

**Rt Hon Sir Geoffrey Palmer, Chair of the Support Group -**

As the facilitator of the Chair's Support Group it may be helpful if I make some comments on the approach the Group took over the three meetings it had. These meetings were truly cordial. They were constructive. They generated an atmosphere of trust and cooperation – rare qualities in the IWC in my experience. The process demonstrated the advantages of miniaturisation: that is to say, all the diverse points of view of the IWC being represented in a group of a manageable size.

The first conclusion we reached – and this is implicit rather than explicit on the face of the document – was that we would use the tools at the IWC's command – Schedule amendments.

We would not attempt to rewrite the International Convention for the Regulation of Whaling except to the degree that can be accomplished through changing the Schedule. The reasons for that position were essentially pragmatic.

Obtaining the agreement necessary, within the immediate future, to alter the treaty itself was assessed to be a remote possibility given the long history of mistrust and division. The significance of that decision, however, needs to be spelled out. Some of the critical issues can only be solved by amending the Convention notably Article VIII, that deals with Special Permit whaling.

So we are in the situation that the best we can achieve here is a binding agreement that can be implemented through a Schedule Amendment made at Agadir. Notice of the contents of that amendment must be given by April 22, 2010. That is not far away. That fact should concentrate the minds here.

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The Group began its discussions by imagining what a properly functioning IWC would look like. This process produced a set of principles which guided the rest of our discussions. These included the 4 Cs:

- **Cooperation:** establishing a shared vision for a future of this organisation in which we could all work together towards achieving a better future for whales in an atmosphere of collaboration, trust and mutual respect for the differing, but deeply-held views of IWC member countries;

In other words we worked to find things we could agree upon.

- **Conservation:** all members of the Commission share the common goal of whale conservation. We thought the Commission should focus more on this common goal, particularly in the view of emerging threats to whales that could not have been in the minds of the drafters of the ICRW;

- **Certainty:** a properly functioning IWC will require certainty for all parties; this will require improved systems for monitoring and accountability, and needs to be durable and sustainable for whales and whalers alike;

- **Compromise:** for the IWC to function properly, any interim agreement needs to include something for everyone; and should not prejudice anyone's baseline position or principle. It should address issues around both the exploitation and the protection of whales, whaling by indigenous peoples, and the needs of developing countries, particularly with regard to capacity-building.

In particular, we immediately needed to deal at a practical level with the thorny issues of scientific whaling and small type coastal whaling;

- and finally, any arrangement would need to be **transparent**, and provide for a greater engagement by NGOs than has previously been the case.

There has been an understandable focus on the elements of the draft proposal that will take immediate effect and those that will operate over the interim period.

It is important to remember that just as important to the package is the commitment to addressing, during the interim period, the hard issues that lie at the heart of the ideological divide between the Commission's members:

- whether any level of commercial whaling should be allowed and, if so, on what conditions;
- whether the scientific whaling loophole in Article VIII of the Whaling Convention can be permanently closed;
- whether parties to the Whaling Convention should be allowed to opt out of management measures adopted by the Commission;

If we can solve those problems, which will require amendment of the Convention if agreement can be reached, we will really be able to move forward with confidence. If we cannot, no-one should assume that we will simply revert to the status quo ante. What would be the purpose in that after all this effort?

We are far from an agreement yet. What is front of you is an incomplete document. It is not agreed by any nation at this stage. It is a work in progress.

The most notable gap relates to the numbers of whales to be killed. Some of us want no whales to be killed for commercial purposes. Others of us want to go commercial whaling on a substantial basis. The talks we had revealed that neither of these agendas could be satisfied if an agreement was to be forthcoming. Compromise was going to be required. That meant suffering pain.

Or to put it another way, often used in domestic politics – both sides would have to swallow a dead rat - never a happy event – and one calculated to disturb digestion.

The principle that seemed to the conservation side of the house to be the most attractive was to reduce the total number of whales being killed. These figures have increased substantially in recent years. Whaling quotas have risen despite the moratorium.

In 1990 non-indigenous whaling quotas totalled just over 300 whales. In 1995 they were around 500. In 2000 they were around 1000. By 2005 there were around 2000. Now in 2010 the quotas are set at more than 3000.

A key issue that emerged from the discussions was whether it would be possible to cap or internationally curtail by agreement the exercise of Article VIII rights. The issue was regarded by many in the negotiation as a critical one. The current rules of the IWC have not provided an effective way to limit or stop this whaling.

The package in front of you, incomplete as it is, can reduce catch levels significantly if the numbers are agreed. Obviously these numbers are critical to any package being accepted. The agreement will limit the opportunity of those who take whales now within the convention. That amounts in my view to a method of international control by IWC over scientific whaling - a first.

The significance of this agreement will be that it closes for a 10 year period, a loophole that renders the IWC powerless to control the numbers of whales killed as matters stand. There are other significant changes as well;

- proper functioning of the Conservation Committee of the Commission

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- adherence to proper scientific standards rather than self-appointed catch limits
- the establishment of a management and compliance committee with processes for national inspectors, international observers, a vessel monitoring system, a DNA registry and market sampling scheme
- significant changes in governance.

