



NUMUN

Northwestern University Model United Nations

International Court of Justice

Topic C: Whaling Conflict

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Whaling Conflict: Australia v. Japan

Introduction

The conflict between Japan and Australia concerning Japan's whaling activity in the Southern Pacific has, to say the least, hazy beginnings. The root of the conflict lies in the Japanese Whale Research Program under Special Permit in the Antarctic (JARPA) whose objectives are stated to be the monitoring of the Antarctic ecosystem and the "modeling [of] competition among whale species and future management objectives."¹ In reality though, it seems that JARPA II—the most recent iteration of this program—is actually a prop used by the Japanese government to conceal their efforts to whale in the Antarctic exclusively for trading. Australia, frustrated by Japan's continued illegal whaling in the Australian Whale Sanctuary, brought a case against Japan to the International Court of Justice in May 2010 in which they accused Japan of "breach[ing] obligations assumed by Japan under the International Convention for the Regulation of Whaling ("ICRW"), as well as its other international obligations for the preservation of marine mammals and marine environment."²

Proceedings in the ICJ began on June 26, 2013. Australia asserted, as it did in its original proceedings, that Japan's whaling activity in the Southern Pacific was in violation of the 1946 Whaling Convention and that Japan had continually refused to act upon the International Whaling Commission (IWC) recommendations concerning this conflict.³ Japan responded that their intentions in the Southern Ocean were to conduct research on whales that would be used to

¹ "Scientific Contribution from JARPA/JARPAII." *ICR : JARPA/JARPAII*. The Institute of Cetacean Research, Dec. 2013. Web. 14 Feb. 2014.

² International Court of Justice. *Australia Institutes Proceedings against Japan for Alleged Breach of International Obligations concerning Whaling*. International Court of Justice. N.p., 1 June 2010. Web. 14 Feb. 2014.

³ Drape, Julian. "Barbs Traded in Aust v Japan Whaling Case." *The Australian*. N.p., 26 June 2013. Web. 14 Feb. 2014.



develop the whaling industry. Such information, Japan claimed, could only be obtained by killing the whales. New Zealand intervened with the case during the week of July 8, 2013, stating that Japan's system for issuing special whaling permits, which were used in the Australian Whale Sanctuary, were being exploited to conceal Japan's whaling for profit efforts.⁴⁵ Proceedings concluded on July 16, 2013, and the court's final decision is expected to be released in early 2014.

This case is particularly interesting because it raises questions about international law and country relations that have not previously been considered. The judgment that the ICJ passes down will likely be considered a landmark decision, as it will set the tone for judgments on environmental and trade conflicts similar to this case in the future.

⁴ Press, Tony. "Whaling in the Antarctic: New Zealand Intervenes, Australia concludes." *The Conversation*. N.p., 12 July 2013. Web. 14 Feb. 2014.

⁵ International Court of Justice. *Whaling in the Antarctic (Australia v. Japan): New Zealand Files a Declaration of Intervention in the Proceedings under Article 63 of the Statute*. International Court of Justice. N.p., 21 Nov. 2012. Web. 14 Feb. 2014.



Background

Whaling has a rich history that stretches across the world, dating back as far as the 8th century. We will, however, for the purposes of this committee, begin our analysis at the turn of the 20th century, when rapid modernization of the whaling process began to raise environmental concerns over international whale stocks. In the late 19th century, Norweigan fisherman Sveyn Foyin invented the bomb-tipped harpoon gun, which enabled whalers to hunt at alarming rates. Where before fisherman preyed mostly on beached whales or arduous manual beaching of whales, now they could hunt whales directly and kill hundreds of whales per year.⁶ With this incredible increase in whale hunting productivity, the market flooded with whale oil and meat, decreasing their value and throwing the industry into chaos⁷.



