

**Intersessional Meeting on the Future of IWC
6-8 March 2008**

Responses to the 'call for input'

Introduction

The primary aim of the Intersessional Meeting on the Future of IWC being held from 6-8 March 2008 is to consider a process to determine a way forward for IWC rather than to consider matters of substance.

The Steering Group¹ established to plan and develop a draft agenda for the intersessional meeting, believed that it would be important for individual Contracting Governments to have the opportunity to provide input in advance of the March meeting on their initial thoughts on the negotiating process within the IWC and how it might be improved, and ways in which trust might be rebuilt.

To that end, Contracting Governments, via Circular Communication IWC.CCG.661 of 11 January, were invited to provide written responses to the following two questions:

1. Why do you think that discussions to date within the IWC have not led to a more consensus-based resolution of IWC's problems? Is the negotiating process itself a factor?
2. What are your initial thoughts on how future discussions and negotiations should be organised and conducted, taking into account the need to rebuild trust?

Contracting Governments were also encouraged to provide any additional information or ideas they had in relation to how the functioning of IWC can be improved.

Responses were to be compiled, without attributing comments to specific Contracting Governments, and made available prior to the meeting. Please note that when the responses are compiled this will be done without attributing comments to specific Contracting Governments.

Responses received

Responses to the call for input were requested to be submitted by 15 February. As of 26 February, responses have been received from 10 Contracting Governments. If further responses are received, these will be added and this document will be revised accordingly.

The responses are provided verbatim in the following pages.

¹ The Steering Group comprises the Commission Chair, Vice Chair and representatives (from Chile, New Zealand and Palau) of three non-IWC meetings held between the 2006 and 2007 Annual Meetings to discuss the future of IWC. The three meetings were: (1) the Conference for the Normalisation of the International Whaling Commission, Tokyo, February 2007, hosted by the Government of Japan; (2) the Symposium on the State of the Conservation of Whales in the 21st Century, New York, April 2007; and (3) a meeting of Latin American countries held in Buenos Aires in December 2006.

RESPONSE 1**1. *Why do you think that discussions to date within the IWC have not led to a more consensus-based resolution of IWC's problems? Is the negotiating process itself a factor?***

In discussions and negotiations on many IWC resolutions political arguments substitute scientific data. Besides, the emotional nature of discussions prevents decision-making by consensus.

2. *What are your initial thoughts on how future discussions and negotiations should be organised and conducted, taking into account the need to rebuild trust?*

It is not necessary to rebuild trust between Parties as it exists. The problem is that conservation policy of some countries is based on "passive protection": unspecified ban for commercial and scientific-purpose whaling in any part of the World's oceans. Others consider that there is a need for active conservation measures, e.g. management of whale populations and sustainable use whaling of wealthy whale stocks on scientific basis.

The problems in question are very delicate and complicated. The main step should be made towards consensus establishment among leader countries of two sides. To reach this goal it will be possibly useful to organize a small group (SG) (not more than 10 - 12 countries). For example - Japan, Norway, Iceland, Antigua & Barbuda, Grenada, St.Vincent & Grenadines, from one side, and U.K., USA, Australia, NZ, Germany, Brazil, from another. It will be also good to include the Secretariat and Scientific Committee representatives and Professor Jumo (as facilitator) in this SG. It goes without saying that each side may need time and place to conduct consultations with other countries and NGO observers. Mandate of the SG could be as follows to:

1. elaborate a strategy on how to reach consensus on harmonization of different government positions concerning whaling,
2. identify discussions format and level; and
3. determine the procedure of the whole process.

RESPONSE 2

1. *Why do you think that discussions to date within the IWC have not led to a more consensus-based resolution of IWC's problems? Is the negotiating process itself a factor?*

We have observed that some procedures block the negotiation process. For example, when the voting started during the 59 Meeting in Anchorage, it was allowed a new vote category "not participating". This category is not consistent with the transparency that should be the norm during the voting process. A country that attends a session shall express a valid vote and not excuse its participation during voting.

