

1976

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Carl Q. Christol

John R. Schmidhauser

George O. Totten

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Recommended Citation

Carl Q. Christol, John R. Schmidhauser, and George O. Totten, *The Law and the Whale: Current Developments in the International Whaling Controversy*, 8 Case W. Res. J. Int'l L. 149 (1976)

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The Law and the Whale: Current Developments in the International Whaling Controversy

Carl Q. Christol*
John R. Schmidhauser**
George O. Totten***

Introduction

THE LAW HAS had a long involvement in the fortunes of the whale. Unfortunately for the whale, the law and the institutions for its enforcement have been as frequently hostile to the whale as they have been friendly.

However, the law is an instrument of policy. Thus, in reality it has been the past policy of human beings to formulate laws and to create institutions which have made of the whale an endangered species. Basic changes in such policies can reverse this process and properly protect them. Indeed, there were several efforts to achieve such a reversal during the early decades of the twentieth century when whale "harvesting," as it has been called, was reaching its highest levels. These early efforts at conservation all failed, but are important because they incorporated legal principles or enunciated positions which foreshadowed those of contemporary environmentalists.

Early Effort at Conservation

In the days before the scientific and technological explosion, which reached its take-off stage only with the era of World War II, the whale served a variety of economic needs. Thus, there were few efforts to preserve and protect it from its catchers; however, there were several that are noteworthy. For example, in 1924, the League of Nations established a Committee of International Law. Its reporter was M. Jose Leon Suarez of Argentina. In his 1925 report, he observed that the whaling industry was

* Professor of International Law and Political Science, University of Southern California.

** Professor of Political Science, University of Southern California.

*** Professor of Political Science, University of Southern California.

“rapidly exterminating the whale.”¹ He also stated that “the riches of the sea, and especially the immense wealth of the Antarctic region, are the patrimony of the whole human race, and our Committee is the body best qualified to suggest to the Governments what steps should be taken before it is too late.”²

The first League effort proved inauspicious for the whale. Although the United States suggested in 1927 that “an international conference is desirable to consider the problem of conserving the whale,”³ this was opposed by several nations, one of whom, Japan, urged that the matter be handled through bilateral or multilateral agreements among directly concerned countries.

The matter seemed to be dead by 1929. The position was summed up as follows:

There seems at present little danger of complete extermination of the species in view of the nature of modern whaling, the amount of capital involved being so considerable that a company must kill a considerable number of whales in order to be able to make profits, and if hunting becomes unprofitable, it will stop by itself, long before the whales are exterminated.⁴

Nonetheless, a number of concerned nations under League auspices negotiated a Convention for the Regulation of Whaling on September 24, 1931.⁵ Thus was begun a faltering system of international legal regulation, which down to the immediate past seems to have been designed more for the short-range economic benefit of whale catchers than for the welfare of the general community — certainly not for the benefit of the whale. The 1931 agreement imposed only limited restrictions on the signatories. It prohibited destructive and wasteful methods of whaling such as the taking of very young whales and females with offspring. Two of the major whaling nations, Japan and Russia, did not accept it. The agreement was essentially unenforceable. However, the United States endeavored to meet the obligations which it

¹ M. Suarez, *Report on the Exploitation of the Products of the Sea*, 20 AM. J. INT'L L. 231, 235 (Supp. July 1926).

² *Id.* at 236.

³ L.N. Doc. C.196.M.70.1927.V. at 161, cited in L. Leonard, *Recent Negotiations Toward the International Regulation of Whaling*, 35 AM. J. INT'L L. 90, 98, n.38 (1941).

⁴ 10 LEAGUE OF NATIONS OFF. J. 1594 (1929); Leonard, *supra* note 3, at 99.

⁵ Convention for the Regulation of Whaling, Sept. 24, 1931, 49 Stat. 3079, T.S. No. 880. Reasons for such an agreement are set out in Jessup, *The International Protection of Whales*, 24 AM. J. INT'L L. 751 (1930).

had assumed by enacting the Whaling Treaty Act of March 31, 1932.⁶

Britain hosted a conference on whaling in 1937. This resulted in the International Agreement for the Regulation of Whaling and the Final Act of June 8, 1937.⁷ Interested nations met again in London in 1938 and entered into a Protocol Amending the International Agreement and Final Act of June 24, 1938.⁸ These agreements produced a whaling season, prescribed minimum lengths for certain species, provided that each factory ship was to carry one government inspector, and closed whaling in certain areas of the Atlantic, Pacific and Indian Oceans for identified species. This was followed by an informal conference in London on July 17, 1939. Although it bore the title "International Conference for the Regulation of Whaling," the effort centered on securing compliance with earlier agreements and attempted to induce Japan to adhere to the 1937 Agreement and the 1938 Protocol.⁹

