



Australian Government
Attorney-General's Department

Office of International Law

13 June 2013

His Excellency
Mr Philippe Couvreur
Registrar
International Court of Justice
Peace Palace
Carnegieplein 2
2517 KJ The Hague
NETHERLANDS

Dear Mr Couvreur

Whaling in the Antarctic (*Australia v. Japan: New Zealand Intervening*)

I have the honour to refer to your letter of 11 June 2013 enclosing a letter from the Agent of Japan dated 10 June 2013 conveying Japan's views on the matters raised by Australia in its letter of 5 June 2013 concerning the filing by Japan of lengthy comments by Professor Judy E Zeh on Australia's expert evidence.

First, I note the reference in the letter from the Agent of Japan to the e-mail chain attached to Dr Gales' statement of 31 May 2013, presumably as some form of alleged precedent for its filing of the material from Professor Zeh. The e-mail chain attached to Dr Gales' expert statement was included as a source of reference for a point made in Dr Gales' statement and, of course, Dr Gales will be able to be cross-examined on that statement. That e-mail chain and its limited purpose stands in stark contrast to the 24 pages of extensive and untestable evidence set out in the two e-mails of Professor Zeh filed by Japan.

The intent of Japan in seeking to introduce expert evidence by the back door is now confirmed by the statement in the letter from the Agent of Japan dated 11 June that the material from Professor Zeh is tendered on the basis that it will be '... useful to assist the Court in assessing the scientific aspects of the case ...'.

We reiterate in full the comments made in our letter of 5 June 2013 as well as our request to the Court that the material from Professor Zeh not be treated as part of the Court's dossier and that no reference should be made to this document or its content during the oral proceedings. We note that Japan has offered no characterization of the material from Professor Zeh (in particular, whether it is to be treated merely as evidence, or as expert evidence), and has offered no explanation of the manner in which this new material is consistent with (i) the specific process and timetable adopted by the Court, following consultation with the Parties, and (ii) the Rules of the Court.

If the sole purpose of Japan is to give Australia advance notice of possible questions for cross-examination of Australia's witnesses and not in any way to deploy Professor Zeh as an expert witness, that only confirms that the material has no place in the Court's dossier.

Yours sincerely



W M Campbell QC
Agent of Australia