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The Genocide of Whales: A Crime Against Humanity

LUIS KUTNER*

The moot point is whether Leviathan can long endure so wide a chase, and so remorseless a havoc; whether he must not at last be eliminated from the waters. . .

—Herman Melville, *Moby Dick*

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I. INTRODUCTION

Whales, which spend their entire lives roaming over the oceans of our planet, are true world citizens. They pass through man's carefully defined boundaries without hesitation. National fishing or economic zones and territorial claims are not, in reality, painted on the seas and do not interrupt their instinctual travels. Although the migratory patterns of individual species vary, whales generally feed in the world's rich cold waters during the summer months, then breed in the warmer waters in the winter.¹ For example, every winter the gray whale migrates approximately 5,000 miles from Arctic feeding waters down the Pacific Coast to the calving and mating sanctuaries in the lagoons of lower California.² A complete seasonal trip for these world travelers is about 10,000 miles.

*LLB, J.D.; Member, Illinois Bar; former Lecturer in Law, University of Chicago; former Visiting Associate Professor of Law, Yale University; Nominee, 1975-6 Nobel Peace Prize; Chairman, World Habeas Corpus Committee, World Peace Through Law Center; President, Commission for International Due Process of Law; former Consul, Ecuador; former Consul General, Guatemala; former Special Counsel to Attorney-General of Illinois; author of numerous law journal articles and several books, including *World Habeas Corpus* and I, *The Lawyer*. The research assistance of B. Alan Burwald, M.A., is acknowledged. The special assistance of Ronald L. Nelson, J.D. candidate, University of Miami, and an Associate Editor for the *Lawyer of the Americas* is acknowledged.

1. Scheffer, *Exploring the Lives of Whales*, 150 NAT'L GEOGRAPHIC 752, 759 (Dec. 1976).

2. Graves, *The Imperiled Giants*, 150 NAT'L GEOGRAPHIC 722, 751 (Dec. 1976).

This great urge to travel is but one of many qualities that whales share with humanity. Like man, the whale is a social creature. It lives and travels in family groups, "pods," and, displays other social instincts which are similar to "human" feelings and indicates a caring for others of its species.³ Whales also are susceptible to many diseases common to mankind including mental psychosis.⁴

Because of their highly migratory life pattern whales are not controllable by any one country. Whales are known in all seas and should be considered inhabitants of this world deserving of protection rather than exploitation to the point of extinction. The old arguments of *res nullis* and *res communis* as noted in the Grotius-Selden debate⁵ may be raised, but modern times have revamped the views of a single country's ownership of natural resources.⁶ The whale should be viewed as a world inhabitant not freely subject to the whim of those who have the present technological means to exploit them.

The history of whaling is a story of slaughter. Since its inception the modern whaling industry has employed a "boom-bust" technique. One species is exploited until it is commercially extinct then another species is chosen for "harvest." Most species are down in population and age composition with true assessment of the present condition of the whales made difficult by the lack of good scientific data. While scientists struggle for more information on the whales, the slaughter continues.⁷

Basically, the cry for responsible regulation of whaling is based on two views of the whales: (1) the conservationists, who view the whale from a homocentric or utilitarian point of view, and (2) the protectionists, who view the slaughter as a violation of the natural right of life itself. Regulation of the slaughter of whales is a concern for all of humanity whether viewed from the conservationist or protectionist point of view. Unfortunately the present world regulatory body, the International Whaling Commission (IWC) has had a dismal record in regulating whaling and the future does not look bright.

3. Scheffer, *supra* note 1, at 766.

4. *Id.* at 764.

5. See generally H. Knight, *Law of the Sea: Cases, Documents and Readings* 1-32 (1977).

6. An example of this revamped view is the "common heritage of mankind" approach to the deepsea mining question now before the United Nations Law of the Sea conferences. See also Copes, *The Law of the Sea and Management of Anadromous Fish Stocks*, 4 OCEAN DEV. & INT'L L.J. 247-48 (1977).