The Second World War prevented further legal efforts on behalf of the whale until 1944. However, by 1944 the British convened interested nations for discussions and out of this resulted the 1944 Protocol. This Protocol introduced the "principle of a maximum total catch for the season in Antarctic pelagic whaling; not more than 16,000 blue whale units were to be taken in the open season in the area south of 40° South Latitude."¹⁰ The blue whale unit was equated with two fin whales, two and one-half humpback whales, and six sei whales. In retrospect, this decision has been seen as unwise. In 1973 it was described in these terms:

Unfortunately, because this unit of measurement was scientifically unsound, it legitimized indiscriminate reduction of all species.¹¹

With the close of World War II, intensive whaling operations were reinstated. Catches that had peaked in 1940, and which had

⁶ Whaling Treaty Act of March 31, 1932, 49 Stat. 1246.

⁷ International Agreement for the Regulation of Whaling and the Final Act of June 8, 1937, 52 Stat. 1467, T.S. No. 933.

⁸ Protocol Amending the International Agreement and Final Act of June 24, 1938, 53 Stat. 1794, T.S. No. 944.

⁹ Leonard, *supra* note 3, at 105.

¹⁰ D. JOHNSTON, *THE INTERNATIONAL LAW OF FISHERIES* 400 (1965); 148 U.N.T.S. 11, 43.

¹¹ *THE FOURTH ANNUAL REPORT OF THE COUNCIL ON ENVIRONMENTAL QUALITY* 345 (1973).

fallen off considerably during 1942 through 1945, began to be very large again in 1945 and in 1946.¹² Concern over excessive kills, including the very great possibility that certain kinds of whales, especially the blue, were marked for extinction, led the United States to call a conference to deal with the situation. The conference met in Washington, D.C., and in December, 1946, produced the International Convention for the Regulation of Whaling.¹³ The United States ratified the Convention on July 18, 1947.

The nations bound by the Convention have changed during the years. Peru was a party at one time, but is no longer. Japan was not bound for many years, but now is. At the present time, the following are parties to the Convention: Argentina, Australia, Brazil, Canada, Denmark, France, Iceland, Japan, Mexico, Norway, Panama, South Africa, the Soviet Union, the United Kingdom, and the United States. The same nations are also parties to the Protocol to the International Convention for the Regulation of Whaling of November 19, 1956.¹⁴ The Protocol became effective for the United States on May 4, 1959.

The 1946 Convention sets forth today's international law of whaling. The Convention calls for annual meetings of the International Whaling Commission, and pursuant to the terms of the agreement conditions in which the member States can engage in whaling are fixed by annual Schedules. The 1946 Convention and the 1946 Schedule fixed a variety of methods to allow for an expected optimum condition. This optimum condition, as foreseen in 1946, would allow for both the killing of whales and also the protection of the whale stocks. This hope has never been realized; although, there have been some corrective actions over time as the stock has been depleted, or largely so, depending on the type of whale.

In broad terms, the 1946 agreements prohibited the killing of some types (gray and right whales); prohibited killing under certain circumstances because of age, sex, and size; prohibited the use of factory ships to kill baleen whales in certain areas; fixed hunting seasons and hunting areas for certain species; imposed limits on the total catch of certain species; required notifications of catches made in certain areas; prohibited the use of land sta-

¹² J. McHugh, *The Role and History of the International Whaling Commission, THE WHALE PROBLEM, A STATUS REPORT* 303, 306-307 (W. Schevill ed. 1974).

¹³ International Convention for the Regulation of Whaling, July 18, 1947, 62 Stat. 1716, T.I.A.S. No. 1849, 1 U.N.T.S. 2124.

¹⁴ Protocol to the International Convention for the Regulation of Whaling, Nov. 19, 1956, 10 U.S.T. 952, T.I.A.S. No. 4228, 338 U.N.T.S. 366.

tions and vessels harboring there from hunting during a portion of each year; restricted the mobility of factory ships; required that all parts of whales hunted commercially be used for commercial purposes; fixed compensation standards for gunners and crews; imposed the requirement that hunters report to the International Whaling Commission detailed information on kills, position of calving grounds and the migration routes of whales; and, required each member nation to provide the Commission with copies of national laws whereby each nation imposed on its whalers the duty to conform to the terms of the Convention. The Schedule also readopted the concept of the blue whale unit, and provided "[t]he number of baleen whales taken during the open season caught in any waters south of 40° South Latitude by whale catchers attached to factory ships under the jurisdiction of the Contracting Governments shall not exceed sixteen thousand blue whale units."¹⁵

