

## **The Pew Tokyo Whale Symposium**

### **A Change in Climate for Whales: Is There a Common Way Forward?**

**United Nations University, Tokyo  
30-31 January 2008**

---

#### **Opening Address**

#### **From New York to Tokyo**

**Tuiloma Neroni Slade  
Chairman of the Symposium**

Distinguished colleagues,

Allow me to add my own remarks of welcome, and to say what a privilege it is, always, to be in this ancient and beautiful country and to meet in this, one of the greatest cities in the world.

It is not by accident that we gather in Tokyo in this centre of the United Nations. As we did with the first Symposium on Whales held in New York at the UN headquarters, we come together, inspired by the high principles of the United Nations, in search for change in climate for whales and, in collective effort, to chart a common way forward. Let those principles be the guiding spirit in our work. Let us also bear in mind that the United Nations itself, an organisation as old as the International Whaling Commission (IWC/Commission), is currently searching for change for the reform and modernisation of its ways.

#### **The symposium**

This is the second whale Symposium sponsored by the Pew Environment Group. On your behalf, I extend to the Pew organisation our grateful appreciation for the initiative of the symposia and for the generosity of the arrangements.

By its title, and for a reason, this Symposium seeks “A Change in Climate for Whales”. The reason is that the *International Convention for the Regulation of Whaling* (ICRW/Convention) continues to be plagued by considerable controversies; and the Contracting Governments are at loggerheads. The whaling countries, as well as those which oppose whaling, share a sense of unhappiness and concern about the way the IWC currently conducts its business. The commercial whaling countries feel unfairly treated and complain of their viewpoint not being respected; and the countries opposed to commercial whaling feel aggrieved that IWC decisions are ignored. And all this, while the whales are left increasingly unprotected. There is deep division and unchanging polarisation between the two sides of the argument, over the current moratorium on commercial whaling, and with respect to other critical and fundamental issues.

This Tokyo Symposium is designed to seek a way forward and away from the impasse that dominates the work of the IWC. It is appreciated that there are formal positions. But, this is not an IWC meeting; and we do not seek from you the repetition of official positions or of known contentions and viewpoints. Rather, we would want our work here to be an open and constructive dialogue that aims to inform and broaden perspectives; and to do so with a view to setting the groundwork for the IWC parties to bridge the divide that exists. We need not simply ideas, but ideas that are more likely to work. I believe that our exchange of views will be especially productive if we can do so in an atmosphere of frankness and of cordiality. We need to understand the contrary viewpoint, and to do so with real understanding. Ultimately, it is that degree of understanding that will produce the ability and confidence for all parties to face up to the realities of feasible alternatives and, hopefully, to find solutions.

### **Participants**

And, so, colleagues, by your background and expertise you have been invited to come here to contribute to that process of finding change and of moving forward. It is an opportunity that I believe we should not miss, to test out and to make use of our collective experience to help fashion steps that might set the way for the future of the IWC.

Our gathering, around 86 in number, is representative of some 28 nationalities with a wide variety of expertise including the perspectives of those not directly dealing with whales issues but who have played responsible and effective roles in other multilateral processes. Collectively, you bring to our task outstanding credentials and the most pertinent of experiences.

The basic rule for our work is that delegates be constructive and creative. As far as is practicable, we want to encourage open debate unburdened by official lines, so that we may be able to come away from established and entrenched positions and try to find that way forward. In that direction, I ask that we observe the other discipline in our work, namely, the Chatham House Rule by which, at least for those to make unscripted interventions, there will be no attribution of statement or viewpoint without the express consent of the individual concerned. For the written contributions, we propose to have these made publicly available on the Symposium website and trust that we have the agreement of all authors to do so.

### **The Convention**

We meet at a significant time, coincidental with the 60<sup>th</sup> anniversary in the operation of the Convention. A major criticism is that the Convention is of a past age and now seriously in need of structural change and modernisation. Its objective to regulate whaling and, at the same time, conserve whales for future generations is seen as outdated, ambiguous and allowing for confusion in implementation. Typically, it is criticism not fully accepted by all parties. But, fundamentally, it is the very nature of the Convention that lies at the heart of the crisis of the IWC.

