Contemporary initiatives on the future of the International Whaling Commission

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ABSTRACT

In his term as Chairman of the International Whaling Commission between 2006 and 2009, Dr Bill Hogarth championed a process for finding a way forward for the IWC. In parallel with, and in places intertwined with the Hogarth Initiative, a number of other initiatives attempting to move the IWC forward have been proposed by a range of stakeholders; both governments and NGOs. This paper traces the more important suggestions, commenting on their likelihood of success.

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1. Introduction

Dr Bill Hogarth served as Chairman of the International Whaling Commission (IWC) from the end of the 2005 annual meeting in St Kitts and Nevis through to the end of the 2009 annual meeting in Madeira. During that period, he worked tirelessly to find in his words, a “way forward for the IWC”. The end of his term saw a number of procedural initiatives in place and some significant improvements made in the way in which the IWC conducts its business, but little real progress on solving the major differences between the pro and anti-whaling groups within the Commission. Hogarth chose to promote the change process through a Small Working Group (SWG) and a series of intersessional meetings focused solely on finding a way forward, firstly identifying all the issues causing conflict within the Commission, including shortcomings of the International Convention for the Regulation of Whaling (ICRW); secondly separating them into critical and non-critical items and then addressing the critical items through an improved negotiation process developed in the interim. As Hogarth departed the chairmanship, this process was still under way with a number of IWC members committing themselves to the process only until the annual meeting of the Commission in June 2010.

In parallel with Hogarth’s initiative, and in many places intertwined with it, a number of other initiatives were in progress, developed both inside and outside the Commission. This paper tracks the most significant of these, commenting on their effectiveness to date and likely impact on the future of the IWC.

2. The Australian Initiative

Australia introduced its initiative on a way forward for the IWC with a paper entitled “Whale Conservation and Management: A Future for the IWC” [2] which it presented at an intersessional meeting of the Commission in London in March 2008. In the paper, Australia strongly confirmed its support for the IWC as the international body with primacy over the conservation and management of all cetaceans (whales, dolphins, and porpoises). It noted some successes and some shortcomings of the current IWC regime, specifically condemning scientific permit whaling. It also specifically noted the failure of the IWC to seriously address emerging threats to cetaceans such as climate change, fishery activities, marine pollution, poorly regulated whale watching industries, ship strikes, and habitat disturbance, suggesting that the IWC could “begin to address these issues by developing internationally-agreed, cooperative conservation management plans, taking into account all whale-related issues and threats and launching regional, non-lethal, collaborative research programs to improve management outcomes for cetaceans”. It further suggested reforming the management of science conducted under ICRW and IWC auspices, including agreed priorities and criteria for research, and an end to unilateral “special permit” scientific whaling.

The paper reinforced Australia’s particular objection to whaling under special permit, noting that the initiative to reform the management of science “could be undertaken immediately by agreement of governments within the Commission… and would strengthen the Commission by increasing collaboration on science and would remove the most serious source of tension that presently impedes the Commission’s work”.

Probably because it was somewhat outside the focus of the meeting, there was little discussion of the Australian proposal at the London meeting; however, Australia reintroduced its initiative...
at the IWC annual meeting in Santiago the following June with two supporting papers submitted under agenda items in three separate sections of the meeting: the Scientific Committee, the Conservation Committee, and the session on the Future of the IWC. These papers: Conservation Management Plans for Improved Cetacean Management [3] and Regional Non-lethal Research Partnerships: a proposal for the Southern Ocean [4] added detail to the earlier proposal.

The first paper explained that even the Revised Management Procedure (RMP), almost universally accepted as an extremely conservative management plan, is nonetheless a plan devised to maximise the number of whales taken from a given population and does not address threats other than from whaling, except by compensating reductions in the catch limit. In addition, it pointed out that the RMP is based on statistical simulation which makes allowance for numbers of whales, but takes no interest in why those numbers may change. It then set out in detail the essential elements of a conservation management plan, and suggested a process by which the IWC might draw up such plans within its existing committee system. The second paper proposed a Southern Ocean Research Partnership as one element in a global network of such partnerships, following up on Australia’s earlier proposal for a more coordinated approach to filling in gaps in the Scientific Committee’s research program. Australia’s vision was that these partnerships “inclusively planned, cooperatively implemented and transparently reviewed”—will strengthen and improve the credibility of the scientific framework that underpins the management and conservation activities of the IWC. They would address agreed priorities, use benign research techniques, invite peer review and openly share their results” [4].