Among the governance proposals are:

- biennial meetings
- a new committee structure
- establishment of a bureau, an institution that is common in many international organisation
- greater opportunities for participation by NGOs.

The collage, as the document itself suggests, represents a paradigm shift. It will, for a period of 10 years, set aside the difference between members and allow the IWC to function. The IWC does not properly function as an international organisation because it has been riven by deep splits and divisions.

We need to hear at this meeting what the members of the Small Working Group think of the work so far. What are its strengths? What are its weaknesses? How should it be changed?

Certainly the collage will not satisfy any nation. It cannot. It is a compromise. It will remain a compromise – a negotiated compromise. Everyone will be grumpy, even if the package succeeds which is most definitely not assured.

I want now to address some points about some of the problems people may have with the collage.

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Firstly, let me reiterate that the draft prepared after much lengthy debate within the Support Group does not mean the abandonment of Paragraph 10(e) of the Schedule. Neither does it legitimise commercial whaling. The Support Group is proposing a suspension of the current categories of whaling during a 10-year period. During that period the long term issues that have been isolated in the SWG process will be analysed and addressed.

As has been said many times during this process, to obtain a durable settlement everyone will have to bear some of the pain. Whaling under objection and reservation, as well as Special Permit whaling - as categories – will go. The only non-indigenous whaling that can happen will be that set out in the numbers in the Table. The Table will need to deliver significant reductions in the numbers of whales killed each year. That is at the heart of the proposal.

These numbers have not been finalised yet. But it is clear to me as the facilitator of the Support Group that unless the numbers of whales taken annually are significantly reduced, then there will be no consensus and no deal.

It is my earnest hope that over the next few days we will be able to get much closer to finalising the proposals that will be further considered in Agadir.

There has also been much talk of the objection provisions available under the ICRW, and suggestions that one or more of the whaling countries might object within 90 days to a consensus decision of the Commission, and thus not be bound by it. I understand these concerns. But they are not well founded.

As Chair of the Support Group, I can report to you that it is my firmly-held conviction that all countries involved have participated in good faith. We all understand the significance of the discussions we have been holding.

I am in no doubt whatsoever that IF we reach a consensus, none of the whaling countries will be lodging an objection. That is what consensus means. Blocking consensus is not easily undertaken by one country. If they do, it would simply provoke objections from the other side – as is provided for in the Convention – and would wreck any carefully-crafted compromise. It would put us back where we were at the start of this process and in an even worse frame of mind because the success achieved collectively will have been snatched from us by unilateral action.

Comments have also been made that quotas allocated under an interim arrangement would not be based on sound scientific advice. I want to reassure you all that ultimately, all quotas will be based on the RMP.

It is true, of course, that for some of the stocks under consideration, the Scientific Committee does not have adequate data to implement the RMP. For those stocks, collection and analysis of high-quality data for implementation of the RMP will be a priority.

In the interim, quotas will be precautionary, and at a level that is well within the limits of sustainability according to the best available scientific information. Should a future implementation of the RMP generate a higher permissible level of take, quotas will nonetheless remain at the precautionary levels developed in the current process.

A further criticism that has been made is that the current collage does nothing to prevent international trade in whale products. The fundamental reason for this, of course, is that this is not the role of the IWC. Trade matters are the domain of CITES and the WTO.

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However, our negotiations are ongoing, and it may be possible to develop some further safeguards to address these concerns.

Nothing is agreed until everything is agreed. We all know that I believe that the Support Group has made great progress in bringing us out of the trenches and silos that characterised much of the time that I have spent at the IWC during my 8 years.

At present, we may be in a no-man's land. The options are to move forward towards an armistice, or retreat back to the trenches. I urge you all to enlist your collective energies in reaching out for a settlement.

We have been climbing this Mount Difficulty for quite some time. There have been many attempts at scaling its peak. Each time we have had to abandon our expedition and return to our respective encampments. We are now at another point of decision. Do we try again for the summit or go home defeated?

Change is within view, and within reach. Behind us rests the certainty of the deadlock we have enjoyed for decades. Our previous expeditions up this Mount Difficulty have failed. We can return to the comfortable acrimony of our established positions. However, just ahead of us awaits the uncertainty of new life for this organisation, a life where parties can cooperate to advance their common interests.

Let us not rename Mount Difficulty Mount Impossible just yet.

If we do not scale this peak, I confidently predict no further attempt will be made for 20 years. Governments will not be prepared again to commit the significant diplomatic resources that have gone into the present exercise. Politicians will not be prepared to give time and energy to an issue that has proved so intractable

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and which, while important, is far less demanding of their attention than the many other issues with which they have to grapple. So unless we succeed the IWC will fall back into the slough of despond that has characterised its activities for many years. That, I believe, would be unfortunate.