The Convention provisions have remained virtually unchanged since 1946. Over the years many ideas for improvement have been put forward. Significantly, there is no serious suggestion for the Convention to be discarded. Rather, there is acknowledgment of positive results and achievements overall; indeed, there is a view

that the current arrangements with the Convention and the IWC, contentious as they are, may well be the best practical option for the conservation of whales.

### **Structural weaknesses**

But there is serious contention about the structure and mandate of the Convention. The most controversial relate to substantive ‘loopholes’ in key provisions such as Article V and Article VIII which allow for unilateral opt-outs for “scientific whaling” or “objections” and “reservations” to the Convention. There are also basic disagreements about the competences of the IWC and its decisions regarding, for example, the moratorium on commercial whaling; and issues of treaty interpretation. Without express authority for amending the Convention, and without provision for a modern mechanism for the resolution of disputes, there is little option to avoid the inevitability of stalemate. It is the present day tragedy of Whaling Convention.

### **Scientific whaling**

With the adoption of the moratorium on commercial whaling in 1982 and its entry into force in 1986, the ‘scientific’ whaling issue has become the most dominant point of contention. As we witness, yet again, of the current whaling expedition in the Southern Ocean, the matter is the object of strong feeling and international condemnation: of commercial whaling and, with equal measure, of excessive conduct and activism on the high seas.

At the root of it, the issue is whether scientific whaling is an abuse of the “special” permit rule under Article VIII of the Convention and the true spirit of that rule; or whether, as contended by Japan in particular, scientific whaling is fully warranted by the science and in accordance with Article VIII. For each side of the argument, there are strongly-held viewpoints, forcefully put, and fiercely defended; and both claim as correct and justifiable under law quite different interpretations of the Convention. Both cannot be right. But, with the absence of Convention provisions on compliance and for the settlement of disputes, there is no acceptable method to arbitrate and settle these differences.

### **Issues of focus**

Thus far, I have touched on the ‘core’ issues and what I believe are some of the deep-seated and intractable problems about the Convention and the IWC. I ask of all delegates to concentrate on these fundamental aspects, and in our debate to try to fashion responses to questions that we need to address:

- Whether, for example, for its effective functioning today, is there need to improve or change the Convention?
- If so, what might be the forum and process – within the processes of the Convention, or in a wider international political setting?
- What might be the appropriate methodology – issue-specific or wholesale review?
- What might be a feasible common basis to establish international consensus on protecting the whales?

I want also in these opening remarks to examine with a little more detail the work of this series of symposia and to reflect on our journey from **New York to Tokyo**, and to the future.

### **Normalisation conference**

Prior to the holding of the first Symposium in New York in April 2007, there was the Conference for the Normalisation of the International Whaling Commission that was held in Tokyo two months earlier in February 2007. ‘Normalisation’ is a term that seeks a return to what is said to be the true nature of the Convention and traceable to the making of the St Kitts Declaration of 2006. To others, it is the code-word for lifting the moratorium on commercial whaling. What they seek, instead, is modernisation.

A principal feature of the Conference was the summation of the IWC as dysfunctional in character and the identified components for this characterisation, including: disregard for international law and the principle of science-based policy and rule-making; disrespect of cultural diversity; emotionalism; combative and confrontational discourse; lack of good faith negotiations; and pressure on scientists. A summary document of the Conference is in your ‘welcome’ packs.

The Conference also discussed and came to conclusions on other aspects, including trust and consensus-building and made suggestions for possible ways of moving forward.

It needs to be said that whether by choice to boycott or not, not every IWC viewpoint was represented at that Conference.

### **New York Symposium**

The first Symposium in New York, like our present gathering, brought together the conservation community, scientists, policy experts and others from both inside the ‘IWC world’ and from outside. And like our gathering here, the single aim of the New York Symposium was to create the atmosphere for positive and creative thinking, and to focus on possible options for the future.