Also, as a means to avoid the last minute entry of new states that can bias the results, it must be considered that a country that attends a commission meeting for the first time shall be as an observer, without voting rights and without paying membership. In this way, said country would get used to the issues and procedures of the commission and will get the right to vote the next meeting.

This measure will block the entry of new states, which are promoted by other members of the commission that want to obtain votes for their own issues. This will also demonstrate the real motivation of these new states in participating at the IWC.

On the other hand, we considered it would be advisable to assert the importance of the Scientific Committee and elevate its influence in the decision making process. It would also be desirable that this Committee would act with more independence and produce more objective results on its research, without any political bias.

Another recommendation that we find important is that the meetings should take place in accessible locations for all countries. It should be taken into account that costs in said locations are high for developing countries.

2. *What are your initial thoughts on how future discussions and negotiations should be organised and conducted, taking into account the need to rebuild trust?*

A mandatory practice, which is now being adopted, should be the celebration of intersessional meetings before plenary meetings, in order to solve conflicts. We also consider appropriate to hire facilitators like experts in conflict resolution and promote the participation of international organisations, like FAO, that could act as mediators when conflicts arise.

We also understand that there are economic restraints to the participation of large delegations, which prevents the developing countries from having an adequate representation and puts them in a difficult position.

Moreover, we think that the application of penalties and interests to the contracting parties that do not pay their contributions on time should be reasonable and by no means be a punishment to developing countries.

RESPONSE 3

1. *Why do you think that discussions to date within the IWC have not led to a more consensus-based resolution of IWC's problems? Is the negotiating process itself a factor?*

Whales and the IWC have been chosen as the battleground between two opposing cultural forces. The one ("The anti-harvest" movement) is generally of the view that meat originating from wildlife in general, or from wild mammals, or in some cases restricted to wild aquatic mammals, should be avoided primarily due to concern for the biodiversity of the world, but also from a number of other concerns, or just reflecting different dietary habits. The supporters of this view represent a broad coalition of divergent views, ranging from vegetarians to those who accept the consumption of meat, but only from land mammals or even only from farmed land mammals. The other force maintain that meat originating from wild mammals, whether they be terrestrial or aquatic, is a legitimate source of food supply or of monetary income.

With the dual objective of the IWC – conservation and management – the organisation has been chosen as a convenient place to fight out the confrontation between the opposing views. Originally the fight against commercial whaling was based on widespread, and in some cases also objectively well founded, concerns over stock levels of whale populations as they were known in the 1970's, reflecting inadequate management policies and methods employed by the IWC at the time. The introduction of an interim moratorium on all commercial whaling, followed by scientific effort and the formulation of more adequate management methods, seemed a reasonable option at the time.

The real problem for the IWC has arisen out of the inability to act politically and administratively after the scientists have re-evaluated the stock levels, and constructed an adequate management method (RMP). The inability has been cemented by the present voting rules which require 75 % of the votes to be cast for changes – a requirement almost impossible to meet in an organisation split nearly in two equally great parts.

The general public, notably in non-whaling nations, and the popular media, have a very limited understanding of to-day's real state of the various whale stocks. The idea that "The Whale" is threatened with extinction is an easily understood and an energetically communicated slogan, but it is evidently far from true. This notion is upheld by some NGO's which want to maintain a cause, and a fund-raising issue, and it is also readily used for politically cost-free political profiling on environmental issues. On the other side the nations wanting to reintroduce whaling seem to have underestimated the strength and in some respects also the legitimacy of scepticism against whaling. They may have been too reluctant to admit that the former ways of conducting whaling did have some problems associated, notably regarding the animal welfare side of whaling. These combined factors have turned debate in the IWC into highly publicised trench warfare, and have made it almost impossible to create the conditions necessary to formulate a new understanding of the IWC's twin purpose – conservation and management. A compromise seems far away, as the present stalemate in the IWC allows:

- those nations who oppose whaling to maintain the moratorium on commercial whaling and to exploit this visible 'green' platform vis-à-vis their public;
- those nations who insist upon continued whaling to do so, either as scientific whaling or under the objection procedure, without the bureaucratic hassle that might become part and parcel of a future RMS compromise;
- the aboriginal societies to get (some) modest quotas for food purposes.

