

# On Thin Ice: Will the International Court of Justice’s Ruling in *Australia v. Japan: New Zealand Intervening* End Japan’s Lethal Whaling in the Antarctic?

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## INTRODUCTION

In March 2014, the International Court of Justice (the “ICJ”) declared that Japan’s whaling activity in the Antarctic did not satisfy the scientific exemption to a global whaling moratorium and ordered Japan to cease its current operations. Japan complied with the ICJ’s ruling and ended its expedition for that year; however, it also revealed a new scientific research program in November 2014 to resume whaling in the Antarctic. The International Whaling Commission (“IWC”) in June 2015 rejected Japan’s new proposal, citing that the planned lethal research continues to violate international regulations.

It is not clear how Japan will respond to this recent rejection. The best-case scenario would be for Japan not to conduct any lethal whaling in the Antarctic until such whaling is approved by the IWC. However, because international whaling agreements are self-regulating, neither the

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ICJ nor other countries will directly be able to stop Japan from administering its new program.

Such a result does not mean that the ICJ ruling was futile. Although the ICJ lacks official mechanisms with which to enforce its opinions, the Court has been shown to have strong *unofficial* methods of enforcement. In prior disputes, ICJ opinions have successfully incited political action toward legal compliance. Even if continued external political pressure is insufficient to bring about Japan's total abstention from lethal whaling, the ICJ's ruling echoes global disapproval of the whaling trade. On the other hand, if internal changes eradicate Japan's market for whale meat, Japan's government may be forced to reconsider its lethal whaling practices.

#### BACKGROUND TO THE LITIGATION

The IWC is a regulatory body created under the 1946 International Convention for the Regulation of Whaling ("ICRW"), whose mission is to "provide for the proper conservation of whale stocks and thus make possible the orderly development of the whaling industry."<sup>1</sup> The IWC has authority to amend the ICRW Convention Schedule and to adopt regulations as necessary to conserve whale resources. The IWC's regulations extend over all Contracting Governments that agree to adhere to the Convention, including Japan (who lodged its notice of adherence to the ICRW on April 21, 1959, at which point it became subject to all ICRW regulations).<sup>2</sup> Contracting Governments have good faith obligations to adhere to the ICRW's provisions under Article 26 of the Vienna Convention on the Law of Treaties, in addition to customary international practice. As discussed below, the ICRW does not have an enforcement mechanism.

In 1982, the IWC issued a moratorium on all commercial whaling by fixing at zero the maximum catch of whales to be taken in any one season. This ban went into effect in 1986 and the IWC intended to revisit it in 1990. However, the moratorium is still in place today.<sup>3</sup> In

1. International Convention for the Regulation of Whaling, Dec. 2, 1946, 62 Stat. 1716, 161 U.N.T.S. 72 [hereinafter "Convention"].

2. Whaling in the Antarctic (Austl. v. Japan: N.Z. Intervening), Application Instituting Proceedings, ¶ 2 (Mar. 31, 2010) [hereinafter "Application"], <http://www.icj-cij.org/docket/files/148/15951.pdf> [<http://perma.cc/C8LD-TK2J>].

3. *Catch Limits & Catches Taken*, INT'L WHALING COMM'N, <https://iwc.int/catches> [<https://perma.cc/8WYG-NKW2>] (last visited October 2, 2015).

addition, the ICRW in 1994 banned all commercial whaling in the Southern Ocean Sanctuary.<sup>4</sup>

The moratorium features two exceptions: one for indigenous whaling practices and one for the purposes of scientific research. If a country wishes to utilize this “scientific research exemption” it may do so in accordance with IWC guidelines. The guidelines allow governments to grant permits to their nationals for whaling programs after bringing proposed research programs to the IWC’s Scientific Committee meetings for review.<sup>5</sup> The Scientific Committee may submit comments requesting modifications to, or the cessation of, such programs; however, it does not have the authority to force countries to end whaling altogether. Instead, like with most international treaty obligations, governments are under good faith obligations to comply with the ICRW provisions.<sup>6</sup>

Japan has killed over 11,000 whales under its scientific whaling programs since the moratorium went into effect. Over a span of thirty years prior to the ban on commercial whaling, Japan had killed only 840 whales for scientific purposes.<sup>7</sup> This drastic increase in scientific whaling practices since the inception of the ban on commercial whaling has caused activists and other countries to question such programs’ validity.