The first Symposium also produced a summary document of its discussions, which is also in your ‘welcome’ packs. It noted the proceedings of the Tokyo Conference; and also provided recommendations for moving the debate forward. It was the conclusion of New York that the report of the Symposium be made available to the 59<sup>th</sup> annual meeting of the IWC in Anchorage in May 2007; and that an effort be made to explore areas of common ground with the chairman of the Normalisation Conference with a view to facilitating orderly discussion on the future of the IWC.

I need also to say that whether by choice to boycott or not, not every IWC viewpoint was represented at the first Symposium.

### **The Buenos Aires process**

Let me also mention the Buenos Aires process, which for the past three years has brought together a large group of Latin American countries in their common endeavour for the conservation of whales, in particular through the adoption of a whale sanctuary in the South Atlantic and for the rest of the Southern Hemisphere.

Representatives from Latin America are here with us and we will have the opportunity to hear first hand about their experience and goals.

### **IWC meetings and the ‘future’**

At the IWC annual meeting in Anchorage in May 2007, a proposal was accepted for the inclusion of a new agenda item on the “IWC in the future”. This was a significant first development. Moreover, the reports of the Normalisation Conference and the New York Symposium, as well as the Buenos Aires Declaration, were before the IWC, and combined as key inputs on that agenda item and to the decision to further consider the future of the IWC at the intersessional meeting scheduled for 6-8 March 2008 at Heathrow in the United Kingdom.

The point I would make is that we gather with these positive and hopeful developments in the background. So, timely as it is, we want to seize the special opportunity of this Symposium to make a substantive contribution to the proceedings of Heathrow; and therefore, I ask of all delegates here to be especially conscientious in exploring feasible options which might be submitted as our offering to the IWC intersessional meeting

### **The current state of the whaling debate**

The current state of the whaling debate is the first subject for our consideration in this Tokyo Symposium. It is a subject that infused the discussions in New York, in that it was assessed in a more generalised format from three different but related contexts of: the status of whale stocks; developments in oceans laws; and the history of whaling diplomacy.

This broad-based analysis in New York pointed to a range of substantive problems, with complicated issues having legal, political, economic and social/cultural implications. These issues remain for our attention here.

In New York, care was taken to gain proper understanding of cultural and national sensitivities, and to this end the participants heard and discussed a substantive presentation on the Japanese whales strategy and its underlying motivations.

For this Symposium in Tokyo, the proposal is that we look at the current state of the whaling debate more specifically from the vantage points of Japan and from within Japan. For our first session, we have three speakers, all excellently positioned, to provide three such different perspectives from within Japan. Shortly, I will have the honour to introduce them to you. To gather our collective thoughts, it is important that we understand in proper manner and to hear them in clear terms.

### **Conflict management**

In session 2 this afternoon, we will consider matters relating to conflict management and interactions.

The four presenters in session 2 are new to the symposia and are ‘outsiders’ in the sense that they are not normally involved in whaling issues. They will, however, be able to bring fresh insights and a wealth of experience from the key roles they have played in resolving problems in other deadlocked multilateral conventions.

For our discussion of this subject matter, we need to look at the reports of the New York Symposium and of the Normalisation Conference in order to gain an appreciation of what is at issue. Each report is a contrast in argumentation and illustrative of the difficulties of the IWC and the contentious relationship of the parties. Combined, the reports provide a daunting catalogue of conflict-points that need to be resolved in connection with issues of substance and issues of process and procedure.

In New York the options canvassed ranged from:

- Maintenance of the status quo: accepting the reality of the current divisive situation, while seeking further improvements;
- Engaging in negotiations: for amending the Convention or specific articles of it, such as Articles V and VIII; or to introduce systems on compliance and to settle disputes; to improve IWC procedures for a cordial and more diplomatic atmosphere; or to re-examine previous initiatives, such as the Irish Proposal and RMS+ strategy;
- Consideration of a number of wider international political interventions and processes for the study of issues and airing of views; and
- Generally to seek ways for improved opportunities and dialogue between the parties.

