

Chair's Recommendations for Follow-up to the March 2008 Interessional Meeting on the Future of IWC

1. INTRODUCTION

In my concluding remarks at the Interessional Meeting on the Future of IWC held at the Renaissance London Heathrow Hotel from 6-8 March 2008, I informed Commissioners that I would present a report of the meeting to the Commission which would be circulated well in advance of IWC/60 in Santiago, Chile. I also stated that, in consultation with others, I would develop a series of recommendations, for discussion at IWC/60, for improved procedures and ideas that would take the Commission forward.

The Chair's Report of the interessional meeting (Document IWC/60/7) was made available to all interested parties on 24 April via the IWC's website (<http://www.iwcoffice.org/meetings/interession.htm>).

This document contains my recommendations for how the Commission might now move forward. In their development, I have taken account of the ideas expressed and discussed in London, subsequent discussions I have had with number of Commissioners and others (including Professor Juma and Ambassadors de Soto and Estrada-Oyuela - the three experts involved in the March interessional meeting).

2. RECOMMENDATIONS

My recommendations fall into two areas:

- (1) recommendations to improve the practice and procedures of the Commission;
- (2) recommendations on how to approach discussions/negotiations on substantive issues at IWC/60 in Santiago and beyond.

2.1 Improving the practice and procedures of the Commission

During discussions at the interessional meeting in London, there was general agreement that the Commission needs to improve the way it conducts its business. A variety of suggestions were made which are described in some detail in section 4 of my report of that meeting. These included: (1) striving to reach decisions by consensus wherever possible; (2) ensuring that adequate notice is given of matters to be considered by the Commission so as to reduce surprises and allow time for proper consultation; (3) recognising the diversity of interests among Commission members and the need for mutual respect and equal treatment of all Contracting Governments; (4) improving the negotiation process, for which a variety of mechanisms were proposed including the use of open and closed sessions, smaller groups and 'cooling off' periods; (5) reviewing the composition and function of the Scientific Committee; (6) improving participation, through, for example, a financial contribution scheme that better-reflects countries' capacity to pay and the introduction of other working languages; (7) reviewing the role of the media; and (8) improving relationships with other intergovernmental organisations.

While some of these matters can be addressed through changes to the Commission's Rules of Procedure, others are more dependent on goodwill, understanding and a constructive attitude being shown by Commissioners and Contracting Governments. I have asked the Secretariat to develop a document that presents options on how these matters might be approached for discussion and possible action in Santiago. The document will be circulated prior to the meeting.

2.2 An approach to discussions and negotiations on substantive issues

It is clear that improving matters of procedure are a means to an end and that that end should be an IWC that is effective with respect to wise conservation and management. I have been encouraged by the overall willingness of Commissioners to engage in discussions and negotiations to that end. To build upon that willingness, I have developed a proposal for a process to enable discussions and negotiations on substantive issues to be undertaken. This process is outlined below. In my experience it is important to develop a proposed timeline and an indication of who is to be involved at the various stages. Of course, I recognise that this cannot be considered 'cast in stone' and that as discussions proceed there may be a need to modify approaches and or timelines. My proposal is summarised below and in Table 1. Table 1 identifies which parts of the proposed approach will be open to observers.

Step 1: The Commission commits to addressing its difficulties through negotiating a 'package'.

Given the many interests and differing priorities of members in relation to the conservation and management of whales and the role of IWC, I believe strongly that resolution of the IWC's difficulties can only be achieved through the negotiation of some sort of 'package' that incorporates the key issues faced by the Commission. This will inevitably mean that no-one will achieve everything they seek on every issue but that everyone should gain something, i.e. there should be no outright winners or losers and all parties should be able to portray the package as positive. There must also be recognition that the science-based conservation of whale stocks should not be compromised during negotiations of any package.

Step 2: The Commission commits itself to make every effort possible to achieve a negotiated package by consensus.

Ideally, any agreements that are reached will be by consensus. Consensus agreements are most likely to be fully implemented and thus be more enduring. Reaching an outcome that has the agreement of all Contracting Governments should be the goal. Although I recognise that this may be difficult. If this proves not possible it is my hope that an 'IWC consensus' can be reached i.e. that there is no demand for a vote from any country although reservations may be recorded.

Step 3: Contracting Governments identify elements/issues they believe should be considered for inclusion in any package.

On the understanding that '*nothing is agreed until everything is agreed*', **all** Contracting Governments should have an opportunity to identify those elements or issues they believe should at least be considered for inclusion in any package. While this exercise may result in a long list, at this stage I believe it is important for all Contracting Governments to have the opportunity to identify those issues of particular importance to them. The aim at this stage is to develop an initial list *without* value judgements or criticisms being made by others. To facilitate such discussions at IWC/60, I intend to pull-together a list of elements/issues that have already been identified as being of importance in previous discussions on the future of the organisation. Contracting Governments will then be invited to identify further issues that they wish to be included.

Step 4: Having identified possible/potential elements of a package, Contracting Governments discuss how each one might be addressed and possible compromises reached as appropriate.

At this stage, I would like us to have a short discussion of the identified elements to obtain some idea of relative importance and possible compromises that might be reached. Of course a package is built up of a balance of compromises over several issues not any single issue. However, to be able to build-up an idea of what might be acceptable, it is important to obtain a feel for the individual issues themselves and what options might be appropriate.

