

Working Group for the Provision of Assistance to Governments of Limited Means (WG-AGLM)

Summary of responses to the review on options for providing assistance, and suggested recommendations

Prepared by the Secretariat

1 INTRODUCTION

On 10 February 2012 the Secretariat circulated a review document (number IWC/2012/WG-AGLM 1) to the WG-AGLM which presented options for providing assistance to member Governments with limited means to participate in the work of the IWC. Current membership of the group comprises the Governments of Ecuador, Japan, Republic of Palau, Saint Lucia and the USA. Responses to the review were received from three members of the group.

This document provides a summary of the comments received and the original individual responses are provided at Annex B. Suggested recommendations based upon the comments received are given at Section 4 below.

In addition, the original review (IWC/2012/WG-AGLM 1) has also been circulated to the Commission as a whole in compliance with the request in Resolution 2011-1 for the Secretary to report 100 days before the 64th Annual Meeting on potential options for providing assistance to member governments.

2 GENERAL COMMENTS

IWC/2012/WG-AGLM 1 was welcomed as concise and thorough review of potential options. All respondents supported the establishment of a voluntary fund to assist member governments of limited means participating in the work of the Commission. One respondent noted that 15 out of 29 Group One countries were absent from IWC/63, and stated that the establishment of a financial support mechanism was therefore an urgent issue. However different opinions were expressed regarding the appropriateness of using a voluntary fund to support attendance at the Commission's regular (annual) meetings.

There was general support for modifying the approach of the IATTC (expressed through its Resolution C-11-11) so as to apply to the IWC, with one respondent suggesting that the Secretariat should draft a similar Resolution for consideration by the WG-AGLM. Accordingly a draft Resolution for review and possible submission by members of the working group has been prepared (see Annex A).

The responses are summarised in more detail in Section 3 below.

3 SPECIFIC COMMENTS

IWC/2012/WG-AGLM 1 noted that two basic options exist for providing financial assistance to developing countries to participate in the work of the IWC. These were to either (1) modify the IWC's central budget or (2) to establish a voluntary fund. Responses to these basic options are summarised in sections 3.1 and 3.2

3.1 Modification to the IWC's central budget

The IWC's central budget could be modified to support developing countries either by changing the contributions scheme to reduce financial contributions from developing countries, or by allocating central funds to support attendance at Commission meetings.

3.1.1 Summary of responses

No respondents supported modification to the IWC's central budget using either reduction in fees or direct allocation for participatory expenses. Instead this option was variously considered as (1) likely to cause controversy at the Commission level; (2) lacking in guarantee that a fee reduction would result in Contracting Governments underwriting participatory expenses for their delegates; and (3) as creating an unfair increase in the fees of countries in Groups 3 and 4.

Additionally, one respondent indicated their satisfaction with the current interim contributions formula following the slight modifications made in 2010 with respect to the contributions of St. Vincent and The Grenadines.

3.2 The voluntary fund approach

All three respondents supported the establishment of a voluntary fund, and one respondent noted that this approach would also enable the IWC to provide assistance to developing countries sooner than any of the other options considered.

3.2.1 Use of Voluntary Funds

With regard to the question of how the voluntary funds should be used, two respondents recommended that funds should be used to support attendance at all meetings, including Commission plenary meetings so as to permit participation in decision making.

The third respondent expressed concern that Article III.5 limits the use of such funds, in particular for the participation in regular meetings of the Commission. Instead, it suggested that the voluntary fund should support developing expertise in the establishment of policy and management frameworks, facilitate partnerships, increase information sharing, facilitate participation in research, training and in projects related to whale conservation and management.

3.2.2 Eligibility of countries to receive voluntary funds

All respondents suggested that Group One countries should be eligible, with two countries suggesting that Group Two countries may also be considered. Different opinions were expressed regarding whether suspension of the right to vote should influence eligibility to receive funds, with one respondent suggesting that it should not, and one suggesting that the question should be discussed further.

