

# **The Second Pew Whale Symposium, Tokyo, 30-31 January, 2008**

## **Chairman's Summary**

### **Judge Tuiloma Neroni Slade, Symposium Chairman**

#### **1. Introduction**

- 1.1. One hundred participants from 28 different nationalities met at the Headquarters of the United Nations University in Tokyo on 30-31 January 2008, for the second Pew Whale Symposium. As suggested by the title of the symposium: *A Change in Climate for Whales: Is there a Common Way Forward?* the symposium explored possible change and a way forward in the whaling debate. It brought together stakeholders with different viewpoints, perspectives and experience of the whaling issue, as well as other experts with a broader experience in international policy not specific to whales.
- 1.2. This symposium took place only five weeks before the intersessional meeting of the International Whaling Commission (IWC) to be held in London Heathrow on 6-8 March 2008 to discuss the future of the IWC. The Tokyo deliberations assumed particular significance in the light of this fortuitous timing.
- 1.3. There are moments in history when solutions are seen to be within reach. From this symposium I believe there is just cause for me to suggest that we may be at that point now for whales. Certainly, a door may be opening.

#### **2. Background**

- 2.1. At the request of the Pew Environment Group, I agreed to chair the symposium although (and perhaps also because) I am not an expert on whales and whaling. However, I had participated and was privileged to contribute as an interested observer from outside the whale conservation community in the first Pew Whale symposium organized at United Nations Headquarters in New York in April 2007. There I saw how the whale policy experts seemed to benefit from the “fresh air” that outsiders brought. Given the political complexity of the second symposium held in Tokyo, in the capital city of the main proponent of commercial whaling, I accepted the responsibility of attempting to create a conducive environment (with the support and good will of all the participants). I note that for its intersessional meeting in March, 2008, the IWC has decided also to bring people from outside the “IWC family”, and – based on my recent experience – I think this is a good idea.
- 2.2. Despite the fact that many of the participants in the Tokyo symposium held profoundly different views, we were able to maintain the most cordial atmosphere and have thorough discussions at the same time. It is my understanding that the spirit we managed to maintain is quite unusual in the whaling context. I must pay tribute to all the participants who without exception made this possible.

- 2.3. The List of Participants in the Tokyo symposium is available on the symposium website [www.pewwhales.org/tokyosymposium](http://www.pewwhales.org/tokyosymposium). Participants included IWC Commissioners and Alternate Commissioners, whale scientists and other scholars, legal and policy experts (both with and without direct IWC experience), members of key NGOs from Japan and elsewhere, as well as the Secretariat which assisted me in my task.
- 2.4. The Earth Negotiation Bulletin of the International Institute for Sustainable Development (IISD) produced an excellent summary report which describes in detail the two-day proceedings. This summary report is available in English at <http://www.iisd.ca/yimb/whales/pew2/> and in Japanese at <http://www.iisd.ca/yimb/whales/pew2/indexj.html>, and, I believe, shows that the symposium was a very productive meeting. Rather than providing the details of the discussions here, I would encourage everyone to read this summary report. This will allow me to focus on what I think are good lessons to be learned by the IWC and anyone interested in the conservation and proper management of whales.
- 2.5. As proposed at the symposium, all the participants in the symposium were provided the opportunity to see and to comment on the first draft of this Chairman's Summary. I acknowledge and am grateful to those participants who contributed with their thoughts and observations which provided many different viewpoints. While all contributions were carefully considered and in some respect reflected herein, I would emphasize that this document is a Chairman's summary of the symposium proceedings and reflecting the chairman's viewpoint; it is not (and does not purport to be) an endorsed or consensus document.

### **3. The global context**

- 3.1. During the symposium, several viewpoints sought to put the discussions, and the IWC dispute, in context. The future of our planet is facing a number of environmental threats, which are increasing at an accelerating rate that could hardly be envisaged in the 1940s when the International Convention for the Regulation of Whaling (ICRW) was adopted and in the 1970s and early 1980s when the environmental movement mobilized in favour of a moratorium on commercial whaling. Many speakers reminded the Tokyo symposium that the challenges are imminent and difficult.
- 3.2. In the context of marine environmental issues, repeated references were made to the challenges of bycatch, overfishing, pollution, and habitat loss. And, of course, all of these problems may be dwarfed by the potential for catastrophic changes in the world's climate. For the IWC to become a modern and effective organization it should have the means to address these and other contemporary issues insofar as they affect whale conservation and the management of whaling. But in addition, as suggested at the symposium, it is important for the international community that the impasse on whaling is resolved not only for its own sake but also so that the resources and energy that have been devoted to this issue can be directed to these broader and potentially devastating threats to the planet as a whole. If we cannot

resolve the whaling impasse, how can we pretend that more complex issues involving more vested interests can be addressed adequately?

