

**Progress Report on the September 2008 meeting of the Small Working Group (SWG) on
the Future of the International Whaling Commission
presented by Alvaro de Soto, SWG Chairman
St Petersburg, Florida, USA**

1. The Small Working Group on the Future of the International Whaling Commission established at IWC/60, in Santiago, Chile, met in St Petersburg, Florida, USA, from 15 to 18 September 2008. I chaired the meeting at the request of the Chairman of the Commission, Dr William Hogarth. The terms of reference for the SWG (Annex 1) require a report by the SWG. In the interest of allowing as much time as possible for substantive discussions, it was agreed that instead of attempting to put together a report for approval of the SWG at the meeting, I should submit, on my own cognizance, the "brief progress report" foreseen in those terms of reference.
2. The Agenda of the meeting in St Petersburg is attached as Annex 2 and list of documents as Annex 3. The SWG was attended by representatives of 26 Contracting Governments (see Annex 4), an unmistakable sign of the interest that the membership attaches to its work. It had before it a list of 33 elements/issues considered of importance by members (see Table 1, Annex 1).
3. It was recognized at the outset that the size of the Group and the length of the list could hamper its ability to efficiently discharge its primary task of developing "*a package or packages for review by the Commission*" in order to assist it "*to arrive at a consensus solution to the main issues it faces,*" particularly having regard to the limited time available for the SWG to complete its work. In order to rationalize its work, therefore, the SWG agreed to the approach described in the "Note on SWG method of work" attached as Annex 5.
4. On that basis and taking into account the background information provided in document IWC/S08/SWG 3, the contributions of Contracting Governments contained in document IWC/S08/SWG 4 (including the addenda) and the understanding that '*nothing is agreed until everything is agreed*', the SWG then proceeded to allocate the elements/issues in accordance with the criteria specified in sub-paragraphs (a) and (b) of paragraph 8 of the Note – henceforth referred to as Category (a) and Category (b) elements/issues. Succinct descriptions of the issues arising under each element/issue allocated to Category (a) were developed. As for the 22 elements/issues that fall under Category (b), an indication was provided of how the issues are either being addressed or, if not, how they could be addressed¹. The results of this exercise are contained, respectively, in the "Outline of issues for Category (a) elements/issues" (Annex 6) and the "Outline of issues and mechanisms for progressing work on Category (b) elements/issues," (Annex 7). It is important to note that the breakdown agreed does not imply that the SWG believes that some elements/issues are more important than others. Nor should the breakdown be so rigidly interpreted as to mean that issues under one category cannot be raised when considering the other. The division into these two categories should be understood primarily as a methodological step without which the SWG's work might prove quite unwieldy.
5. I believe it is fair to say that the discussion leading to the categorization of the elements, involving as it did substantive considerations, helped to pave the way and set the tone for the initial discussion of possible elements of a core package or packages for review by the Commission. In the course of this discussion and throughout the meetings, delegations displayed a willingness to explore and respect the positions of others. Many substantive issues were discussed, and useful clarifications were provided, thus opening avenues that might usefully be pursued in the continuing discharge of the SWG's objective. The restraint that prevailed during the discussions, coupled with agreement on the allocation of items between the two categories, significantly contributed to the SWG's constructive work.
6. On the basis of the categorization agreed and the identification of the main issues that should be addressed, views were put forward on the elements that could be included (and how they might be combined) in a hypothetical core package or packages concerning the future of the IWC. Agreements would have to be sought within a range of options under each component of any package(s). While it would be premature to speak of agreement as such on a package, and significant differences remained, as was to be expected, as to how its components would be characterized, there was little perceptible dissent regarding what those components, broadly speaking, might be.

¹ Some items, or aspects of them, appear in both categories, which accounts for the fact that the sum of items under both categories exceeds the number of items in Table 1 of the terms of reference.

7. In my view, it would be detrimental to the prospects for success of the effort under way to attempt, at this stage, a detailed narrative of what was a hypothetical discussion on the elements of a possible package or package(s). I will therefore confine myself to report a broad understanding that a possible package or packages for negotiation on the future of the IWC would involve the following elements: commercial whaling and the moratorium; coastal whaling; RMP and RMS; research under special permit and the role of IWC; compliance and monitoring (including sanctions); sanctuaries; objections and reservations; whale watching and other non-lethal uses; small cetaceans; and animal welfare.
8. I noted with particular appreciation the fact that delegations holding opposing viewpoints explicitly accepted that in order to obtain agreement on a package, it was necessary to provide solutions not only in areas of concern to them but also in those that preoccupied others. This is a further reflection of what appears to be an emerging willingness to accept that compromise is required if the difficulties clouding the future of the IWC are to be overcome. I must add on a concluding personal note that both the atmosphere and the substance of the meetings stood in contrast to the IWC's reputation for acrimony and intolerance.
9. Members of the SWG felt that the progress made offered a good basis for governments to make, in the coming period, an assessment of progress and for consultations among them to take place. Thus with a view to meeting the Commission's request to the SWG to report five weeks in advance of the intersessional meeting – likely to be held in the first trimester of 2009 – it was agreed that another meeting of the SWG to build on the progress made should be held, tentatively, in the second week of December 2008. In this context attention was drawn to the need to assist delegations from developing countries which might face difficulties financing attendance at such meetings.

23 September 2008

Annex 1

Terms of Reference for the Small Working Group on the Future of the IWC

(from Annex B of IWC/60/24)

OBJECTIVES

To assist the Commission to arrive at a consensus solution to the main issues it faces (based on Table 1) and thus to enable it to best fulfil its role with respect to the conservation of whale stocks and the management of whaling.

The working group's primary task in this regard is to make every effort to develop a package or packages for review by the Commission.

MEMBERSHIP

Membership of the working group will be representative in terms of e.g. views, geography and economy. It will be assisted by the Secretariat in an *ex officio* capacity, providing scientific and technical assistance as needed. A list of core members is attached, although any Commissioner may attend meetings.

In conducting the business of the working group, members agree to:

- (a) consult with those non-participating countries that it broadly represents – this will assist an inclusive process;
- (b) take into account the known general views of all countries that are not members of the working group.

