DEPARTMENT OF COMMERCE AND INDUSTRIES,
MUTUALGEBOU, KERKPLEIN,
MUTUAL BUILDING, CHURCH SQUARE,

PRETORIA 23 Augustus 1938.

DIE SEKRETARIS VAN BUITELANDSE SAKE : PRETORIA

Internasionale Walviskonferensie

Graag wil ek die Departement se dank betuig vir die bylae tot die afskrifte van twee briewe gedateer 21 en 30 Junie onderskeidelik, van die Staatsekretaris van Vrygewestelikesake waarop u aantekening No.P.M.107/5 van 2 en 8 Julie 1938 verskyn.

[Handwritten Signature]
SEKRETARIS VAN HANDEL EN NYWERHEID.

Bire

MT.

PM. 10 7/5
(over)

UNION OF SOUTH AFRICA

Downing Street,

Circular despatch B No. 62

17 August, 1938.



Sir,

With reference to Mr. MacDonald's circular telegram A No. 1 of the 28th February, I have the honour to transmit certified copies of the Protocol signed at the conclusion of the International Conference for the Regulation of Whaling, which was recently held in London, together with certified copies of the Final Act of the Conference.

No. 100/10/38

*2 copies enclosed
only available*

2. His Majesty's Government in the United Kingdom would be grateful if they could be informed, as soon as may be convenient, of the intentions of His Majesty's Government in the Union of South Africa with regard to ratification of the Protocol.

I have the honour to be,

Sir,

Your most obedient,

Passed to *Comm. L...* humble servant,

CONSIDERATION
for INFORMATION
DISPOSAL

Devonshire

Date *29/8/38* Initials *JL*

for the Secretary of State.

Recd 20/9/38

THE MINISTER OF EXTERNAL AFFAIRS,
UNION OF SOUTH AFRICA.

Telegramadres "NYWERCOM."
Telegraphic Address



p m 107/5 (ca)

C.I. 1.

Adresseer asb. alle briewe aan die
Sekretaris.
All communications to be addressed
to the Secretary.

Verwys in antwoord asb. na
In reply please quote

No. H.N. 404/60
No. C.I.

UNIE VAN SUID-AFRIKA.—UNION OF SOUTH AFRICA.

DEPARTEMENT VAN HANDEL EN NYWERHEID,
DEPARTMENT OF COMMERCE AND INDUSTRIES,

MUTUALGEBOU, KERKPLEIN,
MUTUAL BUILDING, CHURCH SQUARE,

PRETORIA 31st August, 1938.

1--9-1938

THE SECRETARY FOR EXTERNAL AFFAIRS : PRETORIA

International Whaling Conference

I beg to acknowledge receipt of the certified copy of the Protocol signed at the conclusion of the International Conference for the Regulation of Whaling and the Final Act of the Conference.

It is thought desirable that certified copies of the documents should also be furnished to the Provincial Secretaries, Cape and Natal, and to the Director of Fisheries. I shall be glad, therefore, if you will kindly supply me with three additional copies of each of the documents for transmission to the above officers.

W. J. M. Muller

SECRETARY FOR COMMERCE AND INDUSTRIES

MT.

P.M. 107/5.

DEPARTMENT OF EXTERNAL AFFAIRS
PRETORIA.

5th September, 1938

- 7 SEP 1938

The High Commissioner for the
Union of South Africa,
LONDON.

With reference to Circular despatch
B. No. 62 of 17th August, 1938, from the Secretary
of State for Dominion Affairs, regarding the
International Whaling Conference, I would be
grateful if you could obtain five further copies
of the Protocol signed at the conclusion of the
Conference, and five copies of the Final Act of the
Conference, for the use of the Union Government.

[Handwritten signature]

B.R. BOTHA

SECRETARY FOR EXTERNAL AFFAIRS.

JM/BC.

