

Opportunity: Needs meet Possibilities
Negotiating Sanctuaries for Whales

by

Sidney Holt

A contribution to the
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**This article is dedicated to
the loving memory
of three comrades
now deceased,
and to one still with us,
whose skills and persistence
provided the foundations
for the successful actions here described.**

Sir Peter Scott
1909-1989

Dr Lyall Watson
1939-2008

Mr. David McTaggart
1932-2001

Ms Leslie Ann Busby

23 February 2009

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*I do not like to think of the number of aged whales dying
there without our people being able to have a shot at them.*

Harold. K. Salvesen,

Industry representative on the
UK delegation to the 1951 meeting
of the IWC, during discussion
of the future of The Sanctuary

Abstract

The reality that the management/conservation need for a particular Marine Protected Area (MPA) must, for successful execution, be matched by appropriate legislative and political provisions and circumstances is illustrated with reference to whale Sanctuaries created under the International Convention for the Regulation of Whaling 1946 (ICRW). In addition the relation of those circumstances with other activities, not necessarily concerned specifically with cetaceans, is examined in historical terms. The links between the declarations of the two major sanctuaries in the Indian and Southern Oceans, and the successful negotiation of successive partial and complete moratoria on commercial whaling in 1979, 1981 and 1982, are indicated.

The idea that whales should be protected from capture in some places where they generally live, or perform specific biological functions such as feeding or breeding, predates the onset in the late 1920s of pelagic whaling using *expeditions* consisting of a factory ship with a stern slipway for hauling whale carcasses on-board, a number of associated catchers and sometimes various auxiliaries such as supply ships, scouting boats, search helicopters and the like.² For example, the authorities of western Australia in 1913 declared a sanctuary eastward from Norwegian Bay, in the belief that this was a humpback calving area; this resulted in companies building new land stations outside that coastal zone in less hospitable locations but which nevertheless had good access to whales.

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² Contrary to a common presumption, “pelagic whaling” is defined not by the use of factory-mother ships, nor by the ocean zones where it is prosecuted (for example “offshore” or on the high seas), but by the fact that the carcasses are treated (flensed and possibly further processed) on ships rather than being towed back to land-stations or harbours.

Creation of sanctuary for whales (in the Antarctic) was first proposed to the League of Nations in 1929 by a committee of international lawyers, led by Sr José Leon Suárez of Argentina. It was discussed in the series of Diplomatic Conferences through the 1930s leading up to World War II. By that date all whaling nations except Japan accepted the concept in principle but some governments doubted if they had powers to declare such areas beyond their Territorial Seas, then only 3 miles in breadth. The Conferences resolved to advise Governments to take steps to assert or acquire such powers.

Provision for Sanctuaries, within the category of "closed waters", was written into Article V.1 (c) of the International Convention for the Regulation of Whaling 1946 (ICRW), the 'mother' of the IWC. The only pertinent conditions regarding their designation are - in Article V.2 (a) and (b) – that, along with all other regulations, they "shall be such as are necessary to carry out the objectives and purposes of the ICRW" and "shall be based on scientific findings". The delegation of Japan to the IWC has repeatedly sought – always unsuccessfully - to have this last requirement restrictively interpreted as "recommended by the IWC Scientific Committee". Since, however, the Scientific Committee does not consist of independent scientists but rather of nominees by governments, and does not vote, such meaningful agreement on controversial matters is virtually never possible.

The other most pertinent agreement in 1946 was that the ICRW "applies to all waters [in which whaling is prosecuted] by ships and from land-stations" under the jurisdiction of Parties to it, i.e. by IWC Members. Thus there is no legal distinction in the Convention between the High Seas, Territorial Sea and even internal waters – that is waters inside the baselines from which the Territorial Seas are established – or, indeed any other special zones that might be declared by states, such as fishery protection areas and special areas for which Customs or anti-pollution procedures have been proscribed..

Provision for a specific sanctuary in the southeast sector of the Antarctic extending westward from the longitude of Tierra del Fuego (70-160°W, south of 40°S) – but only for baleen whales – was included in the first edition of the *Schedule* to the ICRW, a document which is an integral part of the ICRW but which can be amended by a three-fourths vote of participating Member States. This area, generally referred to as **The Sanctuary**, was, *de facto*, a prohibited region for pelagic whaling for baleen species because there are no locations on that coastline from which a land-station could operate.

Japan, which is now seeking to abolish all IWC-established sanctuaries, arguing, *inter alia*, that their legality is dubious, did not - being then an occupied country - participate in the 1946 Conference but its Government made no statement of opposition to the concept when it ratified the ICRW and so become a full member of the IWC, in 1950. However, from its first appearance Japan sought the abolition of The Sanctuary when a proposal for suspending it for a year or more was discussed in 1955. Those IWC Members who favoured temporary suspension had the support of some of the scientists who, despairing of achieving their objectives of either substantial reduction of the Blue Whale Unit catch limit or replacing this notoriously bad system for regulating Antarctic baleen whale catching by species catch limits, as well as getting protection for the threatened blue and humpback whales, thought that

opening The Sanctuary to pelagic whaling would relieve the pressure on stocks elsewhere in the Antarctic feeding grounds. The Sanctuary was eventually suspended indefinitely in 1962 and the general idea put on a back shelf; it eventually disappeared from the Schedule.

While the popular "wisdom" had been that few whales feed in the southeastern Pacific, the first expeditions going there when the Sanctuary was opened to baleen whaling obtained big catches, mainly in the west and also close to the eastern boundary. This latter was accessible from South Shetland and Graham Land (Called by Americans Palmer Peninsula, and now, internationally, The Antarctic Peninsula) where the earliest floating factories, then the factory ships had sheltered places – especially the great crater of Deception Island in South Shetland. This should not perhaps have been surprising. The Norwegians Lars Christensen had traversed the Bellinghausen Sea (which became the mid-point of The Sanctuary) in the 1930s and reported seeing very few whales. But the whalers, in their explorations, notoriously kept secrets and deliberately misreported. However that may be, Salvesen's *Southern Harvester*, when she went there in 1955, had the biggest catch rate ever. Her captain reported to the company low catches to discourage the other Salvesen expedition, *Southern Venturer* – which was operating in the Weddell Sea - from joining her, though she eventually did so and also obtained very high catch rates.

An interesting feature of Salvesen's 1955 adventure was that the baleen whales were reported not to be scared by the ships, not swimming away as they did in other sectors of the Antarctic. Such behaviour has been noted elsewhere, for example with reference to minke whales in the early days of Norwegian "small-type" whaling in the Northeast Atlantic, where one method of hunting was for the catcher boat to sit quietly and await the approach of the whales.

Another provision carried into the ICRW from pre-war agreements was the prohibition of pelagic catching of baleen whales in the southern hemisphere north of 40°S and comparable restrictions in the northern hemisphere, especially the Atlantic.. Some regarded this as a contribution to conservation by protecting whales in areas where reproduction takes place – both coition and parturition. That was a rather romantic idea because, although calves and females accompanied by calves were supposedly protected, a high proportion of the adult females being killed on the feeding grounds were pregnant. However, the main driver of this rule had really been a perceived need to protect land-station whaling operations in the temperate and tropical zones from the consequences of intense pelagic whaling in their vicinity. Other consequences of this decision appeared much later, as we shall see.

The Northeast Pacific

Before we look at more recent successful and pending attempts to designate whale sanctuaries under the ICRW it is worth turning back the page more than half a century, to the IWC's third and fourth meetings, 1951 and 1952. Having just signed a Peace Treaty with the USA Japan took its place for the first time as a Sovereign State in 1951, although not without objection from the USSR delegation, which had no such treaty. The Commissioner for Canada gave notice of his intention to propose, the following year, that the

Northeast Pacific, northward of the 20°N parallel (about the latitude of Mexico City) be declared out-of-bounds to all factory ship whaling for all baleen whales and the sperm whale. (At that time the Pacific north of 66°N was closed to factory ships with respect to baleen whaling except between 150°E and 140°W in the zone between 66°N and 72°N.)

