

Extract from the Chair's Report of the 59th Annual Meeting of IWC,
Anchorage, Alaska, 28-31 May 2007

7. THE IWC IN THE FUTURE

7.1 Introduction

When introducing this item, the Chair noted that when developing the draft agenda for this meeting, both he and the Vice-Chair believed that it would be useful for the Commission to have a general discussion concerning the future of IWC, given *inter alia* the impasse reached on the RMS and the number of issues for which polarisation rather than consensus appears to be the norm. He noted that since IWC/58 there had been two meetings held outside the auspices of IWC that addressed the future of the organisation. The first was hosted by the Japanese Government in February 2007 and the second was organised by the Pew Foundation and held in New York in April 2007. He believed that there were some common themes arising from the two meetings and expressed the hope that fruitful discussions on the future of the organisation could now take place within IWC involving all parties.

Argentina drew attention to a meeting held in Buenos Aires in December 2006, attended by a number of Latin American countries, which also addressed *inter alia* the future of IWC. It noted that the Buenos Aires Declaration that arose from this meeting had been circulated by the Secretariat at its request to all Contracting Governments in December. Argentina requested that the outcome of the Buenos Aires meeting be considered alongside the outcomes of the Tokyo and New York meetings. The Chair agreed.

The Chair invited the outcomes of the three meetings to be reported to the Commission.

7.1.1 Conference for the Normalisation of the International Whaling Commission, Tokyo

Mr Nakamura, the Commissioner for Palau and Chair of the Tokyo conference noted that the aims of the conference were to discuss and recommend specific measures to restore the IWC as an effective resource management organisation in accordance with its mandate prescribed by the 1946 International Convention for the Regulation of Whaling and to promote dialogue and reduce the confrontational nature of the discourse that had become entrenched in IWC. It was to his regret, therefore, that participation in the meeting was not fully reflective of the views held among Commission members even though invitations had been extended to all Contracting Governments. Mr Nakamura noted that discussions at the meeting had taken place in plenary and in four Working Groups addressing: consensus building, building trust and procedural issues; public education; cultural diversity; and the interpretation of the ICRW and other instruments. It was his view that the IWC could not continue in the same way as at present and that the Tokyo and New York meetings provided a starting point for improving the situation.

Mr Nakamura highlighted the major conclusions of the meeting which included: (1) that the principle of sustainable use of resources is a universal principle and that whales should not be exempt from such use; (2) that diverse cultural values and dietary practices must be respected, noting that the responsible management of marine living resources is particularly important for the food security of many developing countries; (3) given that whaling is occurring and will continue into the future, IWC needs something like Chairman Fischer's RMS package¹ which came close to being a reasonable compromise; (4) that the commercial whaling moratorium was intended to be a temporary measure and that its continued application is of questionable legality; (5) that regional management organisations such as NAMMCO could provide an alternative to IWC; (6) that IWC should ensure that the culture related to the hunting of whales is maintained and that there should be further examination of other international instruments that deal with cultural diversity such as the UNESCO conventions; (7) that the use of the term 'aboriginal' is considered by some to be disrespectful and derogatory and that alternative language should be considered; (8) that research under Article VIII should be done in a responsible way and that the determination of whether such research is responsible must be done by the permit-issuing state in the context of the ICRW; (9) that the focus should be on sustainable whaling rather than having different categories as at present.

Recommendations on ways to improve how IWC conducts its business included: (1) seeking consensus solutions before voting; (2) showing a willingness to compromise; (3) the need for science-based solutions; (4) examining how to create the political will to resolve the current situation; (5) the need to work and speak in less confrontational ways; (6) consideration of how to bring strong anti-whaling countries to the negotiating table; (7)

¹ *Rep. Int. Whaling Comm 2004: 82-92*

consideration of looking at governments rather than Commissioners to resolve the situation; (8) that important findings of the Scientific Committee including agreements on stock abundance should be made available to the public through press releases from the IWC Secretariat; (9) that proposals to amend the Schedule might be looked at by a special group with the purpose of ensuring consistency with Article V.2; and (10) that an outside legal opinion might be sought when there is disagreement over the interpretation of the ICRW or Commission decisions.