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Purs 20/9 + 20/9 (handwritten)

Gestuur aan *Hande Repreterant*

vir informasie
atmandating

7 SEP 1938

Datum *6/9/38* Paraf *[Signature]*

Contracting Governments, which shall include the Governments of the United Kingdom, Germany and Norway shall have agreed to extend its duration:

The Undersigned, Principal Secretary of State for Foreign Affairs of His Majesty the King of Great Britain, Ireland and the British Dominions beyond the Seas, Emperor of India, hereby certifies that, the Governments of Canada, Germany, the United Kingdom, Eire, the United States of Mexico, New Zealand and Norway have agreed to extend the duration of the said Agreement, and that the Agreement will accordingly under provisions of Article 21 continue in force after the 30th June, 1938.

Witness my hand this 29th day of June, 1938.

Given at the Foreign Office, London.

(Signed) Halifax.

Certified a true copy:

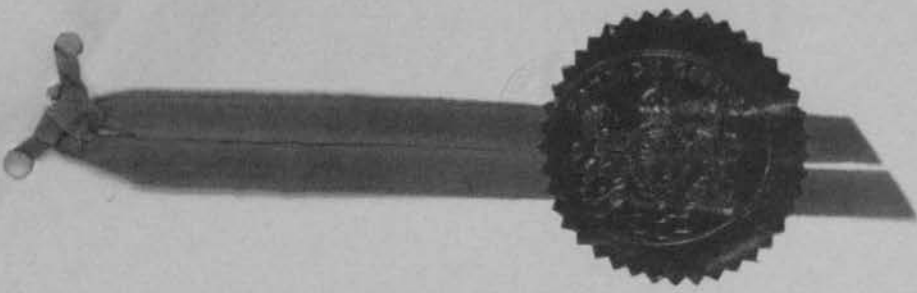


LONDON.

Stephen Gaselee,

9 - AUG 1938

Librarian and Keeper of the
Papers at the Foreign Office.



Whereas the International Agreement for the Regulation of Whaling, signed in London on the 8th June, 1937 has been ratified by the Governments of the United States of America, Germany, the United Kingdom of Great Britain and Northern Ireland, Eire, New Zealand and Norway, and came into force in accordance with the provisions of Article 19 on the 7th day of May, 1938; and

Whereas the Governments of the United States of Mexico and Canada have acceded, with effect from the 7th May, 1938 and the 14th June, 1938, respectively, to the said Agreement in accordance with Article 22 thereof; and

Whereas in consequence the Governments of the United States of America, the United Kingdom of Great Britain and Northern Ireland, Eire, New Zealand, Norway, the United States of Mexico and Canada are contracting Governments; and

Whereas, according to the provisions of Article 21, the said Agreement remains in force until the 30th June, 1938 and thereafter if, before that date, a majority of the

contracting /

Ph 607/5 (M)

UNION OF SOUTH AFRICA

Downing Street.

Circular despatch B. No. 69

27 August, 1938.



Sir,

With reference to Lord Stanley's despatch No. 77 of the 6th July, regarding the International Agreement for the Regulation of Whaling, signed in London on the 8th June, 1937, I have the honour to transmit two certified copies of a certificate which has been deposited with the original Agreement in the archives of the Foreign Office certifying that the Agreement will continue in force after the 30th June, 1938, in accordance with the provisions of Article 21 thereof.

I have the honour to be,

Sir,

Your most obedient,
humble Servant,

Devonshire.

for the Secretary of State.

Gestuur aan *Hande o byspreekers*
oorwagend
vir informasie
afhandeling
Datum *7/9/38* Paraaf *[Signature]*

Pans 10/10 to 20/9 (amended)

THE MINISTER OF EXTERNAL AFFAIRS,
UNION OF SOUTH AFRICA.

Provided that no poll of persons registered under the scheme carrying on a particular designated business shall, without the consent of the board, be taken under this subsection—

- (a) within the two years immediately following the date on which the order confirming the scheme was made; or
- (b) within such period after the date of the declaration of any previous poll of persons registered under the scheme as carrying on that business, being a poll taken under this subsection in relation to the scheme, as may be specified in the scheme.

A.D. 1938.

See Sec.
—cont.

Street.

August, 1938.

D. 1938.

Printed by EYRE AND SPOTTISWOODE LIMITED

for
HUGHES ROBERTSON COLLING, C.B., C.V.O., C.B.E., the King's Printer of
Acts of Parliament

despatch
international
signed in
honour to
date which
sent in the
that the
30th June,
Article 21

of State.

