

# Research Report

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International Court of Justice

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

MUNISH '14



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<b>Forum</b>	International Court of Justice
<b>Issue:</b>	Whaling in the Antarctic (Japan vs. Australia: New Zealand intervening)
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## Introduction

Whaling as a means of industrial fishing and as an occupation has been ongoing for several centuries. However, due to the sudden nearing extinction and endangerment of several species of whales and other marine life affected by whaling, members of the international community have joined hands to revoke any whaling activities in order to preserve and prevent the extinction of whales. Treaties and conventions - like the International Convention for the Regulation of Whaling (ICRW) - have been put into place by the International Whaling Commission (ICW), which was signed and ratified by various member nations in the United Nations, create a basis for regulation and vigilance of whaling activities in high seas and various waters. This helps to control and monitor private and commercial whaling activities, which now, due to the recent developments in conservation measures, are considered a illegal.

The creation of whaling sanctuaries, namely the Southern Ocean Whale Sanctuary, regulate the type of whaling (commercial, private or scientific) that can be conducted by countries and impose limits on the amount of catches that must be observed, helping to define grounds upon which to secure the existence of endangered whales.

Until 1970, before the uproar of sentiment towards anti-whaling, the whaling industry was considered to be a significant part of the governments and economies of several nations worldwide. After the realization that species of whales were nearing endangerment, several nations decide to urge for restrictions on this occupation.

Eventually, a moratorium was placed, implementing a zero catch policy for any commercial or private purpose, however allowed whaling for scientific purposes to occur. This moratorium was contested by nations such as Japan, Russia, Norway and Peru as it affected their whaling activities and did not initially provide information about whaling for



scientific purposes. Japan and Peru withdrew their opposition later. Today, a moratorium only affects commercial whaling, and whaling used for scientific research is still permitted.

A recent development between countries Australia and Japan has called for the filing of proceedings by Australia against Japan, due to its believe of the violation of the laws of the moratorium by Japan.

## Definition of Key Terms

### Whaling

The practice of hunting and killing whales. There are multiple categories of whaling, the main ones being commercial and scientific whaling.

### Commercial whaling

The act of whaling for the sole or partial purpose of sale, involving the killing of a whale by any means, and having a private company or government profit from the act. A moratorium was placed upon commercial whaling by the United Nations and other Member States municipal governments, via the implementations of new laws, sanctions, and the passing of resolutions.

### Scientific Whaling

The act of whaling with the sole purpose of research, exempting parties from the consequences of illegal whaling invoked by its moratorium. There must however be proof of scientific activity, with intent to do so before the animal is hunted, with no trace of commercial whaling present.

### Moratorium

The suspension or delay of an activity or law, by means of sanctions, laws, and other forms of political pressure, emplaced by ruling bodies, such as governments, union groups, or the United Nations.

### JARPA I/JARPA II

Japanese Whale Research Program under Special Permit in the Antarctic. JARPA I (1988 - 2005), JARPA II (2005 - present).



## JARPN I/JARPN II

Japanese Whaling Research Programs conducted in the North Pacific waters.  
JARPN I (1994 - 1999), JARPN II (2000 - present)

## UNCLS

The United Nations Convention on Law of the Sea (UNCLS) is an international agreement that defines the rights and responsibilities of nations with respect to their use of the world's oceans, establishing guidelines for businesses, the environment, and the management of marine natural resources.

## Exclusive Economic Zone (EEZ)

An EEZ is the area determined by the UNCLS over which the residing state reserves special rights to the exploration, use and extraction of resources on the sea bed or in its waters. An EEZ is not to be confused with Territorial Waters, in which a state has absolute sovereignty, as within an EEZ a state has mere 'sovereign right'.

## Major Parties Involved and Their Views

### Australia

Australia has been a highly prominent and persistent nation in the application of the ICJ case against the Japanese government and its whaling industry. Their case is built upon the main premise that Japan has been violating the moratorium on commercial whaling, by hiding under shroud of the research exemptions, specifically concerning their JARPA II program, which has been running since 2007. Several organizations such as GreenPeace and World Wildlife Fund are also in accord with Australia's approach. After the conduction of feasibility studies, the projected numbers for JARPA II's catches was limited to a maximum of 850 minke whales (with a 10% leverage plus or minus) and 10 fin whales were required for the study. However, after the conduction of the program in the first year, the projected numbers were deemed too little and Japan requested for the maximum catch to be raised to 850 minke whales (with a 10% leverage + or -), 50 fin whales and an addition of 50 humpback whales to the quota. After being requested to suspend the catch of humpback whales by the United States, JARPA II terminated the take of humpback whales and has abided by the restriction to date. Nonetheless, due to its lethal approach in the killing of marine animals that are almost nearing extinction, Australia and several countries oppose the conduction of JARPA II as a means of scientific research. Due to its geographical



location near the Antarctic EEZ, Australia has been a key figure in this case and consistently voiced opinions and objections to Japanese whaling programs, urging for a cease on all lethal research in the Antarctic. This however, went unheard until proceedings were initiated in the International Court of Justice. It is important to note that Australia has the third largest claim, and EEZ, and thus the intentions to preserve the Antarctic to its fullest capabilities.

