



# Whale Symposium Bulletin

**A report of the Symposium on the State of the Conservation of Whales in the 21st Century**

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Symposium on the State of the Conservation of Whales in the 21st Century  
New York - 12th & 13th April 2007

## SUMMARY OF THE SYMPOSIUM ON THE STATE OF THE CONSERVATION OF WHALES IN THE 21ST CENTURY: 12-13 APRIL 2007

This two-day Symposium, organized by the Varda Group on behalf of the Pew Charitable Trusts, took place on 12-13 April 2007 at UN Headquarters in New York. The objective of the symposium was to analyze options for the conservation of whales, specifically exploring policies for resolving the current impasse over commercial and scientific whaling at the International Whaling Commission (IWC).

The Symposium sought to avoid the debates of the past and introduce new information and fresh solutions. To this end, participants included people from within the IWC community, as well as those with wider expertise in conservation, law, and other relevant fields. Participation was by invitation only. Sixty-five people of 27 nationalities attended the meeting, representing a mix of legal, policy and science academics, policy- and opinion-makers, national and international civil servants, and non-governmental organization (NGO) and think-tank representatives.

The symposium was organized into four sessions, centered around the following themes: state of the world's whale stocks: implications for policy makers; developments in oceans law from 1946 to 2006: is the International Convention for the Regulation of Whaling outdated?; whaling diplomacy: why has it been so difficult to find an acceptable solution?; and the way(s) forward.

For each session, three presenters introduced the topic by addressing the issue from three perspectives: from within the IWC, from outside the IWC, and from an "NGO perspective." The presentations were followed by broad and interactive discussion.

Participants' eagerness to improve the functionality of the IWC and enhance whale conservation efforts translated into efficient deliberations and concrete recommendations, which will be presented during a side event at the upcoming IWC meeting in Anchorage, Alaska, US, in May 2007.

### A BRIEF HISTORY OF WHALE CONSERVATION IN THE IWC CONTEXT

Several populations of great whales are highly endangered and number 500 or less individuals; many others are also at a fraction of their original population levels. The primary cause of



Symposium panelists, organizers and Chair

this situation is commercial whaling, which started in the early Middle Ages and officially ended in 1986, when the moratorium on commercial whaling, adopted in 1982 by the IWC, entered into force. Particularly the intense whaling efforts in the 1960s, when around 70,000 whales were caught annually, are thought to have been critical for many species. Whaling is still taking place today, either as aboriginal subsistence whaling, scientific whaling, or under official objection to the 1982 moratorium.

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Whaling in the modern age is regulated by the 1946 International Convention for the Regulation of Whaling (ICRW). Its purpose is to “provide for the proper conservation of whale stocks and thus make possible the orderly development of the whaling industry.” In 1949, upon its entry into force, the Convention established the IWC. The main duty of the IWC is to keep under review and revise as necessary the Schedule to the Convention, which specifies measures to regulate whaling. These measures, among others: provide for the complete protection of certain species or stocks; designate specified areas as whale sanctuaries; set limits on the numbers and size of whales which may be taken; prescribe open and closed seasons and areas for whaling; and prohibit the capture of suckling calves and female whales accompanied by calves. Since 1946, the Convention itself has not been revised, except for an amending protocol in 1956 that incorporated regulations on methods of inspection, and extended the definition of “whale catchers” to cover aircraft.

Membership of the IWC is open to any country that formally adheres to the ICRW, and currently stands at 73. Each member country is represented by a Commissioner, who is assisted by experts and advisers. The IWC meets annually; the 2007 meeting is scheduled to take place in May in Anchorage, Alaska, US. Since its inception, the IWC has had three main committees: Scientific, Technical, and Finance and Administration. The Technical Committee has fallen out of use, but a new Conservation Committee first met in 2004. There are also sub-committees dealing with aboriginal subsistence whaling and infractions (breaking of regulations), and *ad hoc* Working Groups to deal with a wide range of issues.

The Convention requires that amendments to the Schedule “shall be based on scientific findings.” To this end, the Commission established the Scientific Committee, which comprises up to 200 of the world’s leading whale biologists. Many are nominated by member governments. The Committee meets in the two weeks immediately before IWC annual meetings, and may also hold intersessional meetings.

The information and advice of the Scientific Committee form the basis on which the Commission develops the whaling regulations as contained in the Schedule. Schedule amendments require a three-quarters majority vote. Any changes become effective 90 days later unless a member state has lodged an objection, in which case the new regulation is not binding on that country. The regulations adopted by the Commission are implemented through the national legislation of the member states, who appoint inspectors to oversee their whaling operations and may also receive international observers appointed by the IWC.

In recent years, the Scientific Committee has been concentrating on a Comprehensive Assessment of whale stocks, which led to the development of the Revised Management Procedure (RMP), to be used in setting catch limits for different whale populations. The RMP was accepted and endorsed by the IWC in 1994, but it has yet to be implemented, pending the negotiation of a Revised Management Scheme (RMS), under discussion since 1996, which would set out a framework for inspection and observation to ensure compliance with the RMP.

