

# Intersessional Group on Quorum (IGQ)

## Summary of responses to the quorum review document, and suggestions for clarifications to the IWC's rules and procedures

Prepared by the Secretariat and the Chair of the IGQ

### 1 INTRODUCTION

On the 3<sup>rd</sup> January 2012 the Chair of the IGQ and the Secretariat circulated a review of the quorum practices of a selection of Inter-Governmental Organisations. Responses to the review were received from the Governments of Australia, Japan, Kenya, Monaco, UK and USA.

This document provides a summary of the comments received and the original individual responses are provided at Annex A. Draft amendments to the Commission's Rules and Procedures are suggested based upon the comments received.

### 2 GENERAL COMMENTS

All respondents recognised the importance of a quorum. There was broad agreement with the general content and approach of the review document which was described as comprehensive and helpful. All respondents either stated or suggested that clarifying the current Rule B.1 would be beneficial, and all respondents gave other specific or general suggestions for improving the IWC's procedures regarding quorum.

### 3 SPECIFIC COMMENTS

The review document identified a series of five actions as a structure for considering clarifications to the IWC's rules and procedure regarding quorum. The responses received are summarised below according to these actions.

#### 3.1 Action One on when and how the requirement for a quorum should be applied

##### 3.1.1 Summary of responses

The review document suggested two alternative approaches in regards to when the quorum requirement should be applied, these being:

- (1) whether the quorum requirement only applies at the time of decision making as suggested by the March 2010 precedent; or
- (2) whether the quorum requirement is ongoing throughout the meeting but which should be applied particularly at the point of decision making (see also Action 4 below).

Five of the respondents commented on when the quorum requirement should be applied. Of these, four suggested that alternative (2) under Action 1 should be the appropriate description of IWC quorum requirements, with one respondent clarifying that although the quorum requirement should be an ongoing one, its application should be limited to decision making.

The fifth respondent suggested that quorum should be determined at the start of a given session and deemed to apply for the duration of that session so as to enable late night decisions to be taken. However this respondent also suggested by way of alternative that if the quorum is to be determined when a vote is called, that the quorum should be deemed to continue for the duration of the vote. This view, that if a quorum is in place when a vote is called then it shall be considered to continue for the duration of the vote, was also echoed by another respondent in order to prevent potential voters departing as it became clear how a roll call vote was progressing.

In a related issue, three respondents referred to the March 2010 intersessional meeting, and of these two suggested that despite the discussions which took place the meeting should not be used to set IWC practice as no quorum was present. The third remarked that the discussions were of use even in the absence of a quorum.

Also under Action 1, the quorum review asked:

- (3) whether to change the term ‘attendance’ to something more specific such as ‘present in the room’;

Five respondents advocated that ‘attendance’ be changed to ‘presence’. Of these, three suggested this should mean ‘present in the room’, one suggested it should mean ‘present at the start of the session’ and one suggested it should mean ‘present at the meeting’, but without commenting on how that should be assessed.

In a closely related issue, one respondent suggested an additional amendment to the Rules of Procedure to provide that members who abstain or do not participate in a vote are still present for the purposes of constituting quorum.

Finally under Action 1, the quorum review asked:

- (4) whether the Chair should [formally] check and announce that a quorum is present before a vote is taken; and
- (5) what is the appropriate action to take if a quorum is not present for a particular vote (e.g. close the item, formally leave it open until later in a meeting when a quorum is present).

Three respondents suggested the Chair or Secretary should check that the quorum is present before voting, but that this provision could remain as per the current system where the verification takes place informally.

With regard to what action to take if a quorum is not present two respondents stated that this should be left to the discretion of the Chair rather than stipulated in the Rules of Procedure. One respondent stated that no decision can be taken in the absence of a quorum (not even to close an item or to leave it open), and that decision making must be deferred until a quorum is re-established.

### 3.1.2 Suggested draft rule changes in light of the comments received regarding Action One

Rule of Procedure B.1 could be clarified *with respect to Action 1* as follows. New text is shown in ***bold italic***:

***The presence in the room of Attendance*** by a majority of the members of the Commission shall constitute a quorum, ***which shall be required for any decision to be taken. The Chair will announce prior to each vote if a quorum is present. If participants choose to leave after the announcement, or do not participate in the vote, the quorum shall be considered to remain.***

Or

***The presence at the start of the session of Attendance*** by a majority of the members of the Commission shall constitute a quorum, ***which shall be required for any decision to be taken. The Chair will announce prior to each vote if a quorum is present. If participants choose to leave after the announcement, or do not participate in the vote, the quorum shall be considered to remain.***

## 3.2 Action Two on whether Contracting Governments with a suspended vote should be included in the quorum necessary for decision making

### 3.2.1 Summary of responses

Six respondents addressed this question. Two indicated that suspension of voting rights does not mean suspension of membership, and that any Contracting Government, even with a suspended voting right can be present in the room at time of decision and so count towards the quorum.