As consequence any acute need to change the situation is not felt. Almost all – of the traditional concessionaires – seem to get at least some of what they want.

The present situation has been unchanged for more than 20 years. It does not take account of changing circumstances relating to the availability of whales, of the fact that new and efficient management methods have been invented, or to the fact that a number of coastal societies feel that their needs are being overlooked without reason. Neither does the present situation take account of the interesting fact that the number of whales taken in the various whaling operations actually has increased more than 100 % during the last 10 years without being subject to international decision making.

With the present voting rules (75 % for substantive changes) there is no hope for a change in the basic situation based on the present way of discussing matters. Only a clear and present danger of dissolution of

the organisation – as the one we have seen looming in the horizon – might create sufficient interest on both sides to start listening to the other side.

2. *What are your initial thoughts on how future discussions and negotiations should be organised and conducted, taking into account the need to rebuild trust?*

It might be noted that apparently the contracting states with the strongest views or interests in the matter are under pressure from strong parts of their constituencies. This makes it extremely difficult for them to be seen to open up a discussion of alternatives. These difficulties are increased by the extreme publicity connected with IWC-meetings. In normal international negotiations many different solutions may be discussed and reviewed before coming to a solution which might be acceptable to all. This has for many years not appeared to be feasible in the IWC.

Confidential talks in – or on the margin of – such fora as the upcoming intersessional meeting in London – seem to be the only way forward for the time being.

In addition it might be considered useful to establish a code of conduct on public dealings with whaling matters, not only covering the IWC-meetings themselves but also the periods in between.

RESPONSE 4

- 1. Why do you think that discussions to date within the IWC have not led to a more consensus-based resolution of IWC's problems? Is the negotiating process itself a factor?***

I think that the key problem is that almost every one is more or less “comfortable” with the current situation: whaling countries actually get what they want (Japan under article VIII of the Conventions and Norway under its objection to the moratorium), while the anti-whaling countries remain opposed to the resumption of the whaling activities, as their public opinion demand from them.

- 2. What are your initial thoughts on how future discussions and negotiations should be organised and conducted, taking into account the need to rebuild trust?***

I think that a new and different approach is necessary since negotiations have not been successful up to now, despite the good faith efforts taken by many countries during a number of years.

RESPONSE 5

1. *Why do you think that discussions to date within the IWC have not led to a more consensus-based resolution of IWC's problems? Is the negotiating process itself a factor?*

(A) Because many of country whale commissioners:

- ❖ are unwilling to recognize or accept the fundamental role of IWC is a management organization for regulation of whaling as provided in the 1946 ICRW;
- ❖ do not honour proper implementation of provisions of ICRW, i.e. national licensing permit procedures for scientific whaling;
- ❖ do not give due respect to, accept or support the science-based findings, recommendations or reports of IWC's Scientific Committee, i.e. RMP, RMS;
- ❖ fail to acknowledge nor honour original understanding and their commitments to the temporary nature of the 1986 moratorium on commercial whaling;
- ❖ come to IWC meetings with inflexible national positions, mindset, or preconditions leaving no room for negotiations, accommodations or compromises;
- ❖ are more interested in pushing their national or regional agendas forward than concentrating their time and efforts in narrowing gaps on given issues.

