Dispute Resolution and Scientific Whaling in the Antarctic

The Story Continues

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In recent years, few issues have polarised public opinion and international relations in the Asia-Pacific Region more acutely than the position of lethal scientific whaling in the Southern Ocean. Since the International Whaling Commission (IWC), the pre-eminent global management authority exercising regulatory competence over great whales, introduced a moratorium on commercial hunting in 1982, there has been considerable agitation in particular quarters for the eventual resumption of whaling. Under the terms of the International Convention for the Regulation of Whaling 1946 (ICRW),1 commercial quotas have been set at zero since the 1985/1986 whaling seasons,2 pending the elusive development of a new and universally acceptable series of management controls. In the interim, a small number of States have sought to pursue their whaling ambitions through a series of regulatory exceptions. Parties to the ICRW may enter reservations to this general position, as has been exercised by Norway and, somewhat more contentiously, Iceland in re-joining the IWC,3 while a parallel regime for so-called “aboriginal” whaling has long

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2 Paragraph 10(e) of the ICRW Schedule. Under Article I(1) of the ICRW, the Schedule is an ‘integral part’ of the Convention.
3 Having left the IWC in protest in December 1991, Iceland applied for membership of the Commission in 2001 subject to a reservation to the moratorium. This was initially rejected but subsequently approved with some reluctance in 2002 by the members; see further Alexander Gillespie, ‘Iceland’s reservation at the International Whaling Commission’, (2003) 145 European Journal of International Law 977–998.

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been recognised as a distinct mechanism to ensure that the subsistence and community needs of particular peoples are protected and guaranteed.4

Rather more controversially, however, Article VIII of the 1946 Convention permits parties to undertake whaling “for the purposes of scientific research subject to such restrictions as to number and subject to such other conditions as the Contracting Government thinks fit”,5 with the final authorisation of scientific catches ultimately lying outside the operation of the ICRW regime. Since the entry into effect of the commercial moratorium, and the withdrawal of a short-lived reservation to these provisions due to extensive political and trade-related pressure, Japan has been the chief exponent of scientific whaling, ostensibly to evaluate ecosystem pressures and changes within the Southern Ocean.6 These endeavours have been subject to strident criticism within the IWC and have represented an enduring cause-célèbre in regional relations, with Australia and New Zealand having long viewed the Japanese program as little more than a euphemism for de facto commercial whaling. In March 2014, following years of legal and political wrangling, alongside the more forceful intervention of militant environmental campaign groups,7 the International Court of Justice (ICJ) ruled that the JARPA II program of lethal sampling failed to constitute whaling “for the purposes of scientific research” pursuant to Article VIII of the ICRW and accordingly ordered the cessation of these activities.8

While the judgment provoked short-lived jubilation among the dominant anti-whaling cohort of States within the IWC,9 rumours of the demise of Japanese scientific whaling have nonetheless proved to be exaggerated. A number of IWC Members sought to bolster the Commission’s oversight of lethal sampling in the light of the judgment, although the resultant Resolution adopted at the IWC’s most recent Meeting in 2014 fell short of wrestling further control

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4 Section 13 of the ICRW Schedule, under which specific catch limits are established “to satisfy aboriginal subsistence need”.

5 Article VIII(1).