A third respondent recognised that IWC’s current approach provides a ‘blanket formulation’ where the single quorum rule applies to all business transacted, and questioned whether it would be appropriate to differentiate members with a suspended vote from just one part of the Commission’s business (i.e. decision making). However this respondent also suggested that if a second quorum level for decision making was to be introduced that this could be linked to voting rights. In such circumstance, this respondent suggested that an IWC decision making quorum should be calculated as the presence of a defined proportion of those Members which possess the right to vote.

The three other respondents stated that the quorum should be calculated as a majority of members who have paid their contributions (i.e. members with voting rights).

### 3.2.2 Suggested draft rule changes in light of the comments received regarding Action Two

If the Commission wishes to stipulate that only members who have paid their dues should be included as part of the quorum then Rule of Procedure B.1 could be clarified as shown below. Alternatively if the Commission wishes to continue with the present situation (i.e. that all Contracting Governments count towards the quorum) then no change is required. Any change would be additional to that agreed under Action One above:

Rule B.1:

Attendance by a majority of the members of the Commission *whose right to vote has not been suspended under paragraph E.2* shall constitute a quorum.

### 3.3 Action Three on whether members whose credentials are under review can participate in voting

Four respondents remarked that Commissioners whose credentials are under review may not or should not participate in a vote. However one of these respondents drew attention to Rule of Procedure E which requires the IWC to make every effort to reach its decisions by consensus, and proposed that decision making by vote on a substantive issue in the early stages of a meeting (48 hours) would not be in the spirit of this rule. Thus there should be a natural window of opportunity for credentials to be verified. In a similar way, another respondent suggested that the Chair should be free to exercise discretion on whether to postpone a vote so as to permit participation of Commissioners whose credentials remain under review.

Given the above consensus that Commissioners whose credentials are under review may not participate in a vote, and the current situation where the Chair has discretion to postpone a vote there does not appear to be a need to change the Commissions current rules or procedures.

### 3.4 Action Four on whether it is necessary to clarify the IWC's rules with regard to decision making by consensus as opposed to voting.

One respondent indicated that quorum should be considered an ongoing requirement, and as such it already covers decision making by consensus. Similarly, another respondent recognised that the Commission makes many decisions by consensus during an annual meeting, e.g. relating to endorsement of reports, and that it is therefore necessary for the quorum to be constituted at all times. A third respondent agreed that it would be appropriate to clarify that decision making by consensus is no different to decision making by voting with regard to quorum.

The overall view expressed is that the requirement for a quorum is an ongoing one which is necessary for inter alia a range of decisions such as endorsement of reports which take place during a meeting. The draft rule change suggested under Action One above shows includes the broad phrase '*which shall be required for any decision to be taken*' and as such includes decisions made by consensus.

### 3.5 Action Five on methods to establish Commission agreement on quorum clarifications ahead of the first substantive Agenda Item at IWC/64.

Two responses were received related to this action point. Both considered it would be desirable to have agreement prior to opening of plenary, with one respondent suggesting that any of the three alternatives provided in the review were acceptable, and the second respondent advocating that the matter should be discussed at the private commissioners meeting.

In light of these comments, discussion on quorum will be added to the Agenda for the Private Commissioner's Meeting, where consideration of any recommendations made by the Finance and Administration Committee during the Sub-group week will be possible.

## 4 CONCLUSION

Members of the IGQ are invited to comment on the draft options for changes to the Commission's Rules of Procedure as indicated at Sections 3.1 and 3.2 above. All comments should be received at the Secretariat by Friday 6 April. Final draft rule changes will then be submitted as part of the IGQ's report to the Finance and Administration Committee. This report must be circulated to all Commissioners by Thursday 3 May (60 days prior to the Commission meeting) so as to comply with the requirements of Rule of Procedure R.

## Annex 1.

### Responses received from members of the Intersessional Correspondence Group on Quorum in regarding the review circulated on 3<sup>rd</sup> January 2012.

The responses are provided in alphabetical order:

- Australia
- Japan
- Keyna
- Monaco
- United Kingdom
- United States of America

#### 1) Government of Australia

**IWC Paper: Review of the practices of a selection of Inter-Governmental Organisations on quorums in the light of discussions within the IWC, with suggestions for a way forward (03/01/12)**

#### Australia's comments on IWC Quorum Review Paper – 27 January 2012

##### **Introduction**

Following discussions on the proposed South Atlantic Whale Sanctuary at IWC63, the Commission agreed to establish an intersessional group (the IGQ) to consider the interpretation of its Rules of Procedure (RoP) regarding the quorum necessary for a decision to be taken.