(B) IWC meetings over these many years have been conducted in:

- ❖ a confrontational/adversarial manner rather than reconciliatory/accommodating;
- ❖ harsh, derogatory and disrespectful languages and remarks have been the rule instead of exception;
- ❖ debaters from both sides have been talking at instead of to each other;
- ❖ double standards have been employed in the treatment of similarly situated indigenous people subsisting on annual quotas for whale hunts

2. *What are your initial thoughts on how future discussions and negotiations should be organised and conducted, taking into account the need to rebuild trust?*

- ❖ agreement be reached on the conduct of debates; i.e. the chair be empowered to stop the debates if discussions/negotiations are confrontational or adversarial and therefore counterproductive;
- ❖ harsh, derogatory, and disrespectful languages not be tolerated;
- ❖ debates be minimized so as to encourage plenary to accept findings and reports of the Scientific Committee especially with regards to RMP and RMS;
- ❖ representatives not be allowed to set pre-conditions to issues they make concessions to;
- ❖ mutual respects for differences be encouraged to prevail instead of putting each other down simply because of the disagreement;
- ❖ representatives be advised in advance of the IWC meetings to have open mind and be flexible on issues being resolved.
- ❖ commissioners be authorized by their governments to make decisions on the spot and not bound by instructions from their countries.

You have also asked for additional ideas in relation to how the forthcoming IWC can be improved and what follows are some of such thoughts. Since becoming an IWC member in [], we have observed the detrimental if not divisive role the various environmental organizations, Sea Shepherd and Greenpeace to name a few, have had in the decision-making process of IWC. It seems that their aims, objectives and goals, not to mention their modus operandi, have so permeated into policy formulation and have become integral parts of national environmental policies. And as such they unfortunately have given impression to sustainable use group of countries that their colleagues on the other aisles serve as spokesmen for these NGOs in the IWC arena. Ways and means to minimize if not eliminate altogether their role and influence in IWC decision-making process should be developed and implemented.

Finally, we agree with Secretariat's recommendation that comments received not be attributed to sending governments. This approach will remove the traditional bias or prejudice that the polarized camps have become characterized with over the years. The modus operandi over these many years has been for each camp to reject whatever the other side is saying, offering or suggesting irrespective of whether their arguments are science-based, sound or reasonable.

RESPONSE 6

1. *Why do you think that discussions to date within the IWC have not led to a more consensus-based resolution of IWC's problems? Is the negotiating process itself a factor?*

The very nature of "conservation and management" of whales in the IWC does not lend itself well to consensus. Especially given the polarized views of parties on conservation and management, there are few issues where a middle-ground, negotiated position currently can be formed. To control the outcome of IWC issues, the parties have spent an inordinate amount of time and capital recruiting new members to their persuasion. This has further confounded the lack of trust among parties. Polarized camps have developed and members have come to view these as inflexible voting blocs (although this is not always accurate); the two groups rarely talk except in formal debate on the issues.

Although disputes over the substance of issues are the primary reason for a lack of consensus, the negotiating process may also be a contributing factor. Member nations with opposing views do not make sufficient efforts for bilateral dialog on IWC matters outside of annual meetings. In the interim between annual meetings, many parties keep up their aggressive positions in other diplomatic arenas and meetings. The short time available for the annual IWC meeting discourages consensus building; therefore parties seek to succeed by simply controlling the outcome of the vote. Moreover, the Commission's practice often allows debates to become unconstructively aggressive, and insufficient attention is given to traditional modes of dispute resolution – particularly when achieving a middle-ground might be possible. Even in opening statements, delegations tend to adopt hard-line postures that set a polarized tone for the balance of the meeting. Finally, this distrust among parties has led to parliamentary maneuvers deliberately designed to confuse or simply buy time.