With regard to how to prioritise those countries who should receive funding, one respondent suggested that initial discussion could be based on timing of application, and a second suggested that priority should be given to Group One countries with the lowest GNI and GNI per capita

4 Suggested recommendations from the Working Group

The Working Group will report its conclusions to the meeting of the Finance and Administration Committee at IWC/64. In order to support this process, comments are invited on the appropriateness and acceptability of the following recommendations:

- (a) After reviewing a range of possible options for providing assistance to member governments of limited means, the Working Group recommends by consensus the establishment of a voluntary assistance fund.
- (b) Further work is required to determine how the voluntary funds should be used, particularly with respect to the issue of Article III.5. Two countries believed that priority should be given to assisting developing countries attendance at plenary meetings, while the other suggested that it was more appropriate for the funds to be used for capacity building purposes linked to the work being undertaken through the Commission.
- (c) The Working Group agreed that Group One countries should be eligible for assistance from the voluntary fund with two members suggesting that assistance could also be extended to Group Two countries where resources allowed. In the event that available funds are insufficient to support all Group One countries the Working Group suggested using criteria such as least GNI to prioritise applications. Different opinions were expressed on whether suspension of vote should affect prioritisation for funding.
- (d) The Working Group considered that the approach used by the IATTC through its Resolution C-11-11 to create a special sustainable development fund provided a useful model in which to structure the use of a voluntary fund within the IWC. Accordingly the Working Group has developed a draft Resolution to establish a similar voluntary fund under the IWC (See Annex A). A provision on the use of the voluntary fund to support attendance at routine Commission meetings has been included in square brackets. The intention is to allow the F&A Committee to debate this proposal further, and to make a recommendation to the Commission if deemed appropriate.

Annex A

Draft Resolution on the Creation of a Fund to Strengthen the Capacity of Governments of Limited Means to Participate in the Work of the IWC

Submitted by (*Names of Contracting Governments to be inserted*)

Recognising the large number of developing countries who are members of the IWC and have financial difficulties that limit their full participation in the work of the IWC;

Recalling the voluntary financial support provided to Contracting Governments in Capacity to Pay Groups 1 and 2 during the special meetings of the Small Working Group tasked with advancing the 'Future of the IWC' process;

Desiring to ensure the fullest possible participation in the work of the Commission by all Contracting Governments

NOW THEREFORE THE COMMISSION:

Agrees to create a 'Voluntary Assistance Fund' so as to strengthen the capacity of Governments of limited means to participate fully in the work of the Commission;

Agrees that the sources of the Fund shall be voluntary contributions obtained from Contracting Governments or from national or international bodies or entities interested in strengthening the capacities of developing countries, so long as any contributions received are compatible with the Commission's Financial Regulations governing acceptance of external funds;

Agrees that the initial capital of the fund shall be the amount voluntary contributions provided for support of developing countries during the 'Future of the IWC' process that remain unspent;

Requests the Secretary to administer the Fund, which shall be subject to the financial regulations and audit rules of the Commission;

Further requests the Secretary to develop protocols for distributing funds to Governments of limited means, subject to the purposes below;

Agrees that disbursements from the fund shall be limited to the purposes of:

- Development of policy and management frameworks and the facilitation of partnerships;
- Increase in information sharing;
- Facilitation of participation in research activities and training activities;
- Participation in projects related to whale conservation and management;
- [Participation of representatives of developing countries in the annual meetings of the Commission or its subsidiary bodies, as well as of scientific experts in the meetings of the Scientific Advisory Committee;]
- Others that the Commission may decide, but limited strictly for the creation of sustainable development

Annex B

Responses received from members of the Working Group on Providing Assistance to Governments of Limited Means to the review document circulated on the 10 February 2012.

The responses are provided in alphabetical order:

Japan

Republic of Palau

United States of America

1. Government of Japan

Dear Dr. Brockington:

First, I would like to thank you for your effort in developing the Options paper circulated on February 11th. Your paper has helped us deeply consider the issue as it provides a concise and comprehensive review of available options. This e-mail provides our comments:

1. General Comment

The IWC, having a large number of Contracting Governments with a long history, has many developing countries that have often had difficulties in attending the Commission meetings. For example, 15 out of 29 countries categorized in the Group One were absent from the IWC 63, and this is a clear example of why the Commission should consider to establish a mechanism to support the inclusion of its developing countries in the decision making as an urgent issue. In order to achieve this, it would be desirable to establish a mechanism as an initial step, applying the least controversial option available. Therefore, we support the option which focuses on a mechanism through the establishment of a voluntary fund at its conclusion.

