IN THE INTERNATIONAL COURT OF JUSTICE

THE COMMONWEALTH OF 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 FACT

As parties to the International Convention for the Regulation of Whaling (ICRW), Japan and Australia have been bound by a number of international obligations regarding the killing, taking, and treatment of whales since its adoption in 1946. However, given environmental concerns and the depletion of whale stocks caused by commercial whaling in the ocean, many countries around the world ceased their whaling practices, including Australia in 1978. In 1982, the IWC, aware of the problems posed by commercial whaling, issued a worldwide moratorium. Soon after, the Commission established the Southern Ocean Sanctuary where commercial whaling was also prohibited.

While Japan has maintained its objection to the prohibition on the taking of minke whales in the Southern Ocean Sanctuary, it accepted the moratorium on commercial whaling in 1986. However, shortly after the moratorium came into effect, Japan began authorizing special permits for large-scale "scientific whaling" operations under the *Japanese Whale Research Program under Special Permit in the Antarctic* (JARPA). This program allowed Japan to continue whaling under JARPA until the program's termination in 2005. Under this program, Japan authorized the killing of 6,777 minke whales over the span of 18 years in the Southern Ocean Sanctuary.

Immediately following JARPA's termination, Japan authorized an even larger whaling research program, which is now the subject of legal proceedings before the International Court of Justice. The *Japanese Whale Research Program under Special Permit in the Antarctic Phase II* (JARPA II) authorizes the taking of double the number of minke whales taken under JARPA and also anticipates the taking of humpback and fin whales in future research. The program is exclusively funded by the commercial sale of whale meat and the target number of whales necessary for the research continues to fluctuate each year.

In its authorization of the JARPA II program, which is not "for the purpose of scientific research," Japan has breached its international legal obligations established by the ICRW and the ICRW Schedule.

JURISDICTION

The application is brought under Article 36, paragraph 2 of the Statute of the Court which grants the Court jurisdiction "in all legal disputes concerning: a. the interpretation of a treaty; b. any question of international law; c. the existence of any fact which, if established, would constitute a breach of an international obligation; d. the nature or extent of the reparation to be made for the breach of an international obligation." This application falls under the Court's jurisdiction on each subparagraph of Article 36, paragraph 2.

STATEMENT OF LAW

1. The International Convention for the Regulation of Whaling (ICRW) was adopted on 2 December 1946 and entered into force on 10 November 1948. Established under the ICRW, the International Whaling Commission (IWC) adopted a worldwide moratorium on commercial whaling in the Southern Ocean Sanctuary. Since Australia and Japan are both parties to the ICRW, they are also bound to the obligations set forth by the IWC and ICRW Schedule.
    A. Article VIII of the ICRW, authorizes any contracting government to grant its nationals a special permit to "kill, take and treat whales for purposes of scientific research."
2. The ICRW Schedule was established by the ICRW and has been subsequently amended by the Commission up until July 2012. These amendments are legally binding unless a Contracting Government puts forth and maintains an objection against it.
    A. Paragraph 7(b) of the Schedule prohibits the commercial whaling "whether by pelagic operations or from land stations...in a region designated as the Southern Ocean Sanctuary".
    B. Paragraph 10(e) of the Schedule prohibits the commercial whaling of pelagic whales

ARGUMENTS

1. Japan has violated Article VIII, Paragraph I of the 1946 International Convention for the Regulation of Whaling (ICRW) in its authorization of the JARPA II program because it fails to satisfy the exemptions granted for the purpose of scientific research under Article VIII.

A. In response to a moratorium on commercial whaling and facing international pressure, Japan birthed the JARPA research program the following year in order to continue whaling under the guise of "scientific research".
B. The JARPA II program relies exclusively on funding from the commercial sale of whale meat. The commercial market unduly influences the number of whales killed each year under the program and is not supported by scientific sample sizes.
C. In contrast to scientific methodology, Japan has authorized the JARPA II program indefinitely. Additionally, only 15% of the papers written in conjunction with the two projects have been peer reviewed and are potentially relevant to the objectives of the programs. Together the two programs have killed 10,000 whales in their pursuit of "scientific research."
D. The killing of whales under JARPA II is not scientifically justified in order to achieve the program's stated objectives and is done to recuperate operating costs rather than for the purposes of scientific research.

2. Japan has violated paragraphs 7(b), and 10(e) of the July 2012 ICRW Schedule.
    A. Since JARPA II is a program with dubious scientific purpose, Japan has violated paragraph 7(b) of the Schedule which prohibits commercial whaling in the Southern Ocean Sanctuary. Noting Japan's objection to paragraph 7(b), Japan killed nineteen Fin whales in the Southern Ocean Sanctuary between 2005-2010, in breach of the schedule it is obliged to follow.
    B. Japan has violated paragraph 10(e) of the schedule since JARPA II is not a scientific program. Commercial whaling is prohibited by paragraph 10(e): "catch limits for the killing for commercial purposes of whales from all stocks for the 1986 coastal and the 1985/86 pelagic seasons and thereafter shall be zero." Japan objected to this provision originally, but withdrew its objection on 1 May 1987. Thereafter, Japan was obligated to end commercial whaling. Since JARPA II is not "for purposes of scientific research", the Court should interpret the program as commercial whaling which would violate paragraph 10(e) of the schedule to the ICRW.

SUMMARY AND REQUESTS

Clearly Japan has breached several aspects of the ICRW and its schedule in regards to its written and intended meaning. While JARPA II is a program that is seemingly scientific, its disregard for scientific methodology has violated, in numerous fashions, the "kill, take, and treat whales for purposes of scientific research " clause in Article VIII of the ICRW. Additionally, the violation of paragraphs 7(b) and 10(e) of the schedule further illustrate Japan's efforts to skirt around the ICRW without drawing ire from the international community.

Australia asks for the Court, under its jurisdiction, to declare that Japan no longer authorize any special permit that is not for the purposes of scientific research. Additionally, Australia asks the Court to declare that Japan end the JARPA II program immediately to prevent the further destruction of whale stocks in the Southern Ocean Sanctuary.