

Topic 2: Australia Vs Japan (Saving the Whales)

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Introduction:

On May 31st 2010, Australia instituted proceedings against Japan in respect of “Japan’s continued pursuit of a large-scale program of whaling under the Second Phase of its Japanese Whale Research Program under Special Permit in the Antarctic (‘JARPA II’), in breach of obligations assumed by Japan under the international obligations for the preservation of marine mammals and the marine environment”. Australia invoked Article 36(2) of the ICJ Statute to establish jurisdiction, citing its and Japan’s declaration of compulsory jurisdiction from 2002 and 2007. New Zealand intervened under Article 63(2) of the Statute, citing its interest as a party to the International Convention for the Regulation of Whaling (ICRW). The Court admitted this intervention in February 2013. After hearings in mid-2013, the Court ruled on 31 March 2014 that it had jurisdiction and rejected Japan’s objections. It found that Japan’s JARPA II program, though broadly considered scientific research, did not meet the requirements of Article VIII(1) of the 1946 Convention, as its design and implementation were not reasonable for its stated objectives. The court determined that Japan breached ICRW provisions, including moratoriums on commercial whaling and restrictions in the Southern Ocean Sanctuary. It ordered Japan to revoke existing permits for JARPA II and to stop granting further permits under Article VII(1) related to the program.

Topics of Discussion:

- **Scientific Research vs. Commercial Whaling:**
 - How can scientific research be conducted without lethal methods?
- **International Whaling Moratorium:**
 - What role does the moratorium on commercial whaling play in this dispute?
- **Marine Conservation:**
 - What can be done to improve marine conservation?
- **Cultural Sensitivities:**
 - How can countries respect different views on whaling?

Key Terms:

International Whaling Commission (IWC): The global body responsible for management of whaling and conservation of whales.

Southern Ocean and Whale Sanctuaries: A designated zone in the Southern Ocean where commercial whaling is prohibited.

Scientific Whaling: Whaling conducted under Article VIII of the ICRW, which allows lethal research on whales for scientific purposes.

JARPA II: Japan's second Antarctic Research Program, criticized for its lack of scientific validity and commercial byproducts.

Biodiversity: The variety of life in a particular habitat or ecosystem, including the protection of species like whales.

NEWREP-A: Japan's revised whaling program, launched after the ICJ ruling, which continues to permit lethal whale hunts under the guise of scientific research.

Key Contributors:

- **Australia**

Australia has been a strong advocate for whale conservation, accusing Japan of using scientific research to disguise commercial whaling. Following the ICJ ruling, it continues to monitor Japan's actions and push for stricter regulations to prevent such exploitation.

- **Japan**

Japan defends its whaling practices as both scientific and cultural. It argues that whaling is a part of its heritage and continues to conduct whaling in its territorial waters, especially after leaving the IWC in 2019.

- **New Zealand**

A close ally of Australia, New Zealand supports anti-whaling initiatives and emphasizes the importance of protecting marine ecosystems. It has actively participated in discussions about enforcing conservation measures.

- **Norway and Iceland**

Both nations continue commercial whaling despite the IWC's moratorium, citing objections to the ban. Their actions highlight the broader challenges in achieving global consensus on whale conservation.

Background Information:

The case brought by Australia was based on Article 36, paragraph 2, of the ICJ Statue, which allows countries to recognize the court's jurisdiction. New Zealand, as a party to the ICRW, joined the case to ensure its interests in whale conservation were considered. Public hearings in 2013 included testimony from experts and arguments from all sides. The ICJ ruled in 2014 that Japan's JARPA II program did not meet the requirements for scientific research under article VIII of the ICRW. While Japan claimed the program aimed to collect data on whale populations, the court found its design and execution were unreasonable for those goals. The court ordered Japan to revoke all permits under JARPA II and halt further whaling activities tied to the program. Despite the ruling, Japan's subsequent launch of NEWREP-A has kept the issue alive, challenging global efforts to enforce conservation rules.

Potential Solutions:

Potential solutions can include closing loopholes in the ICRW is critical to prevent the misuse of scientific exemptions for whaling. Clearer definitions of what constitutes legitimate scientific research would ensure stronger enforcement. Promoting non-lethal alternatives, like genetic sampling and observational studies, can provide valuable data without harming whales. Encouraging nations like Japan to adopt sustainable industries, such as whale watching, could offer both economic benefits and conservation wins. Global collaboration is essential to balancing conservation and cultural values. Neutral mediators can help foster dialogue between nations with differing perspectives, ensuring both sides feel heard. Additionally, strengthening the IWC's monitoring and enforcement capabilities would help hold violators accountable, especially in protected areas like the Southern Ocean. By pursuing these measures, the global community can work toward protecting whale populations while respecting cultural traditions.

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