

ACTION LES
COPY DSG
cdc
AG

721

RECEIVED

APR - 4 2014
14-02 821
EXECUTIVE OFFICE
OF THE SECRETARY-GENERAL

Note to the Secretary-General

Through Ms. Malcorra

International Court of Justice —
Australia v. Japan: New Zealand intervening —
Judgment in the Whaling in the Antarctic Case

03/04/14

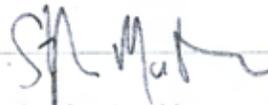
14-02637

1. The purpose of this Note is to inform the Secretary-General of the Judgment of the International Court of Justice of 31 March 2014 in the case *Whaling in the Antarctic (Australia v. Japan: New Zealand intervening)*.
2. Australia instituted this case against Japan on 31 May 2010, claiming that Japan's large-scale programme of whaling under the Second Phase of its Japanese Whale Research Programme under Special Permit in the Antarctic ("JARPA II") constituted a breach of Japan's obligations under the International Convention for the Regulation of Whaling (the "Convention") as well as of its other international obligations for the conservation of marine mammals and the preservation of the marine environment. The Parties to the Case had no objection to New Zealand's intervention as a non-party.
3. Australia argued that Japan was legally required to refrain from authorizing or implementing any special permit whaling which was not for the purposes of scientific research within the meaning of Article VIII and that JARPA II was not a programme for the purposes of scientific research within the meaning of that Article.
4. Japan rejected these claims and maintained that "taking of whales for purposes of scientific research should be viewed in the context of the freedom to engage in whaling enjoyed by States under customary international law".
5. The Court emphasized that it would not engage in resolving differences among the members of the international community with regard to appropriate policies towards whales and whaling. Rather, it limited its task to the determination whether the special permits granted under the JARPA II programme fell within the legal limits set by the Convention.
6. The Court paid special attention to the standards applicable to the granting of special permits for the killing, taking or treating of whales under the Convention. It assessed whether the "umbrella" programme for these activities created by Japan involved scientific research and whether the incorporation of lethal methods in the programme's design and implementation was reasonable in terms of its stated objectives.
7. With regard to the scientific dimension of the programme, the Court concluded that, in principle, JARPA II could broadly be categorized as "scientific research". However, it noted that several of the programme's elements cast doubt on such characterization: the open-ended time frame of the programme; its limited scientific output to date; and the lack of cooperation between JARPA II and other domestic and international research programmes in the Antarctic Ocean. Further, the Court noted that Japan had launched JARPA II prior to the final review of its predecessor programme by the Scientific Committee of the International Whaling Commission and remarked in this regard that the sample sizes in JARPA II were not driven by strictly scientific considerations.

LEG/03/010

RECEIVED
APR 11 2014
EOSG/CENTRAL

8. Furthermore, the Court considered that the evidence did not establish that JARPA II's design and implementation were reasonable in relation to achieving its stated objectives. In particular, the Court stated that "even if a whaling programme involves scientific research, the killing, taking and treating of whales pursuant to such a programme does not fall within [the scope of] Article VIII [of the Convention] unless these activities are themselves 'for purposes of' scientific research". Specifically with regard to the use of lethal methods, the Court found that the lack of evidence of any studies of the feasibility or practicability of non-lethal methods raised concerns about the scale of lethal sampling in JARPA II.
9. Based on these conclusions, the Court decided that special permits granted by Japan in connection with JARPA II did not fall within the scope of permissible activity under the International Convention for the Regulation of Whaling.
10. Additionally, the Court decided that Japan had violated several essential elements of the Schedule to the Convention including: (i) the moratorium on commercial whaling, in each of the years during which it had 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 had been 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 had been taken under JARPA II.
11. The Court ordered that "Japan shall 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 ...the Convention". Furthermore, the Court specified that it expects that Japan "will take account of the reasoning and conclusions contained in this Judgment as it evaluates the possibility of granting any future permits under ... the Convention".
12. All of the aforementioned decisions and orders were taken by the Judges by twelve votes to four (except one, that was taken by thirteen to three).
13. The judgment is final and without appeal, and is binding upon the parties. Japan has expressed disappointment with the outcome of the proceedings, but has pledged to abide by the ruling of the Court.



Stephen Mathias
Assistant Secretary-General
in charge of the Office of Legal Affairs
3 April 2014

cc: Mr. Feltman