The terms of reference for the IGQ are:

- (1) What comprises 'attendance' – this relates both to whether the requirement for a quorum is a continuing one that can be applied at any point at a meeting or whether there is a point in time at which a decision on whether the meeting is quorate can be taken (e.g. at the start of the complete meeting, at the start of a session, when a vote is called for etc.) and also on the location of members of the Commission (e.g. in the room, in the building, etc).
- (2) What is precisely meant by 'members of the Commission' e.g. Commissioners (or alternate Commissioners) with accepted credentials.
- (3) Whether in deciding a majority this simply refers to 'members' from all signatories to the Convention or does the suspension of the right to vote (Rule E2) have any relevance.

The timetable for the IGQ work states that the Secretary and the Chair of the IGQ will develop a discussion document (by the end of February) that examines:

- the history of the 'quorum' within the IWC including the origin of the RoP and any previous examples of its use; and
- a summary of the issue and practice in other intergovernmental organisations (members may suggest relevant organisations for the Secretariat to approach).

On 3 January the Chair of the IGQ circulated to members of the Group a paper (Attachment A) that reviews quorum practices at a selection of Inter-Governmental Organisations. Comments on the paper are requested by 10 February.

The paper examines the history of the ‘quorum’ within the IWC including the origin of the RoP and any previous examples of its use. It provides a summary of the issues and practices of other intergovernmental organisations drawing on academic research. The paper includes possible actions (1-5) to support the development of a proposal on the IWC RoP relating to the constitution of a quorum for the IWC Finance and Administration Committee and subsequently the Commission’s consideration.

A second document will be circulated to the IGQ in March 2012 which will propose a way forward on the basis of comments received.

As a general comment, Australia considers this paper to be an extremely helpful review of IGO quorum practices with some good suggestions for further work to assist in clarifying the IWC RoP on the constitution of a quorum. Our comments on Actions 1-5 in the paper are summarised below.

### **Australia Comments on Actions 1-5 (Sections 9.1–9.5)**

**Section 9.1 Action 1:** Consideration should be given to clarifying the IWC’s Rules of Procedure on:

- (1) whether the quorum requirement only applies to decision making as suggested by the March 2010 precedent; or
- (2) whether the quorum requirement is an ongoing one throughout the meeting but which should be applied particularly at the point of decision making (see also Action 4 below); and
- (3) whether to change the term ‘attendance’ to something more specific such as ‘present in the room’; and
- (4) whether the Chair should [formally] check and announce that a quorum is present before a vote is taken; and
- (5) what is the appropriate action to take if a quorum is not present for a particular vote (e.g. close the item, formally leave it open until later in a meeting when a quorum is present).

#### *Action 1 (1) and (2)*

Australia concurs with the outcome of the paper’s review of modern IGO practice that constitution of quorum is an ongoing requirement which continues to apply throughout the meeting, but which should be applied particularly at the point of decision-making.

We note that this conclusion is consistent with the overarching purpose of the quorum requirement - securing broad participation in the process of consideration and decision-making, and preventing decisions being taken by an unrepresentative minority of members.

As such, despite the potential precedent suggested by the March 2010 meeting of the IWC, we suggest that Action 1 sub-paragraph (2) (as opposed to Action 1 sub-paragraph (1)) best articulates the quorum requirement in the IWC.

We suggest that the IGQ might consider drafting a proposed amendment to Rule B.1 of the RoP<sup>1</sup> for the consideration of the F&A Committee (and subsequently the Commission) which clarifies the ongoing nature of

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<sup>1</sup> [1] **B. Meetings**

1. The Commission shall hold a regular Annual Meeting in such place as the Commission may determine. Any Contracting Government desiring to extend an invitation to the Commission to meet in that country shall give formal notice two years in advance. A formal offer should include:

- (a) which meetings it covers, i.e. Scientific Committee, Commission sub-groups, Annual Commission meeting;
- (b) a proposed time window within which the meeting will take place; and
- (c) a timetable for finalising details of the exact timing and location of the meeting.

Attendance by a majority of the members of the Commission shall constitute a quorum. Special Meetings of the Commission may be called at the direction of the Chair after consultation with the Contracting Governments and Commissioners.

the quorum requirement during IWC meetings and particularly emphasises the need for the presence of quorum for all decision making.

*Action 1 (3)*

In our view, it would be prudent to amend the IWC RoP to clarify the fact that physical ‘presence’, rather than ‘attendance’, of the relevant Commission Member is required to count towards constitution of quorum. As noted by the review paper, such an amendment would bring the IWC RoP into line with language used in the RoP of other modern IGOs.

In addition, we recall that there have been some instances at previous annual meetings where Commission Members have remained physically present on the floor of the plenary but have declined to participate in a vote (i.e. to cast positive or negative votes, or officially abstain). For clarity, should such a situation arise again in the future, Australia also suggests an additional amendment to the RoP to provide that members that abstain or do not participate in a vote are still ‘present’ for the purposes of constituting quorum.