The organic terms of the Convention contained a major defect. The Commission, as a governing body but without any enforcement authority of its own, was expected to amend the Schedule annually in order to modify seasons, areas of whaling, and most importantly, quotas. Thus, while the member nations could regulate the conservation and utilization of whale resources by a three-fourths vote of all members, an escape from any such decision was also provided. Pursuant to Article V of the Convention, any member nation was entitled to present an objection to such a three-fourths decision. Having made such an objection, and not having subsequently withdrawn it, the objecting nation would not be bound by the majority vote. This allowed for a system in which certain nations, in particular Japan and the Soviet Union, operated beyond the wishes of the majority and were immune from the limitations and prohibitions mentioned above. Thus, despite the terms of the Convention, the 1946 Schedule and the subsequent Schedules, the killing of blue whales increased up to 1951, humpbacks with varied annual catches up to 1959, fins to 1952, sei through 1965, and sperm through 1970. By 1968 the blue and the humpback had been essentially eliminated as economic resources and were threatened as species. Nonetheless, following 1966, the fin, sei, and sperm whales were being caught in large numbers, with the sei and the sperm whales subjected to very substantial increases in catches as compared with 1946.¹⁶

¹⁵ International Convention for the Regulation of Whaling, July 18, 1947, Schedule, para. 8(a), *supra* note 13.

¹⁶ McHugh, *supra* note 12, at 306-307.

The Controversy Over the International Whaling Commission

The differences in values and policy positions between national and international environmental and conservation organizations and the whaling industries of the major whaling nations have become transposed into the official or semi-official positions of many of the nations represented on the International Whaling Commission. Indeed, it has often been the case that the delegation of a nation is composed of representatives of the IWA whaling industry of that nation. For example, Iwao Fujita, President of the Japanese Whaling Association is also delegate from Japan on the International Whaling Commission. Or conversely, another national delegation may be representative of a conservationist position. This situation, which has become characteristic of the contemporary era, is not only a fundamental source of divisions on the Commission, but renders more difficult the fulfillment of the conflict reduction mission of this international organization. In the perspective of Black and Falk, "[c]onflict management is the central problem of the international legal order, the fundamental yardstick by which the adequacy of the system as a whole must be measured."¹⁷ Therefore, the issues to be resolved within the jurisdiction of the International Whaling Commission provide a significant series of tests of the conflict resolution capabilities of that international organization. The organizational structure and jurisdictional capabilities, or deficiencies, of the IWC are of obvious importance in such an assessment. The very terms of its organization contain the seeds for internal and external conflict because they are essentially contradictory. The terms propose "to provide for the proper conservation of whale stocks, and thus make possible the orderly development of the whaling industry." The Commission has thus been charged with being merely a forum for the whaling industry while virtually ignoring whale conservation during most of its first two decades.

It was not until 1963 that the first quota reductions were adopted. Later, total bans on the killing of certain species of whales such as the blue, humpback, right and gray were adopted. The reduction of the blue whale to 8,000, only 10 percent of its population 30 years ago, has been dramatized by conservation groups as a measure of the seriousness of the threat of whale extinction and, during past years, of the ineffectiveness of the IWC. Studies such as George Small's *The Blue Whale* have provided rather de-

¹⁷ 3 C. BLACK & R. FALK, *THE FUTURE OF THE INTERNATIONAL LEGAL ORDER* vii (1971).

tailed commentary on the consequences of the Commission's decisions.¹⁸ Indeed, J. L. McHugh, former chairman of the IWC, summed up the first two decades of the Commission in much the same terms as some of the external critics:

From the time of the first meeting of the commission established under the International Convention for the Regulation of Whaling (1946) in 1949 to the disastrous meeting of 1964, almost all major actions or failures to act were governed by short-range economic considerations rather than by the requirements of conservation.¹⁹

The impact of these policies was ultimately devastating for a wide variety of whale stocks. As detailed above, as soon as one species in a particular geographic area was depleted, the whaling industry shifted to the next species and to geographic areas which it deemed economically desirable. The development of modern technological methods for killing whales, particularly in the 20th century, had dramatically changed the relationship of whalers to their prey. In fact, whales had a respite from killing only in those major periods when men devoted their energies to killing each other in World Wars I and II. By the contemporary era, Japan and the Soviet Union outstripped several other whaling nations such as Norway and the Netherlands, which earlier in this century had been leading whale harvesters. The United States whaling industry in both the 19th and 20th centuries had contributed to the decimation of whale stocks. Scott McVay cited a modern example of a California whaling company which virtually eliminated in one decade a stock of humpbacks which had appeared regularly between Monterey and San Francisco. From the beginning of its operations in 1956 and 1965 when the IWC prohibited the killing of humpbacks, the yearly kill of this California whaling company was as follows:

1956-133	1961-62
1957-199	1962-39
1958-115	1963-55
1959-140	1964-27
1960- 67	1965-04

McVay indicated that this virtual annihilation represents in micro-

¹⁸ G. SMALL, *THE BLUE WHALE* (1971).