7. Scheffer, *supra* note 1, at 759.

Except for the IWC, no other world body is in an established position to address the problem of whaling regulation. All attempts have floundered in political and economic trade-offs. The present method for international problem solving—the convention, whether by consensus or direct vote—has failed to deal effectively with the problem. History has shown that such international conventions get bogged down in non-convention issues such as maintaining the *status quo* or advancing nationalistic goals. A new approach is needed. Such an approach will be proposed by this article. A World Public Opinion Court can address specific cases rather than rely on compromise as in the trade-off system of present international organizations.

II. WHALES

Before whaling began there were approximately 3.9 million whales in the world oceans. In 1975 the estimate was 2.1 million.⁸ Even these figures are deceptive in that they do not reflect the true reduction in species population and total biomass. Some species of baleen whales have suffered a ninety-six percent reduction in population as compared to the total reduction in whale population of forty-six percent. Also, the selective hunting of Antarctic blue and fin whales has resulted in an eighty-five percent reduction in the total baleen whale biomass in the Antarctic grounds.⁹

Meanwhile, the predation and exploitation of whales by man continues. Today, commercial whale hunters kill whales of the sei, Byrd's, sperm, and minke species by the thousands each year. Other ravaged species have also been depleted. The fin whale is down to an estimated twenty-two per cent of its unexploited population, the humpback whale is down to seven per cent; and the blue whale is down to six per cent.¹⁰ These figures are estimates of surviving stocks based on sightings and, primarily, annual whaling records of animals caught and slaughtered—a "ghost population," in the true sense.¹¹ With questionable population figures and the reduction in some species age and total biomass, scientists and concerned citizens around the world fear that the great whales are threatened by extinction. No one can say for sure how long it will take to replace the

8. Scarff, *The International Management of Whales, Dolphins and Porpoises: An Interdisciplinary Assessment* (pts 1-2), 6 *ECOLOGY L.Q.* 326, 330 (1977) (an excellent article encompassing many of the varied aspects of the whale issue).

9. *Id.* at 330, 332.

10. Scheffer, *supra* note 1, at 754.

11. *Id.* at 759.

losses already suffered or how much of this "punishment" the whales can absorb before they disappear, perhaps like the great auk during the mid 19th century.¹²

A basic question to be addressed in a discussion of the whale issue is: Why regulate whaling at all? Basically there are two prevalent viewpoints for whaling regulation: (1) the conservationists view or homocentric idea that all nature, including the whale, should be managed for the benefit of man, and (2) the protectionists or species' rights idea that there is an inherent value in all life, even non-human species. Either view would require some form of regulation on whaling.

From the conservationist point of view whales are a source of benefit for man, the most obvious being the raw products derived from the whale carcass itself. Traditionally whales have been sought for their baleen¹³ and oil. By the early 1960's, whale meat also became an important consideration.¹⁴ Whale meat, having good nutritional value, has been used as animal food and is also consumed by humans. Today, whale oil is primarily used in making margarine and cooking oil. The oil from the sperm whale, "sperm oil," is inedible, having the properties of a liquid wax. The early use of sperm oil as a smokeless candle oil has been replaced by its modern use as a high-grade machine lubricant. Other by-products of the whale industry involve teeth (scrimshaw) and ambergris (perfume). Additional utilitarian considerations include the whales' position in the marine ecosystem. Since the whale may be a balance wheel for the system as a whole, its demise will have an unknown effect on marine ecology. In this unknown lay the potential for an adverse effect on mankind.¹⁵

Additionally, certain facts about human life may be discoverable through study of this marine mammal. Areas of particular concern are common diseases, brain characteristics and potentialities, and physiology, particularly diving physiology. Whale ontogeny is also of interest in man's quest for knowledge of himself. Finally, although not easily qualified for economic analysis, certain aesthetic pleasures

12. Graves, *supra* note 2, at 724-25.

13. Baleen consists of a series of horny plates which grow down from the upper jaws of baleen whales. These plates strain the seawater for food. Man has used baleen primarily in garment making and craft work.

