American Model United Nations

ICJ Justice

IN THE

INTERNATIONAL COURT OF JUSTICE

OF THE

AMERICAN MODEL UNITED NATIONS

Australia (Applicant) v. Japan (Respondent)

Argued: November 20, 2011
Decided: November 20, 2011

The majority opinion was signed and agreed to by Justice Berman, Justice Calkins, Justice Carmona, Justice Carraher, Justice Delgado, Justice Gonzalez, Justice Hathaway, Justice Jackson, Justice Kroll, Justice Mercier, Justice Ruth, Justice Vining, and Justice Westmaas.

In determining the jurisdiction for this case, the Court assessed the answers to two questions: 1) Has a breach of an international convention been alleged? and 2) Is the Court the last final legal remedy for resolving the dispute?

a) Court has jurisdiction in this case under Article 38, Section 1, Subsection (a) of the Statute of the International Court of Justice, which states that the Court is afforded the function to decide disputes relating to "...international conventions, whether general or particular, establishing rules expressly recognized by the contesting states..." See that the International Convention for the Regulation of Whaling (ICRW) is such a convention, the Court has the jurisdiction to investigate. The Court also has jurisdiction to investigate "...the existence of any fact which, if established, would constitute a breach of international obligation," under Article 36, Section 2, Subsection (c).

b) Bilateral negotiations between Australia and Japan have been severed. The ICRW does not include a mechanism for dispute resolution outside of bilateral negotiations between States. As such, this Court has found that all possible legal options have been exhausted regarding recourse for Japan's actions among parties of the ICRW, specifically Australia.

The opinion of the Court is as follows:

To assess the merits of the allegations made by Australia, the Court determined if 1) the Japan Whaling Research Program Under Special Permit II (JARPA II) should be considered a breach of the International Whaling Commission (IWC) moratorium on commercial whaling and the ICRW, 2) JARPA II used excessively-intense whaling

methods, and 3) JARPA II can be reasonably considered a scientific research endeavor.

a) Japan challenges the extent to which the ICRW and IWC may exert authority over whaling practices. Contracting governments to the ICRW are bound by their agreement in Article 3 of the ICRW to establish the IWC. Article 5, Section 1, Subsection (e) of the ICRW delegates power to the IWC to adopt regulations in regards to the "...time, methods, and intensity of whaling (including the maximum catch of whales to be taken in any one season)..." Regulatory decisions by the IWC are binding on all parties to the ICRW through the delegation of power in Article 3 of the ICRW. The moratorium banning commercial whaling of protected stocks is a regulatory decision established by the IWC. Since Japan ratified the ICRW, it is bound by the decisions of the IWC such as the moratorium on whaling protected stocks.

b) Australia claims the JARPA II program is in violation of the ICRW and the moratorium; however, Japan has not violated either the ICRW's articles or the moratorium established by the IWC. The ICRW allows whaling for scientific research in Article 8, Section 1, Subsection (a). Whaling for scientific research is bound to decisions of the IWC adopted under Article 5, Section 1, Subsection (e) of the ICRW. Specifically, Australia contends that the intensity of the whaling methods used to extract specimens for the JARPA II program is excessive. However, the IWC has not defined degrees or levels of intensity. If the IWC had defined intensity, whaling methods used for both scientific research and commercial purposes would be bound by the definition. Although Australia and other parties to the ICRW encourage non-lethal methods for whale research, the ICRW does not require that parties take special consideration to research through non-lethal means.

c) JARPA II is a specially-permitted lethal whaling program, and its purpose is scientific research. Although the research results in the deaths of many whales, this result is allowed under Article 8, Section 1, Subsection (a) of the ICRW which states that "...a special permit [authorizes nationals] to kill, take and treat whales for purposes of scientific research..." Because JARPA II and its predecessor, JARPA, have led to scientific discoveries, the Court finds both programs sufficient in scientific purpose and nature to be considered scientific research. The loss from the program is of little consequence to the legality of the program under the ICRW.

   Whaling initiated under JARPA II's special permit is completed by the Institute of Cetacean Research, a non-profit scientific organization funded by government subsidies. The Institute of Cetacean Research distributes the by-products from JARPA II's research to the general public of Japan and uses the proceeds to fund further research.

The ruling of the Court is as follows:

Since JARPA II does not violate the IWC's moratorium on commercial whaling, use excessively-intense whaling methods (as defined by the IWC), or have commercial status, the ICRW and the moratorium established by the IWC have not been breached by Japan.

The esteemed Court finds the case in favor of Japan, that its current JARPA II program has been exercised within its sovereign right and the whaling for scientific research practices outlined by the ICRW and the IWC.

Justice Berman

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Justice Calkins

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Justice Carmona

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Justice Carraher

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Justice Delgado

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Justice Gonzalez

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Justice Hathaway

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Justice Jackson

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Justice Kroll

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Justice Mercier

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Justice Ruth

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Justice Vining

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Justice Westmaas

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