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International Regulation of Whaling

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BOOK REVIEWS

International Regulation of Whaling

Reviewed by Sudhir K. Chopra

Birnie, P. *International Regulation of Whaling: From Conservation of Whaling to Conservation of Whales and Regulation of Whale-Watching*, Vols. I and II, Oceana Publications Inc., New York, London, Rome (1985); 50/vol.; ISBN 0-379-20604-8 (v.2), x/iii, 1053 pp.

This two-volume work is primarily structured around the International Convention for the Regulation of Whaling 1946 (ICRW)¹ and the work of and developments at the International Whaling Commission (IWC). It also covers the regulation of whaling during 1919-1946, which obviously was the basis to negotiate the new Convention (ICRW) in 1946. The first chapter describes whales and other marine mammals and their bio-physiological characters, it also describes their law and high consumptive uses. Historical account of whaling and its regulation until 1930 is dealt with in the second chapter. One of the parts of this chapter deals with early law of the sea. While Professor Birnie discusses the Grotian theory of *mare liberum* and the Roman law concepts of *res nullius* and *res communis*, she completely misses Grotius' opinion on whaling. Grotius' work at one time specifically dealt with whales and he gave elaborate opinions on whales and the right of all nations to catch whales.²

The third chapter deals with regulation of whaling during 1919-1946, which covers the period of the League of Nations. This section is important because it gives the reader a thorough background as to what led to the negotiation of ICRW. A large part of the following chapter (IV) is devoted to the discussion of "precedents" (i.e., the earlier fisheries agreements,³ conservationist treaties,⁴ and the importance of the extended na-

1. 161 U.N.T.S. 72; T.I.A.S. No. 1849; U.K.T.S. no. 5 (1949), (Md. 7604); and U.K.T.S. No. 68 (1959), (Md. 849). See P. BIRNIE, at 689.

2. B. TELDERS, *De oorsprong van het leerstuk der territoriale zee* (The origin of the theory of territorial waters), in *VERZAMELDE GESCHRIFFEN* 122 (1947); S. MULLER, *MARE CLAUSUM, BIJDRAGE TOT DE GESCHIEDENIS DER RIVALETEIT VAN ENGELAND EN NEDERLAND IN ZEVENTIENDE EEUW* (A Contribution to the History of Rivalry between England and the Netherlands in the Seventeenth Century) 135 (1972); F. DEPAUW, *GROTIUS AND THE LAW OF THE SEA* 63 (1965).

3. BIRNIE, *supra* note 1, at 146-50.

4. *Id.* at 150-6.

tional jurisdiction in the seas.⁵ The later part of the same chapter discusses the Whaling Conferences of 1945 and 1946 and then goes on to discuss the provisions of the ICRW including its objective.⁶ Chapter V covers the IWC's annual meetings from the first meeting held in 1949 to the twelfth meeting held in 1969. This chapter primarily is devoted to the discussion of substantive developments at each meeting. In the next chapter (VI) developments outside the IWC, especially the 1958 Geneva Conference and Conventions on the Law of the Sea, Antarctic Treaty and other fisheries agreements of the same period as covered in the preceding chapter are dealt with (1945 to 1960).

Chapter VII, which is titled Developing Law of Conservation and Practice of IWC during 1961-1969, once again covers each meeting of the IWC with emphasis on new developments, although not much in terms of 'conservation policies' developed in this period. The next chapter VIII covers the period from 1970-1979 and discusses developments in international environmental law and the law of the sea. While this chapter provides a wealth of information on outside developments, it does not do justice to the Third U.N. Conference on the Law of the Sea (UNCLOS-III), relevant provisions of which are covered in six pages.⁷ Discussion of the United Nations Conference on Human Environment (UNCHE) and the following developments is much better.⁸ Chapters IX and X are definitely important for those looking for some real change in the attitudes and practice of the IWC. These two chapters cover annual meetings of the IWC from 1970-79: it was in this period that we witnessed the influence of UNCHE and repeated proposals for moratorium whaling.

Chapter XI discusses the new developments outside the IWC such as Convention Trade in Endangered Species (CITES),⁹ Convention on Conservation of Migratory Species (CCMS),¹⁰ Berne Convention on Conservation of European Wildlife and Natural Habitat¹¹ and Convention on Conservation of Antarctic Marine Living Resources.¹² Also discussed in the chapter are the developments at the UNCLOS-III and the national regulations concerning marine mammals. Certainly the first part of this convention provides very useful information on linkages between the IWC and other conventions. Once again, discussion of UNCLOS-III developments is wanting in substance and national legislation part is more or less confined to the discussion of the United States. Birnie says, "There is not space to detail them there."¹³ I believe she meant "here", though she writes that a "number of trends are emerging from the new national legis-

5. *Id.* at 157.