*Action 1 (4)*

We are comfortable with the current system whereby it is left to the Chair to informally verify that a quorum is present for decision making, but would also be entirely comfortable with the inclusion of a new provision, as suggested at Action 1 paragraph (4), that the Chair would be required to formally check and announce that a quorum is present before a vote is taken.

*Action 1 (5)*

Regarding Action 1 sub-paragraph (5), Australia would be content to leave it to the discretion of the Chair to determine the appropriate action to take if a quorum is not present at the time of a call for a vote, rather than stipulating this in the RoP.

**Section 9.2 Action 2:** Consideration might be given to clarifying the IWC’s Rules of Procedure to specify whether a Contracting Government with a suspended vote should be included in the quorum necessary for decision making.

*Action 2*

Australia would be happy to give further consideration to the practicalities of implementing a rule in the IWC context that specifies whether a Contracting Government with a suspended vote should be included in the quorum necessary for decision making.

We appreciate the logic of excluding from a decision-making quorum Contracting Governments whose right to vote has been suspended, given that that Member would, in any event, be unable to participate in a vote. However, given that the IWC approach to constitution of a quorum is currently a ‘blanket’ formulation whereby a single quorum applies to all types of business, we wonder whether expressly excluding those Contracting Governments from the quorum only for the purposes of decision making may unduly complicate matters. For example, would these Members also be excluded from the consensus decision-making quorum, or merely from quorum necessary for a vote?

However, if, in developing amendments to general quorum requirements of the RoP, the Commission decides to introduce a different (higher) quorum level for decision-making as opposed to merely opening the meeting or conducting debate, we suggest it might then become more logical to exclude those Contracting Governments with suspended voting rights from the decision-making quorum. If such an amendment was to be made to the RoP, a potential alternative to the NAFO model (which specifies that the decision-making quorum does not include parties which have no right to cast a vote) would be to calculate the IWC decision-making quorum as the presence of a defined proportion of those Members which possess the right to vote.

**Section 9.3 - Action 3:** Consideration might be given to clarifying the IWC’s Rules of Procedure to specify whether a decision can be taken before any outstanding issues regarding credentials have been rectified and whether, if a vote can be taken before such issues are resolved, members whose credentials are under review can participate in such votes.

*Action 3*

In our view, Rules A.1, D.1 and E.1 of the IWC RoP currently have the combined effect that, until the credentials for a Commissioner have been issued, that Commissioner may not validly participate in a Commission vote.

Australia would be comfortable to leave it to the discretion of the Chair as to whether to postpone a vote to permit the participation of Commissioners whose credentials remain under review, should the issue arise.

**Section 9.4 - Action 4:** Consideration might be given to whether it is necessary to clarify the IWC's Rules of Procedure to specify that decision making by consensus is no different to decision making by voting with respect to the need for a quorum.

*Action 4*

As stated in relation to Action 1, Australia's position is that quorum is an ongoing requirement that applies from opening to closure of a meeting, including all Commission business – whether consideration and debate of agenda items or taking action or making decisions. In line with this view, any amendment to the RoP proposed under Action 1 sub-paragraph (2) should be broad enough to encapsulate decision making by consensus, even if it is not necessary to expressly address this point.

**Section 9.5 - Action 5:** Consideration should be given to a method or methods to establish Commission agreement on the timing of the introduction of any changes intended to clarify the Commission's rules and procedures on quorum, in the context of the Agenda Item on SAWS.

Possible options to be discussed and agreed at the Private Commissioners' meeting held the day before the opening plenary includes:

- (1) Commissioners' agree to be bound by F&A Committee recommendations on quorum (or choose an option if alternatives are presented) prior to those recommendations being discussed by plenary; or
- (2) Commissioners' agree that the Plenary hears that part of the F&A Committee report on quorum prior to the Agenda Item on the SAWS being re-opened; or
- (3) Commissioners' agree to continue the discussions on the SAWS as the first Agenda Item, but to postpone a decision until the F&A Committee report on quorum has been heard by plenary.

*Action 5*

Australia concurs that it would be highly desirable to establish Commission agreement on any proposed changes to clarify the Commission's RoP on the constitution of a quorum prior to the opening of plenary at IWC64, particularly in light of the possibility that a decision may be taken on the first item on the agenda. We have no particular preference amongst the three sensible options for facilitating this agreement identified in the review paper.

## 2) Government of Japan

Mr. Simon Brockington  
Secretary to the Commission

This responds to your email dated 2012/01/03 addressed to the Intersessional Group on Quorum. At the outset, I wish to thank you and the Chair of the Intersessional Group, Mr. Gerard van Bohemen for your efforts to accomplish the comprehensive review of quorum practices.