14. Scarff, *supra* note 8, at 341.

15. Note, *The Conservation of Whales*, 5 CORNELL INT'L L.J. 99, 101 (1972). See Herrington, *The Plight of Ocean Mammals*, 1 ENV'T'L AFFAIRS 792, 797 (1972).

are derived by man from the whale. Many people consider these giant creatures as works of wonder and inspiration, and enjoy seeing and even listening to them. There is also the value of the whales as a symbol for world concern for the environment.¹⁶

The protectionists would control whaling for the sake of the whales, not merely for the sake of man. Naturally, man might receive a secondary benefit from this, especially on the aesthetic level, but the primary justification would be the right of "nature" to continue without man's destruction. This view holds that the loss of any one species is a loss to the whole. Each species has at least the right to a chance to survive. Various protectionist-type proposals have been made in recent years concerning nature. One such argument in the legal field has been made by Christopher Stone in his proposal on standing and nature.¹⁷

Whether a conservationist or protectionist view is adopted, the whale presents values which are at the least worthy of serious consideration. Excluding an extremely short sighted view of immediate homocentric benefit, the whale seems deserving of regulation to prevent its demise—regulation which is now practically nonexistent.

III. CARNAGE

Whales, once considered companions of the gods, became the quarry of man about 4,000 years ago. The first whalers were Norsemen and polar Eskimos who, hunting with harpoons, sought the cetaceans for food. Later, in the 11th or 12th century, the Basques began "modern" whaling¹⁸ by developing an organized whale fishery in the Bay of Biscay. In what would become an all too familiar pattern, the Basques whaled to the point of virtually eliminating the entire stock of a species known as the Biscayan right whale. By the early 1700's, the techniques of early coastal whaling expanded to the open sea. Soon American whalers came to dominate the industry. Of the entire 900 whaling vessels owned worldwide in 1846, 700 were American.¹⁹ The fleet of ships roamed the oceans searching for whales,

16. See Grieves, *Leviathan, the International Whaling Commission and Conservation as Environmental Aspects of International Law*, XXV W. POLITICAL Q. 711 (1972). See also Interview with Maurice F. Strong, Former Executive Director of the UN Environment Program, (July 13, 1976), in 2 ENVTL POL'Y & L. 125 (1976).

17. Stone, *Should Trees Have Standing?—Toward Legal Rights for Natural Objects*, 45 S. CAL. L. REV. 450 (1972). See *Sierra Club v. Morton*, 405 U.S. 727, 741 (1972) (Douglas, J., dissenting).

18. Scarff, *supra* note 8, at 344.

19. Graves, *supra* note 2, at 730.

returning to homeport after voyages of three to four years with oil for lamps and lubrication and bone for umbrellas and corset stays. Ship-owners and ship captains reaped fortunes and used the profits to build elegant homes, parks, and gardens in the major whaling ports. The peak years for the industry were from 1820 to 1860. The slaughter stopped temporarily due to a combination of factors: the discovery of petroleum, a cheap substitute for whale oil; the toll of the Civil War on the "Yankee" whaling fleet; and, most significantly, the decline of the whale population.²⁰ Under the weight of such burdens the American industry virtually collapsed and other whaling nations also began to retire their own fleets.

However, technological advances revived the industry. Late in the 1860's a Norwegian whaler, Svend Foyn,²¹ developed and patented a harpoon gun with a range of 50 yards. Steampowered ships also came on the scene and, together with Foyn's harpoon gun, whalers were able to successfully pursue the swiftest and hither-tofore elusive whales. Until the end of the 19th century the old pattern was followed resulting in the depletion of the temperate whaling grounds. The whalers then had to follow their prey to the Antarctic feeding grounds. Each summer the fleets of catcher boats and factory ships met the whales as they arrived and the slaughter began.