2. Feedback to 3.2.2. (a)-(d)

(a) *whether with this extension of the general approach adopted during the Future process is still compliant with Article III.5*

Japan sees that the extension of the general approach adopted during the Future process is the least controversial option, which would also enable the IWC to provide assistance to developing countries sooner than the any other options provided in the paper.

(b) *what meetings are covered (e.g. just Commission plenaries, all sub-groups or some sub-set)*

Priority should be given to the Commission plenary in order to support developing countries to join decision making.

(c) *which countries are potentially eligible (e.g. all group 1, both group 1 and 2, does eligibility to vote influence eligibility, etc.)*

Given the current condition of the limited financial resources, the support should start with the Group One countries as an initial step. Once the financial resources are secured, it might be appropriate to consider the possibility to extend the coverage to the Group Two countries in a later stage.

Also, the allocation of the financial support should be prioritized to countries which have paid their contributions and secured their voting rights for the meeting for which the financial support is requested. With this prioritization, the IWC could encourage countries to pay their contributions.

(d) *if (a)-(c) are addressed, what practical mechanisms will need to be put in place to implement an approach such as that given in Annex A, particularly if there are insufficient voluntary funds to pay for all eligible countries (see section 3.3 below)?*

The Annex A can be used as a basis, with an additional description for the case of insufficient voluntary funds. In such a case, priority should be given to those countries with the least GNI and GNI/capita among the Group One countries.

3. Avoidance of Decisive Expression

The Options paper refers to Article III.5 of the ICRW in Section 1.1, but it doesn't give its interpretation of the Article. Since the background on the rationale behind the Article is unclear, even after looking into the minutes of 1946 Washington Conference, it is wise to avoid discussion on the interpretation of this Article.

However, the Option paper seeks assessment on consistency of the certain options. For example, the section 3.1.2. of the Options paper concludes "this approach is the most likely to be considered in breach of Article III.5", and in section 4, it says "voluntary fund approach is most likely to be seen as consistent with Article III.5". Since this paper doesn't examine the interpretation of Article III.5 in principle, it should not include any decisive descriptions regarding the consistency of options to Article III.5, even in a comparative observation. Instead, it can mention, for example, "This option is most likely to be called in question regarding the consistency with Article III.5".

4. Disclaimer

As mentioned in 1. above, we believe that the IWC should start with the least controversial option as an initial step. In doing so, the paper from the WG to the Commission should include a disclaimer such as "This paper suggests an option (voluntary fund) which is likely to be less controversial at the IWC Commission. However, it doesn't mean that other options (e.g. payment from central budget) have been excluded from future consideration. It doesn't limit the interpretation of the Article III.5 of the ICRW either."

We should not limit our options by the paper from the WG. If the IWC's trial with voluntary fund does not work, the IWC will need to modify the mechanism.

Finally, we are of the view that the IATTC Resolution C-11-11 provides a useful model to achieve its objective of providing assistance to the IWC's developing countries. We would therefore ask the Secretary to draft a similar resolution for circulation with the revised version of the Options paper in sufficient time to meet the 60 day requirement of the Rules of Procedure.

Sincerely,

Kenji Kagawa
Commissioner for Japan to the International Whaling Commission
Chief-Counsellor
Resources Management Department
Fisheries Agency
Ministry of Agriculture, Forestry and Fisheries
Government of Japan

2. Republic of Palau

Palau Commissioner Victorio Uherbelau's Contribution
As Member of Working Group for Provision of Funding Assistance to
IWC Member Governments of Limited Means
Re: Option to Propose to the Commission
(15 March 2012)

1.1 Observations re Article III.5 of ICRW

The Secretariat is to be commended highly for producing a well-thought-out and well-researched background working paper for the Working Group to use as a guide for its rather ambitious task. It is discouraging that out of 89 members; only four Contracting Governments accepted this seemingly formidable challenge. This lack of volunteers from IWC membership is disappointingly so in view of many active, and at times heated, debates engaged in by eloquent orators at the Commission's annual meetings or its intersessional sessions since May 2002 at Shimonoseki IWC42. It makes one wonder whether the enthusiastic debaters from either side of the isles merely wished to be heard but not at all intent to find workable resolutions to this rather sensitive but real problem encountered by a good number of IWC Contracting Governments.