## Japan

Japan continues to argue that the scientific purpose of whaling is required in order to continue studies on sex and ages of whale populations, as well as to understand their distribution according to geographical patterns.

Japan defends JARPA II and claims that it is permitted under the International Whaling for the Regulation of Whaling (ICRW) as it has been accepted and certified as being for a scientific purpose. The Australian attack on Japan selling whale meat has been rebutted by the elucidation of the IWC regulation that requires any whale meat obtained through scientific purposes to not go to waste. Hence, in order to avoid any waste of the obtained meat, Japan has put these meats up for sale on their supermarket shelves.

Furthermore, Japan continues to defend itself in response to any objection raised against the JARPA pro-gram, reiterates that it has not breached any restrictions imposed by the ICRW due to its scientific nature and contends that JARPA II must continue as research is vital for the preservation and understanding of whale populations.

## Australia's Prayer for Relief

Australia appeals to the court to find and sentence Japan for a breach of obligations to previous treaties through the implementation of a 'scientific' research program: JARPA II. Australia further requests for the termination of JARPA II and the annulment of acquired permits that allow lethal commercial whaling activities in the name of 'scientific research.'

Australia has further requested that Japan provide assurance of this termination, stating that it will immediately discontinue all activities and will not indulge in further action for the program JARPA II and will not pursue similar programs or activities in the coming future.

## Japan's Prayer for Relief

Japan appeals to the court that JARPA II continue as earlier, as it falls under the pursuit of scientific whaling and there has been no wrongdoing on Japan's part due to this. Japan continues to reiterate the importance of lethal measures in scientific whaling methods in order to allow for research to occur.

## Timeline of Events

Date	Description of event
c. 1000 C.E.	Basques initiate the first act of a commercial whaling operation in the Bay of Biscay region.
1611	The first whaling ships are sent to the Arctic island of Spitsbergen to hunt bowhead whales, resulting in the first commercial whaling operation in the Antarctic.
1868	Svend Foyn perfects the harpoon, bringing whaling in to a modern age.
1904	Norwegian Carl Anton Larson establishes the first large scale whaling operation in the Antarctic. Within ten years, whalers kill 1,738 blue whales, 4,776 fin whales, and 21,894 humpback whales.
1937	International Agreement for the Regulation of Whaling is signed in London. The next season, 46,039 whales are killed in the Antarctic, the highest total ever.
1946	International Convention for the Regulation of Whaling (ICRW) is signed in Washington, D.C. Three years later, the IWC meets for the first time.
1972	United Nations Conference on the Human Environment votes for a ten-year Moratorium on commercial whaling.
1982	IWC establishes indefinite commercial whaling moratorium, to take effect from 1985/86 Antarctic season. Japan, Norway, Peru, and USSR file objections; Japan and Peru later withdraw their objections.
1987	Japanese factory ship <i>Nisshin Maru No. 3</i> and three catcher's set out on first "scientific whaling" voyage in Antarctic, to kill up to 330 minke whales.
1994	IWC adopts Southern Ocean Sanctuary.
1996	Japan begins "research" whaling in the North Pacific.
2000	Japan expands North Pacific "research" to include Bryde's and sperm whales.
2002	Japan expands North Pacific hunt to include sei whales, and increases N. Pacific quota of minke whales. At the annual IWC meeting, Japan and allies initially deny bowhead quota to natives of Alaska and Russia.
2005	The Government of Japan announces massive increase of "research" whaling quota in the Antarctic, to 935 minke whales annually. Beginning in 2006, the catch will also include endangered fin whales; and, from 2007, endangered humpback whales.



## UN involvement, Relevant Resolutions, Treaties and Events

Most relevant events have been mentioned earlier in the 'Timeline of Events', though there are a few things worthy of clarification.

The International Convention for the Regulation of Whaling is an international environmental agreement signed by 15 nations in Washington, D.C. on 2 December 1946. Its purpose is, to quote from the convention, to: "provide for the proper conservation of whale stocks and thus make possible the orderly development of the whaling industry." There were three main objectives of the agreement: the protection of all whale species from overhunting by the whaling industry; the establishment of an accepted system of regulation to ensure proper conservation; the development of whale stock, and the protection natural resources, represented by whale stocks, for future generations. The instrument through which these objectives were to be accomplished was the International Whaling Commission (IWC). The main duty of the IWC is "to keep under review and revise as necessary the measures laid down in the Schedule to the Convention which govern the conduct of whaling throughout the world." The measures taken by the IWC provide for complete protection of certain species; the designation of specific areas as sanctuaries for whales; limits on the size and number of the permitted whaling; the prescription of open and closed seasons for areas where whaling is permitted; the prohibition on the whaling of calves and their accompanying mother.