Canada did put forward its detailed proposal at the 1952 meeting. The delegation argued that the evidence from land station whaling along the North American west coast, almost all of which has ceased because the stocks were now so depleted that it was not economical to continue to exploit them, showed that stocks in the region were basically quite small and that if factory ship operations were to begin there all would collapse completely and some would perhaps be exterminated. This led to a lively debate, with the USSR opposing the whole idea while Japan accepted it in principle but thought sperm whaling should be allowed and a more appropriate boundary chosen between east and west - which was perhaps merely a delaying tactic. It was argued, correctly, that little was known about the stocks in question and it was suggested that someone should send an expedition there to collect data. But most of the discussion turned on the position of the east-west boundary of the proposed sanctuary. Canada had proposed the International Date Line as the boundary from 20°N to 48°N. While this is mostly at 180° longitude, in the Bering sea it diverts far to the west so as to keep the Aleutian Islands on the same time as western Canada and the US, which would have put the greater part of the North Pacific into the eastern sector. Consequently Canada proposed a more complicated kinked boundary from 48°N to 66°N along several segments of Great Circles. In the Plenary discussion alternatives were suggested by several delegations, particularly because the Scientific Committee had said the Canadian proposal was more political and geographical than biological: South Africa suggested a line at 178°W or 170° or 160° or 150°W. The Soviet delegate, the Admiral of the USSR's whaling fleet, said his captains would find it difficult to navigate along Great Circles and so might not always know when they were inside the proposed sanctuary or outside it. Eventually it was decided to ask the Scientific Committee for advice on statistics of previous catches and their interpretation, to report to the next meeting.

Apart from the boundary question (which has been contentious in all subsequent discussions of sanctuaries) some matters of more general interest were raised in these discussions. With respect to Japan's and the USSR's argument to exclude the sperm whale from the proposed prohibition Canada's response was that although, admittedly, few sperm whales migrated far northward of 20°N if the sperm whale was excluded - thus providing a justification for factory ships to be operating within the proposed closed area. "There is always the old story of they were out hunting sperm whales but accidentally took some baleen whales!", said the Canadian Commissioner.

It turned out that no one at this meeting knew why most areas outside the Antarctic, apart from the North Pacific, had been closed to factory ships in the original Schedules of 1946 and 1949. But - most relevant to our present concerns - Canada justified its proposal in terms of what we would now call the Precautionary Principle, and also maintained that "the basis of its

consideration is entirely one of conservation which [we] believe is the Commission's main reason and main concern for being in existence."

It was decided to return to this subject the following year when historical catch details would be available. (The Japanese delegation also provided documentation of recent pelagic catches by Japan in the western North Pacific) At the 1953 meeting the Canadian Commissioner displayed a chart of catches and made a long statement about his proposal under the agenda item "Any other business". He offered the opinion that there was not much mixing between the whales on the western and eastern sides of the North Pacific but emphasized that "We realize, of course, that... there must be a balance between the scientific proposals put forward, insofar as conservation measures are concerned, but that balance must be maintained so that the commercial operations can operate profitably. There is little sense to us, in our concept of the word 'conservation', to merely conserve a stock of whales or fish and just leave them in the sea. Our concept is that...they must be fully exploited to the maximum, at the same time giving continuity of the supply without endangering the supply." Requesting that the Scientific Committee study the data charts before the next meeting the Canadian Commissioner "warned" the Commission that "maybe next year or in some future years Canada intends to re-submit its proposal to prohibit the use of factory ships in the North-east Pacific."

The Scientific Committee did not report back on this matter at the 1954 meeting, nor did Canada re-submit its proposal then or at any subsequent meetings.

The Soviet Union had been operating a 5000-ton factory ship, *Aleut*, in the Northwest Pacific since 1932 but she had always worked close to the Asian shores, particularly near Kamchatka. After World War II, when the USSR occupied the ex-Japanese Kurile Islands, Soviet pelagic and land station whaling continued in that region. However, in 1963 the new 17,000-ton *Dalnij Vostok* (big, but only half the size of the new group of Soviet Antarctic factory ships) began whaling in the North Pacific but apparently by tacit agreement with Japan it kept mainly in the western sector; it operated until 1976. During that period catch limits were negotiated by the four North Pacific Members of IWC and merely endorsed *post-facto* by the Commission.

I think this discussion of a Northeast Pacific "sanctuary" in 1950-54 must be evaluated in the context of the practically simultaneous discussions regarding the establishment of an International North Pacific Fisheries Commission (INPFC) in which the North American countries constrained the Government of Japan - for the price of a peace treaty with the USA - to acquiesce in what was called "the Abstention Principle" by which Japan would refrain from fishing on the High Seas of the eastern North Pacific for salmon and halibut, provided that those stocks were judged to be already "fully exploited", by which was meant maintained at Maximum Sustainable Yield levels. (The USSR was excluded from those negotiations.) Much later, of course, the extension of national jurisdictions to 200nm gave vast areas of jurisdiction to the US and Canada, well into the central North Pacific, particularly because of US sovereignty over the Aleutian Islands. In 1952 a Japanese factory began operating north and south of the Western Aleutians. But in 1954 a new factory

was permitted to operate in the Eastern Aleutians. At that time the IWC rules prohibited expeditions that had operated in the Antarctic from working also in the North Pacific in the same 12-month period to take baleen whales (there were no such restrictions for sperm whaling). As catch rates declined in both regions in the following years it was clearly uneconomic for a country to maintain two separate pelagic fleets. The prohibition was abolished in 1970. In any case, the emerging pattern of North Pacific pelagic whaling revealed that the Canadian concern that generated the abortive attempt to designate the Northeast Pacific as a sanctuary was directed at impeding Japan, not the Soviet Union.

The Indian Ocean

In 1978 the newly independent Government of the Republic of Seychelles, which was acquiring a huge Exclusive Economic Zone (EEZ) as a result of changes in the Law of the Sea, decided to accede to all relevant intergovernmental agreements concerning the ocean. That included the IWC. That year a little book was published, written by Richard Fitter and Sir Peter Scott, entitled *The Penitent Butchers*. They recounted the histories of the World Wildlife Fund and the Fauna Preservation Society (which published the book). The predecessor of the FPS - the Society for the Preservation of the Wild Fauna of the Empire (founded in 1903, when, it noted, the worst sufferers had been the North Atlantic whales and the sub-Antarctic seals) - had declared in 1929, just as pelagic whaling was getting into its stride "It is quite a human trait to 'kill the goose that lays the golden eggs' and doubtless only when the last whale has disappeared will tardy legislation at length emerge". In 1937 the Society had said, in relation to what was happening in the southern hemisphere, that "All previous whaling industries have declined and died through overfishing". In their 1978 chapter entitled *The Rake's Progress of the Whalers* Fitter and Scott wrote: "No crystal ball is needed to forecast that the Antarctic whale fishery which, even ten years ago, could have been saved as a valuable resource for mankind, will become economically unviable within the next five years."

