

IN THE INTERNATIONAL COURT OF JUSTICE

AUSTRALIA,

APPLICANT

V.

JAPAN,

RESPONDENT

COUNTER-MEMORIAL OF THE COUNTRY OF JAPAN

COMES NOW the country of Japan and for their Memorial to the Court states the following:

STATEMENT OF LAW:

1. Implemented in 1986, The International Convention on the Regulation of Whaling (ICRW) serves its purpose to “provide for the proper conservation of whale stocks and thus make possible the orderly development of the whaling industry”. Article VIII(I) of the ICRW permits any contracting governments, including Japan, to grant to its nationals a special permit for scientific whaling. The contracting government of Japan under article XIII(I) issued itself a permit entitled JARPA I.

2. After the implementation of the moratorium on whaling, the program known as JARPA I, or the Japanese Whale Research Program Under Special Permit in the Antarctic, ran from 1987 to 2005 and permitted Japan to catch a small number of whales each year for scientific purposes. Expiring in 2005, Japan implemented a second phase of JARPA under article VIII(I) called JARPA II.

STATEMENT OF FACT:

On 01 June 2010, Australia instituted proceedings before the International Court of Justice against Japan over a dispute concerning Japan's JARPA II program on scientific whaling. The contention brought before the court was a matter based on the provisions of article XXXVI paragraph II of the court statute which excludes from ICJ jurisdiction "any dispute concerning or related to the delimitation of maritime zones,... or arising out of, concerning, or relating to the exploitation of any disputed area of or adjacent to any such maritime zone pending its delimitation."

Australia's allegation is based on a dispute over the interpretation of the ICRW regulation of commercial whaling. The stated purpose of the ICRW is to "provide for the proper conservation of whale stocks and thus make possible the orderly development of the whaling industry." Since 1986, under the ICRW, there has been a moratorium on whaling for commercial purposes in the Antarctic. Under article VIII(I) of the ICRW, any contracting government is allowed to grant its nationals a special permit for scientific whaling. Whaling conducted under the protection of a permit is exempt from the ICRW, but all such permits must be reported to the ICRW immediately upon issuance. After the moratorium in 1986, Japan issued itself a permit under which it caught a small number of whales each year for the purpose of scientific study. This program, known as JARPA I, was viable from 1987 to 2005. Upon the expiration of JARPA I in 2005, JARPA II was instituted under article VIII(I). JARPA II increased the sample size from JARPA I by ten percent and expanded the program to include humpback and fin whales.

STATEMENT OF JURISDICTION

1. The application is brought under Australia's proclamation under article XXXVI paragraph I, of the statute of the International Court of Justice which excludes from ICJ jurisdiction “any dispute concerning or related to the delimitation of maritime zones,... or arising out of, concerning, or relating to the exploitation of any disputed area of or adjacent to any such maritime zone pending its delimitation.”

2. Contracting Governments have honorable obligations to adhere to the ICRW's provisions under Article XXVI of the Vienna Convention on the Law of Treaties, in addition to standard international practice. The ICRW does not have an enforcement mechanism.

3. JARPA II is permitted under article VIII (1) of the ICRW to authorize contracting governments to grant special permits to kill, take, or treat whales for scientific research.

ARGUMENTS

1. The JARPA II permit includes the following objectives: “a) monitoring the Antarctic ecosystem (whale abundance trends and biological parameters; krill abundance and the feeding ecology of whales; effects of contaminants on cetaceans; cetacean habitat); b) modeling competition among whale species and future management objectives (constructing a model of competition among whale species; new management objectives including the restoration of the cetacean ecosystem); c) elucidation of temporal and spatial changes in stock structure; and d) improving the management procedure for Antarctic minke whale stocks.” None of the following include the mention of commercial whaling.

2. The Country of Japan is not in violation of any obligations in the convention on biological diversity, including articles III, V, and X(B).

3. Article III requires states to not cause harm to other states during activities that fall under their national jurisdiction and control.

4. Article V states “as far as possible and as appropriate,” parties are to cooperate (including through international organizations) in the conservation and sustainable use of biological diversity outside their national sovereignty.

5. Article X(B) requires states “as far as possible and as appropriate,” to adopt measures that avoid or minimize negative impacts on biological diversity.

SUMMARY AND REQUESTS

Reiterating the fact that Japan is operating within the conventions of the ICRW and JARPA II, the country of Japan is not violating any of its obligations to neither the Convention on International Trade in Endangered Species of Wild Fauna and Flora nor the Convention on Biological Diversity.

Requesting that Australia respect the protection of the country of Japan’s permit under the ICRW as instituted in 1986. The ICRW gave Japan the liberty to issue permits for scientific research and Japan has not been in breach of any of the alleged activities.