6. *Id.* at 168.

7. *Id.* at 375-380.

8. *Id.* at 363-374.

9. *Id.* at 510.

10. *Id.* at 512.

11. *Id.* at 518.

12. *Id.* at 533.

13. *Id.* at 535.

lation."¹⁴ A significant omission is the Australian legislation¹⁵ which in many ways establishes a new precedent. For a researcher using this volume and trying to ascertain the impact of national legislative measures on the IWC, it is very frustrating to find that no reference, even in the footnotes, is provided about other countries. The later part of the same chapter discusses the problems associated with the revision of the ICRW.

Volume II of this work contains two chapters and the documents. First of these, Chapter XII, once again discusses CITES, CCAMLR, UNCLOS-III and other relevant conventions under the heading "From Consumptive to Non-Consumptive Uses of Cetaceans." Developments associated with these conventions are discussed in far more detail in this chapter than the earlier chapters. The second part of this chapter is devoted to IWC meetings from 1980 to 1983. This is the most significant period so far as IWC is concerned since it is in this period (1982) that we see ultimate change—moratorium on commercial whaling. The last Chapter (XIII) has some very useful recommendations and provides enough material for scholars to think and develop new strategies for conservation of whales.

This work has immense value for international lawyers, natural scientists and policy makers involved with or interested in the regulation of whales and whaling. Such a report from Professor Birnie who has spent many years observing the IWC meetings first hand decidedly gives a very valuable account of IWC meetings which otherwise is not available in any one work. Dr. Birnie has covered a vast amount of literature, which is obvious from the scope of this and the references provided. It must have been like opening a Pandora's box and getting lost as to what to cover and what to leave out, decidedly a difficult choice. Some of the notable omissions, however, are the discussion of whaling industries, especially the Japanese and Soviets, as to why they resisted reduction of quotas, and as to why Soviets have changed their policy now. Obviously, there were more than just political and social reasons. Perhaps the economics of continued whaling was not workable. Many states (Netherlands, Australia, Norway and U.K.) gave up whaling.

Another drawback is when Dr. Birnie refers to various proposals put forward at the IWC meetings, including quota fixation. She repeatedly says pressure led to compromise without any explanation about the pressures. Perhaps the fact that for a long time the IWC has been facing financial difficulties and that therefore IWC meetings have been short (a week or less)¹⁶ helps to explain the pressures at the meetings. Of course, these pressures are in addition to the anticipated threat that whaling nations might withdraw from ICRW and thus lead to ultimate demise of the

14. *Id.*

15. Whale Protection Act 1980, Act No. 2, 1980 The Commonwealth of Australia Gazette, No. G39 at 2, 29 September 1981; W. BUSCH, 1 ANTARCTICA AND INTERNATIONAL LAW 205 (1982).

16. BIRNIE, *supra* note 1, at 612.

IWC, if their interests are not accommodated. Perhaps the addition of charts summarizing quotas, catch, voting patterns on major issues could have helped in providing a clearer picture. At times it is difficult to ascertain, barring a few exceptions, the policies of different countries. Although this information is provided in the discussion of each meeting, it is difficult to keep track of trends and changes. Considering the vastness of the whaling industry and the use of whale products, it would have been helpful if the breakdown of the whale products was given individually. Such an approach would help the reader to understand the compulsion behind the whaling and to look for economic substitutes. It may appear to be something for an economist to do, but such information can be a very useful tool for a lawyer, researcher, or a conservationist.

The worst drawback of this otherwise invaluable work is the use of *op. cit.*, a nearly obsolete practice in modern writing, especially in a work like this, covering a plethora of documents and reports. It is almost impossible to use these citations for further research without turning hundreds of pages or going to bibliography, which again is not complete. Many, many cited references are missing from the bibliography. A work like this, which is meant to serve as an authoritative reporting of the events and developments and as a source of information otherwise not available in most libraries, is seriously flawed only for poor citation technique and an inconsistent method of citation. The primary use of this volume, to help the reader or researcher in conducting further research, is nearly defeated despite an excellent collection of documents in the document section of the book.

The book also suffers from the fact it is a photo reproduction of the typescript, which obviously was neither editorially corrected or proofread. Many typographical errors, repetitions and problems associated with unedited works plague these volumes. Last of all, to find such a massive and useful work without an index is thoroughly disappointing. For most of these drawbacks, except the use of *op. cit.*, the responsibility lies with the publishers.

Nevertheless, this is a pioneering work and an essential reference for everyone wanting to know and research about whales. These two volumes not only provide the most comprehensive treatment of the subject to date, but also provide a huge selection of documents to work with. Without a doubt, this work is a must for every library which serves lawyers, political scientists or governmental agencies dealing with whales.