

## NOTES:

The preceding list contains the names of a number of small and highly specialized international bodies which may not maintain large secretariats and are not expected to require the full-time services of Federal personnel. . . .

While the U.S. Government participates in other international organizations not listed here, the degree of participation may not be enough to warrant designating the organization as an international organization for the purpose of details and transfers. The Department of State will consider the status of such organizations under the detail and transfer statutory provisions on a case-by-case basis when requested to do so by Federal agencies.<sup>1</sup>

## INTERNATIONAL OCEANS, ENVIRONMENT, HEALTH, AND AVIATION LAW

*International Whaling Commission Fails to Reach Agreement on Commercial Whaling; United States Sees Commission as Increasingly Ineffective*

The United States was deeply involved in unsuccessful negotiations at the June 2010 meeting of the International Whaling Commission (IWC), seeking to overcome the division between countries that oppose commercial whaling and those that sanction it—specifically Iceland, Japan, and Norway. The negotiations centered on a proposal under which, inter alia, whaling countries would reduce their kills by roughly half for the next ten years, subject to IWC monitoring.<sup>1</sup> Environmental groups<sup>2</sup> and countries seeking a complete ban, notably Australia and Latin American countries, vigorously opposed the proposal. In the end, there was no agreement, so commercial whaling will continue subject only to limits imposed by the three whaling nations themselves.<sup>3</sup>

Prior to the meeting, Ambassador David Balton of the U.S. Department of State described the background of the negotiations and U.S. policy regarding the IWC in testimony before the House Committee on Foreign Affairs Subcommittees on International Organizations, Human Rights and Oversight and on Asia, the Pacific and the Global Environment. Excerpts follow:

[T]he United States is a leader in whale conservation and continues to view the IWC as the preeminent organization to coordinate critical cetacean research, to study emerging threats to whales and their habitat and to resolve current whale conservation issues.

Unfortunately, divergent views within the IWC membership have for many years prevented real progress on these important issues. . . .

From the perspective of overall U.S. foreign policy, the whaling issue is an unfortunate anomaly. For nearly two decades, the IWC has been mired in a prolonged stalemate. This stalemate has steadily eroded the stature and effectiveness of the organization. As six past U.S. Commissioners recently put it in a letter to President Obama, “we have seen the

<sup>1</sup> U.S. Dep’t of State Press Release, List of International Organizations Approved for Detail and Transfer of Federal Employees (June 7, 2010), at <http://www.state.gov/p/io/empl/142802.htm>.

<sup>2</sup> John M. Broder, *U.S. Leads Bid to Phase Out Whale Hunting*, N.Y. TIMES, Apr. 15, 2010, at A1; Juliet Eilperin, *Panel Proposes Whaling Ban Compromise*, WASH. POST, Apr. 24, 2010, at A2. The text of the compromise proposal considered at the IWC meeting is at [http://iwcoffice.org/\\_documents/commission/IWC62docs/62-7rev.pdf](http://iwcoffice.org/_documents/commission/IWC62docs/62-7rev.pdf).

<sup>3</sup> See, e.g., *Whales Urgently Need Your Help Now*, Advertisement, N.Y. TIMES, June 18, 2010, at A20.

<sup>4</sup> David Jolly, *Talks on Whaling Reductions Fail*, N.Y. TIMES, June 24, 2010, at A8; Marc Kaufman & Juliet Eilperin, *Talks on Whale Hunting at an Impasse*, WASH. POST, June 24, 2010, at A4.

steady decline of the IWC from a world-class international organization for the conservation and management of the great whales to a nearly dysfunctional body.”

The organization’s stated objectives are to conserve whales and to manage whaling operations. Following years of overharvest, the IWC adopted a moratorium on commercial whaling in the mid-1980s. For several years thereafter, the moratorium proved to be reasonably effective. The IWC members who had previously engaged in commercial whaling generally abided by the moratorium. Within the IWC, work proceeded to study the stocks of great whales and to prepare a new set of management rules under which limited whaling might resume under tightly controlled strictures. But starkly divergent views arose among IWC members which effectively brought this work to a halt. Norway, which was never legally bound to the decision establishing the moratorium, resumed commercial whaling in 1993. Iceland, which left the IWC in the early 1990s, rejoined the IWC some years later, claimed that it was no longer bound to observe the moratorium, and resumed whaling operations. Japan, which claims to observe the moratorium, significantly expanded lethal scientific whaling in both the Southern Ocean and North Pacific.

At this point, the IWC does not meaningfully control any of these whaling activities. Indeed, the only whaling activities that the IWC oversees closely are the taking of whales for aboriginal (or indigenous) subsistence use, including the whaling undertaken by Alaskan Eskimos. Recently, the Commission has struggled with this activity as well . . . . By all accounts, the organization is increasingly becoming ineffective.

. . . [T]he nations most involved in this stalemate are normally allies on a wide range of international issues—with each other, and with the United States. . . . The whaling issue is a source of ongoing friction in these relationships. Staunch positions taken by IWC members at opposite ends of the spectrum of views on whaling fuel this friction.