Moreover, it makes one wonder too whether it is not high time now for the Commission-of-here-and-now to revisit Article III.5 of the International Convention for the Regulation of Whaling (ICRW) which was adopted some 66 odd years ago by only a handful of industrial whaling countries genuinely concerned about eventual global decimation of the various species of whales. But IWC membership has grown since to include other less financially endowed countries that can ill afford to themselves meet the participatory expenses of their country delegates at the Commission's various activities.

This member of the Intersessional Working Group is of the view that provisions of the 1946 ICRW were not meant to be inviolable tenets never ever to be contradicted or modified even if change of circumstances warranted it. Too much deference has been accorded the argument that Article III.5 must be strictly adhered to as if it were cast in stone. The obvious implication there is that it is unthinkable to even consider amending the Article's restrictive language. Why? Perhaps the foregone conclusion that such a move will never garner a three-fourths majority vote required for its adoption. That may be so. But the Commission agreed, as a way forward at the 2011 Jersey Island IWC63, to consider adopting "*The Pacific Way of Consensus Decision-Making*". And so why can't the Commission, by consensus, amend the text of Article III.5 and be done with it?

Then too like many other Whale Commissioners, I am a true believer of the English Proverb: "*When there is a will, there is a way!*" And after all, provision of some form of financial support for IWC developing countries was the lone recommendation unanimously endorsed if not agreed to at the 2010 Agadir IWC62 out of the worthy recommendations of the Chair's and Vice Chair's Consensus Report.

With the foregoing said, I now move on to specific issues outlined in the working document.

3.1 Use of Central or Core Budget

Utilizing the Commission's central or core budget as the source of providing financial support to the Contracting Governments with Limited Means may perhaps be feasible only if the text of Article III.5, as alluded to above, was to be modified to allow for it. And this is also noted in paragraph 1.2.1 "... (1) the legal and procedural requirements associated with Article III.5 of the Convention must be considered..."

But difficulty associated with Article III.5 could be overcome by amending the Commission's Financial Regulations to establish such fund for specific purpose as was done with respect to the creation of a Special Fund for Small Cetaceans.

I am not in favor of reducing annual contributions assessed of group 1 and group 2 members for two reasons. First, there is no guarantee that fee reduction will automatically result in group 1 or 2 Contracting Governments underwriting participatory expenses of their delegates in the meetings or activities they are required to attend. Secondly, fee reductions in group 1 and 2 countries' contributions will have corresponding increases in assessed fees of countries in categories 3 and 4. And this is simply not fair. But perhaps the Commission ought to take a closer look at group 2 countries with the view towards further subdividing it into two separate categories. After 10 years, the benchmark GNI per capita of US\$13,460.00 of the 30 Group 2 countries could have gone up or down. And those with lesser ability or poorer economy should be made eligible for financial assistance as are the group 1 countries.

And even if the central or core budget approach could not be adopted at this juncture, the Secretariat should continue dialoguing with those Inter-governmental Recourse Management Organizations that have already adopted the core or central budget approach; i.e. IOTC, IATTC, ICCAT, or Ramsar Convention's and especially, the Western Central Pacific Fisheries Commission (WCPFC) whose membership includes a good number of IWC countries bordering the Pacific or with Pacific Islands as their territories. For example: Australia, New Zealand, United States, United Kingdom, France, Japan, Korea, China, Kiribati, Marshall Islands, Nauru, Palau, Solomon Islands and Tuvalu.

3.2 The voluntary fund approach

It may very well be that the voluntary fund scheme is the only approach that a great majority would support, or even by a consensus at the upcoming IWC64 in Panama. And if that be so, I'd of course go along with the will of the majority. But it has to be made clear that the contributors to the voluntary funds must be first and foremost IWC Contracting Governments. However, if sufficient volunteer fund cannot be so raised, and needs to be sourced from traditional donor organizations (IGO's or NGO's), it must be done on the condition that the benevolent contributors or donors refrain from attempting to influence the Commission's deliberations in favour of the views or positions they individually advocate.

3.2.2 for attendance at regular meetings of the Commission and its sub-groups

I concur with the conclusion that, if voluntary fund is established, it should not be restricted to covering only special events. Rather, following on the precedence set for the use of the voluntary fund during the Small Working Group on the Future of IWC process, the new voluntary fund ought to be used to cover all Commission's regular meetings, including intersessional sessions, subgroups, etc. But to hold down the costs, the subgroups meetings or special events should be held more than once a year and to be scheduled as much as possible at the margins of the IWC annual meetings.