Because of uncertainties in the scientific analyses and in the precise status of the various whale stocks, the IWC decided at its meeting in 1982 that there should be a moratorium on commercial whaling of all whale stocks from 1985/1986. Japan, Peru, Norway and the USSR lodged objections to the moratorium rendering it not binding on them. Japan later withdrew its objection. Iceland did not lodge an objection, but withdrew from the IWC in 1992. It rejoined in 2002, with a retroactive objection to the moratorium. Today, only Norway, Iceland and Japan are considered whaling nations, with Norway and Iceland referring to their respective objections, and Japan describing its whaling efforts as scientific whaling. In addition, some aboriginal communities in Denmark (Greenland), Russia, Saint Vincent and the Grenadines, and in the US (Alaska) engage in subsistence whaling.

In addition to the moratorium, two whale sanctuaries have been created: in the Indian Ocean (1979) and in the Southern Ocean (1994).

Discussions in the IWC are highly polarized. A key question raised in the whaling debate is whether it is acceptable to consider that, as predators, whales should be “culled” for fisheries management purposes. In addition, pro-whaling nations propose to lift the moratorium and abolish the current sanctuaries, arguing that these represent a breach with the ICRW objective to provide, *inter alia*, for “the optimum utilization of the whale resources.” Anti-whaling nations, however, express concern that despite the moratorium, catches have gradually increased over recent years – particularly through the use of special permits to allow killing of whales for scientific purposes. In 2005-2006, of the 2,313 whales reported caught, 1,117 were caught by Japan and Iceland under scientific whaling. Japan reported taking 1,078 minke whales, 10 fin whales, 5 sperm whales, 100 sei whales and 50 Bryde’s whales, and Iceland reported catching 39 minke whales. In 2005-2006, Norway reported the taking of 639 minke whales under their objection to the moratorium. The remaining whale catches for 2005-2006 came from aboriginal subsistence whaling.

**CMS COP-7:** The seventh Conference of the Parties (COP-7) to the Convention on the Conservation of Migratory Species of Wild Animals (CMS) was held in September 2002, in Bonn, Germany. COP-7 decided to list fin, sei and sperm whales in CMS Appendices I and II, and Antarctic minke, Bryde’s and pygmy right whales in Appendix II.

**CITES COP-12:** COP-12 of the Convention on the International Trade in Endangered Species of Wild Fauna and Flora (CITES) was held in November 2002, in Santiago, Chile. Delegates, *inter alia*, rejected proposals to downlist populations of minke and Bryde’s whales from CITES Appendix I to Appendix II.

**IWC-56:** The 56th Annual Meeting of the IWC (IWC-56) took place in Sorrento, Italy, in July 2004. Proposals for sanctuaries in the South Pacific and South Atlantic failed to gain the necessary three-quarters majorities to be adopted. Other rejected proposals, all from Japan, included: the abolishment of the Southern Ocean Sanctuary; a quota of 2,914 Antarctic minke whales; and quotas of 100 minke whales and 150 Bryde’s whales to be taken by coastal community-based whaling. However, the Commission



passed a resolution to work to resolve this latter issue. The IWC also adopted resolutions on: the RMS process; the critically endangered western gray whales; and whale killing methods and associated welfare issues. It also decided to continue its work on by-catch and small cetaceans.

**CITES COP-13:** CITES COP-13 convened in October 2004, in Bangkok, Thailand. Japan's draft resolution urging the completion and implementation of the RMS and its proposal to downlist three stocks of minke whale from Appendix I to Appendix II were rejected by secret ballot.

**IWC-57:** IWC-57 took place in Ulsan, Republic of Korea, in June 2005. The IWC rejected proposals by Japan to: broaden the option of voting by secret ballot; revise the RMS so as to, *inter alia*, lift the moratorium; remove the existing Southern Ocean Sanctuary; and allow the yearly taking of 150 minke whales by coastal communities. A proposal by Brazil and Argentina for a South Atlantic Sanctuary did not obtain the required three-quarters majority. A resolution was passed that strongly urges the Government of Japan to withdraw or revise its proposal on catches for scientific purposes in the Antarctic.

**CMS COP-8:** CMS COP-8 met in November 2005, in Nairobi, Kenya, and adopted resolution 8.22 on cetacean conservation. The resolution, *inter alia*: urges the integration of cetacean conservation into all relevant sectors; encourages cooperation between the CMS Secretariat and Scientific Council and the IWC and other international bodies, to address environmental threats, among other issues; and invites parties to strive to ensure wherever possible that their relevant activities avoid harm to cetaceans.

**IWC-58:** IWC-58 took place in Frigate Bay, Saint Kitts and Nevis, in June 2006. The meeting agreed that, despite intensive intersessional work, the issue of advancing the RMS had reached an impasse. After considerable discussion, a proposal by Brazil and Argentina for a South Atlantic Sanctuary was not put to a vote. Japan's proposals to allow the yearly taking of 150 minke whales by coastal communities and to abolish the Southern Ocean Sanctuary were again defeated. No agreement was reached on special permit whaling. The IWC considered reports on environmental issues, small cetaceans, and the work of the Scientific and Conservation Committees and the Infractions Sub-Committee. The Commission agreed to a Code of Conduct for non-governmental organizations, and adopted the St Kitts and Nevis Declaration, proposed by Japan and several other countries, which declares a commitment to "normalizing the functions of the IWC based on: the terms of the ICRW and other relevant international law; respect for cultural diversity and traditions of coastal peoples and the fundamental principles of sustainable use of resources; and the need for science-based policy and rulemaking that are accepted as the world standard for the management of marine resources." Several of the countries voting against the declaration formally disassociated themselves from it after the result was declared.