Before providing substantive comments, I would like to note that throughout the review paper you refer to Rule B. 1.(c) as the IWC's definition of a quorum whereas in fact, the sentence of the definition is a part of Rule B.1 itself. Rule B.1.(c) relates to a formal offer to hold a regular Annual Meeting of the Commission in a specific country.

### Regarding Item 9.1

The current Rules of Procedures (hereinafter referred to as "RoP") B.1 is only a rule with regard to a quorum, which should be interpreted that the Commission, when a quorum is present ("Attendance by a majority of the members of the Commission" RoP B.1.), is able to open a meeting and proceed a discussion as well as make a decision. Accordingly, even though there was discussion at the Intersessional Meeting in March 2010, it should not be regarded as a official meeting of the Commission because only 35 of the Commission's 88 members attended as you referred to clearly in Paragraph 6 (2), Robert's Rules of Order provides that in the absence of a quorum, any business transacted is null and void.

Hence, we would like to suggest that, even though the Chair's Report of the March 2010 meeting states "...he [the Chair] reported with regret that as there was not a quorum of the membership present (i.e. a majority), it would not be possible to take a decision", the meeting itself should not be a precedent for interpreting the IWC's Rules of Procedure.

It is our view that with the present Rules of Procedure, decision-making can be done only when a quorum for the meeting is constituted. Given these observations, we would support the idea along with item (2) and suggest that item (1) under "**Action 1**" be deleted.

With respect to item (3) under "**Action 1**", as described in item 8.2, the term "attendance" may cause possible unnecessary confusion, and changing the term to something more specific one, such as "present in the room", might be preferable.

With respect to item (4) under "**Action 1**", the Chair or the Secretariat should check that a quorum is present before voting. If there is not a quorum, any vote should not be taken.

With respect to item (5) under "**Action 1**", if a quorum is not present, the Commission should not be able to make decisions, such as closing an item and/or leaving it open. The Commission should, later in a meeting when a quorum is present, consider and decide on an appropriate action to be taken.

### Regarding Item 9.2

The suspension of voting rights does not mean the suspension of the membership. Any Contracting Government, even when suspended their right to vote, can attend and be present in the room at the time of decision. We are, therefore, of the view that it is unreasonable to exclude Contracting Governments with suspended voting rights from constituting the quorum.

"**Action 2**" should be changed to: "Consideration might be given to clarifying the IWC's Rules of Procedure to confirm a Contracting Government with a suspended vote forms part of a quorum.

### Regarding Item 9.3

The IWC's RoP E. says, "[t]he Commission shall make every effort to reach its decisions by consensus. If all efforts to reach consensus have been exhausted and no agreement reached, the following Rules of Procedure shall apply". Seeking to take a decision by vote in an early stage of a meeting (i.e. up to 48 hours) might not be depicted as exhausting all efforts, thus contrary to the spirit of this provision, especially for reaching a consensus on a substantive Agenda item. Therefore, under the spirit of the IWC to make every effort to reach consensus, it is natural to understand that a vote should be taken after giving a sufficient time to resolve outstanding issues with credentials.



**Regarding Item 9.4**

As a matter of principle, we consent to your interpretation that decision-making by consensus should be no different to decision-making by voting with respect to the need for a quorum. However, we would note that IGQ should recognize that, in practice, it would not be realistic to check whether or not a quorum is constituted whenever decision-making is required because the Commission makes many decisions by consensus during an annual meeting particularly related to the approval/endorsement of reports or sections of the reports of its committees. In this regard, we are of the view that basically the quorum should be constituted when making a decision.

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

### 3 Government of Kenya



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KWS/5000

23 February 2012

Ambassador Gerard van **Bohemen**  
 IWC Commissioner for New Zealand, and  
 Chairman of the Inter-sessional Group on the Quorum  
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Dear *Amb. Gerard,*

**The establishment under your Chairmanship an inter-sessional working group to address the issue of the quorum for meetings of the International Whaling Commission**

We are aware of the Circular Number 968 which announces the establishment under your Chairmanship an inter-sessional working group to address the issue of the quorum for meetings of the International Whaling Commission. It is therefore our concern to learn that, the IWC has at recent meetings been unable to take important decisions due to lack of a quorum of voting members.

Kenya has been a party to the Whaling Convention since 1981, but for several years its voting rights in the Whaling Commission have been suspended due to arrears of back dues. These accumulated during a period when Kenya's participation in the Commission lapsed due to national budget constraints. Under the current IWC financial regulations, Kenya would not be able to regain its voting rights unless it pays back dues plus interest amounting to GBP 201,383 as per the IWC Secretariat letter of December 2011. Needless to say, this is not easy for a developing country in the current financial situation. We therefore reiterate our call for an equitable solution to the problem of back dues that will allow our country to resume active participation in the IWC.

In the meantime, Kenya does not wish that our inability to participate in IWC meetings should exacerbate a situation where the IWC is prevented from taking important decisions.