CHAIR

The Chair of the Commission will appoint a facilitator, one of the current experts² (based on their availability) to chair the working group under the supervision of the Chair. This will allow the Chair to intervene in the event that discussions reach an impasse.

MODE OF WORKING

The working group shall decide its own *modus operandi* at an initial meeting in Santiago. It will include, email, conference calls and at least one meeting prior to an intersessional meeting of the Commission. The level of confidentiality shall be such that it allows a free exchange of ideas within the working group; meetings will be closed to observers. After any meetings, the working group will develop a brief progress report to be circulated to the Commission. As noted above, members will be free to (and should) consult with countries who are not members of the working group.

REPORTING

The working group will present a report on the results of its initial deliberations to the 2009 Intersessional Meeting of the Commission on the Future of IWC³; the report will be distributed at least 5 weeks before the Intersessional. Based upon discussions there, intersessional will direct the Working Group to continue working on a possible package or packages and develop a final report that will be distributed at least 5 weeks before IWC/61. The Chair of the Commission will report to all Contracting Parties on the progress made at the 2009 Intersessional Meeting.

² Professor Calestous Juma, Ambassador Raúl Estrada-Oyuela and Ambassador Alvaro de Soto

³ The Chair of the working group will consult with the Secretariat and the Advisory Group in establishing a date for the intersessional meeting such that a decision can be taken on the dates by November 2008.

Table 1

Elements/issues identified as being of importance to one or more Contracting Government in relation to the future of IWC. These are in alphabetical order.

1.	Advisory/Standing Committee or Bureau – need for	18.	Financial contribution scheme
2.	Animal welfare	19.	Frequency of meetings
3.	Bycatch and infractions	20.	Marine Protected Areas (MPAs)
4.	Climate change	21.	Objections and reservations
5.	Civil society (involvement of)	22.	Procedural issues – improvements to
6.	Coastal whaling (i.e. within EEZ)	23.	Research under special permit
7.	Commercial whaling moratorium	24.	Revised Management Procedure (RMP)
8.	Compliance and monitoring	25.	Revised Management Scheme (RMS)
9.	Conservation Committee	26.	Sanctions
10.	Conservation management plans	27.	Sanctuaries
11.	Convention (purpose of)	28.	Science – role of science and functioning of Scientific Committee
12.	Co-operative non-lethal research programmes	29.	Secretariat – implications for role of/expertise
13.	Data provision	30.	Small cetaceans
14.	Developments in ocean governance	31.	Socio-economic implications
15.	Ecosystem-based approach to management	32.	Trade restrictions
16.	Environmental threats to cetaceans	33.	Whalewatching/non-lethal use
17.	Ethics		

Table 2 (revised⁴)

Contracting Governments who indicated their interest in participating in the small working group

1.	Antigua & Barbuda	15.	Italy
2.	Argentina	16.	Japan
3.	Australia	17.	Korea, Republic of
4.	Brazil	18.	Mexico
5.	Cameroon	19.	Netherlands
6.	Chile	20.	New Zealand
7.	China	21.	Norway
8.	Costa Rica	22.	Palau
9.	Côte d'Ivoire	23.	Panama
10.	Czech Republic	24.	St. Kitts & Nevis
11.	Denmark	25.	St. Lucia
12.	Germany	26.	South Africa
13.	France	27.	Sweden
14.	Iceland	28.	USA

⁴ This list shows membership of the SWG as of 15 September 2008 and is slightly changed from that given in IWC/60/24. After IWC/60/24 was distributed, the UK withdrew from the Small Working Group and Germany and Mexico indicated that they wished to join. Subsequently Côte d'Ivoire, the Czech Republic and Sts. Lucia indicated that they wished to join the SWG.

Annex 2

AGENDA

1. INTRODUCTORY ITEMS

- 1.1 Introductory remarks from the Chair of the Commission
- 1.2 Introductory remarks from the SWG Chair
- 1.3 Reporting
- 1.4 List of documents
- 1.5 Update on plans for the 2009 Intersessional Meeting of the Commission on the Future of IWC

2. ADOPTION OF THE AGENDA

3. REVIEW OF DOCUMENTS

4. TOWARDS DEVELOPMENT OF A PACKAGE OR PACKAGES FOR REVIEW BY THE COMMISSION

5. NEXT STEPS

- 5.1 Further work of the SWG
- 5.2 2009 Intersessional Meeting of the Commission on the Future of the IWC

6. OTHER BUSINESS

7. ADOPTION OF THE REPORT

8. CONCLUDING REMARKS

Annex 3

LIST OF MEETING DOCUMENTS

IWC/S08/SWG	1	Draft agenda
	2	List of documents
	3	An overview of the elements/issues identified as being of importance to one or more Contracting Governments in relation to the future of the IWC (prepared by the Secretariat)
	4	Input from Contracting Governments on the 33 elements/issues identified as being of importance to one or more Contracting Governments in relation to the future of the IWC (prepared by the Secretariat)
	4	Addendum: input from Costa Rica
	4	Addendum 2: input from Mexico
	5	Progress report on the work of the Intersessional Correspondence Group on Scientific Committee Issues
	5	Addendum: input from Denmark

Note that subsequent to the SWG meeting, Document IWC/S08/SWG has been revised to incorporate the comments from Costa Rica and Mexico and other input subsequently provided from New Zealand.