The UN General Assembly entertained a proposal, initiated by the Government of Sweden, to convene the 1972 United Nations Conference on the Human Environment. The purpose of the conference was to discuss the state of the global environment. Representatives of 113 countries, and over 400 inter- and non-governmental organizations attended the conference. Amongst other agreements, it was recommended that governments strengthen the IWC, and increase international research efforts on the matter. Furthermore, due to increasing urgency of the issue, a 10-year moratorium on commercial whaling was agreed upon.

The United Nations Convention on the Law of the Sea (UNCLOS) is a treaty that resulted from a series of three conferences also known as the United Nations Conference on the Law of the Sea. In brief, the UNCLOS specifies the rights and responsibilities of nations regarding the world's oceans, creating regulations for businesses, the environment, and the management of marine life and natural resources. The UNCLOS imposes that nations who have and/or ratified the treaty, are to conserve and protect marine mammals and further requesting nations to follow their obligations under the IWC. As Japan is one of the many nations who have signed the UNCLOS, they are obligated to follow these regulations.

- The International Convention for the Regulation of Whaling, 2 December 1946.
- United Nations Conference on the Human Environment, 16 June 1972.
- The United Nations Convention on the Law of the Sea, 10 December 1982.

## Evaluation of Previous Attempts to Resolve the Issue

There has not previously been an ICJ case regarding the issue of whaling in the Antarctic both involving Japan and Australia. This case has been the first time that Japan has been called to the International Court of Justice, and thus previous attempts are not applicable. There have, however, been other forms of previous attempts to stop Japan from whaling in the Antarctic. The United States, amongst other countries, have threatened with economic sanctions, though their jurisdiction is often questioned, as sanctions may conflict its obligations under the World Trade Organization (WTO). Furthermore, an indefinite commercial whaling moratorium had been established in 1986, which along with the ten-year moratorium was an effective measure against commercial whaling. During a period of 15 years, whale populations started to thrive once again, and many species were saved from extinction. However as mentioned previously, Japan gradually started expanding their whaling operations under the justification of scientific research.

## Possible Solutions

Possible solutions to stop commercial whaling in the Antarctic by Japan include legal, political, and environmental options. There are alternatives to the International Court of Justice, such as the International Tribunal for the Law of the Sea where a similar solution of the issue may be possible. Furthermore, there are several economic sanctions that may be imposed on countries who participate in commercial whaling, though as mentioned previously, there will be a debate as to the jurisdiction of individual countries. Finally, the more favourable solution to prevent commercial whaling is the establishment of whale sanctuaries areas of the ocean, though this solution is only effective when countries abide the rules and agreements.





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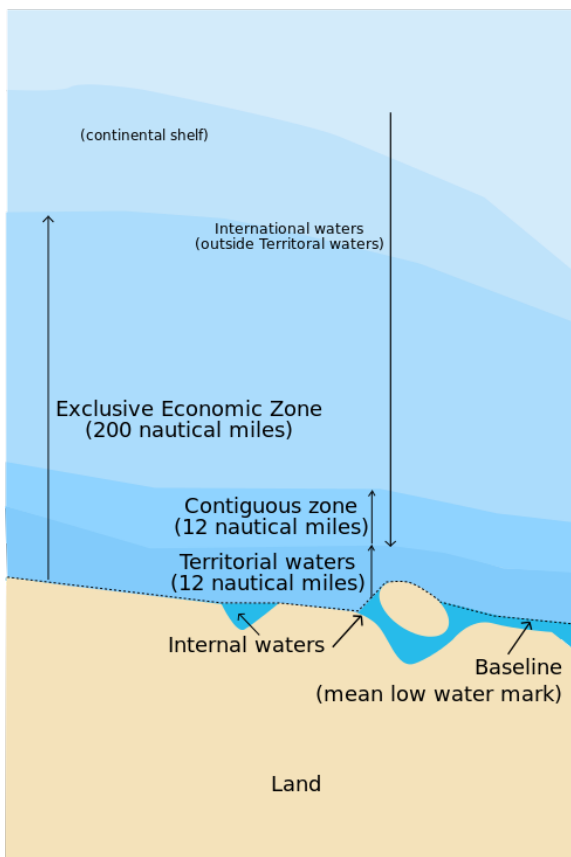
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## Appendix

I. Display of the division of waters:



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