Unfortunately, Australia’s initiative as a way forward for the IWC may have been too subtle for the majority of members and was lost in the more specific debate on resolving existing issues in the IWC in both London and Santiago meetings. It did, however, receive some support in subsequent meetings of the SWG [5], and certainly received support from conservation non-government organisations (NGOs). Lack of support for the initiative from pro-whaling countries is probably because it directs the focus of cetacean research away from information useful for determining maximum sustainable catches, even though the long-term outcome of the Australian approach will be increased whale populations and better understood population dynamics; both essential for any long-term sustainable whale harvest.

Australia raised its proposal again at the intersessional meeting in Rome in 2009, further announcing that it would invest $A 32m over six years in non-lethal research and other initiatives with the aim of eliminating unilateral scientific whaling. Half of this was to go to the Australian Marine Mammal Centre “to provide grants for applied, strategic, non-lethal research, and related activities”, and half for the Southern Ocean Research Partnership “to deploy the latest non-lethal research techniques against agreed conservation and management science priorities” [7].

Australia hosted the first meeting of the Southern Ocean Research Partnership in Sydney in April 2009, which was attended by approximately 60 delegates, all from anti-whaling countries with an interest in cetaceans and the Southern Ocean. The research discussed was strictly non-lethal, and was specifically designed to complement research carried out under the Southern Ocean Whale Ecosystem Research (SOWER) program in which Japan is a major participant, even though Japan was not represented at the meeting [8].

Without participation by pro-whaling members, the Australian initiative is unlikely to make an immediate contribution to the current debate on the future of the IWC, though it may well make a major contribution in the longer term. It certainly appears to be an excellent example of the kind of initiative on which all parties could agree without having to commit to changes such as “Normalisation” and “Modernisation” which have unfortunate connotations for some IWC members.

Australia raised its proposal to bring all scientific cetacean research under the Scientific Committee’s control again at the annual meeting in Madeira in 2009 under agenda items on the future of the IWC, and once again the pro-whalers generally interpreted it as an attack on Japan’s scientific whaling program rather than a suggestion for moving the IWC forward. A later presentation by Australia on its Southern Ocean Research Partnership program was well received, though little time was available for discussion.[5]

In summary, the Australian initiative was a well thought out proposal for providing focus for the Scientific Committee, at the same time bringing scientific permit whaling under IWC control and providing funds for cooperative research on specific aspects of cetacean science. It may have received more support had more emphasis been placed on setting aside, temporarily at least, the major differences between pro and anti-whalers and focusing instead on conservation issues. Unfortunately, in the short term it has not received the support it deserves due in part to Australia’s ongoing strident condemnation of Japan’s permit whaling program.

3. The Safety Net Initiative

The genesis of the Safety Net Initiative was the meeting hosted by Japan and held separately from, but in conjunction with the 2006 Annual Meeting of the IWC in St Kitts and Nevis. This meeting, attended by most pro-whaling delegates still jubilant from the passing of the St Kitts and Nevis Declaration,[6] resolved to hold a follow-up meeting in Japan in February 2007. It was that meeting which, together with meetings held by the Pew Foundation in New York in April 2007, and a meeting of Latin American IWC members held in Buenos Aires in December 2006, formed the basis of the initial discussion on the future of the IWC at the Commission’s annual meeting in Anchorage in 2007.[7]

The next public step in the Safety Net Initiative was a meeting held in the 2008 Santiago IWC meeting venue, but outside the meeting agenda to discuss a proposal from a working group of pro-whalers. The meeting was chaired by Jenkins of Species Management Specialists Inc., a sustainable use and pro-whaling NGO based in Australia. The principal speakers were Joji Morishita and Dan Goodman, both members of the Japanese delegation. The speakers spoke to a document titled Working Group Memorandum—Preparing a Safety Net.[8]

Morishita spoke briefly, confirming the pro-whaling view on the dysfunction of the IWC, and introducing the concept of a

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[4] The SOWER program is a multi-national research project carried out annually in the Southern Ocean under IWC Scientific Committee auspices.
[5] From notes taken by the author at the meeting.
[6] The St Kitts and Nevis Declaration [9], passed with a majority of one, was essentially a summary of the pro-whaling case for sustainable harvesting of cetaceans.
[7] A full description of this process can be found in The Hogarth Initiative on the Future of the IWC by Iliff [1].
[8] Unpublished discussion paper handed out at the meeting.