Annex 4

LIST OF PARTICIPANTS

Antigua & Barbuda

Anthony Liverpool

Argentina

Javier Figueroa

Miguel Iniguez

Australia

Donna Petrachenko

Andrew McNee

David Dutton

Brazil

André Tenório Mourão

José Truda Palazzo

Cameroon

Baba Malloum Ousman

Chile

Cristian Maquieira

Costa Rica

Eugenia Arguedas

Cote d'Ivoire

Amvra Jeanson Djobo

Czech Republic

Pavla Hycova

Denmark

Ole Samsing

Germany

Monika Roemerscheidt

Thomas Borchers

France

Stephane Louhaur

Martine Bigan

Iceland

Stefan Asmundsson

Bjarni Sigtryggsson

Japan

Joji Morishita

Dan Goodman

Hideaki Okada

Kiyomi Hyoe

Korea, Republic of

Zang Geun Kim

Mexico

Lorenzo Rojas-Bracho

Damaso Luna

Netherlands

Maaïke Moolhuijsen

New Zealand

Jan Henderson

Gerard van Bohemen

Mike Donoghue

Norway

Halvard Johanssen

Hild Ynnesdal

Petter Meier

Palau, Republic of

Victorio Uherbelau

Panama

Deborah Siraze

St. Kitts & Nevis

Joseph Simmonds

St. Lucia

Vaughn Charles

South Africa

Herman Oosthuizen

Sweden

Bo Fernholm

USA

Doug DeMaster

Roger Eckert

John Field

Chair of the Commission

Bill Hogarth,

Cheri McCarty (assistant to the
Chair)**SWG Chair**

Alvaro de Soto

Secretariat

Nicky Grandy

Greg Donovan

Interpreters

Leticia Saenz

Cynthia Diaz Menk

Scheherazade Matallah

Mohammed Bennis

Apologies

China and Italy, both members of the SWG, were unable to attend and sent their apologies.

Annex 5

Note on SWG method of work 15 September 2008

1. The Terms of reference of the Small Working Group on the Future of the International Whaling Commission (SWG) are set out in Annex B of IWC/60 /24. The goal is to assist the Commission “to arrive at a consensus solution to the main issues it faces (based on Table 1) and thus to enable it to best fulfill its role with respect to the conservation of whale stocks and the management of whaling.” The primary task is to “make every effort to develop a package or packages” for review by the Commission. It is expected to do so in time for consideration at IWC/61.
2. The case has been made that the IWC, and with it the international whaling management regime as a whole (and the proper conservation of whale stocks), are in jeopardy due to fundamental disagreements concerning what its purpose should be. Whether all members agree that the regime is in peril or not is almost immaterial as long as some members believe this to be the case. One must assume that this is what led the Commission to take unusual steps to establish the SWG.
3. The SWG is faced with two problems at the outset. The first is the size of the working group. The fact that so many should have volunteered to join, even though they know that they will have full opportunity to pronounce on the proposals that emerge in the Commission, is an encouraging sign of the wider membership’s desire to address the issues. However, it must be said that as a general proposition, the efficiency of a working group is in inverse proportion to its size. This is particularly the case if the time available for it to discharge its task is limited.
4. It is worth recalling that as part of the terms of reference of the SWG, its members agreed to a) consult with those non-participating countries that it broadly represents so as to assist an inclusive process, and b) take into account the known general views of all countries that are not members of the working group. Thus in addition to representing the views of their own countries, members also have a collective responsibility to assist the Commission as a body. Members might also usefully bear this in mind when they decide whether to intervene in meetings or not. If a member makes a point that they support, perhaps they will find it possible not to take the floor merely to repeat that point.
5. The second problem is the length of the list of elements/issues that were identified as being of importance to one or more Contracting Governments in relation to the IWC. Again, as a general proposition and having regard to the time frame available, the list borders on the unmanageable. There is the danger that if the list remains as it is and detailed discussions occur on every issue in both isolation and combination, the SWG will become hopelessly bogged down. Something needs to be done to make the process more manageable.
6. No-one disputes the importance of any of the elements/items on the list; indeed it is essential to respect each member’s prerogative to identify what it considers to be important. The importance of the issues is not under discussion. But members will recall that in the interest of saving time and to avoid sparking controversy this list was drawn up without a discussion of the merits of inclusion of items. That is how we ended up with 33 items. In order to enable the IWC to fulfill its role of conservation of whale stocks and the management of whaling, therefore, we should try to identify whether each and every issue on the list needs to be addressed and resolved satisfactorily immediately as part of the package of those contentious issues that directly impinge on the future of the IWC.
7. The overview in IWC/S08/SWG3 shows that many of the elements/issues in the list, while important, are in fact already being addressed or can be addressed via an appropriate mechanism. Several of these items need not or, in some cases, cannot be solved in the short term. These relate primarily, but not exclusively, to administrative and scientific issues. In other words, there is an important distinction to be made between the items on the list on grounds of urgency and controversy. In order to grapple as a matter of urgency with those issues whose continued irresolution can compromise the future of the UN, it would greatly assist the SWG, in the spirit of the Commission’s mandate, if its work method reflected this crucial distinction.

8. It is therefore suggested that the elements/issues on the list be categorized in the following way:

- (a) controversial issues that need to be addressed in the short term, i.e. those that if not addressed in the short term may fail to alter the status quo or even result in an irreparable break in the system via the withdrawal of governments from the Convention; and
- (b) issues which are non controversial or less controversial and which, if left unresolved, would not prevent a package being agreed concerning category (a), *provided* that a mechanism exists or can be established to address them. These are primarily but not exclusively scientific and administrative issues. (There may be issues which, while controversial, may not need to be tackled immediately as part of the package in (a) above.

9. It is suggested that the SWG should identify which elements/issues fall under each of the two (or perhaps three) categories in accordance with the above definitions. The SWG should agree whether the issues under (b) are being properly addressed and, if not, recommend how the IWC should address them in the future. If these steps are taken, an orderly discussion of the 33 items at this session of the SWG would be greatly facilitated. It would also open the way to begin discussing a package or packages concerning the items in category (a) for the Commission's consideration.

Annex 6

Outline of issues for Category (a)⁵ elements/issues

ELEMENT 2. ANIMAL WELFARE (SWG 3: PP. 4-7; SWG 4rev: PP. 63-64)

No disagreement that animal welfare is important. Some issues that have been raised (in no particular order and may overlap):

- (a) whether it falls within IWC's mandate;
- (b) whether reporting of animal welfare data from whale hunts should be voluntary or mandatory;
- (c) the relationship with the RMS, including whether the provision of data should be mandatory and whether minimum conditions should be set under which whales could be killed;
- (d) the perception of some that data provided from whale hunts are used in a negative manner rather than being used for constructive discussion on how to improve killing methods;
- (e) whether the focus should not just be on welfare issues associated with whale hunting, but also associated with other anthropogenic factors (e.g. entanglement, strandings).