Throughout its exploitation of the whales, the whaling industry has utilized a "boom-bust" method of exploitation. After one species of whale is hunted to the point of "commercial extinction," another species is sought in its place.²² As the oil rich baleen species of whale have become depleted and less "oily" species hunted in their stead, the number of whales harvested has increased in order to sustain the same level of production. Consequently, findings show that the average age of whales killed is declining, with older whales becoming fewer in number.²³

IV. REGULATION

International regulation of whaling began less than 50 years ago with the signing, on September 24, 1931, of the first convention for the regulation of whaling.²⁴ Prior to this time, other than the begin-

20. Scarff, *supra* note 8, at 345.

21. Graves, *supra* note 2, at 732.

22. Scarff, *supra* note 8, at 345-46.

23. *See id.* at 330.

24. Convention for the Regulation of Whaling, Sept. 24, 1931, 49 Stat. 3079, T.S. No. 880.

ning of some scientific research in the 1920's, little attention was given to whale conservation or protection. While, following World War I, the question of whaling regulation was discussed at several international meetings, no real success was achieved at establishing a regulatory scheme.²⁵

The 1931 Whaling Convention under the auspices of the League of Nations was an attempt to regulate whaling, albeit, a very weak one. The weakness stemmed from several factors: only baleen whales were considered; no overall quotas were established; no effort limits were established; and several whaling countries; Japan, Germany, Chile, Argentina, and the Soviet Union, did not sign and ratify the convention.²⁶

Because of the weakness of the 1931 Whaling Convention, whaling companies entered into a scheme of self-regulation,²⁷ whereby the companies, in fact a cartel, regulated in terms of number of whales killed and the "blue whale unit" (b.w.u.). Under this system various species of whale were given b.w.u. values, with companies receiving quotas of whale in b.w.u.'s, not types of whales allowed to be taken.²⁸ The cartel lasted for two years until nonmember companies began taking whales without a quota.

In 1936, Norway and Great Britain, which together accounted for over 95 per cent of the world catch, reached a bilateral agreement prescribing limiting regulations over the two country's whaling industries. Additional agreement modifications were made in 1937, 1938, and 1939 with various other nations agreeing to be bound by the terms of the Anglo-Norwegian agreement.²⁹

World War II gave the whales a reprieve from the hunt. The years 1939-1945 saw 82,000 whales killed, while in the six years before the war, 269,000 whales were taken.³⁰ This war-produced reprieve did, at least for a few years, what international political maneuvering and industrial competition had prevented man from doing himself, but it was not long lasting.

Following World War II, whaling and whale conferences were again continued. The first conference met in January 1944, and set

25. Scarff, *supra* note 8, at 349.

26. *Id.* at 349-50.

27. *Id.* at 350.

28. *Id.* Originally, one "blue whale unit" equaled either one blue whale, three humpback whales, or five sei whales.

29. *Id.*

30. *Id.* at 351.

up quotas again based on the blue whale units (with some changes in the equations). But the whale stocks had not revived during the war years and the 1945 whaling season was a disaster.³¹ The disappointing season and the general spirit of international cooperation of the times led to the second post-war international whaling conference in Washington, D.C. in November of 1946. The result of this conference was the International Whaling Commission (IWC) established by the International Convention for the Regulation of Whaling, a convention set up primarily by and for whaling countries.³² The IWC meets annually in London and has the power to regulate the hunting season, prescribe size limits and catch quotas (including zero quotas) for each species, designate open and closed waters, and act with respect to matters incidental to the regulation of the industry.

During the 1960's, coinciding with the beginning of public environmental awareness, the United States, once a leader in the world slaughter of whales, began to take a stronger position in favor of the whale.³³ Acting upon the popular beliefs of its citizenry, the United States Congress passed the Marine Mammal Protection Act of 1972, the "primary objective" of which was to preserve "the health and stability of marine ecosystems"³⁴ affected by marine mammals that balanced it "in a manner . . . important to other animals . . ." ³⁵ This significant law—indeed a milestone—greatly stimulated the cause of the whale.