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2 The RMP was accepted by the Commission in 1994 as the method for calculating a sustainable level of harvest for whale stocks.
3 As an example, see the opening statement of WWF to the IWC annual meeting in Madeira [6].
“Safety Net” to ensure that there is a management framework in place for the conservation and management of whale stocks while the IWC is talking about its future, and more particularly in the event of a breakdown in the Future of the IWC initiative. Goodman spoke at length about the objectives, concepts and recommendations of the working group for a safety net in the form of a new international organisation to secure the dual purposes of the ICRW: “management and control of whaling to achieve sustainable use of abundant species, and protection and recovery of depleted and endangered species”. In doing so, he stressed that the discussions were intended to be non-confrontational towards the IWC and to the discussions on its future.

The Memorandum and speakers emphasised that fundamentals to be included in any safety net were:

- Providing a balance of conservation and management within which stocks at low levels would be protected, while abundant stocks would be managed (harvested) sustainably.
- Respecting standard conservation principles such as the precautionary approach, ecosystem considerations, and sustainable use.
- Prohibiting “large scale” unregulated or uncontrolled whaling.10
- Allowing whaling only for abundant stocks with a strict quota and effective monitoring, compliance and surveillance measures. Quotas would be set using an “RMP-like or similarly science-based framework” which allows for “bycatch and sampling for scientific research”.
- Making no distinction between commercial whaling and aboriginal subsistence whaling.
- Membership of the new organisation should be limited to those countries which support “sustainable consumptive use of cetacean resources, and promote the objectives of optimum utilisation of such species both within and beyond exclusive economic zones as reflected in Article 64 of the United Nations Convention on the Law of the Sea (UNCLOS)”.
- Ecosystem management under Article 64 of UNCLOS should be interpreted as including the possibility of culling cetacean stocks in order to increase yields of other fisheries.
- Cetaceans should be treated like any other living resource, and whaling should be managed like any other fishing or hunting activity.
- Scientific whaling should be the same as for other fisheries where the need for scientific data independent of the fishery is required on an ongoing basis. It was noted that the scale of such research would be similar to, or lower than that currently undertaken.

In terms of the scope and form of an agreement, the Memorandum noted that the achievement of management objectives needed to be balanced against the rights and obligations of states under UNCLOS as well as the interests of consumers, the industry, and non-whaling members. It was also noted that any agreement could be global or regional in scope and apply to all waters, just those beyond national jurisdiction, or perhaps a regulatory function in selected areas with a recommendatory function in others. It could take the form of a treaty, memorandum of understanding, or some other instrument, and it could cover all cetaceans, or only large cetaceans. The political implications of establishing a new organisation were considered at the meeting, including its potential for increasing conflict between both governments and NGOs. In this respect, basing a new convention on UNCLOS, and including many of the provisions of the ICRW was seen to be beneficial in “undermining criticism from anti-whaling countries” by drawing attention to the fact that pro-whalers are not unhappy with the ICRW; just the way it is being implemented. It was also suggested that separating those wanting consumptive use of cetaceans from those whose interests are non-consumptive or purely protectionist could possibly reduce tension between them. The benefit to the ongoing debate in the IWC from the threat of establishing an alternative organisation was also noted.

From its deliberations, the working group put forward a set of recommendations, the fundamental one being “that an alternative to the current ICRW and IWC is required and that appropriate text should be developed to incorporate the following combination of options for these items: A convention type agreement, legally binding and restricted in membership that is global in scope, covers all cetaceans, and has a commission that makes regulations covering waters beyond national jurisdiction, provides recommendations related to cetacean use within economic exclusion zones (EEZs) at the request of the coastal state, and administers a benefit sharing program to assist research in developing countries”. The working group also put forward a text as an example of a possible preamble and purpose statement for a new convention. In considering the timing for the introduction of a new convention, the working group recommended that the transition should be as rapid as possible, bearing in mind member countries’ own parliamentary processes, possible diplomatic and media pressure and the requisite six months withdrawal period from the ICRW.11 It also recognised the need to develop strategies to address the political context, and the diplomatic work to be done by the leading proponent states. The working group believed that the safety net should be operational if the process in the IWC is not resolved to their satisfaction by the end of the IWC annual meeting in June 2009.