So it is not surprising that the idea was in the air that in joining the IWC this new state, comprised of more than one hundred islands, most of them small, should do more than just cast its vote for or against the initiatives of others. It had before it the example of Malta that had 'made waves' by launching in the UN General Assembly a vast debate about the reform of the Law of the Sea. Seychelles was not quite so ambitious. The momentum that began in 1972, with the UN call for a ten-year general moratorium to allow an interim respite from virtually uncontrolled commercial whaling and give time for emplacement of better management, had diminished with the 1974 agreement on the Australian proposal for an "amended moratorium" that came to be called the *New Management Procedure* (NMP) defined by paragraph 10(a - c) of the ICRW Schedule. Application of the new rules (which had been opposed only by Japan) in the second half of the 1970s had led to the closure of most baleen whaling in the southern hemisphere, except that for the small minke whale - large scale catching of which was begun at the opening of the decade by Japan and the USSR - and for the Bryde's whale, a relative of the sei whale which had been depleted in the 1960s as a consequence of the ongoing depletion of blue, fin and humpback whales. Since the assessments of whale stocks at the time depended on long data series from commercial catches the

minke catch limits were practically arbitrary (fitting the immediate commercial "needs" of the remaining factory ships), while the southern hemisphere Bryde's whales were largely protected by the prohibition of pelagic whaling in the zone north of 40°S. However, in the late 1970s Japan had conducted successful large-scale "scientific-commercial" whaling under Special Permits allowed by Article VIII of the ICRW, south of Madagascar and on the fringe of the Indian Ocean near Indonesia, as well as near the Solomon Islands in the South Pacific. The Japanese authorities were known to be considering two ways of opening up this resource for further exploitation. One was to seek the abolition of the pelagic ban in the tropical and temperate waters, but that would have been politically difficult. The other was to open client land-stations in developing countries, not Members of the IWC, in the Indian and Pacific Oceans near the discovered Bryde's whale concentrations – beginning with Madagascar and also Indonesia which had some traditional whaling on a small scale. (The Bryde's whales in the Atlantic had already been rapidly depleted by so-called "pirate whalers" operating under flags of convenience to provide frozen baleen whale meat to the Japanese market.) The seasonal timing would be such that the factory ships operating in the Antarctic could even pick up the frozen meat on their return journeys to Japan, thus saving transport costs and import-export inconveniences.

People in Seychelles knew in 1979 that "pirate" operators were preparing two new vessels to enter the Indian Ocean, although the Governments of South Africa and others were now interested in preventing that. The pirate operations, originally in the Atlantic, were under threat by the actions of IWC Members to impose various types of sanctions against whaling under the flags of non-Member countries. Some Members were, at the same time, concerned that if these "pirate" operations were legitimized by the countries whose flags they flew joining the IWC this would swing the balance of power back towards the Commission again becoming what it had often been called: "a Whalers' Club".

The ban on pelagic whaling in temperate and tropical waters did not apply to sperm whales. With the decline of baleen catches in the Antarctic the Soviet expeditions had steadily increased their catches of sperm whales - which yielded an industrial oil of strategic importance; the US was building its strategic oil stocks mainly from land station operations in friendly countries. Two of the Soviet expeditions were catching sperm whales in essentially unlimited numbers on their ways to and from the Antarctic via Suez, and people in Seychelles were aware that this species was far less abundant near the islands than it had been a few decades earlier. (It was not known at the time how large were the numbers of baleen whales the Soviet expeditions were also illegally killing in these waters, illegally.) In these circumstances the inclination was to join with those nations that still favoured a general moratorium, but it was thought that it would not have been possible then to secure the necessary three-fourths majority vote. Accordingly the Government embraced a strategy including declaration of the Indian Ocean as a sanctuary, from the northern coastline to the Antarctic ice.

Early in 1979 a Workshop on Protected Areas for Cetaceans, convened by IUCN in Mexico, with support from UNEP and WWF, had suggested that the eastern Indian Ocean be designated as a protected area. This was made

feasible, it was thought, because of the recent decision by the Government of Australia for the country to get out of the whaling business and to work for a world-wide ban on whaling.

The Seychelles' idea was that designation of the entire Indian Ocean would at least protect one or perhaps more of the southern hemisphere populations of all baleen species and the sperm whale. (It was realized that the sperm whale - for which the NMP was even less adequate than it was for baleen whales - needed global protection, so a second strategic aim was to secure a long-term moratorium on all catching of this species. That aim was not realized until 1981). Marking experiments had shown that some minke whales that had fed in the southern Indian Ocean might appear on the breeding grounds in other oceans where, for example, Brazilian land-station operations were catching them. Also it was of course known that whales moved across longitudinal boundaries during the same summer feeding season. Individual recognition of humpback whales by skin patterns, in the northern hemisphere, had revealed that a whale did not always return to the same breeding area in successive seasons, and it seemed reasonable to assume that this would also be so for other baleen whale species in the southern hemisphere. Nevertheless the IWC was necessarily dealing with fixed geographical definitions for the purpose of managing whaling and assessing putative whale populations, and it was generally assumed that the various exchanges and movements that had been noted were exceptions rather than the rule.

It was far from clear that a three-fourths majority was obtainable at the time for this limited objective. However, it seemed to be close enough that the balance could be shifted if Indian Ocean coastal states – few of which were yet Members of IWC – expressed their support for such an action. They had no special authority or claims regarding the High Seas, under the emerging new Law of the Sea, but coastal states' special interest in areas adjacent to their expanding areas of national jurisdiction was becoming widely accepted. So the Seychelles Government discreetly consulted, at high level, governments of all the Indian Ocean coastal states and found most were favorable to the sanctuary proposal and none opposed it. Several said they would work to bring their countries into the IWC, but that could not practically be done before the 1979 meeting of the Commission. An additional move was the declaration by Seychelles of its own EEZ as a protected zone for all marine mammals and a hope that as many other Indian Ocean coastal states as possible would do likewise

The consultations led to a suggestion that an Indian Ocean Alliance for Conservation be established, of which the proposals regarding whaling would be a part. In the background to this was the move being led in the United Nations by Sri Lanka to declare the Indian Ocean as a Sea of Peace, from which, *inter alia*, the navies of the Superpowers would be invited to withdraw. Although this naturally had support from most of the Non-Aligned countries it was a practical impossibility. The United States and UK (sovereign of the Chagos Archipelago, including the island of Diego Garcia) saw the Alliance for Conservation as the thin end of a Sea of Peace wedge and strongly opposed it; that initiative was pursued for a while but eventually abandoned (See below).

When the Seychelles' sanctuary proposal was discussed at the 1979 meeting of the IWC it became clear that a three-fourths majority would not be forthcoming without some compromise. The compromise that won the day was a Seychelles amendment to its own proposal to limit the sanctuary to waters north of 55°S, which meant that Soviet and Japanese pelagic whaling for minke whales could continue, at least for the time-being. The sanctuary would be set up for a limited time, but subsequently it was made unlimited, by consensus. The idea lingered that it would be possible in a few years to amend the southern boundary of the sanctuary to realize the original proposal; this did not happen until fifteen years later.

In the following years several more Indian Ocean countries did join the IWC – Egypt, India, Oman, Kenya, Mauritius. Sri Lanka, which had been enthusiastic about joining, did not do so, nor did Tanzania; it was thought that these failures resulted from diplomatic pressure by Japan. For the same reason Mauritius never attended meetings nor paid its dues to the IWC. But this influx of Non-Aligned “Developing countries” began to prepare the IWC to adopt a general “moratorium” of unlimited duration, which it did in 1982 (the sperm whale being already protected, since 1981), again on the basis of a specific proposal by Seychelles to set all catch limits to zero regardless of their supposed “conservation status” and existing classifications under the NMP. (By then most of the stocks on which commercial whaling was still permitted were “unclassified”.) The wording of the Seychelles proposal, which specifically excluded the word “moratorium”, eschewed the insistence by Japan that “moratoria” infringed the ICRW. Meanwhile, with mainly NGO financing, a research plan for the sanctuary had been put together at a workshop held in the town of Zeist, in The Netherlands, and expanded research on cetaceans was being promoted in several countries in the region, especially in India and Sri Lanka but also in Oman and Seychelles. However, the financial means to assist this were not forthcoming either from the IWC or, as had been hoped, from UNEP, and supporters of the Seychelles initiative were subject to criticism by some opponents and skeptics who alleged that promises had not been fulfilled. It had also been envisaged that measures to protect cetaceans and other vulnerable marine species in the region, for which the IWC did not have a consensus for legal competence, would be taken by other international institutions, as implied by the original Alliance for Conservation idea, but this happened only to a very limited degree. To this day there is no comprehensive management plan for the protected marine life of the region as a whole.