Aspects of the Commission's ongoing work on this issue are considered under Category (b), Element 2.

ELEMENT 3. BYCATCH AND INFRACTIONS (SWG 3: P. 8; SWG 4rev: PP. 65-66)

Bycatch

Some issues that have been raised (in no particular order and may overlap):

- (a) what is IWC's role with respect to bycatch of large whales and small cetaceans (relates to item 30 – small cetaceans)?
- (b) given that work is already ongoing within IWC in relation to *inter alia* mitigation, assessment of the scale of bycatch and improved reporting, should more be done?
- (c) commercialisation of bycaught animals;
- (d) management advice for large whales in the absence of an approved RMS but with ongoing anthropogenic takes from multiple sources (including bycatch)
- (e) Co-operation with regional agreements and bodies that also deal with cetacean bycatch.

Note that aspects of the Commission's ongoing work on this issue are considered under Category (b) Element 3.

Bycatch and infractions

- (a) This will be considered as part of RMS discussions (See Element 25) and compliance and monitoring (see Element 8).

ELEMENT 6. COASTAL WHALING (SWG 3: P. 12; SWG 4rev: PP. 71-76)

Some issues that have been raised (in no particular order and may overlap):

- (a) creation of a new whaling category (i.e. in addition to commercial and aboriginal subsistence whaling);
- (b) allowing coastal whaling prior to adoption of an RMS (link to item 24: RMP and 25: RMS);
- (c) clarification of aspects of Japan's requests for coastal whaling quotas (e.g. see SWG, p.58);
- (d) undermining of commercial whaling moratorium;
- (e) risk of proliferation of those wishing to undertake coastal whaling.

⁵ These are controversial issues that need to be addressed in the short term, i.e. those that if not addressed in the short term may fail to alter the status quo or even result in an irreparable break in the system via the withdrawal of governments from the Convention.

ELEMENT 7. COMMERCIAL WHALING MORATORIUM (SWG 3: PP. 13-15; SWG 4rev: PP. 77-78)

Some issues that have been raised (in no particular order and may overlap):

- (a) whether the conditions for lifting the moratorium have been met;
- (b) continued need for the moratorium;
- (c) whether or not the commercial whaling moratorium should ever be lifted regardless of the status of whale stocks
- (d) whether exceptions to the commercial whaling moratorium could be allowed for certain stocks under certain conditions
- (e) whether or not there should be a link between adopting an RMS and lifting the moratorium (links to item 25: RMS)

ELEMENT 8. COMPLIANCE AND MONITORING (and 26 SANCTIONS) (SWG 3: PP. 16-17; SWG 4rev: PP. 79-81, 113)

Some issues that have been raised (in no particular order and may overlap):

- (a) Whether it is necessary to develop a list of 'serious' infractions (i.e. infractions, which if they occur, would have an immediate implication with respect to ongoing whaling operations rather than being dealt with at the end of the season – e.g. see IWC/57/RMS3);
- (b) To what extent, if any, the IWC should have a role in setting penalties and imposing sanctions with respect to infractions;
- (c) Whether it is necessary to develop a formal dispute settlement mechanism that would require amendment to the Convention.

This item links to Element 25: RMS.

ELEMENT 11. CONVENTION (PURPOSE OF) (SWG 3: PP. 22-23; SWG 4rev: PP. 87-89)

The issue to address under this element is:

whether or not the Convention requires amendment to reflect the changes in attitudes, concerns, priorities and approaches to ocean governance relevant to the IWC that have occurred since the Convention came into force?

ELEMENT 21. OBJECTIONS AND RESERVATIONS (SWG 3: P. 41; SWG 4rev: PP. 105-106)

Some issues that have been raised (in no particular order and may overlap):

- (a) whether or not the Convention should be amended to remove the possibility for governments to opt out of certain provisions through objections and reservations.
- (b) if so, when and how.
- (c) how to proceed in light of the objection procedure?

This is a general issue but has had particular significance in relation to Element 25 (RMS).

ELEMENT 23: RESEARCH UNDER SCIENTIFIC PERMIT (SWG 3: PP. 44-9; SWG 4rev: PP. 108-109)

Some issues that have been raised (in no particular order and may overlap):

- (a) Should it be allowed under any circumstances?
- (b) Level of input from Scientific Committee (new guidelines for review of new and existing permits agreed) and response of permit issuers
- (c) Code of Conduct (details not finalised – basis new agreement in (b)?) - voluntary or binding?
- (d) Need to amend Convention – or is declaration of commitment sufficient?
- (e) Relationship with Sanctuaries – should SP whaling be allowed to occur there?

ELEMENT 24: REVISED MANAGEMENT PROCEDURE (SWG 3: PP. 50-52; SWG 4rev: PP. 110-111)

Some issues that have been raised (in no particular order and may overlap):

- (a) How/if to incorporate into Schedule?
- (b) Tuning/protection levels (Commission has agreed values)
- (c) Need for update e.g. in light of alternative uses?
- (d) Mechanisms for revision (SC has process, Commission ultimately decides)
- (e) Relationship with Sanctuaries?

ELEMENT 25: REVISED MANAGEMENT SCHEME (SWG 3 PP. 53-59; SWG 4rev PP. 112-113)

Some issues that have been raised (in no particular order and may overlap):

- (a) What elements are included (cross reference to most other elements) as part of RMS?
- (b) Relationship with moratorium
- (c) Relationship with coastal whaling
- (d) Elements of and details of compliance and monitoring scheme (progress has been made on several elements but details remain)
- (e) Incorporation into Schedule (method and timing – see element on objection)

ELEMENT 27: SANCTUARIES (SWG 3: PP. 60-61; SWG 4rev: PP. 114-115)

Some issues that have been raised (in no particular order and may overlap):

- (a) Necessary or not given moratorium?
- (b) Criteria for establishment/objectives e.g. scientific, economic, societal
- (c) Relationship with Special Permit whaling (see Element 23)
- (d) Relationship to RMP/RMS – complementary management mechanism or redundant?

Note that the question of incorporation of MPA concepts is dealt with under Category (b), Element 20.