By the end of the Rome intersessional meeting in March 2009, it was obvious that the future of the IWC would not be resolved at the June annual meeting, giving the Safety Net Working Group time to prepare an action plan for presentation at that meeting. On 24 June, the day after the IWC meeting resolved to allow the SWG another year to work on the Future of the IWC process, Jenkins issued a media statement announcing the completion of a “draft new international treaty to manage the hunting and conservation of the world’s whale stocks” together with an invitation to all interested parties to attend a presentation on the Safety Net: A New International Convention for the Conservation and Sustainable Use of Cetaceans. The media statement [10], issued before the Safety Net meeting noted:

The draft treaty was developed because of serious concerns held by many conservation and wildlife management experts regarding the failure of the IWC to carry out its functions under the existing International Convention for the Regulation of Whaling.

If the IWC fails to reach an agreement on the future of that organisation, we felt it necessary that a safeguard is available to contracting parties who wish to carry out the sustainable hunting of abundant species of whales. We conducted our work with hope that talks over IWC reforms would produce a successful outcome and the view that an alternative is required if those discussions failed.

The new convention has been handed over to governments to initiate further negotiations if they wish to do so.

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9 Taken from the discussion paper and notes taken by the author at the meeting.
10 No definition of “large scale” was given. The implication here appears to be that small scale unregulated whaling would be allowed. From the next criterion, it appears that this may mean allowing sampling for scientific purposes.
11 ICRW Article XI allows withdrawal from the ICRW effective on 30th June in any year, provided such withdrawal is advised by 1 January of that year.
The Safety Net meeting was attended by representatives of approximately 15 pro-whaling IWC members, three pro-whaling NGOs and two anti-whaling IWC members. In speaking to the draft convention, Jenkins emphasised that it had no official status and that it had been produced by members of the working group in their private capacity. Individual members of the working group were not identified, though in the course of the discussion it became obvious that Dan Goodman of the Japanese delegation was one member. Additional guiding principles outlined by Jenkins included the importance of the precautionary approach and ecosystem considerations. He also noted the importance of ensuring that all signatories to any new convention “should share a common basic view with respect to the utilisation of cetacean resources in order to avoid the polarised situation that has rendered the IWC dysfunctional”. The scope of the new convention was to be global, covering all cetaceans, and have a commission making regulations covering waters beyond national jurisdiction and recommendations at the request of coastal states for waters within EEZs. The United Nations Convention on the Law of the Sea (UNCLOS) 1982, particularly Clauses 62, 63, and 64, was to be a “core reference” for the new convention.

The draft convention presented[11] was remarkably similar to the ICRW, except in the preamble which focused heavily on rational management, sustainable use, food security and sovereignty, cultural diversity, science-based management, and ecosystem management. Reference was also made to UNCLOS, the United Nations Convention on Biological Diversity (CBD), the Report of the World Commission on Environment and Development, and the 1995 International Conference on the Sustainable Contribution of Fisheries to Food Security. In the body of the document, many articles were taken verbatim from the ICRW, the major differences being the inclusion of an article establishing a research fund and benefit sharing scheme to assist developing nations, clauses to ensure that signatories support sustainable consumptive use of cetaceans, a clause requiring unanimous support of original signatories to any future signatories, and clauses on monitoring, compliance and enforcement measures.

Discussion focused on the next step for the draft convention, with a consensus that delegates should report to their respective governments on the Safety Net Initiative in conjunction with their reports on the IWC meeting itself. A suggestion by one attendee that the more appropriate method of setting up an international convention would be for more senior government officials than IWC commissioners to meet and discuss the merit or otherwise of such a convention long before the terms were discussed was noted but not followed up. What was apparent was the enthusiasm of the delegates present for the concept of an alternative convention, free from what the delegates saw as the intractable attitude of the anti-whalers.[12]