Answers to 3.2.2 Specific Questions

(a) *Whether with this extension of the general approach adopted during the "Future of IWC" process is still compliant with Article III.5. Unqualified, YES!*

(b) *What meetings are covered (e.g. just Commission plenaries, all sub-groups or some sub-set)*

Plenary meetings of the Commission, including its standing committees, i.e. Scientific; Finance and Administration; Budget, etc. but to hold down the costs of attendance, that subgroup meetings be held back-to-back or at the margin of Commission plenary sessions or its intersessional meetings.

(c) *which countries are potentially eligible (e.g. all group 1, both groups 1 and 2, does eligibility to vote influence eligibility, etc.) All group 1 countries should be eligible as they were under SWG for future of IWC. See comment under 3.1 above for group 2 eligibility. Whether or not a developing country's right to vote has been suspended (temporarily) ought not to have any bearing on that country's eligibility for the use of the fund.*

(d) *if (a)-(c) are addressed, what practical mechanism will need to be put in place to implement an approach such as that given in Annex A, particularly, if there are insufficient voluntary funds to pay for all eligible countries (see section 3.3 below)?*

- (i) ***Utilize the GBP 48,175, left over from the "Future of IWC" process, as the seed funding for the new voluntary contribution;***
- (ii) ***Amend IWC Financial Regulations to accommodate establishment of such fund;***
- (iii) ***One delegate per country under the lesser estimated costs as outlined left column in Table 2, and***
- (iv) ***For the Secretariat, as part of this Working Group task, to develop similar procedure as in Annex A for administration of the fund.***

3. United States of America

Options for Providing Assistance to Member Governments with limited Means to Participate in the Work of the IWC

The United States fully supports the exploration of options within the Commission to support the participation of Governments with Limited Means in the work of the Commission. We provided voluntary funds to the commission to ensure that these governments were able to participate in the “Future of the IWC” discussions. This provides our response to the suggestions made by the Secretariat in their paper providing options to provide assistance to member governments with limited means to participate in the work of the IWC.

Core budget approach:

The United States is currently satisfied with the interim contributions formula, which takes into account member government’s capacity to pay. And we believe that, following the slight modifications made 2 years ago with respect to St. Vincent and the Grenadines’ contributions, that the formulation meets the needs of all member governments. We do not recommend modifying the current contributions scheme.

We also support the current practices set up for the participation of Invited Participants in the Scientific Committee meetings. This is an important way for scientists to contribute to the work of the Commission. And we would like to explore ways that we could expand on this concept.

Voluntary fund approach:

The United States supports the establishment of a voluntary fund to assist member governments with limited means in participating in the work of the IWC. We are quite satisfied with the process established to assist member government’s participation in the “Future of the IWC” process. We are supportive of the establishment of a voluntary fund to strengthen the capacity of member governments participation in the Commission’s work. However, we remain concerned that Article III.5 limits the use of such funds, in particular for the participation in regular meetings of the Commission. In our view, a voluntary fund should be established that will assist in developing expertise in the establishment of policy and management frameworks, facilitate partnerships, increase informational sharing, facilitate participation in research activities, training activities, and participation in projects related to whale conservation and management.

Specific thoughts on the Secretariat’s questions outlined in Section 3.2.2 are below:

- a) We continue to interpret article III.5 as applying to regular meetings of the Commission. Therefore, extension of the general process established under the “Future of the IWC” discussions (which were extraordinary meetings of the Commission) to participation in regular meetings of the Commission would not be consistent with the Convention.
- b) We believe that article III.5 applies to regular meetings of the Commission.
- c) We concur with the practice established in the Future of the IWC process, whereby Group 1 and 2 countries were eligible for assistance. We can discuss the specifics related to whether or not voting rights have been suspended as applying to eligibility. Should this become a factor, a decision on date by which voting rights would be restored should be discussed.
- d) We concur that a process should be put in place to determine who receives funds, should there not be enough voluntary contributions to cover the costs of all Group 1 and 2 countries. The suggestion of awarding based on timing of application is a good starting point for discussion.

In conclusion, we like the prospect of establishing a voluntary fund to assist member governments with limited means’ participation in IWC activities. We like the example set by IATTC in its resolution on the creation of the special sustainable development fund. We think this is a good model in which to structure the use of a voluntary fund within the IWC.