¹⁹ McHugh, *supra* note 12, at 305-308.

cosm, the familiar pattern of whaling which has taken place in the major harvesting regions.²⁰

World opinion has long favored some international control over whaling. Thus, in 1958 the United Nations Conference on the Law of the Sea adopted a resolution requesting "states to prescribe, by all means available to them, those methods for the capture and killing of marine life, especially of whales and seals, which will spare them suffering to the greatest extent possible."²¹ The growing concern of scientists and environmental groups for the fate of whales became significant at the international level in the 1970s. In June of 1972, 110 nations, including the United States, adopted a resolution urging a 10-year moratorium on the killing of whales. This action, taken at the United Nations Conference on the Human Environment at Stockholm, Sweden, was confirmed in June, 1973, at the first session of the United Nations Governing Council for Environmental Programs held in Geneva, Switzerland and reconfirmed at the second session of the same international body meeting in March, 1974, in Nairobi, Kenya. The key recommendation of the 1972 international resolution was that "Governments agree to strengthen the international whaling commission, to increase international research efforts, and as a matter of urgency to call for an international agreement, under the auspices of the international whaling commission and involving all Governments concerned, for a 10-year moratorium on commercial whaling."²²

The response by the major whaling nations at the next meeting of the IWC, in 1972, was to reject the UNCHE resolution. Following appeals by the United States in 1972 and in 1973 to the IWC to adopt a moratorium and to fix quotas, and the rejection of this position by both Japan and the Soviet Union, the United States "lodged strong protests with both nations."²³ Within the United States, Congress enacted the Marine Mammal Protection Act of 1972, prohibiting catching or importation by the United States citizens of marine mammals and their products, and the Endangered Species Act of 1973.²⁴ Worldwide protests over the

²⁰ S. McVay, *Reflections on the Management of Whaling*, THE WHALE PROBLEM, A STATUS REPORT 376 (W. Schevill ed. 1974).

²¹ U.N. Doc. A/CONF.13/L.56 (1958).

²² U.N. Doc. A/CONF.48/14 and Corr. 1, Recommendation 33 (1972).

²³ COUNCIL ON ENVIRONMENTAL QUALITY, THE FIFTH ANNUAL REPORT OF THE COUNCIL ON ENVIRONMENTAL QUALITY 443 (1974).

²⁴ Marine Mammal Protection Act of 1972, Pub. L. No. 92-522, 86 Stat. 1027; Endangered Species Act of 1973, Pub. L. No. 93-205, 87 Stat. 884.

refusal of Japan and the Soviet Union to accept scientifically determined limitations heightened interest and attention in the 1974 IWC conference. Interestingly enough, the 10-year moratorium did not come to a vote in the 1974 meeting. Instead, an alternative proposal was presented for implementation in the 1975-1976 whaling season by the Australian delegation. This alternative, the provisions of which are reproduced below, has become the focal point of controversy over both the future of whales and of the International Whaling Commission itself. The proposal was presented as an amendment to the resolution for a 10-year moratorium sponsored in 1972, 1973, and 1974, by the United States delegation.

AMENDMENT TO USA RESOLUTION
PROPOSED BY AUSTRALIA

Preamble

The International Whaling Commission

Noting that whale stocks are a common concern to mankind;

Concerned that some species of great whales are at present considerably depleted below their optimum population levels;

Recalling that the historic decline in whale populations occurred not only because of excessive exploitation, but also because knowledge was inadequate to protect the species;

Motivated by the need to preserve and enhance whale stocks as a resource now and for future use when food needs of the world will be greater because of increased human population and by the need to maintain marine ecosystems in a well-balanced condition capable of high productivity;

Taking into consideration the long range interests of the consumers of whale products and of the whaling industry as cited in Article V.2 of the Convention;

And Recognizing that the management of whale stocks should be based not only on the concepts of maximum sustainable yield in numbers by species, but should also include such considerations as total weight of whales and interactions between species in the marine ecosystem;

Decides that

1. It shall classify all stocks of whales into one of three categories according to the advice of the Scientific Committee.
 - (a) *Initial management stocks* which may be reduced in a controlled manner to achieve MSY levels or optimum levels as these are determined.

- (b) *Sustained management stocks* which should be maintained at or near MSY levels and then at optimum levels as these are determined.
- (c) *Protection stocks* which are below the level of "Sustained Management Stocks" as described in (b), which should be fully protected.

The committee should define stocks for this purpose, as the units which can be most effectively managed individually.