Mr Nakamura believed that there were some commonalities between the comments and recommendations arising from the Tokyo and New York meetings and that these provided a starting point for the dialogue that is both desirable and necessary. He noted that he had already had some discussions with Sir Geoffrey Palmer, Chair of the Pew Foundation meeting held in New York, regarding the outcome of both meetings. He undertook to continue such discussions but would welcome the involvement of others in seeking a way forward for IWC.

7.1.2 *Symposium on the State of the Conservation of Whales in the 21st Century. New York*

Sir Geoffrey Palmer, New Zealand Commissioner and Chair of the Pew Foundation meeting thanked Mr Nakamura for his courtesy in discussing with him how to proceed with presenting the outcome of the meetings. He found Mr Nakamura's remarks highly constructive. Sir Geoffrey considered it notable that three meetings had taken place within one year directed at addressing the impasse afflicting IWC. He considered the session at IWC/59 provided an opportunity to build bridges.

Turning to the Pew Foundation meeting, Sir Geoffrey noted that it had not been a government-sponsored meeting, but that it was organised by the Pew Foundation, an NGO, and co-sponsored by UNEP. He had chaired the meeting in his personal capacity. The meeting had been divided into four sessions covering: (1) the status of whale stocks; (2) developments in oceans law since 1946; (3) the history of whaling diplomacy; and (4) possible ways forward. One third of participants had an IWC background, another third were representatives of NGOs and another were participants who had no previous connection with IWC. He believed that the meeting had produced some new ideas on how healing the divisions within IWC might be approached. He reported that there had been a general acceptance, expectation and hope that IWC would survive and that the current impasse, recognised by both 'sides' would be resolved, although he stressed that the difficulties in doing so should not be underestimated. He stressed that the outcomes of the meeting did not represent a package but rather a menu from which choices could be made. He noted that a number of approaches had been identified. One of these was to maintain the *status quo*, i.e. to keep the current policies and accept that the debate might be divisive and deadlocked as there may be no other route available to reduce or control commercial and scientific permit whaling, but at the same time to continue efforts to further a conservation agenda within IWC. A second approach was to negotiate compromises within the IWC, recognising that this would require a more diplomatic atmosphere within IWC meetings and an end to the use of derogatory language. In this respect, one idea put forward was to negotiate a new protocol to the Convention that would: remove or restrict the open-ended use of Article VIII relating to scientific permit whaling; establish a Compliance Review Committee that would have new powers of enforcement; include a new dispute settlement provision; stipulate that there can be no reservations to the new rules; prevent countries from opting out of IWC rules; include a management objective implementing the precautionary and ecosystem approaches and including non-consumptive uses; and include provisions allowing amendment of the Convention. Other ideas included: (1) a whaling-free Southern Hemisphere; (2) a re-examination and revision of the 'Irish Proposal'²; and (3) an RMS+ strategy with the following four fundamental components: phasing out of lethal scientific research; phasing out of whaling in sanctuaries; lifting of the commercial whaling moratorium upon completion of RMP modelling and Commission action on a case-by-case basis; and a prohibition on the international trade of whale meat. A third approach was to seek a final settlement by a 'higher' authority, through, for example an Independent World Commission on the Conservation of Whales, a Ministerial Summit on the 60th Anniversary of IWC, a mutually-agreed, binding mediation or arbitration procedure, an International Diplomatic Conference under the auspices of the UN, an independent group of qualified eminent persons, bringing the IWC into the framework of the UN and integrating whale conservation as an issue into broader oceans, biodiversity and species protection agendas and instruments.

Sir Geoffrey noted a number of additional points and recommendations, including: (1) that further research into the economics of whaling should be conducted and in particular the degree to which the industry is subsidised by governments; (2) that there should be stakeholder dialogue on whale conservation within pro-whaling countries; (3) improved dialogue through the establishment of a working group comprising a diverse mix of interests and views to find common ground; and (4) exploration of new approaches to conflict management in IWC, noting that the techniques of conflict management had not been exercised in IWC to the degree that they should.