To develop a hypothetical example, let us imagine a key issue 'Non-lethal Activity A'. Some Governments may consider that 'Non-lethal activity A' should not be considered at all by the Commission and that it detracts from its prime business. Others may hold the opposite view and believe that 'Non-lethal Activity A' is extremely important and that it should be one of the core items of business.

One possible compromise could be a general acceptance that 'Non-lethal activity A' is a legitimate subject for the Commission to discuss, noting that it is a potential factor in the conservation of whale stocks (clearly part of the work of the Convention) and that the focus of consideration of this activity should relate to determining/avoiding problems with respect to conservation. In this approach there is a gain for: (1) those who currently wish to consider 'Non-lethal activity A' since the Commission would agree to address it without objections; (2) those who believe that 'Non-lethal activity A' is not the primary aim of the Convention, since the issue would be included in the context of the conservation of whale stocks; and (3) for the whale populations concerned in that addressing this matter will help ensure that 'Non-lethal activity A' does not have a negative impact on their status.

In summary, my intention here is not to have detailed discussions on each item, but rather to generate broad ideas of how each might be handled and where compromises might be possible. Clearly, the finalisation of the details will be more likely to occur when all elements are considered together in a possible package or packages.

Step 5: Initial development of a possible package or packages by a small working group.

I believe that steps 1 to 4 can be achieved at IWC/60 in meetings open to all Contracting Governments. However, it seems clear that the development of possible packages would be difficult in such a large group. I therefore propose that initial work to develop a possible package or options for (a limited number of) possible packages should be undertaken by a smaller group of Contracting Governments. Given the need to consider the possible elements of any package in an interactive manner I believe that it is most appropriate to establish a single working group rather than several groups. Given that the specific task of such a working group will be dependent on discussions under Steps 1 to 4, I propose that specific Terms of Reference for the group be developed in Santiago.

In accord with the views expressed by the outside experts at the March 2008 intersessional meeting, I believe that the working group should be as small as possible to facilitate discussions but as large as necessary so as to be representative of different interests. I am currently developing options as to how such a group might be constituted, for discussion at IWC/60.

I want to stress that the purpose of the small working group is not to negotiate on behalf of all Contracting Governments, but rather to develop proposals for review, comment and negotiation by all members. While there may be an opportunity for the working group to have preliminary discussions in Santiago, I believe that most of its work will need to be done intersessionally through meetings, email correspondence and conference calls. I do not anticipate that the discussions in the working group will be of a scientific/technical nature.

Step 6: Review by all Contracting Governments of the work of the working group.

All Contracting Governments will have the opportunity to review and comment on the options being developed by the working group, and I propose that this be done via an intersessional meeting of the Commission in the period February/March 2009. I anticipate that the meeting would need to be of 3-4 days duration. I would like, if possible, at IWC/60 to agree a venue and dates for the intersessional meeting.

Step 7: Further development of a package or package options by the working group

Based on the discussions at the intersessional meeting, the working group would continue to work on a possible package or packages. It would report back to all Contracting Governments at IWC/61 in Madeira in June 2009.

Step 8: Further review by all Contracting Governments of the work of the working group

I sincerely hope that it will be possible to reach broad agreement on a single package (or at least have one in sight) at IWC/61 in Madeira, recognising that even if this is achieved there will inevitably be some further work to be done to codify the details to allow formal adoption and implementation. If it is not possible to reach broad agreement on a single package at IWC/61, then steps 7 and 8 would need to be repeated for IWC/62. I believe that it is essential that we do not fail in our efforts to reach an acceptable solution as quickly as possible. I do not wish to contemplate failure but this may be necessary if we cannot reach agreement by IWC/62, with potentially very sad consequences for whale conservation and management, not to mention the future of the IWC.

Table 1: Summary of the suggested process

What	Timing	Who by/how	Open to all Contracting Governments?	Open to observers?
Step 1: The Commission commits to addressing its difficulties through negotiating a 'package'.	IWC/60, June 2008	These steps could be addressed during the sessions set aside for Thursday and Friday the 19 and 20 June for follow-up to the March intersessional meeting on the future of IWC. <i>Note:</i> Discussions on the procedural issues addressed in section 2.1 above would also be addressed during these sessions.	Yes	Yes
Step 2: The Commission commits itself to make every effort possible to reach a negotiated package by consensus.	IWC/60, June 2008			
Step 3: Contracting Governments identify elements/issues they believe should be considered for inclusion in any package.	IWC/60, June 2008			
Step 4: Contracting Governments discuss how individual elements might be addressed and possible compromises reached as appropriate.	IWC/60, June 2008	This step would be best-addressed during the private meeting of Commissioners on Sunday 22 June.	Yes	No
Step 5: Establishment of a small working group and initial development of a possible package or packages	June 2008 to February/ March 2009	Working group to be established at IWC/60; although the working group may have the opportunity for initial discussions at IWC/60, its work would principally be done via meetings, email correspondence and conference calls.	No	No
Step 6: Review by all Contracting Governments of the work of the working group.	February/ March 2009	A 3 to 4 day intersessional meeting of the Commission with some private sessions of Commissioners only	Yes	At times
Step 7: Further development of a package or package options by the working group.	Feb/March to June 2009	As Step 5.	No	No
Step 8: Further review by all Contracting Governments of the work of the working group.	IWC/61, June 2009	It is anticipated that some time would be set aside for discussions prior to the Commission plenary and that as proposed for IWC/60 there would be the option for both open and closed sessions.	Yes	At times