4. Implications of the Safety Net Initiative

There can be no doubt on the frustration of Japan, and to a lesser extent, the other pro-whaling members of the IWC, with the situation in the Commission. They see that the intent of the ICRW, together with other international conventions such as UNCLOS, its provisions relating to Highly Migratory Fish Stocks (CMS), and the CBD is sustainable harvest of all species including cetaceans, yet it is being frustrated by anti-whalers due to concepts of animal rights which do not appear in any convention. However, questions must be asked about Japan’s intentions in sponsoring the Safety Net Initiative. The openness with which it has been pursued certainly has been designed to maximise the pressure exerted on the mainstream Hogarth Initiative, but it must be asked whether there is more to it than that. Certainly, Jenkins has been set up as the principal motivator behind the initiative, but there has been no secret made of the strong Japanese backing.[13]

Clearly, it is in Japan’s best interest to persuade the IWC to sanction sustainable harvesting of cetaceans; however, a fall-back position of an alternative international convention joined by half the former members of the IWC certainly appears logical. Less obvious alternatives for pro-whaling countries are joining an extended North Atlantic Marine Mammals Commission (NAMMCO) or simply withdrawing from the ICRW and whaling within their other international treaty obligations, but without any specific external agreement.[14]

Decision time for Japan and other pro-whalers will come in late 2009, following the outcome of the IWC Small Working Group meeting in Santiago in October and any subsequent meetings. If Japan chooses to withdraw from the ICRW, it would be required to advise the United States as depository government for the Convention by the end of December, and would be bound by the Convention until June 2010. The Safety Net convention, or alternative, could be in place by then.

5. Pew Charitable Trusts contribution

The Pew Charitable Trusts, a United States based independent public charity “committed to fact-based research and goal-driven investments to improve society”[15] entered the whaling debate by convening a Symposium on the State of the Conservation of Whales in the 21st century at the United Nations Headquarters in New York in April 2007. Its objective was to “analyse options for the conservation of whales, specifically exploring policies for resolving the current impasse over commercial and scientific whaling at the International Whaling Commission”[13]. With this aim, and “seeking to avoid the debates of the past and introduce new information and fresh solutions”, the symposium was anti-whaling in character in spite of the comment by the symposium chairman, Sir Geoffrey Palmer of New Zealand in his opening remarks, that “this symposium was designed to investigate in an open-minded way whether there are ways through the painful impasse”. Participation was by invitation only, with 65 participants from 27 countries with a mixture of legal, policy and science academics, policy and opinion makers, national and international civil servants, and non-governmental organisation and think-tank representatives[14]. All the delegates were strongly anti-whaling, even those from the five pro-whaling countries represented.

The structured discussion at the symposium was led by speakers from within and outside the IWC on each of four topics:

(i) State of the world’s whale stocks and implications for policy makers.
(ii) Developments in Oceans Law from 1946 to 2006.
(iii) Whaling Diplomacy: why has it been so difficult to find an acceptable solution?
(iv) The Way(s) Forward.

Reporting on the outcome of the symposium to the meeting of the IWC in Anchorage in May 2007, Sir Geoffrey stressed that no single view had been resolved; however, a number of worthwhile

12 From notes taken by the author at the meeting.
13 Japan’s Institute of Cetacean Research submitted a paper on the subject to the Pew Whales Commission’s meeting in Lisbon in February 2009.
14 The alternatives open to pro-whaling IWC members is dealt with in detail in The International Whaling Regime post 2007 by Iliff [12].
15 From Pew Charitable Trusts information sheet.
suggestions had come forward. There was general agreement that the IWC should continue as the primary international organisation responsible for cetacean conservation and management, but the ICRW should be strengthened to better manage whaling, particularly whaling under special permit and in whale sanctuaries. Alternatives proposed to achieve this included a ministerial summit of IWC members, an international conference under UN auspices, or an independent world commission. Improved negotiation processes within the IWC were also regarded as important.

Discussion of the Pew symposium report, together with the reports from Japan’s Normalisation meeting and the Buenos Aires Group report at the Anchorage meeting of the IWC resulted in the chairman launching his initiative for A Way Forward for the IWC.

Ten months later in January 2008, Pew convened a second symposium; this time titled A Change in Climate for Whales, held in Tokyo and timed to provide input into the March intersessional meeting of the IWC. Once again, participation was by invitation only, this time with 100 participants from 28 countries. Following the perceived success of the first symposium in bringing fresh ideas to the IWC issues through the participation of “outsiders”, invitees 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” [15]. The chairman was Judge Tuiloma Neroni Slade, a former judge of the International Criminal Court.