Finally Sir Geoffrey highlighted the common elements of the outcome of the Tokyo and New York meetings, i.e. a willingness to seek areas of commonalities, a clear commitment to end the use of derogatory language, an

² *Rep. Int. Whaling. Comm* 49:35

improved mechanism for conflict management (letting others know what you want so as to build trust) and a shared interest in elevating discussions to a higher level. He believed that the Commission should take the opportunity to explore the common ground, but stressed that this will require a change in the way the organisation conducts its business, with governments talking to, rather than past, each other.

7.1.3 *Buenos Aires Declaration*

Mr Javier Figueroa, Alternate Commissioner for Argentina reported on the outcome of the December 2006 Buenos Aires meeting that had been chaired by Ambassador Eduardo Iglesias. He noted that the Latin American region had already begun in 2005, at an earlier meeting, to consider alternative approaches that could be used to modernise the organisation and overcome the impasse within IWC (it preferred the term 'modernisation' to 'normalisation' believing the latter to have derogatory connotations for some). This was continued through the meeting held in Buenos Aires in December 2006 that included representatives of Argentina, Chile, Panama, Ecuador, Guatemala, Dominican Republic and diplomatic observers from Colombia, Uruguay and Venezuela. Participants at the meeting had been in favour of improved dialogue and an end to the use of derogatory terms within IWC. They considered that the debate on the future of the organisation must take place within IWC so as to guarantee the greatest participation. The meeting believed that since IWC was created, it had contributed to the conservation of whales and the recovery of whale stocks, with the important work of the Scientific Committee being extensively recognised. Mr Figueroa noted that for the Latin American region, it is vital that any debate include certain elements such as: (1) mechanisms to facilitate the participation of developing countries, not just from a financial perspective but also from a scientific and technical point of view; (2) the promotion of the non-lethal use of whale resources; (3) the promotion and creation of new sanctuaries; and (4) the strengthening of the Conservation Committee to address new threats to cetaceans. The region would be supportive of any initiative that would re-launch negotiations. Finally, there was the view that scientific permit whaling should be suspended at least until conditions exist to advance such negotiations.

7.2 **Commission discussions and actions arising**

Denmark noted that IWC is now so polarised that it cannot take decisions to find its way out of the current impasse. It recalled that at IWC/57 in 2005 it had, together with the Republic of Korea, proposed a way forward for the Commission but that this had been rejected³. While Denmark welcomed the new-found politeness of discussions at the 59th Annual Meeting, it stressed that the organisation needs to go beyond this if the impasse is to be overcome. It considered that if IWC fails to fulfil its dual role of conservation and management, there is a real risk that the organisation will collapse, which would be to the benefit of no-one. Denmark wanted IWC to function properly but noted that for this to occur, a give and take on both sides is necessary. It suggested that those opposing whaling must drop the position that no whaling at all can take place and that pro-whaling countries must drop the position that the provisions in the Convention concerning scientific permit whaling and whaling under objection are beyond a compromise. Denmark believed that work should resume on the RMS/RMP or similar system and that discussions should focus on areas where agreement might be achieved in the shorter-term rather than on areas where reaching agreement would be more difficult. It stressed the need to re-build trust and confidence among IWC members and indicated that it would like all Contracting Governments to pledge their willingness to be prepared at future meetings to compromise on essential matters.

Brazil noted that the outcome of the Buenos Aires meeting reflected its views on what is needed if IWC is to re-state its role as the global organisation with a mandate on whales and whale resources. It noted that while the outcomes of the Tokyo and New York meetings were interesting, the meetings were held outside IWC. Brazil believed that solutions to the current impasse must be found inside IWC since Contracting Governments are the ones who should be interpreting the Convention.

St. Kitts and Nevis recalled that the St. Kitts and Nevis Declaration adopted by the Commission last year (Resolution 2006-1⁴) addressed issues of sustainable use of marine living resources and the past, present and future contribution of cetaceans to sustainable livelihoods, food security and poverty reduction. Since the passing of the Declaration, it was pleased to see a movement in the debate. It was heartened by the reports from the Tokyo, New York and Buenos Aires meetings believing that they would help the 'normalisation' or 'modernisation' of IWC. St. Kitts and Nevis considered that it might be useful to establish a Committee to review the recommendations from the three meetings as a way to begin discussions on a way forward for the Commission.

