Policy Paper Proposal: Sample 3

Finding a Compromise: Law, Diplomacy, and Whaling in the Southern Ocean

Statement of the Problem

Australia opposes commercial and scientific whaling, while Japan considers scientific whaling a right rather than a “loophole” under the International Convention for the Regulation of Whaling (ICRW). Policy commentary on whaling generally highlights differences in the positions of Japan and other nations on the usefulness of scientific whaling and the continuation of the moratorium on whaling. Morishita (2006), for example, reviews the whaling issue from the Japanese perspective, discussing resource management and political, economic, and cultural perspectives and suggesting options for progress. Clapham, Childerhouse, Nicolas, Rojas-Bracho, Tillman, and Brown (2007) respond to Morishita’s paper, arguing in favor of regulation of the whaling industry.

Australia has found that it must balance the risks posed to bilateral relations with Japan if judicial resolutions are pursued in response to significant public pressure (including from non-governmental organizations) to take action. Recent Australian legal commentary has focused on proceedings brought in Australia by the Humane Society International against the Japanese company Kyodo Senpaku Kaisha Ltd. for whaling in the Australian Whale Sanctuary. McGrath (2005, 2006) reviews the international and domestic legal issues raised by these proceedings, including their significance for environmental law and the domestic law, and argues that a focus on domestic law is insufficient for resolving the whaling issue. Blay and Bubna-Litic (2006) review international law relevant to Australia’s domestic legislation and examine the relationship between international and domestic law to consider the merits of applying domestic law to international issues in the context of these proceedings. They advance the view that efforts to stop commercial whaling should have an international focus rather than a domestic law focus.

There is little research specifically targeting the differences in domestic law between Australia and Japan. In order to fill this gap, this paper will examine the positions of Japan and Australia on whaling conducted under Article VIII of the ICRW (scientific whaling) to identify policy and legal issues relevant to resolving the differences of view over the conduct of scientific whaling in the Southern Ocean.

Research Questions

1. What are the differences between Australia’s and Japan’s domestic law regarding whaling?
2. How can international law accommodate both the Australian and Japanese positions?
Methodology
This paper will ask whether international law can provide a resolution to the differences in view between Japan and Australia over whaling in the Southern Ocean through an examination of the relevant policy and legal issues. I will review sources such as government statements, parliamentary reports, and discussions in international forums to clarify the policy objectives and concerns of both parties. This includes explaining, to the extent possible, why there are differences of view that have so far not been resolved. I will review and summarize the relevant international and Australian domestic law (legislation and case law), academic literature, and commentary to assess the scope for effective unilateral action through domestic law, summarize the existing legal situation in light of this analysis, and comment on the policy options available to both parties, including the role of diplomacy.

References