2. *What are your initial thoughts on how future discussions and negotiations should be organised and conducted, taking into account the need to rebuild trust?*

Here are a few ideas that might help reduce the conflict and move to negotiated agreements.

a. Rule of Procedure E states that members should seek to make decisions by consensus, although this rule is rarely followed. A new rule of procedure should be implemented on "no surprises". A member wishing to put forward a new initiative (resolution, Schedule amendment, discussion paper, etc.) would be required to circulate the document in question to the Secretariat no later than 60 days or some other reasonable period before the IWC meeting at which it is to be discussed. This will allow proponents to inform and consult with all parties before tabling the initiative, and seek consensus before it is voted upon. This is aimed at preventing the introduction of controversial actions without timely notification and/or consultation prior to Commission consideration. Any such rule of procedure could make allowances for late/emergency circulation of resolutions and documents on late-breaking issues that would not unduly inhibit the proceedings.

b. IWC members and outside observers have commented on the lack of diplomacy and escalating rhetoric in the Commission as serious barriers to progress. Initially civil debates in plenary sessions too often devolve into unproductive, heated, and repetitive statements. The body should encourage the chair, through acclamation or resolution, to curtail this behaviour by:

- Increased reliance on Rules of Debate D(1) and D(2), relating to time limits for speakers and truncated speakers lists;
- Enforcing the policy of allowing oral opening statements only for new members. This is designed to avoid political figures setting a confrontational tone for the meeting;
- Reminding delegates about the proper use of the parliamentary procedure for a "point of order", through an education process on this issue.

c. In most multilateral environmental institutions, when it becomes apparent that an issue cannot be resolved in plenary or that detailed edits to a text might address a country's concerns, the issue is referred to a working group for continued discussion in a smaller, less formal environment. Such smaller groups are often able to arrive at solutions that the full plenary cannot. References to working groups should become the IWC's standard mode for attempting to resolve disputes during plenary in the first instance. Difficulties

of smaller delegations participating in small working groups needs to be addressed, with careful scheduling and close coordination *inter alia*.

The IWC should also formalize other tools to act as "dispute resolution mechanisms." One possibility might be the enhanced use of "friends of the chair" groups. Another possibility might be to provide cooling-off periods while informal consultations take place. Yet another possibility would be to rely more heavily on the Chair's Advisory body to propose consensus recommendations to the Commissioners for their consideration and possible adoption.

d. A new resolution should be considered soon that would acknowledge the broad spectrum of issues in the IWC such as cultural diversity, food and economic security, conservation goals, and different uses of whale resources. This is aimed at acknowledging the variety of perspectives in the IWC, without judging which are superior, and calming the somewhat inflammatory nature of debate during Commission deliberations. Many delegations may have difficulties accepting these goals, but just formally acknowledging them should help IWC overcome perceived insensitivities amongst parties and establish a useful foundation for resolving the current impasse.

RESPONSE 7

1. *Why do you think that discussions to date within the IWC have not led to a more consensus-based resolution of IWC's problems? Is the negotiating process itself a factor?*

I think there are two main reasons - one being an objective large difference in interests between the countries that oppose all commercial whaling at all times and those countries that want to start whaling now - the other being a lack of interest in keeping the process alive. The latter is of course to a large extent a result of the first one but there is also a basic lack of keeping the negotiating process alive that could be dealt with. New commissioners with experiences from other fora would facilitate the process.

2. *What are your initial thoughts on how future discussions and negotiations should be organised and conducted, taking into account the need to rebuild trust?*

One way is to involve more outside experts both in marine ecology and in social science as was done in the PEW-meeting in New York. Experienced national negotiators from adjacent fields would also help the process.

Some of the present problems are possible to solve which would create a stronger pressure on those few countries involved in the basic problem concerning whether there should be any commercial whaling at all.

RESPONSE 8

1. *Why do you think that discussions to date within the IWC have not led to a more consensus-based resolution of IWC's problems? Is the negotiating process itself a factor?*

The whaling dispute has undergone transition over its history. In the early stage, the issue had been mainly that of economic interests and resource management. IWC members were striving to establish an effective resource management system to conserve and sustainably utilize whale resources. However, at least since the early 1970s, the whaling issue has become a conflict over the different views about whales. Countries supporting the sustainable utilization of whales regard them as resources valuable as food, while anti-whaling countries grant a special status to whales different from other animals and consider whales as an icon of environmental consciousness. As anti-whaling countries tend to ignore the current status of whale stocks, the nature of the dispute has changed from a conservation and management issue to an issue of conflicting values. Discourse at the IWC reflects this misunderstanding or a confusion of the resource management issues with "ethical" issues.