ELEMENT 31: SMALL CETACEANS (SWG 3: P.65; SWG 4rev: P. 120⁶)

Some issues that have been raised (in no particular order and may overlap):

- (a) Are they fully covered under the Convention or not – degree of management competence?
- (b) Level to which addressed in Commission and its subsidiaries (e.g. Scientific Committee which does discuss small cetaceans through a standing sub-committee).
- (c) Whether it is appropriate to use Resolutions with respect to management of small cetaceans and, if so, the nature of the language used (e.g. exhortation versus condemnation)
- (d) Relationship with regional agreements (co-operation exists at scientific level with e.g. ASCOBANS and ACCOBAMS and CMS).

⁶ Mistakenly called element 30 in SWG 3

ELEMENT 33: WHALEWATCHING/NON-LETHAL USE (SWG 3: P.72; SWG 4rev: PP. 123-124)

Some issues that have been raised (in no particular order and may overlap):

- (a) Covered under the Convention or not – degree of management competence (e.g. guidelines versus regulations)?
- (b) Relative levels of recognition between lethal and non-lethal use by governments
- (c) Co-existence of lethal and non-lethal use in management regimes
- (d) Level to which addressed in Commission and its subsidiaries (e.g. Scientific Committee which does discuss whalewatching through a sub-committee)

Note that consideration of incorporation of commercial aspects of non-lethal use into a revised contributions scheme is dealt with under Category (b), Element 18.

Annex 7

Outline of issues and mechanisms for progressing work on Category (b)⁷ elements/issues

Some issues that have been raised ⁸	How issues are either already being addressed or how they could be addressed
ELEMENT 1: ADVISORY/STANDING COMMITTEE OR BUREAU – NEED FOR (SWG 3: P. 3; SWG 4rev: P. 62)	
To help improve the efficiency/decision-making of the Commission, whether the existing Advisory Committee could be revised in some way or whether a new body (Standing Committee or Bureau) is needed (e.g. with an expanded role and broader representation).	<p>Consideration of this matter to date has largely taken place within the F&A Committee in the context of needing a body to help implement the Convention between meetings if it were to meet less frequently than annually. More recent discussions within the Commission on the future of the organisation suggest that revising the role of the Advisory Committee or creating a new body is not necessarily related to meeting frequency.</p> <p><i>Keep under review by the F&A Committee, taking into account progress in discussions of the other elements.</i></p>
ELEMENT 2: ANIMAL WELFARE (SWG 3: PP. 4-7; SWG 4rev: PP. 63-64)	
Continued work on animal welfare issues despite disagreements in some areas (e.g. competence, data provision).	<p>The Commission is continuing on a voluntary basis to address animal welfare issues through its Working Group and through periodic focused expert workshops (e.g. the forthcoming workshop on entanglement).</p> <p><i>This is an appropriate mechanism to deal with these aspects of Element 2; the initial focus of the SWG on Element 2 should be on the Category (a) issues.</i></p>
ELEMENT 3: BYCATCH AND INFRACTIONS (SWG 3: P. 8; SWG 4rev: PP. 65-66)	
Continued work on bycatch issues despite disagreements in some areas (e.g. with respect to small cetaceans).	<p>The Scientific Committee continues to examine scientific aspects of bycatch of large whales and small cetaceans in terms of assessing effects at the population level, reviewing mitigation measures and incorporating it into work on the RMP and AWMP and presenting this work to the Commission. It will be assisted in this process by work associated within the conservation management plan framework (see Element 10 below). Several aspects of this work are undertaken in co-operation with other international bodies including, ASCOBANS, ACCOBAMS and FAO.</p> <p><i>This is an appropriate mechanism to deal with these aspects of Element 3. The initial focus of the SWG on Element 3 should be on the Category (a) issues.</i></p>

⁷ These are issues which are non-controversial or less controversial and which, if left unresolved, would not prevent a package being agreed concerning category (a), *provided* that a mechanism exists or can be established to address them. These are primarily but not exclusively scientific and administrative issues. (There may be issues which, while controversial, may not need to be tackled immediately as part of the package in (a) above.

⁸ For each element, the issues are listed in no particular order and may overlap.

Some issues that have been raised ⁸	How issues are either already being addressed or how they could be addressed
ELEMENT 4: CLIMATE CHANGE (SWG 3: P. 3; SWG 4rev: PP. 67-68)	
(a) Further efforts to estimate effects on cetaceans at the scientific level	<p>The Scientific Committee has this item on its agenda and is examining this issue from a number of perspectives – in particular it has recently held a joint workshop with CCAMLR with respect to the Southern Ocean and it will be holding a 2nd full workshop on the topic in Spring 2009 (the first was in 1996). The Scientific Committee has recognised that this is a complex issue from both a data and modelling perspective that will require medium- to long-term efforts. Its work with respect to incorporating such effects under whaling management procedures is considered under (b) below.</p> <p><i>The Scientific Committee should continue to give this matter priority and report to the Commission on its findings.</i></p>
(b) Allowance for effects: management of whaling	<p>Both the RMP and the AWMP are tested with scenarios that use proxies (e.g. changing carrying capacity, catastrophes and changes in reproductive/survivorship) for environmental changes including climate change. The Committee regularly reviews these scenarios and is doing so at present for RMP trials. In addition, both the RMP and AWMP have mandatory reviews every 5 years to ensure that the tested scenarios are adequate in the light of new knowledge.</p> <p><i>The Scientific Committee should continue to give this matter priority and report to the Commission on its findings.</i></p>
(c) Allowing for effects: species not subject to whaling (especially heavily depleted populations)	<p>The Scientific Committee has stressed that the effects of environmental change may affect all species/populations including those for which catches would not be allowed if the RMP was implemented – indeed highly depleted populations are probably the most vulnerable to such changes. The Committee continues to investigate this and will be assisted in this process by work associated within the conservation management plan framework (see element 10 below).</p> <p><i>The Scientific Committee should continue to give this matter priority and report to the Commission on its findings.</i></p>
(d) General small cetacean issue	<p>The question as to the level to which this issue should be examined for small cetaceans falls under the category (a) element 30. At present the Scientific Committee is examining the issue for all cetaceans.</p> <p><i>Notwithstanding the discussions under Element 20, the Scientific Committee should continue to also consider climate change in the context of small cetaceans as well as large whales and report to the Commission on its findings.</i></p>
(e) Mitigation actions	<p>At its previous workshop, the Scientific Committee noted that mitigation measures related to the general issue of climate change are well known and it asked the Commission to urge member countries to take such action.</p> <p><i>It remains a Commission responsibility to decide how to incorporate advice from the Scientific Committee.</i></p>