As with the previous meeting, the meeting was structured around a number of topics:

(i) The current state of the whaling debate: views from Japan.
(ii) Conflict management and biodiversity.
(iii) Interactions between governments, NGOs and the private sector.
(iv) The IWC process on its future.

As with the previous symposium, the discussion produced an interesting mixture of regurgitation of familiar positions of both pro and anti-whaling camps with academic observations showing varying degrees of understanding of the problems and some sound commonsense, all without a great deal of general agreement on any point. The Chairman’s Summary of the symposium made the very telling statement:

Two principal ideas centred on possible concessions by Japan and/or the anti-whaling interests. The former asks Japan to observe the moratorium and phase out commercial/scientific whaling; the latter asks anti-whaling interests to accept the concept of sustainable utilisation of whale stocks. I am drawn to the conclusion that neither side was prepared to make any significant concession to the other.

He then went on to say:

Based on what was said by participants at the symposium, there is room for discussion of the following: Acknowledging potential claims by existing and well established small coastal whaling communities in countries that are still whaling and (not or) suspending Article VIII “scientific” whaling in the Southern Ocean and elsewhere, and respecting sanctuaries established by the IWC.

He suggested a “Diplomatic conference to review and consider requisite changes or a protocol to the ICRW or to establish an Independent World Commission or Panel of Eminent Persons to help the IWC out of the present impasse”. Acknowledging the positive effect of the moratorium, he also exhorted all IWC members, individually and collectively, to consider that if “at some point in the future that any level of catch may someday be determined by the IWC, this should be considered a limited exception to the moratorium, and not a substitute or replacement for it” [15]. The Chairman’s report of the symposium was submitted to the IWC intersessional meeting in March 2008 but was not discussed directly as the report of the first symposium had been, however, a number of the points made at the symposium were raised in the discussion.

Pew’s next public contribution to the whaling debate came in February 2009, when the newly formed Pew Whales Commission chair by Dr Peter Bridgewater met in Lisbon four weeks before the Rome Intersessional Meeting on the future of the IWC. In addition to the 14 Commission members, the meeting included 25 observers from governments, academia, and NGOs. Documents considered by the Pew Commission included the IWC Report of the SWG on the Future of the International Whaling Commission which was to be presented to the forthcoming IWC intersessional meeting, the Japanese Institute of Cetacean Research paper Building a Safety Net, together with a number of papers from NGOs. The meeting also heard presentations from five speakers on various aspects of cetacean conservation and management.

The Chair’s Report [15] included a number of conclusions reached by a significant majority of the group, and included suggestions such as urging ministerial representation in delegations at the IWC annual meeting in Madeira later in 2009, a number of suggestions for modernising the ICRW, improvement in the Scientific Committee process, and noted some support for Small-Type Coastal Whaling in Japanese waters. The Chair’s Report was presented to the IWC Rome Intersessional Meeting by the commissioner for Portugal but was not discussed directly.

It came as something of a surprise when Pew’s written opening statement to the 2009 IWC Annual Meeting in Madeira contained the following:

Whereas the hypothetical acceptance of an exception to the moratorium to allow Japan to maintain its coastal whaling tradition would be a very bold step for the supporters of the moratorium, the Government of Japan needs to realise that this step can be envisaged only if it agrees to end scientific whaling and commits to respect internationally agreed whale sanctuaries. We urge the IWC Annual Meeting in Madeira to seek agreement to pursue negotiation on the basis of these considerations [17].

This statement set Pew well apart from virtually all the other anti-whaling NGOs who were strongly opposed to any concession to Japan in terms of trading Small-Type Coastal Whaling for cessation of scientific whaling. The statement did, however, go on to justify seeking to end the whaling controversy in order to allow the IWC to focus on the ongoing and emerging environmental threats to cetacean populations. Of further concern to NGOs was the announcement that Monica Medina, director of the Pew Whale Conservation Project since 2007, had joined the US National Oceanic and Atmospheric Administration and would succeed Bill Hogarth as US Commissioner to the IWC.

16 A group of thirteen eminent individuals with wide and considerable experience in international law, policy and environmental governance. No IWC commissioners were members; two of the members came from non-IWC countries. The term Commission was chosen to convey a desire to move beyond exploratory discussions to making concrete recommendations [16].