We therefore call for:

- (a) an equitable solution to the back dues problem that will allow Kenya and other developing countries to resume active participation in the IWC;

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(b) in the meantime, parties to the Whaling Convention whose right to vote in the IWC has been suspended should not be counted as members of the Commission for the purpose of determining the quorum.

We believe that this proposal is in accordance with the current Rules of Procedure of the IWC and is not contradicted by them. We respectfully request that you forward this letter to the members of your inter-sessional group.

Because our request concerning the back dues problem goes beyond the remit of the inter-sessional quorum group, we are also copying this letter to the IWC Secretary with the request that it be circulated to all Commissioners and observers.

Yours

*Amerselin,*

*Julius Kipng'etich*

**JULIUS KIPNG'ETICH, CBS**  
**DIRECTOR**

Copy:

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#### 4) **Government of Monaco**

##### **IWC Intersessional Correspondence Group on Quorum (ICGQ)**

*Preliminary remarks by Frederic Briand (Monaco) as a member of ICGQ*

##### **1. On definitions:**

While IWC Rule of Procedure B.1.(c) defines a quorum at IWC as '*attendance by a majority of the members of the Commission*', events at IWC amply demonstrated that this still leaves far too much room for alternatives interpretation among IWC Commissioners, thus making the Chair unable to rule over deliberate chaos. Such a state of affairs is highly damaging to the reputation and credibility of IWC and simply cannot be repeated.

=> We need a new rule on quorum, a rule that will be clear, practical, without any ambiguity.

##### **2. Sources of ambiguity:**

As pointed by others as well, these are many, for example:

a. Who are the members ?

- the Governments, or the persons of the Commissioners formally appointed ?

b. What constitutes attendance (the numerator) ?

- the number of members, with proper credentials, having actually physical registered to the Annual Meeting?  
or

- actual attendance in the room at the start of a session? or

- actual attendance in the room taken at the start of the given agenda item? or

- actual attendance in the room when the voting process was called ?

- only those with proper credentials? representing only countries with fees in order?

c. How to compute the denominator ?

- is it the number of signatories to ICRW ?

- shall we count only the members of Governments having paid their yearly fees ? or include all those authorized to attend, even when their voting rights have been suspended ??

##### **3. On numerators and denominators**

A quorum can be affected either by modifying the numerator or the denominator. It is important that the new rule prevents distortion of the spirit of the rule

=> It follows that members should be present at the meeting, have credentials in order as well as full voting rights in order to count towards a quorum. Without such a rule, non-paying, or non-credentialed members would have a 'license to kill' the quorum by just sitting there and inflating the denominator.

##### **4. preventing walkouts**

Walking out of a vote is a desperate (theatrical) gesture, practiced in highly politicized contexts and certain National Chambers. It has no place in a international context, where a single voter most often represents an entire Government.

=> Once the Chair calls for a vote, a quorum cannot be lost until after the vote has been taken. Put differently, if a quorum is in place when a vote is called, that quorum shall be considered to continue for the duration of the vote.

## 5 United Kingdom

### International Whaling Commission Preparations for IWC 64 (Panama City, 2-6 July 2012)

#### Intersessional Correspondence Group on Quorum (ICGQ)

*Preliminary observations by the United Kingdom as a member of the ICGQ*

#### Introduction

1. At IWC63 held in Jersey in July 2011, the issue arose of what constitutes a quorum for the purposes of the IWC's rules of procedure. This was in the context of a walk out by the pro whaling group of countries on the calling of a vote by the Chair following a request for a vote by the Buenos Aires Group (a like-minded group of anti-whaling Latin American countries) on the establishment of a South Atlantic whale sanctuary.
2. Rule B1 provides that "attendance by a majority of the members of the Commission shall constitute a quorum" whilst giving no guidance as to what is meant by "attendance". Interpretations therefore range from attendance being actual attendance in the room at the time any decision is taken, or a vote held, to registration at the meeting in question (but not necessarily presence in the room at a given time).
3. An ad hoc meeting of private Commissioners on the final day of IWC63 was unable to reach agreement on the issue and the IWC therefore agreed to establish an intersessional correspondence group on quorum (ICGQ) to consider the issue and report to IWC64.
4. The Chair of the ICGQ (Gerard van Bohemen, the New Zealand Commissioner) and the Secretariat have jointly prepared a preliminary paper on the issue and this was issued to Commissioners and ICGQ members on 3 January 2012. The IWC Secretariat has requested comments on the paper by Friday 10 February after which time a further paper will be produced in March, setting out a proposed way forward for consideration at IWC64. The process is therefore at an initial informal stage.
5. The UK, as a member of the ICGQ, therefore provides the observations below on the quorum issue.
6. The UK believes that the quorum issue should be resolved at the outset of IWC64 so as to allow for the proper functioning of the rest of the meeting, including the decision on a South Atlantic sanctuary in respect of which the vote remains open and is the first item on the IWC64 agenda.