. . . .

The United States certainly has different views about whaling and whale conservation than those who are engaged in commercial whaling and lethal scientific whaling.<sup>4</sup> Nevertheless, the governments who are engaged in those activities are now responsibly engaged with us and other IWC members in an honest if difficult effort to find a way forward. We do not know whether or not this effort will succeed. . . .

. . . The Chairs’ proposal, while not acceptable to the United States or to most other IWC member governments, provides a strong foundation by which to continue discussions, and develop an arrangement that might be acceptable to the IWC membership. In our view, such an opportunity to improve whale conservation and to make the IWC an effective organization may not present itself again soon.

. . . .

As the process comes to a head, it will be more difficult for IWC member governments to continue to be flexible in these discussions. Indeed, some members (including the United States) are under increasing political pressure and criticism from constituents who believe that the Chairs’ proposal would effectively capitulate to those members who want to engage in commercial whaling. On the other side, Japan, Norway and Iceland are under

<sup>4</sup> [Editor’s Note. See John R. Crook, *Contemporary Practice of the United States*, 103 AJIL 366 (2009).]

increasing political pressure and criticism from constituents who believe that the Chairs' proposal would unduly restrict their right to harvest whales.<sup>5</sup>

*Eleven from Somalia to Be Tried for Piracy in Federal Court in Virginia; Maersk Alabama Pirate Pleads Guilty; United States Supports Russian Piracy Resolution*

In April 2010, the U.S. Attorney's Office for the Eastern District of Virginia announced the indictment of eleven men from Somalia on charges that include piracy. Five were charged in connection with a failed nighttime attack on the USS *Nicholas*, a U.S. Navy frigate that the attackers apparently thought was an unarmed freighter.<sup>1</sup> The other six were charged in connection with an unsuccessful early morning attack on the USS *Ashland*, an amphibious assault ship.<sup>2</sup>

Excerpts from the announcement of the charges follow:

Federal grand juries in the Eastern District of Virginia have returned two separate indictments charging 11 men from Somalia with engaging in piracy and related offenses pertaining to attacks on two Navy ships. The indictments charge separate attacks by separate groups on the U.S.S. *Nicholas* and the U.S.S. *Ashland*.

....

According to the first six-count indictment returned on April 20, 2010, five men—Mohammed Modin Hasan, Gabul Abdullahi Ali, Abdi Wali Dire, Abdi Mohammed Gurewardher, and Abdi Mohammed Umar—left Somalia in search of a merchant ship to pirate. They allegedly used two smaller vessels loaded with assault weapons and a rocket propelled grenade (RPG) that served as attack boats, along with a larger ship full of supplies.

This indictment alleges that on March 31, 2010, Hasan, Ali, and Dire boarded one of these smaller vessels and set out to pirate and plunder what they believed to be a merchant ship. Ali and Dire each allegedly carried an assault weapon, and Hasan allegedly carried an RPG. The indictment charges that they opened fire on the ship, which they later discovered was the *Nicholas*.

The remaining two individuals charged in the indictment—Gurewardher and Umar—remained onboard the large ship to maintain that ship during the alleged attack.

In a second five-count indictment, six men—Maxamad Cali Saciid, Mohammed Abdi Jama, Jaamac Ciidle, Abdicasiis Cabaase, Abdirasaq Abshir and Mahamed Farraah Hassan—were charged with piracy-related offenses involving the U.S.S. *Ashland* on or about April 10, 2010.

All 11 men were charged with piracy, which carries a mandatory penalty of life in prison.

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<sup>5</sup> Deputy Ass't Secretary of State David Balton, Ongoing Efforts Within the International Whaling Commission (IWC) Regarding Its Future, Statement Before the House Committee on Foreign Affairs' Subcommittee on International Organizations, Human Rights and Oversight, and Subcommittee on Asia, the Pacific and the Global Environment (May 6, 2010), at <http://www.state.gov/g/oes/rls/remarks/2010/143167.htm>.

<sup>1</sup> Richard Sisk, *U.S. Navy Captures 5 Somali Pirates, Seizes Pirate Mother Ship off Kenya, Somali Coasts*, Apr. 1, 2010, at [http://www.nydailynews.com/news/world/2010/04/01/2010-04-01\\_us\\_navy\\_captures\\_5\\_somali\\_pirates\\_siezes\\_pirate\\_mother\\_ship\\_off\\_kenya\\_somali\\_coa.html](http://www.nydailynews.com/news/world/2010/04/01/2010-04-01_us_navy_captures_5_somali_pirates_siezes_pirate_mother_ship_off_kenya_somali_coa.html); Craig Whitlock, *Lack of Prosecution Poses Challenge for Foreign Navies That Capture Pirates*, WASH. POST, May 24, 2010, at A8.

<sup>2</sup> USS *Ashland* Captures Pirates, Apr. 10, 2010, at [http://www.navy.mil/search/display.asp?story\\_id=52519](http://www.navy.mil/search/display.asp?story_id=52519).