- 3.3. Some of the advocacy organizations most involved in the whaling issue are also among those most involved in issues of interest to all governments, especially (as the symposium heard) to the Japanese Government, including climate change, Africa and development, and nuclear disarmament.

## **4. Views from within Japan**

- 4.1. Holding this symposium in Tokyo gave participants an opportunity to learn that there is a contrasting and rich diversity of views among the Japanese people.
- 4.2. In many ways, this is not surprising; we also observed a wide variety of views expressed among government officials, NGOs and scientists.
- 4.3. I hope this can lay to rest any conception that this issue is black and white. Indeed, my impression is that this issue might be better viewed as of various tints of grey.
- 4.4. In this regard, I was struck, for example, by the comments concerning the great number of cetaceans being killed as by-catch from fishing activities (including from ships flying flags of like-minded countries) or as species considered by some to be outside the competency of the IWC (i.e. small toothed whales). I note as well the increasing awareness of the impacts of other industrial and military activities on cetaceans.

## **5. Areas of Agreement**

- 5.1. The following points are those on which, in my view as Chairman, there appeared to be some level of agreement among many of the participants. I believe that if we can start by identifying points of common ground, even very basic ones, then we would have laid firm groundwork for further consultations, and helped move such consultations forward in a positive way.
- 5.2. The ICRW and the IWC have produced significant benefits for whale conservation.
- 5.3. Conflict at and around the IWC is escalating. The factors contributing to this include: 1) increased scientific whaling; 2) escalating protests; and, 3) increasing frustration among Contracting Parties that the Commission is not doing its job.
- 5.4. Endangered and depleted populations and species of whales deserve absolute protection. Recovery or population increases are progressing for some stocks and species, but not for others.
- 5.5. Truly international solutions are preferable to more narrow ones, despite questions about whether the political will exists to support such an outcome.
- 5.6. Relative to other international conventions and multilateral organizations, the IWC is outdated, less transparent, less flexible and less responsive. The ICRW itself does not include many elements of more modern international conservation agreements, such as references to the precautionary approach, ecosystem approach, conflict resolution or transparency -- or clear criteria or definitions of such elements.

- 5.7. Sustainability is an important concept, but because there are varying definitions and criteria for it, its meaning should be clarified and precisely defined in any future decision-making.
- 5.8. There is a range of important legal, scientific, ethical, social and cultural issues that need to be considered and resolved in defining a way forward. The best scientific data need to be at the basis of what will, ultimately, be the political resolution of these conflicts.
- 5.9. It would be wrong to discount the fact that there remain major areas of disagreement, but these are well known to all; thus I would like to focus on the ways forward.

## 6. Possible Ways Forward

- 6.1. Conflicts are resolved in relatively finite ways. In general, one side or the other can, as one speaker at the symposium described it, capitulate entirely to the other. Or, alternatively, a solution of some sort can be achieved, which involves give and take on both sides. Typically, international disputes are resolved through the *give-and-take* approach with parties seeking to protect their highest priorities. In the terms of one presenter at the Tokyo symposium, a solution needs to be environmentally sound, socially acceptable, economically feasible and culturally viable.
- 6.2. In the case of whales, one view expressed suggested that maintaining some degree of the *status quo* may be the best that can be hoped for – but not one which is characterized by escalation by either side. Based on what I heard of other views expressed, I believe there are important reservations about this approach, because currently the *status-quo* is extremely relative: the number of whales caught outside of international control is increasing, and opponents are taking or threatening to take additional steps to counter. The *status quo* appears neither stable, nor, despite suggestions that parties should accept it, acceptable to many participants.
- 6.3. A variety of ideas were put forward during the symposium. Not surprisingly, two principal ideas centered around possible concessions by Japan and/or by the anti-whaling interests:
  - 6.3.1. The former asks Japan to observe the moratorium and phase out commercial/scientific whaling. Under this scenario, Japan could announce this decision or, alternatively, quietly decide and implement it.
  - 6.3.2. The latter asks anti-whaling interests to accept what the proponents of whaling call the concept of sustainable utilization of whale stocks.
- 6.4. Unfortunately, it is not possible for me as symposium chairman to give any concrete form to even the most positive hints – even if, indeed, there were hints. Therefore, I am drawn to the conclusion that at the time of the Tokyo symposium neither side was prepared to make any significant concession to the other. This suggests that consideration might be given to finding areas of possible compromise.

