



INTERNATIONAL COURT OF JUSTICE

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Press Release

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Whaling in the Antarctic (Australia v. Japan: New Zealand intervening)

The Court finds that Japan's whaling programme in the Antarctic (JARPA II) is not in accordance with three provisions of the Schedule to the International Convention for the Regulation of Whaling

THE HAGUE, 31 March 2014. The International Court of Justice (ICJ), the principal judicial organ of the United Nations, has today rendered its Judgment in the case concerning Whaling in the Antarctic (Australia v. Japan: New Zealand intervening).

In that Judgment, which is final, without appeal and binding on the Parties, the Court,

- (1) finds, unanimously, that it has jurisdiction to entertain the Application filed by Australia on 31 May 2010;
- (2) finds, by twelve votes to four, that the special permits granted by Japan in connection with JARPA II do not fall within the provisions of Article VIII, paragraph 1, of the International Convention for the Regulation of Whaling;
- (3) finds, by twelve votes to four, that Japan, by granting special permits to kill, take and treat fin, humpback and Antarctic minke whales in pursuance of JARPA II, has not acted in conformity with its obligations under paragraph 10 (e) of the Schedule to the International Convention for the Regulation of Whaling;
- (4) finds, by twelve votes to four, that Japan has not acted in conformity with its obligations under paragraph 10 (d) of the Schedule to the International Convention for the Regulation of Whaling in relation to the killing, taking and treating of fin whales in pursuance of JARPA II;
- (5) finds, by twelve votes to four, that Japan has not acted in conformity with its obligations under paragraph 7 (b) of the Schedule to the International Convention for the Regulation of Whaling in relation to the killing, taking and treating of fin whales in the "Southern Ocean Sanctuary" in pursuance of JARPA II;
- (6) finds, by thirteen votes to three, that Japan has complied with its obligations under paragraph 30 of the Schedule to the International Convention for the Regulation of Whaling with regard to JARPA II;

- (7) decides, by twelve votes to four, that Japan shall revoke any extant authorization, permit or licence granted in relation to JARPA II, and refrain from granting any further permits in pursuance of that programme.

I. JURISDICTION OF THE COURT

The Court notes that Australia invokes as the basis of the Court's jurisdiction the declarations made by both Parties under Article 36, paragraph 2, of the Court's Statute. Japan contests the jurisdiction of the Court over the dispute submitted by Australia, arguing that it falls within Australia's reservation (b) contained in its declaration, which refers to disputes concerning "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". The Court considers that the existence of a dispute concerning maritime delimitation between the Parties to the case is required for the reservation to be applicable. Since there is no maritime delimitation dispute between the Parties in the Antarctic Ocean and since the current dispute is only about the compatibility or not of Japan's whaling activities with its obligations under the Convention, the Court concludes that Japan's objection to the Court's jurisdiction cannot be upheld.

II. INTERPRETATION OF ARTICLE VIII, PARAGRAPH 1, OF THE INTERNATIONAL CONVENTION FOR THE REGULATION OF WHALING

The interpretation and application of Article VIII of the Convention is central to the current case. In the view of the Court, while this Article gives discretion to a State party to the Convention to reject the request for a special permit or to specify the conditions under which a permit will be granted, the question of whether the killing, taking and treating of whales pursuant to a requested special permit is for purposes of scientific research cannot depend simply on that State's perception.

The Court then turns to the meaning of the phrase "for purposes of scientific research" in Article VIII of the Convention. In the view of the Court, the two elements of this phrase are cumulative. As a result, even if a whaling programme involves scientific research, the killing, taking and treating of whales pursuant to such a programme does not fall within Article VIII unless these activities are "for purposes of" scientific research. Therefore, the Court does not consider it necessary to offer a general definition of "scientific research" and focuses its attention on the meaning of the term "for purposes of".

