



Whaling in the Antarctic (Australia v. Japan)

ARGUED: 20 November 2022

DECIDED: 20 November 2022

1 The Majority opinion was signed by and agreed to by Justice Christopherson of The United Arab Emirates,
2 Justice Tuck of Greece, Justice Pando of China, Justice Gillson of Djibouti, Justice Preston of Ethiopia, Justice
3 Nigro of Italy, Justice Kilkelly of Ukraine, Justice French of Uzbekistan.

4 Summary of the History of Proceedings:

5 On the 31st of May in 2010, the Commonwealth of Australia submitted documentation to this Court ques-
6 tioning whether or not the Japanese Research Program under Special Permit in Antarctic (JARPA II) is in violation
7 of the International Convention for the Regulation of Whaling (ICRW). On November 20th, 2022, this Court heard
8 oral arguments from the Commonwealth of Australia and Japan on this matter. The Commonwealth of Australia
9 contends that Japan has breached the ICRW and is engaging in commercial whaling. They asked the Court to
10 declare that Japan ends the JARPA II program on that basis, while Japan contends that JARPA II is compliant
11 with the ICRW and asks this Court to dismiss this case on that premise.

12 Summary of Relevant Facts:

13 The International Convention for the Regulation of Whaling 1946(ICRW) focuses on making sustainable
14 ways to conduct whaling. In 1982, the International Whaling Commission voted to put a pause on all commercial
15 whaling; the moratorium remains in force today. This means that no commercial whaling is allowed to be conducted.
16 However, governments can grant a special permit under Article VIII of the ICRW to authorize the killing, treating,
17 or taking of whales for the purpose of scientific research. Japan's government authorized the JARPA and subsequent
18 JARPA II program under such a permit.

19 JARPA II's stated goal is to strive for the sustainable use of marine life resources. They want to understand
20 how marine life changes, where those changes are leading to, and study the appropriate management methods and
21 ways of utilizing said marine life. JARPA II's research plan gives four main objectives to their research. They
22 want to monitor the Antarctic ecosystem, model competition among whale species and develop future management
23 objectives, elucidate temporal and spatial changes in stock structure, and improve the management procedure for
24 the Antarctic minke whale stocks. This program is partially funded by the sale of the whale meat that is left over
25 after they have conducted their research to a private Japanese whaling company, and partially funded by government
26 subsidiaries.

27 Summary of Jurisdiction:

28 The Court has jurisdiction over this case based on Article 36 Section 2a-c of the International Court of
29 Justice rules and under Article 31 Section 1 of the Vienna Convention on the Law of Treaties. Since the Court
30 is being asked to interpret and analyze the International Convention on the Regulation of Whaling agreed upon
31 by both Japan and the Commonwealth of Australia, the Court acknowledges that we have jurisdiction under the
32 aforementioned statutes. Additionally, the Court is being asked to answer questions of international law. The Court
33 also acknowledges that the facts before us today could constitute a breach of Japan's international obligations, and
34 therefore give us jurisdiction under Article 36, Section 2(d)of the ICJ charter.

35 The Court acknowledges that it does not have jurisdiction to determine the parameters that constitute
36 scientific research; however, reviewing the methods and parameters of a scientific program in order to determine if
37 said program sits within an international obligation is within the Court's jurisdiction.

38 The Opinion of the Court is as Follows:

39 Article VIII of the International Convention for the Regulation of Whaling (ICRW) states, which both the
40 Commonwealth of Australia and the Government of Japan have ratified, grants all contracting parties the right
41 to authorize a special permit to “kill, take and treat whales for the purposes of scientific research.” However, the
42 ability for Contracting Parties to issue such permits is limited by the 1986 Moratorium on Commercial Whaling.
43 The Moratorium was added to the Schedule of the ICRW; therefore, it is binding on all Contracting Parties to the
44 ICRW.