Anti-whaling NGOs and some politicians take advantage of this situation and make resolution of whaling issues more difficult. Many anti-whaling countries bear no domestic political cost in opposing whaling, since they no longer have a domestic whaling constituency. By opposing whaling in anti-whaling countries, such politicians and governments obtain political points on environmental issues without losing anything.

Under this political climate, the anti-whaling movement has been able to achieve tremendous success in many countries and further spread to other countries, as the result, the general public of these countries accepted and became fixated on the view that whales are special animals and that they should not be harvested even if they are abundant.

As scientific data on the whale stocks has been accumulated, it is widely accepted by experts that sustainable whaling is possible for some abundant species. However, because of the intensive lobbying from anti-whaling NGOs, the public are led to believe that all whales are endangered, politicians and anti-whaling IWC member countries maintain their anti-whaling policy. This has rendered the IWC dysfunctional as an international resource management organization.

Since 1982, the normal rules of debate and treaty interpretation, as well as the globally accepted principles of science-based conservation and management and mutual respect for cultural diversity, have often been put aside in the IWC.

To sum up this, the following 8 situations contribute to the current "impasse" or "dysfunctional nature" of the IWC:

- Disrespect for international law (the ICRW and treaty interpretation). (Particularly meaning that the current discussion in the IWC tends to disrespect the core principle of the ICRW which is "orderly development of the whaling industry" as referred in the preamble of the ICRW.)
- Disrespect for the principle of science-based policy.
- Excluding whales from the principle of sustainable use of resources.
- Disrespect of cultural diversity related to food and ethics.
- Fueling emotionalism concerning whales.
- Institutionalized combative/confrontational discourse that discourages cooperation.
- Lack of good faith negotiations.
- Pressure on scientists which results in a lack of consensus scientific advice from the Scientific Committee.

With these situations mentioned above, it is the negotiating environment rather than the process that is the primary factor which has rendered the current impasse in the IWC. This environment has failed to offer a common ground on which its contracting parties can discuss and negotiate the issues.

2. *What are your initial thoughts on how future discussions and negotiations should be organised and conducted, taking into account the need to rebuild trust?*

As the first step, mutual respect for differences, not political coercion, is the solution to facilitate constructive discussion and negotiation in the IWC. It is most important to carefully consider if the IWC can

function with two fundamentally different views between pro- and anti-whaling interests as to the value of whales - whether whales can be regarded as food or not. From a pragmatic perspective, whaling is existing and will continue to exist in many regions of the world. The question then is whether or not anti-whaling countries want some roles in the management of this whaling.

Next step will be the establishment of common rules applicable to discussion and negotiations of the IWC which will change the negotiating environment. These rules might include; respect of international law, science-based policy, sustainable use of marine living resources, respect of cultural diversity related to food and ethics, and spirit of good faith.

As Dr. Hogarth stated in his letter of 20 December 2007□IWC.CCG.657□, it is very important to “include discussion of many issues, including small type coastal whaling and non-lethal use of cetaceans” to the process he initiated in Anchorage. We contracting parties have to find solutions for these substantial issues as soon as possible to restore credibility of the IWC as an international organization responsible for conservation and management of whales.

RESPONSE 9

1. *Why do you think that discussions to date within the IWC have not led to a more consensus-based resolution of IWC's problems? Is the negotiating process itself a factor?*

The management and conservation of large, long lived, highly migratory marine mammals such as cetaceans is a complex issue. The IWC was established for both the proper conservation of whale stocks and the orderly development of a whaling industry. However to date, the majority of its management tools have objectives and controls that are entirely limited to adjustments in the number of whales killed in whaling operations. The limitations of this approach have seen the IWC preside over the systematic over-exploitation of one cetacean species after another.