There is need, in my view, to focus especially on the underlying and deep-seated problems. The moratorium on commercial whaling adopted by the IWC 26 years ago is a central conflict issue. A major victory of the environmental movement and the conservationists, it is rejected by the pro-whalers as unsupported by the science and incompatible with the Convention. Yet, because of 'scientific' whaling, there is concern that commercial whaling is increasing – and also taking place within the boundaries of the ocean sanctuaries established by the IWC in the Indian Ocean and the Southern Ocean; and, even more critically, that commercial whaling is increasingly out of international control.

The issues surrounding the moratorium have assumed a certain measure of complexity, especially as they are portrayed in the cultural and economic settings and equated with the national integrity.

Yet, the IWC and the issues concerning the IWC have no exclusive claim to complexity. There are other multilateral problems, engaging the very same contracting parties, with equally difficult issues and where the contestants are amenable to dialogue and to change.

The language of the IWC parties is at times emotive and undisguised in temper. There is in the dysfunctional characterisation, the charge of emotionalism aimed by one side to the other. In truth, emotion is weaponry in the hands of both.

A particular challenge in trying to find solutions to the IWC conflicts is the apparent commitment of the principal parties to nothing short of total victory. It is not a situation that allows easily for compromise and for the setting of agreed rules of the contest.

### **The way forward**

The two sessions tomorrow are closely related in that they are concerned with finding a way forward for the future of the IWC.

The four speakers in session 3 in the morning are all closely involved with the political and policy-making aspects and will bring to our discussions direct insights into the failings, and the achievements, of the IWC - and, I am sure, practical suggestions for possible steps forward, including ways to address conservation threats holistically.

Session 4 in the afternoon will also deal with the IWC process on its future, and more specifically try to generate concrete recommendations from this Symposium to the IWC intersessional meeting. This session is unique in its arrangement as a 'round-robin' discussion panel, which is to be facilitated by Mr Richard Black.

All on this panel will be experts. As explained in the paper in your 'welcome' packs, we request those persons who are interested in participating in this session to provide their names, and also to list in the paper provided the issues they would like to see discussed at this session. Based on the information submitted we will then, in the course of today, determine the topics for discussion and the participants for the panel. Because of the time factor Mr Black and the Secretariat will be speaking in advance with the participants in order to avoid repetitions, overlaps as well as gaps.

How we move forward from here will, naturally, be determined by the product of the presentations and the discussions that we will have, and thus I do not propose to attempt to preview these last two sessions.

However, let me say that in New York, as at the Normalisation Conference, the participants were careful to ensure that the discussions were as comprehensive and as practical as possible. It cannot be that every suggestion for change will be found to be feasible in policy terms or to be workable in application. And no doubt our work should be tempered as much by realism and the practicalities as by the desire for constructive and productive dialogue.

### **Who is to take the first step?**

At the Normalisation conference, the participants had noted the "small signs" of improvement in the relations between the parties, and they posed the question: "who should take the first big step to break the ice?" In New York, too, as I have noted, there was expressed desire to explore areas of common ground with a view to facilitating orderly discussion on the future of the IWC.

I believe all of us with a sense of commitment and responsibility – government and non-government alike – must take the first step. I also believe that a very significant move was taken in this direction with this series of symposia.

Distinguished colleagues,

We are in mixed company, from within the IWC circle and from without; and, unlike any of the meetings held in Tokyo and New York last year, we also now have representatives of the whaling countries and of anti-whaling countries who have

chosen to sit down to work together. Some of you are participating in your personal capacity, and this is perfectly fine, as this meeting is not a negotiation.

That we hold this Symposium in the heart of the main pro-whaling country, at this particular time, especially now with the whaling fleet operating in the Southern Ocean, is a signal of confidence to the international community and of putting words into action in opening up the dialogue to all who are interested in effective solutions.

It would be wrong, though, to underestimate in any way the difficulties and enormity of our task. But, we are many and I sense your resolve, calmly and with cordiality, together to take on the challenges before us. It is, in effect, the validation of the first-step endeavour of New York to find a way forward and to establish, if we can, a change in climate for whales.

Thank you.