



American Model United Nations
International Court of Justice

1 IN THE INTERNATIONAL COURT OF JUSTICE

2 THE GOVERNMENT OF AUSTRALIA,

3 APPLICANT

4 V.

5 THE GOVERNMENT OF JAPAN,

6 RESPONDENT

7 MEMORIAL OF THE GOVERNMENT OF JAPAN

8 COMES NOW the Government of Japan and for their Memorial to the Court states the
9 following:

10 STATEMENT OF LAW:

- 11 1. Article 36, paragraph 2 of the Statute of the International Court of Justice provides that the compulsory
12 jurisdictions of the Court are to be accepted between the parties to the present Statute.
- 13 2. On 9 July 2007, Japan declared its acceptance of the jurisdiction of the International Court of Justice as
14 compulsory. Australia declared the Court's jurisdiction as compulsory on 22 March 2002.
- 15 3. The International Convention for the Regulation of Whaling, signed in 1946, is the founding document of the
16 International Whaling Commission, of which both Australia and Japan are members.
- 17 4. Article VIII of the International Convention for the Regulation of Whaling provides the authority to member
18 states of the International Whaling Commission to kill whales for scientific purposes under their special permit
19 programs. Article VIII paragraph 1 also gives responsibility for setting and regulating these catches to individual
20 governments, "to kill, take and treat whales for purposes of scientific research, subject to such restrictions as
21 to the number, and subject to such other conditions as the Contracting Government thinks fit, and the killing,
22 taking and treating of whales in accordance with the provisions of [Article VIII] shall be exempt from the
23 operation of [the International Convention for the Regulation of Whaling]."

24 STATEMENT OF FACT:

25 The International Convention for the Regulation of Whaling (ICRW) took its inception in 1946 and is the
26 founding document of the International Whaling Commission (IWC). It has been a source of international law to
27 provide "the proper conservation of whale stocks and thus make possible the orderly development of the whaling
28 industry," as stated in the Preamble of the Convention. As Australia was one of the 15 original signatories to the
29 ICRW and Japan joined the IWC in 1951, both states recognize that the object and purpose of the ICRW are to
30 conserve, recover and manage whale stocks for sustainable whaling.

31 In 1982 the IWC adopted under Article V paragraph 1(e) of the ICRW a "moratorium" on whaling for
32 commercial purposes, setting catch limits for the killing for commercial purposes of whales in any one season at
33 zero. Following the introduction of the moratorium, the Government of Japan ceased all practices of whaling for
34 commercial purposes in the Southern Ocean.

35 In 1987, Japan began its Whale Research Program under Special Permit in the Antarctic (JARPA) under
36 Article VIII of the ICRW, which provides each Contracting Government to right to issue special permits "to kill, take
37 and treat whales for purposes of scientific research, subject to such restrictions as to the number, and subject to such
38 other conditions as the Contracting Government thinks fit." Research under the JARPA program was conducted for
39 18 years in response to claims of uncertain scientific information on whale stocks, and the analysis results of JARPA
40 concerning Antarctic minke whales show that the composition of the Antarctic marine ecosystem is still changing.

41 To further study the changes in the Antarctic marine ecosystem, the Second Phase of Japan's Whale Research
42 Program under Special Permit (JARPA II) was launched the season starting from November 2005 to the beginning
43 of 2006, after discussions at the IWC Scientific Committee and the Plenary meetings. JARPA II, like JARPA, has

44 been carried out to obtain scientific data for the scientific assessment of the sustainable use of whale resources and
45 not for the pursuit of profit by marketing whale meat. Conducts under JARPA II comply with Article VIII of the
46 International Convention for the Regulation of Whaling.

47 STATEMENT OF JURISDICTION:

- 48 1. In accordance with the ruling of the Court and Article 36 paragraph 2 of the Statute of the International Court
49 of Justice, Australia and Japan recognize the jurisdiction of the Court as compulsory; therefore, the Court has
50 jurisdiction to entertain this case.
- 51 2. Article 36, paragraph 2 of the Statute of the Court also specifies that the Court has jurisdiction in all legal
52 disputes concerning (a) the interpretation of treaties, (b) questions of international law, (c) the existence of
53 any fact which, if established, would constitute a breach of an international obligation, and (d) the nature or
54 extent of the reparation to be made for the breach of an international obligation. Not listed under Article 36,
55 paragraph 2, determining what elements scientific research should or should not contain does not fall under
56 the jurisdiction of the Court.

57 ARGUMENTS:

- 58 1. Paragraph 1 of Article VIII of the ICRW regulates whaling for scientific research. Any IWC member state
59 shall be subjected to restrictions on the number of whales hunted and other conditions “as the Contracting
60 Government thinks fit.” Under this regulatory regime of the Convention, the power to determine such questions
61 as what should be the components of the scientific research or how the scientific research should be designed and
62 implemented is primarily left to the discretionary decision of the granting Government. Pursuant to Article VIII,
63 Japan researches whales in the Antarctic through JARPA II, designed as comprehensive long-term research.
64 JARPA II prevents harm to stocks that will occur in the complete application of the precautionary approach.
65 Thus, Japan did not breach any obligations assumed by its government under the ICRW.
- 66 2. Australia’s argument stipulating that Japan’s pursuit of JARPA II is violating the ICRW and the Moratorium
67 is unfounded; It is motivated not by the framework of the ICRW but by its pursuit of a total, permanent
68 ban on the catch of whales. By claiming that Japan is violating the ICRW and its Moratorium, Australia,
69 whether explicitly or implicitly, stipulates that JARPA II is commercial and accuses Japan of acting in bad
70 faith. However, Japan has always acted in good faith by adhering to its obligation under the ICRW. Thus,
71 faithfully accepting the moratorium and suspending commercial whaling indefinitely. Unless Australia can
72 establish convincing and conclusive evidence that Japan acts in bad faith by continuing commercial whaling
73 under JARPA II, Australia’s presumption should not be accepted under any circumstances by the Court of
74 Justice.
- 75 3. This dispute brought to the Court by Australia concerns the legality of Japan’s activities under international law
76 and not ethical values or the evaluation of good or bad science. Considering the scope of the Court’s compulsory
77 jurisdiction under Article 36, paragraph 2 of the Statute of the Court, it is not under the jurisdiction of the
78 Court to determine what constitutes research activities. In this case, neither does it have jurisdiction to
79 determine if the use of lethal methods should or should not be part of the JARPA II research program.

80 SUMMARY AND REQUESTS:

81 Paragraph 1 of Article VIII of the ICRW regulates whaling for scientific research. Under the jurisdiction of
82 the ICRW and the ICW, Japan has received the correct documentation to be whaling in Antarctica. Equally, Japan
83 has contributed to scientific research on whales through the long-term JARPA II research plan to understand the
84 marine ecosystem better. Japan requests the court to dismiss this case on the premise of Japan following the rules
85 and regulations provided.