



Fisheries Jurisdiction - Spain v Canada

ARGUED: 19 November 2018

DECIDED: 20 November 2018

1 The Dissenting Opinion was signed and agreed to by Justice Rodell and Justice Chirumamilla.

2 The Court was asked to deliver a judgment on whether the actions of Canada against the Kingdom of Spain's
3 fishing vessel, the Estai, is considered illegal under international law, and whether the Court has jurisdiction to rule
4 on such a matter.

5 We are of the opinion that the Court cannot decide at this point in time whether or not it has jurisdiction.

6 The main issue we have with the Majority's opinion is that it definitively states that the Court does not have
7 jurisdiction over this matter, which is problematic in nature because of the claims that Spain has made to the Court.
8 Spain has claimed that Canada wrongfully used force, violating the principle of the freedom of the seas, violating
9 Spanish sovereignty, endangering the Estai and its crew, unilaterally using coercion, harassing Spanish vessels, and
10 wrongfully arresting a national ship.

11 These are fundamental breaches of international law. First, at this time on 1 March, 1996, Spain's claims
12 have not yet been substantiated. Second, it cannot be definitively determined that these disputes all arose out
13 of or concerning conservation and management measures taken by Canada with respect to vessels fishing in the
14 NAFO Regulatory Area, as defined in the Convention on Future Multilateral Cooperation in the Northwest Atlantic
15 Fisheries, 1978, and the enforcement of such measures.?

16 Third, it is not up to States to determine whether or not the Court has jurisdiction. The Court is the only
17 body that can decide whether or not it has jurisdiction in any case. This is easily found in the Court's statute,
18 Article 36 (6). The Court has declined jurisdiction, or even the possibility of jurisdiction, due to one reservation that
19 Canada has made. The Court has not fully explored whether or not this reservation holds up in light of the claims
20 that Spain has made concerning Canada's fundamental breach of international law.

21 Fourth, any and all parties that come before the Court submit to its procedural rules. The decision of
22 whether or not the Court has jurisdiction is within the Court's procedural rules, as this is an inherent part of
23 deliberations and opinion writing.

24 Fifth, reservations do not exclude any State completely from jurisdiction, they merely provide exceptions
25 to jurisdiction. Reservations do not justify exceptions to the main principles of international law, which are the
26 promotion of human rights, the strict limitation on the right to use force against other states, and the strict prohibition
27 on the acquisition of territory by force.

28 In United States Diplomatic and Consular Staff in Tehran (1979), the Court observed that

29 "no provision of the Statute or Rules contemplates that the Court should decline to take cognizance of one
30 aspect of a dispute merely because that dispute has other aspects, however important,"

31 and,

32 "if the Court were, contrary to its settled jurisprudence, to adopt such a view, it would impose a far-reaching
33 and unwarranted restriction upon the role of the Court in the peaceful solution of international disputes."

34 We believe the Court has erred in its weighing of Canada's reservation against Spain's allegations, and the
35 maintenance of the fundamentals of international law.

36 Until the Court definitively knows whether or not Spain's claims are true, it cannot make a decision on
37 whether or not it has jurisdiction. Therefore, we dissent.

Signed By

Justice Pravallika Chirumamilla

Justice Hope Rodell