

THE PAQUETE HABANA (S.CT. 1900)

QUESTION

Are coastal fishing vessels immune from capture (prize of war)?

ANS Yes.

FACTS

Two coastal fishing vessels captured by the U.S. navy during blockade of Cuba during Spanish – American War (1898).

COURTS

Ships sold as prize by District Court. *Reversed* by Supreme Court.

HOLDING

Coastal fishing vessels are immune from capture during wartime as a matter of customary international law (Law of the Sea), which is incorporated as part of U.S. federal law under the U.S. Article VI (“Supremacy Clause”).

RATIONALE

1. The specific rule as to capture of coastal vessels is intended to promote the well-being of the population.
2. The court examined the history of the specific rule, as to actual practice and treaties, to determine its existence.

DICTION

Coastal fishing vessels not engaged in peaceful activity or on the high seas not catching fresh fish are subject to capture.

COMMENT

1. This case is the leading Supreme Court case that gives *customary international law* the *same standing as treaties* under Article VI of the U.S. Constitution (the “Supremacy Clause”). This is even though it is not mentioned in the Constitution. This is the leading case that “*incorporates*” customary international law into U.S. domestic law (known as the “*Doctrine of Incorporation*”).
2. I wonder if this is still good law, as to the specific issue of coastal vessels, after our experience of use of such vessels during the Vietnam War and more recently off Africa to run blockades and/ or to conduct piracy.
3. What if there was a treaty or an executive order to the contrary?