**NORMALIZATION MEETING:** The Conference for the Normalization of the International Whaling Commission, held in Tokyo, Japan, from 12-16 February 2007, aimed to "put forward

specific measures to resume the function of the IWC as a resource management organization." Although Japan had invited all IWC member countries, only 35 countries attended the meeting, which was not officially sanctioned by the IWC. Twenty-six anti-whaling countries decided not to attend the meeting. The meeting resulted in a series of recommendations to be presented to the IWC at its next meeting in May 2007, including a request for secret ballots and Japan's proposal to expand coastal takes of minke whales.

## REPORT OF THE SYMPOSIUM

### OPENING SESSION

Charles Fox, the Pew Charitable Trusts, opened the meeting. Highlighting the current impasse within the International Whaling Commission (IWC), he noted with concern that pro-whaling countries may now hold a simple majority, sufficient to rewrite IWC rules and pave the way for the resumption of commercial whaling. He expressed hope that participants would identify a way forward.

Juanita Castaño, Director, UN Environment Programme (UNEP) New York Office, noted the important role in securing whale conservation



Charles Fox, the Pew Charitable Trusts

played by UN-administered conventions, such as the UN Convention on the Law of the Sea (UNCLOS), the Convention on Biological Diversity (CBD), the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), and the Convention on Migratory Species of Wild Animals (CMS). She conveyed a message from UNEP's Executive Director Achim Steiner, underlining Steiner's interest in the issue at hand and in the Symposium's outcome.

Symposium Chair Sir Geoffrey Palmer, Former Prime Minister of New Zealand, President of the New Zealand Law Commission and Commissioner to the IWC, announced that a Chair's Summary of the Symposium would be made available. Rémi Parmentier, Varda Group, said the Symposium's discussions would be subject to the Chatham House Rule, whereby statements are not attributed to individual speakers, except in the case of panel presenters.

In a keynote address, Chair Palmer noted that the unbridled exploitation of the world's great whales has led to a collapse of many stocks, and said the "painful impasse" that has developed in the IWC cannot be regarded as satisfactory by any side in the debate.

He underlined the large degree of uncertainty surrounding whale life cycles and ecology, and drew attention to the environmental paradigm shift caused by climate change, noting that its effects are most acutely felt in the polar regions, where many cetaceans feed.

Chair Palmer highlighted the relationship between the IWC and the UN-administered biodiversity-related conventions. He argued that, although the International Convention on the Regulation of Whaling (ICRW) is the proper instrument to address whale conservation, it has serious deficiencies, and called for: removal of special permit whaling; establishing a compliance review committee with enforcement powers; a dispute settlement mechanism; a stipulation that there can be no reservations to the new rules and no opting-out of the IWC rules; and recognition and regulation of non-lethal management regimes as legitimate uses of whale resources.

Chair Palmer said scientific, moral and ethical questions need to be addressed, including whether whales can be hunted sustainably and whether humans have any need to hunt whales. He expressed hope that the Symposium would yield new strategies and fresh ideas to ensure the sustainable future of whales.

#### **STATE OF THE WORLD'S WHALE STOCKS: IMPLICATIONS FOR POLICY MAKERS**

Michael Tillman, Research Associate, Center for Marine Biodiversity and Conservation, Scripps Institution of Oceanography, provided a perspective from within the IWC. Addressing the scientific underpinnings of the current whaling controversy, he noted problems related to uncertainties in stock assessments, including: large information requirements to determine maximum sustainable yield; significant gaps



Michael Tillman, Research Associate, Center for Marine Biodiversity and Conservation, Scripps Institution of Oceanography

in critical data; the inability to ascertain the status of many stocks; mixing of stocks on whaling grounds; lack of knowledge on the potential recovery of depleted stocks; and absence of accounting for the effects of environmental change.

Tillman also addressed enforcement issues, including inspections, as well as illegal, unregulated and unreported catches. In reviewing the

Revised Management Procedure (RMP), he said it requires an estimate of abundance with reasonable confidence intervals. He described a series of simulation exercises to test the RMP against uncertainties, catastrophic environmental declines and inaccurate population models, noting that they showed it to be robust despite

its simplicity, and highlighting the establishment of a conservative catch limit of 0.001 percent of the abundance estimate. He noted that the “carrot-and-stick” approach of allocating catch limits according to the provision of information creates a strong incentive for improved scientific information.

In closing, Tillman said the RMP, in conjunction with proper research and monitoring, is a reasonable means for managing commercial whaling if it is resumed and that the alternative of a proliferation of regional instruments would not be in the best interest of whales.

Providing a perspective from outside the IWC, Daniel Pauly, Director, Fisheries Centre, University of British Columbia, addressed the culling of whales to safeguard the world's fisheries resources. He noted that marine mammals annually consume an amount of food equivalent to three to four times the catch of the world's fisheries, and said some parties argue that this is intolerable in an age when many developing countries suffer from lack of food security.



Daniel Pauly, Director, Fisheries Centre, University of British Columbia

Pauly said annual catches have decreased

since the late 1980s, noting that Japan has been attributing this to fish consumption by whales and is influencing public opinion on this issue in developing countries.

Pauly presented global maps depicting whales' fish consumption as well as human fisheries activities. He indicated that some overlap occurs, particularly in coastal waters, but that the overall overlap on a global scale is negligible, with most fish consumption by whales taking place in areas that are not commercially interesting for fisheries. He concluded that: the worldwide decline in fisheries catches cannot be attributed to whales; even if all marine mammals were culled, the available catch would not be increased; and even if catches were to increase, developing countries would not be the ones to benefit from this.