Some issues that have been raised ⁸	How issues are either already being addressed or how they could be addressed
(f) Need for co-operation with other bodies	<p>The Scientific Committee is already working in collaboration with other scientific bodies e.g. those within CCAMLR, CMS as well as Southern GLOBEC. The need for further collaboration (e.g. with respect to possible mitigation measures) will need to be identified as work progresses.</p> <p><i>The need for collaboration with other bodies is recognised and should be encouraged.</i></p>
(g) Level of priority to be given to this work	<p>The Scientific Committee is addressing this as one of its priority issues both in a general context and in the context of the RMP/AWMP; it is necessarily an iterative ongoing subject and future work will <i>inter alia</i> depend on the recommendations from the forthcoming workshop and the level of priority allocated by the other scientific bodies.</p> <p><i>The Scientific Committee should continue to give this matter priority and report to the Commission on its findings.</i></p>
ELEMENT 5: CIVIL SOCIETY – INVOLVEMENT OF (SWG 3: PP. 10-11; SWG 4rev: PP. 69-70)	
Whether, and if so, in what way, the involvement of civil society in IWC's work should be expanded beyond the <i>status quo</i> .	<p>NGO accreditation and participation criteria have largely been addressed by the F&A Committee (who have then made recommendations to the Commission), and on occasion in private meetings of Commissioners (e.g. the decision at IWC/60 to allow limited speaking rights to NGOs as a trial).</p> <p><i>At IWC/60, the Commission had agreed with the F&A Committee's recommendation to keep this issue under review.</i></p>
ELEMENT 9: CONSERVATION COMMITTEE (SWG 3: PP. 18-20; SWG 4rev: PP. 82-84)	
(a) Could the basis of the Conservation Committee (CC) be revised such that all Contracting Governments would formally recognise and actively engage in it?	<p>To date, attempts to resolve the controversy over the establishment of the CC have been confined to discussions within the CC itself, including by a small group it set up to examine the language of Resolution 2003-1 that established the Committee and to discuss its terms of reference. The small group concluded that '<i>further discussions on the expectations of the work of the Conservation Committee should be continued under the responsibility of the IWC or its Chair</i>'.</p> <p><i>The IWC should discuss this at the Spring 2009 Intersessional Meeting on the Future of IWC.</i></p>
(b) The focus, priority and funding of the Committee's work.	<p>There has been relatively little discussion within the Plenary of the CC report after it has been presented. Funding of CC work – so far in relation to the development of a ship strikes database being done by the Scientific Committee – has been part-funded from voluntary contributions and part-funded from the Scientific Committee budget.</p> <p><i>The IWC should discuss this at the Spring 2009 Intersessional Meeting on the Future of IWC.</i></p>

Some issues that have been raised ⁸	How issues are either already being addressed or how they could be addressed
ELEMENT 10: CONSERVATION MANAGEMENT PLANS (SWG 3: P. 21; SWG 4rev: PP. 85-86)	
(a) The value of conservation management plans as a framework for conservation actions related to recovering species/populations with respect to non-whaling related threats. The development of conservation management plans is a complex and iterative process that even with the appropriate framework will normally take several years.	<p>The Scientific Committee has agreed the value of such a framework and will be taking this into account in its agenda for the forthcoming meeting (and beyond).</p> <p><i>The Scientific Committee should continue to give this matter priority and report to the Commission on its findings.</i></p>
(b) The appropriate way to link the work of the Commission and its subsidiary bodies on the scientific and mitigation measure/management actions (including involvement of stakeholders – see (c) below).	<p>This is a matter for the Commission to decide – one suggestion has been that the Conservation Committee (and see Element 9) may be an appropriate technical body to work with the Scientific Committee towards translating scientific advice into appropriate mitigation measures for consideration by the Commission. This would need to undertaken in conjunction with stakeholders including relevant national and intergovernmental bodies.</p> <p><i>Determining the appropriate forum and strategy could be placed on the Commission's Agenda.</i></p>
(c) The need to involve/co-operate with other appropriate national and intergovernmental regulatory bodies that are responsible for non-whaling-related threats.	See the comments under (b) above.
ELEMENT 12: COOPERATIVE NON-LETHAL RESEARCH PROGRAMMES (SWG 3: P. 24; SWG 4rev: PP. 90-91)	
(a) Organised regionally outside IWC to develop priorities and research needs	<p>It is intended that the resultant programmes will be submitted to the Scientific Committee for review</p> <p><i>The Scientific Committee should give this matter priority and report to the Commission on its findings.</i></p>
(b) General issues with respect to non-lethal and lethal research	This is covered under element 23 (Research under special permit)
ELEMENT 13: DATA PROVISION (SWG 3: P. 25; SWG 4rev: P. 92)	
(a) Ensure that scientific and operational data essential for management are available for review and analysis	<p>The Scientific Committee has developed an approach to this issue (including the Data Availability Agreement and the Requirements and Guidelines related to the RMP) that it believes is working well.</p> <p><i>The Commission has already endorsed this approach.</i></p>
(b) Whether data should be provided to the Commission on animal welfare issues.	This is addressed under the Category (a) consideration of Element 2 (Animal Welfare).