Intermezzo

At the same IWC meeting – 1979 - at which the IOWS was declared, the Commission adopted a proposal for an indefinite moratorium on “pelagic whaling”. This was, in fact, a successful amendment to an unviable proposal for a general moratorium. The original text would apply both to factory ship whaling and operations by modified catchers, as used in Norwegian operations in the North Atlantic and by some Japanese operators in the Northwest Pacific based in Hokkaido, for minke whales. Arising from discussion of that proposal there emerged a clearer definition of “pelagic whaling”, that is whaling in which the carcasses of whales are processed at sea (It is defined neither by the hunting technique nor by its location.) Thus pelagic whaling is distinct from land-station whaling but can take place both

on the High Seas (as in the Antarctic) and in zones under various national jurisdictions, such as Exclusive Economic Zones and even in Territorial Seas – sometimes referred to, inaccurately and misleadingly, as “coastal whaling”. In this case, as with the proposal for the IOWS with respect to its southern boundary, sufficient votes could come only by agreeing to an exemption for minke whale catches.

The voting on the pelagic moratorium proposal revealed to the Seychelles delegation and others that the Commission might be closer to being able to declare a general moratorium than had been thought. It was decided to pursue the Indian Ocean Alliance for Conservation idea notwithstanding some political opposition, especially from the USA and the UK. The President convened a three-day conference, in April 1980 to discuss the matter further. It was attended by representatives of fifteen countries.³ The task of the conference included the following:

“The whaling issue could be used to forge an alliance with the other Indian Ocean coastal states and that these states could build a regional conservation policy that could set an example of common sense to the rest of the world.”

This conference concluded unanimously that an effort should be made to re-introduce the originally proposed southern boundary of the IOWS at the Antarctic ice-edge. The 55°S boundary had offered protection, *inter alia*, to female sperm whales, which do not migrate further south, but left the adult males unprotected except by some zero catch limits and now the pelagic moratorium. But the future food supplies for baleen whales, mainly euphausiids, were also of concern because commercial fishing for krill was beginning, apparently on an increasing scale. The Antarctic Treaty Powers were negotiating a fisheries management convention for the Antarctic to apply at and southward of the Antarctic Convergence, with a provisional concept of a northern boundary at 55°S. Delegates to the Seychelles conference thought it might then be possible to protect the krill in the Indian Ocean sector, and also that the new convention – the future CCAMLR - might enable action with respect to whales. (In fact for all cetaceans, not merely those for which the IWC had accepted responsibility for conservation and management.)

A further consideration was that although pelagic whaling had long been banned north of 40°S, pelagic minke whale catching, which had been excluded from the 1979 pelagic moratorium, was conducted by Japanese and Soviet vessels in the Southern Hemisphere only south of 55°S.

Other ideas for coordinated conservation actions included the designation of areas of critical habitat in the region, including coral reefs, and arrangements for the protection of dugongs and marine turtles

In the months after the April 1980 conference renewed attention was given to possible enactment of a general global moratorium. The reasons for optimism

³ Bangladesh, Comoros, Djibouti, India, Iran, Iraq, Mauritius, Oman, Pakistan, Kenya, Maldives, Seychelles, Sri Lanka, Tanzania, Yemen. Australia was represented by its Commissioner to the IWC as an Observer – as was the UNEP. South Africa was invited but did not attend because at the time the Apartheid regime there was strongly opposed by nearly all the other states in the region.

were the changing Membership of the IWC, a global change in attitudes of the public towards whales, accompanied by the growth of the whale-watching industry, and the evident inadequacy of the New Management Procedure that had been tried since 1976. The first step was to obtain a general moratorium on sperm whaling, for which worldwide support was gathering, especially as the oil and other products from it were mostly industrial commodities for which there now existed substitutes, and the meat had insignificant value for human nutrition. This was achieved in 1981. That success boosted renewed public interest in a general moratorium, which the Seychelles delegation pursued successfully at the 1982 IWC meeting.⁴ An important feature of that success was the nature of a compromise that would add a sufficient number of votes in favour in order to meet the three-fourths majority rule. In 1979 it had been a boundary change for the Indian Ocean sanctuary and a minke exclusion for the pelagic moratorium. In 1981 it had been a sperm-whaling phase out agreement for certain Japanese land-station operations. In 1982 it was a three-year delay before the moratorium would come into force. There was much debate about the length of the delay, which had been two years in the original Seychelles proposal, to allow for social and economic adjustments in nations that would pause or cease their whaling operations. It emerged just before the 1982 meeting, however, that some countries with land-stations still operating had forward contracts for the provision of whale meat to Japan that could not be broken. One of them – Spain – said it would vote in favour of the Seychelles proposal if the delay period were to be lengthened to three years. That shift, together with a few significant abstentions in the vote, was decisive.

It was thought at the time that these decisions would at last set seal to the objective of fully protecting the Indian Ocean sector. While the USSR did cease its pelagic whaling the surprise was that Japan would decide to continue its pelagic whaling by issuing large numbers of Special Permits under Article VIII of the ICRW for its whalers to continue catching minke whales, and thereby launch the era of large-scale “scientific whaling”. Perhaps it should not have been a surprise – see below.

The three “moratoria” decisions - 1979, 1981 and 1982 - provide a link with the campaign a decade later to designate the entire Southern Ocean as a sanctuary for whales. From 1983 the Government of Seychelles was subject to steadily increasing pressure from the Government of Japan either to vote with Japan in the IWC or to withdraw from the Commission. The pressure took the form of criticism of individual members of the Seychelles delegation, from the Commissioner down, to direct financial inducements and promises of aid in the development of fisheries in the Seychelles EEZ as a source of foreign exchange and a complement to the other important industry - tourism.⁵ Each year a Japanese delegation visited Mahé a few weeks before the IWC meeting, for “talks”. The Government eventually succumbed to this pressure. It gave notice of its withdrawal just before the 1994 meeting, in Mexico, which

⁴ More detail given in “An Annotated Guide to the IWC Schedule”, by Leslie Busby and Sidney Holt, published by IFAW and the Third Millennium Foundation, 2008.

⁵ Some of this is documented in “Japan’s ‘Vote Consolidation Operation’ at the International Whaling Commission” published by The Third Millennium Foundation, Paciano, Umbria, Italy, in May 2007.

became effective 30 June 1995. It did not send a delegation to the 1994 meeting at which the proposal for the Southern Ocean sanctuary was adopted.

A parallel series of initiatives by the Government of Seychelles was launched in this intermezzo period through the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), to ensure the cessation of trade in products from all whale species and populations protected by the moratoria and sanctuary decisions (as well as by the NMP), by listing all of those not already so listed on CITES Appendix I. The details of how that campaign was planned and conducted through the Conferences of CITES Parties, in India and Botswana must be the subject of another article.