- 2. (a) Commercial whaling shall be permitted on "Initial Management Stocks" subject to the advice of the Scientific Committee as to measures necessary to bring the stocks to the MSY level and then optimum level in an efficient manner and without risk of reducing them below this.
- (b) Commercial whaling shall be permitted on "Sustained Management Stocks" subject to the advice of the Scientific Committee. There shall be no commercial whaling of species or stocks classified as "Protection Stocks," including those species listed for full protection in the current schedule.
- 3. *Also decides* to implement this resolution by:
 - (a) Requesting the Scientific Committee to provide advice on the criteria which should be used in defining categories of whale stocks which should be treated as in Section 1 above. This advice to be provided as soon as possible with a view to its incorporation in the Schedule.
 - (b) Directing the Scientific Committee to arrange to provide the Commission with annually updated advice on these criteria and on the allocation of stocks to the categories.
 - (c) Making all necessary amendments to the Schedule not later than the 27th meeting of the Commission.

Background to the 1975 IWC Conference

On the eve of the 1975 conference of the International Whaling Commission, opinions were sharply divided about the scientific validity of the principle of "maximum sustainable yield" (herein referred to as MSY), which is a key component of the Australian amendment. Advocates cite the enhanced role of scientists in that the IWC's scientific committee will determine which whale stocks will be placed in which categories. Critics, including some from the scientific community, have challenged the MSY principle on the ground that its data is almost entirely based upon sightings reported by whalers and that some of its fundamental assumptions are not consistent with modern sci-

entific methods and approaches. Dr. Lee Talbot of the U.S. Council on Environmental Quality stated the opposing view in these terms:

The present state of our knowledge of whales is still very primitive. We have plenty of statistics from dead whales — but the whole thrust of modern biology and ecology is away from total reliance on such data and towards attempts to understand the ecosystem and the organism's place in it.

I conclude that continued harvesting of the great whales on the basis of the MSY calculations and the fragmentary and very speculative data base we have is not scientifically justifiable.²⁵

Just prior to the 1975 meeting of the International Whaling Commission, *No Man Apart*, the publication of the Friends of the Earth (hereafter referred to as FOE), an American environmentalist organization, attacked the proposed Australian amendment as being "a watered-down version of the moratorium . . . nebulous enough to offer the Japanese (in particular) the opportunity to come up with some interpretation — such as why they can kill more whales next season than ever before."²⁶

Because the patterns of whaling practices have systematically moved from the killing of the largest and most economically desirable whales to progressively smaller varieties during the period of IWC regulation, a number of environmental groups have reached the same conclusions as Friends of the Earth: "It would seem apparent that the IWC is incapable of reversing these trends, otherwise it would have done so."²⁷ The FOE bill of particulars against the International Whaling Commission was not limited to its serious criticism of the past performance of the IWC. Its additional criticisms were detailed in order to provide a stronger foundation for its proposals to abolish the IWC and place the function of defending whales under the control of the United Nations.

The FOE indictment of the IWC emphasized that:

whales often live in international waters and as such are the common heritage of all nations regardless of whether or not they have a coastline, the technology to kill whales, or the wish to use whale products. The exploitation of whales by two major nations for their short-term benefit is clearly unacceptable.

²⁵ L. Talbot, *New Quotas Set for Whales: 1974 I.W.C. Decisions*, 5 MAIN-STREAM 7 (Summer 1974).

²⁶ J. Clark, A. King, & J. Burton, *Save the Whales: Abolish the IWC!*, 5 NO MAN APART 1 (June 1975).

²⁷ *Id.* at 2.

Secondly, not all the countries which whale belong to the IWC; the Japanese are developing more and more partly or wholly-owned companies in countries such as Peru and Chile, which do not belong to the IWC, and they carry on whaling from these countries undeterred. Thirdly, the schedule to the IWC permits any member to opt out of the commission's decisions by lodging an objection within 90 days of the previous meeting. This loophole is often used.²⁸

The FOE critique attacked head on the defenses of the IWC which have been made by J. C. McHugh and others:

Many people have argued that, as the IWC is already in existence, it is better to reform it, rather than to create a new organization. Indeed, the IWC has made various efforts to improve itself, such as by abolishing the Blue Whale Unit and expanding its staff and budget, but the IWC is trapped by its very constitution, which commits it to protecting whaling interests as well as whales. The IWC has been unable to serve two masters, and has submitted to the interests of the whalers in the fear that unless they did so, the whalers would walk out of the Commission and continue whaling without any controls or setting any quotas.²⁹

The alternative international agency and program proposed by FOE was described explicitly in the same issue of its official publication, *No Man Apart*:

