

With reference to the Government of Japan's position statement on Resolution 2016-2 and the associated Standing Working Group (IWC.ALL.276, 31 January 2017), the below signatories submit the following response:

1. We commit to giving effect to Resolution 2016-2, noting that this Resolution was the outcome of full consultation within the Commission and properly adopted by the Commission.
2. We do not agree with the suggestion that Resolution 2016-2 is an attempt to add further conditions for the granting of special permits, or that it is *ultra vires*. Resolution 2016-2 is a manifestation of the Commission's existing right, under Article VI of the International Convention for the Regulation of Whaling, to provide recommendations to any or all Contracting Governments on "any matters which relate to whales or whaling and to the objectives and purposes of [the] Convention". There is nothing in Article VIII of the Convention, nor paragraph 30 of the Schedule, to suggest that this does not include the right to make recommendations to Contracting Governments about special permit programmes.
3. In this context we recall the judgment of the International Court of Justice, which *inter alia*, refers to the duty of all Contracting Governments to cooperate with the Commission and its Scientific Committee,¹ and observes that "whether the killing, taking and treating of whales pursuant to a requested special permit is for purposes of scientific research cannot depend simply on [the issuing] State's perception".²
4. The Standing Working Group established under Resolution 2016-2 will fairly and objectively assist the Commission to fully consider the Scientific Committee's advice on special permit programmes. This will allow the Commission to properly debate and, consistent with Article VI of the Convention, make recommendations on special permit programmes.
5. We look forward to working constructively in the Standing Working Group to facilitate the Commission's consideration of special permit programmes, consistent with Resolution 2016-2 and with the Convention.

Argentina, Australia, Austria, Belgium, Brazil, Bulgaria, Chile, Colombia, Costa Rica, the Republic of Croatia, Cyprus, Czech Republic, Denmark, Estonia, the European Union, Finland, France, Gabon, Germany, Greece, Hungary, Ireland, Israel, Italy, Latvia, Lithuania, Luxembourg, Malta, Mexico, Monaco, the Netherlands, New Zealand, Panama, Poland, Portugal, Romania, Slovak Republic, Slovenia, Spain, Sweden, the United Kingdom, and Uruguay.

¹ *Whaling in the Antarctic (Australia v. Japan: New Zealand intervening)*, Judgment, I.C.J. Reports 2014, paragraph [240]: "The Court observes that paragraph 30 and the related Guidelines regarding the submission of proposed permits and the review by the Scientific Committee (currently, Annex P) must be appreciated in light of the duty of co-operation with the IWC and its Scientific Committee that is incumbent upon all States parties to the Convention, which was recognized by both Parties and the intervening State."

² *Ibid*, paragraph [61].