The representative from St. Lucia noted that he had returned to IWC after some years' absence and found that many of the same problems still existed. He noted that the reports from the three recent meetings continued to refer to 'whaling' and 'anti-whaling' groups, which he believed was at the heart of the problem. He believed

³ *Rep. Int. Whaling Comm 2005: 27-29*

⁴ *Rep. Int. Whaling Comm 2006: 68*

that decisions of the Commission should be based on science and reason and not on emotion and suggested that use of the terms pro- and anti-whaling should cease and that instead the needs of people should be addressed. Senegal associated itself with these remarks. It believed that IWC is at a watershed and that continuation of the *status quo* is not an option. It called on the Chair to do all he could to resolve the impasse.

France agreed that there is a need to re-establish an atmosphere of trust among the Commission and believed that there are now encouraging signs that this can begin. It considered it premature to decide at this meeting on the specific future path for the organisation, but noted that it would support moves to seek resolution. It noted that issues important to France included the removal of the objection procedure and the provision allowing scientific permit whaling. It also believed that the Commission should, as a body, be able to impose sanctions when infractions of the provisions of the Convention and Schedule occur.

South Africa noted that it recognises IWC as the only relevant and legitimate organisation dealing with all cetaceans and expressed concern that its effectiveness is compromised by the current impasse. Like Denmark, South Africa believed that it is in no-one's interest for the IWC to collapse or wither away. It welcomed constructive debate within IWC, but also suggested that informal processes can sometimes generate new ideas and help build trust among participants. It believed that discussions on the future of the organisation should address all issues of importance to member countries, including the non-consumptive use of whale stocks. It viewed the Convention as an old convention requiring some modernisation, but noted that IWC has some positive assets to build on, particularly the credibility and integrity of its Scientific Committee.

The UK associated itself with many of the remarks of South Africa and Denmark, believing the latter to have raised the level of debate. The UK considered that the present situation can only lead to the demise of IWC. However, it noted that it considered the following elements to be important if real progress is to be achieved: (1) a review of special permit whaling and regulation of it so that permits are only issued with the approval of the Scientific Committee; (2) a compliance procedure with sanctions so that if catch limits are exceeded the Commission as a body can take action; (3) breaking any link between discussions on the RMS and on the lifting of the commercial whaling moratorium; (4) that the regulation of whale hunts must contain welfare criteria to minimise suffering and a requirement that data are submitted to demonstrate whether the criteria are met; and (5) a recognition of the increasing importance of the non-lethal use of whales not only in view of welfare concerns but also as an economic resource.

Sweden associated itself with the remarks of Denmark. It noted that since Sweden's re-adherence to the Convention in 1979, it had supported the principle of sustainable use and the application of the precautionary principle. It believed that Commission decisions should be based on science without undue political considerations. It would continue to support the commercial whaling moratorium until an RMS is in place and until IWC has taken full control over all types of whaling. At this point, Sweden could accept the resumption of commercial whaling at the same time as others' interest in whalewatching is recognised and respected. It welcomed the reports from the three meetings, all of which underlined the importance of respect for the views of others and the need to establish ways for improved communication. Sweden noted that it would support future meetings to find a way forward for IWC if they were open to all countries involved and if the range of views held by members was fully reflected. It considered that participation of those not usually involved in IWC matters might be useful, but it stressed that the goal must be to find a solution to the present impasse. It believed that sustainable commercial whaling and sustainable whalewatching must be part of the solution. Finally, Sweden noted its preference for the term 'harmonisation' of the Commission rather than 'normalisation' or 'modernisation' and drew attention to its remarks on this matter last year⁵.

Mali noted that the opening addresses to the Annual Meeting served as a reminder of the importance of whales to various communities. It believed that it is for individual countries to decide how they wish to utilise whale stocks and that preservation and sustainable use should be key to any activities. It also believed that full protection should be extended to whale stocks when necessary, as is the case in the management of other species. With respect to trust, Mali suggested that there had been a show of trust earlier in the day when the Commission endorsed parts of the Scientific Committee report concerning whale stocks and the RMP. Like others, it considered that the reports from the three intersessional meetings had some common denominators.