Only an independent body with no vested interests in whaling or whale products can make these sorts of decisions, and these decisions should be made by all nations which are concerned with the stability of the marine ecosystem, not just by the countries with the technology to kill whales. We believe that these problems could be solved if the United Nations were to set up an international cetacean convention, to be administered by one of their agencies such as the Food and Agricultural Organization or the UN Environment Programme. Such a convention would implement a ten-year moratorium by protecting all the great species of whales — the blue, right, bowhead, humpback, gray, sperm, sei, brydes, minke, and fin — and by prohibiting the deep-sea hunting of all cetaceans. To prevent non-signatory nations from taking advantage of the cessation, all trade in the products of the great whales would be prohibited. In order to find out more about the scale of all shorebased small whale fisheries, all ports and boats operating such fisheries would have to be licensed.³⁰

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

The common heritage concept invoked by national and international environmental groups is identical to the position taken by M. Jose Leon Suárez in his 1925 International Law report. The dismissal of the notion that the International Whaling Commission could be depended upon to protect whales insured continued controversy regardless of the stance taken by IWC in the 1975 meeting. These strong recommendations, the punitive boycotts suggested by several environmental groups, and the continued pressure of world-wide opinion, plus the year-by-year decline in the number of economically desirable whales apparently helped create a more conciliatory attitude on the part of the two major whaling nations, Japan and the Soviet Union.

The 1975 Meeting of the International Whaling Commission

The opening of the 27th annual meeting of the IWC began with a dramatic announcement by the delegation from the Soviet Union that it would phase out three Antarctic whaling fleets "as a gesture to growing conservationist pressure." The Soviet Union's delegate, Dr. I. V. Nikonorov, gave what was described as cautious approval to a plan sponsored by Australia to reduce the levels of catches and safeguard endangered species. The Japanese delegate, Iwao Fujita, indicated that acceptance of the Australian plan would not be easy for the Japanese whaling industry, but that some agreement could be reached if limits were not set in excess of conservation needs. In its plenary session on Friday, June 27, 1975, the IWC adopted a far-reaching program designed to protect whales from the threat of extinction and to broaden the scope of research and conservation activities. For the full text of the 1974 decisions of the IWC see the Appendix. The major decision of the Commission was cited as "the most important step yet taken in the protection of the whale from extinction" by Pearce Wright, Science Editor of *The Times of London*.³¹ This decision embodied a program of conservation which not only reduced the catch for 1975 from 37,300 to 32,450 whales, but established for the first time levels of catch for all oceans. Thus, North Atlantic whaling will be subject to a quota system utilized in other ocean regions for some time. The decision was viewed by some delegates to the commission as a partial fulfillment of their proposal for a 10-year moratorium on all whaling, a position previously taken by the United States and sup-

³¹ *The Times* (London), June 28, 1975, at 2, col. 6.

ported by Great Britain and other nonwhaling members of the commission. Conversely, the new position represented a withdrawal of the 10-year moratorium proposal.

Dr. Robert White, a commissioner from the United States, indicated that the new procedures would establish a selective moratorium which will prevent commercial whaling from bringing any stock below a safety level. He suggested that:

This affords protection for whales long before they are reduced to endangered levels. Previous practice placed whales in a protected status only when they approached extinction. As a result of the decision by the International Whaling Commission, commercial whaling will now be prohibited for all fin and sei whales in the North Pacific; fin whales in almost all the Antarctic; fin whales in the North Atlantic except for areas around Iceland and Newfoundland; sei whales in a major region of the southern hemisphere, and sperm whales in the vicinity of eastern Australia.³²

The status of the largest of whales received particular attention in the meeting. Quotas for male and female sperm whales were lowered by oceanic regions. In southern seas, the allowable catch was reduced from 8,000 to 5,870 males and from 5,000 to 4,870 females. In the North Pacific, quotas were reduced from 6,000 to 5,200 males and from 4,000 to 3,100 females. In addition, major structural changes designed to strengthen the Commission's secretariat were approved, as was a comprehensive review of existing conventions to make the Commission "more consistent with modern principles of conservation." The IWC also decided to establish an international decade of cetacean research in order to provide more scientific information on the behavior and breeding patterns of whales.

One American delegate viewed the 1975 London meeting as the most realistic in the Commission's history. He stated that:

It's finally dawned on the conservationists that the whaling fleets can't be scrapped just like that, and on the whalers that some species really are in danger of extinction. That's made it easier for both sides to make accommodations and for the commission to get down to its business of rational management of whaling stocks.³³

For three years, 1972-1974, the United States had called for a 10-year moratorium on whaling. Although it failed to muster the three-fourths majority required for Commission approval, the

³² Quoted in *The Times* (London), *id.*

³³ *N.Y. Times*, June 28, 1975, at 1, col. 3.

position of the United States was viewed as important to soften opposition to drastically reduced catches.