Presenting a non-governmental organization (NGO) perspective, Philippa Brakes, Senior Biologist, Whale and Dolphin Conservation Society, addressed welfare issues related to whaling. She said whales are affected by multiple threats, and that their cumulative effect makes it difficult to estimate their exact impact on whale populations.

Brakes argued that whaling is as much an animal welfare issue as a conservation issue. Noting that the same killing method is used for whales of very different sizes, and the killing of larger whales often requires multiple strikes, she lamented the fact



that the Russian Federation is the only country that consistently provides a full data set on welfare issues, such as the time to death.

Brakes said the increased understanding of whales' social complexity, including transmission of cultural learning and



Philippa Brakes, Senior Biologist, Whale and Dolphin Conservation Society

roles of individuals, adds another layer of uncertainty in the welfare debate. She lamented the increase in scientific whaling and the lack of refinement of killing methods.

Underscoring that welfare standards for whaling are much lower than those for livestock slaughtering, she called for increased communication and awareness raising on welfare issues, noting that these could

generate a groundswell of protest within whaling nations and pressure on whaling markets, and arguing that whaling should be banned on welfare grounds alone.

In the ensuing discussion, some participants held the IWC had missed an opportunity when it did not adopt the RMP as part of the Convention's Schedule in 1994. They identified the RMP as a demonstration that precautionary, conservative, science-based harvesting can take place, and emphasized the robustness of the RMP given its extensive testing against various complexities. Others, however, felt that the RMP is not sufficiently precautionary and does not take into account environmental changes. Many noted persistent questions regarding the RMP, with some noting that discussion on the protection of whales should reach beyond the RMP. One participant called for a broader definition of protection, noting that whales should not only be protected from extinction but also from prolonged and extreme suffering.

One participant noted the concept of ecosystem-based management is misconstrued and anti-whaling organizations need to recapture its legitimacy in conservation. Another underscored the political nature of the argument, referring to the fact that culling other major predators of fish, such as cod or birds, is never suggested.

Participants discussed applying the precautionary approach, incorporating the ecosystem approach into the IWC's work, and improving the scientific information base. There was a call for enhanced monitoring and research to track progress. One participant emphasized the uncertainties surrounding whale stock recovery, noting high variability across stocks, and called for mechanisms for improved quota setting and broader discussions, including on the importance of ecosystem recovery. Many

called for increased interaction between the whale and climate scientific communities, and identified marine mammals as indicators of environmental change. It was noted that the potential for adaptation by natural selection is limited in diminished populations.

Several participants, noting that whaling as a commercial enterprise relies on subsidies, suggested asking the World Trade Organization to look into the issue, with one participant noting the potential for a coalition between NGOs and the business-oriented community.

Participants agreed on the need for increased communication and awareness, particularly in the developing world, with one participant noting that "Japan has managed to divide and conquer." There was a general call for increased emphasis on exploring non-consumptive utilization of the whale resources.

#### ***DEVELOPMENTS IN OCEANS LAW FROM 1946-2006: IS THE IWC OUTDATED?***

Conall O'Connell, Deputy Secretary of Australia's Department of the Environment and Heritage, provided a perspective from within the IWC. He noted some ICRW successes, including increased humpback whale populations following the moratorium, and said much of this success came more as a response to global pressures, such as concern over the near extinction of great whales, than from internal reform.

O'Connell argued that the ICRW is still a vital instrument, delivering significant cetacean protection measures through its processes of negotiation and compromise, but that its effectiveness depends more on the goodwill of its parties than on the good drafting of its provisions. He said the problem is that the IWC responds to and reflects the dominant ethos of



Conall O'Connell, Deputy Secretary of Australia's Department of the Environment and Heritage

its time, and that the IWC's even divide between pro- and anti-whaling countries, with little prospect of a three-quarters majority in the disputed areas of the moratorium or sanctuaries, does not equal an inability to make decisions. He said the ICRW is a dynamic instrument adaptable to emerging principles of modern oceans management, and noted that while logic suggests it should be modernized, in practice this is unlikely, and that at least it seems to work.

O'Connell said a key achievement is the development of a system to regulate aboriginal subsistence whaling. He noted that review of aboriginal subsistence whaling quotas will be one of the most important issues in the upcoming IWC meeting and a test of

the IWC's integrity. He also cautioned against linking aboriginal subsistence whaling with a partial lifting of the moratorium on commercial whaling.

Presenting a perspective from outside the IWC, Tuiloma Neroni Slade, former judge at the International Criminal Court, said many features of international law had not yet been developed 60 years ago, and are thus not reflected in the ICRW.

Slade argued that the ICRW must be assessed in the context of other international processes. He highlighted international consensus on principles for protection and preservation of the environment and living resources, which include the precautionary principle, ecosystem-based management, and a balance between conservation and utilization.

Among the ICRW's structural weaknesses, Slade cited ambiguity and contradictions about its purpose, allowance for opt-out and exemption from treaty obligations, as well as lack of effective compliance and dispute settlement mechanisms.

Slade said the challenge facing the IWC lies in ensuring that disapproval of commercial whaling does not leave the responsibility for management to the small minority who conduct whaling. Arguing that the IWC has gained primacy



Tuiloma Neroni Slade, former judge at the International Criminal Court

and experience in the conservation and management of whale stocks, he said deficiencies may be corrected through changes and new initiatives within the ICRW and the IWC, as well as through support and effective participation of the rest of the international community.