17 Former chairman of the IWC and current chairman of the UK government’s Joint Nature Conservation Committee.

18 All the speakers were well known anti-whaling proponents.

19 Deliberately titled the Chair’s Report rather than the Meeting Report to reflect lack of agreement on the detail.
What then, has been Pew’s contribution to the resolution of the whaling controversy? Three international symposia including the introduction of numerous outside international relations specialists; three reports presented to IWC meetings, and the combined outcome has been the endorsement of a recommendation of the chair of the SWG which itself is not significantly different from the Irish proposal[20] of 1997 or The Chair’s Suggestions for a Way Forward on the RMS[21] of 2004. Perhaps there is a lesson here for anyone attempting to resolve the whaling debate!

6. Contribution of other non-government organisations

The demise of the RMS[22] process and the subsequent polarisation of the IWC members into more clearly defined pro and anti-whaling groupings since 2006, and the further polarisation with the introduction of bloc voting more recently, has seen a change in the role of the NGOs, at IWC annual meetings at least. In addition, the Hogarth Initiative on the Future of the IWC has seen a major reduction in the number of votes taken at meetings, meaning that the intense lobbying leading up to voting on issues such as sanctuaries, coastal whaling, and special permit whaling has become less relevant. Conversely, after ongoing requests and following the recommendation of Professor Juma[23] [18], NGOs were granted limited rights to make presentations to the IWC annual meetings from 2008.

Of the 47 anti and 16 pro-whaling NGOs attending the Santiago IWC meeting, three representatives from each group were allowed to make 5 min presentations to the plenary meeting. Presentations from representatives of Centro de Conservacion Cetacea (Uruguay), World Wide Fund for Nature (WWF), and Greenpeace (Japan and Caribbean) on the anti-whaling side, put forward the standard anti-whaling arguments of modernisation of the ICRW, respect for sanctuaries, cessation of special permit whaling and non-lethal use of cetaceans, while the High North Alliance (Norway), Women’s Forum for Fish (Japan) and Concepesca (Central America) on the pro-whaling side contributed the standard pro-whaling rhetoric of sustainable use, benefits to coastal communities and respect for cultural values. Perhaps it is a symptom of the whaling debate, that in the first opportunity to express their views in an open IWC meeting for many years, NGOs on both sides were unable to present anything new, though not necessarily as a result of any lack of creativity on their part.

Written opening statements by 19 NGOs on both sides of the debate revealed a similar dearth of new ideas. Many of the anti-whalers made the unrealistic demand that the ICRW be modernised; conversely the pro-whalers called for normalisation of the IWC. Most of the anti-whalers strongly advocated the conservation role of the IWC in the face of non-whaling threats to cetacean stocks such as marine pollution, underwater noise, ship strike, and bycatch, and the future threat of climate change.

The intersessional meeting on the future of the IWC in Rome in March 2009 saw the practice of allowing presentations from six NGOs continue. Apart from the All Japan Seamen’s Union presentation which focused on the harassment of the Japanese Whaling fleet in the Southern Ocean by the Sea Shepherd Conservation Society, all presentations tended to follow well-worn paths with some extra emphasis on the SWG process. As with the member delegations, the NGOs seem unable to go beyond a reiteration of their own dogma, while calling on those with opposing views to make some serious compromises in the interest of harmony.

By the 2009 annual meeting that year in Madeira, the SWG process had produced the Chair’s Suggestions [19] which suggested resolving the impasse within the IWC by trading Small-Type Coastal Whaling by Japan for renunciation of, or a reduction in, the take in its Southern Ocean scientific whaling program. This gave a focus to anti-whaling NGOs to condemn both the suggestion and in most cases the entire SWG process, choosing instead to continue the push for genuine conservation efforts. In this respect, Australia’s proposal received strong support. As mentioned above, the Pew Foundation’s support for the Chair’s recommendation was significantly outside mainstream NGO thinking. In the NGO presentations, speakers from the Association of Traditional Marine Mammal Hunters of Chukotka (Russia) and Te Oku Kaimoana (New Zealand), both representing indigenous people, spoke of the incongruous situation in which an organisation like the IWC, dating back to 1946 should presume to enforce rules on traditional hunters who have been carrying out the same activity for thousands of years. Dr Sidney Holt, celebrating his 50th year of association with the IWC, made the point that whales will never make a major contribution to food security, and exhorted members to embrace whale watching as the only valid commercial use of cetaceans.