Iceland welcomed activities that would result in a positive outcome whether they were held within or outside of IWC. It believed a positive development had already taken place at this meeting when there had been a consensus in favour of sustainable whaling in relation to subsistence whaling⁶ and it hoped for consistency in positions when other types of whaling were discussed. However, Iceland considered that the key problem has

⁵ Rep. Int. Whaling Comm 2006: 48

⁶ Note that when the item of the future of IWC was discussed, aboriginal subsistence quotas had been renewed by consensus for aboriginal subsistence whaling involving the USA and Russian Federation (for bowhead and gray whales) and St. Vincent and The Grenadines (humpback whales). Negotiations regarding the Greenland hunt were still ongoing.

been that until now, there has not been the necessary political will to achieve a compromise. It believed that the Commission has an idea of what form a compromise may take (i.e. Chairman Fischer's RMS proposal) and recognised the key role played by Denmark in this. It also recognised the significant amount of technical work done on the development of an RMS and the ideas forthcoming from the recent meetings. However, Iceland believed that what is now needed is not more technical work but the political will to reach a realistic compromise conclusion.

Germany believed that a process of reflection was needed within IWC so as to find a way forward. Like a number of other countries, it believed the Commission should talk in terms of modernising the organisation rather than normalising it. It believed discussions should be fully inclusive and transparent, but that in the process, what it considered to be major achievements of IWC (e.g. the creation of sanctuaries and the commercial whaling moratorium) should not be ignored.

Japan hoped that IWC would take action to overcome the current impasse. It believed that if the *status quo* remains, the organisation will continue to have fruitless confrontations and whaling will continue outside of IWC control. It also believed the IWC to be endangered and facing extinction. Japan recalled the remarks of the previous Secretary to the Commission, Dr Ray Gambell, who had noted that IWC had two options: either to maintain the *status quo* or to develop a solid approach to management. Like Dr Gambell, Japan preferred the latter option and therefore regretted that work on the RMS had come to a halt. Japan recognised that while the Tokyo and New York meetings were different in some ways, some common ground had emerged including an agreement that something needed to be done to break the impasse. Japan stressed the need to overcome the mutual distrust that existed among Commission members.

Like others, the Netherlands welcomed the reports from the three intersessional meetings and believed that the common ground emerging should be an incentive to develop a package to take to IWC/60 on the way forward for the organisation. It considered that the RMS should be part of the package but that there should also be respect for other practices and points of view. Areas of importance for the Netherlands included compliance, the proper reporting and control of all whaling including special permit whaling, proper mediation procedures and the possibility for imposing sanctions in cases of non-compliance (e.g. loss of quota, loss of permits). The Netherlands noted that it would favour an open-ended working group reflecting the different views within the Commission. The working group would be tasked with developing a package regarding the future of IWC to present to the Commission at IWC/60. If this was not achieved, then the Netherlands would support a high level political meeting to break the deadlock.

Australia noted that times have changed since the Convention was drafted in the 1940s. The whale oil industry had disappeared and whalewatching had become a significant economic activity. It was in no doubt that the most significant benefit to coastal communities from whale resources was from whalewatching rather than whaling (i.e. whales in the water rather than on the butchers hook). Australia believed that the changed context needs to be recognised in any discussions on modernisation or renewal of the Convention. It also believed that science needs to be recognised and respected properly rather than being given a token deference. Australia considered that if scientific permit whaling is to have any value, it must have independent credentials from the Scientific Committee or another body. It believed that such whaling, together with whaling under objection or reservation, undermines the credibility of the Commission. Australia took the view that any revised or new Convention must respect science and the growing economic importance of whalewatching and that there must be satisfactory and enforceable means of compliance.