In order to ascertain, in particular, whether a programme's use of lethal methods is "for purposes of" scientific research, the Court considers whether the elements of such a programme's design and implementation are reasonable in relation to its stated research objectives. As shown by the arguments of the Parties, these elements may include: decisions regarding the use of lethal methods; the scale of the programme's use of lethal sampling; the methodology used to select sample sizes; a comparison of the target sample sizes and the actual take; the time frame associated with a programme; the programme's scientific output; and the degree to which a programme co-ordinates its activities with related research projects.

III. APPLICATION OF ARTICLE VIII, PARAGRAPH 1, TO JARPA II

The Court finds that JARPA II can broadly be characterized as "scientific research". It then examines whether its design and implementation are reasonable in relation to achieving the programme's stated research objectives.

Examining Japan's decisions regarding the use of lethal methods, the Court finds no evidence of any studies of the feasibility or practicability of non-lethal methods, either in setting the JARPA II sample sizes or in later years in which the programme has maintained the same sample size targets. The Court also finds no evidence that Japan examined whether it would be feasible to combine a smaller lethal take and an increase in non-lethal sampling as a means to achieve JARPA II's research objectives.

Turning to the scale of the use of lethal methods in JARPA II, the Court notes that a comparison between the Research Plans in JARPA II and JARPA, its predecessor programme, reveals a considerable overlap between the two programmes' subjects, their objectives, and their methods. For the Court, these resemblances cast doubt on Japan's argument that the JARPA II objectives relating to ecosystem monitoring and multi-species competition are distinguishing features of JARPA II that call for a significant increase in the minke whale sample size and the lethal sampling of two additional species. The Court also notes that Japan launched JARPA II without waiting for the final review of JARPA by the Scientific Committee (a body established by the International Whaling Commission created under the Convention), which analyses the results of research conducted under special permits and reviews and comments on special permits before they are issued by States parties. The Court considers that weaknesses in Japan's explanation for the decision to proceed with the JARPA II sample sizes prior to the final review of JARPA lend support to the view that those sample sizes and the launch date for JARPA II were not driven by strictly scientific considerations.

After an extensive examination of the determination of species-specific sample sizes, the Court notes that the evidence relating to JARPA II provides scant analysis and justification for the underlying decisions that generate the overall sample size, raising further concerns about whether the design of JARPA II is reasonable in relation to achieving its stated research objectives.

The Court also observes a significant gap between the JARPA II target sample sizes and the actual take. In the view of the Court, the gap between the target sample sizes for fin and humpback whales in the JARPA II Research Plan and the actual take of these two species undermines Japan's argument that the objectives relating to ecosystem research and multi-species competition justify a larger target sample size for minke whales, as compared to that in JARPA.

The Court notes that there are three additional aspects of JARPA II which cast further doubt on its characterization as a programme for purposes of scientific research: the open-ended time frame of the programme, its limited scientific output to date, and the lack of co-operation between JARPA II and other domestic and international research programmes in the Antarctic Ocean.

Taken as a whole, the Court considers that JARPA II involves activities that can broadly be characterized as scientific research, but that "the evidence does not establish that the programme's design and implementation are reasonable in relation to achieving its stated objectives". The Court concludes that the special permits granted by Japan for the killing, taking and treating of whales in connection with JARPA II are not "for purposes of scientific research" pursuant to Article VIII, paragraph 1, of the Convention.

IV. EXAMINATION OF ALLEGED VIOLATIONS OF THE SCHEDULE

The Court turns next to the implications of that conclusion, in light of Australia's contention that Japan has breached several provisions of the Schedule. As regards paragraphs 7 (b), 10 (d) and 10 (e) of the Schedule, the Court considers that, although the wording of these provisions differs, all whaling that falls outside Article VIII, paragraph 1, other than aboriginal subsistence whaling, is subject to all three provisions. The Court therefore concludes that Japan has violated: (i) the moratorium on commercial whaling in each of the years during which it has set catch limits above zero for minke whales, fin whales and humpback whales under JARPA II; (ii) the factory ship

moratorium in each of the seasons during which fin whales were taken, killed and treated under JARPA II; and (iii) the prohibition of commercial whaling in the Southern Ocean Sanctuary in each of the seasons during which fin whales have been taken under JARPA II.