The Southern Ocean

After the zero-catch-limits decision (“moratorium”) was adopted the IWC devoted much effort, through the Development Group of its Scientific Committee, to the invention of a better method of setting precautionary catch limits, free from the constraints of assessment data from whaling operations, and from the use of particular models of population dynamics, and with a stronger zero-default. By 1990 a Revised Management Procedure (RMP) –limited to setting catch limits for baleen whales on their feeding grounds - had been tested by computer simulations and adopted in principle by the Commission itself, but not implemented because it was to be part of a Revised Management Scheme (RMS) that would include provisions for enforcement and for ensuring compliance of states with regulations and other theoretically binding decisions. But it was clear from the beginning that there would be many, perhaps insuperable, difficulties in getting agreement on the other elements of a RMS. Meanwhile the Scientific Committee had decided, on the basis of six years of sightings surveys in the southernmost zone of the Southern Ocean (carried out in the first International Decade of Cetacean research – IDCR – launched as part of the IWC's 1973 response to the UN resolution of 1972) that there were far more minke whales there – somewhere between a half a million and a million - than had previously been thought. To some IWC Members, and most NGOs, there was an evident danger that the RMP might be applied without fully effective compliance provisions, to give catch limits in the Antarctic totaling several thousand minke whales. A way of preventing such a move, so dangerous for conservation, was seen most clearly by the Government of France. It was to declare some or all of the Southern Ocean as a sanctuary, that would stay in place at least until such uncertainties would be resolved.

Another factor was some skepticism about the confidence of the scientists that they had devised a fail-safe regulatory procedure. After all, much the same kind of confidence had been expressed in 1974-75 regarding the NMP. And the RMP was so radically different in concept from the NMP and practically all of the fishery regulatory procedures of the time that very few understood it – not even some members of the Scientific Committee who had not participated in the Development Group. As it later turned out the skeptics were essentially right, not with respect to the algorithm of the RMP, which is robust, but rather to the prospective data input to it. We come to that later.

Yet another factor in the growth of support for the idea of a comprehensive Southern Ocean sanctuary was that following the withdrawal of Japan's

"objection" to the IWC's 1982 decision its authorities had decided to conduct what was in fact subsidised commercial whaling, on a substantial scale, through the device of issuing large numbers of Special Permits for taking minke whales in the Antarctic for scientific purposes. The three years of "sampling" Bryde's whales in tropical waters in the 1970s, using the pelagic expeditions on their ways to and from the Antarctic, had in a sense paved the way for this; it had attracted little serious criticism from other countries, and had been profitable through the sale of several thousand tons of frozen whale meat. There was now, in the 1990s, hope in some quarters that Japan would, as a goodwill gesture, cease such operations – even though they were legal in terms of the ICRW. Such hope was, however, forlorn; Japan had, since it joined the IWC, contested the sanctuary approach quite as vigorously as it had always opposed zero catch limits anywhere, and was not about to change its tune.

As with the Indian Ocean discussions of a decade earlier there were other considerations in the background. One was that it had become known, with the collapse of the USSR, that pelagic expeditions registered in Russia and the Ukraine had for years been catching large numbers of pygmy blue, fin, humpback, right and sei whales illegally in all oceans, but especially in the southern hemisphere. This had been going on despite the presence of Soviet national inspectors on the factory ships, but also, it appeared, in later years, even in the presence of "International IWC Observers" of Japanese nationality who, among other things, were overseeing the transfer of frozen whale meat at sea to refrigerated transports that would convey it Japan.

Another consideration was the interest in the great on-going debate about whether exploration for, and exploitation of, minerals should be permitted within the Antarctic Treaty Area – which includes both the continent and the sea and ice area northward to 60°S. The outcome was a decision by the Treaty Powers to prohibit both activities for 50 years, a decision in which certain NGOs – particularly Greenpeace and WWF - and a coalition including several others (Antarctic and Southern Ocean Coalition -ASOC) played a prominent part. This decision - to treat Antarctica as a special region of the world with respect to international environmental law - would rub off on the whaling issue.

By the early 1990s the internal political situation of the IWC had much changed from that of 1979. The IWC had many more Members, although a few of the newcomers were now supporting Japan in its broad attack on conservation measures in general and sanctuaries in particular. Seychelles was considering leaving the IWC as a result of the intense diplomatic and financial pressure from Japan. But several countries – such as Spain, Brazil, Chile, and Peru - had ceased whaling after the general "moratorium" came into force in 1986 and had adopted strong conservation policies.

The gestation of the French proposal for a Southern Ocean sanctuary lasted three years, and included a conference on Norfolk Island in the South Pacific to clarify legalistic issues that had been raised. A remarkable feature of that conference was that the Commissioner for Japan tried – unsuccessfully – to unseat the accredited observer for one of the Inter-Governmental Organisations that had been invited – IUCN. The Norfolk Island conference

decided there were no formal impediments to the adoption of the French proposal by the IWC. Thus the proposal was put to the IWC for a vote at its 1994 meeting in Mexico.

The only real point of controversy there was the location of the sanctuary's northern boundary. The French proposal was that it should be circum-global at 40°S. This coincided roughly with the most commonly accepted oceanographic-geographic definition of the Southern Ocean, and would bring the feeding grounds of the largely copepod-eating sei whales within the sanctuary as well as the feeding grounds of the other baleen whales that consume mainly euphausiids ("krill") further to the south. But this could lead to political difficulties. In particular it would bring the disputed Falklands/Malvinas Islands and their surrounding seas within the sanctuary and perhaps make it difficult for Argentina and possibly also the UK to accept. The 40°S boundary might also have caused problems for Chile with regard to its claims to Antarctic waters in its far south, despite the fact that the ICRW does, in law, apply to "all waters", both High Seas and those under undisputed national jurisdictions. Nevertheless the original French proposal was supported by many Members, and particularly strongly by Ireland, Italy and Monaco.

The then Vice-President of the USA, Al Gore, had thrown his considerable weight behind the sanctuary proposal but to avoid the feared political problems the US Administration put forward an alternative which would make the sanctuary boundary contiguous with the already accepted boundary (under the auspices of the Antarctic Treaty) of the Convention for the Conservation of Antarctic Marine Living Resources (CCAMLR), which had come into force in the same year as the IWC's adoption of the pause in commercial whaling. This boundary passes (going westward) from south of the Falklands/Malvinas, south of Cape Horn, continues for some way at 55°S but then moves first to 60°S, then to 50°S for most of the circuit. This convoluted boundary was designed to approximate to the major oceanographic feature called the *Antarctic convergence*, which be-straddles the distribution of krill that delimits the main feeding area of all the baleen whales except sei and Bryde's.

The US proposal, while meeting the perceived political requirements, thus did not fulfill the biological requirements of the sanctuary at least to protect all the feeding grounds, and the Southern Ocean as a whole, not merely its Antarctic zone. France and several of the other supporters of the proposal strongly opposed the US compromise, yet it was clear that the original proposal would not attract the requisite majority vote. A solution was found in a paper I had submitted to the Scientific Committee that year based primarily on an analysis of historic catches in the Southern Ocean (and especially their absence from the far-eastern South Pacific sector close to the coast of Chile). This suggestion safely by-passed the politically sensitive sectors but for most of its way was at 40°S apart from where it was contiguous with the existing Indian Ocean sanctuary at 55°S, thus fulfilling the original intent of the Seychelles proposal of 1979. This intermediate proposal, put forward formally by Chile and the USA with a number of other co-sponsors, was adopted without dissent except for a contrary vote by Japan.

Abstentions, and absences from the conference room while a vote is taken do not count in the calculation of majorities (The Norwegian delegation has invented a new kind of behavioural tactic to fit certain circumstances: "Present but not participating in the vote". Exactly how this differs from a simple abstention has never been satisfactorily explained) It was therefore tactically essential to find ways for representatives of countries that often opportunistically voted with Japan, against proposals it regarded as unacceptable, not to cast "no" votes. Three delegations from Caribbean island states in that category, to their credit, abstained on the SOWS vote, and a fourth returned home early – the news that he had been seen changing his outbound flight spread around the conference room like wildfire! There is no doubt that the four Caribbean "defections" as well as that by RoKorea were in part the results of personal interventions by Gore, although lobbying by some NGOs surely contributed to them.

