3. REASONABLENESS AND COMMENTARY ON WHALING IN THE ANTARCTIC

International lawyers seek to demonstrate that their discipline is scientific; that is, committed to values including rationality, progress and objectivity. But what is reasonable depends on the circumstances. Reasonableness is assessed according to the special features of a case. It is not a benchmark capable of precise definition or mechanical application. But reasonableness ‘is often a false friend that gives the impression of an objective threshold where none exists’. Although it provides flexibility for a court, the concept is vague and offers little clear or practical guidance to decision makers. Reasonableness moreover implies that the standard does not remain fixed. It requires a highly fact-specific inquiry.

45 Wemhoff v Germany App no 2122/64 (ECtHR, 1968) Ser A, No 7, para 10.
46 The Government of Sudan/The Sudan People’s Liberation Movement/Army (Abyei Arbitration), Award of the Arbitral Tribunal of 22 July 2009, Dissenting Opinion of Judge Al-Khasawneh, para 182.