As of late July, several factors still remained to be resolved. First, each whaling nation which had membership in the Commission retained its option to disapprove of the quota reductions within 90 days of the decision. Actually, only eight member nations engage in whaling. Although the London conference showed greater inclination for compromise and possible agreement than previous IWC conferences, the key actors are Japan and the Soviet Union which harvest over 80 percent of the whale catches. Secondly, there are six whaling nations which are not members of the Commission: Chile, Peru, Portugal, Somalia, Spain, and South Korea. While they currently only account for 6 percent of the current harvest, this ratio presumably could change. Conservationist groups argue that whaling in some of these nations is controlled by the big whaling nations.

Depending upon the resolution of these factors, the 1975 decisions of the International Whaling Commission are quite significant. Concurring with U.S. delegate Robert White, Norway's delegate and the chairman of the IWC, Inge Rindal, viewed the reduction as the sharpest on record, "effectively reducing next season's total whale catch by 10,000 — from 37,000 to 27,000." Rindal felt that Japan and the Soviet Union would not lodge objections stating that "[b]oth the Soviets and Japanese went along with most of the new quotas, while abstaining on others."³⁴ The policy of selective moratorium was applied to the finback, second in size to the totally protected blue whale. Only 585 can be caught in the 1975-76 season in the southern oceans and North Atlantic. Last season's quota was 1,550. Drastic cuts were also made for the sei, sperm, minke and brydes.

Some Immediate Reactions to the 1975 Decisions

The most important question at the close of the 1975 IWC meeting was whether the two largest whale harvesters would conform to the cutbacks or exercise their options to refuse. Because the deadline for this work paper, August 1, 1975, occurred before the end of the 90-day option period, the reactions summarized are of necessity only the immediate ones. The final actions and emergent policy decisions, if any, of the major whaling nations, the nonwhaling nations of IWC, and the most active

³⁴ *Id.*

national and international environmental and conservation groups, given expression either unilaterally or through appropriate international organizations, will take place in the coming months. The immediate Japanese reactions to the new regulations of the IWC were strong. The preliminary response implied both deep disagreement with the proposed cutbacks and probable, albeit reluctant, official compliance. Shigeru Hasui, a board member of TAIYO Fishery Company, argued that the Australian proposal would seriously cut back on whale meat production which was cited as one of the major aims of Japan's whaling industry at 110,000 tons or "the equivalent to annual protein consumption of more than 1,000,000 Japanese," or "about one percent of the country's total protein consumption."³⁵ In November, 1974, in anticipation of a serious controversy over harvesting quotas in 1975, Motokichi Morisawa, Executive Director of the Japan Fisheries Association, had developed a fuller description of Japan's attitudes and needs with respect to whale meat:

In 1973, for example, domestic whale meat supplies in Japan totaled 123,000 tons, including 95,000 tons from mothership whaling operations in the Antarctic Ocean and northern seas, 2,000 tons from coastal whaling and 26,000 tons from imports.

Of the total supplies, 61,500 tons were earmarked for general public consumption, 15,000 tons for school lunches and related branches and 46,000 tons for canned and processed food products, including ham and sausage. Whale meat thus offers an important source of animal protein for the Japanese. Whale meat in the same year also accounted for around 6 percent of total supplies of meat products in this country.

If animal protein supplies, equivalent in volume to 123,000 tons of whale meat, are sought through imports, necessary imports are estimated to reach around 220,000 tons in terms of beef and over 290,000 tons in terms of pork. Beef imports then will reach a level equal to 76 percent of domestic production (290,000 tons in 1973) and 2.9-fold the actual imports in 1973 at 77,000 tons.

Japan's beef imports in that case will account for 12 percent of the total volume of world beef trade. In view of the current trend of the global meat situation as well as the latest trade policy of the United States, such sizable imports of beef are considered extremely difficult of realization.

Whale meat prices also are reasonably low despite the recent advance of high-grade items. The price of whale meat at present stands at a level about one-fourth that of beef and one-half that of pork. It also is around 60 percent of that of chicken.

³⁵ Y. Nakagawa, *Japan's Whalers Brace for IWC 'Harpoon,'* Japan Times Weekly, June 28, 1975, at 11, col. 1.

Whale meat thus is a valuable source of animal protein for Japanese households. As such, a whaling ban is certain to bring heavy pressure to bear on the household economy of the less economically blessed stratum. . . .

Supporters of the campaign for an overall ban on whaling and some countries, including Japan, in favor of continuing whaling operations appear to be taking basically different stands regarding the concept about the character of the whale as an animal. It seems that the former holds the view that whales should be classified in the same category of wild animals as lions, elephants and giraffes. In contrast, the latter feels that whales are a source of esculent animals.

