



# Research Report

## International Court of Justice

Whaling in the Antarctic  
(Australia vs. Japan)

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**Contemporaneity:** All ICJ Court rulings on the matter are invalid (but there may be useful information in the ICJ documents), treat this case as if you introduce the case in 2002 (original application date).

## Introduction

Japan was party to the 1946 International Convention for the Regulation of Whaling and other international obligations for the preservation of marine mammals and the marine environment. Japan established the mission JARPA to obtain more information about whales and their numbers. However, Australia accused Japan of pursuing whaling under the Second Phase of its Japanese Whale Research Program under Special Permit (JARPA II). Australia maintains that Japan's purpose has not been to research scientific data, as Japan has used lethal methods. Australia argues that Japan's claim that its activities are 'for purpose of' scientific research does not fall within Article VIII.

## Definition of key terms

### JARPA

- Research program by Japan with four main objectives. Being;
  - 1) Estimation of biological parameters to improve the stock management of the Southern Hemisphere whale;
  - 2) Elucidate the role of whales in the Antarctic marine ecosystem;
  - 3) Elucidation of the effect of environmental change on cetaceans; and
  - 4) Elucidation of the stock structure of Southern Hemisphere whales to improve stock management.

### JARPA (II)

- Research program in the Antarctic by Japan to find scientific information on whale stocks. Due to the information then found, we now know more about the status of whale stocks and their biology. The JARPA II mission, which took place 18 years later, aimed at increasing the information known about whale stocks.
  - 1) 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);
  - 2) Modelling 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);
  - 3) Elucidation of temporal and spatial changes in stock structure; and
  - 4) Improving the management procedure for Antarctic whale stocks.

## **International Convention for the Regulation of Whaling**

- Convention made 'to provide for the proper conservation of whale stocks and thus make possible the orderly development of the whaling industry.'

### **Article VIII**

Paragraph 1 – 'Authorizes the granting of special permits to kill, take and treat whales only when non-lethal methods are not available, invoking the views of the experts it called, as well as certain IWC resolutions and Guidelines.'

Paragraph 2 – 'Any whales taken under these special permits shall so far as practicable be processed and the proceeds shall be dealt with in accordance with directions issued by the Government by which the permit was granted.'

#### **For purposes**

- Taking into account;
  - i. The use of lethal methods;
  - ii. The scale of the programme;
  - iii. The methodology used to select sample sizes;
  - iv. A comparison of the target sample sizes and the actual take;
  - v. The time frame associated with a programme;
  - vi. The programme's scientific output.

#### **Scientific research (Mr. Mangal Australian expert)**

1. Defined and achievable objectives (questions or hypotheses) that aim to contribute to knowledge important to the conservation and management of stocks;
2. 'Appropriate methods', including the use of lethal methods only where the objectives of the research cannot be achieved by any other means
3. Peer review
4. The avoidance of adverse effects on stock. In support of these criteria, Australia also draws on resolutions of the Commission and the Guidelines related to the review of special permits by the Scientific Committee (see paragraph 47 above).

#### **Scientific research (Court)**

'Scientific research should proceed on the basis of particular questions, which could take the form of a hypothesis.'

#### **General overview**

Australia accused Japan of whaling in the Antarctic in breach of a treaty signed by Japan. The

Court decided to entertain the case but then questions the interpretation of 'for purposes (1) of scientific research (2)' and defines it as cumulative.

Japan has also sold whale meat. However, New Zealand has intervened on this point, indicating that permitting the sale of meat does not mean that a sale is required. Nonetheless, Japan has made a lot of money from the sale of whale meat. In addition, Japan has also indicated that they sold the meat for the creation of employment. However, Australia rightly argues that pursuing the creation of employment is not the same as being undertaking whaling for the purposes of scientific research.

Japan has been taken to the International Court of Justice by Australia for violating the International Convention for the Regulation of Whaling. According to Japan, it depends on the interpretation. However, Australia questions if the purpose was 'research' by using lethal methods.

### **Major parties involved**

#### **Australia**

Australia is located in the South-east and is the fifth largest country in terms of squared kilometres of land. Australia lies in the Pacific Ocean. Japan is one of Australia's major economic partners.

#### **Japan**

Japan is an island in East Asia. It is surrounded by sea and is the tenth largest country in terms of population.

#### **New Zealand**

New Zealand is a country also located in the Pacific Ocean. It declared its intention to intervene in this case in support of Australia.

### **Bibliography**

- <https://en.wikipedia.org/wiki/Australia>
- <https://en.wikipedia.org/wiki/Japan>
- <https://www.icj-cij.org/en/case/148>
- <https://www.icj-cij.org/files/case-related/148/148-20140331-JUD-01-00-EN.pdf>
- <https://www.icj-cij.org/files/case-related/148/15951.pdf>
- <https://www.icj-cij.org/files/case-related/148/17386.pdf>
- <https://www.icj-cij.org/files/case-related/148/17388.pdf>
- <https://www.icrwhale.org/eng/FAQResearch.pdf>
- <https://www.icrwhale.org/QandA1.html>
- <https://www.icrwhale.org/scJARPA.html>