These numbers are also troubling in light of Japan’s historic sale and consumption of whale meat.<sup>8</sup> Today, very few Japanese eat whale meat.<sup>9</sup> However, the meat from Japan’s scientific research programs is still donated to schools and hospitals in an effort to reinvigorate the practice.<sup>10</sup> In addition, once scientists have captured the whales and recorded their requisite data points under the scientific whaling programs, Japan allows the meat from those whales to be sold

4. International Convention for the Regulation of Whaling sched. § 3(7)(b), Dec. 2, 1946, 62 Stat. 1716, 161 U.N.T.S. 72 (setting forth amendments to the Convention). Japan is the only Contracting Government that continues to object to this provision. *Id.*

5. Convention, *supra* note 1, art. VIII, § 1.

6. David S. Lessoff, *Jonah Swallows the Whale: An Examination of American and International Failures to Adequately Protect Whales from Impending Extinction*, 11 J. ENVTL. L. & LITIG. 413, 423 (1996).

7. Application, *supra* note 2, at ¶ 10.

8. *Which Countries Are Still Whaling?*, INT’L FUND FOR ANIMAL WELFARE, <http://www.ifaw.org/united-states/our-work/whales/which-countries-are-still-whaling> [<http://perma.cc/9ZWL-6WDZ>] (last visited July 23, 2015).

9. *Asahi poll: 60% of Japanese Want Whaling to Continue*, ASAHI SHIMBUN (Apr. 22, 2014), [http://ajw.asahi.com/article/behind\\_news/social\\_affairs/AJ201404220050](http://ajw.asahi.com/article/behind_news/social_affairs/AJ201404220050) [<http://perma.cc/3ZTP-Y57Q>].

10. Sophie Brown, *Japan Begins Whaling Season with Meat Feast for School Children*, CNN (June 27, 2014, 10:07 AM), <http://www.cnn.com/2014/06/27/world/asia/japan-begins-whaling-season-meal-for-school-children/> [<http://perma.cc/JNN5-N3XY>].

commercially.<sup>11</sup> Several other countries, including Iceland and Norway, also consume whale meat and participate in global whale meat markets.<sup>12</sup>

Two of Japan's whaling programs have caused particular concern within the international community. Under the first, known as the "Japanese Whale Research Program under Special Permit in the Antarctic" ("JARPA I"), Japan killed 6,800 Antarctic minke whales between the years of 1987 and 2005. The second implementation of this program (beginning in 2005 and known as "JARPA II") expanded the whaling to include fin and humpback whales. The Japanese government justifies its JARPA programs under the ICRW's scientific whaling exemption. However, the number of whales killed under the JARPA programs greatly outweighs the number killed in any other scientific whaling programs undertaken in the history of the IWC.<sup>13</sup>

Antarctic whale populations have declined over the course of the JARPA programs, particularly in the Southern Ocean Sanctuary and the surrounding waters. For these reasons, the IWC has several times asked Japan to halt the JARPA programs or to revise them to use only non-lethal research methodologies. Japan refused to heed the IWC's recommendations to suspend the program in 2003, 2005, and 2007.<sup>14</sup>

In addition, Australia and other countries attempted several bilateral requests both within and outside of the IWC to stop Japan's whaling programs. In 2007, thirty countries and the European Commission sent the Government of Japan an "Aide Memoire" asking that it cease all lethal scientific research on whales and send home all JARPA II vessels.<sup>15</sup> In response, Japan agreed not to hunt humpback whales until further consensus existed within the IWC as to their population health. Yet Japan defended the JARPA programs' legitimacy under the ICRW's scientific exemption in contradiction of the IWC's recommendations.<sup>16</sup>

Despite these indications of international disapproval of the JARPA programs, Japan continued lethal whaling in the Antarctic. After exhausting alternative procedures, on May 31, 2010 the Government of Australia filed suit against Japan in the ICJ. Australia alleged that Japan's JARPA II whaling program constitutes a breach of the ICRW and other international obligations for the preservation of marine mammals and the marine environment.<sup>17</sup>

11. Application, *supra* note 2, ¶ 12.

12. *Which Countries Are Still Whaling?*, *supra* note 8.

13. Application, *supra* note 2, ¶¶ 10–12.

14. *Id.* ¶¶ 18–22.

15. *Id.* Annex 1 at 22–25.

