



## Whaling in the Antarctic (Australia v. Japan)

**ARGUED: 20 November 2016**

**DECIDED: 20 November 2016**

1 This majority opinion is signed by and agreed to by Justice Buxton, Justice Madrigal, Justice Weeks, Justice  
2 Selvaggi, Justice Strum, Justice Ali, Justice Quinn, Justice Johnson, Justice Nelson, Justice Farley, Justice Larsen  
3 and Justice Gross.

4 On the matter of jurisdiction, the Court has determined it has the ability to rule on whaling in the Antarctic  
5 in a dispute between Australia and Japan under Article 36 Section 2 of the Statute of the International Court of  
6 Justice. The Court has the ability to rule on: A. the interpretation of treaties; B. any questions of any international  
7 law; and C. the existence of any fact which, if established, would constitute a breach of international obligation.  
8 Additionally, the Court reaffirms its jurisdiction over this matter in regards to Article 26 of the Vienna Convention  
9 on the Law of Treaties which states, every treaty in force is binding upon the parties to it and must be performed  
10 by them in good faith.

11 With regards to the second Japanese Whale Research Program Under Special Permit in the Antarctic  
12 (JARPA II), the Court finds that there is no substantial evidence to prove that Japan has breached its obligations  
13 under the International Convention for the Regulation of Whaling (ICRW). This is confirmed by the Court's inter-  
14 pretation of the treaty as a whole, in particular Article 8, which provides the guidelines for whaling for the purpose  
15 of scientific research. Additionally, the Court finds that there is not sufficient evidence that Japan has breached the  
16 international obligations set forth by the ICRW Schedule Paragraph 7b and Paragraph 10e.

17 The argument presented by Australia claims that JARPA II is in violation of the ICRW particularly through  
18 its utilisation of factory ships in taking, killing or treating of whales, which they believe constitutes commercial  
19 practices. The Court finds a lack of supporting evidence for this claim. The plan for JARPA II provides significant  
20 information and research in regards to the proper use of factory ships and lethal methods for the purpose of scientific  
21 research. Additionally, Australia cited the number of specimens used in JARPA II as evidence that this program  
22 is used for commercial practices, however the Court recognizes that under Article 8 Paragraph 1 of the ICRW the  
23 contracting government has the ability to set its own sample size for research. Therefore, this article negates the  
24 argument by Australia that the number of specimens alone defines whaling as a commercial practice.

25 While the Court recognizes that there has been no breach in international obligations by Japan and the  
26 JARPA II Program, the Court believes that greater transparency regarding the issue of scientific whaling practices  
27 would reduce contention. Recognizing Article 143 Paragraph 3c of the United Nations Convention on the Law of  
28 the Sea (UNCLOS), the Court suggests that Japan have greater disclosure of the practices following the completion  
29 of the outlined research, including, but not limited to, the handling and disposal of specimens, as well as all other  
30 economic implications.

31 The Court orders the following:

32 The Australian government to recognize the right of Japan to continue the implementation of their JARPA  
33 II program for the purposes of scientific inquiry.

34 Greater adherence by Japan to transparency under UNCLOS Article 143 Paragraph 3c.

*Signed By*

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Justice Buxton

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Justice Madrigal

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Justice Weeks

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Justice Selvaggi

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Justice Strum

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Justice Ali

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Justice Quinn

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Justice Johnson

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Justice Nelson

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Justice Farley

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Justice Larsen

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Justice Gross

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Justice Harris

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Justice Conizales

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Justice Henning

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Justice Roehm