Stressing that the ICRW does not have a monopoly on complexity, Slade said the international community

has been able to find consensus on equally complex issues. He outlined potential options for progress, including: an international diplomatic conference under UN auspices; appropriate consultations with ICRW parties and within the UN system; a World Commission; and an independent group of qualified eminent persons. Calling for a better-defined purpose and mandate of the ICRW and broadened membership, he identified vote-buying as an unfair practice with no place in international negotiations.

Duncan Currie, international environmental lawyer, provided an NGO perspective, noting the importance of both good governance and cooperation as fundamental principles, and stressing that the object of cooperation is as important as the cooperation itself. Examining how the IWC measures up, he noted several problems, including: outdated objectives; unclear scope; and a lack of amendment provisions, an effective compliance mechanism, a dispute resolution mechanism, and

transparency. Considering a potential way forward, he reiterated the options laid out by Slade, and added: amending the treaty; establishing new treaties; and bringing the issue to the UN General Assembly. He said the objective of future action should be to cooperate in a spirit of global partnership to conserve, protect and restore the health and integrity of the global whale populations as part of the ecosystem.

Currie said possible outcomes include: an ecosystem approach aimed at all aspects of sustainability, a precautionary approach and prior environmental impact assessment; a regime that addresses all environmental influences, including climate change, pollution and ship strikes; and good governance, including robust decision-making, no or restrained possibility to opt-out, dispute resolution procedures, effective compliance and enforcement mechanisms, amendment procedures, and greater transparency.

In the ensuing discussion, participants agreed that the legal aspects of the whaling debate should be addressed in conjunction with the political aspects, calling for efforts to increase public support for whale conservation. They stressed the need to clearly distinguish between aboriginal and commercial whaling.

One participant recalled earlier attempts to renegotiate the ICRW, noting a general unwillingness to allow any new Convention to address whaling in exclusive economic zones (EEZs), and highlighted that through its Agenda 21, the UN recognizes the IWC as the appropriate organization to deal with whale conservation and acknowledges non-consumptive utilization of whale resources.

Delegates debated whether the status quo in the IWC is sufficient for conservation purposes, stressing the need to involve the world community and to avoid countries leaving the IWC.

Participants discussed the likelihood of Japan leaving the IWC, with some arguing that Japan would likely stay because of its commitment to the international system, the investment it has made in the process, and the lack of incentives to leave since it can continue whaling for scientific purposes.

One participant suggested that introducing the UN Scale of Assessment in the IWC context may encourage more countries to join, which in turn will make it harder to get anti-conservation decisions adopted. One participant urged moving beyond the vote-buying debate by promoting the concept of sustainable utilization among developing countries.

Many participants called for improved linkages with other international bodies, including CBD, CMS and CITES, but also the Antarctic Treaty and the Commission for the Conservation



Duncan Currie, international environmental lawyer



of Antarctic Marine Living Resources, with one participant lamenting the absence of an emergency response mechanism. Others argued that even though the ICRW is not perfect, it is still the best instrument available, and it needs meaningful adherence to its decisions rather than amendment. Participants debated whether the IWC is the appropriate forum to address small cetaceans. Some opined that CMS, with its legally binding mechanisms, is better equipped to do so.

Debate also centered around the usefulness of wholesale versus incremental changes, with one participant identifying a complete overhaul as unrealistic. Possible actions were identified, including feeding into the UN Secretary-General's annual Report on Oceans and the Law of the Sea, and focusing, in a positive way, on the IWC's dispute resolution work.

Other suggestions included: increased communication with whaling countries at the political and technical levels in between IWC meetings; building capacity in countries that recently joined the IWC; increasing public engagement, especially in whaling countries; and publicizing economic and other issues related to whaling in Japan.

#### **WHALING DIPLOMACY: WHY HAS IT BEEN SO DIFFICULT TO FIND AN ACCEPTABLE SOLUTION?**

Chair Palmer opened Friday's morning session by challenging participants to "think outside the box" and consider both the intended aims of proposals as well as how to achieve them.

Rollie Schmitten, former US Commissioner to the IWC, provided a perspective from within the IWC, stating it is not working. Reviewing its current status, he noted that the lack of will makes it difficult to find solutions. He said traditional negotiating strategies aimed at finding common ground do not seem to work in the IWC and observed that, instead, every issue appears to be "black-and-white." He underlined that pro-whalers have little reason to negotiate and said both sides use the tactic of expanding membership with the unlikely goal of forcing the other side either into submission or into leaving. He reminded participants of the Convention's main purpose of sustaining the whaling industry.

Regarding future options, Schmitten disagreed with calls for a new convention, saying it would become an excuse for whaling countries to seek a sustainable use convention instead. He suggested completion of the Revised Management Scheme (RMS) as the most viable solution and recommended the need for: significant



Rollie Schmitten, former US Commissioner to the IWC

leadership by the US; agreement on the opt-out provision; small intersessional meetings to enhance communication; phasing out legal scientific whaling; a corresponding phase-out of whaling in sanctuaries; lifting or partial lifting of the commercial moratorium upon completion of the RMS; and a ban on international trade in whale meat. He concluded that this type of compromise would make the IWC functional and result in fewer whales killed, and that, in the long term, commercial whaling would likely cease through cultural changes as well as increased environmental awareness about the benefits of non-consumptive use.