In short, the practice of allowing NGOs the right to address the IWC plenary meeting has gone some way to stem the criticism of the IWC for failing to involve civil society, but on the other hand, has done little to introduce any fresh views on the subject.

7. The Whale and Dolphin Conservation Society suggestion

The most constructive suggestion for a way forward for the whaling debate from an NGO was provided in a leaflet submitted to the Pew Commission meeting in January 2009 by the Whale and Dolphin Conservation Society (WDCS). In it, WDCS argues that “the IWC’s tools are too limited in their legal scope to replicate contemporary best practice in wildlife conservation or fisheries management; too outdated to respond to our growing understanding of the special qualities and vulnerabilities of whales; and too unsophisticated to resolve the political issues that confound the effective conservation of whales today”. WDCS make the point that the focus on Japan’s whaling program in the Southern Ocean, while ignoring the threat posed by Norwegian and Icelandic whaling, “will result in a solution that is incomplete, unenforceable or unsustainable—in the longer term”.

WDCS requested the Pew Commission to use the experience of its eminent participants to seek a solution outside the IWC, suggesting linking cetacean conservation with practices in Marine Protected Areas, and with other conventions such as the CMS. It also suggested leverage being exerted on whaling countries through trade, political, and economic relationships, mentioning the current increasing concerns for the global economy and climate change. Public health issues and food security were also raised as issues outside the IWC influence in which some pressure might be exerted [20].

Unfortunately, however, like the Australian initiative, the proposal appears to have been too far “outside the square” and did not receive any serious consideration by the Pew meeting. Hopefully, like the Australian initiative, it will gather momentum
in the coming months, receiving the recognition it deserves and being taken seriously as a way of moving forward.

8. Conclusion

The mainstream process to “find a Way Forward for the IWC” initiated by Chairman Bill Hogarth in 2006 has produced a number of procedural improvements, but so far has failed to produce any real agreement on the substantive issues dividing pro and anti-whalers. Any consensus on the fundamental question of whether sustainable whaling should be allowed seems as far away as ever. After three annual meetings, two intersessional meetings, numerous small working group, support group, steering group, and Pew Trusts meetings, the best suggestion has been remarkably similar to earlier compromise proposals debated and dismissed in 1994 and again in 2006. It has been suggested repeatedly in discussions within the IWC that there must be “give and take” on both sides, yet neither is prepared to compromise on the fundamental issue.

The Safety Net exemplifies the “no compromise” approach. If carried to its logical conclusion, it will result in two conventions: one protecting whales, the other harvesting them. The rhetoric of the pro-whalers emphasises sustainable whaling, but as Sidney Holt pointed out to the Rome meeting “whaling is a business after all”. As such, its ability to regulate itself sustainably must be questioned. The anti-whalers left in the IWC after the departure of the pro-whalers would be free to implement the modernisation of the ICRW which they crave, but it would be a hollow victory as they watched the whales they saved being hunted under another convention.

The Australian Government and WDCS have offered suggestions which in their different ways skirt this issue to produce a positive outcome. The Australian suggestion to temporarily set aside the fundamental issue which divides the parties, and to focus on cetacean conservation initiatives will result in benefits for both sides’ aspirations. For anti-whalers, a focus on ship strikes and netting; chemical and noise pollution in the ocean; but above all, the effect of climate change on cetaceans, will dramatically and netting; chemical and noise pollution in the ocean; but above all, the effect of climate change on cetaceans, will dramatically increase knowledge of whale stocks numbers and biology to ensure any future harvest is sustainable. The WDCS approach is somewhat different; suggesting that there is little room within the IWC charter to provide benefits which whalers might be prepared to trade for a cessation of whaling, meaning that wider fora should be used to canvass options.

Unfortunately, neither suggestion has received much support from within the mainstream of IWC discussion which has concentrated on trying to resolve individual sticking points within the IWC gambit. If the current initiative fails, surely it is logical to adopt less conventional, but more creative thinking and move away from the frustrating and non-productive attitudes which have plagued the primary global forum managing the world’s cetaceans over the past 20 years.

References