JTMUN

SPECIALIZED COMMITTEES | 2014

THE INTERNATIONAL COURT OF JUSTICE

(ICJ)

What is the International Court of Justice (ICJ)?

- A "World Court" that is a branch of the United Nations
- Forum for nations to pursue their grievances
- The ICJ settles **legal disputes** between nation **states**, not people
    - The International Criminal Court (ICC) tries criminals
- The ICJ can **only** settle disputes when both nations in conflict agree to submit their case

What is your role in UTMUN ICJ?

- You will be representing an **"advocate",** a lawyer, from the country in conflict to reach a settlement that most **favors** the welfare of your country
- You will be either representing the **plaintiff or defendant side**, depending on the court case and country you are given

COURT CASES FOR DEBATE:

1. **Ownership of Senkaku/Diaoyu Islands-** China (Plaintiff) v. Japan (Defendant)
2. **Whaling in the Antarctic-** Australia (Plaintiff) v. Japan (Defendant)

DEBATE PROCEDURE

A. Roll Call

- The chair will call on the name of the advocate. Please answer "present" when called upon.

B. Oaths

- Advocates will swear: “"I solemnly declare upon my honor and conscience that I will speak the truth, the whole truth, and nothing but the truth."

C. Plaintiff Advocate A Speech

- 5 minute speech arguing for the plaintiff’s position

D. Points of Information/ Clarification from Defendants

- 2 minutes

E. 5 Minute Caucus

- For Defendant Advocate A to tailor the speech to rebut the Plaintiff’s points

F. Defendant Advocate A Speech

- Ensuing cycle
- Repeat C-E until alternating between the Plaintiff and Defendant side until all advocates have made their speeches

G. Crossfire Debate

- Advocates ask the opposing side any relevant questions
- Alternate between plaintiff and defendant

H. Closing Arguments

- One advocate from the plaintiff and defendant side will make a final speech
- 5 minutes for each

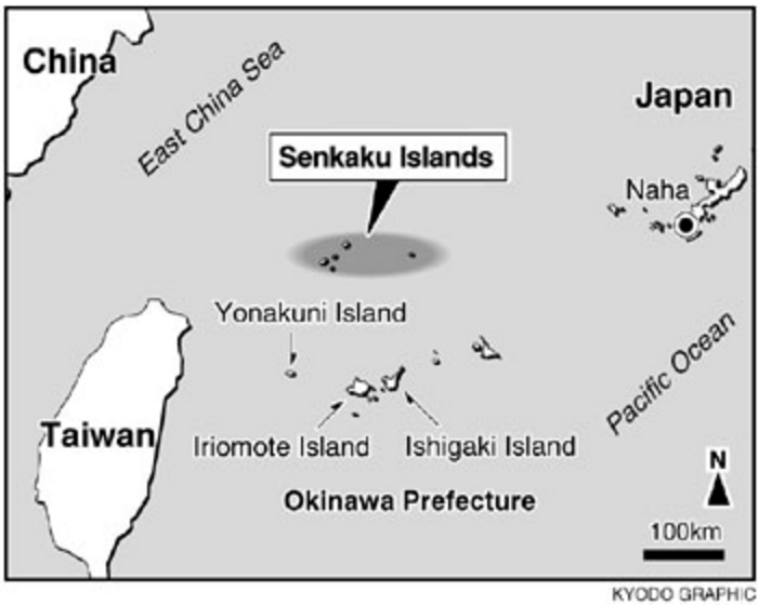
I. Committee Adjourned, Chair of ICJ Deliberates Verdict

WHAT YOU SHOULD PREPARE:

- Compilation of evidence to support your country's position in order to organize your own argument
    - For example- past UN resolutions, history of territory in concern, recent development of issue (any direct confrontations between the two nations?)
- Research on the opposing side's position to come up with rebuttals
- Division of arguments between your fellow advocates
    - For example- Speaker A- social issues, Speaker B- legal, Speaker C- moral
- Compilation of a list of questions to ask during crossfire debate
- **Position paper-** Answer why the judge should rule in favor of your country in the issue of concern.
- **5 Minute Speech** (See Debate Procedure C-F)

OWNERSHIP OF SENKAKU/DIAOYU ISLANDS

A. Geography of Senkaku Islands



The Senkaku Islands are a group of islands in the Pacific Ocean with disputed status. The main contenders for ownership are the People's Republic of China, Japan and Taiwan (Republic of China). The Japanese refer to these islands as "Senkaku" while the Chinese call them "Diaoyu".

