
FINAL

**OPENING SPEECH TO SYMPOSIUM ON
THE STATE OF CONSERVATION OF
WHALES IN THE 21ST CENTURY**

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Chair of the Symposium

Introduction

1. We are here today for the whales. This unique gathering aims to increase our knowledge of these great mammals and to engage in significant discussions to devise strategies for their future. It should be said at the outset that whales are not fish. This self evident fact must be spelled out. Many countries deal with cetaceans within their fisheries ministries and look on these mammals as indistinguishable from fish.
2. The world has at least 80 species of whale including dolphins and porpoises. These are divided into baleen, filter feeding whales and toothed whales. There are 13 species of baleen whales ranging in size from the pigmy right whales at 6.5 metres to the blue whales at 27 metres. Of toothed cetaceans there are approximately 70 species. These include orca, sperm, pilot and beluga whales, and narwhal. There are about 20 species of beaked whales and 46 species of dolphins and porpoises.
3. For the international environment there is something iconic about whales. Some of the species of great whales were hunted to the point of extinction. Twenty one years ago the moratorium on commercial whaling adopted by the International Whaling Commission came into force. It was regarded at the time as a famous victory for the environment.
4. The unbridled exploitation of the world's whales led to a collapse in many stocks. That exploitation has come to symbolize the excesses to which unrestrained human activity can go. International

cooperation to regulate whaling only started in any real way with the *International Convention for the Regulation of Whaling* that was agreed to in Washington on 2 December 1946. There are now 73 nations parties to that convention. The convention lies outside the United Nations system.

5. There are powerful forces that favor a resumption of commercial whaling. The International Whaling Commission has been polarised and divided for about 15 years over the issue. This symposium has been designed to investigate in an open minded way whether there are ways through the painful impasse that has developed in the IWC. Our aim must be to provide fresh insights.

6. The people gathered here come from many corners of the globe, with a wide range of international experience and expertise – in some cases directly in relation to whales and whaling, and in some cases not. We are here to put our experience to use in the spirit of inquiry, to find new answers to old questions. As such, we are not here to represent or repeat the positions of our governments, organizations or institutions, but to ‘think outside of our collective box’. For this reason, I would like to request that participants observe the ‘Chatham House Rule’ in relation to these discussions – this means that the ideas expressed in this room must not be attributed publicly to specific individuals without their express permission. We can discuss this further in a few minutes.

7. I have been New Zealand Commissioner at the IWC for nearly five years. I first became interested in whaling issues when I was New Zealand Minister for the Environment between 1987 and 1990. What

experience has taught me is that the present situation at the IWC cannot be regarded as satisfactory by any side of the debate. Answers need to be found in order to restore a measure of peace and harmony – of rationality – to the IWC.

The State of Whale Stocks and the Science

- 8 I have learnt also that, although cetacean science in some respects has come on in leaps and bounds in recent decades, we still know very little about most cetacean populations. For many whales, we still have little idea about how large the populations are; how long the animals live; their habitat requirements; even where their breeding grounds are. Most important of all, we do not know how they are affected by the impacts of human activities, or how their disappearance would affect the global marine ecosystem. These are very basic questions and scientists undoubtedly have more success in resolving these questions for many of the larger terrestrial mammals than for whales. Whales are not only unique; they are also perhaps uniquely difficult to study.

- 9 Much of what we know about whales is based on the brief glimpses that we get at the surface and this is combined with many assumptions about how we think they live and behave. Beaked whales for example, which include some species that have been subject to commercial takes, spend most of their time at great depths. Some species are so mysterious that they are described from only one or two skulls held in the vaults of a few natural history museums, including my local museum Te Papa Tongarewa, the Museum of New Zealand in Wellington.