16. *Id.* ¶ 32.

17. *Id.* ¶ 2.

THE CASE: WHALING IN THE ANTARCTIC (AUSTRALIA V. JAPAN: NEW ZEALAND INTERVENING)

The ICJ is the principal judicial organ of the United Nations, created in 1945 under the Charter of the United Nations with the role of settling legal disputes submitted to it by States under international law. It sits in The Hague and is composed of fifteen judges, each elected for terms of nine years.<sup>18</sup> The ICJ generally avoids politically sensitive issues, showing the importance of this ruling in what remains a contentious situation.<sup>19</sup>

Australia claimed Japan's JARPA II program violated its good faith obligation as a Contracting Government to abide by the following statutory provisions established by the ICRW:<sup>20</sup>

- (1) Observe the zero catch limit in relation to the killing of whales for commercial purposes under paragraph 10(e); and
- (2) Refrain from undertaking commercial whaling of humpback and fin whales in the Southern Ocean Sanctuary under paragraph 7(b).<sup>21</sup>

Australia requested remedies including a declaration finding Japan to have violated its international obligations in implementing JARPA II, an order for Japan to cease implementation of JARPA II, Japan's revocation of any permits allowing such activities, and a demand for Japan to provide assurances and guarantees that it will not take any further action under the JARPA II or similar programs until such program has been brought into conformity with international law obligations.<sup>22</sup> The thirty countries that had sent the 2007 Aide Memoire all joined in Australia's complaint. New Zealand specifically intervened in the proceeding to support Australia.<sup>23</sup>

18. *The Court*, INT'L CT. JUST., <http://www.icj-cij.org/court/index.php?p1=1> [<http://perma.cc/6ART-8KFY>] (last visited July 23, 2015).

19. Phillippe Sands QC, Matrix Chambers, Remarks at the New York City Bar Association Event: Would Japan's Continued "Scientific Whaling" Constitute a Breach of International Law? (Oct. 30, 2014).

20. Whaling in the Antarctic (Austl. v. Japan: N.Z. Intervening), Judgment, ¶ 234 (Mar. 31, 2014) [hereinafter "Judgment"], <http://www.icj-cij.org/docket/files/148/18136.pdf> [<http://perma.cc/RE78-ZJRZ>].

21. See Application, *supra* note 2, ¶ 7. In addition to the two ICRW violations, Australia alleged that Japan breached provisions of both the Convention on International Trade in Endangered Species of Wild Fauna and Flora and the Convention on Biological Diversity, neither of which the ICJ considered. See *id.* ¶ 38.

22. *Id.* ¶¶ 40–43.

23. See *id.* Annex 1 at 22.

### The ICJ Ruling

On March 31, 2014, in a departure from the Court's conservative leanings, the ICJ found that although JARPA II could be broadly considered a program of "scientific research" under the IWC, its design and implementation did not reasonably relate to its stated scientific objectives.<sup>24</sup> Japan was ordered to revoke any current permits under JARPA II and refrain from granting new ones.<sup>25</sup> The ruling effectively ended JARPA II and issued a strict mandate that any future whaling proposals by Japan comply with the ICRW conditions.

The case is believed to have turned on Japan's expert witness testimony from Norwegian scientist Lars Walløe. Australia's cross-examination created a unique opportunity to question Japan's entire rationale for characterizing JARPA II as a "scientific whaling" operation.<sup>26</sup> In his report, Dr. Walløe himself questioned Japan's motives for using such large sample sizes in the JARPA programs.<sup>27</sup> On cross-examination, Australian attorney Justin Gleeson elicited Dr. Walløe's admission that he disagreed with the required sample sizes for both the fin and humpback studies and that the rationale for such large sample sizes was not apparent in Japan's scientific data.<sup>28</sup> This statement weakened Japan's justification for JARPA II as a scientific whaling program and permitted the ICJ to view Japan's activity as quasi-commercial whaling.

### FUTURE IMPLICATIONS

Japan initially complied with the judgment and agreed to abandon its whaling in the Antarctic. However, in June 2014 Japan's Prime Minister Shinzo Abe revealed his intention to resume such whaling and to begin a third scientific whaling program.<sup>29</sup> In response, during its September

24. Whitney Magnuson, *Marine Conservation Campaigners As Pirates: The Consequences of Sea Shepherd*, 44 ENVTL. L. 923, 928 (2014).