The Court then turns to Australia's allegation that Japan violated paragraph 30 of the Schedule, which requires that Contracting Governments provide the Secretary to the International Whaling Commission with proposed scientific permits before they are issued and in sufficient time to allow the Scientific Committee to review and comment on them. In this regard, the Court observes that Japan submitted the JARPA II Research Plan for review by the Scientific Committee in advance of granting the first permit for the programme and also submitted for review all subsequent permits. The Court also finds that the JARPA II Research Plan sets forth all the information specified by that provision. For these reasons, the Court considers that Japan has met the requirements of paragraph 30 as far as JARPA II is concerned.

V. REMEDIES

The Court observes that JARPA II is an ongoing programme. Under these circumstances, measures that go beyond declaratory relief are warranted. The Court therefore orders that Japan revoke any extant authorization, permit or licence to kill, take or treat whales in relation to JARPA II, and refrain from granting any further permits under Article VIII, paragraph 1, of the Convention, in pursuance of that programme. The Court sees no need to order the additional remedy requested by Australia, which would require Japan to refrain from authorizing or implementing any special permit whaling which is not for purposes of scientific research within the meaning of Article VIII, since that obligation already applies to all States parties.

Composition of the Court

The Court was composed as follows: President Tomka; Vice-President Sepúlveda-Amor; Judges Owada, Abraham, Keith, Bennouna, Skotnikov, Cançado Trindade, Yusuf, Greenwood, Xue, Donoghue, Gaja, Sebutinde, Bhandari; Judges ad hoc Charlesworth; Registrar Couvreur.

Judges OWADA and ABRAHAM append dissenting opinions to the Judgment of the Court; Judge KEITH appends a declaration to the Judgment of the Court; Judge BENNOUNA appends a dissenting opinion to the Judgment of the Court; Judge CANÇADO TRINDADE appends a separate opinion to the Judgment of the Court; Judge YUSUF appends a dissenting opinion to the Judgment of the Court; Judges GREENWOOD, XUE, SEBUTINDE and BHANDARI append separate opinions to the Judgment of the Court; Judge ad hoc CHARLESWORTH appends a separate opinion to the Judgment of the Court.

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A summary of the Judgment appears in the document "Summary No. 2014/3". This press release, the summary and the full text of the Judgment can be found on the Court's website (www.icj-cij.org), under the heading "Cases".

Note: The Court's press releases are prepared by its Registry for information purposes only and do not constitute official documents.

The International Court of Justice (ICJ) is the principal judicial organ of the United Nations. It was established by the United Nations Charter in June 1945 and began its activities in April 1946. The seat of the Court is at the Peace Palace in The Hague (Netherlands). Of the six principal organs of the United Nations, it is the only one not located in New York. The Court has a twofold role: first, to settle, in accordance with international law, legal disputes submitted to it by States (its judgments have binding force and are without appeal for the parties concerned); and, second, to give advisory opinions on legal questions referred to it by duly authorized United Nations organs and agencies of the system. The Court is composed of 15 judges elected for a nine-year term by the General Assembly and the Security Council of the United Nations. Independent of the United Nations Secretariat, it is assisted by a Registry, its own international secretariat, whose activities are both judicial and diplomatic, as well as administrative. The official languages of the Court are French and English. Also known as the "World Court", it is the only court of a universal character with general jurisdiction.

The ICJ, a court open only to States for contentious proceedings, and to certain organs and institutions of the United Nations system for advisory proceedings, should not be confused with the other — mostly criminal — judicial institutions based in The Hague and adjacent areas, such as the International Criminal Tribunal for the former Yugoslavia (ICTY, an ad hoc court created by the Security Council), the International Criminal Court (ICC, the first permanent international criminal court, established by treaty, which does not belong to the United Nations system), the Special Tribunal for Lebanon (STL, an independent judicial body composed of Lebanese and international judges, which is not a United Nations tribunal and does not form part of the Lebanese judicial system), or the Permanent Court of Arbitration (PCA, an independent institution which assists in the establishment of arbitral tribunals and facilitates their work, in accordance with the Hague Convention of 1899).

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