

INTERNATIONAL COURT OF JUSTICE

*Whaling in the Antarctic* (Australia v Japan, New Zealand intervening)

**Questions posed by Judges to the Parties during the Oral proceedings**

8 February 2014

**To Australia:**

On paragraph 30 of the Schedule and the nature of review by the Scientific Committee (Response by Ms MIYASAKO) [By Judge Tamada]

As to paragraph 30 of the Schedule, what is the legal nature of a “review” power of the Scientific Committee? Does it include the power to revoke the special permit issued by Japan?

On Interpretation based on Article 31 (1) of VCLT? (Response by Mr. INAGAKI) [By Judge Kawagishi]

What is the relationship between the “ordinary meaning” and the other methods of interpretation, namely the context and object and purpose? How can it be identified in accordance with the article 31 (1) of VCLT?

On a possible criteria of evaluating JARPA II as an Article VIII “scientific research” (Response by Mr. LAMBERTI) [By President Shibata]

Australia argues that there are “essential” characteristics for activities to be considered as “scientific”. Are these characteristics normative standards, against which all activities, including JARPAII, must be evaluated, and if so, how are these standards derived (sources of international law)? If, on the contrary, these characteristics are not normative standards, what are they, and why and how should the Court treat them to be certain standards to gauge an activity like JARPA II?

On the characteristic of JARPA II (Response by Ms BAE) [By Judge Tamada]

Is Australia arguing that JARPAII has no scientific contribution? Can Australia accept the possibility of JARPAII having mixed objectives both commercial and scientific, and if so, is JARPAII with mixed objectives permitted under Article VIII?

**To Japan:**

On Japan's acceptance of Schedule 10 (e): (Response by Mr. CARASITI) [By Judge Tamada]

Unlike Norway and Russia that have lodged objections to the so-called moratorium on commercial whaling as provided in Schedule 10 (e), Japan did accept the moratorium. Would this acceptance have any legal effect on the change of the object and purpose of the ICRW?

On the appropriateness of the methods and sample size of JARPA II (Response by Ms MORI) [By President Shibata]

According to IWC Resolution 1986-2 adopted by consensus (therefore assuming an assent by Japan to its content), the lethal methods in the scientific whaling in the Southern Ocean Sanctuary (Section III of the Schedule) should be taken when "there are compelling scientific reasons". What is the "compelling" nature of scientific reasons for Japan to kill up to 900 Minke whales, 50 Fin whales, and 50 Humpback whales every year? This question poses the "compelling" nature of scientific reasons, and not just ordinary scientific or statistical reasons for the use of lethal means and the sample size.

On discretionary power, abuse of rights (Response by Thithirat) [By Judge Kawagishi]

With regard to the Contracting Government's power to issue special permit under Article VIII, is there any room for abuse of right or good faith to limit such discretionary power of the Contracting Governemnts? If so, to what extent can abuse of right or good faith be relevant to the discretionary power?

On Article 31 (3) (a) and (b) of the Vienna Convention on the Law of Treaties (VCLT) (Response by Mr. MORINAKA) [By President Shibata]

In the view of Japan, what constitute "subsequent agreement" and/or "subsequent practice" that can be taken into account when interpreting Article VIII of the ICRW? More specifically, how can or cannot a resolution adopted by (1) majority; (2) consensus in the Commission be considered as constituting "subsequent agreement/practice" within the meaning of VCLT Article 31 (3) (a)/(b)?

END