

## **IN THE INTERNATIONAL COURT OF JUSTICE**

**THE GOVERNMENT OF AUSTRALIA,  
APPLICANT**

**V.**

**THE GOVERNMENT OF JAPAN,  
RESPONDENT**

### **MEMORIAL OF THE GOVERNMENT OF JAPAN**

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

#### **STATEMENT OF LAW:**

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

#### **STATEMENT OF FACT:**

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

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

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

To further study the changes in the Antarctic marine ecosystem, the Second Phase of Japan's Whale Research Program under Special Permit (JARPA II) was launched the season starting from November 2005 to the beginning of 2006, after discussions at the IWC Scientific Committee and the Plenary meetings. JARPA II, like JARPA, has been carried out to obtain scientific data for the scientific assessment of the sustainable use of whale resources and not for the pursuit of profit by marketing whale meat. Conducts under JARPA II comply with Article VIII of the International Convention for the Regulation of Whaling.

#### **STATEMENT OF JURISDICTION:**

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

#### **ARGUMENT:**

1. Paragraph 1 of Article VIII of the ICRW regulates whaling for scientific research. Any IWC member state shall be subjected to restrictions on the number of whales hunted and other conditions “as the Contracting Government thinks fit.” Under this regulatory régime of the Convention, the power to determine such questions as what should be the components of the scientific research or how the scientific research should be designed and implemented is primarily left to the discretionary decision of the granting Government. Pursuant to Article VIII, Japan researches whales in the Antarctic through JARPA II, designed as comprehensive long-term research. JARPA II prevents harm to stocks that will occur in the complete application of the precautionary approach. Thus, Japan did not breach any obligations assumed by its government under the ICRW.
2. Australia’s argument stipulating that Japan’s pursuit of JARPA II is violating the ICRW and the Moratorium is unfounded; It is motivated not by the framework of the ICRW but by its pursuit of a total, permanent ban on the catch of whales. By claiming that Japan is violating the ICRW and its Moratorium, Australia, whether explicitly or implicitly, stipulates that JARPA II is commercial and accuses Japan of acting in bad faith. However, Japan has always acted in good faith by adhering to its obligation under the

ICRW. Thus, faithfully accepting the moratorium and suspending commercial whaling indefinitely. Unless Australia can establish convincing and conclusive evidence that Japan acts in bad faith by continuing commercial whaling under JARPA II, Australia's presumption should not be accepted under any circumstances by the Court of Justice.

3. This dispute brought to the Court by Australia concerns the legality of Japan's activities under international law and not ethical values or the evaluation of good or bad science. Considering the scope of the Court's compulsory jurisdiction under Article 36, paragraph 2 of the Statute of the Court, it is not under the jurisdiction of the Court to determine what constitutes research activities. In this case, neither does it have jurisdiction to determine if the use of lethal methods should or should not be part of the JARPA II research program.

#### **SUMMARY AND REQUESTS:**

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