B. Origins of Dispute

In 1879, the Japanese government incorporated the Senkaku Islands as part of the Ryukyu kingdom. Furthermore, in 1884, the Japanese conducted a study on the islands, declaring it to be *terra nullius*. Under international law, a state may claim *terra nullius,* "land belonging to no one", through direct occupation. The dispute of ownership started under the Treaty of Shimonoseki after the First Sino- Japanese War. Under the treaty, China agreed to cede to Japan "the island of Formosa together with all islands appertaining or belonging to said island of Formosa (Taiwan)". However, after World War II, Japan lost all land belonging to Taiwan. However, the treaty did not explicitly state whether the Senkaku islands were one of the islands "appertaining or belonging" to Taiwan. Subsequently, the islands were managed by the USA as part of the Ryukyu

Islands. However, neither Taiwan nor China protested. No major objections were raised until in 1968, when the United Nations Economic Council for Asia and the Far East reported a "possibility of oil reserves" in the Senkaku Islands. Since then, the Senkaku Islands have become a major source of tension between the three respective countries.

C. Japan's Stance and Key Evidence

The Senkaku Islands fall under the Japanese's jurisdiction due to the islands history and conventions of international law.

1. Reports of *terra nullis* after survey of the islands in 1884.
2. The islands "appertaining or belonging to Formosa" in the Treaty of San Francisco did not include the Senkaku Islands.
3. Both the People's Republic of China and Republic of China (Taiwan) did not protest the ownership of Senkaku Islands during the San Francisco Treaty. It wasn't until the United Nations reported "possibility of oil reserves" was there dissent.

D. China's Stance and Key Evidence

The People's Republic of China claims full ownership over the Diaoyu Islands due to documentary evidence and Post-WWII treaties.

1. Early maps and travel documents dating back to the 1500s detailing the Diaoyu Islands
2. China did object against the transfer of islands from US to Japan in 1971
3. Under both the Shimonoseki and San Francisco Treaty the Senkaku Islands did not rightfully belong to Japan

E. Timeline of Events

1879- Japanese annexation of Ryukyu Kingdom

1895- First Sino-Japanese War, Japan places Senkaku islands under Okinawa province

1895- Treaty of Shimonoseki

1945- Treaty of San Francisco

1968- United Nations Economic Council for Asia and the Far East report published

1972- US hold on Okinawa and Ryukyu (including Senkaku) relinquished

F. **Important Documents for Further Research**

- 1958 Geneva Conventions on the Law of the Sea
- 1982 United Nations Convention on the Law of the Sea
- Chapter VI of the United Nations Charter (peaceful settlement of disputes)
- Article 7 of the United Nations Charter (creation of the International Court of Justice)
- Statute of the International Court of Justice
- Status and Rules of the International Tribunal for the Law of the Sea (ITLOS)

