

PEW FOUNDATION SYMPOSIUM ON WHALING: 30-31 January 2008

THE WAY FORWARD

by Richard Cowan

I very much welcome the opportunity to talk to such a distinguished group of people about the problems facing the International Whaling Commission (IWC). I should preface my remarks by reminding you all that I am attending this symposium in a personal capacity, not as a representative of the government of the United Kingdom. The following remarks are, therefore, to be considered as personal rather than as a statement of UK government policy.

During most of the present decade it has become fashionable to decry the activities of the IWC - or rather what is seen as its lack of activity. This international body is often described as 'dysfunctional' and 'moribund'. Both pro- and anti-whaling groups claim that the Commission is signally failing to address their concerns. Some on both sides go so far as to suggest that their interests would be better served by abolishing the IWC and forming a new body (not the same new body, of course) with an unambiguous mandate either to conserve whale stocks or to manage commercial whaling (depending on their point of view).

These lines of argument seem to me to ignore the very real achievements of the IWC and to deny the realities of international negotiation.

The adoption by the IWC in 1982 of the moratorium on commercial whaling was, I believe, the boldest step towards environmental conservation taken in any forum in the 20th century. Despite the weaknesses inherent in the IWC's structure - the right of parties to object to, and therefore circumvent, measures adopted by the majority, the unfettered right of Contracting Governments to issue 'special permits' for whatever lethal scientific research they deem appropriate - the moratorium has resulted in a massive reduction in the number of whales being killed either directly or indirectly for the purposes of consumption.

At the same time, the IWC has begun to recognise the need to consider wider environmental threats to whale populations, threats which arise from climate change, ship strikes, pollution (both by noise and by toxic discharges) and from habitat destruction and degradation. Clearly more work needs to be done in these areas and the IWC's Scientific Committee might usefully devote more of its resources to their examination - possibly at the expense of work currently being done to assess how many whales might possibly be hunted.

There has also been some recognition by some of those engaged in whaling operations of the need to address welfare concerns arising from whale-hunting, both for the whales and for the hunters themselves. More work needs to be done here too, but the first steps have been taken and this should not be ignored.

On the other side of the great divide, the whaling nations can and do take sufficient whale meat to satisfy local demand. While their activities certainly attract criticism from the non-whaling countries of the IWC and from wider public opinion, they are recognised, at least by parties to

the International Convention on the Regulation of Whaling (ICRW), as being legal activities under the Convention. Thus, while many countries make formal diplomatic protests about whaling, none see whaling as a reason to introduce trade or other sanctions against the whaling nations, or to act in ways which would undermine generally good relations with them on other fronts. Could anything like the same degree of international legitimacy attach to whaling activities carried out outside the ICRW, albeit within the terms of a new Convention whose members were exclusively actual or potential whaling countries? This seems to me unlikely.

We have heard some interesting arguments at this conference about the possible role which conflict resolution procedures might play in enabling the deadlock within the IWC to be broken. But for conflict resolution procedures to work effectively, it is surely necessary that all parties to the conflict can see that common ground exists between parties and that occupation of that ground is possible without having to sacrifice key principles. If, for both sides, the gain from moving to the common ground is worth the pain involved in doing so, then resolution is possible. Equally, if for one side or the other, the pain involved in moving to the common ground is less than that which might result from their opponents' taking unilateral action, then resolution is still possible, but negotiations are more difficult and more unequal because of the element of duress involved.

For some countries in the anti-whaling group, there is probably no price at which they would willingly endorse a resumption of commercial whaling. For others, there may be such a price, but it is likely to be a high one and appears on the basis of discussions to date to be too high for those who are asked to pay it.

At the very least, it would seem to involve:

- the adoption of a very precautionary approach to the setting of catch limits (the Revised Management Procedure as approved by the Commission in 1992 or stronger);
- significant curtailment (if not total cessation) of lethal whaling operations carried out in the name of science;
- the adoption by all parties without objection (either immediately or at any future date) of a set of rules for the conduct of commercial whaling operations; these would have to be sufficiently transparent and credible to ensure that catch limits, once set, should not be exceeded; moreover, they would have to involve full international oversight and be capable of being enforced by the Commission in case of any infractions by parties;
- there would also have to be international oversight of a market sampling regime, to ensure that all cetacean products exposed or offered for sale were derived from legal takes;
- costs incurred in regulating commercial whaling would have to be borne primarily by the whaling industry, or by the governments of countries issuing licences to take whales;
- recognition of existing whale sanctuaries and a willingness to support the creation of new ones;
- realignment of the work of the IWC's Scientific Committee and the deployment of resources to investigate and better understand the impact on cetacean populations of environmental threats to their survival and possible amendment of the Revised Management Procedure in light of the results of research in this area.

Some countries would go further, insisting that those taking whales should collect (or else provide for the collection of) welfare data on whales struck or killed, and that conditions should be set so as to minimise the stress and suffering caused to hunted whales.

I do not dispute that these are onerous conditions. So far, the whaling nations have shown little if any willingness to accept them.

The reason for this is perhaps not hard to see. The recognition of the Southern Ocean Whale Sanctuary and the cessation of lethal whaling for the purpose of scientific research would deprive Japan of the greater part of the whale products to which it now has access. The catch limits likely to flow from the operation of the Revised Management Procedure - far from compensating for this loss - would be likely to increase it by setting quotas for those few species of whale for which catch limits can be set, at levels which are substantially lower than current scientific takes. If the terms on which a majority of the anti-whaling bloc might be induced to agree to a resumption of commercial whaling are unacceptable to the whaling nations, what opportunities arise for the whaling nations should they decide to leave the IWC and set up an organisation more apt to their wishes? Theoretically, the possibilities are limited only to the extent that non-whaling countries would presumably bar whaling vessels from their Exclusive Economic Zones. But I am convinced that the reality of the situation would be rather different. As I noted earlier, the fact that current whaling operations are legal under the terms of the ICRW constrains those countries opposed to whaling from taking significant economic or political action against the whalers, as many of the general public in those countries would demand. If economic action by anti-whaling countries were to make itself felt, then public opinion in the whaling countries themselves might seriously question the wisdom of pursuing a policy which is principally of importance to a minority of their populations and which attracts significant adverse international criticism. Would the balance between gain and pain necessarily be weighted in favour of the continuance of whaling operations?

On the basis of this brief analysis I am obliged to conclude that there are no obvious routes to breaking the current deadlock which do not involve for either side or both sides an excess of pain over possible gain.

There are times, as every chess-player knows, that if you see you cannot win a game, then playing for the draw is the honourable and courageous thing to do. Stalemate need not be seen as negative, it avoids either side feeling that they have lost completely and it preserves, in the instance of the IWC at least, the very considerable benefits which both sides derive from the current situation.

More intellectually attractive solutions may be possible in the longer term, if attitudes on either side change. But for the present, both sides have too much to lose and too little to gain to make meaningful compromise possible.

If participants on both sides of the whaling debate were to recognise this, then some of the tension and mistrust which has characterised meetings of the IWC in recent years would disappear. The Commission, relieved of the burden of trying to resolve matters whose resolution has eluded it for at least the last twelve years, could afford to meet less often and in more amicable mode.