#### Consideration

7. The ICGQ paper helpfully goes into much detail on the quorum issue relying upon relevant rules under other multilateral environmental agreements, including biodiversity and Regional Fisheries Management Organisation equivalents. To that extent, it provides a good comprehensive picture of the position on quorum more generally.
8. Messages that emerge from a consideration of the quorum issue are as follows:
  - In essence the IWC rule on quorum requires a majority of all 89 IWC members to be present (as opposed to a majority of the e.g. 50 or so actually present at the meeting) – it was this requirement that led to the inability of the March 2010 St Petersburg (US) IWC meeting from being quorate and therefore being able to take a decision on the Greenlandic humpback quota;
  - It is generally recognised that the quorum needs to exist at least for the session of the meeting in question, and not just the meeting itself; indeed, an argument can be put that the quorum should be maintained throughout any given session too – that would mean that a walkout could always be initiated to avoid any decision from being taken (as was the case in Jersey);
  - There is a suggestion that a quorum cannot be lost when a vote is ongoing i.e. there cannot be a walkout once a vote is called;

- Non paying members cannot vote but will still count as part of a quorum so can still walk out to avoid a decision being taken;
  - Clarity can be provided through new rules that spell out what is intended (although rule changes of course require to be adopted by simple majority and a quorum will be required for those changes).
9. This all suggests that any changes to the quorum rule should be clear so as to ensure that we have a workable system in place. We should seek to avoid any practice that brings the organisation and functioning of the IWC into disrepute, and it could be said that a walkout from proceedings is such a practice. To that end the quorum rules should be amended so as to render such walkouts ineffective.

*Timing of determination of quorum*

10. One solution is a clear requirement that a majority of the IWC members are in the room for any session, but that this should be determined to be the case when a vote is called.
11. However, an alternative solution would be one that deems a quorum to be present for a vote held during a session when there was a quorum at the beginning of that session. Any such requirement that a quorum is deemed to hold for the entirety of a morning, afternoon or evening session would enable a session to continue late into the night or early hours even where many participants had disappeared for the night or left at the end of a meeting. That would avoid any decisions being held to be null and void when taken at such a time (a time that, in reality, negotiating dynamics will usually ensure is when decisions are taken). It is for this reason that we made the point in Jersey that there must be some flexibility in the rule.
12. In any event, it is critical that any rule change makes it clear that the quorum determined as existing when a vote is called is deemed to exist for the duration of that vote to prevent walkouts from occurring in the midst of a vote as it becomes clear which way a vote is going.

*Number in quorum*

13. In order to prevent future walkouts and therefore avoid further disrepute for the IWC, it would be sensible to consider limiting the categories of countries that would count towards a quorum in a way that would reduce the impact of any walkout. Given that under the rules as they stand payment of financial dues is closely linked to decision making, where non-payment means voting rights are lost, it seems logical also to tie payment of dues to eligibility to count as part of a quorum given that quorum also has a bearing on the decision making process. This link between payment of dues and quorum exists in the NAFO rules and the ICGQ Chair poses the question whether we should seek to adopt that approach here. The UK believes that we should. This limitation in numbers is necessary if we are to adopt clear rules on the need for a quorum during decision making, otherwise we would always be faced with the situation where one group could stage a walkout and prevent a decision from being taken where they felt they would lose a vote. If we are seeking a solution that avoids bringing the IWC into further disrepute, a measure that helps to avoid such tactics is surely beneficial.
14. Another factor that again may have a bearing on how successful walkouts can be is whether the quorum consists of a majority of all the IWC members (whether at the meeting or remaining in capital) or simply the IWC members that are registered for the meeting in question. If the former (the current position), is there not a danger that Contracting Governments will stay away, thus rendering a decision impossible, as was the case with the March 2010 Greenlandic humpback decision. Limiting eligibility to count as part of a quorum to those who are actually on the spot will again limit the effect of any walkout since the threshold of whether there is or isn't a quorum will not be so easily crossed at the meeting itself. An example may be helpful. Say there are 90 IWC members in total, 50 of which are at the meeting. Of the 90, 45 are of one view, 45 are of another. Of the 50 actually attending, 30 are in one camp and 20 are in the other. A walkout by the 20 would prevent a quorum if that were based on the total membership (30/90 is not a majority), but it would not if it were based on those actually attending (30/50 is).
15. With these conditions of payment and registration built into to the quorum rule, the requirement for a constant quorum would still not enable one group to undermine the work of the IWC.
16. Another question posed by the ICGQ Chair is whether a quorum is required for decision making by consensus as opposed to decision making by voting. If a quorum is to be constantly maintained anyway, that would automatically apply to decisions by consensus so arguably should not be problematic. But we should of course apply the same limitations on what constituted a quorum so as to avoid situations where walkouts or lack of attendance would prevent decision making. It should be

recalled that Contracting Parties are obliged by the current rules to make every effort to reach decisions by consensus.

