

CASE ANALYSIS ON PAQUETE HABANA V. UNITED STATES (1900)

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ABSTARCT

Before international law followed the doctrine of *jus in bello* and *jus ad bellum*, it followed the doctrine of 'just war theory'. This doctrine is a traditional doctrine that provides the military ethics that had to be followed by military leaders, theologians, ethicists and policy makers. This doctrine ensures that war is morally justified in its means and methods and ensures that military and other categories of authorities and entities that are governed by this doctrine follows the principles of this doctrine and upholds the same.

The status of Customary International Law in the US legal system is uncertain. The US Constitution does not make any reference to Customary Laws in its provisions and has only a limited reference of it. However, throughout the 19th and 20th Century, the United States Courts have applied Customary International Law without the requirement of it first being codified by the Congress. The Court also referred to it as a part of its law. It treats International Law as having the status of general common law, that is, a law that is neither federal law nor state law and is applicable only in the absence of a contrary domestic law.

One such case that was governed by this doctrine of just war and Customary International Law is The Paquete Habana case¹. This case is a landmark case of the US Supreme Court regarding the applicability and recognition of Customary International Law by the United States. The Court ruled that the capture of fishing vessel by the US Military, as a Prize of War, is a violation of the Customary International Law and ordered the release of the two captured fishing vessels.

INTRODUCTION

The expression ‘customary international law’ concerns, on the one hand, the process through which certain rules of international law are formed, and, on the other, the rules formed through such a processⁱⁱ. While these guidelines are not really broad in nature and in its scope, all current general rules of international law are standard and customary.

Customary International Law emerges from the acts of countries pursued out of a sense of lawful obligations. Albeit long a significant source of international law, there remains to be discussions, debates, uncertainties and vulnerability about standard of customary international law’s status in the US legal framework. The US Constitution clarifies that treaties are a part of the preeminent rule that everyone must follow and is the supreme law of the land and the US Supreme Court has also clarified that this implies that a treaty can uproot contrary state law, and supersede a prior in-time federal rule, if the treaty is self-executing.

However, the US Courts see customary international law as supplanting otherwise applicable relevant domestic laws. They treated this customary international law as having the status of general common law, that is, as law that were neither federal law nor state law, and which could be applied only in the absence of any contrary domestic law.

One such case in which customary international law was upheld in place of a general law is the *Paquete Habana* caseⁱⁱⁱ. Though an old case, it was held that international law is a true law. The *Paquete Habana* case was a landmark United States Supreme Court case. This case reversed a previous judgment that allowed the capture of the fishing vessels under prize. This case integrated customary international law with American law.

BACKGROUND

Back in the 1898, Cuba was under the Spanish rule. In April 1898, two fishing vessels namely, the *Paquete Habana* and the *Lola*, were sailing along the Spanish colony of Cuba. These two fishing vessels were captured by the US merchant vessels. There was a blockade of the island over the rising tensions between the two countries. The United States stated that the blockade was according to the American laws and stated that the law of the nations applied.

Thereafter, the Spanish – American war began and US announced that the practice of ‘capture of prize’, also known as, prize of war would be followed. Thus, this gave the US authority to take the two fishing vessels – Paquete Habana and Lola to Key West, Florida. Here, the two vessels were auctioned by the Federal District Court. This court had the jurisdiction over the captured prizes of war.

The US Admiral claimed that most of the fishing vessels of the Spanish were manned with trained seamen with naval experience. US also stated the customary international practice of capturing enemy vessels as prize of war^{iv}. The cargo of the two vessels did not carry any arms or ammunition, but merely carried fish.

The owners of the two captured vessels were two Spanish citizens. They appealed to the US Supreme Court. They appealed on the ground that according to the customary laws, fishing vessels was exempted from being captured as the prize of war. The appellants claimed that this act of capturing the fishing vessels was violating the international law that US proclaimed.

The US federal government argued that it had indeed complied with the international law and under the international law, the military commanders had the discretion to whether exempt fishing vessels from prize of war.

The US Supreme Court held that the fishing vessels were exempted from being captured and cannot be taken as prize of war. The Court also held that the International Customary Law will be considered while determining disputes along with American law.

The Court cited various precedents in support of its decision and stated that it was an ancient usage among civilised nations, beginning centuries ago and gradually ripening into a rule of international law^v.

ANALYSIS

The United States Supreme Court found that there was no specific United States law or statute that neither defined the term prize of war nor provided any specification regarding the same. However, the court stated that the customary international law made capturing of fishing vessels an exemption to the prize of war. The court went ahead and stated that there are a

number of factors that are taken into consideration while determining whether or not something or some act is considered as a customary international law. In this particular case, the court pointed that there were several other countries that practiced a custom that commercial fishing vessels were exempted from being captured as prizes of war. This practice was considered customary in nature because the practice was observed to be followed over a long period of time. The repetition of the practice made commercial fishing vessels an exemption. *Opinio juris* stated that commercial fishing vessels were exempted from being prizes of war.

The American law of maritime prize is older than the country itself and dates way back to 1812. The genesis of the American maritime prize law is the result of the work of John Marshall during the war of 1812. According to this law, a fishing vessel is immune from being captured as prize of war. This shows that, the exemption on the fishing vessel is not only a customary practice, but also an American law. Thus, regardless of whether the court went by the compliance of customary international law or not, it was still bound by the American law which is the law of the nation, and still had to exempt fishing vessel by releasing the two captured Spanish fishing vessels.

CONCLUSION

The *Paquete Habana* did not emerge as nothing. The decision of the case extended the development of international law. The opinion observed in this case became a strong influence on the law of naval warfare. It more importantly declares that the international law is a part of the nation's law.

The United States Constitution does not provide anything about customary international law except for the reference where it grants power to the Congress to define and punish offences against the law of nations. Over the time, US courts have started to apply customary international law without the requirement for it to be codified by the Congress and have referred to it as a part of its law. However, the courts have not considered the application of customary international law over the otherwise applicable domestic law.

It paved way for the development of international law in the American legal system and thus, becomes an important precedent in International Law.

REFERENCES

ⁱ *Paquete Habana v. United States* 175 U.S. 677.

ⁱⁱ Tullio Treves, *Customary International Law*, **OXFORD PUBLIC INTERNATIONAL LAW** (November 2006), <https://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e1393>.

ⁱⁱⁱ *The Paquete Habana*, 175 U.S. 677 (1900).

^{iv} William S. Dodge, *The Story of the Paquete Habana: Customary International Law as Part of our Law* (2005).

^v *Id.* at 3.

