The Whaling Dispute in the South Pacific: A Japanese Perspective

Ad hoc Editorial Chamber *

Australia instituted proceedings against Japan before the International Court of Justice alleging that the JARPA II is violating the obligation of ICRW which prohibits the commercial whaling. Japan is strongly protesting against Australia arguing that the JARPA II has been carried out only for research whaling. This paper contains the Japan's position over the whaling in the South Pacific. The Japan's arguments are divided into two sections in this paper. First, it will check if whales are truly vulnerable following the Comprehensive Assessment of the IWC. Second, it argues the legitimacy of the JARPA II under international law.

Keywords
JARPA II, Minke Whale, ICRW, IWC, Schedule, ICJ

1. Introduction

On May 31, 2010, Australia instituted proceedings against Japan before the International Court of Justice.[1] Australia alleged that: "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") [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

* This paper has been written by Ad hoc Editorial Chamber consisting of Professors Hyun-soo Kim, Eric Yong Joong Lee and John Riley. Japanese sources have been translated by Ms. Song-yi Kim.

1 In accordance with Article 36, paragraph 2, of the ICJ Statute, Australia and Japan recognized the Court's jurisdiction as compulsory on March 22, 2002 and July 9, 2007, respectively.

and marine environment."[2] The case was based on the decision of the Federal Court of Australia on January 15, 2008, which adjudicated that Japan's whale research program conducted in the Antarctic Ocean should be illegal and ordered to cease it.[3]

The Application contends, in particular, that Japan "has breached and is continuing to breach the following obligations under the ICWR: (1) to observe in good faith the zero catch limit in relation to the killing of whales for commercial purposes;[4] and (2) to act in good faith to refrain from undertaking commercial whaling of humpback and fin whales in the Southern Ocean Sanctuary."[5] Australia points out that:

> [H]aving regard to the scale of the JARPA II programme, the lack of any demonstrated relevance for the conservation and management of whale stocks, and to the risks presented to targeted species and stocks, the JARPA II programme cannot be justified under Article VIII of the ICRW.[6]

It further argues that Japan has also breached and is continuing to breach, *inter alia*, its obligations under the Convention on International Trade in Endangered Species of Wild Fauna and Flora("CITES") and under the Convention on Biological Diversity("CBD").[7]

2. Legal Issues

Australia requests the Court to declare that "Japan is in breach of its international obligations in implementing the JARPA II program in the Southern Ocean," and order Japan to: "(a) cease implementation of JARPA II; (b) revoke any authorisations, permits or licences allowing the activities which are the subject of this application to be undertaken; and (c) provide assurances and guarantees that it will not take any further action under the JARPA II or any similar program until such program has been brought into conformity with its obligations under international law."[8] Australia also explains

2 ICJ, Australia institutes proceedings against Japan for alleged breach of international obligations concerning whaling, Press Release, June 1, 2010, *available at* http://www.icj-cij.org/docket/files/148/15953.pdf (last visited on Oct. 15, 2011)

3 Federal Court of Australia, Humane Society International Inc. v. Kyodo Senpaku Kaisha Ltd. [2008] FCA 3, NSD 1519 of 2004 (Jan. 15, 2008).

4 ICRW Schedule, para. 10 (e).

5 *Id.* para. 7 (b).

6 *Supra* note 2.

7 *Id.*

8 *Id.*