Because Congress found that "certain species, and population stocks of marine mammals" were "in danger of extinction or depletion," it declared in the Act that "such species and population stocks should not be permitted to diminish beyond the point at which they cease to be a significant functionary element in the ecosystem of which they are a part" or "to diminish below their optimum sustainable population."³⁶ To that end, the depletion of any marine mammal, including those killed by fishermen was prohibited. In addition to the ban on killing, this law also made it illegal for any U.S. citizen to disrupt, harass, or hurt marine mammals. Moreover, there can be no commercial harvesting of any species of these creatures unless a special scientific committee approves. One of the few exceptions

31. *Id.* at 352.

32. *Id.* at 353.

33. Graves, *supra* note 2, at 732-33.

34. Marine Mammal Protection Act of 1972, 16 U.S.C. § 1361(6) (Supp. V 1975).

35. 16 U.S.C. § 1361(5)(b) (Supp. V 1975).

36. 16 U.S.C. §§ 1361(1), 1361(2) (Supp. V 1975).

granted on this taking ban is for the Alaskan Eskimos to hunt whales legally without having to obtain a government permit.³⁷

The United States, as well as other countries, has suggested that its own moratorium on the taking of whales be adopted world-wide for 10 years in order to allow an accurate census of all species and to give depleted stocks a chance to grow.³⁸ Indeed, the Marine Mammal Protection Act calls for negotiations to be "undertaken immediately," through the Secretary of State, "to encourage the development of international arrangements for . . . conservation of . . . all marine mammals."³⁹ Though falling far short of that goal, the International Whaling Commission has been moving toward some reduction in the quota. On its own, the United States has enacted other tough measures concerning whales, like the federal law forbidding the importation of whale products into this country or their traffic within interstate commerce; further, the U.S. now prohibits any seafood imports from countries hindering international fishery conservation programs.⁴⁰

The whales were also added to the U.S. endangered species list mandated in the Endangered and Threatened Species Act of 1973, which provides for domestic protection similar to that given under the Marine Mammal Protection Act and also calls for international cooperation in protecting endangered species.⁴¹

V. INADEQUACIES

Yet, even the actions which have been taken to date are, sadly, not enough. The Marine Mammal Protection Act does not really restrict foreigners; for them it is business as usual.⁴² Even more meaningless are the international whaling conventions which allows offenders to plunder with arrogant immunity the marine ecosystem. These international agreements apply only to signatory countries, leaving others free to hunt whales indiscriminately. And, moreover, such

37. 16 U.S.C. § 1371(b) (Supp. V 1975). U.S. Eskimo hunting for whales has become an important issue in IWC deliberations. After the 1978 IWC meeting some feel this issue marks the loss of whale conservation leadership for the United States. Storro-Patterson *IWC 1978*, 5 *OCEANS* 63 (1978); 124 Cong. Rec. E5219 (daily ed. Sept. 25, 1978). See also 124 CONG. REC. E5561-62 (daily ed. Oct. 14, 1978).

38. Graves, *supra* note 2, at 733.

39. 16 U.S.C. § 1361(4) (Supp. V 1975).

40. Graves, *supra* note 2, at 749.

41. Endangered and Threatened Species Act of 1973, 16 U.S.C. § 1533 (Supp. V 1975); 50 C.F.R. § 17.11 (1977).

42. See Norris, *SMITHSONIAN* (Feb. 1977), at 44.

agreements are only voluntary at that; there is no power to enforce them.⁴³

Two member-nations of the Whaling Commission, Russia and Japan, have opposed the U.S. suggestion that there be a global moratorium on whale kills. Operating their pelagic fleets in the Antarctic and North Pacific waters these two countries account for eighty-five percent of the world whale catch. In the Japanese fleet, for example, harpooned whales are delivered by swift catcher boats to factory ships where they are cut up and the meat distributed to freezer lockers, blubber and internal fat to a huge steam cooker, and bones to power saws then, later, to the cookers for extracting oil. All of this is done effectively at sea on the whaling grounds.⁴⁴