Providing a perspective from outside the IWC, Atsushi Ishii, Center for Northeast Asian Studies, Tohoku University, elaborated on Japan's whaling diplomacy in recent years. He highlighted the



Atsushi Ishii, Center for Northeast Asian Studies, Tohoku University

dangers of the "Japan as loser" paradigm, which is based on the notion that Japan is seriously trying to overturn the moratorium but has failed every year. He said Japan's primary objective is not to overturn the moratorium but rather to continue scientific whaling. Ishii noted that Japanese people rarely eat whale meat and are not pro-whaling, but rather "anti-anti-whaling": they support whaling not

because they like to eat whale meat but because they disapprove of anti-whaling activities.

Ishii emphasized that the Japanese Government has never pursued the necessary strategies to overturn the moratorium: it is not creating a negotiable atmosphere; it is not promoting the notion of Japan as a science-respecting country; it has never made any concession or negotiated seriously with anti-whaling countries; and it does not seriously consider a fallback-strategy, such as pulling out of the IWC.

Ishii described this situation as a "harmonized and scheduled confrontation." Among solutions, he cited: bringing scientific whaling under control of international law; diminishing the Japanese public's and politicians' support for scientific whaling; changing activist NGO strategies that offend the Japanese and fuel support for scientific whaling; and reconsidering a revised version of an earlier Irish proposal, which would allow coastal whaling in EEZs, promotes a global sanctuary elsewhere, revises the RMS, and abolishes scientific whaling.

In closing, Ishii remarked that the argument of whaling on cultural grounds was politically constructed by the Japanese Fisheries Agency long after the moratorium was proposed, and that Japan's annual whaling profit equals its Government's subsidies, and currently stands at around US\$10 million.

Presenting an NGO perspective, Kitty Block, Senior Legal Adviser, The Humane Society, summarized the current situation. She said: the position of whaling nations is the strongest in decades; conservation countries' resolve is eroding; the slaughter of whales continues at unprecedented levels; there is an interest in allowing a resumption of coastal commercial whaling; and whaling nations show no interest in compromise.

She said the IWC is becoming increasingly ineffective as it is unable to stem the increase of whaling and enforce its moratorium, and without a very serious effort and commitment to reverse the current trend, pro-whaling countries will strip the IWC of its conservation mandate and make it a non-transparent body.

Block stressed that: the ICRW is worth saving, since no other multilateral environmental agreement has a comparable jurisdiction; the ICRW's conservation mandate must be preserved and strengthened; adopting an unenforceable and ineffective RMS is not an answer; and an RMS cannot stop or regulate special permit whaling.

In conclusion, Block noted that: an overwhelming majority of the global community supports whale protection and opposes commercial whaling; whaling is inherently cruel and completely unnecessary; the ICRW should be amended, exploited provisions removed and compliance and binding dispute settlement mechanisms added; the moratorium must remain in place; and all diplomatic effort should be employed to bring this to fruition.

The ensuing discussion explored lifting the moratorium, with some noting it could be done on a stock-by-stock basis, and others highlighting the chance that lifting the ban could lead to species being downlisted in other fora, such as CITES. One participant suggested that putting an end to commercial whaling would be easier if the possibility of resuming it was opened up, but under such strict conditions that countries would lose their interest in it. Several participants disagreed with the idea that the IWC is completely polarized, noting that some countries hold neutral views, and that the IWC's lack of functionality may lead these countries to leave the IWC.

A participant suggested establishing a "bill of rights" for sentient creatures, while another noted ongoing efforts to establish a universal declaration on animal welfare at the UN. Regarding scientific whaling, one participant said practical reasons prevent abolishing it completely. One participant urged a larger role of the IWC's Conservation Committee, noting Norway's recent recognition of this Committee, and stressed it needs increased funds to carry out its activities.



Kitty Block, Senior Legal Adviser, The Humane Society

Noting the lack of incentive for whaling nations to change their position, a participant proposed, and others supported, enlarging countries' EEZs in exchange for subscribing to a series of rules on marine resource exploitation and monitoring. One participant stated that all conservation, welfare and other ethical arguments used to oppose whaling in the high seas equally apply to whaling in EEZs, and questioned whether allowing coastal whaling will reduce the total amount of whales killed.

Participants agreed that pro-whaling countries will only be interested in negotiation when they see a potential gain, and pointed out that Norway, Iceland and Japan currently have no need for a compromise. They discussed possibilities for change in Japan's whaling policy through public pressure and contemplated the potential role of IWC member countries in this regard. One participant remarked on the Japanese people's prejudices, which are not about whaling per se, but rather about the anti-whaling movement. It was noted that: the information presented at the Symposium, including welfare issues and the fact that whaling is heavily subsidized, is unknown to the Japanese people; environmental NGOs in Japan are generally not working on whaling and share the prejudice against anti-whaling groups; and it would be useful to convene a similar symposium in Japan, bringing in Japanese media. Participants agreed on the need for a strong communication strategy targeting the Japanese public at large, and one suggested creating a working committee to developing a strategy to get the message directly to the Japanese people, bypassing the Government and the main media.

Participants agreed that quiet diplomacy is more fruitful than aiming for public embarrassment, with one recalling successful negotiations with the Japanese Government regarding long-line fishing. A participant stressed that in Japan, anti-whaling sentiments are regarded as civil disobedience and thus unacceptable, and that this should be addressed in any communication strategy.