The modern era has brought successes in whale management that include the declaration of the moratorium on commercial whaling; the establishment of sanctuaries; consensus-based management of aboriginal subsistence whaling quotas; and consideration of emerging environmental issues. These measures have brought about the partial recovery of the world's whale populations but they are only the first steps to successful long-term management.

No one who participates in the IWC would deny that the Commission is currently split between states that fundamentally support non-consumptive use of cetaceans and seek their full protection, and states that could support a resumption of some form of commercial whaling. With such fundamental differences on key positions held by parties to a multilateral organisation, consensus will be difficult to achieve. But that is not the same as instability or an inability to make and hold to decisions. The characterisation that the IWC is at an 'impasse' appears in itself to be accepting the view of those countries that would measure progress solely in terms of steps the Commission is making towards lifting its current ban on commercial whaling. The moratorium on commercial whaling has not been lifted and a Revised Management Scheme has not been agreed because three quarters of the members have not voted to do so. This reflects the legitimate decision-making procedures of the Commission.

It is appropriate for the Commission to reflect the views of its Parties. As the number of adherents to the Convention increases, the Parties become more closely representative of the international community. The polarisation currently experienced in the Commission would be reflected by any Conference of the Parties, UN conference or debate, or similar representative forum. It would be unrealistic to expect any representative international gathering to arrive at consensus, for instance, on the maintenance of the moratorium, or the resumption of commercial whaling.

The primary issues preventing the Commission moving forward relate more to a lack of recognition of contemporary oceans management principles and Parties' ability to 'opt-out' of Commission decisions. For the IWC to move into the future the key challenges that need to be addressed are: the capacity for countries to 'opt-out' of collective management decisions; the dramatic expansion of special permit scientific whaling; and disagreement over the competency of the IWC on issues such as animal welfare and the management of small cetaceans.

2. *What are your initial thoughts on how future discussions and negotiations should be organised and conducted, taking into account the need to rebuild trust?*

As some of the heavily exploited populations of whales have started to recover under complete protection from IWC-endorsed commercial whaling, and our knowledge of the abundance of less exploited whale populations has increased, it is not surprising that tensions between conservation and whaling interests have risen. The polarised debate about the future of the IWC and its management options is a natural consequence. However, to characterise this divergence of views as a potentially fatal failure of trust or a fundamental shortcoming of the Convention would be an over-simplification, which fails to acknowledge three critical issues:

1. The ICRW operates legitimately through a set of rules that ensures that substantive changes in its operation are only achieved when three-quarters of its voting members agree to this. Through this near-consensus approach, substantial change is likely to occur at a conservative pace and will reflect the wishes of most members.

2. During the moratorium on commercial whaling the IWC has been successful in arriving at consensus decisions on the management of the one form of whaling that all Parties can accept: Aboriginal and Subsistence Whaling.
3. Learning from the lessons of historical failures in management, the IWC's Scientific Committee has developed and continues to refine a new management procedure for the hypothetical reintroduction of commercial whaling (the Revised Management Procedure: RMP). This procedure, developed in the early 1990s is arguably among the world's most thorough and detailed processes for resource management.

This is not to say that the IWC lacks substantial problems. Among the most critical failures are a dramatic expansion of unregulated whaling, in the form of whaling under special permit and under objection to the moratorium; an ongoing disagreement over inclusion of robust compliance and enforcement requirements into any Revised Management Scheme under which commercial whaling might operate if sufficient members agreed to it; and a lack of agreement over the competency of the IWC on core issues such as the management of small cetaceans (many of which are in urgent need of international management) and animal welfare.