25. Judgment, *supra* note 20, ¶ 247.

26. This was also the first time the ICJ had ever allowed cross-examination of expert witnesses. Sands, *supra* note 19.

27. Whaling in the Antarctic (Austl. v. Japan: N.Z. Intervening), Expert Statement of Dr. Lars Walløe, 10 (Apr. 9, 2013), <http://www.icj-cij.org/docket/files/148/17418.pdf> [<http://perma.cc/28PC-5B9S>].

28. Whaling in the Antarctic (Austl. v. Japan: N.Z. Intervening), Oral Proceedings CR 2013/14, 44-46 (July 3, 2013), <http://www.icj-cij.org/docket/files/148/17428.pdf> [<http://perma.cc/3T93-PYGJ>].

29. Hilary Whiteman, *Japan's PM Shinzo Abe Suggests Return to Antarctic Whaling During 'Whale Week'*, CNN (June 11, 2014, 8:34 AM), <http://www.cnn.com/2014/06/10/world/asia/japan-whaling-abe/> [<http://perma.cc/Y9PP-NCU9>].

2014 meeting in Slovenia, the IWC passed a resolution (adhering to the ICJ's ruling) that requires stricter guidelines for review by the IWC and its Scientific Committee when evaluating new scientific whaling proposals.<sup>30</sup>

On November 18, 2014 Japan revealed its new research proposal, called the New Scientific Whale Research Program in the Antarctic Ocean ("NEWREP-A"). In this proposal, Japan appeared to seriously consider the ICJ ruling by not only rebranding the project so as to differentiate it from the JARPA programs but also by lowering its projected total kills and limiting its study to only Antarctic minke whales.<sup>31</sup> Japan's fisheries minister, Koya Nishikawa, said that Japan hopes "to earnestly explain this new plan in order to win understanding from other nations in the world," showing the country's intention of adhering to the ICJ ruling.<sup>32</sup> However, even though this new program proposes to reduce Japan's lethal whaling, it does not satisfy the ICJ's judgment. Japan, though agreeing to lower its total whale kills, has not ended its lethal whale studies and instead seems to have produced merely a scaled-down JARPA program.

In June 2015, the IWC's Scientific Committee reviewed Japan's NEWREP-A program and, in accordance with the ICJ judgment, determined that Japan's proposal as submitted did not justify the need for lethal research.<sup>33</sup> However, the Scientific Committee did not reject the program outright and stated that it will not ban the potential need for lethal research until after further laboratory work, field experiments, and analysis.<sup>34</sup> The full IWC was scheduled to review the Scientific Committee's findings on NEWREP-A's viability during its September 2015 meeting and has not yet released any further information.

Notwithstanding the Scientific Committee's partial rejection of NEWREP-A, there remains the troubling issue of how to enforce the ICJ ruling. The ICJ itself has no enforcement mechanisms and therefore is

30. Patrick Ramage, *IWC65 Wrap Up: Major Victories Scored for Whales*, INT'L FUND FOR ANIMAL WELFARE (Oct. 6, 2014), <http://www.ifaw.org/united-states/news/iwc65-wrap-major-victories-scored-whales> [<http://perma.cc/WM8Q-SB5Q>].

31. THE GOV'T OF JAPAN, PROPOSED RESEARCH PLAN FOR NEW SCIENTIFIC WHALE RESEARCH PROGRAM IN THE ANTARCTIC OCEAN (NEWREP-A) 13 (Nov. 18, 2014), <http://www.jfa.maff.go.jp/j/whale/pdf/newrep—a.pdf> [<http://perma.cc/M699-Y4ND>].

32. *Japan Plans New Antarctic Whale Hunt, but Vows to Slash Quota*, ASAHI SHIMBUN (Nov. 18, 2014), [http://ajw.asahi.com/article/behind\\_news/politics/AJ201411180092](http://ajw.asahi.com/article/behind_news/politics/AJ201411180092) [<http://perma.cc/7EYH-5L9T>].

33. INT'L WHALING COMM'N, REPORT OF THE SCIENTIFIC COMMITTEE 89 (June 19, 2015), <https://archive.iwc.int/pages/view.php?ref=5429&k=> [<https://perma.cc/84RT-MB5S>].

