

INTER-AMERICAN TROPICAL TUNA COMMISSION
87TH MEETING (RESUMED)

La Jolla, California (USA)
27-29 October 2014

PROPOSAL IATTC-87 A-3

SUBMITTED BY VANUATU

**APPOINTMENT OF THE DIRECTOR OF THE INTER-AMERICAN
TROPICAL TUNA COMMISSION**

Executive Summary: This document provides a legal analysis of the texts regulating the appointment of the Director and proposes a way forward that would safeguard both the interests of the Commission Members and the Director's position.

Proposed concrete solution: Vanuatu proposes to reappoint the current Director for a term of 4 years as prescribed by the Antigua Convention retroactively starting from 27th August 2014 and calls for a Heads of Delegation meeting on Monday 27 October 2014.

I. SUGGESTED WAY FORWARD

1. Vanuatu suggests convening a Heads of Delegation meeting on Monday 27th October to reach consensus on the reappointment¹ of the current Director Dr. Guillermo Compean for a term of four years starting retroactively from 27th August 2014.
2. Such decision if reached by consensus would:
 - Demonstrate the IATTC Member States full adherence to the Antigua Convention (2003) which prescribes that the term of the Director shall be of four years;
 - Enable IATTC Member States to reach consensus on adequate Rules of Procedure for the selection and election of the Director in the future;
 - Allow the Commission to concentrate on other matters that currently prevent the Commission to perform its work in an efficient manner.
 - Remedy the lack of efficiency and pro-activeness within this Organization, leading to the adoption of the so called “status quo” (legality of which is highly questionable), which have not only affected its operation but also placed the person of the Director in an unprecedented position.

¹ Mr. Driss Meski - Executive Secretary of the ICCAT was reappointed by consensus during a Heads of Delegation meeting.

I. COMMENTS

3. Vanuatu is of the view that:

- The Antigua Convention (2003) prevails (**A**);
- The term of the Director is of four years ending on 26th August 2014 and the Antigua Convention does not prescribe for temporary extension of the term of the Director (**B**);
- The Commission has failed in adopting rules of procedure on the appointment / selection of the Director before the expiration of the term of the Director (**C**).

A. Primacy of the Antigua Convention (2003)

4. The Antigua Convention, which was negotiated to strengthen and replace the IATTC Convention (1949) establishing the IATTC, entered into force on 27 August 2010.

5. The entry into force of the Antigua Convention (2003) replaced de-facto the IATTC Convention (1949) establishing the IATTC despite the fact that the IATTC Convention (1949) is not formally terminated yet as prescribed by Article XXXI.6 of the Antigua Convention (2003):

“6. Upon entry into force of this Convention for all Parties to the 1949 Convention, the 1949 Convention shall be considered as terminated in accordance with the relevant rules of international law as reflected in Article 59 of the Vienna Convention on the Law of Treaties.”

6. Article 59 of the Vienna Convention on the Law of Treaties prescribes:

“1.A treaty shall be considered as terminated if all the parties to it conclude a later treaty relating to the same subject matter and:...”

7. Legal consequences of the primacy of the Antigua Convention (2003):

a) Article XXXI.3 of the Antigua Convention (2003) prescribes:

“3. Upon entry into force of this Convention, this Convention shall prevail, as between Parties to this Convention and the 1949 Convention, over the 1949 Convention.”

b) The Antigua Convention (2003) shall prevail with some exceptions: Article XXXI.4 of the Antigua Convention (2003) prescribes:

“4. Upon the entry into force of this Convention, conservation and management measures and other arrangements adopted by the Commission under the 1949 Convention shall remain in force until such time as they expire, are terminated by a decision of the Commission, or are replaced by other measures or arrangements adopted pursuant to this Convention.”

c) Does the appointment of the Director fall under these exceptions?