Some issues that have been raised ⁸	How issues are either already being addressed or how they could be addressed
ELEMENT 14: DEVELOPMENTS IN OCEAN GOVERNANCE (SWG 3: P. 26; SWG 4rev: PP. 93-94)	
The need to move away from a sector-based single species approach to the conservation and management of marine living resources to an ecosystem-based approach, co-operating with and taking account of the work and outcome of other relevant treaties (e.g. UNCLOS, CBD).	<p>The Scientific Committee has already begun to address aspects of this issue and co-operates with CCAMLR in particular (see Element 15).</p> <p><i>The Scientific Committee should continue to give this matter priority and report to the Commission on its findings.</i></p>
ELEMENT 15: ECOSYSTEM-BASED APPROACH TO MANAGEMENT (SWG 3: P. 27; SWG 4rev: PP. 95-96)	
(a) No specific definition agreed.	<p>The Scientific Committee is working on this issue on two fronts: (1) using ecosystem information to inform single-species management (e.g. under the scenarios used to test the RMP and AWMP); (2) working towards developing ecosystem models (see (b) below) that may ultimately be used in a predictive manner.</p> <p><i>The Scientific Committee should continue to give this matter priority and report to the Commission on its findings.</i></p>
(b) Level of priority to be given to this work.	<p>The Scientific Committee is addressing this as one of its priority issues both in a general context and in the context of the RMP/AWMP; it is necessarily an iterative ongoing subject and future work will <i>inter alia</i> depend on the recommendations from relevant workshops and the level of priority allocated by the other scientific bodies.</p> <p><i>The Scientific Committee should continue to give this matter priority and report to the Commission on its findings.</i></p>
(c) As with Element 4 (Climate change), complex scientific issue from data and modelling perspective, need for co-operation with other bodies.	<p>As noted under Element 4, the Scientific Committee is embarking upon the long-term work needed to begin to develop ecosystem models that may eventually lead to some predictive modelling that can be used to inform management; this work can only be effectively undertaken in collaboration with CCAMLR, SO-GLOBEC and others – and the Scientific Committee is pursuing this.</p> <p><i>The Scientific Committee should continue to give this matter priority and report to the Commission on its findings.</i></p>

Some issues that have been raised ⁸	How issues are either already being addressed or how they could be addressed
ELEMENT 16: ENVIRONMENTAL THREATS TO CETACEANS (SWG 3: P. 28; SWG 4rev: PP. 97-98)	
(a) Level of priority to be given to this work and incorporation into the conservation and management of cetaceans.	<p>The Scientific Committee has recognised the importance of addressing threats other than whaling and has established a standing working group on this subject as well as holding specialists workshops and important research programmes (POLLUTION 2000+ and SOWER 2000). It is working towards greater incorporation of the work of this group with the other sub-committees, noting the value of a conservation management plan framework in this context. The RMP and AWMP at present address these issues in their simulation testing frameworks that are regularly reviewed (and see Element 4: Climate Change and 15: Ecosystem-based approach to management).</p> <p><i>The Scientific Committee should continue to give this matter priority and report to the Commission on its findings.</i></p>
(b) Need for co-operation with other bodies that have some regulatory capacity on factors outside whaling.	<p>The co-operation with other bodies at a scientific level is underway.</p> <p><i>Where mitigation measures may be proposed on matters other than whaling, there is a need to consider a broader co-ordination with other bodies at a Commission level.</i></p>
ELEMENT 17: ETHICS (SWG 3: P. 30; SWG 4rev: PP. 99-100)	
(a) Overview: there are ethical/philosophical/cultural issues involved in many of the elements, both category (a) and category (b) that have been raised at past meetings or in responses in SWG4. Examples of these include: whether it is possible to kill whales humanely (and what criteria are to be used to judge this); whether it is justified to kill whales for scientific purposes; whether whales have a special status compared to other animals; whether it is justified to have different management objectives for different categories of whaling; whether commercial exploitation has a different ethical basis to aboriginal subsistence whaling; whether aboriginal subsistence communities should be allowed to include a monetary component in the distribution of products; whether voting is an appropriate way to address cultural differences with respect to attitudes to whales.	<p>There is no formal mechanism to address ethical issues in a systematic manner within the Commission. Rather, where relevant, ethical considerations have been raised by individual government where they believe them to be relevant. One submission asked whether it would be possible for the IWC to formulate a balanced position on whaling from all the ethical arguments involved, without the need to pass an opinion on the merits or relevance of the ethics concerned. If this was deemed desirable a mechanism would need to be established to develop such a position. In addition, member governments will take ethical considerations into account in the discussions of the various elements.</p>

Some issues that have been raised ⁸	How issues are either already being addressed or how they could be addressed
ELEMENT 18: FINANCIAL CONTRIBUTIONS SCHEME (SWG 3: PP. 31-36; SWG 4rev: PP. 101)	
(a) Whether work should be resumed on the revision of the financial contributions scheme so as to improve on the Interim Measure currently in place.	<p>A Contribution Task Force was established under the F&A Committee at IWC/52 in 2000 to develop proposals as to how the contributions scheme in place at that time could be revised particularly with respect to alleviating the burden of IWC membership of developing countries. After IWC/55 in 2003 the work of the CTF was put on hold pending the outcome of discussions on the RMS (recognising the potential implications of this work for any revised contributions formula). However, given that work on the RMS was reaching an impasse, at IWC/57 it was agreed to resume the work of the CTF by holding a CTF meeting at IWC/58. But despite agreeing to intersessional work at IWC/58, it had not been possible to schedule a meeting and at IWC/59 in 2007 there were no proposals to resume the CTF's work. While progress had been made by the CTF towards developing a new scheme, unresolved issues remained particularly with respect to the development of appropriate factors to take account of wealth and treatment of whaling. However, given the difficulties of reaching agreement, an Interim Measure had already been put into place at IWC/54 in 2002. This Measure has relieved significantly the financial burden of IWC membership for most developing countries but some believe further improvements could be made.</p> <p><i>The way to progress this matter should be considered by the Commission.</i></p>
(b) Whether fines should be imposed for late-payment of financial contributions (as at present) or whether alternative penalties should be set.	<p>Such matters are under the purview of the F&A Committee and were last reviewed at IWC/54 in 2002.</p> <p><i>The F&A Committee should keep this matter under review, under direction from the Commission.</i></p>
ELEMENT 19: FREQUENCY OF MEETINGS (SWG 3: P. 37; SWG 4rev: P. 102)	
Whether the meeting frequency of the Commission and/or its subsidiary bodies should be reduced and if so, how and from when (related to a number of other elements).	<p>This issue has been addressed to date by the F&A Committee.</p> <p><i>This matter should continue to be kept under review by the F&A Committee, noting that such review should take into account discussions of other related elements.</i></p>
ELEMENT 20: MARINE PROTECTED AREAS (SWG 3: P. 40; SWG 4rev: PP. 103-104)	
(a) This issue is integrally related to the discussion of Element 27 (Sanctuaries)	See the discussion under Element 27.
(b) No general definition of MPAs.	<p>The flexibility in the definition of MPAs is valuable and the Scientific Committee may consider a variety of possible targeted MPAs as potential mitigation tools within the context of conservation management plans (see Element 10).</p> <p><i>The Scientific Committee should continue to give this matter priority and report to the Commission on its findings.</i></p>

