

IN THE INTERNATIONAL COURT OF JUSTICE

AUSTRALIA,

APPLICANT

V.

JAPAN,

RESPONDENT

MEMORIAL OF THE COMMONWEALTH OF AUSTRALIA

COMES NOW the Commonwealth of Australia and for their Memorial to the Court states the following:

STATEMENT OF JURISDICTION

The Court has jurisdiction in accordance with the provisions of Article 36, paragraph 2 as well as Article 38, paragraph 1 (a) and (b) of its Statute by virtue of acceptance made by Australia dated 22 March 2002 and by Japan dated 9 July 2007.

STATEMENT OF LAW

1. International law recognizes the importance of custom and international treaties as legally binding.
2. The Commonwealth of Australia and Japan among other states have agreed to the regulations established within the International Convention for the Regulation of Whaling created in 1948.
3. The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), entered into force in July 1975 with the intent to establish universal regulations on the international trade of different species. As one of the largest conservation agreements in existence, both Australia and Japan are members.

STATEMENT OF FACT

The International Convention for the Regulation of Whaling, an international environmental agreement took effect in 1948 with the primary objective of protecting whale species from overhunting, creating international regulations for fisheries to ensure conservation and development of stocks. The Convention has placed a moratorium on whaling in the Southern Ocean Sanctuary and encourages all nations to limit the number of whales they collect for scientific research. Japan officially recognized the ICRW in 1951 and Australia in 1948. Australia and Japan are obligated as members of the ICRW to uphold the convention's rules, procedures, schedule and spirit. The state of Japan has failed to do so by establishing JARPA II and objecting to the moratorium on whaling in the Southern Ocean Sanctuary. In response to this, the Commonwealth of Australia has entered into bilateral talks with Japan and has chosen to present this issue to the International Court of Justice.

ARGUMENTS

- I. Japan has failed to meet the obligations set forth in the International Convention for the Regulation of Whaling.

In 1982 the IWC adopted under article V (I) (e) of the ICRW a “moratorium” on whaling for commercial purposes which subsequently set the maximum catch limit of whales to be taken in any one season at zero. This was brought into effect by adding paragraph 10 (e) to the Schedule of the ICRW and was placed into effect “upon the best scientific advice...” Japan objected to the addition of paragraph 10 (e) within the prescribed period of the ICRW however withdrew its objection.

In 1994 the IWC adopted under Article V (I) (c) of the ICRW the Southern Ocean Sanctuary; defined as a designated area of ocean in which whales—including severely depleted and/or vulnerable species—can find a safe refuge from human threats to their survival. Japan objected to paragraph 7 (b) within the prescribed period in relation to **Antarctic minke whale stocks** and has not since withdrawn its objection.

Therefore under the ICRW Japan has agreed to:

- (a) By paragraph 10 (e), to refrain from killing ALL whale stocks for commercial purposes seeing as how it withdrew its objection to V (I) (e); and

(b) By paragraph 7 (b), to refrain from commercial whaling in the Southern Ocean Sanctuary for all whale stocks **other than minke whale stock**.

II. Japan is obligated by the binding of “good faith” to abide by the ICRW as mentioned in Article 26 of the Geneva Convention.

Good faith has been described by the International Law Commission as “the fundamental principle of the law of treaties.” It is enshrined in Article 26 of the Vienna Convention, which provides that “every treaty in force is binding upon the parties to it and must be performed by them in good faith. Japan has therefore recognized the interest of the nations of the world in safeguarding for future generations the great natural resources represented by the whale stocks; Considering that the history of whaling has seen over-fishing of one area after another and of one species of whale after another to such a degree that it is essential to protect all species of whales from further over-fishing. The goals of the ICRW being to safeguard the whaling population of the world defines that *inter alia* requires that a party to a treaty shall refrain from any acts calculated to prevent the due execution of the treaty or **otherwise to frustrate its objects**. Resolution 2007-1 of the CSD and Resolution 2007-3 of the CSD show a clear and overwhelming majority that members of the ICRW, as objects to its binding factors, are frustrated with the actions of Japan in its pursuant of JARPA I and JARPA II.

III. Japan is duty-bound under the ICRW to practice non-lethal research methodologies whenever applicable.

Technological advances in non-lethal research allow scientists to collect data that previously required lethal methods, such as the age, breeding habits, sex ratio, population structure and migratory patterns of whales. These research methods were implemented recently by the Southern Ocean Non-Lethal Research Partnership, of which Australia and New Zealand are participants. The findings of the Southern Ocean Research Partnership are evidence that collecting information from whales in the Antarctic can correspond with the parameters established by the ICRW. In 2003 the IWC called upon Japan to halt the JARPA program or to revise it to exclusively include non-lethal methodologies. Again in 2005 and 2007 the IWC issued resolutions urging Japan to withdraw its JARPA II proposal or to revise it to also

exclusively include non-lethal methodologies. Still, Japan increased the number of whales collected from 440 under JARPA to more than 860 under the provisions of JARPA II. It is also necessary to highlight the species of whales being collected by the state of Japan such as minke, fin and humpback whales. Japan has breached its obligations under the Convention on International Trade in Endangered Species and Wild Fauna and Flora (CITES) with respect to the JARPA II intention to collect humpback whales as well as obligations under the Convention on Biological Diversity to ensure that their activities do not cause damage to the environment.

IV. Japan has refused the recommendations of the IWC

Under Article VI of the ICRW the IWC may make recommendations to any or all parties on any matters which relate to whales or whaling and to the objectives and purposes of the ICRW. The IWC has made several recommendations to Japan regarding the JARPA II program, particularly that it pursue non-lethal techniques and that it ensure conservation in sanctuaries (both found in resolutions from 1995).

SUMMARY AND PRAYER FOR RELIEF

The Commonwealth of Australia requests the court to adjudge and declare that Japan is in breach of its international obligations in its implementation of JARPA II. Australia requests that Japan cease implementation of JARPA II; revoke permits allowing lethal whaling activities; provide assurance that it will not take further action under the JARPA II program and will not pursue any similar future action.