The Antigua Convention (2003) being silent on the appointment of the Director or the transition period of the Director's position at the time of the entry into force of the Convention, we can assume that it was the understanding of the IATTC Member States that the appointment of the Director fell under the category of "other arrangements" as per Article XXXI.4 listed above².

B. The term of the Director is of four years ending on 26th August 2014 and the Antigua Convention does not prescribe for temporary extension of the term:

8. During the 83rd IATTC Meeting, a Heads of Delegation meeting was held at the request of Canada to discuss issues related to the term of the Director under the provisions of the Antigua Convention, Article XII of which provides:

"The term of the Director shall be of 4 years, and he may be reappointed as many times as the Commission decides."

9. The principal purpose of the Heads of Delegation meeting was to seek consensus among the Members of the Commission as to the specific dates associated with the beginning and end of the Director's four-year term.
10. The Heads of Delegation reached a consensus that the term began with the entry into force of the Antigua Convention on August 27, 2010, and would conclude on August 26, 2014.³
11. It is worth noting that the Antigua Convention (2003) does not prescribe for any short term appointment of the Director and that a four year term is the only available option.

C. Failure to adopt Rules of Procedure for the appointment of the Director:

12. During the same Heads of Delegation meeting, it was further agreed that a decision on whether to reappoint the current Director or to select a new Director will be required well in advance of that date, and that a process was needed for identifying potential candidates, including the current Director, and taking a decision. It was agreed that this issue should be considered and such a process adopted at the annual meeting of the Commission in 2013.
13. It is a fact that the Commission did not find consensus on adopting adequate rules of procedure for the selection and appointment of the Director despite the submissions made by both the EU and Guatemala *et al* during the 87th of the Commission (Part 1) held in Lima in July 2014.
14. The lack of adoption of adequate rules of procedures led the Commission Members to maintain the status quo⁴ until the 87th IATTC Commission meeting (Part 2).

² Indeed, a decision was made to replace the later "arrangements" made under the IATTC Convention (1949) whereby the Director appointment was for an undefined period with other "arrangements" adopted pursuant to the Antigua Convention (2003).

³ It is worth noting that some IATTC Member States are of the view that no decision was reached during the 83rd Commission meeting maintaining that the term of the Director is undefined as prescribed by the then IATTC Convention (1949).

⁴ Some IATTC Member States argue that the term of the Director is still regulated by the former IATTC Convention (1949) i.e. that the term of the Director is for an undefined period and others argue that the term of the Director is regulated by the Antigua Convention (2003) which provides that the term of the Director is 4 years. Since no decision was made on which interpretation shall prevail, it was agreed to maintain the "status quo" until the 87th IATTC Annual Commission meeting (Part 2).

- a. Late August 2014, at the request of the IATTC Chairman, Mr. Alvin Delgado, Commission Members approved by consensus to maintain the “*Status quo*” and delay any decision making on whether or not the term of the Director should expire on 26th August 2014 to be further discussed during the 87th Commission Meeting (Part 2).
- b. The Legality of the said “status-quo” is highly questionable. Indeed, the Antigua Convention does not prescribe for a temporary extension of the term of the Director as it was decided in late August 2014 nor it allows an additional extension until such time IATTC Member States would reach a consensus leading to the adoption of appropriate rules of procedure for the selection and election of the Director.
- c. It is Vanuatu’s opinion that the term of the Director is ruled by the Antigua Convention (Article XII) as well as by the Heads of Delegation meeting decision made during the 83rd IATTC Commission meeting in June 2012 whereby the term began with the entry into force of the Antigua Convention on August 27, 2010, and would conclude on August 26, 2014.

III CONCLUSION

15. Keeping in mind that extending the term of the current director for an ad-hoc period until such time adequate rules of procedure for the selection and appointment of the Director are adopted would be in contravention with the Antigua Convention (2003), Vanuatu is of the opinion that re-appointing the current Director for an additional term of four years starting retroactively from 27th August 2014 is the only acceptable solution at this rather late stage.