Participants noted that Japan's interest in whaling is driven by a "victim mentality," and that Japan argues that using emotional arguments to restrict access to marine living resources would set an undesirable precedent. One participant pointed out that Japan will not accept the Irish proposal if it does not include scientific whaling, arguing that the only solution is to place scientific whaling under international control. Another said whaling countries will be more sensitive to the argument that whaling is not economically viable, rather than that it is wrong.



Participants during the ensuing discussion



Participants also debated whether illegality could be used as an argument to oppose Japan's scientific whaling efforts, stressing the need to scrutinize the definition of "scientific whaling."

### THE WAY(S) FORWARD

Providing a perspective from within the IWC, José Truda Palazzo, Jr., Alternate Commissioner to the IWC for Brazil, stressed that the current deadlock in the IWC has nothing to do with science or economics, but rather with politics.

Palazzo highlighted the importance of: acknowledging outstanding political issues, including coastal whaling in Japan and a whaling-free Southern hemisphere; finding negotiating ground on core issues; and agreeing on best practices for enforcement and control. He advocated actions outside of the IWC, suggesting promotion of regional cooperation. Palazzo also stressed the need to seriously consider updating the ICRW and continue to promote the non-lethal use of the whale resources. He called for a "cold-headed" evaluation of coastal whaling claims and acceptability, including whether coastal whaling is legitimate, sustainable, and non-infringing on the use rights of others.

Palazzo called on: whaling countries to redefine their policy so that it excludes "whaling imperialism"; Nordic whaling countries to stop blocking conservation on behalf of Japan; and like-minded countries to maintain their basic principles, but be open if whaling countries show interest in serious negotiation.

He also stressed the need to: clean up the agenda of the IWC Plenary meetings; cooperate to avoid derogatory language; pursue intersessional dialogue with wide participation; set up a high-level, independent body to monitor progress; and try to agree on a timetable to deal with outstanding issues.

Providing a perspective from outside the IWC, Yolanda Kakabadse, former President of IUCN – The World Conservation

Union, cautioned against prevailing misconceptions, including that: "I am right, you are wrong"; what is happening is a power struggle; and there are no shared objectives. She noted with concern that participants at the Symposium are "preaching to the converted," stressing that the real target audience is absent. Noting that differences in perception of values cannot be judged objectively, she underlined the need to take a step back and recognize countries' right to identity and sovereignty.

Arguing that protecting the global goods requires more and better partnerships, she noted that Japan is carrying all the blame, while Iceland and Norway are equally accountable.

Kakabadse stressed the need to: build trusts; agree that there is a conflict; agree on a strategy, methods of evaluation and control, sources of information, safeguards, and dispute resolution;

break away from the "Japan versus the West" deadlock; and understand what the true whaling interests are. She further suggested: installing a high-level commission; holding meetings with two conveners representing the two main partners; working towards a consensus strategy; and increasing efforts to reach out to each other.

Karen Sack, Oceans Policy Adviser, Greenpeace International,



Karen Sack, Oceans Policy Adviser, Greenpeace International

Greenpeace International, provided an NGO perspective, stressing that "the time is always right to act" and risks might need to be taken to change the status quo. She cautioned against changing the definition of aboriginal subsistence whaling to include coastal whaling, and called for the international community to stand up and work with Japan more diplomatically.

Sack stressed the need to "put the whales back into the oceans," clarifying that whaling has become a taboo issue in international negotiations on biodiversity and oceans, and that the issue needs to be addressed comprehensively and in recognition of the ecosystem approach and the precautionary principle. Recalling successful reforms of regional fisheries management organizations initiated by the UN Food and Agricultural Organization, Sack called for modernization of the IWC in parallel with these processes. She encouraged parties to CITES, CMS, CBD and UNCLOS, as well as the UN General Assembly, to adopt a resolution welcoming the upcoming 60th anniversary of the IWC and urging its member countries to modernize its operations. She highlighted major commonalities in many developing countries' interests, also in relation to other environmental issues, and called for increased efforts to unite their positions in the IWC context. Sack called on NGOs, governments and scientist to work together in developing and implementing an agenda for change.

In the ensuing discussion, participants agreed on the need to move beyond the taboo of discussing whaling issues in international environmental fora, and to discuss the issue in trade and foreign policy fora as well. One participant stressed the need to work on flaws in international legislation in areas beyond national jurisdiction.

A participant compared the dynamic of the Symposium to that of the recent Normalization Meeting held in Japan, which was attended mainly by pro-whaling nations, noting a striking similarity in both consensus and lack of appreciation of opposing views.

Participants explored options for combining bottom-up and top-down approaches to break the deadlock, suggesting a binding arbitration system, involving, for instance, a high-level mediator



Yolanda Kakabadse, former President of IUCN - The World Conservation Union

appointed by the UN Secretary-General. Several, however, noted that arbitration, mediation and litigation are risky, and should be considered only if diplomacy fails.

One participant suggested promoting dialogue with Japan, Norway and Iceland through a special gathering at the upcoming IWC meeting, noting that if discussion were to take place only in Plenary, NGOs would be excluded from participating. There was a general call for an international, consistent, long-term campaign on oceans governance, particularly regarding the high seas.

One participant warned against the model of regional fisheries management organizations, calling for ecosystems, not stocks, to be managed. Another opined that the anti-whaling argument of whales being sentient creatures may be met with skepticism in countries dealing with war and extreme poverty.