34. *Id.* at 95.

unable to stop Japan from continuing with its lethal research.<sup>35</sup> Short of declaring war, other IWC Contracting Governments will not be able to stop Japan's activity. Nevertheless, ICJ rulings can trigger "unofficial" enforcement mechanisms capable of overcoming countries' resistance to ICJ rulings.<sup>36</sup>

### The ICJ's Unofficial Enforcement Capabilities

Since the ICJ's inception, countries have almost always complied with ICJ rulings despite the lack of official enforcement mechanisms.<sup>37</sup> Even in contentious political situations, the ICJ's rulings tend to incite change in two different ways: first, the rulings can act as bellwethers of international public opinion and trigger "peer judgment" of the offending country. Second, they can raise awareness within the country itself of the need to reform its practices internally.<sup>38</sup>

Countries may comply with ICJ decisions in order to maintain a certain image in the eyes of their peer countries. In the 1994 territorial dispute between Libya and Chad, Libya did not fully comply with the ICJ's determination that gave the entire resource-rich Aouzou area between the two countries to Chad.<sup>39</sup> However, Libya eventually negotiated with Chad to reach an agreement that halted the years of warfare over the region, despite continued rumors of government support for rebel militia groups. Once it publicly accepted the ICJ's ruling, Libya could no longer assert any formal sovereignty over the Aouzou area and withdrew all troops. Libya then attested that its open support of the ICJ's decision and accord with implementing the decision greatly benefitted Libya's international image and strengthened Libya's ties to other North African countries.<sup>40</sup>

ICJ decisions can also incentivize countries to comply as an ex ante solution to prevent future regional disputes. In the *Sipadan-Ligitan* case, for example, the ICJ found that two disputed Palau islands belonged to

35. Thomas E. Wright, *European and International Law: Myths & Reality*, R.I.B.J., Nov.–Dec. 2005, at 19.

36. Andrew Coleman, *The International Court of Justice and Highly Political Matters*, 4 MELB. J. INT'L L. 29, 65 (2003).

37. See Aloysius P. Llamzon, *Jurisdiction and Compliance in Recent Decisions of the International Court of Justice*, 18 EUR. J. INT'L L. 815, 825 (2008).

38. Some scholars have gone so far as to call the ICJ the "international community's conscience." See Coleman, *supra* note 36.

39. Territorial Dispute (Libyan Arab Jamahiriya/Chad), 1994 WL 417031, ¶ 134 (Feb. 3).

40. Heather L. Jones, *Why Comply? An Analysis of Trends in Compliance with Judgments of the International Court of Justice Since Nicaragua*, 12 CHI.-KENT J. INT'L & COMP. L. 1, 8 (2012).



Malaysia, not Indonesia.<sup>41</sup> After accepting the decision, the Indonesian Embassy expressed hope that its acceptance would set a precedent in the Southeast Asian region for all countries to abide by future ICJ rulings. Indonesia desired to serve as an example for future interactions among countries in the region, and recognized the effect that noncompliance could have in future bargaining situations, both for itself and for surrounding countries. Indonesia's response shows how a country may value its international reputation above its own desires for prevailing in the dispute and exemplifies the ICJ's peer judgment effect.<sup>42</sup>

However, unlike in some other ICJ cases, Japan has long known about the international opposition to its challenged practices. Despite this, it has continued whaling, thwarting the IWC's repeated attempts to curb the JARPA programs. The ICJ judgment may indeed elevate this international reprobation to a level that causes Japan to fully comply. Yet, on the basis of Japan's behavior subsequent to the ruling, it does not appear to have any intention of ceasing its whaling in the Antarctic, and instead will attempt to modify its proposals to fit within the IWC's (unenforceable) standards.

In this instance, the ICJ's second method of enforcement—raising awareness of the issue internally—will most likely be the means by which Japan may ultimately comply with the Court's judgment. Because Japan appears impervious to peer judgment, it will likely carry out its NEWREP-A program, including the lethal research component, unless Japanese citizens demand change from their government using internal political and social mechanisms. Thus, the implementation of the ICJ's judgment will be contingent on its ability to effect change within Japan.

#### Japan's Internal Opposition to Whaling

The prevailing opinion of scholars and United Nations representatives is that ICJ opinions effectively incite political action toward legal compliance more so than enforce legal provisions themselves.<sup>43</sup> Domestic courts are sometimes specifically tasked with enforcing ICJ judgments, leaving the country to determine through its own procedures exactly how, and if, it will comply. The ICJ's *Case Concerning Avena and Other Mexican Nationals (Mex. v. U.S.)* is an excellent example of

41. *Sovereignty over Pulau Ligitan and Pulau Sipadan (Indon./ Malay.)*, Judgment, 2002 I.C.J. 625, 634 (Dec. 17).