- 10 Humanity is facing an environmental paradigm shift. We know life on the planet is being affected, perhaps dangerously, by climate change and we know we have to do something about it. The choices we face as a global community, in relation to mitigating the effects of burning fossil fuels and attempting to cope with the impacts of warming on the planet and its fragile ecosystems, are daunting. Nowhere are these changes being more acutely felt than in the Polar Regions, where many cetacean species feed. We know very little indeed about the effects of global warming on whales, but the news is unlikely to be good when it comes in.
- 11 Another issue is the matter of ocean acidification. This is caused by the absorption of greater quantities of carbon dioxide into the world's oceans thus increasing the acidity of the water. The impacts of ocean acidification may be difficult to predict. But the effects are likely to be profound and to extend right the way through the complex food webs of the oceans, from the smallest plankton right through to the apex predators, such as orca and sperm whales.
- 12 We will hear from a number of speakers on issues relating to the current status of whale populations, whether whales are competing with fish, and whether humans are over fishing the oceans. We will also, no doubt, hear about the welfare issues associated with hunting these huge mammals, under often less than ideal circumstances.
- 13 During the annual IWC meetings there have been discussions on what is thought to be 'acceptable' in terms of the length of time it takes to kill whales. Can whales be killed by methods that are humane? This is a question we repeat here. Furthermore, the complexity of cetacean

brains, their social systems and the unique role that some individuals may play in cetacean societies, is a subject the study of which is only in its infancy.

- 14 With this in mind, I encourage you to be visionary during these discussions, as we will be attempting to chart a course for the protection of whales over the next century.

Developments in the International Law of the Oceans

- 15 The second segment of our deliberations will be devoted to international oceans law. The Convention under which the IWC operates is nothing if not old and creaky. In many ways it is outside the mainstream of international environmental law both in theory and in practice. Both sides in the debate at the IWC refer to the IWC as being dysfunctional and it is hard to take issue with that description. Many of the features of international law that characterize modern treaties were just not around in 1946.

- 16 The United Nations Convention on the Law of the Sea places emphasis on the conservation of marine living resources. Articles 65 and 120 recognize the right of a coastal state, or the competence of an international organization, to prohibit, limit or regulate the exploitation of marine mammals more strictly than provided for in the Law of the Sea Convention itself. These articles suggest that the IWC has the primary competence in the area of cetaceans.

- 17 The Convention on International Trade in Endangered Species (CITES) currently maintains an international ban on trade in whale

products. CITES and the IWC have a close and continuing relationship under the prevailing conservationist policies in relation to whales. How that will change in the future is not easy to predict.

- 18 The Convention on Migratory Species (CMS) has the advantage of bringing a modern and holistic perspective to the conservation of migratory cetaceans. And there has been a recent agreement concluded in the South Pacific under this convention. The Convention on Biological Diversity also speaks to whales.
- 19 But the International Convention for the Regulation of Whaling itself has serious deficiencies. There were contradictions built into the Treaty about its purposes from the beginning. There are serious structural weaknesses at the heart of the ICRW. These problems with the Treaty are the source of many of the disputes that have emerged over the past 15 years or more that the International Whaling Commission has been attempting to negotiate a Revised Management Scheme for whales.
- 20 The first of these difficulties and perhaps the most important relates to the scientific whaling exception. Article VIII of the Convention allows governments to permit nationals to kill, take and treat whales for scientific research purposes, exempt from the commercial whaling moratorium.
- 21 Some would say scientific whaling has been used as a means of continuing commercial whaling. Many whales are taken under this provision. Current Japanese special permits are as follows:

JARPN II 2006-07	100 Sei whales 50 brydes's whales 10 sperm whales 160 minke whales
JARPA II 2007-08	850 minke whales 50 fin whales 50 humpback whales

Officially, only Norway and Iceland are engaged in commercial whaling. More than 29,000 whales have been killed under objection and special permit whaling since the moratorium went into effect.

- 22 The Schedule to the Convention can be altered by an agreement of 75 percent of the members. Many of the most important provisions concerning the regulation of whales are contained in the Schedule. The complicated provisions of Article V of the treaty means that nations that do not agree to a schedule amendment can simply opt out. Norway continues to whale commercially under precisely such an opting out arrangement. Norway is not bound by the moratorium. It objected to it under Article V. Iceland says it is exempt because it left the Convention then rejoined with a reservation to the moratorium. If there is to be a resumption of commercial whaling, it is hard to see how nations can be permitted to opt out of the rules. That will cause the whole system to unravel.