The circumstances of the vote by the Russian Federation in favour of the SOWS are of interest. This happened because before the Mexico meeting responsibility for IWC affairs had been shifted from the Ministry of Fisheries to the Ministry of Environment. After the meeting, before the 90-day objection deadline had been reached, ministerial responsibility changed again, back to Fisheries, and Russia lodged an objection to the decision for which it had voted in favour! After that the Government was persuaded to withdraw its objection. This was probably the result of intervention by President Yeltsin's environment advisor, Dr Alexei Yablokov, an eminent biologist known for his research on cetaceans, and one of the courageous men behind the revelations of Soviet falsification of catch data. Those who assisted in that enterprise included Ms Olga Lysenko of Greenpeace Russia, and David McTaggart.

In the run-up to the 1994 meeting France had proposed that the sanctuary would have an indefinite duration but that the decision would be reviewed ten years after its adoption, and every ten years thereafter as necessary, and could be modified at those times (the implication being that it could not be modified at other times, although such a prohibition might not, if challenged, survive a subsequent debate in the Commission). The following year a group of NGOs (IFAW; WWF; Greenpeace) sponsored a workshop, held in Galway, Ireland, on the eve of the 1995 meeting of the IWC in Dublin, to draw up a comprehensive research plan for the SOWS, following the precedent of the Zeist workshop regarding the Indian Ocean. The required review of the 1994 decision did take place at the 2004 meeting of the IWC and no amendments were made, although some countries suggested that it had not served much purpose, because not only had Japan continued its "scientific whaling", but it had steadily increased the scale and scope of it, and begun to include in the catches species other than the minke whale – particularly, at the time, the fin and sperm whales, but subsequently also sei whales and proposals to "sample" humpbacks.

Lessons learned

First, the matter of **continuity**. The Indian Ocean sanctuary was at first designated only for ten years, with provision for review after five years "unless the Commission decides otherwise". The review of the 1979 decision led to removal - by a consensus brilliantly orchestrated by the Commissioner for Seychelles, Mr. Robert Delpech - of the time limitation, the Schedule then

only requiring that the sanctuary provision be reviewed again in 2002. At the 2002 meeting, the Commission agreed “to continue the prohibition” [i.e. the designation of the sanctuary] but did not set a time when it should be reviewed again.

The discussion regarding the 1982 decision had shown that it was politically feasible to get broad, if not always universal, agreement for formulae by which decisions stayed in place until they were changed by a subsequent contrary vote. In that case the Commission was required to keep the decision under review but specifically, by 1990 at the latest, to consider modifying it and possibly setting some catch limits at other than zero. From its inception the SOWS was considered to be permanent (though subject to periodic review) unless the Commission decided otherwise – which would of course require a reverse three-fourths majority vote.

In the review period for the SOWS some voices suggested that its value was reduced by the fact that there had not been a significant increase in research on whales in the Region; the same criticism had been directed earlier to the IOWS. But others listed research projects that might not have been undertaken if the sanctuary had not been declared, and especially if large-scale commercial whaling had been resumed there. This view coincided with advances in non-lethal research methods, in the fact that management would no longer rely on information from catches, and the growth in global interest in whale-watching and other pursuits not calling for the killing of whales. A contribution to the review was made by a group of "independent" scientists contracted by the IWC Secretariat as consultants. The critical points they made, however, revealed their failure to look carefully at the declared purposes of the sanctuary, the limits to the effective legal competence of the IWC and the prevailing political and institutional circumstances.

One complaint – shared by many others – was that the sanctuary did not offer protection to other cetaceans than the baleen and sperm whales and orca, including quite large "whales" such as the pilot whales, the Southern bottlenose and other beaked whales. This, however, derives from the fact that the ICRW unfortunately does not define a "whale". What animals are to be included in this category for regulatory / management purposes has remained controversial and unresolved for nearly four decades. It is evident that, potentially, the IWC could do more than the present concentration on scientific matters and recommendations emerging from them for the conservation of all cetaceans except perhaps the species inhabiting freshwaters – and even that is not specifically excluded by the ICRW. But, in the absence of statutory definitions, this requires the consent of all active Members of the Commission, which has not been forthcoming. Such discussion as there has been (actually not much of a "discussion", more like repeated statements of "positions") has been utterly confused by two factors: a myth that "small cetaceans – not precisely defined (the minke was a "small cetacean" until Japan and the USSR began their large-scale exploitation of it in the Antarctic) – are primarily inhabitants of “coastal waters”, whatever they might be. Thus the spectre of controversy over the application of maritime law to various ocean zones has been used to prevent any progress in resolving the competency issue. But this matter is made worse by the fact that much so-called subsistence and or commercial whaling, especially in

Greenland (beluga, narwhal), Canada (beluga) and Faeroes Islands, Japan and elsewhere (pilot whales) are based on some "small cetaceans" which are, nevertheless, undoubtedly "whales". The delegation of Denmark launched the long nonsensical arguments about this by claiming that the only "whales" (as far as the IWC is concerned) were those species listed in a sort of multilingual dictionary that was annexed to the Final Act of the 1946 Conference as an advisory of usage. So we have the North Atlantic bottlenose whale listed because Norway was present, but not the bigger bottlenose whale of the North Pacific – called Baird's beaked whale – because Japan, being an occupied country, was absent. In some ways more worrying is that other large bottlenose whale species, and other beaked whales, as yet unexploited, live in huge numbers in the SOWS – at least according to some Japanese scientists – and they are not, at present, subject to any IWC conservation measures, even though they are specified in the IWC's formal definition of species that may be taken in "small-type whaling". At the other end of the spectrum are several real "small" cetaceans that are at risk of extinction but about which the IWC still does little or nothing except adopt pious Recommendations.

A second set of problems arises from the fact that, increasingly, other human activities are adversely affecting whales/cetaceans. These include polluting and contaminating activities, including scientific, exploratory and military use of high intensity sound (harmful introduction of energy including heat and sound is included in the UN definition of marine pollution); fishing, with respect to entanglements with traps and other passive gears and lost ghost nets, etc., as well as reductions in the whales' food supplies; collisions with vessels; changes in coastal habitats, especially in near-shore waters; possibly climate change, whether natural or human-caused or both; and - some allege - improperly controlled whale-watching. To those perhaps we should add some other elements of invasive scientific research. The IWC itself is empowered under the ICRW (Article VI) to address recommendations "on any matters relating to whales or whaling" (Article VI of the ICRW) to any or all contracting governments, and may instruct its Secretary to communicate with other entities such as other international organizations and the governments of specified non-Member countries. It has, unfortunately, rarely used these powers to invite others to take appropriate action with respect to the consequences for whales of human activities other than whaling. At a time when there is much talk about "the ecosystem approach" to ocean management this is truly regrettable. It is unreasonable to criticize the IWC for not taking substantive action on such matters, for which it has no legal competence and limited technical and scientific competence, but it could and should do much more by way of stimulation, guidance and vigorous encouragement of others.

Then there is the matter of regional management. After 1979 the delegation of Seychelles, and some others, tried to persuade the Commission to establish a special structure for pursuing research and management in the protected region. One proposal was for a regional sub-committee or panel for these purposes. Such ideas were rejected by the majority of Members, mainly for fear of fragmenting the Commission's work. Similar suggestions were made regarding the SOWS but not taken up. In this case there would perhaps have been greater benefit from the formation of an inter-agency body or instrument

for such a purpose; I had in mind the sorts of high-level advisory and coordinating bodies set up within the UN system, some of them with broad terms of reference (such as the ACC – Inter-agency Administrative Coordinating Committee), others such as the Advisory Committee on Marine Resources Research (ACMRR) which for many years served FAO, UNESCO and its IOC, IMO, IAEA, WHO and the UN itself, with UNEP, and which, among other things, oversaw the FAO/UNEP project *Mammals in the Seas* that led to the first global conference on this subject, held in Bergen, Norway, in 1976.