42. Jones, *supra* note 40, at 10.

43. *Introduction to the Annual Report of the Secretary-General on the Work of the Organization: 16 June 1956–15 June 1957*, U.N. GAOR, 12th Sess., supp. no. 1A, 5, U.N. Doc. A/3594/Add.1 (1957).

the ICJ's inability to enforce provisions within a national government.<sup>44</sup> In *Avena*, the ICJ found that the United States had violated its obligations under the Vienna Convention on Consular Relations by failing to inform Mexican nationals on death row in the United States of their right to have the Mexican consulate notified of their arrest and detention. The ICJ stated that the United States has an obligation to provide review and reconsideration of the affected Mexican nationals' cases "by means of its own choosing."<sup>45</sup>

President Bush, speaking for the executive branch of the United States government, determined that it was in the U.S.' best interest to comply with the ICJ ruling. He issued a "Memorandum for the Attorney General" in 2005, one year after the ICJ decision, stating this view. However, in a case much familiar to law students, the judicial branch disagreed with the President.<sup>46</sup> In 2008, the U.S. Supreme Court affirmed "while the ICJ's judgment in *Avena* creates an international law obligation on the part of the United States, it does not of its own force constitute binding federal law that pre-empts state restrictions on the filing of successive habeas petitions."<sup>47</sup> Although the executive branch was swayed by the ICJ's judgment and likely felt subject to international peer standards directing compliance, the judicial branch was not. *Avena* and its subsequent litigation display the limits of external pressures for enforcing an ICJ decision. In such instances, the real compliance must come from within the offending country.

In the present instance, the ICJ and others interested in Japan's cessation of whaling can hope that the most significant impact of the ICJ ruling is felt within Japan. Although some Japanese NGOs and individuals have long opposed Japan's whaling practices, prior to this case, Japan's whaling industry was largely unknown to the younger generation of Japanese citizens.<sup>48</sup> The remainder of the country was divided between maintaining loyalty to the longstanding tradition of

44. 2004 I.C.J. 12, 71 (Mar. 31).

45. Cindy Galway Buys, *The United States Supreme Court Misses the Mark: Towards Better Implementation of the United States' International Obligations*, 24 CONN. J. INT'L L. 39, 43 (2008).

46. *Id.* at 48.

47. *Medellin v. Texas*, 552 U.S. 491, 522–23 (2008).

48. "Most young Japanese do not consider whaling to be part of Japanese culture, but neither would the issue appear to loom large in their consciousness. When asked whether they knew that Japan hunts over 850 whales, including 10 endangered species, within the Southern Ocean Whale Sanctuary, over 90 percent answered that they did not know." Shirley V. Scott, *Australia's Decision to Initiate Whaling in the Antarctic: Winning the Case Versus Resolving the Dispute*, 68 AUST. J. INT'L AFFAIRS 1, 6 (2014).

hunting and consuming whale meat,<sup>49</sup> and adopting a more “modern,” some might say Western, position against the whaling industry.<sup>50</sup>

The movement within Japan against the government's support of lethal whaling has continued to grow over the past decade. In late 2011, the Japanese government spent 2.28 billion yen (US\$30 million) from its tsunami reconstruction budget, on top of its existing US\$6–10 million annual subsidy, to fund a JARPA Antarctic whaling expedition. A dozen Japanese NGOs signed a protest letter to the prime minister in response, demanding that the government “not waste any more taxpayers' money on the whaling program . . . [which] cannot survive without taxpayer handouts.”<sup>51</sup>

Greenpeace Japan and Iruka & Kujira (Dolphin & Whale) Action Network, two of the NGOs that signed the 2011 letter, are both active and vocal protestors of the government's continued whaling. On April 22, 2014 the organizations released a Joint Statement in support of the ICJ's ruling and against any future research programs that Japan may present or undertake. Both organizations have continued to circulate materials in opposition of NEWREP-A.<sup>52</sup>