WHALING IN THE ANTARCTIC

A. Origins of Dispute

Whaling is a very profitable practice, but has been identified as a cause for the endangerment of many species of whales. As such, in 1982, the International Whaling Commission (IWC) declared a moratorium that placed limits for commercial whaling to zero. However, exceptions apply to aboriginal groups and governments that are given permits for scientific research purposes. Furthermore, in 1994, IWC declared the Southern Ocean to be a whale sanctuary. Japan objected to the moratorium, but in 1987, retreated the objection and announced that it will commence a scientific research project in the Antarctic called Japanese Whale Research Program under Special Permit in the Antarctic (JARPA). In 2005, JARPA II, the second phase of the project, was announced. Under the special permit, governments are allowed to do as they wish with their catch. Australia objects to this practice and believes that the research is putting whaling species at risk of the endangerment. Japanese markets sell whale meat, which provides Australia reason to object the work of JARPA II. Japanese say the by-products of the research do not constitute as commercial whaling and help cover the cost of the program. Australia monitors Japanese ships and the activities they carry. After attempts to diplomatically resolve this issue, the case was brought forth to the ICJ basically over different interpretations of rules and laws in place concerning scientific and commercial whaling.

B. Australian Stance

Australia believes that ICJ has jurisdiction of the case as both, Australia and Japan, are members of the United Nations and have part of the United Nations Convention on the Law of the Sea (UNCLOS).

In terms of the case, Australia argues that Japan is in violation of its obligations under the International Convention for the Regulation of Whaling (ICRW), which sets the limit of commercial whaling to zero and which objects to the whaling of humpback and fin whales in the Southern Ocean sanctuary. Under Article VII Furthermore, Australia objects to the sale of whale meat in Japanese markets, which hints to the work of JARPA II as supporting the commercial

whaling industry. A statement by the Japanese Prime Minister Yukio Hatoyama demonstrates that Japanese have a cultural of eating whale. I of the ICRW, the JARPA II program cannot be justified due to the danger it poses to the targeted species and for lack of demonstrated relevance of program objectives. Japan is also in violation of the article 55 of the UNCLOS, which declared the killing of whales in Australia's exclusive economic zone (EEZ) illegal. JARPA II's hunting of the humpback whales is also a breach of obligations under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). Australia also believes that Japan is in violation of the Convention on Biological Diversity (CBD) as it is harming the environment beyond its borders.

C. Japanese Stance

Japan states that it is not in violation of the terms set up by the ICRW, and so this case is nullified as Australia's main argument is now invalid. It claims it has taking steps to fulfill all obligations, which include the cessation of the use of lethal methods for scientific purposes and the practice of commercial whaling. Also, the laws applicable to whaling in the Southern Ocean are not applicable to Japan as it is only conducting scientific research. Also, ICJ has no authority over settling conflicts based on CITES and CBD. As such, Japan argues that the ICJ should not be involved in settling the issue.

Japan states that since it is not violating ICRW laws, JARPA II is not in violation of UNCLOS. Furthermore, Japan states that ICRW laws do not apply to governments that object to it. It also argues that the research program do not endanger any species as it has set a quota for whaling.

D. Important laws, resolutions, and conventions

IWC – ban on commercial whaling in 1986

ICRW – Article VIII states that whaling ban except scientific research purposes given that a nation's government has obtained a permit

UNCLOS- Article 120 states that the protection of marine mammals can include the prohibition, restriction, or regulation of the marine mammals by coastal states and international organizations. Articles 87 and 116 allow nations to take living organisms on high seas. The

signatories of the treaty need to pay a duty if they are in violation. They also have to follow the regulations under IWC.

CITES – convention regulates international trade of endangered species and lists many species of whales that are under the danger of extinction

Timeline of events

2000 – 200 mile EEZ zone marked as Australian Whale Sanctuary making whale hunting illegal

2005 – Japan announced the second phase of JARPA to commence in the 2007/8 season

2007 – Japanese ships hunt whales in Antarctica and in parts of the Australian EEZ zone

Dec 21, 2007 – Australia, 29 other countries, and the European Commission informed the Japanese government of their opposition to JARPA II and demanded the cessation of all lethal scientific activities

Dec 19, 2007 – Australian government devised a plan to oppose the actions of Japan, which include reform proposals for the IWC

May 28, 2010 – Australian government announced that it will be taking legal action Japan

May 31, 2010 – Australia files a case against Japan in ICJ

CONTACT US:

Email us if you have any questions, uncertainties or even if you just want to voice your confusion. We are here to help!

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