

Taking Japan to court over whaling is risky, says international legal expert

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(PhysOrg.com) -- An international legal expert says Australia has some very difficult decisions about how best to approach the increasingly tense situation arising from Japanese whaling in the Southern Ocean.

Professor Steven Freeland, from the University of Western Sydney's School of Law, has been a Visiting Professional at the Appeals Chamber at the International Criminal Court in The Hague, and is currently a Visiting Professor in International Law at the University of Copenhagen. Professor Freeland says Australia is unlikely to take Japan to the international courts because of the risks that legal action would pose to its relations with Japan and its claims over territorial waters.

"Any high profile legal proceedings at international courts would undoubtedly spark some form of political retaliation from Japan which could affect our bi-lateral relationship. One cannot avoid the political implications of taking another country to court with allegations of illegality," he says.

"In addition to this, to succeed in its claims before the courts Australia would probably need to assert that the Japanese are whaling in Australian territorial waters, in which case the court would have to determine the boundaries of Australian territorial waters, as opposed to what we claim to be our territory."

"Japan does not accept our claims to part of these waters and, if the court ruled that the waters that we claim as our own are in fact not part

of Australia's legal territory, that would have far broader consequences than just the issue of whaling, including the rights to fisheries and other resources."

Professor Freeland says the Federal Government would also be aware of the potential to lose any legal action, which could spark another wave of negative consequences.

"There is always the inherent risk in any legal action that a country's claims are not accepted by the court. If the [court](#) ruled that whaling in the [Southern Ocean](#) was legal, or at least parts of the whaling program were legal, then Japan would be emboldened and we would have lost any moral high-ground we may feel we have in terms of whaling," he says.

"Japan may then well ask us to take action against groups like the Sea Shepherd, such as refusing them Australian port access or taking more direct action against their activities"

Professor Freeland also says the Federal Government's refusal to rule out international legal action against Japan could backfire.

"The more the government threatens international legal action without doing anything, or at least anything publicly, the more this will affect its credibility. Australia cannot continue to strongly assert its sovereignty and the applicability of its laws to the area concerned, and yet fail to take any tangible action to try to enforce those laws," he says.

"The government is now caught between fulfilling its election promises to act on Japanese whaling, and trying to limit the potential political and economic fallout with a friendly country, and an economically important trading partner at that. If Australia is really serious about resolving this issue by diplomatic discussions, then threats of legal action do not help. On the other hand, if these threats continue, then Australia must be

prepared to follow through on them."

Provided by University of Western Sydney

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