Despite this blatant opposition by Japanese NGOs, the anti-whaling movement has only recently been gaining traction within Japan. The ICJ ruling can certainly help propel this movement forward, particularly because now, the people of Japan can no longer claim ignorance of their country's whaling practices. Although some have remained loyal to the industry's historical and cultural value, the popular movement does appear to be angling toward the ICJ's judgment. “‘This might be a good time to quit,’ said Toshio Kasuya, an early collaborator on Japan's research program who has since become one of its harshest critics. From early on, it became clear to researchers that the program did not prioritize scientific discovery, he said. ‘The system is bankrupt.’”<sup>53</sup>

49. “A 2007 survey of Japanese students aged between 15 and 26 revealed that they were receptive to the rhetoric of the government of Japan to the effect that Japan has been a victim of Western cultural imperialism, which should be resisted.” *Id.* See also Hiroko Tabuchi & Marlise Simons, *U.N. Court Orders Japan to Halt Whaling off Antarctica*, N.Y. TIMES, Mar. 31, 2014, [http://www.nytimes.com/2014/04/01/world/europe/united-nations-court-rules-against-japan-in-whaling-dispute.html?\\_r=3](http://www.nytimes.com/2014/04/01/world/europe/united-nations-court-rules-against-japan-in-whaling-dispute.html?_r=3) [<http://perma.cc/2ZTN-7FH2>].

50. Scott, *supra* note 48, at 6–7.

51. *Id.* at 11 (alteration in original). See also Justin McCurry, *Japan Whaling Fleet Accused of Using Tsunami Disaster Funds*, GUARDIAN (Dec. 7, 2011, 12:50 AM), <http://www.theguardian.com/world/2011/dec/07/japan-whaling-fleet-tsunami-earthquake-funds> [<http://perma.cc/3NY9-XL9P>].

52. *Our Actions*, IRUKA & KUJIRA (DOLPHIN & WHALE) ACTION NETWORK, <http://ika-net.jp/en/our-actions> [<http://perma.cc/M7H2-2FE7>] (last visited July 28, 2015).

53. Tabuchi & Simons, *supra* note 49.

The demonstrable downturn in the country's public support for whaling since the ICJ ruling is evidenced in recent articles from several prominent papers as well as in the surge of whale watching as a tourist operation in coastal cities.<sup>54</sup> This popular resistance to, or at least scrutiny of, Japan's activities may influence the Japanese government to lessen its whaling programs. And, in a best-case scenario, public opinion may also demand legislation that permanently ends the country's whaling activities.

### CONCLUSION

As a result of the Court's decision, Japan now faces both external and internal pressure to discontinue the JARPA program. Externally, if Japan does continue with NEWREP-A, it will face pushback from the international community. However, most countries have opposed Japan's whaling practices long before the ICJ judgment, leaving the question as to whether the judgment will actually cause any international changes. Instead, the judgment highlights the international legal world's view of Japan's actions and leaves no doubt as to whether Japan has international approval for its whaling practices.

Japan's new proposal shows a move in the direction of compliance. However, whether NEWREP-A marks a permanent shift in the country's attitude or is merely an attempt to avoid further international rebuke remains unclear. Japan has long resisted external pressure to cease its whaling, causing some concern about how much the ICJ opinion will actually change the Japanese government's actions.

The most promising outcome from the judgment is its potential impact within Japan. The ICJ judgment represents an international exposure of wrongdoing; one that Japanese citizens can no longer ignore. Even if continued external pressures remain insufficient in bringing Japan to fully discontinue its lethal whaling practices, such pressures could become catalysts for unleashing Japan's internal revolt against the government's longstanding whaling industry. The majority of Japanese people already do not appear to participate in any whale market, despite the government's desire to continue promoting the consumption of whale meat. International rebuke could finally bring about a Japanese

54. See Editorial: *Unwillingness to Give Up Research Whaling Will Harm Japan's Interests*, ASAHI SHIMBUN, Sept. 22, 2014, <http://ajw.asahi.com/article/views/editorial/AJ201409220039> [<http://perma.cc/87A9-FW28>]; Editorial: *Japan Must Give Up Antarctic Whaling, Focus on Preserving Coastal Hunt*, MAINICHI DAILY NEWS, Sept. 17, 2014, <http://mainichi.jp/english/english/perspectives/news/20140917p2a00m0na019000c.html> [<http://perma.cc/XXC5-4JGY>].

movement against whaling that would terminate Japan's lethal industry from within.