Conclusions

17. The UK therefore proposes that:

- Any new rule on quorum should be clear, workable and avoid ambiguity;
- It should prevent procedural manoeuvres that bring the working methods of the IWC into disrepute;
- Quorum should be determined at the start of a given session of the meeting and deemed to apply for the duration of that session to enable late night decisions to be taken;
- If a quorum is nevertheless to be determined when a vote is called, that quorum should be deemed to continue for the duration of the vote;
- The quorum should be a majority of those IWC members that are present at the meeting and that have paid their financial contributions;
- The same arrangements should apply for decisions made by consensus as by a vote.

**Marine species conservation team / international legal team**

**UK Department for Environment Food and Rural Affairs**

**10 February 2012**

## 6) United States of America

Dear Gerard and Simon,

Thank you for getting the work of the Intersessional Group on Quorum off the ground. The United States offers the following comments on the review you prepared and on your suggestions for a way forward.

**General comments:** The United States generally agrees with the review, including its suggestion that the requirement for a quorum is an ongoing one. This view is also consistent with the Commission's desire to make decisions by consensus. An unduly small number of Commission members should not make decisions in the name of the organization.

**Specific comments:** The United States also agrees that the five areas identified for clarification are the appropriate ones, and we offer the following specific comments (in *italics*):

**Action 1:** Consideration should be given to clarifying the IWC's Rules of Procedure on:

- (1) whether the quorum requirement only applies to decision making as suggested by the March 2010 precedent; or
- (2) whether the quorum requirement is an ongoing one throughout the meeting but which should be applied particularly at the point of decision making (see also Action 4 below); and
- (3) whether to change the term 'attendance' to something more specific such as 'present in the room'; and
- (4) whether the Chair should [formally] check and announce that a quorum is present before a vote is taken; and
- (5) what is the appropriate action to take if a quorum is not present for a particular vote (e.g., close the item, formally leave it open until later in a meeting when a quorum is present).

*The United States agrees that the quorum requirement should be an ongoing one, but that its application should be limited to decision making. The discussions at the March 2010 intersessional meeting were of use, even in the absence of a quorum. While the current rules refer to "attendance" in the establishment of a quorum, the "presence" of the Commissioner or Alternate Commissioner may be a more precise choice. We do not think it is necessary, at this time, for the rules to require the Chair to check and announce that a quorum is present. The establishment of a quorum has only been an issue for two Commission meetings, and it will still be possible for the Chair or a Contracting Government to raise the issue at any time or before a decision is made. With regard to what action to take in the absence of a quorum, as stated above, it is our view that no decision should be taken in the absence of a quorum. Otherwise, we suggest leaving it to the discretion of the Chair to determine whether to close the agenda item or to leave it open until later in the meeting.*

**Action 2:** Consideration might be given to clarifying the IWC's Rules of Procedure to specify whether a Contracting Government with a suspended vote should be included in the quorum necessary for decision making.

*At this time, the United States feels it is sufficient to determine quorum simply based on Commission members, regardless of their ability to vote.*

**Action 3:** Consideration might be given to clarifying the IWC's Rules of Procedure to specify whether a decision can be taken before any outstanding issues regarding credentials have been rectified and whether, if a vote can be taken before such issues are resolved, members whose credentials are under review can participate in such votes.

*The United States believes that, under these circumstances, the Commission should not allow Contracting Governments whose credentials are under review to participate in a vote.*

**Action 4:** Consideration might be given to whether it is necessary to clarify the IWC's Rules of Procedure to specify that decision making by consensus is no different to decision making by voting with respect to the need for a quorum.

*The United States favors clarification of the rules in this regard.*



**Action 5:** Consideration should be given to a method or methods to establish Commission agreement on the timing of the introduction of any changes intended to clarify the Commission's rules and procedures on quorum, in the context of the Agenda Item on SAWS.

*The United States views this as a topic for the Commissioners' meeting prior to the opening of the plenary session, and that this discussion will be informed by prior discussions within the Finance and Administration Committee. At IWC/63, the Commission agreed to place the proposed South Atlantic Sanctuary as the first substantive order of business. We support that decision and we would like to avoid reopening it. Rather, if a vote is to be held on the Sanctuary proposal at the outset of the meeting, then it is our hope that Contracting Governments will remain present, thus removing the need for any rule changes pertaining to quorum at the outset of the meeting.*

*In sum, we suggest the following changes to Rule of Procedure B.1.(c) for the working group to consider: "The presence of Attendance by a majority of the members of the Commission shall constitute a quorum, which shall be required for any decision to be taken." We would also be amenable to additional rule changes consistent with our comments, above.*