Other initiatives in the IWC

Since 1994 a number of other proposals for Sanctuaries under ICRW Article V.1 have been put forward by Members: by Brazil and Argentina for the South Atlantic (later joined by South Africa) and by New Zealand and Australia for the Southwest Pacific. In my opinion these proposals did not at first express the clarity of purpose seen in the previous actions, but there were, and still are, strong arguments for them, not least because they are desired by the most active coastal nations in each region, particularly on both sides of the South Atlantic. Both proposals have repeatedly attracted simple majority votes in their favour, although representation in IWC membership of the African Atlantic coastal states and of the numerous Pacific island states is still rather limited. The present situation is that the South Atlantic coastal states have suspended their annual demand for a vote on their proposal at the time when the IWC is seeking ways out of the current political deadlock. At the same time the proponents of a South Pacific or, really, a Southwest Pacific sanctuary have begun to concentrate their attention on the declaration of the largely contiguous EEZs of most of the island states as sanctuaries, either by the national governments or perhaps by the regional inter-governmental management body, the Pacific Islands Forum and its Fisheries Agency, the competence of which – including Associate States as well as Members - extends eastwards to Pitcairn Island. It appears that this would set the eastern boundary of a South Pacific Sanctuary rather far out into the Pacific Ocean, but with the recent declaration by the Government of Chile of extensive waters adjacent to its long coastline as a national whale sanctuary the gap has been substantively narrowed if not closed.

An additional action outside the IWC, which is under consideration in the South Pacific and elsewhere, is the creation of regional international instruments and Memoranda of Understanding (MoUs) for the protection of cetaceans, including designation of protected areas, under the Convention on Migratory Species (CMS) which already over-see such instruments for the Mediterranean and Black Seas (ACCOBAMS) and for the North and Baltic Seas (ASCOBANS), and has negotiated a MoU for the Pacific Islands Region.

The combined result of the two as yet incomplete regional actions within the IWC has led some observers of the situation (not yet governments, however, at least not explicitly), to suggest that the entire southern hemisphere should be declared as "whaling-free", a suggestion that was endorsed by a meeting of experts on whales and whaling convened in Cambridge, UK in February, 2006 by Pew Charitable Trusts.

Some years ago the Commissioner of Ireland to the IWC proposed that all High Seas (which include the Antarctic zone of the Southern Ocean and most of the Mediterranean) should be designated as a Sanctuary, as one element in a package proposed to break the political deadlock in the organization. This was never put to the vote and was supported at the time, cautiously, by few other delegations. However, the idea seems to have re-surfaced as one of the actions that could be looked at again in the context of renewed efforts to reach some accommodation between the three still-whaling nations – Japan, Norway and Iceland - and the non- and ex-whaling nations. Finally, the suggestion made some years ago, by some NGOs, especially Greenpeace, that the entire World Ocean should be declared a sanctuary was a sort of *reductio ad absurdum* but nevertheless gave expression to gathering world opinion that commercial whaling had seen its day, being unnecessary for human subsistence and welfare, inhumane, and – worst of all – now barely profitable. What could perhaps be said for this idea was that the 1982 decision setting all catch limits to zero until such time and circumstances as would justify change was, although for an indefinite pause, changeable by a reverse vote. A global sanctuary declaration could also not be formally irreversible but it would perhaps express the long-term intention.

Another regional sanctuary proposal made by governments – in this case by nearly all the coastal states of the Mediterranean and Black Seas – was that the IWC should designate that region as a sanctuary. This proposal emerged from a workshop of cetacean experts convened in Italy by UNEP's Regional Seas Programme and endorsed formally by a Conference of Parties to the Barcelona Convention under UNEP. Implementation of this idea would have needed one or more of the coastal states Members of the IWC (these were at the time France, Monaco, Spain and Egypt, and are now France, Monaco, Spain, Italy, Greece, Israel and Morocco, Egypt having withdrawn from the Commission) to put a formal proposal to the Commission. When the idea first emerged the Government of France was about to present its SOWS proposal and it was thought that the Commission would not be able to deal with two such proposals simultaneously, so the Mediterranean idea was set aside. Subsequently Italy, France and Monaco have taken multilateral action to declare the Ligurian Sea (Gulf of Lyon) as a sanctuary called *Pelagos*; that is the subject of another contribution to this conference, by Dr Giuseppe Notarbartolo di Sciara.

The zero-catch-limit decisions of 1981 and 1982 had two distinct purposes. One of these was to provide an opportunity for scientists and managers to devise a safe, enforceable management system. That was only partially achieved, and not implemented. The Commission has in fact recently paused if not ceased its effort to agree on a RMS. But even the RMP is in trouble. Its application depends on reasonably reliable population estimates (by sightings or possibly by acoustic methods) as well as quantitative estimates of the reliability (variances) of those estimates. When it was devised there was agreement among scientists on the approximate number of minke whales (with wide confidence limits) feeding in the Antarctic, based on the first IDCR series of sightings surveys. But the two subsequent sets of surveys have given substantially different results and, despite several years of arguing and calculating, the Scientific Committee now has no agreed figures for the numbers of minke whales that feed in the SOWS. So the problem regarding

any legitimization of resumed commercial whaling is evidently not only in the matter of ensuring compliance under a strong RMS. Furthermore, because the Commission only “accepted” the scientists’ formulation of the RMS/Catch Limit Algorithm, instead of incorporating it in the ICRW Schedule, a renewed debate has opened – led by Norway – for a relaxation of the agreed CLA in order to increase any future IWC catch limits (and to justify substantial increases in catch limits declared unilaterally by objecting states) at the expense of increased risk of unintended stock depletions.

The other purpose of the 1982 decision was to allow recoveries of species and populations not merely out of the condition of being “endangered” but to high, biologically productive levels. Although some species and populations, such as the blue, humpback and some right whales are, we know, now increasing in numbers, at least in some regions, they are – with the exception of the Northeast Pacific grey whale - very far from the desired highly productive levels. Furthermore, most populations have already been subject to zero-catch-limits (apart from the vast illegal whaling by the USSR in the southern hemisphere and possibly also in the North Pacific) for longer than twenty-two years, but to what degree they have increased in that time is barely known, except for good news about some of the humpbacks. Also, although numbers are presumably increasing, the age- and body-size-structure of these populations must still be very far from that which existed at the time and soon after intensive industrial whaling began; it is commonly forgotten that the productivity of a biological population depends as much on its age, size and sex compositions as on its numbers or biomass. To fulfill this second purpose a very long term of protection must be necessary for these long-lived and slowly maturing animals. Confirmation of sanctuaries as long-term instruments for conservation and recovery could contribute to that process.

Finally it can be said that a clear difference between sanctuaries and moratoria - in addition to the perception that the former are more “permanent” than the latter - is that the former are conceptually concerned with an array of species, and may even include several populations of the same species; they are thus defined with respect to the recovery and protection of a complex of possibly interacting whale populations, without involving assumptions about the particular inter-relations and inter-dependencies within the diversity.

Acknowledgements

Hundreds of people were directly involved in the actions to create whale sanctuaries in the Indian and Southern Oceans, on which this paper is focused; here only a prominent few can be singled out for special acknowledgement. Let me begin with Harold Eidsvik, of IUCN, who prepared and steered the IUCN/WWF/UNEP workshop in Baja California, Mexico, in February 1979, which set the sanctuary ball rolling again. Dr Paul Spong was the Rapporteur on that occasion.

The actions later that year, centred on the Republic of Seychelles, were supported vigorously by the then President of the Republic, M. Albert France René, and orchestrated by the late Dr Lyall Watson, serving as Alternate Commissioner for Seychelles to the IWC. Others on the delegation were the

Commissioner, M. Laustau-Lelanne, Ms Cornelia Durrant (Political advisor) and Mr. Malcolm Forster (Legal adviser). My superiors in FAO and UNEP allowed me - then in my final year of service with the UN system - to serve unofficially as scientific and technical advisor to the Seychelles delegation.