Figure 1 Japanese Whaling in Antiquity (Taiji Whaling Musueum)

The first formally expressed international concerns over the whale stock were presented by the League Of Nations in the 1920s, via the 1931 Convention for the Regulation of Whaling⁸. This document and its subsequent additions, however, proved toothless and ineffective at controlling the further depleting whale stock across the worlds oceans, particularly in the arctic. In 1945, nations dissatisfied with the current state of whaling regulation met in Washington D.C.,

⁶ Johnson, Genevieve. "The History of Whaling in Albany, Australia." *PBS.com*. Public Broadcasting Service, n.d. Web. 06 Feb. 2014.

⁷ Tønnessen, J. N., and Arne Odd Johnsen. *The History of Modern Whaling*. Berkeley: University of California, 1982. Print.

⁸ *The American Journal of International Law* , Vol. 30, No. 4, Supplement: Official Documents (Oct., 1936) , pp. 167-174



to discuss options for the future. This meeting culminated in the International Convention for the Regulation of Whaling, which established the International Whaling Commission, an oversight body whose duty is to strongly enforce whaling regulations on the international scale. It is important to note that, at first, these regulations were to ensure that the whale industry could grow in a safe manner, and to ensure that the whaling industry could thrive without a cheapening of oil prices due to overfishing. The rhetoric of the IWC would only become conservationist vis-à-vis the growing environmental movement of the 1960s. The Stockholm Conference of 1972 highlights this rhetoric change, as diplomats began to speak of man's "special responsibility to safeguard and wisely manage the heritage of wildlife"⁹, rather than citing economic concerns over the solvency of the whaling industry.

The critical portion of the ICRW to today's case is the Article VII exception.

Notwithstanding anything contained in this Convention any Contracting Government may grant to any of its nationals a special permit authorizing that national to kill, take, and treat whales for purposes of scientific research subject to such restrictions as to 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 this Article shall be exempt from the operation of this Convention. Each Contracting Government shall report at once to the Commission all such authorizations which it has granted. Each Contracting Government may at any time revoke any such special permit which it has granted.

(*ICRW, Article VII*)

⁹ Report of the United Nations Conference on the Human Environment, Stockholm, 1972, UN Doc. A/CONF.48/14/Rev.1, 5-16 June 1972, ("Report of the Stockholm Conference"), 37. <<http://www.un-documents.net/aconf48-14r1.pdf>>



JARPA II is a Japanese scientific initiative whose purpose is to collect biological and ecological data regarding the Minke whale in the Antarctic region, under the above exceptional science research conditions set forth by the IWC. This is the program which Australia claims does not follow proper IWC standards. JARPA II, the second iteration of the JARPA programme for cetacean research, calls for increased minke whale research that results in the deaths of whales, escalating death levels far beyond what the IWC had in mind for research whaling.¹⁰ Although Japanese sources claim that JARPA II has produced prolific and useful research¹¹, the IWC claims that JARPA II, and its predecessor JARPA, fail to address the truly critical research problems relating to conservation, instead viewing whales as a commodity and seeking to restart whaling as soon as possible¹².

Australia instituted proceedings against Japan on May 31st, 2010 before the International Court of Justice, stating that:

“Japan’s continued pursuit of a large scale programme of whaling under the Second Phase of its Japanese Whale Research Programme under Special Permit in the Antarctic (JARPA II) [is] in breach of obligations assumed by Japan under the International Convention for the Regulation of Whaling (ICRW), as well as its other international obligations for the preservation of marine mammals and marine environment.”¹³

The International Convention for the Regulation of Whaling placed a ban on commercial whaling in 1986. However, there is a clause under said ban that allows Japan to catch a specific number of whales every year under research premises. “Japan believes it has a strong case

¹⁰ “Resolution 2007-1”. *International Whaling Commission*. 2007.

¹¹ “Scientific Contribution”. *Institute for Cetacean Research*.