Some issues that have been raised ⁸	How issues are either already being addressed or how they could be addressed
(c) Incorporation of Marine Protected Area concepts into IWC Sanctuaries;	<p>The Scientific Committee is attempting to incorporate such concepts (e.g. measurable goals) in its review of existing and proposed Sanctuaries – this will need to be done in co-operation with the Commission who has the responsibility to set such goals at least in a qualitative manner.</p> <p><i>The Scientific Committee should continue to give this matter priority and report to the Commission on its findings.</i></p>
(d) Need for co-operation with other bodies with respect to addressing threats other than whaling.	<p>The co-operation with other bodies at a scientific level is underway.</p> <p><i>Where mitigation measures may be proposed on matters other than whaling, there is a need to consider a broader co-ordination with other bodies at a Commission level.</i></p>
ELEMENT 22: PROCEDURAL ISSUES – IMPROVEMENTS TO (SWG 3: P. 42; SWG 4rev: PP. 105-106)	
Recognising that agreements were reached on a number of changes to procedural issues were reached at IWC/60, are there other issues that need to be addressed in the short- or longer-term?	<p>Procedural issues are usually addressed by the F&A Committee. However, the changes agreed at IWC/60 resulted from discussions of the Commission itself.</p> <p><i>Progress on this issue should be co-ordinated by the F&A Committee and the Commission itself.</i></p>
ELEMENT 26: SANCTIONS (SWG 3: P. 16; SWG 4rev: P. 113)	
This is being dealt with as part of element 8 on compliance and monitoring.	
ELEMENT 28: SCIENCE – ROLE OF SCIENCE AND FUNCTIONING OF THE SCIENTIFIC COMMITTEE (SWG 3: P. 62; SWG 4rev: PP. 116-117)	
<p><i>At IWC/60, an Intersessional Correspondence Group on Scientific Committee issues was established to develop a discussion document (and if it deems appropriate, recommendations) on the following issues: (1) Consideration of the advantages and disadvantages of separating the annual meeting of the Scientific Committee from that of the Commission; (2) Consideration of ways to increase participation in the Scientific Committee of scientists from developing countries in the work of the Scientific Committee; (3) Consideration of ways in which the Scientific Committee can assist in improving the knowledge and technical capability of scientists from countries where cetacean research is in its infancy so that they can better contribute to the work of the Scientific Committee and to conservation and management issues within their region; (4) Review of the process for inviting participants to the Scientific Committee.</i></p> <p><i>In accordance with the timetable agreed in Santiago, the Secretariat circulated the ICG's Terms of Reference to all Contracting Governments with a request for comments/suggestions to be received by 15 August 2008 (this deadline was later extended). The SWG had agreed that only those governments responding would continue to be included in subsequent correspondence (and would therefore comprise the intersessional correspondence group). A number of working group members (Argentina, Australia, Brazil, Italy, Korea, Mexico, Netherlands, New Zealand, Norway, Mexico and the USA) had offered to be on a 'core group' to assist the Chair of the Scientific Committee and the IWC's Head of Science to compile an initial draft of the discussion document referred to in the Terms of Reference. It had been hoped that the draft discussion document could have been circulated to Contracting Governments and SWG and ICG members in advance of the September meeting. Unfortunately, it was not possible given inter alia the short time frame but a report on progress was provided by the Secretariat (IWC/S08/SWG 5). At that meeting it was agreed that the Chair of the Scientific Committee and the Head of Science would develop a draft document for consideration by the core group that summarised and provided an overview of the views expressed on each item in IWC/S08/SWG5. That draft document would be sent to the core group by mid-October for comments before being circulated to the full SWG by the end of October.</i></p>	

Some issues that have been raised ⁸	How issues are either already being addressed or how they could be addressed
ELEMENT 29: SECRETARIAT – IMPLICATIONS FOR ROLE OF/ EXPERTISE (SWG 3: P. 64; SWG 4rev: P. 118)	
The implications of the outcome of discussions on the future of IWC on the role and expertise of the Secretariat, how should they be addressed and when (i.e. are any changes necessary in the short-term?)	By the Commission, assisted by the F&A Committee, as part of the ongoing discussions on the future of IWC.
ELEMENT 31: SOCIO-ECONOMIC IMPLICATIONS (SWG 3: P. 66; SWG 4rev: P. 119)	
How to take account of socio-economic factors in the conservation and management of whale stocks.	While in the past, discussions focused on the socio-economic implications of the commercial whaling moratorium on whaling communities (e.g. see Element 6: Coastal whaling). more recently socio-economic factors have been raised with respect to whalewatching (see Element 33: Whalewatching). <i>Future action will depend upon discussions on whalewatching under category (a).</i>
ELEMENT 32: TRADE RESTRICTIONS (SWG 3: P. 69; SWG 4rev: P. 122)	
(a) Should any new whaling operations be allowed, whether or not any trade restrictions should be put in place either as a permanent or temporary measure (e.g. to build public confidence in IWC's ability to manage any new whaling operations).	Such measures have been considered as part of RMS discussions – see element 25. <i>This issue is dependent on discussions of a number of Category (a) items and would need to be considered by the Commission in the light of those.</i>
(b) Co-ordination of IWC and CITES management measures.	This is done by governments that are Parties to both Conventions.