45 The Court acknowledges that the JARPA II program, sanctioned by Japan in accordance with Article VIII
46 of the ICRW, has provided the scientific community with valuable research and has furthered knowledge about minke
47 whales. However, we believe that this Court has not seen ample evidence supporting Japan’s claims that the JARPA
48 II program is for scientific purposes. The Court further believes that the methods and scale of the JARPA II program
49 show that Japan acted in bad faith while granting the permit and had exterior motives other than scientific research
50 in mind. This belief is supported by Resolution 2003-2 of the International Whaling Commission, which calls into
51 question the scientific validity of JARPA II and its potential dubious second purpose.

52 The Government of Japan, being bound by the ICRW and all of its amendments, is obligated under Article
53 10e of the Schedule for the International Convention for the Regulation of Whaling to abstain from all commercial
54 whaling. If the Government of Japan is found to have authorized the killing of whales for commercial purposes, it
55 would be in clear violation of International Law and it would be the indisputable duty of this Court to strike down
56 the program to prevent Japan from conducting any future commercial whaling. However, this Court has not been
57 presented with adequate evidence that the whales killed under JARPA II are taken solely for commercial purposes
58 and serve no valid scientific purpose. Therefore, we cannot terminate JARPA II in its entirety.

59 This Court does not take The Commonwealth of Australia’s accusation of commercial whaling in the South
60 Ocean Sanctuary lightly, and we recognize that it is very possible that Japan is using the whales killed in the Southern
61 Ocean Sanctuary for commercial purposes. However, without sufficient evidence the Court cannot, while upholding
62 the sanctity of international law, terminate JARPA II in its entirety. But, the Commonwealth of Australia presented
63 compelling evidence in its memorial and oral arguments of the possibility that Japan is using JAPRA II to conduct
64 commercial whaling in the Southern Ocean Sanctuary. The murky facts surrounding whaling in the Southern Ocean
65 Sanctuary require additional investigation to fully determine the commercial nature of JARPA II, which is why the
66 Court has directed the suspension of the program until its true motives can be determined.

67 The Court would like to stress the narrow nature of our decision. By suspending JARPA II in the Southern
68 Ocean Sanctuary, the Court is not commenting on the Japanese Whaling program as a whole, but rather we are
69 ruling that there is a possibility of violations of the ICRW in the Southern Ocean Sanctuary. Under this ruling Japan
70 may pursue other scientific whaling ventures, assuming they follow the legal pathway outlined in Article VIII of the
71 ICRW and comply with all other international legal obligations.

72 Therefore, the Court orders the following:

73 First, the Court orders the immediate suspension of JARPA II in the Southern Ocean Sanctuary for a period
74 of five (5) years. The Court also directs the Governments of Japan and Australia to engage in bilateral negotiations
75 to establish a framework to be implemented by the International Whaling Commission to determine the nature of
76 JARPA II in the Southern Ocean Sanctuary and report their agreement to the IWC by 20 November 2027.

77 Second, the Court requests that Japan provide further evidence to the relevant organs to determine whether
78 JARPA II falls within scientific research or if it is, in fact, commercial whaling. We encourage the Commonwealth
79 of Australia to also provide further evidence that JARPA II is in violation of the ICRW and that their practices
80 constitute commercial whaling. We encourage the IWC to have a final decision made by 20 November 2027, when
81 the suspension on JARPA II ends. If it is found that there is no commercial whaling taking place, JARPA II shall
82 be reinstated fully. If commercial whaling is found to be occurring, the JARPA II program will be immediately
83 terminated.

84 Finally , the Court requires Japan to take actions as appropriate to ensure that any future scientific whaling
85 programs conform to the ICRW and other international obligations.

Signed By



Justice Christopher French



Justice Connor Kilkelly



Justice Jess Gillson



Justice Julian Pando



Justice Matthew Nigro



Justice Michaelyn Preston



Justice RyLeigh Christopherson



Justice Madison Tuck