Norway noted that there is a general consensus that IWC is at a standstill and that its future might be at risk. It agreed with others that if IWC is to be made relevant, then full and frank discussions on its future must be held. It found the reports from the three intersessional meetings helpful, but expressed concern that in their interventions, several Contracting Governments had already identified certain demands that must be met before negotiations have even started. Norway urged members to keep in mind that a three-quarter majority is needed to change the Schedule and that countries therefore have to work together. It was somewhat concerned that there was a lack of a specific proposal on how to move forward, but supported the suggestion made by St. Kitts and Nevis that a Committee be established.

Costa Rica supported modernisation of the organisation by consensus. It was pleased with the language and tone of the meeting and believed this represented a fundamental step forward. It thanked the Chair and the Secretariat for their efforts to promote consensus.

Chile was also pleased to see a notable change in the atmosphere in which the meeting was being conducted. It suggested that the Commission should be working to modernise, rather than normalise, since the latter implied that it had not been working in a normal manner. Like Australia, Chile commented that the world has changed since the Convention was agreed. It believed that the structure, objectives and purpose of the IWC needed to be updated. In any discussions on the future of IWC, Chile thought it important to note that no member country in

the Southern Hemisphere is interested in the lethal use of whales and that there is considerable support for non-lethal use of whale resources. It was interested in South Africa's comment on the usefulness of informal meetings and stressed that as the host of the next Annual Meeting it would do everything within its power to make progress towards an IWC that addresses the concerns of the 21st Century.

Like many others, Belgium welcomed the reports from the three intersessional meetings. It noted that it had participated in the New York meeting where it had stressed the need to put whales back into the ocean and the importance of taking account of threats other than whaling (e.g. ship strikes, entanglement, climate change) which affect more whales than whale hunting. Belgium believed that addressing these other threats provides an opportunity for the Commission to work on non-divisive issues, but noted that the current budget constrains the number of topics that can be addressed. It also encouraged increased collaboration with other organisations at a scientific and policy level. Belgium indicated its support for a process to address the future of IWC.

India re-iterated its full commitment to IWC. It believed that conservation should be coupled with sustainable development and that the issues faced by the organisation could be resolved with scientific reasoning. Panama also encouraged further dialogue. The Republic of Korea congratulated the Chairs of the three meetings and considered it fortunate to witness that the importance of resolving the problems of IWC is recognised. With respect to the New York meeting, it noted mention in the report that to engage in negotiations for a protocol to the Convention, there would be a requirement for conservation countries to provide incentives to whaling countries that would be sufficient for the latter to agree to certain compromises. The Republic of Korea asked what sort of incentives had been discussed.

The Republic of Guinea expressed concern regarding the current polarisation of the organisation and believed that the opportunity should be taken to get it back on track. In this regard it proposed that a committee, comprised of both views, be established to take stock of what appears to be the common ground, what issues are divisive and to propose solutions. It further recommended that an extra-ordinary meeting of the Commission be held to review the outcome and to negotiate a way ahead for the organisation. In a similar vein, Spain thought that it would be useful to extract the positive elements from the reports of the three meetings and for an intersessional group to review these and look for common ground. It also believed that IWC should be modernised and that any solution should include a robust and modern RMS that includes best practices applied elsewhere and a compliance mechanism as mentioned by the Netherlands. Spain appreciated the improved standard of dialogue.

After hearing all the interventions, the Chair noted that there is a general agreement on the need to move forward taking account of the three intersessional meetings. He therefore asked to be allowed to work with the Commissioners of Palau and New Zealand and a representative from the Latin American region to develop a proposal on how to proceed. He would come back to the Commission with this proposal before the end of the meeting. The Commission agreed to this approach.

On the last day of the meeting, the Chair reported that he had met with the Vice-Chair, the Commissioners from Chile, New Zealand and Palau and the Secretary to discuss how to move forward. On the basis of this, he proposed that an intersessional meeting of the Commission be held prior to IWC/60. The meeting would be open to all Contracting Governments and observers. If the Commission could agree to this, the Chair proposed that he would use the small group to prepare a draft agenda and documents for the meeting. The draft agenda would be circulated to all Contracting Governments for review. The Commission agreed with this approach. Brazil requested that the intersessional meeting be held in a convenient location.