



Fisheries Jurisdiction - Spain v Canada

ARGUED: 19 November 2018

DECIDED: 20 November 2018

1 The Majority Opinion was signed and agreed to by Justice Cianek, Justice Mach, Justice Hickey, Justice
2 Schutt, Justice Johannes, Justice Miranda, and Justice Tiller.

3 The Court was asked to deliver a judgment on whether the actions of Canada against the Kingdom of
4 Spain's fishing vessel, the Estai, is considered illegal under international law, and whether the Court has jurisdiction
5 to rule on such a matter. The Kingdom of Spain presented to the Court that they believed the seizure of the Estai
6 was a violation of the United Nations Convention on the Law of the Sea (UNCLOS), which states that a state's
7 exclusive economic zone [EEZ] shall not extend beyond 200 nautical miles from the baseline from which the breadth
8 of the territorial sea is measured. Because the vessel was seized at a distance of between 245-250 nautical miles from
9 the shore of Canada, outside of their established EEZ. The Kingdom of Spain further argued that measures taken
10 by Canadian authorities to board the vessel and confiscate its contents, as well as the detainment of its crew and
11 demands for bail were unjustifiable. The Kingdom of Spain referred to these actions as an excessive use of corporal
12 punishment, which the Kingdom of Spain argued is prohibited under general international law, and claimed is a
13 blatant violation of their sovereignty.

14 Canada argued that due to the reservations they presented in regards to Article 36(2) of the Statute of the
15 Court, which allows states to submit to the compulsory jurisdiction of the Court, the Court does not have jurisdiction.
16 Their reservation concludes that they do not accept compulsory jurisdiction in disputes arising out of or concerning
17 conservation and management measures taken by Canada with respect to vessels fishing in the NAFO Regulatory
18 Area... and the enforcement of such measures. Canada claims that the Court does not have jurisdiction to rule in
19 respect to their argument because their actions were justifiable as conservation and management measures to which
20 the state had previously vowed their commitment, and had been undertaken expressly in the interest of protecting
21 an endangered species of fish.

22 The Court has determined that it does not have jurisdiction to rule on this matter.

23 The opinion and explanation of the reasons of the Majority are as follows:

24 Under Articles 2 (1) (d) and 19-23 of the Vienna Convention on the Law of Treaties of 1969, to which both
25 Canada and Spain are signatories, a reservation is defined as a declaration made by a state by which it purports to
26 exclude or alter the legal effect of certain provisions of the treaty in their application to that state. A reservation
27 enables a state to accept a multilateral treaty as a whole by giving it the possibility not to apply certain provisions with
28 which it does not want to comply. Reservations can be made when the treaty is signed, ratified, accepted, approved
29 or acceded to. Reservations must not be incompatible with the object and purpose of the treaty. Furthermore, a
30 treaty might prohibit reservations or only allow for certain reservations to be made.

31 As this Court decided in 1986 I.C.J. 14, Case Concerning the Military and Paramilitary Activities in and
32 Against Nicaragua (Nicaragua v. United States of America), Declarations of acceptance of the compulsory jurisdiction
33 of the Court are facultative, unilateral engagements, that States are absolutely free to make or not make. In making
34 a declaration, a State is equally free to either do so unconditionally and without limit of time for its duration, or to
35 qualify it with conditions or reservations. This shows that the Court has historically accepted the rights of States to
36 issue reservations in their acceptance of compulsory jurisdiction.

37 Furthermore, in accordance with Article 38(5) of the current Rules of the Court, established and ratified in
38 1978, and bearing in mind that contentious cases require the consent of all parties in order to determine jurisdiction,
39 it is clarified that no action be taken in the proceedings, unless and until the State against which such application is
40 made consents to the Court's jurisdiction for the purposes of the case. While Canada has accepted the compulsory

41 jurisdiction of the Court under Article 36(2) of the Statute of the International Court of Justice, the Court recognizes
42 that Canada has reservations to this agreement. In Section 2(d) of declarations submitted to the Court in 1994 by
43 Canada in regard to their acceptance of the compulsory jurisdiction of the Court, Canada explicitly communicated
44 their reservations to accept the jurisdiction of the Court in disputes arising out of or concerning conservation and
45 management measures taken by Canada with respect to vessels fishing in the NAFO Regulatory Area, as defined in
46 the Convention on Future Multilateral Cooperation in the Northwest Atlantic Fisheries, 1978, and the enforcement
47 of such measures. Because this declaration was provided to the Court the year prior to the cases introduction to
48 the Court, the Court finds that Canada is justified in their refusal to recognize or consent to the jurisdiction of the
49 Court in this case.

50 Arguing that Canada was required to accept the jurisdiction of the Court in the settlement of this dispute,
51 the Kingdom of Spain referred to Article 288 of UNCLOS, which states in Section 1 that "A court or tribunal
52 referred to in article 287 shall have jurisdiction over any dispute concerning the interpretation or application of this
53 Convention which is submitted to it in accordance with this Part." The former Section 287 further expands upon this
54 basis for jurisdiction, asserting that the courts or tribunals to which such disputes are submitted, which, as stated
55 in Article 287, Section 1(b), including the International Court of Justice, may also find within their jurisdiction
56 the interpretation and application of any related or relevant international agreements which may be pertinent to
57 the interpretation of the Convention. While the Kingdom of Spain's arguments to this extent were compelling, the
58 Court could not declare jurisdiction due to the reservations submitted by Canada before this event occurred.

59 Thus, the Court finds that this case does fall under the reservations made by Canada when it accepted the
60 compulsory jurisdiction of the ICJ. It is uncontested by both parties that the Estai was fishing within the NAFO
61 Regulatory Area, thus this case would fall under the reservations put forth by Canada and would be outside the
62 jurisdiction of this Court.

63 We the United Nations International Court of Justice advise:

64 The Majority suggests that Canada and the Kingdom of Spain seek further remediation through measures
65 such as, but not limited to, the International Tribunal for the Law of the Sea, arbitration, or other means of diplomatic
66 resolution.

67 The Majority condemns unilateral acts of violence occurring on the high seas.

68 While the Majority understands the self-interest of each State is imperative to its sovereignty, we remind
69 States of their obligation to international law, the international community, as well as the preeminence of international
70 law in the settlement of interstate or otherwise international disputes.

71 Therefore, the Majority does not have jurisdiction in regards to the determination of whether the actions of
72 Canada against the Kingdom of Spain's fishing vessel, the Estai, is considered illegal under international law.

Signed By

Justice Audrey Johannes

Justice Tessa Schutt

Justice Rob Hickey

Justice Raegan Mach

Justice Jacqueline Miranda

Justice Josh Cianek

Justice Alex Tiller