The claimed need of whale products for food and oil is itself specious, for there are available substitutes. As a food resource, it can be said that Japan depends on whales for protein in the same way Americans rely on beef cattle. Indeed, Japan consumes sizable quantities of whale meat; it contributes to their food supply and is even part of their school lunch program. But it is the only country to do so, and as Dr. Akito Kowamura, a Japanese expert on whales, has stated, "[I]n time we could learn to do without it. Not tomorrow [however] . . . But slowly—and forever."⁴⁵ Japan, together with the Soviet Union and Great Britain, also uses great quantities of sperm oil, which comes from the head of the unpalatable sperm whale; about 20,000 of these whales are killed each year, largely for their oil. In this area, science has discovered a superior substitute for sperm oil. The substance is jojoba oil, which comes from the beans of wild plants growing in California, Arizona, and Mexico. Pilot plantations have already been started in the United States to harvest the plants.⁴⁶

Regulation problems concerning activities outside of IWC control have also arisen. There have been cases of competitors being bought-out so that another country's quotas can be taken over.⁴⁷ Non-IWC nations are free to whale without control, and only eight of the seventeen nations currently whaling belong to the IWC.⁴⁸ Also,

43. Graves, *supra* note 2, at 724.

44. *Id.* at 733, 740-41, 749.

45. *Id.* at 745.

46. *Id.* at 739-40. See Scogin, *Sperm Whale Oil and the Jojoba Shrub*, 4 OCEANS 65 (1977).

47. Note, *supra* note 15, at 108-09.

48. In 1977 the eight whaling countries outside of the IWC killed more than 7,000 whales, compared with 23,000 whales for the seventeen IWC countries. 124 CONG. REC. E4935 (daily ed. Sept. 12, 1978).

"flags of convenience" operations are used to circumvent IWC regulations.⁴⁹ IWC protection, even if adequate in scope to ensure survival, may not really protect the whale because of the limitations of IWC itself.

Other international bodies have been concerned with the whale question. The United Nations Conference on the Environment met in Stockholm in 1972⁵⁰ and adopted Resolution No. 33 which calls for a strengthening of the IWC and a 10 year moratorium on commercial whaling. The International Convention on the Conservation of Migratory Species of Wild Fauna held in Bonn, Germany, July 1976, also addressed the problem. Not much progress was made, however, because of the fear of interfering with the United Nations Law of the Sea deliberations.⁵¹

VI. PROPOSAL

To this point, the text of this article has addressed a problem—the need for effective regulation of whaling and for preventing the genocide of the whale. The next logical step is to look for a solution to the problem. What are the possibilities? Three different approaches may be considered: (1) Do nothing and hope the IWC improves; (2) call for a world convention on whaling and try to get a truly international agreement; or (3) try something new in international law.

From the whale's point of view, the past performance record of the IWC has not been impressive. The IWC is, after all, a whaler's organization established to maintain whaling. With this "purpose" in mind and noting the less than complete world representation in the membership of the IWC, the basis for decision making under the IWC is too narrow to be considered representative of a world choice concerning the killing of whales. Certainly the protectionist point of view will get little, if any, airing under the IWC. Neither will the views of those countries which, because of their concern with the killing of whales, are observing a moratorium on whaling adequately represented. Times have changed; the world is smaller and the whales can no longer be regulated on a *res nullis* animal or *ferae naturae* basis. Consequently, the world must move beyond the IWC.

49. Scarff, *supra* note 8, at 598.

50. U.N. Conference on the Human Environment (Stockholm), U.N. Doc. A/Conf.48/14, at 23 (June 5-16, 1972).

51. Navid, *Draft International Convention on the Conservation of Migratory Species of Wild Fauna*, 2 ENV'TL POL'Y & L. 116, 118 (1976).