- 6.5. In my opinion as chairman, based on what was said by participants at the symposium, there is room for discussion of the following:
- 6.5.1. Acknowledging potential claims by existing and well established small coastal whaling communities in countries that are still whaling. This may involve agreeing a finite and limited number of whales from healthy stocks and species that can be taken annually, for local consumption, by the IWC member states currently engaging in whaling under Article V(3) and Article VIII of the ICRW. This finite number or cap would need to be reviewed periodically to take account of new realities and uncertainties arising from external threats warranting further restrictions.
- And (not or)
- 6.5.2. Suspending Article VIII “scientific” whaling in the Southern Ocean and elsewhere, and respecting sanctuaries established by the IWC.
- 6.6. We also need to recognize other opportunities to change the climate for whales. We heard a number of valuable suggestions to engage new fora, new voices and new negotiators into the processes and to consider renovating the ICRW itself to incorporate modern principles in Multilateral Environmental Agreements (MEAs) as noted earlier. It seems to me that this would need to be done regardless of any other outcome, in order to move the IWC forward and to enable it to address whales in a wider context, and in the environment and conditions of today.
- 6.7. Judging from the spirit of constructiveness and cordiality that presided over our symposium in Tokyo, I also think that suggestions heard at the first symposium in New York are worthy of consideration, namely: to convene a Diplomatic Conference to review and consider requisite changes or a Protocol to the ICRW, or to establish an Independent World Commission or a Panel of Eminent Persons to help the IWC out of the prevailing impasse.
- 6.8. I was also impressed with the ideas that a “Vienna Setting” (as used in the negotiation of the Biosafety Protocol to the CBD) and other creative techniques to stimulate agreement during negotiations could be promising. There were in Tokyo constructive ideas to enhance confidence, facilitate constructive dialogue, to innovate and think “out of the box”, including to prepare, stick to and communicate a roadmap. An enabling environment will be important not only to resolve the current impasse but also to fashion a sustainable way forward in coming decades. For ease of reference, the presentations by eminent speakers from outside the whale conservation community made in the afternoon of the 30<sup>th</sup> of January are available on the Tokyo symposium website. Many of these may be of direct assistance to the IWC at the Intersessional meeting and beyond.
- 6.9. I was interested to see the different reactions to the suggestion to involve higher political level participation, including Ministers at the appropriate time. I find it appropriate to suggest that IWC Commissioners should feel encouraged to welcome this suggestion. It would be wrong, I believe, to perceive Ministers’ involvement as symptomatic of the failure of the IWC.
- 6.10. Likewise, I also found that some of the reactions to suggestions to establish closer ties between the IWC and modern multilateral instruments (CBD, CMS, the

Biodiversity Liaison Group, UNGA, etc) seemed illustrative of a certain narrowness about the IWC and its workings, and pointed to the need for a broader measure of inter-facing with MEAs.

- 6.11. We also heard how important it is to focus on practical and achievable solutions as opposed to advocating particular perspectives on moral issues. In this regard, I agree with the participants who emphasized the need to avoid aggressive confrontation and, in particular, to look to the media to help out by promoting balanced press reporting.

## **7. Status of the moratorium**

- 7.1. In Tokyo we heard of recent data on the increase and recovery, in some cases, of certain whale species and stocks. These encouraging signs allow us all to measure the success of a series of protection decisions culminating in the 1982 decision to set all commercial whaling catch limits to zero: the so-called moratorium on commercial whaling. Now that 26 years (an entire generation) have passed since the moratorium's adoption, and for all the reasons advanced in this summary report, I believe there is a measure of global imperative in recognizing that the moratorium has had a critical and positive effect on the world's whale populations. More especially I should like to put forward the view that all IWC member States without exception, and regardless of the quarrels of the past, might consider recognition of this fact and of a situation that is already now widely, if not overwhelmingly, acknowledged. Implementation of the moratorium drastically reduced the number of whales caught and the number of whaling countries. This recognition based on the facts which we heard in Tokyo about the on-going increase and recovery of certain whale species and stocks would help all stakeholders to look forward to the future and not back to the past.
- 7.2. In this context, it seems to me that all IWC members might wish to consider individually and collectively that if they decide at some point in the future that any level of catch may someday be determined by the IWC (based on a precautionary, long-term management procedure that has been fully and rigorously tested), this should be considered a limited exception to the moratorium, and not a substitute or replacement for it.
- 7.3. In the end, beyond these two days in Tokyo the future change in climate for whales is in all of your hands.
- 7.4. It was an honour to serve as the chairman of the symposium. I would like to thank the Pew Trusts for the arrangements, and all participants for their valuable input and contributions.