- 23 In fact, there is now no effective way of enforcing the International Convention and ensuring that its provisions are complied with. The IWC does not have power to enforce its regulations or to punish violations. Enforcement is the exclusive province of the member States. The Convention does not specify the types of measures that should be adopted to ensure compliance. The IWC can only make recommendations to member States regarding issues of enforcement.
- 24 Furthermore, the ICRW lacks any compulsory dispute settlement mechanism. Such a mechanism is a fundamental feature of most modern treaties. It is not easy to understand how an international convention can be effective when there is no means of dealing with disputes that arise under it. There are a large number of issues on which the parties to the Convention disagree. Take just one example. One of the most obvious problems is the issue of what is within the competence of the Convention. New Zealand takes the view that all cetaceans (including dolphins and porpoises) are covered by the Convention. The Japanese Government takes the opposite position. Both cannot be right. Such issues require a dispute settlement mechanism, yet none is available. Interpretation of the Treaty must be capable of being resolved but under this Convention it cannot be. Neither does the IWC have access to any legal advice.
- 25 The idea of adding a Protocol to the ICRW has been floated as a possible solution to these problems. A Protocol is an international agreement that is binding between nations that agree to it. The International Convention on the Regulation of Whaling already has

one protocol that was agreed to in 1956, ten years after the convention itself. It was a document that amended the provisions of the original convention. It is important to understand the International Whaling Commission itself cannot change the Treaty. That must be done by a Protocol agreed to by the sovereign States that make up the membership of the Convention. But the IWC could propose that changes be made. It did so in 1956.

26 If it were thought desirable or possible to amend the Treaty, issues that could be considered are:

- Removal of Article VIII of the Convention relating to Special Permit whaling;
- Establishing a Compliance Review Committee that would have new powers of enforcement;
- A new dispute settlement provision that could be based on the one contained in the Convention on Biological Diversity;
- A stipulation there can be no reservations to the new rules;
- It would also be necessary to provide that there can be no opting out of the IWC rules as has been the case in the past;
- Recognition and regulation of non-lethal management regimes as legitimate uses of whale resources.

27 If such changes or any others are to be made, a heavy political lifting would be necessary to secure agreement. It is hard to see how such agreement could be secured in the present conditions.

28 This leads to another point. Serious consideration must be given to the argument that despite the weaknesses of the Convention, it is the best instrument available for the conservation of whales and has been relatively successful. That suggests a cautious strategy continue along present lines.

Diplomacy

29 Can diplomacy provide some answers? Would some effort at mediation or international arbitration be worthy of consideration? The issue here is how, without changing the rules, can the present structure be made to work to the satisfaction of both sides of the debate? That, I suspect, involves unpacking why we arrived at the place where we are, and analysing what is required to arrive at some other place. It is here, I suspect, that the creativity of the symposium will be most challenged. There are strongly held views on both sides of the whaling debate.

30 Would a meeting of foreign ministers or heads of government be a way forward?

Could the United Nations have a role?

What other mechanism could be envisaged?

31 One of my fondest memories of the role played by the United Nations in protecting the world's oceans is of the events that took place in this building in 1989 when the General Assembly voted for global prohibition on driftnet fishing in international waters. I may add that I was closely involved with the negotiations and implementation of the Convention for the Prohibition of Fishing with Long Driftnets in the South Pacific. That Convention was concluded at Wellington on 23 November 1989. Could such things happen again?

The Future

32 Amongst the public, there is a sense that the whales have been saved; that only a few people get worked up about the numbers currently being killed. In the event, there is a full-scale resumption of commercial whaling. However, there will be a great deal more public interest and international concern about the issue than there is at present.

33 If this Symposium is to achieve the aims of its sponsors it needs to come up with new ways of thinking about whales. That will not be easy. Many minds have thought much about these issues for many years. We need clear thinking, incisive analysis, boldness and vision.

34 There are scientific, moral and ethical questions here that we need to confront. One issue is whether whales can be hunted sustainably. Given the uncertainties in estimating populations and the threats from climate change, ship strikes and the like, that question is hard enough to answer. But given the damage that was done over two centuries, should the pause in commercial exploitation become permanent? Even if whales can be hunted sustainably, should they be, given what we do not know? Have humans any need to hunt whales? After all it is only their meat for food that is of any utility now, although that was not the case historically.

35 For all other whale products, substitutes have been found. In the absence of government subsidies which, for example, the Japanese fleet currently receives, it may not even be economic to pursue whales for any purposes at all as except for whale watching. The complex web of science, law, politics and diplomacy that surrounds the controversial issue of whaling needs to be understood and answers need to be found.

36 I wish to conclude by thanking on your behalf the Pew Charitable Trusts and other sponsors for bringing us together to attempt this task.