A world convention on whaling does not appear very promising. This conclusion is based on the track record of recent large multi-nation conferences. The results of such meetings fall into two general categories: (1) nothing is accomplished because, by a failure to compromise, countries arrive at a broad yet weak agreement (if one is reached at all), or (2) nothing is accomplished concerning the stated purpose of the conference because compromise in the name of nationalistic goals strips the resultant agreement of any true meaning. It is not unreasonable to believe that the whales' cause, if not their very existence, would be sacrificed for gain in the international political arena. In an international conference, the vote on a whale question could easily pale in the importance of the moment to a question of, for example, territorial expansion of mineral rights. In the heat of debate issues are too often sublimated. As a result, most conferences addressing the whale issue take a conversational approach to the problem—*sans* any concrete legal solution. Moreover, none of the world organizations invoke international due process of law. Hence, unless affirmative legal action is taken, the inevitable extermination of the whale species will occur.

It is evident that a new approach is needed. Out of deep concern over the genocide of the whale, and through the Commission for International Due Process of Law, this author proposes a Whale Defense Center within the establishment of a World Court of Public Opinion. Ideally, such a World Court of Public Opinion would be set up in Mid-America (preferably Chicago), away from such areas of influence of world governments and international political concerns as in New York or Washington, D.C.

The concept of such a court is tantamount, in history, to the early Citizens' Court, where the common law began as a pervasive body of persuasive and prohibitive conduct emerging out of the experience of the members of the community. Thus, the old common law courts (circa 800 A.D.) can provide a model for the new World Opinion Courts.⁵² In these early common law courts the decisions of the shire or hundred courts were made in person or by representatives of the freemen (suitors or Doomsmen) of the jurisdiction. Questions were brought to the court by those involved, views presented, and the decision made by the Doomsmen. The decisions were based

52. See generally J. BAKER, AN INTRODUCTION TO ENGLISH LEGAL HISTORY 9-15 (1971); A. KIRALFY, POTTER'S HISTORICAL INTRODUCTION TO ENGLISH LAW AND ITS INSTITUTIONS (4th Ed. 1958); T. PLUCKNETT, A CONCISE HISTORY OF THE COMMON LAW 89, 90 (2d Ed. 1936).

on custom, the facts, and the common experience or opinion of the decider, with little or no written law to use as a guide. Initially, such decisions were enforced by public opinion, although, through the centuries, the courts developed an executive branch which assumed enforcement duties.

The proposed World Court of Public Opinion, through the Whale Defense Center, would hear questions concerning whaling in much the same manner as the opinion courts of old. The Court itself would provide a forum where allegations in this case of whale genocide, could be tested in an adversary environment for a co-ordinated record upon which knowledgeable judges⁵³ could make co-ordinated findings and conclusions based on their knowledge of the situation and the opinion and desires of the world community in general. This method would be the antithesis of the investigative-interview techniques utilized by many present day decision making bodies where parties do not present their position in a co-ordinated manner and where cross-examination is non-existent.⁵⁴ In the proposed Court, the aggrieved party in each case and public interest groups or organizations appearing on behalf of the "plaintiff" would act as protagonists, while the responding party would be both the party charged and groups of organizations sympathetic with the cause of the party it would defend. These liberal party and standing rules would encourage the airing of all points germane to the particular issue before the Court. Also, the avoidance of strict rules of plaintiff-defendant procedure would aid in getting issues before the Court, since advocates for both sides of an issue will have easy access to the Court. With ease of access and open presentation of all points of view, the World Public Opinion Court judges would be able to make decisions based on the opinions held by the various segments of the world community. Theoretically no industry, interest group, or country could dominate the decision making body. All positions on the issue will be heard, tested, and weighed by the court.

53. Admittedly, the selection of a knowledgeable judge would require great care. The judges of the World Opinion Court will necessarily be individuals possessing broad knowledge and indisputable integrity. They must determine the world opinion as to the solution of a dispute with little or no written law to guide them. These decisions, therefore, will be very similar to those made by the Doomsday of the old common law opinion courts.

54. This may be analogized to the complaints voiced from many domestic quarters about the ineffectiveness of certain informal non-adjudicative administrative hearing processes in our own governmental system.