A small, developing country such as Seychelles could not have pursued this objective successfully without substantial outside help, both financial and personal. This was provided particularly by the Threshold Foundation, which had been established by Prince Shahram Pahlavi-nia, who was resident in Seychelles, and the World Wildlife Fund International (WWF), with the dedicated involvement of two of its stars: Sir Peter Scott and Dr Sylvia Earle. Mr. Harold Wicks lubricated the pipeline from Threshold. When Threshold ran out of money a few years later, as a result of investment error, Mr. Brian Davies, Founder and CEO of the International Fund for Animal Welfare (IFAW) helped to find ways to continue the necessary financial support for Seychelles involvement in cetacean conservation. The Government of Sweden generously gave financial assistance for the convening of the Indian Ocean Alliance consultation, and the vigorous and helpful role of the Commissioner for Sweden, Dr Bertil Hagerhall, from when his country rejoined the IWC in 1979, must be acknowledged here.

The workshop held in Zeist, Netherlands, after the 1979 success, was funded by WWF Netherlands on the initiative of its Director, Mr. Niels Halbertsma. I was Convener of the workshop; Ms Leslie Busby organized it and wrote the Report. Halberstma, after the declaration of the IOS, also supported the voyage of the research yacht *Tulip* to conduct research on sperm whales near Seychelles and Sri Lanka, led by Dr Hal Whitehead, assisted by scientists Dr Vassili Papastavrou and Dr Jonathan Gordon, who both later served with IFAW. Simultaneously Brian Davies arranged for the IFAW aircraft to fly to Seychelles to conduct a sperm whale survey there, a project carried out by Mr. Ronald Keller.

Several diplomats based in London at the High Commission offices served as Seychelles Commissioner to IWC in the following years, but the burden of steering the Indian Ocean Sanctuary through the IWC processes to quasi-permanence was borne by Mr. Robert Delpuch, a brilliant diplomat, sailor and raconteur. For part of that period I served as Alternate Commissioner.

A key role in launching the idea of a sanctuary in the Southern Ocean was played by M. Paul Gouin, a French businessman and environmental activist resident in the Caribbean, who had participated in various ways in IWC matters since attending the FAO/UNEP Conference in Bergen in 1976. The then President of France, M. Mitterand, fully supported the idea, which had been suggested to him by his Minister for Environment, M. Brice Lelande, and put the French diplomatic and administrative services at the disposal of the IWC Commissioner for France. This decision conformed to the generally pro-conservation position taken consistently by the French Government since the first meeting of the IWC. Dr Michel Pascal was appointed as senior scientist to the French delegation, and I was assigned to assist him, while Ms Leslie Busby worked with the French administration, both of us with support from IFAW and the Third Millennium Foundation. Mr. Brian Davies put substantial funds at the disposal of the campaign for the SOWS, including

financing a film about the whaling issue made by a well-known Australian company, Youngheart Productions, which was broadcast on TV and by public showings throughout the world, and to which several stars of the entertainment world and owners of existing relevant film footage contributed. The film, *The Last Whale* - intending the minke whale, was produced by Wayne and Scott Young, assisted by Lance Innes and ably directed by David Bradbury, a renowned director of several prize-winning environmental documentaries. Olivia Newton-John donated the lovely opening song and the Australian group *Midnight Oil*, led by Peter Garrett – now Minister for Environment, Heritage and the Arts in the Australian Government – provided some of the other music for the sound-track.

Greenpeace International, especially its founder and Honorary President, the late Mr. David McTaggart, as well as Mr. John Frizell and Mr Brian Fitzgerald, ensured a lively, continuous and vigorous contribution by Greenpeace national offices worldwide as well as by the international organisation. Bryan Adams, Canadian musician and friend of McTaggart, conveyed the message about saving whales in the Antarctic to hundreds of thousands of young people who attended his group's concerts performed on a global tour which included, I think, Seoul, Tokyo, Sydney and other cities in Australia, Auckland and Vancouver. WWF again contributed in many ways, as it had in 1979, this time involving especially Mrs. Cassandra Philips and Mr. Gordon Shepherd in WWF International, and numerous national offices. Many other NGOs provided unique inputs to the campaign; they ranged from local environmental and children's organizations, especially in the region of Mexico near where the IWC met (Puerto Vallarta), to other international groups. Not all of the latter supported the SOWS proposal because they interpreted it – I think wrongly - as indirectly favouring resumed whaling elsewhere. A remarkable exception was Cetacean Society International (CSI) led by Mr. Robbins Barstow, which - until the meeting in Mexico - had opposed the SOWS proposal but during the meeting changed its position and vigorously supported it. Many supportive activities were organized throughout Mexico just before and during the crucial IWC meeting; the main organizer of that campaign was Ms Martha Banuelos, of the Greenpeace office in Mexico City. Notable features of it were the spectacle of thousands of people forming the shape of a gigantic whale on the beach (filmed by the Youngheart crew from a helicopter) and a night parade of children bearing flaming torches through the grounds of the hotel where the IWC meeting was taking place and most of the delegations were staying. These demonstrations continued the tradition of celebratory activities that had for two decades punctuated those IWC annual meetings at which positive conservation decisions had been made, following an initiative launched by the parading of a full-size model of a sperm whale through the streets of Stockholm throughout the 1972 UNCHE Conference, and attended by the Secretary-General of the Conference, Mr. Maurice Strong, whose contribution should also be acknowledged here.

I think it is also reasonable to say that without ceaseless efforts by Mr. Will Martin, Vice-President Al Gore's special nominee on the US delegation, and by the new Commissioner for Chile, Sr Pablo Cabrera, and the Commissioner for France, M. Laurent Stéfanini, the SOWS would not have come into being. Apart from Mr. Martin's negotiations at the Mexico meeting, he had

previously been involved specifically in discussions with the Government of RoKorea. Others in the French Administration whose contribution was critical were Mme Martine Bigan and, for a while, M. Alain Maigret. Others in Chile must be mentioned. Sr Juan Carlos Cardenas, in the Greenpeace office in Santiago, organized a great petition drive in Chile. This was at the end of the Pinochet regime and one of the signatories was Sr Eduardo Frei, the future President.

Some campaigners in the critical whaling and pro-whaling countries in southeastern Asia must receive special mention. One of those is Ms Kyenan Kum, a powerful advocate of animal welfare, who was working for IFAW in the RoKorea and helped to secure Korea's abstention in the critical vote in Mexico. Another is Ms Naoko Funahashi, working with IFAW and also with some Japanese NGOs, who had spent time in the Southern Ocean – being a crew member on the first Greenpeace vessel that interacted there with the Japanese whaling fleet.

Work for abstentions or absences by the critical four Caribbean Members involved several people and organizations. One such was Ms Lesley Sully; the NGO with which she and Ms Mona George-Dill were associated – the East Caribbean Coalition for Environmental Awareness (ECCEA) – coordinated a campaign to that end. The Dominica Conservation Association also deserves special mention; associated with that – in addition to Mona George-Dill - were Atherton Martin and Andrew and Fitzroy Armour. Mr. Leslie Pierre – publisher of the newspaper *The Grenadian Voice* - and the subsequently assassinated animal welfare campaigner, Ms Jane Tipson, in St Lucia, also played important and difficult roles.

Lastly we should recall that this year is the eightieth anniversary of Sr José Leon Suárez' historic proposal to the League of Nations for creation of a whale sanctuary in the Southern Ocean. I like to think of this conference in Hawaii as a monument to his remarkable initiative.

References

A full list of reference materials is not given here, for reasons of space. The reader is directed to the author's *Sanctuary: 'Saving the Whale' in Six Movements*, to be published in 2009 by IFAW, Mass., USA.