Several participants praised regional conservation efforts and successes in Latin America, with one highlighting ecotourism-driven Caribbean efforts and expressing hope that Pacific islands will follow a similar path. Another recalled some West African Commissioners voting in favor of whaling in recent years, and public shock and outrage in their respective countries when NGOs made this public.

Participants called for engagement of all whaling nations, continued discussion of ecosystems within the IWC, and country support of NGO participation at the IWC. One participant said any new commission to address whales should be created within the IWC.

Parmentier announced a side event to be held at IWC-59 in Anchorage to report on the Symposium's discussions.

### **CLOSING SESSION**

Chair Palmer summarized the discussions and main outcomes of the Symposium, noting the variety of suggestions made, including: creating a working group comprising not the "usual suspects" but rather those countries in the middle of the debate, who would take the lead in the process; developing an outreach programme to raise awareness in whaling countries; establishing an independent World Commission; seeking mediation; and broadening the discussion on whale conservation and bringing it into other fora.

Chair Palmer also noted agreement on a number of key points, including: maintaining sanctuaries; closing loopholes such as scientific whaling and objections; ending subsidies; developing new enforcement and dispute resolution mechanisms; preventing trade in whale products; and constraining whaling.

Chair Palmer expressed hope that these ideas would help stimulate further debate and achieve progress in the IWC. Commending participants on their positive contributions, he closed the meeting at 5:22 pm.



Symposium Chair Sir Geoffrey Palmer, Former Prime Minister of New Zealand, President of the New Zealand Law Commission and Commissioner to the IWC

## **UPCOMING MEETINGS**

**IWC-59:** The 59th Annual Meeting of the IWC (IWC-59) will take place from 28-31 May 2007 in Anchorage, Alaska. The meeting will be preceded by meetings of the Scientific Committee and other committees and sub-committees. During IWC-59, a side event will be held to present the outcomes of the Whale Conservation Symposium of 12-13 April, 2007. For more information, contact: IWC Secretariat; tel: +44-1223-233-971; fax: +44-1223-232-876; e-mail: [secretariat@iwcoffice.org](mailto:secretariat@iwcoffice.org); internet: <http://www.iwcoffice.org>

**SIXTH SESSION OF THE UNITED NATIONS PERMANENT FORUM ON INDIGENOUS ISSUES: TERRITORIES, LANDS AND NATURAL RESOURCES:** This meeting is scheduled to take place from 14-25 May 2007, in New York, US. For more information contact: Secretariat of the Permanent Forum on Indigenous Issues; tel: +1-917-367-5100; fax: +1-917-367-5102; e-mail: [indigenouspermanentforum@un.org](mailto:indigenouspermanentforum@un.org); Internet: [http://www.un.org/esa/socdev/unpfii/en/session\\_sixth.html](http://www.un.org/esa/socdev/unpfii/en/session_sixth.html)

**UNICPOLOS-8:** The eighth meeting of the Open-ended Informal Consultative Process on Oceans and the Law of the Sea will take place from 25-29 June 2007, at UN headquarters in New York. For more information, contact: UNDOALOS; tel: +1-212-963-3962; fax: +1-212-963-2811; e-mail: [doalos@un.org](mailto:doalos@un.org); internet: <http://www.un.org/Depts/los/>

**CITES COP-14:** CITES COP-14 will be held from 3-15 June 2007, in The Hague, the Netherlands. The COP will consider proposals to amend the CITES appendices, and address enforcement and administrative matters. For more information, contact: CITES Secretariat; tel: +41-22-917-8139; fax: +41-22-797-3417; e-mail: [cites@unep.ch](mailto:cites@unep.ch); internet: <http://www.cites.org>

**IWC-60:** IWC-60 and its associated meetings will take place in 2008 in Chile, with the date and venue to be determined. For more information, contact: IWC Secretariat; tel: +44-1223-233-971; fax: +44-1223-232-876; e-mail: [secretariat@iwcoffice.org](mailto:secretariat@iwcoffice.org); internet: <http://www.iwcoffice.org>

**SECOND MEETING OF THE CBD AD HOC OPEN-ENDED WORKING GROUP ON PROTECTED AREAS:** This meeting will take place from 11-15 February 2008, in Rome, Italy. For more information, contact: CBD Secretariat; tel: +1-514-288-2220; fax: +1-514-288-6588; e-mail: [secretariat@biodiv.org](mailto:secretariat@biodiv.org); Internet: <http://www.biodiv.org>

**CBD COP-9:** CBD COP-9 will take place from 19-30 May 2008, in Bonn, Germany. For more information, contact: CBD Secretariat; tel: +1-514-288-2220; fax: +1-514-288-6588; e-mail: [secretariat@biodiv.org](mailto:secretariat@biodiv.org); Internet: <http://www.biodiv.org>

**CMS COP-9:** CMS COP-9 will take place in November 2008, with the date and venue to be set. For more information, contact: UNEP/CMS Secretariat; tel: +49-228-815-2401/02; fax: +49-228-815-2449; e-mail: [secretariat@cms.int](mailto:secretariat@cms.int); internet: <http://www.cms.int/>

**IWC-61:** IWC-61 and its associated meetings will take place in 2009 in Portugal, with the date and venue to be determined. For more information, contact: IWC Secretariat; tel: +44-1223-233-971; fax: +44-1223-232-876; e-mail: [secretariat@iwcoffice.org](mailto:secretariat@iwcoffice.org); internet: <http://www.iwcoffice.org>