¹² “Australian Memorial”. *International Court of Justice*. 2011. < <http://www.icj-cij.org/docket/files/148/17382.pdf>>

¹³ “ICJ Hears Case of Whaling in Antarctic: Australia vs. Japan.” *UNIC Canberra*. United Nations Information Centre, n.d. Web. 16 Feb. 2014. <<http://un.org.au/2013/06/27/icj-hears-case-of-whaling-in-antarctic-australia-vs-japan/>>.



because it complies with the international convention for the regulation of whaling,” said an anonymous Japanese ministry official. Critics believe otherwise, arguing that Japan is taking this IWRC clause and toying with it in order to conduct commercial whaling under the premise of scientific research.¹⁴

Later that year, the Court set May 9th, 2011 for the filing of the Memorial of Australia and March 9th, 2012 as the time limit for the Counter-Memorial of Japan. A few months after the Counter-Memorial was filed, the Registrar decided that a second round of written pleadings was not necessary; informing the parties through letters dated May 2nd, 2012. In September of the same year, New Zealand asked to intervene in the court case and was approved by the Court the 6th of February 2013.¹⁵

According to a press release issued February 13th, 2013, New Zealand’s intervention related to how the ICRW’s article VIII, paragraph 1 was being interpreted. While the Court allowed this, Japan expressed some concern with the idea of New Zealand as an intervener. However, the Court stated that Australia and New Zealand were not to be seen “as parties in the same interest” since the intervention was not granted based on “its status of party”.

The Court then held its public hearings from the 26th of June to the 16th of July in 2013. During these trials, Australia was represented by Mr. Campbell, Q.C., General Counsel (International Law), Attorney-General’s Department, as Agent; the delegation of Japan was led by Mr. Koji Tsuruoka, Deputy Minister for Foreign Affairs, as Agent; and the delegation of New Zealand was led by Dr. Penelope Ridings, International Legal Adviser, Ministry of Foreign

¹⁴ McCurry, Justin. "It's Australia v Japan over Whaling in the Antarctic." *The Guardian*. Guardian News and Media, 26 June 2013. Web. 16 Feb. 2014. <<http://www.theguardian.com/environment/2013/jun/25/australia-japan-whaling-antarctic-challenge>>.

¹⁵ UNIC Canberra



Affairs and Trade, as Agent. The date of the announcement of the Court's Judgment has yet to be announced, and they are currently in the midst of deliberation.¹⁶

Bloc Positions

Judicially Active Judges:

Along with international law germane to this case (find an abridged list of such agreements under 'Judicially Restrained Judges' below), judges who take a more active approach may also make other considerations. Judges will likely consider the value of Japan's demonstrated research as a result of their whaling in this area and the effect that it could potentially have on the further development of the whaling industry. Additionally, these judges might also take into consideration the arguably destructive impact that Japan's whaling has had on Australia, both environmentally and economically.

Judicially Restrained Judges

Restrained judges will likely limit their considerations to the relevant international law surrounding this case. Such laws include the 1946 Whaling Convention, the International Whaling Convention's 1986 moratorium on commercial whaling, the International Convention for the Regulation of Whaling (ICRW), and the Convention on International Trade in Endangered Species of Wild Fauna and Flora and under the Convention on Biological Diversity, among others. The primary question that judicially restrained judges will need to answer is whether or not Japan's JARPA program—whose public aims are to further develop whaling research—supersedes international agreements that prevent whaling in the area.

¹⁶ United Nations. International Court of Justice. *Australia Institutes Proceedings against Japan for Alleged Breach of International Obligations concerning Whaling*. International Court of Justice. United Nations, 01 June 2010. Web. 16 Feb. 2014. <<http://www.icj-cij.org/docket/index.php?p1=3&p2=1&k=64&case=148&code=aj>>



Questions to Consider

1. How is the Article VII exception of the ICRW to be interpreted? Does JARPA II conform to the requirements of this interpretation?
2. Is the goal of JARPA II research initiatives to promote the conservation of Minke whales?
3. Was JARPA a success? If not, is the larger-scale JARPA II, which follows many of the same tenets, a prudent research initiative?
4. How does New Zealand's intervention change the issue?
5. How will the decision on this case change the way the IWC functions?
6. How will the decision on this case affect future conservation efforts?