While acknowledging the progress achieved in the past few decades, any effective discussion of the future of the IWC must include a dialogue on how to resolve these issues. Perhaps most importantly, any future direction for the IWC should include management objectives and priorities beyond the current single fishery paradigm, and accommodate global environmental threats associated with climate change and the overall ecological health of the oceans.

RESPONSE 10

1. *Why do you think that discussions to date within the IWC have not led to a more consensus-based resolution of IWC's problems? Is the negotiating process itself a factor?*

At this stage it does not make much sense trying to assign responsibilities for the current impasse. Particularly, because the reasons must be sought in structural causes which go beyond the willingness of certain players.

Among such reasons, we can mention, on the one hand, the Convention's institutional deficiencies. That is to say, the ambiguities with regard to its purpose, the possibility for the Parties to be exempted from complying with certain key provisions related to the Convention's Regulation (such is the case of the commercial whaling moratorium) the lack of compliance and dispute settlement regimes, as well as the complicated procedure to amend the Convention which has led it to become an old-fashioned instrument compared to other conventions that address the conservation / use of living marine resources.

On the other hand, the IWC decision-making process and the way in which plenary debates are conducted do not meet the sought objective. If each controversial item on the agenda is discussed in plenary meetings where on many occasions interventions are meant to reflect maximalist positions politically profitable at the domestic level - we cannot expect great progress.

2. *What are your initial thoughts on how future discussions and negotiations should be organised and conducted, taking into account the need to rebuild trust?*

There is a consensus about IWC abandoning the culture of confrontation, which prevails within the Commission where the primary objective of the delegates discourse seems to be, in some cases, a tactical, political defeat although merely rhetorical over the opposite bloc since no victory can alter the current situation. Although most speeches are not framed within that rationale, it is the most unyielding positions, which have regrettably ended up by splitting the organisation into two irreconcilable blocks.

Within this context and if we would really like to exit the current status of IWC, it would be necessary to:

1. Hold closed diplomatic negotiations (either multilateral or bilateral).
2. Ensure intersessional contact between the Commissioners of the opposite blocs to foster the confidence that is missing nowadays.
3. Establish open working groups in IWC to elaborate on options for the agenda's controversial items, either by correspondence during intersessional periods or in plenary meetings.
4. Recognise the need to urgently debate in the Commission all options recently proposed to unlock the current situation (from convening a diplomatic meetings under the auspices of the United Nations through to studying the possibility of amending the Convention, or relaunching negotiations on RMS, among other options).
5. Foster IWC bonds with other international agencies such as CBD, CMS, CITES , the Antarctic Treaty and the CCAMLR to share experiences and learn from others, particularly on how those organisations handle their internal disputes.
6. Promote a greater participation of the international community in IWC. In this regard, issues such as fostering international cooperation activities in the Commission (e.g. training new Commission members), encouraging the participation of scientists from developing countries on the Scientific Committee and developing an equitable contribution scheme, are all issues which favour the Commission's universal nature.
7. Bearing in mind the importance of the work of the organisations and institutions devoted to cetacean conservation and research, it is important for them to support a potential negotiation process through their responsible participation within IWC.

8. In plenary, avoid condemnatory resolutions (e.g. JARPA II) and/or political appeals (St. Kitts Declaration) agreed upon on the basis of fluctuating simple majorities to foster an environment of mutual confidence.

9. Completely leave aside derogatory language, inside and outside IWC meetings.

With a view to implementing such measures to open up a dialogue, although they guarantee no specific outcome, it is necessary to achieve a basic political agreement that will allow progress in that direction.

Such a framework agreement should state the negotiating will of all Parties to negotiate a package including all contentious issues, while agreeing on a roadmap to establish negotiating mechanisms and realistic intermediate goals.

Furthermore, it should include an express acknowledgement of the non-lethal use of cetaceans on equal grounds to other uses of the resource, reflecting existent international consensus with regard to the need of striking a balance between conservation and the rational use of live marine resources.