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THE MINISTER OF EXTERNAL AFFAIRS,
UNION OF SOUTH AFRICA.

A.D. 1938.

FIFTH SCHEDULE.

Section 13. PROVISIONS TO BE SUBSTITUTED FOR SUBSECTIONS (3) AND (6) OF SECTION THIRTEEN OF THIS ACT IN RELATION TO A MARKETING SCHEME FOR REGULATING THE CARRYING ON OF TWO OR MORE DESIGNATED BUSINESSES.

Subsection to be substituted for subsection (3) of section thirteen.

(3) If, after the preceding provisions of this section have been complied with in relation to a marketing scheme for regulating, in any respect, the carrying on of two or more designated businesses, the Ministers decide to proceed in the matter of the scheme, they shall forthwith direct the Commission to cause to be taken in the prescribed manner, in relation to each of those businesses, a poll of appropriate registered persons, being persons who are registered in the Commission's register as carrying on that business, and shall take no further action in the matter of the scheme unless, in the case of each poll so taken, the result of the poll shows that at least half the total number of appropriate registered persons entitled to vote have voted, and that at least two-thirds of all the votes polled have been cast in favour of the scheme.

Subsection to be substituted for subsection (6) of section thirteen.

(6) If, in the case of any marketing scheme for the time being in force which is a scheme for regulating, in any respect, the carrying on of two or more designated businesses, a request for a poll on the question whether or not the scheme should be revoked is made in writing to the board administering the scheme by or on behalf of the prescribed number of persons registered under the scheme as carrying on a particular designated business, the board shall forthwith communicate the request to the Commission, and thereupon the Commission shall cause to be taken in the prescribed manner a poll of persons registered under the scheme as carrying on that business, and shall communicate the result of the poll to the Ministers; and if the result of the poll shows that not less than half of the total number of votes polled have been cast in favour of revocation of the scheme, the Ministers shall by order revoke the scheme :

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3 Street.

7 August, 1938.

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P 10/10 to 20/9 (under)

THE MINISTER OF EXTERNAL AFFAIRS,

UNION OF SOUTH AFRICA.

5. No person shall be liable to any penalty in respect of a contravention of any marketing scheme, if he proves that the contravention was necessary for the performance of a contract which, by virtue of this Part of this Schedule, was not, at the time of the contravention, void or unenforceable.

A.D. 1938.
4TH SCH.
—cont.

6. For the purposes of this Part of this Schedule, the expression "the relevant period" means, in relation to a scheme, a period beginning twelve months before the date when notice of the submission of the scheme was published in the Gazettes and ending six months after the date when the scheme comes into force.

PART IV.

INCIDENTAL PROVISIONS WITH RESPECT TO REVOCATION OF MARKETING SCHEMES.

1. Where a marketing scheme is revoked by a subsequent scheme, the subsequent scheme may provide for the transfer to the new board of the whole or any part of the property, rights and liabilities of the existing board, for the continuation by or against the new board of any legal proceedings instituted by or against the existing board which are pending at the time of the revocation, and for the dissolution, without winding-up, of the existing board.

In this paragraph the expression "the new board" means the board administering the subsequent scheme, and the expression "the existing board" means the board administering the scheme revoked.

2. The Ministers shall by order revoke a marketing scheme if an order is made for the winding-up of the board.

3. The board administering a marketing scheme shall not be deemed to be dissolved by reason only that the scheme has been revoked, and (except in a case where the board is dissolved without winding-up under paragraph 1 of this Part of this Schedule) so much of the scheme as relates to the winding-up of the board shall continue in force notwithstanding the revocation.

4. Where a marketing scheme or any provision of such a scheme is revoked, subsection (2) of section thirty-eight of the Interpretation Act, 1889, (which relates to the effect of repeals) shall apply as if the revocation of the scheme or of that provision, as the case may be, were the repeal of an enactment by another Act.

52 & 53 Vict.
c. 63.

(M)
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7 August, 1938.

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Pms 10/10 + 30/9 (under)

THE MINISTER OF EXTERNAL AFFAIRS,
UNION OF SOUTH AFRICA.