VII. CONCLUSION

Various arguments lend support to the World Public Opinion Court proposal. The whale, a true world citizen, should be considered on a world-wide basis; thus, an international solution is needed. The IWC is not effective since it is made up of a select few and is dedicated to a very self-interested viewpoint. Individual states, even if they were to adopt a protectionist's viewpoint, have no control over the whale and, therefore, any unilateral protection is spotty and ineffective.⁵⁵ Because of its strategic and monetary insignificance, international conferences have not really dealt with the whale issue.⁵⁶ A new approach, such as that proposed above, is the next rational step in the development of whale regulation.

The adoption of this step should produce desirable results in solving the whale question. The issues would be pinpointed and not intertwined with complex international political questions.⁵⁷ The decision would be based on world opinion rather than the desires of the whaling industry.⁵⁸ There would also be an impetus for gathering more knowledge about the whale since political considerations will carry considerably less weight in the decision making process than scientific fact.

A World Court of Public Opinion would symbolize the "community of man" as it determines international policy, with dramatic

55. There is obviously no real protection when protective areas extend only as far as the sovereignty of one or a few nations and, as the migrating whale leaves one area of national claim, man-made rules of life and death change even though the water remains the same.

56. In terms of national security, the whale issue is certainly not of dramatic significance. The monetary factor is also rather insignificant since whaling is worth relatively little, i.e., approximately \$225 million per year. See Scarff, *supra* note 8, at 342.

57. The complexity of the issues and concerns of the present Law of the Sea Conferences seem to dwarf the whale question and push it into the background. For example, the negotiating text of the 1977 conference addressed the whale question in two rather ambiguous articles. Article 64 of the text directs coastal states to conserve highly migratory species (most cetacean families are included in the migratory species list) directly or through "appropriate international organizations." Article 65 allows for coastal states or international organizations "to prohibit, regulate and limit the exploitation of marine mammals." Informal Composite Negotiating Text, Third United Nations Conference on the Law of the Sea, 15 July 1977, U.N. Doc. A/Conf.62/WP.10/Part V, art. 64, 65 (1977). Neither article carries any formal sanctions or guidelines.

58. This is generally the case in the whaler dominated IWC. For example, in the 1978 meeting in London the IWC did not even discuss the 10-year moratorium plan while, at the same time, removing the gray whale from the IWC protected species list. 20 OCEAN SCI. NEWS 3 (July 17, 1978).

secondary benefits accruing from its establishment. A successful Whale Defense Center would lead the way for other centers in the Court. The whale issue being internationally recognized but not of great economic or strategic value could be a starting point for international cooperation and dispute settlement. Once questions concerning whaling are decided and the world community becomes comfortable with the peaceful resolution of that issue other questions could be addressed by the Court.⁵⁹

This article is devoted to proposing a means of solving the whole problem and not establishing the specifics of the Court. However, in anticipation of some obvious questions, it may be said that the jurisdiction of the Court should rest on international questions, i.e., those issues which are no longer solvable on the individual state basis.⁶⁰ As the world shrinks in size more and more questions will fall into this category. Parties will present information on the desires of mankind. The determination of public opinion will rest largely on the shoulders of the "knowledgeable judges" who would use their own knowledge and also evaluate the presentation of the various parties to each case. Enforcement is always a question in international decisions, but public opinion is a strong force. It was strong in the old common law shire courts. It could be an effective sanction in the future as well. It is also possible that, as the World Court of Public Opinion gains in stature and use, there will develop an enforcement body to enforce the Court's decisions.

The noted scientist, Dr. Linus Pauling, for one, has stated his "complete accordance" with this proposal for a Whale Defense Center.⁶¹ To be sure, such a proposed world advocacy can judicially ventilate whale endangerment and achieve meaningful empirical disciplines of international law by arraignment and trying offenders engaged in genocide of the world's whale population.

59. Such questions could extend beyond conservation and protection of living resources to other issues of world concern such as the world human rights issue.

60. Obviously the genocide of the whales—true world citizens—is a prime example of a question that must be solved internationally. The actions of no one state can be effective.

61. Letter from Dr. L. Pauling to Mr. L. Kutner (April 11, 1977).