Food supplies cannot be increased sufficiently, swiftly and sharply to keep pace with rising population. Food supplies from lands are limited. Hence, animal protein resources required by man should be sought from seas for coping with the situation. If management of marine resources is adequately and scientifically carried out, oceans can be properly pastured in the same manner as raising cattle and swine on land. Marine resources at the same time are not in the stage of extermination.³⁶

The necessity for a reorganization of the components of the Japanese whaling industry has been cited in Japanese news stories as an immediate and direct impact of the cutbacks in whale catches adopted in the 1975 IWC meeting as has the detrimental effect upon "the livelihood of crew members of whaling ships."³⁷ One representative of the Japanese whaling industry acknowledged that three major whaling companies, Nippon Hogeï, Nitto Hogeï, and Kokuzo Hogeï, would merge by spring, 1976. In anticipation of a sizable cut in Japan's whale catch, the cost of whale meat in Japan rose 38 percent over the prices of June, 1974, reaching close to the price level of pork.³⁸ The division of certain quotas set in the 1975 IWC meeting was left to be negotiated by Japan and the Soviet Union. The Japanese press anticipated that Japanese fisheries would face "hard negotiations with the Soviet Union to share the catch of fin whales in an Antarctic area which is not Japan's traditional whaling ground."³⁹ In short, the initial Japanese reactions were negative, seriously con-

³⁶ Morisawa, *International Opinion on Whaling and Japan's Position*, 31 KEIDAN-REN REVIEW 7-12 (Nov. 1974).

³⁷ Comment of Toshio Futami, member of the central committee of the all-Japan Seaman's Union, *N.Y. Times*, June 29, 1975, at 2, col. 3.

³⁸ *Id.* See also *Japan Times Weekly*, July 5, 1975, at 3, col. 3.

³⁹ *Japan Times Weekly*, July 5, 1975, at 3, col. 1; *Japan Times Weekly*, July 12, 1975, at 9, col. 1.

cerned, but not clearly committed to rejection of the cutbacks; although, as noted above, at the time of the completion of the Work Paper, the 90-day period in which Japan may negate its observance of the IWC cutbacks had not ended.

The initial responses of several major environmental groups were complete rejection of the Australian amendment. The cutbacks were applauded but then condemned as being far too limited. Several conservation groups had observers at the London IWC meeting and by mid-July, sent to their members critiques of the decisions. The comments of the newsletter of the Society for Animal Protection Legislation, Washington, D.C., provide a representative reaction:

The IWC still belongs to the old guard. Yet this year's quota cuts (approximately 8,500 whales) were larger than any ever adopted in the past. The boycott and demonstrations have had an effect. Their continuance is essential if further needed protection for the whales is to be won. Indeed they are needed even to hold the modest gains won this year. When the antarctic fin whale quota was cut to 220, Mr. Fujita stressed that this must be the decision for this year only, and Mr. Rindal reassured him that indeed that was always so. The Chairman's reassurance that the reduced fin whale quota is "only for the coming season which has always been the case," makes clear the transitory nature of any protection the IWC may give.⁴⁰

Clearly, the battle lines between the conservation group and the whaling industries have not been altered. Whether IWC's new policy of more drastic cutbacks will be continued and extended, whether nations such as Japan and the Soviet Union will seek to evade compliance, either by opting out under IWC rules, or by transferring their whaling operations to whaling nations which do not belong to IWC (such as Chile, Peru or Somalia), and whether national and international conservation groups successfully intensify their efforts at boycotting and prohibiting whaling activities and sales via national legislation, all are questions which will have a direct bearing on the International Whaling Commission and its future or demise as an international body. The United States Commissioner, Robert M. White, provided a balanced assessment of some of the immediate problems which demand resolution:

While the United States is pleased at the progress made here, it feels that many steps remain to be taken. The data on which

⁴⁰ Newsletter of the Society for Animal Protective Legislation, July 18, 1975, at 4.

Management Procedure are based are uncertain and require much improvement. As whaling operations go down, we need to ensure that whaling vessels retired by IWC members do not come to be used for whaling by non-IWC nations. We need to enlist in the IWC whaling nations who are non-IWC members. We need to investigate more humane methods of killing whales, and we need to step up research so that our understanding of whales is more adequate.⁴¹

To date, the efforts on the part of international organizations to build an international law on whaling have not been particularly satisfactory. Part of the problem has been the difficulty of obtaining commonly accepted, scientific facts as to the condition of the whale. From the perspective of some whaling nations it has seemed that it has been almost necessary to destroy the whale before it could be seen that its numbers had been severely diminished.

Over time, science and technology are providing substitutes for whale products. This may substantially reduce reliance on the whale from a general economic point of view. But there is an urgent need for nations to accelerate this process and develop a serious commitment to this goal in the harvesting nations.

⁴¹ Statement of the Honorable Robert M. White, U.S. Commissioner to the International Whaling Commission, June 27, 1975.