

From Bali to Antarctica – Rudd's next green challenge

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At the Bali climate change summit the Rudd government demonstrated that it is streets ahead of the previous government on the global environmental challenge of our time. This week presents another opportunity for leadership in environmental diplomacy, this time on the vexed issue of Japanese whaling in the Southern Ocean near Antarctica.

The government is moving swiftly to begin surveillance of the Japanese whaling fleet, which has been dispatched to kill an unprecedented number of whales this summer. Projected catches for Japan's "scientific" whaling program are 850 minke whales and, for the first time, 50 fin whales (which are an endangered species) and 50 humpback whales (which are vulnerable).

This is a dramatic escalation of the Japanese whaling program, which is now reaching an intensity not seen since the days of full blown commercial whaling. Although justified by the Japanese as scientific research under a loophole provision of the Whaling Convention, in reality it is commercial whaling conducted against the express advice of the Scientific Committee of the International Whaling Commission. Consider here not only the scale of the program (Japan will kill in one summer more whales for research than it did between 1954 and 1986) but also the lethal "research" methods (despite the existence of proven non-lethal alternatives).

The government's surveillance efforts will collate evidence that could be used in a international case against Japan. Apparently we will soon learn what Australia's litigation strategy will be. In this respect it is very welcome news that Prime Minister Rudd and Environment Minister Garrett have dusted off the report of the Sydney Panel of Independent International Legal Experts, which had been hidden in a bottom draw by the former government.

The Sydney Panel Report outlines a suite of legal options for successfully challenging Japan's whaling program. These include taking a case to the International Court of Justice in The Hague for breaching the Whaling Convention, which allows genuine scientific research but prohibits plainly commercial whaling. Both Australia and Japan have accepted the jurisdiction of the World Court, so there is no impediment to bringing a case immediately.

Japan could also be hauled before the International Tribunal for the Law of the Sea in Hamburg for breaches of the Law of the Sea Convention. One of the advantages of this option is that the Tribunal can issue immediate provisional measures requiring Japan to

cease is unlawful whaling activities. Other equally strong options include initiating compliance procedures under the Convention on International Trade in Endangered Species which could lead to a collective trade embargo.

There are many good legal options available to the Rudd government to move things forward on this issue. Although international litigation ought to be a last resort, Japan has simply not responded in good faith to any diplomatic overtures made over many years. On fisheries and whaling matters it continues to make ambit claims for ever increasing catches, against scientific advice and the wishes of the international community. Although international litigation is unlikely to bring a quick fix, and does carry risks, it can lead to positive change as was seen most clearly in the case of French nuclear testing in the South Pacific.

Dr Tim Stephens was Rapporteur for the Sydney Panel of Independent International Legal Experts and co-author of the Sydney Panel's Report.